

ACCESS TO JUSTICE

EXCERPTED
FROM THE
2011 ANNUAL REPORT
OF THE
CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA
ONE HUNDRED TWELFTH CONGRESS
FIRST SESSION

OCTOBER 10, 2011

Printed for the use of the Congressional-Executive Commission on China



Available via the World Wide Web: <http://www.cecc.gov>

U.S. GOVERNMENT PRINTING OFFICE

70-936 PDF

WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
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ACCESS TO JUSTICE

Findings

- Chinese citizens' ability to redress perceived wrongs continued to face significant challenges during the Commission's 2011 reporting year. Authorities continued to promote a "harmonious" socialist society with Chinese characteristics. Key policies and regulations during the past year reflect the Party's ongoing concern with "maintaining social stability."
- The courts encouraged the use of mediation over trials as means to resolve disputes in civil cases. Critics point out that mediation could lead to curtailed access to courts for Chinese citizens. In addition, it remains unclear whether the new PRC People's Mediation Law can adequately resolve disputes without coercion, and whether it can provide for effective enforcement of mediated agreements.
- Citizen petitioners seeking to address their grievances continued to face official reprisals, harassment, violence, and detention, especially by local governments due to incentive structures linked to citizen petitioning.
- Officials at various levels of government continued to discourage, intimidate, and detain human rights lawyers and defenders who take on issues, cases, and clients that officials deem to be "sensitive." Officials employed a spectrum of measures including stationing police to monitor the homes of rights defenders, forcing rights defenders to travel to unknown areas or to attend meetings to "drink tea" with security personnel, and imprisonment.
- The Supreme People's Court announced in May 2011 that it would issue uniform guidelines for some types of cases. The guiding cases are meant to provide uniformity in decision-making for the public security apparatus, procuratoracy, and the courts. One of the key questions that remains unanswered is the degree to which the guiding cases are binding on lower courts.
- The Chinese government continued to promote administrative law reforms that seek to provide greater oversight of state agencies and government employees and to protect citizen interests if they are faithfully implemented and executed. The amended PRC Administrative Supervision Law became effective in June 2011. Its key provisions provide some protection for whistleblowers. The amended PRC State Compensation Law became effective in December 2010. Its key provisions expand the scope of the law by allowing negligence as a cause of action against the government under some circumstances. In addition, the amended law eliminates certain procedural loopholes making it easier to establish a valid claim.

- Chinese citizens remained reluctant to bring cases against government officials utilizing administrative law provisions. Cases brought against the government based on administrative law provisions reportedly accounted on average for very low percentages of local courts' total workloads.
- The government increased funding for the legal aid system during the 2011 reporting year. Nevertheless, China faces a systemic shortage of defense lawyers. In underdeveloped regions, some criminal defendants may have no access to legal representation.

Recommendations

Members of the U.S. Congress and Administration officials are encouraged to:

- Support the U.S. State Department's International Visitor's Leadership Program and other bilateral exchange programs that bring Chinese human rights lawyers, advocates, and scholars to the United States for study and dialogue. Support similar programs in the non-governmental organization and academic sectors that partner with China's human rights lawyers and nonprofit legal organizations.
- Continue to monitor the policy of mediation as the Chinese government's preferred way to resolve disputes. Achieve a clear understanding of the implications on Chinese citizens' access to justice and the Chinese government's compliance with international standards.
- Continue to monitor the anticipated issuance of the guiding cases by the Supreme People's Court for the public security apparatus, procuratoracy, and the courts. Pay particular attention to their effect, if any, on lower level courts.
- Express concern to Chinese authorities over treatment of petitioners and encourage Chinese leaders to examine the incentive structures at the local level that lead to abuse of petitioners who seek to express their grievances.
- Object to the continued harassment of human rights lawyers and advocates. Call for the release of lawyers and activists who have been subject to unlawful home confinement, "disappearance," or harassment by officials for their activities to defend and promote the rights of Chinese citizens.
- Support exchange, education, and training in legal aid expertise with Chinese defense lawyers and law schools.

Introduction

Chinese citizens' ability to seek redress against government actions that violate their legal rights has changed significantly over the past 30 years. More than 200 laws have been enacted,¹ but citizens continue to face significant obstacles to accessing justice. Article 8 of the Universal Declaration of Human Rights states that "[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."² Article 2 of the International Covenant on Civil and Political Rights (ICCPR) requires states to ensure that persons whose rights or freedoms are violated "have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity."³

During the Commission's 2011 reporting period, key policies and regulations relating to access to justice reflected the Communist Party's ongoing concern with maintaining stability. Authorities emphasized the use of mediation over trials in civil cases and promoted mediation as the solution to social unrest. At the same time, authorities sought to enact measures that could curb corruption and lead to greater professionalism within the courts. Authorities' concern with maintaining stability extended to citizen petitioning, an area beset with well-documented human rights violations such as arbitrary detention. During this reporting year, Chinese media exposed a "stability maintenance" organization tasked by some local governments with retrieving petitioners from Beijing, a practice that often led to abuse of petitioners. In addition, petitioner cases involving land disputes continued as a trend as officials sought to develop more rural land.

Against the backdrop of the Nobel Peace Prize being awarded to China's prominent imprisoned intellectual and writer Liu Xiaobo in October 2010, and amidst the online "Jasmine" call for reform domestically, the government enforced measures that further restricted human rights lawyers' advocacy efforts. Officials at various levels of the government continued to take steps to discourage, intimidate, and detain human rights lawyers and defenders who take on issues, cases, and clients that officials deem to be "sensitive." In spite of apparent efforts to train more legal aid representatives, measurable positive effects in citizens' access to justice remain elusive.

Mediation as a Vehicle To Maintaining Social Stability

During the 2011 reporting year, government and party officials continued to use courts as a tool in their efforts to maintain social stability. In particular, the Supreme People's Court encouraged the use of mediation over trials as means to resolve disputes in civil cases.⁴ The PRC People's Mediation Law became effective in January 2011,⁵ and stresses the need to resolve civil disputes through mediation and to maintain social harmony and stability.⁶ It encourages disagreeing parties to reach a voluntary resolution through people's mediation committees.⁷ Furthermore, the mediation services are free of charge and legally binding on the parties.⁸ To further strengthen enforcement efforts, in July 2010, authorities issued a joint opinion involving multiple agencies in an effort to im-

prove enforcement of legally binding decrees.⁹ The joint opinion establishes general policy provisions for each agency and allows the courts to coordinate among agencies.¹⁰ Since passage of the PRC People's Mediation Law, authorities have actively promoted it as the "first line of defence [sic]"¹¹ against mass conflicts. In January 2011, the Supreme People's Court further emphasized the importance of mediation to all basic-level people's courts by stressing the need to uphold the principle of "mediation first, then integrate mediation and adjudication."¹²

Authorities also praised the national model judge for 2010, who resolved more than 3,100 cases in 14 years "all without a single mistake, appeal, or citizen petitioning [against her decisions]."¹³ Judge Chen explained that one of her key work principles is to prioritize mediation over litigation, especially in cases involving neighborhood disputes and marital discord.¹⁴

In spite of the push for mediation, the broader implications of the law remain unclear. While mediation is an effective tool in some types of cases, concerns about mediation center on three main issues: Curtailed access to courts for Chinese citizens, adequate resolution of disputes without coercion, and effective enforcement.¹⁵ A particular concern is the potential use of the PRC People's Mediation Law to pressure and silence human rights activists. For example, in June 2011, public security officials reportedly approached members of the Tiananmen Mothers, a non-governmental organization that seeks public discussion and accountability for people killed during the 1989 Tiananmen protests. The officials reportedly offered to pay compensation to settle individual cases.¹⁶ The terms of the settlement, however, did not include public discussions about the 1989 Tiananmen protests, investigations, or accountability—objectives that the Tiananmen Mothers aim to achieve.¹⁷ To further promote mediating disputes over trial work, the government and the Party reportedly have mandatory mediation quotas, offer financial rewards and career advancements to judges who have high rates of mediation, and punish judges who issue decisions that result in citizen petitioning.¹⁸ This approach can lead some judges to engage in unfair settlement tactics that could "detract from the substantive fairness of the process and undermines the legitimacy of the court system."¹⁹ Survey data also suggests that the enforcement of mediated agreements remains weak.²⁰

Efforts To Professionalize the Courts

During this reporting year, the Supreme People's Court sought to professionalize courts by issuing codes of conduct, recusal regulations, and guiding cases. In December 2010, the Supreme People's Court issued two documents concerning judges' conduct: The Model Judicial Behavior Code²¹ and the Basic Code of Professional Conduct for Judges.²² The two documents seek to guide judges in their judicial work and conduct outside of work,²³ set forth five principles of loyalties for judges,²⁴ and stress allegiance and loyalty to the Party.²⁵ In early 2011, the Supreme People's Court issued two regulations intended to limit improper influence on the courts. The Trial Implementation of the Provisions Regarding Professional Avoidance of Trial Judges and Court Leadership When a Spouse or Child Practices as a Lawyer²⁶ ("Trial Implementation Provisions")

requires the court officials and some trial judges to recuse themselves in some professional settings when a spouse or child practices as a lawyer in the jurisdiction they oversee. The Provisions Regarding the Prevention of Interference With Casework by Internal Court Personnel²⁷ prohibit current and retired court personnel from conducting private meetings with parties, as well as their relatives and legal representatives, whose cases are being adjudicated by the court. The provisions also prohibit current and retired court personnel from forwarding documents, inquiring, or interceding on behalf of the parties.²⁸ The efficacy of these regulations remains unclear. For example, the Trial Implementation Provisions do not include limitations on the procuratorate, public security personnel, or anyone else who shares a close relationship with the parties or the court.

Authorities also sought to limit the lower courts' ability to request instructions from higher level courts when adjudicating cases. This practice occurs when lower level courts seek to avoid responsibility or are unwilling to decide a case based on the facts and law as presented. The Opinion Concerning the Standardization of Trial Work Between Higher Level and Lower Level Courts,²⁹ issued in December 2010, is the latest in a series of efforts by the central government to address this practice. Key provisions in the opinion limit the types of cases where instructions can be sought and prohibits "in principle" the court of second instance from remanding a case based on unclear facts and insufficient evidence, when the court of first instance has fully investigated the facts.³⁰

The Supreme People's Court issued the long-awaited Regulations Regarding Guiding Cases in November 2010, which could lead to greater uniformity in the handling of cases.³¹ The regulations announced that the Supreme People's Court will publish uniform guidelines for some cases that have generated broad societal interest; where the regulation is general; where cases are representative of other cases similarly situated; or where cases are particularly complex, difficult or novel, or otherwise have guiding value.³² The Supreme People's Court (SPC) reportedly was selecting its first series of guiding cases in May 2011.³³ In addition, according to the director of the SPC research department, the guiding cases will eventually include three series covering public security, the procuratorate, and the courts.³⁴ One of the key questions that remains unanswered is the degree to which the guiding cases are binding on lower courts.³⁵

In September 2010, the Supreme People's Court issued sentencing guidelines on a trial basis that could improve transparency, uniformity, and fairness in sentencing criminal defendants.³⁶ The key provisions of the guidelines provide baseline sentences for 15 of the most commonly encountered crimes such as traffic offenses, battery, rape, robbery, larceny, fraud, and drug offenses, among others, and establish sentencing factors in aggravation and in mitigation.³⁷ If implemented at the local level, the guidelines could potentially promote greater transparency and consistency in sentencing by limiting individual discretion of judges.

Corruption Within the Judiciary

Corruption within the judiciary has been a longstanding problem.³⁸ The extent and scope of corruption are unclear due to a lack of independent data. According to official sources, from January to November 2010, the government “investigated 119,000 graft cases, resulting in 113,000 people being punished, of whom 4,332 were prosecuted . . .”³⁹ In addition, a report published by the Supreme People’s Court in February 2011 singled out 187 people within the judicial system for improper conduct, ranging from private use of public property to charging inflated fees in 2010.⁴⁰ Anecdotal but numerous incidents of corruption reported in the media involved judges extorting money from litigants,⁴¹ engaging in collusion,⁴² and accepting bribes.⁴³

During this reporting year, key policies continued to reflect the authorities’ ongoing efforts to root out corruption within the judiciary,⁴⁴ and within the confines of the existing political structure where the courts are subject to the control of the Party.⁴⁵ The current approach to combat judicial corruption appears to particularly emphasize the role of state supervision.⁴⁶ In October 2010, the Supreme People’s Court announced it would gradually undertake tours of inspection of local-level courts where one of the main purposes is to investigate the lower level courts’ ability to handle matters diligently and free from corruption.⁴⁷ In addition, the authorities continued to promote the policy of “Five Prohibitions” first promulgated in 2009.⁴⁸ The “Five Prohibitions” policy proscribes judges from engaging in improper conduct such as accepting gifts, interceding on behalf of another party, divulging work secrets, and engaging in favoritism.⁴⁹ The courts have also instituted an online forum where citizens can report on corrupt judges and monitor the progress of whistleblowing tips.⁵⁰ The efficacy of the online forum remains unclear.

Administrative Law

Administrative law provides channels for citizens to seek limited remedy when they believe the government has violated their rights. Because Chinese courts do not have the power either to apply constitutional provisions or to strike down laws or regulations that are inconsistent with China’s Constitution,⁵¹ administrative laws serve as a tool to allow citizens to express grievances, challenge alleged official wrongdoing, and impose constraints on official misconduct. Overall, Chinese citizens today have more options for redress against government violations than they did 20 years ago, when the field of administrative law first began to develop. In spite of these developments, the administrative law system still faces fundamental institutional challenges. For example, Chinese citizens cannot challenge administrative regulations that violate constitutional or legal rights. Article 12 of the PRC Administrative Procedure Law forbids courts from accepting citizen challenges of administrative rules and regulations that have “general binding force.”⁵² In addition, the PRC Administrative Reconsideration Law does not allow adjudication of State Council rules or regulations.⁵³ During this reporting period, the Chinese government continued to promote administrative law reforms that seek to provide greater over-

sight of state agencies and government employees and to protect citizens' interests. In June 2010, the amended PRC Administrative Supervision Law became effective.⁵⁴ The key amendments provide some protection for whistleblowers.⁵⁵ For example, Article 6 stipulates that administrative agencies shall keep whistleblowers' information confidential, and Articles 46 and 47 provide that individuals [should] be punished or prosecuted for revealing information about whistleblowers or bringing retaliatory charges against reporting parties.⁵⁶ In December 2010, the amended PRC State Compensation Law became effective.⁵⁷ The amended compensation law expands the scope of the existing law by allowing negligence to go forward as a cause of action against the government under some circumstances.⁵⁸ In addition, the amended law eliminates certain procedural loopholes making it easier to establish a valid claim⁵⁹ and allows compensation for "psychological injury."⁶⁰

The Commission notes that overall, Chinese citizens remain reluctant to bring cases against government officials using administrative law provisions. According to the Supreme People's Court's work report, the courts handled 135,679 administrative cases, or approximately 1 percent of the 11.7 million cases handled by local courts at various levels.⁶¹ The key reasons include a lack of confidence in the judicial system, historical context, and the belief that the *xinfang* system is a more appropriate channel for citizens' grievances.⁶²

Citizen Petitioning (Xinfang)

The petitioning, or *xinfang* (letters and visits), system exists to provide a channel, outside court challenges, for citizens to appeal government, court, and Communist Party decisions and present their grievances. Due to institutional weaknesses in the judiciary and limits on citizens' ability to air grievances, citizens often use petitioning as a means to seek redress for perceived wrongs. Common citizen petitioning cases involve reports of official corruption causing perceived injustice, alleged abuse of power, and unfair land compensation.

China's Constitution and the 2005 PRC National Regulations on Letters and Visits provide that Chinese citizens have the right to petition without retribution. *Xinfang* bureaus are found throughout the Chinese bureaucracy, including offices of the Party, police, government, procuratorates, courts, and people's congresses. Individual petitioning may take the form of one dissatisfied citizen going to multiple *xinfang* bureaus repeatedly over the course of several months or years. Collective or mass petitioning may involve attempts to organize demonstrations, speeches, or marches of people seeking to present their grievances. The capital city, Beijing, where the central government and high-level officials are located, is an especially prominent destination for petitioners from all over China. According to a 2007 research study conducted by the Chinese Academy of Social Sciences, there were "more than 10,000 petitioners that have set up temporary residence" in Beijing.⁶³ However, only approximately 0.2 percent of the petitioners reportedly achieve resolution through petitioning.⁶⁴

Based on official information from Xinhua in March 2011, the *xinfang* system "ferreted out a total of 2,076,000 cases of varying

kinds of conflicts since April 2010, of which 1,643,000 cases,” or 79.1 percent, have been resolved.⁶⁵ According to the latest Supreme People’s Court’s annual report, the number of citizen-petitioning cases in 2010 declined by 22 percent at local levels.⁶⁶ The declining figures could mean, however, that the local officials, whose career advancement is often correlated with lower instances of citizen petitioning,⁶⁷ are becoming more skilled at preventing petitioners from reaching higher level *xinfang* bureaus.

In spite of Premier Wen Jiabao’s show of support for petitioners’ problems during a visit to Beijing’s top petitioning bureau,⁶⁸ Chinese citizens continued to face official reprisals, harassment, and violence. During this reporting year, the central government, and its extensive network of “social stability preservation” organizations under the leadership of the Communist Party Central Committee, continued to assess local government in part based on the number of “abnormal petitions.”⁶⁹ To cope with the assessment, local governments continued to employ private security companies that sometimes resorted to extralegal measures to prevent petitioners from reaching the central government.⁷⁰ In October 2010, Southern Metropolitan Daily exposed a private security company, Anyuanding, under contract by local governments to “retrieve” petitioners who attempted to petition in Beijing, where the central government is located.⁷¹ Anyuanding employed a variety of methods to prevent petitioners from making their grievances heard at the central level. The methods reportedly included coaxing, threats, abduction, detention in “black jails” for extended periods of time, and beatings.⁷² Official mistreatment of petitioners was especially harsh during national holidays, meetings held by the Party, and “politically sensitive periods.”⁷³

Maintaining social stability and containing the petitioning system remained a priority for central and local authorities. In May 2011, the Supreme People’s Court issued a series of documents for lower level courts on how to handle petitioning. The documents outlined “four musts and five systems.” The four “musts” include: Strengthening the ideology of the masses, finding the problem at the source, building long-term capacity, and focusing on the masses. The five systems focus on risk assessment, notification, reception of petitioners, multi-faceted solutions, and establishing a system of finality in petitioning.⁷⁴ Key elements of the documents echoed the push for mediation and social stability observed throughout the court system during this reporting period. [See Mediation as a Vehicle To Maintaining Social Stability in this section.]

During this reporting year, local governments continued to misapply legal regulations to punish petitioners for the sake of maintaining social stability. Public security officers on occasion detained petitioners under Article 23 of the PRC Public Security Administration Punishment Law.⁷⁵ The provision proscribes conduct that “disturbs social order.” Specifically, Subsection 1 prohibits “disturbing order of organizations, groups, enterprises, institutions, causing interference in their routine operations in work production, operation, medical care, education and research, but not yet causing serious harm.”⁷⁶ Subsection 2 prohibits “disturbing order in bus stations, ports, wharfs, airports, shopping facilities, parks, exhibition centers, and other public places.”⁷⁷ The punishment for “disturbing

social order” under Article 23 ranges from warning to 15 days of detention. For example, public security officers from the Beijing Public Security Bureau’s Haidian district took petitioner Cai Fuxian into custody for 10 days under Article 23 on October 17, 2010, for distributing leaflets near the meeting place of the fifth plenum of the Communist Party’s Central Committee. Cai was seeking redress for the alleged wrongful death of her father, a veteran cadre of the Party, and claimed that a current Central Committee member was involved.⁷⁸

Authorities and rural petitioners who petitioned about demolition of or eviction from their land and residences continued to confront each other, often violently.⁷⁹ Under the rubric of land and *hukou* reform, there appeared to be increasing tension between some local governments’ plans to develop rural land for urbanization and some rural residents’ desire to stay put. According to data made available by the Chinese Academy of Social Sciences in December 2010, petitioning related to land makes up 73 percent of all petitioning cases.⁸⁰ Presently, there are approximately 50 million farmers who have lost their farmland due to urban development, a number projected to double in 10 years’ time.⁸¹ Against this backdrop, the National People’s Congress Standing Committee passed the PRC Administrative Coercion Law on June 30, 2011, to become effective on January 1, 2012.⁸² The law aims to establish a framework for regulating coercive measures government authorities can use against citizens.⁸³ Key chapters in the law define government actions that fall within the scope the law,⁸⁴ set out a standardized process by which forcible measures may be imposed against citizens,⁸⁵ and allow citizens to sue for damages under certain circumstances.⁸⁶

Citizen petitioning and its abuses reflect two contradictory goals of the system: Stability preservation—embodied by the need for conflicts to remain at the local level—and the central government’s use of citizen petitioning as a check on local governments.⁸⁷ Furthermore, the existing system partially reflects the limited options available to Chinese citizens seeking redress through the rule of law.

Human Rights Lawyers and Defenders

The Commission observed increasing efforts by Chinese authorities to discourage, intimidate, and physically harm human rights lawyers and defenders who took on “sensitive” causes.⁸⁸ Authorities continued to employ a spectrum of harsh measures such as stationing police personnel to monitor the whereabouts of rights defenders,⁸⁹ forcing rights defenders to “travel” to remote or unknown locations,⁹⁰ inviting them to “drink tea” with security personnel,⁹¹ and imprisoning them.⁹² In addition, the Chinese government appears to increasingly target human rights defenders under the color of law. For example, throughout this reporting year, the government denied annual license renewals for human rights lawyers,⁹³ charged some human rights defenders and activists with crimes such as “disturbing social order,”⁹⁴ and prohibited others from leaving the country, citing national security concerns under the PRC Law on the Control of the Exit and Entry of Citizens.⁹⁵ [See Section II—Criminal Justice and Section II—Freedom of Resi-

dence and Movement for additional information on human rights lawyers and defenders.]

Legal Aid

Chinese law grants criminal defendants the right to hire an attorney but guarantees pro bono legal defense only if the defendant is a minor, faces a possible death sentence, or is blind, deaf, or mute.⁹⁶ In other cases in which defendants cannot afford legal representation, courts may appoint defense counsel or defendants may apply for legal aid, in theory, as early as the investigative stage of their cases.⁹⁷

During the 2011 reporting year, the Commission observed numerous reports of legal aid initiatives aimed at serving disadvantaged regions and improving access to justice for citizens. In early February 2011, the Ministry of Justice announced that legal aid funds nationwide increased to more than 1 billion yuan (US\$153 million) in 2010, as the central government and provincial governments allocated more funds to establish legal aid programs in rural localities.⁹⁸ In addition, the China Legal Aid Foundation—a government agency established to raise, manage, and allocate funding for the legal aid system—increased legal assistance funding with allocations from the public welfare lottery.⁹⁹ The increase in legal aid funding comes as officials report that legal aid organizations across China handled record numbers of cases on behalf of disadvantaged applicants.¹⁰⁰

According to a February 9, 2011, China Daily article, a senior official with the Ministry of Justice announced that the government would send lawyers to assist disadvantaged groups in 213 destitute counties in central and western China.¹⁰¹ On February 14, 2011, the China Daily reported that the Beijing Legal Aid Center announced free legal aid consultations and services for families of trafficked children seeking to sue child traffickers, in response to a high-profile government crackdown on child abductions.¹⁰² On February 25, 2011, China Tibet News reported that the Ministry of Finance allocated a special legal aid fund of 700,000 yuan (US\$107,200) to assist migrant workers, minors, the elderly, women, and persons with disabilities in the Tibet Autonomous Region.¹⁰³ In a March 1, 2011, China Daily article, the Beijing Municipal Bureau of Justice announced its Legal Services in the Community project would place lawyers in all 2,600 communities and 3,900 villages within the Beijing municipality.¹⁰⁴

Despite the expansion of the legal aid system, China's legal aid structure faces systemic challenges in meeting the demands of its disadvantaged citizens and rural localities. According to a February 2010 article in Zhengyi Net (a Web site under the authority of the Supreme People's Procuratorate), a large number of citizens are in need of legal assistance—including 40 million poor rural residents and 82 million persons with disabilities.¹⁰⁵ The article notes that "the staffs of legal aid agencies in China are far from meeting these needs."¹⁰⁶ In February 2011, China Daily reported that China continues to face an imbalance in legal professionals, as only 5,000 of China's 200,000 lawyers work in the relatively poorer central and western regions.¹⁰⁷ In some of China's underdeveloped regions, courts may have no defense attorneys.¹⁰⁸ Furthermore, even in

areas with a higher proportion of lawyers, citizens are often unable to manage the high costs associated with legal representation. According to one estimate, 80 to 90 percent of criminal defendants in China are unable to hire a lawyer.¹⁰⁹ Despite increases to legal aid funding by the China Legal Aid Foundation, the legal aid system needs substantially more financial support to expand legal aid resources nationwide and to improve training for lawyers handling the challenges of legal aid cases.¹¹⁰

Endnotes

¹“By the End of 2010, Our Country Will Have Drawn Up 236 Active Laws and Over 690 Administrative Regulations” [Dao 2010 niandi, woguo yi zhiding xianxing youxiao falu 236 jian, xingzheng fagui 690 duojian], Xinhua, reprinted in China Daily, 10 March 10.

²Universal Declaration of Human Rights (UDHR), adopted and proclaimed by UN General Assembly resolution 217A (III) of 10 December 48, art. 8.

³International Covenant on Civil and Political Rights (ICCPR), adopted by UN General Assembly resolution 2200A (XXI) of 16 December 66, entry into force 23 March 76, art. 2.

⁴“Chinese Chief Justice Stresses Priority of Mediation Over Court,” Xinhua, 30 May 11; “China Issues Guidelines for Resolving Social Conflicts,” Xinhua, 4 May 11.

⁵PRC People’s Mediation Law [Zhonghua renmin gongheguo renmin tiaojie fa], issued 28 August 10, effective 1 January 11; Supreme People’s Court, Several Provisions Regarding Judicial Affirmation Procedures for People’s Mediation Agreements [Zuigao renmin fayuan guanyu renmin tiaojie xieyi sifa queren chengxude ruogan guiding], issued 23 March 11; “New People’s Mediation Law Takes Effect,” Congressional-Executive Commission on China, 10 February 11.

⁶PRC People’s Mediation Law [Zhonghua renmin gongheguo renmin tiaojie fa], issued 28 August 10, effective 1 January 11, art. 1.

⁷Ibid., arts. 1, 7–12.

⁸Ibid., arts. 4, 33.

⁹Opinion on Questions Regarding Establishing and Improving Enforcement [of Judicial Decisions] by Multiple Organizations [Guanyu jianli he wanshan zhixing liandong jizhi ruogan wentide yijian], issued 7 July 10.

¹⁰Ibid. For example, Chapter 8 calls on the Ministry of Civil Affairs to give special consideration to those seeking enforcement who are in dire conditions.

¹¹Zhu Zhe and Lan Tian, “Mediation Draft Law Could Ease Tension,” China Daily, 23 June 10. According to the article, Minister of Justice Wu Aiyong told the National People’s Congress Standing Committee that the “mediation should be the fire line of defence to maintain social stability and promote harmony.”

¹²Several Opinions Regarding Further Strengthening the Basic People’s Courts Under New Circumstances [Guanyu xiningshi xia jinyibu jiaqiang renmin fayuan jiceng jichu jianshede ruogan yijian], issued 28 January 11, secs. 13, 14.

¹³Zhu Xudong, “Basic-Level Court Judge Chen Yanping’s Work Method Is Worth Spreading Throughout the Country” [Jiceng faguan chen yanping gongzuofa zai quanguo huo tuiguang], News of the Communist Party of China, 23 February 11; Carl F. Minzner, “China’s Turn Against the Law,” Washington University in St. Louis Legal Studies Research Paper, No. 11–03–01 (2011), 24.

¹⁴Ma Shoumin, “Prioritizing Mediation Promotes Societal Harmony and Stability” [Tiaojie youxian licu shehui hexie wending], People’s Court Daily, 15 March 11.

¹⁵Carl F. Minzner, “China’s Turn Against the Law,” Washington University in St. Louis Legal Studies Research Paper, No. 11–03–01 (2011); Stanley Lubman, “Civil Litigation Being Quietly ‘Harmonized,’” Wall Street Journal, 31 May 11; Willy Lam, “Beijing Tightens Control Over Courts,” Asia Times, 25 June 11.

¹⁶“Open Letter From the Tiananmen Mothers,” reprinted in Human Rights in China, 30 May 11; Willy Lam, “Beijing Tightens Control Over Courts,” Asia Times, 25 June 11.

¹⁷Ibid.

¹⁸Carl F. Minzner, “China’s Turn Against the Law,” Washington University in St. Louis Legal Studies Research Paper, No. 11–03–01 (2011), 31–37.

¹⁹Ibid., 38–39.

²⁰Li Gang, “Court Supervised ‘Mediation’ Is Easy, Enforcement Is Hard” [Fayuan “tiaojie” rongyi zhixing nan], Beijing Youth Daily, 7 July 10. According to this article, based on data released by a court in Beijing, agreements in nearly half of the disputes settled through mediation are not honored by the parties, contributing to what the paper characterized as the “strange phenomenon” of too much mediation and too little enforcement. “We Ought To Pay Attention to Both Mediation and Enforcement” [Tiaojielu yu tiaojie zidong luxinglu yingdang bingzhong], People’s Court Daily, reprinted in Legal Daily, 14 April 11; Carl F. Minzner, “China’s Turn Against the Law,” Washington University in St. Louis Legal Studies Research Paper, No. 11–03–01 (2011), 42–43. Minzner postulates that as courts began to aggressively pressure parties to settle, parties increasingly had second thoughts after settlement, further eroding voluntary enforcement rates for mediated agreements.

²¹Supreme People’s Court, Model Judicial Behavior Code [Faguan xingwei guifan], issued 6 December 11.

²²Supreme People’s Court, Basic Code of Professional Conduct for Judges [Zhonghua renmin gongheguo faguan zhiye daode jiben zhunze], issued 6 December 11.

²³Supreme People’s Court, Model Judicial Behavior Code [Faguan xingwei guifan], issued 6 December 11, arts. 81, 82, 83-activities outside of work; 84-interaction with media; 85-interpersonal conflict with others; 89-overseas travel.

²⁴Supreme People’s Court, Basic Code of Professional Conduct for Judges [Zhonghua renmin gongheguo faguan zhiye daode jiben zhunze], issued 6 December 11. The five principles are: Guaranteeing loyalty to the administration of justice, ensuring judicial fairness, ensuring judicial honesty, striving to achieve justice for the people, and defending the image of the judiciary.

²⁵Supreme People’s Court, Model Judicial Behavior Code [Faguan xingwei guifan], issued 6 December 11, art. 1. Specifically, Article 1 requires judges to be loyal to the Party and contains new language on “maintaining the same line of thought and action as the Party’s Central Committee,” and “to not go against the core policies of the Party and the country, in words and deeds”; Supreme People’s Court, Basic Code of Professional Conduct for Judges [Zhonghua renmin gongheguo faguan zhiye daode jiben zhunze], issued 6 December 11, arts. 4–7. Specifici-

cally, these articles contain new references requiring “loyalty to the Party, loyalty to country, and loyalty to the people in order to build and defend a socialist system with Chinese characteristics,” “abide by political discipline, guard the country’s secrets and trial work secrets, and not engage in activities that are detrimental to the country’s interests and judicial authority, and not speak or publish speeches that are detrimental to the country’s interests and judicial authority.”

²⁶Supreme People’s Court, Trial Implementation of Provisions Regarding Professional Avoidance of Trial Judges and Court Leadership When a Spouse or Child Practices as a Lawyer [Guanyu dui peiyou zinu congshi lushi zhiyede fayuan lingdao ganbu he shenpan zhixing gangwei faguan shixing renzhi huibi de guiding (shixing)], issued 10 February 11.

²⁷Supreme People’s Court, Provisions Regarding the Prevention of Interference With Case-work by Internal Court Personnel [Guanyu zai shenpan gongzuozhong fangzhi fayuan neibu renyuan ganrao banande ruogan guiding], 15 February 11.

²⁸Ibid., arts. 1–5.

²⁹Supreme People’s Court, Opinion Concerning the Standardization of Trial Work Between Higher Level and Lower Level Courts [Guanyu guifan shangxiaji renmin fayuan shenpan yewu guanxide ruogan yijian], issued 28 December 10. For a summary of the Opinion, also see “Recent Developments in Judicial Reform,” Congressional-Executive Commission on China, 31 March 11.

³⁰Supreme People’s Court, Opinion Concerning the Standardization of Trial Work Between Higher Level and Lower Level Courts [Guanyu guifan shangxiaji renmin fayuan shenpan yewu guanxide ruogan yijian], issued 28 December 10, art. 6.

³¹Supreme People’s Court, Regulations Regarding Guiding Cases [Zuigao renmin fayuan guanyu anli zhidao gongzuode guiding], issued 26 November 10.

³²Ibid., arts. 1, 2.

³³“Supreme People’s Court Steadily Pushes Forward Guiding Cases With Chinese Characteristics” [Zuigaofa wenbu tuijin zhongguo tese anli zhidao zhidu], Legal Daily, 17 May 11.

³⁴An Jie, “Hu Yunteng Explains the Regulations Regarding Guiding Cases” [Hu yunteng jiedu guanyu anli zhidao gongzuode guiding], Dongfang Fayun, 11 January 11.

³⁵Ibid. In the same article, the director of the research department of the Supreme People’s Court suggests that the lower courts should abide by the guiding cases when adjudicating cases that are similarly situated. If the judge does not follow the guiding cases, he should articulate a compelling reason.

³⁶Supreme People’s Court, Guiding Opinion on Sentencing in Peoples’ Courts (Trial Version) [Renmin fayuan liangxing zhidao yijian (shixing)], issued 13 September 10, effective 1 October 10.

³⁷Ibid., chap. 4.

³⁸See, e.g., Randall Peerenboom, *China’s Long March Toward Rule of Law* (Cambridge, Cambridge University Press, 2002), 295–98. Peerenboom discusses corruption in the context of judges’ technical competence and judicial independence. See also Ling Li, “The ‘Production of Corruption’ in China’s Courts,” U.S.-Asia Law Institute Working Paper Series, 5 July 2011. Li postulates that corruption within the judiciary is a systemic problem.

³⁹“Corrupt Chinese Judges To Face Harsh Punishments: SPC Vice President,” Xinhua, reprinted in China Human Rights, 29 December 10. Details about graft cases are not known.

⁴⁰“Making Fundamental Improvements, Guaranteeing a Fair and Just Judiciary” [Zhuazhu genben qianghua cuoshi, baozhang gongzheng lianjie sifa], People’s Court Daily, reprinted in Legal Daily, 28 February 11. The article is a summary of Supreme People’s Court’s anti-corruption efforts in 2010.

⁴¹Mimi Lau, “Bribing Judges Is Almost a Sure Thing,” South China Morning Post, 21 May 11.

⁴²Chen Xianfeng and Wang Kailei, “Following the Trail of a Corrupt Court in Guangdong Province, Nine Judges Conspired With Others for Profit” [Guangdong zhanjiang fayuan fubai wo’an zhuizong: jiuming faguan yuren hemou huoli], Communist Party of China News, 2 May 11.

⁴³Shao Ming, “Foshan Intermediate People’s Court Responds to Judges Accepting Bribes, ‘Sentences to Three, Postpones for Four’” [Foshan zhongyuan huiying faguan shouhui “pansan huansi”], Southern Metropolis Daily, 17 June 11.

⁴⁴Supreme People’s Court, “Work Report of the Supreme People’s Court” [Zuigao renmin fayuan gongzuo baogao], reprinted in People’s Daily, 20 March 11, subsection 5; Supreme People’s Court, “Wang shengjun: The Work of the People’s Courts Still Has Five Problem Areas” [Wang shengjun: renmin fayuan gongzuozhong haicunzai wuge fangmiande wenti he kunnan], 11 March 11.

⁴⁵Ling Li, “The ‘Production of Corruption’ in China’s Courts,” U.S.-Asia Law Institute Working Paper Series, 5 July 2011, 36. Li argues reform efforts “have seldom touched upon the decision-making mechanism, through which corruption in the judiciary has become institutionalized.”

⁴⁶State Council Information Office, “China’s Efforts To Combat Corruption and Build a Clean Government,” 29 December 10.

⁴⁷“Strengthen Internal Supervision of the Courts, SPC Promotes Judicial Inspection Tour” [Jiaqiang fayuan neibu jiandu, zuigao fayuan quanmian tuixing sifa xuncha zhidu], People’s Court Daily, reprinted in Xinhua, 21 October 10. The other goals include implementing Party ideology, shaping ideas regarding a clean government, and resolving conflicts.

⁴⁸Supreme People’s Court, Provisions Regarding the “Five Prohibitions” [Guanyu wuge yanjin de guiding], issued 8 January 09.

⁴⁹Ibid.

⁵⁰“Tip-Off Websites Launched To Root Out Corruption in China’s Legal System,” Xinhua, 9 February 11.

⁵¹PRC Constitution, adopted 4 December 82, amended 12 April 88, 29 March 93, 15 March 99, 14 March 04, arts. 62, 67, 128.

⁵² PRC Administrative Procedure Law [Zhonghua renmin gongheguo xingzheng susong fa], issued 4 April 89, effective 1 October 90, art. 12. The law is also known as the Administrative Litigation Law.

⁵³ National People's Congress, Explanation Regarding the Administrative Reconsideration Law [Zhonghua renmin gongheguo xingzheng fuyi fa shiyi], 18 October 00.

⁵⁴ PRC Administrative Supervision Law [Zhonghua renmin gongheguo xingzheng jiancha fa], issued 9 May 97, amended 25 June 10.

⁵⁵ *Ibid.*, arts. 6, 46, 47.

⁵⁶ *Ibid.*

⁵⁷ PRC State Compensation Law [Zhonghua renmin gongheguo guojia peichang fa], issued 12 May 94, amended 29 April 10, effective 1 December 10.

⁵⁸ *Ibid.*, art. 2. Article 2 states, "If a state organization or a member of its personnel, when exercising functions and powers in violation of the law, infringes upon the lawful rights and interests of a citizen, and causes damages-the aggrieved person shall have the right to recover damages from the state in accordance with the law." For a further discussion about the implication of the amended State Compensation Law, including negligence, see Stanley Lubman, "A Step Forward: New Law Expands Government Liability," Wall Street Journal, 13 January 11.

⁵⁹ PRC State Compensation Law [Zhonghua renmin gongheguo guojia peichang fa], issued 12 May 94, amended 29 April 10, effective 1 December 10, art. 35. For a further discussion about the implication of the amended State Compensation Law, including efforts to eliminate procedural loopholes, see Stanley Lubman, "A Step Forward: New Law Expands Government Liability," Wall Street Journal, 13 January 11.

⁶⁰ PRC State Compensation Law [Zhonghua renmin gongheguo guojia peichang fa], issued 12 May 94, amended 29 April 10, effective 1 December 10, arts. 9-12. For a further discussion about the implication of the amended State Compensation Law, including the inclusion of psychological injuries, see Stanley Lubman, "A Step Forward: New Law Expands Government Liability," Wall Street Journal, 13 January 11.

⁶¹ "Highlights of Work Report of Supreme People's Court," Xinhua, 11 March 11.

⁶² See Carl F. Minzner, "Xinfang: An Alternative to Formal Chinese Legal Institutions," Stanford Journal of International Law, No. 42 (2006), 118-20.

⁶³ Zhang Han, "Pressuring Petitioners," Global Times, 27 October 10.

⁶⁴ *Ibid.*

⁶⁵ "Our Country's Petition System Is Full of Innovation and Shows Good Results, Achieving a Positive Outcome" [Woguo xinfang xitong chuanguan zhengyou huodong yijing qude jieduanxing chengguo], Xinhua, reprinted in Legal Daily, 29 March 11.

⁶⁶ Supreme People's Court, "Annual Work Report (2010)" [Renmin fayuan gongzuo niandu baogao (2010)], May 2011, 33.

⁶⁷ Human Rights Watch, "An Alleyway in Hell," November 2009, 3, 7-19; Xu Kai and Li Wei'ao, "The Machinery of Maintaining Social Stability" [Weiwen jiqi], Caijing, 6 June 11.

⁶⁸ Tania Branigan, "Wen Jiabao Visits China's Central Complaints Department," Guardian, 26 January 11.

⁶⁹ Xu Kai and Li Wei'ao, "The Machinery of Maintaining Social Stability" [Weiwen jiqi], Caijing, 6 June 11.

⁷⁰ *Ibid.*; Long Zhi, "Anyuanding: Investigation Into Beijing 'Black Jail' Retrievers (Part I)" [Anyuanding: beijing jiefang "hei jianyu" diaocha (shang pian)], Southern Metropolitan Daily, 24 September 10; See also Zhan Han, "Pressuring Petitioners," Global Times, 27 October 10; Liu Chang, "Controversy Over 'Black Jails' Continues," Global Times, 4 May 11; "Woman Detained in a Black Jail After Coming to Beijing To Handle Affairs" [Laijing banshi nu beiguan heijianyu], Beijing News, 2 August 11.

⁷¹ Long Zhi, "Anyuanding: Investigation Into Beijing 'Black Jail' Retrievers (Part I)" [Anyuanding: beijing jiefang "hei jianyu" diaocha], Southern Metropolitan Daily, 24 September 10. See also Zhan Han, "Pressuring Petitioners," Global Times, 27 October 10.

⁷² Zhan Han, "Pressuring Petitioners," Global Times, 27 October 10.

⁷³ *Ibid.*; Xu Kai and Li Wei'ao, "The Machinery of Maintaining Social Stability" [Weiwen jiqi], Caijing, 6 June 11.

⁷⁴ "Supreme People's Court Issues the Following Documents Regarding Petitioning Work" [Zuigao renmin fayuan jiushe su xinfang gongzuo xiafa xilie wenjian], People's Court Daily, 16 May 11.

⁷⁵ PRC Public Security Administration Punishment Law [Zhonghua renmin gongheguo zhi'an guanli chufa fa], issued 5 September 86, amended 12 May 94, 28 August 05, effective 1 March 06, art. 23.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ "Female Petitioner Cai Fuxian From Guizhou Is Detained for Leafletting and Later Released" [Guizhou lupanshui nufangmin cai fuxian sa chuanan bei zhuhou shifang], Boxun, 29 October 10.

⁷⁹ "Land Disputes Worst Problem in Rural Areas," Agence France-Presse, 16 December 10; Choi Chi-yu, "2,000 Battle Police in Yunna," South China Morning Post, 31 March 11; "Six Hundred Policemen in Fuzhou Used Tear Gas To Force Expropriation of Property, Violent Conflict Results in Many Villagers Beaten and Detained" [Fuzhou liubai jingshi cuileidan qiangzhengdibao chongtu duwei cunmin beida beizhual], Radio Free Asia, 8 April 11; "Petitioners Attacked and Beaten," Radio Free Asia, 22 March 11; Alice Yan, "Demolition Violence Stirs Fury on the Mainland," South China Morning Post, 6 November 10; "Police Detain Land Protesters," Radio Free Asia, 20 October 10.

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⁸¹ *Ibid.*

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- ⁸³Ibid., especially chaps. 2–4.
- ⁸⁴Ibid., chap. 2.
- ⁸⁵Ibid., chaps. 3, 4.
- ⁸⁶Ibid., art. 8.
- ⁸⁷Xu Kai and Li Wei'ao, "The Machinery of Maintaining Social Stability" [Weiwen jiqi], *Caijing*, 6 June 11.
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- ⁹³"Lawyers' Licenses Withheld," *Radio Free Asia*, 18 July 10; "Authorities Deny Human Rights Lawyers Professional License Renewals," *Congressional-Executive Commission on China*, 10 December 10.
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