

Report on China's Judicial System and Institutions for Human Rights

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Abstract: China's human rights judicial system and institutions have made obvious progress in terms of the coverage of legal remedy, organizational structure, judicial assistance, equal protection, independent trial, trial procedures, criterion for sentence, judicial supervision and state compensation etc. However, there are still room for further improvements concerning the Constitution's legal remedy system, the scope of accepting administrative litigation, the jurisdiction of civil litigation and the financial sustainability of courts.

1. Since the inception of reform and opening in 1978, China has promulgated and revised a series of human rights-related laws including the *Criminal Procedure Law*, the *Civil Procedure Law*, the *Administrative Procedure Law* and the *State Compensation Law*.

2. But there are still some problems waiting for more efforts to solve, including making more detailed legal regulations for protecting human rights and promoting effective implementation of the laws. However, in recent years, we have witnessed positive efforts and notable progress made by the Chinese government in improving the judicial system and institutions for human rights protection:

3. First, on the range of legal remedy, the standing committee of the National People's Congress passed the first amendment of the *Civil Procedure Law* on October 28th 2007, in which it responded to difficulties in appealing and law enforcing, further specified conditions for retrial, elevated the trial grade of courts, explicitly defined the period of review, improved the role of legal supervision by procuratorial organs, added the rule of instant implementation and property report, extended the application period for implementation, and expanded the scope of civil legal remedy to citizen's personal rights, privacy rights, right of name, labor rights, property rights, education rights and right to equal employment etc.

4. Second, equal protection of rights is strengthened. Civil law ensures equal protection of the rights of owners of both public and private assets, as well as the rights of both individual citizens and legal persons.

5. Third, the independence and neutrality of trial is enhanced. Especially in administrative litigation, in order to prevent interference from administrative authorities, people's courts have on one hand taken reform measures like "higher level

jurisdiction”, “rotating jurisdiction”, “cross jurisdiction” and “appointed jurisdiction” to avoid local protectionism; and have on the other hand explicitly forbidden judicial organs from participating in local administrative law enforcement so as to maintain their neutrality and independence.

6. Fourth, in the field of judicial organization and institutions, the role of judicial committee is brought into full play, which can directly form collegial panel to handle major, difficult or complicated cases. Judges independent trial responsibility system has been set up and the system of people juror has been improved.

7. Fifth, in terms of legal remedy, the Supreme People Court amended the *Regulation on Legal Remedy to Parties with Economic Difficulties* in 2005, stipulating that in cases concerning the elderly, woman, juvenile, the disabled and laid-off worker, who demand their entitlements such as support payments, alimony, pension, work injury compensation and so on, their litigation fees can be delayed, reduced or even exempted according to law. In December 2006, the Ministry of Justice proposed to improve the network of legal assistance, increase financial support to it and expand its coverage. In October 2007, the standing committee of the NPC revised the *Lawyer Law*, with an aim to better protect lawyer’s rights in criminal litigation, for example lawyers shall not be monitored during interviews, shall have more access to case files, shall have the right to investigate and collect evidence without asking for permission from the witness, and shall enjoy expression immunity.

8. Sixth, in terms of trial procedures, legal limit of time is more strictly abided by to avoid extended custody. The criminal evidence system has been reformed to prohibit extortion by torture and the principle of presumption of innocence is better and more widely practiced. In September 2005, the Supreme People’s Procuratorate announced that interrogation of criminal suspects shall be fully recorded. Since January 1st 2007, the death penalty approval authority has been taken back to the Supreme People’s Court. At the same time, the Supreme People’s Court requested all local higher people’s courts to start the second instance of death penalty so as to strictly guarantee the quality of capital cases. In July of 2006, the Supreme People’s Procuratorate published a newly amended regulation on the register criterion about the crime of malfeasance, in which for the first time in a form of legal interpretation, it specifically identified 8 scenarios as case registration through extortion by torture. This has provided concrete standards for the handling of similar cases.

9. Seventh, in terms of penalty measurement, combination of penalty and transformation is emphasized. Pilot projects of community-based non-penalty implementation have been expanded from a couple of cities to more than 20 cities. Lighter penalty is more and more applied to minor criminal cases.

10. Eighth, in terms of judicial supervision and inspection, from May 2004 to June 2005, the Supreme People’s Procuratorate launched a campaign of seriously

punishing violation of human rights by staff of public offices. Priorities of this campaign included fight against illegal custody, illegal search, extortion by torture, obtaining testimony through violence, sabotaging elections, breaching citizen's civil democratic rights and torturing prisoners. In September 2006, the Supreme People's Court and Procuratorate officially set up a joint news briefing system. In June 2006, the Supreme People's Court promulgated *Suggestions on Strengthening Open Trial*, and expanded the range of open trial.

11. Ninth, in terms of state compensation, the Supreme People's Court in September 2004 promulgated a regulation to define 14 scenarios as law violation by people's courts. This has added concrete standards to the enforcement of the *State Compensation Law*.

12. However, there are still room for further improvements concerning the Constitution's legal remedy system, the scope of accepting administrative litigation, the jurisdiction of civil litigation and the financial sustainability of courts.

Introduction of the Center:

The Center for the Study of Human Rights at Nankai University was founded on April 8th 2005, consisting experts and scholars from various fields such as politics, law, administration management, sociology, history, philosophy and economics. Its missions are promoting research on China's human rights theories and practical problems and advancing protection of human rights in China. Since its establishment, the Center has actively participated in a number of national and international human rights seminars, compiled a series of books on China's human rights in cooperation with China Society for Human Rights Studies, set up a number of courses on human rights law and its protection in judiciary, administrative, social and political processes in Nankai University, and has sent delegates to attend the training program for Chinese civil society organized by the UN Office of the High Commissioner for Human Rights.

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