



ASIA-PACIFIC RIGHTS AND JUSTICE INITIATIVE

Case Studies on Access to Justice by the Poor and Disadvantaged

Strengthening Legal Aid System in China to Improve Access to Justice for the Poor and Disadvantaged in Society

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SUMMARY BOX

Categorization of lesson:

Establishment and development of legal aid and legal counselling systems for the poor. Enhancement of management and counselling capacity of legal aid centres to assist the poor in civil and criminal cases.

Critical lessons for the sub-practice:

1. The shortage of financial and human resources for legal aid centres is critical, and regional disparities in quality of legal aid centres are wide.
2. No set of comprehensive national laws and regulations unifies and standardises the structure, operating procedures, sources of funding and professional standards of legal aid services.
3. As economic and social structures rapidly change, many groups in the society are becoming marginalised and left behind.
4. A good and committed partner is necessary to ensure the effectiveness of project activities.
5. As legal aid moves to the top of the agenda, co-ordination will be necessary to prevent duplication and ensure more efficient use of resources.

Recommendations:

- ❖ Developing a legal aid system is a core entry point for UNDP, as legal aid empowers the poor and disadvantaged to claim and exercise their rights. UNDP's assistance should help build the capacity of both duty bearers and rights holders, and it should concentrate on key issues in which UNDP shows itself to have a comparative advantage and a long-lasting impact.
- ❖ A well-planned strategy and long-term partnerships with key stakeholders and Government are imperative to build communications, confidence and trust through working together toward the common goal of increased access to justice for the poor and disadvantaged.
- ❖ Attention should be given to monitoring and evaluation of programme activities to properly assess progress, consolidate achievements and ensure follow-up.
- ❖ To avoid overlap and inefficient use of resources, UNDP programmes should be well co-ordinated within the United Nations and donor community.

CATEGORISATION OF LESSON

Establishment and development of legal aid and legal counselling systems for the poor. Enhancement of management and counselling capacity of legal aid centres to assist the poor in civil and criminal cases.

BACKGROUND

In late 1978, the Chinese leadership condemned the previous legal nihilism and stressed the importance of law for its modernisation drive. Since then, the Chinese Government has embarked on a set of concerted programmes to construct a socialist legal system with “Chinese characteristics.” Many legal institutions were established, law curricula were revived in academic institutions, and lawyers once again began to practice. Entire segments of law were placed by new codes and statutes. These new laws range from commercial legislation designed to facilitate economic development, to laws that expand procedural protection for criminal defendants, to laws that permit ordinary citizens to sue the Government for redress of official misconduct. These new laws and regulations provide a relatively comprehensive legal framework for the protection and promotion of the rights of all Chinese citizens and empower the legal and judicial institutions to protect these rights. However, the overwhelming majority of rural and urban poor are generally unaware of legal aid services and cannot afford increasing legal costs, thus severely constraining their access to justice.

The right to legal assistance is an important safeguard to basic human rights. Without this, the poor and the disadvantaged will have great difficulty in claiming and exercising their rights. It is therefore critical to have a legal aid system in place that is easily accessible to the poor and the disadvantaged, including laid-off workers, migrants, children and juveniles, ethnic minorities and people with disabilities.

Before 1994, there had been no systematic legal aid services in China, although the courts might be obliged to provide legal assistance to defendants in certain criminal cases. In the wake of China’s drastic social and economic transition, the Government came to recognise the growing importance of access to justice for the poor and disadvantaged and decided to establish a national legal aid system under the auspices of the Ministry of Justice (MOJ). Relevant laws and regulations were proposed at the central and local levels to incorporate this new initiative, and in late 1996 and early 1997, the Legal Aid Centre of the MOJ and the China Legal Aid Foundation were set up. Legal aid centres now are being established at the province, prefecture and county levels.

Because legal aid was relatively new for China, the country had a great shortage of management capacity and was eager for international assistance to provide support and best practices. At the same time, legal aid development has been regarded as an important entry point for UNDP in poverty reduction and rights-based development. In this context, UNDP launched a co-operation project with China on the legal aid system in October 1999.

The course of legislation and local regulations involves a comparatively long and complex process, given that China has little experience in legal aid and diverse local situations. Financial inputs to meet objectives under the Government’s plan also are much more than the resources UNDP is able to commit. Accordingly, UNDP identified professional training, public awareness raising, legislation and rule making, and institutional capacity building as key areas of intervention and adopted a two-stage strategy. In Phase One, UNDP, assisted the Government to train more than 600 legal aid workers selected from legal aid centres of excellence, and to increase public awareness of legal aid through development of standard training materials and a website. Activities were specifically designed to address emerging problems when the legal aid system was in its early stage of construction. The first phase was successfully implemented by MOJ with a modest financial contribution of US\$320,000 from UNDP. In Phase Two, UNDP assistance focused on some of the in-depth challenges facing legal aid services as the system developed and socioeconomic transition in China after entry to the World Trade Organisation accelerated. UNDP reached out to the donor community to mobilise more resources to help MOJ set out regulations and rules on legal aid, train legal aid

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workers in the poor regions and learn international experiences and good practices. The Government of the Netherlands contributed US\$100,000 to UNDP for carrying on the second phase, which is ongoing.

FINDINGS AND CONCLUSIONS

Lessons on output/outcome

The shortage of financial and human resources for legal aid centres is critical, and regional disparities in quality of legal aid centres are wide

While the development of legal aid services continues apace, China faces several obstacles in its efforts to build a nationwide legal aid system that is able to meet the demands of people in need. The most serious challenge that hinders the further development of legal aid services is the severe lack of financial and human resources. Given the huge population and a growing demand due to increased legal awareness of the public, legal aid services can only assist a small proportion of the people in need. In addition, many local Governments in poorer regions still cannot afford to establish and maintain legal aid centres. In addition, many local Governments do not see the establishment of legal aid centres as a priority and are reluctant to commit funding. The majority of legal aid institutions also are short of well-trained personnel and an adequate budget. Regional disparities are wide in terms of the operation and quality of legal aid centres. Legal aid services in China's poor western region, for example, encompass one-third of the country's provinces, but less than one-eighth of total legal aid institutions in China. Legal staff in those institutions are fewer than 1,000, and many still need to improve their management capacity and professional skills. UNDP projects have assisted in improving the legal aid system by staffing it with better-trained professionals and making it more accessible to the poor and vulnerable groups. Capacity building continues to produce more capable legal aid workers.

No set of comprehensive national laws and regulations unifies and standardises the structure, operating procedures, sources of funding and professional standards of legal aid services

Legal aid services at all levels needed to be better established, regulated and standardised. To this end, UNDP's projects have helped accelerate the establishment and improvement of legal aid services at the provincial and county levels. In early 2001 only 21 percent of counties had legal aid centres, with only about 500 trained legal aid practitioners. By the end of June 2003, more than 80 percent of counties had established legal aid offices and there were more than 2,600 Government-sponsored legal aid institutions, staffed by more than 8,900 legal aid personnel, about 50 percent of them qualified lawyers. In 2002 alone, legal aid institutions provided free services in more than 120,000 cases, and Governments at all levels provided roughly US\$9.6 million to support legal aid institutions.

At the same time, UNDP's assistance contributed to the enactment of local regulations on legal aid services and related pilot experiments. The MOJ built on the local experiences and drafted national regulations and rules on legal aid. A national administrative regulation on legal aid was approved by the State Council in July 2003 and came into force in September 2003, marking a milestone in legal aid legislation in China. More people are now turning to legal aid for legal assistance, with nearly 900,000 cases total, and officials are giving more moral and financial support to legal aid, although there remains much room for improvement in this aspect.

As economic and social structures rapidly change, many groups in the society are becoming marginalised and left behind

Not only do the majority of the poor not know about legal aid services or the procedures for obtaining them, but most lawyers in China also are concentrated in large cities and rarely practice in rural or isolated areas.

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Privatisation of professional legal services also results in increasing legal costs and regional disparities. Without professional assistance, poor and disadvantaged groups are not able to effectively claim and exercise their legal rights. Thus, the benefits of economic growth, social liberalisation and legal construction do not necessarily translate into fairness and justice for all. Some groups are left behind – or even worse off – in terms of access to justice, as the transition to a market economy in particular has created the unintended effect of eroding the quality and social protection that prevailed under the planned economy.

A good and committed partner is necessary to ensure the effectiveness of project activities

Without the full co-operation of the MOJ and its strong commitment to the development of a legal aid system in China, UNDP's projects could not have achieved significant results. Therefore, a simply but critical lesson is to find and work with a good partner to ensure the effectiveness of project activities. A need also exists for UNDP to strengthen its in-house expertise on the issue.

As legal aid moves to the top of the agenda, co-ordination will be necessary to prevent duplication and ensure more efficient use of resources

UNDP's primary competence lies in its ability to act as a catalyst and facilitator, bringing together various stakeholders around development issues and initiatives such as access to justice and human rights. Through the legal aid programme, UNDP has enhanced its partnership with bilateral donors and shown its strength to introduce new ideas and open up opportunities for co-operation with the Government. On a cautionary note, however, because legal aid is becoming a high-priority area of governance in China, care must be taken to prevent the proliferation of unco-ordinated international donors, both Government and non-Government. In the future, UNDP should work with various donors through information sharing, round table consultations and networking to better co-ordinate scattered resources and programmes.

RECOMMENDATIONS

- ❖ Developing a legal aid system is a core entry point for UNDP, as legal aid empowers the poor and disadvantaged to claim and exercise their rights. UNDP's assistance should help build the capacity of both duty bearers and rights holders, and it should concentrate on key issues in which UNDP shows itself to have a comparative advantage and a long-lasting impact
- ❖ A well-planned strategy and long-term partnerships with key stakeholders and Government are imperative to build communications, confidence and trust through working together toward the common goal of increased access to justice for the poor and disadvantaged
- ❖ Attention should be given to monitoring and evaluation of programme activities to properly assess progress, consolidate achievements and ensure follow-up
- ❖ To avoid overlap and inefficient use of resources, UNDP programmes should be well co-ordinated within the United Nations and donor community