

China's judicial system and mechanisms

China Society for Human Rights Studies—UPR Report—China— February 2009

Key words: human rights protection; judicial justice; anti-corruption; death penalty; criminal judicial procedure

1. In the building of a law-based state, the Chinese government is attaching increasing importance to the improvement of fair judicial system and mechanisms. After decades of strenuous efforts, a relatively complete legal system has been put into place. With the Constitution as its foundation, and complemented by department laws, it covers various respects and areas of human rights protection, forming a relatively systematic human rights protection and remedy system that suits China's national conditions. In the meantime, China still falls short in terms of law enforcement and conversion of due rights to actual rights, and there still exist many shortcomings and loopholes in China's human rights judicial system. Therefore, this material seeks to assess China's major achievements as well as main problems in the judicial system and mechanisms in an impartial and objective manner.
2. China has improved its judicial trial system and formed a relatively complete modern legal system, endeavoring to protect human rights, judicial and social justice. Specific judicial mechanisms include: open trial system, collegial panel system, people juror system, defense system, litigation representation/agent system, avoidance system, judicial mediation system, judicial remedy system, and examination and approval of death penalty, etc. At the same time, China actively improves relative legal system that corresponds with the trial system. It has promulgated Arbitration Law, Lawyer's Law, Notary Law, Labor Dispute

Mediation and Arbitration Law, etc, and established arbitration system, lawyer system, notary system, legal remedy system and bar examination system. Especially worth noting is that in the judicial system of China, priority has been given to the mediation system with distinct Chinese characteristics, which plays an important role in reducing litigation cost and settling disputes fundamental.

3. Judicial justice is the essential foundation and core link of the judicial safeguard system, and is the ultimate goal as well as major drive for judicial reform. At present different degrees of judicial injustice still exist nationwide due to multi-faceted reasons. Such a phenomenon cannot go away over night, and needs joint efforts of the government, people and law practitioners to solve it. In this respect, the Chinese government has begun taking forceful measures in areas such as institutional building and personnel training, which should be complimented. For example, strict bar examination has been established to raise the threshold of entrance into judicial organs, as a step to change the personnel composition and enhance the professional qualification of these organs.
4. Graft and corruption in nature are acts committed by people holding public offices who abuse their powers to seek personal profit at the expense of personal rights of common citizens, therefore anti-corruption work is an important instrument of the judicial system to protect human rights. In 2003, the work report of the Supreme People's Court to the National People's Congress (NPC) and the Chinese People's Political Consultative Conference (CPPCC) sessions mentioned that between 1998 and 2003, 12830 officials above division chief level were indicted for criminal charges; while in 2008 this figure reached 13929, which include 930 director-general level cadres and 35 minister-level officials. The Chinese government has always given priority to the prevention and punishment of corruption and established the National Bureau of Corruption Prevention in September 2007, which represents the first attempt of China to set up a specialized state organ for corruption prevention, and will certainly promote in-depth

development of the anti-corruption work of China.

5. The death penalty system is closely linked with the right of life, a fundamental human right. The Chinese government and judicial organs have always maintained a cautious attitude towards it, and have in recent years introduced reform to some irrational procedures in the death penalty system. For example, the Notice on the Second Instance of Capital Case issued by the Supreme Court provides that since July 1st 2006, all second hearings of capital cases should be held in open court. Since January 1st 2007, the Supreme People's Court has taken back the examining and approving right of death penalty, which is a major reform in China's efforts to improve its trial system in recent years. Although it adds a bit extra cost and work to the Supreme Court, it is significant in safeguarding the authority, unity and dignity of the rule of law, reducing and controlling death penalty, as well as protecting human rights.

6. Problems such as extortion by torture, wrong sentences and contempt for lawyers are sources of unjust cases and have led to many cases of human rights violation. The Chinese government has consistently adhered to the combination of harsh punishment of serious crimes in accordance with the law and human rights protection in the judicial area according to law; and to the policy of combining punishment and leniency in handling criminal cases. It is learned that amendments to the three main litigation laws including the Criminal Litigation Law have been put on the agenda of 5-year legislative program of the NPC. The new Criminal Litigation Law soon to be passed will follow guiding principle of human rights protections, and it is widely believed by scholars that specific mechanisms with vital importance to human rights protection such as "presumption of innocence", "the right of silence for criminal suspects" and "the presence of a lawyer during police interrogation of criminal suspects" could be added to the new law.