

Annual Report on China's Judicial Reform 2013



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Foreword

Rule of law and access to justice are essential to human development. The protection of the law protects people from vulnerabilities to abuse, guarantees their access to basic services and expands their abilities to participate in the decisions that shape their lives.

In China, one key objective of judicial reform is to build the institutional capacity of the judiciary to ensure justice for all. UNDP has been supporting China's judicial reform since the first five-year judicial reform programme was launched by the Supreme People's Court (SPC) in the 1999. Throughout the three five-year judicial reform programmes, UNDP has offered policy advice and international expertise to assist the SPC on a number of its judicial reform priorities, such as people's assessors pilots, open trial, alternative dispute resolution and judicial aid system reform.

2013 was a pivotal year in China for judicial reform with measures adopted to enhance judicial openness and to prevent the miscarriage of justice and with the plan for comprehensive legal and judicial reform that the Third Plenary Session adopted in November 2013.

This reports presents and analyses these recent developments in judicial reform in China and reflects on its possible future directions. It highlights pilot initiatives at the level of the court, the procuratorate and the judicial administrative organ, and underlines the importance of the independence of judiciary. The report also analyses key issues for the next stage of China's judicial reform over the period 2014-2018 and underlines the crucial value of an overarching roadmap, as well as coordinated efforts by all stakeholders.

UNDP is pleased to have supported Professor Xu Xin and his research team in the preparation of this comprehensive review. We hope that the present report and the views it offers will be of interest and use to policy-makers, law professors, international and national experts and all those, who have an interest in judicial reform in China.

Christophe Bahuet



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Introduction

2013 was the year that would determine the direction of judicial reforms in China for the next decade.

Although there have been small steps forward, such as the advocacy of judicial transparency, the prevention of unjustly prosecuted or misjudged cases, and a draft plan for a new round of judicial reform, the overall atmosphere is obviously contingent on the Third Plenary Session of the 18th Communist Party of China (CPC) Central Committee setting a future agenda.

The Third Plenary Session was held in November 2013 and adopted the Decision on Major Issues Concerning Deepening Comprehensive Reforms (hereinafter "Decision"). Unlike previous conferences, which primarily focused on economic development, the Third Plenary Session laid out the general plan for deepening reforms in a comprehensive way, focusing on strengthening the rule of law and giving priority to reforms in the legal field.

The Decision sets the goal of building a just, efficient, and authoritative socialist judicial system, with an emphasis on independent prosecutions and trials, improving the exercise of judicial power, and adherence to the democratic operation and protection of human rights. In this way, the Decision identifies a direction and opens up space for further judicial reform over

the next ten years. Substantive reduction in the instances of interference by local authorities and the executive branch and more judicial independence are expected. Under the guidance of the Decision, the central government will come up with an overall plan for a new round of reforms with specific directives. The court, the procuratorate, the public security department, and the judicial administrative branches will also map out their own reform measures. Specific key reforms needed to improve judicial independence are: a unified management system of personnel, finance, and the logistics of judicial organs; exploring the possibility of separation, to a certain degree, of judicial jurisdictions from administrative regional divisions; and establishing a system of selecting and managing judicial personnel according to the different characteristics of their profession. Improving the efficacy of the exercise of judicial power will involve changing the current trial committee system, and clarifying the responsibilities of the chief trial judge and the collegial trial panel. Promoting judicial transparency and improving the functioning of people's jurors and people's monitors can add more democratic elements to the judicial process. Safeguarding lawyers' rights to practice, enforcing accountability for false charges, wrongly prosecuted or misjudged cases, and preventing such cases will provide basic human rights protections in the legal field. The

above-mentioned reforms concur with many recommendations in the past annual reports on China's Judicial Reform, and if implemented, will result in significant progress in China's legal reform.

Yet there is resistance to deepening legal reforms, especially from the local communist party, government agencies, and special interest groups fearing the reduction in the possibilities for interference by local authorities and the administrative branch. This resistance poses the greatest challenge to the implementation of the Decision. The Decision has provided a guiding direction but is lacking concrete implementing measures. The legal reform framework remains vague, reflecting its transitional nature. Although decision-makers are attune to these challenges and have emphasized trial independence and a reduction in local and administrative interference, judicial independence remains a critical element for China's judicial reform, as well as overall reform of its political system. Judicial independence is of the utmost importance to realizing the ideal vision of rule of law in China, and it is the bottom-line issue that needs to be addressed.

Based on the above analysis and lessons learned from past years, this new round of judicial reform urgently needs a high-level overarching design, without which it will be like a vessel sailing without navigation markers. Lack of an overarching design may result in reforms being short-sighted, superficial, repetitive, contradictory, or even deviatory in direction, which may eventually lead to reform measures failing to take effect or becoming

meaningless, and consequently leading to an overall regression in the rule of law. Therefore, effective judicial reform needs both bottom-up momentum as well as systematic and strategic planning from the top.

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I. General Reform Measures

i. Enhancing Judicial Independence

The Decision reiterated the Report adopted in 2013 by the 18th National Congress of the Communist Party of China, which stressed: “ensuring that the judiciary and the procuratorate can exercise their powers independently and justly in accordance with the law.” Although independent trial and prosecution powers have long been enshrined in the Constitution, through the issuance of the Decision the central leadership is prepared to make a greater effort to realize judicial independence.

While reiterating the importance of judicial independence, the Decision sets the direct objective of reducing interference by local authorities and the executive branch through concrete measures. The measures to reduce local authorities' interference include: reforming the judicial management system to promote the unified management of personnel, finance, and materials of the local courts and procuratorate below the provincial level, and the proper establishment of jurisdictional authorities separated from administrative zoning so as to ensure the uniform application of national laws. The measures to reduce administrative interference include: reforming the trial committee scheme and installing a responsibility/ accountability system that combines the functions of presiding trial judge and the collegial panel, thus letting the adjudicator make the decision and be accountable for the decision; clarifying the functions of the court at various levels and the trial supervision hierarchy of the court system; and establishing a judicial personnel

management system that reflects professional characteristics, as well as a unified mechanism for recruitment, position exchange, and promotion of judges, procurators, and police officers that protects their job security.

China's Supreme Court, taking advantage of the favorable situation, undertook supporting initiatives. In April 2013, the Supreme Court convened a forum of experts to discuss how to raise the credibility of the judicial system by enhancing judicial independence. At the national conference of the chief justices of the provincial level superior courts held in June 2013, the Chief Justice of China's Supreme Court, Zhou Qiang, emphasized that “courts at all levels must dare to stand up to various interference to ensure that the court exercises its trial power independently according to law; must improve the mechanism of designated jurisdiction, upgraded jurisdiction, and centralized jurisdiction; must continue to implement the unified enforcement deterrence mechanism, and must overcome local and departmental protectionism.” In October 2013 “trial independence” became a buzz word mentioned on several occasions. On October 12, 2013, the head of the Third Criminal Tribunal of the Supreme Court, Dai Changlin, claimed that “in order to prevent false charges, wrongly prosecuted or misjudged cases, independent trial power has to be guaranteed.” On October 14, 2013, at the 6th National Workshop of Criminal Justice, Supreme Court Chief Justice Zhou Qiang again emphasized the importance of the “just and independent exercise of trial power.” On October 17, 2013, at the China Trial Theory Seminar, the Standing Deputy Chief Justice of the Supreme Court, Shen Deyong, stated that

"the court's just and independent exercise of trial power must be under the guidance of the communist party leadership." On October 25, 2013, The Pilot Program of Deepening Judicial Transparency and Reforming Trial Power was issued, which called for ensuring that the sole trial judge and collegial panel members are able to exercise their trial power justly and independently according to law. On October 28, 2013, Opinions on Earnestly Upholding the Law for the People, Improving Judicial Justice, and Enhancing Judicial Credibility was published using unusually adamant language to demand the firm implementation of the constitutional principle of judicial independence. The Opinions read: "resolutely resist various forms of local and departmental protectionism, resolutely eliminate any illegal interference such as power, money, relationship, and connections, continuously improve the system to ensure that the court justly and independently exercises its judicial power according to law, and resolutely safeguard the dignity and authority of the Constitution and the law." The frequent reiteration of trial independence by the court's top leadership reflects their determination to push for reforms, which is definitely helpful for reforms within the court system and to resist outside interference. However, trial independence cannot be achieved only through the reiteration of the concept. Instead, reforms have to target the root of the issue and undertake systematic change. Also, trial independence must be practiced within the court system.

Compared to the court, the procuratorate did not especially emphasize independence in its procuratory functions. In May 2013 at the new provincial chief procurators' training class, Cao Jianming, the Chief Procurator of China's Supreme Procuratorate established the requirement that in carrying out comprehensive reform in procuratory work, the just and independent exercise of procuratory powers must be combined with adherence to the communist party's leadership and to common judicial practice. In July 2013, at another chief

procurators seminar, he reiterated the same requirement. In December 2013, the Supreme People's Procuratorate issued The Pilot Reform Program of Procurators Responsibility Scheme; its objective was to ensure the independent exercise of procuratory powers according to law.

While the Decision pointed out that the direction of reform is towards judicial independence, and the court has taken some initiatives in this direction, concrete proposals have not yet emerged on the required comprehensive reforms. For instance, with regard to the reduction of local interference, since the interference by the local party and government is the main hindrance to judicial justice, a prerequisite to achieving judicial independence will be to get rid of this interference. Possible approaches could include:

1. The personnel, finances, and material supplied to the judiciary can be removed from the control of local government. The Decision proposes "in judicial management reform, a unified management system of personnel, finance, and materials should be encouraged for the court and procuratorate below the provincial level." The media's characterization of this as "vertical management of the court system" triggered a misunderstanding of the supervision functions of the superior court over the lower court, and even a misunderstanding of the central government's centralized judicial management. In fact, the relationship between the higher and lower court is only one of monitoring and supervision. The vertical management of personnel, finance, and materials only involves administrative and related matters. This model does not intensify administrative control by the higher court of the lower court, but rather means that the appointment and removal of judges and chief justices should be done by the judge selection body within the court

system, and not through an arrangement with the local government. Although the Constitution provides that local courts at various levels are accountable to the state power organ that establishes the court, the current appointment and removal system for judges mainly relies on Article 11 of the Law on Judges, i.e. the chief justice of the court shall be elected or removed by the People's Congress of the same level, and judges shall be appointed or removed by the Standing Committee of the People's Congress of the same level. Therefore a change in the process for the appointment and removal of judges does not directly violate the provision of the Constitution, and only the Laws on Judges would need to be amended. The amendment proposal has already been scheduled on the legislative agenda of the National People's Congress. In the final analysis, reducing local interference in judicial personnel matters will involve a revision to the Constitutional framework, which is the fundamental way to eliminate interference by local authorities. The Decision, however, is silent on the appointment and removal of judicial officials by local People's Congress. Whether this omission will leave room for local interference in judicial matters remains to be seen.

2. The funding for the judiciary should come from the budget of the central government. According to the Decision, the funding for local courts and procuratorates at various levels shall be borne by the provincial budget, with certain proportions guaranteed by the central government. This could only be a transitional measure. In the future, financing the judiciary through the central government budget should be implemented.
3. The selection, appointment, removal, promotion, and discipline of judicial officials should be handled by a specially established committee in the judicial system. The Standing Committee of the People's Congress

should only decide on procedural matters in accordance with Constitutional requirements. The Decision proposes "establishing a judicial officials management system that reflects professional characteristics." The court and procuratorate will adopt a unified process for the recruitment, training, appointment, relocation, and promotion of new judges and procurators; will select lawyers and legal scholars to become judges and procurators; will set up different job requirements for different position levels, and for the gradual career progression of judges and procurators; will establish a selection and disciplinary committee for judges and procurators with the participation of prominent public figures. A unified judicial committee of three levels could be considered a priority composed of congress delegates, members of the political consultative conference, lawyers, and scholars.

4. The local communist party, government, and the political-judicial committee should not interfere in the handling of individual cases. Such interference is against the constitutional requirement of trial independence and is unnecessary. Many cases have proven that such interference often results in prejudice, and sometimes such entities even become a "party" to the case. Interference in individual cases can easily encourage profit seeking and corruption, which often results in wrongly prosecuted and misjudged cases that severely damage the reputation of the party and government as well as the public confidence in the judiciary. In December 2013, the three provincial organizations of Jiangxi province: the provincial Party Disciplinary Committee, the Party Organization Committee, and the Political-Judicial Committee, jointly issued Regulations of Party and Government Leaders' Support to Judiciary Independence. The directive clearly demands that no party or government officials should use their position, power or influence to become

involved or interfere in the adjudication and enforcement of cases, and those who are in violation of this directive shall be held accountable. The directive is conducive to creating a favorable environment for judicial independence. However, non-party or government interference in judicial functions should be clearly defined in legislation and effectively implemented through specific systematic measures.

5. The establishment of judicial jurisdictions appropriately separated from the administrative division should be explored, so as to break through the horizontal overlap of judicial jurisdictions and administrative divisions and to create a barrier that would reduce local interference. Factors to be considered for the specific design include: weakening local party and government influence; making it convenient for parties to bring legal actions; fully utilizing judicial resources; and increasing judicial efficiency. Courts should be regrouped, and their jurisdictions redefined according to the volume of cases, as well as demographic and transportation conditions. First, priority should be given to superior courts because they make the "de facto final decision" and are the final forum for many cases. In court regrouping, reform of the banking system of the regions could be looked upon as an example for reference. For instance, one superior court could be established and exercise jurisdiction over Hebei, Beijing, and Tianjin. Second, depending on case volume, certain intermediate courts that are located in adjacent geographical areas can be merged. Third, also depending on case volume, certain basic level courts can be merged, or existing basic courts could be used as dispatch tribunals of a newly established court. Fourth, administrative law cases, civil and commercial cases that cover different regions, and cases that may be erroneously decided because of improper local influence

could be tried in another, or higher, jurisdiction. Finally, attention should be paid to the key words "appropriately separated" between administrative division and judicial jurisdiction. Creating this division can be difficult because any decision must be based on actual needs and should not make it more inconvenient for the parties. Division should not be done only for the sake of "separation" or "regrouping."

6. Setting up a special court for administrative law can be at three levels: (1) a supreme administrative law court within the Supreme Court; (2) preliminary administrative law courts; and (3) appellate administrative law courts, which are separated from geographical administrative divisions. The scope of administrative cases should be expanded to also cover abstract administrative acts (i.e. making laws and regulations). The Decision mentioned the deepening of administrative law reform, with the intention of strengthening the enforcement powers of administrative law. But it did not emphasize oversight of administrative law enforcement, and it especially did not clarify the overall judicial review of administrative acts. Hopefully in the future, administrative law courts could gradually exercise the function of judicial review, and realize the Decision's requirement of "safeguarding the authority of the Constitution and the law."

ii. Abolishing the Practice of Re-education Through Labor

In 2012 mention of "abolishing re-education through labor" (RTL) was still quite sensitive. Even in the first half of 2013, quite a lot of people were still claiming that RTL had had some positive effects and many officials and even some legal scholars thought that the practice needed to be reformed but not abolished altogether. Yet the Decision clearly stated: "abolish the

system of re-education through labor, improve punishment and correction laws regarding illegal and criminal acts, and strengthen the community correction system." On December 28, 2013, the Standing Committee of the National People's Congress reviewed and approved the proposal submitted by the State Council on abolishing the labor re-education practice, promulgating a decree officially announcing the abolition of RTL. According to the decree, current RTL verdicts are still valid until the abolition takes effect. But once abolition is effective, people serving in RTL under the past law will be released, and the remaining time period of labor will not be enforced. Thus, after 56 years of practice the Standing Committee ended the RTL program that was introduced in 1957 and aimed at "eliminating counterrevolutionaries."

For many years many people have advocated vigorously for tearing down the "solid wall" of RTL. Some even paid with their lives. Several recent high impact cases were the final catalyst for abolition, especially the Tang Hui case of 2012 and the series of RTL cases in Chongqing City: those of Ren Jianyu, Peng Hong, Xie Suming, Huang Chengcheng, Dai Yuequan, and Fang Hong.

The RTL practice could deprive a citizen of their liberty for a maximum of four years without legal due process, and could be re-ordered repeatedly. The practice is in overt violation of several laws with higher status such as the Constitution, the Law of Legislation, and the Law of Administrative Discipline. The practice also runs against the international human rights Conventions to which China is a signatory. In practice, the local party and government frequently abused RTL, using it as a tool for "maintaining stability" through suppressing citizens' petitions to higher authorities and suppressing freedom of speech. Many people therefore have warmly received the abolition of RTL, regarding it as the most major milestone in recent years toward achieving the rule of law.

Beginning in March 2013, the practice was

stopped in most localities. In September 2013, Guangdong Province released all RTL inmates. After the issuance of the Decision, Shanghai also released all detainees under RTL. But since the beginning of 2013, when the Central Political-Legal Committee announced the temporary suspension of RTL, other forms of punishment began to emerge. Prosecution of so-called "pocket crimes" increased, such as the "crime of trouble-making" and the "crime of illegal business operation." Administrative detention and criminal detention also increased. "Custody education and remolding" still exists. People like Wu Hongfei and Yanghui were transferred from criminal detention to administrative detention, which showed the "practical wisdom" of enforcement agencies taking advantage of gaps in the legal system. Given these events, abolition of RTL represents only an initial step forward. The key is to carry out systematic reform "to put power in a restrained cage." Hence, close attention needs to be paid to the follow-up arrangements for illegal activities and community correction. The abolition of custody education and remolding, referred to as the "bigger RTL," should be on the agenda for discussion as soon as possible.

Repeated offenders who are not criminals include those who are in compulsory substance abuse rehabilitation and those in "education through custody and remolding programs." Any restriction of a person's physical freedom must be done in compliance with relevant international treaties and China's domestic laws. That is to say, the deprivation of personal freedom must go through strict legal scrutiny and procedures. Therefore, if a law on administrative correction of illegal acts is to be drafted, it must be based on the principles of basic due process, even though some procedures could be streamlined. The key elements of the legislation should include: judicial determinations, open process, the accused's participation in testimony and evidentiary review, the right to counsel, and the right to appeal. Trivial illegal acts could be treated with public security discipline measures. Other illegal acts could be treated with security

measures and as misdemeanors as practiced in many countries. But elevating punishment to the level of a misdemeanor means elevating a petty offender to a criminal. This change in classification affects a person's basic human rights, so the question as to whether to adopt this practice should be fully debated.

The community correction system already has some practical experience and needs to be developed and improved further. Pilot programs, first started in certain areas in 2003, and in 2009 after the issuance of the Opinion of Nationwide Community Correction Trial Work, have become widespread. But due to various factors, the overall quality of community correction is relatively low. Inadequate system frames, strong traditions of criminal punishment, low levels of community development, not enough support from judicial administrative agencies, not enough guidance for the grassroots justice offices, weak development of civic organizations, lack of willing participation of organizations and volunteers, as well as low awareness and initiatives of the public toward community correction all contribute to this low level of quality. The future work in this regard should look at the experience of some countries but apply this experience according to China's context. For instance, the individual correction model of Australia, the correction consultation model of minors in the Netherlands, and the self-governing model of well-developed communities in the U.S. could be considered. The integrated community correction system should be led by the judicial administrative agency, with the active participation of social groups. The scope of targeted people should be defined, and their rights protected. A Community Correction Law should be drafted soon as well.

iii. The First Major Revision of the Administrative Litigation Law

In December 2013 The Draft Revision of the Administrative Litigation Law was submitted to the Standing Committee of the National People's

Congress for review. Public comments were solicited on December 31, 2013, and January 31, 2014. This is the first major revision of the law since its implementation in October 1990. The revision was an important measure to deal with an urgent problem in the operation of administrative litigation: "hard to file a claim, hard to try the claim and hard to enforce the outcome."

The Draft Revision added 23 new Articles, revised 36, and deleted 4, making important changes to the scope of administrative litigation, the standing of parties, case jurisdiction, evidence acceptance, statutes of limitation, and enforcement measures. The Draft Revision clearly establishes that administrative agencies cannot interfere or obstruct the court in the handling administrative cases. The Draft Revision expands the scope of administrative litigation and lists the specific administrative acts that can be heard, which include administrative disputes regarding ownership rights and use rights of natural resources such as land, rights of land contract and management in rural areas, and minimum livelihood security benefit issues. Other changes include: during a challenge to a specific administrative act, requests can be made at the same time to review regulatory documents that are below the classification level of rules and regulations; permission for "verbal complaints" and mediation in administrative litigation; established litigation representative and third party status; clarified the standing of the plaintiff and defendant, and limiting the standing of plaintiffs to those who have a legal interest in the litigated administrative act; an improved standard of geographical and hierarchical jurisdiction, specifying that the superior court can authorize the initial adjudication of administrative litigation cases of basic level courts outside the administrative region, and that the intermediate court can adjudicate cases involving lawsuits against administrative acts of the county level government; emphasized adherence to strict adjudication procedure and defined the responsibility of the court; improved evidence rules through clarification of the consequences of a defendant's failure

to provide evidence within the time limits, the burden of proof of the plaintiff, the application of evidence rules, the defendant's responsibility for providing evidence, and the court subpoena function; strengthened enforcement measures by authorizing the court to make a public record of an administrative agency's refusal and failure to obey a judicial decision, verdict, or mediation agreement, and authorizing detention of the personnel of an administrative agency directly responsible for such a refusal; and specified trial supervision and strengthened supervision of the procuratorate over administrative litigation.

The Draft Revision made substantive progress in terms of the scope of litigation, standing of the parties, and enforcement measures, but there is still significant room for improvement. For instance, the scope of cases to be heard could be further extended to include more abstract administrative acts for judicial review. On the basis of enhancing jurisdiction level and expanding the choices of geographical jurisdiction, the Supreme Court can set up circuit administrative tribunals with judges rotating periodically, and eventually establishing a special administrative court. Also, the Draft Revision is still under review, and just how many of its progressive provisions could survive and become law is uncertain. In the final analysis, the defects of administrative litigation can only be remedied by judicial reform, especially by enhancing judicial independence, which further involves reform of the political system.

iv. Further Preventing Miscarriage of Justice Cases

In 2013 against the background of the newly revised Criminal Procedure Law, the prevention of false charges, wrongly prosecuted and misjudged cases was highlighted again (hereinafter referred to as "miscarriage of justice cases"). The high level leadership aimed to "let the people experience justice and fairness in each and every case." Since Zhou Qiang became the new Chief Justice of the Supreme Court in March 2013, he has made great efforts

to promote judicial transparency and the rehabilitation of miscarriage of justice cases. In May 2013, the Deputy Chief Justice of the Supreme Court Shen Deyong said: "We should guard against miscarriage of justice cases like guarding against fierce floods and savage beasts, i.e. we would rather release a guilty person than convict an innocent person." Thus several unjust cases spanning many years were overturned, such as the Zhang family uncle and nephew case in Zhejiang province, the Wu Chagnlong case in Fujian province, the Li Huailiang case in Henan province, and the Xiao Shan case in Zhejiang. Currently, quite a few major cases raising serious doubts are under review or re-trial.

In August 2013, the Central Political-Judicial Committee issued The Regulation on Earnestly Preventing Miscarriage of Justice Cases which put specific checks on the stages of investigation, prosecution, and trial. The measures include: simultaneous audio and video recording of the entire process of interrogation during the investigation; submitting all evidence and excluding that which should be excluded; strict adherence to adjudication according to evidence and when in doubt, acquittal; practicing strict evidence verification standards; no unlawful verdicts or decisions because of external pressures like media hype, dramatic grievance petitions, "detection time deadlines," or "maintaining local stability"; effectively protecting lawyers' rights to practice law; establishing and improving the integrated power and responsibility system where the judge, prosecutor, and police officer have a lifelong responsibility/accountability for the quality of a case's handling; having a clear definition of miscarriage of justice cases, and the initiating party and process of correction, and accountability measures.

The Regulation has had some positive impact: emphasizing the quality of case-handling and lifelong accountability for a case; reiterating the principles of "acquit when in doubt" and "presumption of innocence"; helpful correctives

to some incorrect concepts, such as presumption of guilt, and the one-sided pursuit of the rate of detection, arrest, prosecution, and verdict. However, there are certain defects in some measures of The Regulation. For instance, The Regulation recognizes and supports the current practice of "joint handling of cases" by various judicial agencies under the coordination of the local political-judicial committee, which is not conducive to prosecutorial and trial independence. And The Regulation states that "in general" the local political-judicial committee should not express its opinion about the nature and handling of a case, which leaves room for interference and the "setting of the tone" for certain cases. Regulations or directives of this kind are not institutionalized legislation with lasting effect. Their limited effect will be diluted or shelved in practice as the focus of the high-level leadership shifts.

In order to implement The Regulation, the Supreme Court and Supreme Procuratorate also issued concrete measures to prevent miscarriage of justice cases. In September 2013, the Supreme Procuratorate issued Certain Opinions on Properly Performing Prosecutorial Functions to Prevent and Correct Miscarriage of Justice Cases. It emphasized the following: the independent and just exercise of prosecutorial power; guaranteeing lawyers' rights to meet with the accused, especially in significant bribery cases; applying the strictest evidentiary standards in death sentence cases; procuratory consultation in the investigation authorized in major and complicated homicide cases, and involvement in crime scene site surveying; and establishing a lifelong responsibility/accountability system over prosecutors' handling of a case. In November 2013, the Supreme Court issued Certain Opinions on Preventing Criminal Miscarriage of Justice Cases, which emphasized five basic concepts: respect for and protection of human rights; independent exercise of trial powers according to the law; due process; open trials; and adjudication by evidence. Certain Opinions required a change to the "confessions supremacy" practice, stressing the scrutiny of

evidence, the importance of court hearings, strict enforcement of evidence rules, tribunal members' joint responsibility, and the presiding judge's primary responsibility/accountability for quality control of case handling. The above-mentioned two directives are concrete measures to implement The Regulation of the Central Political-Judicial Committee. They are more practical and will play certain roles in preventing wrongly handled cases.

Although there has been some progress since the issuance of the above-mentioned regulations and directives, the root cause of the miscarriage of justice cases is far from addressed. As long as the system that is capable of producing such cases is not changed, i.e. without clear judicial accountability and the requisite judicial independence, it is hard to ensure the correction of all mistakes. Therefore, the prevention of miscarriage of justice cases does not only require concepts such as "acquit when in doubt," the presumption of innocence, and the exclusion of unlawful evidence, it also requires supporting mechanisms such as ensuring the lawyer's presence, simultaneous audio and video recording, witness testimonials, the police officer's presence and testimonials, the substantiation of confessions, judicial decrees, jurisdiction supervisions, judicial accountability, and case quality control. Furthermore, the prevention of the miscarriage of justice requires fundamental changes to the legal system, such as giving citizens the right to remain silent, effective guarantees of lawyers' practice rights, the reduction in police power, and the strengthening of the oversight of police power, proper repositioning of the procuratorate's power from a supervisory role to a restraining function, and the independent trial power of the court where the judge only acts according to the law, and no organization or individual can interfere under any pretense.

The case of Nie Shubin, which has attracted wide attention, is a touchstone of the government's sincerity towards preventing and correcting

the miscarriage of justice. In 1995, Nie Shubin, then 21 years old, was sentenced to death by the Hebei Provincial Superior Court for rape and intentional homicide. In 2005 the real murderer, Wang Shujin, was captured and confessed to raping and killing the victim, Kang Juhua. The mother of Nie Shubin cried out for help. The Supreme Court ordered a retrial of Nie's case in 2007. It has been seven years, and the lawyer of the petitioner has still not been permitted to read the file. In September 2013, Wang Shujin was sentenced to death in the second trial. This triggered public concern that the door for finding the truth about the mishandled Nie's case would be closed even tighter. Even though there were discrepancies in Wang's confession, the possibility that Wang was the murderer could not be excluded. Discrepancies between a confession and evidence are common. Moreover, Wang's initial confession appeared natural, without indication of outside influence. Many important details in Wang's confession were consistent with the crime scene and similar methods were used by him in other crimes. Because the evidence was weak, even when there was no real culprit captured, Nie's case should be reviewed according to law. The most urgent concern now is to let the lawyer see the file, and if qualified, the court should start the retrial process.

v. Reflection and Reform of Judicial Interpretations

Censorship has increased since the "Southern Weekend" newspaper incident in early 2013. In August 2013 a crackdown on Internet rumors swept China. From August 20 to August 31, in one place in Hubei province alone, 5 people were arrested and put under criminal detention and 90 were put under administrative detention. Prominent Internet figures like Qin Huohuo, Zhou Lubao, Fu Xuesheng and Lu Hu, a reporter of the New Fast Newspaper, were detained. Xue Manzi was exposed on China Central TV for visiting prostitutes. This kind of politically motivated "justice drive" using improper

methods to obtain short-term benefit is bound to be problematic. Many reported cases clearly revealed the flaws created by such overreaction and improper punishment. For instance, Ms. Zhao in Hebei province was detained because she asked "whether someone died in the case"; Mr. Zhang in Guangdong province was detained because he said "the five martyrs of Liang Ya Mountain were guerrillas." The police in Tangshan, Anhui, arrested Yu Heyu because 10 people died in a car accident and he said 16 people died; and in Shiyan, Hubei, an internet user was detained because he reported 7 people died in a car accident when actually only 3 died.

To support this drive, in September 2013, the Supreme Court and Supreme Procuratorate jointly issued a rushed judicial interpretation on Application of Laws in Criminal Cases Involving Using Information Network for Defamation. This Interpretation intensified "Internet fear" and drew a lot of criticism. Very soon, "the first case of 500 people transferred to criminal detention" exposed defects in the Interpretation. Yan Hui, a middle school student in Zhangjiachuan city, Gansu province was put under criminal detention because in his micro blog he cast doubt about a case regarding the unusual death of a man. This case was quickly quashed because of the strong social reaction. Yang Hui was released and the head of local public security bureau, Bai Yongqiang, was investigated for accepting bribes.

In fact the Interpretation of the two "Supreme" state organs not only set an extremely low threshold for the "crime of serious defamation," but also expanded the scope of actionable defamation beyond existing legislative provisions. That is, it listed seven circumstances that could be considered as "seriously damaging social order and state interest." This Interpretation even created a new crime, "online trouble-making," implying a presumption that the Internet is a purely public space. This is in clear violation of the legislative provisions on criminal acts and expanded the applicable scope for the crime of "picking fights and causing a disturbance."

The Interpretation weakened Article 35 of the Constitution on citizens' freedom of speech, and Article 41 of the Constitution on the citizens' right of overseeing (to make criticisms, suggestions, petitions, accusations, and criminal reports about a state organ and its staff). The Interpretation therefore could be unconstitutional. According to Article 41 of the Constitution and Article 90 of the Law on Legislation, citizens can petition to the National People's Congress to review the legality of the Interpretation. Freedom of speech protected by law includes the freedom of improper speech, which is only punishable through clear legislative provisions and should not be limited or even criminalized by a judicial interpretation. Rumors should be cracked down on but any crackdown must be done according to law, and not in an exaggerated and political way. Violating legal definitions, expanding the interpretation of actionable defamation, and using the crime of picking fights and causing a disturbance to punish rumors on the Internet is a wanton abuse of government power, whose harm is far more serious than the mere rumors themselves.

This example shows the urgent need for reflection and then reforming the current system of "judicial interpretation with Chinese characteristics." Although the purpose of judicial interpretation is to provide remedies for general and vague legislative provisions, for judges' inadequacy, and for the lack of case precedents, for a long time the judicial interpretation system in China was ridden with problems of ultra vires interpretation, multiple authorities undertaking interpretations, confusion about the forms, simplified formulations of procedure, and the absence of mechanisms for revocation and oversight.

Future reform of judicial interpretation could adopt the following ideas. First, enacting a Law of Judicial Interpretation as quickly as possible, or creating a special chapter on Judicial Interpretation in the Law of Legislation, with special regard to strict procedures for formulating and promulgating judicial interpretation; establishing a judicial interpretation review and removal mechanism,

and timely correction and elimination of those interpretations that are in violation of the Constitution and laws. Second, unifying the authority and forms of judicial interpretation; quickly discontinuing the power of judicial interpretation by the procuratorate, and reserving sole authority for judicial interpretation to the court. Third, actively promoting a guiding case precedent system: publishing more guiding case precedents; greatly encouraging courts at various levels to make their verdict documents public; trying to interpret the application of laws and procedures through meaningful case precedents, and reducing the necessity of making law through judicial interpretations. Fourth, proposing to the Standing Committee of the National People's Congress the setting up a special unit for judicial interpretation to ensure scientific and workable legislation and increase legislative interpretation while reducing the necessity for giving judicial interpretation. Fifth, eventually abolishing the judicial organs' law-making powers and authority through judicial interpretation.

vi. Improving the Juvenile Justice System

The improvement of the juvenile justice system has been a key element of judicial reform pilot programs, especially at the local level. In 2013, the Supreme Court increased the number of comprehensive juvenile case trial tribunals, begun in 2006, to 49 pilot intermediate level courts. At the beginning of 2014, the Supreme Procuratorate issued a Regulation on Procuratorate's Handling Juvenile Criminal Cases, which further improved specific procedures for handling juvenile cases and emphasized that an independent juvenile criminal procuratorate should be established in the procuratorates at the provincial and prefecture levels as well as at the basic level procuratorates, where juvenile criminal cases abound. Some exploration of the local level is valuable. For example, in Shanghai and Tianjin, a juvenile criminal record sealing

system has been fully implemented. Beijing established the first superior court level juvenile trial tribunal and the procuratorate has a trial project of no prosecution of certain cases. In Henan province, the public security department, the procuratorate, and the court jointly issued a Pilot Regulation on Non-Custodial Litigation of Juvenile Criminal Cases. In Kunming, the intermediate level court is trying to avoid prison sentences for juvenile offenders if at all possible. In Chendu, the intermediate level court is allowing the presence of certain adults. And in Guangzhou, the intermediate court initiated the juvenile pre-trial joint judicial conference.

After many years' exploration and experience by various local procuratorates, some practices are maturing and becoming ready to be enacted in legislation. These practices include: the presence of legal guardians or appropriate adults at trial; expedited handling of juvenile criminal cases; mediation of criminal juvenile cases; the separation of the prosecutions of a crime committed by multiple juvenile offenders; non-custody risk evaluations for juvenile offenders; and conditional sealing or expungement of a juvenile's misdemeanor criminal record. Other aspects of pilot programs and reform should be hastened, such as social surveys of juvenile criminal cases, and educational follow-up for juvenile criminal suspects who were not arrested or prosecuted. These should be implemented together with the increasingly improved community correction and assistance system.

Juvenile crime victims also deserve full attention and protection. In March 2013, the court in Beijing first tried to seal video images for the protection of minor victims of crimes. In October 2013, the Supreme Court, the Supreme Procuratorate, the Ministry of Public Security, and the Ministry of Justice jointly issued an Opinion on Punishing Sexual Assault Crimes of Minors According to Law. The Opinion represents the first time in China's laws for the protection of minors that an "interest of the child comes

first" principle has been articulated. The Opinion, clearly stated that sexual assault of female minors, "school campus sexual assault," and the organizing and forcing minors into prostitution should be severely punished. The Opinion stated that punishment for obscene behavior in public places such as the classroom should be increased. The Opinion also emphasized the confidentiality of information regarding crime victims who are minors so as to prevent "secondary harm" to the minor. Thus the Opinion established a three-layer protection net.

There are further improvements possible in the law regarding victims who are minors. These are: providing legal aid to minor victims, legal representatives appearing in court on behalf of the minor, increasing civil compensation and state compensation for crime victims who are minors, and the revision of the relevant names of crimes in the penal code. For instance, abolishing the "crime of sleeping with minor girls" and changing it to the crime of rape would make it clear that having intercourse with a girl under the age of fourteen is a crime of rape subject to imprisonment of five years or more, and in serious cases, the death penalty.

II. Reform Measures in the Court System

The major reform of the court system in 2013 centered around the enhancement of public credibility, the better exercise of trial power, and the optimization of court functions. Specific measures included: promoting judicial transparency, improving work style, harmonizing the relationship between judges and lawyers, strengthening capacity building, launching pilot projects of a collegial trial panel and jury system, as well as improving case evaluation, guiding case precedents, enforcement mechanisms, and government compensation.

(I) Enhancing Judicial Credibility

The issue that could be as disturbing as injustice is a just verdict that is not believed to be just by the people. This crisis of judicial credibility is a serious challenge in China today, not only to judicial reform but also to social governance in general.

This is not a separate issue; it is part of the problem of low credibility of the entire system of public authority, which reflects a credibility crisis in society as a whole.

After Zhou Qiang became Chief Justice of the Supreme Court in 2013, he focused on enhancing judicial credibility through transparency and correcting wrongly handled cases. In April 2013, the Supreme Court held a legal experts seminar on enhancing judicial

credibility. In October 2013, the Supreme Court issued a directive entitled Opinions on Earnestly Upholding the Law for the People, Improving Judicial Justice, and Enhancing Judicial Credibility. The programmatic document which will guide the work and reform of the court in coming years is referred to as "Zhou Qiang's first directive."

The Opinions proposed the following: six ways of making the judiciary serve the people, four initiatives to ensure justice, four measures for enhancing judicial credibility, and six ideas for court reform. The measures for enhancing judicial credibility included increasing justice, transparency, democratic practice, the role of people's jurors and lawyers, and the capacity building of legal professionals.

Justice is the premise on which judicial credibility rests and justice must be seen and experienced by the public, and only then can the judicial credibility crisis be defused. The above-mentioned measures reflected this approach, which has also been an emphasis in China's Judicial Reform Reports in recent years.

Judicial credibility depends on judicial independence, supplemented by judicial accountability, oversight, and legal protection. Only when judicial independence is realized can judicial corruption be eliminated to the fullest extent and judicial credibility re-established.

Considering the great difficulties in realizing judicial independence and carrying out substantive legal reforms in the current situation, a more practical approach would be to try to increase judicial independence and credibility wherever possible.

The main objective of judicial reform is now to enhance judicial credibility and let the people experience justice and fairness in each case. Based on this thinking, a more feasible 9-point program of suggestions was made: 1. reducing the interference by local authorities; 2. reducing administrative interference; 3. distinct judicial accountability; 4. better job security for judges; 5. appropriate judicial oversight; 6. more judicial transparency; 7. speeding up the guiding case mechanism; 8. establishing enforcement units independent of the court; 9. introducing more democratic practices such as a true jury system.²

i. Promoting Judicial Transparency

Judicial transparency has been a major initiative and achievement of judicial reform in recent years. Since the last round of judicial reforms launched in 2008, several directives have been promulgated. They include: The Six-Point Regulation of Judicial Transparency, Certain Provisions of the People's Court's Handling of Media and Public Opinion, Standards of Open and Demonstrative Courts, Provisions of the People's Court's Publication of Verdict Documents on the Internet, and Provisions of the People's Court's Live and Taped Broadcast of Trials. The scope of open and demonstrative courts has expanded, and the online publication of verdicts continued.

Judicial transparency made new progress in 2013. In July the Supreme People's Court issued Interim Measures of Online Publication of the Supreme Court's Verdicts, and the website

of China's Verdict Documents was officially launched, and verdicts published. According to this Measure, death penalty review cases that have guiding significance and regular verdicts would usually be published on the Internet, whereas verdicts of civil and commercial cases resolved through mediation, withdrawal of complaints (or cases treated as the complaint was withdrawn) would usually not be published online. Parties can apply not to publicize if it was deemed to involve personal privacy or trade secrets. Personal information shall receive technical treatment when made public for the protection of parties. The above initiatives show that there has been substantive progress toward the full transparency of verdicts.

In August 2013 the trials of several high profile cases were broadcast live to the public, e.g., the case of Boxilai, the case of Wang Shujin in Hebei province, the case in Nanjing where two young girls were starved to death, and the case in Daxing, Beijing where a baby girl was fatally smashed to the ground. Especially with the much-observed Bo Xilai case, the entire trial was micro-blogged live, which became the biggest highlight. The degree of transparency was surprising. The sharp-tongued exchange of arguments on both sides and the intense confrontation indicated that the trial was not a pre-rehearsed show. In the circumstances of the court's poor image and low judicial credibility, this trial practice of Jinan Intermediate Court won overwhelming approval and commendation. Although the public and news media were not allowed to observe freely, the degree of transparency went far beyond expectations. This showed that judicial transparency is not something to be afraid of; on the contrary, it can greatly enhance the credibility of the court. The open trial of the Boxilai case had a demonstrative effect and set a good example of transparency for courts at all

2. For more details see "Nine Suggestions for Enhancing Judicial Credibility." Study and Exploration, Vol. 1, 2014

levels and in all localities. From now on, if live micro-blogging at trial and live video of major cases that draw public attention could become common practice, it would greatly improve the image of the court.

In November 2013, the Decision made by the Third Plenary Session of the 18th Communist Party Central Committee proposed to “promote open trial and open prosecution, record and retain the entire court hearing and trial material; improve rational explanation of legal documents, and encourage the court to publicize verdicts in force”. The Supreme Court launched its microblog on November 21, 2013 and on November 28, it held a News Conference on Judicial Transparency of Normative Documents. At the News Conference Certain Opinions on Building Three Platforms of Judicial Transparency, and Provisions of Publicizing People’s Courts’ Verdicts on the Internet were issued. The directives emphasized “to change from passive transparency to active transparency; change from internal transparency to transparency to the public; and change from transparency in form to transparency in substance”. The three platforms for transparency were transparency of trial procedure, transparency of verdict documents, and transparency of enforcement information.

Several initiatives have been undertaken to implement the building of the three platforms. The first was using information data technology to publish the procedure of case filing, court trial and hearing, panel discussion, and verdict and sentencing. For this purpose the website of China’s court trial live broadcasts was officially launched in December 2013. Second, building and improving the website of China’s Court Verdicts where publishing a case verdict is the rule and non-publishing an exception. No obstruction to the publication is allowed, and the ultimate goal is to have all verdicts of the four-tier court system in China published there. Third, improving the enforcement information enquiry system; conducting synchronized audio and video recording of hearings and

implementation of major enforcement cases; making public the list of people who lost their credibility, are restricted from leaving the country, and are restricted for consumption limit, so as to boost the social credit system and enhance overall open information.

Provisions of Publicizing Courts’ Verdicts on the Internet set publishing principles as “legal, timely, normative, and truthful”: required that courts at each level designate a special unit for verdict publication; listed four exceptions for non-publishing; stipulated that real names and entities should be used when publishing, and delineated the scope of anonymous and deleted information. Publishing verdicts has great significance. If in the next five years, 80% of verdicts of courts at all levels are published online, it will make a great contribution to judicial reform.

The above normative documents provided feasible concrete measures. In the past few years, judicial transparency has made considerable progress, basically advancing from trial transparency to comprehensive transparency, from procedural transparency to combined transparency of procedure and results, and from implementing the power of the court to protecting the right to sue and the right to open information as required in a democracy. The next step will be focusing on the actual implementation of rules and regulations.

There is still a long way to go for real implementation of judicial transparency. For instance, there are still too many restrictions on the observation of trials, especially the so-called “sensitive” cases; sometimes transparency is selective: information on high profile cases that have broad public concern is kept strictly secret, whereas trials of insignificant cases are broadcast live; some courts lack confidence in the fairness and quality of their verdicts, and the promptness of publication varies greatly from place to place.

To solve these problems and push further for judicial transparency, the following initiatives could be considered: make trial hearings completely open and encourage public observation; apart from the necessary security checks, eliminate ID checking, as is the common practice throughout the world. Further clarify the scope and content of verdict publication, relax restrictive standards, and clarify accountability of the court for not publishing effective verdicts so as to avoid publication as a mere formality. The selective publication of information should be prohibited; there should be greater openness for high profile cases; and preference given to live video broadcasts rather than live micro blogging. Press observation of trials should be given priority, and the conveniences provided for it. Further, efforts for more open trial hearings, such as ensuring open trials for appellate hearings, should be done. Fully ensuring litigants' rights to review files at all stages of litigation also should be implemented. The building of three transparency platforms requires a great deal of information technology expertise, and adequate funding should be provided to courts in less developed areas.

ii. Improving Court Ethics

For many years, improving court ethics to ensure judicial integrity has been the reiterated objective of the court. Over the past year, in response to the Rectification Movement initiated by the central government, the court made more effort. In the end of 2012, to implement The Eight Provisions of Improving Work Style and Having Closer Ties with the People issued by the Communist Party Central Committee, the Supreme Court promulgated Six Measures of Further Improving Judicial Ethics. The six measures were: adhering to the principle of law serving the people, promoting judicial transparency, strengthening communication with the public, streamlining meetings, documents, and briefs, and improving research and survey work.

In March 2013 the national court system held an anti-corruption conference. In April the Supreme Court issued The Notice of Conducting Judicial Ethics Education, which exposed six types of unhealthy tendencies: using public funds for receptions and entertainment, luxury ceremonies, unauthorized leave of absence, lackluster work efforts after long holidays, lending government vehicles to other entities, and using them for personal purposes. In May 2013, the Supreme Court launched the second round of judicial inspections and issued The Disciplinary Enforcement Proposal for Illegal Purchase and Use of Government and Police Vehicles and for Illegal Business and Profit-Making Activities. In June 2013 The Notice to All Courts in the Country to Return Club Membership Cards was issued, and in December 2013 The Provisions of "Ten-Nos" to Rectify Unhealthy Tendencies during Festival Time as well as The Notice of Conducting Ethical Education in the National Court System for 2014 were issued.

The above directives had some effect on curbing the unhealthy tendencies of stubborn resistance, laziness, and luxury, "winning and dining" with public funds, and using public vehicles for private use. But this kind of "correction drive" does not have the same long-term effects as institutionalized mechanisms. Also, judicial and specific inspections may reinforce administrative links between the higher and the lower court, which is not conducive to internal independence within the court system.

The collective prostitution case involving judges of Shanghai Superior Court in August 2013 and the "private room ordering" case by a Hubei Provincial Superior Court judge in December indicated the limitation of the above efforts. Yet it also showed the effectiveness and importance of the oversight power of the parties involved and the public. Therefore the key issue is not the rectification movement, but rather, the protection of freedom of speech,

the encouragement of people's anti-corruption actions, the protection of the rights of the parties and the lawyer, enhancing judicial transparency, enforcing the Constitution, practicing the rule of law and democratic constitutionalism, thus really "locking powers in a cage." Future reform efforts needed include: while implementing judicial accountability, oversight, and protection, enhancing judicial independence; clarifying a judge's boundary of responsibility, making the judge independently accountable; and also establishing a disciplinary system for judges that focuses on prevention and punishment of corruption by judges, restricting judges' outside job activities, and promoting a sense of professional ethics among judges.

iii. Improving the Relationship between Judges and Lawyers

The relationship between judges and lawyers is the core in judicial process. Under the current legal system and environment, lawyers in general are regarded as "trouble-makers". Especially in recent years the relationship between judges and lawyers has become increasingly tense and in some cases even fiercely confrontational. Recent incidents included lawyers Yang Jinzhu and Li Jinxing going on a hunger strike after being evicted from the court in Yinhai district, Beihai city, Guangxi province; lawyer Wang Quanzhang being detained by the court in Jingjiang city, Jiangsu province; lawyer Wang Xing being forcefully evicted from the court in Chuanying district, Jilin city; lawyer Zhuxiaoding being evicted by sheriffs in the superior court of Shandong province for refusing to undergo a security check; and in the small river case of Guiyang several lawyers being evicted from the court. Sometimes the court imposed harsh discriminatory security checks on "sensitive lawyers" in "sensitive cases" such as repeated ID checks, body searches, and the forced removal of shoes and belts. Lawyers have difficulties in file reviewing and making copies and they are often scolded, interrupted in court, or evicted.

Lawyers are very active on microblogs. Out of a professional sense of responsibility, they often use self-created media in challenging the court and judges, thus making the relationship between the two groups even worse. This tension tears up the community of the legal profession and damages the judiciary's image and credibility.

Having realized the seriousness of this problem, in the past year the Supreme Court repeatedly stressed the role of the lawyer and requested that the relationship between judges and lawyers be improved. On April 25, 2013, at the criminal trial survey seminar, Deputy Chief Justice of the Supreme Court, Shen Deyong spoke highly of the role of lawyers in preventing wrongly handled cases. He stressed that lawyers are important members of the legal professional community whose rights to practice according to law should be fully respected and protected. The following day, at the forum of legal experts and scholars on how to enhance judicial credibility, Chief Justice Zhou Qiang pointed out that development of the judicial system must closely depend on joint efforts of legal scholars and lawyers and if lawyers and courts stand on opposite sides, a sound legal system will be impossible.

Through the initiatives of the Supreme Court and the efforts of the lawyers' community and related agencies, many local courts have issued directives protecting lawyers' rights. In May 2013, at Bayannao'er city intermediate court in Inner Mongolia, a green passage was opened for lawyers, where lawyers only needed to show their ID. In July, the intermediate court in Enshi city Hubei province issued a Notice of Ceasing Security Check of Lawyers and Other Professionals Who Appear in Court to Perform Legal Duties. In Huizhou, Guangdong province, Huiyang district court relaxed the security check for lawyers and they can now enter the court freely with their Lawyer's Certificate. The Bar Association in Beijing worked together with Beijing superior court and issued The Guideline to Simplify the Security Check Procedure for

Lawyers' Entering Courts in Beijing. Starting September 1, 2013, except for "temporary checking", lawyers in Beijing only needed to show their professional certificate to enter courts. In October 2013, the superior court in Henan province issued Certain Opinions on Establishing Positive Interaction between Judges and Lawyers to Jointly Promote Justice, which stipulated that there was no need for a security check when lawyers came to the court and if there were special circumstances when security checks were needed, lawyers should be treated the same as prosecutors. In November 2013, the superior court in Hebei province issued The Opinion on Further Respecting and Protecting Lawyers' Rights to Practice and Regulating Judge-Lawyer Relationship, which stipulated that lawyers did not need to go through security checks when attending trials and court hearings, and a one-stop service would be set up make it more convenient for lawyers in filing, paying fees, obtaining court date, service, and accepting litigation materials. In December 2013, Chongqing city began the one-card practice to make it easier for lawyers to participate in litigation.

While affirming the above experimental measures of local courts, the most direct and effective improvement would be to revise Article 6, Section 1 of the Rules on Security Check of Judicial Officers and to abolish restrictions on lawyers' appearance in court to perform professional duties, making it clear that prosecutors and lawyers only need to show valid certificate when coming to the court.

To improve the judge-lawyer relationship, the court needs to take the initiative by extending the olive branch first. When the judge gives an inch, the lawyer will give a yard. Although the court has taken some measures such as no security checks for lawyers or assigning a special lounge for lawyers, these will not radically improve judge-lawyer relationship. The more fundamental action will be to realize judicial fairness and effectively guarantee lawyers' rights.

Protecting lawyers' rights should become a consensus principle of the legal community. The judges, prosecutors, and lawyers are not only interdependent in sharing honor and disgrace, but also they are the safeguard of justice. If the lawyers' practice right is not guaranteed, the prosecutor will lose an antagonizing entity, and the truth may not come out. Judges without oversight and checks and balances are bound to practice judicial arbitrariness. If the lawyers' right to practice is not guaranteed, the prosecuting power and trial power cannot be respected and the judge and prosecutor can easily become a vassal for power. Therefore, the safeguarding of lawyers' rights not only requires the efforts of lawyers, but also requires judges and prosecutors to take on this common mission, because it is a basic premise of a society under the rule of law.

As for the practical measures of improving the judge-lawyer relationship, there is an urgent need to establish a lawyer to judge conversion system, which will be helpful for mutual understanding, respect, tolerance, and trust between judges and lawyers. Selecting judges from lawyers is a natural continuation of a lawyer's career. Judges with practicing experience as lawyers will better understand a lawyer's behavior and better tolerate a lawyer's fierce words and deeds or performance in court. Maybe in the future those lawyers who become judges will experience and understand better the difficulties of making a verdict decision. In this way, lawyers will trust judges more because they have similar professional experience; similarly judges will trust lawyers more because one of them may become a judge one day. Eventually the judge-lawyer relationship will become a virtuous cycle. Therefore the judiciary should make great efforts to select judges from lawyers and rapidly establish the system of conversion from the lawyer to the judge. This system, originated in the common law countries of Britain and the U.S., has been followed by continental law countries as well and thus has become a common practice throughout the world. It should be an important direction for China's reform of the judge selection method.

iv. Strengthening Capacity Building of Judicial Professionals

In October 2013, the Supreme Court issued a directive entitled Certain Opinions on Further Strengthening Capacity Building of Judicial Professionals under the New Situation. It proposed to enhance judicial abilities from the following nine aspects: professional training, political and ideological building, leadership building, staff management, communist party work, culture building, grassroots building, ethics and clean government, and organization building.

This Opinion highlighted career development directions for legal professionals. Specifically it clarified the power and responsibility of judges, judicial assistants, and administrative staff; tightening judges' threshold criteria and selection process; advancing the reform of judge's progression; improving management of court clerks; regulating management of sheriffs and marshals; improving judges' job security; gradually increasing salary and benefits; and broadening human resource to select more judges from outstanding lawyers and legal scholars. These points have been mentioned in many legal professional building documents before and need to be implemented soon.

The Decision of November 2013 clearly laid out the goals and tasks: establishing a management system that suits characteristics of the legal professionals; building a sound unified mechanism for recruitment, position exchange, and gradual progression of judges, prosecutors, and police officers; improving human resource management of the different categories of legal professional; and achieving their job securities.

In order to realize these goals, the traditional selection mechanism of judges needs to be changed, and a unified judge selection committee needs to be set up, using a scientific system of selection, appointment, promotion and discipline, to ensure professionalism of

judges. Threshold criteria of judges need to be stricter. To be a judge, one must have legal education with a certain number of years of practical experience as a lawyer. The practice in common law systems of selecting judges from lawyers is an especially good model that should be the main mechanism in the future.

(II) Better Exercising of Trial Power

The key issue to having the sound practice at trial is to eliminate administrative interference. In October 2013, the Supreme Court issued A Pilot Program of Deepening Reform of Judicial Transparency and Trial Process, deciding to start a pilot reform at 7 intermediate-level courts and 2 basic-level courts in Shanghai, Jiangsu, Guangdong, and Shaanxi provinces and municipalities. The pilot reform program was officially launched in December 2013 and will last for two years. According to the program, the pilot courts will set up an open information platform, which will make the trial procedure, verdict document, and enforcement information completely open and transparent. Trial apparatus will be set up in a scientific way, reasonably defining the division of responsibility with good coordination between the various units within the system, which will help support the initiative of the judge. The trial and administrative functions of the various units within the court system will be deployed with strengthened checks and balances, to ensure that the single judge and members of the trial panel are exercising trial power justly and independently. The unified power and accountability system of the single judge, the collegial panel, and the trial committee will be strictly implemented. The rules of procedure of the trial committee will be improved to clarify the scope of discussion of the cases. Among these pilot measures, the focus is on reform of the trial management responsibility of the chief justice of the court and head of the tribunal with a track record established throughout the entire process.

The Decision of the Third Plenary Session of the 18th National Congress of the Communist Party Central Committee in November 2013 emphasized on the sound practice of judicial power and eliminating administrative interference. It stated: "reform the trial committee system; improve the accountability of presiding judge and trial panel; let the adjudicator make the verdict and be accountable for the decision; clarify functions of courts at various levels; and define jurisdiction oversight of the higher and lower court." The Decision also proposed to set up a human resource management system that suits the characteristics of different categories of legal professionals to ensure their job security. Thus, the entry point for judicial reform shall be the adjustment of the working relationship within the court and between the higher and lower court, as well as the professional development of judges themselves, so as to reduce administrative interference and increasing the independence of judge's decision-making.

Nonetheless, reducing administrative interference is bound to be a difficult process. So far there has been no concrete operational proposal to implement the objective of reform, and the Supreme Court's Pilot Program of Deepening Reform of Judicial Transparency and Trial Process appears rather weak and far from adequate in overall design. For example, the trial management power of the chief justice and head of the tribunal will definitely affect judges' independent judgment. Even when there are complete records of the management power exercised and improved rules of procedure of the trial committee, it is insufficient to ensure independent trials. There is still room for the leaders to influence the trial.

This shows that the resistance to court reform and judge's independence mainly comes from the court system itself. Actually, if there is to be true judicial independence, the practice of the chief justice of the court and the head of

tribunal's review and approval of trial should be abolished without any conditions, and the trial committee repealed. The relationship between the higher and lower court should be clearly defined, then the integrated power and accountability can be realized, thus preventing the "sharing or evasion of responsibility" through "collective efforts" of the single judge, the trial panel, the chiefs of the court and tribunal, and the trial committee. In short, the division of functions within the court should focus on clarifying "leadership" roles and limiting "leadership" power; and the adjustment of the relationship between the higher and lower court should focus on the higher court giving up many of its powers and control over the lower court. Therefore the degree to which administrative interference is reduced depends on the court, especially the Supreme Court's resolution of "self-revolution."

It should be noted that the Pilot Program was issued before the Decision, and it had been expected that the fourth five-year reform outline of the court would propose a more comprehensive reform program for judicial independence. Some suggested major reform measures for reducing administrative interference are:

1. Prohibit the higher court from influencing the trial of the lower court in any way; differentiate the judicial function from the administrative function; and clearly define the administrative management relationship between the higher and lower court. The higher court should only affect the lower court through jurisdiction-level oversight, and the lower court will only cooperate with the higher court in areas of sheriffs, statistics, file management, and information technology. The higher court may alter the lower courts' verdicts through review and re-trial, but the process has to be initiated by the procurator or the parties. The change of a verdict by the higher court does not necessarily

- mean an error of verdict by the lower court. Investigation of misjudged cases has to be strictly limited to a few cases of corruption, favoritism, and a wantonly arbitrary verdict. The difference in level of trial is only a division of labor; there is no difference of status among the judges.
2. Completely abolish the practice of asking for instructions about a certain case, and the Supreme Court will no longer give instruction relating to a specific case. This was already mentioned in the Opinion of System Set-Up for Preventing Wrongly-Handled Cases, which demands that the lower court "shall not ask for instruction from higher court regarding facts or evidence of a case."
 3. Abolish the practice whereby the chief of the court or tribunal gives instructions to a specific case. The chief of court and tribunal shall not interfere with a judge's trial. Reduce the power of court and tribunal chiefs. Their main function is to represent the court to the public, and to conduct administrative management of internal judicial affairs. It should be clearly stated that any interference of a judge's trial of a case should lead to adverse consequences, including resignation.
 4. Abolish the trial committee practice. The above-mentioned Pilot Program requested that "the rule of procedure of the trial committee and its operation be improved and the scope of discussion of the cases be defined." This will not resolve the problem of "those who conduct the trial do not make the decision and those who make the decision are not present in trial." This practice is directly contrary to the principle of rhetoric and impedes judicial independence. As a transitional measure, before the committee is abolished altogether, its function could be defined as that of an advisory entity and it can only give advisory opinions on certain legal issues involved in a case.
 5. Abolish the judicial inspection practice. The higher court cannot impose any kind of administrative inspection on the lower court.
 6. Repeal the current practice of court management and evaluation of judges based on numbers and figures. Data should be only used for statistical purposes.
 7. Establish a system whereby the third trial will be final based on previous trials of facts and trial of law, and supplemented by the first trial final and second trial final practice.

i. Advancing the Collegial Trial Panel Reform

Reform of collegial trial panel has been one of the focuses of court reform over the years, beginning with the civil trial reform launched in late 1980s. The three Five-Year Reform Outlines of the Supreme Court and the last round of judicial reform program all emphasized the goal "to reform the collegial trial panel and to strengthen its function". Several related directives have been issued, such as Certain Provisions of the Collegial Trial Panels of the People's Court; Certain Opinions on Chief Justice, Deputy Chief Justice, Head of Tribunal and Deputy Head of Tribunal Participating in Collegial Trial Panels; and Certain Provisions of Further Increasing the Function of Collegial Trial Panels. Yet reform in this regard is still rather weak and it is quite common for the panels to exist in form only.

In contrast, some pilot practice in local courts has brought in new ideas. For instance, in recent years in the Yantian district of Shenzhen and Shijingshan district in Beijing, the court has made the presiding judge responsible for the trial. In 2012 Futian district court of Shenzhen and the intermediate court of Foshan made head of the collegial panel responsible. In April 2013 the Superior Court in Henan province piloted a new form of collegial panel system in 6 intermediate courts and 30 basic-level courts.

The names may vary but the basic concept is similar: a presiding judge is selected through an open process, and is supported by judge assistants and staff. The presiding judge plays the key role as case adjudicator and manager, responsible for case assignment, decision-making, and the final signature of a case, and is also responsible for job division of team members and their evaluation. The presiding judge has integrated power and responsibility and is accountable for the case handled by the team.

The core aim of this initiative is to ensure judicial independence and to overcome the widespread defects of "separation of trial and verdict-making." This initiative is helpful in improving a judge's professionalism and accountability, reducing corruption, and increasing the quality and efficiency of trials. For instance, in Futian district court in Shenzhen, the level trial efficiency increased tripled in 2013. Compared to the year before, 9,849 more cases were closed, and the rate of written complaints declined to 0.8%, which was the lowest in the city. In Foshan city intermediate court, in the first 10 months of 2013, while the overall number of cases filed increased, 14 fewer cases were remanded for retrial than in the previous year, and public complaints decreased. Based on these good results, the Supreme Court assigned some of the courts as reform pilot courts. In the meantime the Supreme Court issued The Pilot Program of Deepening Judicial Transparency and Trial Practice, which expanded reform pilot courts.

In comparison to the presiding judge practice, more bold and comprehensive reform measures were adopted by the Heng Qin new district court established in Zhuhai city, Guangdong province in the end of December 2013. Their exploratory measures included: having a fixed number of eight judges, each supported by three assistants and one clerk; judges have their own management system; there are no case-differentiated tribunals and no case approval

practice; there is a judge conference which will decide case-related matters; there is no hierarchy corresponding administrative unit in the higher and lower court, but only support and coordination in trial management, human resource supervision, judicial affairs office, enforcement unit, and sheriffs. The traditional functions of the tribunal chief will be handled by a judge conference and trial management office, and administrative functions will be handled by the head of the court, human resource supervision and the judicial affairs office. This exploration broke the traditional internal structure of the court, reduced internal administrative interference, and enhanced the professionalism of judges. It complies with the rule of operation of judicial power and has great demonstrative significance for the national reform of the court system.

According to the proposal of the Decision: "to improve presiding judge and collegial trial panel responsibility/accountability system, so as to let the adjudicator make the decision and the decision-maker be accountable for the decision." It can be expected that the collegial panel reform will be actively implemented. But just as the reform of reducing local interference and administrative interference, the program of collegial panel reform needs to be more concrete and feasible and must be pointed to the direction of full judicial independence.

Although the current presiding judge practice enhanced judicial independence to a certain extent and moved closer to integrated power and accountability, it has obvious defects. On the one hand, it reduced the superficiality of the collegial panel; on the other it added another "leadership" layer, i.e., the panel must act under the leadership of the presiding judge and judges cannot exercise trial power in an equal and independent manner. The way to ensure judicial independence should be to reduce or eliminate administrative interference, yet the current system fostered more administrative meddling,

which is definitely not the most desirable solution.

Therefore, the future collegial panel reform must be aimed at achieving the following: ensuring the independent exercise of trial power of each and every judge; defining the commenting and voting rules of the collegial panel; streamlining the case-handling process according to the complexity of the case; abolishing the case approval practice by the chief of the court or tribunal; abolishing the trial committee; abolishing the practice of asking for instruction for case trial; implementing accountability for wrongly handled cases; improving the judge selection process; providing higher salaries and job security; and establishing a separate judge progression and management mechanism - thereby thoroughly eliminating the administrative operation of the collegial panel and ensuring that the collegial panel and the single judge can exercise trial power independently without any interference from any organization or individual.

ii. Conducting Pilot Jury System Reform

The jury system is the main path to realizing judicial democracy. Since the implementation of The Decision of Improving the People's Jurors System in 2004, 8.034 million people's jurors have participated in trials. In 2012 alone, the number of jurors who participated in trials was three times that of 2006, and the number of cases they participated in trial reached 6.289 million, of which 1.764 million were criminal cases, 4.298 million civil cases, and 0.227 million administrative cases. Yet for a long time, this was a superficial formality, with the jurors present but having no say in the trial. Other problems of the juror system included: the qualification requirement was too high, the fixed term too rigid, the scope of their participation and function unclear; the decision made had no authority and no reasonable method of evaluation; public interest in participation was

low; most jurors were part of the elite; powers and responsibilities were unclear, most jurors were involved in mediation only, and there were no subsidies, etc.

In 2013 juror practice focused on expansion of the scale of the initiative. In May 2013, at the nationwide video conference, the goal was set to increase jurors to 200,000 within two years at various levels of the courts. In October 2013 Zhou Qiang, Chief Justice of the Supreme Court, gave a report to the Standing Committee of the National People's Congress on the implementation of The Decision of Improving the People's Jurors System and proposed to strengthen the organization and leadership, increase the juror numbers, enhance training, encourage more trial participation, and raise awareness. In November, the Decision of the Third Plenary Session of the 18th Communist Party Central Committee called for "extensive practice of people's jurors and people's monitors mechanism to broaden the channel for orderly public participation in judicial matters." Many hope this will help promote true judicial democracy. In December, the Supreme Court instructed that pilot reform projects be employed in some intermediate- and basic-level courts in ten provinces and municipalities, including Beijing. The reform measures included: expanding the scope of the selection of jurors; applying the random selection principle; expanding the case range of juror trial participation; ensuring jurors' rights of file review, trial participation, and giving dissenting opinions; improving the commenting procedure of the collegial panel; inviting expert jurors in special types of cases; strengthening jurors' training; establishing funding standards and a periodic adjustment mechanism. Among these measures, the random selection method and the introduction of expert jurors could achieve positive results.

Some success in juror system reform has been achieved in some local court experiments. For

instance, courts in Shanghai and Fuzhou have long invited expert jurors in cases involving more specialized knowledge such as intellectual property and business cases involving foreign parties, thus making up for inadequacies in some judges' professional knowledge. Ningjiang court in Nanjing city introduced larger collegial panel reform in which one judge and four jurors form a "five-person panel"; or two judges and five jurors form a "seven-person panel" so as to increase the proportion and influence of jurors in a case. Jiangbei court in Ningbo city experimented with the "grand jury" practice in the trials of business cases where fact-finding and law-applying are separated and jurors play a key role in fact verification.

The above measures are conducive to increasing jurors' function in trial participation and mitigated some defects of the current situation of jurors' mere presence without participating in trial. But the core problems have not been touched on or solved, making it difficult to have a truly effective jury system. The following suggestions are made for juror reform based on the experience in Guangan Sichuan province working together with the procuratorate on an experiment of the people's monitoring system.

1. Selection of people's jurors should be from common people and have a broader base of representation; it should primarily rely on voluntary application to ensure motivation and enthusiasm of participation. Theoretically, any application from citizens of 22 years old and above should be entered in the database and randomly selected when needed.
2. Define the scope for the use of jurors. Currently it could be temporarily limited to criminal cases that are subject to 10 years imprisonment or more, or criminal cases with great social concerns. In the future, the scope can be expanded when judicial resources permit expansion.
3. Improve the process of jurors' participation: first, abolish training for jurors and adopt the practice in common law countries like the Britain and the U.S. where instruction is given to jury and there is a concise guidebook about jurors' rights, obligations, and performance requirements; second, separate fact-finding and law application, with jurors participation only in fact-finding; third, jurors cannot be changed without sound justification during a trial; four, ensure that jurors have equal status to the judge; five, increase the number of jurors in a collegial panel where usually there will be one judge and four jurors so as to prevent strong guiding by the judge; six, the head of the collegial panel will be selected by drawing lots, and when making comments on a case, the judge should be the last to give an opinion; seven, abolish the current rule which states "when there is difference in opinions of the jurors and the judge, the panel shall submit the case to the chief of court to decide whether to submit the case to the trial committee for discussion and decision and to provide explanation." Decisions should be made in strict observation of the principle of majority vote.
4. Measure to ensure jurors can perform their duties: first, only providing basic subsidies for loss of work time, transportation costs, and meal subsidies; second, abolishing the current practice of assessment of jurors; third, strengthening the protection of jurors' right to give independent opinions and to vote independently. Jurors' speech and action during jury duty performance are free from legal action, and employers must enable selected jurors to participate in trial; four, providing for the effective safety protection for jurors.
5. Abolish the court assessment system based on whether a jury is involved. The use of a jury should depend on the specific situation of the case and the rule of jury involvement. The

role of the jury system depends on the quality of participation, not the number of cases that jurors are used in.

6. Inviting expert jurors in trials that require specialized knowledge.
7. In the future, enact separate legislation on the jury system on the basis of the current judicial interpretation, with an emphasis on substantial participation. Grand jury practice could be tried when and where the jury system is working well. The future model could be co-existence of grand jury trial and jury participated trials.

iii. Improving Case Evaluation Practice

In 2012 the Supreme Court issued The Notice of Conducting Court Trial Evaluation and Verdict Documents Evaluation Among Grand Training of all Staff. During the “two evaluation drive,” 2,767,000 trials and 1.4386 million verdicts were reviewed and evaluated throughout the courts in the country. This drive continued in 2013. Court hearings and trials are the key elements. So evaluation of the two could reflect on the quality of a judge’s handling of a case and judges should pay attention to their words, manners, and the image they create in court. It could also make them pay more attention to the writing and reasoning of their verdicts. But this drive is supervising the judiciary with administrative means, which strengthened administrative control of the higher court over the lower court. Along with verdicts being publicized online and gradually implementing live broadcast of trials, the court’s internal “two evaluations” should be abolished because only the public is the best evaluator of court trials and verdicts.

In June 2013, the Supreme Court issued The Assessment Index Compiling Method of the Quality of Case Handling of People’s Court (Trial), which gave clear definitions of “dimensionless method” and “index synthetic method” to ensure

rational use of the assessment index in court at all levels and to prevent the unhealthy tendency of “putting numbers first.” This directive was the first assessment operational document after the 2011 Guiding Opinion of Conducting Case Quality Evaluation, which helped to define the evaluation drive. But in reality, the evaluation drive did more harm than good and in some way was even counterproductive.

As a matter of fact there should be a radical rethinking about case quality evaluation and court performance assessment. First, the case quality evaluation practice has become a “commanding baton” in court work. In a para-administrative court system, any indicator practice could trigger competition through competitive access to resources, which may lead to fervent pursuit of numbers and even falsification without regard to justice and judicial efficiency. Second, the case quality evaluation does not only evaluate a court but also a judge, which may affect a judge’s normal trials, increase the burden on judges, distort a judge’s judicial acts and therefore adversely affect judicial independence. Lastly, there are problems in the evaluation system itself. For instance, the current index and indicators can hardly reflect judicial effectiveness objectively; it is hard to obtain data about public satisfaction; and setting the percentage of cases settled through mediation gives preference to mediation over litigation, which may result in compulsory mediation.

Therefore, case quality evaluation and court performance assessments are not scientific evaluations of judicial activities. The final and only judicial standard is fairness and justice, nothing else. Under this premise, litigation effectiveness and judicial efficiency could become the next level of evaluation standard. The court is not an administrative agency and should not be managed through administrative performance assessments. Relevant data should only be used for judicial statistics purposes. A judge is not an official who requires

performance evaluation; a judge is a magistrate who exercises trial power. It is therefore suggested that all indicators and data that are designed to evaluate a judge's performance be abandoned. The key element of realizing judicial fairness is not evaluation but accountability, judicial independence, reasonable disciplinary measures, and a sense of professional ethics, so as to make the handling of each and every case fair and just.

(III) Optimization of Court Function

i. Improving Guiding Case Mechanism

In February 2013, the Supreme Court published the fourth batch of four guiding cases; and in November 2013 the fifth batch of six guiding cases. Since the guiding case mechanism began in 2010, the Supreme Court has only published five batches and 22 guiding cases in total. The frequency and numbers of such publications are both low. Hopefully the Supreme Court will accelerate publishing more guiding cases and make it a key regular function of the Court; the guiding cases will replace judicial interpretations and become the main way that the Supreme Court provides guidance for the application of the law and public policy. There is also hope that the Supreme Court will promote the full publication of verdicts online and establish a nationwide court case database in accordance with the directive of Certain Opinions of Advancing Three Platforms of Judicial Transparency issued by the Supreme Court.

In the meantime, the main focus should be switched to the application of guiding cases. The key is to clarify the authoritative effectiveness of the cases. Although the 2010 Guiding Case Provisions stated that "[p]eople's courts at all levels should make reference to published guiding cases when adjudicating similar cases," it is not clear about the meaning of "similar," how reference should be made, whether the case could be quoted, and what the remedies are if the guiding cases are not followed.

At present, the Supreme Court has drafted detailed provisions regarding the application of guiding cases, which are at the stage of soliciting comments and will be published soon. It is expected that the detailed provisions will further improve the case guiding mechanism, especially the application and authority of the cases. We propose the following suggestions: further clarifying the standard of "similar cases"; allowing the party and lawyer to quote the guiding case; allowing the court verdict to make reference to trial principles indicated by the guiding case; obliging the judge to make it clear whether the guiding case is applicable; removing the request that the application of a guiding case be explained in the verdict and reported to the court guiding case office. In cases in which the guiding case was not followed and the application of the law was wrong, the appellate court could change or amend the judgment and the party could use it as a legitimate reason for appeal.

ii. Advancing Enforcement Reform

Some progress was made in the reform of enforcement work in 2013. In January the upgrading of the enforcement information systems of all courts in the country was completed. In July 2013 Certain Provisions of Publicizing the Namelist of Dishonest Enforcees was issued, which specified six circumstances where the enforcee has the ability to honor the effective verdict but may refuse to do so and thus will be put on the namelist. Courts in Beijing, Sichuan, and Shanxi publicized the namelist successively. In September 2013, The Provision of Network Querying and Freezing Enforcee's Bank Account specified the court's enforcement network procedures. Also, the Enforcement Bureau of the Supreme Court entered a memorandum with several state-owned banks on network querying, freezing, and deducting enforcee's funds in the bank. In November 2013 the directive of Certain Opinions of Advancing Three Platforms of Judicial Transparency issued by the Supreme Court required that for the purpose of judicial

transparency the enforcement information and query system be improved; simultaneous audio and video recording be done in major enforcement case hearings and implementation; namelists of dishonest enforcers, those who are restricted from leaving the country, and are restricted for high consumption be publicized, so as to establish a public credit system, and push for full transparency of enforcement information.

The above initiatives are conducive to regulating and strengthening enforcement. Over the past years, although many enforcement reform measures have been introduced, the problem of difficult and chaotic enforcement has still not been solved. This shows that enforcement reform is a systemic project, and improvement of working mechanisms and methods and even decentralization of enforcement powers are not enough to get us "out of the woods." Problems have to be dealt with at their root. To solve the problem of "difficult enforcement," apart from reinforcing measures and procedures and encouraging the enforcer to cooperate, more emphasis should be put on overall system reform, judicial independence, justice, and even political system reform. The problem of "chaotic enforcement" needs to be dealt with in the comprehensive framework against corruption.

iii. Improving State Compensation

In December 2013 the Supreme Court issued Provisions of the Compensation Committee of People's Court Using Cross-examination Procedures to Adjudicate State Compensation Cases. It stated that when there is controversy regarding tort facts, consequences of damage, and causation, and the controversy cannot be resolved through trial by written communication, cross-examination procedures should be employed. It emphasized the principle of open cross-examination: except for circumstances involving state secrets, personal privacy, and conditions prescribed by law, all cross-examination should be conducted openly. It

also laid out specific provisions about the entity organizing the procedure, parties participating in the procedure, and the notice, preparation, content, sequence, minutes, extension, and effectiveness of the procedure. The burden of proof is on the applicant for compensation and the government agency that is sued for compensation is to present evidence favorable to its case. In special state compensation cases, the government agency with an obligation for compensation has a special burden of proof. The Provisions also specified a statute of limitations, terms of evidence submission, and the legal consequences of extension and overdue evidence submission. It emphasized evidence-based trials and specified that evidence not admitted cannot be used in fact verification.

The Provision aimed at implementing judicial transparency, which is a helpful procedure for the Compensation Committee of the Supreme Court in reviewing state compensation cases and ensuring equal participation and equal rights to know and to express opinions about the compensation applicant and the compensating state agency. Besides improving the procedure, attention needs to be paid to the outstanding issues of "difficulty in filing" and "difficulty of enforcement" in state compensation cases. Citizens should be given more and better remedies; standards of compensation should be higher, the scope of compensation broader, and the organizational structure and functioning of the state compensation committee needs to be improved. Only through fundamental system reforms can the state compensation mechanism be realized and such cases diminished or prevented from occurring.

In addition, other reform measures of the court also included: in January 2013 The Notice of Pilot Program of Centralized Administrative Case Trial by the Supreme Court required that superior courts designate one or two intermediate courts and the designated intermediate courts designate two to three basic-level courts

as focal points for administrative case trial. This reform mechanism helps avoid local interference, to a certain extent, by ensuring that jurisdiction is transferred before an independent administrative court is established.

In May 2013 the Supreme Court revealed that it would explore setting up a full-time professional mediator practice on the basis of its 2012 Overall Pilot Reform Program of Convergence of Litigation and Alternative Dispute Resolution Mechanisms. The initial idea is to make judges or judge assistants with strong mediation skills full-time professional mediators in order to solve the problems of non-separation of mediation and litigation and compulsory mediation. The idea is a step in the right direction, but more civic mediation organizations and social capacities should be introduced so as not to overly drain limited judicial resources.

III. Reform Measures of the Procuratorate

In 2013 the Procuratorate doubled its anti-corruption efforts. It piloted procurator case responsibility, established mechanisms to prevent illegal investigations, strengthened the procuratory function in criminal appeals and procuratory oversight of civil litigation, and increased capacity building of procurators.

i. Deepening Reform of the Anti-Corruption System

In recent years, the Procuratorate has continuously increased the investigation and punishment of crimes related to one's position. From January 2008 to August 2013 the Procuratorate investigated 15,1350 corruption and bribery cases involving 198,781 suspects, among whom 167,514 were prosecuted and of those 148,931 were convicted. Economic losses recovered reached 37.7 billion yuan. Among the investigated cases, 32.1% were reported by the public, 35.4% uncovered by the Procuratorate, 9.5% referred by disciplinary and supervision agencies, and 23% were through the defendant's surrender or from another agency's referral. 13,368 investigations were carried out on leaders above the county or division chief level, of which 32 were above the provincial or minister level. From 2008 to 2012 the number of offenders receiving bribery or giving bribery increased 19.5% and 60.4% respectively. As of November 2013, investigations involving corruption and bribery totaled 16,510 cases, 23,017 persons, and 5.51 billion yuan. Complaints and crime reports received by the communist party disciplinary supervision agencies in 2013 reached 1,950,374, of which 172,532 cases were investigated and 173,186 cases closed. 182,038 persons were disciplined.

High-level officials at the provincial or minister level punished include Li Chuncheng, Liu Tienan, Ni Fake, Guo Yongxiang, Wang Suyi, Li Daqiu, Jiang Jiemin, Ji Jianye, Liao Shaohua, Guo Youming, Chen Baihuai, Chen Anzhong, Tong Mingqian. High profile cases like Bo Xilai, Liu Zhijun, Huangsheng, and Tian Xueren were prosecuted and sentenced, reflecting the central government's determination in combating corruption.

Anti-corruption efforts and system building continued. In May 2013, a new round of inspection by the central government started, which focused on "discovering and reporting information regarding acts violating law and discipline" and "spot-checking relevant information disclosed by leading officials." Open media coverage was deployed. These measures were subtly effective. On October 22, 2013, the Supreme Procuratorate released a report regarding anti-corruption and bribery efforts to the Standing Committee of the National People's Congress, twenty-four years after the previous report. This indicated that the central government is speeding up its anti-corruption drive.

The November Decision of the Third Plenary Session devoted a special session to emphasizing the "strengthening of checks and oversight over exercise of power," and to boosting the innovation of anti-corruption system safeguards. The main progress in this regard included: first, strengthening the dual leadership of the party disciplinary committee; intensifying the central disciplinary committee's oversight by post and inspection; making the disciplinary dual leadership system more effective, and strengthening the leadership of higher level disciplinary committee over the lower level committee. In investigating corruption, the higher level disciplinary

committee will take the lead. Second, the progress also included the improvement of laws and regulations on leading officials' disclosure of relevant personal information, and a pilot project of such disclosure by newly appointed leading officials. The website of the Communist Party Central Disciplinary Committee published an article interpreting the Decision which further stressed "the promotion of a pilot practice of newly appointed leading officials disclosing information regarding their spouse' and children's job positions, assets, and status of living abroad."

In December, the Politburo of the Party Central Committee adopted the second five-year anti-corruption plan, the Working Plan of Establishing and Improving the System of Punishing and Preventing Corruption, 2013-2017. The directive provided guiding principles for anti-corruption work in the next five years as a strict party discipline, adherence to the mass line, and building ethics. It also showed the party's resolve of "hitting both a fly and a tiger." As the overall master plan of future anti-corruption efforts, the Plan stressed using legal concepts and means to fight corruption, conducting the pilot practices of new leading officials' disclosure, and attaching importance to public oversight via the Internet. In the same month, the Communist Party Central Organization Department issued a Notice of Furthering Leading Officials' Disclosure of Relevant Personal Information, requesting leading officials to take initiative and honestly disclose relevant personal information. Those who do not do it honestly or hide important information shall not be promoted or listed in the official reserve; in the meantime, spot-checks will be conducted for information disclosed by leading officials.

The above efforts and reforms are only the beginning and there is a long way to go because corruption is comprehensive, deep-rooted, and systemic. Although the Decision offers a ray of hope for reinvigorating the anti-corruption system, the critical apparatus is still not in

place, and the possible system reform remains superficial based on principles but without an effective implementation mechanism. In response to this situation and given that corruption is deep rooted, the establishment of a mature and effective anti-corruption system should be dealt with at least in the following four aspects:

First, implement an official assets disclosure practice, which is a common practice in the world. At present, at least 137 countries have this regulation and it is also in place in China's Hong Kong, Macao and Taiwan. In Macao, if an official does not want to disclose assets, the only other option is to resign. In socialist Vietnam, a system for the official disclosure of property declarations was introduced in 2010, and in 2012 the Anti-Corruption Law expanded the scope of property declarations to include all assets, requiring an explanation of the legality of newly acquired assets. In Russia, the relevant regulation provides not only that all government officials and their family members must disclose assets annually, but also prohibits officials, military officers and their spouse and minor children from owning properties, bank accounts, and stocks abroad. In contrast, it is difficult to establish such a disclosure system in China. A few years ago there were pilot disclosure processes in Altay of Xinjiang, Cixi of Zhejiang, Liuyang of Hunan, Lichuan of Jiangxi, and Lujiang of Anhui, yet due to the problems of non-disclosure, dishonest disclosure, and lack of strict verification, the pilot system was a mere formality and encountered a certain level of resistance from local officials. Officials' asset disclosure is the most crucial and most effective measure, which reflects the degree of determination of anti-corruption efforts, so the system should be set up as soon as possible. The Decision seems to have touched upon this, but in a vague way. Since anti-corruption is a "self revolution," it could be considered that the "original sin" be forgiven to a certain extent technically, and disclosure begins with newly appointed officials below department director level. The officials' and their

spouses' and children's job positions, assets, and expatriate status should be included in the disclosure. Starting from this basis, disclosure should be gradually accelerated, and reach the level of comprehensive disclosure as soon as possible. Considering that the judge is the last line of defense in social justice, in order to ensure judicial integrity, to prevent judicial corruption, and to realize judicial justice, the court system could take the lead in asset disclosure. This could also be the justification for increasing judges' salary and benefits, and strengthening judicial protection.

Second, integrate current anti-corruption organs and establish an independent and integrated Independent Commission Against Corruption (ICAC). Under the current system, the party disciplinary committee deals with "tigers" and the procuratorate deals with "flies"; if tigers and flies are both to be dealt with, the best way is to integrate the two agencies' functions. Experience could be drawn from the Hong Kong ICAC, where anti-corruption functions could be separated from the procuratorate and combined with the party disciplinary agency with Chinese characteristics. The independent and integrated anti-corruption commission is entrusted with full responsibility for all anti-corruption matters, and conducts investigations independently according to law without the interference of any organization or individual.

Third, put the party disciplinary measure of "shuang gui" (two specified) into a legal framework. The "shuang gui" measure means the party disciplinary committee demands that a party member provide an explanation at a specified time and at a specified place. For non-party members the explanation is to be made at a designated time and place ("shuang zhi," two designated). This handling method violates the due process of the law and often violates a person's basic rights. In 2013, an official from Wenzhou City died "during a bath" under "shuang gui," and the deputy head of Sanmenxia Court, Jia Jiuxiang, died during "shuang gui." These

incidents prompted a reflection on "shuang gui," and again, calls for its repeal. Since most people are not willing to speak for officials, this appeal had little resonance. But for the equal protection of human rights, the basic human rights of corrupt officials also should be protected. This is a basic requirement of a society ruled by law that practices the principle of "everyone is equal before the law." It is gratifying to see the light at the end of the tunnel. At the end of November 2013, according to an official of the communist party central disciplinary committee, in the future, if an official is involved in a crime connected to one's position, it will not be handled by the party disciplinary committee first, but will be directly handled by the procuratorate according to criminal liability. In this way, anti-corruption work will be governed by the rule of law.

Fourth, protect freedom of speech and encourage acts of public engagement in anti-corruption. Several online anti-corruption cases in 2013 once again demonstrated the great impact of public engagement in anti-corruption. Examples were cases of a group visit of prostitutes by Shanghai judges, a judge of Hubei province "opening a room" in a hotel with a woman lawyer, and property owners of Gong Aiai in Shaanxi and Huang Zhongyi in Guangdong. Although the Decision proposed "improving democratic, legal, and public oversight, and deploying and regulating oversight on the Internet," further crackdown on online rumors showed that control of freedom of speech is being tightened. If the government is firm and sincere in combating corruption, it must rely on the people, allowing them to voice their opinions, and encouraging reports of corruption.

ii. Procurator's Accountability Pilot Program

In December 2013, the Supreme Procuratorate issued The Pilot Program of Procurator's Accountability In Case Handling, and planned

to launch this program in 17 procuratorates for 7 provinces in 2014. According to the program, each procuratorate will have several chief procurators who will shoulder the main responsibility for handling cases. Each procurator will be supported by a few procurators and assistants, forming a case-handling team. The specific content of the program includes: the selection, appointment, or removal of chief procurators through set processes; the integration of internal organization and the exploration of forming a chief procurator's office; and the definition of the chief procurator's power and limits of power. Apart from powers and functions that must be exercised by the head of the procuratorate or the prosecution committee prescribed by law, the Pilot Program mandates that other cases could be handled independently by the team headed by the chief procurator, and the chief procurator will be responsible for his/her decisions. In addition, the Pilot Program concretely builds a sound case-handling and enforcement oversight checks mechanism; strictly implements the approval system by the head of the procuratorate or the prosecution committee; and determines the salary and benefits of the chief procurator.

The pilot program is not the first initiative of this kind. By the late 1990s, in response to the challenges with the revision of the Criminal Procedure Law, some local procuratorates broke the shackles of the judicial structure and explored reform of the procurator's responsibility system. For example, Haidian procuratorate in Beijing tried "investigation and prosecution separation"; Baiyun district procuratorate in Guangzhou city tried the chief investigator's main responsibility in case-handling; some procuratorates in Henan Province tried to let the procurator lead the case; and the Tangshan and Pingshan procuratorates of Hebei province practiced chief procurator's responsibility. These experiments had some positive effects, so in 1999, the Supreme Procuratorate launched a chief procurator's responsibility/accountability

practice in ten provinces and municipalities, including Beijing and Shanghai. In 2000, The Opinion of Prosecution Reform in the Past Three Years proposed "reforming the procurator's case-handling mechanism and fully establishing a chief procurator's responsibility/accountability system." The Supreme Procuratorate demanded that, starting January 2000, the procuratorate at all levels adopt the chief procurator system. In May 2000, two more directives were issued: The Opinion of Practicing Chief Procurator Responsibility System in Civil and Administrative Prosecution and The Opinion of Practicing Chief Procurator Responsibility System in Investigation, and this practice was implemented widely in the procuratorates. As at the end of 2003, 2,897 procuratorates in the country adopted this practice, and 12,633 chief procurators were appointed. By the end of 2004, 90% procuratorates in the country had implemented this practice.

These early experiments helped solve the problems associated with too many internal approval procedures, the overburdening of administrative process, the lack of initiatives of procurators involved, which improved efficiency and quality of case-handling. But owing to the limited space for reform, the lack of continued efforts, the unwillingness of the procuratorate's leaders to relinquish power, and low levels of professionalism in some parts of the profession, over the last decade of practice, in most procuratorates, the chief procurator responsibility/accountability system was only superficially implemented. Only a small number of places made progress because of case-load pressure — "too many cases and not enough procurators" — and because the procuratorate leaders paid more attention to the reform.

This new round of pilot programs indicates the importance attached by leaders to the reform, and the attempts to make prosecution more independent. Compared to the previous pilot program, in this round of reforms the chief

procurator's responsibility is clearer, and so is the relationship between the chief procurator, the head of the department, the procuratorate, and the prosecution committee. In addition, the extent and degree of "returning power to the procurator" is greater, and more attention is paid to improving the salary and benefits to chief procurators. In a way, this initiative bears some similarities to the "presiding judge" pilot program in court, yet they are different in nature. Both are expected to ensure the independence of judicial officials. But because of the head of the procuratorate's responsibility and the administrative nature of procuratorial power, it is questionable whether the procurator responsibility system is rational or should be part of future reform paths. The procuratorate is very different from the court, therefore it should not necessarily follow the rationale of court operations.

iii. Strengthening Oversight of Illegal Investigation

Oversight of illegal investigation is the main form through which prosecutorial power constrains investigative powers. Although there have been directives such as the Provisions of Criminal Case Establishing Oversight (Trial) and the Provisions of Questioning Criminal Suspects During Investigation and Arrest, their actual effect was limited. In reality, illegal investigative acts were quite common in the form of torture, inducement, illegal collection of evidence, and extended detention. The cause of these problems lies in unbalanced power and an asymmetry of power favoring the police.

In October 2013, the Supreme Procuratorate issued The Opinion on Investigation Oversight Department Checking on Illegal Investigation Acts (Trial). It defined the methods and scope of investigation, and the verification of illegal investigation acts; entrusted the investigation oversight department with the power to request written explanations from the investigation unit;

and stipulated illegal evidence exclusion, and the avoidance system of relevant personnel. This Opinion furthered the measures in more detail, as mentioned in the new Code of Criminal Procedure and the Rules of Criminal Procedure of the People's Procuratorate. The Opinion also made progress in the area of strengthened oversight, expanded the scope of supervision, increased the ways of obtaining information, and made clear that illegal evidence must be excluded. But it was not strong enough to curtail investigative powers. More needs to be done in the following areas: (1) giving procurators the power to suggest disciplinary measures for illegal acts, instead of only "requesting an explanation," currently a rather weak punishment; (2) making clear the procedural consequences of illegal investigations and firmly excluding illegally acquired evidence; and (3) setting up the real-time monitoring of investigative questioning to avoid post-fact and passive supervision.

Although the procuratory agency has made continued efforts to strengthen oversight of illegal investigative acts, it is still difficult to curtail such acts in a fundamental way, and it is even more difficult to make judicial officials accountable in cases that are already proven to have been wrongly handled. For instance, in the uncle and nephew case of Zhang Gaoping in Zhejiang province, which was redressed in 2013, how should the "magic female detective" be held responsible? How should the police, procurator, judge, and the political-judicial committee "share responsibilities"? Responsibility may all come to nothing even if there is great public concern. Therefore, the problem must be dealt with at its root with the active promotion of judicial reform. Specifically, police powers should be weakened, and strict legal liability imposed, greatly increasing the costs of illegal investigations; to ensure procuratorial independence and strengthen the constraints of prosecutorial power over investigative power; allowing citizens a right to remain silent, protecting citizens' basic rights, prescribed in the

Constitution; protecting a lawyer's rights and promoting a lawyer's presence to ensure the exercise of police powers is restrained; and lastly, ensuring a judge's independent adjudication and enhancing judicial independence.

iv. Strengthening Procuratory Oversight in Civil Litigation

In November 2013, the People's Procuratorate issued The Oversight Provisions of Civil Litigation (Trial). It defined the scope, conditions, means, functions, and procedures of civil litigation procuratory oversight. It provided for the conditions, the processes, and the cases that can apply for procuratory oversight. This directive improved the feasibility of civil litigation oversight, and therefore proved conducive for the procuratorate to perform its functions. The filing and handling of cases are respectively the responsibilities of the accusing and appealing supervision unit and the civil and administrative supervision unit, and also there is an open hearing during case adjudication. These provisions are helpful to make the exercise of procuratory power more sensible, but there are problems too. For instance, the procuratorate's power, scope, and effectiveness in discovery are not clear, and the condition for parties' application for oversight is too broad. These problems are related to the controversial role of the procuratorate in civil litigation.

Against the background of rather serious corruption and insufficient oversight, giving the procuratorate certain powers in civil litigation oversight has had some positive impact in enhancing justice. But ultimately civil litigation is a private matter between parties, and the intervention of the procuratorate must be reasonably limited to avoid an imbalance of power and the invasion of the parties' private rights. The implementation and strengthening oversight of the rights to sue is the most

effective path towards justice in civil litigation. Compared to civil litigation, the procuratorate's intervention is more important in administrative litigation as a safeguard for justice and the dignity of the law when there is a great disparity of the litigation power of the parties. In the long run, there should be sensible positioning and distinction of procuratory functions. Oversight in civil litigation should be gradually weakened, and its main function in civil litigation should be to bring action or support public interest litigation on behalf of the state.

v. Strengthening Procuratory Function in Criminal Appeals

The Criminal Procedure Law and The Revised Criminal Procedure Rules (Trial) proposed higher standards for the procuratorate in criminal appeals. In March 2013 The Opinion of Strengthening and Improving Procuratory Function in Criminal Appeals was issued. It clarified the functions and responsibilities of the procuratorate, proposed specific requirements, and emphasized that the procuratorate should earnestly promote state compensation and relief for criminal victims. The Opinion provided comprehensive guidance for future work, but mostly through vague principles; further improvement is needed. For example, the case and information inquiry system should be better; an open review mechanism should be in place; response documents should provide stronger rationale; the appeal review process should be streamlined; responses to review should occur more quickly; oversight of litigation should be strengthened; the connection with the people monitoring these practices should be improved; and case accountability should be implemented.

vi. Strengthening the Capacity Building of Procurators

The Opinion on Strengthening Capacity Building

of Procurators, issued in May 2013, laid out a direction for building professionalism in six aspects: education and training, selection and appointment, interaction and exchange, job security, optimized management, and self monitoring. Shortly thereafter, The Opinion of Accelerating the Six-Point Capacity Building Project was issued, which emphasized that in the future young procurators should be selected through an open process from judicial agencies, legal experts and scholars, lawyers, and people with practical legal experience. This measure should be carried out immediately and become the main channel of procurator selection. It will continue to be improved and eventually establish a transfer mechanism where lawyers become procurators and judges. In December 2013, The Capacity Building Plan of Basic Level People's Procuratorates of 2014-2018 reiterated that professionalism is the goal of procurators' future development.

vii. Advancing Procuratory Transparency

Procuratory transparency is a good remedy for strengthening procuration oversight and promoting its integrity. More efforts were made in this regard in 2013. In January 2013, at the national conference of chief procurators, the Supreme Procuratorate indicated that in response to the public online anti-corruption movement it would be proactive in building the procuratorate micro-blog. In February 2013, the first Annual Report of China's Procuratory Transparency was published, and Guangdong provincial procuratorate ranked first. In October 2013, The Working Plan of Pilot Reform for Deepening Procuratory Transparency was reviewed and approved by the Central Political-Judicial Committee. Transparency reform started in five procuratorates. Some provincial procuratorates also followed, implementing exploratory transparency measures. For example, the Hainan provincial procuratorate issued Implementation Opinions of Deepening Procuratory Transparency Under New Circumstances. It emphasized strengthening the rationales used in prosecution documents

and gradually increasing the practice of open hearing, open adjudication, and open evidence verification. In December 2013, the Supreme Procuratorate revised its working rules and increased the emphasis on improving transparency through online publicizing and inquiry, building new open media platforms, and promoting oversight through transparency.

Compared to trial transparency, procuratory transparency seemed to be progressing more slowly. It is hoped that the pilot reform measures would soon spread to the entire country, and the scope of transparency would be expanded. All procuratory processes and results should be open, except for those classified as secret cases. In particular, responses to public reports, the handling and outcomes of high profile cases, and procuratory documents should be published. The liability for not making the should-be-open procuratory process public needs to be clarified.

In addition, in May 2013, The Detailed Rules of the Supreme Procuratorate's Inspection and The Code of Conduct for Civil and Administrative Procurators were issued aiming at strengthening the procuratorate's internal supervision. In 2014, the Supreme Procuratorate will focus on three pilot projects to deepen reform: transparency, procurator accountability, and the people's monitor system.

IV. Reforms Measures in Judicial Administration

Reforms in judicial administration reflected improvements in legal-aid work, a pilot project on evidence-based criminal correction methods, and strengthening of lawyers' professionalism management.

i. Legal Aid Work Improvement

2013 was the 10th anniversary of the promulgation of the Legal Aid Ordinance. In the ten years since it was promulgated, legal aid handled 5.13 million cases nationwide and provided 39 million legal consultations, with an average annual increase rate of 20% and 11.5%, respectively. The funding provided totaled 6.6 billion yuan, with an average annual increase rate of 24%. In the year 2013 alone legal aid funding exceeded 1,500 million yuan. Twenty-eight provincial-level regions adopted or revised local legal-aid regulations. The number of professionals working in legal aid reached 14,000 throughout the country.³

Provision of Legal Aid in Criminal Litigation was issued in February 2013. It provided for the eligibility for legal aid and laid out the application process; clarified standards of economic hardship and "other specific conditions"; required that in certain cases legal aid must be provided to a criminal suspect or defendant; defined the procedure for the applicant raising different opinions and a grievance complaint procedure; and stated the division of functions between the police, the procuratorate, the court, and legal-aid agencies.

The Provisions is helpful for implementing the articles in the new Criminal Procedure Law regarding human rights protection and the protection of the right to a defense. It also increased the operability of legal aid in criminal cases. But owing to a lack of effective oversight, incentives, and accountability, its effectiveness in reality is much compromised, and there is no basic change in the current poor quality of legal aid in criminal cases.

In June 2013 the Ministry of Justice issued the Opinion of Further Promoting Legal Aid Work, which proposed to redouble efforts in legal aid work in four aspects: strengthening the regulatory functions of legal aid; securing funding; advancing capacity building; and providing special aid to less developed regions where fewer lawyers are available. While the Opinion made some progress, legal aid work could be further improved in areas such as accountability if the police, the prosecutor, or the court failed to inform the accused; establishing a "lawyer on duty" practice; and expanding groups targeted for aid.

Future reform measures of the legal aid system could consider the following aspects. First, emphasizing government responsibility and gradually decoupling legal aid from judicial administration agencies. Specific measures could include: increasing financial input; publicizing the use of legal aid funds and strengthening administrative monitoring as well as public oversight; gradually expanding services to suspects or defendants who are subject to five

3. http://www.legaldaily.com.cn/bm/content/2013-09/13/content_4847942.htm?node=20730

years or more imprisonment; establishing a full-time legal-aid lawyer mechanism, with feedback and evaluation to improve the quality of legal aid. Second, encouraging and supporting non-governmental legal aid organizations; relaxing restrictions on private funds and various foundations' involvement; and inspiring lawyers and legal professionals' sense of social responsibility. In recent years, non-governmental organizations and legal professionals have played an increasingly important role in legal aid. For instance, the Major Case Legal Aid Network organized by the Institute For Advanced Judicial Studies of Beijing Institute of Technology has attracted over 300 volunteer legal professionals in less than six months of operation. It has provided over 3,000 free legal consultations and established connections with over 50 law firms, legal aid organizations, and NGOs. A nationwide legal aid network is taking shape, but it is extremely difficult for public interest law institutes and NGOs to register. The government should relax its restrictions and encourage and support such organizations' involvement so as to make it easier for people to achieve justice.

ii. Evidence-Based Correction Pilot Projects

In September 2013 the Ministry of Justice issued a Guiding Opinion of Pilot Evidence-based Correction in Certain Prisons and identified nine prisons for the pilot project, including Yancheng prison. The Opinion laid out the objective, task, principle, content, steps, and safeguards of the project. Evidence-based correctional work means that when dealing with the correction of criminals, the correction officer will work out a correction plan based on evidence collected from the person's correctible behavior, then apply it under practical conditions to achieve the best results. This is a new method developed internationally in recent years, which reflects a conceptual shift from punishment by the state to humanitarian correction, thereby reducing the recidivism rate.

The new type of evidence-based correction pilot project should learn from the experience of other countries and focus on searching for practical and effective ways to adjust this to the conditions in China. Attention needs to be paid specifically to the following: first, the research and pilot work should be done by identifying different types of crimes. Second, the new method puts significant requirements on correction officers; therefore, training and education are needed for the conceptual change and capacity building. Third, the core of the new method is "evidence." Valid evidence upon which correction plans will be made must be collected through legal means and scientific evaluation. Fourth, evidence collection methods and correction plans should be continually reviewed, revised, and improved so as to draw out lessons in a timely manner. Fifth, NGOs' participation and full collaboration with research professionals should be fostered and introduced. Sixth, a comprehensive evaluation is needed for the results. Experimental groups and contrast control groups can be set up for research, combined with social follow-up visits so as to gain an objective assessment of the effectiveness of correction.

iii. Strengthening the Professionalism of Lawyer Management

The monitoring and regulation of lawyers continued to be strengthened in 2013. In April the National Bar Association issued the Opinion of Lawyers' Honesty and Professional Ethics Building. It required lawyers' professionalism be improved; the management responsibility of the heads of law firms be strengthened; the Bar Association's disciplinary role be enhanced; and illegal and dishonest practice severely punished. The high profile case of Mr. Li triggered a debate about lawyers' professional ethics. In November 2013 the Beijing Bar Association conducted an official investigation into the rape case of Mr. Li and the related defense and possible violation of the professional code of conduct by his attorney.

In the same month, the National Bar Association established the trade professionalism oversight committee. Some local bar associations followed suit. For example, the Justice Bureau of Chongqing city, and Chongqing City Bar Association engaged 22 supervisors for lawyers' trade professionalism oversight.

The Decision of the Third Plenary Session of the 18th Communist Party Central Committee proposed "to improve protection of lawyers' rights to practice and strengthen punishment and prevention mechanism of illegal and unethical practice." Owing to the uneven quality of lawyers throughout the country, the Bar Association has a certain role to play in strengthening trade professionalism and the oversight of lawyers' unethical behavior. But in the current situation, where there are insufficient safeguards for lawyers' right to practice and their personal safety and rights are frequently violated, priority should be given to the effective protection of lawyers' rights to practice. At present, there is a deviation between the focus of the bar association and the spirit of the Decision. When there is ineffective protection of lawyers' right to practice, the bar associations' management role is restrained and cannot realize true self-governing of the profession. In the future, the reform of lawyers trade professionalism management should be based on the effective protection of lawyers' right to practice, so as to move toward true self-discipline in the lawyers' profession and self-governing of lawyers. Judicial administrative agencies should be phased out gradually and be replaced with micro management, which will create a healthy environment for the development of the legal profession.

In addition, the National Bar Association is drafting the Guiding Opinion of Promoting Government Purchase of Lawyers' Legal Service, which when issued will to a certain extent help the government act according to law, improve the relationship between the government and

lawyers, and enhance lawyers' social status. The attempt at using lawyers' service in building a government ruled by law started in the 1980s. Over the years this has taken various forms, such as the government legal advisory board, engaging lawyers as government legal advisors, and as public lawyers. The Decision called for "establishing a legal advisor mechanism as a general practice," and government purchase of lawyers' services is an effective way of implementing this call.

Conclusion

Overall Design of Judicial Reform

Judicial reform in China will embark on a new journey in 2014.

In 2013 the new chief of the Supreme Court, Zhou Qiang, took office. He undertook a series of actions based on Xi Jinping's speech in commemoration of the 30th anniversary of the 1982 Constitution. Judicial transparency, and the prevention of wrongly handled cases, were made the entry points for the new round of judicial reform, supplemented by measures such as the better exercise of trial power, advancing the collegial panel and the jury system, improving the guiding case mechanism, strengthening enforcement, improving case evaluation, mitigating relationships between judges and lawyers, and enhancing capacity building. Great efforts were made to enhance judicial credibility, and judicial independence gained more attention. Political phrases like "the three supremacies" were fading out. Policies of judicial activism and coercive mediation were weakened.

Judicial reform is moving in small steps in the right direction. The procuratorate redoubled its anti-corruption efforts, established mechanisms to prevent illegal investigations, strengthened criminal appeal procuration and civil litigation procuration, and enhanced transparency. Reform was going forward according to a plan. In judicial administration, the scope of legal aid was expanded, a pilot project of evidence-based correction was launched, and the professional management of lawyers strengthened. The system of re-education through labor was finally abolished.

The Third Plenary Session of the 18th Communist Party Central Committee opened a new chapter and laid out the direction for judicial reform in the next decade. Xi Jinping attended for the first time the Central Political-Judicial Conference held in the beginning of 2014, and stressed strict enforcement of the law, fair justice, actively deepening reforms, and strengthening and improving political and legal work to safeguard the vital interests of the people. Meng Jianzhu, head of the Central Political-Judicial Committee, laid out the work plan, which called for innovative governance, deepening judicial system reform, promoting technology and information applications, improving public education about law, advocating stability and the rule of law, enhancing capacity building, and effectively raising the modernization level of political and legal work. These steps reflected the great importance the central leadership attaches to legal reforms, but to better implement the Decision, better plan the new round of judicial reform, and better advance substantive system reform, a top-level design must be worked out that will ensure that the reform moves in the right direction from the pivotal overall perspective. Based on the experience of over thirty years of judicial reform, combined with common judicial practice and our reflection of China's overall judicial reform, a top-level reform design is recommended to provide some ideas for the next round of judicial reform. The recommended design can be summarized in five pairs of relationships, which serve as the fundamental framework, six guarantees of key support, and five strategies forming the path of implementation.

(I) Five Relationships

i. Strategic Arrangement of Judicial Reform

Strategic arrangement deals with the relationship between judicial reform, political system reform, and social stability.

First, legal reform should be given priority as the entry point for political reform. Judicature is an act in which judicial institutions and parties seek dispute resolution and justice through rules and procedures. In an era defined by a lack of consensus, the rule of law is the most fundamental consensus. Consensus about judicature and its rules and procedures is relatively easy to achieve. Judicial reform is the core area of legal reform. If judicial institutions can function effectively, it means the basic framework of constitutionalism is in place; and when a commonly accepted legal system and constitutionalism are established, it will be conducive to advancing and protecting other democratic reforms. As a stabilizer of the society, judicature can be a buffering mechanism in an era of drastic changes.

Second, who will design and organize judicial reform? At present judicial reform is led by the Central Judicial System Reform Leading Group, formed in May 2003. Considering China's current political framework and the setup of the judicial system, it is suggested that the National People's Congress establish a judicial reform committee. No less than half of its members should be scholars, lawyers, and other public figures from civil society. The judicial reform agenda's design, steps, and plans, and any assessment of effectiveness should be open to the public, should widely accept comments, and should guarantee that the public can participate effectively through appropriate channels, so as to facilitate the dialogue between the top-level leadership and the public.

ii. Judicial Independence

Judicial independence means correctly handling the relationship between judicial institutions and the Communist Party, the government, and local authorities, especially that of the judiciary and the Communist Party.

Judicial independence is the basic guideline for the rule of law. Judicial institutions should be independent from any organization or individual; the lower courts independent from the higher courts, and the judge independent from leaders of the court and other judges. The state should provide organizational and funding guarantees of that independence. As for the relationship between the judiciary and the Party, while adhering to the leadership of the Party, the Party's leadership over the judiciary should be improved.

1. The Party should not interfere with the adjudication of individual cases, which is the basic principle. The relationship between the Party and the judiciary should be positioned at political and organizational leadership.
2. Reform the political-judicial committee. The function of the central government political-judicial committee should be purely as guidance on judicial policies (i.e., political leadership). Whether a local political-judicial committee is necessary should be studied and reconsidered.
3. Improve the Party's organizational leadership over the judiciary. Establish a selection committee of judicial officials in compliance with the laws of justice. Gradually expand the scale of selection of judicial officials from lawyers and establish a professional transfer mechanism from a lawyer to a judicial official. The Party's power of appointing and removing the chief of the court and the procuratorate should be changed to the power of recommending candidates.

4. Strictly restrain the power of the Party committee of the court and the court leaders so as to fully protect judges' independent adjudication.

iii. Judicial Review

Judicial review correctly handles the relationship among the judiciary, the executive, and the legislature to ensure that the executive branch acts according to the law and that legislation is constitutional. The Decision specifically mentioned "to safeguard the legal authority of the Constitution," "to further improve the monitoring mechanism and the procedure of Constitution implementation, and to raise constitutionalism to a new level." The best way to ensure the faithful implementation of the Constitution is to establish a system of constitutional review. Specific recommendations include:

1. Entrust the court with greater powers for comprehensive review of administrative acts including abstract administrative acts.
2. Establish a constitutional review system and begin with the Constitution Commission or Constitution Court.
3. Do not request the court to submit a work report to the People's Congress. Legislation comes from the will and intent of the people. Strictly enforce the law enacted by the representative body of public opinion so as to be responsible to the people. The best way for the court to be obedient to the representative body is to adjudicate cases independently and fairly according to the Constitution and the law. This will be the ultimate support of the People's Congress and the best way to abide by the rule of law.

iv. Optimize the Judicial Structure of Functions and Power

Optimizing the judicial structure of functions and power is aimed at correctly handle the

relationship among judicial institutions and their internal divisions. Although the Decision stressed the division between judicial powers and responsibilities and their coordination, a sound structure should emphasize checks and balances and disregard coordination. Measures for optimal configuration could include:

1. Weaken and strictly restrain investigation powers; the judicial writ practice could be adopted.
2. Prosecutors should return to the position of state procurators; their main function is public prosecution.
3. Integrate the anti-corruption functions of the procuratorate and the Party's disciplinary committee, and establish a general and independent anti-corruption commission.
4. Protecting the lawyer's right to practice law and parties' right to sue.

Straighten the internal relationship of the court as follows: 1. Abolish the case instruction practice. The higher court could influence the lower court through judiciary-level oversight, and the lower court can support the higher court in terms of sheriffs, statistics, file management, and information technology. Apart from these, there is no "relationship" between the higher and lower courts. 2. The function of the Supreme Court should be judicial policy guidance. The guiding case mechanism should be vigorously developed and the number of quasi-legislative judicial interpretations gradually reduced. 3. Straighten the internal relationship within the court system by weakening the power of the head of the court and the tribunal, abolishing the adjudication committee, expanding the scope of the sole trial judge, and adequately guaranteeing independent adjudication by the collegial panel or the sole presiding judge. 4. Abolish the management of courts according to data and the judge performance appraisal system. Relevant data should be for statistical purposes only and if attention has to be paid

to data or figures, the most important data should be the acquittal rate because it directly reflects the degree of the court's independent adjudication.

v. Final Resolution by Judicial Decision

The final resolution by judicial decision means correctly handling the relationship between the judiciary and other dispute-resolution mechanisms. Judicial resolution is the last defense of social justice, and the principle of judicial final settlement should be recognized to establish judicial authority. Therefore the practice of petition, appeal, and re-trial must be changed; the problem of "enforcement difficulty and chaos" must be solved to ensure enforcement of the verdict. Alternative dispute resolution should be developed and enable the public to have its own path.

(II) Six Securities and Safeguards

i. Job Security

Judicial job security is a basic premise and a necessary condition for judicial officials to correctly and effectively perform trial and prosecution functions and for judicial officials to exercise their powers independently and legally. A set of reasonable and scientific systems should be established for judicial officials' selection, appointment, and discipline. It should be made clear that judicial officials enjoy identity protection, protection of personal safety, and immunity for the legal actions they performed during their tenure. This means the appointment and removal of judicial officials must be done in accordance with statutory conditions, and they cannot be fired or their salary and benefits reduced without legitimate reasons. This will protect judicial officials from being mistreated for simply performing their duties. Judicial officials should have a series of management systems separate from administrative ranking. And their salaries should be higher than those of civil servants.

Ensuring security of personal safety protects judicial officials from hidden dangers while they perform their duties. Immunity for their actions while they are performing duties is a privilege for judicial officials acting according to law, and that includes the right to be free from legal prosecution for their acts and speech while performing their legal duties. Furthermore, they have no obligation to testify in court for matters related to the performance of their duties.

ii. Funding Security

Funding is the material basis of judicial activities. One of the key factors of whether there can be independent and impartial exercise of judicial power depends on whether judicial funding can be free from the financial control of local authorities. In most countries the common practice is that judicial funding is by central government budget, which provides unified funding security. The Decision advocated for unified management of personnel, finance, and materials for local courts and procuratorates below provincial level. This provincial funding is only a transitional measure. In the long run, provincial funding should be transferred to central government budget funding as soon as possible.

iii. Safeguarding Fairness and Justice

Serious judicial unfairness and corruption are issues of uncertainty: if and when judicial independence is realized, will judicial corruption become even worse? In actual fact, judicial independence and corruption are not necessarily linked. Safeguarding judicial independence and curbing judicial corruption are two separate issues. While advancing judicial independence, judicial oversight, accountability, and protection must be strengthened at the same time. In this way judicial independence will not intensify corruption, but will help to solve the problem of corruption.

The following steps need to be taken to secure

judicial fairness and justice: 1. Combat judicial corruption and strengthen oversight; especially by providing adequate protection to lawyers and their clients, as they have the most incentive to oversee judicial matters. 2. Promote transparency in a holistic way, expeditiously implementing the three major transparency platforms: adjudication procedure, online publication of verdict documents, and enforcement information. Clarify responsibility and accountability for non-publication for materials that should be publicized, so that publicizing does not become a mere formality. The website for publicizing verdict documents should be built quickly and there should be comprehensive transparency of verdict documents. 3. Promote guiding case practice; standardize sentencing; define judges' discretionary powers; strive for similar sentencing for similar cases to promote a unified judicial practice. 4. Improve adversary-based judicial process and apply tougher sanctions for procedural violations. 5. Adhere to neutral adjudication, ensure equal treatment of parties and apply the principle of reciprocity; especially in criminal litigation, put an end to joint case-handling by the police, the prosecutor, and the court; strictly exclude illegal evidence. 6. Prevent the miscarriage of justice by targeting its root causes in the system; strengthen accountability, and improve state compensation.

iv. Safeguarding Efficiency

Justice delayed is justice denied. Like safeguarding fairness and justice, increasing efficiency is also an objective of judicial reform. Judicial efficiency deals with the economical and effective use of judicial resources. China is undergoing a period of social transformation with rapid economic development, numerous disputes, and inadequate judicial resources. The challenge is that there are more cases than hands available. Therefore safeguarding efficiency is a dimension that cannot be ignored in the top-level design of the reform.

To increase judicial efficiency the following things could be done: 1. Vigorously develop a diverse system of dispute resolution; properly bridge the litigation and non-litigation

approaches; improve alternative dispute resolution mechanisms such as mediation, arbitration, and administrative review; reduce judicial demand and try to achieve effective diversion of disputes. 2. Expend judicial resources in a scientific and reasonable manner; improve simplified procedures and small claims and expand the application scope; streamline procedures of ordinary first and second trial; 3. Improve the adjudication management system; conduct a sound triage of cases to avoid procedural delays. 4. Make full use of technological means; save human resources; and implement paperless office work.

v. Safeguarding Democracy

In China today, there is a deficiency in democracy. The people should be able to enjoy greater democracy, including judicial democracy. The jury system is the most significant form of judicial democracy. Yet the current Chinese jury practice is facing some serious issues that need to be resolved, particularly the problem of "mere presence and no participation in trial." The root cause of this issue is a lack of incentives and safeguards for jurors to participate and have an impact on the adjudication of a case. As mentioned before, the experience of the jury systems of common law countries should be drawn upon, as well as the participatory jurors system of continental law countries, and applied to China's conditions, so as to resolve the problems of the superficial jury presence and the public lacking incentives to take part. Efforts should be made towards systemic change that aims to maximize judicial democracy and to establish a jury system that suits conditions in China.

vi. Protection of the Disadvantaged

The principle of protecting the disadvantaged underpins judicial accessibility. Reform efforts and measures should include: 1. Improve legal aid mechanisms, lower the threshold

of eligibility, expand the scope of service, improve the quality of legal aid, gradually decouple legal aid agencies from judicial administration, and encourage formation of NGO legal aid organizations and the funding of NGOs. 2. Reform and improve judicial relief mechanisms, especially for crime victims. Pay attention to combining this reform with criminal mediation and integrate it into the social security system. Set and raise reasonable relief funds and gradually make the transition to state compensation for crime victims.

(III) Five Tactics

The top-level design will be carried out in two steps: the five relationships and six protections are long-term goals that could be broken down into more realistic objectives that can be realized step by step in the short term.

i. Differentiating Challenges

Identifying the difficulties impeding judicial reform or even the entire reform movement in the country deserves specific analysis. Retracting reform efforts because of difficulties in general is not an option. Difficulties should be differentiated and dealt with accordingly. Some difficulties are imaginary and some are realistic, and the realistic ones are of different degrees. Most difficulties encountered in judicial reform come from the obstruction of interest groups; some others are imagined difficulties.

Through "institutional obstacles" the control of certain interest groups can be seen. Judicial independence will primarily damage the interests of some officials, making it difficult for them to manipulate the judiciary and interference could even be investigated or prosecuted for legal liabilities. Yet opponents to judicial reform always have high-sounding pretexts such as in the name of socialism and China's specific country conditions. Actually,

capitalism has never had a monopoly on judicial independence. Socialist judicial independence could be by all means superior to capitalist judicial independence. The actual experience in China shows exactly why judicial independence is much needed to realize fairness and justice. The Decision stressed independence in adjudication and trial, which in essence enhances judicial independence.

Therefore an important tactic for advancing judicial reform is to differentiate challenges, deal with them in stages, and attack the easier ones first. For instance, it may be difficult to realize within a short period the goal that all judicial funding will be financed through the central government budget, yet it is feasible to do this at the provincial level. Also before the adjudication committee is abolished, its functions could be confined to an advisory role. More could be done in the area of judicial job security, such as position rotation of judicial officials, more judges selected from lawyers, separate the titles for judges decoupling from administrative ranking, gradual implementation of higher salaries for judges, and promotions of judges according to seniority, etc. Another example is the optimization of the court system structure, which involves higher and lower courts on vertical level, and courts of different regions and jurisdiction on horizontal level, as well as the division of functions among departments and staff within the court. The obstacles to this reform mainly come from the courts themselves. It appears very difficult to achieve but actually it only involves the court, the judge and especially the interests of court "leaders." So long as the judiciary and particularly the Supreme Court makes up its mind, it is entirely possible to optimize the court system setup gradually. Many problems could be solved following this approach, and there is still considerable room for reform even under the current political and judicial framework.

ii. De-Politicizing judicial reform

Judicial reform is sometimes described as “attacking a fortified position.” Why is it fortified? Because it is politicized. If non-political techniques and tactics were deployed to separate judicial from political reform and advance reform from legal and technical angles, then greater space could be found. Except for the fundamental principle of the socialist path and the leadership of the Communist Party, theoretically almost all other problems could be discussed as legal and technical issues. By setting our minds free and changing our way of thinking, some political and ideological “taboo areas” of reform could be transformed into technical issues of legal governance, thus some of the difficulties and obstacles could be effectively defused, such as the non-interference by the political-judicial committee to individual cases, judicial independence, and even socialist rule of law, which could all be processed as technical matters. Hence de-politicizing judicial reform could be an important tactical way to turn the reality of China in transition into real rule of law in the future.

iii. Starting with the Court Itself

Full judicial independence seems extremely difficult to achieve, yet it is a goal that can be realized in stages. In the short term, judicial independence could be gradually enhanced, especially starting within the court. The court and judges often complain about numerous interferences, but most of this interference comes from within the court system: from the head of the court or tribunal, or higher courts. Interference over the judge by the local Party organization or government is often imposed through the leaders of the court. Therefore, judicial reform can start with internal independence of the court and judges, elimination of administrative interference to enhance independence: the higher court being prohibited from interfering with the lower court;

court leaders being prohibited from interfering with a judge's adjudication of the case. The measures mentioned in the Decision, such as reform of the adjudication committee system, clarifying court functions at various levels, and defining the adjudication level oversight of the higher and lower courts are important initiatives to eliminate administrative interference within the court itself.

iv. Gathering Momentum

To push judicial reform forward momentum is needed; resolve from the above, and confidence from below. Yet for quite a long time both were lacking. Opening up and broadening public participation in judicial reform can help the leadership be more determined and the public more hopeful and confident so as to gather consensus and momentum for the reform. Specific suggestions: first, make the reform documents, advisory reports, reform agendas and progress, and result evaluations available to the public through various online platforms; second, the public has the right to fully participate in the entire process of reform, including comments and suggestions, research and consultation, agenda setting, opinion collecting, process observation, and effectiveness evaluation; third, break down taboo areas, encourage private judicial reform research and related institutes to form and function; fourth, the National People's Congress should establish a judicial reform commission as the decision-making body for the national judicial reform, with the participation of private entities and the public.

v. Improving the Quality of Legal Professionals

Improving the quality of legal professionals is a fundamental and long-term task. Without high-quality legal professionals even the best system cannot work. Therefore, promoting judicial reform requires attention being paid to

improving the quality of legal professionals. First, forming a scientific judicial career development system, with special emphasis on the selection, promotion, award, discipline, job security, and retirement system; fostering a sense of honor for a judicial career and for judicial officials themselves; learning from the common law country tradition of selecting judges from lawyers, and adopting transitional mechanisms to transform lawyers into judicial officials. These technical changes are critical to changing the judicial environment in China. Second, legal education must be thoroughly reformed through long-term planning and transitioning to legal career education and development. In the meantime, reforming the bar examination system, emphasizing legal professional ethics and fostering underpinning justice concepts. The work of legal professionals affects citizens' properties, reputations, freedoms and even life, so legal professionals should have high standards of professional ethics.

The rule of law in China has set an irreversible path. The main trends in rule of law and constitutionalism will not change. In China today social conflicts are intensifying and public demand for justice is increasing. "Experiencing fairness and justice in every case" has become one of the primary expectations of citizens. Yet one cannot be optimistic about progress where justice and public credibility are lacking, authority is lost, the reforms over many years have had limited results, and the public is not happy about the current judicial situation and its reform. In 2013 China's judicial reform was attempted through arduous efforts, with less than satisfying results. The voyage will continue with China's dream of a rule of law. We expect the new round of judicial reform will carry a vision, proceed by taking into account China's unique conditions, consider a systematic, comprehensive, and effective top-level design, and make breakthroughs on the key issues of eliminating local and administrative interference. We expect even more that the judicial system in

the next ten years will launch a groundbreaking journey of real reform, starting with reinforcing trial independence, moving to establishing judicial independence, and then expeditiously proceeding to a just, efficient, authoritative, and independent modern socialist judicial system.