

# 中国人民大学 中国法律 发展报告 2016

## 基于九个省数据的法治指数



RENMIN UNIVERSITY OF CHINA  
REPORT ON CHINA LAW DEVELOPMENT 2016

CHINA RULE OF LAW INDEX BASED ON 9  
PROVINCES DATA

主编 朱景文

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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。

中国人民大学系列发展报告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社会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。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》和《中国人民大学中国人文社会科学发展研究报告》。

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

2016 年 12 月 16 日

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## 前 言

《中国法律发展报告 2016：基于九个省数据的法治指数》是中国人民大学系列发展报告和中国人民大学法学院标志性项目“中国法律发展报告”的研究成果，得到国家社科基金重大项目“法治评估创新及其在中国的推广应用研究”、中央政法委 2016 年度项目“中国特色社会主义法治状况评价体系及机制研究”及中国法学会法治研究基地的资助。

本报告与 2015 年的报告一样，继续采用主观评价的方法，对我国法治发展的状况进行评估。二者不同的是，2015 年的报告的评估样本来自全国 28 个省、区、市，而本报告的样本来自 9 个省，即全国东、中、西部各 3 个省。评估的指标体系基本与 2015 年一致，以保证评估结果的可比性。

本报告由中国人民大学法治评估研究中心承担，零点公司负责调查和数据整理工作。本报告集体讨论，分工负责。

### 1. 报告整体设计

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第七章 结论：朱景文

第八章 九省对全国法治评估：朱景文

第九章 法治指标的省级评估：朱景文

全书由朱景文负责统稿、主编。

参加本报告后期文字和图表整理工作的还有中国人民大学法学院法学理论专业博士研究生赵一单（第一章和第三章），彭浩（第六章和第七章），刘信言（第八章和第九章）。

2015 年报告编写参加者、中国政法大学法学教育研究与评估中心副主任刘坤轮副教授因眼疾不能参加本报告的写作，特此对他为本报告所做出的贡献表示感谢。

朱景文

2017 年 4 月于世纪城



2016

## Abstract

### I . China's Rule of Law Index

The system of indicators in this report is comprised of six first tier indicators, namely, the legal norms system, the enforcement system of the rule of law, the supervision system of the rule of law, the safeguard system of the rule of law, the CCP's rules and regulations system as well as the effectiveness system of the rule of law. The first five of these indicators concern the substantial arrangement of the system of socialist rule of law with Chinese characteristics; the sixth indicator, that is, the effectiveness of the system of the rule of law, mainly concerns the results of the governance of the system of the rule of law. The first five indicators reflect the structure of the system of the rule of law and the level of the governance of the system of the rule of law and the capacity of the governance, while the sixth indicator shows the function of the system of the rule of law and its effectiveness. The effectiveness of the rule of law is a multi-layered conception, assessing whether through the governance of the rule of law, the abuse of public power has been curbed, the basic rights of the people have been re-



spected, the social order and security has been guaranteed, the public awareness of the rule of law and abiding the law have been enhanced and the acknowledgement of legality has been improved. Therefore, the governance system and governance capacity of the rule of law provide the institutional foundation for the effectiveness of the rule of law. The exact situation of the function of the institution consists in the effectiveness of the governance. The following chart contains the structure of the indicators system of the rule of law in China (see Table 1).

**Table 1 Structure of the Indicators System of Rule of Law in China**

First Tier Indicator	Second Tier Indicator	Third Tier Indicator
1. Legal Norms System	1. 1 Legislative Completeness	1. 1. 1 Completeness of Legal System
		1. 1. 2 Completeness of the Legislative Mechanism
	1. 2 Legislative Scientificity	1. 2. 1 Extent Corresponds to Reality
		1. 2. 2 Extent Corresponds to Fairness and Reasonableness
	1. 3 Legislative Democracy	1. 3. 1 Openness of Law-making
		1. 3. 2 Public Participation in Law-making
		1. 3. 3 Specialists' Participation in Law-making
2. Enforcement System of the Rule of Law	2. 1 Executive Enforcement	2. 1. 1 Executive Legality
		2. 1. 2 Executive Strictness
		2. 1. 3 Executive Openness
		2. 1. 4 Executive Efficiency
	2. 2 Judicial Enforcement	2. 2. 1 Judicial Independence
		2. 2. 2 Judicial Fairness
		2. 2. 3 Judicial Openness
		2. 2. 4 Judicial Efficiency
		2. 2. 5 Judicial Convenience
	2. 3 Social Governance	2. 3. 1 Governance by Law
		2. 3. 2 Petition Through Letters and Visits
		2. 3. 3 Informal Justice
		2. 3. 4 Legal Services



continuing

First Tier Indicator	Second Tier Indicator	Third Tier Indicator
3. Supervision System of the Rule of Law	3.1 Legislative Supervision	3.1.1 Supervision of Legislation
		3.1.2 Supervision of Judicial Interpretation
	3.2 Executive Supervision	3.2.1 Inner Supervision
		3.2.2 Audit Supervision
		3.2.3 People's Congress Supervision
		3.2.4 Administrative Reconsideration
	3.3 Judicial Supervision	3.3.1 Procuratorial Supervision
		3.3.2 Inner Supervision
		3.3.3 Adjudicatory Supervision
		3.3.4 People's Congress Supervision
		3.3.5 Public Opinion Supervision
4. Safeguard System of the Rule of Law	4.1 Personnel Safeguards	4.1.1 Judge
		4.1.2 Prosecutor
		4.1.3 Police
		4.1.4 Lawyer
	4.2 Material Safeguards	4.2.1 Judicial Safeguards
		4.2.2 Prosecutorial Safeguards
		4.2.3 Police Safeguards
	4.3 Legal Education and Popularizing Law	4.3.1 Legal Education
		4.3.2 Popularizing Legal Knowledge
5. CCP's Rules and Regulations System	5.1 Perfectness of the CCP's Rules and Regulations	5.1.1 CCP's Rules and Regulations' Completeness
	5.2 Executive Force of the CCP's Rules and Regulations	5.2.1 CCP's Rules and Regulations' Enforcing Force
		5.2.1 CCP's Rules and Regulations' Supervision
	5.3 Coordination of CCP's Rules and Regulations and Stateslaws	5.3.1 Coordination Between Laws and CCP's Rules
	5.4 Party Members' Law-observing	5.4.1 Party Organs Leaders' Law-observing
		5.4.2 Party Organs Faculties' Law-observing
		5.4.3 Party Ordinary Members' Law-observing



continuing

First Tier Indicator	Second Tier Indicator	Third Tier Indicator
6. Effect System of the Rule of Law	6. 1 Power-Control	6. 1. 1 Powers Defined by Law
		6. 1. 2 Applying Power According to Law
		6. 1. 3 Policy-Making According to Law
		6. 1. 4 Lack of Corruption
		6. 1. 5 Accountability
	6. 2 Human Rights	6. 2. 1 Rights of Equality
		6. 2. 2 Rights to Vote
		6. 2. 3 Freedom of Expression
		6. 2. 4 Rights of the Person
		6. 2. 5 Property Rights
		6. 2. 6 Right to Health Care
		6. 2. 7 Right to Education
	6. 3 Social Order and Public Security	6. 3. 1 Community Security
		6. 3. 2 Social Order
	6. 4 Ideas of the Rule of Law	6. 4. 1 Credibility
		6. 4. 2 Extent to Respect Law
		6. 4. 3 Identification of Legality

Altogether, China's Rule of Law Index is composed of 6 first tier indicators, 20 second tier indicators and 64 third tier indicators.

## II. Questionnaire and Investigation

There are two categories of the questionnaires: public and professional one. The two types of questionnaires are tailored to each groups' background, namely, the public, and legal professionals (lawmakers, judges, prosecutors, lawyers, polices, legal academics). For example, the public questionnaire includes the assessment of social security and social order. This is an issue very close to the everyday life of each citizen, and the public are best qualified to speak on this issue. Such questions will not be addressed again to legal academics and legal practitioners. The questions addressed to legal experts and practitioners tend to be more professional and are usually too complicated for the public such as some indicators of the safeguard system of the rule of law. In addition, the questions about the



CCP's rules and regulations should be addressed to the party affair workers. Unfortunately, this report has very few answers from this group due to insufficient pre-correspondence and liaison. But most answers came from CCP party members and hopefully could be used to assess the current situation on this issue.

This is the second time to investigate and survey the public and professionals about the rule of law in China. This investigation is different from the one in 2015 which based on the 4 000 samples in 28 provinces over China. The investigation in 2016 had also over 4 000 samples, but was based on the 9 provinces that located in east, middle and west China, namely, Guangdong, Hebei, Jiangsu, Henan, Jilin, Jiangxi, Shanxi, Sichuan, and Yunnan provinces.

### III. General Evaluation of the Indicators

Analysis of the first tier indicators of the rule of law shows that every first tier indicator scores about 70 points, that is, middle evaluation, in which the legal norm system scores 71.7, the implement system of the rule of law scores 69.9, the supervision system of the rule of law scores 71.5, the safeguard system of the rule of law scores 73.8, the CCP's rules and regulations scores 72.6, and the effectiveness system of the rule of law scores 71.3. That is to say, the difference of every indicators score is very small, and all first tier indicators are balanced distributed. Comparing the scores in 2015, scores of all first tier indicators go up in which score of the CCP's rules and regulations grows from 69.1 in 2015 to 72.6 in 2016, grows by 3.5 that is a biggest increasing.

On the other hand, except the first tier indicators, the second and third tier indicators show a big difference. All indicators scores concentrate in the section between 60 and 80 points, that is, middle and poor evaluation.

#### 1. Legal Norms System

The legal norm system is composed of three second tier indicators, namely, the legislative completeness (71.1), the legislative scientificity (72.8) and the legislative democracy (71.1).

Among the indicators of legislative completeness the legal system com-



pleteness scores 73.6, but the legislative mechanism scores 68.7, therefore, their difference is 4.9 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 scientificity indicators is composed of extent corresponds to reality (72.4) and extend corresponds to fairness and reasonableness (73.2). That is the middle evaluation for legislative scientificity.

The legislative democracy indicator is composed of the legislative openness (71.3), the public participation (64.1) and the experts participation in law-making (78.0). It is noteworthy that big difference between public and experts participation in law-making is 13.9 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 (see Table 2).

**Table 2 Scores of Indicators of Legal Norms System (2015/2016)**

	2015	2016	Average
Comprehensiveness of departments of law	70.8	73.0	71.9
Comprehensiveness of application	73.0	75.6	74.3
Comprehensiveness of scope	71.6	72.1	71.8
Comprehensiveness of Legislative Mechanism	66.2	68.7	67.5
Extent Corresponds to reality	70.4	72.4	71.4
Extent Corresponds to Fairness and Reasonableness	71.0	73.2	72.1
Getting access to the proposed draft laws on the table	68.2	67.8	68.0
Consulting the laws after they have been officially published	76.7	74.8	75.7
Making suggestions to the law-making agencies	65.6	65.2	65.4
Suggestions have been responded to by the law-making agencies	60.9	63.1	62.0

## 2. Implement System of the Rule of Law

The implement system of the rule of law is composed of three second



tier indicators, namely, the executive implement system (69.2), the judicial implement system (70.7) and the social governance system (69.7).

The executive enforcement indicator includes four third tier indicators, namely, the executive legality (67.7), the executive strictness (70.7), the executive openness (69.7), and the executive efficiency (68.8), in which the administration doing nothing (65.9), the financial openness (62.7), as well as the executive efficiency in handling pollution cases (66.1) are poorly evaluated (see Table 3).

**Table 3 Scores of Executive Enforcement Indicators (2015/2016)**

	2015	2016	Average
2.1.1 Executive Legality	63.8	67.7	65.7
Vagueness of power and responsibility	65.0	68.5	66.7
Exceed & Abuse power	64.4	68.7	66.6
Executive omission	62.1	65.9	64.0
2.1.2 Executive Strictness	70.9	70.7	70.8
Traffic execution	71.9	71.7	71.8
Market execution	70.7	70.4	70.5
Construction execution	70.4	70.4	70.4
Public hygiene execution	70.4	70.5	70.4
2.1.3 Executive Openness	65.8	69.7	67.7
Financial openness	59.5	62.7	61.1
Material openness	66.5	71.5	69.0
Handling affairs at the police	71.3	74.8	73.1
2.1.4 Executive Efficiency	70.4	68.8	69.6
Obtain ID	73.4	71.9	72.6
Obtain certificate	69.8	67.7	68.7
Handle traffic accident	72.3	69.6	71.0
Handle pollution cases	66.2	66.1	66.2

The judicial implement indicator includes five third tier indicators, namely, (1) the judicial independence (72.6); (2) the judicial fairness (70.6); (3) the judicial openness (73.0); (4) the judicial efficiency (67.8); (5) the judicial convenience (69.6) (see Table 4).



Table 4 Scores of Judicial Enforcement Indicators (2015/2016)

	2015	2016	Average
2. 2. 1 Judicial Independence	70. 2	72. 6	71. 4
Illegal interferences in the investigation of the police	68. 8	71. 7	70. 3
Illegal interferences in the procuratorial work	70. 8	73. 5	72. 1
Illegal interference in the trial	69. 7	73. 4	71. 5
Media jeopardizes judicial independence	71. 5	71. 9	71. 7
2. 2. 2 Judicial Fairness	70. 4	70. 6	70. 1
Whether the police extorted confession by torture during the criminal investigation	72. 0	72. 3	72. 1
Whether the defendants' lawyers' rights have been protected and respected by judges in the criminal trial	73. 6	72. 9	73. 3
Whether the judges are neutral in trying civil cases	70. 1	71. 8	70. 9
Whether the judges are independent from executive organs as the accused in trying administrative cases	67. 6	69. 9	68. 7
Whether the lawyers have illegal contact with the judicial staff	65. 6	66. 3	65. 9
2. 2. 3 Judicial Openness	70. 6	73. 0	71. 8
Attend Proceeding	70. 6	72. 0	71. 3
Consult written judgment	70. 6	73. 9	72. 3
2. 2. 4 Judicial Efficiency	67. 65	67. 8	67. 7
Civil Cases Trial	68. 5	67. 7	68. 1
Civil judgments Enforcement	62	63. 2	62. 6
Criminal Investigation	66. 8	70. 7	68. 8
Administrative Cases Trial	73. 3	69. 5	71. 4
2. 2. 5 Judicial Convenience	70. 08	69. 6	69. 8
Difficult to file a case	66. 4	69. 5	68. 0
Can't afford a lawyer	68. 9	68. 5	68. 7
Litigation fee is high	68. 4	68. 4	68. 4
Court is too far away	75. 4	73. 9	74. 7
Can't understand legal terminology	71. 3	67. 5	69. 4