The Relationship between Court, Congress and Government in China
- From State Structure Perspective

By the Hon. Judge Wei, Yanming

Ladies and Gentlemen:

It is my great honor to attend the BRIC forum in Brazil at the invitation of Brazilian Supreme Court. According to the schedule, we have already heard the introduction on state structures of Brazil, Russia and India. Now I would like to brief you, from the state structure perspective as well, on the relationship between the judicial, legislative and executive branches, namely, Court, Congress and Government.

In light of the Constitution, The socialist system led by the working class and based on the alliance of the workers and farmers is the fundamental system of the People’s Republic of China. Any individual, political party or social organization must abide by the Constitution in all their actions and shall not be entitled to surpass the Constitution or the law. All acts in violation of the Constitution and law must be investigated. China implements the principle of rule of law, in its entire endeavor to build a socialist country ruled by law.

1. The Legislative Branch - People’s Congress

1.1 The nature and status of the system of people’s congress

The system of people’s congress is an organizational form for the state power in China. It is China’s fundamental political system. Any power in the People’s Republic of China belongs to the people. The organ for the people to exercise state power is the National People’s Congress (NPC) and local people’s congresses at all levels. The NPC and other local people’s congresses are all established through democratic elections, responsible to and supervised by the people. State executive, judicial and procuratorial organs are created by, responsible to and supervised by the people’s congresses at the corresponding levels. The NPC is the supreme authoritative organ of the state. Local people’s congresses are local authoritative organs of the state.
1.2 The National People’s Congress (NPC)

1.2.1 The Organizational Structure of the NPC

(1) The NPC: the highest authoritative organ of state, with five consecutive years for each term. The plenary session of the NPC is held once a year or at any time under special circumstances. Deputies to the NPC are members who form the highest authoritative organ of state. They are elected from the provinces, autonomous regions, municipalities directly under the Central Government and the armed forces.

(2) The Standing Committee of the NPC: the permanent organ of the NPC, consisting of the chairperson, vice chairperson, secretary-general and members. They shall not assume any posts in the governmental, judicial or procuratorial organs. The term of office is also five consecutive years. The chairperson and vice chairperson shall not serve more than two consecutive terms. Normally the Standing Committee is convened once every two months.

(3) The Chairperson Meeting of the Standing Committee: The meeting is composed of the chairperson, vice chairperson and secretary-general, deposing of major routine work of the Standing Committee.

(4) Special committees of the NPC: The NPC permanent committees are composed of the director, deputy directors and other members. The special committees are led by the NPC normally, or by the Standing Committee instead, off the session of the NPC. And the special committees study, review and draft motions and bills.

1.2.2. Major Functions and jurisdictions of the NPC

The Constitution empowers the NPC with the entire power and supreme status, and its main authorities are as follows:

(1) To formulate and revise the Constitution and supervise its implementation; enact and revise basic laws and other laws of the state. The amendment of the Constitution shall be proposed by the Standing Committee of the NPC or over one-fifth of the NPC deputies and can only be adopted by a majority of no less than two-thirds of the deputies. Laws and other bills shall be adopted by the NPC with a majority of over half of deputies. The Constitution also stipulates that the NPC is
entitled to alter or withdraw annul inappropriate decisions adopted by the Standing Committee of the NPC.

(2) To elect members of the Standing Committee of the NPC; to elect the President and Vice Presidents of the People’s Republic of China; to decide on the candidates of the premier of the State Council upon the nomination of the President; to decide on the candidates of other members of the State Council upon the nomination of the Premier; to elect the chairperson of the Central Military Commission; to decide on the candidates of other members of the Central Military Commission upon nomination of the chairperson of the Commission; to elect the President of the Supreme People’s Court; and to elect the procurator-general of the Supreme People’s Procuratorate. The NPC is entitled to recall all the above-mentioned functionaries.

(3) To review and approve the plan for national economic and social development; to review and approve the national budget and the report on its implementation; to approve the organizational structures of provinces, autonomous regions, and municipalities directly under the Central Government; to decide on the establishment and system of special administrative regions and to decide on issues with respect of war and peace.

(4) To exercise such other functions and powers as the highest authoritative organ of state should exercise.

2. The Executive Branch - the State Council

2.1 The composition of the executive branch

The executive branch of the People's Republic of China includes the central and local executive organs. The central executive organ refers to the Central Government, known as the State Council. Local executive organs are local people's governments at four levels: the provinces (autonomous regions and centrally administered municipalities), cities and prefectures, counties and townships.

2.2 The Legal Status and Functions of the State Council

The State Council is the highest state executive organ. The Constitution prescribes the following extensive functions of the State Council, including:
(1) To adopt administrative measures, enact administrative rules and regulations and issue decisions and orders in accordance with the Constitution and law; (2) To submit proposals to the National People’s Congress or its Standing Committee; (3) To stipulate the tasks and responsibilities of various ministries and commissions, exercise unified leadership over the work of the ministries and commissions and direct all other administrative work of a national character that does not fall within the jurisdiction of any specific ministries or commissions; (4) To exercise unified leadership over the work of local executive organs of the state at various levels throughout the country, and to formulate the detailed division of functions and powers between the Central Government and local governments of provinces, autonomous regions, and municipalities directly under the Central Government; (5) To draw up and implement the plan for national economic and social development and the state budget; (6) To direct and administer economic affairs and urban and rural development; (7) To direct and administer the affairs in respect of education, science, culture, public health, physical culture and family planning; (8) To direct and administer civil affairs, public security, judicial administration, supervision and other related matters; (9) To conduct foreign affairs and conclude treaties and agreements with foreign countries; (10) To direct and administer the buildup of national defense; (11) To direct and administer ethnic affairs and safeguard the equal rights of the ethnic minorities and the right to autonomy of ethnic autonomous areas; (12) To protect the legitimate rights and interests of Chinese citizens residing abroad and of returned overseas Chinese and their family members; (13) To alter or annul inappropriate orders, directives and regulations issued by the ministries or commissions; (14) To alter or annul inappropriate decisions and orders issued by local executive organs at various levels; (15) To approve the geographic division of provinces, autonomous regions and municipalities directly under the Central Government, and to approve the establishment and geographic division of autonomous prefectures, counties, autonomous counties and cities; (16) To decide on the enforcement of martial law in parts of provinces, autonomous regions, and municipalities directly under the Central Government; (17) To review and decide on the size of administrative organs and, in
accordance with the law, appoint or remove administrative officials, train them, evaluate their performance and reward or punish them; (18) To exercise such other functions and powers as the National People’s Congress or its Standing Committee may assign to it.

3. The Judicial Branch - the Supreme People's Court (SPC)

The Supreme People's Court is the highest trial organ in the country and exercises its adjudicative right independently. It is also the highest supervisory organ over the trial practices of local people's courts and special people's courts at various levels. It reports its work to the National People's Congress and its Standing Committee. The NPC is entitled to appoint or remove President, Vice Presidents and members of the Trial Committee of the SPC.

3.1 The Functions and Responsibilities of the SPC

(1) To try the following cases: cases of first instance over which it has jurisdiction according to law and regulations and cases of first instance it deems that it should try, cases of appeal and protests against the judgments and orders of High People’s Courts and special people’s courts and cases of protests filed by the Supreme People’s Procuratorate in accordance with the procedures of trial supervision.

(2) To review and approve death sentence. The SPC shall review and approve death sentences rendered against offenders involved in the cases of manslaughter, rape, robbery, bombing and other crimes that severely endanger public security and social order.

(3) To supervise the trial work of local people’s courts and special people’s courts at various levels.

(4) To try the case by itself or remand the case to original court for retrial which has already been legally enforced, when discovering real mistakes in the verdict of local people’s courts.

(5) To review and approve the verdict of crime(s) which is (are) not specially stipulated in the Criminal Law and shall be tried by means of analogy.

(6) To interpret the application of law in trial process.

3.2 Main Working Principles of the SPC
(1) The principle of equality. All citizens are equal before the law, so are all the ethnic groups. No privilege or discrimination is allowed in the application of law.

(2) The principle of open trial. All cases tried by the people’s court should be conducted openly except for those involving state secrets, individual privacy or juvenile offenses.

(3) The principle of defense. The accused is entitled to defending him/herself or entrust someone else to defend him/her in terms of the establishment of facts and introduction of evidences.

(4) The system of collegiate panels. Cases of first instance are tried by a collegiate panel of one to three judges and two to four people’s assessors. Cases of appeal or protest against the judgments or orders are tried by a collegiate panel of three to five judges. The presiding judge of the panel is appointed by the President of the court or the chief judge of a court division. All members of the panel enjoy the same rights.

(5) The system of disqualification. Litigants are entitled to request judicial officers to withdraw themselves from the cases if they deem any judicial officer has a conflict of interest in or other special relationships with these cases and could therefore affect the impartiality. The President of a court then makes the final decision on whether to approve such request or not. Additionally, the judges may also want to withdraw of their own accord if they think they should do so because they themselves have a conflict of interest in or other special relationships with the case. They should report such issue to the President of a court for decision.

(6) The principle of independent trial. People’s court exercises judicial power independently in accordance with law and is secure from interference by any administrative organ, public institution and individual.

3.3 The Trial Committee

The Trial Committee is the highest adjudicative organ in the Supreme People’s Court. It is mainly in charge of the following tasks: to sum up adjudicative experiences, to discuss major or complex cases and other trial-related issues. The President of the SPC shall preside the meeting of the Trial Committee. It is composed
of the President of the Court, Vice Presidents, Chief Judges, Deputy Chief Judges and
judges. The President of the SPC is elected and removed by the National People’s
Congress. The vice presidents, chief judges, deputy chief judges, and other members
of the Trial Committee, and judges are appointed and removed by the Standing
Committee of the National People’s Congress.

4. The Relationship between Congress, Government, Court and
Procuratorate

In China, the executive, judicial and procuratorial organs are all elected and
supervised by and report to the people’s congress. These state organs conduct their
activities in accordance with the principle of democratic centralism. The foresaid
therefore has defined the relationships between congress, government, court and
procuratorate as follows:

4.1. The relationship of making decisions and implementing them. The people’s
congress exercises state power on behalf of the people. It makes legislations, decides
on major issues, elects and removes officials as well as supervises state functionaries.
The laws and decisions adopted by the people’s congress must be implemented by
government, people’s court and people’s procuratorate.

4.2. The relationship between the supervisor and the supervisee. The People’s
congress, on behalf of the people, exercises supervisory power over government,
peoples’ court and people’s congress which must be responsible to and report their
work to and receive supervision of the people’s congress.

4.3. The relationship of working in coordination. Despite the different
responsibilities and functions, the people’s congress, government, people’s court and
people’s procuratorate share the same goal - to represent and realize the fundamental
interests of the people and jointly build socialism with Chinese characteristics. The
people’s congress uniformly exercises the state power and, under this precondition,
rationally divides the executive, trial and procuratorial power. This principle avoids
not only having the state power over-concentrated but unnecessarily checked, so as to
allow the state organs to specialize in their distinctive responsibilities and at the same
time work in a coordinated manner.
It can, therefore, be concluded that Chinese characteristics in legislative, executive and judicial areas could stand out after we analyzed the relations between court, congress and government from a state structure perspective. This kind of state structure firmly ensures political stability, economic enhancement and societal harmony in China.