

Legal Aid in China

--The National Report

Legal Aid Center

Ministry of Justice (MOJ)

P. R. CHINA

1. Type of legal system

The legal system in China is a kind of 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. Statute law is the main form of the law.

2. Population

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

3. GDP²

Year	2009	2010	2011	2012
GDP (Billion RMB)	34,090.28	40,151.28	47,288.16	51,932.2

4. Administration of legal aid

In 1994, the proposal to establish legal aid system was set out by M.O.J. 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 M.O.J and more local legal aid centers/divisions was established.

In 2003, the Regulations on Legal Aid 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 free and it is the obligations that governments should be charged with. The legal aid fund mainly comes from the governments at or above the county level.

¹ http://www.stats.gov.cn/tjfx/jdfx/t20110428_402722253.htm Notice: the population of Taipei, Hong Kong and Macao is not included.

² <http://www.stats.gov.cn/tjsj/ndsj/2012/indexch.htm>

On the basis of Regulations on Legal Aid by the State Council, most of the provinces have their own provincial legislation on legal aid.

According to the Regulation on Legal Aid 2003, there are mainly four levels of legal aid institutions. At administrative level, the Legal aid Center of M.O.J is responsible for supervising and directing the legal aid work across the country on behalf of MOJ. At provincial level, the legal aid institutions are mainly responsible for policy making, guiding 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 level institutions are the main places to receive 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, the Legal aid Department was established in September 2008 within MOJ. The original functions have been divided into two parts. The role of 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 services provided by 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 legal aid, enhancing international cooperation and communication, editing the bimonthly CHINA LEGAL AID, etc.

5. Different legal aid schemes

Until the end of 2012, there are 3693 legal aid institutions at the provincial, municipal and county levels to assign staff lawyers, private lawyers and grass-rooted legal workers, etc. to provide legal aid to the vulnerable people. For the convenience of the local residents, there are also 63710 legal aid work stations across the country to provide the basic legal advice, primarily examine and forward legal aid applications. These stations are located in local communities, towns, Women Federations, Federation for Senior Citizens, etc. some legal aid institutions established the court duty lawyer system, the arbitration tribunal duty lawyer, etc. to provide instant legal aid 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 provide legal aid services in the middle and western 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 dozens of migrant legal aid stations under the guidance and supervision of the Beijing 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 invested 50 millions RMB each year, and will invest 100 millions RMB every year over the Twelfth Five-Year Plan periods. In addition, many other social organizations are also 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 is required 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 staff, or a private 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 short 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 kinds of legal education activities, provide legal advice in local communities, town, factories, industries, schools, detention houses, prisons and other special places; In minority 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% in mainland according to the statistics of Legal Aid Center of MOJ in 2008.

6. 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 eligibility requirements based on the provincial poverty lines. Some developed provinces, such as Guangdong, have their own legal aid financial eligibility standard according to the lowest salary standard. In practice, both means and merits should be tested for civil legal aid in most provinces/autonomous regions/municipalities.

7. Scope of legal aid

Legal aid mainly covers criminal law, civil law and a few parts of administrative law issues.

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, etc.

8. Legal aid expenditure

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

In addition, most provinces have a cash limited system, except several economic

developed provinces, such as Zhejiang and Jiansu, have a demand-oriented system.

Chart 1: Legal aid expenditure in 2009, 2010, 2011 and 2012 (million RMB)

Item \ Year	2009	2010	2011	2012
Legal aid expenditure	807.60	1,022.10	1,049.26	1,195.36

9. Legal aid case and legal advice statistics

Chart 2: Legal aid cases handled in 2010, 2011 and 2012

Item \ Year	2010	2011	2012
Handled cases	624,948	722,974	862,399
Handled by staff	152,726	160,733	187,147
Handled by private lawyers	204,023	231,486	284,771
Handled by legal workers	229,301	277,207	330,402

Chart 3: legal advices in 2009, 2010, 2011 and 2012

Item \ Year	2009	2010	2011	2012
Legal advice	4,849,849	4,874,083	5,334,383	5,760,418