

Judicial Transparency in the People's Republic of China

1. Transparency is essential to judicial systems that uphold the rule of law and protect human rights. Miscarriages of justice and abuse thrive in systems that are closed to scrutiny. While progress is being made, in many respects China's judicial system remains opaque. The number of annual executions is a state secret.¹ Trials of sensitive cases are closed to the public, including, increasingly, foreign consuls in cases involving their nationals. Statistics on political crime are rarely published.²
2. There have been advances in judicial transparency since China's 2013 Universal Periodic Review. Cameras are now installed in detention centers to record interrogations, a move intended to reduce torture. Many trials are now broadcast. Facilities used to detain individuals subjected to residential surveillance in a designated location are open to procuratorial inspection. Most notably, judgments in most civil and criminal cases are now posted online by the Supreme People's Court (SPC). At the end of 2017, there more than 40 million judgments available on *China Judgments Online*, compared to 25.75 million at the end of 2016. Available 2016 statistics show that around 60.9% of online judgments involved civil cases; 16.86% involved criminal cases; with the remainder involving administrative orders, enforcement, intellectual property, and compensations.³

Court websites

Legislative background

3. Since 2013, the SPC has implemented four platforms related to judicial transparency: 1. *China Judicial Process Information Disclosure Online*, a national uniform judicial process information disclosure platform that enables parties to review relevant process information and materials related to the progress of cases; 2. *China Court Trial Online*, a platform that aims to uniformly gather court trial videos of courts at all levels in China; 3. *China Judgments Online*, the national uniform platform for disclosure of judgments and conciliation statements, which includes a sub-website, the *National Sentence Reduction and Parole Information Case Process Platform*; 4. *China Enforcement Information Disclosure*, a platform where the public may request information on persons subject to enforcement, enforcement case process information, and judgment enforcement information.
4. In August 2016, the SPC issued regulations requiring that courts publish all judgments online, albeit with a few important exceptions. Subsequently, the number of judgments in “sensitive” cases – notably those involving the crimes of counterrevolution, endangering state security (ESS), and “using an evil cult to sabotage implementation of the law” – found by Dui Hua has increased. In 2017, 40% of all names added to Dui Hua’s Political Prisoner Database (PPDB) were found on court websites – this compares with 25% in 2015 and 14% in 2014.

5. The 2016 regulations mark an improvement from previous regulations and white papers released by the SPC on judicial transparency in that they identify courts as the responsible institution for releasing judgments and require that they give reasons for refusing to release judgments. In 2017, however, only seven courts were providing information on why certain judgments were not being made publicly accessible.⁴ The 2016 regulations grant courts discretion to keep judgments secret if the court determines that the judgment involves state secrets, juveniles, certain sensitive crimes like rape, and any other judgment that courts deem “unsuitable” for release. According to a senior judge in the SPC, courts can decide that judgments are unsuitable for posting if they believe that by doing so social stability will be damaged. In “important cases,” the president of the court or the sentencing committee can decide not to post a judgment.
6. In 2016 and 2017, judgments in criminal cases posted online, taken as a percentage of all cases, dropped, most likely because judges more often exercised the power granted to them to bar judgments they deemed might endanger social stability. To address this trend, the SPC issued new regulations requiring courts to post all sentence reduction and parole judgments online by the end of 2018.⁵

Year	First instance trial completed*	First instance judgment posted †	%
2014	1,023,017	779,213	76.17%
2015	1,099,205	844,435	76.82%
2016	1,115,873	776,985	69.63%
2017	1,297,000	820,031	63.23%

Sources: * *China Law Yearbook, 2015-2017 and Supreme People's Court Work Reports 2014-2018*. † *China Judgment Online, 2015-2017*

Research

7. The value of online judgments for research and advocacy is far reaching. Topics such as the types of crimes and sentences meted out to Hong Kong residents and foreign nationals, the average number of years those sentenced to life in prison actually serve, variations in sentencing based on gender, age, and ethnicity, and degrees of transparency by province are among the topics that can be explored. Dui Hua is believed to be the only NGO that systematically examines judicial websites across local, provincial, and national levels to uncover names of individuals tried in cases of ESS and other political and religious crimes, and track updates concerning their whereabouts, health, and clemency status. Judgments discovered on court websites inform Dui Hua’s dialogue with the Chinese government on prisoners.
8. Information discovered through judgments, especially those posted on the sentence reduction and parole sub-website, allows one to identify types of meritorious behavior that qualify prisoners for clemency and better treatment. Judgments reveal that prisons can grant points towards clemency for outstanding performance on political examinations,

monitoring other prisoners, maintaining personal hygiene, and singing revolutionary songs about the Communist Chinese Party (CCP), among other behavior.⁶ Conversely, judgments reveal ideological and cultural barriers to clemency and better treatment. Prisoners who can only speak dialects or ethnic minority languages can be deprived of family visitation rights or points used for sentence reduction in some prisons.⁷ While singing “Red Songs” seems an innocuous way to accrue points towards clemency, it can also be used to discriminate against prisoners serving sentences for ESS, many of whom are imprisoned for expressing dissent with CCP policies.

Advocacy for political and religious prisoners

9. Governments and NGOs use information found on judgment websites to advocate for the release and better treatment of political and religious prisoners. Names found on the websites are raised in face-to-face meetings with Chinese officials, are included on prisoner lists submitted to Chinese officials, and can form the basis of appeals by United Nations Special Procedures to China's Mission in Geneva.
10. Dui Hua discovered the subversion case of the Mao Zedong Thought Communist Party of China group, founded in 2008 with the aim of restoring pre-reform era socialism. An online judgment indicated that one of its founders, Wei Jinxiang (蔚晋湘), was given a sentence reduction of ten months in August 2014 and received a recommendation for another sentence reduction in July 2016.⁸ In January 2018, Dui Hua submitted a request to the Chinese government to find out the outcome of this recommendation. In another case first discovered from online judgments, Dui Hua inquired about Dong Zhanyi (董占义), founder of The New Era Communist Party.⁹ Between 2015 and 2017, Dui Hua submitted his name on three prisoner lists to the Chinese government. An online judgment confirmed that Dong received a five-month sentence reduction in November 2017, seven months after Dui Hua submitted his name to the Ministry of Foreign Affairs.
11. In 2015-2017, Dui Hua found over 350 previously unknown prisoner names in cases involving ESS from online judgments and other judicial documents. Within this chapter of offenses in the Criminal Law, the degree of transparency varies depending on the exact charges. Judgments involving espionage and illegally procuring/trafficking in state secrets are more accessible than those involving inciting subversion and subversion cases. In 2017, Dui Hua found over 40 names on judicial websites involving espionage and state secret cases. Many appear to have connections with Taiwan. Dui Hua's research into judicial websites and other sources indicated that a portion of China's espionage and state secrets cases involve ethnic Koreans in the country's northeast region. Of the eleven names of ethnic Koreans convicted of these charges, a few are known to have been sentenced for providing information about North Korea to South Korea or Japan.
12. Dui Hua discovered over 130 previously unknown prisoner names in cases involving incitement, subversion, and splittism in 2015-2017. Courts appear to regularly exercise discretion not to disclose online judgments involving inciting subversion and subversion.

One example is Lee Mingche (李明哲), a Taiwanese activist sentenced to five years' imprisonment for subversion in October 2017. Although the trial was broadcast live on the official social media account of the Yueyang Intermediate People's Court, the judgment has not been published as of this writing. Despite the high-profile media given to Gou Hongguo (勾洪国), Hu Shigen (胡石根), Wu Gan (吴淦), Zhou Shifeng (周世锋) and other activists sentenced in connection with the "709" crackdown of July 2015, none of these judgments are available online. Zhou Shifeng's case was cited as an example of the successful handling of subversion cases in SPC President Zhou Qiang's 2017 SPC work report, yet the judgment itself is not available online.

13. Besides the aforementioned subversion cases, Dui Hua has found a judgment involving a partial-named duo that attempted to establish an opposition group called the "China Democracy and Justice Party." Its founder Qu X (曲某) was found to have written articles predicting the chaos that would follow the inevitable demise of the CCP. In preparation for its demise, Qu and a female co-founder Deng X (邓某) discussed plans to set up a new ruling party and raise funds through a security guard company. Although their plans did not materialize, the court cited messages they sent via WeChat as evidence of subversion and sentenced Qu and Deng to three and a half and four years' imprisonment, respectively.
14. Judicial websites maintain a relatively high level of transparency in cases involving Article 300 of the Criminal Law "organizing/using a cult to undermine implementation of the law," a charge frequently used to persecute banned religious groups. In 2017, Dui Hua found approximately 800 new names of individuals convicted under Article 300 from online judgments, compared to 900 names from unofficial sources. The majority of cases involved Falun Gong, followed by the Almighty God group. Dui Hua has found evidence that numerous imprisoned practitioners have been awarded clemency for "thought reform."¹⁰
15. Online judgments also revealed that lesser-known Protestant groups including Society of Disciples, Shouters, Full Scope Church, Three Kinds of Servant, Bloody Holy Spirit, and the Buddhist group Guanyin Famen have been targeted by police.¹¹ Despite media coverage of the 2014 Shandong McDonalds homicide, which was allegedly committed by Almighty God members, online judgments reveal that violence is rarely used by members of the Almighty God group or other banned religious groups.

Anti-Terrorism and Anti-Splittism in Xinjiang

16. Online judgments shed light on several little-known aspects of the ongoing religious and political campaigns in Xinjiang. Last year, Dui Hua found the first judgment involving the use of "educational placement," a new coercive measure imposed on prisoners who are considered a danger to society even after completing their sentences for terrorism or extremism offenses. The first-and-only available judgment on educational placement revealed several aspects of this measure: 1. It is applicable to prisoners convicted of inciting splittism as well as terrorism; 2. There are no time limits on the measure, leaving open the possibility of *de facto* life imprisonment; 3. The mechanisms to evaluate the risk level of

prisoners or challenge the evaluation reports conducted by the educational placement institutes are unclear.¹² As authorities associate terrorism and splittism with Uyghurs, Dui Hua believes they are bearing the brunt of this post-imprisonment measure.

17. Dui Hua also found judgments involving violators of the Islamic clothing ban in force throughout Xinjiang. Individuals can be sentenced for “illegal business activity” for selling clothing with the Islamic star and crescent symbol. In one case, a Muslim man, Gong Xiaojun (龚小军), was sentenced to two years' imprisonment for “disrupting official business” after arguing with cadres over his “abnormal” beard and a black robe his wife was wearing at home.¹³ The case indicates that Xinjiang authorities have extended the reach of the ban to peoples’ homes.
18. Online judgments provide evidence that Muslims of the Hui minority group also face some of the pressures that Uyghurs face. Dui Hua reported on the case of Hui farmer Ma Shengli (马胜利), who was sentenced to two years imprisonment in July 2017 in Yunnan for aiding and instigating Uyghurs to escape to Istanbul.¹⁴ Online judgments discovered by Dui Hua also reveal that Hui in Xinjiang have been sentenced for cult or other public order offenses for privately preaching the Quran.

Judicial work reports and annals

19. Dui Hua has uncovered piecemeal figures on political crime from annual judicial work reports released at the provincial level, despite the dearth of such information at the national level. In a Jiangsu province procuratorate report, a total of 146 cases involving 256 individuals were indicted for ESS and Article 300 offenses in 2017. Extrapolated to the national level, the Jiangsu report implies that the number of people indicted for ESS and cult offences in 2017 was around 4,500. Judicial reports published by the Xinjiang High People's Court provided the number of ESS cases up until 2016. In each year between 2010 and 2014, the number of first-instance ESS trials averaged 300.¹⁵ The last available statistics from the 2016 work report revealed that the number dropped to 100 in 2015.¹⁶ This drop can be attributed to a deliberate move away from counting terrorism and ESS cases in the same category. Terrorism now has its own category in work reports; it experienced a 25 percent surge in Xinjiang in 2015.
20. Dui Hua culls figures from judicial annals available in libraries and electronic yearbook databases. A Hunan judicial record stated that a total of 1,602 individuals were imprisoned nationwide during the “two disturbances” of 1989 for counterrevolution and other crimes.¹⁷ Guangdong Social Statistics Yearbooks indicated the province tried a total of 39 first-instance ESS cases from 2009-2015, of which 15 were tried in 2015 alone. This likely reflects actions taken against supporters of the 2014 Occupy Central protests in Hong Kong.
21. Dui Hua also monitors websites run by the procuratorate. One newly discovered case concerns Ye Dongdong (叶东东), indicted for inciting subversion in Longnan, Gansu Province, in November 2017. Dui Hua's research revealed that Ye is a supporter of the

group “Genuine Communist Party of China” (中国真共产党) that seeks to stage a “proletarian revolution” to revive people's communes.

Statistics on women and juveniles in prison

22. China agreed to the 2013 UPR recommendation to improve the collection and publishing of gender-specific data in the fields of economic and social development.¹⁸ This has yet to be implemented in an important area – the number of women in prison.
23. From 2003 to the first half of 2015, statistics on the number of women in Chinese prisons were publicly available. They could be found in the annual reports of the Asian Pacific Conference of Correctional Administrators (APCCA)¹⁹ and the *China Statistical Yearbook* published by the National Bureau of Statistics.²⁰ The last information released for the number of women in prisons under the Ministry of Justice was for the first half of 2015 – when the number stood at 107,131. This number does not include women held in detention facilities or other facilities run by public security bureaus (e.g., custody and education, mandatory drug rehabilitation, and legal education).
24. The number of women in prison in China was for many years released to the APCCA in the early months of the year following the year reported on. In February 2016, Dui Hua published an article in its *Human Rights Journal* detailing the sharp rise in the number of women incarcerated in China.²¹ A few months later the Ministry of Justice stopped releasing the figure to the APCCA.
25. In 2013, the *China Statistical Yearbook* also stopped reporting on the number of juveniles in prison in China.

Recommendations

26. In line with recommendations made by States Parties, and considering China's responses to those recommendations at the 2013 UPR on China, Dui Hua recommends that the People's Republic of China:
 - a. Publish the number of annual executions. Recommendation was made by Italy, Switzerland, France, and Belgium, but was not agreed to by China.²²
 - b. Resume providing the number of women in prison. China agreed to the recommendation by the State of Palestine to increase release of gender data, but releasing the number of female prisoners in China has not resumed.
27. In line with the recommendation by Singapore²³ to strengthen the judicial system, agreed to by China, Dui Hua recommends that China:

- a. Increase the number and percentage of criminal judgments released online and provide information on why some judgments are not released.
- b. Remove ideological and cultural barriers to granting clemency in the prison system.²⁴

¹ Although the exact number of executions carried out every year in China is a closely guarded state secret, officials occasionally release numbers of executions in select years that enable estimates to be made. In late 2014, accounts in Mainland publications enabled Dui Hua to estimate that China carried out 2,400 executions in 2013. The Dui Hua Foundation, “China Executed 2,400 People in 2013,” Press Statement, October 20, 2014, Web, https://duihua.org/wp/?page_id=9270.

² The Supreme People’s Court (SPC) no longer provides the number of trials of the first instance for endangering state security (ESS). In recent years, the SPC has grouped ESS with two other crimes – dereliction of military duty and endangering interests of national defense – to form a category of “Others.” In its 2018 Work Report (covering 2017) delivered at the annual session of the National People’s Congress, the SPC stated that “Others” represented 0.1 percent of all first instance trials during the five-year period 2013-2017, equal to 5,489 first instance trials for “Others.” The great majority are believed to be ESS trials.

³ The Supreme People’s Court of The People’s Republic of China, *Judicial Transparency of Chinese Courts (2013-2016)*, People’s Court Publishing Group, February 2017, Page 24.

⁴ “China Academy of Social Sciences Releases Judicial Transparency Index,” The Paper, March 22, 2018, https://www.thepaper.cn/newsDetail_forward_2037308?utm_source=HRC+Updates&utm_campaign=3a3949911b-EMAIL_CAMPAIGN_2018_03_23&utm_medium.

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- ⁵ “Supreme People’s Court: The National Information Platform for the Reduction of Prisons and Paroles will be completed before the end of next year,” *Legal Daily*, Law Library, November 23, 2017, <http://www.law-lib.com/fzdt/newshtml/fzjd/20171123110043.htm>
- ⁶ The Dui Hua Foundation, “Clemency for Singing Red Songs,” *Reference Materials*, November 2, 2017, <https://www.duihuaresearch.org/2017/11/clemency-for-singing-red-songs.html>.
- ⁷ The Dui Hua Foundation, ““Mandarin Only” Visitation Rules,” *Human Rights Journal*, January 10, 2018, <https://www.duihuahrjournal.org/2018/01/mandarin-only-visitation-rules.html>.
- ⁸ The Dui Hua Foundation, “Leftist Subversion in China: 1980 to Present,” *Reference Materials*, October 29, 2013, <https://www.duihuaresearch.org/2013/10/leftist-subversion-in-china-1980-to.html>.
- ⁹ The Dui Hua Foundation, “Life Sentence Commuted for Opposition Party Leader Dong Zhanyi,” Press Statement, April 13, 2015, https://duihua.org/wp/?page_id=9618.
- ¹⁰ Dui Hua’s Political Prisoner Database recorded around 300 acts of clemency for prisoners convicted of Article 300 of the Criminal Law “organizing/using a cult to undermine implementation of the law” in 2014. In 2015, the number of acts of clemency for prisoners serving this sentence rose to 500. The Dui Hua Foundation, “Will a New Judicial Interpretation on Cults Lead to Greater Leniency?” *Human Rights Journal*, February 24, 2017, <https://www.duihuahrjournal.org/2017/02/will-new-judicial-interpretation-on.html>.
- ¹¹ The Dui Hua Foundation, “Identifying Cult Organizations in China,” *Reference Materials*, July 10, 2014, <https://www.duihuaresearch.org/2014/07/identifying-cult-organizations-in-china.html>.
- ¹² The Dui Hua Foundation, “Uncovering the Obscurity of Educational Placement,” *Human Rights Journal*, March 13, 2018, <https://www.duihuahrjournal.org/2018/03/uncovering-obscurity-of-educational.html>.
- ¹³ The Dui Hua Foundation, “Ban on Islamic Clothing in Xinjiang,” *Human Rights Journal*, February 28, 2018, <https://www.duihuahrjournal.org/2018/02/ban-on-islamic-clothing-in-xinjiang.html>.
- ¹⁴ The Dui Hua Foundation, *Digest* January 2018: “Prisoner Updates,” *Digest*, January 17, 2018, <https://duihua.org/wp/?p=12814>.
- ¹⁵ The Dui Hua Foundation, “Xinjiang State Security Trials Flat, Criminal Trials Soar in 2014,” *Human Rights Journal*, March 10, 2015, <https://www.duihuahrjournal.org/2015/03/xinjiang-state-security-trials-flat.html>.
- ¹⁶ The Dui Hua Foundation, “China State Security Trials Fell 50 Percent in 2015, Official Data Suggest,” *Human Rights Journal*, April 16, 2016, <https://www.duihuahrjournal.org/2016/04/hrj20160406-china-state-security-trials.html>.
- ¹⁷ The Dui Hua Foundation, “China Releases Last June 4 Counterrevolutionary Imprisoned in Beijing,” Press Statement, May 30, 2013, https://duihua.org/wp/?page_id=7759.
- ¹⁸ Report of the Working Group on the Universal Periodic Review, A/HRC/25/5, Recommendation 88, “Improve the collection and publishing of gender-specific data in the fields of economic and social development” (State of Palestine).
- ¹⁹ Asian Pacific Conference of Correctional Administrators, <http://www.apcca.org/index.php>.
- ²⁰ China Statistical Yearbook, National Bureau of Statistics, <http://www.stats.gov.cn/tjsj/ndsj/>.
- ²¹ The Dui Hua Foundation, “Growing Number of Women in Prison in China,” *Human Rights Journal*, February 23, 2016, <https://www.duihuahrjournal.org/2016/02/growing-number-of-women-in-prison-in.html>.
- ²² Report of the Working Group on the Universal Periodic Review, A/HRC/25/5, Recommendation 108, “Publish the figures regarding death sentences and executions” (Italy); “Publicize the statistics on executions” (Switzerland); “Publish official statistics on the application of the death penalty, guarantee the right to a fair defense, and introduce a procedure for pardon petitions with a view to a moratorium on execution” (France); “Publish or make available precise information on the identity and number of the individuals currently awaiting execution and of those who were executed in the past year” (Belgium).
- ²³ Ibid, Recommendation 124, “Continue its effort to strengthen the judicial system to enhance public security and the rule of law” (Singapore).
- ²⁴ The Dui Hua Foundation, “Clemency for Singing Red Songs,” *Reference Materials*, November 2, 2017, <https://www.duihuaresearch.org/2017/11/clemency-for-singing-red-songs.html>; The Dui Hua Foundation, ““Mandarin Only” Visitation Rules,” *Human Rights Journal*, January 10, 2018, <https://www.duihuahrjournal.org/2018/01/mandarin-only-visitation-rules.html>.