

National Report – China

I Introduction

The legal aid system is an important part of the rule of law with Chinese characteristics. Since 1994 when the Ministry of Justice proposed to establish the legal aid system, the government has been actively honoring its obligation for legal aid and based on real conditions, making efforts to promote development of legal aid. Measures have been taken to improve mechanisms of relevant laws, regulations and rules, and policies, increase funding for legal aid, enhance team building of legal aid institutions, innovate ways of publicity and services, expand the scope of services, strengthen protection for special groups, and better the quality of services. All these have made a positive role for recognizing and protecting human rights, safeguarding legitimate rights and interests of those in need, and achieving fairness and justice.

President Xi Jinping reiterated that the legal aid for citizens with financial difficulties should be enhanced, that while the scope of legal aid is being enlarged gradually, the work of legal aid should focus on the real need of economic and social development and the improvement of quality of legal aid services, that efforts should be made to build mechanism of public legal services, and provide justice for citizens in each case. In the State Council's Work Report for 2015, it is stated that "the scope of legal aid is being enlarged to cover not only people living on subsistence allowances but also people with low income", which means that the improvement of the legal aid system was a part of improving people's livelihood and social construction as well as an important measure for enhancing and innovating social governance. This is good demonstration that the Chinese government will make greater efforts to push progress of legal aid.

II Policies of Legal Aid Being Improved

Since the establishment of the legal aid system, the Chinese government, based on its own conditions, has been learning from beneficial experience of foreign countries and making efforts to improve relevant laws and policies on legal aid. The 1996 *Criminal Procedure Law of the People's Republic of China* and the *Lawyers Law of the People's Republic of China* established the position of legal aid in the national judicial system for the first time. The *Legal Aid Regulations* of the State Council in 2003 set up a basic framework and various principles for the legal aid services. Amendments to the *Criminal Procedure Law of the People's Republic of China* in 2012 further enhanced the position and role of legal aid.

A dozen of laws including the *Law of the People's Republic of China on Protection of the Rights and Interests of the Elderly*, the *Law of the People's Republic of China on the Protection of Rights and Interests of Women*, the *Law of the People's Republic of China on the Protection of Minors* and the *Agriculture Law of the People's Republic of China* provide specialized regulations on legal aid from perspectives of different social fields and groups.

In order to implement the *Criminal Procedure Law* and the State Council's *Legal Aid Regulations*, the Supreme People's Court and the Ministry of Justice issued series of judicial interpretations,

administrative regulations and rules and normative documents related with legal aid, and local regulations and rules on legal aid were made by provincial authorities. After development of two decades, legislation for legal aid in China has grown from zero into the current system, where the *Criminal Procedure Law* and the State Council's *Legal Aid Regulations* are at the core, and which provides basic legal basis for the work of legal aid.

At present, China is earnestly studying experience accumulated in the implementation of laws and regulations such as the *Legal Aid Regulations* and the *Criminal Procedure Law* and practices of local legal aid institutions, and planning to make the *Law on Legal Aid* by the national legislator to further promote and regulate the work of legal aid.

III Team of Legal Aid Services Providers Being Developed Steadily

By the end of 2014, there were more than 3700 legal aid institutions at provincial, municipal and county level had been set up with a total of 140,000 full-time legal aid staff. Over 270,000 practicing lawyers and near 70,000 grassroots legal service workers accept appointments by legal aid institutions to provide legal aid services. Many social groups, public interest groups, and college legal clinics also provide pro bono legal aid services, and a legal aid service network covering both the rural and urban areas has come into being.

IV Financial Guarantee for Legal Aid Being Enhanced

Sufficient funding for legal aid is the material guarantee to ensure that the people in need could get access to legal aid, and it also demonstrates that legal aid is the governmental responsibility. In recent years, the central and local financial departments have been increasing support for legal aid. Since 2005, the central finance has allocated special funding to subsidize the handling of legal aid cases in different localities. The special lottery program for public welfare of the central government was created to fund legal aid services for special groups such as migrant workers and the disabled. At provincial level, 23 provinces and municipalities including Henan, Chongqing, and Jiangsu have set up special funding for legal aid to promote balanced development of the work of legal aid.

V Scope of Legal Aid Coverage Being Expanded

The *Legal Aid Regulations* of the State Council have general provisions on the scope of legal aid in civil and administrative matters, which includes 1) state compensation; 2) social insurance or subsistence allowance; 3) pension or benefit payment; 4) parental support, child support, or alimony; 5) work payment; 6) civil rights and interests for Good Samaritan protection. Provincial governments may make additional regulations about the scope of legal aid matters, and many provinces (autonomous regions and municipalities) have incorporated compensation for traffic accidents and medical accidents and family cases into the scope. As a result, the scope of legal aid coverage has been expanded.

The *Criminal Procedure Law* in 2012 and relevant normative documents have further expanded

the coverage of criminal legal aid. First, suspects and defendants in criminal cases, victims in cases of public prosecution and voluntary prosecutors in cases of private prosecution can directly apply for legal aid or get their legal aid application referred by public security departments, procuratorates or courts if they can't afford legal representation due to poverty. Second, if the criminal suspect or the defendant is a minor, if he/she is blind, deaf or mute, if he/she is a mental patient who has not completely lost the ability of recognizing or controlling his/her own conduct, if he/she may be sentenced to life imprisonment or death penalty, if he/she has not entrusted any defendant, or if he/she is the respondent or defendant in a case of compulsory medical treatment and etc, the public security department, the people's procuratorate, or the people's court shall inform legal aid institutions to appoint a lawyer to provide defense for him. Third, the legal aid for victims has been enhanced.

VI Standards of Economic Difficulty for Legal Aid Being Lowered

The Legal Aid Regulations of the State Council authorize governments of municipalities directly under central government control, provinces and autonomous regions to establish standards for economic difficulty in their administrative regions, and adjust these standards according to local economic and social development. In recent years, more and more places have lowered the standards for economic difficulty to about 1.5 to 2 times that of the lowest subsistence income level. Beijing, Shanghai and Guangdong province use a low income level as the standard rather than a subsistence-level income, so legal aid can benefit a larger group of people.

VII Subsidies for Handling Legal Aid Cases Being Increased

According to the Legal Aid Regulations, governmental legal aid institutions should pay a subsidy to the lawyer, who handles legal aid cases by appointment, or the staff of social organizations, who handles legal aid cases by arrangement. The standards for such subsidy should be made by judicial departments of municipalities directly under central government control, provinces and autonomous regions, together with the financial departments at the same level, in reference to local economic development level and the average costs of legal aid institutions when handling various legal aid cases. And these standards can be adjusted according to need. A dynamic increase mechanism has been set up, according to which the subsidy for handling legal aid cases can be revised. The subsidy standards for handling legal aid cases have been increased by a great margin. In many places, there is translation subsidy when the legal aid recipients are foreign nationals, people of minority groups, and people who are blind, deaf or mute that translation is needed.

VIII Providers of Legal Aid Services on the Rise

Currently, providers of legal aid services mainly include the following: government-run legal aid institutions; social groups, which are specialized right-protection organizations under labor unions, communist youth leagues, women federations, committees for aging, and disabled persons' federations at all levels, and provide legal aid services for targeted groups; public interest groups;

volunteer lawyers; and legal aid volunteers.

IX Methods of Legal Aid Services Being Innovated

In recent years, ways of legal aid services have been innovated. Many convenient measures are used to facilitate people's access to legal aid. For instance, clients can make appointment for legal aid services. Legal aid institutions can provide doorstep service, legal aid services at non-working hours, online service, or mobile service. In some places, new technological tools such as WeChat (a mobile text and voice messaging communication service) and microblogging are being used to provide information on legal education and legal aid advice for the public. In order to meet needs of the national judicial reform, such practice as duty lawyers is being piloted in detention centers and courts in many places.

X Quality Management of Legal Aid Being Improved

Legal aid management institutions of the judicial administrative departments seriously perform the duty of supervising the work of legal aid, and continue to improve the level of management of legal aid work. The Ministry of Justice issued Regulations on the *Procedure of Handling Legal Aid Cases* and other rules and normative documents to improve service standards and the work procedure such as acceptance, checking, appointment and handling. Meanwhile, legal aid institutions, learning from effective international practice that ensures the quality of legal aid, are actively conducting quality assessment of legal aid cases.

XI Future Prospects

In the past two decades, with comprehensive promotion of rule of law, the legal aid cause in China has made rapid development. However, just like in any other country, it is also faced with many difficulties and challenges such as a great demand for legal aid as a result of a large population in need, insufficient legal aid funding and human resources as well as regional imbalance, and off-standard legal aid services. In particular, the reform of judicial system has put forward stricter requirements for how to implement the government's responsibility for legal aid and promote the development of legal aid in a comprehensive manner.

The legal aid cause in China is enjoying favorable opportunities of development. Under the new situation and faced with new tasks, Minister Wu Aiyong pointed out that the major task in future is to improve the legal aid system, expand its coverage, enhance the quality of legal aid services, strengthen the financial guarantee and promote legislation for legal aid. The Ministry of Justice will focus on the requirements for forwarding the modernization of national governance system and capacity, and based on economic and social conditions and needs of people with financial difficulties and special groups, actively participate in activities of deepening the reform of the judicial system, and continuously improve the legal aid system. Looking into the future, we have each and every reason to believe that the legal aid cause in China will embrace better development.