

Cry freedom

Jerome A. Cohen says a revised criminal law that takes effect come 2013 provides the backdrop to a key challenge confronting China – how to bring the party and government under the rule of law

International Human Rights Day is always a good time to take China's temperature. This year, the country is especially feverish. Amazingly, 63 years after the People's Republic was established, populous and powerful China still has no effective means of enforcing the rights enshrined in its constitution. Yet, once again, new Communist Party leaders reignite hopes for bringing government and the party under the rule of law.

On January 1, a newly revised Criminal Procedure Law goes into effect, making explicit reference to human rights for the first time. Thousands of Chinese judges, prosecutors, lawyers, officials, scholars and party experts are currently contending and co-operating in an effort to give concrete meaning to its largely progressive, but broad and often ambiguous, language. This will be a complex, long-run process.



How China's new leadership will handle the prosecutions of citizens is important

Although little understood outside specialist circles, the outcome of this struggle will have a major impact on the personal freedom of 1.3 billion individuals as well as on their country's politics, government, society, economy and international relations.

The revised law is not the only recent human rights legislation requiring implementation. The country's first mental health law, for example, promises better protection against arbitrary incarceration in mental hospitals. Yet other legislation is needed to eliminate the continuing threat of unfair official detention.

One litmus test will be whether the party's new leaders allow the National People's Congress to finally eliminate "re-education through labour". Legislation is also urgently needed to ban the notorious "black jails" to which would-be petitioners are subjected.

Not on the NPC's agenda is another critical measure required to assure the personal security of millions of ordinary mortals, as well as China's highest leaders – legislative regulation, if not elimination, of "double designation" (*shuanggui*). That is the long-standing party institution for

detaining incommunicado, at the pleasure of its investigators, any of the more than 80 million party members suspected of misconduct.

Ironically, when party leaders announced the purge of their colleague Bo Xilai (薄熙來) in March, they guaranteed the nation that his case would be handled strictly according to law. Their actions, of course, immediately belied their words, since they then "disappeared" Bo for many months into the bowels of the party's feared discipline inspection system. Only after a secret political struggle over his fate did the party turn his case over to the legal system for prosecution.

How to present to the world Bo's case, often said to be the most important Chinese legal proceeding since the 1980-81 show trial of the Gang of Four, is the party's most urgent challenge. If extended incommunicado detention has subdued the normally feisty Bo, his trial, although it would be described as "open", is more likely to resemble the carefully limited "open" prosecution of his wife, Gu Kailai (谷關來), than the much longer, more publicised and free-wheeling circus that constituted the trial of the Gang of Four.

Despite its many legal failings, the latter did drive home to a nation only beginning to recover from the nightmare of the Cultural Revolution the importance of criminal defence lawyers and the tragic consequences of unconstitutional search and seizure, torture of political opponents, official coercion of confessions and lawless killing. Unfortunately, as his rule over Chongqing (重慶) demonstrated, Bo never took those lessons to heart.

Yet how China's new leadership will handle the prosecutions of ordinary citizens is far more important to human rights progress than party leaders' occasional resort to law to pillory their political rivals. Sadly, prospects are not encouraging, if the November 30 conviction of Chen Kegui (陳克貴), the nephew of blind "bare-foot lawyer" Chen Guangcheng (陳光誠), is any guide.

After a trial that can only be described as a judicial farce, Chen Kegui, a 32-year-old farmer, was convicted of "intentional wounding" and sentenced to three years and three months in prison by the Yinan county court in Shandong (山東) province.

The number of procedural violations that marred his prosecution surely match those that marked the 2006 proceedings in the same court against his now famous uncle, whose daring escape from illegal home imprisonment in April this year not only made him a world figure but also made his family a target of official revenge. Like his uncle, Chen Kegui was subject-



ed to many months of pre-trial incommunicado police detention and denied the right to be represented by independent defence counsel. Instead, local "legal aid" officials foisted their hand-picked counsel on him from the same two local law firms that had been forced upon his uncle and that, under instruction from the authorities, had failed to provide him a competent defence.

Extraordinarily, Chen Kegui's assigned lawyers never even gave his family a copy of the indictment and only informed them of the trial less than four hours before it began.

Although his parents arrived in time to attend the trial, which was announced as open to the public as required by law, they were both excluded. Their testimony would have confirmed that Chen Kegui's stabbing of a township official who led an illegal after-midnight break-in at their family farmhouse was an act of self-defence.

It was a desperate attempt to fend off 30 or more officials and thugs who had been severely beating him and his parents and destroying their furniture in furious retaliation for his uncle's escape. Yet the court

had the illogical temerity to deny them an opportunity to testify and yet exclude them from even observing the trial on the grounds that they were witnesses to the events in question!

After the trial, Chen Kegui's assigned lawyers even refused to tell his parents, who had been held in a police van outside the courtroom all afternoon, about the process and the result. That would have required them to explain how they could have allowed their obviously intimidated client to renounce an appeal before the trial ended.

One can only wish that, by next year's Human Rights Day, China's new leaders will have stimulated not only further legislative protections of constitutional rights but also law enforcement's good-faith implementation of such rights. Otherwise, to paraphrase Shakespeare, they will again have to plead guilty to "keeping the promise to the ear, but breaking it to the hope".

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