



**JUSTICE FOR ALL**

**The Problems and Possibilities of Legal Aid  
and Empowerment in Rural China**

Report from Public Interest and Development Law Institute

Wuhan University



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## Preface

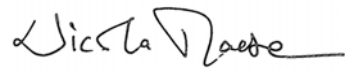
This English edition of the Chinese report, “Justice for All”, provides overseas readers with an introduction to, as aptly described in the subtitle, the problems and possibilities of legal aid and legal empowerment in rural China. The report was first published in Chinese in January 2010 by the Public Interest and Development Law Institute at Wuhan University Law School. The report set out to inform policy makers in China of the importance of investing in rural legal aid. It was the culmination of a four year project, led by PIDLI, to address the challenges of promoting access to justice in the poorest rural counties in Hubei. Lessons learned from this populous central province were, argued PIDLI, relevant to the rest of rural China. The Rights Practice was delighted to be able to support the project with the help of the Civil Society Challenge Fund at the UK's Department for International Development.

The report tells an important and interesting story, not only about the practical difficulties of accessing legal services in remote villages, but also about the way the rule of law is gradually taking root in rural China. The project encouraged local partners to approach the problem of access to justice from the village up: local dialect, personal relationships, transport difficulties, cost and little understanding of the law and their rights are some of the barriers that prevent farmers and migrant workers from taking their disputes to urban-based lawyers. In contrast, the township-based legal worker was much cheaper and more accessible, but he (and it was almost always he) was also untrained.

Over the lifetime of the project over 750 legal workers were given training on the areas of the law and the kinds of disputes which occur most frequently in rural Hubei. The successful implementation of the project was the result of a unique collaboration between the provincial Bureau of Justice, the professors and students of Wuhan University Law School, law colleges located in rural regions, and local lawyers. At the heart of PIDLI's training philosophy is the concept of legal empowerment, enabling the law to become an effective weapon for the poor and vulnerable. As the report acknowledges, however, there are tensions inherent in China's transition to a more rules-based society and many farmers still have a poor understanding of their rights.

“Justice for All” makes an eloquent case for supporting the development of legal aid in rural China and calls for legal aid to be more widely available in administrative law cases. Without access to justice in rural areas China's villagers will not be able to participate fully in economic and public life and many will continue to resort unsuccessfully and expensively to the tradition of petitioning.

Executive Director of The Rights Practice

A handwritten signature in black ink, appearing to read "Nicola Macbean". The signature is fluid and cursive, with a long horizontal stroke at the end.

*Nicola Macbean*

## Preface

This Report summarizes experiences from a long-term project on legal aid and legal empowerment oriented towards rural China.

In 2006, Public Interest and Development Law Institute of Wuhan University (PIDLI) has started to cooperate with The Rights Practices on a project named Promoting Access to Justice in Rural China, which spanned 4 years in Hubei Province in central China. This Project originated from concerns for 800 million Chinese peasants (among whom 400 million are migrate workers). It is dedicated to raising effective provision of legal aid to those at the bottom of the society, promoting access to justice for the disadvantaged groups in rural China, and ensuring the realization of the rights of these people. Towards this end, the Project was conducted in the form of in-depth needs appraisal, rights awareness raising, practical legal skills training and strategy advocating. These have been successful activities that are highly recognized both by the participants and observers. PIDLI emphasizes participatory investigation and training methodologies, employs human rights and legal empowerment perspectives, endeavors to improve understandings of Chinese grassroots justice by researchers and activists from different backgrounds and explores possible approaches to achieve legal empowerment in China. During implementation of the Project, PIDLI, along with her partners, has gained a good amount of experiences, and we hope to share them with colleagues from both within and outside China.

This Report is witness to the growth of PIDLI, a university-based research and advocacy institute in China, as well as the development of the cause of Chinese legal aid. Since 2006, many Chinese provinces and municipalities have promulgated or revised their local legal aid regulations, incorporated legal aid in the list of major government tasks, and even included it as an index in the comprehensive governance evaluation system. The work of legal aid has been gradually strengthened, with funding, personnel and the number of cases handled increasing rapidly. Researchers and decision-makers have shown more and more recognition and attention to what grassroots legal aid workers do, and have provided them with greater support in the respects of working conditions, case-based allowances and skills training. In the meantime, PIDLI was founded in Wuhan University and kept growing. Based on the accomplishments of the project on access to justice in rural China, her scope of work has expanded to cover legal aid and legal empowerment for the

persons with disabilities, migrant workers, women and criminal detainees. At the same time, we established a community legal empowerment clinic in Wuhan University School of Law, encouraging more young lawyers to learn about Chinese legal reality, to get involved in public interest law practice and to make contributions to access to justice at grassroots level.

Pursuing the path of legal aid and legal empowerment in the name of “Justice for All”, this Report also carries great expectations for others who share our beliefs. The outlook of Chinese legal aid and legal empowerment lies with participants and contributors ranging from official legal aid institutions at the central government level to those at the grassroots level, from legal clinics within law schools to NGOs and foundations within China and outside. This Report records the cooperation between PIDLI and these institutions and organizations, and provides examples and suggestions for more cooperation among the actors in the future.

This Report draws from close collaborations over a number of years with front-line legal workers who are trying their best to provide legal service to the ordinary people. They are warm and modest. They have presented invaluable experiences and ideas about grassroots legal aid and legal empowerment. We would like to extend our cherished appreciation to them the Grassroots Legal Workers. During the drafting of this Report, PIDLI has received substantial support from Legal Aid Center under Ministry of Justice of PRC, Department of Justice of Hubei Province and legal aid offices of cities in Hubei, including Enshi, Huanggang, Huangshi, Shiyan, Xiangfan, Xiaogan and Yichang. The Right Practice has provided relevant literature from overseas and inspiring perspectives for the drafters of this Report. In addition, the drafters have greatly benefited from the conveniences provided by Wuhan University School of Law and first-hand materials student volunteers of Promoting Access to Justice in Rural China project have accumulated year after year. We are also indebted to many scholar and lawyer friends of ours who have generously shared their experiences and opinions with us over time. We take the opportunity to express our sincere thanks for all the support and encouragement we have fortunately received in the past 5 years.

Director of Public Interest and Development Law Institute of Wuhan University (PIDLI)



*Wanhong Zhang*

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## Executive Summary

# 1. The Current Situation and Challenges Facing Grassroots Justice in Rural China

## 1) Rural Development and Disputes

Three decades of reform have brought China rapid economic growth and a dramatic social transformation. Development, however, has been unequal across the country; there is a widening rural-urban gap and continued poverty in much of the countryside. With limited development resources, farmers occupy the bottom rung of China's socio-economic ladder and are increasingly marginalized and vulnerable. The insecurities of modern life have also contributed to a greater range and complexity of disputes in rural areas. These include not only traditional disputes concerning marriage, family, neighbours, debts and credit, but also administrative disputes arising from growing legal awareness amid poor grassroots governance. Industrialization and urbanization have contributed to new types of disputes as a result of work-related injuries and occupational illness, land requisition, and environmental pollution. The distribution of different disputes varies across China reflecting variation in the levels of economic development and access to natural resources. But generally speaking, the number of disputes, the scale of people involved, and their complexity and severity, have reached a level not seen before.

## 2) Methods to Resolve Disputes

In the still largely relationship-based society of rural China there are many channels for dispute resolution including reconciliation, mediation, arbitration, litigation and petitioning, but mediation and litigation are the most common and effective. Mediation is normally chaired by village cadres or other respected villagers, or may be facilitated by rural grassroots legal aid workers<sup>1</sup>; while litigation is

<sup>1</sup>Legal workers are paralegals working in the township Justice Office. This is the lowest level of China's administrative system of justice. The Department of Legal Aid in the Ministry of Justice is responsible for policy making and the national Legal Aid Centre has responsibility for research and training. The Bureau of Legal Aid in the provincial Department of Justice is responsible for policy at the provincial level and has administrative oversight of lower administrative levels; a provincial Legal Aid Centre largely handles cases at the provincial Higher Court and the provincial

capital's intermediate court. At the lower city or county level there are Legal Aid Centres which are sub-branches of the Bureau of Justice; they jointly carry out legal aid cases and legal aid administration. At the township level the Legal Aid Working Station, the Justice Office, the People's Mediation Committee and the Legal Services Office are combined into one Justice Office. This office is generally staffed by one to three persons who are not normally legally trained. They may variously be called administrative cadres, legal aid workers, autonomous people's mediators or legal services workers.

conducted by legal aid workers or lawyers.

Given the social diversity and range of disputes, a unified legal system demands a variety of dispute resolution channels, drawing on different local sources of wisdom and authority. Since the legal system in China is still under construction, the dispute resolution system needs to encompass both formal and informal procedures. However, the use of any informal procedures must, nevertheless, take into account contemporary legal principles of fairness and democracy and not tolerate any discrimination against women, corruption or arbitrary use of power. Moreover, with the continued expansion of a market economy and the promotion of rule of law, more and more villagers will choose to use formal judicial procedures to resolve disputes and there will be a growing demand among farmers for professional legal services.

## **2. Legal Aid is Critical to Helping Farmers Resolve Disputes and Secure Remedies**

When villagers become involved in a dispute at the grassroots level in China, they can go to a law firm, the local Justice Office or social organizations, such as the Women's Federation, for legal advice and services. However, lawyers rarely work at the grassroots level and, since they are known to charge high fees, the transport to visit urban-based lawyers is often inconvenient, and there may be differences in dialect, customs and education, farmers tend not to think about lawyers or seek them out for legal services. On the other hand, grassroots legal services offices offer accessible and affordable legal services. However, as a result of unclear legal provisions and a lack of oversight, such services are of mixed quality and often have limited effect. Legal services provided by other organisations also have their limitations. Clinical courses within law schools are only able to handle a few cases, while social organisations and grassroots NGOs usually lack professional legal knowledge and skills. Consequently, many villagers turn to their relatives and friends to help them with their disputes. The successful resolution of disputes involving villagers is further hampered by the remoteness and relative isolation of villages, farmers' lack of legal and rights awareness, and the fact that court procedures are difficult to readily grasp and apply.

The mismatch between the growing demand for legal services in rural areas and the limited provision of such services has never been greater. Legal aid

is the key to addressing this situation; but, beyond the system of paid legal services, a range of other methods for resolving rural disputes are becoming part of the system of rural justice and provide an opportunity to enhance villagers' access to justice.

The current Legal Aid Regulations state clearly that the responsibility for legal aid provision lies with the government. According to the regulations, legal aid can be provided either by government established legal aid organizations or through the services of legal aid workers, legal service workers, lawyers and legal aid volunteers organized by social organizations. Legal aid is intended to protect the rights and interests of those involved with the law, and it is targeted at clients with a low income or in certain special cases.

In recent years, legal aid in China has developed significantly in terms of policy focus, institutional and systemic improvements and an expansion of the scope of eligible cases. But, the further development of legal aid is constrained by low legal aid awareness, insufficient funding, the low quality of legal workers, inadequate oversight of the quality of legal aid, poor incentives, and low levels of participation by other legal aid providers. As a result, the system has failed to benefit more rural residents.

### **3. International Experience in Legal Empowerment of the Poor**

Legal aid is more than just a form of social security; and it should certainly not be seen as charity. Legal aid should be a means to help beneficiaries protect their dignity, increase their rights awareness, feel legally empowered, and release their potential. Legal empowerment refers to the use of legal approaches, particularly building the capacity of the poor and vulnerable to protect their rights and interests nationally and within the market, and using the weapons of the law to help eliminate poverty and improve the quality of life of the poorest and most vulnerable.

Villagers are largely ignorant of their legal rights and do not have access to professional legal services; moreover, many of the legal institutions are unjust and unaccountable, leaving the rural population, to a large extent, excluded from using the law. Villagers lack effective property rights; migrant workers often work in unsafe conditions because of the informal nature of their employers' operations; they do not have access to credit or investment, and cannot enter local or global markets. Therefore, legal

empowerment is crucial to helping the rural population secure access to justice and rule of law, enabling them to realize their property rights, labour rights and business rights.

If the law works for everyone, if the law can become an opportunity and not a barrier for the poor, then the vulnerable can obtain remedies consistent with human rights standards through both formal and informal systems of justice. This will enable the excluded poor to transcend the current situation and help them find solutions to long-term economic and social problems. Legal empowerment of the poor acknowledges the complexity of society and the huge potential of the poor, unleashing their ability and creativity to build a more prosperous and equitable world.

#### **4. “Promoting Access to Justice in Rural China” : a project of Wuhan University Law School**

The project, “Promoting Access to Justice in Rural China” was initiated by Wuhan University Law School to address the rights of China's 800 million people living in rural areas. Over three years, the project was committed to understanding and promoting access to justice among the poorest and most vulnerable in rural China. It aimed to help achieve justice, to protect rights, to increase empowerment and eliminate poverty through activities to raise rights awareness, improve skills and strengthen institutions.

The project's research findings indicate that the government's legal aid system has its strengths: firstly, it features an extensive network; its authority enables it to win trust and garner interdepartmental and cross-regional support; the overall costs are low while the results have been significant; its capacity to handle cases is huge. Secondly, most legal aid workers are not “profit-driven” lawyers. Due to their age, education level and attachment to rural life, they would rather work at the grassroots to provide legal aid services and they also often enjoy a close relationship with their clients, so that they are well placed to protect their interests and those of the community. Lastly, most legal cases at the grassroots level are not particularly complex in nature; but for a poor rural client facing a loss, the involvement of a legal aid worker can markedly improve the protection of his or her rights.

But the system also has its weaknesses: the current grassroots legal aid structure is monolithic, yet, it has multiple functions and this has weakened and divided its power. In addition, there are shortcomings in the quality of

personnel, a need to improve skills, a shortage of funding and policy limitations resulting in an inadequate provision and poor quality of legal aid services.

Therefore, offering the training and support legal aid workers need should increase the provision of good quality legal aid and provide more farmers with access to justice. The main mission of the project was to explore the possibilities of building an innovative model for providing legal training which could continue operating over the long term without imposing too heavy an economic burden on local finances or the poor.

## **5. Local Practice of Legal Aid and Empowerment: the Hubei Model of Rural Legal Aid Training**

### **1) The Hubei Model**

The rural legal aid training organized by the project was targeted at the 30 most impoverished counties in Hubei. It aimed to provide material and knowledge support to local legal aid workers and, with guidance from experts and multi-agency support, help to build a platform for them to communicate with and learn from each other, with the ultimate goal of providing better legal aid services to vulnerable groups in rural areas and greater social fairness and harmony. The training which can be characterized as the “Hubei Model” had the following features:

- ※ Practical training themes and content. Extensive research was conducted prior to training in order to analyze and develop a clear understanding of villagers' practical legal needs. Training courses were custom-made based on the actual situation of legal aid workers and included the latest legal aid policies and legal knowledge, interviewing and mediation skills and the development of internet search skills.
- ※ Advanced training concepts and methodology. Great importance was attached to the training of trainers so that they could understand and develop the trainees' critical thinking skills; the training promoted participatory and interactive teaching and used role-play, moot courts and peer education. Technical guidance was provided for the training and a training feedback mechanism was introduced to ensure continuous improvement.
- ※ Post-training follow-up support and tracking. A contact network and website were set up enabling trainees to visit the website with any queries, contact lecturers directly, or talk with other trainees to try and resolve any problems they encountered at work. Trainees were

also encouraged to share the lessons learned with colleagues after they returned home. Support was provided for such work to amplify the effects of the project's training courses.

- ※ Multiple support agencies and collaboration. The training made full use of international, domestic, central and local government and college resources including financial, policy, scholarly and personnel support, laying a solid institutional, material and intellectual foundation for the project's success and introducing a new model for sharing and contributing resources.

This effective training model had significant and far-reaching impact: legal workers' legal knowledge and case handling skills were boosted and on return to work they were able to further spread legal awareness through publicity activities and their own handling of cases. Local training and promotional activities bolstered recognition of legal aid and enhanced its prestige among the population at large, which, in turn, served to strengthen grassroots legal workers' identification with the legal aid cause and pride in their work, reinforcing their commitment to working in rural areas and serving villagers. All these factors have contributed to strengthening and building the capacity of rural legal workers and helped grassroots legal aid departments win more support from different levels of the government.

## **2) Replicable and Sustainable**

Perhaps most importantly, many of the problems and challenges identified during the field visits to the poor regions of Hubei were similar to those researchers found in other areas of China, and, therefore, seem highly representative. This means that the experience and achievements acquired during the more than three years of project implementation have helped shape a model that can be promoted elsewhere. The training is both replicable and sustainable: its course design, training approach and materials fit with rural reality, and can be promoted in other regions. Although the training methodology was innovative in China, experience in the later stages of the project demonstrated that local trainers were more than equal to mastering the methodology.

# **6. China Rural Legal Aid Development Strategy and Recommendations**

## **1) Joint Efforts by All Stakeholders**

The Public Interest and Development Law Institute at Wuhan University (PIDLI) was the main organization responsible for designing and implementing the training; it also published the training materials, trained trainers and provided technical guidance. Drawing on its own experience and lessons learned, PIDLI has actively promoted practical training and continued to research and advocate for further improvement to the national legal aid network and the building of a legal aid quality assessment mechanism.

Legal aid provision in China remains a very fragmented system with different providers each having their own objectives and approaches. There is a lack of effective communication and cooperation among the different providers. There is thus an opportunity for improvement and consolidation and an urgent need to discuss how to build a collaborative network among all stakeholders. This national network should include multiple providers of legal aid: in addition to legal aid workers, public interest lawyers, commercial lawyers, teachers and students at law clinics and in NGOs should be encouraged to join the network and contribute to the provision of legal aid. In addition to securing the support of the professional legal community, local elites can be brought in to help mobilize additional support from all levels of government, the justice agencies and foundations.

## 2) A Legal Aid Strategy with Participation of Multiple Parties

Regardless of whether it involves litigation or mediation and whether it takes place in the courtroom or in a rice field, the claiming and remedying of rights need specific professional knowledge, skills, people and institutions, all of which requires already limited resources. Therefore, the strategy to develop legal aid advocated by this project calls on the support of all stakeholders, both policy and institutional support as well as financial and human capital.

- Recommendations to the national legal aid authority
  - ※ Push for the enactment of the Legal Aid Law.
  - ※ Call for more legal aid funding and ensure designated funds are not diverted to other budget areas.
  - ※ Implement the principle of “providing aid to everyone who needs aid”; strengthen the authority of the Ministry of Justice.
  - ※ Require local judicial bureaus to further lower the legal aid threshold.
  - ※ Require local judicial bureaus to put in place projects to train grassroots legal workers.



<sup>2</sup> For example, after a long period of research and consultation on legal aid practice, the Peoples' Congress of Hubei Province passed the Hubei Provincial Legal Aid Regulations on 3rd August 2011 (entered into force on 1st October 2011). These new regulations lower the legal aid threshold, establish the principle of an oversight system to ensure the quality of legal aid services and require government departments and courts to be more accountable for making legal aid available and accessible to the poor.

- ※ Build a mechanism to assess legal aid services in poor rural areas.
  - ※ Ensure the rational deployment and coordination of legal aid resources.
  - ※ Provide guidance for high-impact cases involving legal aid and support “strategic legal aid” cases.
  - ※ Enhance legal aid's role and function in administrative litigation and sensitive social issues.
- Recommendations to local Justice Bureaus and legal aid authorities
    - ※ Promote local legislation and administrative measures to encourage policy support for legal aid<sup>2</sup>.
    - ※ Increase legal aid budgets and funding.
    - ※ Lower the legal aid threshold.
    - ※ Implement and consolidate resources for training legal aid workers.
    - ※ Promote more effective dissemination of legal aid information.
    - ※ Improve the quality of legal aid services.
    - ※ Encourage legal aid services to include the provision of legal empowerment to legal aid recipients.
  - Recommendations to law schools and the Committee of Chinese Clinical Legal Educators
    - ※ Encourage teachers and students to conduct research and practical work addressing rural rule of law and rights issues; set up rural-community-oriented legal clinics.
    - ※ Law schools should offer to develop training for legal aid workers and mobilize teachers and students to help deliver the training.
    - ※ Develop various types of legal information consultation services and become the regional centre for legal consultation services.
    - ※ Promote the development of local civil society.
    - ※ The Committee of Chinese Clinical Legal Educators should promote rural community-oriented law clinics.
  - Recommendations to foundations and other donors
    - ※ Fund legal aid worker training projects initiated by law schools, law clinics or NGOs; establish a system for sharing information and resources among donors and funding beneficiaries.
    - ※ Set up diverse funding channels and improve their accessibility for legal aid institutions in poor areas.
    - ※ Address the capacity building needs of beneficiary



organisations.

- ※ Ensure cross-cutting human rights issues are integrated into support for legal aid and fund projects, such as training for women leaders in rural areas, which will build the capacity of local communities to participate in the provision of legal aid and increase legal empowerment.
- ※ Share international experience of the legal empowerment of the poor.
- ※ Call for legal empowerment of the poor to be included in development strategies.



## Chapter One | **BACKGROUND**

## I Rural Justice in China

The project, Promoting Access to Justice in Rural China, was launched in 2006 to increase understanding and promote access to justice for vulnerable populations in rural China, particularly women, the disabled, the elderly and children. The experience of living in poverty increases vulnerability and susceptibility to rights violations. Through awareness raising, skills training and institutional capacity building the project aimed to help these groups obtain legal aid, protect their rights, become empowered and move out of poverty.

In order to fully understand the realities of the grassroots judicial system in rural China the project undertook preliminary field visits, surveys<sup>3</sup>, and interviews in some of the poorest counties of rural Hubei. Further research and feedback from training activities in more than 30 poor rural counties in Hubei gave the project insight into the realities and problems facing the legal system in rural China.

### 1. Rural Disputes

#### 1) Distribution of Dispute Types

Among all interviewed legal aid workers [see footnote 1 for a definition], one third reported that they thought that the annual number of disputes occurring in their township was relatively high. A majority of disputes concerned marriage and family, personal injury, neighbours, land requisition and demolition, and other land-ownership-related disputes.

In addition, the distribution of disputes has a strong regional flavour. For example: in mineral-rich counties, local labour disputes are pervasive; in counties where arable land is scarce and most labour is exported, many cases concerned migrant workers; in townships crossed by expressways and railways or suburban townships, land requisition compensation cases abound.

#### 2) Dispute Resolution Subjects

When disputes arise, 77% of village “security and mediation directors”<sup>4</sup> said villagers would normally first seek help from village cadres; almost half of the legal aid workers agreed although around one fifth thought villagers would first go to the Justice Offices or the legal aid centre at the township or county level. In terms of results, village security and

<sup>3</sup> The survey questionnaires were largely distributed among participants on the training courses. Eighty questionnaires were completed during the pilot training and 525 questionnaires were completed during subsequent training courses. As changes were made to the questionnaires after the pilot training evaluation meeting, the two types of questionnaires went through separate statistical analysis. Data used in this report is mainly drawn from analysis of the questionnaires completed by trainees in the post-pilot training.

<sup>4</sup> An official: one person normally serves as the head of both the village security committee and the people's mediation committee. He or she is often called the security and mediation director. This position may

mediation directors reckoned that on average the vast majority of village disputes were resolved using village resources while less than one fifth were handled in the townships. Legal aid workers estimated that nearly 90% of township disputes were resolved at the township level, and only a few serious and difficult cases underwent procedures at the county, municipal and provincial levels. The situation could be summed up as “small things do not go out of villages and big things do not go out of townships.”

Township-level justice departments, village committees and people's mediation committees are the main entities to resolve rural disputes. If village committees failed in mediation, some aggrieved villagers go to township governments where these disputes would then generally be resolved through the authority and perceived legitimacy of the local government. Disputes transferred to township-level governments tend to be complex, and their resolution often needs the assistance of professionals, such as legal aid workers or lawyers. Villagers generally think highly of township cadres and the government, and they attach great importance to the power of government and legal aid workers, or lawyers. Tellingly, however, in a society in transition, villagers rely on multiple sources of authority—religion, government, democracy and professionalism. Faced with different kinds of disputes, legal aid workers have also adopted different approaches to resolving them.

### 3) Dispute Resolution Channels

The main channels to resolve rural disputes include reconciliation (*hejie*, 和解) between the two parties; mediation (*tiaojie*, 调解) involving a third party; arbitration (*zhongcai*, 仲裁) entailing an official process, litigation (*susong*, 诉讼) at the local court; and petitioning (*xinfang*, 信访) to higher levels of the government<sup>5</sup>. Statistics from the questionnaires completed by the project's trainees suggest that petitioning is the most time-consuming method, followed by labour arbitration and bringing lawsuits. Neither clients, nor grassroots legal aid workers, are particularly satisfied with the cost or results of these types of dispute resolution mechanisms. In contrast, grassroots legal aid workers generally think highly of mediation offered by the Justice Offices, village committees and people's mediation committees.

With regard to the most effective measures in dealing with disputes, convincing people by reasoning with them or persuading them with emotional appeals are common at both the township and village levels; this reflects traditional Chinese respect for courtesy and ethics

have different names in different areas, such as security director (*zhibao zhuren*, 治保主任) or militia company commander (*minbin lianzhang*, 民兵连长). Some even shoulder the responsibility of legal aid liaison and “stability preservation” office liaison. This group of people constituted one of the main targets for village legal research and training.

<sup>5</sup> Take marriage disputes as an example. Legal aid workers thought they are mainly mediated by justice departments (30%), followed by village people's mediation committees, referred to as “village mediation committee” hereinafter, (23%), township people's mediation committee, referred to as “township mediation committee,” (18%), courts (10%) and lawsuits (7%). Village security and mediation directors reckoned they are mainly mediated by village

mediation committees (34%) and relatives and friends (25%), followed by courts (16%), township mediation committees (11%) and respected people (7%). In terms of labor disputes, legal aid workers reckoned that they are mainly mediated by the justice department (36%), followed by village mediation committees (14%), township mediation committees (10%), lawsuits (9%) and courts (4%); while village security and mediation directors thought they are mainly mediated by village mediation committees (43%), followed by courts (18%) and the justice department (11%), both relatives and friends and petitions rank fourth (4%), and lawsuits last at (2%). Furthermore, legal aid workers believed that police station mediation accounts for 0.4% of marriage dispute resolution and 0.7% of labor dispute resolution. Other channels (including arbitration) account for 0.2% of marriage dispute resolutions and 1.3% of labor dispute resolutions.

(*zunlizhongde*, 尊礼重德) and harmonious relations. Such measures could be said to reflect what German sociologist Max Weber described as “affectual” and traditional social actions rather than means-ends rational social actions. A combined appeal to personal relationships and traditional pragmatism seems to have broad support among villagers and grassroots legal aid workers, who described it as the most effective method for dispute resolution. Survey responses, however, show that a significant number of respondents chose “informing legal regulations and consequences,” as the second or third “most effective measure”. This suggests that there is gradual public acceptance of the need to handle cases according to the law. In other words, grassroots judicial work is developing towards the establishment of the rule of law.

## 2. Current Situation of Grassroots Judicial System

The current grassroots judicial system in China comprises law firms, legal services offices, Bureau of Justice local offices, legal aid working stations, people's mediation committees (*renmin tiaojie weiyuanhui*, 人民调解委员会), notary bodies, police stations (*paichusuo*, 派出所), people's courts or detached tribunals (*paichu fating*, 派出法庭), arbitration tribunals and petition offices. It also includes “joint mediation” (*lianhe tiaojie*, 联合调解) which, under certain conditions, involves the participation of multiple administrative departments, such as administrative mediation involving the township government and local bureaus of industry and commerce, education, health and labour. In fact, in a large number of townships the legal services office, local justice office, legal aid working station and people's mediation committee often comprise one or two members of staff working under “many hats” (*duogepaizi, yitaorenma*, 多个牌子, 一套人马). This report is focused on the involvement of lawyers and grassroots legal aid workers in delivering legal aid; many grassroots legal aid workers may also carry out the work of judicial administrative staff, grassroots legal service workers and people's mediators. Analysis of the role of grassroots notaries, public security administrative staff, judges, arbitrators and petition office workers is beyond the scope of this report.

### 1) Law Firms

Existing Chinese laws and regulations state that lawyers are legally obligated to provide legal aid. In addition, lawyers have their own motivations for providing legal aid: it can help boost their reputation; it can be a source of income and it can provide them with a sense of value as practitioners of the law. Lawyers who do not provide legal aid also face potential sanctions. Statistics collected by the All China Lawyers

Association in 2008 showed that there were 140,000 lawyers practicing in China, among whom nearly 6,000 were full-time legal aid lawyers. That year, over 14,000 law firms provided pro bono legal consultation services in more than 2.6 million cases and handled over 120,000 legal aid cases. In December 2009, the Ministry of Justice reported that China had 156,000 lawyers in practice and 14,741 law firms<sup>6</sup>. In 2008, more than 546,000 legal aid cases were approved to be handled nationwide<sup>7</sup> however, lawyers were involved in only 21.9% of these cases. Since a far larger number of legal aid cases were not registered and handled instead via mediation, we can conclude that lawyers' participation in legal aid was significantly lower than the demand.

Surveys in the 30 poor counties covered by this project found that when villagers go to the law they generally do not go to lawyers. Lawyers live in county towns and transport from the villages is often inconvenient. Moreover, most counties only have one law firm with a limited number of lawyers and are unable to meet actual demand. Lawyers at the county level also charge fees ranging from 600 to 3,000 yuan a case, putting them beyond the means of most villagers. In research, farmers also reported that they find it hard to communicate with lawyers due to differences in dialect, custom and educational levels. Because of these barriers, villagers largely turn to the grassroots legal services offices.

## 2) Legal Services Offices

Grassroots legal services offices (*jiceng falv fuwusuo*, 基层法律服务所) have been set up in townships and city neighbourhoods by the Ministry of Justice to provide legal services at the local level. The business scope and practice requirements are specified by the Ministry of Justice and set out in the Grassroots Legal Services Office Management Rules (issued and implemented on March 31, 2000). The provision of grassroots legal services is the outcome of specific historic conditions in the development of China's rule-of-law. As an effective complement to the legal services provided by lawyers, grassroots legal services have contributed to the economic development and resolution of disputes at the community level. Grassroots legal services offices charge villagers affordable rates for their services: research conducted by the project revealed average rates of 100-200 yuan for mediation and around 400 yuan for litigation<sup>8</sup>.

However, it is also the case that the low fee rates correspond with a generally unsatisfactory level of service. Most legal services office staff have not received any higher education in law. Their self-taught legal

<sup>6</sup> Data sources include the Ministry of Justice: [http://www.moj.gov.cn/moj/2008-03/13/content\\_814307.htm](http://www.moj.gov.cn/moj/2008-03/13/content_814307.htm), Xinhua Net: [http://news.xinhuanet.com/newscentre/2008-10/25/content\\_10250583.htm](http://news.xinhuanet.com/newscentre/2008-10/25/content_10250583.htm), and Legal Daily: [http://www.legaldaily.com.cn/index\\_article/content/2009-12/27/content\\_2011706.htm?node=5955](http://www.legaldaily.com.cn/index_article/content/2009-12/27/content_2011706.htm?node=5955), visited on January 15, 2010. The statistics are for lawyers in practice, excluding those who have passed the National Judicial Examination but have not practiced law as lawyers.

<sup>7</sup> Data source: the Website of Legal Aid Department: "2008 National Legal Aid Work Statistics Analysis," [http://www.moj.gov.cn/flyzs/2009-04/07/content\\_1066224.htm](http://www.moj.gov.cn/flyzs/2009-04/07/content_1066224.htm), visited on November 5, 2009.

<sup>8</sup> Materials from the Ministry of Justice's research office confirm these findings. In developed cities like Shanghai, fees for grassroots legal services are around 1% of those charged by lawyers; while in underdeveloped places like

Gansu, the rate is around 10%. Data source: Yan Junxing ed.: Study on Multi-Polar Rural Dispute Handling Mechanism (多元化农村纠纷处理机制研究), Law Press, 2005.

knowledge and practical skills cannot be compared with lawyers. The effectiveness of legal services staff in handling cases is further undermined by their unclear legal status and the absence of external oversight, as well as villagers' own lack of legal knowledge, poor access to information and organizations, marginalized status, and difficulties in communicating effectively with legal services staff.

In some poor townships the directors of justice departments may also provide paid legal services from legal services offices. The income from these services can be very good, allowing them to buy houses in county towns and even own private cars. Some legal services offices hire one to two legal services workers whose costs are covered by their own revenues. They pay certain "management fees" to the county Justice Bureau to subsidize the justice department's office expenditure, and they are also responsible for carrying out certain administrative and public-interest affairs designated by the Justice Bureau<sup>9</sup>.

<sup>9</sup> The Regulations on Legal Aid (enacted on September 1, 2003) does not specify whether legal services offices are obligated to undertake legal aid. According to Article 3 of the Temporary Management Rules on Legal Aid Work by Lawyers and Grassroots Legal Service Workers (issued on September 9, 2004), "grassroots legal service workers should handle a certain amount of legal aid cases each year as designated by legal aid institutions." Article 5 of Hubei's Legal Aid Rules (implemented on August 1, 2003) states that "legal service workers are encouraged to participate in legal aid activities." In practice, justice departments often dispatch legal aid work to legal service offices. Surveys in Sichuan, Shanxi and Shanghai also demonstrate the separate but mutually dependant relationships between legal service offices, justice departments and legal aid stations, as well as the complementary and competitive relationship between legal

Since they lack formal qualifications, legal workers are not certified lawyers and, therefore, cannot handle criminal cases for their clients. Though they do not compete directly with lawyers, the latter largely exclude them from membership of the legal profession. Moreover, lawyers have attempted through policy, laws and regulations to restrict competition, rather than support the role of legal workers and their opportunities to take cases. In recent years, official policy and local governments have adopted a "laissez-faire" attitude towards grassroots legal services offices. They have encouraged the offices to become separate from Bureaus of Justice, but no new legal services offices are to be approved at urban or rural levels; existing workers in legal services offices are expected to gradually migrate to law firms or legal aid institutions with the result that legal services offices will eventually disappear.

### 3) Justice Departments and Legal Aid Institutions

Current laws and regulations in China define the legal aid system as free legal assistance to protect the rights and interests of clients facing economic hardship, or in other specified situations; and, delivered by legal aid workers, legal services workers, lawyers or legal aid volunteers in government established legal aid organizations or social organizations.

Since 2004, in cooperation with local justice departments, Hubei government has established legal aid working stations at the township



level with staff working under “many hats”. In the poor counties covered by this project, most Justice Offices only have one to two workers, who shoulder a huge administrative workload including general judicial administration, dispute mediation, law publicity and education, the settlement and education of people released after serving prison sentences, community correction and sentencing, community “comprehensive governance” and “stability maintenance”.<sup>10</sup> Moreover, in many underdeveloped regions, legal aid working stations and Justice Bureaus are not separate from local legal services offices. While this arrangement helps to provide additional financial and human resources for grassroots legal aid, it also obscures the distinction between legal aid and paid for legal services and undermines the commitment of legal workers to providing legal aid. Despite the Ministry of Justice's efforts to promote legal aid as a free service, in practice, villagers find it hard to differentiate between legal aid and legal services. Legal aid workers tend to prefer to first provide paid-for legal services, albeit at a low price.

In terms of scope, in practice nationwide, the policy of “providing aid to everyone who deserves aid,” through increasingly lowering the threshold and expanding the range of eligible cases has enabled more and more indigent claimants to benefit from legal aid in civil cases. Financial thresholds for qualifying for legal aid are set locally and normally with reference to the local minimum living guarantees. Proof of financial hardship is provided by village committees. However, in cases concerning unpaid wages for migrant workers, work injury compensation and serious traffic accidents there is no requirement to prove financial hardship. In other migrant worker-related cases the criteria have been relaxed to the lowest income levels.

Data provided by the Ministry of Justice distinguishes between five types of legal aid providers: workers in legal aid institutions, lawyers, grassroots legal services workers, members of social organisations and registered legal aid volunteers. In practice, the provision of legal aid is diverse and flexible. In line with the current level of economic development in China, such a model is able to mobilize limited resources and deliver the maximum amount of legal aid to society as possible.

Funding of legal aid has been rising steadily since 2005. In 2008 the total national fund for legal aid was 682,498.6 million yuan, 28.2% higher than 2007.<sup>11</sup> However, most township Justice Bureaus in the areas covered by this project lacked annual funding for discretionary office

services offices and law firms. Fu Yulin, “Current Situation and Development of China's Grassroots Legal Services” (中国基层法律服务现状与发展), in Fu Yulin ed. *Rural Grassroots Legal Services Study* (农村基层法律服务研究), China University of Political Science and Law Press, 2006, pages 19-45.

<sup>10</sup> The Suggestions on Further Strengthening Construction of Township Justice Department issued by the Justice Ministry in 2009 specify that a justice department is an agency under the county (city and district) level Justice Bureau, responsible for guidance, management and organization of judicial administrative matters in its jurisdiction. It mainly has nine tasks: (1) provide guidance for the management of mediation, participate in the mediation of complicated civil disputes; (2) Undertake everyday work of community correction, organize and develop the management, education and assistance of people with non-imprisoned punishment; (3) guide the management of grassroots legal service work; (4) coordinate relevant departments and units to develop settlement, education and help of people released after serving a fixed sentence; (5) organize and develop law education and publicity; (6) organize and develop grassroots law-abiding governance, provide suggestions for

administration and management of township people's government (street office) according to law; (7) assist grassroots government in dealing with social conflicts and disputes; (8) participate in social security and comprehensive governance; (9) fulfill social stability related work designated by the superior judicial administration department and the township people's government (street office).

<sup>11</sup> Data source: the website of the Legal Aid Department of the Justice Ministry: "2008 National Legal Aid Work Statistic Analysis," [http://www.moj.gov.cn/flyzs/2009-04/07/content\\_1066224.htm](http://www.moj.gov.cn/flyzs/2009-04/07/content_1066224.htm), visited on November 5, 2009.

<sup>12</sup> In dealing with a cross-region case, legal aid workers normally travel together with their client or his or her friends and relatives. They would choose the cheapest transport and accommodation. Our project's volunteers were often moved by these stories during follow-up visits. For example, a legal aid worker went to Shanghai for a case. He stayed in the cheapest hotel. It was hot. After his client left, he paid money out of his own pocket to ask the hotel boss to turn on his room's air-conditioning. Another legal aid worker went to Shenzhen. He did not know the directions but chose to walk in order to save the cost of a taxi.

expenses and case handling. Case subsidies for grassroots legal aid workers do not cover cases they accept on their own, without having been approved and dispatched by county legal aid centres. These cases may be billed as legal services (there could be around 50 such cases every year) or be provided pro bono as legal aid cases (between 1 to 20 cases a year). The number of cases varies across different townships. Subsidies for officially approved or mandated cases cover approximately 100 to 150 cases a year in each county. A 100 to 500 yuan subsidy is provided based on the complexity of the specific case as determined by the relevant director in the county Justice Bureau. In a very small number of serious cases which involve other provinces, the subsidy may be as much as 1000 yuan. With cases that span different regions, the client or his or her relatives would normally cover the transport and accommodation expenses for the legal aid worker<sup>12</sup>; while legal aid workers would assume such costs if the case is a local one.

### 3. Current Situation of Government Legal Aid

As a result of the project's field visits, the current situation of government legal aid in China can be described as follows:

- 1) Rural legal aid has become increasingly important. Legal aid workers' success rate in dispute resolution is quite high. 61% of interviewed legal aid workers reported an above 80% success rate. In recent years, legal aid workers have acquired a more neutral and authoritative status and are better able to win the trust of both sides; many make an effort to become familiar with local language and customs, and they have increasingly rich experience in case handling. This has strengthened their ability to understand and help resolve disputes and conflicts at a relatively low cost and prevent their escalation; they indirectly help protect villagers' interests and community traditions. But, public awareness of legal aid remains limited. About 80% of villagers reported learning about legal aid through legal aid workers or village cadres. With regard to the nature of legal aid, almost all legal aid workers described it correctly as legal assistance for people in economic difficulty. But nearly a quarter of village cadres could not describe the difference between legal aid and general legal services.

Surveys made by the Ministry of Justice and the State Statistics Bureau in 2008 showed that awareness of legal aid among low-income residents was low. The proportion of people who had "heard about" legal aid among three groups, namely, families with an income equivalent to or

less than 300 yuan per month; people who had not received compulsory education; and rural residents who receive “five-guarantee subsistence” (*wubao*, 五保) were respectively 32%, 16% and 25%, much lower than the societal average of 57%. Sixty four percent thought legal aid was inconvenient because they “cannot find the legal aid centre”; 53% thought the “legal aid application procedure too complicated”; and 37% said “I do not have the number or cannot get through”. In particular, low-income respondents and relatively-high-income respondents, the unemployed, people without compulsory education, women, rural and central China residents cited “I cannot find the legal aid centre” as the main reason for finding legal aid impractical, while students and rural residents cited “the application procedure is too complicated”.<sup>13</sup>

- 2) The most common form of rural legal aid is dispute mediation, followed by legal consultation and legal representation in lawsuits. The least common forms of assistance include writing legal documents and legal information (*fazhi xuanchuan*, 法制宣传). With regard to the priorities for legal aid, legal aid workers deemed dispute mediation (49%), legal representation in lawsuits (22%) and providing guidance for aggrieved farmers about legal aid procedures (11%) as the top three, while village cadres thought dispute mediation (46%), law lectures (21%) and providing guidance for aggrieved farmers about legal aid procedure (14%) as the top three. Other tasks such as providing legal advice and court documents also appeared in answers provided by both groups of respondents.
- 3) The legal aid work load. A majority of legal aid working stations (84%) handled less than 30 legal aid cases annually. Among those surveyed, 63% of respondents were full-time legal aid workers while the other 37% worked part-time on legal aid. On average, around half of those surveyed worked eight hours a day and many of this group worked much longer hours. In field visits, observers witnessed clients who sought consultation with the head of the local Justice Bureau on weekends. Nearly 80% of legal aid workers surveyed thought their work of dispute mediation and case handling was “tiring” or “very tiring.”
- 4) Legal aid workers' perceptions of their effectiveness. Analysis of the relationship between legal aid workers' perceptions of their success and other factors indicate that only the use of “effective measures” and the time spent on each case correlated positively. Other variables such as the clients' background and circumstances, including gender, age or education level, or workload, did not seem to have a significant impact on the legal aid workers' effectiveness.

<sup>13</sup> Data source: website of the Ministry of Justice: [http://www.legalinfo.gov.cn/moj/index/content/2008-08/05/content\\_916582.htm?node=7345](http://www.legalinfo.gov.cn/moj/index/content/2008-08/05/content_916582.htm?node=7345), visited on April 22, 2010.

on the legal aid workers' effectiveness.

- 5) Legal aid workers' self-evaluation. Legal aid workers tend to think highly of their communication skills with approximately 75% of respondents rating them “relatively strong”; they also rated highly their ability to learn, their professional skills and their ability to write. Their self-evaluation of their ability to obtain information was the lowest with only about 60% rating them strongly. Legal aid workers in townships cited specialized books and the internet as the most commonly-used sources of legal knowledge while TV and training were the most popular sources of information for legal workers in villages. The use of the internet for information was on the rise, particularly in townships; while pamphlets were increasingly being used to share information in villages. Other sources of information for legal workers included consulting with experts, radio, newspaper and magazines.
- 6) Needs of legal aid workers. The top three needs cited among legal aid workers were adequate funding, higher level (government) support, and training and education opportunities. Village-based respondents most wanted villagers' understanding and support, attention from senior officials and training opportunities. With respect to funding, legal aid workers wanted subsidies for case mediation and office costs. The most needed hardware included office stationery, a permanent office and promotional materials. In addition, respondents noted that a motorcycle and computer would help them improve their efficiency while the “software” of legal knowledge could help them improve the quality of their work. The top three areas of knowledge that legal aid workers wanted to improve on included the Compulsory Education Law, the Regulations on Administrative Penalties for Public Security and the Inheritance Law. For village respondents, these were the Compulsory Education Law, compensation for property damage and the Inheritance Law. Other areas of law on which they also expressed the need to learn more included Marriage and Family Law, debt, Property Law, the Land Administration Law, the Personal Injury Compensation Law, the Consumer Rights Protection Law, the Labour Contract Law, the Civil Procedure Law and the Environmental Protection Law. In addition, legal aid workers wanted to learn farming techniques, foreign languages, writing, driving, the use of computers<sup>14</sup>, and negotiation skills.

<sup>14</sup> In a follow-up field visit, we discovered that in a township justice department with standard equipment (a relatively big office with essential office equipment), the computer was old and the printer/copier operated in English, impeding legal aid workers' work

#### 4. Commentary

Due to the rapid transitions in Chinese society, rural disputes have increased

and become more varied and complicated. They include not only traditional disputes concerning marriage, family, neighbours, debt and credit, but also administrative disputes arising, in particular, from a combination of village self-governance, the relatively recent development of rule of law and the low level of skills among grassroots officials. Other disputes such as work-related injuries and diseases, land requisition, and environmental pollution are the result of industrialization and urbanization. The number of disputes, the scale of people involved, and their complexity and severity, have reached a level not seen before. However, there are also multiple channels for resolving disputes and a wide range of local sources of knowledge and authority are involved. Villagers have begun to realize that more institutionalized solutions are more effective. Nevertheless, we cannot afford to ignore the importance of informal channels in dispute resolution, such as the use of relatives, friends and unofficial authority. The exclusion of poor villagers from the judicial system denies them access to justice; this is also likely to result in misunderstandings and grievances as those excluded suspect that judicial decision makers are complicit in illegality or corruption.

The legal aid system has developed against this backdrop. In addition to the fee-paying legal services there is now a range of mechanisms linked to the grassroots judicial system which can help to resolve the growing number of rural disputes. But, the current grassroots legal aid system is monolithic and has too many functions. Too few staff, low levels of capacity, insufficient funding and policy limitations also contribute to a lack of effective provision and poor quality of legal aid services. The project also examined the skills and knowledge of legal aid workers and found that they had an uneven understanding of the law and were unable to cope with a stream of seemingly endless practical problems. From questions on damage caused by rearing animals to labour relations, their knowledge of the law was low. Grassroots legal workers were unfamiliar with basic legal theories and the concept of rule of law; they found it hard to select the right rules to deal with disputes. In many situations “folk” law “corrodes” the state law<sup>15</sup>.

Since mediation makes up the bulk of available legal aid services, special attention should be drawn to its function and limitations. Firstly, legal aid workers view the outcome of 80% of mediation cases as a reasonable compromise made by both parties. “Informal” rules, such as face, sympathy and courtesy are also considered legitimate reasons for making a compromise by one or both parties. If one party, however, has more social, economic and political clout, the other party will be more likely to have to give way. Secondly, mediators may be the representative of one party in the

efficiency. Trainees seldom use email or visit registered legal forums with the result that their capacity to acquire legal knowledge via the internet is limited.

<sup>15</sup> Take the director of a township legal aid centre as an example. He is an outstanding lawyer with rich practical legal experience at the grassroots. He was faced with the tension between labor contract law and local customs: a local plasterer asked someone to help him in a decoration job based on “equal pay for equal work.” But the person who helped him sustained an injury. A dispute about the medical fees arose among the three

parties. In mediation the director suggested that the plasterer and the home owner should each assume 40% of responsibility and the injured 20%. The director admitted that he could not ascertain the legal relationship among the three. The judge felt the same way.

<sup>16</sup> Refer to Fu Yulin, "Current Situation and Development of China's Grassroots Legal Services" (中国基层法律服务现状与发展), in Fu Yulin ed. Rural Grassroots Legal Services Study (农村基层法律服务研究), China University of Political Science and Law Press, 2006, page 54.

<sup>17</sup> We did not make any request on gender when we did the pilot training. In the end, there were only four women out of 80 people selected by various county judicial institutions. Later we made the request to include more women, but they only accounted for 20% of all trainees. The message we got from various counties was: "we have no more women colleagues."

legal aid case or the director of the Justice Bureau. This conflict of interest can erode the mediator's authority in settling the dispute. Compared with the "official" and "compulsory" nature of litigation, the "folk" and "consensual" nature of mediation is both its strength and weakness<sup>16</sup>. The health of the decades-old system of mediation should not be subject to short term policy changes and demands. It should be able to occupy its proper place in the development of the rule of law while nevertheless taking into account the reality of disputes.

Another noteworthy issue is the gender imbalance amongst legal aid workers and the problems in protecting the rights of rural women. There are very few women legal aid workers at the township level<sup>17</sup>. This suggests that women's ability and authority to participate in dispute resolution and public governance has not been acknowledged. The lack of women legal aid workers would seem to be an obstacle to the protection of rural women: among the legal aid workers surveyed many thought "domestic violence" was not a serious issue in rural areas. Overcoming men's dominance in the legal community and the lack of gender awareness in traditional society remains a daunting task.



## II Analysis of Issues Facing Rural Justice in China

The challenges facing the rural justice in China can be analyzed on different levels.

### 1. Economic and Social Transition

Since the beginning of the reform period, China's economy and society have undergone a period of rapid transition, yet economic and social development in the countryside continues to lag behind. The establishment of a market economy, the reform of the planning system, and the migration of rural labour to cities has failed to mitigate the inequalities brought on by development. On the contrary, the urban-rural gap has widened and social injustice has become more prominent. Rural voices are marginalized and most farmers have not been able to participate in the growing social mobility, influence public decision-making and share equitably in the fruits of development.

Farmers and migrant workers live in a world still largely based on personal contacts where a society ruled by law is not easily distinguished from a society rooted in social relations. When their rights are violated, villagers still turn to personal contacts within a familiar and traditional “hierarchy” for assistance. Consequently, most migrant workers return to their hometown to seek legal aid or, with the support of friends and relatives, to petition higher levels of government.

Moreover, farmers' knowledge of the law is weak and their understanding of their rights is flawed<sup>18</sup>. Farmers' sketchy information about the law is acquired through TV, pamphlets, anecdotes of cases and rumour. Such sources may reinforce a belief that only the “law” will help them. But they have very little understanding of concrete procedures, the basis for making claims, or the validity of a judgment. For example, an injured migrant worker may expect to receive the same amount of compensation as was received by a victim in a case he or she has heard of but in a headline-making case there will often be other factors accounting for high levels of compensation. Some victims persist with the objective of securing the same levels of compensation for a case with very similar conditions, but this may be very unrealistic and can result in the relationship between the grassroots legal aid worker and his/her client breaking down. As a consequence many

<sup>18</sup> Zhao Xudong's investigation in Li Village Hebei makes the same point. See, Zhao Xudong: *Legal Awareness and Grassroots Legal Services*, (法律意识与基层法律服务), published in Fu Yulin ed. : *Rural Grassroots Legal Service Study*, (农村基层法律服务研究), China University of Political Science and Law Press, 2006, pages 206-207, and “Investigation and Reflection on Current Rural

Law Publicity Education in Maiji District”, (对麦积区当前农村普法教育工作的调查与思考), in Jia Wuguang ed.: *Collection of Legal Aid Review Reports and Theoretical Studies*, (法律援助考察报告及理论研讨论文集), Fangzheng Press, 2008, pages 414-416.

villagers turn to petitioning rather than the law, despite the fact that petition offices and the system of petitioning cannot resolve most problems.

The more developed the economy, the greater the level of market penetration, division of labour and mobility, the higher the demand for specialized legal services. Legal services are an indispensable part of modern life; a modern pluralist society needs to draw on a uniform legal system to resolve the range of rights-related disputes that arise. In today's China as a result of economic and social inequalities, legal services in the rural areas are scarce and for many an unaffordable luxury. Therefore, legal aid must develop in parallel with the market economy in China in order to support the rule of law and the harmonious development of society.

## 2. Transformation of the Legal System

Resource distribution underpins social stratification and legal transformation; equally legal transformation can influence social stratification. A legal system that can maintain social mobility helps provide the structural basis for social equity. But unlike the market transformation in the countries of the former Soviet Union which took place against a broken political system, the reform in China has not been promoted via legislation and formal institutions, but through an informal and flexible process of institutional change<sup>19</sup>. In this process of transformation, grassroots democracy remains weak and local protectionism and corruption abound. A social security system is yet to be fully established and in the poorer rural areas it is difficult to guarantee social welfare to elderly people left on their own or abused women and children. In these areas, the legal system struggles to help migrant workers suffering from work-related injuries or illness seek compensation or deal effectively with injured victims who have few resources of their own; yet, failure to address these kinds of challenges brings other problems. The Chinese legal system lacks small claims courts and an independent judiciary. The law is out of step with the situation on the ground. Folk law continues to operate on the margins of state law and “bad men” continue operating outside the law. Good laws have not been properly implemented.

The old order has been destroyed but the new legal order has not yet been established. The legal system has huge gaps and contradictions; it lacks independent decision-makers; professional practitioners are ignorant of ethics and rules; and clients continue to distrust the law. China's transformation to a market economy has failed to deliver a democratic

<sup>19</sup> Sun Liping: *Practical Sociology and Market Transition Process Analysis* (实践社会学与市场转型过程分析), in *Social Science in China*, 5th volume, 2002.



political system and a smooth road towards the rule of law.

### 3. Micro Level: Making Rights a Reality

#### 1) Farmers and Migrant Workers

- ※ From the perspective of farmers and migrant workers, legal publicity efforts have increased their awareness of the law and their rights. However, this new knowledge has not been able to protect them from rights violations arising from their poverty and vulnerability.
- ※ The growing complexity of rural life, the increasing number of migrant workers and the relaxation of legal aid criteria will inevitably lead to more grassroots cases.

#### 2) Legal Aid Workers

- ※ More than 64% of legal aid workers are older than 35. Most of those with a three-year-college degree or above obtained their qualifications through self-study. They have usually worked for a long time at the grassroots level, they lack training and have limited knowledge or broader experience<sup>20</sup>.
- ※ The administrative status of legal workers is unclear. In some poor counties, the director of the county legal aid centre only has the rank of a section head (*zhengguji*, 正股级) while the director of a township justice department is an assistant division head (*fukeji*, 副科级). This is the same or a slightly higher rank compared to the director of the legal aid centre who is, nevertheless, expected to supervise the services provided by the township level. The effective management of local legal aid is difficult with such low and confusing administrative rankings.
- ※ Legal Aid Workers do not take initiatives in handling cases. There is inadequate supervision by the higher levels of the Bureau of Justice to ensure that cases are handled according to the law or administrative policies. There is too much emphasis on the quantity of cases and too little attention devoted to quality control; there are also too few material or other incentives. On the one hand, society's expectations, the praise and encouragement of their clients and the policy relevance of their work make legal aid workers proud of their job and their confidence can be enhanced by continuous training and learning. However, leaders and colleagues within local government departments do not appear to understand the significance of their

<sup>20</sup> Among 458 township-level respondents, those that were 25~36-years old made up 33.4%, 37~46-years old made up 50.4%, 47~55-years old made up 13.9%. There were 156 college or above degree holders, accounting for 31.3%; 230 three-year college degree holders, accounting for 46.1%, 53 high school or specialized middle school graduates, accounting for 10.6%, 3 middle school graduate, accounting for 0.6%, missing information for 57 people, accounting for 11.4%. Among interviewed three-year college or above degree holders, 70.7% were law students while the other 29.3% graduated in fields other than law

<sup>21</sup> Benjamin L. Liebman, Legal Aid and Public Interest Law in China, Texas International Law Journal, 1999, 34, p. 276.

### 3) Lawyers

- ※ There are too few economic, tax or reputational incentives to attract “profit-driven” lawyers and law firms to provide legal aid in rural areas.
- ※ There is also too little political or policy space for “pro bono” lawyers and law firms to provide legal aid<sup>21</sup>.
- ※ Legal aid tasks or targets are allocated by the government and have a strong planning tinge; moreover the government does not take into account the variable costs incurred by different lawyers and law firms in providing legal aid. The deployment of lawyers, a scarce resource, is neither rational nor efficient.

### 4) Social Organisations

- ※ There are many social organisations directly managed by the government. The Communist Youth League, the Women's Federation, the China Disabled Persons' Federation and the All China Federation of Trade Unions are responsible for protecting the rights of their respective memberships. But they lack the capacity to provide specialized legal services and do not have a case management system. Consequently, their practical contributions are limited and their involvement may even compound the difficulties for vulnerable groups to obtain legal aid.
- ※ University legal aid groups can only handle a limited number of cases. Their other disadvantages include a lack of experience among volunteer students, insufficient supervision by teachers and an unclear legal status.
- ※ Grassroots NGOs, with their limited funds and social status, cannot easily benefit from the guidance and advice of professional lawyers. Secondly, the Rules on The Administration of Social Organizations constrain the operation of NGOs through placing restrictions on their legal status and fundraising which make it difficult for NGOs to act and secure funds to support their development. Lastly, grassroots NGOs lack sufficient capacity. Those NGOs whose mission is to provide legal aid, find it hard to use citizen action or the management of projects to develop their own leaders and supporters, they also lack research and development skills; externally, they lack both the ability and communication channels to advocate effectively to government.

### III A New Perspective: Legal Empowerment

In the minds of most Chinese as well as the relevant literature in China, legal aid is the answer to resolving the problem of why the vulnerable find it “hard to go to court.” However, more recently, reflections on the “law and development” movement and the “development lawyering” practices in many Southeast Asian countries, have led scholars, such as Stephen Golub, to propose a concept of legal empowerment to supplement or even substitute for conventional legal aid. These ideas have been influential on law and development programming and were taken up by the UN Commission on Legal Empowerment of the Poor. Our work has tried to draw on the principles of legal empowerment in the design and implementation of this project. We intend to use the concept of legal empowerment to help redress the patronizing view that legal aid is some kind of charity. In this section of the report, we briefly introduce the concept of legal empowerment, the evolution of this idea, its significance and the main features of such an approach.

#### 1. The Concept of Legal Empowerment

There are different definitions of legal empowerment<sup>22</sup>. Generally speaking, the term refers to the use of legal approaches, including litigation, to help the poor promote their rights and interests in order to eliminate poverty and improve their quality of life. Legal empowerment is intended to enable the vulnerable to learn how to use the law “as a weapon”. Empowerment has been described as an “expansion in the ability to make life choices”. The concept not only addresses the question of individual capacity, but also the context the relations of power in which the individual operates. The purpose of legal empowerment is to enable the poor and excluded to use law, the legal system and legal services to protect and advance their rights and interests as citizens and economic actors. Building on rights-based approaches to development, legal empowerment tackles the elimination of poverty not only through economic growth, but also through improvement in the protection of the rights of the poor.

#### 2. The Evolution of the Concept of Legal Empowerment

Society has long recognized the role of law in development. The concept of legal empowerment has emerged from a lengthy history of ideas and practice

<sup>22</sup> Domestic scholars often translate empowerment as “increasing rights” (*fuquan*, 赋权). This report does not agree with this translation and instead translates the word as “increasing capacities” (*funeng*, 赋能). A detailed justification has been published elsewhere. The content in this section draws on Making the Law Work for Everyone published by the Commission on Legal Empowerment of the Poor, Volume 1. Readers and researchers who are interested in legal empowerment may read: Asian Development Bank, Law and Policy Reform at the Asian Development Bank, Legal Empowerment: Advancing Good Governance and Poverty Reduction, Manila: Asian

Development Bank, 2000; J. Bruce, et al, Legal Empowerment of the Poor: From Concepts to Assessment, ARD Inc. for USAID, 2007; S. Golub, "The Legal Empowerment Alternative," in Promoting the Rule of Law Abroad, In Search of Knowledge, edited by T. Carothers, 161-191. Carnegie Endowment for International Peace, 2006; S. Golub, "Legal Empowerment: Impact and Implications for the Development Community and the World Bank," in The World Bank Legal Review, Law, Equity, and Development, Volume 2, edited by C. Sage and M. Woolcock, 167-184, Martinus Nijhoff, 2006; S. Golub and K. McQuay. "Legal Empowerment: Advancing Good Governance and Poverty Reduction," in Law and Policy Reform at the Asian Development Bank, 2001 Edition, edited by Asian Development Bank, Asian Development Bank, 2001; D. Banik, "Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication," Hague Journal on the Rule of Law, vol.1, no. 1 (2009): 117-132.

on the contribution of law to development. It can be briefly summarized as follows:

- Development theory in the 1950s and early 1960s was dominated by the idea of successive “stages of economic growth”. Its leading proponent, the American W. Rostow, advocated the mobilisation of domestic and foreign savings to generate sufficient investment to take a country from the early “stages” of a “traditional society” through “take-off” to self-sustaining growth. Modelled on the Marshall Plan in which American financial aid had helped the war-torn countries of Europe to rebuild, the policy to inject capital and technical assistance to the poor countries of Asia and Africa largely failed. One of the reasons for this failure was understood to be the absence of the necessary institutional conditions to help convert capital into growth.
- Against this intellectual background a “law and development” movement emerged in America in the 1960s in which donors, such as the US Agency for International Development and the Ford Foundation, funded reform of the judicial systems and laws in many developing countries of Africa, Asia and Latin America.
- The underlying assumption of the movement was that law was central to the development process; lawyers and judges were seen as key actors in social reform and more professional training was assumed to be the solution to the perceived gap between law and practice. Before long the movement was deemed to have been a failure: it had no coherent theory of how law would promote development and its efforts to transplant American legal practice were deemed naïve and insensitive to local cultures.
- By the 1970s development theory had begun to take account of the complexities of the development context in which poor countries had to operate in an international system characterised by unequal power relationships and structural economic rigidities. The development thinking that emerged placed more emphasis on structural and institutional reforms to eradicate absolute poverty and efforts to promote employment, education and health rather than an exclusive focus on GNP growth.
- The law and development movement's top-down focus on the formal institutions of the judicial system was also challenged by the emergence in the 1990s of rights-based approaches to development and influential participatory studies such as the World Bank's “Voices of the Poor” in which poverty came to be understood as the experience of multiple forms of vulnerability and not just a shortage of funds. There has been a growing recognition of the need for the poor, themselves, to have

effective legal protection and for their rights, physical security and assets to be protected by law.

- In 2005, with the support of a number of developing and industrialised countries, an independent, international body was established to explore the concept of legal empowerment and make recommendations for development policy. The Commission on Legal Empowerment of the Poor was comprised of 21 Commissioners, including former heads of government, economists, jurists and senior policy makers from all regions around the world. The Commission worked from an understanding that poverty is manmade and represents a failure of public policies and markets. It noted that most poor people are not protected by the law and cannot benefit from the opportunities it provides.

### **3. The Significance of Legal Empowerment**

The report published by the Commission on Legal Empowerment of the Poor in 2008 pointed out that legal empowerment is not just a matter of emancipating the poor; it also offers greater prosperity and security for society as a whole:

- The prosperity of rich countries is created through a variety of sophisticated instruments and norms such as limited-liability companies, partnerships and cooperatives, labour contracts all of which rely on an effective framework of law and functioning institutions. Such a framework also offers effective resolutions of disputes and realization of equity and justice.
- Legal empowerment is good economics. Only through participation and creativity can the poor realize development. By providing security and opportunity, we can unleash their energy and creativity, eradicate poverty and promote economic growth. Justice demands it, and so does development.
- Legal empowerment is smart politics. Legal empowerment bolsters the state's effectiveness and legitimacy, and thus that of its officials and representatives at all levels. Bold leaders that champion the legal empowerment of the poor will attract extensive support.
- Legal empowerment promotes gender equality and helps address the poverty and rights violations caused by gender discrimination.
- Legal empowerment finds its normative basis in globally agreed standards of human rights and should always meet or exceed these global standards. Human rights should guide the legal empowerment process at the national and local level.
- Securing land and resource rights for the poor can combat poverty as

well as environmental degradation. The poor depend more directly on their local environment for their day-to-day survival than the rich. It is therefore easier for the poor to engage in the rational and sustainable development and protection of natural resources.

#### **4. Legal Empowerment Strategies**

Compared with orthodox top-down development of rule of law, legal empowerment emphasizes a bottom-up approach. It is founded on the political, economic and cultural realities of a country's grassroots. It promises a choice of affordable mechanisms for the poor and greater support from stakeholders and the mobilization of peers.

The Commission on Legal Empowerment of the Poor's Working Group on Access to Justice and the Rule of Law identified four fundamental barriers to access to justice: i) lack of legal identity; ii) ignorance of legal rights; iii) unavailability of legal services; and iv) unjust and unaccountable legal institutions. The legal exclusion or denial of legal identity of large numbers of people is a serious and neglected problem which can make it impossible for people to receive basic services or the protection of the law. Legal ignorance is a problem that results from inadequate dissemination of information or deliberate obfuscation; poor people often do not know their legal rights or responsibilities. The Working Group recognised the need to improve legal knowledge among poor communities, but also for the justice system to meet the rising expectations of the poor and become fairer, more efficient, transparent and accessible.

The poor are excluded by law for many reasons. The situation varies sharply in different countries. But, the following four issues are commonly found in all countries:

- The poor cannot be legally empowered if they are excluded from a sound and working judicial system.
- The majority of poor around the world lack effective property rights. The inherent economic value of their property remains underexploited.
- The poor (particularly women and children) are often found in unsafe working conditions as their employers operate outside the formal legal system.
- The poor lack economic opportunities as their property and businesses are largely unrecognized by law. They do not have access to credit and investment and cannot enter local and global markets.

Our project has found that an effective legal empowerment strategy consists of the four pillars below:

- **Access to Justice.** If the poor cannot use the judicial system to increase their relative power, then the best laws are just a set of empty promises. Therefore, reform of public institutions and eradication of the legal and administrative barriers to the poor's access to justice are crucial. These include, but are not limited to:
  - ※ Effective, affordable and accessible alternative dispute resolution mechanisms.
  - ※ Simplification and standardization of the law; legal publicity campaigns that target the poor.
  - ※ A powerful legal aid system with multiple legal service providers including paralegals and law school students.
- **Property Rights.** Secure and accessible property rights not only protect economic assets, but also the identity and dignity of the poor. Promoting property rights includes, but is not limited to:
  - ※ Institutionalizing property rights management; and promoting an inclusive system of property rights.
  - ※ Creating a functioning market for the exchange of assets that is accessible, transparent, and accountable.
  - ※ Broadening the availability of property rights, including security of tenure, through social and other public policies to provide access to housing, low-interest mortgages and state redistribution of land.
  - ※ Formulating laws for compulsory resettlement, including fair and rational compensation.
  - ※ Recognizing all types of land ownership such as customary rights, rights of aboriginal residents, collective rights, and ownership certificates, including efforts to incorporate such customs into legislation.
  - ※ Conducting a national land audit, publishing the results and clamping down on the illegal appropriation of public land.
- **Labour Rights.** Labour is not only a means of production, it is also the physical investment of labourers in wealth creation. Around the world most of the poor have to make a living from working in unsafe, low-paid jobs in the informal economy. Promoting the poor's labour rights includes, but should not be limited to:
  - ※ Basic labour rights, in particular the freedom to form associations, the right to negotiate with employers, and non discrimination.
  - ※ Improving the quality of labour regulations and their implementation.
  - ※ Inclusive policies for social protection regardless of employment



<sup>23</sup> The Commission's report explained in a footnote that "business rights" need not to be seen as a new legal term but as existing rights relevant to individual small businesses. The word business has been combined with rights to produce a term which reflects the importance of these rights in the life of the poor. This report translates Business Rights as the "Rights to Do Business" (*jingshangquan*, 经商权).

status. Ensuring effective enforcement of labour rights (occupational health and safety, working hours and minimum wages) for workers in the informal economy.

- ※ Provide more education, training and retraining opportunities.
- Business Rights<sup>23</sup>. Around the world most poor entrepreneurs work in the informal economy and enjoy limited business opportunities. Guaranteeing basic business rights, including the right to vend, to have a workspace, and to have access to necessary infrastructure and services (shelter, electricity, water, sanitation) and helping SMEs to succeed are instrumental in poverty reduction. Promoting the poor's business rights must include, but not be limited to:
  - ※ Putting in place a proper legal and control framework, covering executable business contracts, private property rights and use of public space.
  - ※ Ensuring fair transactions between formal and informal enterprises and providing financial and business development marketing services for informal enterprises.
  - ※ Preparing incentives for small enterprises, including government procurement, tax breaks and subsidies. Providing social protection for informal entrepreneurs.

A legal empowerment strategy promotes the view that lawyers should work with the poor more as partners than clients and that the poor should be encouraged to influence public policy and priorities using both judicial and non-judicial strategies. The relationship between the formal legal system and informal customary laws needs to be more fully explored. The latter are popular in many rural areas and informal and customary procedures can be good for the poor. But they sometimes cause problems; they risk sustaining traditional power relations and discrimination against women and other vulnerable groups. Another issue to be explored is the use of legal mechanisms to improve government accountability in the delivery of public goods and social services.

In publishing its conclusions in 2008, the Commission recognised that although the methods of each country would vary, the goal should be the same "to enable and empower the poor to succeed both as individuals and contributors to the economic and social well-being of their communities". Legal empowerment of the poor, the Commission acknowledged, would not on its own "make poverty history", but, they argued, it was hard to see how it would be accomplished without it.



## Chapter Two | **PROGRAM**



## IV Project Implementation and Assessment

### 1. Action Research to Understand China's Grassroots

#### 1) Rights-based Approach to Development

A rights-based approach to development unites concerns for farmers' rights and development: rights are the foundation for development and development provides the means to realize rights. A key concept in this approach is the relationship between the rights holders (the villagers and farmers in this project) and the duty bearers (the government). Rights holders are entitled to demand their rights from duty bearers who, in turn, have a duty to fulfill their obligations. In this sense, the goal of legal empowerment is to help farmers obtain justice and realize their own development through understanding and claiming their rights.

#### 2) Participatory Development

Participatory development theory implies, firstly, the objects of development are also the decision-makers. They not only carry out development activities, but, as beneficiaries, they also participate in the planning, management, monitoring and evaluation of development projects. Secondly, participation implies that beneficiaries have some control over resources and are able to influence the system. Thirdly, participation implies a process by which the rural poor see an improvement in their enjoyment of civil and political rights, as well as economic, social and cultural rights. Fourthly, participation implies an equal partnership among all key social actors. Through participation in development rural knowledge and talents will be unleashed and farmers, drawing on substantive rights and equitable claims, will be able to create their own networks, improve their skills, manage resources and participate in decision-making.

During the project's detailed design phase, we drew on the methodology and tools of Participatory Rural Appraisals (PRA). The participatory methodology is transparent, can be localized, is simple and adaptable, yet also allows for a comprehensive understanding of systemic issues. In collecting information, project researchers held extensive discussions with local officials and villagers enabling everyone to reach a consensus and make a joint decision based on the evidence and the discussions. The PRA methodology includes problem analysis and stakeholder analysis. Applied tools include semi-structured interviews, individual case interviews, problem trees, a community social resources map, poor-rich

gap analysis, matrix scoring, a seasonal calendar, and SWOT analysis. The methodology demands sufficient interaction with different populations to obtain rich content and information in diverse forms.

### 3) Comparative Research

Comparative research was another form of analysis adopted by this project; this included drawing on international experience, detailed local studies and interdisciplinary research. At the beginning of the project, researchers made a field visit to the Philippines to draw on the experience of another developing country in establishing legal aid. As Fei Xiaotong said, "Rural life in China is local. The localism is defined by geographical limits on activities, little contact with other regions, an isolated life and restricted social circles"<sup>24</sup>. To this end, researchers paid frequent visits to rural areas to reflect on how legal theories and international legal aid models would be relevant. The project also drew on expertise from other fields for advice; the perspectives of sociology, anthropology, politics, and psychology all helped to inform our understanding of farmers' enjoyment of their rights and the design of practical training courses on rural legal issues.

<sup>24</sup> Fei Xiaotong: Rural China, Birth System (乡土中国与生育制度), Beijing University Press in 1998, page 23.

## 2. Training to Suit Rural Realities

1) The selection of the target and topics for training was based, as described above, on an understanding and analysis of farmers' actual legal needs.

※ Research revealed that farmers needed legal services in land, marriage and family, labour contract, medical and personal injury compensation disputes. Legal aid workers and village security and mediation directors are the major providers of these services. Therefore, offering practical legal training to this group of people would help improve farmers' access to justice.

2) Training "tailor-made" to meet the needs of legal aid workers.

※ Legal aid policy. Officials from Hubei Legal Aid Centre and local judicial administrative departments were invited to talk about the latest policies concerning legal aid. Their involvement not only provided trainees with the most up-to-date information, but also boosted trainees' self esteem through the attention shown by senior officials.

※ Legal knowledge. Textbooks and course materials designed for use in the training provided basic introductions to legal theory, a clear explanation of laws and regulations, examples of real cases and straightforward flow charts to help trainees to master legal knowledge.

<sup>26</sup> "The legal process should be treated as an educational process, awareness-increasing process, capacity-building process, organizing process and empowerment process." Fu Hualing, "Creating a Support Structure for Rights: Legal Aid and the Rule of Law in China," p20.

- ※ Meeting and mediation skills. Meetings are a basic element of legal aid workers' everyday job in handling cases and mediation is a common tool. Therefore, enhancing skills in these two areas was deemed to be critical.
- ※ Internet search skills. The law is constantly being updated and circumstances vary significantly between different cases and from region to region. Legal aid workers need to be able to use the internet to search for information that cannot be found in their textbooks and course materials.
- ※ Training lecturers. The project drew on a range of trainers and lecturers including officials from the provincial legal aid centre, lawyers, law school professors and PhD candidates. Training trainers' sessions strengthened the capacity of lecturers to draw on a broad base of experience and knowledge when training legal workers.
- ※ Training methodology. Legal aid workers are experienced adults and they bring to learning different motivation, attitudes and capacity for learning from university students. To deliver effective training in legal knowledge and practical skills as well as enhance understanding of the rule of law, special training methodologies were needed. Such methods included critical thinking, participation, interactive teaching, role-play, moot court, peer education, and watching videos. Guidance was provided on technical matters, such as the design of course materials, lesson planning, presentation skills including body language, team work, questioning skills, and similar teaching tools. The aim was to ensure that the training would encourage trainees to participate and to be more reflective; and would provide opportunities for a more egalitarian participation and sharing of experience. Lecturers were encouraged to use these various techniques flexibly in conjunction with the Trainee's Manual to work towards achieving the intended learning objectives.
- ※ Training feedback and improvement. Discussions about the training during the course and the completion of an evaluation form by lecturers and trainees provided feedback. Suggestions were also collected through post-training follow-up interviews to improve course quality.

### 3) Far-reaching impact of the training.

- ※ Improve legal techniques. Legal workers' legal knowledge and case handling techniques improved as a result of the training. In particular a better grasp of theory gave legal workers a framework for understanding their own experience and a firmer grounding in legal knowledge improved the quality of case handling.

- ※ Disseminate legal knowledge. Following training legal aid workers went back to their townships and with the support of the county Justice Bureau organized legal lectures for local township cadres and village Cadres. Furthermore, through interaction with their clients and by providing a better quality of legal service, legal workers also help provide public legal education.
- ※ Boost recognition. Through training and publicity at the local level, legal aid became better known and gained in prestige. This will help grassroots legal aid workers develop their future work and win more support from all levels of the government.
- ※ Raise sense of identification. Training has helped to improve grassroots legal aid workers' identification with and pride in their work and this has helped to strengthen their commitment to working in rural areas and on behalf of farmers.

#### 4) Support for a sustainable network

- ※ Establish a network of contacts. This network includes project taskforce members, trainees, lecturers, CPRDC, Hubei Legal Aid Centre and local Justice Bureaus. Members of the network can communicate through mail, email and phone as well as the PIDLI website. Following training, participants are encouraged to make use of the website or contact lecturers directly if they encounter any problems in their work.<sup>25</sup>
- ※ Promote interaction among peers. Trainees at each training session come from different grassroots judicial bodies. Our project encourages and enables legal aid workers to speak to and learn from each other and to exchange ideas. Local trainees and trainees from other counties can learn from each other; township legal aid workers, township trainees and village trainees can communicate with each other; joint discussions were held among legal aid workers, lawyers, notaries and clinical legal education staff and students.

### 3. A Replicable and Sustainable Training Model

The biggest achievement of this project is the development of a replicable and sustainable rural legal training model.

- Training content. The conduct of research and training in 30 of the poorest counties in Hubei provided us with a sufficiently extensive body of evidence and experience to understand the general situation and problems of the rural grassroots judicial system in China. The training courses and the training philosophy were both designed to suit the reality of rural areas and can easily be promoted in other regions.

<sup>25</sup> "In follow-up visits, we found that quite a number of grassroots legal workers called lecturers about difficult issues they encountered in work after the training.

- Training materials. The training materials reinforced lessons from the training and can be used for self-study. Results from participants' evaluations and follow-up surveys indicated that trainees found the training materials thorough and with sufficient detail on potential solutions to the range of common legal disputes in the countryside.
- Trainees welcomed the introduction to theory and the relevant institutions as well as the use of straightforward language to discuss difficult concepts. A focus on real life cases and practical solutions made the training materials relevant. The training materials went through extensive testing and revisions and can now be used nationwide.
- Training methodology. The project adopted new and diverse training methodologies. By training trainers, local lecturers, who joined the project at a later stage, were able to master the methodology and do a competent job.
- Training lecturers. In order to ensure the provision of local trainers the project drew on a range of local human resources namely, local universities' legal clinic teachers and lawyers from local law firms. Following training, both groups were well placed to meet the long term need for local trainers.
- Multi-stakeholder support. From the pilot program to the roll-out of training the implementation of the project benefited from the support of several key stakeholders. Firstly, the judicial administrative departments at all levels and other local officials provided valuable support to the training. Secondly, the project was able to draw on the resources of college law schools and clinical legal education. And finally, local lawyers and other legal elites were galvanized to participate.

#### **4. The Project's Multiplier Effects**

- Increased rights awareness. In addition to providing practical training for legal aid workers, the project also organized a large-scale campaign on “Bringing Legal Aid to the Countryside.” The project provided information on legal aid directly to rural families, thereby bringing “law to your doorstep”. The project also led to an improvement in the quantity and quality of cases handled by legal aid workers which further helped to promote rights awareness and trust in the law amongst recipients. Beneficiaries of legal aid were able to share their experience with other villagers further enhancing the project's multiplier effects and sustainability.
- The Public Interest and Development Law Institute (PIDLI). Wuhan University's PIDLI was established as a result of this project. It has developed rapidly: organizing inter-disciplinary field research, coordinating resources in law schools and legal clinic programs throughout Hubei, and building partnerships with local justice departments. PIDLI has and will continue to play an important role in promoting grassroots legal aid in Hubei.

## **V The Project's Difficulties and Challenges**

This project successfully trained more than 700 rural legal workers in all of Hubei's poorest counties and raised awareness of the importance of legal aid in rural areas nevertheless, in implementing the project we also encountered a number of challenges. Overcoming these challenges required the support of all stakeholders. The learning process of this project has been extremely valuable to PIDLI and, in the following section we outline these difficulties and challenges in the hope that future work in this area can draw on our experience.

### **1. Implementation**

The main implementing organization for the project was the Public Interest and Development Law Institute (PIDLI) at Wuhan University. However, it was not until June 2009 that PIDLI took on a full-time employee. In addition to their work for the Institute, academic staff had teaching and research commitments and student volunteers had to attend class. As a result no one was able to devote 100% of their energy to the project until a late stage. If the training described above is to be continued in the future, stable partnerships and organizational capacity need to be developed to manage the workload.

### **2. Follow-up Visits to Beneficiaries and Greater Attention to the Vulnerable**

The project organized two large-scale follow-up visits in August and December 2009; these provided an opportunity to understand the strengths and weaknesses of the project's training activities. However, since the target regions were remote and transport was inconvenient, the number of visits that could be carried out by the staff and students of Wuhan University Law School was limited. The project required a mechanism for collecting feedback that was much closer to those directly involved; for example, how could the project collect information from local beneficiaries. This would also enable the project to better address the needs of more vulnerable groups, such as women, children, the disabled and the elderly.

### **3. A More Appropriate Training Methodology**

This project introduced many novel training methods, but such new ways of



thinking cannot be implemented overnight. On the one hand, trainees were not at ease in the classroom while on the other hand, lecturers were not familiar with the reality of rural grassroots legal training. For example, it was challenging to introduce a training model which revolved around the trainees with lecturers playing a supporting role. Throughout the training, it was intended that trainees should identify the questions and then work to analyze and resolve problems themselves; the lecturers were to act as facilitators prompting ways of thinking and helping draw conclusions. This trainee-centred model not only draws on participants' own experience and knowledge, but also embodies the legal principles of democracy and equity. Understanding these principles is as important as mastering legal knowledge.

More work is still needed to develop cost-effective rights awareness-raising among villagers and develop an adequate, accessible, acceptable and adaptable methodology that could, for example, be regularly used by clinical law students and legal aid workers when they go to the countryside for legal publicity or mediation activities.

#### **4. More Diverse Training Content**

Legal aid workers need more than practical legal training. For example, they mentioned in the survey that driving a motorcycle would improve the efficiency of their work travelling around in the countryside. Not all social problems need to be solved via legal channels. Law is the bottom line or point of reference for people to protect their rights and interests and to keep life in order. Grassroots judicial work is not only about providing aid after a villager has been aggrieved, it is also about effective prevention. Delivering access to justice to everyone needs civil society and grassroots self-governing organizations to help provide private remedies and mutual help.

#### **5. Close Collaboration with All Stakeholders**

The current overall situation of legal aid provision is still fragmented. Different providers have different objectives and have followed different development paths. There is a lack of effective communication and cooperation and further improvement and consolidation among providers needs to be addressed. We should, therefore, explore building a network that will enable all stakeholders, including justice departments at all levels, law schools, law firms and NGOs to cooperate more closely.

## **6. The Gap between Demand Generation and Adequate Supply**

There is a potential risk that as demand increases for legal aid through greater awareness among farmers, the supply of legal aid services cannot meet aggrieved individuals' expectations for assistance in protecting their rights or settling disputes. This could result in greater frustration as those who come to learn about the law lose confidence in the rule of law

## **7. Capacity Building**

First, institutionalization. The institutionalization of volunteer recruitment, financial management and publishing and communications will ensure that organizations are not over-reliant on the personal ability and charisma of the founder, but can become sustainable.

Second, management capacity. This includes not only the internal capacity to manage projects, but also the capacity to conduct advocacy and build partnerships.

Third, human resources. Developing talent is at the heart of organizational development. We must be able to recruit more long-term professional researchers and attract volunteers in this area of work through combining opportunities for individual and institutional development. .

## Chapter Three | **FUTURE**



## **VI Development of Rural Legal Aid and Empowerment in China**

### **1. The Importance of Developing Legal Aid**

#### 1) The gap between the demand for and supply of legal services

Since China's reform and opening up and transition to a market economy, fundamental changes in economic, political and cultural fields have impacted on people's lives and rights. Conflicts and inequalities have emerged. China's reform has reached a critical juncture; building a harmonious society, fairness and justice have become the guiding principles for handling and resolving the conflicts arising from opposing social interests. In rural China disputes have become increasingly complex and secretive. Only by actively trying to understand the dynamics of rural disputes and building a holistic dispute resolution system, can we protect against future troubles, maintain social stability and promote the rule of law. The gap between the rising demand for legal services among villagers and the limited supply of such services has never been so large. Legal aid is the most important mechanism for redressing this shortfall.

Looking at the history of legal aid, there is an established consensus that the right to defence and free legal help is an integral part of human rights. The right to a fair trial has been included in numerous international treaties. The current Legal Aid Regulations state that the government is responsible for providing legal aid.

The government's legal aid agencies boast several advantages: first, they cover a wide network, extending into every township. With China's large area, vast population and unequal development, this coverage is essential. Second, the government's authority can ensure the provision of legal aid from start to finish, across departments and regions. Third, the hotline and mediation services are cheap, effective and able to handle large numbers of cases. Lastly, grassroots legal workers and the villagers with grievances may often be related or know each other; support and advice will be sympathetic and there is more likely to be an acceptance of finality when the case is closed.

#### 2) The significance of practical legal training

Most grassroots cases are not very complex. But the intervention of legal aid workers can be of great help to poor farmers who are at a loss.

Providing the necessary training and support to legal aid workers can further enhance the contributions they can make.

The majority of grassroots legal aid workers are not as “profit-driven” as lawyers. Largely because of their age, education level and attachment to the rural areas they prefer to provide legal services at the grassroots. Their situation should not limit them. Instead, like those who receive their services, they too should be empowered to be able to take advantage of opportunities. Training can provide grassroots legal workers with multiple incentives: greater efficiency, social acclaim and official honor, increased self confidence and personal development. Legal aid itself can become an attractive profession for grassroots legal aid workers as well as for newly graduated law school students.

### 3) Legal empowerment and development of law

The poor are not rich men without money. Providing vulnerable groups with legal aid can also be a process of education, awareness raising, capacity building, organizational and legal empowerment.<sup>26</sup>

Although government takes the lead in providing legal aid this does not necessarily mean that government should be responsible for all legal aid related matters. With the development of rule of law, a growing civil society is capable of sharing more of the legal aid workload. Local communities increasing capacity to self manage and self service offers the prospect of a more diverse range of legal aid for community members. The vulnerable not only need to know their rights, but also how they can claim remedies when their rights are violated. In other words they not only experience the authority of the law in person, but also the fact of equal justice in practice. Thus, the system for providing vulnerable groups with access to justice will continue to improve and many problems can be nipped in the bud, gaining public support and improving the quality of life. Furthermore, legal empowerment through legal aid expands the poor's legal opportunities and protection, helps build a stable and harmonious social structure and lays a solid foundation for successful policies and institutional reform.

## 2. Opportunities for Developing Legal Aid

### 1) Policy advocacy and legal transformation

- ※ Provide regular trainings. Legal aid policy should prioritize staff development (including the overall quality as well as professional skills) and organize regular effective training.
- ※ Explore effective publicity campaigns. Transcend the limitations of

<sup>26</sup> “The legal process should be treated as an educational process, awareness-raising process, capacity-building process, organizing process and empowerment process.” Fu Hualing, “Creating a Support Structure for Rights: Legal Aid and the Rule of Law in China,” p20.

the periodic legal education campaigns to promote awareness of legal aid.

- ※ Put in place a case handling quality supervision system. Review of case handling should be based on feedback from clients, case files, third party evaluation, and superior's evaluation to ensure effective legal aid.<sup>27</sup>
- ※ Promote the enactment of the Legal Aid Law. The current Legal Aid Regulations are only administrative regulations formulated by the government, and do not constitute a law enacted by the NPC and its Standing Committee<sup>28</sup>. The impact of the Regulations on certain authorities, in particular judicial and procuratorate institutions is limited. Its detailed rules do not comply with the Law on Lawyers and the major procedural laws. Therefore, the power and scope of the Regulations needs to be improved in order to overcome the obstacles between different administrative levels and different departments.<sup>29</sup> Efforts must also be made to enhance collaboration between the government and judicial departments, and between social organisations (the Women's Federation, the Union, the Youth League, the Disable Persons' Federation) and NGOs.

## 2) Funding and personnel support

- ※ Establish an independent legal aid budget account with enhanced supervision to ensure funds are used for specific purposes. Standardize the application-approval-payments system for
- ※ subsidies, increase the current subsidy rates for case mediation and raise office budgets.
- ※ Regulate the management of grassroots legal aid workers, issue professional legal aid certificates. Reward outstanding grassroots legal aid workers and provide more incentives.

## 3) Multiple providers and diverse legal aid approaches

- ※ With regard to legal aid providers, pro bono lawyers, lawyers, legal clinic teachers and students should all be encouraged to join legal aid workers in providing legal aid services; apart from professional law practitioners, local elites can be identified, educated and organized to provide legal aid. They have a strong attachment towards their hometown and fellow villagers and may be willing to assist poor villagers to claim their rights and obtain justice.
- ※ With regard to legal aid approaches, mediation and litigation are both possible choices. Be inclusive to solutions offered by other grassroots judicial institutions; make the shift from receiving help to self help.

<sup>27</sup> Discussion on quality control of legal aid case handling may refer to theses written by Jiang Jianfeng, Ding Ping, Pu Jiehu, and Xu Guanghan, published in Jia Wuguang ed.: *Legal Aid Management Skills (法律援助管理技能)*, printed by Fangzheng Publishing House in 2008, page 75-133.

<sup>28</sup> Proposals of the Legal Aid Law were submitted to the 2007 NPC and the 2008 NPC: Item 36 of the NPC Committee for Internal and Judicial Affairs' Report on Review Results of Proposals Submitted by the 5th Session of the 10th National People's Congress for Deliberations (passed by the 30th Meeting of the Standing Committee of the 10th NPC on October 28, 2007): two proposals about drafting the Legal Aid Law. The State Council issued the Regulation on Legal Aid in 2003. At present, efforts must be centred upon how to implement the regulation. The enactment of the Legal Aid Law may be considered after gaining practical experience. The NPC Committee for Internal and Judicial Affairs' Report on Review Results of Proposals Submitted by the 1st Session of the 11th National People's Congress for Deliberations (passed by the 5th Meeting of the Standing Committee of the 11th NPC on October 28, 2008): the committee believes that some of the issues raised in the proposal are resolved by normative documents jointly formulated by the Justice Ministry and relevant judicial institutions. Some can be resolved by local regulations and rules authorized by the

Regulation. Other are in the process of resolution. Given that the implementation of the Regulation has not been long, relevant institutional arrangement and requirements are not in place yet. The current priority is to implement and perfect relevant rules. The enactment of the Legal Aid Law may be considered after gaining practical experience.

<sup>29</sup> “Penetrate those visible or invisible walls between institutions of different natures and at different levels,” Fu Hualing, “Creating a Support Structure for Rights: Legal Aid and the Rule of Law in China,” p15.

Through the above approaches, we hope that more trivial damages and routine disputes in rural areas will no longer be ignored. They can ultimately be resolved through a comprehensive legal aid network. This would be a great gift to every aggrieved farmer or migrant worker who has long suffered from the impact of poverty and exclusion.



## **VII Our Plans for the Future**

Drawing on our first hand observations of legal aid and initiatives to promote legal empowerment in rural China as well as the experience we obtained in the field, our future strategy will address the following priorities.

### **1. Support Practical Legal Aid Training**

- Provide training materials, including published textbooks, other materials, photographs and videos for training.
- Training trainers. Select suitably qualified people at the local level to attend training; develop a pool of trainers and coordinate inter-regional support for trainers.
- Share experience and provide technical guidance, including course design, volunteer management, project management, and case handling appraisal.

### **2. Help Build a National Legal Aid Network**

- Hold regular meetings to continue an exchange of ideas and education among peers.
- Organize field visits and send students to various legal aid institutions for internships.
- Publish internal publications, share experience and promote innovation.
- Apply for funding and coordinate support from national and international foundations.

### **3. Legal Aid Research and Advocacy**

- Establish PIDLI as a resource centre on legal aid: the publication of updated laws and regulations, the revision of training materials, the development of new training methodologies, the compilation of straightforward and clear promotional materials and the provision of online legal advice.
- Focus on legal research and advocacy: draw on the experience of implementing rural projects and university research skills; continue to carry out interdisciplinary field studies; timely identification of grassroots legal problems and put forward solutions.

## **VIII Recommendations for China's Rural Legal Aid Development Strategy**

Regardless of whether litigation or mediation is involved or whether it takes place in a court or in a rice field, rights claims and remedies require specific professional knowledge, skills, people, institutions and support, all of which need society's resources. Therefore, the strategy to develop legal aid advocated by this project requires the support and resources of different stakeholders, including institutional and policy support as well as material support and human resources.

### **1. Recommendations to the National Legal Aid Authorities**

- Press for the enactment of a Legal Aid Law. Further develop the legal aid system and clarify and regulate the legal status and supervision of legal aid provided by legal services offices, social organisations and public institutions.
- Lobby for more legal aid funding. On the one hand, lobby for central government funding and help local authorities to obtain financial support from local level government budgets; on the other hand, encourage, guide and coordinate all local legal aid organizations to apply for funding from the Legal Aid Foundation, the Welfare Lottery, and other foundations. In addition, ensure designated funds are not diverted to other budget areas.
- Fully implement the principle of “providing aid to everyone who deserves aid”; encourage rural disputes to be resolved through legal channels rather than through the use of petitioning and other non-legal and irregular approaches. Build judicial authority.
- Require local judicial administrative departments to further lower the legal aid threshold. Publicise guidance on the standards for determining financial eligibility for legal aid that takes into account the level of local economic development, local minimum income standards, minimum wage rates and household income levels. Expand the scope of legal aid cases to include more livelihood-related rights protection and emphasise the importance of legal aid for the most vulnerable populations.
- Require local judicial administrative departments to put in place projects for training grassroots legal workers. Publish minimum training requirements, set up evaluation criteria for the frequency, length, content and outputs from training; provide guidance on the need for training to address local issues, for example, training specifically targeted at areas with serious problems, such as, in relation to

environmental protection or labour rights; and coordinate interregional support for training resources.

- Build a mechanism to assess legal aid services in poor rural areas. Collect the views of the local poor, legal aid workers, the judicial agencies and researchers in order to build a comprehensive system for evaluating the quality of legal aid provision. Sources of data should include the findings of consultations, legal aid application procedures, inspection reports, files and documentation, observation and follow-up visits, statistics, and the findings from external monitoring (peer review and media supervision). Together with case handling subsidies and the selection of outstanding workers this can be a way to help regulate and incentivize legal aid services for the poor. The evaluation system could be implemented by an institution under the Ministry of Justice or be carried out on behalf of the Ministry by an independent organization.
- Ensure the rational deployment and coordination of legal aid resources. Establish a network throughout China to help provide resources for legal aid; bolster funding, provide policy support and encourage more social organisations and individuals to provide legal aid.
- Develop guidance for high-impact legal aid cases and deliver “structural legal aid.” Increase publicity and coverage of outstanding legal aid teams, outstanding legal workers, and typical cases.
- Explore legal aid's role and function in administrative litigation and sensitive social issues. Pay special attention to new disputes emerging in China's transitional society and provide aid to help address them.

## **2. Recommendations to the Local Judicial Authorities and Legal Aid Administration**

- Increase the legal aid budget and expenditure. Apply to the local government for a larger legal aid budget; apply to the Ministry of Justice for legal aid funding; apply for funds from various foundations.
- Lower the legal aid threshold. Relax the financial difficulty criteria for legal aid and ensure low-income residents are able to access legal aid. Expand the scope of eligible cases to include more livelihood-related rights protection. Provide guidance to counties to help them establish more specific standards based on local conditions.
- Secure budgets for training legal aid workers. Increase the scale and results of training. Consolidate training resources from among lawyers, law schools and social groups.
- Promote more effective dissemination of information about legal aid. Promoting awareness of legal aid is in itself an important type of legal aid. Legal aid publicity should be included in every “Five-Year Legal Publicity Plan” and legal aid publicity should be combined with public

legal education. Routine legal aid promotion and focused campaigns should target different groups, including the general public, government officials and law practitioners to ensure that vulnerable groups are aware of legal aid, more government officials take legal aid seriously, and more law practitioners provide legal aid. Motivate more volunteers (lawyers, law clinic teachers and students, social organisation members, grassroots legal aid workers) to share in the promotion of legal aid in a planned and targeted manner. Publicity materials should use everyday language that is easy for ordinary people to understand. Evaluate legal promotion activities through field visits and include the results in the overall evaluation of judicial administration work.

- Help set up legal aid case review standards and incentives to improve the quality of legal aid services. Devise and implement province-wide case handling review procedures and develop standards for rewarding and penalizing performance with reference to the Legal Aid Centre at the Ministry of Justice.
- Encourage legal aid services to include the provision of legal empowerment to legal aid recipients. Recommend that legal aid workers implement a particular philosophy in handling cases, which is not to handle cases on behalf of villagers, but with them. Legal aid workers should help to spread legal concepts and skills among their legal aid clients.

### **3. Recommendations to Law Schools and the Committee of Chinese Clinical Legal Educators**

- Against the background of innovation in legal education, law schools should make full use of the flexibility of the current education system and the autonomy of higher education to encourage teachers and students to research and develop practice in relation to rural rule of law and villagers' rights. Law schools should help set up legal clinics for rural communities; nurture among law students a sense of responsibility towards the poorest and foster the principle of public interest. There should be a virtuous interaction and balance between legal research, the cultivation of talent and serving society.
- Law schools should work closely with local judicial administrative departments and lawyers to initiate, enable and contribute to training of legal aid workers. Identify appropriate incentives to encourage law school teachers and students to participate in such training.
- Law schools should be the knowledge base, talent pool and catalyst for training legal aid workers. With their relatively independent position, law schools can help to ensure that the principles and the conduct of training meet the needs of the poorest and most vulnerable clients as well

as other villagers and that the training helps to secure protection of human rights. Law schools should carry out surveys and follow-up visits to poor areas; set up observers and observation sites and establish an open and timely feedback mechanism for continued monitoring of the local rights situation.

- University law schools should develop various kinds of legal information and consultation services in order to become local centres for legal advice. Law schools boast large holdings of books and information. Their libraries and internet information centres should become more open and help to serve society; their teachers and students should help to provide advice to legal aid workers and the rural poor through the internet, telephone, mail, seminars, lectures and workshops.
- Identify various ways in which law school students could enhance their understanding of the law in practice through exchanges with legal aid workers in order to learn from each other. For example, clinical courses could be linked to undergraduate internships by developing rural grassroots legal aid internship programs: third-year students could receive education at community legal empowerment clinics and take part, during the holidays, in short introductions to work experience at justice department offices. Fourth year students could also participate in graduate internships in justice department offices and this could also provide a basis for recruitment.
- Encourage the development of local civil society. Take a close interest in the development of local NGOs, help them to collect information, establish themselves, and participate in grassroots self-governance and public management; university law schools can be a channel for communication with the local authorities helping to build mutual trust and collaboration; they can also assist them in securing funds.
- The Committee of Chinese Clinical Legal Educators should promote and publicise legal clinics within rural communities. Funding policies should also prioritise legal clinics in rural areas. The Committee should also promote the sharing of domestic and international experience of legal clinics within rural communities.

#### **4. Recommendations to Foundations and Donors**

- Fund legal aid worker training projects initiated by law schools, legal clinics or NGOs, particularly in impoverished areas in western China. Prioritize funding for practical legal training in the poorest areas. Donors should also establish a system for sharing information and resources to ensure complementarities and synergies in funding, mutual learning and an increase in the scope and impact of financial assistance.
- Build more diversity in funding channels and improve access to funding

for all kinds of legal aid providers in the poorest areas.

- Pay more attention to capacity building of funded institutions, including fund-raising and management capacity.
- Ensure cross-cutting human rights issues are integrated into support for legal aid and fund projects, such as training for women leaders in rural areas, which will build the capacity of local communities to participate in the provision of legal aid and increase legal empowerment
- Share international experience in legal empowerment of the poor. Introduce the work of international organizations and foreign NGOs in relation to legal empowerment of the poor in developing countries; share methodologies, successes, lessons learned and recommendations.
- Call for legal empowerment of the poor to be part of development strategies. Empowerment of the poor should also be an element of other economic, social, cultural and political development strategies.



## References

### Chinese Publications

#### Articles :

Chen Honglian (陈洪连), *Analysis of Current Deficiency and Imbalance in Farmers' Rights and Solutions* (当前农民权利缺位与失衡的现状分析及对策思考), in *Ningxia Social Science* (宁夏社会科学), No. 5, 2005.

Chen Yingfang (陈映芳), *Migrant Workers: Institutional Arrangements and Identity Recognition* (“农民工”: 制度安排与身份认同), in *Sociological Studies* (社会学研究), No. 3, 2005.

Guo Daohui (郭道晖), *Care for the Vulnerable: Some Thoughts from a Legal Perspective* (关注社会弱势群体: 法学视角的几点思考), in *Hebei Legal Science* (河北法学), No. 7, 2005.

Jia Wuguang & Gao Zhen (贾午光, 高贞), *Current Situation, Problems and Suggestions for Migrant Workers' Legal Aid* (农民工法律援助现状, 问题及对策建议), in *China Justice* (中国司法), No. 11, 2006.

Li Ao (李傲), *The Public-Interest Nature of Clinical Legal Education* (诊所法律教育的公益性), in *Chinese Journal of Law* (法学研究), No. 6, 2006.

Liu Peng (刘鹏), *Structural Poverty: Analysis of the Weak Position of Chinese Farmers* (结构性贫困: 对中国农民弱势处境的分析), in *Journal of Northeast Normal University (Philosophy and Social Sciences)* (东北师范大学学报哲学社会科学版), No. 1, 2002.

Sun Liping(孙立平), *Practical Sociology and Market Transition Process Analysis* (实践社会学与市场转型过程分析), in *Social Science in China* (中国社会科学), No. 5, 2002.

Yu Hongqiang (俞弘强), *Overview of Studies of Relations between Chinese Government and Farmers: A Review of Relevant Outcomes of Modern Chinese Sociologists* (中国政府与农民关系研究述评: 对当代中国社会学学者相关成果的考察), in *Journal of Xiamen University(Arts & Social Sciences)* (厦门大学学报哲学社会科学版), No. 5, 2004.

Zhang Jiayu (张家宇), *Discuss Legal Remedy for Migrant Workers' Labour Rights* (试论农民工劳动权利的法律救济), in *Journal of Anhui Agricultural University (Social Sciences Edition)* (安徽农业大学学报社会科学版), No. 2, 2009.

Zhang Yishan & Qi Hongqian (张屹山, 齐红倩), *Study of Three Issues: "Farmer, Countryside and*



*Agriculture" and Rights of Farmers* (“三农问题”与农民权利研究), in *Study and Exploration* (学习与探索), No. 2, 2005.

Zhang Youqin (张友琴), *Social Support and Social Support Network: First Exploration of Social Support Model for Vulnerable Groups* (社会支持和社会支持网络: 弱势群体社会支持模式初探), published in *Journal of Xiamen University(Arts & Social Sciences)* (厦门大学学报哲学社会科学版), No. 3, 2002.

Zheng Chengliang (郑成良), *Harmonious Society and Rights Protection* (和谐社会与权利保障), in Zhou Wei ed., *Human Rights Law Review* (周伟, 人权法评论), Volume One, Beijing University Press (北京大学出版社), 2005.

### **Books:**

Fang Jiangshan (方江山), *Non-Institutional Political Participation: Analysis of Chinese Farmers in the Stage of Transition* (非制度政治参与: 以转型期中国农民为分析对象), People's Publishing House (人民出版社), 2000.

Fei Xiaotong (费孝通), *Rural China, Birth System* (乡土中国, 生育制度), Beijing University Press (北京大学出版社), 1998.

Fu Yulin (傅郁林)ed., *Rural Grassroots Legal Services Study* (农村基层法律服务研究), China University of Political Science and Law Press (中国政法大学出版社), 2006.

He Xuefeng (贺雪峰), *New Rural China* (新乡土中国), Guangxi Normal University Press (广西师范大学出版社), 2003.

Jia Wuguang (贾午光)ed., *Collection of Legal Aid Review Reports and Theoretic Studies* (法律援助考察报告及理论研讨论文集), Fangzheng Press (中国方正出版社), 2008.

Jia Wuguang (贾午光)ed., *Legal Aid Management Skills* (法律援助管理技能), Fangzheng Press (中国方正出版社), 2008.

Li Xiaoyun & Zuo Ting (李小云, 左停), *Study of Chinese Farmers' Rights Protection: Investigation of the Enforcement of Chapter Nine of the Law on Agriculture concerning Farmers' Rights Protection* (中国农民权益保护研究: 农业法第九章农民权益保护实施情况调查), Social Sciences Academic Press (社会科学文献出版社), 2007.

Liu Yingjie (刘应杰), *China's Urban-Rural Relationship and Migrant Workers* (中国城乡关系与中国农民工), China Social Sciences Press (中国社会科学出版社), 2000.

Liu Yunsheng, Ren Guanghao (刘云升, 任广浩), *Study of Farmers' Rights and Legal Protection* (农民权利及其法律保障问题研究), China Social Sciences Press (中国社会科学出版社), 2004.

Huang, Philip (黄宗智) ed. , *China Rural Studies* (中国乡村研究, Volume 4), Social Sciences Academic Press (社会科学文献出版社), 2006.

Wang Chen'guang (王晨光) ed. , *Current Legal Situation in Rural Areas* (农村法制现状), Social Sciences Academic Press (社会科学文献出版社), 2006.

Pan Yiyang (潘逸阳), *The Farmer as Subject* (农民主体论), People's Publishing House (人民出版社), 2002.

Qin Hui (秦晖), *Farmer China: Historic Reflection and Practical Choice* (农民中国: 历史反思与现实选择), Henan People's Publishing House (河南人民出版社), 2003.

State Council Research Office Thematic Team (国务院研究室课题组), *Chinese Migrant Workers Research Report* (中国农民工调研报告), Yanshi Publishing House (中国言实出版社), 2006.

Su Li (苏力), *Sending Law to the Countryside: Study of China's Grassroots Judicial System* (送法下乡: 中国农村基层司法制度研究), China University of Political Science and Law Press (中国政法大学出版社), 2000.

Su Li (苏力), *Road to Cities Rural of Law in Transitional China* (道路通向城市: 转型中国的法治), Law Press (法律出版社), 2004.

Yan Junxing (严军兴) ed. , *Study of Diversified Rural Disputes Resolution Mechanism* (多元化农村纠纷处理机制研究), Law Press (法律出版社), 2008.

Tong Lihua (佟丽华), *Who Touches Their Rights?: Analysis of Chinese Migrant Workers' Rights Cases* (谁动了他们的权利?: 中国农民工维权案例精析), Law Press (法律出版社), 2008.

Xia Yong (夏勇), *Origin of Human Right: Historical Philosophy of Rights* (人权概念起源: 权利的历史哲学), China University of Political Science and Law Press (中国政法大学出版社), 2001.

Yu Jianrong (于建嵘), *Yue Village Politics: Transformation in Rural Social and Political Structure in Transitional China* (岳村政治: 转型期中国乡村社会政治结构的变迁), Commercial Press (商务印书馆), 2001.

Zhang Yinghong (张英洪), *Farmers' Rights* (农民权利论), China Economy Publishing House (中国经济出版社), 2007.

Zheng Yongliu & Ma Xiehua (郑永流, 马协华), *Farmers' Legal Awareness and Rural Legal Development: Empirical Study of Rural Areas in Hubei* (农民法律意识与农村法律发展), China University of Political Science and Law Press (中国政法大学出版社), 2004.

**Translated Works:**

Henri Mendras, *The End of the Peasantry* (农民的终结), translation by Li Peilin (李培林), China Social Sciences Press (中国社会科学出版社), 1991.

G. William Skinner, *Marketing and Social Structure in Rural China* (中国农村的市场和社会结构), translation by Shi Jianyun and Xu Xiuli (史建云, 徐秀丽), China Social Sciences Press (中国社会科学出版社), 1998.

James C. Scott, *The Moral Economy of the Peasant: Rebellion and Subsistence in Southeast Asia* (农民的道义经济学: 东南亚的反叛与生存), translation by Cheng Lixian (程立显), Yilin Press (译林出版社), 2001.

## Overseas Publications

Asian Development Bank, Law and Policy Reform at the Asian Development Bank, *Legal Empowerment: Advancing Good Governance and Poverty Reduction*, Manila: Asian Development Bank, 2000.

Banik, Dan, ed., *Rights and Legal Empowerment in Eradicating Poverty*, Ashgate, London, 2008.

Banik, Dan, *Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication*, Hague Journal on the Rule of Law, vol.1, no. 1 (2009): 117-132.

Bruce, John W. (Team Leader); Garcia-Bolivar, Omar; Hanstad; Tim, Roth, Michael; Nielsen Robin; Knox, Anna and Schmidt, Jon, *Legal Empowerment of the Poor: From Concepts to Assessment*, USAid Report, March 2007, available at:  
[http://www.bizclir.com/galleries/publications/Legal\\_Empowerment\\_of\\_the\\_Poor.pdf](http://www.bizclir.com/galleries/publications/Legal_Empowerment_of_the_Poor.pdf)

Carothers, Thomas, *Promoting the Rule of Law Abroad: The Problem of Knowledge*, Rule of Law Series, Democracy and the Rule of Law, Carnegie Endowment for International Peace, Carnegie Paper No. 34, October 2003, available at:  
<http://www.carnegieendowment.org/files/wp34.pdf>

Commission on Legal Empowerment of the Poor Report, *Making the Law Work for Everyone*, Vol I, and Vol II (English only), 2008, available at:  
[http://www.undp.org/legalempowerment/report/Making\\_the\\_Law\\_Work\\_for\\_Everyone.pdf](http://www.undp.org/legalempowerment/report/Making_the_Law_Work_for_Everyone.pdf)  
<http://www.undp.org/legalempowerment/library.shtml>

Cotula, Lorenzo, *Making Law Work for the Poor*, International Institute for Environment and Development, 2005, London: IIED and RING, available at:  
<http://iiedtest.merfa.co.uk/pubs/pdfs/11047IIED.pdf>

Fu Hualing, *Creating a Support Structure for Rights: Legal Aid and the Rule of Law in China*, December, 2005, available at:  
[Http://asiafoundation.org/pdf/CH\\_legalaid.pdf](Http://asiafoundation.org/pdf/CH_legalaid.pdf)

Golub, Stephen, *Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Rule of Law Series, Democracy and the Rule of Law, Carnegie Endowment for International Peace, Carnegie Paper No. 41, October 2003, available at:  
<http://www.carnegieendowment.org/files/wp41.pdf>

Golub, Stephen, *The Commission on Legal Empowerment of the Poor: One Big Step Forward and A Few Steps Back for Development Policy and Practice*, Hague Journal on the Rule of Law, 2009, 1: 101116, Cambridge University Press, available at:

<http://journals.cambridge.org/action/displayFulltext?type=1&fid=4614192&jid=ROL&volumeId=1&issueId=01&aid=4614188>

Golub, Stephen, *Legal Empowerment: Impact and Implications for the Development Community and the World Bank*, in *The World Bank Legal Review, Law, Equity, and Development*, Volume 2, edited by C. Sage and M. Woolcock, 167-184, Martinus Nijhoff, 2006.

Golub, Stephen, *Make Justice the Organizing Principle of the Rule of Law Field*, Hague Journal on the Rule of Law, 2009, 1: 61-66, Cambridge University Press, available at:

<http://journals.cambridge.org/action/displayFulltext?type=1&fid=4614144&jid=ROL&volumeId=1&issueId=01&aid=4614140>

Golub, Stephen and McQuay, Kim, *Legal Empowerment: Advancing Good Governance and Poverty Reduction*, 2001, Law and Policy Reform at the Asian Development Bank, 2001 Edition. Manila: Asian Development Bank.

Liebman, Benjamin L., *Legal Aid and Public Interest Law in China*, Texas International Law Journal, 1999, 34, p. 276.

Open Society Justice Initiative, *Between Law and Society: Paralegals and the Provision of Primary Justice Services in Sierra Leone*, New York, 2006, available at:

[http://www.soros.org/initiatives/justice/focus/legal\\_capacity/articles\\_publications/publications/between-law-and-society-20100310](http://www.soros.org/initiatives/justice/focus/legal_capacity/articles_publications/publications/between-law-and-society-20100310)

Open Society Justice Initiative, *Legal Clinics: Serving People, Improving Justice*, Hungary, 2009, available at:

[http://www.soros.org/initiatives/justice/focus/legal\\_capacity/articles\\_publications/publications/legalclinics\\_20090101/legalclinics\\_20090101.pdf](http://www.soros.org/initiatives/justice/focus/legal_capacity/articles_publications/publications/legalclinics_20090101/legalclinics_20090101.pdf)

Pitts, D., *Human Rights in Diverse, Developing Nations: A Case in Point South Africa*, in *Human Rights Education*, vol. 7, no. 1 (2002): 14-17.

Sage, Caroline; Menzies, Nicholas and Woolcock, Micheal, *Taking the Rules of the Game Seriously: Mainstreaming Justice in Development*, *The World Bank's Justice for the Poor Programme*, International Development Law Organization, Legal Empowerment Working Papers, No. 5, 2009, available at:

<http://www.idlo.int/publications/LEWP/LEWP5.pdf>

Tamanaha, Brian Z., *The Primacy of Society and the Failure of Law and Development*, October 2, 2009, St. John's Legal Studies Research Paper No. 09-0172, available at:

<http://ssrn.com/abstract=1406999>

Troyer, Ronald J., *Publicizing New Laws: The Public Legal Education Campaign*, In *Social Control in The People's Republic of China*, pp.70-83, ed. Ronald J. Troyer, John P. Clark and Dean G. Royek, 70-83, Praeger, New York, 1989.

UNDP, *Access to Justice, Practice Note*, UNDP, 2005, available at:  
[http://europeandcis.undp.org/files/uploads/HR/mat%20PracticeNote\\_AccessToJustice.pdf](http://europeandcis.undp.org/files/uploads/HR/mat%20PracticeNote_AccessToJustice.pdf)

Van de Meene, Ineke and Van Rooij, Benjamin, *Access to Justice and Legal Empowerment: Making the Poor Central in Legal Development Co-operation*, Leiden University Press, 2008.

Van Puymbroeck, Rudolf V., ed., *Comprehensive Legal and Judicial Development: Toward an Agenda for a Just and Equitable Society in the 21st Century*, The World Bank, Washington D.C, 2001.

Wojkowska, Ewa and Cunningham, Johanna, *Justice Reform's New Frontier: Engaging with Customary Systems to Legally Empower the Poor*, International Development Law Organization, Legal Empowerment Working Papers, No. 7, available at:  
[http://www.idlo.int/publications/LEWP/LEWP\\_Wojkowska.pdf](http://www.idlo.int/publications/LEWP/LEWP_Wojkowska.pdf)



**JUSTICE FOR ALL**

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