

# ATTACKS ON JUSTICE - PEOPLE'S REPUBLIC OF CHINA (PRC)

*(Including Tibet Autonomous Region, Hong Kong  
and Macau Special Administrative Regions)*

## *Highlights*

Although the independence of the judiciary is constitutionally enshrined in China, the government and the Chinese Communist Party continue to interfere in the judicial process, directing judgments in many instances. A series of reforms to improve judicial professionalism, independence and effectiveness have taken place since January 2002. The June 2001 reform of the Judges' Law of the People's Republic of China (1995) seeking to guarantee the independent exercise of judicial authority became effective in January 2002. To raise professional standards, all judicial actors are now required to obtain a Certificate of Legal Profession Qualification by taking a unified annual State Judicial Exam, first held in March 2002, with only seven per cent of candidates passing. In December 2004, China introduced significant reforms to the eligibility and training process of peoples' jurors: as of May 2005, jurors are expected to have power equal to those of a judge. New disciplinary measures issued by the Supreme People's Court in September 2002 and June 2003 seek to ensure judicial transparency and effectiveness, and to guarantee a fair and strict application of the Judges' Law. New disciplinary punishment rules for prosecutors were also put in place in August 2004 by the Supreme People's Procuratorate. Cases of judicial corruption are still of concern. Under Article 306 of the Criminal Law, defence lawyers can be held accountable if their clients commit perjury, the definition of which leaves a wide margin of discretion to judges and prosecutors. Lawyers continue to face harassment, intimidation and abuse by police and prosecutors, threats of disbarment and imprisonment for defending their clients' rights too actively. Lack of fair trial, due process, and equality of arms are of concern and administrative detention without judicial process is still common. In July 2003, the Chinese Executive State Council issued a set of national Legal Aid Regulations to guarantee free legal assistance to the poor, but demand for legal aid remains far higher than supply.

## BACKGROUND

In **November 2002**, the 16<sup>th</sup> National Congress of the Chinese Communist Party (CCP) elected for a five-year term Hu Jintao as new General Secretary replacing Jiang Zemin. **Hu Jintao** is also the President of the People's Republic of China (PRC), and chairman of the Central Military Commission. The Chinese Prime Minister, **Wen Jiabao** has been in office since **March 2003** for a five-year term.

Effective political control is constitutionally in the hands of the Chinese Communist Party, where State organs act as instruments to implement the Party's policy. Party members hold almost all government, military and police high positions. Ultimate authority rests with the party's **Politburo** (political bureau) and **Central Committee** (See "Who's Who in China's leadership", <http://www.china.org.cn/english/PP-e/48915.htm>).

In **March 2004**, the **National People's Congress (NPC)**, which is constitutionally vested with legislative power, passed constitutional amendments previously approved in October 2003 by the Central Committee of the Communist Party. The 14 amendments included new provisions to enhance the constitutional protection of private property and declared explicitly for the first time that "the State respects and safeguards human rights". The **NPC Standing Committee** has the formal power to supervise enforcement of the Constitution, and invalidate conflicting laws and regulations but has failed to fulfil this constitutional role in practice. In **June 2004**, it announced the creation of a **Special Legislative Review Panel** to review legislation and regulations for consistency with the Constitution. The creation of this panel may improve the handling of citizen petitions on conflicts between the Constitution and laws or regulations, and could be a first step towards a more robust constitutional enforcement. Throughout **2004**, a number of Chinese and international lawyers and academics held conferences to discuss general legal reforms. The proposals included *inter alia*, the enhancement of judicial independence, reform of the relationship between the judiciary and media, the abolition of evidence obtained coercively, the legal regulation of the presumption of innocence, the introduction of an improved and transparent discovery system, the banning of all forms of administrative detention, the improvement of existing administrative laws, a reduction in the scope of imposition of capital punishment, and the introduction of plea bargaining mechanisms.

Human rights abuses remain of concern in China, with the high number of arbitrary detentions and death penalty cases. Many citizens have been detained and punished for peacefully exercising their rights to freedom of expression, association, belief, speech or press. Moreover, the increase of Chinese language websites and domestic media in China have led to imposition of tighter controls; officials have expanded the list of topics subject to censorship and improved methods for enforcing compliance, including the control of mobile telephone messages and tighter controls of Internet access. In **October 2004**, the government banned all reporting on rural land seizures. Workers cannot form or join independent trade unions yet, and reportedly those seeking redress for wrongs committed by their employers often face harassment and criminal charges. Child labour continues to be a problem in some sectors, and forced labour by prisoners under administrative detention is common.

## JUDICIARY

### Independence

Although Article 126 of the *Constitution* provides for the independence of the judiciary, the central and local governments and the CCP reportedly continue to interfere in the judicial process and direct judgments in many instances. The judicial

system of the PRC has long been afflicted by a lack of legal regulation. To redress this, the government and judicial authorities have enacted since **January 2002** a series of reforms to upgrade judicial professionalism, independence and effectiveness.

The **Supreme People's Court** (SPC) has released its *Opinions on Strengthening the Development of Professionalism of Judges* (*Supreme People's Court Several Opinions on Strengthening the Professionalisation of the Judicial Corps*), effective **29 July 2002**, to reinforce the authority of judges and reduce executive interference in the judiciary. Commentators have noted that external and internal judicial dependence continue to be pervasive problems in the country. The Opinions also demand enhanced "professional entry standards", "professional consciousness" "professional ethics", "professional skills", "well-established "professional image", and improved professional supervision of judges. The document states that judges can be dismissed or demoted only if they have broken the Judges' Law of the People's Republic of China (see below), and the penalty must be approved by the national and local legislatures in accordance with the procedures prescribed by the Judges' Law.

### **Judicial Appointments**

In **January 2002**, China introduced a unified **State Judicial Exam (SJE)** to raise the professional standards of Chinese judicial actors, pushing all judicial and legal training programs to adopt unified curricula and standards, including those that are directly relevant to human rights promotion. Anyone who wants to qualify as a **judge**, **prosecutor**, or become a **practising lawyer** or a **public notary**, will have to pass a unified SJE to obtain a **Certificate of Legal Profession Qualification**. On **30-31 March 2002**, China held its first annual SJE. Over 360,000 people sat for it and only seven per cent passed the exam designed to test legal knowledge and ability to join the applied profession. The SJE constitutes only the first step as the Supreme Peoples' Court and Supreme People's Procuratorate have indicated that successful candidates will have to undergo further training specifically relevant to their post and take follow-up examinations. (See "Judges to Be Chosen by Special Examination", <http://www.china.org.cn/english/2001/Apr/11945.htm>; "Establishment and Enforcement of the National Uniform Judicial Examination", 7 February 2002, <http://www.china.org.cn/e-news/news02-02-7.htm>; and "National Judicial Exam a Two-Day Event", 1 April 2002, <http://www.china.org.cn/english/2002/Apr/29875.htm>).

On **1 January 2002**, the June 2001 reform of the 1995 *Judges' Law of the Peoples' Republic of China* (hereinafter *Judges' Law*) came into effect. It seeks to guarantee the independent exercise of judicial authority by regulating all areas from judges' rights and duties to eligibility requirements and conditions of appointment, as well as disciplinary and dismissal procedures. Accordingly, individuals seeking appointment as judges must pass the aforementioned SJE to be eligible. Existing judges not holding the professional qualifications as required by the revised Judges' Law will be removed from their positions unless they can obtain the qualification (SJE) within a stipulated time (See *Judges' Law Of the Peoples' Republic of China*, **1 June 1995**, <http://en.chinacourt.org/public/detail.php?id=2692>; and "The Supreme People's Court Announced New Rules to Appoint Judges", **18 December 2001**, [http://english.peopledaily.com.cn/200112/18/print20011218\\_86966.html](http://english.peopledaily.com.cn/200112/18/print20011218_86966.html)).

### **Shujiyuan**

In **October 2003**, the SPC took further provisional measures, which if fully implemented, will contribute to the professionalization of the judiciary. The *Provisional Measures on Clerk Administration in the People's Court* sought to redefine the position of “judicial secretary/court clerk” (*shujiyuan*) as a purely administrative function, rather than a step on the career track to becoming a judge. In the past, clerkships were widely regarded as a stepping stone or training ground for a judicial career, as experienced court clerks were often appointed to the bench. This led to a continuing increase in the number of judges and a consequential shortage of support staff. Statistics from **2002** indicate that at that time, two-thirds of the 300,000 personnel employed in Chinese courts were judges and only around 40,000 were clerks. The new provisional measures prevent court clerks from being appointed to the bench solely on account of their clerkship experience. Furthermore, the SPC is considering establishing a system for selecting judges for higher level courts from judges from lower courts, who in turn would be selected from legal professionals (See “Courts to Hold Stricter Standards for Judges”, **28 October 2003**, <http://www.china.org.cn/english/government/78568.htm>).

### **People's Jurors**

On **20 December 2004**, China introduced significant reforms in the eligibility and training process of **people's jurors**. In recent years, the use of the juror system established by the 1954 Constitution, had significantly decreased. The requirements and selection procedure were not regulated in the past.

Under Articles 37-39 of the 1983 *Organic Law Of The People's Courts Of The People's Republic Of China*, people's jurors are specially appointed ordinary citizens, who at a Court's discretion, may be asked to join a judges' panel on an *ad hoc* basis to rule on a specific case. As of **late 2004**, there were 24,000 people's jurors in China. Although they are not classified as members of the judiciary or court employees and only receive a stipend when summoned, jurors enjoy the same voting rights as judges and are often selected on the basis of technical expertise relevant to the case. As of **May 2005**, jurors are expected to have power equal to those of a judge (See *Organic Law Of The People's Courts Of The People's Republic Of China*, **Sept. 1983**, [http://www.novexcn.com/organic\\_law.html](http://www.novexcn.com/organic_law.html)).

New criteria for jurors' selection and training are governed by the *Decision on Perfecting the People's Juror System* adopted by the **10<sup>th</sup> National Peoples' Congress (NPC)** in **October 2004**. This NPC decision enacts previous regulations issued by the Supreme People's Court (SPC), and the Ministry of Justice (MOJ). According to the new legislation, eligible jurors must have at least a junior college (two years) education, and must be trained before participating in the court hearings. The appointment of jurors must be carried out by the standing committee of the County People's Congresses (CPC) (local legislature). The Supreme People's Court (SPC) Vice-President **Cao Jiangming** has asserted that local courts should consult local executive and legislative bodies, and give priority to candidates with a good cultural background and legal knowledge. High moral standards are also essential (See China Daily, “China issues reforms on jury system”, **21 December 2004**, [http://www.chinadaily.com.cn/english/doc/2004-12/21/content\\_401801.htm](http://www.chinadaily.com.cn/english/doc/2004-12/21/content_401801.htm)).

Preliminary appointment of jurors under the new system began in **January 2005**, and they will begin hearing cases from **1 May 2005**. They will serve a strict five-year

term. Candidates were chosen through elections by CPCs in **January and February 2005**.

#### **Disciplinary measures**

On **12 September 2002**, the Supreme People's Court (SPC) issued the *Measures (Experimental) on Courts Enforcing Work Discipline*. These measures sought to ensure transparency, effectiveness and fairness in the courts' work as prescribed by the Judges' Law, and are so far being applied (See *Measures (Experimental) on Courts Enforcing Work Discipline*, **12 September 2002**, <http://www.cecc.gov/pages/newLaws/courtsWorkDiscipline.php?PHPSESSID=ee5182ff0da056e8f6f01e7fab7d31c8> (available only in Chinese)).

On **10 June 2003**, the SPC also issued the *Supreme People's Court Several Provisions on Strictly Enforcing the Relevant Punishment Systems of the People's Republic of China Judges' Law*, which became effective on the same day. These interpretative provisions were passed to redefine the judges' duties and to guarantee a fair and strict application of the Judges' Law, (*Supreme People's Court Several Provisions on Strictly Enforcing the Relevant Punishment Systems of the People's Republic of China Judges' Law*, **10 June 2003**, <http://www.cecc.gov/pages/newLaws/judgesLawpunishmentSys.php?PHPSESSID=ee5182ff0da056e8f6f01e7fab7d31c8>).

#### **Cases**

In **September 2003**, **Judge Li Huijuan** from the **intermediate court in Luoyang**, ruled that a regional regulation adopted by the Henan People's Congress on seed prices was invalid because it conflicted with the national *Law on Seeds* passed by the central government. The ruling sparked a controversy over whether provincial or national legislation ought to take primacy in courts. In **October 2003**, the Henan Provincial People's Congress Standing Committee declared the ruling illegal, alleging that the judge had exceeded her power and requested the local court to fire Judge Li, who was effectively dismissed. The decision triggered criticism from the national media and legal scholars (See "New NPC body to address law conflicts", **21 June 2004**, [http://www.chinadaily.com.cn/english/doc/2004-06/21/content\\_340989.htm](http://www.chinadaily.com.cn/english/doc/2004-06/21/content_340989.htm)).

In **March 2004**, **Xiao Yang, Chief Justice of the Supreme People's Court**, reported that 794 of the more than 200,000 practising judges in China were investigated for **corruption in 2003**, with 52 cases referred for criminal prosecution. In **2004**, there were also numerous reported instances of judicial corruption; a scandal implicated **13 judges and numerous court officials of the Wuhan Intermediate Peoples' Court** who were found to have received over USD 480,000 in bribes from lawyers in return for favourable rulings in **early 2005** (See "Courthouse Corruption Criticized at NPC", **9 March 2005**, <http://www.china.org.cn/english/2005/Mar/122288.htm>).

## **LEGAL PROFESSION**

As illustrated above, China introduced in **January 2002** a unified **State Judicial Exam (SJE)** to raise the professional standards of Chinese judicial actors, pushing all judicial and legal training programs to adopt a unified curricula and standard, including those that are directly relevant to human rights promotion.

In **January 2003**, scholars noted that the Ministry of Justice's effort to increase the authority of Bar associations are only small steps towards improving the autonomy of the legal profession. Although **Minister of Justice, Zhang Fusen**, ordered all provincial judicial bureaux to sever ties with law firms that they fund, and urged that Bar associations be given greater authority by cutting their government links, the main power of disqualifying and registering lawyers still rests in the government's hands.

Although **since 2004**, law firms and private lawyers were obliged by *new regulations to provide legal aid*, most defendants and parties in administrative and criminal prosecutions cases who were eligible for legal aid, still went to court without a lawyer.

It is common in China for defence lawyers to face harassment, intimidation and abuse by police and prosecutors, threats of disbarment and imprisonment for defending their clients' rights too actively. Under Article 306 of the *Criminal Law of the PRC*, defence lawyers can be held accountable if their clients commit perjury, the definition of which leaves a wide margin of discretion to judges and prosecutors.

### Cases

Lawyer **Zhao Changqing** was sentenced to five years' imprisonment in **July 2003** on charges of subversion for his alleged role in drafting an open letter to the November 2000 16th Party Congress urging democratization.

In Shanghai, **Zheng Enchong**, a lawyer involved in the defence of economic and social rights of displaced persons, was sentenced to three years in prison on **29 February 2003** on the charges of illegally providing state secrets to entities outside of China. Access to his trial was restricted (See [http://www.cecc.gov/pages/news/zhang\\_052703.php](http://www.cecc.gov/pages/news/zhang_052703.php)). His licence had already been revoked in 2001 in relation to cases he was handling for people displaced by urban redevelopment, revealing a major real estate scandal.

**Mrs Jiang Meili**, Zheng Enchong's wife, was also illegally detained on **28 February 2004** for three days after she went to Beijing to petition the NPC on behalf of her husband. She remained then under house arrest. She was released on **1 March 2004**, but has reportedly remained under police surveillance since (See "HRIC briefing packet prepared on Zheng Enchong for the Association the Bar of the City of New York Asian Affairs Committee", **16 December 2004**; Press release of International Commission of Jurists, **29 July 2003**, [http://www.icj.org/news.php3?id\\_article=2992&lang=en](http://www.icj.org/news.php3?id_article=2992&lang=en); and "FIDH: Open Letter to Hu Jintao, Head of State of the People's Republic of China", **17 March 2004**, [http://www.fidh.org/article.php3?id\\_article=745](http://www.fidh.org/article.php3?id_article=745)).

**Guo Guoting**, Zheng Enchong's lawyer in October 2003 (see above), was reportedly harassed 18 times by the authorities to stop defending Zheng. As a consequence, Guo Guoting was forced to stop practising in **September 2004** after his clients were frightened away because he had defended Zheng's case.

Beijing defence lawyer **Zhang Jianzhong** was convicted and sentenced in **January**

**2004** to two years' imprisonment under Article 306 of the *Criminal Code* for assisting in the fabrication of evidence in the **Huo Haiyin corruption case**. It took the sentencing court about 11 months to decide on the case which had been widely criticized as a politically-motivated prosecution. This is despite the fact that the *Criminal Procedural Law* allows a maximum of two and a half months to reach a verdict. However, he was given credit for time served in pre-trial detention upon sentencing. Zhang Jianzhong was released in **May 2004**. Reportedly, he was persecuted for being too effective in representing his clients' interests, and around 600 lawyers signed a petition to free him.

Reportedly, more than 500 lawyers have been prosecuted since 1997 under Article 306 of the *Criminal Law* for "perjury" or "evidence fabrication by lawyers" (See "Defence Lawyers Turned Defendants", [www.cecc.gov/pages/news/ZhangCriminalDef.pdf](http://www.cecc.gov/pages/news/ZhangCriminalDef.pdf) and "Zhang Jianzhong Case Update", **January 2004**, <http://www.cecc.gov/pages/news/zhanguupdate.php>).

Access to the trials of lawyers **Zhang Jianzhong** and **Zheng Enchong** in **February 2003** was also restricted (See, [http://www.cecc.gov/pages/news/zhang\\_052703.php](http://www.cecc.gov/pages/news/zhang_052703.php)).

## PROSECUTORS

**In January 2002**, as discussed above, China introduced a unified **State Judicial Exam (SJE)**. Anyone who wants to qualify as a prosecutor, judge or become a practising lawyer or a public notary, will have to pass a unified SJE to obtain a **Certificate of Legal Profession Qualification**. The first examinations were held on **March 30-31, 2002**.

In **August 2004**, the **Supreme People's Procuratorate**, China's top organ for legal supervision and leading prosecutorial authority, announced **new disciplinary punishment rules for prosecutors** (*procurators*). The new 118 regulations enumerate 81 kinds of improper professional and personal behaviour punishable by disciplinary warning, demotion and expulsion. The prescribed conducts include *inter alia* receiving bribes, conducting illegal house or body searches, misusing public funds or even having extramarital affairs. The new rules are already being applied (See "Disciplinary punishment rules for prosecutors issued", **14 August 2004**, [http://english.people.com.cn/200408/14/eng20040814\\_152897.html](http://english.people.com.cn/200408/14/eng20040814_152897.html)).

## ACCESS TO JUSTICE

Although Article 5 of the 1979 *Regulations of The People's Republic of China on Arrest and Detention* stipulates that the authorities must notify a detainee's family or work unit of his detention within 24 hours - except when doing so would "hinder" the investigation of a case - in practice, failure to provide notification in time remains of concern, specially in politically-sensitive cases (*Regulations Of The People's Republic Of China On Arrest And Detention*, [http://www.novexcn.com/arrest\\_detention.html](http://www.novexcn.com/arrest_detention.html)).

Article 96 of the *Revised 1997 Criminal Procedure Law of the People's Republic of*

China grants suspects access to a lawyer after their initial detention. In practice reportedly, the police often circumvent or delay the detainee's access to a lawyer.

Law enforcement authorities often hold criminal suspects and defendants in pre-trial detention for periods exceeding those permitted by both Chinese law and international human rights standards. Detainees do not have access to their family nor their lawyer. In politically-sensitive cases, detainees cannot find a lawyer, and lawyers did not have pre-trial access to their clients, with both parties not being allowed to speak to each other during trials. Judges rarely grant petitions from defence lawyers seeking to "obtain a guarantor pending trial" (*qubao houshen*), a type of non-custodial detention. Detainees routinely languish in detention centres for as long as a year, and sometimes longer, before a court formally charges and tries them, and authorities in China frequently detain defendants for long periods after trial while awaiting judgment, particularly in "sensitive cases". The *Criminal Procedure Law* of the PRC provides that courts must pronounce the judgment no later than two and half months after accepting a case of public prosecution. Although the *Criminal Procedure Law* requires that trials be held in public, courts frequently ignore this requirement, particularly in politically-sensitive cases or those involving state secrets. These trials continue to be held in secret. Although detainees are entitled to apply for bail pending trial, it is seldom granted (*Criminal Procedure Law Of the People's Republic of China*, **1 July 1979**, amended **17 March 1996**, <http://www.cecc.gov/pages/newLaws/criminalProcedureENG.php>; CECC "2002 Annual Report Criminal Justice", <http://www.cecc.gov/pages/virtualAcad/crimjustice/crimeannrept02.php#fn89>; and CFR: "China Needs Real Defence Lawyers", [http://www.cfr.org/pub4848/jerome\\_a\\_cohen/china\\_needs\\_real\\_defence\\_lawyers.php](http://www.cfr.org/pub4848/jerome_a_cohen/china_needs_real_defence_lawyers.php) ).

Lack of fair trial, due process, and equality of arms are of concern; reportedly only one to five per cent of trials involved witnesses. Criminal trials often consist of confessions made under coercion or torture, or from statements of witnesses read by the Procurator. Defence lawyers are unable to question or summon witnesses to testify as they do not have such authority. The duration of criminal trials is very often limited to a few hours, even in capital cases, with a conviction rate in **2003** of above 99 per cent.

### **Unlawful detentions**

Administrative detention without judicial process is still common. People suspected of committing minor crimes are sent to "re-education through labour" camps for up to several years without being ever brought before a judge. In **June 2004**, to remedy unlawful custodial detention, the **Supreme People's Procuratorate** (SPP) established two hotlines and an e-mail address for public complaints about unlawful detentions. In addition, the **NPC** is reportedly reviewing proposals to strengthen laws designed to prevent lengthy detentions. Despite these evolutions, lengthy administrative detention remains common, affecting migrant labourers and other disadvantaged social groups in particular (See China Letter, News and Human Right: "Your call has been placed in a queue", **27 June 2004**, <http://uygurletter.blogspot.com/2004/06/your-call-has-been-placed-in-queue.html>).

### **Legal Aid**



In **July 2003**, the **Chinese Executive State Council** issued a set of national *Legal Aid Regulations*, providing a formal framework for the further development of provincial and local legal aid efforts. The *Legal Aid Regulations* formally make providing legal aid a government duty under the Ministry of Justice's responsibility. However, the central government has allocated almost no money to support local governments in establishing legal aid centres.

The new regulations that came into force in **2004** require law firms and private legal practitioners to provide legal aid. Although criminal and administrative cases remain eligible for this legal aid, most defendants still went to trial without a lawyer.

The *Legal Aid Regulations* also establish a set of eligibility guidelines for legal aid applicants that represent a relatively limited set of cases, and in criminal cases allow an individual to apply for legal aid only after initial police investigation is complete. The *Legal Aid Regulations* allow local authorities a degree of discretion in refusing cases. They also grant local legal aid centres flexibility in structuring their programs. The *Legal Aid Regulations* only require legal aid centres to provide pro bono assistance in criminal cases in which a defendant faces a possible death sentence, is a minor, or is blind, deaf, or mute. Except for these cases, applicants for legal aid must also meet a locally set standard of economic hardship.

Chinese legal aid centres rely heavily on mandatory *pro bono* representation, although Ministry of Justice (MOJ) personnel also represent clients directly. MOJ personnel generally run the intake process, distribute qualified cases to private lawyers, and supervise the cases. Private lawyers generally handle one or two legal aid cases per year. The *Legal Aid Regulations* authorize legal aid centres to subsidize lawyers handling these cases, but forbid lawyers to receive fees from their clients. Chinese legal aid officials cite the lack of money to pay these subsidies to private lawyers as a serious obstacle to the development of legal aid. Demand for legal aid in China remains far higher than supply. According to legal aid officials in Chengdu, Sichuan province, only about one-third of applicants receive legal aid each year. MOJ statistics show legal aid centres handling 166,433 cases during 2003, or fewer than three per cent of the total number of cases decided by the Chinese court system in 2003 (*Regulations on Legal Aid Adopted 16 July 2003 at the 15th executive meeting of the State Council and effective 1 September 2003*, <http://www.cecc.gov/pages/selectLaws/ResidencySocWelfare/regsLegalAid.php>; and Beijing Review: "Legal Assistance Government Duty", <http://english.hanban.edu.cn/english/China/86936.htm>).

## Cases

### **Lack of due process and fair trial**

In **April 2002** **Yang Jianli**, a U.S. permanent resident and Chinese national, travelled to China using a borrowed passport and false identity documents to interview and lend support to striking workers in northeast China. Public security officials took Yang into custody and held him incommunicado for more than 14 months. Yang was indicted behind closed doors for illegal entry into China and espionage in **July 2003**. Chinese authorities have refused to permit family members to visit or correspond with him. Moreover, Chinese officials refused his lawyer's repeated requests to meet with him until **July 2003**, more than a year after his detention. Yang was tried in secret on **4 August 2003**. No verdict was issued publicly after the three-hour trial. Yang's

brother and sister travelled to Beijing for the trial but were barred from the court. Yang Jianli remains detained as at **May 2005** (See “Please Help Free Dr. Yang Jianli”, <http://www.yangjianli.com/>)

In **December 2002**, Tibetan activists **Tenzin Deleg** and **Lobsang Dondrub** were tried in secret. They were both sentenced to death, Lobsang Dondrub was duly executed and Tenzin Deleg’s sentence was commuted to life imprisonment in **January 2005**.

The trial of US-based Chinese dissident **Wang Bingzhang** was conducted in secret on **12 February 2003** under the state secrets exception. U.S. consular officials requested permission to attend Wang’s appeal hearing, but the court denied the request.

Authorities in Liaoyang Province held labour protest leaders **Yao Fuxin** and **Xiao Yunliang** after their trial in contravention of the *CPL*. They were tried in **January 2003** but did not learn of the verdict until **May 2003**. Both remained imprisoned as at **May 2005**. Civil society organizations demanded their release on humanitarian grounds, as, reportedly, both men are suffering from health problems as a result of their conditions of detention (“ICFTU Appeal for the release of YAO FUXIN and XIAO YUNLIANG on urgent medical grounds”, 24 January 2005, <http://www.icftu.org/displaydocument.asp?Index=991221181&Language=EN>).

The Chinese government held criminal defence lawyer **Zhang Jianzhong** in violation of the *Criminal Procedure Law* (CPL)’s provisions. Seven months after Zhang’s trial in **February 2003**, the Beijing Intermediate People’s Court had not yet rendered a verdict. He was sentenced to two years for fabrication of evidence in **January 2004**, although he was given credit for time served in pre-trial detention, and released in **May 2004**. (“Zhang Jianzhong Case Update”, **January 2004**, <http://www.cecc.gov/pages/news/zhanguupdate.php>)

Access to the trials of lawyers **Zhang Jianzhong** and **Zheng Enchong** in **February 2003** was restricted. ([http://www.cecc.gov/pages/news/zhang\\_052703.php](http://www.cecc.gov/pages/news/zhang_052703.php)).

Internet activist **Huang Qi** spent nearly two years in detention awaiting the court’s verdict on his case on **9 May 2003**, where he was eventually convicted of subversion and sentenced to five years’ imprisonment.

#### **Unlawful arrests**

**Mrs Ding Zilin**, **Mrs Zhang Xianling** and **Mrs Yin Min**, members of Tiananmen mothers, were arrested on **28 March 2004** and their houses searched by police. The reason was their plan to file a legal complaint before the Supreme People’s Procuratorate against former Premier Li Peng on behalf of 126 people who lost a family member in the violent crackdown against protesters in Tiananmen Square on 4 June 1989. They were eventually freed in **July 2004**.

Authorities also placed other activists and dissidents under house arrest or otherwise restricted their freedom of movement. These included **Huang Jinping** and **Hu Jia** who have been under house arrest since **January 2005**, and who, at the time of publication, remained detained. **Liu Xiaobo** was arrested but released on the 14 December 2004. None of these individuals have been charged with a crime or brought

before a judge for a review of the lawfulness of their detention or the restrictions imposed on them. (FIDH: “House Arrests”, **3 June 2004**, [http://www.fidh.org/article.php3?id\\_article=1235](http://www.fidh.org/article.php3?id_article=1235); Front Line Defenders: “Human Rights Defender, Ding Zilin, under house arrest in China”, **May 2004**, <http://www.frontlinedefenders.org/news/1209>; Epoch Times: “AIDS Activist Hu Jia Under House Arrest for Visiting Zhao Ziyang’s Former Residence”, **27 January 2005**, <http://english.epochtimes.com/news/5-1-27/26055.html>; and RSF: “Cyberdissidents Yu Jie and Liu Xiaobo released”, **14 December 2004**, [http://www.rsf.org/print.php3?id\\_article=12070](http://www.rsf.org/print.php3?id_article=12070)).

## **TIBET AUTONOMOUS REGION (TAR)**

Using the international war on terror as a justification, the Chinese government has cracked down on independent Muslim religious leaders and suspected Uighur separatists who were peaceful dissenters. The human rights situation in the Tibet Autonomous Region (TAR) and neighbouring areas outside the TAR remains of concern. In **May 2004**, the Chinese government issued a White Paper entitled “Regional Ethnic Autonomy in Tibet”. The White Paper appraises the ethnic autonomy measures installed in Tibet by the PRC while asking that the Dalai Lama’s “bid for Tibetan independence” be dropped. In **September 2004**, a delegation of emissaries of the Dalai Lama was invited to visit several areas of heartland China for the third time in three years. The PRC government maintains that the door to dialogue is open provided that the Dalai Lama recognises that Tibet and Taiwan are inseparable parts of China.

Legal measures for the protection of detainees in Tibet are the same as those in China, and as such, laws remain inadequate in theory and practice. An unspecified number of Tibetans are currently serving sentences in “re-education through labour camps” without their case being subject to judicial review (“US State Dept report on Human Rights Practices 2004, China”, <http://www.state.gov/g/drl/rls/hrrpt/2004/41640.htm>).

There is a noticeable lack of legal training among members of the judiciary.

According to the Tibet Autonomous Region’s Higher People’s Court, all seven cities and prefectures in the region had established legal assistance centres since August 2001, and had provided legal assistance to over 1,248 residents by the end of 2003. In practice, reportedly, detainees accused of political crimes were often deprived of such legal assistance. Politically-sensitive trials were conducted in secret and in a hasty manner (See “Legal Assistance in Tibet”, <http://www.humanrights.cn/zt/magazine/200402005510162653.htm>)

## **HONG KONG SPECIAL ADMINISTRATIVE REGION (SAR)**

Hong Kong is a Special Administrative Region (SAR) of the People’s Republic of China. Under the terms of the *Sino-British Joint Declaration on the Question of Hong Kong* and its *1990 Basic Law (Constitution)*, Hong Kong enjoys a large degree of

autonomy except in issues of military defence and foreign affairs.

The provisions of the *Basic Law* require that progress towards universal suffrage and democratization should be attained 10 years from **1 July 1997**, the date in which China regained sovereignty over Hong Kong. In **April 2004**, the Chinese executive unilaterally excluded the possibility of universal suffrage until at least 2012-13, and reinterpreted the *Basic Law* as empowering China to veto proposals for electoral reform. The power to initiate reform was withdrawn from Hong Kong's Legislative Council and vested in the Chief Executive, whose appointment rests heavily with the central government.

As a result of these and other measures, there were massive protest marches in Hong Kong in **July 2003, January** and **July 2004** expressing concern over the protection of human rights in the SAR.

Because the *Basic Law* provides that Hong Kong is to retain its common law tradition, it has an independent separate judiciary with jurisdiction over all areas relating to the *Basic Law* within the limits of the autonomy of the region. The Hong Kong judicial system is widely regarded as fair and impartial. On matters relating to the central government and its relationship to the SAR, the Courts must seek an interpretation of the *Basic Law* from the Standing Committee of the National People's Congress through its Committee for the Basic Law. Judgments are final and not subject to appeal. Lawyers' organisations have expressed concern that this mechanism may circumvent the Court of Final Appeal's authority and may undermine judicial independence (*Basic Law of Hong Kong Special Administrative Region of the People's Republic of China*, [http://www.info.gov.hk/basic\\_law/fulltext/content.htm](http://www.info.gov.hk/basic_law/fulltext/content.htm); and "US State Dept Report on Human Rights Practices 2004, China" (includes Tibet, Hong Kong, and Macau), <http://www.state.gov/g/drl/rls/hrrpt/2004/41640.htm>).

## **MACAU SPECIAL ADMINISTRATIVE REGION (SAR)**

Macau comprises a 13 square mile enclave on the South China coast. Reverted to China by the Portuguese in **1999**, like Hong Kong, Macau enjoys a large degree of autonomy except in military defence and foreign affairs, and its citizens enjoy legally-protected rights. Its *Constitution* is the SAR's *Basic Law* promulgated by the Chinese Peoples' National Congress in **1993**. The *Basic Law* establishes that the region is to enjoy substantial political and economic autonomy for the first 50 years under PRC sovereignty. The executive, headed by **Chief Executive Edmund Ho**, since **August 2004** comprises 60 local and 40 mainland representatives.

The judiciary is reportedly independent. The arrangements for Macau's judiciary mirror that of Hong Kong. Courts are independent to adjudicate on issues within the region's areas of autonomy, but must seek interpretation of the *Basic Law* from the standing committee of the NPC in matters concerning the relationship between Macau and the central administration. The *Basic Law* also stipulates that a **Public Prosecutor General** is to head the public prosecution system, independent of the government. He reportedly enjoys theoretical and practical independence from

executive interference.

The *Basic Law* provides for the use of Portuguese as well as Chinese as official language by legislative, executive, and judicial organs. This has hampered the development of the legal system as there is a shortage of bilingual magistrates and legal practitioners. By the **end of 2004**, of the 105 lawyers in Macau, 41 speak either Cantonese only, or Cantonese and Mandarin, but not Portuguese. The government is currently sponsoring a postgraduate training programme for lawyers trained outside Macau.

While the judiciary is reportedly regarded as fair and efficient, delays of up to a year in between the filing and hearing of civil cases have been noted (*Basic Law of the Macau Special Administrative Region of the People's Republic of China*, <http://www.umac.mo/basiclaw/english/main.html>).

## LEGAL REFORMS DURING THE PERIOD

- 18 July 2002:** Supreme People's Court, *Several Opinions on Strengthening the Professionalization of the Judicial Corps*
- 12 September 2002:** *Measures on Courts Enforcing Work Discipline*
- 28 Dec 2002:** Amendment of *Criminal Law of the People's Republic of China*, Articles 13, 102-113
- 10 June 2003:** Supreme People's Court, *Several Provisions on Strictly Enforcing the Relevant Punishment Systems of the People's Republic of China Judges' Law*
- July 2003:** *National Legal Aid Regulations*
- 1 July 2004:** *Administrative Licensing Law of the People's Republic of China*
- August 2004:** *New disciplinary punishment rules for prosecutors (procurators)*