

**Refugee Review Tribunal  
AUSTRALIA**

**RRT RESEARCH RESPONSE**

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**Questions**

- 1. What was the “general” workers compensation attitude in the mid 1990s to death from work place accidents in Fuqing?**
- 2. Is there any compensation for death following a criminal attack? If so, would it be payable to a fiancé?**

**RESPONSE**

- 1. What was the “general” workers compensation attitude in the mid 1990s to death from work place accidents in Fuqing?**

No information was found in the sources consulted on the general workers compensation attitude to death from work place accidents in the mid 1990s in Fuqing. Some information on work safety and workers compensation generally in China in the 1990s was found in the sources consulted and is provided below.

On work safety in China the US Department of State reported in its human rights report for 1995:

Occupational health and safety are constant themes of posters and campaigns. Every work unit must designate a health and safety officer, and the ILO has established a training program for these officials. Although the 1982 Constitution does not provide for the right to strike, the Trade Union Law explicitly recognizes the right of unions to “suggest that staff and workers withdraw from sites of danger” and participate in accident investigations. It is unclear, however, to what extent workers can actually remove themselves from such dangerous situations without risking loss of employment.

Nonetheless, pressures for increased output, lack of financial resources to maintain equipment, lack of concern by management, and a traditionally poor understanding of safety issues by workers have contributed to a continuing high rate of accidents. Official statistics indicate that 20,263 workers were killed in industrial accidents during 1994, up from 14,288 in 1993. Deaths from industrial accidents during the first 5 months of 1995 stood at 6,656. One credible report indicates that there are over 10,000 miners killed yearly. Fires, mostly in entertainment establishments and factories, killed 2,000 people in 1994, according to official statistics. Poor enforcement by local officials of occupational safety and health regulations puts the lives of workers at risk. Over 30 million Chinese work in toxic environments. Less than half of rural enterprises meet national dust and poison standards. In addition, many factories use harmful products, such as asbestos, fail not only to protect their workers against ill effects of such products, but also fail to inform them about the potential hazards. Although work safety issues have attracted the attention of senior government leaders, supervision of both local and foreign small-scale private enterprises, where most accidents occur, remains poor (US Department of State 1996, 'Acceptable Conditions of Work' in *Country Reports on Human Rights Practices for 1995 – China*, April, p.594 – Attachment 1).

The China Labour Bulletin reported on delays in receiving workers compensation:

When Zhang Guangli lost four fingers of his left hand operating machinery at the No.1 Steel Plant in Anshan, his employer, Angang New Steel Co Limited, agreed to pay for his medical treatment but not to provide the work-related injury and disability compensation required by law. **In May 1994**, one year after the accident, Zhang sought redress through his local Labour Dispute Arbitration Committee (LDAC). Even though Zhang's injury was clearly work-related, it took six years for the labour bureau to certify it as a "grade six disability" and another seven years before the courts brokered a "mediation agreement" in which Angang New Steel undertook to pay Zhang 20,000 yuan in compensation, and a disability pension equivalent to 70 percent of his average wage at the enterprise.

Why did it take 13 years for an employee who was seriously injured at work to obtain the compensation he was entitled to under the law? The answer lies in the inability of China's overburdened and overly bureaucratic arbitration and court system to cope with the rapidly increasing number of labour disputes, as well as the undue influence that powerful corporations and individuals can exert over the system.

In 1991, China's arbitration system settled just 7,600 labour disputes; by 2006, that figure had increased more than 40-fold to 317,000, an average annual rise of 28.2 percent. And since 1 January 2008, when the *Labour Contract Law* went into effect, the number of disputes has escalated further. The *Guangzhou Daily* reported on 25 March 2008 that LDAC cases in most city districts had risen three to five-fold since 1 January, with cases in one district rising 15-fold. The head of the city's labour arbitration office told the newspaper that the number of cases filed in the first two months of 2008 equaled the total for the whole of 2001. **The range, complexity and length of labour disputes have likewise increased dramatically, placing a huge burden on the existing three-tier system of dispute settlement. This system – involving successively, internal mediation within enterprises, local-level arbitration and final resolution by court trial – was originally established in 1987 to handle disputes within state-owned enterprises. In 1993, the system was formalized and broadened to include all enterprises in China. However, it has patently failed to keep up with the rapid pace of economic development and expansion of the private sector.** Ideally, disputes should be settled at stages one or two but increasingly workers need to file law suits to obtain redress. Critics have pointed out that the procedures for settling work-related injury and occupational illness compensation cases, in particular, are excessively complicated and time-consuming, with workers having to jump through numerous procedural hoops to prove their case. These include: confirmation of labour relationship, appraisal of work-related injury

or disability, administrative redress, labour arbitration and adjudication by courts. Each step of the process is loaded down with trivial details and can present a daunting challenge for even the most determined complainant, such as Zhang Guangli, with some cases dragging on for nearly two decades (China Labour Bulletin 2008, *Help or Hindrance to Workers: China's Institutions of Public Redress*, 23 April, pp.1-2 [http://www.clb.org.hk/en/files/share/File/research\\_reports/Help\\_or\\_Hindrance.pdf](http://www.clb.org.hk/en/files/share/File/research_reports/Help_or_Hindrance.pdf) – Accessed 20 April 2009 – Attachment 2).

A December 2007 news article in the *South China Morning Post* reported the case of a worker who was hit by a car in May 1997 while riding home from work on his bicycle. The case involved a decade of legal battles and his wife encountered “cronyism, apathy and blatant disregard of the law” (Tze-wei, Ng 2007, ‘Despair for family in 10-year battle for injury compensation’, *South China Morning Post*, 10 December – Attachment 3).

For other information on workers compensation in China see questions 2-5 in RRT Research & Information 2009, *Research Response CHN34757*, 29 April – Attachment 4).

## **2. Is there any compensation for death following a criminal attack? If so, would it be payable to a fiancé?**

Reports indicate that, although there is no state compensation system for victims of crime in China, compensation may be available for death following a criminal attack through criminal proceedings or civil action. However, sources also state that a person may claim compensation for losses resulting from unlawful acts by state functionaries exercising criminal jurisdiction and administrative powers. No information was not found in the sources consulted on whether compensation would be payable to a fiancé. Sources mention compensation may be payable to families, heirs or relatives with “fostering relations” to the deceased person.

Sun Qian, from the General Office of the Supreme Procuratorate in Beijing, wrote in a 2008 article in the *Frontiers of Laws in China* journal on the need to set up a state compensation system for crime victims:

...Nonetheless, in the judicial practice of China, neither the substantive rights nor the procedural rights of victims get due attention. In terms of physical damages incurred to victims by crimes, there are not only defects in the judicial pattern of the existing supplementary civil action in criminal proceedings, but also substantial distortions in the judicial practice...Moreover, as there conceal a number of crimes, due to defects in the state compensation system, victims are often encountered with survival crisis, who are becoming to affect social stability. Reinforcing the protection of victims' human rights is the basic requirement for complete realization of the principle and purpose of criminal proceedings, and is also imperatively needed for the improvement of state remedy system. In order to safeguard the legal rights and interests of citizens, construct a harmonious socialist society, and to improve the judicial protection system for human rights in compliance with Chinese conditions and socialist conception of rule of law, **it is necessary to promptly set up a state compensation system for victims in China** (Sun, Qian 2008, ‘Perspectives on Chinese establishing state compensation system for victim of crimes’, *Frontiers of Law in China*, Vol. 3, No. 3, September, p.389 – Attachment 5).

Sun also stated that:

...Judged from China's current criminal litigation system, the interests of the defendant gain more attention of criminal litigation, while the interests of the victim are often not effectively protected...(Sun, Qian 2008, 'Perspectives on Chinese establishing state compensation system for victim of crimes', *Frontiers of Law in China*, Vol. 3, No. 3, September, p.392 – Attachment 5).

He continued:

Chinese *Criminal Law*, *Criminal Procedure Law*, *Administrative Reconsideration Law*, *State Indemnity Law* and regulations of letters and calls from the people constitute the remedy system of China's citizen rights. These laws and systems play a key role in the prevention of power abuse by state organs and their staff, protection of citizens' legitimate rights and interests and the maintenance of social stability. However, due to the discord of the remedy scope and the misalignment or missing of the remedy system, citizen rights can not be properly realized or even come to nothing, which further intensifies contradictions and disputes and gives rise to large number of cases of calls and visits from the citizens, negatively impacting on social stability. **In the criminal judicial practice, there are mainly two channels for the indemnity and compensation for the loss incurred to the victim by crimes: One** is to be indemnified by the offender through supplementary civil action in criminal proceedings, and **the other** is to be compensated by the government or related organs through the coordination of the government. In the case of supplementary civil action in criminal proceedings, if the offender is unable to make compensation, the legitimate rights and interests of the victim will come to nothing. If the government or related organs are to make compensation, as it is not regulated by law, there are discretion and big variance, and a lack of normalcy, normalization and fairness. Therefore, to legalize and systemize state's compensation for victims of criminal crimes is a sign of progress in the state remedy system (Sun, Qian 2008, 'Perspectives on Chinese establishing state compensation system for victim of crimes', *Frontiers of Law in China*, Vol. 3, No. 3, September, p.394 – Attachment 5).

On state agencies paying compensation Sun also stated:

...In judicial practice, some state organs normally adopt the approach of state compensation to make certain economic compensation to victims to safeguard victims' legitimate rights and interest and to stop victims from calling and taking legal action. In recent years, some local governments of China have tried to make economic compensation to victims. For example, the municipal government of Shijiazhuang of Hebei province distributed subsidies to victims and families of the dead of the Jin Ruchao explosion case in Shijiazhuang in 2004. This not only alleviates to some extent the difficulties of victims and their families, but also stabilizes social sentiment and maintains normal social order...(Sun, Qian 2008, 'Perspectives on Chinese establishing state compensation system for victim of crimes', *Frontiers of Law in China*, Vol. 3, No. 3, September, pp.397-398 – Attachment 5).

In respect of compensation the following articles of the *Criminal Law of the People's Republic of China* and the *Criminal Procedure Law of the People's Republic of China* appear relevant:

#### *Criminal Law of the People's Republic of China*

Article 36. Where the victim has suffered economic loss as a result of a criminal act, the criminal element, in addition to receiving criminal sanctions according to law, shall in accordance with the circumstances be sentenced to make compensation for the economic loss.

Where the criminal element bears responsibility for civil compensation and is also imposed a fine, if his property is not enough to pay the compensation and fine in full or if he has also been sentenced to confiscation of property, he shall first pay civil compensation to the victim.

Article 37. Where the circumstances of a person's crime are minor and do not require sentencing for punishment, an exemption from criminal sanctions may be granted him, but he may, according to the different circumstances of each case, be reprimanded or ordered to make a statement of repentance or formal apology or make compensation for losses, or be subjected to administrative sanctions by the competent department (*Criminal Law of the People's Republic of China* (Adopted 1 July 1979, Amended 14 March 1997), Articles 36-37 Chinalaw website <http://www.qis.net/chinalaw> – Accessed 20 May 1999 – Attachment 6).

### *Criminal Procedure Law of the People's Republic of China*

#### Article 88

With regard to a case of private prosecution, the victim shall have the right to directly initiate an action to the people's court. If the victim has died or lost his capacity of conduct, the legal representative or any near relative of the victim shall have the right to initiate an action to the people's court. The people's court shall accept the case according to law (*Criminal Procedure Law of the People's Republic of China* (Adopted 1 July 1979, Amended 17 March 1996), United Nations High Commission for Refugees website <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3ddbcd4e7&skip=&query=criminal%20procedure%20china> – Accessed 29 November 2007 – Attachment 7).

In addition, an article dated 2 February 2007 in the *South China Morning Post* noted that in 2000 judges were granted a discretionary power to give more lenient sentences in cases where the criminals compensated their victims:

In 2000, the Supreme People's Court granted judges the discretionary power to hand down more lenient sentences when criminals compensated their victims (Wang, Irene 2007, 'Chinese court criticized over lenient sentences', *BBC Monitoring Alert*, source: *South China Morning Post*, 2 February – Attachment 8).

On civil compensation a January 2007 *South China Morning Post* article stated that:

Under mainland criminal law, victims have the right to ask for civil compensation from their assailants, but in the 80 per cent of unpaid cases, the criminals may not have the financial capacity to pay compensation, suspects may not be identified, or victims in urgent need of medical care may have to wait a long time to have their cases heard (Wang, Irene 2007, 'No compensation adds insult to injury for victims of crime Only 20pc of applicants receive timely payments, highlighting serious flaw', *South China Morning Post*, 26 January – Attachment 9).

The *South China Morning Post* article noted that:

The failure of many victims to get payouts has become a regular source of petitions and a serious headache for mainland authorities. The issue also caught the attention of judicial authorities, and there are now signs of change (Wang, Irene 2007, 'No compensation adds insult to injury for victims of crime Only 20pc of applicants receive timely payments, highlighting serious flaw', *South China Morning Post*, 26 January – Attachment 9).

Legal controversy has arisen over such sentencing practices. News articles have stated that there have been a "string" of cases in Guangdong in which defendants, including murderers,

were given more lenient sentences after having made payments to the victims' families. It was also reported that there were similar cases in Shandong and Zhejiang (Bezlova, Antoaneta 2007, 'Death penalty: China Considers Cash for Clemency', *IPS*, 17 June <http://ipsnews.net/news.asp?idnews=38207> – Accessed 29 April 2009 – Attachment 10; 'Crime Compensation Policy Clarified' 2007, China.org.cn website, 1 February <http://nanpin.china.com.cn/english/government/198564.htm> – Accessed 29 April 2009 – Attachment 11).

It was reported that in one case, in Dongguan (Guangdong province), a murderer's death sentence was commuted to life following a payment of "50,000 yuan (\$A8300) to the family" (Toy, Mary-Anne 2007, 'China tells courts to toe party line', *The Age*, 5 February <http://www.theage.com.au/news/world/china-tells-courts-to-toe-party-line/2007/02/04/1170523960816.html> – Accessed 5 February 2007 – Attachment 12; Wang, Irene 2007, 'Chinese court criticized over lenient sentences', *BBC Monitoring Alert*, source: *South China Morning Post*, 2 February – Attachment 8).

On one case in Guangdong *IPS* reported:

The dilemma faced by legal authorities is exemplified by the case of an elderly woman Deng Rongfen from Dongguan in Guangdong province, reported in the local newspaper Southern Weekend in March.

Deng's only son and the sole breadwinner in a family of five was stabbed to death in May 2006. He had surprised three migrant workers robbing his family house. The perpetrators were all given death sentences.

But even as justice was achieved on paper, Deng's family situation remained insolvent. Deng had no money or means to send her grandchildren to kindergarten or help her daughter-in-law raise them. **The desperation of Deng's circumstances eventually led to court-sanctioned negotiations between her and the accused and the arrangement of a civil compensation package in exchange for reduction in their sentences** (Bezlova, Antoaneta 2007, 'Death penalty: China Considers Cash for Clemency', *IPS*, 17 June <http://ipsnews.net/news.asp?idnews=38207> – Accessed 29 April 2009 – Attachment 10).

A January 2007 news article reported a case in Shaanxi province where compensation was paid to the family of a person who was one of 11 people killed by one man. The article stated:

Under the Criminal Procedure Law victims who suffer material loss because of a crime have the right to seek compensation by filing an incidental civil action alongside criminal proceedings.

But as the wording is general and some defendants cannot afford to pay damages, victims often fail to recover what should be paid even after difficult litigation, according to Chen Guangzhong, a professor of Criminal Procedure Law at the China University of Political Science and Law.

"Even if the victims get some compensation it's often too little for what they've suffered," Chen said.

The murder committed by Qiu Xinghua is a case in point. The provincial higher court in northwest China's Shaanxi Province last month ordered the execution of Qiu, a 47-year-old farmer, who killed 11 people and seriously injured two others in July. **However, the court**

**didn't accept compensation claims from the victims' families because Qui's family is too poor to pay.**

"I cannot imagine how life will go on," Yin Xingqiao, the wife of a victim, told local media. Her husband, the family's sole breadwinner, was murdered leaving her alone with three shabby rooms and a 10-year-old son.

She said compensation was more important to her than the death sentence because she would have to find a way to support her family. **Local media reported that Yin appealed to the local government for help after the verdict was handed down but received only 500 yuan (\$64).** This is far short of the amount necessary for a decent funeral ('Help Possible for Crime Victims' 2007, China.org.com website, 9 January <http://www.china.org.cn/english/China/195364.htm> – Accessed 29 April 2009 – Attachment 13).

Also, in Xinjiang a man who killed two students was sentenced to death and ordered to pay over "380,000 yuan (48,700 US dollars) to compensate victims" ('Man in northwest China sentenced to death for two revenge murders' 2007, *BBC Monitoring Alert*, source: Xinhua news agency, 11 January – Attachment 14).

In respect of claims for compensation arising for losses arising from unlawful acts by state functionaries carrying out criminal jurisdiction and administrative powers Biddulph writes:

The *PRC State Compensation Law* enables a person to claim **compensation for losses suffered as the result of unlawful acts by state functionaries exercising criminal jurisdiction and administrative powers.** The claim may be made either together with an application for review or litigation or independently. Where a person is claiming compensation for unlawful detention, the calculation of damages will be made on the basis of the average salary for the previous year. The amount of compensation payable is not affected by the actual salary of the person. The intention of the law was to provide a minimum standard of compensation in respect of the breach of the fundamental right of personal freedom, which is not dependent upon the wealth or poverty of the person whose right has been infringed. Damages may also be assessed in respect of property losses, personal injury, illness, disability and death suffered as a result of the unlawful act in accordance with the formula set out in the law (Biddulph, Sarah 2007, *Legal Reform and Administrative Detention Powers in China*, Cambridge University Press, Cambridge, pp.325-326 – Attachment 15).

Article 6 of the *State Compensation Law of the People's Republic of China* defines a claimant where the injured person has died as follows:

Article 6

An injured citizen, legal entity or any other organization has the right to sue for redress.

**In case an injured citizen is deceased, his or her heir and other relatives having fostering relations has the right to sue for redress.**

If case an injured legal entity or any other organization ceases to exist, the legal entity or any other organization which receives its rights has the right to sue for redress (*State Compensation Law of the People's Republic of China* (Promulgated 12 May 1994, Effective 1 January 1995), Lehman, Lee & Xu Law website, Article 6 <http://www.lehmanlaw.com/resource-centre/laws-and-regulations/general/state-compensation-law-of-the-peoples-republic-of-china-1994.html> – Accessed 30 April 2009 – Attachment 16).

The basis for calculating compensation under the *State Compensation Law of the People's Republic of China* is provided under Article 27:

Article 27

If a citizen's right of life and health is infringed upon, the amount of compensation is calculated according to the following provisions:

1. If a bodily injury is caused, medical expenses shall be paid and the decrement of income resulted from the absence from work shall be compensated. The daily amount of compensation for the income decrement resulted from the absence from work is calculated according to the daily average wages of employees of the state in the preceding year, the maximum amount is five times the annually average wages of employees of the state in the preceding year;
2. If a partial or complete loss of working ability is caused, medical expenses and compensation for disability shall be paid, the compensation for disability is determined in accordance with the extent of loss of working ability, the maximum amount for the partial loss of working ability is 10 times the annually average wages of employees of the state in the preceding year, and the maximum amount for the complete loss of working ability is 20 times the annually average wages of employees of the state in the preceding year. Where a complete loss of working ability is caused, living allowances shall be paid to the person(s) without working ability supported by the injured party.
- 3. If a death is caused, the compensation for death and funeral expenses shall be paid, and the aggregate amount is 20 times the annually average wages of employees of the state in the preceding year. Living allowances shall also be paid to the person(s) without working ability supported by the deceased prior to the death.**

The payment standard of living allowances as provided in Items 2 and 3 of the preceding paragraph shall be handled in reference to the relevant regulations on living relief by local civil administration departments. If the dependent(s) is a minor, the living allowances shall be paid until the 18th birthday of the dependent(s); the living allowances for other persons without working ability shall be paid until their death (*State Compensation Law of the People's Republic of China* (Promulgated 12 May 1994, Effective 1 January 1995), Lehman, Lee & Xu Law website, Article 27 <http://www.lehmanlaw.com/resource-centre/laws-and-regulations/general/state-compensation-law-of-the-peoples-republic-of-china-1994.html> – Accessed 30 April 2009 – Attachment 16).

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REFINFO (IRBDC (Canada) Country Information database)



ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)  
RRT Library Catalogue

### List of Attachments

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