

The Rule of Law

INCREMENTAL PROGRESS IN IMPLEMENTING CHINA'S LEGAL SYSTEM

CHINA BALANCE SHEET

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Background

- No one claims that China is today a rule-of-law country. The harsh criminal justice system is still plagued by mistreatment of detainees, aggressive defense lawyers are likely to end up as defendants themselves, and successful businesses can be expropriated by local governments.
- Nevertheless, most would acknowledge that China is moving toward a legal system that increasingly provides mechanisms to restrain the arbitrary exercise of state and private power.
- Since 1979, the National People's Congress (NPC) has enacted and updated more than 200 laws, generally consistent with accepted principles of international law.
- China's 3,000 basic courts and 180,000 judges are answerable to the NPC and thus cannot yet consistently protect the rights and interests of citizens through an independent authority to enforce government and private compliance with the law.
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- Although courts hear 8 million cases a year, government agencies, including the courts themselves, are flooded with nearly twice as many petitions to resolve a range of grievances—30 percent of which are about the legal system and the handling of specific cases.
- In February 2008 the Chinese government released a white paper claiming that the mainland had built a fundamental “legal system for socialism with Chinese characteristics.” The paper said that laws had been enacted to build a government that acted according to the rule of law.

“We must realize that full implementation of the rule of law as a fundamental principle is key to building socialism with Chinese characteristics, maintaining a harmonious society and realizing lasting stability and peace in the country.”

—Hu Jintao, November 2007

Milestone Laws Passed, 2007–2008

The Property Law covers the creation, transfer, and ownership of state, collective, and private property, strengthening protection of private businesses and property. The controversial bill first drafted in 2002 was deferred repeatedly before being rejected at the 2006 National People's Congress, or NPC. It was finally passed by the NPC in 2007.

The Corporate Tax Law ended 30 years of preferential tax treatment for foreign enterprises, which previously paid as little as 15 percent in corporate taxes compared with up to 33 percent paid by Chinese companies. The new law equalizes the tax rate for foreign and domestic companies at 25 percent. It was passed by the NPC in 2007.

The Labor Contract Law, implemented in January 2008, is aimed at protecting workers by requiring written contracts from the first day of employment, implementing new contract forms, setting minimum probationary periods, and mandating union consultation on labor contracts.

The Anti-Monopoly Law is China's first comprehensive competition law. The law targets anti-competitive monopoly agreements, abuses of a dominant market position, anti-competitive concentrations, and the anti-competitive misuse of government power. It also includes a controversial requirement that mergers or acquisitions of Chinese companies by foreign firms must be investigated to ensure that they do not “endanger national security.”

Background *(continued)*

- However, the paper reasserts the ultimate authority of the Party over the legal system, noting that “the CPC [Communist Party of China] always plays the role as the core of leadership in directing the overall situation and coordinating the efforts of all quarters in legal construction.”

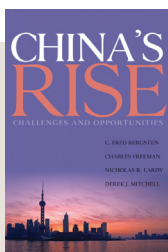
Current Situation

- The landmark 1989 Administrative Litigation Law (ALL), fortified by the 1994 State Compensation Law, grants citizens the unprecedented right to sue the government over “concrete” government actions that violate their rights and interests and is a significant step in implementing the constitutional concept that the Chinese government is itself constrained by law and accountable to its citizens.
- The 1996 Administrative Penalties Law (APL) and 2004 Administrative Licensing Law impose procedural constraints on government action itself. The APL is the first law to provide regulated persons the right to defend their case and the right to a public hearing, thus introducing the concept of procedural due process.
- According to official statistics, in 2005 more than 50 percent of judges hold a university degree (up from 7 percent a decade ago), and new rules require judges to have a degree and pass a national unified bar exam. However, low salaries enhance corruption’s allure. Judges are appointed and remunerated by local-level People’s Congresses, exacerbating local protectionism and political influence.
- Starting with fewer than 2,000 lawyers in 1979, China now has around 143,000 certified lawyers, more than 300,000 law students in over 600 law schools, and more than 13,000 law firms.

- In January 2007 the Supreme People’s Court (SPC) took back authority to review death penalty cases—the right to issue death sentences was given to provincial courts in 1983 because of a surge in crime. Under the new review process, the SPC rejected 15 percent of death sentences applied by lower courts in 2007, and Chinese courts handed down 30 percent fewer death penalties in 2007 than in 2006.

Implications

- Establishing the rule of law in authoritarian China is a complex, often unprecedented process and represents a paradox similar to the creation of a “socialist market economy.” Despite the Party’s refusal to relinquish ultimate power over the legal system, the Party recognizes the value of greater rule of law to the Chinese economy and society as well as its own legitimacy and “governing capacity.”
- Government transparency is fundamental to establishing the rule of law. China’s evolving administrative laws and new regulatory practices like procedural safeguards, open government information, and public participation in decisionmaking represent substantial change in traditional and Maoist Chinese political culture as well as represent positive developments that may contribute to helping improve and strengthen the legal system over the long term.
- However, significant obstacles still exist to the creation of the “rule of law” in China. U.S. government agencies and NGOs should continue to work with their Chinese counterparts to instill the principle that a more credible and transparent Chinese judiciary as well as a more transparent government would help increase the legitimacy and effectiveness of the Chinese legal system.



FOR FURTHER INFORMATION:
SEE CHAPTER 5: “THE RULE OF LAW IN CHINA: INCREMENTAL PROGRESS”
IN *THE CHINA BALANCE SHEET IN 2007 AND BEYOND*, & CHAPTER 3: “CHINA’S DOMESTIC
TRANSFORMATION: DEMOCRATIZATION OR DISORDER?” IN *CHINA: THE BALANCE SHEET: WHAT THE
WORLD NEEDS TO KNOW NOW ABOUT THE EMERGING SUPERPOWER*
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