

# China: The National Report<sup>1</sup>

## *1. Type of legal system*

China has a civil law system. The Constitution is the fundamental law of the State. The people of all nationalities, all State organs, the armed forces, all political parties, public organizations and others must take the Constitution as the basic norm of conduct.

## *2. Population*

Approximately, there is a population of 1.3 billion (1339724852) in mainland on the 1<sup>st</sup> November 2010.<sup>2</sup>

## *3. GDP*

Year	GDP	Source
2008	31622.88Billion RMB	National Bureau of Statistic of China: <a href="http://www.stats.gov.cn/tjsj/ndsj/2010/indexch.htm">http://www.stats.gov.cn/tjsj/ndsj/2010/indexch.htm</a>
2009	34050.69Billion MB	same
2010	39798.3 Billion RMB	National Bureau of Statistic of China: <a href="http://www.stats.gov.cn/tjgb/ndtjgb/qgndtjgb/t20110228_402705692.htm">http://www.stats.gov.cn/tjgb/ndtjgb/qgndtjgb/t20110228_402705692.htm</a>

## *4. Average annual salary (full time work)*

<sup>1</sup> Notice: Hong Kong, Macao and Taipei are not included in this report.

<sup>2</sup> [http://www.stats.gov.cn/tjfx/jdfx/t20110428\\_402722253.htm](http://www.stats.gov.cn/tjfx/jdfx/t20110428_402722253.htm).

Year	GDP	Source
2008	29229 RMM	National Bureau of Statistic of China: <a href="http://www.stats.gov.cn/tjsj/ndsj/2010/indexch">http://www.stats.gov.cn/tjsj/ndsj/2010/indexch</a> .
2009	32736 RMB	Same

### *5. Administration of legal aid*

In 1994, the proposal to establish legal aid system was set out by the Ministry of Justice (MOJ). In 1996, with the new prescription on legal aid by the Amendment of Criminal Procedural Law and the Lawyers' Law, the Legal Aid Center of MOJ was established. The Legal Aid Center of MOJ is responsible for supervising and directing the legal aid work across the country on behalf of MOJ.

In 2003, the Regulation on Legal Aid (the Regulation on Legal Aid (2003)) by the State Council took in effect. It set up the framework and general principles of China's legal aid system. For example, legal aid is the obligations that the governments should be charged with; the governments at or above the county level should give financial support to legal aid; the clients, who are eligible for the legal aid standard, can get free legal services. Now, on the basis of Regulation on Legal Aid (2003), about 27 provinces/autonomous regions/municipalities have enacted their own provincial legislations on legal aid.

According to the Regulation on Legal Aid (2003), legal aid institutions are mainly four levels. At ministerial level, is the Legal aid Center of MOJ; at provincial level, legal aid institutions are mainly responsible for policy making, directing and supervising the legal aid work in the province; at municipal level, legal aid institutions have mixed functions of supervision, management (like provincial level) and providing legal aid services; and county legal aid institutions are the main places to receive, examine legal aid applications, grant legal aid and arrange for providing the legal aid services.

In order to improve the supervision and management of legal aid, MOJ established the Legal aid Department in September 2008. The role of the Legal aid Department is set out to guide and inspect the execution of laws, regulations and policies of legal aid; to plan the arrangement of legal aid development; to supervise and manage the work of legal aid institutions and legal aid staffs; to guide the legal aid work of social organizations and legal aid volunteers, etc. While the Legal aid Center of MOJ is adjusted to be responsible for legal aid publicity and education, training, research, quality evaluation of cases, enhancing international cooperation and communication, editing the monthly periodical CHINA LEGAL AID, etc.

## *6. Different legal aid schemes*

Now, there are 3575 government legal aid institutions at or above the county level, covering each administrative region. These legal aid institutions receive and examine legal aid applications, grant legal aid, assign private lawyers, staff lawyers, grass-rooted legal workers and volunteers to provide legal aid services, control case quality, pay legal aid remunerations and so on. For the convenience of the local and rural residents, there are also 60828 legal aid work stations across the country to provide the basic legal advice, to receive and primarily examine and to forward legal aid applications. These stations are mainly located in local communities, towns, Women Federations, Federation for Senior Citizens. Some legal aid institutions established the court duty lawyer system, the arbitration tribunal duty lawyer, etc. to provide instant legal aid services to the clients.

The governments encourage social organizations to participate in legal aid. For example, from 2009, funded by the social donations, the China Legal Aid Foundation established the “1 + 1” legal aid volunteers project, recruiting private lawyers and undergraduates from law schools as legal aid volunteers to

providing legal aid services in middle-west regions where there are relatively shortage of lawyers; From 2009, the China Legal Aid Foundation has initiated the central government lottery fund legal aid project. Now, this project supports about 30 migrant legal aid stations under the guide and supervision of the Bei Jing Migrant Legal Aid Station, private lawyers, grass-rooted legal services workers and universities' legal clinics to deliver free legal services to low-income groups who are not yet suitable for the government legal aid, to develop public law publicity and education. In 2009 and 2010, this program has invested 50 millions each year, and will invest 100 millions every year over the Twelfth Five-Year Plan periods. In addition, many other social organizations also are providing free legal services to the vulnerable in our society and developing public law publicity and education by utilizing their own resources,

Generally, the clients can get face-to-face, hotline or internet legal advice provided by legal aid institutions and organizations, and no means-tests are needed.

If the client asks for legal representation, he/she needs to apply to the local legal aid institution. The applicant needs to fill in an application form, submit the financial difficulty statement/certificate and all the related materials. After being

examined, if the client is eligible for legal aid, the legal aid institution will assign a lawyer or a grass-rooted worker etc. to provide legal aid services for him/her. However, if the client is a migrant worker claiming for industrial damages and salaries, or an appointed defendant by the court, he/she can get legal aid directly, without submitting financial difficulty statements/certificates.

Local legal aid institutions have been dedicated to improve the standardized development of the reception-room. For example, legal aid institutions in the same province have the same logos and equipments which are necessary for legal aid work, make legal aid affairs public. In Guizhou province, Jiangxi province and Hunan province etc, local legal aid institutions set up the private room by learning the experiences from Canada.

In practice, for the convenience of the clients, legal aid institutions smooth the application process by entrusting local law firms and legal aid stations to receive the applications and make a primary examination; enhance the delivery of services by making home calls, improving hotline services and granting legal aid cards etc; insist that the alternative disputes resolution services are the priorities, guide the clients to address their issues by simpler, more informal remedies; introduce social

workers into legal aid work, provide the clients with psychological services, etc.

In large and middle level cities with enough private lawyers and legal aid fund, the private lawyers are the main force to deal with criminal cases and complex civil cases, staff lawyers mainly receive and examine the clients' applications, grant legal aid, control case quality, deliver legal aid publicity and education etc. In places where are shortage of lawyers and legal aid fund, staff lawyers are the main force to provide legal aid services. Grass-rooted workers, work station staffs and clinic staffs can only provide simpler legal aid services.

Legal aid plays a vital role in legal publicity and education. For example, legal aid institutions regularly provide legal information and knowledge for the public related to legal aid through TV, website, newspaper, journals, magazines and etc; Organize lawyers, grass-rooted workers and volunteers to deliver all kind of legal education activities, provide legal advice in local communities, town, factories, industries, schools, detention houses, prisons and other special places; In minorities regions, develop publicizing materials in the local languages, employ staffs who are good at the local languages. The legal aid awareness rate is 63.4% according to the Legal Aid Center of

MOJ's statistics in mainland in 2008.

### ***7. Legal aid financial eligibility limit***

According to the Regulation on Legal Aid (2003) and provincial legislations, the legal aid is free and the eligible clients will not have to pay a contribution. Now most provinces/autonomous regions/municipalities have their own legal aid financial eligibilities based on the provincial poverty lines. Some developed provinces, such as Guangdong, have their own legal aid financial eligibilities according to the lowest salary standard. In practice, civil legal aid in most provinces/autonomous regions/municipalities is both means and merits tested.

### ***8. Scope of legal aid***

Scope of legal aid mainly covers criminal law, civil law and a few parts of administrative laws.

Criminal suspect during the police investigation stage, crime victim and private prosecutor may apply for legal aid if they don't have an attorney or can't afford one. In public prosecution, if the defendant is not represented due to financial problems or other reasons, or if he/she is blind, deaf, mute, youth, or may face the death penalty if convicted, public defense will be



appointed by the court through the local legal aid institution.

In civil and administrative cases, the following claims may apply for legal aid: state compensation, social security, minimum living subsidies; consolation money, relief fund, maintenance for old parents, young children, spouse or other close relatives; job payment; job injury; traffic accident, medical malpractice; domestic violence; land requisition and resettlement dispute; fake and poor quality seed, pesticide, chemical fertilizer and other environmental pollution claims; mandatory education for children; and rights violation of the disabled, youth and senior and etc.

### *9. Legal aid expenditure*

The legal aid fund mainly comes from the governments at or above the county level. Besides, there also is a few part of legal aid fund that comes from social donation and the lawyers' contribution. The legal aid fund is used mainly to pay for cases' expenses and remunerations of legal aid providers.

In addition, most provinces have a cash limited system, except that several developed provinces, such as Beijing and Jiansu, have a demand led system

Chart 1: Legal aid expenditure in 2008 and 2009

Item	Unit	2008	2009	2010
Legal aid expenditure	Million RMB	682.50	807.60	1022.10

### *10. Cases statistics*

Chart 2: Legal aid cases and legal advices granted and handled in 2008 and 2009

Item	2008	2009	2010
Grant total number	546859	668419	727401
Handled total number	466921	573248	624948
Legal advice	4322329	4849849	4874083
Handled by staff lawyers	138708	154806	152726
Handled by private lawyers	162267	211929	204023
Handled by grass-rooted workers	9438	12792	229301
Handled by registered legal aid volunteers	5912	6350	38939