

Canada China Procuratorate Reform Cooperation Project



An End-of-Project Summation

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Supreme People's Procuratorate
of the People's Republic of China



International Centre for Criminal Law Reform
and Criminal Justice Policy



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Foreword

Opportunities for engagement increase every day as global interconnections increase and communications technology improve. In each context, we should value the respect that grounds toleration, and thus we should seek an accommodation of our differences in a spirit of toleration. . . . We should all value mutual respect because it makes for better communication and engagement, and because valuing treating others in way they find legitimate manifests a kind of empathy with others which is itself valuable.

Stephen C. Angle in *Human Rights and Chinese Thought:
Cross-Cultural Inquiry*

For the past four years, the Supreme People's Procuratorate (SPP) in the People's Republic of China and the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR) in Canada have been working together in a technical cooperation project funded by the Canadian International Development Agency and endorsed by the Ministry of Commerce of China to support the ongoing legal and judicial reform project in China. The Canada-China Procuratorate Reform Cooperation Project (CCPRCP) involved a whole range of actions and interactions aimed at exchanging legal expertise and best practices in procuratorial systems and the implementation of international standards in prosecution practices. The space for this engagement was created by the SPP's commitment to implementing the Government of China's five-year judicial reform plan. While the project faced a number of challenges, it was always seen by both sides as a friendly and effective partnership for sharing knowledge and experiences. In April 2008, a group of SPP officials and ICCLR team members gathered in Victoria, British Columbia to exchange perceptions on how well the project had done in meeting its objectives and to document the lessons it had taught. This document is based on the findings of this meeting as well as a more detailed ICCLR follow-up review of project activities.

The Project

Its Objectives

The Canada-China Procuratorate Reform Cooperation Project (CCPRCP) is one of several Government of Canada bilateral projects with the Government of the People's Republic of China aimed at supporting China's legal and judicial reform process with the objective of increasing its capacity for good governance and the promotion of the rule of law and human rights. At a more concrete level, the project's purpose is to strengthen the capacity of the Supreme People's Procuratorate (SPP) and the prosecution profession to exercise its constitutional and professional role in protecting citizen's rights, implement and enforce due process in the criminal prosecution system, develop and implement new laws and policies and increase the effectiveness of prosecutors' legal and professional responsibilities.

The activities were carried out on the Canadian side by the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR) as the Canadian Executing Agency for the Canadian International Development Agency. The CCPRCP worked towards these objectives by implementing a wide range of activities - 41 individual initiatives over four years - designed to build capacity and reinforce mutual learning about Canadian and international standards in criminal law. The capacity development model used in the project was internally driven and focused on the areas of importance to the SPP. At the same time, it combined smaller interventions that could be managed within the project context with more comprehensive initiatives that involved organizational change and development. For example, at one level it introduced the SPP to the Canadian government's integrated management system for combating corruption and at another level it supported the SPP in playing a lead role in the creation of the recently established International Association of Anti-Corruption Authorities.

Its Partners

In many ways the partnership between SPP and ICCLR is a unique one. The SPP is the highest procuratorial body of the Government of China and the legal supervisory organ of the Chinese State. ICCLR is a Canada-based, not for profit organization, a UN affiliated institute dedicated to improving the quality of justice through reform of criminal law and practice. Moreover, the legal traditions and systems of China and Canada are very different. So what made such an asymmetrical partnership work so well? Mainly the success of the CCPRCP relationship stemmed from the capacity of its two partners to commit across their divide to engaging with each other to achieve a shared objective and to carry out joint tasks.

The Asymmetrical Partnership

The Supreme People's Procuratorate (SPP)

Description: The SPP is the highest procuratorial body of the Government of China and the legal supervisory organ of the State.

Mandate: The SPP is mainly responsible for leading local people's procuratorates at various levels to perform legal supervision according to state laws. The procuratorates support public prosecution in criminal cases and oversee the activities of public and state security agencies, people's courts and prisons.

Governance: The SPP is responsible to the National People's Congress and its Standing Committee. It is represented in the Leading Group on Judicial Reform

Size: The SPP is the national headquarters of the procuratorial system in China, which consists of four levels of prosecution agencies and has a work force of over 220,000 employees including prosecutors, management and support staff.

Organization: The SPP has 18 departments including the General Office, the Personnel Department, the Investigation and Supervision Department, the Public Prosecution Department, the Anti-corruption General Bureau, Procuratorial Department for Dereliction of Duty and Infringement on Citizen's Rights, Procuratorial Department for Accusations, Procuratorial Department for Petitions, Duty Crime Prevention Department, Office of Law and Policy Research, and International Judicial Cooperation Department. It also manages 6 institutes including the National Prosecutors College, the Procuratorial Daily, the Institute of Prosecution Theory, and the Research Centre of Procuratorial Technology and Information.

The International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR)

Description: The Centre is an independent, international institute based in Vancouver, Canada and officially affiliated with the United Nations. Founded in 1991, the Centre is a joint initiative of the Government of Canada, University of British Columbia, Simon Fraser University, The International Society for the Reform of Criminal Law, and the Province of British Columbia. It is incorporated under the BC Societies Act and is registered as a charitable, non-profit institution in both Canada and the United States.

Mandate: To promote human rights, the rule of law, democracy and good governance. The Centre contributes to local, national and international efforts to support law reform initiatives and to improve the administration of criminal justice.

Governance: A Board of Directors provides policy and strategic governance to the Centre. The Centre is managed by a President and an Executive Director.

Size: The Centre has a staff of 13 full and part time employees supported by an extensive network of experts.

Programs: In addition to its legal and judicial reform work in China, ICCLR's programs focus on promoting the international criminal justice and human rights standards and norms; supporting the work of the United Nations Office on Drugs and Crime in combating transnational organized crime, human trafficking, corruption, and terrorism, protecting victims and the rights of the child as well as eliminating violence against women; supporting the work of the International Criminal Court; and promoting corrections reform and restorative justice.

As well, two other organizational capacities were critical to building and sustaining the SPP-ICCLR relationship. On the Chinese side there was the high level of commitment on the part of the SPP to its government's extremely ambitious judicial reform process. On the Canadian side ICCLR understood the necessity to network the project with as wide a range of the Canadian criminal justice community as possible. The partnership was ably assisted by the Department of Justice Canada, the Royal Canadian Mounted Police, the Ministry of Attorney General of British Columbia, and the Ministry of Attorney General of Ontario.

McIntosh Apples and Mandarin Oranges

The Challenge of Cross-Cultural Dialogue

Given the different historical and philosophical traditions of China and Canada – as different as McIntosh Apples and Mandarin Oranges – it is understandable that their citizens attribute different meanings to governance concepts such as the “rule of law” and “human rights”. This has meant that the cross-cultural conversations between the Chinese and Canadian participants in CCPRCP activities have at times been confused, if interesting, and on occasion even humorous.

Seen from the perspective of a technical assistance model of international development, the objective of the CCPRCP was to help China to implement its judicial reform program. However as the SPP and ICCLR progressed with project implementation, it became clear that the project was to provide a platform for a two-way knowledge exchange on the promotion of the rule of law through analysis of criminal justice models: examining international rights, fundamental values and mechanisms that check abuses of government power. In fact, it was precisely through the structured but open dialogue opportunities provided by the project that SPP officials were exposed to the patterns of the Canadian justice system – to the implications of its Charter of Rights and Freedoms, the role of prosecutors in promoting fairness in the criminal justice system, the independence of the Canadian judiciary, the judicial responsibilities of the federal and provincial governments in the Canadian federal system of government and the internal and external checks and balances in the Canadian justice system that make accountability routine. Similarly, it was through these same open exchanges that the Canadian participants in the project began to understand the internal logic of the Chinese procuratorial system and the role of the procuratorate, not only in providing prosecution services, but in “supervising” the entire justice system.

The Mischief of Words

In fact, the project dialogue continually stumbled over the meaning of legal terms. For example, one of the SPP’s reform objectives is to “enhance its supervisory capacity to enforce national prosecutorial standards”. When the Chinese phrase *jian-cha-yuan* was repeatedly translated into English as prosecution office, it was not surprising that the Canadians receiving this translation assumed that the SPP must be the equivalent of the Public Prosecution Service of Canada. Likewise how could one fault them for thinking that persons in the Chinese judicial system designated *jian-cha-guan*, translated as prosecutors, were probably the equivalent of Crown Prosecutors in Canada. So what were they to then make of a description of Chinese procuratorates as judicial organs, with the power not only to prosecute but to oversee the conduct of police activities, investigate corruption cases without involving the police and to supervise the courts and judges? Only when it was explained that supervision in this context did not really mean to supervise but rather to oversee, monitor and review did it become a little clearer because *jian-cha-guan* do not have the power to give orders to judges and rule on legal proceedings. However, in the Chinese system, prosecutors can review a decision and make a judgment, file and appeal if they believe that the judge has made a mistake in fact finding or in applying the law. The words *jian-cha-yuan* and *jian-cha-guan* were only two of the project’s many mischief words, forever requiring explanation.

The Importance of Learning

Even greater impediments to the sharing of knowledge across cultures than the mischief of words are the difficulties in understanding alien systems – a Chinese prosecutor’s understanding of the Canadian system of democratic governance and a Canadian prosecutor’s understanding of the Chinese roots in the civil Soviet model of the system of justice.

For example, two Chinese journalists from the *Procuratorial Daily* visited Canada to conduct comparative research and write legal articles for their newspaper as part of the CCPRCP’s Year IV Work Plan. The objective of their visit was to increase the understanding of the procuratorate of Canada’s criminal justice system and ultimately broaden public awareness of criminal law reform in Canada and China. As illustrated by Gao Bin’s article, “The Busiest Prosecutors in Vancouver” reproduced below, the journalists wrote about what they observed, from a Chinese perspective, which was very different from what a Canadian journalist might have written seeing the same events. Similarly, Eileen Skinnider, who was on the Canadian project team, was sometimes led to wonder about the way the Chinese judicial system functions.

Team Teaching

Time: December 2007

Canadian Team Member: Eileen Skinnider

One always has to keep in mind the challenges of cross-cultural dialogue. As an associate with the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR) I have been involved with the Centre’s China projects for over 10 years now, and with each visit to China and with each Chinese delegation visiting Canada, I have learned more and more about the Chinese criminal justice system and the reform process underway in China. So having worked in China as well as in other countries, I know the importance of listening, being open and being aware of how I may make assumptions based on my own very Canadian upbringing.

How easy, though, it is to hear a legal term, such as “disclosure” or “bail”, and read into that term three years of legal education and many more years of experience of practicing law in Canada. Add to this is the fact that these terms are spoken through our translators who might also be grasping for an English word that we would understand but that might not exactly describe what our Chinese colleagues were saying. And then add to this the fact that our Chinese colleagues are also making their own assumptions from their Chinese education and experience.

I recall a joint teaching exercise where it was not until the discussion of a case study, near the end of the afternoon, that I realized that despite my explanation of “arrest” and “detention”, the class of young prosecutors were thinking of these terms

Busiest Prosecutors in Vancouver

Time: December 31, 2007 Staff Reporter: Gao Bin

Source of News: Procuratorial Daily

Prosecutors sitting in the offices at the Vancouver provincial courthouse are probably the busiest we had interviewed. We saw piles of files on their desks and in the hallways. We also saw prosecutors go to the courtrooms with “shopping carts” full of files. We were wondering why the prosecutors there were so busy. We found the answer from Mr. Phillip Sebellin, Crown Counsel of the Criminal Justice Branch (CJB) of the Ministry of Attorney General of British Columbia (AGBC).

Unusual Neighbours of the Courthouse

On November 13, we visited the Crown offices in the building of the Vancouver Provincial Court on Main Street. We felt a different atmosphere here: people were lining up for welfare; a homeless person asked us for money to buy coffee; a few people gathered together in an alley “smoking”. We became alert and walked faster.

Mr. Phillip Sebellin explained what we saw when we met him. He said that Main Street is where many jobless people and drug addicts gather. Drug deals are often done in quiet alleys. Sometimes law and order problems occur here.

The Vancouver courthouse and the police office are only one or two blocks from where these people gather. Philip said humourously that it is not necessarily a bad thing to have these people as neighbours. If they break the law, it is convenient for them to come to the courthouse.

Carts Help Prosecutors with Heavy Loads

We noticed that some prosecutors pushed carts loaded with thick files to the court rooms. Although pushing a cart was not quite beautiful and elegant to look at in court, it helped prosecutors with their heavy loads. Philip told us that their office prosecutes almost all criminal offences

differently. I had been partnered with a faculty member, Professor Xu Henan, of the National Prosecutors College to co-teach a group of young prosecutors in the Xuanwu District of Beijing. During this session, I introduced the international standards relating to pre-trial procedure set out in the International Covenant on Civil and Political Rights (ICCPR), including protections against arbitrary arrest or detention. I then spoke briefly about relevant Canadian standards. Professor Xu Henan then talked about pre-trial procedures in China. The case study involved a detailed story about a Chinese victim in Canada who police believed had been trafficked and forced into prostitution in Vancouver. After getting a description of the man, a bulletin was issued to all police units to detain and question him. When a local police unit did so and the individual was not cooperative and would not talk to the police, he was then taken to the police station.

I had to describe "detention" and "arrest" a number of times before it dawned on me that in this class "detention" and "arrest" were being used interchangeably to describe the same circumstances. Arrest is a formal procedure in China requiring the approval of the prosecutor as upon arrest, generally an accused will be detained pending trial. In Canada, once police have arrested a suspect, the basic presumption is that a person may apply for bail pending trial.

Yet even when persons are simply detained, not arrested, Canadian law grants individuals rights upon detention by police. In contrast, the concept of "detention" is understood differently in China. When a person is answering police questions, either on the street or at the police station, as I understand it, this is not "detention". Every individual in China is obliged according to the law to answer police questions and cooperate with police investigations. I think it was hard for them to believe that anyone would not have such a duty.

Yet both countries seek to meet those international standards that apply to all state parties under the ICCPR.

(except those by the federal prosecution services). In this courthouse, the prosecutors' workload is quite heavy. Each prosecutor usually has to deal with several cases in one day. The files they prepare may weigh as much as or over a dozen kilograms. It is difficult to carry these files.

Comparing these prosecutors at Main Street with those who work on commercial crime, organized crime and criminal appeals and special prosecutions, the latter's work does not seem as intense. We learnt this from Mr. Monty Carstairs, Deputy Director, Commercial Crime of the CJB of the AGBC. However, their cases are more complicated and take longer time to investigate, obtain evidence and prepare.

Plea Bargain - Advantages Mingled with Disadvantages

In common law countries with adversarial systems, the judge bases his or her ruling on the arguments of the prosecutor and defense lawyer. It is therefore time-consuming. Sometimes an ordinary case takes several months. To improve the situation, plea bargain has become a common practice for the prosecution and defense.

According to Trevor Shaw, Crown Counsel, Commercial Crime Section of the CJB of the AGBC, a prosecutor and defense lawyer would, before the court hearing, arrange to settle a case against the defendant with the prosecutor agreeing to dismiss some of the charges against the defendant or reducing the charges in exchange for the defendant pleading guilty. Once an agreement is reached, the judge may make the decision based on the results of the plea bargain and the agreed-upon facts. Of course, the judge can refuse to accept the plea bargain if he or she believes the content violates the fundamental principle of justice.

Plea bargaining helps improve the efficiency of the justice system due to its convenience and speediness. It is widely used by common law countries. In Canada, about 70 percent of the criminal cases are settled through plea bargaining. Trevor believes that plea bargaining could exempt some people from the complications of having a "criminal record", give some offenders who went astray from momentary impulse an opportunity to begin their life anew, and reduce the negative impact on the society and their families. Besides, new offenders could avoid being "contaminated" in jails.

Some people are concerned that plea bargaining may cover up the fact that some offenders commit serious crimes and may not get the punishment they deserve. Moreover, plea bargaining may compromise the principle of fairness, which may result in unfair sentencing. Trevor admits that it is sometimes hard to find absolute balance between fairness and efficiency

After finishing our interviews, we left Main Street, where the urban marginalized people and the law enforcement agencies co-exist "harmoniously". Here we saw another face of the city - anxiety behind serenity, depression behind liveliness, degeneration behind prosperity. This is Vancouver, a diverse city.

A Thirty-Year Long March

A Brief History of the Legal/Judicial Reform Process in China

In order to appreciate the challenges that the Government of China is facing in implementing its current judicial reform program, it is necessary to know something about the thirty-year history of judicial modernization in China.

In 1978, based on the hard lessons learnt from the Cultural Revolution, the new Chinese leadership under Deng Xiaoping used the Third Plenary Session of the 11th Central Committee of the Communist Party of China (CPC) to introduce a series of “reform and opening” policies. Amongst other things these policies reaffirmed the principle of “socialist legality” and the equality of all citizens before the law. As well, the Plenary Session decided to rebuild the formal legal system and legal profession.

In July 1979, China promulgated a first set of new statutes that included the country’s first criminal law, first criminal procedures law and first Chinese-foreign joint venture law and updated laws on courts and procuratorates. These laws re-established the procuratorates, formalized the prosecution and trial process, promised a certain level of judicial independence and re-opened the criminal defense bar. By these laws, Chinese judges and prosecutors were required to do their work according to the law “under the leadership of the Party”. In the same year, the CPC for the first time promised that “the Party should also operate within the framework of the law”.¹

Since 1979, in spite of numerous twists and turns in the reform road, China has achieved significant progress in advancing its legal and judicial reform agenda. It has enacted hundreds of new laws and thousands of new regulations. It has signed and ratified dozens of important international conventions on human rights and justice cooperation. It has created hundreds of law schools and trained hundreds of thousands of legal professionals. In summary, although the overall trends in the field of criminal justice reform in China have continued to exhibit a complicated mix of conflicting forces and factors, there has been visible progress in China in the promotion of the rule of law and improvement of human rights in criminal justice. Since 1995, China has introduced some significant changes to its criminal law and criminal procedures in light of international human rights and rule of law standards. Some of these changes have not yet been completed or fully implemented, but they are clear indicators of positive developments leading towards more fundamental reforms. Some of the key reforms include:²

- 1996: Amendment of the Law of Criminal Procedures, so that the presumption of innocence was partially recognized and legal aid was made accessible to three categories of criminal defendants.
- 1997: Amendment to the Criminal Law, so that China for the first time recognized “*nullum crimen sine lege, nullum poena sine lege*”, a basic legal principle that protects the individual from being accused of a crime and/or punished for a crime unless it was expressly set out in written law at the time of commission.

¹ Source: Chinese media.

² Source: Chinese media.

- 1998: China signed the International Covenant on Civil and Political Rights (ICCPR).
- 1999: The principle of legality, even though still considered as “rule by law”, became a principle of the Chinese Constitution. In the same year, the Supreme People’s Court (SPC) of China launched its “First Five-year People’s Court Reform Plan”.
- 2000: The Legislative Law became effective; it ruled that only the national legislature could create a law to allow the deprivation of any personal freedom created by a law made by the national legislature.
- 2001: The Ministry of Justice introduced the first uniform national judicial exam. Over 360,000 people throughout the country wrote the first exam.
- 2002: The number of licensed practicing lawyers in China exceeded 100,000 for the first time in history. Now, there are approximately 140,000 practicing lawyers, excluding the judges and prosecutors.
- 2003: The first national Legal Aid Regulations established national standards for an expanded legal aid system and Shanghai, Beijing and four provinces launched a community corrections pilot project.
- 2004: The system of “shou-rong qian-song” (detention-and-deportation) was abolished after media exposure of the case of a university student beaten to death in detention.
- 2004: Constitutional amendments promising greater respect for human rights and the rule of law enshrined the protection of human rights as a constitutional principle.
- 2005: The Supreme People’s Court (SPC) announced its “Second Five-year People’s Court Reform Plan”, while the Supreme People’s Procuratorate (SPP) started its second “Three Year Procuratorial Reform”.
- 2006: The Government adopted a new objective of “building a socialist harmonious society”, on the basis of “further improving socialist democracy and legal system, fully implementing the policy of governing under the rule of law, and really respecting and protecting the rights and interest of the people.”
- 2008: The Government publicly reconfirmed its intention to ratify the ICCPR and continue to improve the legal system in China.

The Drivers of the Judicial Reform Process in China - Internal and External

The demands, needs and threats facing the Chinese judicial reform process outlined above are driven by both internal and external factors.

Internally, China has found itself on the horns of a modernization dilemma, caught between the wish to learn from the “good experiences” of the “advanced countries” of the west and avoiding its “bad influences “ that might threaten social stability. Thus the goal of the current reform process underway in China is not westernization but a “harmonious society” defined as “socialism with Chinese characteristics” driven by “learning and absorbing all the positive results of all civilizations”.

One of the strategic shifts of real consequence for Chinese modernization in recent times has been the official recognition given to “rule of law” as a guiding principle of state government. While the meaning of these words has not yet solidified in the law, the transition from the rule of man to the rule of law is changing the Chinese governance landscape. In the early years of the judicial reform process, the main objective was to create “rules” of law (rather than to promote the “rule of law”) through the enactment of more laws and regulations, specified law

codes and judicial interpretations, the hiring of more judges and prosecutors to apply these rules and the training of more law students and lawyers. Now there are signs that the idea of the rule of law is beginning to change the very nature of the relationship between the government and the people.

For example, the Chinese constitution was amended in 2004 to recognize “human rights”. The enactment of the Property Rights Law has substantively improved the protection of private property. The expansion of the legal aid services in China has aided in achieving a greater level of equality in the law. Efforts to combat corruption are beginning to improve service delivery. And the promulgation of a revised Labour Contract Law provides more protection for the rights of the working class.

On the external front, globalization has served as the second major driver of China’s rush to build a new conceptual framework for its judicial system based on a set of rules for the state, its companies and its citizens to interact legitimately outside China’s national boundaries. In the era of globalization, Chinese reformers argue that no country that wants to prosper can afford to ignore international standards of accountability and transparency, to condone corrupt practices, disregard human rights, or exempt itself from a rule of law approach to administrative control. This way of thinking is demonstrated in the numerous publications and discussions among Chinese legal scholars, judges and prosecutors. In recent years, China has engaged in a large number of initiatives to facilitate the exchange of experience and expertise in nearly every area of law and justice reforms, as it seeks to define its roles and responsibilities in a globalizing world.

While China is probably one of the developing countries that have benefited most from globalization, globalization has also presented China with many challenges. In order to adjust to the world order in which China is a major player, China’s top prosecution agency, the SPP and its affiliated institutes worked hard to create an operating environment in the field of criminal justice compatible with international standards. Seeking to learn from the experience of others, in 2006, at an SPP national conference on foreign affairs, the Chief Prosecutor of China called upon all of the country’s prosecution agencies to engage in international exchange and cooperation, not only to learn best practices from other countries for improving the fairness and efficiency of criminal processes in China but also for spreading the word internationally about the progress being made in reforming China’s judicial system.

In this context, the SPP recently launched a campaign to address the problem of illegal detention. According to the 2008 Work Report of the SPP, the number of suspects subject to illegally extended detention was reduced from 24,921 in 2003 to 85 in late 2007. Moreover, it says, it now requires prosecution agencies to audio-and-video tape their interrogation processes of suspects having committed job related crimes for the purpose of reducing and preventing the use of torture and other illegal interrogation techniques. As part of its effort to “enhance its supervisory functions”, in 2007, SPP statistics claim that the procuracy turned down as many as 255,931 police applications for arrest warrants and issued over 50,000 letters to law enforcement agencies urging them to “correct” misconduct in criminal investigation. Thus, while torture is still practiced in China, steps are being made to reduce its application. As well, on the international front, the SPP has worked hard with the international community to create the International Association of Anti-Corruption Authorities (IAACA). In this regard, it hosted the

inaugural conference for the IAACA and took the lead in establishing a secretariat for it. China is a signatory to both the UN Conventions Against Transnational Organized Crime and Against Corruption and has recently signed extradition treaties with Spain, Portugal and France.

The CCPRCP has been privileged to have been one of the many venues that China, and in particular the SPP, has chosen to use for engaging the world in the globalization of its judicial system.

Recent Reform Achievements

Each year in March, the SPP and the SPC reports to the National People's Congress (NPC) on their performance in implementing their annual work plans. However, in March 2008, the SPP went further than this and reported to the NPC on its reform accomplishments over the past five years from 2003 to 2008. Supplemented by excerpts from papers presented by the SPP officials who attended the CCPRCP End-of-Project workshop, the following list of prosecutorial reform measures undertaken during this period provides a measure of both the pace and complexity of the regulatory and organizational change process underway in the SPP.

In **fulfilling its prosecutorial responsibilities** over the past five years, SPP took the following steps:³

- Prosecution offices across the country issued more than 4.23 million arrest warrants for criminal suspects and brought 4.69 million persons to trial;
- Prosecutors investigated nearly 35,000 cases of violation of citizens' political and civil rights involving 42,010 government officials, of whom 16,060 were found guilty;
- The number of suspected criminals held in illegally extended detention was reduced from 24,921 in 2003 to 85 in 2007;
- The process of complaints and appeals was improved by opening communication channels for whistle-blowers, processing letters of complaint more swiftly and undertaking community visitations; and
- Prosecutors nationwide investigated 35 officials at the provincial or ministerial level, 930 at the municipal level and nearly 14,000 at the county level or above for embezzlement, bribery and the misappropriation of public funds.

While prosecuting corruption cases with vigour, the SPP has recently undertaken a statistical analysis of several hundred corruption cases to determine their changing patterns as a result of China's changing economic system. In combating corruption, the SPP tries to strike a balance between prevention and punishment based on a profile of criminal motivations and opportunities. In order to sever the links between the two, it has developed a well-orchestrated program of preventative education, is in the process of tightening up the rules and regulations for doing the business of government and is strengthening the system for external supervision of public service operations. The SPP has recently set up an MIS system whereby information related to bribery related cases are saved, categorized and shared with the community.

³ These data come from the 2008 SPP Work Report.

In reforming the prosecutorial system:

- Supervision over prosecution practices was improved in the areas of arrests procedures, interrogation methods, the exclusion of illegally obtained evidence, torture, and court appearances in the second incidence of death sentences;
- The management of corruption cases is now subjected to more checks and balances, the interrogation of suspects and witnesses in corruption investigations are to be video-taped in order to protect suspects' rights;
- More than 50 regulatory documents were formulated by Chinese procuratorial organs to advance the reform process - on the rapid processing of minor criminal cases, on a policy on proportionality aimed at combining leniency with severity; on the audio and video taping of interrogation procedures; and on the handling of juvenile offenders using designated prosecutors and dictating caution in arrest and prosecution practices.⁴
- Increased transparency and fairness was impressed on law enforcement through the adoption of a community-based accountability system called the People's Supervisors' System.

In September 2003, the SPP began piloting a system of community-appointed lay supervisors of prosecution procedures related to arrests, case withdrawal and decisions not to prosecute. When making such decisions it is obliged under the People's Supervisor's System to take into account the opinions of the lay supervisors. As well, the lay supervisors can provide opinions and suggestions on the decisions of the prosecutors with respect to "five circumstances" related to a citizen's rights and to property rights. This reform measure has increased the legitimacy of the judicial system and received extensive support from all sectors of society. By 2008 the pilot project had been extended to cover 86% of the procuratorates across the country.

In improving the professionalism of prosecutors:

- SPP has worked to create a more professional prosecution service by developing a code of conduct and a performance-driven incentive system based on rewards and punishments;
- Management training was provided to senior officials of procuratorates;
- The percentage of prosecutors with a university degree was increased from 39.2 percent in 2003 to 70.3 percent in 2007, with 520,117 prosecutors attending training programs aimed at improving their academic backgrounds.

The SPP has provided staff training programs in "enforcing legal supervision and maintaining fairness and justice" and "the rule of law in a socialist society". As well, it has piloted a new human resource management system addressing the issues of job classification and compensation, selection, training and promotion, personnel management, and performance management. Prosecutors are now recruited through a system of judicial unified exams.

⁴ Ms. Mu Hongyu's presentation at the End-of-Project Stocktaking Meeting in Victoria on April 23-25, 2008.

Getting to Maybe

The Paradoxes of Complexity and Attribution

According to a new Canadian-authored book entitled *Getting to Maybe*, reforming an institution as complex as the SPP is as challenging as raising a child. While one can have a dream about how one would like one's child to grow up to be, it is difficult to predict outcomes with any certainty. This however is not to say that certain kinds of reform measures or parenting practices are not more likely to result in the end product that one is hoping for than others. As was discussed in the previous section, the Government of China has a strong vision of "governing under the rule of law, and really respecting and protecting the rights and interest of the people". Over the past five years, the SPP has made many improvements to the way it functions, although it is still too early to tell what their final effect will be.

Either you will go through this door or you will not go through.

If you go through there is always a risk

The door itself makes no promises. It is only a door.

From *Getting to Maybe*

So donors wake up
From your impossible dream
-You drop in your funding
A long way upstream -
Then the waters they flow,
They mingle, they blend
So how can you take credit
For what comes out in the end?

From an IDRC song

Given the complexity of the SPP reform process, it is extremely difficult to measure the contribution that a small project like the CCPRCP has made to it. All that we can say for certain at its conclusion is that ICCLR was privileged to have been along on the journey, even if only for a short while. A recent study of *Capacity, Change and Performance* commissioned by the European Centre for Development Policy and Management identifies two different approaches to capacity development creating different kinds of engagement. The direct approach implies that the external actors take on direct responsibility for either implementing or designing a development intervention. The indirect approach refers to a facilitation or supportive role by external interveners whereby they work directly through country actors. The role of ICCLR in the CCPRCP has certainly been of the indirect sort, with the SPP in the driver's seat and the ICCLR in the back seat.

So in what ways, if any, did the CCPRCP contribute to the SPP's reform process? What did SPP's relationship with ICCLR actually look like? These are the questions that need to be answered in assessing the CCPRCP's performance.

Making CCPRCP Activities Serve the SPP's Reform Priorities

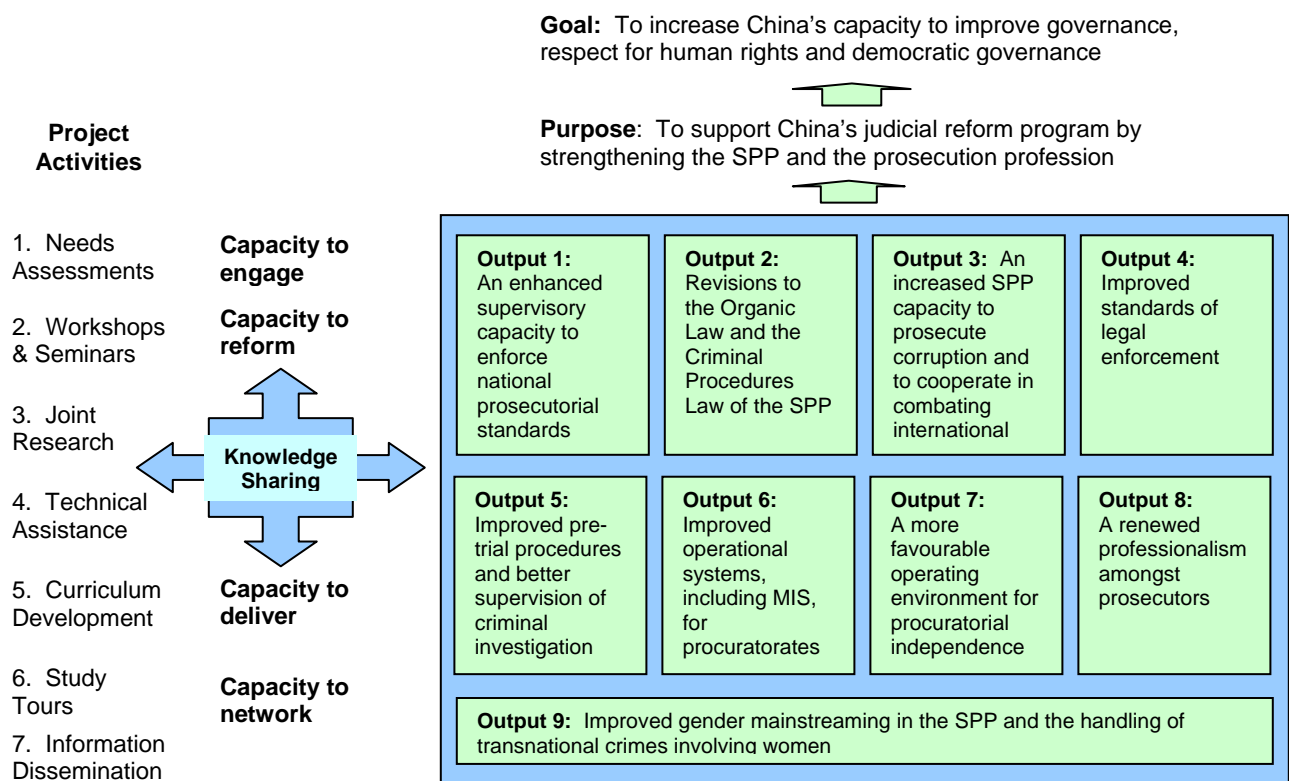
Adhering to the indirect mode of development cooperation, the SPP's reform agenda became the expected outputs of the CCPRCP. In essence this reform program corresponded to the basic constellation of functions performed by any public sector body in fulfilling the aspirations of their client citizens: policy and law making, adherence to "best practice" performance standards, service delivery, regulatory enforcement, operational and financial systems management and human resource management.

The challenge faced by the CCPRCP was to ensure that its various knowledge sharing and capacity development activities actually contributed to the SPP’s reform needs and were in line with Chinese change processes – a unique blend of maintaining ideological consistency, learning by doing, studying the experience of others and complying with international standards.

To meet this knowledge sharing and capacity development challenge, the project employed a number of programming methodologies. They included needs assessments, workshops and seminars, joint research, technical assistance, curriculum development, study tours and information dissemination, all of which were within the Canada-China comfort zone of engagement.

The following diagram maps this relationship between the CCPRCP’s goals and objectives, its expected outputs, its methodologies and its capacities.

A Map of the CCPRCP



Making the CCPRCP Work

What made the CCPRCP work as well as it did was the willingness and capacity of the SPP to engage, reform, deliver and network. Without these core SPP capacities, the CCPRCP would have gone nowhere.

And by far the most important of these project success factors was the commitment of both parties, but particularly of the SPP, to engage. The SPP developed the conceptual framework for the project; the ICCLR's task was simply to turn what the SPP had written into donor mandated language of results-based management. The two partners then worked together to produce the Project Implementation Plan. In fact, in the beginning, there was no guarantee that the CCPRCP would work at all. ICCLR had been working in China for years but had never directly involved with a government agency as its project partner, and certainly not one as large as the SPP. As for the SPP, it had a number of external partners, but the CCPRCP was a first for it in terms of implementing a government-to-government project. But the SPP had its own motivation for engagement stemming from its strong commitment to the government's judicial reform process and its commitment to improving the delivery of procuratorial services in China. On the ICCLR side, it too had a strong commitment to criminal justice reform in China based on its long history of working in China. In the end, it was this combined sense of responsibility to the project on the part of both the SPP and ICCLR which allowed them to develop and sustain the relationship needed to make the CCPRCP work. As well, it allowed them to turn their relationship into a platform for networking the project with a broader community of interests – with the Canadian and Chinese partners to other CIDA-funded governance projects in China, with the Ministries of Justice and Public Security, the RCMP and the Attorneys General of British Columbia and Ontario in Canada, with several criminal justice research centres in China and with the International Society for the Reform of Criminal Law, to name just a few of the project's backward and forward linkage arrangements.

Activities and Performance

So if the SPP reform process is progressing according to plan, if the intentions of CCPRCP to support that reform process were noble and if the relationship between the partners of the CCPRCP was strong, what did the CCPRCP actually accomplish? One of the difficulties with a project like the CCPRCP in which there is no direct line of causation between project activities and reform results is the challenge of measuring project performance and results in concrete and quantifiable terms. The project employed a number of strategies for coping with this difficulty. It used the level of involvement in project activities as a measure of their usefulness. It assumed that knowledge gained would likely be knowledge used. It surveyed the level of participant satisfaction with project activities as a measure of their capacity development worth. It generalized about project results based on a compilation of significant project stories. And it drew links between project activities and reform achievements based on the logic of their connections.

If participation rates are any indication of project impact then the CCPRCP has been considered a success. The following two tables provide the Chinese and Canadian side numbers.

Participation Rates

Chinese Side Participation	
Type of Activity	Numbers
Project Management	10 with a core group of 3
Study Tours	71 in 8 different study tours
Provincial Lectures	Approximately 2,500 and many more via closed circuit TV
Curriculum Development and Team Teaching	13 faculty and staff of the National Prosecutors College and approximately 200 prosecutors
Journalist Exchange	2 journalists; an estimated readership of their articles of 220,000
In-country Workshops	Approximately 250
International Meetings and Symposium	14 persons
Joint Research	12 researchers

Canadian Side Participation	
Type of Activity	Numbers
Project Management	A core group of 3 and a team of 9
Study Tours	Approximately 119 different resource persons
Provincial Lectures	18 persons
Curriculum Development and Team Teaching	5 persons
Journalist Exchange	15 interviewees
In-country Workshops	10 resource persons
International Meetings And Symposium	13 persons
Joint Research	6 faculty advisors

On the Chinese side, the CCPRCP was inclusive of high, medium and low ranking procuratorate personnel from deputy chief prosecutors to junior prosecutors and was active in 24 different provinces. On the Canadian side, the project involved persons from 4 different ministries, 2 provincial governments, 4 law faculties and several federal, provincial and municipal police forces.

The following is an excerpt from a paper delivered by the Division Chief, International Cooperation Department of the SPP at the project's End-of-Project Stocktaking Meeting which provides an inkling of the breadth of subject matter covered by the project and its relationship to the SPP's reform agenda:

The project offered substantial content, with specialized discussions about reform priorities, hot topics and difficult questions in the procuratorial reform. All the project activities were designed to answer major and frequently discussed questions in the reform. For example, the Deputy Prosecutor-General of the SPP, Mme. Hu Kehui, led a delegation to visit Canada in April 2006, with the focus of "Supervision on Financial and Commercial Institutions and Investigation and Prosecution of Financial Crimes and Corruption Cases". In June 2006, the "International Cooperation on Anti-Corruption" seminar was held in Beijing Chaoyang District Procuratorate. In July 2006, Mr. Xu Hanming, Deputy Chief Prosecutor of Hubei Provincial Procuratorate, led a delegation to Canada to study issues around the "Oversight and Supervision of Police Activities". In April 2007, Mr. Shi Shenglong, Deputy Prosecutor General of SPP, led a delegation to Canada to learn about the "Prosecution Systems Management". These activities were organized around the functions and reform priorities of procuratorial organs. Moreover, the Director of the Office of People's Supervisors of SPP, Mr. Wen Shengtang and another colleague attended a "Workshop on Public Participation in Canada and China" in Ottawa in September 2007. Mr. Wen presented a paper on the People's Supervisors System and related

reforms, which was of considerable interest to the workshop participants. These examples indicate that the project not only delivered various activities in the project work plan, but also met the goal set at the beginning of the project of generating in-depth dialogue on the realities of the legal/judicial reform program in China.

The project has also produced a number of useful results. For example, the Deputy Director-General of the Investigation and Supervision Department of SPP, Mr. Wan Chun, published an article in the *People's Procuratorate* on the Canadian experience in prosecuting vulnerable groups after leading a delegation to Canada to study this topic. After returning from a study tour to Canada, Mr. Xu Hanming, Deputy Prosecutor of Hubei Provincial People's Procuratorate, published an article in the *Procuratorial Daily* on the oversight of police activities. As well, two journalists from the *Procuratorial Daily* went to Canada for two weeks and wrote a series of articles on various aspects of the Canadian justice system. One of the visiting scholars, Ms Fu Peiyun, undertook a comparative analysis of the Canadian and Chinese justice systems which became the basis for an article published in the *Prosecution Service of Suzhou Municipality*.

In this project, the Chinese and their Canadian counterparts learned a lot about each others' judicial systems and best practices. This learning provided a reference point for procuratorial reform, promoting the rule of law and furthering the protection of human rights in the Chinese justice system. At the same time, the CCPRCP promoted mutual understanding, created lasting friendships and enhance legal/judicial cooperation between the two countries.

Twice during the course of the project, once at its mid-point and once towards its end, the SPP and ICCLR took the pulse of project by surveying project participants on the relevance of project activities to the reform process and their professional development.

In general the SPP personnel who participated in CCRPC activities found the activities that they participated in which lent themselves to comparative analysis and joint research on the practicalities of prosecution and prosecution systems management to be most useful. Of less interest to them were those project activities that focused on things like human rights and gender equality that could be said to be values driven. However, contrary to this emphasis on the practical, one participant wrote: "the real value of the project was in promoting better Sino-Canadian understanding and relations in crime prevention and criminal justice, and assisting and encouraging the Chinese with respect to the development of more fundamental legal principles which are, in my view, both transferable and critical to the development of legal and criminal justice institutions in China. These include basic rule of law and human rights elements". And although not presented in the above table, what the Canadians who participated in the CCPRCP said they had taken away from their project experiences was a better understanding of the enormity of the Chinese legal/judicial reform task, of the impracticality of transferring the elaborate and resource-intense common law system to China in the foreseeable future and of the SPP's determination to implement its reform plans.

Participant Opinions on Relevance of Project Activities

	Not relevant	Somewhat relevant	Relevant	Very Relevant	Most Relevant
How relevant are CCPRCP activities to the legal/judicial reform process in China and to the work of the SPP?					
Comparative analysis of Chinese legal/judicial systems		8%	26%		66%
Investigation of financial crimes		17%	50%	8%	25%
Anti-corruption procedures		8%	33%	17%	42%
Investigation of organized crime		24%	42%	17%	17%
Investigation practices involving vulnerable groups	8%	17%	25%	50%	
Implementation of human rights conventions	8%	17%	33%	17%	25%
Prosecution of transnational crimes			25%	25%	50%
Gender analysis and mainstreaming		50%	42%	8%	
The CCPRCP has developed my professional capacity in the following ways.					
Of international systems and international norms of fair trials		24%	17%	42%	17%
Of legal/judicial reform policies and policy development		26%	8%	42%	24%
Of improved national prosecutorial standards		33%	8%	42%	17%
Of enhanced procuratorate management systems	8%	8%	68%	8%	8%
Of approaches to my present and future work		7%	50%	25%	18%
Of knowledge of the Canadian criminal justice system			25%	7%	68%
Of gender considerations in procuratorial policies/practices	34%	34%	18%	7%	7%

Results: Anticipated and Unexpected

The project had set out four development results for itself. They were ambitious but they reflected the hopes of both Chinese and Canadian planners and participants. And, with goodwill from both sides, significant progress was made in a relatively short period of time.

The first outcome was a **strengthened capacity of the SPP and the prosecution profession to fulfill their constitutional mandates in a judicious, effective and efficient manner**. Some of the more notable activities that contributed to increased capacity are the following:

- The SPP has scaled up its pilot project in the use of people’s supervisors to cover the entire country, with plans to make the new supervision systems into law. This is one of the five major achievements documented by SPP for the period 2005 – 2008, with a focus on misconduct of prosecutors.
- The Chinese government issued several provincial level regulations requesting all law enforcement agencies, prosecution services and courts to handle criminal cases within legally defined limitations.
- A strengthened connection between law enforcement and criminal justice, as well as an increased number of cases transferred from legal administration to the criminal justice system.
- SPP revision of its “Regulation of the People’s Procuratorate in Handling Juvenile Delinquency Cases”, which served to make its criminal justice system more understanding of the special needs and circumstances of juveniles.

Improved Policy and Institutional Environments to Guide and Regulate the Criminal Prosecution System was the second outcome. A significant number of revisions have been made to Chinese law during the project period, such as:

- Amendments to the Criminal Law, the Law of Criminal Procedure, and the Law on Corrections and Treatment of Unlawful Activities;
- Amendment of the Organic Law of Courts by the NPC making it mandatory that all sentences carrying the death penalty be reviewed by the SPC;
- NPC amendment of the Criminal Law which expanded the definition of bribery and money laundering to make it more consistent with UNCAC and UNTOC;
- Procedural amendments discussed for changes in law regarding right to silence and evidence and right to counsel;
- SPP revision of its “Regulation of the People’s Procuratorate in Handling Juvenile Delinquency Cases”, which served to make its criminal justice system more sensitive to special needs and circumstances of juveniles.

The third outcome, and the foundation for a stronger SPP, was **Enhanced quality of human resources and human resource management in the SPP and the criminal prosecution system.** A new emphasis on professionalism has certainly enhanced the quality of human resources and human resource management within the procuratorates. SPC, SPP, MOJ and MOPS are all implementing multi-year capacity development programmes aimed at improving their management systems, professionalizing their services, and strengthening accountability.

Finally, the project aimed to have **Gender equality strategies integrated into all of the planning and operational functions of the criminal prosecutorial system.** While gender equality issues have not yet been mainstreamed into SPP operations and law revisions. Some advances have been made that will contribute to gender mainstreaming, including:

- An increased number of women prosecutors promoted to senior positions;
- Ethical responsibilities of prosecutors to carry out their work in such a way as not to differentially discriminate against crimes of violence committed against both men and women have been reinforced;
- Research carried out on mainstreaming gender into criminal law.

Often, however, it is difficult to get a feel for what a project with as complex an agenda as the CCPRCP has really achieved from performance indicators, participation rates, official statements or even participant feed-back exercises. For this – to appreciate the project’s substantial but unintended results – one has to listen to the project’s undocumented but significant stories. Here are three of those stories:

Story 1: Ask and Results Will Emerge

During the CCPRCP’s inception phase, the SPP indicated that it wished to make the development of anti-corruption strategies and the building of anti-corruption capacities a major component of the project’s four year work program. Consequently, the cooperative agreement that was subsequently signed by the SPP and ICCLR, made combating corruption a project priority with emphasis on strengthening international cooperation aimed at preventing corruption and enforcing anti-corruption measures.

As a result of this prioritization, the first substantive study tour organized under the CCPRCP in 2004 was made up of key members of the SPP's Anti Corruption Bureau led by its Deputy Director General. It focused on the study of the provisions in the Canadian Criminal Code which delineate corruption and bribery offences and procedures related to the proceeds of crime, the provision of mutual assistance in criminal matters and extradition requirements. This initial study tour was followed by workshops on specific anti-corruption measures, more in-depth study tours and in-country lectures on issues like money laundering, the supervision of financial institutions and financial crimes. Much time was spent explaining the workings of the Canadian integrated enforcement structure built around taking a comprehensive, multi-departmental and disciplinary approach.

Then, in 2006, the Canadian Project Director, who was in China concerning other matters, ran across his old acquaintance, the Deputy Director General of the Anti Corruption Bureau – the one who had led the original anti-corruption study tour to Canada. Seizing the moment, he asked him if he had found the study tour useful in any way. To his amazement he was told that, not only had he found it useful, but that following the study tour, the SPP had adopted a modified version of the integrated enforcement team approach that he had learned about in Canada. Then the Deputy Director General went on to say that the SPP was in the process of changing its mutual legal assistance requirements along Canadian lines, including changes to its case management procedures and the development of a training program on the investigation and prosecution of offences. And finally he said that that the SPP was currently working to strengthen its capacity to implement the Cost Recovery of Assets section of the UN Convention Against Corruption and hoped that the CCPRCP could provide him with help in this area.

So what is the moral of this short story? According to the Canadian Project Director, “If you don't ask, you may never learn of a project’s amazing but unexpected results”.

Story 2: Homestays

In February 2006 and again in February 2007, twelve SPP employees came to Canada to do comparative research. The objective of this activity was to expose these young visiting scholars to the Canadian criminal justice system and to increase their capacity to integrate new knowledge, procedures and systems of management into their policy work in China.

The visiting scholars received 15 hours of introductory lectures on the Canadian criminal justice system, international standards in criminal law and legal research techniques. The scholars also visited the police station, the courthouse and met justice officials in both Victoria and Vancouver.

Each scholar had a research topic and prepared a research paper under the direction and assistance of a CCPRCP team member – Professors Gerry Ferguson and Maureen Maloney of the University of Victoria Law Faculty, David Winkler and Eileen Skinnider, ICCLR Associates and Annemieke Holthuis, Counsel, Criminal Law and Policy, Justice Canada. The 2006 visiting scholars and their research topics were:

- Cao Hua: Bail
- Shao Ting: Efficient Management of Prosecution Services
- Wang He: Money Laundering
- Deng Guangming: Plea Bargaining
- Zhang Yuhong: Legal Aid
- He Jinchun: Supervision of Police Practices

The 2007 visiting scholars and their research topics were:

- Wang Ling: Supervision over Investigative Methods
- Liu Ruihan: Right to Remain Silent
- Li Zhuo: Standard of Proof for Charge Approval
- Yang Jiangbo: Plea Bargaining
- Fu Peiyun: Bail
- He Lei: Restorative Justice

The results of the visiting scholars' research have been disseminated to their colleagues through their procuratorate websites and newsletters.

In order to help the research scholars to put their findings on the Canadian justice system into their socio-cultural context, they were billeted with a Canadian family. Here is what one of those researchers and one of the host family members had to say about their homestay experiences.

Judge Jeanne Harvey on hosting He Jinchun

It was so much fun to have Jinchun stay with us. We learned from him that he was the last of eight children from a poor family but that by dint of hard work had done well in school, joined the navy, studied law on his own and passed the law exam.

Of course he was cautious at first and nervous about how he was going to be able to adjust to Canadian home cooking.

But as we got to know each other, we discussed

Wang Ling on staying with the Monds

For a Chinese who hasn't experienced any overseas life, it is exciting and inspiring to have a homestay family for her one month research scholar life. I enjoy my stay with the Canadian family consisting of a couple, nice people. They actually have two daughters but none is living with them; and they treat me as their third daughter, I guess, for during my stay with this family, I often feel being at home.

Different from what I've imagined before coming into Canada, I don't encounter much cultural resistance or cultural shock. On the contrary, both

so many things – both about the law and about our lives. Jinchun was particularly interested in the Canadian Charter of Rights and Freedoms, how the Canadian judicial system polices the police, how the Canadian system of police commissions works, and the work of Canadian police complaints officers. My husband and I purchased dinners at six different restaurants and we would take Jinchun with us to these restaurants. I am a judge and he was amazed that we were left totally alone to eat our meals.

One night we had all of the scholars over for dinner. They cooked dumplings for us. It took them all afternoon to make them from scratch. They cut the celery that went into them into such tiny pieces. In the end they were like angels' wings on our tongues.

Elaine and I love talking about history, literature, and art, exchanging our views on various things. During those talks, she also has become my teacher of language as I keep asking her about the exact word for some daily-used facilities.

Elaine once tells me that year is quite unusual because Victoria rarely rains that lot in early March; she shows her care for me considering I walk to the University of Victoria on foot every day even on some days with small rains. From my side, however, I take the uncommon rainy season as a gift of opportunities to smell the green grass and the lovely cherry. That's the motivation that drives me to walk instead of taking a bus. For the first half month, it takes me 70 minutes and the second half, only 60. On a party hosted by Maureen for all the research scholars, Gerry friendly jokes on me by addressing "are you going to walk from here through the earth back to China"? That humor makes everyone in the room laugh. But if I could sit back into the house again, I would reply, seriously, saying "yes".

Story 3: Accommodating differences

In June 2006, the CCPRCP joined forces with the other CIDA-funded ICCLR China project, Implementing International Standards in Criminal Justice in China, to organize a major China-Canada Symposium on the Reform of Criminal Justice. It was sponsored by the Canadian International Development Agency, and coordinated by ICCLR and the Research College of Criminal Jurisprudence at Beijing Normal University. As well as the ICCLR and the SPP, the two partners to the CCPRCP, it included the Canadian Bar Association which works with the National Legal Aid Centre of the Ministry of Justice to implement a legal aid project and the Supreme People's Court and the National Judicial Institute which jointly implement a judicial Linkages project. Such symposiums served as interesting examples of Canada's contribution to criminal law and justice reforms in China. Presentations by Canadian and Chinese experts addressed a series of hot topics for legal and policy development in China and for bilateral relations in law and justice. Amongst other things, the symposium dialogue included a discussion of what the Government of China needed to do to prepare for ratifying the International Covenant on Civil and Political Rights.

Interestingly, in finalizing the program, one of the Canadian partners expressed a concern that a discussion concerning the use of the death penalty in China was too sensitive a topic for symposium consideration, so in deference to Chinese sensitivities it was dropped from the agenda. Thus it came as a complete surprise to the Canadian side, when the symposium's keynote speaker, the Vice President of the Supreme People's Court, chose to focus his remarks on the need for China to adjust its approach to death penalty sentencing. In light of those remarks RCCJ quickly organized a follow-up workshop on the death penalty for the next day

that included a discussion of the need for death penalty reform, the death penalty as an issue in international cooperation, alternatives to the death penalty, and the costs of wrongful convictions.

During 2005-2007, when China entered into extradition treaties with Spain, Portugal and France, a reference was made explicitly in the treaties that China would give the assurance of no use of death penalty on the extradited offenders. Until recent years, the Chinese government had been reluctant to include such a clause in a treaty. The Canadian-Chinese dialogues in the past 13 years of ICCLR's work in China, together with the work of other international donors, is believed to have been a contributing factor to the changes in the Chinese position in this respect.

In October 2006, the Standing Committee of the National People's Congress passed a resolution amending the Organic Law of Courts to make it mandatory that all sentences carrying the death penalty be revised by the Supreme People's Court. On top of this, in order to reduce the likelihood of wrongful convictions in capital offence cases, the Supreme People's Procuratorate issued a new judicial interpretation demanding that appellate cases carrying the death penalty be heard by appellate courts in open trials rather than by way of documentary reviews.⁵

This is not to say that the CCPRCP can take credit for the change in China's judicial process regarding the use of death penalty, but to say that open dialogue on sensitive issues expands boundaries considerably when they take place at a technical level between partners with close relationships.

Gender Equality



While women were officially deemed to be equal with men upon the founding of the Peoples' Republic of China in 1949, there remains much to be accomplished if this commitment is to be turned into reality. The lived experience of many women in China has not been one of equality with men. And the laws and legal system of China are an extremely important part of the reform journey that has to take place. One of the explicit goals of the CCPRCP was to mainstream gender into all project undertakings and activities in order to assist China on the equality path. And whilst this laudable objective is not always easily accomplished, many achievements have been made over the years.

When the program commenced, the very idea of analyzing laws, policies and practices from a gender perspective was a novel and mostly foreign concept in China. Over time, Chinese colleagues and participants have become more open to discussing gender issues explicitly. The project has addressed the role of gender equality and the differential treatment of men and women in many areas of the criminal justice system which the project has addressed: criminal laws (assault, violence, corruption and its impact on women); criminal procedure (disclosure of information and examination of witnesses) and management practices (the need for women in

⁵ NPC "Resolution on Amending the Organic Law of the People's Courts", October 2006; SPC and SPP jointly issued "Provisions Regarding Procedural Issues in Handling Cases of Appeal of Death Sentences", September 2006.

leadership roles in organizations). Participants in all activities have included women as presenters, experts, learners, and in exchanges. Two main areas where progress was made, albeit slowly, were violence against women in relationships and the protection of vulnerable witnesses and victims, concentrating specifically on the victims of human trafficking.

Domestic violence as a crime is often unreported and in the rare cases where it is reported is usually not treated seriously as a crime by police or prosecutors in China, similar to many countries around the world. When presentations were first made on this issue in China it was difficult to engage the audience. As time has moved on there is an increasing recognition in certain pockets of the criminal justice system of the importance of addressing domestic violence as a crime with very real consequences to both the spouse and her children. As women in China become more aware of their rights there has been an explosion in the number of domestic violence cases which are reported – an increase of upwards of 70 percent. The All-China Women’s Federation estimates that 1 in 3 families experience domestic violence. A new marriage law was passed which explicitly makes domestic violence a crime and prosecutors are taking the issue more seriously. On the ground, a successful pilot project has been set up by the SPP office in Hebei Province and a court established specifically to address the issue of domestic violence.

On a related but distinct topic is the treatment of vulnerable witnesses and victims of crime in the criminal justice system. One very current example is in the area of human trafficking. China is a source, transit and destination country for human trafficking, although the majority of trafficking takes place internally. Because of this, materials and presentations on the importance of prosecutors dealing appropriately with victims were met with interest. China is increasingly recognizing the extent and scope of human trafficking and has put into place a national plan of action 2008-2012 to prevent and combat human trafficking which attempts to provide a much greater focus and urgency on the prosecution of traffickers and the protection of victims.

The road to equality is a long path and ensuring that the laws, procedures and practices of the criminal justice system treat both men and women fairly is an important foundation. The journey is long but the path is known. As Confucius said, “the journey of ten thousand miles begins with the first step”. China has begun the journey to a more equal future for both men and women and this project has been privileged to be a fellow traveler assisting on some part of this important journey.

Accountability for Learning



Essentially the CCPRCP has been about Chinese and Canadian prosecutors relating to each other and to their two very different environments. While it would be difficult to attempt to measure the impact of this type of project on the Chinese procuratorial system or on the lives of Chinese citizens, it is possible to reflect on the strategies it employed and the lessons it taught. Here are five lessons that the CCPRCP partners learned during the course of project implementation:

Lesson 1: The contribution of small initiatives

In order to reform the procuratorial system of China one has to think in comprehensive system-wide terms. But small knowledge sharing activities can play an important role in stimulating new thinking, in identifying opportunities for change and supporting reform processes. The original objectives for the CCPRCP were the objectives of the SPP's reform program. Following a mid-term review, the SPP and ICCLR decided to develop a set of lower level, operational objectives for the project to capture the results that it was achieving through its relatively small initiatives.

Lesson 2: Globalization can be a powerful inducement to reform

China used to be on the edge of global interaction; now it is one of its hubs. In this context, it is imperative that China learn to process the requirements of international standards, and particularly the standards of the rule of law. While combating corruption has become a high priority for the Government of China for promoting state legitimacy, its importance is increased by the fact that China is now a world economic power having to do business according to WTO rules. Using the UN Conventions Against Transnational Organized Crime and Against Corruption as an entry point for discussing corruption helped frame project conversations on the subject in terms of shared responsibility and mutual legal assistance.

Lesson 3: Development assistance vs development cooperation

Because the CCPRCP was being funded on the Canadian side by the Canadian International Development Agency, it was to some extent framed in donor-recipient terms. However it could only function as a learning platform if conceptualized as a development cooperation program. In fact, what was extraordinary about the way the project functioned was that the methodologies for information exchange were dictated by the Chinese side not the Canadian side. The challenge for ICCLR in this context was to prime the Canadian resource persons to prepare appropriately for Chinese study tours, for example, so that they understood that the Chinese had come to Canada, not to hear how criminal justice is practiced in Canada, but to engage in a conversation on reform options for delivering criminal justice in the Chinese context. The Canadian partners learned from a comparison of the differences between the Canadian judicial system and the Chinese system, and especially how development of the Chinese systems fit within the broader landscape of social, economic and political transformation in China.

Lesson 4: Reform as capacity development

The reform of the criminal justice system in China is taking place according to a five year plan. But within this reality, it is as much about building procuratorate competencies for implementing reform directives as it is about developing reform strategies. In this context, the CCPRCP came to play a useful support role to the SPP's reform agenda by acting as a platform for key procuratorate personnel from across the country to participate in reform related activities. Canadian lectures in the provinces and provincial participation in study tours to Canada became one of many ways for creating country-wide pockets of commitment to reform implementation.

Lesson 5: Making engagement work

There were five reasons why the engagement between the SPP and ICCLR worked. First, China is committed to reforming its legal/judicial system as part of its effort to join the world community. It was thus committed to engage. Second, the Chinese change process balances learning from endogenous experiences with learning from the experience of others, which provides a host of entry-points for engagement. Third, although the legal and human rights traditions of China and Canada are historically very different, there are sufficient areas of shared interest to make for a productive dialogue on criminal justice based on mutual interest and learning. Fourth, both countries possess the capacity to craft, manage and sustain a cooperative relationship based on mutual respect. And fifth, the imperative for engagement between the two countries grows as the process of globalization accelerates.

Conclusion



Continued and enhanced engagement between the expert communities and officials of China and Canada is central to the interests and obligations of national and international cooperation for both countries in the areas of good governance, including fa zhi (rule of law), ren quan (human rights) and wei quan (civil rights defense). Such engagement supports the mutual goals of both countries to strive towards recognition and implementation of international standards and norms in criminal justice. This means building on existing relationships and programs for greater cooperation and exchange between and within governmental and non-governmental institutions as well as the public. It follows that Chinese and Canadian reformers should continue to sow the seeds for the future harvest of McIntosh Apples and Mandarin Oranges.