

Law & Legal Affairs



Chinese demonstrators in Beijing. Law still takes a back seat to politics when socio-political stability is perceived as under threat

Picture: Reuters

One China, many systems



The multi-layered complexity of Chinese society is mirrored in its legal set-up, explains **Randall Peerenboom**

ACCORDING to the World Bank's recently announced world governance indicators, China ranks in the 42nd percentile of all countries on rule of law, roughly comparable to Brazil, Guyana, and the Philippines. It is substantially better than Kenya, Laos and Tajikistan, but demonstrably inferior to the UK, Australia, Japan and other economically advanced countries.

These results are unsurprising given the correlation between wealth and most good things in life, including rule of law. To use a more meaningful baseline, China outperforms other lower-middle countries on rule of law and most other good governance indicators, apart from corruption and most human rights and development indicators, with the exception of civil and political rights.

But while the World Bank's rule of law indicator is useful in providing a rough measure of a country's legal system, it fails to capture the complexity of China.

There is not one legal system in China, there are many, and the quality of justice varies dramatically by the type of case, the level of court and the region.

Chinese courts regularly handle commercial and civil cases, and even most

administrative cases, in a fair and efficient fashion. Notwithstanding various jurisdictional and institutional obstacles, Chinese citizens are more successful in suing the government than are citizens of the United States, Japan or Taiwan.

Criminal cases are another matter. China has repeatedly revised criminal laws to strengthen the rights of the accused, increased the defence lawyer's role and raised the level of professionalism of prosecutors, police and prison officials. Nevertheless, the accused often do not enjoy the rights provided in laws, lawyers are still harassed for defending criminals and prison conditions remain harsh. The transition to a market economy, urbanisation and demographic changes have led to spiralling crime rates, undermining public support for reforms and strengthening the hand of enforcement agencies.

In addition to this, prosecutors, police, lawyers and judges are still adjusting to the shift from a more traditional European inquisitorial system to a more Anglo-American adversarial system.

Cultural factors also play a role, including a general preference for social stability and a traditional emphasis on substantive justice that makes it harder to take the

procedural rights of criminals seriously. Law continues to take a back seat to politics in cases perceived to threaten socio-political stability, such as those involving groups attempting to establish political organisations or public demonstrations and protests.

As in other developing countries, socio-economic cases involving pension and welfare claims, labour disputes, land takings and environmental issues also present problems because institutions are weak and the state lacks the financial resources to address what are, in essence, economic issues.

While institutions are generally weaker in China than in developed countries, there is again significant variation. Judges in higher-level courts are, on the whole, more competent, less corrupt and less subject to pressure from local government officials to decide in favour of local parties than judges in lower level courts.

There is also considerable variation by region and within regions between urban and rural areas. Some large cities in developed regions such as Beijing, Shanghai and Guangdong are similar to middle-income countries, while other parts of China are as poor as some of the poorest countries in the world.

As expected, the legal system in the more developed areas functions better – there are more, and better, law schools

and lawyers; the courts are better funded; judges are more qualified; there is less local protectionism and corruption, and the enforcement of judgments is easier. As a result, people in wealthier urban areas are more likely to turn to the courts to resolve disputes and are more likely than people in poorer rural areas to be satisfied with their experience.

During the past three decades, the government has invested heavily in judicial reforms in the belief that a market economy requires the rule of law, and to bolster its legitimacy by giving citizens a fair and efficient forum to pursue their interests, resolve disputes and hold government officials accountable. Yet the sheer size and complexity of China complicate the process of designing and implementing reforms.

At a more fundamental level, the continued reliance on party organs and political means to handle cases perceived to threaten socio-political stability highlights the difference between the establishment of a "socialist rule of law state" and a liberal democratic rule of law.

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Legal Update

PEOPLE

■ **SIR Muir Russell**, the principal and vice-chancellor of Glasgow University, has been appointed as the new chairman of the Judicial Appointments Board for Scotland. He succeeds Sir Neil McIntosh, who has been in the post for six years and will stand down at the end of October.

■ **MCGRIGORS** has announced the appointment of a new chief operating officer among a group of four new senior staff.

Tim Salmon will assume responsibility for the firm's finance, HR, IT and facilities after joining from Barlow Lyde & Gilbert. He is joined at the firm by partners John MacIver from DLA Piper and Mark Parkhouse from Reed Smith, as well as Pamela Muir, who arrives from HBJ Gateley Wareing.

■ **LAURA Drummond**, the current crown counsel with the Attorney General's Chambers in the Ascension Islands, has been appointed as a part-time sheriff.

AWARDS

■ **MACLAY Murray and Spens (MMS)** has been named among some of the UK's largest law firms on the shortlist in the marketing category of this year's FT Innovative Lawyers awards. Freshfields and Eversheds are among the nominees for the prize, for which MMS has been shortlisted for its "KnowEDGE" web campaign.

EVENTS

■ **THE Hastie Stable** of advocates is travelling to Castle Douglas this month to stage a seminar with the Dumfriesshire, Stewartry and Wigtonshire Solicitors' Faculties. The event will cover various aspects of law including conveyancing, family law and criminal appeals and will be held on 31 October. For further information, contact susan.hastie@advocates.org.uk

■ **FORMER House of Lords Judge Lord Clyde** heads a list of speakers at a conference organised by the public law group of the Murray Stable on 10 November.

The event, which focuses on developing public law in Scotland, will also hear from, among others, Valerie Stacey QC, a former vice-dean of the Faculty of Advocates.

It will be held in the Faculty of Advocates Mackenzie Building in Edinburgh. For further information, visit www.murraystable.com