

# ENGAGEMENT WORKS

**A Presentation to the  
The Standing Committee on Foreign Affairs and International  
Development**

**Pertaining to  
A Study of the Canada-China Human Rights Dialogue**

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*Submitted by:*

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# ACRONYMS

CAT	The Convention against Torture
CCJCP	China Criminal Justice Cooperation Project
CCLJ	Centre for Criminal Law and Justice at the China University of Political Science and Law
CCPRCP	Canada-China Procuratorate Reform Cooperation Project
CEDAW	The Convention on the Elimination of All Forms of Discrimination Against Women
CERD	The International Convention on the Elimination of All Forms of Racial Discrimination
CIDA	Canadian International Development Agency
CPS	China Prison Society
CRC	The Convention on the Rights of the Child
CSC	Correctional Services Canada
DOJ	Department of Justice Canada
IAACA	International Association of Anti-Corruption Authorities
ICCLR	International Centre for Criminal Law Reform and Criminal Justice Policy
ICCPR	The International Covenant of Civil and Political Rights
ICESCR	The International Covenant on Economic, Social and Cultural Rights
ICPA	International Corrections and Prisons Association
IISCJCP	Implementing International Standards in Criminal Justice in China Project
MOJ	Ministry of Justice of the People's Republic of China
MOPS	Ministry of Public Security of the People's Republic of China
NPC	National People's Congress of the People's Republic of China
RCCJ	Research Centre (College) of Criminal Jurisprudence
RCMP	Royal Canadian Mounted Police
SPC	Supreme People's Court of the People's Republic of China
SPP	Supreme People's Procuratorate of the People's Republic of China
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNTOC	United Nations Convention on Transnational Organized Crime

## **1. Introduction**

The purpose of this presentation is to brief the members of the Standing Committee on Foreign Affairs and International Trade Development on the experience of the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR) in engaging China on human rights issues. It will provide a brief description of the Chinese legal/judicial reform process, a review of the ICCLR relationship with China and an analysis of the achievements resulting from that relationship. The conclusion that ICCLR draws from this narrative is that engagement works.

## **2. The International Centre for Criminal Law Reform and Criminal Justice Policy**

The International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR) is an independent, not-for-profit, international institute based in Vancouver, British Columbia. It is officially affiliated with the United Nations under a formal agreement between the Government of Canada and the United Nations. The Center works with the UN Office on Drugs and Crime in Vienna to support the UN programs. With a 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. It conducts research and policy analysis, undertakes the development and delivery of technical assistance programs and provides public information, consultation and education related to the international dimensions of criminal law, criminal justice policy, human safety, human rights, and crime prevention.

The Centre was founded in 1991 as a result of an initiative by the Government of Canada, the University of British Columbia, Simon Fraser University, the International Society for the Reform of Criminal Law and the Ministry of the Attorney General of British Columbia. It is governed by a Board of Directors consisting of representatives from:

1. The Department of Justice Canada
2. The Department of Foreign Affairs Canada
3. The Department of Public Safety Canada
4. The Ministry of the Attorney General of British Columbia
5. The University of British Columbia
6. Simon Fraser University
7. The International Society for the Reform of Criminal Law
8. The United Nations Office on Drugs and Crime

The basic premise under which the Centre operates is that a fair, responsible, ethical and efficient criminal justice system based on the rule of law is at the very core of economic and social development, human security and respect for human rights based on internationally recognized standards and norms. The Centre believes that criminal law and criminal law reform have an essential role to play in defending these values and giving them practical expression in combating national and transnational crime, while guaranteeing basic human rights. These are values that are embedded in international conventions, standards and norms including the International Covenant of Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the UN Convention Against Corruption (UNCAC) and the UN Convention Against Transnational Organized Crime (UNTOC).

The Centre has seventeen years of experience in human rights and rule of law policy making and programming. Its international work includes programs aimed at protecting women and children's rights, reforming corrections administration, combating transnational organized crime and anti-corruption measures and dealing with counter-terrorism issues. As part of its extensive human rights programming, the Centre has actively supported the establishment and international ratification of the International

Criminal Court, as well as strategies and practical measures to eliminate violence against women, human trafficking and the rights of children as victims and witnesses. One of the Centre's most significant contributions to rule of law and human rights has been made through its longstanding program of support to the legal/judicial justice reform in China.

### **3. A Brief History of ICCLR's Relationship with China**

ICCLR began its program of engagement with China in 1995 with the launch of the China-Canada Criminal Justice Cooperation Project (CCJCP). This was when the country's judicial reform process was just getting into high gear, the beginning of an historic period of transition to the rule of law. The Chinese partners on the project were the country's first two Centres of academic excellence devoted to providing research support to the criminal justice reform process: the Research Centre of Criminal Jurisprudence (RCCJ) at Renmin University and the Centre for Criminal Law and Justice (CCLJ) at the China University of Political Science and Law. This programme, funded by the Canadian International Development Agency and the Ford Foundation, focused on providing expert input into the ratification and implementation of human rights standards, assistance to the Expert Drafting Group for amending the law of Criminal Procedure of China in its preparation of a draft Code, and then on to assistance for the development of legal aid legislation.

In particular, through its relationship with the partner Centres and institutes, ICCLR provided support to an Expert Drafting Group for Amending the Law of Criminal Procedure and jointly published a book on UN standards and their application to the reform of Chinese criminal law and procedure. This was the first publication to present a systematic review of international standards and their implementation in China. As well under this first program, the Centre developed a collaborative relationship with the Central Prosecutors' College, the national institute responsible for the training of all senior prosecutors in China, and in September 1996, ICCLR sent a delegation to a Sino-Canada Training Workshop on Criminal Procedure and Commercial Fraud at the College. This turned out to be a seminal event in the internationalization of judicial training in China as it was attended by over 200 chief prosecutors, including 110 from ethnic minority areas. Without the curriculum reform of the country's legal training system exemplified by this event, the reform of the judicial system itself would not have been possible. As this work was going on, ICCLR was also working with the Chinese public prosecution agencies to promote prevention of crime, a fair and timely trial process and protection of human rights in criminal justice.

The initial ICCLR/RCCJ/CCLJ institutional linkages project in support of criminal justice reform has grown into a sector-wide, comprehensive Canada-China criminal justice reform program. In 1997, the programme was renewed for another three years. In 2000 there was support for the Canada-China Cooperation Project for the Ratification and Implementation of Human Rights Covenants in China. Then in 2003, it took on a another life until 2007 under the title of Implementing International Standards in Criminal Justice in China and with an additional partner – the China Prison Society – which expanded the programme field to now also include human rights in prison , prison reform, and in particular community corrections.

Separate but building on the original project, ICCLR began in 1998, with funding support from CIDA, a two year cooperative program to assist with the development of a nation-wide Legal Aid System in China. The project provided assistance to the National Legal Aid Centre (NLAC) of the Ministry of Justice, PRC for the development of the first national legal aid law and a legal aid system in China. This project eventually became a much larger CIDA legal aid support project managed by the Canadian Bar Association and IBM Canada. Then in 2003, ICCLR was able to further develop its relationship with the Supreme People's Procuratorate which had begun under the CCJCP to begin a five year CIDA-funded project aimed at strengthening the country's prosecution service and profession.

In order to successfully implement these six projects, and to enhance the benefits to both countries ICCLR drew upon the large pool of Canadian criminal justice expertise including the Department of Foreign Affairs, the Department of the Secretary of State (Asia & Pacific), the Department of Justice (DOJ), the Ministry of the Attorney General of British Columbia and Ontario, the RCMP, the Canadian Association of Chiefs of Police, Vancouver Police Department, National Parole Board, Correctional Service of Canada, the International Society for the Reform of Criminal Law, the Canadian Bar Association (BC Branch), the Law Society of British Columbia, the University of British Columbia Law School, the University College of the Fraser Valley, Universities of Toronto and Ottawa, and the Simon Fraser University School of Criminology.

In summary, after thirteen years of programming in China, what ICCLR started has now grown exponentially in size, scope and reach. In the beginning, programming was delivered through a simple institution-to-institution linkage arrangement; now it is grounded in longer term partnerships involving universities, professional associations and government ministries. Where once it focused mainly on advocating reform, it is now directly involved in implementation of reform initiatives. Certainly it involves a great many more actors in both countries and covers virtually the whole gambit of criminal justice processes, including international human rights implementation, law making, women and the law, reform, policing, prosecution, trials, corrections, defense counsel, legal aid, implementing international standards and mutual legal assistance. Most importantly, ICCLR's China program is no longer a stand-alone effort; rather it is part of a larger program, and so the beneficiary of all the advantages to be derived from a 'program approach' to aid delivery.

#### **4. A Brief History of Legal/Judicial Reform in China and Achievements to Date**

It can be said that modern era in Chinese legal/judicial history began 1978. Driven by the need to stimulate economic modernization, legitimize Communist Party rule and increase China's links with the outside world, the 5<sup>th</sup> National People's Congress adopted a new constitution intended to provide a structural basis for the return to socialist legality. Amongst other things, it reaffirmed the principle of the equality of all citizens before the law, guaranteed the right to a public trial and reaffirmed a citizen's right to offer a defense.

In order to put this new constitution into effect, in mid-1979 the Government promulgated a series of new statutes that included the country's first criminal law, first criminal procedures law, and updated laws on courts and procuratorates. In this process, it was decreed that the country's courts would be virtually independent, meaning that while they would base their judgments on the law, they would continue to "work under unified leadership of the local party committees".

Next, in 1996-1997, the Government introduced a series of amendments to the Criminal Law and the Criminal Procedural Law. These reforms served to introduce a number of well established international standards into Chinese law and to enhance fairness and transparency in the criminal justice process. In more recent years, both the 16<sup>th</sup> and the 17<sup>th</sup> Communist Party Congresses decreed "promotion of fairness and justice in the whole Chinese society" and promised to implement the rule of law, improve the country's legal and justice systems and build a harmonious society. Starting in 2003, all of the government's organs of justice have been making concerted efforts to implement new reform plans. As a result new amendments to the Criminal Law and the Criminal Procedural Law have been developed and introduced.

In March 2004, the Government amended the 1979 Constitution for a second time. **One of these 2004 amendments recognized human rights as a constitutional principle.** As well, the 2006 Chinese Communist Party resolution on "building a socialist harmonious society by 2020" seeks to "further improve socialist democracy and the legal system, fully implement the policy of governing under the rule of law, and respect and protect the rights and interest of the people". In fact, the Chinese Government is

making adherence to international human rights standards a priority as one way to help China to assume its rightful place as a leader of nations in the twenty-first century. However, not unexpectedly, the move to a free market economy has been accompanied by an increased wave of crime and new types of crimes. Thus, public corruption, economic crime, computer crime, narcotics trafficking, robbery and murder are all more prevalent than they were thirty years ago and corruption is becoming the biggest obstacle to implementing the recently enacted legal and judicial reforms. In this context, fighting corruption has become the number one priority for the Supreme People's Procuratorate and its partners in the Chinese justice system forcing it to try and find a workable balance between the dual challenges of the country's escalating crime rates and the need for a more progressive approach to criminal justice.

As a measure of the rapidity of the Chinese legal/judicial reform process, within the last ten years the Government has signed and/or ratified the following international covenants and conventions.

- The International Covenant on Civil and Political Rights – the ICCPR (signed: 1998);
- The International Covenant on Economic, Social and Cultural Rights – the ICESCR (ratified 2001);
- The International Convention on the Elimination of All Forms of Racial Discrimination – the CERD (accessed: 1982);
- The Convention on the Elimination of All Forms of Discrimination Against Women – the CEDAW (ratified: 1981);
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – the CAT (ratified: 1988);
- The Convention on the Rights of the Child – the CRC (ratified: 1992);
- The Convention against Corruption – the UNCAC (ratified: 2006);
- The Convention against Transnational Organized Crime – UNTOC (ratified: 2003), and its three protocols regarding trafficking in persons, smuggling of migrants, and trafficking in firearms and ammunition.
- The 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

China's legal experts and policy makers are currently laying the groundwork for another round of criminal law and procedures reform. As well the country's key judicial institutions and law enforcement agencies - the Supreme People's Court (SPC), the Supreme People's Procuratorate (SPP), the Ministry of Justice (MOJ) and the Ministry of Public Security (MOPS) - have been implementing multi-year institutional strengthening programs aimed at improving their management systems, professionalizing their services, strengthening their accountability arrangements and operationalizing fair trial practices at the provincial and local levels.

Each year, both the Supreme People's Procuratorate and the Supreme People's Court are required to report to the National People's Congress (NPC) on the results they have achieved in implementing their plans. Some of the most significant reforms include:

- Improvements to the death penalty review system, which has caused a significant reduction in the number of capital punishment sentences;
- Increased protection of the rights of the accused in the pretrial investigative process;
- The introduction of anti-torture rules and the video-taping of interrogations;
- Significantly increased efforts to combat corruption and transnational organized crime;
- The introduction of a system community oversight of trial proceedings.



## **5. A Brief Description of ICCLR's Two Most Recent Projects in China:**

This year the ICCLR is winding up two major criminal justice reform projects in China. Both have achieved a great deal in their short four year histories.

- Implementing International Standards in Criminal Justice in China; and
- Canada-China Procuratorate Reform Cooperation Project.

### **(a) The Implementing International Standards in Criminal Justice in China Project**

One of the major drivers behind the judicial reform process in China is the role played by the legal research communities in the country's key academic institutes, many of which have close ties with the policy makers in both the Supreme People's Procuratorate and the Supreme People's Court. ICCLR's projects have been very helpful to the SPP and the SPC with their reform initiatives by conducting applied research on local conditions, documenting the experiences of other countries and providing legal argument and analysis of international standards and conventions.

This is where the IISCJCP has fitted in. Through linkages between ICCLR in Canada and the Centre for Criminal Law and Justice (CCLJ), the Research College of Criminal Jurisprudence (RCCJ) and the China Prison Society (CPS) in China, the project created a platform for research and dialogue between the judicial reform communities within and between the two countries. The project was able to contribute to enhancing the capacity of Chinese legal scholars and justice officials to expose, analyze and publicize key reform issues related to China's criminal justice system.

The IISCJCP focused on legal rights in criminal justice related to the ICCPR, international cooperation related to UNTOC and UNCAC standards, and community corrections related to the UN's standards in particular community corrections. The project and its predecessor projects together:

- Prepared 15 sets of legislative and policy reform recommendations;
- Sponsored 150 seminars, lectures, workshops, conferences, study tours and consultations;
- Involved over 10,000 Chinese justice officials, judges, prosecutors, police officers, corrections officers, legal aid lawyers, law professors and university students; and
- Distributed over 50,000 copies of project-financed books to national and local agencies, law schools and research institutes.

While the attribution of impact to a single donor project like the IISCJCP contradicts the multiple contributions and conditions necessary for reforming a legal/judicial system as large as China's, nonetheless, the IISCJCP was able to support its Chinese partner organizations to:

- Publish 2 major books of comparative and investigative research findings on fair trial standards;
- Develop recommendations on amending the Law on Criminal Procedures;
- Formulate a set of recommendations on the requirements for implementing the UNTOC and UNCAC;
- Influence the SPP's decision to change death sentence appeal and approval procedures and develop options for preventing wrongful executions;
- Develop options for reforming the country's labour re-education system;
- Introduce and develop models for community corrections and expand the system of community corrections to 16 Chinese provinces; and
- Publish two books on the concept of offender risk assessment and the early release of prison inmates.

**(b) The Canada-China Procuratorate Reform Cooperation Project (CCPRCP)**

There is no equivalent in the Canadian Justice System to the Supreme People's Procuratorate (SPP) of China. It is both the highest prosecutorial institution in China and the State's judicial supervisory institution. This means that it is responsible not only for leading local procuratorates in providing prosecution services but for handling corruption cases, exercising legal compliance oversight over the judicial proceedings of the courts, activities in prisons, arrest and investigation procedures of the police and ministry of justice programming, as well as for mutual legal assistance arrangements with other countries. It reports directly to the National People's Congress and is a member of the Leading Group on Judicial Reform

The Canada China Procuratorate Reform Cooperation Project is one of the central players in China's judicial reform process and the objectives set for it were daunting. They were to help the SPP to achieve: (i) an enhanced supervisory capacity to enforce national prosecutorial standards; (ii) revisions to the Organic Law and the Criminal Procedures Law; (iii) an increased SPP capacity to prosecute corruption; (iv) improved standards of legal enforcement; (v) improved pre-trial procedures and better supervision of criminal investigation practices; (vi) improved operational systems for procuratorates; (vii) more favourable operating environment for procuratorial independence; (viii) a renewed professionalism amongst prosecutors; and (ix) improved gender mainstreaming and the handling of transnational crimes involving women. In order to facilitate these reform processes, the CCPRCP supported joint research, study tours, technical assistance, curriculum development and joint training, workshops and seminars and information dissemination.

Implementation of the CCPRCP began in April 2004. It is scheduled to end in September of this year. In order to assess the results achieved by the project during its four year life, the SPP and ICCLR undertook a joint project assessment that included an opinion survey of project participants and a joint end-of-project stocktaking meeting. The following is a summary of the findings of that exercise:

- During the past three years, the SPP has implemented 34 reform measures, for example, it has successfully testing a system of citizen's accountability for the conduct of local procuratorates and has established a standard format for filing cases for investigation.
- The SPP now has the capacity to prosecute over 20,000 cases involving embezzlement and bribery every year.
- Over the past five years the SPP put in place a new job classification system, implemented a unified exam system for recruiting new prosecutors, implemented a performance-based staff management system and significantly increased the percentage of SPP staff with law degrees.
- In 2007 the SPP played a lead role in the establishment of the International Association of Anti-corruption Authorities.
- The CCPRCP delivered 37 project activities.
- Ten articles on the Canadian criminal justice system written by two Chinese journalists were published in the Prosecutorial Daily which has a readership of 220,000 prosecutors.
- 88 SPP officials came to Canada on 10 different study tours and prepared lessons learned reports on such topics as prosecution systems management, the investigation and prosecution of organized crime, the supervision of financial institutions and the prosecution of financial crimes, the oversight and supervision of police activities and promoting the fair prosecution of vulnerable groups.
- 12 SPP researchers were mentored by the University of Victoria law faculty to prepare research papers on such issues as *the Supervision over Investigation Methods: A comparative Study on Canadian and Chinese Law Practices* and *A review of Plea Bargaining in Canada and Some Suggestions to Establish this Mechanism in the Criminal Justice System* that were review by the SPP's Department of Legal Policy Research.

- Canadian legal experts lectured in 5 different provinces to over 2,000 prosecutors helping them to buy into the reform process.
- According to the end-of-project survey, of persons who had participated in project activities, the topic covered were relevant to the Chinese reform process and contributed to professional capacity development.
- The IISCJCP and the CCPRCP projects have provided over 200 Canadian government officials and academics with an opportunity to be involved in a rule of law/human rights dialogue with their Chinese counterparts.

## 6. The Importance of Engagement to the Change Process for Canada and China

Canada began providing development assistance to China in 1982 only five years after the official end of the Cultural Revolution. During this time (1980-1987), China was making important progress in replacing the *rule of men* with the *rule of law*. In recognition of the important first steps taken by the Chinese government during the 1980s to develop a viable legal system and make the government and the courts answerable to an objective standard, CIDA moved in 1995 to start programming in the governance sector with an emphasis on rule of law and human rights programming. These two milestones in China-Canada relations mean that Canada has had an early, long and continuous development cooperation and rule of law/human rights dialogue with China, longer than that of any other western country. In the emerging world of *nonpolarity* and China rising, it would be foolhardy to throw aside this comparative advantage.

Although Canada and China have different rule of law and rights histories, the ICCLR experience in China says that the strong pragmatic tie in China between rights and people's interests means that a great deal of space exists for engagement between the expert communities of the two countries for mutual learning on human rights. Moreover the opportunities for rights discourse increase every day as global interconnections increase and China signs on to more and more international trade, human rights and rule of law conventions.

The following stories from the ICCLR program story book illustrate just how fruitful an open dialogue about the rule of law and rights can be if carried out in an atmosphere of mutual respect that works towards a balance of understandings and criticisms.

**First Story: Building Anti-Corruption Capacities** Combating corruption is a high priority with the Government of China, so it was not surprising that the first substantive study tour under the CCPRCP was one in 2004 by the SPP's Anti-Corruption Bureau. The group focused on the Canadian legislative framework for corruption and bribery offences, the domestic and international aspects of corruption, the proceeds of corruption and extradition and mutual legal assistance. This successful initial study tour was followed by a set of more specific workshops, study tours and joint research on money laundering, the supervision of financial institutions and financial crimes and international cooperation on anti-corruption. To what end one might ask? The Director of SPP's Anti-Corruption Bureau publicly announced at a project planning meeting in 2006, that he had totally reorganized the Bureau along the lines of the Integrated Enforcement Model that he had learned about when in Canada in 2004.

At a higher level, in 2004 ICCLR started providing support to the SPP's Foreign Affairs Bureau to take the lead to establish an International Association of Anti-Corruption Agencies (IAACA) under UN auspices. Two years later, in October 2006, the first General Meeting of the IAACA was held in Beijing attended by 1300 delegates from 137 countries and addressed by President Hu Jintao. The IAACA Secretariat is in Beijing and Chinese Government is covering its operating costs.

And finally working from the bottom up, ICCLR has been partnering with the Research College of Criminal Jurisprudence (RCCJ) to research the development of legal and policy options for implementing the UN Convention against Corruption (UNCAC) and the UN Convention on Transnational Organized Crime (UNTOC) which China has signed. The ‘product’ of this research is four publications: *A Comparative Study of Financial Crimes*; two chapters in a book entitled, *Recent Development of Criminal Procedure Law Outside Mainland China in the 21<sup>st</sup> Century*; *The UNCAC and the Improvement of Chinese Criminal Law*; and *A Study on the Issues of Implementing the UNTOC*. The last two of these publications contain detailed recommendations to the government on convention implementation.

**Second Story: The Idea of Community Corrections** The Chinese Ministry of Justice was first exposed to the idea of community corrections in 1998 when a delegation from the China Prison Society (CPS) toured prison facilities in Canada and held discussions with Correctional Services Canada (CSC) and National Parole Board officials on corrections and conditional release systems. In 1999 the Municipality of Shanghai took the bold step of piloting a community corrections program on a limited basis. China became a member of the International Corrections and Prisons Association (ICPA) in 2000. By 2002, based on the success of the Shanghai experience, and supported through further CPS-CSC consultations, the MOJ was ready to expand community corrections programming to 6 provinces and municipalities. The CPS-CSC dialogue continued with an increased focus on risk management in the corrections environment. In 2006, a CPS delegation participated in a CSC conference on *Community Reintegration of High-Risk Offenders: What Works*. Two books have recently been published disseminating new knowledge on community corrections amongst prison managers in China. They are: *Risk Assessment and Risk Management – A Canadian Criminal Justice Perspective* and *An Overview of Community Corrections in China and Canada*. Community corrections programs are now operating in 18 Chinese provinces. There are 670 prisons in China housing an inmate population of 1.5 million prisoners. The CPS continues to encourage research into the possibility of a national law on community corrections.

**Third Story: The Provision of Legal Aid** Although Chinese law established state-funded, court-appointed counsels in 1980, it was not until 1994 that the Ministry of Justice announced its intention to establish a legal aid system. Moving quickly, in 1995, the Ministry established the country’s first legal aid centre in Guangzhou and set up a task force for creating a National Legal Aid Centre. Acting on a request from the MOJ, CIDA contracted ICCLR to help the Ministry to develop the legal framework for its legal aid program. Through 1998 and 1999, ICCLR hosted a study tour of senior MOJ officials to Canada, supported field investigations in nine Chinese provinces, financed the translation of legal aid legislative materials from over 15 jurisdictions, organized a symposium on the Canadian legal aid systems in Beijing, produced two Chinese language publications on legal aid and helped the MOJ to pilot local legal aid legislation in Hangzhou City. By 1999 there were over 600 legal aid centres operating throughout China handling over 60,000 cases a year and providing legal advice to over 800,000 persons and both the Criminal Procedures Law and the Lawyers Law had been revised to accommodate the idea of legal aid.

To follow up on this pioneering work, in 2003, CIDA contracted the Canadian Bar Association to implement a Legal Aid and Community Legal Services Project with the National Legal Aid Centre aimed at strengthening the country’s legal aid system. In 2006, the Chinese legal system handled 318,514 cases and provided legal aid to 3,193,801 persons. ICCLR continues its dialogue with China on the fair treatment of vulnerable groups under the law through its project with the Supreme People’s Procuratorate.

**Fourth Story: Reducing the Use of the Death Penalty** One of the main topics of discussion between ICCLR and its two partner university-based research institutes, the RCCJ and the CCLJ has been the reduction of the use of the death penalty. In June 2006, the RCCJ acted as the host agency for a China-Canada Joint Symposium on the Reform of Criminal Justice. The aim of this symposium was to provide

a useful forum for the Canadian and Chinese partners involved in three CIDA-funded rule of law projects to dialogue on judicial reform issues from the perspectives of the courts, the prosecution and the defense. One of the topics to be discussed was the death penalty, however, it was pulled at the last minute by the Canadian side in deference to Chinese sensitivities. Thus it was a surprise to everyone in attendance that the Vice President of the Supreme People's Court, in making his opening remarks to the symposium, chose to focus on the need for China to adjust its approach to death penalty sentencing. In light of those remarks, the RCCJ quickly organized a follow-up workshop for the next day on the death penalty that included a discussion of the need for penalty reform in China, the death penalty as an issue in international cooperation, alternatives to the death penalty, and wrongful conviction. A record of workshop deliberations was later posted on the RCCJ website.

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 reviewed 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. Indications are that, while these two measures are causing administrative difficulties, they are having the effect of reducing the number of executions in the country. Now the debate has shifted to reducing that number still further by limiting the death penalty to violent crimes only.

The Canadian experience teaches us that reforming the law and complying with international human rights standards are slow and complex tasks. So it is in China, although the change process there right now is as fast as it has ever been anywhere. This means that, while engagement is all very well, it promises no immediate or necessarily predictable results. There is a new Canadian-authored book now selling in Canadian bookstores entitled *Getting to Maybe*. It is about the challenges of innovating social change in complex situations. The legal reform process in China and the accompanying China-Canada rule of law/rights dialogue certainly fall into this category of an uncertain endeavour. But to quote the concluding words of that book, "We are at a hinge point – there is a cusp occurring here now - and there are things we can do to help change the ultimate outcomes".

## **7. The ICCLR / SPP / CCLJ / RCCJ / CPS Model of Engagement**

There are a number of characteristics of the ICCLR model which make it work as a vehicle for rule of law/rights engagement in the Chinese context.

- a) **Institutional Specificity and Connectivity:** ICCLR has a specific mandate to promote human rights, the rule of law, democracy and good governance in the field of criminal law reform and criminal justice policy. Owing to the composition of its board, it is connected to a wide cross-section of the key criminal justice players in Canada, and because of its UN affiliation, it is also connected to the international criminal justice community. These connections give ICCLR credibility in the eyes of its Chinese partners.
- b) **Continuity and Staying Power:** Although ICCLR's relationship with China has been project driven, ICCLR has been able to operate there without interruption since 1995. This has allowed it to accumulate a first hand understanding of the Chinese judicial system and its change processes and to build trusting relationships with its Chinese partners based on a kind of empathy which is valuable in itself.
- c) **An Antidote to Asymmetry:** There is no equivalent to the Supreme People's Procuratorate in Canada where those responsibilities and accountabilities are dispersed across several ministries and federal and provincial jurisdictions. This means that the idea of twinning like Canadian and Chinese

institutions on a one-on-one basis poses serious difficulties. Fortuitously, ICCLR being a multi-stakeholder institution makes it possible for it to resource the multiplicity of institutional strengthening needs and bridge the “asymmetry gap”.

- d) **Vertical and Horizontal Dialogue:** Under the IISJCP, ICCLR works horizontally on an institution-to-institution basis with two university-based “think tanks” and one ministry-based professional association. In the case of the CCPRCP, it acts as a horizontal connector between the SPP and several national and provincial criminal justice ministries. Working horizontally in both governmental and academic domains has meant that it has also been able to work the vertical links within the Chinese criminal justice community between academe and government. This is particularly useful in the Chinese context where the two drive the reform process together.
- e) **Part of a Program Approach:** The ICCJCP and the CCPRCP are not stand-alone projects. Rather they are part of a comprehensive CIDA governance program that focuses on rule of law and human rights programming involving the Human Rights Research Centre at the University of Ottawa, the National Judicial Institute, ICCLR, and the Canadian Bar Association on the Canadian side and the International Human Rights Research Centre at Beijing University, the Ministry of Justice, the National People’s Congress, the Supreme People’s Procuratorate and the Supreme People’s Court on the Chinese side. Over the past five years this group of project partners has met a number of times, which has been useful in promoting cross-project dialogue.
- f) **CIDA Relationships with Other Government Departments:** Using ICCLR to implement the CCPRCP is an efficient and effective way for CIDA to cooperate effectively with a cluster of other government departments to deliver a governance project that requires a combination of project management skills and sector expertise.
- g) **An NGO-Private Sector Partnership:** In fact ICCLR implements both the IISJCP and the CCPRCP in partnership with GeoSpatial/SALASAN, a Victoria based international development consulting firm, and the Continuing Legal Education Society of British Columbia. This partnership combines ICCLR’s expertise in criminal law and criminal justice policy, SALASAN’s expertise in results based management and institution building and the Society’s educational expertise.

## 8. Conclusion

Based on ICCLR’s thirteen years of cooperative programming experience in China we believe there are five reasons why engagement with China on human rights issues works. First, China is committed to transforming its legal/judicial system as part of its effort to join the world community. Thus it is motivated 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 rights dialogue 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.

There are opportunities and benefits that Canada gains from these cooperative legal and judicial reform programmes. The benefits resulting from sustained engagement include enhanced awareness and understanding of the legal system, the processes, the reform priorities; the direct and supportive links to international cooperation, especially for the prosecution and the law enforcement communities, an expanded network of expertise and opportunities for combating corruption and crime, and including more secure and enhanced trade opportunities. Canada has a 25 year history of providing development

assistance to China. With China having graduated to world power status, it is no longer appropriate that the relationship between China and Canada continue to be defined on these lines. But this does not mean the social capital build up established between the two countries over those 25 years should be abandoned. Rather, relationships like the one that ICCLR has been facilitating between the legal/judicial communities of the two countries needs to be used as a platform for transitioning to a more mature dialogue relationship as between equals.