

The court of mass appeal

Jerome A. Cohen

On March 25, China's Supreme People's Court released its Third Five-Year Reform Programme for the People's Courts. Its predecessor was issued in late 2005, towards the end of the second year of the period in question. By contrast, the third programme has appeared promptly. Its text is dense, largely abstract and suffused with exhortations to the immediate audience – the country's judges – to complete whatever ought to be done to benefit every aspect of the judicial system.

Although not as detailed in its recommendations as the second programme, it does offer specific proposals, and a comprehensive list of problems needing attention. Most importantly, it provides further confirmation of the Communist Party's renewal of the "mass line" in political-legal affairs after a decade of judicial emphasis on professionalism that occasionally pushed the limits of party tolerance.

Running any country's judicial system is a challenge, but mainland China's may be the most daunting. The sheer numbers are mind-boggling: a population of 1.3 billion; almost 200,000 judges, plus roughly as many court staff; more than 3,100 basic courts, some 406 intermediate courts, 32 high courts and the Supreme People's Court that itself has hundreds of judges who deal both with individual cases and handle research, guidance and administration for the entire system.

Last year saw a huge increase in the judicial burden. Courts were called upon to dispose of almost 11 million cases, an unprecedented number and reflection of not only China's stunning development but also the increasingly complex tensions that such progress, and the

economic downturn, have spawned. Of course, the courts would have been even busier in 2008 if they had been allowed to accept many other controversial cases. For some years, there has been an intensifying debate over the extent to which courts should reject lawsuits that involve sensitive public issues and a large number of litigants, such as the environment, land use, enterprise bankruptcy, HIV/Aids discrimination, stock market manipulation, police misconduct and administrative regulation. Last year's earthquake and poisoned milk powder tragedies raised the question of court jurisdiction to national and international attention, as party leaders resisted efforts of victims' families and their lawyers to seek justice in the courts.

The second programme had proposed specific, significant steps towards judicial autonomy, not only for the courts as an institution but also for individual judges. The third programme does not reveal the fate of those proposals, merely listing some of them on the continuing agenda. Although it does endorse protecting the courts from "illegal interference", it does not indicate what conduct would be "illegal".

Some of the third programme's proposals are important. Criminal sentencing has long been a concern, but the new programme suggests the possibility of a separate procedure so defence lawyers, as well as prosecutors, have adequate chances to persuade the court. At present, determination of guilt and sentencing are lumped together.

The new programme favours setting up a public process to handle applications for reductions in sentence and parole. It also supports substantial minimum prison sentences for major offenders who

have been spared the death penalty, thus avoiding the risk that dangerous people might be released if not sentenced to death, as sometimes happens. And it advocates expunging the record of juveniles convicted of minor crimes.

The third programme is also noteworthy for stressing judicial transparency. It recommends posting judicial decisions, and how to enforce them, on the internet.

To what extent and when the newly proposed reforms might be carried out remains to be seen. Since late 2007, when the 17th Party Congress launched the line that plays down judicial professionalism and autonomy, judges and other law-related officials and reformers have been struggling to shape the concrete consequences of the new line. How to apply "the mass line" to the complex problems of the judicial system in ways that will genuinely benefit the masses is no simple task.

Perhaps more decisive action may be stimulated by the refusal of more than 25 per cent of the delegates to the recently concluded session of the National People's Congress – outraged by reports of judicial corruption, inefficiency and unfairness – to approve the Special People's Court 2008 Work Report.

One litmus test of this struggle's outcome will be whether judges continue to wear western-style judicial robes they donned just seven years ago, which symbolise the supremacy of law that the "mass line" is designed to eradicate.

Jerome A. Cohen is co-director of New York University's US-Asia Law Institute and adjunct senior fellow at the Council on Foreign Relations in New York. A fuller version of this article may be found at www.usasialaw.org