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NATIONAL REPORT: CHINA

Legal Aid System in China

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1. Brief History and legal basis of legal aid in China

In the 1950s, China began to provide criminal accuseds with defense attorneys. In 1994, Ministry of Justice put forward to establish the legal aid system with Chinese characteristics. In 1996, with the new prescription on legal aid by the new amended Criminal Procedure Law and the Lawyers' Law, more efforts to set up legal aid institutions nationwide were made, aiming to offer free legal aid to poor litigants. Since then, the number of legal aid institutions has grown rapidly and legal aid work has developed smoothly throughout China. In March 2001, the Tenth Five-Year Plan for National Economic and Social Development (2001-2005) of China put forward the proposal to "establish the legal aid system", incorporating the legal aid undertaking within social development scope. On September 1, 2003 the State Council of P.R.China promulgated the Regulations on Legal Aid, making it clear that legal aid is the responsibility of government, and also setting up the framework and general principles of China's legal aid system.

In addition to the Regulations on Legal Aid, which is main legal basis for legal aid, there are more than ten other laws and regulations related with legal aid, such as the Constitution, Criminal Procedure Law, Lawyers Law, Law on the Protection of the Rights and Interests of the Elderly, Law on the Protection of the Rights and Interests of Women, Notarization Law, Agriculture Law, Law on the Protection of Minors, law on Protection of Disabled Persons, Regulations on

Complaint Reporting, etc.

2. Cases covered by legal aid and financial eligibility

In China, legal aid can be granted to criminal, civil and administrative cases.

In criminal cases, criminal suspects, accused, the victim and private prosecutor in the private prosecution cases who are financially poor, are all eligible for applying for legal aid. If a case is brought in court by the public prosecutor and the accused has not yet entrusted anyone to be his defender due to economic difficulty or other reasons, the legal aid institution shall provide legal aid when the people's court designates a defense for the accused. If the accused is blind, deaf, mute or a minor and has not yet entrusted a defender, or the accused may be sentenced to death penalty and has not yet entrusted anyone to be his defender, the legal aid institution shall provide legal aid without examining the economic status of the accused when the people's court designates a defense for the accused.

In civil and administrative cases, according to relevant statutes and regulations for legal aid, any citizen who can't afford a lawyer may apply for legal aid in the following matters:

- (1) Claim for state compensation according to law;
- (2) Claim for social insurance benefits or minimum living costs;
- (3) Claim for disbursements for bereft families and social relief;
- (4) Claim for payment of maintenance for a parent, child, spouse, or any other dependent;
- (5) Claim for salaries or wages; and
- (6) Claim for civil rights and interests arising from behaviors beyond one's duty
- (7) Claim compensation for workplace injury.

And the Regulations on Legal Aid also authorize each province to supplement its scope and some provinces did include such cases as domestic violence and damage compensation resulting from traffic accidents and medical accidents within the scope.

As for the financial eligibility, in view of the fact that economic situations at provincial level are quite different which makes it hard to enact a uniform national criteria, the Regulations on Legal Aid authorizes provincial governments to set the their own criteria for financial eligibility within their jurisdiction. The baseline is that citizens below the Security Line for Minimum Subsistence (or poverty line) should be provided with legal aid. In fact, some wealthy provinces such as Guangdong, the financial difficulty criteria is generally above this line so as to make more people benefit from the legal aid system.

In addition, for some specific cases, there are no financial eligibility tests needed. Firstly, in the criminal cases mentioned above, where attorneys are appointed by the courts when the accused is blind, deaf, dumb or minor with no defense attorney, or the accused may be sentenced to death penalty with no defense attorney, or when a case is brought in court by the public prosecutor and the accused has not yet entrusted anyone to be his defender due to economic difficulty or other reasons, the institutions should provide legal aid without examining the economic situations of the accused. Secondly, when migrant workers claim for their salary or work-related injury, no means tests are needed.

Currently, legal aid recipients are mainly Chinese citizens. However, legal aid do covers foreign citizens under certain circumstances, especially in border areas. When the accused with foreign nationality or without any nationality fail to have their own lawyers when they are in a criminal trial in China, the people's court shall refer the case to the local legal aid institution to appoint a lawyer to defend the accused. In terms of civil cases, foreigners and people without nationalities, may also apply for necessary legal aid service as long as their cases fall in the scope of legal aid scheme pursuant to relevant laws and regulations, or and the judicial assistance treaty between China and the relevant countries.

3. Types of legal aid services

The legal aid institutions can offer the following types of legal aid services:

- Free legal consultation
- Drafting legal documents
- Legal representation at Courts for civil and administrative cases
- Criminal defending at Courts for criminal cases

For legal consultation, people can get through the following channels and no means tests are needed: (1) Go to the legal aid institutions or their work stations. At the institutions or work stations, free legal consultation will be given to every person who comes to the office. (2) Obtaining free consultation through phone calls. For every legal aid institution, there is a hotline for legal aid. In some provinces, the phone number is the same, like 148, in Chinese its pronunciation is similar with the works "I want justice". (3) Obtaining free consultation or advices through internet. And in some places people can get legal advice through internet.

For drafting legal documents, people can go to the legal aid centers or their work stations and no means tests are needed, either.

If people need further help like legal representation in court, mediation and etc, they need to make a formal application to the local legal aid offices.

4. Procedure

4.1 Application

Applications can be made to the legal aid institutions (most of them are called legal aid centers) around the country directly or to a work station of these centers. The applicants need to fill in an application form, submit the financial difficulty statement or certificate and all the related case materials. If the application is made to work stations, the work stations will refer the application to the legal aid institutions for granting.

4.2 Examination and approve

When receiving the application, the legal aid institutions will examine the materials in 3 working days and make decisions. The written decisions will be sent to the applicants. If the applicants are not satisfied with the refusal decisions, they can file the objection to the judicial administrative department to which the legal aid institution is subordinate. The judicial administrative department shall review the objection within five working days from the date of receiving the objection and shall order the institution to provide legal aid to the applicant if that Department satisfied that granting the legal aid to the said applicant is justified.

4.3 Appointment

The legal aid institution may assign a law firm to arrange a private lawyer or designate its own personnel to handle legal aid cases, or may also, upon request by any other social organization, arrange personnel from the requesting social organization to handle the legal aid case.

4.4 Termination of legal aid

Legal aid providers shall report to the legal aid institution in following circumstances and the legal aid institution, after verification and confirmation, shall terminate the legal aid:

- (1) where means of the aided person have changed so that he no longer eligible for legal aid;
- (2) where the trial of the case is terminated or cancelled;
- (3) where the aided person has appointed his own lawyers; or

(4) where the aided person has applied for termination of legal aid.

4.5 Handling case and disbursement

The legal aid providers may ask legal aid institutions for help when needed during handling the case. When they accomplish the case, they should submit to the legal aid institution such materials as copies or photocopies of the relevant legal documents and provide the final report of the case.

Upon receiving the above-mentioned materials, the legal aid institutions should pay disbursements for providing legal aid to the private lawyer or other private provider assigned to handle the legal aid case.

Standards of the disbursements for providing legal aid are determined by judicial administrative departments jointly with finance departments of provincial governments. However, currently, the standards of the disbursements are very low.

5. Cases handled

In accordance with incomplete statistics, during the period from 1999 to 2008, the legal aid institutions across the country have served 22 million person/times for legal counseling and handled over 2.31 million cases. The increase of legal aid fund in recent years also brings the growth of number of legally aided cases. In 2006, 318514 legal aid cases were handled, and in 2007, 420104 cases were handled, while 2008 witnessed the total number of approved legal aid cases reaching 546859. Among them , 418419 civil cases , 124217 criminal cases and 4223 administrative cases. During the past 4 years, the numbers of civil cases have gone up quickly, which rose over 30% each year, which leads to the quick rise of cases in the past 4 years. (For the figures in last five years, please see the attached chart.)

From 1999 to 2008, more than 3.91million clients received legal aid representation. The number of people receiving legal aid totaled 670821 in 2008. Among them, 164474 women (24.5%), 215395 farmers (32%) and 243671 migrant workers (36%), 50075 disabled clients (7.5%), 69556 senior citizens (10%), 98053 minors(14.6%). Farmers and migrant workers, who are paid more attention (together account for 68%) made up for the main part of legal aid clients. (For the figures in last five years, please see the attached chart.)

6. Legal aid services providers

The legal aid services providers in China are mainly:

- staff lawyers in legal aid institutions
- lawyers in private practice
- grassroots legal workers

The number of legal aid staff across the country by the end of 2008 is 12778. Among them, 10250 staff have legal background, 4237 staff (33%) are lawyers.

There are 130,000 private lawyers and 90,000 grassroots legal workers in China. And according to Lawyers' Law and Regulations on Legal Aid, it is compulsory for every private lawyer to provide legal aid services.

Different places adopt different models to provide legal aid services. Some legal aid centers, like places in Henan, Jilin, Anhui provinces and Chongqing Municipality, use staff model to deal with all the legal aid case. Some big cities like Beijing, Shanghai adopt private lawyer model. Most legal aid centers use mixed model. However, in some counties there are no lawyers at all, so the legal aid centers have to appoint grassroots legal workers to do legal aid cases.

7. Administrative Structure

According to the Regulations on Legal Aid, judicial administrative departments at all levels are in charge of legal aid work. To fulfill this goal, most judicial administrative departments in China have established legal aid institutions, which are generally called Legal Aid Centers, or Legal Aid Divisions. Until the end of 2008, there are 3268 such institutions. These institutions are mainly four levels, ministry level, provincial level (34 institutions), municipal level (361 institutions) and county level (2873 institutions). For the convenience of the local residents, there are also 55708 legal aid work stations across the country. These stations are located in local communities, towns, Women Federations, Federation for Senior Citizens, etc. Institutions at Different levels have different functions.

At ministerial level, there are 2 institutions, the Legal aid Center of the Ministry of Justice and the Legal aid Department of the Ministry of Justice. The Legal aid Center of the Ministry of Justice, established in 1996 with the approval of the Establishment Office of the Central Government, before the end of last year, is responsible for supervising

and directing the legal aid work across the country on behalf of the Ministry of Justice. In order to improve the supervision and management of legal aid, the Ministry of Justice established the Legal aid Department in September 2008. Now, the role of Legal aid Department is to guide and inspect the execution of laws, regulations and policies of legal aid; plan the arrangement of legal aid development; supervise and manage the work of legal aid institutions and legal aid staffs; guide the legal aid work of social organizations and legal aid volunteers, etc. While the Legal aid Center of the Ministry of Justice is in charge of legal aid publicity, training legal aid personnel, evaluating the quality of legal aid cases, doing research on legal aid, cooperating and communicating with foreign organizations on legal aid programs, etc.

At provincial level, the legal aid institutions are mainly responsible for policy making, directing and supervising the legal aid work in the province.

At municipal level, the institutions have mixed functions of supervision, management (like provincial level) and providing legal aid services. And the county institutions are the main places to receive legal aid applications, grant legal aid and arrange for providing the legal aid services.

There are also five Legal Aid Foundations in China, including China Legal Aid Foundation, Beijing Legal Aid Foundation and etc. These Legal Aid Foundations which are independent, non-profitable, non-governmental, were established to receive donations for legal aid. In the meantime, since their funds are mainly used for legal aid work, they do have close contact with legal aid institutions.

8. Legal Aid Fund

Legal aid fund mainly comes from government. In recent years, government's legal aid funding has grown rapidly. In accordance with the Regulations on Legal Aid and the relevant regulatory documents, legal aid is the responsibility of the governments at all levels, which shall incorporate the legal aid fund into the government budget. Recent years have witnessed the rapid growth of legal aid fund appropriated by the governments at all levels. It reached three hundred and thirty-four million Yuan RMB in 2006, five hundred and twenty-three million Yuan RMB in 2007, six hundred and seventy million Yuan RMB in 2008. Since 2005, the Central Government allocated fifty to sixty million Yuan RMB to poverty stricken areas

every year to support them to deal with legal aid cases.(For the figures in last five years, please see the attached chart.)

In addition to the legal aid fund financed by the government, the legal aid institutions also get donations from local community, the Legal Aid Foundations and etc. But it only accounts for relatively small part. Take the year 2008 as an example, the non-government legal aid fund only accounts for 1.9% of the total legal aid fund.

9. Main challenges and recent development

Legal aid work in China has made great progress in the past 13 years. However, it still faces many challenges. The main one is there is still a big gap between the ever-increasing demands of different target groups and the capacity of providing legal aid to meet those demands. And many other problems we have are related to this big issue. For example, the threshold of legal aid financial eligibility is too high and the legal aid scope is too narrow, legal aid financial resources and human resources are still far from enough, the development of legal aid work is imbalanced between the urban and rural areas and among different provinces, the quality and the efficiency of legal aid services need to be improved, the public legal aid awareness should be improved, and etc.

To try to meet with the above challenges, the Ministry of Justice required all legal aid institutions to improve management and working mechanism, get more funds and improve their services. And the following measures are being or are going to be taken:

Firstly, a Rule on Legal Aid Procedure is hopefully to be promulgated by the Ministry of Justice this year. The Rule, elaborating all related legal aid procedures including interviewing with clients and helping in make application for legal aid, giving advices, legal representation at Courts, receiving the feedback after the services, etc, is aimed to improve the quality of legal aid services and protect the rights of legal aid clients.

Secondly, the local governments are encouraged to lower the threshold of legal aid financial eligibility and to broaden the scope of legal aid cases according to the development of social wealth in China. In accordance with the priority sequence of the protection of rights and the urgency of the needs for legal aid, such legal matters as education, employment, social security, medical and health care and so on (matters closely related with livelihood and in which the

underprivileged are in urgent need of help) will be gradually covered by legal aid.

Thirdly, more research on the quality control system will be carried out and a practical legal aid quality control system is expected to be built. As part of the scheme, the current disbursement mechanism will be adjusted to relate it with the legal service market price and service quality. The disbursement criteria should be scientifically made to give full play to the role of disbursement in mobilizing the enthusiasm and initiatives of the vast majority of legal workers to provide legal aid and ensure the quality of legal aid services. The former practice of reducing the case disbursement by solely emphasizing that legal aid is the lawyer's legal obligation should be changed.

Fourthly, legal aid work in rural areas will be strengthened. More attention will be paid and more research will be done on the legal aid services to farmers and the migrant workers who are back to their hometowns. More campaigns will be launched to enhance legal aid awareness and public legal education in rural places

Fifthly, national legal aid information system will be promoted further. In 2007, the national legal aid website (www.chinalegalaid.gov.cn) was established for the public. And more and more legal aid institutions have begun to conduct some legal aid work through internet. Now, a national case management system has just been established and some provinces have already begun to use it on a trial basis. The experiences of Jiangsu and Guangdong on the case management system will be introduced to other parts of China. It is expected that the eastern provinces and some other provinces would use the national information system this year.

(For more information, please access www.chinalegalaid.gov.cn)

Related figures for last 5 years

Item	2004	2005	2006	2007	2008
1. Legal aid institutions	3023	3129	3149	3259	3268
2. legal aid staff	10458	11377	12038	12519	12778
Legal background	8468	7419	8032	9971	10250
3. cases	190187	253665	318514	420104	546859
Civil cases	108323	147688	204945	297388	418419
Criminal cases	78602	103485	110961	118946	124217
Administrative cases	3262	2492	2608	3770	4223
4. legal aid clients	294138	433965	540162	524547	670821
Disabled	27950	32897	37941	40339	50075
Senior citizens (over 60 years old)	39797	53259	60198	57546	69556
Minors (Under 18)	54421	66667	83131	87830	98053
Migrant workers		75917	125290	155277	243671
Women	57289	76257	94712	117932	164474
others	89637	128172	158775		
Farmers				157038	215395
5. legal consultancy	1919440	2663458	3193801	4069972	4322329
6. legal aid fund (million Yuan RMB)	246	280	370	532	683
Government fund	217	262	334	523	670