

China

The Chinese judiciary is subject to the leadership of the Chinese Communist Party. Lawyers cannot function independently, as the Ministry of Justice has significant control over lawyers, law firms and bar associations. Lawyers also face frequent harassment from the authorities. In Tibet, particularly, political detainees are deprived of even elementary safeguards of the due process of law. The independence of the judiciary was further eroded in the Hong Kong Special Administrative Region with the judgements in the right to abode cases.

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

Under the 1982 Constitution, legislative power is vested in the National People's Congress (NPC) which has 2,970 indirectly elected members. Executive power is exercised by the State Council, which is elected by the NPC. President Jiang Zemin is the head of the state and Zhu Rongji is the Prime Minister. Effective political control is in the hands of the Chinese Communist Party (CCP).

The PRC resumed sovereignty over Macao on 19 December 1999 and the former Portuguese colony became the Macao Special Administrative Region (MSAR) with the "one country, two systems" model similar to that of the Hong Kong Special Administrative Region. Edmund Ho Heu-Wah was elected in May 1999 to be the first Chief Executive since the handover.

The year 1999 was marked by several important anniversaries: 10 March was the 40th anniversary of an uprising in Tibet that led to the exile of the Dalai Lama; 4 June was the 10th anniversary of the student crackdown in Tiananmen Square; and 1 October was the 50th anniversary of the founding of the PRC.

Human Rights Background

China signed the International Covenant on Civil and Political Rights on 5 October 1998, but has yet to ratify it.

Human rights continued to be violated on a large scale in China in 1999. The three anniversaries mentioned above led to extensive restrictions on rights and freedoms and numerous arrests of members of the opposition China Democratic Party (CDP), as well as others opposing the government. Furthermore, the death penalty continued to be carried out frequently in 1999, and the number of crimes carrying the death penalty has reportedly increased from 26 to 65.

The media continued to be tightly controlled and manipulated and the use of internet remained under surveillance. In January Lin Hai, a computer entrepreneur, was sentenced to two years imprisonment after having provided the email addresses of Chinese computer owners to a US-based democracy magazine published by Chinese dissidents.

In 1999, the authorities detained thousands of practitioners of the Falung Gong movement and the organisation was declared to be illegal in July 1999. Several hundred followers were tortured, given prison sentences, sent to "reeducation through labour" camps or to psychiatric hospitals

In the Xinjiang autonomous region the situation remained unstable and gross violations were perpetrated. Amnesty International published a report in April 1999 documenting many cases of arbitrary detention and imprisonment, unfair political trials, torture and arbitrary and summary executions, mainly against the Uighurs. The Uighurs is the major ethnic group of Xinjiang.

The Judiciary

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

The CCP, through various channels, can interfere with the judiciary at various stages of litigation. The Central Political-Legal Committee was established directly under the CCP Central Committee, together with political-legal committees at lower levels. Its responsibilities include supervision of judiciary personnel, discussion of "important cases", reporting to the party committee on the trends of legal affairs and the implementation of party policies on legal affairs throughout the judiciary.

On numerous occasions, the Central Political-Legal Committee held conferences attended by representatives from all judicial departments and issued legal directives independently and jointly with the judiciary. The Committee also periodically coordinated campaigns such as the "strike hard" campaign against corruption. In some cases, the Committee directly interpreted legislation and the law, even covering issues as detailed as setting a standard for the prosecution of a crime.

Job security for judges and prosecutors is far from satisfactory. The laws relating to judges and prosecutors do not provide any meaningful safeguards. Judges and prosecutors can leave jobs in "fault" and "no-fault" situations. In a "fault" situation, the Judges Law provides a list of prohibited acts which would trigger the removal of judges from their positions. These include the act of spreading words damaging to the reputation of the country, participating in illegal organisations, or taking part in illegal demonstrations. There is also a catch-all clause embracing all other acts deemed to be in violation of laws or disciplines. In a "no fault" situation, a judge could be removed if he or she is assigned a job outside the court. A judge might also be dismissed if he or she is found to be unqualified. There is no clear process or standard to determine what constitutes an "unqualified judge".

The judiciary is under the obligation to report on its work to the Political-Legal Committee, such as when opinions are divided on certain matters. This allows the Committee to routinely review the judiciary's work. In some cases, the Political-Legal Committee can preside over what are known as "union office conferences" with representatives from the judiciary to deal with "major or difficult cases". This has been less used in recent years.

Another threat to the independence of the judiciary in China is the system of "approval". According to this practice, judges send cases to senior judges and the President of the court before the verdict is reached, for examination and approval. The reason for such a practice is said to be to prevent punishment for a "wrongful judgement". The reversal of judgements by a higher court is often considered a "wrongful judgement" by the judge at the lower level. The lower court judge could himself be punished by, for instance, removal from office.

It must be pointed out that China has, however, made progress in legal reform in recent years with the passage of new legislation such as the new Criminal Procedures Law (see below). On 20 October 1999, the Supreme Court launched a "Five Year Program to Reform" which contains both positive and negative provisions. On one hand it maintains the party dominance over the judiciary, but on the other hand it offers some improvements in the conduct of the trial.

The significant features of the program are as follows:

- Maintaining the party's dominance over the judiciary. The party continues to appoint and remove judges;
- Increasing the ability of individual judges in trying cases. The number of cases handed to the Adjudicative Committee for decision will be limited;
- The Supreme People's Court reiterates that it will implement strictly the rules of public trials. The rule that the trial can be restricted if it involves "state secrets", privacy and minors, continues;
- Reform of the jury system. The Supreme People's Court finalised the drafting of the Resolution on People's Assessor, which is pending for passage in the National People's Congress.

Structure of the Courts

The Chinese court system is comprised of four levels of court: the Supreme People's Court, the Higher People's Court, the Intermediate People's Court and the People's Court. There are, in addition, a number of special courts.

The People's Court's jurisdiction includes criminal, civil and administrative cases, together with the resolution of commercial disputes. A collegial panel of judges, people's assessors, conducts trials of first instance.

There are also military tribunals, marine tribunals and rail transport tribunals. Military courts serve as the judicial branch of the People's Liberation Army and are to adjudicate military offences and other criminal offences committed by army personnel.

Appointment and Dismissal

The appointment of judges and prosecutors is under the control of the party committees. Similar to other "cadres" all judges and prosecutors are nominated by the local party committee under the guidance of the party's Political-Legal Committees. The local People's Congresses merely confirm the nomination. Although the new Judges Law and the new Prosecutors Law provide limited protections to judges and prosecutors from arbitrary removal, the party's nominations for judges and prosecutors remain largely unchanged.

Court presidents appoint the chief judge of each hearing panel, or they themselves serve in that capacity. The President also chairs the "Examination and Evaluation Committee" which conducts an annual appraisal of judges' performances, and upon which promotions, salaries, training opportunities, rewards and penalties are based.

The Supreme People's Court consists of over 200 judicial officers. Its President is appointed for a five year term which may be renewed once and/or revoked by the NPC, while the divisional presidents, vice-presidents, judges and the Adjudication Committee are appointed and/or removed from office by the Standing Committee of the NPC. The Supreme People's Court is responsible to the NPC, to which it reports on its activities.

The presidents and judges of the three lower levels of court are appointed and/or removed from office in accordance with an identical but decentralised procedure involving the Standing Committee of the People's Congress of the judicial district concerned, to which the courts also report (Article 9 of the Judges Act and Article 10 of the Procurators Act).

People's Procurators are appointed and/or removed from office by the local congresses under the same conditions as judges. Each procuratorate has a Procurators' Committee, which takes the most important decisions by a majority of its members. If the head of the procuratorate is outvoted, however, the matter is submitted to the Standing Committee of the local People's Congress.

Criminal Procedures Law and Criminal Law

The 1996 edition of Attacks on Justice outlined the major features of the Criminal Procedure Law (CPL), which was adopted by the NPC on 17 March 1996 and came into force on 1 January 1997. Although the amendments to the original CPL were welcomed, genuine concern remains that the tradition of a dependent judiciary will prevent actual implementation of the amendments. Furthermore, the amended CPL still falls short of international standards.

The PRC also revised its Criminal Law, which came into force in October 1997. The most important amendment to this law is the elimination of crimes of "counter-revolution" (see Attacks on Justice 1998).

Lawyers

According to the new CPL, lawyers may perform two different functions in the criminal process: providing legal counsel and defence representation. The CPL now allows lawyers to provide legal counsel upon suspects being detained or questioned, while the old CPL permitted lawyers' involvement once the cases were brought to the courts. After cases are transferred to the Prosecutor's office, defendants have the right to seek the assistance of a lawyer to handle their defence.

While they are preparing their defence, lawyers can collect evidence and check, take note of and duplicate the evidence collected by prosecutors. In addition, lawyers have the right to meet with their clients and maintain communication with them. More importantly, lawyers have the right to defend their clients in court trials, including cross-examining witnesses and appealing on behalf of their clients. These rights are not respected in practice, however. Lawyers who act according to these provisions often face problems with prosecutors and the police.

The Lawyers Law, which was promulgated in 1996, was a step forward but is still far from being consistent with the UN Basic Principles on the Role of Lawyers. Lawyers are, for example, not independent, as the Ministry of Justice has significant control over lawyers, law firms and bar associations. Lawyers also face frequent obstruction and interference from the police, the procuratorate and courts. Furthermore, local judicial authorities issue regulations and judicial interpretations that limit lawyers' rights to represent their clients. The authorities also retaliate against lawyers representing defendants in politically sensitive cases. As a result political defendants frequently find it difficult to find an attorney.

Furthermore, lawyers are often not given access to a detainee within the required 48 hours or are denied permission to meet them under the pretext that the case involves state secrets. According to the CPL, in cases involving state secrets lawyers must obtain approval to meet with their imprisoned clients which is often denied for the sake of the investigation.

Even if lawyers are allowed to meet with their imprisoned clients, their visits often take place under restrictive conditions. Sometimes officials are present during meetings between lawyers and clients, or lawyers have to submit a written account of what they want to talk about with their clients. This practice is in clear violation with Article 8 of the UN Basic Principles on the Role of Lawyers.

Harassment of Lawyers

Since the new CPL became effective, ironically, lawyers have been at even higher risk than before. There are two main reasons for this: one is that since the new CPL provisions allow lawyers to become involved earlier in the criminal process and expand the scope of their work lawyers are more likely to come into confrontation with the authorities. The other is that hostility towards lawyers is mounting, especially among prosecutors. As a result, lawyers reportedly have been detained, beaten up, even convicted of crimes for representing their clients.

Some CPL provisions create an unfriendly environment for the provision of legal counsel or defence services. For instance, the provision on perjury is linked to lawyers, but the crime of perjury or assisting perjury can be committed by anyone involved in the criminal process, including prosecutors or even judges. The fact that the CPL singles out defence attorneys has no legal basis and puts pressure on lawyers. Furthermore, the Criminal Law does not stipulate in detail what constitutes the crime of forging evidence or perjury under Article 306. This leaves prosecutors wide discretion to prosecute lawyers and gives judges discretion to find them guilty of such an offence.

In practice, lawyers often run into serious legal trouble because witnesses or defendants/suspects change their testimony or statements after lawyers become involved. After the CPL took effect, witnesses and defendants reversing their testimony and statements became a frequent occurrence. Some lawyers have been convicted solely for acquiring a different story from witnesses to that which they have given to officials. Lawyers therefore can be detained by their counterparts in a criminal trial while they are in the middle of conducting a legal defence.

Cases

In 1998 many lawyers (more than 100 estimated by the All China Lawyer's Association) were harassed, detained, and even sent to jail for defending their clients. As a result, the number of lawyers appearing in criminal cases has been substantially reduced and they take part in less than one third of all criminal cases. Numbers for 1999 were unfortunately not yet available at the time of writing.

TIBET

The Tibetan Autonomous Region (TAR) and other Tibetan autonomous areas have been given nominal autonomy with most local powers subject to central approval. The actual extent to which Tibetans control their own affairs is even more circumscribed, however, due to the centralised dominance of the Communist Party and the exclusion of Tibetans from meaningful participation in regional and local administration.

The year 1999 marked both the official celebrations of fifty years of the founding of the People's Republic of China and the 40th birthday of an uprising in Tibet against China. The anniversaries led to extra surveillance and repressive measures in Tibet.

In December 1997, the International Commission of Jurists (ICJ) issued a study, "Tibet: Human Rights and the Rule of Law". The study describes Tibetans as a "people under alien subjugation" entitled under international law to, but in practice denied, the right of self-determination. The reality for Tibetans is that there is neither democracy, nor an independent judiciary, nor any Rule of Law in Tibet. The autonomy which China claims Tibetans enjoy is fictitious, as real power is, in effect, in Chinese hands.

As described in the ICJ report, a judiciary subservient to the Communist Party results in abuses of human rights in all of China. In Tibet the problem is particularly severe due to China's campaign against Tibetan nationalism.

Many Tibetans, particularly political detainees, are deprived of even elementary safeguards of due process. Tibetan judges must report to the Communist dominated "Adjudication Committees" or the "Politics and Law Committees", which then advise on what they consider to be an appropriate ruling. The judge will then render his or her decision. Any judge who reverses the decision of the Committees is subject to serious repercussions. Judges are appointed and may be removed without cause by the People's Congress or one of its standing committees.

HONG KONG

Hong Kong was acquired by Great Britain from China and most of the land area of Hong Kong was scheduled to revert to the People's Republic of China (PRC) in 1997. On 19 December 1984, the Prime Ministers of the United Kingdom and the PRC, Margaret Thatcher and Zhao Ziyang, signed the "Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong", (hereafter "Joint Declaration"). On 30 June 1985 instruments of ratification were exchanged and the agreement entered into force.

In the Joint Declaration the basic policies of the PRC regarding Hong Kong are set out in Article 3 and elaborated in Annex I. One of the basic policies declared by the PRC in Article

3 of the Joint Declaration is that the existing social and economic system and the present lifestyle of Hong Kong will be left unaffected for a period of 50 years.

The format chosen for implementing this "one country, two systems" principle is the Special Administrative Region under direct authority of the Central People's Government of the PRC. The status of the Hong Kong Special Administrative Region (HKSAR) is envisioned in Article 31 of the 1982 Constitution of the PRC. For Hong Kong, the concept of the HKSAR is elaborated in the Basic Law of 1990, a kind of "mini-constitution".

The Joint Declaration determines that the HKSAR is allowed to maintain control of its external and economic relations, to remain a separate customs area and to retain the status of an international financial centre, with foreign exchange markets and a convertible currency. Hong Kong is also allowed to retain a legislature and judiciary of its own. Although the Joint Declaration is called a "declaration", it is an international treaty as defined by the Vienna Convention on the Law of the Treaties. It has been registered in accordance with Article 102 of the United Nations Charter.

Tung Chee-hwa became, on 1 July 1997, Chief Executive of the HKSAR. An Executive Council of the HKSAR was established mainly consisting of pro-China political and business leaders. Rita Fan was elected President of the Provisional Legislative Council (PLC), which was set up under the assumed authority of the Central People's Government of the PRC before the transfer of sovereignty and which began to operate at the end of 1996 in conjunction with the Hong Kong Legislative Council. The PLC replaced the Hong Kong Legislative Council on 1 July 1997. The constitutionality of the PLC was challenged in a court case in July 1997. Ultimately, the Court of Final Appeal decided that the PLC had been lawfully established, however not as the Legislative Council of the Special Administrative Region.

The Standing Committee of the NPC adopted a resolution in early 1997 deciding that most of Hong Kong's laws would be retained in the HKSAR; however, certain laws in contravention of the Basic Law would not be adopted as part of the laws of the HKSAR. Part of the laws not adopted were key sections of the Hong Kong Bill of Rights Ordinance and amendments. They were introduced by the outgoing colonial Hong Kong Government to liberalise the restrictions on freedom of association contained in the Societies Ordinance and to remove the requirement to obtain police permission for demonstrations contained in the Public Order Ordinance.

The Legislative Council of the HKSAR, which was elected on 24 May 1998, consists of 60 members of whom 20 were directly elected from five geographical constituencies, 30 were elected from functional constituencies and the Election Committee, which consists of 800 members divided into four sectors, elected the remaining 10. This system of elections is generally seen as unfair because of the heavy influence which business and professional sectors have through the functional constituency system and the Election Committee. Election monitors were not allowed to enter polling stations to observe the issue and casting of the ballots, etc. They were only able to observe the poll and the counting like any interested member of the public.

The Democratic Party led by Martin Lee won a total of 13 seats (of which nine were out of the 20 directly elected seats) and became the largest party in the Legislative Council. Mr. Lee called upon the HKSAR Government to speed up the process to establish direct elections by

universal suffrage for all the 60 seats. The Chief Executive, Mr. Tung Chee-hwa, argued that political reform should take place according to the Basic Law which outlines a gradual increase in the number of seats to be elected directly and marks the year 2007 as the first opportunity to decide whether a fully directly-elected legislature should be established and when.

Human Rights Background

Slowly but steadily one can see the erosion of rights and freedoms in the HKSAR. To name only some examples: the pope was not allowed to visit the HKSAR because of the ties between the Vatican and Taiwan; Legislator Margaret Ng was denied a visa to travel to mainland China for a seminar, allegedly for criticising Justice Secretary Elsie Leung; the director of the government-owned Radio Television Hong Kong (RTHK), Ms. Cheung Man-yee, was transferred to a post in Tokyo, allegedly as a result of political pressure due to her steadfast maintenance of editorial independence.

The International Covenant on Civil and Political Rights was ratified by the United Kingdom on 20 May 1976 and extended to Hong Kong with several reservations. Because the United Kingdom did not ratify the Optional Protocol, neither the UK nor Hong Kong citizens had the right of individual petition. When the PRC resumed sovereignty over Hong Kong on 1 July 1997, the change in Hong Kong's legal status had implications for the extension of the ICCPR to the HKSAR.

However, this problem was negotiated, and consequently Section XIII of Annex I to the Joint Declaration stipulates, *inter alia*, that:

[t]he provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force.

Through Article 39 of the Basic Law, these provisions apply in the HKSAR. As noted above, however, key provisions of the Hong Kong Bill of Rights Ordinance were considered by the Standing Committee of the NPC and the PLC to be in contravention of the Basic Law and ceased to have effect on 1 July 1997. These included the provision which required that all pre-existing (Hong Kong) legislation which could not be construed consistently with the Ordinance be repealed to the extent of such inconsistency.

The Chinese Government has accepted the reporting obligation to the UN Human Rights Committee, the supervisory body established under the ICCPR, with regard to the HKSAR although the PRC is not a state party to the International Covenant on Civil and Political Rights (the PRC signed the Covenant on 5 October 1998 but has yet to ratify it). The fifth periodic report was the first report submitted by the Chinese Government after the return of the HKSAR to Chinese sovereignty. The report was discussed on 1 and 2 November 1999.

In the 1998 edition of *Attacks on Justice* we described cases of people tried in mainland China and sentenced to death for offences committed in Hong Kong. The HKSAR Government did not ask for the extradition of the prisoners.

With regard to deportation from the HKSAR to the PRC the Human Rights Committee said:

In the light of the fact that the Covenant is applied in HKSAR subject to a reservation that seriously affects the application of Article 13 in relation to decision-making procedures in deportation cases, the Committee remains concerned that persons facing a risk of imposition of the death penalty or of torture, or inhuman, cruel or degrading treatment as a consequence of their deportation from HKSAR may not enjoy effective protection. In order to secure compliance with Articles 6 and 7 in deportation cases, the HKSAR should ensure that their deportation procedures provide effective protection against the risk of imposition of the death penalty or of torture or inhuman, cruel or degrading treatment.

The Judiciary

The Joint Declaration determines that the HKSAR is allowed to retain a legislature and judiciary of its own. Article 19 and 85 of the Basic Law guarantee independent judicial power and freedom from interference. Article 82 of the Basic Law states that the "power of final adjudication" rests with the courts of the HKSAR.

Structure of the Courts

The Court of Final Appeal, Court of Appeal, Court of First Instance, District Court, Magistrates' Court and other tribunals with judicial officers presiding are the courts that exist in the Hong Kong Special Administrative Region. The Court of Final Appeal replaced the Judicial Committee of the Privy Council, which was the highest court when Hong Kong was a Crown Colony of the UK.

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

The tribunals only exercise civil jurisdiction in relation to matters specified by legislation. These include minor labour disputes, small civil claims and determinations about obscene and indecent publications. They are staffed by magistrates and other lay appointees. There are other administrative boards and tribunals established by statute which are not the responsibility of the judiciary. Magistrates exercise an almost exclusive criminal jurisdiction, without a jury. The powers of punishment are limited to sentences of no more than three years imprisonment.

District courts exercise civil jurisdiction over monetary claims of not more than HK\$ 120,000 as well as criminal jurisdiction. In the latter, the powers of the judge are limited to imposing sentences of not more than seven years on any one occasion. The Court of First Instance has an unlimited jurisdiction. It exercises both civil and criminal jurisdiction. Criminal cases are conducted by trial by jury upon indictment.

Appointment and Dismissal

A Judicial Officers Recommendation Commission was created to advise upon judicial appointment or promotions, conditions of judicial service and any other matters affecting judicial officers. The membership of the Commission consists of the Chief Justice and the

Secretary for Justice ex officio and two judges, one barrister, one solicitor and three lay persons by appointment of the Chief Executive. Certain categories of persons, like members of the legislature and other public pensionable officers, are not allowed to be members of the Commission.

Article 89 of the Basic Law places restrictions on the removal of judges of the courts of the HKSAR. Judges may be removed for misbehaviour or inability to discharge their offices. A panel of local judges must make a recommendation to the Chief Executive who takes the decision to remove a judge.

According to Article 90 of the Basic Law, removal and appointment of the judges of the Court of Final Appeal, the Court of Appeal and Courts of First Instance must be endorsed by the legislature and reported to the Standing Committee of the National People's Congress. Only judges of courts, starting from the level of District Court, enjoy security of tenure guaranteed by the Basic Law. Magistrates are not regarded as judges and are appointed on contract terms.

The power of the Court of Final Appeal

In Attacks on Justice 1998 we discussed the case of Ng Ka Ling vs. the Director of Immigration and expressed concern that the HKSAR Government referred to the Standing Committee of the National People's Congress (NPC) for interpretation of the Basic Law.

The move of the HKSAR Government to seek an "interpretation" was strongly opposed by members of the legal community in Hong Kong and abroad. The Hong Kong Bar Association issued numerous statements and appeals to the public. Although the Law Society Council took the position that interpretation and amendment were "both lawful" and the matter was a political choice to be left to the government, many of its members disagreed. Lawyers from both branches of the legal profession co-signed an appeal to the government against re-interpretation. Over 360 lawyers signed a four-page letter rejecting the arguments of the Secretary for Justice. A group of some 300 solicitors published in local newspapers an open petition to the NPCW not to accept the request of the government.

The Standing Committee of the NPC announced the "interpretation" on 26 June 1999. The Standing Committee considered that the CFA was wrong in not seeking an interpretation from the Standing Committee at the time when it heard the cases, and that its interpretation of the Basic Law was not consistent with the "legislative intent".

The HKSAR Government has refused to state publicly the situations or conditions under which it would again seek an "interpretation" from the Standing Committee, or the limits beyond which, or issues on which, it would not seek an "interpretation" from the Standing Committee. Rather, in a case concerning the constitutionality of flag desecration legislation of the HKSAR, the Secretary for Justice has not disavowed the possibility of seeking an interpretation from the Standing Committee of the relevant provisions of the Basic Law if the CFA ruled against the HKSAR Government

During the discussion of the fifth periodic report of the HKSAR to the UN Human Rights Committee on 1 and 2 November this issue was also dealt with. The Committee expressed its serious concern:

at the implications for the independence of the judiciary of the request by the Chief Executive of HKSAR for a reinterpretation of Article 24(2)(3) of the Basic Law by the Standing Committee of the National People's Congress (NPC) (under Article 158 of the Basic Law) following upon the decision of the Court of Final Appeal (CFA) in the Ng Ka Ling and Chan Kam Nga cases, which placed a particular interpretation on Article 24(2)(3). The Committee has noted the statement of the HKSAR that it would not seek another such interpretation except in highly exceptional circumstances. Nevertheless, the Committee remains concerned that a request by the executive branch of government for an interpretation under Article 158 (1) of the Basic Law could be used in circumstances that undermine the right to a fair trial under Article 14.

On 3 December 1999, the Court of Final Appeal of the HKSAR accepted that the Standing Committee of the NPC has a general and unqualified power to interpret the Basic Law. In an unanimous judgement, the Court applied the interpretation of the Standing Committee in June to overrule its previous decisions. In July, the Immigration Ordinance was changed following the interpretation of the Standing Committee in June.

In the flag burning case reported in last year's edition of *Attacks on Justice* the HKSAR Government appealed the decision by the Court of Appeal that the burning of the Chinese flag was a legitimate form of freedom of expression. On 15 December 1999, the Court of Final Appeal quashed the decision of the lower court. It was perceived that the decision was taken not to further anger China after the right of abode cases.

Cases

Alan Leong lawyer and Vice-President of the Bar Association: Mr. Leong was kicked in the back as he was leaving a forum he attended in mid-1999. The Bar Association had taken a very strong position against the proposal of the government to seek re-interpretation from the Standing Committee. Government propaganda that portrayed the claimants for permanent resident status as immigrants who would strain the social and economic resources of the HKSAR likely led to this assault. The attacker was not apprehended.