

REVIEW OF PROCEDURE LAWS RAISES HOPES FOR JUSTICE

AN HRIC BRIEF¹

Plans to revise procedure laws have gained urgency in the light of two high profile cases of men wrongfully convicted of murder. The cases highlight the need for better protections relating to interrogation, admission of evidence, appeal and recourse against abuse of power.

On December 17, 2003, the Standing Committee of the 10th National People's Congress (NPC) unveiled its plan to revise China's three procedure laws—the Criminal Procedure Law, the Administrative Procedure Law and the Civil Procedure Law—by 2007.²

Although a concrete timetable for the revisions has yet to be made public, academics, legal experts and government officials have kicked off wide-ranging discussions on areas to be considered for revision. The revision of the three procedure laws could potentially further the course of legal reform, and bring Chinese laws more in line with international standards, particularly after China's accession to the World Trade Organization (WTO) in 2001.

During the past decade, China has undertaken a series of legal reforms aimed at improving the existing judicial and court system. However, the pace of reform has been slow and piecemeal, and revisions to the law have not been guided by a cohesive legal framework. Legal experts have identified weaknesses in the current system and have expressed hopes that the impending revisions will target those areas. The government's receptiveness to the experts' advice may serve as a test of its commitment to rule of law.

This briefing will provide some background on the three procedure laws, highlighting recent developments in law revision and presenting the issues that legal experts would like the upcoming revisions to tackle.

Background of the three procedure laws

China's three major procedure laws, the Criminal Procedure Law (*xingshi susongfa*), the Civil Procedure Law (*minshi susongfa*) and the Administrative Procedure Law (*xingzheng susongfa*), set

out the rules governing the legal processes for cases involving criminal offenses, civil claims and administrative complaints, respectively. They cover the mechanics of the court process from the filing of complaints (including questions on venue and jurisdiction), to answers and demurrers, service of process, investigation, assembly and examination of evidence, notice to parties, pleadings and orders, trials and appeals. A well defined and uniformly applied procedure law minimizes the element of human discretion and is crucial to ensure fairness, efficiency and transparency of a legal process that protects everyone equally. Of the three procedure laws, the proposed revision of the Criminal Procedure Law has provoked the most interest domestically and internationally, given China's poor record in the administration of justice, its widespread abuses in pretrial detention and the abhorrent practice of politically-motivated sentencing.

Criminal Procedure Law

The Criminal Procedure Law was introduced on July 7, 1979, six days after the Criminal Law took effect. In its emphasis on rule of law following the anarchy of the recently concluded Cultural Revolution, the law marked a major advancement in developing a legal system that restrained abuses of official authority and revolutionary excess. Article 2 of the Criminal Procedure law includes aspirational language on protecting citizens' rights to a fair trial and protection under the law. However, implementation proved problematic.³

Four years after its promulgation, the Criminal Procedure Law was amended under the anti-crime (*yanda*) campaign. Subsequent resolutions and supplementary provisions stripped away many of the procedural safeguards promised in the law. Notable examples included delegating the authority to approve death sentences from the Supreme People's Court to provincial Higher People's Courts, and extensions to the detention of suspects during investigation, trial and appeal in certain major cases.⁴ The requirement to provide the accused with seven days' advanced notice of trial⁵ was deleted, and the time limit for appeals was reduced from ten to three days.⁶ These changes severely constrained the ability of the accused to prepare a defense or file an appeal. The suspension of these procedural safeguards lasted well over a decade until amendments to the Criminal Procedure Law in 1996.⁷

The case of She Xianglin

On April 13, 2005, a 39-year-old former security guard, She Xianglin, appeared in court in Jingshan, Hubei Province, for the third time on charges of murdering his wife, Zhang Zaiyu. Unlike the previous two trials 11 years before, the purpose of this one was to pronounce She not guilty and immediately release him from jail. The reason: the wife She had allegedly murdered had shown up alive in his hometown on March 28, 2005. In October 1994, She was sentenced to death for murdering his wife, who had disappeared from their home in January 1994. The key evidence that linked She to the crime was a female corpse that no family members had viewed, but which the police declared to be She's missing wife based on body height and a state of decay matching the time of her disappearance. The other piece of evidence was She's confession, which She subsequently claimed police had extracted from him after repeatedly beating him and denying him sleep and water for ten consecutive days. The lower court convicted She of murder based on his oral testimony and the investigation report of the police. On appeal, the higher court found the initial conviction questionable and remanded the case to the trial court for further fact finding. On remand, after the "mediation" by the Communist Party's Political and Legal Committee, the lower court affirmed She's guilt but reduced the sentence to 15 years' imprisonment in light of three unresolved queries raised by the higher court. Further appeal by She was denied. After exhausting all channels of appeal, She's family members began petitioning the government, attempting to rectify the injustice. As a result of the family's incessant petitioning, the authorities detained She's mother for several months, and she died shortly after release; She's brother was also detained for 40 days and was warned by the authorities against further petition attempts. Had She's wife not "resurrected," She would have had to serve out his sentence for a crime that he not only did not commit, but which never even took place.¹

1. For information about this case, see Mure Dickie, "Murder Case Puts the Chinese Legal System on Trial," *Financial Times* (April 13, 2005), (<http://news.ft.com/cms/s/86c3c294-abb9-11d9-893c-00000e2511c8.html>); Liu Li, "Wrongly Jailed Man Freed after 11 years," *China Daily* (April 14, 2005), (http://www.chinadaily.com.cn/english/doc/2005-04/14/content_434020.htm); Tim Johnson, "China Police Under Scrutiny for Forcing Murder Confessions from the Innocent," *Knight Ridder Newspapers* (April 8, 2005), (http://news.yahoo.com/news?tmpl=story&cid=2270&u=/krwashbureau/20050408/ts_krwashbureau/_bc_china_murders_wa_1&printer=1); "The controversy of She Xianglin case put the rule of law in question, Parts I, II & III (She Xianglin an yin chu fa xue zheng yi fa lu ru he mian dui yuan jia cuo an)," *china.eastday.com* (April 10, 2005).

Although the 1996 amendments are acknowledged to have improved criminal judicature, progress was only partial. As noted in one research report, "[s]ome parts of the CPL were heavily reshaped, including those dealing with arrest and detention, defense counsel, initiation of prosecution, and trial proceedings. However, other parts of the law, such as those regulating investigations, evidence, and review of death sentences, were left largely untouched."⁸ Legal experts and human rights NGOs shared similar views.⁹

An area of specific concern is cases involving "state secrets" (*guojia mimi*),¹⁰ where the Criminal Procedure Law denies suspects access to evidence,¹¹ legal counsel¹² and an open and public trial.¹³ As Professor Jerome Cohen has pointed out, police have often abused exceptions to the Criminal Procedure Law pertaining to state secrets cases to undermine the rights of suspects.¹⁴ Tactics include delays in notifying detainees' families as a means of preventing access to legal counsel, on the grounds that such notification would interfere with police investigation. And while the Criminal Procedure Law allows lawyers to meet with their clients, police often create arbitrary barriers such as requiring lawyers to show unobtainable documents before granting such access, or preventing or delaying lawyers' access to evidence and police reports, thereby impeding the preparation of an effective defense. In instances where lawyers insist on being granted such access, police have been known to invoke the Criminal Code to detain or prosecute these lawyers.¹⁵

Another area of the Criminal Procedure Law that has generated a lot of discussion recently is where the final authority to review and approve death sentences should lie. China's criminal justice system includes no less than 60 crimes that can result in the death penalty. Among these are violent crimes such as homicide, rape, kidnapping and drug trafficking, but non-violent economic crimes such as corruption, embezzlement or tax evasion may also lead to capital punishment.¹⁶ The need to review the administration of capital sentences was made more urgent by the recent cases of Nie Shubin and She Xianglin, the former executed for a crime he did not commit, and the latter imprisoned for 15 years for a "crime" that never took place.

Until 1983, the Supreme People's Court (SPC), the highest court of the country, retained the authority to review and approve all death penalty cases.¹⁷ But with the launch of the anti-crime campaign, the Standing Committee of the National People's Congress ruled that the SPC should delegate the authority to review and approve death sentences involving violent crime cases to the highest people's courts in provinces, autonomous regions and municipalities under direct jurisdiction of the central government, and in September 1983 amended the Court Organization Law accordingly.¹⁸ The SPC retained the authority to review the death penalty only in cases involving non-violent crimes such as economic crimes and corruption.¹⁹ This change has resulted in several problems in the administration of criminal justice. First, it has created an anomaly under which the regional higher people's courts may be responsible for reviewing their own decisions, removing any possibility that the defendant can obtain a genuine review of the initial death sentence.²⁰ Secondly, the regionalization of administration of the death penalty has resulted in uneven

application: the same crime may result in different punishments, depending on the geographical location of the court. Thirdly, the delegation of authority to review death penalty cases under the 1983 amendment to the Court Organization Law has created a direct conflict in law. Under the Criminal Procedure Law and the Criminal Law, all death penalty cases must be reviewed by the SPC; that provision remained unchanged when the National People's Congress amended the Criminal Procedure Law and the Criminal Law in 1996 and 1997 respectively.²¹ In light of these subsequent amendments, the continued delegation of review and approval in capital cases constitutes an invalid application of an obsolete law, in addition to creating a situation in which a general law contravenes basic laws of higher legal order.²²

Administrative Procedure Law

The Administrative Procedure Law was adopted on April 4, 1989. By giving citizens rights and avenues to sue officials for abuse of authority or malfeasance, the Administrative Procedure Law challenges the traditional belief that government officials' actions are beyond reproach and that ordinary people can never challenge them (*guan da yu min*). As stipulated in Article 1, the Administrative Procedure Law is designed to protect the lawful rights and interests of citizens, and to safeguard and supervise the exercise of administrative powers by administrative organs in accordance with the law. One may utilize the Administrative Procedure Law to seek recourse against abuse of power in the form of arbitrary administrative sanctions (e.g. detention, fines, confiscation of property), compulsory administrative measures (e.g. restricting freedom of a person) or the refusal to issue a permit or license for which one is eligible.²³ Citizens may also use the Administrative Procedure Law to challenge compensation schemes, settle damage claims, assert their rights to the allocation of natural resources or sue government organs for failure to protect citizens' rights.²⁴

During the 14 years since the law came into effect, the courts have accepted a total of 913,091 cases, averaging 20 cases per court per year.²⁵ The number of cases filed under the Administrative Procedure Law has increased nearly ten-fold between 1989 and 2003. For instance, the court accepted 87,919 cases in 2003, compared to 9,934 cases accepted in 1989.²⁶ In light of the growing caseload, courts have frequently sought interpretation from the NPC on the implementation and application of the Administrative Procedure Law to remedy inadequacies in existing provisions to facilitate citizens' claims against the government.

However, the sheer increase in the volume of cases filed under the Administrative Procedure Law does not necessarily mean that ordinary people have succeeded in vindicating their rights against official malfeasance. The legal protection promised appears to exist largely on paper. Two thirds of all cases never proceed to trial, either because plaintiffs withdraw the cases or because courts dismiss the complaints. At one point, as many as 57 percent of the complaints were withdrawn by the plaintiffs, and up to 13 percent of the complaints were dismissed by the court. Plaintiffs won in less than 20 percent of the cases that went through the complete trial process, which

means that the government prevailed in four out of five of these cases.²⁷

These data illustrate the difficulties ordinary people face when they resort to challenging government action or inaction. The entrenched culture of official superiority has also been compounded by deficiencies within the law itself. For example, the law covers only a limited scope of matters, leaving out many other areas where citizens may have legitimate complaints against government officials. The law also lacks clarity in determining who may be included in the legal action

The case of Nie Shubin

The case involving Nie Shubin unraveled in mid-January 2005, when a man named Wang Shujin confessed to the murder for which Nie had been executed some ten years before. In September 1994, police in Shijiazhuang, Hubei Province found a badly decomposed female body lying in a cornfield alongside a bicycle and some clothing. Shortly thereafter, police arrested 20-year-old Nie Shubin, who initially admitted only to having hurled some obscenities at the victim. A week after his arrest, Nie Shubin confessed to the authorities that he had raped and murdered the woman. Six months after his arrest, the Shijiazhuang Intermediate People's Court tried and convicted Nie of rape and murder, and sentenced him to death. The Hubei Higher People's Court affirmed the conviction and the death sentence, and on April 27, 1995, Nie was executed. When subsequently confronted about the competence of Nie's legal representation, his lawyer indicated that Nie had been beaten into a confession. The judge in charge of the case has since retired, the court records of the case are not available for public perusal, and of course Nie himself is no longer around to explain what induced him to confessing to a crime that he did not commit. Did police extract a confession from Nie by force? Could Nie's severe stammer have impacted his ability to testify coherently? If the real perpetrator had never emerged, Nie's guilt would have been subjected to no further doubt. Now Nie's family has retained a lawyer to seek further judicial review and compensation from the state.¹

1. For information about the Nie Shubin case, see "Who's the real murderer? New evidence uncovered wrongful charges on an innocent (Hebei shui shi zhen xiong yi an yin ren guan zhu)", *Legal Daily* (March 17, 2005), (http://www.legaldaily.com.cn/xwzx/2005-03/18/content_197214.htm); "Authority indicates that compensation may be available to the wrongful execution case involving Nie Shubin (Nie Shubin si sing an guan fang shou ci biao tai lu shi ke neng ti chu guo jia pei chang)", *People's Daily* (March 18, 2005), <http://legal.people.com.cn/GB/42733/3252380.html>; "Death-penalty debate grips China after wrongful execution," *Globe and Mail* (March 18, 2005) (<http://story.chinanationalnews.com/p.x/ct/9/id/7e6003d87d986ed3/cid/9366300fc9319e9b/>).

as plaintiffs or defendants,²⁸ thus limiting who may benefit from the outcome and who may be held responsible. A revision to the law that addresses these deficiencies is much needed.

Civil Procedure Law

The National People's Congress adopted the Civil Procedure Law on April 9, 1991, after a 9-year experimental period.²⁹ It is an important set of laws that governs the procedures under which citizens may use the court system to settle civil disputes. Legal experts generally believe that the existing Civil Procedure Law has a solid framework, and any proposed revision should use the existing law as its foundation. However, because the Civil Procedure Law was implemented before China developed its market economy, it lacks the mechanisms necessary to handle a full range of civil disputes arising from economic activities. For example, the current law lacks procedures for small claims that would allow ordinary people to expeditiously settle minor money disputes; a lack of clear direction on the application of the existing summary process results in misuse of both the regular and the summary processes; and there is need for fuller development of special procedures for handling election-related matters, declaration of death of a missing person and declaration of status of ownerless property.³⁰

In light of the high volume of civil cases, which has averaged six million per year between 1998 and 2000,³¹ there is also a dire need for judicious utilization of limited court personnel. Experts in the field have suggested a change from the current three-judge collegiate panel trial system to a single judge trial system. Some experts have also suggested adding an additional layer to the appeal process by providing further review of an appeal court's decision.³² Furthermore, rules of evidence introduced by the Supreme People's Court in 2002, which govern the burden of production of evidence, burden of proof, time limit for production, authentication, admission and introduction of evidence,³³ remain instructions from the SPC; they should be adopted in the formal legislation to increase their legal authority and applicability.

Rationales for the revisions

Rapid social and economic development in the 1990s significantly transformed Chinese society. With improved living standards and an increase in the number of people resorting to the courts to enforce rights and to vindicate wrongs, ordinary people are demanding greater accountability from the government and more procedural certainty and protection. The latest constitutional amendments in 2004,³⁴ which include a new clause stating that "[t]he state respects and protects human rights" (Article 33),³⁵ brought the first explicit mention of human rights in the Constitution. But while the Constitution has been amended four times, the three major procedural laws remain largely untouched.³⁶ The existing procedure laws lag behind China's overall legal development and social reality, and are not in conformance with international standards. Increasingly, the Supreme People's Court has had to issue resolutions and supplementary opinions to resolve conflicts or to adapt the laws to new situations.

Certain Opinions on Standardizing Criminal Evidence Work

BY LIU DEHUA AND WANG JING

On April 12, the Sichuan Province High Court, Procuratorate and Public Security Bureau issued a joint opinion entitled, "Certain Opinions on Standardizing Criminal Evidence Work (to be implemented on a trial basis)," which clearly stipulates that confessions obtained through coercion may not be used as evidence, and which details other circumstances under which confessions and statements are inadmissible as evidence. The opinion will be implemented on trial basis as of May 1. According to reports, this is the first time that a Chinese provincial public security organ, procuratorial organ and people's court have issued a joint opinion standardizing criminal evidence work.

Coerced confessions are inadmissible as evidence

The opinion stipulates that oral evidence collected through the use of torture, threats, enticement, fraud, etc., may not be used as evidence. Extorting confessions by torture is carried out in China's justice system. In a certain sense, the convictions in the Nie Shubin case in Hebei and the She Xianglin in Hubei were obtained by torture. It is in this context that the Sichuan Province High Court, Procuratorate and Public Security Bureau have issued a joint opinion on standardizing criminal evidence work that specifically calls for a ban on confessions extorted by torture and embodies the constitution's provision that "the state respects and safeguards human rights."¹

The opinion stipulates: "Where a defendant and/or witness changes his or her confession or statement during the trial phase because investigative organs have extracted a confession through torture or used threats, enticement, fraud or other illegal means to collect evidence, a confession or statement made before the hearing may not by itself be used as evidence to prove that the charge has been established if one of the following circumstances is applicable: (a) Investigative organs cannot provide a reasonable explanation for the concrete facts of illegal evidence collection raised by the defendant or witness; (b) people's procuratorates or public security organs are unable to rule out the possibility of illegal evidence collection because they refuse to investigate and verify it."

In past cases, the judiciary had the discretion to dismiss evidence that was suspected of having been obtained through torture. But this was not written into law. This latest opinion provides a legal basis for supporting defendants who withdraw a confession obtained through coercion.

Presumption of innocence when guilt is uncertain

The opinion stipulates: "In situations where evidence is insufficient to determine guilt or innocence or the extent of culpability, the defendant should be presumed innocent or less culpable. Where evidence clearly indicates innocence or reduced culpability, but public security and procuratorial organs have no way of verifying the evidence or refuse to produce the results of their investigations, the remaining circumstances of the overall case can be synthesized into a presumption in favor of the defendant."

This provision applies the legal principle of "giving the accused the benefit of the doubt." In the past, due to budgetary and resource constraints, public security and procuratorial organs tended to focus on evidence that incriminated suspects in a criminal investigation and to attach insufficient importance to extenuating evidence or evidence that supported a suspect's innocence. Thus, there was insufficient protection of the rights of the accused.

The opinion stipulates that if public security organs and the procuratorate make several appraisals prior to trial and reach different conclusions, all of the conclusions must be submitted to the court with an explanation of the reasoning behind them. At the same time, a judicial appraisal can only express an opinion regarding a technical question related to a case. Inferences about the facts of a case or legal applicability cannot be used as evidence.

Professor Long Zongzhi of Southwest Politics and Law University (Xinan Zhengfa University) believes that this opinion 1) sums up practical experience, 2) is based on expert opinion, 3) lays equal stress on combating crime and safeguarding human rights as well as on substantive correctness and procedural fairness, 4) keeps pace with advancements in the administration of criminal justice, 5) plays a significant role in standardizing and raising the quality of case-handling procedures, and 6) has a positive impact on China's evidentiary legislation and judicial practice.

Translated by Paul Frank²

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1. This provision was adopted on March 14, 2004 by the Second Session of the Tenth National People's Congress.
2. This translation quotes parts of a translation published on the Web site of the Congressional-Executive Commission on China: <http://www.cecc.gov/pages/virtualAcad/index.phpd?shows-ingle=10740>.

In late 2003, the National People's Congress agreed to prioritize the revision of the three procedure laws in the legislative agenda, in part to bring the procedure laws in line with China's rapid economic development, and also to meet China's obligations under the WTO and other international covenants. The Vice President of the Chinese Supreme People's Court, Huang Songyou, pointed out that revision of the Criminal Procedure Law was necessary under China's obligations as a signatory to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.³⁷ The recent amendment in the Constitution to recognize private property rights was a precursor to the adoption of other laws geared toward protecting private property rights in China, as required by membership in the WTO.³⁸ What is now needed is the political will to make the changes necessary to ensure that the laws reflect and uphold the human rights principles enshrined in the Constitution and the two international human rights covenants.³⁹

Areas for Revision

Legal experts and leading academics have been asked to submit draft revisions of the Civil Procedure Law to the Intermediate People's Court for study.⁴⁰ More than 300 legal experts met in October 2004 to exchange views on areas that the NPC should consider in the revision of the three procedure laws.⁴¹ The following is a list of issues that legal experts and observers hope the NPC will address:

- Admissibility of statements made by witnesses absent at trial: Under current procedure laws, statements of witnesses can be admitted into evidence even when they fail to appear at trial. Experts have suggested that such evidence should be inadmissible in court, particularly in criminal cases, in order to safeguard the rights of defendants by preventing the common public security practice of coercing or inducing witnesses to produce fabricated statements or evidence.
- Implementation of the bail system: The current Criminal Procedure Law provides for a system of release on bail, but it is rarely used, resulting in extended periods of pretrial detention. Experts suggest that the law should be revised to include an effective and unambiguous bail system that will reduce instances of unnecessary detention and shorten the periods of detention.
- Broadening the scope of cases under administrative processes: Experts pointed out that the current Administrative Procedure Law covers only a narrow scope of claims that citizens may have against the government, leaving many with no recourse to address official misconduct that infringes on their rights and liberty. In many cases, the only recourse that individuals may have is through the relatively ineffective petitioning process. Experts suggest that the NPC should expand the scope of cases for which one can seek redress under the Administrative Procedure Law.
- Pragmatism: Experts urge that any revisions should take into consideration objective constraints, ensuring that the revised laws are pragmatic and that their implementation is feasible.
- Expanding the availability of appeal in civil cases: Under the current system, the decision of the first appeal is the final



She Xianglin, wrongfully imprisoned, sees freedom for the first time in 11 years. Photo: Reuters

judgment of the case (*liangshen zhongshen zhi*), which means that the party losing on appeal has no opportunity to seek further review. Experts have proposed instituting a two-appeal system that places the final appeal at the provincial higher people's court or at the Supreme People's Court.⁴² There are four reasons for this suggestion: (1) to correct any legal errors made by the lower courts; (2) to ensure uniform application and interpretation of the laws; (3) to improve the proper application of the law by taking into account different legal arguments; and (4) to advance judicial independence by distributing the trial courts' adjudicating responsibility across the judicial branch.

- Returning authority to approve and review death sentences to the Supreme People's Court: The recent cases of Nie Shubin and She Xianglin demonstrate the urgency of revising the current system of reviewing and approving capital cases. Many experts have urged the NPC to return the review and approval authority to the Supreme People's Court in order to remedy the situation in which the court that affirms a lower court's capital sentence also serves as the authority to give final approval to the death sentence. The centralization of final approval power also insulates the courts from local pressure and influence, and ensures that capital punishment is imposed on solid grounds. As noted by Beijing University Law School Professor He Weifang, who is also a member of the drafting panel, "Withdrawing

the right of local courts to ratify the death penalty and [returning that authority] to the Supreme People's Court is an important measure in ensuring verdict quality and citizen's human rights." Legal experts have submitted a draft amendment to the People's Court Organization Law that includes such a provision.⁴³

- Establishing a set of uniform rules of evidence for all classes of cases: The current legal system lacks uniform rules of evidence that spell out when, how and what kinds of evidence are admissible in court. The rules issued by the Supreme People's Court in 2002 are only applicable in civil cases. In criminal matters, while the Criminal Procedure Law prohibits the collection of evidence, testimony or confession by force, coercion, deceit or entrapment,⁴⁴ it stops short of barring the admissibility of such evidence. Indeed, many individuals have been convicted of heinous crimes based on "confessions" obtained through torture, coercion or the use of force, as the She and Nie cases vividly demonstrate. The call for excluding the testimony of absent witnesses in criminal cases speaks to the urgent need for a set of rules that can be applied in all civil, administrative and criminal cases. A set of uniform rules settles the expectation of what kinds of evidence can be used to establish guilt or liability; it can also minimize arbitrariness and enhance the credibility of the judicial process.
- Presumption of innocence: Current criminal jurisprudence

continues the centuries-long tradition of using the penal system not only to punish the wrongdoers, but also to simultaneously teach the general public a lesson on the consequences of criminal infractions.⁴⁵ The current Criminal Procedure Law, with its allowance of pre-indictment investigatory detention and the lack of an effective bailment system, appears to operate from the principle of “presumed guilty until proven innocent.” It may be time for the NPC to consider a criminal justice system that protects and respects human rights by revising the Criminal Procedure Law to operate from the principle of presumed innocence and to institute procedural safeguards for the accused.

What to expect

The legal community has expressed optimism regarding the upcoming revision process of the three procedural laws, especially after the government revealed plans to revise the Court Organization Law.⁴⁶ This round of revision to the three procedure laws may have significant implications not only for China’s efforts in legal reform, but also in demonstrating the government’s level of commitment to promoting and respecting human rights in the legal context.

Nevertheless, the half-hearted amendment of the Criminal Procedure Law in 1996 gives reason to doubt whether there is enough political will to deliver final products that will include all the necessary changes. Another area of concern is that the government has yet to disclose an exact timetable for the revision. Although the NPC indicated that it hoped to accomplish the revision by the end of the 2007 legislative term, it is unclear whether it can meet that target date.

Recent reports indicate that drafting work is not likely to start until 2006, to allow time for the NPC to complete the legislation for China’s first Civil Code.⁴⁷ This may lead to two possible scenarios. First, the law revision might be rescheduled during the next session of the NPC, inevitably delaying the course of China’s legal reform. Second, the NPC might rush the revision and allow insufficient time for public consultations and discussion. This might result in revised procedural laws that are no more than another showcase of superficial changes, with little achieved in terms of addressing the real issues.

1. The primary drafter of this brief was Wing Lam, with final review by Zenobia Lai.
2. The revisions of the procedural laws are among a set of 59 scheduled draft laws and 17 optional draft laws to be examined in the current legislature of the NPC.
3. Lawyers Committee for Human Rights (LCHR), *Opening to reform? An analysis of China’s Revised Criminal Procedural Law*, (New York: LCHR, 1996) (hereafter “LCHR”).
4. Supplementary Provisions of the Standing Committee of the National People’s Congress Concerning the Time Limits for the Handling of Criminal Cases, adopted July 7, 1984, (<http://www.law-lib.com/lawhtm/1984/46047.htm>). The Supplementary Provisions listed circumstances and procedures for the extension of detention periods. However, they did not define major cases or offences that could provoke the extension.
5. Criminal Procedure Law of the People’s Republic of China, Section 2, Article 110 (1979).

6. “Decision of the Standing Committee of the National People’s Congress Concerning the Procedure for the Rapid Adjudication of Criminal Elements Who Seriously Endanger Social Order,” adopted September 2, 1983. Under Article 131 of the 1979 Criminal Procedure Law, the defendant has 10 days to appeal and the prosecutor has 5 days to appeal an unfavorable decision.
7. The 1996 amendment reinstated the requirement to give notice and a copy of the complaint to the defendant 10 days prior to the commencement of trial. Criminal Procedure Law, Article 151(2) (1996).
8. LCHR, *supra* note 2, p. 19. See also Chapter 1 of LCHR, *supra* note 2 for a detailed account of the rationale and drafting of the revised CPL 1996.
9. See also Human Rights in China (HRIC), *Empty promises: Human rights protections and China’s Criminal Procedure Law* (Hong Kong: HRIC, 2001); Chen, Ruihua, “Major issues concerning the reform of Criminal Judicature in China,” (http://www.usc.cuhk.edu.hk/wk_wzdetails.asp?id=1720).
10. For many, the removal of counter-revolutionary crime was thought to signal greater respect for the rule of law, but its replacement with an equally elastic notion of “endangering state security” has in fact broadened the capacity of the state to suppress dissent. HRIC and Human Rights Watch, “Whose Security? ‘State security’ in China’s new Criminal Code,” *China Rights Forum*, pp. 18-23 (Human Rights in China, Summer 1997).
11. Criminal Procedure Law, Article 45 (1996).
12. Article 64 of the Criminal Procedure Law requires the detaining party to notify the detainee’s family of such detention unless such notice may interfere with ongoing investigation. Criminal Procedure Law, Article 64 (1996). In practice, this article has been invoked to deny the accused the right to seek legal counsel by holding him incommunicado. In addition, in cases involving state secrets, the suspect must seek approval from the investigating authority, usually the Public Security Bureau, when engaging or seeking to meet with legal counsel. Criminal Procedure Law, Article 96 (1996).
13. Generally, all hearings at the lower people’s courts are open to the public, except for cases that involve state secrets, have particular privacy concerns or involve minors. Criminal Procedure Law, Article 152 (1996).
14. Jerome Cohen, “The plight of criminal defense lawyers,” a statement given to the Congressional-Executive Commission on China’s Round Table Discussion on *Challenges for Criminal Justice in China*, in Washington, D.C., July 26, 2002, (<http://www.cecc.gov/pages/roundtables/072602/cohen.php>) (hereafter “Cohen”).
15. Cohen, *supra* note 14, Sections 3–5.
16. See The European Initiative for Democracy and Human Rights, *The Death Penalty in China: A Baseline Document*, App. I (The Rights Practice, Dec. 2003).
17. See Criminal Law, Article 43 (1979), Criminal Procedure Law, Article 144 (1979), and Organic Law of the Courts, Article 13 (1979).
18. Notice of the Supreme People’s Court on Delegating the Power of Approval of Death Sentences in Some Cases to Higher People’s Court (*zui gao wen min fa yuan guan yu shou quan gao ji wen min fa yuan he zhun bu fen si xing de tong zhi*), Sept. 7, 1983. See also, Court Organization Law, Article 13 (1979), amended by the Standing Committee of the National People’s Congress on September 2, 1983.
19. Court Organization Law of the People’s Republic of China, Articles 13, as amended on September 2, 1983. (Except for cases handed down by the Supreme People’s Court, cases involving the death penalty should be reported to the Supreme People’s Court for approval. Whenever necessary, the Supreme People’s Court may authorize Higher People’s Courts in provinces, autonomous regions and municipalities directly under the central authority to exercise the power of approval in cases

- of murder, rape, robbery, use of explosives and other cases seriously endangering public security and social order that involve the death penalty.)
20. The European Initiative for Democracy and Human Rights, *The Death Penalty in China: A Baseline Document* (The Rights Practice, Dec. 2003).
 21. People's Republic of China Criminal Procedural Law, Articles 199, 200, effective July 1, 1996, cf. Criminal Procedure Law, Articles 144, 155 (1979). Criminal Law of the People's Republic of China, Article 48 (1997).
 22. In terms of legislative authority, the National People's Congress (NPC) has exclusive jurisdiction in adopting and amending the country's basic laws on matters relating to the structure of the state organs, the criminal justice system and deprivation of liberty of Chinese citizens. The Standing Committee of the NPC may adopt or amend other general laws not within the exclusive legislative authority of the NPC. The Standing Committee of the NPC may also amend laws passed by the NPC when it is not in session, provided that these amendments do not contravene the principles of the underlying laws. Legislation Act of the People's Republic of China, effective July 1, 2000.
 23. See Administrative Procedure Law, Article 11 (1989).
 24. See Opinions of the Supreme People's Court on Several Issues concerning the Implementation of the Administrative Procedure Law of the People's Republic of China (*Zui gao wen min fa yuan guan che zhi xing zhong guo wen min gong he guo xing zheng su song fa ruo gan wen ti de yi jian* (shi sing)), Section 1 (May 29, 1991).
 25. "910,000 cases accepted by court since the inception of Administrative Procedure Law 15 years ago (*xing zheng su song fa ban bu xhi-wu nian, quan guo fa yuan shen li xing zheng an jiu-shi-yi wan jian*)," ChinaNews.com, (April 2, 2004) (<http://www.chinanews.com.cn/n/2004-04-02/26/420851.html>).
 26. ChinaNews.com, *supra* note 25.
 27. Ying, Songnian, "The revision of the Administrative Procedure Law unavoidable (*xiu gai xing zheng su song fa shi zai bi xing*)," (<http://www.procedurallaw.com.cn/article.htm1?id=2541>).
 28. See, e.g., "Concerns about the proposed revisions to the three procedure laws (*guan zhu san da su song fa xiu gai*)," (<http://www.china-judge.com/ReadNews.asp?NewsID=2621&BigClassID=16&SmallClassID=20&SpecialID=0>); and "Guo Chingzhu, Interpretation of the improvement of third party system in the Administrative Procedure Law (*Guo Qingzhu: shi xi xing zheng su song fa di san ren zhi du de wan shan*)," (<http://www.procedurallaw.com.cn/article.htm1?id=9213>).
 29. The Civil Procedural Law (Trial) was introduced on March 8, 1982.
 30. China-judge.com, *supra* note 27.
 31. "It's time to revise the Civil Procedure Law (*min su fa gai xiu gai liao*)," *Legal Daily*, March 14, 2002, (http://www.legaldaily.com.cn/gb/content/2002-03/15/content_33695.htm).
 32. Fu, Yulin, "Some thoughts on the revision of the Chinese Civil Procedure Law (Part II) (*xiu ding wo guo min shi su song fa de ji ben si lu* (xia)), (<http://www.civillaw.com.cn/weizhang/default.asp?id=18529>).
 33. Some Provisions of the Supreme People's Court on Evidence in Civil Litigation (*zui gao wen min fa yuan guan yu min shi su song fa zheng ju de ruo gan gui ding*), adopted Dec. 6, 2001, effective April 1, 2002; Provisions of the Supreme People's Court on Relevant Issues Concerned Evidence in Administrative Litigation (*zui gao wen min fa yuan guan yu xing zheng su song fa zheng ju ruo gan wen ti de gui ding*), adopted June 4, 2002, effective Oct. 1, 2002.
 34. "Lawmakers adopt constitution amendments," *China Legislative Information Network System* (March 15, 2004), (<http://www.chinalaw.gov.cn/jsp/contentpub/browser/contentproe.jsp?contentid=co1281275053>).
 35. The amendments to the Constitution were adopted by the National People's Congress on March 14, 2004.
 36. Previous amendments to the Constitution, recognizing non-public economy and market economy, were made in 1988, 1993 and 1999. See "People-oriented Constitutional amendments," *China Today*, (2004) (<http://www.chinatoday.com.cn/English/e2004/e200405/p10.htm>).
 37. "China to amend Criminal Procedure Law," *China Daily* (October 13, 2004), (http://www.chinadaily.com.cn/english/doc/2004-10/13/content_381800.htm).
 38. "Property law a giant leap," *China Daily* (November 8, 2004), (http://service.china.org.cn/link/wcm/Show_Text?info_id=111454&p_qry=china%20and%20property%20and%20rights%20and%20law).
 39. "Three procedural laws to undergo a big revision to ensure the principle of human rights," *People's Daily* (October 13, 2004), (http://english.people.com.cn/200410/13/eng20041013_160011.html).
 40. The proposal was drafted by law professors Jiang Wei and Suen Bangqing of the People's University.
 41. The conference was organized by the China Law Society. Over 300 famous scholars, experts and professors of the procedural law circle participated in the conference to exchange opinions and discussions on the topics with regard to the revision of the three procedural laws.
 42. Fu, Yulin, *supra* note 31.
 43. "Local courts to lose execution power," *South China Morning Post* (November 30, 2004), (<http://china.scmp.com/chimain/ZZZIHZBQBIE.html>).
 44. "It shall be strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means." Criminal Procedure Law, Article 43 (1996).
 45. This is stated in Article 2 of the Criminal Procedure Law, "The aim of the Criminal Procedure Law of the People's Republic of China is: . . . punishment of criminals and protection of the innocent against being investigated for criminal responsibilities; to enhance the citizens' awareness of the need to abide by the law. . . ." Criminal Procedure Law, Article 2 (1996).
 46. "Legal experts suggest reforming the court system and professionalizing judges (*zhuan jia jian yi ren min fa yuan gai ming fa yuan fa guan zhi ye hua jing ying hua*)," *Chinesenewsnet.com* (Dec. 5, 2004), http://www1.chinesenewsnet.com/gb/MainNews/SinoNews/Mainland/zxs_2004-12-04_513006.shtml.
 47. "Revision of Civil Procedure Laws to be started in 2006 as legislature focuses on drafting the Civil Code (*min fa dian wei dang qian li fa zhong dian min su fa xiu gai er ling ling liu zhan kai*)," *People's Daily* (October 12, 2004), (<http://www.people.com.cn/GB/shehui/1060/2913944.html>).