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China's Judicial Reform and Human Rights Protection

View of United Nations Association of China

1. Legal remedy is the last resort and the most effective means to prevent and correct human rights violations. A sound judicial system is needed in order to guarantee the effectiveness of this remedy. Such a judicial system includes: a. the proper status of judicial power in the state power system, b. the neutrality, independence and impartiality of the judiciary and law enforcement personnel, c. the fairness and transparency of the judicial process. Since China adopted the policy of reform and opening-up in 1978, the judiciary system has been under continuous restructuring and development. The Constitution has clear stipulation about the organization, power, and principles to be followed by the courts. China also has enacted or amended a series of laws (such as Criminal Procedure Law, Civil Procedure Law, Administrative Procedure Law and Law of the People's Republic of China on Lawyers), thus established a fairly complete legal system.
2. The principles as enshrine in the Constitution and other instruments include: everyone is equal before the law; the presumption of innocence; the accused has the right to defense; the equality of procurator and defense; the rights of citizens of all nationalities to use their own language in conduct proceedings; the courts shall exercise judicial power publicly and independently; etc. These principles play an important role in protecting the justice and efficacy of the judicial activities.
3. By historical standards, these changes are unprecedented and fast. Despite the above-mentioned achievements, there is still room for improvements in China's current judicial system:
 - A. China started national judicial examination only in 2002. Therefore, not all sitting judges possess adequate professional knowledge. Qualified judges fall far short of the growing needs, especially in under-developed regions.
 - B. Despite the great efforts to promote the independence of the judiciary, intervention in the legal proceedings from chief judges or superior courts still happen from time to time, which undermines the independence of the trials and litigants' exercise of their right of appeal.
 - C. Measures have been taken to prevent local protectionism, such as the rotation of judges at different level and in different regions. However, the phenomenon has not been systematically eradicated. Courts still face restriction from local governments in terms of human, financial and material resources, resulting in different verdicts on cases of similar nature, thus affecting the equality of civilians' access to legal remedy.
 - D. The Supreme Court issued clear instructions that testimonies of the witnesses, statements of the victims and confessions of the defendants would be invalid if concrete evidence shows that they are acquired by way of torture, threat, enticement, deceit or other unlawful means. However, these

are not included in the *Criminal Procedure Law*.

- E. Under the system of “reeducation through labor”, a citizen can be deprived of liberty for 1-3 years without the litigation rights available to defendants in criminal cases. The decision-making power of the “reeducation through labor” lies with the reeducation-through-labor management committee of governments. There is an urgent need to reform this system. A person can only be sentenced to “reeducation through labor” by a qualified court through proper legal procedures.
 - F. The Law of the People’s Republic of China on Lawyers was revised in October 2007. The rights of lawyers in criminal proceedings have been further guaranteed. The revisions include: a. Lifting the restrictions on lawyer’s meeting with the defendant under custody; b. Enhancing lawyer’s access to legal files relevant to the case in question; c. Enlarging lawyer’s rights in investigation and evidence collection; d. Adding new clauses on lawyers immunity and privilege of speech and testimony on behalf of the defendant, etc. These revisions are yet to be reflected in the Criminal Procedure Law.
4. In conclusion, we in UNA-China would like to urge for further reforms in China’s judicial system. China is changing from a state of planed economy to one of market economy. Judicial reform is one of the most important symbols of political democratization and rule of law. Future legal reform should aim at building an independent, impartial, just, effective and authoritative legal system in order to overcome the existing problems and improve its performance in the protection of human rights.