

# 中国人民大学 中国法律 发展报告 2015

## 中国法治评估指标

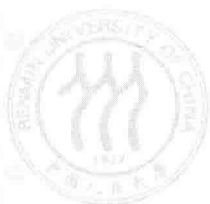


RENMIN UNIVERSITY OF CHINA  
REPORT ON CHINA LAW DEVELOPMENT 2015  
CHINA INDICATORS OF THE RULE OF LAW

主编 朱景文

 中国人民大学出版社

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# 中国人民大学发展研究报告

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## 出版说明

2002年以来，中国人民大学年度系列发展报告（即《中国人民大学中国社会发展研究报告》、《中国人民大学中国经济发展研究报告》和《中国人民大学中国人文社会科学发展研究报告》）的出版发行，引起了社会各界和广大读者的广泛关注，产生了较大的社会影响，成为我校一个重要的学术品牌，这让我们深感欣慰，也增强了我们继续做好这项工作的责任和信心。正是基于这样的责任和信心，加上近一年的努力，我们又编写出版了中国人民大学系列发展报告 2015。

中国人民大学系列发展报告 2015 的各个子报告均由编委会负责审定选题、整体框架、主要内容和编写体例，组织有关专家召开研讨会，审核报告的写作提纲。各报告实行主编负责制，主编由校学术委员会主任、秘书长会议确定，学校聘任；主编聘请副主编或执行副主编。各报告根据主题，分别聘请相关部门的领导和知名学者担任顾问。中国人民大学社会学理论与方法研究中心、中国人民大学中国经济改革与发展研究院和中国人民大学中国人文社会科学发展研究中心分别作为《中国人民大学中国社会发展研究报告》、《中国人民大学中国经济发展研究报告》和《中国人民大学中国人文社会科学发展研究报告》的依托单位，在组织和写作方面发挥了主要作用。

根据实际情况及学者建议，学校对年度系列发展报告进行了一些调整。

• 1 •



《中国人民大学中国人文社会科学发展研究报告》调整为逢奇数年出版。2010年,《中国人民大学中国法律发展报告》开始列入年度系列发展报告。2012年,学校在上述系列发展报告的基础上推出了“研究报告系列”,涉及经济、社会、新闻和教育等学科,拓展了研究领域。现在,报告的编写出版工作已纳入学校的年度科研计划,成为一项常规性工作。2014年,学校根据“研究报告系列”发展的实际情况,决定不再出版《中国人民大学中国经济发展研究报告》。

由于报告所涉及的问题大多具有重大、复杂和前沿性的特点,加上写作与出版周期较短及研究水平的局限,尽管我们尽了努力,报告中的不足或易引起争议的地方仍在所难免。欢迎专家和学者批评指正。

中国人民大学发展研究报告编委会

2015年9月15日



## 前 言

《中国法律发展报告 2015》是国家社科基金重大课题“法治评估创新及其在中国的推广应用研究”，北京市社科联重大项目“法治评估基础理论研究”，中国人民大学发展报告重大项目和人民大学法学院标志性项目“中国法律发展报告”的共同研究成果。中国法学会 2016 年初已经批准中国人民大学法治评估研究中心为中国法学会研究基地。中央政法委决定由本中心承担政法委 2016 年课题“中国特色社会主义法治状况评价体系及机制研究”。所有这些都是对我们工作的支持、鞭策和肯定。

本报告是在 2007 年起编写的历年的《中国法律发展报告》的基础上撰写的，这些报告包括《中国法律发展报告：数据库和指标体系》《中国法律发展报告 2010：中国立法 60 年》《中国法律发展报告 2011：走向多元化的法律实施》《中国法律发展报告 2012：中国法律工作者的职业化》《中国法律发展报告 2013：法学教育与研究》《中国法律发展报告 2014：建设法治政府》。所有这些报告都是建立在相关领域客观数据统计的基础上，我们的任务是把这些数据按照一定的指标体系加以整理。本报告与以往报告不同的地方是，它建立在主观评价的基础上，它的所有数据都来自第一手问卷调查。这是国内第一部以主观评估为基础的、反映法治发展各个方面的法治评估报告。

本报告由中国人民大学法治评估研究中心承担，中国人民大学调查与



数据中心给予大力支持，免费提供调查，没有他们的帮助，报告是不可能顺利完成的。本报告集体讨论，分工负责：

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全书由朱景文统稿，主编。

朱景文

2016年4月于世纪城





## Abstract

### I . China Indicators of the Rule of Law

Since the late 1970s, China has pushed forward the rule of law with Chinese characteristics. What is the rule of law with Chinese characteristics? According to a decision on the rule of law published by the 4th plenary session of the 18th CCP's Congress the system of the rule of law with Chinese characteristics is composed of five sub-systems, namely, the legal norms system, the implement system of the rule of law, the supervision system of the rule of law, the ensure system of the rule of law and the system of CCP's rules and regulations, which established a basic framework to evaluate China's rule of law.

Except them, the effect system of the rule of law is also a key indicator to measure the rule of law's functions and effectiveness. The effectiveness of the rule of law is a multi-dimensional concept, that is, if the rule of the law is able to keep the public power within the limits of law, if the human rights are respected and protected, whether the public security and the social order are ensured, if the public powers' credibility and respect for law



are improved and enhanced. The structure of China indicators of the rule of law is in the following table:

**Table1 Structure of China Indicators of the Rule of Law**

Indicator at the first level	Indicator at the second level
1. legal norms system	1. 1 legislative completeness
	1. 2 legislative scientificity
	1. 3 legislative democracy
2. implement system of the rule of law	2. 1 executive implement
	2. 2 judicial implement
	2. 3 social governance
3. supervision system of the rule of law	3. 1 documental supervision
	3. 2 executive supervision
	3. 3 judicial supervision
4. ensure system of the rule of law	4. 1 personnel ensure
	4. 2 financial ensure
	4. 3 legal education and popularizing law
5. CCP's rules and regulations system	5. 1 completeness of the CCP's rules and regulations
	5. 2 enforcing force of the CCP's rules and regulations
	5. 3 coordination between state's law and CCP's rules and regulations
	5. 4 CCP's members' law-observing
6. effect system of the rule of law	6. 1 power-control
	6. 2 human rights
	6. 3 social order and public security
	6. 4 credibility and legitimacy

Therefore, China Indicators of the rule of law in this report is composed of 6 indicators at the first level, 20 indicators at the second level, 66 indicators at the third level and 185 indicators at the fourth level.

## II. Questionnaire

Questionnaire in the China's Rule of Law Index divides into three kinds, namely, questionnaire for public, one for scholars and one for professionals. Questionnaire for public contains 3983 samples, and covers 28



provinces, national autonomous regions and municipalities under the central government, and distribution in term of age, sex, place of residence, income, and educational background basically conforms to the 6th national population census. Questionnaire for scholars contains 248 samples from directors of professional councils under the China Law Society, and their majors are mostly the Constitutional law, the administrative law, the legal theory and the economic law, with title of senior professional post, the participants are more familiar with the eastern part than western in China, city than countryside. Questionnaire for professionals contains 251 samples, including judges, prosecutors, police, lawyers, working members of people's congress and administrative organs, with high education degree, and the CCP's members account for 68.5%, and most participants worked in big cities for a recent year.

### III. General Evaluation of the Indicators

Analysis of the indicators at the first level shows that every indicator at the first level scores about 70 points, that is, middle evaluation, in which the legal norms system scores 70.1, the implement system of the rule of law scores 68.8, the supervision system of the rule of law scores 70.7, the ensure system of the rule of law scores 72.1, the CCP's rules and regulations system scores 69.1, all five indicators averagely score 70.2, and the effect system of the rule of law scores 69.7. That is to say, the difference of every indicators score is very small, and all indicators at the first level are balanced distributed.

On the other hand, except indicators at the first level, the indicators at the second, third and fourth levels show a big difference. Almost all indicators scores concentrate in the section between 60 and 80, that is, middle and poor evaluation, in which only two indicators, the financial openness and the miscarriage of justice score bellow 60, and four indicators, the fundamental facility ensure of prosecutions and police work, judicial and the community public security, score 78 that are the highest score, and no one scores over 80.



## IV. Evaluation of Various Indicators in China Indicators of the Rule of Law

### 1. Legal norms system

The legal norms system is composed of three indicators at second level, namely, the legislative completeness (69.0), the legislative scientificity (70.7) and the legislative democracy (70.6).

Among the indicators of legislative completeness the legal system completeness scores 71.8, but the legislative mechanism scores 66.2, therefore, their difference is 5.6 score, which means that shortage of legislative completeness focuses on the legislative mechanism, including law-making, law-amending, annul and interpretation since the formation of legal system with Chinese characteristics in 2010. The legislative mechanism does not match to the social needs and social change.

The legislative democracy indicator is composed of the legislative openness (72.5), the public participation (63.2) and the experts participation in law-making (76.2). It is noteworthy that big difference between public and experts participation in law-making is 13 score. Although the law-making organs at various levels always stress on the democratic legislation for recent years, as a matter of fact shortage of the legislative democracy lies in the public participation, especially contrasting to the expert participation in law-making.

### 2. Implement system of the rule of law

The implement system of the rule of law is composed of three indicators at the Second level, namely, the executive implement (67.7), the judicial implement (68.9) and the social governance (69.8), in which no one scores over 70.

The executive implement indicator includes four indicators at the third level, namely, the executive lawfulness (63.8), the executive strictness (70.9), the executive openness (65.8), and the executive efficiency (70.4), in which the administration doing nothing (62.1), the financial openness (59.5), as well as the executive efficiency in handling pollution



cases (66.2) are poorly evaluated.

The judicial implement indicator includes five indicators at third level, namely, (1) the judicial independence (70.2), in which the investigation, prosecution and judiciary independence score below 70; (2) the judicial fairness (70.4), in which the judicial fairness in trying administrative cases (67.6), the illegal contact between lawyers and judges (65.6) are poorly evaluated; (3) the judicial convenience (70.1), in which the difficulty to fill cases, and expensive payment for lawyer and lawsuit are poorly evaluated; (4) the judicial openness (66.2) is composed of the court openness (70.6), the prosecution openness (67.9), the police administration openness (64.9), and the jail administration openness (61.3); (5) the judicial efficiency (67.6), in which the efficiency in enforcing civil cases scores only 62.0 that is the lowest score, and the efficiency in trying criminal cases score 73.3 that is the highest one.

The social governance indicator includes four indicators at the third level, namely, the governance by law (67.2), the legal service (70.7), the mediation (71.5) and the petition letter (66.5). It is noteworthy that the environmental pollution, urban construction, the traffic, food safety and market order under the indicator of governance by law score below 70, poor evaluation. Under the indicator of legal service, convenience of lawyer service scores 68.6, poor evaluation too, although lawyer service quality scores over 70.

### 3. Supervision system of the rule of law

The supervision system of the rule of law is composed of three indicators at the second level, namely, the documental supervision (70.9), the executive supervision (69.0) and the judicial supervision (72.1).

Documental supervision indicator includes the supervision on law (71.2) and judicial interpretation (70.7).

Under the indicators of executive supervision, inner supervision (67.4) and the people's congress supervision (67.5) are poorly evaluated, however, audit supervision and administrative review score over 70.

Under the indicators of judicial supervision, the inner supervision in judiciary and the people's congress supervision are poorly evaluated too, how-



ever, prosecution supervision, higher authority's supervision and public opinion supervision are evaluated much better than the inner supervision and the people's congress supervision.

#### 4. Ensure system of the rule of law

The ensure system is composed of three indicators at the second level, namely, the personnel ensure (70.8), the financial ensure (75.4) and the legal education and popularization law (70.0).

The personnel ensure is composed of the judge, prosecutor, police and lawyer ensure, including quantity, technical quality, and professional morality, in which judge, prosecutor and lawyer score over 70, however, police scores 68.0.

The Financial ensure includes the fundament facility (78.0), the fundamental equipment (77.4) and the performance fund (75.4), which are the highest score in all second level indicators, however, salary and welfare scores 70.8.

The Legal education and popularization law includes two indicators at the third level, namely, the satisfaction for law graduates (68.6) and the satisfaction for legal popularization (71.3).

#### 5. CCP's rules and regulations system

The CCP's rules and regulation system is composed of four indicators at the second level, namely, the completeness of the CCP's rules and regulations (70.7), the enforcing force of the CCP's rules and regulations (68.1), the coordination between state's law and CCP's rules and regulations (65.0), and CCP's members' law-observing (72.6).

The enforcing force of the CCP's rules and regulations includes punishment to break CCP's rules and regulations (66.4), which shows insufficiency of enforcing force, and the supervision of the CCP's rules and regulations (69.8) which is composed of superior supervision and discipline commission supervision that score over 75, the party members' supervision that scores below 65. Their difference exceeds over 10 score that reflects the current situation of supervision system in the CCP, the strong and poor link in the supervision mechanism of the CCP.



## 6. Effect system of the rule of law

The effect system of the rule of law is composed of four indicators at the second level, namely, the power-control (68.4), the human rights (70.3), the social order and public security (70.5), and the credibility and legitimacy (69.8).

Power-control indicator includes the powers defined by law (75.5), the applying power according to law (71.4), the policy-making according to law (67.1), the incorruption (66.8) and the accountability (61.0). It is noteworthy that the score difference between the power defined by law and the policy-making according to law is 8.4, which reflects the difference between the power-control in law and practice. The accountability including law-breaking in the organizational and personnel appointment, law-making, administration, judiciary, prosecution score below 65, which shows a outstanding deficiency in the legal construction, that is, power-using and accountability do not support with each other, accountability of illegally power-using can not be effectively traced. Incorruption scores 66.8, under which two indicators in all six, namely, incorruption of party, government leaders, score below 65. It shows that anti-corruption is still unable to satisfy the people's need although it has obtained a great achievement for recent years. It is fully shows that a saying "anti-corruption is always online" is absolutely right.

Indicator of the human rights scores over 70, among which three indicators at the fourth level, namely, the religious belief freedom, the personnel right (arresting according to due process), the right to education score over 75, accounting for 25% in all 12 human rights indicators. However, the right to equality and the government paying for land requisition relates to private property right score only under 65. It should be noticed that the equal right is a basis of all human rights. To a certain extent, evaluation of the human rights in a state lies if the individuals are equally treated by law. And the government paying for land requisition belongs to the range of property right, relating to protection of private property rights. And another side of protection of human rights is government power-control. Whether



the equal treatment or the private property protection, controlling abusing-power is a key.

Social order and public security indicator scores 62.8, under which seven indicators at the fourth level score under 65 in all eight indicators, including cutting, selling fake, pirated software, running right light, gifting for service, smoking at no-smoking place, no declaration to pay tax, which are illegal and breaking social order acts that common people are very familiar. The percentages of poor evaluation to these indicators are over 64%, some of them reach over 70%. To a certain extent, it is just an important issue for whole people to lack the rule-based consciousness to be resolved in urgent need in current Chinese society in setting up the rule of law society. In contrast, the community security indicator scores 78.0, which reflects that the basis of public security in society is comparable stable.

Indicator of credibility and legitimacy is composed of credibility (68.2), belief on the rule of law (70.1), identity with legitimacy (71.1) indicators at the third level. The scores of the accountability in proper order are the people's congress (70.8), prosecution (70.1), court (69.3), government (66.3), and public security (64.7). The scores of the belief on the rule of law in proper order are judge (75.5), lawyer (75.3), prosecutor (75.1), deputies to the people's congress (67.6), police (67.2), government and party's officials (65.4), ordinary people (64.3). In term of the identity with legitimacy, the identity with traffic rules, government and network rumor, the reform and the rule of law, and etc., score higher than identity with courts' wrong decision and criminal detention and rumor.

The report suggests that except to stress on the top-design, China's rule of law construction at moment should enhance the construction of poor links, especially focus on the problems in the implement system and effect system of the rule of law, in which 31 indicators score below 65, accounting for 16.8% of all 185 indicators at the fourth level. According to answers of questionnaires, most important is to resolve five big problems, namely, the executive lawfulness, the incorruption, the accountability, the social order and openness.





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