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국제학석사학위논문

**Social Stability over Social Reform:  
An Analysis on Legal Aid in China**

'사회변혁'보다 '사회안정'을:

중국의 법률구조 분석

2014년 2월

서울대학교 국제대학원

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# **Social Stability over Social Reform:**

## **An Analysis on Legal Aid in China**

A thesis presented

By

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**Graduate School of International Studies**

**Seoul National University**

**Seoul, Republic of Korea**

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# Social Stability over Social Reform: An Analysis on Legal Aid in China

'사회변혁'보다 '사회안정'을: 중국의 법률구조 분석

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Abstract

# **Social Stability over Social Reform: An Analysis on Legal Aid in China**

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This study aimed to examine the role of the government and the civil organizations in the development of legal aid in China and to diagnose the impact of legal aid on the Chinese society. For this purpose, a case study was carried out on four legal aid programs, namely the Beijing Legal Aid Center, the All-China Women's Federation, Wuhan University's Center for the Protection of the Rights of Disadvantaged Citizens, and Gongmeng.

The Beijing Legal Aid Center provides legal aid for various problems in the citizens' lives, and its focus is on socially underprivileged migrant workers. Being a governmental organ, the center rarely denotes a reformist aspect and rather serves the purpose of maintaining social stability by assuaging the discontented minority group.

The All-China Women's Federation is relatively active in protecting women's rights, and has also contributed to the legislation of laws related to

women's rights protection. Still, its nature as a mass organization dictates the direction of its activities, which mostly conform to the government's policy of maintaining social stability. The Wuhan University center has been very active in representing public interest litigations against the irrational behaviors of the government. Its close relation with the related government bodies, though, inhibits the center from pursuing radical reformist action. Lastly, Gongmeng is an independent civil legal aid organization which provided legal aid for highly sensitive cases such as the tainted milk scandal. Gongmeng's shut-down in 2009, however, indicates that a voice that directly challenges the authority of the government has yet to survive in China.

In conclusion, most of the legal aid organizations in China are oriented towards maintaining social stability rather than social reform. Even though some non-governmental organizations pursue reformist goals, they are still under the control of the government which reduces their autonomy. Therefore it can be concluded that the time is not yet ripe for legal aid to be the driving force of social reform, which proves that the statist approach is valid in the area of legal aid in China.

**Keywords:** Legal Aid in China, Rule of Law, Law Reform Movement, Statist Approach, Public Interest Law, Civil Society of China

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# 1. Introduction

## 1-1. Research Background and Research Question

From the 1990s the Chinese government has been claiming for building a society governed by law, implementing reforms in many areas such as the parliament, government, court, and the Chinese Communist Party (CCP), and the purpose of these reforms was mainly to stabilize the one-party rule of the CCP.<sup>1</sup> Also from 1994 the Ministry of Justice worked hard to establish the national legal aid system, and it was successfully developed into a national-scale system with a large number of national legal aid centers spread throughout the country.

Considering the fact that the government put much effort to establish the legal aid system in China, one might expect that legal aid will be practiced in accordance with the government's policy line. In the western countries such as the U.S., however, legal aid service has often been linked with public interest litigations through which people attempt to bring about meaningful social change.<sup>2</sup> Also in China, social organizations and other non-governmental

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<sup>1</sup> 조영남, 『중국의 법치와 정치개혁』 (파주: 창비, 2012), pp. 30, 80.

<sup>2</sup> O'Connor and Epstein divide the history of public interest law into three stages. The first stage is the legal aid movement which started from the German Society in 1876 and provides cost-free legal care to those in need. The second stage is the emergence of interest groups dedicated to using litigation to achieve policy ends, started from the progressive-populist era of the early 1900s. The last stage is the public interest movement, which flourished during the 1960s and 1970s. As can be seen here, legal aid and public interest movement are closely related. Karen O'Connor and Lee Epstein, *Public Interest Law Groups: Institutional Profiles* (New York: Greenwood Press, 1989), pp. xi-xvii.

actors participate in the legal aid, which leaves the room for the expansion of the civil society and the build-up of pressures from below.

What then is the impact of legal aid on the Chinese society? Is it mainly contributing to maintaining social stability or is there any room for legal aid to be used for bringing about social reform?

This study aims to examine the role of the government and the civil organizations in the development of legal aid in China and to diagnose the impact of legal aid on the Chinese society. To develop a framework for analysis we will review different perspectives on the rule of law in China in the following paragraphs, because rule of law is closely related to the development of legal aid system.

Among academics there is a hot debate over the nature of rule of law in China. Jayasuriya, one among them, has been arguing for adopting a different version of rule of law in analyzing the recent legal developments in the East Asian countries. Pointing to the limits of the liberal understanding of rule of law which assumes that there are causal connections between markets, liberal politics and the rule of law, he suggests that we adopt a statist approach which emphasizes the role of state structures in shaping the development of legal institutions. According to the statist approach, the legal reform or the rule of law is achieved through pressures from above rather than pressures from below. In those states, it is argued, law is an instrument of legitimization and a means

of rationalizing the state, and law is also used to manage and regulate civil society. Following this approach, there is a great potential that legal aid in China will serve the purpose of supporting the government's policies.<sup>3</sup>

Meanwhile Gallagher, who studied the Chinese laborers' legal actions, suggests that even though there exist limits and difficulties to the development of rule of law in China, there is also the possibility that the CCP will expand the rule of law, thereby taking "the risk of activating social forces and enlarging the role of new interest groups," in order to obtain "the added benefits of increased legitimacy both at home and abroad." She argues, therefore, that we should adopt "a perspective that understands the rule of law as an outcome of negotiation and contestation between the authoritarian state (those who make the law) and society (those who make use of it)."<sup>4</sup> Adopting this perspective which focuses on the dynamic of state-societal interaction around law, there seems to be the possibility that the legal aid system, which was originally established by the government, can become a tool for the Chinese citizens to build a society closer to their wishes, as they actively use the system to defend their legal rights.

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<sup>3</sup> Kanishka Jayasuriya, "Introduction: A Framework for the Analysis of Legal Institutions in East Asia," in Kanishka Jayasuriya (eds.), *Law, Capitalism and Power in Asia* (London; New York; Routledge, 1999), pp. 1-24.

<sup>4</sup> Mary E. Gallagher, "'Use the Law as Your Weapon!': Institutional Change and Legal Mobilization in China," in Neil J. Diamant, Stanley B. Lubman, and Kevin J. O'Brien (eds.), *Engaging the Law in China: State, Society, and Possibilities for Justice* (Stanford: Stanford University Press, 2005), p. 75.

To test the validity of statist approach in analyzing the development of legal aid system in China, this study will examine the governmental and non-governmental legal aid programs in China. The conclusion drawn from the case study is that the government's role in establishing and developing legal aid system has been very large, which means that most of the legal aid is focused on maintaining social stability. Even though some non-governmental programs denote reformist aspects, they are still under the control of the government which inhibits them from freely pursuing social reform.

## **1-2. Literature Review**

Liebman's 1999 study is one of the earliest comprehensive studies on the legal aid system in China. The study describes the evolution of legal aid and public interest law in China and examines its implications for the development of the legal profession and the law. He argues that legal development in China is progressing without any single dominant rationale or policy goal, which leaves room for innovation, and even though non-government actors such as university-based centers are still under the government's control, the room in which they maneuver is continuing to expand and therefore they will have positive effect on legal reform in China.<sup>5</sup>

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<sup>5</sup> Benjamin L. Liebman, "Legal Aid and Public Interest Law in China," *Texas International Law Journal*, Vol. 34, No. 2 (1999).

Regan's 2004 study provides a new perspective on the government's and non-governmental actors' role in legal aid in China. He observes that non-governmental actors such as university-based centers are relatively independent from the government's control, and puts equal weight on both actors by designating the government centers as "generalist" and the NGO centers as "specialist," emphasizing the complementary nature of both centers.

He further argues that the NGO legal aid offices are increasingly recognized as a credible voice in law reform processes in China and that the network of NGO legal aid offices illustrates the proliferation of non-party organizations in many areas of life in China, which represents the retreat of the state from trying to control all areas of life as well as offering new degrees of freedom and responsibility to China's legal professionals.<sup>6</sup>

Gallagher's 2006 study focuses on how the rule of law reform affects the state-civil society relationship by examining the development of legal consciousness among the laborers who take legal actions with the help of a university-based legal aid center in Shanghai. The study finds out that through the process the plaintiffs experience positive changes in their feelings of individual efficacy and competency, while they develop more negative perceptions of the legal system in terms of its fairness and effectiveness.

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<sup>6</sup> Francis Regan, "Legal Aid in China: an Analysis of the Development of Policy," *Civil Justice Quarterly*, Vol. 23, No. 1 (July 2004), pp. 169-186.

Gallagher argues that by reorienting the aggrieved citizens from the petitioning route to the legal one through the rule of law project, the Chinese state is inserting space between the government and individuals such as state-enterprise workers. The state's rule of law project, she concludes, reworks ideological discourse away from emphasis on socialist equality and collectivism toward ideals more suited to capitalist accumulation, including limited government responsibility for social welfare. The study has well-captured the tension between the government's intention and the changes that the citizens experience while they actually use the law, and this provides important implication regarding the effect legal aid has on the Chinese society.<sup>7</sup>

Cho, who studied the law dissemination campaign in China, concludes that this campaign is a political mass movement through which the Chinese state attempts to achieve political stability by institutionalizing of governance. One of the results of this campaign, Cho argues, is the establishment of legal aid system, which implies that the legal aid system should be viewed as part of the development of legislative system led by the government.

He also points out that the campaign is being conducted either excluding or suppressing public interest lawyers and other non-governmental organizations, and it is expected that similar problems will be found in the legal

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<sup>7</sup> Mary E. Gallagher, "Mobilizing the Law in China: 'Informed Disenchantment' and the Development of Legal Consciousness," *Law and Society Review*, Vol. 40, No. 4 (December 2006), pp. 783-816.

aid system because it has also been led mainly by the government.<sup>8</sup>

As can be seen in the literature review, most of the previous studies are focused on examining the general situation of legal aid in China, and it is hard to find a study that explores the potential impact of legal aid on promoting social reform through case study, and here lies the significance of this study. In particular, considering that western scholars generally hold positive view about the role of non-governmental legal aid centers in the expansion of rule of law, this study will carefully examine the role of non-governmental legal aid centers.

### **1-3. Research Methodology and Sources**

This study adopted the literature analysis method. To give an overview of legal aid it referred to reports on legal aid systems in different countries published by the Korea Legal Aid Corporation, and to examine the current situation of the governmental and non-governmental legal aid programs it conducted a case study.

For a governmental program case study, the Beijing Legal Aid Center was chosen, because it is located in the capital and is therefore deemed appropriate to represent governmental legal aid centers. As for non-governmental programs, the All-China Women's Federation (ACWF), Wuhan University's Center for the Protection of the Rights of Disadvantaged Citizens

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<sup>8</sup> 조영남, 『중국의 법률 보급 운동』 (서울: 서울대학교출판문화원, 2012).

(Wuhan University Center), and Gongmeng (公盟, Open Constitution Initiative) were selected as subjects of case study.

The ACWF is a national mass organization which acts for the improvement of women's and children's rights. Because the ACWF is very large in its scale and is very active in promoting women's rights, it was chosen for the case study of legal aid program provided by social organization.

The Wuhan University Center is the first legal aid organization established in China and is well-known for its pioneering work in public interest litigation both at home and abroad, which makes it a potential candidate for a legal aid organization with a large social impact.

Lastly, Gongmeng is a human rights lawyers group which provided legal aid for several high-profile cases and as a result was shut down by the government in 2009. As it is an organization most independent from the government's control, it was deemed appropriate to review Gongmeng's activities to diagnose the future of independent legal aid organizations in China.

The primary materials used for the analysis are as follows: to introduce the general situation of the governmental legal aid centers I referred to the 2009 National Legal Aid Statistics Report provided in the China Legal Aid website (中国法律援助网), and to get a more clear picture on the governmental centers' activities I reviewed 20 exemplary cases handled by the Beijing Legal Aid Center, introduced in the "Legal Aid Achievements (法援事迹谈)" page of the

center's website. The ACWF's activities were traced from the websites of The ACWF Legal Assistance Center (全国妇联法律帮助中心) and the Guangdong Province ACWF, and also from related media reports. The Wuhan University Center publishes English annual summary on its website every year, so I analyzed the reports of the year 2004 through 2012 to examine the kind of cases handled by the center. As for Gongmeng's activity, I referred to the "Final Report on Gongmeng's Legal Aid for the Victims of Melamine-tainted Milk (2008-2011) (三聚氰胺奶粉受害者公盟法律援助总结报告)" written by Xu Zhiyong, the founder of Gongmeng.

All these materials were analyzed with a focus on the type of cases handled by each center, because whether certain legal aid center provides legal aid for administrative litigations, test cases or public interest litigation cases shows the philosophy of the center. I also paid attention to each center's participation in law reform movement and their relationship with the government in order to gauge the potential for acting for social reform.

## **2. Overview of Legal Aid**

### **2-1. The Meaning and History of Legal Aid**

Legal aid is providing professional legal service for dispute resolution.<sup>9</sup>

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<sup>9</sup> 송상현, "법률구조사업의 세계적 추이와 한국의 현황," 서울대법학연구소(편), 『법학교육과 사법제도 개혁』 (서울대학교 출판부, 1988), p. 477 in 김상준, 『우리나라 법률구조제』

In other words legal aid means that a lawyer or a person with equivalent qualification provides professional help such as legal advice, legal document preparation and litigation representation for the socially underprivileged people so that their rights are protected. In order to analyze the relationship between legal aid and social reform, however, we need to adopt a broader definition of legal aid that includes a law reform or social reform movement designed to protect the socially underprivileged's legal rights.<sup>10</sup>

From the ancient Roman times legal aid existed as a custom or institution and in the Middle Ages legal aid denoted charitable characteristics reflecting the Christian faith of the time. After the French Revolution, influenced by the theory of social contract legal aid was recognized as a natural right of citizens, and entering the second half of the 20<sup>th</sup> century many western countries turned into welfare states, which made legal aid to be regarded as a social welfare right.<sup>11</sup>

So far legal aid had been mostly charitable practices, but after the modern reforms in the last half of the 19<sup>th</sup> century legal aid turned into a more systematic form with firm legal bases. In 1851 the appointment of pro bono lawyer and the exemption of litigation expenses for the poor were legislated in

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도의 현황과 과제에 대한 연구』 (서울대학교 법학과 석사논문, 1999), p. 7.

<sup>10</sup> 김상준(1999), pp. 7-8.

<sup>11</sup> 안동일, “외국의 법률구조 동향,” 『대한변호사협회지』 제55권(대한변호사협회, 1980), p. 20 in 김상준(1999), p. 9.

France, and in Germany those articles were inserted into the code of civil procedure in 1877. In the UK the legal aid system for the poor was expanded in 1883 and 1893, and in 1892 the US federal judges were granted the authority to appoint a lawyer who would represent the poor.<sup>12</sup> Despite these rules, however, the individualism and the principle of laissez-faire at that time did not welcome the state's intervention, and thus the legal aid for the poor had to depend on the voluntary work of the individual lawyers or charities.<sup>13</sup>

Entering the 20<sup>th</sup> century, as socialism spread across the world and more people realized the negative side of the laissez-faire, the state's active intervention for substantive equality was welcomed by the people, and governmental legal aid service appeared in Europe and the US. After the Second World War there was an ideological turn from the formal constitutionalism toward the substantial constitutionalism and the concept of welfare state was actively discussed, and the right to trial and the right to have counsel were put into each country's constitution. Also as part of a judicial welfare policy more specific and independent laws for legal aid were enacted, and the Legal Aid and Advice Act of the UK in 1949 was the first of those laws. Summing up, started as an individual voluntary act, legal aid developed into a voluntary service by the legal professionals' organization, and then into a

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<sup>12</sup> 안동일(1980), p. 21 in 김상준(1999), p. 9.

<sup>13</sup> 김상준(1999), pp. 9-10.

systematic legal aid institution supported by the state.<sup>14</sup>

## **2-2. Cases of Foreign Countries**

### **1. Korea**

Korean legal aid system was initiated by private lawyers association and the Korea Legal Aid Center for Family Relations. Responding to an increasing social need for legal aid, the Ministry of Justice founded the Korea Legal Aid Society with government fund on July 1, 1972, and in 1986 the Legal Aid Law was enacted.<sup>15</sup> Legal aid programs in Korea can be divided into the following three categories: (1) legal aid provided by government institutions and their subordinate organizations; (2) legal aid provided by civil organization and other institutions such as Korean Bar Association, law schools, and religious organizations; (3) legal aid provided by legal aid corporations such as the Korea Legal Aid Corporation (KLAC), Korea Legal Aid Center for Family Relations (KLACFR), and Korea Family Legal Service Center.<sup>16</sup>

Here we will review the activities of the civil organizations and legal aid corporations. The KLAC provides litigation aid for civil and criminal cases, the KLACFR deals with domestic cases, YMCA citizen's mediation center

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<sup>14</sup> 최대권, 『영미법』 (서울: 동성사, 1991), p. 163 in 김상준(1999), p. 10.

<sup>15</sup> 양정자, “한국의 법률구조제도,” 대한가정법률복지상담원(편), 『법률구조의 현황과 발전방향』 (대한가정법률복지상담원 출판부, 2010) pp. 3-6.

<sup>16</sup> 양정자(2010), pp. 7-28.

helps with civil cases related to consumer issues and administrative cases, the Lawyers for a Democratic Society deals with criminal cases related with human rights movement, and the Korean Bar Association focuses on normal civil cases and criminal cases. The eligibility for legal aid is mostly based on the applicant's economic capacity and the capacity to plead, and the KLAC's criteria are most strict and specific.<sup>17</sup>

The KLAC does not provide legal aid for administrative litigations, and sets the likelihood of success of a case as a criterion for legal aid, which makes it hard to litigate test cases designed for institutional reform. Also it is often criticized for its passivity in representing class action suits.<sup>18</sup> Being an institution under the supervision of the Ministry of Justice and funded by the government, it might be hard for the KLAC to overcome these obstacles to its independent operation.<sup>19</sup>

Lastly we will examine the law reform movements by legal aid organizations. While the KLAC has been focusing on representing individual cases and being passive in law reform or proposal of legislation, volunteer legal aid organizations have strived for institutional reform in order to deal with the underlying causes of individual problems. Thinking that legal aid for separate cases cannot resolve the fundamental problem as long as the discriminatory

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<sup>17</sup> 김상준(1999), p. 77.

<sup>18</sup> 김상준(1999), pp. 77-78.

<sup>19</sup> 양정자(2010), p. 20.

family law exists, the KLACFR promoted the family law reform movement which culminated in the amendment of family law in December 1989. As for the YMCA citizen's mediation center, if a case is judged to have a large social impact the center researches on the actual condition, prepares measures through professional consultation or public hearing, and then demands for correction or law revision. The center's efforts contributed to the enactment and amendment of many laws such as the Trial of Small Claims Act, Housing Lease Protection Act, and Consumer Protection Act. The Lawyers for a Democratic Society has been very active in law reform and social reform movements, fighting against 'poisonous' clauses such as the Social Safety Control Law, National Security Law, Assembly and Demonstration Act and Labor Law.<sup>20</sup>

## **2. The U.S.**

In the US the term legal aid usually indicates legal aid for civil case. The civil legal aid in the US passed through the period of charitable legal aid (1876-1964) when private legal aid organizations provided legal help voluntarily to those in need, and after 1965 a legal aid system supported by the state was established. Proclaiming "War on Poverty" the Lyndon B. Johnson

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<sup>20</sup> 김상준 (1999), pp. 82-84. With respect to the KLAC's passive attitude towards law reform movement, Kim argues that law reform movement is not an anti-government movement and therefore the KLAC should be more active in proposing legislation and policies for the benefit of the whole citizens.

administration set up the Office of Economic Opportunity (OEO) in 1964 and part of its budget was used for legal aid, which was the first time that the federal government's fund was spent for civil legal aid. The OEO legal aid program was more focused on law reform than on protection of individual rights. Hiring full-time staff lawyers, the OEO legal aid program worked hard for the benefits of the poor through class action, administrative litigation and lobbying for legislation. Representing the collective interest of the poor, the program received political pressure from the state government and other government bodies who were often defendants in the lawsuits initiated by the OEO's legal aid service.<sup>21</sup>

In 1974 the OEO legal aid program was disassembled and its functions were handed over to a non-profit, private body corporate Legal Services Corporation (LSC), established in the same year based upon the Legal Services Corporation Act. Funded by the parliament, the LSC gives financial support to the independent civil legal aid organizations contracted to it, and those organizations are to abide by the LSC Act and the LSC's regulations. Every time there was a change of government between the Republican and Democratic parties, who differ widely in their stances over the legal aid system,

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<sup>21</sup> 김정선, “미국 법률구조제도의 특성 및 문제점,” 대한법률구조공단(편), 『각국의 법률구조제도 현황』 (서울: 대한법률구조공단, 1997) pp. 208, 211-214.

there followed the ebb and flow in the budget increase and reduction.<sup>22</sup>

As to the specific characteristics of civil legal aid, there is a considerable flexibility in judging the eligibility of the applicants, as each legal aid organization can decide whether to provide legal aid or not considering the distinct situation of each area and organization, within the range of government guideline. This point merits attention because unlike legal aid system in Korea, which decides whether to provide legal aid based upon the likelihood of success of the case, in the US the lawyer who provides legal aid can decide it based upon their own judgment.<sup>23</sup>

In principle, legal aid is open for every civil action except for criminal suits, but certain political or sensitive cases are not eligible for the legal aid.<sup>24</sup>

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<sup>22</sup> 김정선(1997), pp. 214–216.

<sup>23</sup> 김정선(1997), p. 218.

<sup>24</sup> 김정선(1997), pp. 218–219.

The clause (b) of Article 1007 of the Legal Services Corporation Act clarifies that no LSC funds may be used (1) to provide legal assistance with respect to any fee-generating case; (2) to provide legal assistance with respect to any criminal proceeding, except to provide assistance to a person charged with an offense in an Indian tribal court; (3) to provide legal assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures to act and the action is brought against an officer of the court or against a law enforcement official for the purpose of challenging the validity of the criminal conviction; (4) for any of the political activities prohibited in paragraph (6) of subsection (a) of this section; (5) to make grants to or enter into contracts with any private law firm which expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public; (6) to support or conduct training programs for the purpose of advocating particular public policies or encouraging political activities, labor or antilabor activities, boycotts, picketing, strikes, and demonstrations, as distinguished from the dissemination of information about such policies or activities, except that this provision shall not be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to provide adequate legal assistance to eligible clients; (7) to initiate the formation, or act as an organizer, of any association, federation, or similar entity, except that this paragraph shall not be construed to prohibit the provision of legal assistance to eligible clients; and etc.

LSC's legal aid is mostly focused on cases over divorce, child support, housing supply, subsidy for low income earners and consumer issues.<sup>25</sup>

Class action is one of the distinct features of legal aid in the US. In 1996, however, the parliament passed a law prohibiting the LSC-funded legal aid organizations from being involved in class actions or from intervening in cases which challenges the welfare system reform of the federal or state governments. These developments gave birth to a prediction that the civil legal aid of the US will no longer be focused on the pursuit of social reform through law but rather on the rights protection for individual applicants.<sup>26</sup>

Other characteristics of the civil legal aid of the US are: free legal aid, full-time staff lawyers system which generates professionals dedicated to the legal aid, development of various legal aid programs, cooperation with the bar association, law schools and other social organizations, and establishment of Neighborhood Offices to improve accessibility of legal aid programs for the poor.<sup>27</sup> These features made it possible for the legal aid to be active in leading institutional reforms, and the many Poverty Laws enacted since the 1960s are the legacy of the American civil legal aid.<sup>28</sup>

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Legal Services Corporation, "The Legal Services Corporation Act," <http://www.lsc.gov/sites/lsc.gov/files/LSC/pdfs/LSC-Act-2013.pdf> (Access Date: 2014. 1. 23).

<sup>25</sup> 김정선 (1997), pp. 218-224.

<sup>26</sup> 김정선 (1997), pp. 219-221.

<sup>27</sup> 김정선 (1997), p. 217.

<sup>28</sup> 김정선 (1997), p. 257.

### 3. The Development of Legal Aid System in China

Even before the legal aid system was formally established in China, some lawyers voluntarily offered pro bono legal aid services and the legal foundations for legal aid could also be found in a number of existing laws.<sup>29</sup> The first legal aid center founded in China was a non-government, university-based program – Wuhan University’s Center for the Protection of the Rights of Disadvantaged Citizens (CPRDC), established in 1992 with financial support from the Ford Foundation. Another university-based center, the Center for Women’s Law Studies and Legal Services of Peking University, was established in 2005, and students at the China University of Law and Politics and Peking University have established legal aid center or association to offer legal consultations.<sup>30</sup>

The governmental legal aid system was first proposed by the then-Minister of Justice Yang Xiao in 1994, and after a pilot operation in Guangzhou in 1995 the governmental legal aid system was expanded nationwide. In 1996, legal foundations for legal aid were strengthened with the passage of the Lawyers Law, which imposed obligations on lawyers to undertake pro bono cases, and revisions to the Criminal Procedure Law, which expanded the class

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<sup>29</sup> Liebman(1999), p. 218; 朱景文 主编, 『中国法律发展报告-数据库和指标体系』, (北京: 中国人民大学出版社, 2007), p. 401.

<sup>30</sup> Liebman(1999), pp. 233, 235-236.

of defendants for whom courts should appoint lawyers to include the blind and persons charged with capital crimes.<sup>31</sup>

In 1997, China Legal Aid Foundation was created to raise and manage the funds for the legal aid system. Also in this year the Sichuan Province Legal Aid Center, the first provincial legal aid center in the nation, started operation, and with the establishment of the Tibet Autonomous Region Legal Aid Center in 2001 every province in China came to have a provincial legal aid center. In 2003, the State Council issued the Regulations on Legal Aid (法律援助条例), which established the basic framework for the legal aid system by clarifying government responsibilities, funding sources, system structures, scope of cases covered by legal aid, organization and enforcement, and legal liabilities of the legal aid system.<sup>32</sup>

The governmental legal aid centers have increased in great number for the last decade. The table below shows the number of governmental legal aid centers, staff, and the number of cases handled by governmental centers from the year 1999 through 2010.

(Table 1) Governmental Legal Aid Centers Statistics

Year \ Items	Centers	Staffs	Cases
1999	1,235	3,920	117,545

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<sup>31</sup> 朱景文(2007), p. 401; Liebman(1999), p. 220.

<sup>32</sup> 朱景文(2007), pp. 402-403; Sun Jianying, “Legal aid ensures equal treatment under law,” [http://www.chinadaily.com.cn/china/2012-12/12/content\\_16008860.htm](http://www.chinadaily.com.cn/china/2012-12/12/content_16008860.htm) (Access Date: 2013. 12. 20).

2000	1,890	6,109	159,413
2001	2,274	8,458	149,051
2002	2,418	8,285	135,749
2003	2,774	9,457	166,433
2004	3,023	10,458	190,187
2005	3,129	11,377	253,665
2006	3,149	12,038	318,514
2007	3,259	12,519	420,104
2008	3,268	12,778	546,859
2009	3,274	13,081	641,065
2010	3,573	13,830	n/a

Source: 司法部法律援助中心 编者, 『中国法律援助制度诞生的前前后后』 (北京: 中国方正出版社, 1998), 中国法律援助网, <http://www.chinalegalaid.gov.cn>.<sup>33</sup>

From the discussions above it can be concluded that the Chinese government took the initiative in establishing the legal aid system in China, resulting in its rapid growth in a relatively short period of time. Some scholars, however, regard the role of government and NGO to be equal in the establishment of the Chinese legal aid system. Regan, for example, says in his 2004 study that “China’s legal aid reflects the quite common pattern of a combination of bottom-up and top-down initiatives,” in which “the network of generally specialist NGO centers was quickly complemented by a network of generalist public legal aid offices.”<sup>34</sup>

Even though the non-government, university-based centers were established earlier than the governmental centers and their actions certainly have promoted the government to develop a national legal aid policy, it is an

<sup>33</sup> Recited from 조영남(서울: 서울대학교출판문화원, 2012), p. 123.

<sup>34</sup> Regan(2004), pp. 174-175.

overestimation to view the non-government centers' role to be equal with that of the governmental centers. The reasons are as follows. First, the number of university NGO centers was too small to claim that public legal aid offices were established to “complement” the NGO network. Second, many studies point out that non-governmental, private legal aid centers are often faced with difficulties such as lack of funds, professional staff, and legislation to guarantee free activities of those centers. Third, many non-governmental centers are still under the government's control, which leaves little room for free maneuvering.<sup>35</sup>

What then was the reason behind the government's enthusiastic effort to establish the legal aid system? Hui Xu, a scholar affiliated with the Chinese Academy of Social Sciences, analyzes that the establishment of the legal aid system was part of an effort by the political elites to deal with the legitimacy crisis. According to Xu, the economic growth during the 1980s through the mid-1990s had bolstered the government's legitimacy, but as the unequal distribution of wealth became a social issue the political elites focused on social justice in order to enhance legitimacy. Xu anticipates that the legal aid system

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<sup>35</sup> 洪笃凯, 「关于社会团体参与法律援助活动的思考」, 『中国司法』 2005 年 11 期, pp. 84-85; 司法部法律援助中心调研组, 「社会组织参与法律援助工作的调研报告」, 『中国司法』 2005 年 4 期, p. 67; 唐鸣·王勤, 「我国民间法律援助组织的兴起与变革」, 『社会主义研究』 2008 年 5 期, pp. 48-51.

will play the role of a social safety valve, because it can represent marginalized groups in Chinese society, such as migrant workers.<sup>36</sup>

This view is confirmed by the book *The Ins and Outs of the Development of China's Legal Aid System*, published by the Ministry of Justice Legal Aid Center.<sup>37</sup> In that book the former Minister of Justice Yang Xiao, who first proposed and led the establishment of legal aid system, says that judicial justice is a prerequisite for a fair society, and legal aid system is an essential part of judicial justice. In other words, legal aid system is a means to realize 'socialist rule-of-law state,' through which social stability is maintained and economic growth can be continued. In another chapter which discusses the theoretical background of the legal aid system, the authors argue that even though economic equality has not yet been realized in a socialist China, political and judicial equality should be guaranteed to all people, and if the government fails to provide the environment the leaders will have to face voices questioning if China truly is a socialist country.

Moreover, considering that the Chinese government has been promoting 'governing the state according to law (依法治国)' since the 15<sup>th</sup> National Congress of the Chinese Communist Party, it seems that the

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<sup>36</sup> 徐卉, 「中国法律援助制度的建立与发展:从合法性危机到社会安全阀」, 『环球法律评论』 2005年6期, pp. 648-651.

<sup>37</sup> 司法部法律援助中心 编者, 『中国法律援助制度诞生的前前后后』(北京: 中国方正出版社, 1998), 〈中国法律援助网〉, <http://www.chinalegalaid.gov.cn> (Access Date: 2013. 4. 27).

establishment of the legal aid system was part of the government's well-coordinated policy plan.<sup>38</sup> In conclusion, the Chinese legal aid system, which was first started by non-governmental actors, has developed into a full-blown national system through the ambitious promotion of the government who wanted to obtain social stability.

In the next chapter we will examine whether the legal aid system can become the force for social change by looking into the activities of the governmental and non-governmental legal aid organizations.

#### **4. Case Study 1: Governmental Programs**

The legal aid programs in China can be divided into five different categories.<sup>39</sup> The first is the Guangzhou Model, in which the centers are funded by the government and full-time legal aid lawyers provide legal aid services. The second is the Beijing Model, in which legal aid cases are assigned to law firms. At present this model is the most widely adopted. The third is the Qianxi Model, in which individuals or organizations establish legal aid programs under the government's permission. The fourth is non-government and university-based programs, such as the legal aid centers of Wuhan University and Peking

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<sup>38</sup> In his 2002 study, Cho defines 'governing the state according to law (依法治国)' as a comprehensive political reform designed to enhance the governance. Cho explains that the legislative reform of the 1980s developed into a political reform that encompasses the parliamentary reform, government reform, judicial reform, and communist party reform in the 1990s. 조영남, (과주: 창비, 2012), p. 80.

<sup>39</sup> Liebman(1999), p. 224, in 조영남(서울: 서울대학교출판문화원, 2012), p. 124.

University and legal aid organizations operated by labor unions (工会) and All-China Women's Federation (中华全国妇女联合会). The fifth is one where law firms voluntarily provide legal aid services under the government's tacit demand.

This paper divides the legal aid programs into two types: governmental and non-governmental programs. Under the non-governmental type there are three sub-categories: legal aid centers operated by social organization, university-based centers, and legal aid provided by non-registered civil organizations. This paper will examine these four types of legal aid programs one by one.

#### **4-1. Present Conditions of Governmental Programs**

The governmental legal aid centers provide legal representation in criminal, civil, and administrative litigations and also give legal advices to those who seek help.

According to the 2009 National Legal Aid Statistics Report provided in the China Legal Aid website, which is operated by the Ministry of Justice Legal Aid Center (司法部法律援助中心), by the end of 2009 there were a total of 3,274 governmental legal aid centers and 58,031 offices in China.<sup>40</sup> The

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<sup>40</sup> 司法部法律援助工作司, “2009年全国法律援助工作统计分析, ”  
[http://www.chinalegalaid.gov.cn/China\\_legalaid/content/2010-08/26/content\\_3998329.htm?nod](http://www.chinalegalaid.gov.cn/China_legalaid/content/2010-08/26/content_3998329.htm?nod)

governmental centers advertised their service through television and newspaper, and offered a total of 5,392 classes about legal aid in order to improve the general public's and officials' understanding of the legal aid system.

There are 13,801 personnel working in the governmental legal aid centers. As can be seen in the table below, about 80 percent of staff are law-majors, and about 45 percent of the staff hold a lawyer's license or legal profession license. These figures show that a large proportion of the staff working in the governmental legal aid centers are professionals who are well-versed in legal matters.

(Table 2) Staff in Governmental Legal Aid Centers

	Law-major		Lawyer's license or legal profession license holders		Lawyers registered to the legal aid centers		Educational background: college graduate or above	
	number	percentage	number	percentage	number	percentage	number	percentage
2007	9971	79.6%	5791	46.2%	4349	34.7%	7960	63.5%
2008	10250	80.2%	5856	45.8%	4237	33.2%	8466	66.3%
2009	10337	79%	5866	44.8%	4185	32%	8894	68%

Source: 司法部法律援助工作司, “2009年全国法律援助工作统计分析,” [http://www.chinalegalaid.gov.cn/China\\_legalaid/content/2010-08/26/content\\_3998329.htm?node=40884](http://www.chinalegalaid.gov.cn/China_legalaid/content/2010-08/26/content_3998329.htm?node=40884) (Access Date: 2013. 10. 28).

The governmental legal aid centers of the country handled a total of 641,065 cases in 2009 and criminal, civil, and administrative cases accounted for 19%, 80.5%, and 0.5% of the total respectively. Among those who received legal aid, migrant workers took up the biggest proportion (234,849 cases,

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e=40884 (Access Date: 2013. 10. 28).

36.6%), followed by women (144,697 cases, 22.6%), minors (86,590 cases, 13.5%), and persons with disabilities (46,435 cases, 7.5%).

Among the civil cases handled by the governmental legal aid centers, the most common were cases related to wage disputes (170,783 cases, 33.1%), followed by cases related to sustenance allowance and childcare costs (58,327 cases, 11.3%), marital/domestic relations (51,093 cases), traffic accidents (45,368 cases), industrial accidents (33,786 cases), claims for social security (38,196 cases), medical accidents (6,969 cases), and rights disputes which arose while helping others (361 cases).

As for the administrative cases, 4,889 cases were requested and 3,781 cases were accepted. The most common cases were claims for the minimum standard of living treatment (692 cases), followed by claims for industrial accident insurance treatment (591 cases), social insurance treatment (521 cases), state compensation (379 cases), and government subsidy or pension (347 cases).

The percentage of cases being accepted as a subject of legal aid in criminal, civil, and administrative cases were 80.5%, 90.9%, and 77.3%, respectively. Among the civil cases that were rejected, 44.9% were rejected because they failed to meet the income requirements, and 43.3% were rejected because they are not included in the categories of cases for which the centers provide legal aid. On the other hand, among the administrative cases, 34.2% of

the rejected cases failed to meet the income requirements, while 45.3% of the rejected cases do not belong to the subject areas of legal aid.

From the statistics discussed above, it can be concluded that the governmental legal aid centers, nationwide in their scale, are providing legal aid for a significant number of citizens and that the centers are devoted to helping socially marginalized groups. However, the fact that administrative cases take up a very small portion of the total cases handled by the governmental centers (0.5%) and that a considerable number of administrative cases are rejected because they are not included in the list of cases for which the centers are willing to provide legal aid demonstrates that the latitude of the governmental centers is still limited.

The 2009 National Legal Aid Statistics Report also points out that there exists disparity among centers of different levels (province(省), city(市), and county(县)) and regions (eastern, central, and western). The centers in western rural area are particularly in need of financial support, as many of them are not supplied with even the basic resources to run the office.<sup>41</sup> Falling behind the eastern part, the western rural area is where legal aid for the economically weak

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<sup>41</sup> The 2005 National Legal Aid Statistics Report also points out regional imbalance in funding as one of the problems of the legal aid system. It seems that this problem is not easily resolved. 司法部法律援助工作司, “2005年全国法律援助工作统计分析,” [http://www.chinalegalaid.gov.cn/China\\_legalaid/content/2010-08/26/content\\_3998321.htm?node=40884](http://www.chinalegalaid.gov.cn/China_legalaid/content/2010-08/26/content_3998321.htm?node=40884) (Access Date: 2013. 10. 28).

is most needed. Therefore the governmental legal aid programs should make efforts to correct the regional imbalance.

#### **4 – 2. Governmental Centers Case Study: The Beijing Legal Aid Center**

The Beijing Legal Aid Center was established in 1997 by the Beijing municipal government and is under the supervision of the Beijing Justice Bureau. The center was chosen for this case study because it is located in the capital and is therefore appropriate to represent governmental legal aid centers in China. The center provides legal advice to the citizens, accepts and evaluates inquiries applying for legal aid or the cases assigned by the judicial authorities, represents criminal suits assigned by the judicial authorities, dispatches lawyers to carry out legal aid, and manages the 12348 Legal Aid Hotline and the online legal advice service on the center's internet website.<sup>42</sup>

To evaluate the center's legal aid work, we will first look at the monthly statistics report regarding the legal advice service. According to the most recent March 2010 Legal Advice Statistics Report,<sup>43</sup> a total of 12,729 persons received legal advice either through phone call or by visiting in person,

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<sup>42</sup> 北京市法律援助中心, “北京市法律援助中心简介” [http://www.bjlegalaid.gov.cn/jg/t20060410\\_125413.htm](http://www.bjlegalaid.gov.cn/jg/t20060410_125413.htm) (Access Date: 2013. 10. 31).

<sup>43</sup> 北京市法律援助中心, “2010年3月法律咨询工作情况统计分析,” [http://www.bjlegalaid.gov.cn/tjkb/t20100420\\_267401.htm](http://www.bjlegalaid.gov.cn/tjkb/t20100420_267401.htm) (Access Date: 2013. 10. 31).

and the number of cases that received the online legal aid service through the center's website is 235.

As to the subject matter of the legal advice, among the 12,729 persons who called or visited the center 10,683 persons (83.9%) inquired about civil matters, 568 persons (4.5%) about administrative matters, 359 persons (2.8%) about criminal matters, 575 persons (4.5%) about litigation procedures, 410 persons (3.2%) about non-litigation procedures, and 134 persons (1.1%) about other matters. Among civil matters, labor disputes took up the largest proportion (29.2%), followed by marriage/family matters (20.3%) and land/housing (17.3%).

Statistics on litigation representation are unavailable, so instead we will examine cases handled by the center from August 6, 2013 through September 4, 2013, introduced in the website's "Legal Aid Achievements (法律援助事迹谈)" page.<sup>44</sup>

(Table 3) Cases handled by the Beijing Legal Aid Center

Title	Content
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<sup>44</sup> This webpage introduces cases handled by the legal aid centers in each district of the Beijing city. Even though these cases were the ones selected by the center to emphasize its successful results and therefore cannot illustrate the whole picture of the center's activities, they still can show us what the center is aiming for. The cases were classified into the following seven categories: divorce, supporting family members (marked as "supporting"), dispute over the inheritance ("inheritance"), business dispute, labor dispute, compensation for personal damage ("compensation"), and dispute among neighbors ("neighbor").

北京市法律援助中心, "法律援助事迹谈," <http://www.bjlegalaid.gov.cn/zxflzx/zxflzxfysjt/default.htm> (Access Date: 2013. 10. 31).

<p>A person abandoned after falling ill – Legal aid does not give up on helping those in need (身患重病被抛弃 扶危济困法律援助不放弃)</p>	<p>[Divorce] After the wife falls ill her husband abandons her, asking for divorce. The center helps her with protecting her own rights and property.</p>
<p>A dispute over alteration of the purpose of use of a leased building – Legal aid resolves the conflict (改变租赁物用途起纠纷 法律援助调解平息诉争)</p>	<p>[Business Dispute] As the business in the leased building thrives, the owner tries to cancel the contract arguing that the leaseholder altered the purpose of use without permission. The center helps them reach an agreement.</p>
<p>Legal aid office successfully directs the residential community (居委会) in establishing the guardian appointment procedure (昌平区天通苑南法律援助工作站成功指导居委会完成监护人指定程序)</p>	<p>[Supporting] The center provides legal and administrative advice to the residential community which was having a problem because it does not yet have procedures for appointing a guardian for a senior citizen.</p>
<p>A contract breached arbitrarily – protected according to law (合同解除无理 依法有据维护)</p>	<p>[Labor Dispute] An employer fires an employee without proper reason and does not pay due compensation. The center explains related laws to the employer and helps the employee to be reemployed.</p>
<p>Legal aid protects the rights of the minor (法律援助维护未成年人权益)</p>	<p>[Supporting] A divorced father refuses to pay maintenance for his underage child. After listening to the center staff's explanation the father understands his legal duty and agrees to pay maintenance.</p>
<p>Injured in the elevator – Compensated through mediation (乘电梯脚被砸伤 经调解获得赔偿)</p>	<p>[Compensation] A woman gets hit by interior design material being transported in the elevator. Thanks to the center's help she receives compensation.</p>
<p>A business dispute arisen from misunderstandings – Resolved through legal aid's mediation</p>	<p>[Business Dispute] A food factory buys a measuring instrument from a manufacturing firm, but its speed is different from the speed stated on</p>

(因误解产品买卖纠纷起 法律援助 助诉前调解息诉争)	the internet website. As the factory tries to return the instrument, the manufacturing firm sues the factory. Finally the dispute is resolved through the center's mediation.
Legal aid helps an abandoned elderly person (七旬老人生病无人管 法律援助 上门送温暖)	[Supporting] An old woman falls ill, but her children do not support her medical expenses. The center's staff visits her home, explains to her related laws, and helps her with filing complaint.
Unpaid wage – Legal aid helps the worker in pressuring the employer (付出劳动报酬难得 法援帮助顺利讨薪)	[Labor Dispute] An employer does not pay a blind massager his proper wage and denies the fact that the massager worked in his shop. The center helps the massager during the suit, and in the end he is able to discuss his wage with the employer.
A dispute over a construction worker's injury – Rightly mediated and peacefully resolved (务工受伤起纠纷 依理调解化干戈)	[Labor Dispute] A subcontractor employee gets injured in a construction site. The center reminds the subcontractor owner and the building owner that both of them are responsible for the injury and has them pay for the compensation.
Trying to support parent with ulterior motives – Through legal aid's careful mediation harmony is restored (抢养老人目的不纯 细心调解一家和睦)	[Supporting] As their mother receives a huge amount of compensation after their father dies in a traffic accident, two brothers fight over who lives with their aged mother. The dispute is resolved through the center's mediation.
Sight obstructed with feudal superstition – Legal aid mediates dispute (封建迷信蒙眼 法援调解止争)	[Neighbor] A person grumbles over the height of his neighbor's newly-built house, because he thinks it will affect his house's feng shui (风水). The center resolves the conflict by explaining to him that feng shui is just a feudal superstition.
Mr. Liu sues the company after labor dispute – Legal aid helps with discussing proper treatment (刘某诉公司劳动争议 法援律师助其讨待遇)	[Labor Dispute] An employee working in a paint company is diagnosed with pneumoconiosis, but the employer is indifferent to his demand for compensation. The center mediates so that the employee can be properly compensated.
How to care for a physically	[Neighbor] A physically challenged person in a neighborhood presents a threat to the neighbors,

<p>challenged person – Legal aid helps solving the problem (智障人管理老大难 法援助力解其困)</p>	<p>and the residential community seeks the center’s help. The center, after reviewing related laws to his family, persuades them to send him to a hospital so that he can receive proper treatment.</p>
<p>After a man’s death his younger brother takes his savings – Legal aid helps his daughter’s son to inherit the money (外公去世其胞弟取走存款 法援调解外孙代位继承遗产)</p>	<p>[Inheritance] After a man dies his younger brother withdraws his savings, uses some for paying his brother’s medical and funeral expenses, and takes the remaining money. The man’s son-in-law asks for the center’s help so that the man’s daughter’s son, the legal heir of the man, can inherit the money.</p>
<p>A person gets injured while driving for his neighbor – The neighbor should compensate for his injury (帮人驾车造成人身受损 被帮助人应承担赔偿责任)</p>	<p>[Compensation] A person gets injured and disabled in a traffic accident while driving for his drunken neighbor, but the neighbor refuses to compensate for his injury. Finally it is decided that the neighbor is responsible for his injury and therefore should pay the compensation.</p>
<p>Legal aid office helps 5 migrant workers to receive 170,000 Yuan compensation (昌平区十三陵法援工作站为五名农民追讨补偿款十七万)</p>	<p>[Labor Dispute] Five migrant workers did not receive proper compensation after being laid off. The center helps them to reach an agreement on the compensation.</p>
<p>Unexpectedly suffers an accident and dies away from home – Legal aid helps the family out of difficulty (意外事故客死他乡 法律援助救危解困)</p>	<p>[Labor Dispute] A migrant worker working in a construction site accidentally falls and dies. The center helps the bereaved family to be adequately compensated.</p>
<p>Road not yet restored after repairing – The person injured ought to be compensated (施工完毕尚未恢复原状 造成他人损伤理应赔偿)</p>	<p>[Compensation] On a rainy day a person riding a motorcycle gets injured on a road not yet restored after a road repairing. The person gets compensated through the center’s help.</p>
<p>Infuriated father after losing a child in a car accident – Lawyer helps him protect his rights through the law</p>	<p>[Compensation] A person without a driver’s license dozes off while driving and has a car accident, killing four persons and putting five persons in a critical condition. One victim’s father</p>

(孩子遭车祸家长生怒火 律师积极引导依法维权)	tries to lodge a complaint to the police and his son's school thinking that they are responsible for the accident, but the center leads him to resolve the matter through legal action. The court rules that the driver should compensate for the loss.
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When we classify the cases introduced above according to their contents, there are 6 cases related to labor dispute, 6 cases related to family matters such as divorce, supporting, and inheritance, 4 cases related to compensation for personal damage, 4 cases related to business dispute and dispute among neighbors. This shows that the legal aid service of the Beijing Legal Aid Center is closely related to the various problems that the citizens encounter in daily life.

Also, those who received legal aid include a woman asked for a divorce after falling ill, a blind massager denied his proper wage, a subcontractor employee, and migrant workers, which demonstrates that the center's legal aid program is significantly helpful to the socially weak and alienated. The center's effort to act for the citizen's welfare can also be found in the following measures: To improve the 12348 Legal Aid Hotline service, the center prepared a feedback box through which citizens can file a complaint, and set up an

evaluation system to figure out the hotline users' satisfaction level over the service.<sup>45</sup>

However, the Beijing Legal Aid Center does not go beyond resolving problems on the surface. In other words, the center does not raise questions to the existing social structure which has given birth to the problems or try to extend the citizen's rights by representing test case or public interest litigation. Rather, the center's activities are mainly focused on maintaining social stability, following the government's policy plan.

For example, the governmental legal aid centers in the Beijing city embarked on the 'stabilizing the society' work during the third plenary session of the 18<sup>th</sup> Chinese Communist Party Central Committee (Nov. 9-12, 2013), some declaring that they will "get rid of elements that can cause social unrest" by focusing on legal aid works for the "priority group (重点人群)" such as the migrant workers.<sup>46</sup>

The center's focus on social stability can also be found in the way the cases are described on the "Legal Aid Achievements" page introduced above.

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<sup>45</sup> 北京市法律援助网, "北京市法援中心 148 办公室以服务群众为根本出发点, 全面提高 12348 专线咨询质量," [http://www.bjlegalaid.gov.cn/zxflzx/zxflzx-gzdt/t20131105\\_284625.htm](http://www.bjlegalaid.gov.cn/zxflzx/zxflzx-gzdt/t20131105_284625.htm) (Access Date: 2013. 11. 10).

<sup>46</sup> 北京市法律援助网, "昌平区流村司法所认真做好十八届三中全会维稳工作," [http://www.bjlegalaid.gov.cn/zxflzx/zxflzx-gzdt/t20131105\\_284633.htm](http://www.bjlegalaid.gov.cn/zxflzx/zxflzx-gzdt/t20131105_284633.htm) (Access Date: 2013. 11. 10); 北京市法律援助网, "平谷区法援中心多措并举做好三中全会维稳工作," [http://www.bjlegalaid.gov.cn/zxflzx/zxflzx-gzdt/t20131107\\_284648.htm](http://www.bjlegalaid.gov.cn/zxflzx/zxflzx-gzdt/t20131107_284648.htm) (Access Date: 2013. 11. 10); 北京市法律援助网, "丰台区法律援助重点时期"因人施援"维护地区稳定," [http://www.bjlegalaid.gov.cn/zxflzx/zxflzx-gzdt/t20131107\\_284651.htm](http://www.bjlegalaid.gov.cn/zxflzx/zxflzx-gzdt/t20131107_284651.htm) (Access Date: 2013. 11. 10).

In one case, a legal aid lawyer says to the person who is expressing gratitude toward him that he should thank the government, because it is the government who made such a good system as the legal aid.<sup>47</sup> In another case, the center has led a group of people trying to petition the related government body to use legal channels such as lawsuit, because, it argues, a class-petition can have a negative influence on society.<sup>48</sup> In yet another case, the center praises a lawyer who resolved a dispute by successful mediation, commenting that eliminating resentment between parties is important in building a Harmonious Socialist Society (和谐社会),<sup>49</sup> the socio-economic vision of the Hu Jintao administration focusing on overall societal balance and harmony.<sup>50</sup> These expressions prove that the Beijing Legal Aid Center is devoted to maintaining social stability, rather than seeking for social reform.

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<sup>47</sup> “每到这个时刻，刘律师都会对当事人说一句经典的台词：如果要感谢的话，就感谢咱们的政府吧，正是政府建立的法律援助制度，才使得咱们弱势群体有了维权的保障。”北京市法律援助网，“意外事故客死他乡 法律援助救危解困，”[http://www.bjlegalaid.gov.cn/zxflzx/zxflzxfysjt/t20130904\\_280379.htm](http://www.bjlegalaid.gov.cn/zxflzx/zxflzxfysjt/t20130904_280379.htm) (Access Date: 2013. 10. 29).

<sup>48</sup> “同时，周律师也向田啸家长阐明被害人要依法维护自己的合法权益，其合法诉求完全能够通过司法诉讼程序得到解决，集体上访只会造成负面社会影响，而且分散司法机关办案精力，希望田啸家长配合司法机关及律师工作，依法解决本案。”北京市法律援助网，“孩子遭车祸家长生怒火 律师积极引导依法维权，”[http://www.bjlegalaid.gov.cn/zxflzx/zxflzxfysjt/t20130904\\_280383.htm](http://www.bjlegalaid.gov.cn/zxflzx/zxflzxfysjt/t20130904_280383.htm) (Access Date: 2013. 10. 29).

<sup>49</sup> “另外，律师在援助过程当中，尽量先采取案外调解的方式，因为这样如果双方能够达成调解一致，就能够真正做到案结事了，当事双方均无怨言，是最符合建立和谐社会的要义的。”北京市法律援助网，“意外事故客死他乡 法律援助救危解困，”[http://www.bjlegalaid.gov.cn/zxflzx/zxflzxfysjt/t20130904\\_280379.htm](http://www.bjlegalaid.gov.cn/zxflzx/zxflzxfysjt/t20130904_280379.htm) (Access Date: 2013. 10. 29).

<sup>50</sup> Wikipedia, “harmonious socialist society,” [http://en.wikipedia.org/wiki/Harmonious\\_Socialist\\_Society](http://en.wikipedia.org/wiki/Harmonious_Socialist_Society) (Access Date: 2014. 1. 1).

## **5. Case Study 2: Non-governmental Programs**

### **5-1. The Types of Non-governmental legal aid organizations**

According to the Ministry of Justice Legal Aid Center's 2005 report, non-governmental legal aid programs in China can be divided into the following three categories.<sup>51</sup>

The first category includes programs provided by social organizations such as the labor union, the Communist Youth League of China (共青团), and the All-China Women's Federation (ACWF). Each organization's rights protection department or civil affairs division operates the programs. There are about 25,000 legal aid centers operated by the ACWF, and about 9,000 centers under the labor unions. The second category includes legal clinics under law schools or students' voluntary legal aid organizations. There are about 30 to 40 of these programs in China. The third category is independent civil legal aid organizations, and the exact number of those organizations is not ascertained yet.<sup>52</sup>

The non-governmental organizations often suffer from lack of funds. Legal aid centers operated by social organizations are usually funded by that organization, and some receive government subsidy if they are registered to the

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<sup>51</sup> 司法部法律援助中心调研组, 「社会组织参与法律援助工作的调研报告」, 『中国司法』 2005年4期, pp. 65-67.

<sup>52</sup> 司法部法律援助中心调研组(2005), p. 65.

organization department (编制部门). Legal aid centers attached to the law schools receive some of the expenses from the school and they also receive donation. Ford Foundation is one of the contributors for many law school-affiliated legal aid centers in China. Independent civil organizations are mostly funded by donation from abroad.<sup>53</sup>

Non-governmental programs provide legal advice, mediate, help prepare legal documents, and they also provide representation in litigation, albeit a small amount. These programs are mostly focused on specific groups of people such as women or the disabled, in accordance with the purpose of the organization providing the legal aid service. Legal aid centers registered to the government receive supervision from the related government bodies. Law school-affiliated centers or independent civil organizations are usually managed by their own regulatory bodies.<sup>54</sup>

As to the regional distribution, most legal aid centers under the social organizations are evenly spread across the nation, but independent civil organizations are mostly concentrated in large cities such as Guangzhou or Beijing, and only a small number of them operate in rural areas.

In the following section we will examine the three types of non-governmental legal aid programs through case study. The All-China Women's

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<sup>53</sup> 司法部法律援助中心调研组(2005), p. 66.

<sup>54</sup> 司法部法律援助中心调研组(2005), p. 66.

Federation, Center for the Protection of the Rights of Disadvantaged Citizens of Wuhan University, and Gongmeng each represent social organization's legal aid, university-based legal aid center, and independent civil legal aid organization respectively.

## **5-2. Non-governmental Programs Case Study**

### **1. The All-China Women's Federation**

As a case study of legal aid programs provided by the social organizations, we will first look into the All-China Women's Federation (ACWF)'s legal aid service. Mass organizations (群众团体) such as ACWF or labor unions are politically more powerful and well-organized than other social organizations, which enables them to actively participate in the various law-related activities led by the state institutions.<sup>55</sup> Therefore it is assumed that the ACWF has the power to lead a law-revision campaign to protect the rights of its members, but at the same time there might be a certain degree of limitation because it is subordinate to the government.

The ACWF Legal Assistance Center (全国妇联法律帮助中心) is a non-profit public service corporation under the direct supervision of the ACWF which provides legal services to women and children. The center introduces that it handles cases related to infringement on rights and interests of women

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<sup>55</sup> 조영남 (서울: 서울대학교출판문화원, 2012), pp. 126-127.

and children, provides legal counsel, educates the public on related policies and laws, holds forums, organizes volunteers, and raises funds. The center declares that it provides legal service and other forms of support for cases with large social impact, raises social awareness on important issues, and asks for the government's intervention on those issues.<sup>56</sup>

Here we will look into the actual activities of the ACWF. In 2012 the ACWF handled about 13,000 petitions and 2,100 calls from women all over the country. The majority of the cases involved domestic violence, marriage and family disputes. The ACWF also made great achievements in protecting Chinese women's legal rights in 2012. It contributed to the incorporation of the anti-domestic violence law into the legislation plan of the Standing Committee of the National People's Congress. It also actively participated in enacting and amending laws and regulations related to women's rights, such as the Special Regulations on Labor Protection of Female Workers, signed by the Premier Wen Jiabao on April 28, 2012. The ACWF encouraged the Supreme People's Court to issue an order commanding the personnel to demonstrate their competence in ruling on the civil cases and to protect women's and children's rights according to the law.<sup>57</sup> These activities show that the ACWF truly is

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<sup>56</sup> 中国妇女法律帮助与维权网, “中心简介,” <http://www.12338.cn/about/about.aspx> (Access Date: 2013. 10.28).

<sup>57</sup> 新华网, “2012年各地妇联受理办结妇女法律援助案件7000多个,” [http://news.xinhuanet.com/legal/2013-01/10/c\\_114326135.htm](http://news.xinhuanet.com/legal/2013-01/10/c_114326135.htm) (Access Date: 2013. 10. 28);

committed to enhancing women's and children's rights and interests by actively participating in enacting and amending related laws.

Next, in order to look into the specific activities of the ACWF in each region, we will examine the Guangdong Province ACWF (GPWF)'s case.<sup>58</sup> The GPWF provides "12338 Legal Aid Hotline" service and online legal advice service. The website clarifies the range, eligibility, and procedure of the legal aid service provided by the GPWF, and the service can be applied online.<sup>59</sup> According to a news report, in 2012 the GPWF dealt with 34,429 petitions, among which 22,499 cases (65.3%) were related to marriage/domestic problems. In the marriage/domestic problems category, domestic violence took up the biggest part (18.2%), followed by supporting children (12.9%), marital infidelity (12.5%), and dispute over cohabitation (7.7%).<sup>60</sup>

The GPWF participated in the "Chinese Women's Legal Aid Program" led by the national ACWF since 2007. The GPWF used to hand over women's rights cases to the governmental legal aid centers, but since the program was

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中国妇女(英文)网, "Over 7,000 Applicants Receive Legal Aid from Women's Federations Nationwide," <http://www.womenofchina.cn/html/node/148595-1.htm> (Access Date: 2014. 1. 2).

<sup>58</sup> As it was difficult to find documents on the Beijing ACWF's legal aid, I have chosen the Guangdong Province for the case study because it has a long history of legal aid since the pilot legal aid program was operated in Guangzhou in 1995.

<sup>59</sup> 广东女性E家园, "12338热线服务平台," <http://www.gdwomen.org.cn/12338/> (Access Date: 2013. 11. 11).

<sup>60</sup> 广州日报, "省妇联公布2012年妇女信访维权统计情况 婚姻家庭类的信访投诉22499件," <http://www.oklawyer.cn/lawyer302.htm> (Access Date: 2013. 11. 11).

started it took more initiative in providing legal aid service to women. For example, in 2008 it received 209 cases and completed 171 cases, with a success rate reaching to 90%. Also the GPWF is working in a close relationship with the social lawyer (社会律师)'s offices, which contributed to drawing a group of legal aid volunteers interested in protecting women's rights.<sup>61</sup>

Then can we conclude that the ACWF's legal aid program is more social reform-oriented than is the governmental program? On its website the GPWF introduces women's rights protection activities of each ACWF branch in Guangdong, many of which are publicity campaigns on related laws and part of the "Building a Peaceful Family Movement (平安家庭创建活动)."

The Building a Peaceful Family Movement is a mass campaign started in 2005 by the national ACWF, the office of the Society Management and Governance (中央综治办), the Ministry of Public Security, the Ministry of Justice, and other related government bodies with a concept that in order to build a harmonious society, each family, the basic unit of one society, should be healthy. The movement tries to achieve social stability by educating the people on laws related to family life such as Women's Rights Protection Law and Marriage Law, and by fighting drugs, superstition, and pseudo-religions.<sup>62</sup> The

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<sup>61</sup> 中国妇女报, "项目化运作提升妇联法律援助水平," [http://www.china-woman.com/rp/main?fid=open&from=view&fun=show\\_news&nid=47013](http://www.china-woman.com/rp/main?fid=open&from=view&fun=show_news&nid=47013) (Access Date: 2013. 11. 11).

<sup>62</sup> 百度百科, "平安家庭创建活动," <http://baike.baidu.com/view/5256185.htm> (Access Date: 2013. 11. 11).

fact that the ACWF is actively participating in this movement demonstrates that its works are in close relationship with the government's goal of social stability.

What we have examined so far is mostly what the ACWF claims about its own activities, so here we will review previous study for a more objective analysis. Lee and Regan, in their study on women's legal aid in China, present two ACWFs' cases.<sup>63</sup>

The first case is the Shanghai ACWF Legal Aid Center. The center, established in 2000, supports and complements the legal aid work of the Shanghai Municipal Legal Aid Center through its focus on women. Even though it is relatively independent and has more flexible criteria for legal aid than the municipal center, the center has granted legal aid in very few court cases and concentrated on legal advice and law awareness campaign. The authors question whether the center's cautious approach to legal aid can well serve enhancing women's rights, and suggest that the center provide legal aid in cases with bigger social impact, such as cases where women's rights have been violated as a result of discriminatory practices or gaps in legislation.<sup>64</sup>

The second case is the Anhui ACWF Legal Aid and Legal Assistance Center. The Anhui ACWF is more pro-active in securing protection for

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<sup>63</sup> Tang Lay Lee and Francis Regan, "Why Develop and Support Women's Organizations in Providing Legal Aid in China? Women's Rights, Women's Organizations and Legal Aid in China," *Journal of Contemporary China*, Vol. 18, No. 61 (2009), pp. 558-561.

<sup>64</sup> Lee and Regan(2009), pp. 558-559.

women's rights and gender equality in legal aid. In order to circumvent the hierarchical superior/subordinate relationship the Anhui ACWF Legal Aid Center has with the Anhui Province Legal Aid Center, in 2002 the Anhui ACWF set up a legal assistance center which focuses on providing legal advice and public awareness campaign.

The assistance center, relatively free from the control of the provincial legal aid center, could set its own criteria for legal aid, thereby extending legal aid to those women who fail the means test for public legal aid but cannot afford to go to court. In 2005 it also struck an agreement with the provincial legal aid center and took up a total of 700 court cases related to women and children, which the authors evaluate as a great success in securing gender equality in legal aid for women.<sup>65</sup>

Summing up the discussion so far, the ACWF is offering practical help to the women whose rights have been infringed through representation in litigation and legal advice. Being a mass organization whose network covers the whole country, it can serve a wide range of women in need of help. With regard to its contribution to the social reform, the ACWF is more active than the governmental centers in promoting enactment or revision of law to improve women's rights.

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<sup>65</sup> Lee and Regan(2009), pp. 560-561.

However, its activities are still very closely linked to the government's policy goal, and in some regions the ACWF legal aid center is subordinate to the governmental center, which might narrow the ACWF's discretion. These factors render it difficult for the ACWF to pursue measures that are beyond the government's permission.

## **2. Center for the Protection of the Rights of Disadvantaged Citizens (CPRDC) of Wuhan University**

Next we will examine the case of law school-affiliated legal aid center. Relatively independent from the government control, those centers expected to be more active in efforts to seek social change.

Center for the Protection of the Rights of Disadvantaged Citizens (CPRDC) of Wuhan University, established in 1992, was the first legal aid center in China and has been receiving great attention both at home and abroad. English annual reports from 2004 through 2012 are available on its website. The reports contain information on the number of cases handled by the center, the number of legal counsels provided, summaries of important court cases, changes in the management system, domestic and international exchange, and research activities of the center, from which we can discern the goal and characteristics of the CPRDC. Here we will review those reports focusing on the contents of the court cases and the center's relationship with the government.

In 2004 the center represented 143 court cases in total, among which 36 cases were related to women's rights, 6 cases to minors, 28 cases to the disabled, 17 cases to administrative matters, 42 cases to the elderly, and 14 cases to laborer. As to the content of the cases, the center dealt with a wide range of cases including demolition compensation, injury compensation, traffic accident compensation, divorce case, labor case, economic dispute, fostering dispute, etc.

The report emphasizes that the center has paid more attention to public interest cases in spite of their difficulty because they have more far-reaching impact to the society. A class action over house property is introduced as an example, in which 42 residents of an apartment sued the construction company with the help of the center. Also, in order to increase the socially disadvantaged people's awareness on their rights, the center handed out handbooks on legal rights named the "Q&A on Law for Citizens" (published by the People's Court Press) to the citizens.<sup>66</sup>

In 2005 the center represented 114 court cases in total, among which 30 cases were related to women's rights, 5 cases to minors, 23 cases to the disabled, 5 cases to administrative matters, 27 cases to the elderly, and 24 cases to laborers. The report introduces a case in which a female worker was suddenly laid off from her work without a proper compensation. The center helped her

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<sup>66</sup> The Center for Protection for the Rights of Disadvantaged Citizens of Wuhan University, "Summary in 2004 of CPRDC," <http://www.cprdc.org/web/ShowTeacher.asp?ArticleID=605> (Access Date: 2013. 6. 20).

apply for arbitration in labor dispute arbitration committee, and through the arbitration process she finally received sufficient salary and compensation from her employer.

In order to improve its financial management the center carried out a series of reforms according to the Provisional NGO Registration Regulation (民办非企业单位登记暂行条例) and the Provisional Hubei Province NGO Yearly Inspection Method (湖北省民办非企业单位年检暂行办法), issued by the State Department on January 1, 2005. The center also passed the financial inspection conducted by the Bureau of Civil Affairs of the Hubei province.

Acknowledging its contribution to the public interest, the Propaganda Department of Communist Party in Hubei province and the Bureau of Civil Affairs of Hubei province granted the center “Star of Charity and Public Service of Hubei Province (湖北省慈善公益之星).” The center was also granted the “National NGO Advanced Unit (全国民办非企业单位自律与诚信建设先进单位)” recognition by the Ministry of Civil Affairs. Its achievements were also recognized in the white paper entitled “The Progress of the Human Rights in China (中国人权事业的进展),” published by the Chinese Information Office of the State Council in 2005 in order to improve the international society’s understanding of China’s human rights situation.<sup>67</sup>

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<sup>67</sup> The Center for Protection for the Rights of Disadvantaged Citizens of Wuhan Univer

In 2006 the center accepted 44 cases and completed 55 cases, including cases accepted in 2005. (The type of cases is not detailed.) The report emphasizes that the center complies with the Regulations on Legal Aid issued by the government in 2003, and that the center is in a good, complementary relationship with the governmental legal aid center. According to the report, if a case is included in the range of governmental legal aid the center directs the applicant to the governmental center, and when the governmental centers do not provide legal aid on cases eligible for the governmental legal aid the center sues against the government with the consent of the applicant.

The report says that the center is paying more attention to cases with large social influence with the expectation that these efforts will affect the legislation and policy-making process of the government. This year the report introduces three public interest cases; a lawsuit against the police for illegal ID card checking, a suit against the public security bureau of a city government which refused a citizen's request for publication of legal document, and a litigation against the Hubei province personnel department for illegally collecting registration fee of civil servant examination. The center also

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sity, "Summary in 2005 of CPRDC," <http://www.cprdc.org/web/ShowTeacher.asp?ArticleID=604> (Access Date: 2013. 6. 20).

participated in seminars and published studies on public interest law, thereby promoting the development of public interest law in China.<sup>68</sup>

In 2007 the center accepted 26 cases. This year's report introduces four public interest cases; the appealing case of the Hubei province personnel department's illegal collection of registration fee, a litigation against the police for illegal ID card checking, a litigation against the illegal administrative sanctions of the Wuhan traffic management bureau, and a labor dispute concerning a worker who was laid off after being treated for schizophrenia.

The center held many conferences to publicize public interest law, working with foreign institutions such as the Law School of George Washington University, Ford Foundation, and American Bar Association. It also participated in various public interest law activities, and the center's research on the sexual discrimination female university students receive during job-seeking activities was adopted by the Hubei province government.<sup>69</sup>

In 2008 the center accepted 47 cases. The report introduces a case in which the center successfully helped a plaintiff in a lawsuit against the traffic department of Huangzhou city which violated the Government Information

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<sup>68</sup> The Center for Protection for the Rights of Disadvantaged Citizens of Wuhan University, "Summary in 2006 of CPRDC," <http://www.cprdc.org/web/ShowArticle.asp?ArticleID=659> (Access Date: 2013. 6. 20).

<sup>69</sup> The Center for Protection for the Rights of Disadvantaged Citizens of Wuhan University, "Summary in 2007 of CPRDC," <http://www.cprdc.org/web/ShowArticle.asp?ArticleID=683> (Access Date: 2013. 6. 20).

Publication Regulation. Later the Legal Department of Hubei province publicized this case to the media, asking governments of all levels to administrate according to law. The report says that this case has generated a widespread social impact and will encourage ordinary citizens to “bravely take up the weapon of law to protect their rights.”

The center hosted a conference on grassroots justice in rural areas, which was assisted by the Hubei Province Legal Aid Center. Among the visitors to the center this year were the deputy director of the Ministry of Justice Legal Aid Center, the deputy director of the Judiciary Department of Hubei Province, and the director of the Hubei Legal Aid Center, which shows that the center was in a close relationship with the governmental legal aid centers.<sup>70</sup>

In 2009 the center accepted 44 cases and completed 34 cases. The report introduces two cases which had great social influence. In the first case a driver died in a collision due to an illegal behavior of a policeman who was checking the vehicles without any caution signals on the road. The plaintiff, helped by the volunteers from the center, was compensated at last. In the second case a husband who badly wanted a son took a second wife and deserted his daughter while his wife went out to a city to work. The center helped the wife in a divorce suit, in which she finally received enough compensation. These two

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70 The Center for Protection for the Rights of Disadvantaged Citizens of Wuhan University, “Summary in 2008 of CPRDC,” <http://www.cprdc.org/web/ShowArticle.asp?ArticleID=705> (Access Date: 2013. 6. 20).

cases illustrate the center's efforts to protect the rights of the socially disadvantaged.

Zhang Wanhong, director of the Laborer's Rights Department of the center, participated in the drafting of the National Human Rights Action Plan of China (国家人权行动计划) (2009-2010) which was issued by the Information Office of the State Council in April 13, 2009. The center also participated in various activities organized by the government, and also joined projects subsidized by foreign institutions.<sup>71</sup>

In 2010 the center accepted 70 cases and completed 46 cases. The report introduces a public interest case in which a citizen visiting a sightseeing place in Wuhan found the raise in ticket price illegal and sued the Hubei Price Bureau, which finally apologized through the media. This case has drawn much media attention, with China Central Television (CCTV), People's Daily, and other media reporting the case, and also induced the government's reaction.

In July the General Office of the State Council (国务院办公厅) issued a new document stipulating that the increase in ticket price of scenic spots should be publicized half a year in advance. Then the Hubei Price Bureau made a statement that it will comply with the new document and hold a public hearing

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<sup>71</sup> The Center for Protection for the Rights of Disadvantaged Citizens of Wuhan University, "Summary in 2009 of CPRDC," <http://www.cprdc.org/web/ShowArticle.asp?ArticleID=727> (Access Date: 2013. 6. 20).

before raising ticket prices of scenic spots. The report comments that through its involvement in this case the center has made the government to act according to law and has strengthened people's legal consciousness, which means a lot to the development of rule of law in China.

As for other activities of the center, in August a book edited by the director of the center professor Lin Lihong, titled "An Investigation Report of Public Interest Litigation in Six Asian Countries (亚洲六国公益诉讼考察报告)," was published by the China Social Science Press. The book introduces the legal system, rules on public interest litigation, the role of lawyers and NGOs in public interest litigation, and the experiences and lessons of public interest litigation in the six Asian countries chosen for the study.

On December 4, the staff and volunteers from the center participated in the mandatory law publicity activity organized by the Hubei Province Legal Aid Center. They introduced the center's activity to the citizens and distributed the brochure "Q & A on Law for Citizens" for free. From these we learn that the center is committed to the development of public interest law in China, and also to informing the public on the importance of law in their everyday lives.<sup>72</sup>

In 2011 the center accepted 59 cases and completed 50 cases. This year's report introduces two public interest cases. The first is a series of suits

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<sup>72</sup> The Center for Protection for the Rights of Disadvantaged Citizens of Wuhan University, "Summary in 2010 of CPRDC," <http://www.cprdc.org/web/ShowArticle.asp?ArticleID=741> (Access Date: 2013. 6. 20).

against the Wuhan Public Security Bureau for its illegal inspection on the internet cafes. The second is a suit against the Shenzhen Huanggang Customs for illegal administrative procedure. The plaintiff of this case was the center's director Lin Lihong, whose books were confiscated when she entered the mainland from Hongkong because they were included in the list of forbidden books, about which she was notified only after the confiscation.

Thinking that this incident was related to the protection of civil rights, publication of government information and the enhancement of customs regulations, professor Lin decided to sue the Huanggang Customs. The court has not given the ruling yet, but the center claims that this case has attracted the public attention on the customs' law enforcement process and the need for the government to publish the list of forbidden books.

As for other activities of the center, on April 9 it held a seminar on the administrative procedure law as part of its project sponsored by the Dutch Embassy in China. Judges from the supreme people's court and provincial court, experts from universities in China and abroad, lawyers and officers attended the seminar. On December 16, professor Sun Jin, director of the Women's Rights Department of the center, took part in a seminar on the promotion of legal aid

for women and children, which was jointly held by the Women's Federation of Wuhan and the Justice Bureau of Wuhan.<sup>73</sup>

In 2012 the center accepted 51 cases and completed 40 cases. This year's report introduces two public interest litigation cases. The first is professor Lin Lihong's suit against the Huanggang Customs. Even though the case ultimately failed, it left a considerable social impact: the Higher People's Court of Guangdong Province issued a judicial advice to the General Administration of Customs of the People's Republic of China Guangdong branch, asking the customs to clarify its confiscation inventory. On February 19, 2012, this case was selected for the "2011 China's Top Ten Public Interest Litigation Case," for its significance in raising questions on the legitimacy of the government's book-censoring system.

Another public interest litigation case introduced in the report is an administrative lawsuit against a local government which did not fulfill its statutory obligation of replying to the citizen's request. During the trials many problems of administrative lawsuits were revealed: First, it is difficult to register an administrative case. Second, district courts cannot supervise the local governments' activities effectively through administrative litigations. Third, during administrative lawsuits the courts tend to ignore the procedural

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<sup>73</sup> The Center for Protection for the Rights of Disadvantaged Citizens of Wuhan University, "Summary in 2011 of CPRDC," <http://www.cprdc.org/web/ShowArticle.asp?ArticleID=762> (Access Date: 2013. 6. 20).

flaws of administrative acts. Fourth, while promoting the urbanization process many local governments tend to sacrifice the legitimate interests of citizens without setting up a fair and reasonable compensation plan.

For a normal legal aid case, the center represented a wife who was asked for a divorce after suffering from schizophrenia. As for its other activities, the center held its 20<sup>th</sup> anniversary celebration on December 27 and leaders from all levels attended the celebration, such as the Supreme People's Court, Hubei Provincial Department of Justice, Hubei Provincial Department of Civil Affairs, Women's Federation of Hubei Province, Disabled Persons' Federation of Hubei Province, Women's Federation of City of Wuhan, Disabled Persons' Federation of City of Wuhan.

On May 13, professor Sun Jin, director of the Women's Rights Department of the center, made a report on the center's women's rights protection work to the vice chairman of the Standing Committee of the 9<sup>th</sup> National People's Congress and the Honorary President of the All-China Women's Federation Peng Peiyun and the deputy director of the Hubei Provincial People's Congress Standing Committee Jiang Daguo. In July, full-time volunteers of the center participated in the "Hubei Private Non-enterprise

Units Personnel Training” program sponsored by the Hubei Provincial Department of Civil Affairs NGO Management Bureau.<sup>74</sup>

As we have examined above, the center has been a leading force in the development of public interest law in China by undertaking lawsuits against the government and thereby raising public awareness on the government’s obligation to administrate according to law. As is emphasized in the annual reports, the center has made much effort to help the disadvantaged exercise their rights and to promote law reform, which are the features found in the social-reform-oriented legal aid by the neighborhood law firms in the U.S.<sup>75</sup>

However, the center’s activities are still within the range permitted by the government, and it is hard to say that the center is directly challenging the authority of the party-state or is criticizing the social system itself. The center is rather in a close relationship with the government bodies, complying with the government regulations such as the Regulations on Legal Aid and the

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<sup>74</sup> The Center for Protection for the Rights of Disadvantaged Citizens of Wuhan University, “Summary in 2012 of CPRDC,” <http://www.cprdc.org/web/ShowArticle.asp?ArticleID=791> (Access Date: 2013. 6. 20).

<sup>75</sup> Garth, who carried out a comparative study on the neighborhood law firms (NLF) of the U.S. and other western countries, notes that NLFs serve three basic “offensive” functions within wars on poverty, which are: (1) leading individuals and groups to enforce legal rights, thereby helping translate the promises of the welfare state into real gains for the poor; (2) promoting law reform, through litigation, negotiation, or lobbying, thereby extending the welfare state rights of the poor; (3) helping mobilize and sustain community groups whose roles are essentially those listed in (1) and (2). Bryant G. Garth, *Neighborhood Law Firms for the Poor: A Comparative Study of Recent Developments in Legal Aid and in the Legal Profession* (Alphen aan den Rijn, Netherlands; Rockville, Md.: Sijthoff & Noordhoff, 1980), p. 231.

Provisional NGO Registration Regulation. Therefore there is little chance for the center to go against the government's policy line and act as a force for social reform.<sup>76</sup> In other words, the center is carrying out a limited role within the social system it was erected in.<sup>77</sup>

### **3. Gongmeng (公盟, Open Constitution Initiative)**

Gongmeng was chosen for the case study subject of independent civil legal aid organization. It is an organization consisting of lawyers and academics in China that advocates the rule of law and greater constitutional protections. It was established in 2003 by Xu Zhiyong, Teng Biao, Yu Jiang and Zhang Xingshui from the Beijing University Law School.<sup>78</sup>

Some of Gongmeng's activities included: challenging the constitutionality of the police investigation in the Sun Zhigang case; participating in the drafting of a proposed amendment to include "human rights" in the Constitution, submitted to the National People's Congress in 2004;

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<sup>76</sup> The fact that the center is working with many foreign institutions and is recognized as the symbol of the development of human rights in China, can work for the benefit of the Chinese government which badly wants to improve the international society's negative perception on the human rights situation of China.

<sup>77</sup> Garth notes that NLFs are institutions for social change in a relatively limited sense, because the NLF movement is incapable of transcending the welfare state categories which erected it. Still, Garth argues, they have a more modest but important role to play, namely helping to make effective the rights given to the underprivileged. Garth(1980), p. 231-232.

<sup>78</sup> Feng Chongyi, Colin Hawes and Gu Ming, "Rights Defence Lawyers as Dissidents in Contemporary China," *International Journal of China Studies*, Vol. 3, No. 3 (December 2012), pp. 338.

defending the manager and editor in chief of the investigative newspaper Southern Metropolitan Daily (南方都市报) against politically motivated charges; conducting research on ways to reform the local people's congress and letters and petition system; writing reports on the development of human rights in China; monitoring experimental direct elections to the Haidian District of the Beijing Municipality Local People's Congress; speaking out for the education rights of migrant children; assisting with an administrative suit on behalf of victims enslaved by illegal brick kilns in Shaanxi; organizing a pro bono legal aid team to conduct public interest litigation on behalf of victims of the tainted milk scandal in 2008-9; launching activities to promote open government information, including the disclosure of public expenditures; hosting a training workshop where legal knowledge relating to rights defense and elections was discussed; providing legal aid to victims of "black jails" and petitioners. Their main purpose has all along been to raise public awareness of legal rights and the importance of public participation in the political process, with the ultimate aim of promoting constitutional reform in China.<sup>79</sup>

Here we will look into the pro bono legal aid Gongmeng provided for the victims of the tainted milk scandal in 2008-9.

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<sup>79</sup> Feng(2012), pp. 338-339.

The milk scandal broke out on September 11, 2008. On the 13<sup>th</sup> the government announced that it will provide free medical treatment for the babies suffering from the tainted milk and made up an emergency treatment leaders' group. On the 16<sup>th</sup>, the General Administration of Quality Supervision, Inspection and Quarantine (国家质检总局) carried out an inspection over the melamine content in the milk and announced that 22 companies' milk products were tainted by melamine. The number of victims announced by the government amounted to 296,000.

On September 12, the next day after the milk scandal broke out, Gongmeng decided to intervene in the incident and publicized through internet website and media that it will use its office telephone for the milk scandal legal aid hotline. It also organized volunteer lawyers group to provide legal aid service for the victims. On the same day the 20 volunteer lawyers released the "Legal Guide for the Victims of the Milk Scandal" through the internet, which had specific information on how to demand compensation. The volunteer lawyers group published a series of work briefings which urged the government to come up with a more specific compensation plan. After the fourth briefing, however, the group stopped making public its legal aid work because of the increasing pressure from judicial departments. By September 11, the number of volunteer lawyers reached 111.

On September 24 Gongmeng announced the “Suggestion on the Compensation Plan for the Victims of the Milk Scandal,” which proposed creating a compensation committee comprised of government officials and judicial and social experts in order to set a unified standard for compensation.

On December 27 the government promised one-time compensation in cash for the victims and established the compensation foundation. The criteria for compensation were as follows: for the dead 200,000 Yuan, for serious cases (who had an operation) 30,000 Yuan, and for normal cases 2,000 Yuan. It was reported that about 90% of the victims received the compensation.

Judging that the government’s compensation plan is insufficient and unfair, from December 2008 through March 2009 Gongmeng filed six times of class action lawsuits asking for compensation, but none was accepted by the court. Gongmeng still continued representing the victims, and from the second half of 2010 through September 2011 a total of five victims of Yili Company’s milk products received compensation from the company.

Gongmeng also tried hard to help those victims who were not included in the victim’s list and therefore could not benefit from the government’s compensation plan, by visiting district courts and contacting health authorities.

Despite its effort, however, the related government bodies seldom answered to Gongmeng's request.<sup>80</sup>

In July 2009 the Chinese government shut down the Gongmeng legal research center in Beijing, after the Beijing tax bureau fined it 1.46 million Yuan with charges of tax evasion. On August 23 the founder Xu Zhiyong was released after a month of detention, and the media observed that Gongmeng's shutdown was related to its involvement in sensitive cases such as the tainted milk scandal. Gongmeng was allowed to re-open in a much reduced size and function in August 2010, but Xu Zhiyong, who later created a reformist group called the New Citizen's Movement, was once again arrested in July 2013 and is currently waiting on trial.<sup>81</sup>

Summing up, Gongmeng, being an independent civil legal aid organization most free from the government's control, has been very active in providing legal aid for sensitive cases. As seen in the tainted milk scandal case, however, there were limits to what Gongmeng could achieve through its pro bono legal aid work because the judicial organs were strictly following the

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<sup>80</sup> 许志永, “三聚氰胺奶粉受害者公盟法律援助总结报告(2008-2011),” <http://www.my1510.cn/article.php?id=6ffac492b521a7db> (Access Date: 2013. 12. 28).

<sup>81</sup> Tania Branigan, “China Officials Shut Legal Aid Centre,” *Guardian* [UK], Jul. 18, 2009; Feng (2012), p. 339; “Prominent Legal and Political Activist Arrested and Released,” *China Justice News Update*, No. 50 (August 2009); Chris Buckley, “Formal Arrest of Advocate Is Approved by China,” *New York Times*, Aug. 23, 2013; Junko Oikawa, “China's Struggle for Civil Society: A New Perspective on Social Development,” <http://www.tokyofoundation.org/en/articles/2013/chinas-struggle-for-civil-society> & (Access Date: 2014. 1. 22); Alexander Smith, “Chinese Anti-corruption Activist Xu Zhiyong Set For Long-awaited Trial,” *NBC News*, Jan. 21, 2014.

government's policy line. The fact that Gongmeng could not even register as an NGO to the civil affairs bureau,<sup>82</sup> and was helpless at the government's crackdown confirms that there are still many limits for a reformist legal aid group to freely pursue its goal.

## **6. Conclusion**

Legal aid in China, started in 1992 with the establishment of a non-governmental center at the Wuhan University, developed into a national scale thanks to the enthusiastic support of the Ministry of Justice. This study tried to examine its impact on the Chinese society – whether legal aid is oriented towards social stability or social reform –, thereby testing the validity of statist approach in legal aid area. For this purpose this study looked at the present conditions of governmental and non-governmental legal aid programs through case study of four legal aid organizations.

The governmental legal aid centers provide practical help for various problems that the citizens face in their everyday lives, and because of its national scale the number of people being helped by the governmental program is very large. Moreover, socially underprivileged migrant workers are the main beneficiary of the program, which shows that the governmental legal aid centers

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<sup>82</sup> *Guardian*, Jul. 18, 2009.

are devoted to meeting the needs of the society. However, being a governmental organ, these centers hardly show a reformist aspect but rather serve as a social safety valve which soothes the frustrated lower class in order to maintain social stability.

The All-China Women's Federation, a mass organization established for the protection of women's rights and interests, provides legal aid for women and children and actively participates in the legislation activity. Still most of its activities conform to the government policy goal, which shows that there is little chance for the ACWF to act for social reform.

The Center for the Protection of the Rights of Disadvantaged Citizens of Wuhan University, a university-based non-governmental legal aid center, is very active in representing public interest litigation cases against the illegal behavior of the government bodies. However, the center is still under the authority of government, which might act as a restraint on the center's pursuit of social reform.

Lastly, the independent civil legal aid organization Gongmeng is very reformist, daringly venturing into representing highly sensitive cases such as the tainted milk scandal. As can be seen in the crackdown on the Gongmeng

office and the arrest of its founder Xu Zhiyong, however, in China a reformist legal aid group like Gongmeng has little room to survive.<sup>83</sup>

In conclusion, most of the legal aid organizations in China are oriented towards maintaining social stability rather than social reform. Even though some non-governmental organizations pursue reformist goals, they are still under the control of the government which reduces their autonomy.<sup>84</sup> Therefore it can be concluded that the time is not yet ripe for legal aid to be the driving force of social reform, which proves that the statist approach is valid in the area of legal aid in China.

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<sup>83</sup> This is confirmed by the case of the Center for Women's Law Studies and Legal Services of Beijing University (北京大学法学院妇女法律研究与服务中心). Established in 1995, the center has been the leading non-governmental legal aid organization of China, but in 2010 the center was suddenly closed after the university notified it of the revocation of registration. 时代周报, "北大妇女法律中心被撤始末," <http://finance.ifeng.com/news/20100415/2053529.shtml> (Access Date: 2013. 10. 31).

<sup>84</sup> Evaluating the law dissemination movement in China, Cho points out that if the movement is proceeded while excluding the social, non-governmental sector, the law will degenerate into the tool of rule by law (which aims to strengthen the state's rule) instead of a tool of rule of law (which controls the power of the state and guarantees the people's basic human rights). He argues that for the political reform of the Chinese government to realize its objectives, not only political institutionalization but also political democratization should be achieved. The same can be applied to legal aid. Without political democratization, there is little chance for legal aid to become a force for social reform. 조영남 (서울: 서울대학교출판문화원, 2012), pp. 152-161.

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## 국문초록

본 논문은 중국의 법률구조의 발전에 있어 정부와 민간의 역할을 살펴보고, 법률구조의 성격과 방향성을 진단해 보고자 하였다. 이를 위해 정부기구 한 곳과 민간 법률구조단체 세 곳의 사례연구를 진행하였다.

먼저 정부기관인 베이징시 법률구조센터는 시민들이 생활 속에서 부딪치는 다양한 문제의 법률적 해결을 위해 노력하고 있으며, 특별히 사회적 약자인 농민공의 권리보호에 힘을 쓰고 있다. 하지만 정부기관인 만큼 개혁적 성향은 잘 드러나지 않고 오히려 사회적 약자 층의 불만 해소를 통한 사회 안정화 기제로 작용하는 면이 크다.

대표적 인민단체인 부녀연합회의 경우 여성권의 신장을 목표로 정부기구보다는 적극적으로 입법 활동에 참여하고 있으나, 국가에 예속된 단체의 특성상 사회 안정이라는 국가의 방침과 긴밀히 보조를 맞추는 모습을 보인다.

비교적 자율성이 높은 우한대학교 부설 센터의 경우 기타 기구들에 비해 사회의 부조리에 도전하는 권익 소송들을 많이 다루고 있지만, 정부 민간기구 관련 조례에 따라야 하는 등 여전히 정부의 영향권 아래 있기 때문에 본격적인 정치민주화나 기본권 수호운동으로 뛰어들 가능성은 적다.

마지막으로 인권단체 공명은 멜라민 분유사태와 같은 사회적 영향력이 큰 사건에 법률구조를 제공하면서 직접적으로 정부에 대한 비판의 목소리를 내었다. 그러나 이 단체가 정부에 의해 폐쇄되면서, 개혁적 성향의 법률구조단체의 미래는 낙관할 수 없게 되었다.

요약하자면, 중국의 법률구조는 아직까지 정부에 의해 주도되는 면이 크기 때문에 사회개혁보다는 사회안정에 더욱 초점이 맞춰져 있다. 따라서 '국가적 접근'이 중국 법률구조의 분석에도 유효함을 확인할 수 있다. 이는 법률구조제도의 수립과 관련이 깊은 법률보급운동이 갖는 한계와도 이어지는 것으로, 정치민주화 개혁 없이 법률구조제도 자체만으로 의미 있는 사회적 변화가 일어나기를 기대하기는 어려워 보인다.

**주요어:** 중국의 법률구조, 법치, 법 개정운동, 국가적 접근, 공익 법, 중국 시민사회

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