

This update covers recent reports of [political interference in the justice system](#), efforts to correct [wrongful convictions](#) and reduce “[corruption](#)” in and of the justice system, and a controversial [expansion of parole](#) in Sichuan Province. It begins with a report on the trial of executives of the Sanlu Group in the [Melamine-tainted milk scandal](#), the final sentence for which has yet to be confirmed.

Executives of Sanlu Group Convicted in Melamine Milk Scandal

On December 31, 2008, four executives of the Sanlu Group, the country’s major dairy producer, the center of China’s tainted milk scandal, were tried in Shijiazhuang, capital of Hebei Province within a single day. The Shijiazhuang Intermediate People’s Court opened the trial at 8 a.m. and ended with a conviction but no sentence at 10:10 p.m. The Court found Tian Wenhua, Sanlu’s former chairwoman and general manager and three other executives guilty of “producing and selling fake or sub-standard products.” This conviction came 94 days after the the four defendants were arrested on Sept. 26. A sentence is expected by the end of January.

According to the *Xinhua News Agency*, Sanlu received consumer reports as early as December 2007 that some infants showed symptoms of red sediment in their urine after drinking baby formula produced by the company. However, Sanlu’s customer relations department did not report these complaints to top executives in written form until May 17, 2008. On July 24, the company sent urine samples to an inspection and quarantine center for examination in Hebei. The test results, which were returned on August 1, showed that most of the

samples contained melamine, an industrial chemical used in the making of plastics.

Between Aug. 2 and Sept. 12, Sanlu Group reportedly produced 904 tons of melamine-tainted baby formula powder of which 813 tons of the tainted products were sold, yielding revenue of 47.5 million yuan (6.9 million U.S. dollars). The Ministry of Health claimed that the contaminated products were likely responsible for the deaths of six infants. Another 294,000 infants suffered from urinary problems such as kidney stones.

The case against Sanlu started as a civil matter when the parents of Xiaotao, a one-year-old boy in Guozhuang town, Zhenpin county, Henan province who was diagnosed with multiple renal stones in June last year after drinking several hundred packets of Sanlu powered milk. After unsuccessful negotiations for compensation with Sanlu Group Co. Ltd., Xiaotao’s parents filed suit against Sanlu at the Zhenpin County Court. The parents of another child victim in Guangzhou filed suit with the Guangzhou Intermediate People’s Court. But the Court rejected the suit claiming that the case had not reached the monetary threshold of 50 million RMB. The court also did not give the litigant a written ruling regarding its decision.

Public dismay and anger over news of the sale of the contaminated products prompted several media sources to predict that Tian would be sentenced to death. Tian, the lead defendant, was initially arrested under Articles 141 and 144 of knowingly producing or selling food with toxic non-food stuffs, causing death or serious harm to human health selling “toxic food,” which, according to Articles 141 and 144 of the China’s Criminal Law, carries capital punishment as the highest penalty. But the prosecution eventually charged Tian with “selling false or substandard products,” the highest possible pun-

ishment for which, according to Liu Renwen, an expert on court proceedings from the Chinese Academy of Social Science, is life imprisonment. According to Beijing-based lawyer Li Xiongbing, "in the most serious scenario where there are death reports, the penalty ... is imprisonment of at least ten years, life sentence or even death."

Mr. Zhang Xin, a Beijing-based defense attorney for Tian, disputed the charge, and argued that, because Tian should be charged only with the crime of producing and selling substandard products. Tian's lawyer argued that Tian will not receive the death sentence, and instead is likely to receive life imprisonment, the highest punishment under the current charge.

In a related case, prosecutors charged Zhang Yujun and Zhang Yanzhang of having committed a crime against public security for concocting the so-called "protein powder" by mixing the chemical melamine and malt starch. Zhang and Zhang sold more than 600 tons of the tainted powder with a total value of 6.83 million yuan (998,000 U.S. dollars), some of which was purchased by the Shijiazhuang-based Sanlu Group. Other distributors of the tainted powder were charged with the crime of selling toxic products. Investigations and trials in these and other cases are ongoing.

http://news.xinhuanet.com/english/2008-12/31/content_10584145.htm

<http://cns0769.com/readnewslist.asp?id=28651&page=2>

http://www.straitstimes.com/Breaking%2BNews/Asia/Story/STIStory_318606.html

Outlook Outlines Steps to Reduce "Corruption" in Justice System

The weekly magazine, *Outlook (Liaowang)*, reported that "the central authority" (*zhongyang*) is deeply concerned about instances of abuse in the justice system and has pledged to take new measures to curb further "corruption" (*fuba*). "Private injustice" (*sifa bugong*), reported *Outlook*, is a major social issue that has aroused public discontent.

One important source of abuse in the justice system, according to *Outlook*, is the "unlimited discretion" (*ziyou cailiangquan*) of judges in criminal sentencing. Judges' irrational use of sentencing discretion damages public confidence in the justice system, according to *Outlook*. The central authority," *Outlook* reports, has asked relevant bodies to curb such discretion through new judicial interpretation and guidance. Meanwhile, a regional and multi-level case directed system that fits Chinese conditions should be built as soon as possible to control free jurisdiction and regional differences.

According to the report, another measure is to publicize the judicial process and invite greater public and media supervision of the justice system. By 2010, all parts of China should widely use the internet and record and videotape the judicial process. Moreover, a petition system should be set up that facilitates greater supervision of the justice system, including the post-trial review and appraisal of a random sample of verdicts by the Communist Party of China and Political and Legal Commission. The "central authority," *Outlook* added, should prevent government leaders from interfering in the judicial process, focus on reforms, and increase their supervision of the justice system.

http://news.xinhuanet.com/legal/2008-12/22/content_10541445.htm

Former Secretary of Hebei Provincial Party Committee Held Responsible for Wrongful Conviction

The magazine *Law and Democracy* reported on Jan 4 that Chen Weigao, the former secretary of the Hebei Provincial Committee of the Communist Party of China, had pressured local justice officials into the prosecution of Shi Jian, the former editor in Chief of *China Development Magazine*, for exposing official party misconduct. Shi was sentenced to 10 years in prison in 1997 for accepting bribes.

According to the report, Li Zhen, then Chen Weigao's personal secretary, suspected that Shi had helped local officials report "misconduct" in Chen's office to "the central authority." In response, Li

Zhen allegedly used his influence and authority to collect compromising information about Shi and urge prosecutors to file corruption charges. It was reported that Shi only borrowed RMB 48,000 (\$6000) from a friend with the money transferred through the account of the Board of Directors of Chinese People Magazine where Shi was a Board member. He later returned this money. Shi's lawyer, Zhang Xingshui, sought the assistance of his mentor Xia Jiajun, a law professor and member of the Standing Committee of the National People's Congress, in overturning the conviction. Both Zhang and Xia wrote a letter to the chairman of the NPC standing committee about the case. Despite the intervention of the petition letter from office of National People's Congress' Standing Committee, the intermediate court upheld the ruling.

In 2002, Li Zhen was himself convicted on charges of accepting bribes in large amounts. He was sentenced to death and executed in November 2003. Chen, the retired secretary of the CPC Hebei Provincial Committee was expelled from the Party in 2003. In November 2003, after serving six years of the ten year sentence, Shi Jian was paroled for "medical reasons." After Shi's release, both his lawyer and Professor Xia solicited the intervention of Premier Wen Jiabao. According to *Law and Democracy*, after Premier Wen asked the new CPC Secretary of Provincial Committee to intervene, the Hebei Supreme Court started an official review of the case. In June 2007, the intermediate court of Shijiazhuang vacated the conviction and declared Shi innocent.

Law and Democracy insisted that new mechanisms are required to restrain the "single-handedness" (*yibashuo*) of high level governmental officials and prevent abuses in the future. Observing that lower level officials had tried to intervene in the case but backed off because of fear of higher authority, *Law and Democracy* recommended there be new procedures for investigating injustices as well as policies for the reparation of harm caused by the government when public officials make wrong decisions unintentionally and also when such errors are intentional.

<http://news.sina.com.cn/c/2009-01-04/163716974822.shtml>

http://www.chinadaily.net/opinion/2008-11/03/content_7166404.htm

Wrongful Convictions in Central China Reversed After 13 Years

The *Xinhua News Agency* reported on Jan. 11 that two men wrongly imprisoned on robbery charges have finally found justice when the court corrected its 13-year-old mistake and declared they were innocent. On the night of Nov. 21, 1995, a village post office in Biyang County of the central Henan Province was robbed of 8,200 yuan (1,170 U.S. dollars). Three weeks later, police arrested post office worker Zou Shujun and his friend Yuan Haiqiang, a mechanic at a local agricultural machinery station.

According to the report, a year of detention and interrogation failed to develop sufficient evidence of guilt, but the Biyang county court sentenced Zou and Yuan to six years and 5.5 years in jail respectively on Dec. 12, 1996. The Intermediate Court in Zhumadian City upheld the ruling on appeal. At the end of 2002, the real robbers, Zhang Fujun and Zhang Hongxi, were arrested, two years after Zou and Yuan were released from prison. Neither the county nor the city court moved to remedy the injustice.

During their 13 years of incarceration, Zou and Yuan insisted on their innocence and appealed for new trials. In petitions to the courts and media, they claimed to have been beaten up and forced into confessing a crime they never committed. In August 2008, reportedly under the pressure of the provincial legislature, the Intermediate Court in Zhumadian City demanded a retrial.

The Biyang County Court retried the case on December 30, and found Zou and Yuan innocent. In January, the intermediate court announced that three of its own judges had received administrative penalties for wrongly jailed the two men. Yuan Changsheng, an official with the County Court, was

also punished. According to a state compensation agreement with the county court, Zou and Yuan are expected to get a total of 360,000 yuan in compensation.

http://news.xinhuanet.com/english/2009-01/11/content_10638846.htm

Expansion of Parole in Sichuan Sparks Debate

According to an in-depth report in the January 8, 2009 edition of *The Beijing News*, there has been an important expansion in the use of parole and early releases in Sichuan Province. In the last six months of 2008, at least 1,000 prisoners considered "elderly, infirm, or disabled" had been released from the Province's prisons before the completion of their sentence. The report suggests that even more releases can be expected in 2009.

The *Beijing News* reported that the scale of the releases represented a "huge" expansion (*daguimo*) in the use of parole in Sichuan, the greatest increase since the founding of the country in 1949. According to Sun Zeng of the Sichuan Province Prison Administration Bureau, China's annual "parole rate" (*jianshilv*) typically does not exceed 3 percent, compared to 40 percent in some Western countries. In Sichuan Province, one of the most populous regions with one of the largest prison populations in China, the past rate for parole has been a mere 0.2 percent. For example, in recent years only four or five prisoners from Chengdu Women's Prison, which holds a maximum of 1000 inmates, were released on parole each year. Last year, 22 women either had the remainder of their sentences commuted or were released on parole.

The expansion of parole appears to be the result of independent action by provincial authorities. In May 2008, the provincial authorities drafted new regulations that encourages more frequent use of parole and non-custodial punishment for prisoners over the age of 65 (or 60 for women) who have served at least half of their sentences, or are physically disabled, or otherwise have difficulty caring for themselves, or are no longer able to perform labor. These prisoners still have to meet subjective criteria

for early release, such as demonstrating genuine repentance, and must no longer pose a threat to society. In August, these regulations were jointly promulgated by the Provincial Higher People's Court, Procuratorate, the Public Security Department, and Justice Department.

The expansion of parole is controversial. The report observes that some people have criticized the new measures as prison authorities "casting off a burden." But officials such as Shang Aiguo of the Supreme People's Procuratorate said that "parole represents an opportunity for their families to provide better care and medical treatment to their loved ones than they will receive in prison, while also allowing limited resources for correctional facilities to be used for other purposes." Shang acknowledged that the mass release of some of the most expensive prisoners to keep in custody has many practical benefits, but prison authorities insisted that "early release for these prisoners also promotes the development of a harmonious society."

The report added that the expansion of parole is not a relaxation of the standards for early release, but rather an expansion of their application in accordance with existing laws to a broader group of prisoners. Prisoners are evaluated on their ability to admit guilt and show remorse, obey prison regulations, undergo "thought reform" and "reform through labor." The report also emphasized the wider social benefits of parole in the part of the province hardest hit by May 2008 earthquake. Also eligible for release under the new measures are individuals who, because of losses sustained during the earthquake are needed at home to provide care to elderly parents or young or disabled children. More than 200 prisoners from Aba Prison (with about 2000 inmates), located in the earthquake zone, were released as a result of the new regulations.

The Report also emphasized the constraints to parole. According to Xu Haifa, who represents the Supreme People's Procuratorate in Hebei's Yancheng Prison, the biggest obstacle to the expansion of parole in China is the lack of supervisory capacity, as local police resources are already

stretched thin, with officers carrying out other responsibilities. Xu said “there is a need for community corrections institution-building and the establishment of an agency dedicated to the supervision and guidance of parolees”. This would enable more prisoners who no longer pose a threat to society to return to society without increasing the pressure on law enforcement.

<http://news.sina.com.cn/c/2009-01-08/043516999471.shtml>

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