

CHINA INCLUDING TIBET AND THE HONG KONG AND MACAO SPECIAL ADMINISTRATIVE REGIONS

The human rights situation in China continued to deteriorate. Persecution and torture of members of the Falun Gong spiritual movement and members of political dissident groups continued. A major campaign against crime led to a record number of executions and allegations of pressure on judges and lawyers to process large numbers of criminal defendants in a short time. Judges and lawyers continued to be controlled by the Chinese Communist Party. There was still no independent judiciary in Tibet. While the overall human rights situation in Hong Kong and Macao remained satisfactory, some concerns about the independence of the judiciary remained.

The People's Republic of China (PRC) is a unitary state with 22 provinces, five autonomous regions (Guangxi, Inner Mongolia, Ningxia, Tibet, Xinjiang), three directly governed municipalities (Beijing, Shanghai, Tianjin) and two special administrative regions (Hong Kong and Macao).

Under the 1982 Constitution, legislative power is vested in the National People's Congress (NPC), which has around 3000 indirectly elected members. Executive power is exercised by the State Council, which is elected by the NPC. President Jiang Zemin is the head of the state and Zhu Rongji is the Prime Minister.

In practice, effective political control is in the hands of the Chinese Communist Party (CCP). The CCP enjoys unassailable political power and state organs act as instruments implementing the Party's policy.

HUMAN RIGHTS BACKGROUND

China signed the International Covenant on Civil and Political Rights on 5 October 1998, but has yet to ratify it. In February 2001, China ratified the International Covenant on Economic, Social and Cultural Rights. In November 2000, China signed a Memorandum of Understanding with the UN High Commissioner for Human Rights, designed to set up a program of technical cooperation in the field of human rights.

However, while showing a willingness to adhere at a pro forma level to the international human rights regime, the Chinese authorities pursued certain domestic policies resulting in serious human rights violations on a large scale.

The Government's campaign against those it deemed a threat to political stability and public order continued. From 25 October 1999 through July 2000, courts in four cities sentenced ten leaders of the dissident-led China Democracy Party (CDP) to heavy prison terms, primarily on subversion charges. Other activists, such as An Jung, founder of the nongovernmental organisation Corruption Watch, were sentenced to long prison terms on charges of inciting the overthrow of the government.

The Chinese Government also continued its campaign against the Falun Gong spiritual group. Followers of the group faced detention, unfair trials, torture and imprisonment as part of the Government's crack-down on groups considered to be "heretical organisations". Legislation was used abusively to convict alleged leaders of the Falun Gong on politically driven charges and new regulations were introduced to further restrict fundamental freedoms. The clamp-down on "heretical organisations" increasingly encompassed other Qi Gong and religious groups, although in September 2001 there were signs that China might re-establish diplomatic links with the Vatican.

In 2001, Falun Gong sources in China and abroad alleged that violence and torture against Falun Gong practitioners detained all over China is now systematic and officially sanctioned. They described this as a new pattern and claimed that a special government task force was set up in Beijing to lead the campaign against Falun Gong, the "610 office". This office allegedly has issued unwritten instructions allowing police and other officials to go beyond legal constraints in this campaign, discharging them of legal responsibility if a Falun Gong practitioner dies in detention due to beatings.

There were a growing number of reports of deaths in custody of Falun Gong practitioners. By mid-January 2001, at least 201 deaths in custody had been reported since the ban on Falun Gong in July 1999. By September 2001, this number had reportedly more than doubled in just over six months.

In April 2001, the central Chinese authorities issued directives to intensify the "strike hard" campaign against crime, resulting in tens of thousands of arrests and a record number of executions in the following weeks. Within three months, from April until early July 2001, Amnesty International recorded 2,960 death sentences and 1,781 confirmed executions. Under pressure to produce results in the "Strike Hard" campaign, there were reports that lawyers were called on to cooperate with the police and prosecution, and not to hold up the judicial process. Courts have boasted of their speed and "special procedures" during the campaign.

The practice of torture continued to be widespread. Victims included both political detainees and criminal suspects. Persons detained pending trial were particularly at risk of torture during pretrial detention due to systemic weaknesses in the legal system or lack of implementation of the revised Criminal Procedure Law. In May 2000, the UN Committee Against Torture called upon China to ensure prompt, thorough, effective and impartial investigation of all allegations of torture.

Chinese authorities struggled to gain control of the Internet with its estimated more than 20 million users. New regulations issued in March 2000 forbade China-based websites from reporting news from "independent news organisations" thus limiting them to state-controlled sources. Internet users continued to be arrested and charged with serious offences for spreading information about human rights or other politically sensitive issues.

Political and religious repression was evident in Xinjiang. A major aim of the "Strike Hard" campaign was to "deal a decisive blow to separatist forces, eliminating separatism and illegal religious activities". At least 24 alleged terrorists, most of them Uighur Muslims, were executed during 2000. At the end of April 2001, 30 Uighurs were sentenced to death in four districts of Xinjiang alone, 16 of whom were reportedly executed immediately. The charges included "separatism" and a range of alleged violent crimes.

On the positive side, there were some signs that the Chinese authorities were attempting to reform the legal system, seeking international expertise to help design new legal structures, train judicial and legal personnel, and help disseminate information on the reforms to the public, the courts, and

the police. However, as the following outline shows, much more is needed in the area of judicial reform.

THE CRIMINAL PROCEDURE LAW (CPL)

The 1996 edition of *Attacks on Justice* outlined the major features of the CPL, which was adopted by the NPC on 17 March 1996 and came into force on 1 January 1997. While the amended CPL was praised both inside China and internationally for making certain improvements in the protection of defendants in China's criminal justice system, doubts were raised as to how much impact these reforms have had in practice.

Some sources alleged that the implementation of the CPL has departed substantially from both the letter and the spirit of the law, and that authorities appear unwilling to allow the limited safeguards in the CPL to be implemented in practice. The CPL provisions aimed at safeguarding human rights were said to have been either diverted by interpretative rules, or violated outright without the authors of the violations suffering any consequences. Loopholes and ambiguities in the CPL have been exploited to the full by law implementation authorities, and in certain areas, the amended CPL has actually resulted in greater limitation of key rights.

An official report from the Standing Committee of the National People's Congress recently confirmed many of the problems with the implementation of the CPL. NPC Standing Committee inspection groups, which were sent out to review the implementation of the CPL, revealed serious problems, particularly regarding three main areas of CPL implementation. Firstly, they found various time limits on detention to have been widely ignored. Secondly, they found that torture has reached epidemic proportions, although both the CPL and the Criminal Law prohibit it. Thirdly, they found that lawyers representing defendants or suspects in criminal cases encountered a great deal of difficulty in fulfilling their professional duties.

THE JUDICIARY

Structure of the courts

The Chinese court system is composed of four levels: the Supreme People's Court, the Higher People's Court, the Intermediate People's Court and the People's Court. There are special courts for handling military, maritime, and railway transport cases.

The Supreme People's Court is responsible to the NPC, to which it reports on its activities. The three lower levels of courts report to the Standing Committee of the People's Congress of the judicial district concerned.

Neither prosecutors nor judges are required to have law degrees or legal experience, and qualification standards traditionally have been low. Only nine percent of judges had received higher education, and many were not well versed in the law. During 2000, the authorities undertook additional efforts to improve the training and professionalism of judges and lawyers. There is now a unified state legal examination for all professional and judicial personnel. On 30 June, 2001, the NPC Standing Committee passed the revision of the Law on Judges and the Law on Prosecutors. Aside from heightening the standard for appointing judges and prosecutors, the NPC Standing Committee declared that all future judges and prosecutors would be selected from those who pass the unified state legal examination. Further changes in the law require judicial and prosecutorial appointees to be law school graduates who have practiced law for at least two years, or

postgraduates who have practiced law for at least 1 year. Such measures are important steps toward enhancing the quality of judges and prosecutors and should be welcomed.

After July 2000, in an effort to distance the judges from prosecutors, judges in Beijing shed their military style uniforms in favour of robes or suits.

Independence of judges

Like other governmental organs of the PRC, the Chinese judiciary is subject to the control of the leadership of the Chinese Communist Party. China's Constitution recognises the independent exercise of the power to adjudicate, and it states that courts "are not subject to interference by administrative organs, public organisations or individuals". However, it must be noted that the CCP is neither an "administrative organ" nor a "public organisation".

Through various channels, the CCP can interfere with and control the judiciary at various stages of litigation. One method of control is through the Central Political-Legal Committee, which was established directly under the CCP Central Committee, together with political-legal committees at lower levels.

The responsibility of these committees includes supervision of judicial personnel, discussion of "important cases", reporting to the Party committee on trends in legal affairs and implementation of Party policy on legal affairs through the judiciary. The judiciary is under the obligation to report on its work to the Political-Legal Committee, such as when opinions are divided on certain matters. This allows the Committee to routinely review the judiciary's work.

It is unclear how the committee system affects the routine work of the judiciary as a whole, since its operations are highly secretive. However, the high frequency of documents issued by the Central Political-Legal Committee suggests that it is deeply involved in judicial affairs.

At the structural level, the court system itself has implications for the impartiality of the judiciary. The Organic Law of the People's Courts provides that an adjudication committee should be established within every people's court. The mandate of the adjudication committee includes discussion of major or difficult cases. However, the law fails to specify the procedure by which a case is subjected to discussion as well as what kinds of cases should be decided by the adjudication committee. Local people's courts have substantially expanded the mandate of the adjudication committees. Thus, in practice, due to the ambiguity of the rules, virtually all cases may be subject to a discussion, and therefore to a decision by the adjudication committee, seriously impairing the independence of individual judges.

Another structural element of the judiciary is the case review system. Despite the fact that the CPL stipulates that individual judges should try cases independently, it is common practice that individual judges report cases to senior judges and the president of the court before a verdict is reached. This case review system has dominated judicial practice within every court. It has recently been reported that the chief justice of the Supreme People's Court called for the use of this practice to be limited (but not abolished).

Appointment and dismissal of judges

The appointment of judges is under the control of the Party committee. Similar to other "cadres", all judges and prosecutors are nominated by the local Party committee under the guidance of the

Party's Political-Legal Committees. The local People's Congresses merely confirm the nomination. This process can result in local politicians exerting undue influence over the judges they appoint.

Judges and prosecutors can leave their posts in "fault" or "no-fault" situations. The Judges Law provides a list of prohibited acts that would trigger removal of judges from their positions in a "fault" situation. Some loosely-defined acts, such as spreading words damaging to the reputation of the country, participating in illegal organisations as well as demonstrating against the country, are among the most serious. There is also a catch-all clause embracing all other acts deemed to violate laws or discipline. Again, there is neither a clear definition of what behaviour should be considered under this clause nor an identifiable practice for determining such acts. In a "no-fault" situation, a judge may be removed if he or she is assigned a job outside the court. In addition, a judge may also be dismissed if he or she is found to be unqualified. Yet there is no transparent process or standard for determining judicial competence.

Other developments

Corruption and inefficiency in the judicial system are endemic. The Government continued a self-proclaimed "unprecedented internal shake-up" of the judiciary, designed to combat corruption and improve efficiency, which began in 1998. In February 2000, the Supreme People's Court issued new regulations tightening conflict of interest guidelines for judges. Judges who violate prohibitions against accepting money or other gifts from litigants or who privately meet with litigants may be liable for malpractice under the new regulations.

The courts have recently initiated some reforms, aimed at quieting the popular outcry against judicial corruption. One notable reform involves "holding judges accountable for wrongfully decided cases", whereby an individual judge may bear personal responsibility for judgments that he issues in a trial. In many jurisdictions, reversal of judgments or orders for retrial by appellate courts are considered "wrongfully decided cases" of the judge who issued the first decision. The penalties for "wrongfully decided cases" include warning, demotion, monetary punishment, or even dismissal. This reform has serious implications for the ability of individual judges to carry out their duties independently.

LAWYERS

According to the Lawyers Law, which was promulgated in 1996, the Ministry of Justice has significant control over lawyers, law firms and bar associations. However, lawyers are now allowed to organise private law firms that are self-regulating and do not have their personnel or budgets determined directly by the State.

The CPL allows lawyers to provide legal counsel to suspects being detained or questioned. After cases are transferred to the Prosecutors office, defendants have the right to seek the assistance of a lawyer to handle their defence. While they are preparing their defence, lawyers can collect evidence and check, take note of or duplicate the evidence collected by prosecutors. Lawyers have the right to meet with their clients and maintain communication with the defendant.

However, these rights are not respected in practice. Defense lawyers have faced serious obstacles in bringing these rights to life, because of both their inability to exercise the rights given to them under the CPL and because of loopholes in the law itself. For example, officials continue to deny requests for lawyer-client meetings. Even when approved, meetings are often limited in frequency and duration, or subjected to conditions that severely compromise meaningful consultation.

Lawyers are commonly held responsible for security during meetings with clients and further told what they can and cannot discuss. Attorney-client confidentiality is generally disregarded as meetings are often monitored, recorded or held in public rooms.

Lawyers continue to experience difficulties in preparing a proper defense. In addition to limited access to detained clients, defense lawyers are restricted in their ability to review evidence collected by the prosecution, have insufficient power to collect their own evidence, and are unable to cross-examine witnesses who have provided testimony but who fail to appear in court. Mounting official hostility towards lawyers has also greatly increased the risk of representing criminal defendants. Lawyers who undertake such work are often harassed and intimidated, and sometimes detained or even convicted of crimes, merely for actively defending the interests of their clients. This is particularly so in politically sensitive cases. Lawyers have consequently been reluctant to work in criminal defense, which has led to a disturbing decline in the number of criminal cases where defendants are represented by counsel.

Lawyers are now working under the shadow of Article 306 of the Criminal Law, by which a defense lawyer may be accused and convicted of the crime of inducing or helping a witness to change testimonies. Under this article, any changes of testimony after a lawyer's involvement would incriminate that lawyer at official will, in particular the will of the prosecutor. It has been reported that dozens of lawyers were detained, charged and even convicted according to this article. Lawyers associations at all levels have protested this legal provision, but so far have failed to attract sufficient official attention.

TIBET AUTONOMOUS REGION

The Tibetan Autonomous Region and other Tibetan autonomous areas have been given nominal autonomy, with most local powers being subject to central approval. The actual extent to which Tibetans control their own affairs is even more circumscribed, however, due to the centralised dominance of the Communist Party and the exclusion of Tibetans from meaningful participation in regional and local administration. The reality for Tibetans is that there is neither democracy nor an independent judiciary, nor any rule of law in Tibet.

The Chinese Government strictly controls access to and information about Tibet. Thus, it is difficult to determine accurately the scope of human rights abuses. However, there appeared to be a total disregard of basic civil and political freedom. The Chinese authorities continued to commit numerous serious human rights abuses in Tibet, including instances of torture, arbitrary arrest, detention without public trial, and lengthy detention of Tibetan nationalists for peacefully expressing their political or religious views.

Repression of religious activities in Tibet intensified during 2000. It is believed that hundreds of Buddhist monks and nuns remained in prison at the end of the year. Few escaped torture and ill-treatment, particularly during the early stages of custody.

In August 2001, the UN Committee on the Elimination of Racial Discrimination said that it "remained concerned with regard to the ...freedom of religion for people belonging to national minorities (in China), particularly in Xinjiang and Tibet." It also cited "continuous reports of discrimination with regard to the right to education in minority regions, with particular emphasis on Tibet."

Legal safeguards for ethnic Tibetans detained or imprisoned are the same in principle as those in the rest of China. However, many Tibetans, particularly political detainees, are deprived of even elementary safeguards of due process. Tibetan judges must report to the Communist dominated "Adjudication Committees" or the "Politics and Law Committees", which then advise on what they consider to be an appropriate ruling. Any judge who reverses the decisions of the Committees is subject to serious repercussions.

A majority of judges are ethnic Tibetans, but most have little or no legal training. Authorities are working to address this problem through increased legal education opportunities. Judges are appointed and may be removed without cause by the People's Congress or one of its standing committees.

THE HONG KONG SPECIAL ADMINISTRATIVE REGION

Hong Kong reverted from British to Chinese sovereignty on 1 July 1997. In the Joint Declaration between the British and the Chinese Governments on the question of Hong Kong, it was stipulated that the existing social and economic system and the present lifestyle of Hong Kong be left unaffected for a period of 50 years.

The format chosen for implementing this "one country, two systems" principle was the Special Administrative Region (SAR) under direct authority of the Central People's Government of the PRC. The status of the Hong Kong SAR was established in Article 31 of the 1982 Constitution of the PRC. The Basic Law, approved in 1990 by the PRC's National People's Congress, provides for fundamental rights and serves as a "mini-constitution" for the Hong Kong SAR.

Under the Basic Law, Hong Kong is allowed to have its own legislature and judiciary. A Chief Executive, selected by a 400-person selection committee that was chosen by a China-appointed preparatory committee, wields executive power.

The legislature (known as the Legislative Council) is composed of directly and indirectly elected members. On 10 September 2000, the second Legislative Council was elected, for a 4-year term. Twenty-four seats were elected on a geographic basis through universal suffrage, 30 seats through functional (occupational) constituencies, and 6 seats through indirect election. Human rights groups and democracy advocates complained of a democratic deficit in the election procedures, but no parties boycotted the elections. Pro-democracy candidates won 17 of the 24 seats elected on a geographic basis and 22 seats overall.

The power of the legislature is curtailed substantially by voting procedures that require separate majorities among both geographically and functionally elected legislators for bills introduced by individual legislators and by Basic Law prohibitions against the legislature's initiating legislation affecting public expenditures, political structure, or government operations. In addition, the Basic Law stipulates that legislators are only allowed to initiate legislation affecting government policy with the prior approval of the Chief Executive.

Human rights background

The International Covenant on Civil and Political Rights was ratified by the United Kingdom in 1976 and extended to Hong Kong with several reservations. When the PRC resumed sovereignty over Hong Kong in 1997, the change in Hong Kong's legal status had implications for the extension of the ICCPR to the SAR. However, an annex to the Joint Declaration was adopted which stipulates

inter alia that "the provisions of the ICCPR and the ICESCR as applied to Hong Kong shall remain in force".

Human rights in Hong Kong were generally respected, but there were signs of censorship and threats to judicial independence (see below).

In April 2000, a senior official of the central government's Liaison Office warned Hong Kong journalists against advocating Taiwanese independence, saying they should report only what was in the interests of Beijing. In September 2000, the Chinese Government cautioned Anson Chan, the head of the civil service in Hong Kong, that she and her entire staff must step up their support of the SAR's civil executive.

The *Falun Gong* spiritual movement has not been outlawed in the Hong Kong SAR, where the right to freedom of assembly is protected, despite the ban on the movement in the PRC. However, there has been substantial debate in Hong Kong on whether the SAR should follow the PRC in outlawing the movement with reference to Article 23 of the Basic Law, which deals with perceived threats to national security. The Government also considered but decided against adopting legislation to adopt an "anti-cult law" which would have the consequence of outlawing *Falun Gong*, and the Chief Executive referred to the organisation as an "evil cult". In some cases, international members of Falun Gong have been refused entry to Hong Kong. The issue of Hong Kong's approach to *Falun Gong* is considered by some as a test case of Hong Kong's autonomy.

The Judiciary

By law and tradition, the judiciary has remained independent since the transfer of power to the PRC, underpinned by the Basic Law's provision that Hong Kong's common law tradition be maintained. Articles 19 and 85 of the Basic Law guarantee independent judicial power and freedom from interference, and Article 82 of the Basic Law vests Hong Kong's highest court with the power of final adjudication. However, the Basic Law also stipulates that the Standing Committee on the NPC has the power of final interpretation of the Basic Law.

Structure of the courts

The court system in the Hong Kong SAR consists of the Court of Final Appeal, the Court of Appeal, the Court of First Instance, the District Court, the Magistrates' Court and other tribunals with judicial officers presiding.

The Court of Appeal and Court of Final Appeal exercise appellate jurisdiction only. There is a constitutional limitation on the powers of interpretation of the Court of Final Appeal under Article 158 of the Basic Law. Under this provision the Standing Committee of the National People's Congress reserves some matters for determination. These relate to the provisions of the Basic Law which concern the relationship between the Central Authorities and the Hong Kong SAR.

Independence of the judiciary

The Government's controversial 1999 request to the Chinese Government to seek a final interpretation of the Basic Law in the so-called "right of abode" cases was discussed in *Attacks on Justice 1999*. The cases arose from Article 24 of the Basic Law, which conferred the status of Hong Kong Permanent Resident on six categories of people. The NPC Standing Committee's interpretation, which effectively overturned a ruling by the Court of Final Appeal, raised questions

about the potential future independence and ultimate authority of Hong Kong's judiciary. In a later decision in December 1999, the Court of Final Appeal declared that the Standing Committee's Interpretation was lawful and binding on all Hong Kong courts.

The third round of right of abode cases involved four actions for judicial review. Judgments for three of the cases were given together on 20 July 2001 (the fourth decision had not yet been handed down by September 2001). In the *Chong Fung-Yuen* judgment, the Court of Final Appeal took the view that the Standing Committee has the power to interpret any provision of the Basic Law at any time, and its interpretation binds the Hong Kong courts so that they must give effect to it.

Appointment and dismissal of judges

A Judicial Recommendation Commission advises upon judicial appointment or promotions, conditions of judicial service and any other matters affecting judicial officers. The membership of the Commission consists of the Chief Justice and the Secretary for Justice *ex officio*, and two judges, one barrister, one solicitor and three lay persons by appointment of the Chief Executive. Certain categories of persons, such as members of the legislature and other pensionable officers, are not allowed to be members of the Commission.

Commission members may be nominated by the private bar. However, Commission resolutions may be adopted with two dissenting votes, thereby allowing for appointments in the face of opposition by the Bar. Legal experts have complained that the commission's selection process is opaque. In November 2000, legislators requested that the process be made transparent. The Government responded that privacy concerns prevented opening the process to the public.

According to Article 90 of the Basic Law, removal and appointment of the judges of the Court of Final Appeal, and of the Chief Judge of the High Court, must be endorsed by the legislature and reported to the Standing Committee of the National People's Congress. Only judges of courts starting from the level of District Court enjoy security of tenure until retirement age (either 60 or 65, depending on date of appointment).

THE MACAO SPECIAL ADMINISTRATIVE REGION

Macao reverted from Portuguese to Chinese administration on 20 December 1999. This followed a "Joint Declaration on the question of Macao" between Portugal and China from 1987, whereby the parties declared Macao to be Chinese territory and provided for China to resume the exercise of sovereignty over it as of 20 December 1999.

Under the terms of the Joint Declaration, China undertook a series of basic policies following the principle of "one country, two systems", similar to the approach taken with regards to the Hong Kong SAR. These undertakings included the establishment in Macao of a Special Administrative Region (Macao SAR) of the PRC, which is under the direct authority of the Chinese Central Government, but which enjoys substantial autonomy, including executive, legislative and "independent judicial power, including that of final adjudication". China also undertook to respect the current legal, social and economic system in Macao, which are to remain in place for 50 years. A Basic Law, passed by the Chinese legislature in 1993, works as a Constitution for the region.

The Government of the Macao SAR is headed by a Chief Executive, chosen by a 300- member Selection Committee, which was chosen by the Preparatory Committee (60 Macao and 40 PRC

representatives appointed by the NPC). The Chief Executive will hold office for a renewable five-year term.

The first legislative assembly is composed of 23 members, of which only 8 are directly elected by the people. Eight are elected by interest groups and seven are elected by the Chief Executive. All of them will serve until October 2001 when a new legislative assembly will be elected. The number of legislators will increase in successive terms: the second legislature will be composed of 27 members (of which 10 will be directly elected) and the third of 29 members (12 elected directly).

HUMAN RIGHTS BACKGROUND

The Macao SAR Government generally respects the human rights of its citizens, although there are problems in certain areas. Such problems include the limited ability of citizens to change their government; limits on the legislature's ability to initiate legislation; occasional instances of police abuse; inadequate provision for the disabled; a lack of legal protection for strikes and collective bargaining rights; and trafficking in women.

Rising unemployment undermined high expectations of economic recovery and government reform under the Chinese regime. Unemployed workers staged several large marches, culminating in a violent confrontation on 2 July 2000, when police used tear gas to disperse stone-throwing demonstrators and arrested several alleged organisers.

The Judiciary

Structure of the courts

There are four courts in the Macao SAR: the Primary Court (with general jurisdiction in the first instance); the Administrative Court (with jurisdiction of first instance in administrative disputes); the Court of Second Instance; and the Court of Final Appeal.

Independence of the judiciary

Since the handover in December 1999, the organisation of the courts has been governed by the provisions of the Basic Law. Article 83 establishes that the courts of the Macao SAR are independent and have power of final adjudication over all cases in the Macao SAR. The courts also may rule on matters that are "the responsibility of the Central People's Government or concern the relationship between the central authorities and the SAR". However, before making their final (i.e. not subject to appeal) judgment, the court must seek an interpretation of the relevant provisions from the Standing Committee of the Chinese National People's Congress. When the Standing Committee makes an interpretation of the provisions concerned, the courts, in applying those provisions "shall follow the interpretation of the Standing Committee". The Standing Committee of the NPC must consult its Committee for the Basic Law of the SAR before giving an interpretation of the law. This Committee is composed of 10 members, 5 from the SAR and 5 from the mainland.

Appointment and dismissal of judges

According to Article 87 of the Basic Law, the Chief Executive appoints judges at all levels, acting on the recommendation of an "independent commission" (which he appoints), composed of local judges, lawyers and "eminent persons". The Basic Law stipulates that judges must be chosen on the basis of their professional qualifications.

Judges may be removed only for criminal acts or an inability to discharge their functions. Judges can only be removed by the Chief Executive acting on the recommendation of a tribunal appointed by the President of the Court of Final Appeal and composed of not less than three local judges. In the case of the justices of the Court of Final Appeal, their removal may only be decided by the Chief Executive following a recommendation of a review committee composed of members of the legislature.

Other developments

The need to translate laws and judgments from Portuguese and a severe shortage of local bilingual lawyers and magistrates may hamper development of the legal system (of the 100 lawyers in private practice, approximately 5 can read and write Chinese). However, the authorities have instituted a rigorous postgraduate training program for magistrates, who received legal training outside the SAR.