

**Is effective legal aid in
developing societies possible?
The case of the People's
Republic of China
by Dr Francis Regan¹**

Introduction

China's national legal aid scheme is now more than 10 years old.² While it is the world's largest scheme, little is known in the west about either its operation, strengths and weaknesses, or how effectively it promotes that stubbornly elusive goal of equality before the law. This paper goes some way towards filling those gaps.

China's legal aid is worth understanding for a number of reasons. The scheme is, for example, likely to be of interest to legal aid researchers and policy makers by virtue of their shared commitment to that policy. But the scheme is significant for a number of other reasons relating to the recent legal developments in China. First, legal aid is a central feature of the attempts to establish a functioning and just legal system in China.³ In other

words rather than examining legal aid as a policy in isolation it in fact provides a vantage point from which to examine the wider legal reform processes underway in China over the last 10-15 years. Legal aid sheds considerable light on a number of questions relating to key legal institutions in China including the functioning of the judiciary, courts, procuracy, and the emerging private legal profession. Finally, China's policy is worthy of attention from a comparative perspective. The evidence suggests that it is one of the few developing societies that has designed and begun to establish a comprehensive legal aid scheme. The Chinese have achieved this goal by careful planning including analysis of schemes in western societies. Two features stand out in the decisions made about China's scheme. First, while other developing societies tend to either focus upon either legal representation or legal advice and minor assistance China has from the outset designed a scheme that embraces both types of services.⁴ Second, China has made use of an unusual combination of service delivery mechanisms. While the literature might refer to China's legal aid as a "mixed model" the scheme is, as I explain below, unlike any other societies' mixed model of legal aid.

In the paper I argue that China's legal aid is a serious and important attempt to

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² China celebrated the tenth anniversary of the birth of the modern legal aid scheme in 2004.

³ For a recent scholarly introduction to China's legal system and legal reform processes see A. Chen (2004) *An Introduction to the Legal System of the People's Republic of China*, 3rd edn, Hong Kong: Lexis Nexis Butterworths. For a sombre assessment of the efforts to establish the legal system after the death

of Mao see: Lubman, S. (1999) *Bird in a Cage: Legal Reforms in China after Mao*, Stanford: Stanford University Press. For a more optimistic although critical account see Peerenboom, R. (2002) *China's Long March Toward Rule of Law*, Cambridge: Cambridge University Press.

⁴ For an analysis of legal aid in another developing society see Regan, F. (1994) "Legal Resources Development in Uganda", *International Journal of the Sociology of Law*, Vol. 22, p..203

grapple with the problems involved in asserting or defending legal rights faced by a number of disadvantaged groups. The result is a scheme that's design is unusually comprehensive. Over time it might very well demonstrate that effective legal aid is an achievable goal in developing societies. I conclude however that China's legal aid faces a number of challenges that currently undermine its capacity to achieve the goal of legal equality. The challenges include the difficulty in establishing competent and professional legal institutions, and the slow increase in the financial resources available to the scheme.

The following sections of the paper therefore describe the operation of the scheme including the legal and administrative framework, the multiple forms of service delivery, and the volume of services delivered. The paper concludes by identifying a number of challenges facing China's legal aid.⁵

Legal Foundations

The Chinese government recently passed a national law the *Regulations on Legal Aid 2003*, to establish legal aid. Prior to 2003, the scheme had legal backing in a number of related laws and other instruments rather than a dedicated legal aid law.

The government made the decision to establish legal aid in 1994. The decision included establishing the National Legal Aid Centre in the Ministry of Justice to administer the national scheme. The

various related legal foundations of the scheme were also subsequently put in place. Prior to 2003 legal aid was provided for in a number of related national laws including the *Law on Lawyers 1996* which among other things obliges all lawyers to undertake legal aid cases each year and the *Law of Criminal Procedure 1996* which ensures a right to legal aid. Meanwhile the rights of particular groups to legal aid were enshrined in legislation including the elderly under the *Law on the Protection of the Rights and Interests of the Elderly 1996*. A number of joint circulars were also issued by the Ministry of Justice, Supreme People's Procuratorate, and the Ministry of Public Security (the police) to guide these agencies behaviour in relation to legal aid.

As noted above, the first national regulations to establish China's legal aid were passed by the State Council in July 2003 and came into effect on September 1, 2003. The *Regulations on Legal Aid 2003* clarifies the role of different levels government in the development of legal aid. Article 3 states that all levels of government have responsibility to implement the national government's commitment to legal aid.

Legal aid is a governmental responsibility and the people's government at or above the county level shall adopt positive measures to promote the work of work legal aid, provide fiscal support for legal aid and ensure that legal aid services develop in harmony with economic development and social progress.

While China is not a federation the provincial governments have extensive powers to make laws and implement policies. Consequently Article 3 of the *Regulations on Legal Aid 2003* make it clear that the service delivery and a large proportion of the funding are the responsibility of the provincial, city and county governments. The provincial governments in particular are expected to pass their own regulations in order to foster the ongoing expansion and development of legal aid. Significantly,

⁵ The paper does not consider the origins and early development of China's legal aid for space reasons but also because they have recently been considered elsewhere. For a discussion of the development of China's legal aid see F. Regan (2004) "China's Legal Aid: An Analysis of the Development of Policy", *Civil Justice Quarterly*, Vol. 23, p.169. The origins and early development are examined in B. Liebman (1999) "Legal aid and public interest law in China", *Texas International Law Journal*, Vol. 34, p.211. Also see A. Choate (2000) *Legal Aid in China*, Asia Foundation, (Working Paper No 12).

by 2003 a total of 17 provincial governments had also passed legal aid regulations. In addition, the provincial governments are also reported to be increasing their financial commitment to

legal aid in their provinces. Key indicators highlight the rapid growth of the legal aid scheme as Table 1 demonstrates.

Table 1 China's legal aid: Growth of Workload and Staffing - 1997-2003⁶

<i>Year</i>	<i>Legal representation matters (No.)</i>	<i>Advice & minor assistance (No.)</i>	<i>Offices and staff (No.)</i>
1997	40,000	1,000,000	200 offices unknown no. staff
1998	80,000	810,000	NA
1999	110,000	710,000	900 offices, 3,000 staff
2000	170,000	830,000	1,248 offices 4,000 staff
2001	170,000	1,130,000	2,207 offices 7,000 staff
2002	179,000	1,309,000	2,400 offices, 8,400 staff
2003	170,000	1,400,000	2,892 offices 10,000 staff

⁶ The data in Table 2 & 3 is collated from a number of sources including: Zheng, Z. (2001) "Legal aid in China: Its development, existing difficulties and future", Paper to the International Legal Aid Conference, Tokyo, Japan, December; *China Daily* (numerous dates). The data is best regarded as an estimate.

The range of services offered by legal aid is unusually comprehensive for a developing society. Indeed the range of services would be the envy of many legal aid schemes in western societies. The range of legal aid services in China includes

- Litigation assistance
 - civil including family law matters
 - administrative law matters,
 - different forms of assistance in criminal matters including in the investigation stage, advocacy in court, and representation for victims in criminal matters
- Outside litigation assistance
 - legal consultation or advice, including telephone advice
 - drafting documents,
 - mediation without litigation,
 - opinions about legal issues and cases, and other simple aid
 - legal education
 - law reform

Service delivery

China's legal aid utilises multiple forms of service delivery mechanisms. The service delivery mechanisms are in most respects similar to those in many other societies. As I explain in more detail below legal aid services are offered by private lawyers, staff in Public Legal Aid Offices and in Non Government Organisation (NGO) offices. In addition, and in contrast to western societies there are also a number of what can be referred to as Government Organised Non Government Organisations (GONGOs). As I demonstrate, the variety of service delivery mechanisms has allowed a more comprehensive and extensive legal aid scheme to develop than would otherwise have been the case.

There are a number of reasons for the variety of service delivery mechanisms. One reason is the government decided

to establish legal aid quickly but relied on a small public outlay of funds. China also followed the trend in other societies of shrinking or at least minimising the size of government including the range of activities it controls. Consequently the Chinese government has allowed multiple legal aid mechanisms at least in part because it introduces multiple income streams to support legal aid. For example, the government allowed NGOs to be established in many areas of policy including legal aid. Usually funded to a large degree by international aid agencies the NGOs complement rather than compete with the work undertaken by the Public Legal Aid Offices and private lawyers. Finally, the Chinese government allows semi-autonomous GONGOs for women the disabled and other groups to offer legal aid services. The GONGOs complement the work of the other mechanisms by targeting services specifically to their particular demographic groups and also provide an additional source of legal aid funding.

1. Public Legal Aid Offices

As explained above, many cities, provinces and county governments in China have established Public Legal Aid Offices in line with the directives from Beijing to rapidly implement policy. The spread of offices is now extensive and includes most of the county. In January 2004, a total of 381 of the 387 municipal or city governments, and 2361 of the 2375 county governments had established legal aid offices. In other words almost all the municipal and county level governments have now established legal aid offices.⁷ We know very little however about the variations in quality or volume of services offered by these offices except that those in poorer provinces are known to be poorly resourced.

The Beijing City Legal Aid Office illustrates the work of the large public offices in the large cities. The Beijing Office is one of the oldest and one of the busiest offices in the country – it

⁷ "Legal Assistance: Government Duty", *Beijing Review*, February 11, 2004

assisted a total of 14,620 people in the period Jan-May, 2002. While many clients required only advice and information as I explain below, more than 250 clients were charged with criminal offences, including 66 murders, 30 assaults and 17 drug cases. The charges in part reflect the dislocation flowing from the economic reforms, according to the staff in the office. Many clients were unemployed after being laid off by factories and faced with unemployment they migrate from towns and rural China to Beijing in order to seek work. Not finding work they resort to the poverty related crimes that are typical in cities including murder, assault and drug offences. The Beijing City Legal Aid Office also provided legal representation in a diverse range of civil cases in the same period including 15 damage and injury cases, 7 workers compensation cases and 4 labour disputes.

The office also assists people with the less serious but common civil and family law problems. In total it assisted over 14,000 people with legal advice and minor assistance in the period January to May 2002. The clients included significant numbers of the government's special "vulnerable priority groups": 466 disabled (3.1%), 152 minors (1%), women 4,646 (32%), elderly 2,458 (17%), others 6,587 (45%). The vulnerable groups are the focus of much recent law and policy in China, including legal aid.⁸

The network of Beijing's Public Legal Aid Offices including the Beijing City Legal Aid Office offer another valuable service, telephone legal advice. While the empirical research in the west tells us that telephone advice is needed by all social groups, many rich European societies do not offer this service. The public legal aid offices in Beijing have combined to offer an innovative low cost, high volume service to all citizens of the city. The "toll-free" 148 telephone line offers free legal advice to all and is designed to provide quick answers to simple legal problems.

⁸ Regan (2004) op. cit.

The large network of public legal aid offices in China utilise a number of forms of service delivery. Many offices employ full time salaried legal and paralegal staff to deliver services. Approximately half the staff employed by the offices are qualified lawyers. As explained above the services offered include advice, minor assistance, mediation and representation. Administrative staff are also employed to undertake clerical and administrative work. Finally, the offices also refer cases to members of the private legal profession who, as explained below, are obligated by law to provide legal representation in a number of legal aid cases each year.

2. Private Lawyers

The public legal aid offices do not provide all of China's legal aid services. Instead the limited financial resources available to the government in the 1990s prompted it to establish an additional service delivery mechanism. That is, the government decided that all private lawyers must undertake a certain number of legal aid cases each year. Without this compulsory *pro bono* contribution by the merging legal profession the policy could not have been implemented to the extent it has.⁹

The problem facing the government is a familiar problem in developing societies. Many developing societies have found that they have insufficient financial resources to bear the total cost of establishing legal aid. In lieu of public funding, the Chinese authorities decided that legal aid could only be implemented if it relied upon donations of legal services. The National Legal Aid Centre of the Ministry of Justice in Beijing explains that: "China is a developing country with a comparatively large number of indigent people. It is not practical for the government to afford all the legal aid expenses. We have to combine the government budget, the

⁹ The private lawyers do not undertake the cases completely without payment. Instead they are paid a nominal fee of 60 yuan, or about US\$7.20 per case.

donations from society and certain lawyers free services.”¹⁰

The private lawyers’ *pro bono* work is not voluntary but rather is an obligation enshrined in a number of laws. The legal obligation upon private lawyers to donate their services was initially enshrined in Article 41 & 42 of the *Law on Lawyers and Legal Representation 1996* and in Article 34 of China’s *Criminal Procedure Law 1996*. The *Regulations on Legal Aid 2003* also include provisions allowing for law firms to be warned and punished with suspension of their license to practice if they refuse legal aid cases that are referred to them by a legal aid office (Article 27).

The private lawyers do not undertake legal aid cases completely without payment. Nevertheless the actual amount they are paid might itself be a source of irritation. Private lawyers are paid a nominal fee of 60 yuan, or about US\$7.20 per legal aid case.

The “practitioners sponsorship”, as it is referred to by the Ministry of Justice, takes two main forms. First, members of the profession are expected to provide free legal aid services, especially litigation in criminal and civil cases. This can involve private law firms providing staff to a legal aid office on a rostered basis. They might for example, work for a week offering advice, referral and minor assistance. Private lawyers also undertake cases in court that are assigned to them by the legal aid office or by the courts. In some cities, including Beijing, local regulations require all private lawyers to undertake two *pro bono* cases per year. Beijing lawyers also have to provide two days of free legal consultation per month.

The private law firms can also fulfil their *pro bono* duty in other ways. Instead of undertaking the work themselves they can, for example, donate money to legal aid offices to the extent that it covers the cost of an agreed number of cases. In Shanghai, for example, the private law

firms often focus on international trade rather than legal problems of the citizens. As a result lawyers prefer to donate money to legal aid rather than undertake cases in less familiar areas such as criminal or family law.

3. GONGO Offices

China has also allowed another network of “semi public” legal aid offices to be established.¹¹ These unusual offices are located within existing high profile national organizations that we can refer to as Government Organised Non Government Organisations (GONGOs). The All China Women’s Federation (ACWF) and the China Disabled Persons Federation (CDPF), for example, have developed dedicated legal aid offices alongside the other assistance and activities they provide to their target groups.¹²

From 2002, the two GONGOs noted above began to offer a combination of legal advice and referral to women and the disabled respectively. The ACWF, for example, offers legal aid at all levels of the organization, that is, from the

¹¹ For a detailed discussion of Chinese GONGOs and NGOs see Roundtable Before the Congressional-Executive Commission on China (2003) *To Serve the People: NGOs and Development of Civil Society in China*, Washington: US Government Printing Office (Roundtable 24/3/03). Available at: www.cecc.gov

¹² These organizations are not regarded as NGOs in the scholarly literature because they are in many respects under the government umbrella in China. They are, however, regarded as a type of NGO in China despite the fact that they rely almost exclusively upon government funding and operate under a high degree of government direction and accountability. Regardless of where they fit on a classification scale they are important providers of legal aid services. For the sake of conceptual clarity, however, it is important to consider the Chinese GONGOs separately from the public and NGO programs. The website for the ACWF is: www.women.org.cn and the website for the CDPF is: www.cpdf.org.cn/

¹⁰ National Legal Aid Centre (1999)

street up. The ACWF has an extensive network of groups across the country including "60,000 grass roots organizations above township and neighbourhood committee levels across China and more than 980,000 women's representative committees and women's committees at grass roots level."¹³ In general assistance is offered by staff or volunteer lawyers at ACWF offices but by non-legal staff if the queries are simple. Services are often limited to legal advice relating to the legal problems experienced by women, but referrals are provided to the public legal aid offices in cases where litigation is required. In addition, in cases where legal aid is not available due to the clients' income, the ACWF has a group of female lawyers who undertake cases on a free or reduced fee basis. The ACWF also takes an active role in legal education of women in relation to the common legal problems they experience including consumer and marriage related problems.

The CDPF also offers legal aid at all levels of the organization, that is, from the county up. There are approximately 61 million disabled people in China many having been injured in work related accidents, according to the CDPF. The services offered by the CDPF are also focussed primarily upon legal advice related to the legal problems disabled people experience including claims for compensation, and discrimination cases. The CDPF employ paralegals and in some cases legally trained staff. But as with the ACWF they generally refer cases involving litigation and where the client is likely to qualify for legal aid to the public legal aid offices. If the client is unlikely or unable to qualify for legal aid they are referred to private lawyers who undertake the case for free or reduced fees.

The development of legal aid within the GONGOs demonstrates that western perceptions of a monolithic all powerful regime in China are incorrect. The

GONGOs demonstrate that government agency responsible for the administration of legal aid, the National Legal Aid Centre in the Ministry of Justice, is not in complete control of the development of policy. While the government established the public legal aid program in China, the GONGOs' decision to establish legal aid programs within their organizations was a result of internal leadership decisions. Indeed the GONGOs did not consult with the Ministry of Justice before they decided to extend their activities into legal aid. As in other societies, the Chinese government is by not able to control all aspects of life.

4. NGO Offices

As explained earlier, a network of NGO legal aid offices was also established in China in the early 1990s.¹⁴ The NGO program enhances the comprehensiveness of policy because these offices complement the role of the Public Legal Aid Offices. The NGO offices are generally attached to law schools in Universities. It is difficult to be precise about the total number of NGO legal aid offices across China but currently there are more than 30 university offices. The NGO offices were also not officially established by the government but have received wholehearted and public support from government over the last 10-12 years.

The work of the NGOs is very different to that undertaken by the Public Legal Aid Offices. The NGOs often specialise in discrete areas of legal work and offer relatively low volumes of services to small groups of people whereas the

¹⁴ The development of NGOs in China is examined in Young, N (2002) "Three C's: Civil society, corporate social responsibility, and China", *China Development Brief*, Jan-Feb. Also see Roundtable Before the Congressional-Executive Commission on China (2003) *To Serve the People: NGOs and Development of Civil Society in China*, Washington: US Government Printing Office (Roundtable 24/3/03). Available at: www.cecc.gov. It is estimated that international NGOs spend more than US\$100 million annually in China.

¹³ "All China Women's Federations", China Society for Human Rights Studies

Public Legal Aid Offices offer general and high volume services to all people. The specialist nature of their work means that the NGOs target demographic groups or problems that they believe are insufficiently catered for by the public offices. Some NGOs specialise in responding to particular types of legal cases, for example, criminal appeals, as I explain below. Other NGOs specialise in responding to the legal needs of particular groups such as women. Consequently, as is the case in other societies, the NGOs volume of services do not match those offered by the public offices. Nevertheless, the NGOs are a valuable component of the overall scheme.

The main NGO legal aid group are those based in Universities. There are two broad types of University based NGOs. The first group were started in the mid to late 1990s and generally rely upon the legal work that is undertaken by legal academics. They often focus on litigation, that relates to a particular demographic group or a particular type of legal problem. They are often substantially and sometimes wholly externally funded. For example, the Criminal Legal Aid Centre attached to the Law School at the China University of Political Science and Law in Beijing, specialises in serious, controversial and widely publicised criminal appeals. The Center for Women's Law Studies and Legal Services (hereafter the Women's Legal Aid Center) was established in December 1995. Attached to the Law School at Beijing University, it aims to provide legal aid services to "impoverished female clients who are in need of help". As a nationwide office, it offers assistance to women all over China.¹⁵ The focus of the work is upon cases involving women that are characterised by "complicated details,

¹⁵ Center for Women's Law Studies and Legal Services of Peking University (2001) *Theory and Practice of Protection of Women's Rights and Interests in Contemporary China*, Beijing: Workers Publishing House of China.

prolonged litigation, and extremely difficult legal entanglements".¹⁶

Meanwhile, other University based legal aid centres offer assistance to a broad cross section of the society. For example, the oldest University legal aid center, the Wuhan University Centre for the Protection of the Rights of Disadvantaged Citizens, Wuhan (hereafter the Wuhan Centre) offers services to a variety of disadvantaged groups in that city including young people, the disabled and women. Established in 1992 the Wuhan Center over the next 10 years provided legal advice over the telephone to more than 20,000 people, answered 20,000 letters where clients wanted advice and information, and assisted more than 1,500 people in cases involving litigation. The cases mainly involve claims for compensation after injuries at work or accidents but also included 16 cases where disabled students were excluded from University despite the *Law on the Protection of Persons with Disabilities* stating that disabled people have the same right to education as all people. Finally, the Wuhan Center has established a community and school legal education program to educate people about the law. The school involves seminars, training courses, education pamphlets and booklets.¹⁷

The university NGO offices are often supported financially by international aid agencies such as the Ford Foundation, particularly the first group described above. The reliance upon external funding is likely to continue in the future¹⁸ because the legal aid regulation that

¹⁶ Center for Women's Law Studies and Legal Services (2001) *A Research Report of the Legal Aid Cases Undertaken by the Center for Women's Law Studies and Legal Services Under the Law School of Peking University*, Beijing. p.1

¹⁷ Cheng, Z. (2002) "Wuhan University Center for the Protection of Rights of Disadvantaged Citizens", *China Human Rights*. Available at: www.humanrights-china.org/

¹⁸ The Ford Foundation supports a number of the University based legal aid centres. See Shih, J (2003) "From the

came into force in September 2003 state that the national and provincial governments are not financially responsible for the NGO offices.¹⁹

The second type of University legal aid NGOs are run by the law students themselves. The Student Legal Aid Centres usually specialise in offering legal advice to local disadvantaged communities. While they rarely undertake litigation in addition to legal advice they often write letters, make telephone calls and read documents for clients. They are sometimes assisted in their activities by legal academics but not always. They are rarely funded by international aid agencies but do sometimes receive funding from the University administration where they are based. In addition some receive a small amount of financial support from local governments. Finally, at least one student legal aid centre has received a donation from a large corporation. In 2003 General Motors China donated 175,000 yuan (about US\$21,000) to the Student Legal Aid Centre at the East China University of Politics and Law in Shanghai. Such local corporate donations might well be an important part of the future funding sources of legal aid in China. As suggested above, this broadening of sources of funding would not be undesirable from the government's point of view as it struggles to fund legal aid.

The oldest Student Legal Aid Centre is at the North West University of Politics and Law in Xi'an. Interestingly, the Centre was started in 1984 well before the first moves were made in the larger cities to establish either the public scheme or the NGO centres. Student

Rule of Man to the Rule of Law", *Ford Foundation Report*, Summer. Available at: www.fordfound.org/publications/ff_report/vjew_ff_report.detail.cfm?report_index

¹⁹ See the *Legal Aid Regulation 2003* Article 8 which specifies that "The State supports and encourages social organizations such as associations and institutions to provide legal aid to citizens in economic difficulty by utilising their own resources".

legal aid centres are also located at many other Universities including Beijing JiaoTong University in Beijing and East China University of Politics and Law in Shanghai. Student Legal Aid centres often exist at Universities where specialist NGOs exist including the China University of Politics and Law in Beijing which houses the Criminal Legal Aid Centre.

China's NGO legal aid organizations are not only important for reasons of their service delivery. They also fulfil other valuable roles. For example, they are an articulate and credible force in China's law reform processes. For example, Prof. Chen Guangzhong, the director of the Criminal Legal Aid Centre at the China University of Political Science and Law was heavily involved in drafting China's Criminal Procedure Law 1996.²⁰ The Women's Legal Aid Centre at Beijing University is also consulted about and makes submissions in relation to law reforms that affect women in China. Finally, the NGO legal aid offices illustrate the proliferation of non-party organisations in many areas of life in China.²¹ The organisations represent the retreat of the party from trying to control all areas of life as well as offering new degrees of freedom and responsibility to, in this case, China's educated legal professionals.

Challenges

Despite the impressively comprehensive design of China's legal aid in practice the scheme faces a combination of challenges if it is to more effectively promote the goal of legal equality. On the one hand the challenges highlight the very youthfulness of China's legal system including its legal aid. On the other hand the challenges also highlight the pressing need for effective legal aid in China. Access to more effective legal aid is, in sum, essential for the

²⁰ Peerenboom, op.cit., p. 243

²¹ Lee, D. (2000) "Legal reform in China: A role for Non Governmental Organisations", *Yale Journal of International Law*, Vol. 25, p. 363

disadvantaged if they are to have any chance of protecting themselves from ongoing weaknesses in the legal system. This section briefly reviews some of the main challenges facing China's legal aid.

Multiple providers - the combination of multiple providers is a mixed blessing for effective planning and administration of China's legal aid. On the positive side it means that there are many types of providers offering many entry points into the legal system. This is a highly desirable feature in any legal aid scheme. But it also means China has a very complicated system to administer.²² As we have seen some of the legal aid providers are also beyond the administrative reach of the National Legal Aid Centre of the Ministry of Justice. The end result is that the national government administrators are unable to effectively guide or fund the policy in the ways that the government decide or that are desirable. Of course the upside is that the legal aid scheme is probably more diverse, flexible and innovative than if it was tightly controlled by the national government.

Multiple administrative structures - The multiple levels of government in China, including national, provincial, municipal, country, inevitably leads to fragmentation of policy making and implementation. The fragmentation also has implications for funding levels. Funding and the related capacity to offer services remain major constraints on the development of China's legal aid. While the national and provincial governments have increased funding the overall amount remains grossly inadequate compared to the need for legal aid. The Ministry of Justice recently estimated that while legal aid was granted in 170,000 cases in 2003, it should ideally

have been granted to approximately 700,000 people.²³

Regional policy variations - Another related challenge relates to regional variations in legal aid. While on paper the take-up of legal aid responsibilities by different levels of government is impressive, as we have seen, access to legal aid depends to a large degree on which province and county a person lives. The commitment to legal aid by provincial and county governments is steadily improving if measured in the number of public legal aid offices. But the variations in wealth between provinces and therefore the income available to provincial governments mean that legal aid offices in some provinces are well resourced but not in others. Poor provinces also have very few private lawyers – the Chinese legal profession is similar to the profession in other societies in that lawyers tend to congregate where they can make a good income. In 2004 it was estimated that 206 of China's 2,375 counties did not have any private lawyers. The result is that the legal system and legal aid scheme struggles most in the poorer Chinese provinces.

Rising tide of litigation - Unfortunately the evidence suggests that the government might also have been too successful in establishing the Chinese legal system over the last twenty five years. At the very time when the legal aid scheme is struggling to cope with demand, the Chinese are also falling in love with litigation. The rise of the market economy has resulted in a rapid rise in economic cases in the courts including trade disputes but also claims for lost wages and compensation for injury. The consequence is that the overworked, under-skilled and under-resourced courts have faced rapidly increasing workloads including large numbers of legal aid cases. There is also growing evidence of a lack of

²² Peerenboom comments that the legislative system in China can be understood as "battling chaos". Peerenboom (2002) op.cit. It is not unfair to observe that the administrative systems also battle chaos.

²³ "Legal Assistance: Government Duty", *Beijing Review*, February 11 2004. Total national government funding was US\$4.8 million in 1998 and rose to US\$18 million in 2003.

capacity or desire in the legal profession to provide legal representation in general. The rate of legal representation for civil cases litigated is for example 50-60%. But disturbingly representation in criminal cases fell from approximately 50% in the period 1980-1995 to approximately 30% in 2002.²⁴ No doubt in part the declining representation in criminal rates is because of the paltry fees lawyers receive for legal aid cases, but in addition there is evidence that undertaking criminal representation can put at risk a lawyer's income, health and safety.²⁵

Quality of legal institutions - The quality and size of legal institutions in China also continues to be a major obstacle to the effective operation of legal aid. The rapid and much needed expansion of the courts, the procuracy and the private legal profession over the last 25 years has brought its own problems. Currently there are more than 210,000 judges working in 3,568 courts and more than 220,000 procurators working in 3,600 procuratorates. There are also approximately 120,000 lawyers the majority working in or for private law firms.²⁶ While the standard of education and the quality of the work of courts and lawyers is increasing there remain serious doubts about the standards of work of these groups of legal personnel.²⁷ The very weaknesses of these legal institutions however means that legal aid is an even more important mechanism to protect the weak and disadvantaged citizens when they become enmeshed in the legal system.²⁸

²⁴ Chen, op.cit., pp.185-186

²⁵ Cohen, J.A. (2003) "The plight of China's criminal defence lawyers", *Hong Kong Law Journal*, Vol. 33, p.231

²⁶ Chen (2004) op. cit.

²⁷ For a discussion of the current problems and desirable reforms to the Chinese court system see Zhang, Q. (2003) "The People's Court in Transition: The Prospects of the Chinese Judicial Reform", *Journal of Contemporary China*, Vol. 12. p.69

²⁸ A recent example that received extensive coverage in China and in the international press demonstrates the

Corruption and guanxi - Finally it is impossible to talk about China's the reality of China's legal system without mentioning the problem of corruption and *guanxi*. To some degree the legal and other systems in China operate on the basis of *guanxi*, or relationship as well as outright corruption.²⁹ The reliable anecdotal evidence is that very little can be achieved in the legal system without relying on relationships or engaging in outright corrupt practices. One of the ongoing threats to a professional judiciary and procuracy is the low salary they receive, in the order of 3,000 yuan per month. This means that lawyers and judges receive a very low salary. The consequence is that they can often be bought. The result is that legal aid clients might not always get the assistance that they deserve or require. While the government is cracking down on corruption among public officials including within the legal system, corruption continues to undermine the effectiveness of laws, the administration of justice and of course legal aid.

Conclusion

This paper has demonstrated that the design and development of China's legal aid is impressive. In the space of 10 years China has established or allowed to emerge a comprehensive scheme that incorporates multiple services providers that together offer a wide variety of services. The development of China's legal aid scheme is therefore a commendable achievement. It is also an achievement that is not reflected in other developing societies. At least in terms of a number

vagaries of the Chinese legal system. To quote a news report "She Xiangin, 39, a former security guard in central China's Hubei Province, spent 11 years in jail after being convicted of murdering his wife. He was set free in April following the reappearance of the supposedly dead woman". "China cracks down on torture and forced confessions", *Xinhua News Agency*, 17th May, (2005). Available at: http://english.people.com.cn//200505/17/eng20050517_185482.html

²⁹ See the discussion in Peerenboom (2002) op.cit.

of design factors, including multiple service providers and a variety of services, China's legal aid comes close to the type of scheme that is necessary for effective legal aid.

The future of China's legal aid also seems to be positive if the public statements about commitment by government are any indicator. The national evidence, including the national regulations and funding, demonstrate that at least the government is committed to legal aid. The evidence also suggests that the provincial governments are increasingly committed to developing legal aid in the counties and provinces.

Nevertheless there are a number of major challenges facing the scheme that threaten probably not to destroy it but at least to limit the extent to which it can promote legal equality. The challenges include regional variations, funding and capacity in legal aid and the legal system generally, and corruption and *guanxi*. If these challenges can be overcome China's legal aid might very well prove to be an example of a developing society where a government and other parties successfully established an effective legal aid scheme.

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