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A Law unto Themselves

The Chinese Government has acknowledged that corruption in the judiciary is a serious problem. Zhang Xian Chu reports.

Apparently, judicial corruption in China has reached the point where the country's top leaders are dealing with it personally. For example, in a speech published in the People's Daily on 26 December 1997, President Jiang Zemin, openly admitted in the National Conference on Political and Legal Affairs held at the end of last year that there are conspicuous problems in the political and judicial teams. He said that from time to time the people were complaining strongly about the judiciary allowing the breach of laws and overseeing relaxed and unfair enforcement; taking bribes; and bullying and oppressing people. Mr Jiang said 'These problems have seriously affected the image of our judicial team and damaged the reputation of the Communist Party and the Government. All the problems, especially the harmfulness of judicial corruption must be recognised.'

The Conference also acknowledged that judicial corruption affects all stages of judicial proceedings, including investigation, prosecution and sentencing. The Conference decided to conduct a campaign against judicial corruption in the first half of 1998. According to Mr Ren Jianxin, President of the Supreme People's Court, the campaign will be focused on the breach of laws, enforcement at discretion, violations in handling cases and power deals.

Although complaints by Hong Kong people against judicial corruption in the mainland have often made headlines in local newspapers, some facts revealed in support of the campaign are still very striking. A division head in a Shenzhen People's Court was arrested recently for private dealing with a defendant before trial. Some judges in Zuhai and Shantuo were also dismissed for corruption (see Ming Pao, 18 December 1997). A strange case was recently reported in the Legal Daily (19 December 1997). A Shenzhen District Court re-accepted a case filed by a debtor when the court's original decision in favour of the creditor had been affirmed by an appellate court and become effective in 1996. The District Court issued its second judgment ordering the creditor to pay the debtor Rmb1 million without pursuing any due procedures and reviewing any new evidence.

In Anhui province, a group of judges that included the Vice-President of a local court was found to be involved in manufacturing a false case. In November 1995, a businessman was arrested by a judge upon the request of a friend of the judge's. In order to justify the unlawful arrest and detention, several judges manufactured a complete set of files back-dated to May 1995, forced the businessman to sign all the fabricated documents, and then accused him of hindering judicial proceedings. The forged documents were approved by all the members of the court's trial committee after they were entertained by the parties to the fraud. Most of the Rmb240,000 obtained from the businessman was divided among the judges before Rmb100,000 was given to the judge's friend. The victim was illegally detained for more than six months. Finally, only one judge was sentenced to one year's imprisonment, suspended for one year. The others were merely given internal punishment (see Legal Daily, 3 January 1998).

In Jiangsu province, 153 cases have been found to have been wrongly decided by an Intermediate Court in the past four years, mainly as a result of judges favouring their friends or receiving bribes. In the first eleven months of 1997, forty-two judicial officers were investigated in Hainan province and dealt with for various abuses of process including the suspension of death penalties through the making of false evidence.

Despite the existence of these outrageous cases, it is not true that the quality and performance of the entire Chinese judiciary is deteriorating. On the contrary - a fair observation clearly reveals that progress has been made in recent years.

First, extensive legislation at both the national and local levels has attempted to put corrupt practices behind the profession. Since 1993, the Interim Regulations on Government Officers, the Law of People's Police, the Law of Prosecutors, and the Law of Judges have been promulgated and supplemented with many local implementing rules. As such, conduct standards are being established for the judiciary and enforcement bodies.

Second, great efforts have been directed to improving the quality of judicial personnel and their work. Examinations have been conducted to check their professional knowledge and skills; universities and training centres have been established to provide them with a higher level of education, and foreign experience has been studied through exchanges with foreign judiciaries.

Third, some practical problems have been seriously dealt with in order to ensure the healthy operation of the judicial system. Initial achievements have been made in correcting local protectionism, interference in the execution of judgments, unlawful enforcement and procedural violations.

Fourth, the judiciary has been playing a more active role in safeguarding the stability of social order and in supporting the establishment of a market economy in China. The fact that the total number of cases handled by the People's Courts at all levels jumped from fewer than 1.6 million in 1986 to more than 5.23 million in 1997, demonstrates the role of the judiciary in China's increasingly litigious society.
Fifth, as the new Criminal Law, and Criminal Procedure Law, and finalised Civil Procedure Law are implemented, the judicial process is becoming more transparent. The Supreme People's Court, for example, has continued to publish its interpretations, judgments and instructions fairly promptly.

In light of the above, how can the serious corruption be explained? The writer believes that the phenomenon reveals several defects in the current system. The lack of effective supervision and discipline is perhaps the most important cause of corruption. Despite the constitutional provision that judges are selected by the relevant People's Congress or its standing committee (as per arts 62, 67 and 101 of the Constitution and art 11 of the Law of Judges), in practice the party leaders have exercised the power of judicial appointment and control. Consequently, judges may not be truly responsible to the People's Congresses and in turn, the Congresses may not be able to effectively supervise and control the behaviour of the judges.

In his speech at the National Conference mentioned above, Mr Ren Jianxin repeated the principle that judicial reform should adhere to the vision of the Party's leadership and the socialist system and not be reliant on the scheme of checks and balances adopted in Western countries.

The quality of the judiciary has concerned many for a long time. It is no secret that unlike lawyers, most of whom hold law degrees or qualifications of equivalent standing, many judges are retirees from the army with no legal, or even general, higher education. More importantly, political loyalty to the Communist Party and the Socialist regime is a requirement for appointment to the bench. As Mr Ren Jianxin puts it, 'A judge not only needs to be in good command of laws and his professional work, but must have a firm political stand and be honest and upright.'

In order to become a practising lawyer in China, one must hold a higher education degree, pass the national qualification examination and complete practical training for one year. However, under the Law of Judges, a college graduate from a non-law major may become a judge with relevant working experience of two years. Moreover, the Law does not provide any national qualification examination for judges and creates an exception to enable those who could not meet the standards above to become judges after certain training.

Unlawful intervention in judicial proceedings is another problem that prevents courts and judges from faithfully and impartially performing their duties. There is bound to be continuing conflict between judges' adherence to the will of the Party's leadership and the denial of the principle of check and balances on the one hand, and their promotion of judicial independence on the other.

The unprecedented establishment of a market economy in China has opened the eyes of more and more people to the possibility of improved living standards. As human beings, even judicial personnel may not be able to resist the temptation to better their lot. In a sense, the judicial circle is at a stage of development that has been experienced in many other jurisdictions. Thus, although the phenomenon of judicial corruption bears certain unique Chinese characteristics, it may still be considered an inevitable and common symptom of transition.

Last, but not the least, technical defects in the current legal system should also be blamed for the judicial abuses. For example, loopholes in legislation, disparities among the regulations issued by different state authorities, and a lack of definitions of many important legal concepts have made abuses of process possible.

There is a continuing struggle between the demand of a market economy for judicial efficiency, impartiality, and professional conduct on the one hand, and the resistance of the traditional ideology to judicial reform, on the other. The current discipline campaign, as a temporary movement, will undoubtedly reduce the incidence of corruption scandals and result in the punishment of violators over a short period. The tougher job, nevertheless, is to reform the current system by introducing a supervisory scheme that will deter and deal with abuses effectively in the long run. This will improve the quality of the entire judiciary and further develop true judicial independence in China. In terms of the big picture, the upgrading of judicial performance will not be achieved in isolation, but to a large degree, depend on the progress of the rule of law in China.

Zhang Xian Chu is a Research Fellow at the University of Hong Kong's Department of Law.
無法無天，一手遮天

張憲初分析中國法律之不足及改善之法

中國的司法腐败居然已經到了使國家領導人
視而無睹的地步。（人民日報）1997年12月26
日發表了文章指出："在中國的司法制度中存在著一些突出的問
題，法不制，執法不嚴，執法不公，吃拿
卡要，索要賄賂，貪贓枉法，欺壓百姓等問
題時有發生。"他說：這些問題嚴重地影響我
們司法制度的形象，損害了政府的威信。
對這些問題，特別是司法腐敗現象的護
性，必須引起足夠的警惕。

中國的司法制度嚴重地影響着中國的社會
主義法制建設的進程，必須引起足夠的警惕。

首先，中央和地方政府為維持司法腐敗行
為的泛濫，對這些違法違紀的司法幹部，進行了嚴厲的處理。1997年以來，已有許多地方干
部因涉嫌司法腐敗被查處，其中就包括幾名省部級幹
部。這些幹部的違法行為，已經嚴重地影響了社
會主義法制建設的進程，必須引起足夠的警惕。

其次，國家為了維護司法制度的權威，行
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第四，司法機關在維護社會穩定和保
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