

LEGAL REFORM IN CHINA



For the past two decades, China's legal system has faced pressure to keep pace with the country's modernization efforts, rapid commercial and economic liberalization, and the need to manage an increasing number and range of disputes. Hundreds of laws and regulations are being reconsidered and reformed, new laws promulgated, and opportunities exist to accelerate and expand the pace and quality of law reform in China with China's entry into the World Trade Organization (WTO). Since 1979, The Asia Foundation has provided support for legal reform in China, in cooperation with government, non-government organizations and academic institutions. The Foundation has provided training, fellowships, technical assistance, and opportunities for Chinese legal scholars to expand their contacts with international legal experts. Most recently, the Foundation's multi-year initiatives focus on the critical areas of administrative law reform, legal aid, and popular legal education.

LEGAL AID PROGRAMS

The Asia Foundation supports legal aid programs in poor, remote areas of China that have fewer resources to provide its people with legal aid services. In the last two decades, the demand for legal services has skyrocketed as increasing numbers of people seek legal remedy. The 1996 Lawyer's Law stated that citizens who cannot afford legal counsel but require legal assistance with respect to civil or criminal cases are entitled to professional legal services free or at a reduced or subsidized rate. Now the government sponsors legal aid centers in every province in China, with the majority of cases handled by local and municipal legal aid centers. A wide range of legal services operations are run by non-governmental organizations, women's groups, and universities. In 2000, 1,852 centers nationwide, mostly at the

county level, provided legal services to 228,000 people; twice the number assisted in 1999. Most cases are associated with work-related injury, child support, disability claims, welfare and state compensation claims. Legal aid is perceived as a way to resolve social instability and strengthen the government's ability to serve the needs of the people. Growing public awareness of citizen rights has also helped to maintain government accountability and enhance popular empowerment. While local governments are expected to appropriate funds for legal aid, the national government does not provide subsidies for their operation.

Supporting legal aid in poor and remote areas.

The Asia Foundation supports initiatives that expand and professionalize legal aid and the protection of rights for the poor and socially disadvantaged through training programs and assistance with operational costs. This assistance to branch offices of the National Legal Aid Center aims to increase the capacity of local legal aid centers to handle civil cases and promote public legal education. By working with legal aid centers in the poorest and most remote areas of China — Guizhou, Shanxi, Yunnan, and Xinjiang — the Foundation's programs help self-starting counties in their efforts to reform and change the legal system to counter corruption and benefit the needy and poor. Foundation funding is matched dollar-for-dollar with local government resources, and has proved an effective catalyst for the development and implementation of substantial legal aid reform. As an added incentive and to promote public awareness for legal aid services, the Foundation worked with the National Legal Aid Center in 2000, to hold the first annual national competition for the 10 best local legal aid centers and 10 most outstanding individual lawyers.



CHINA

The Asia Foundation has been programming in China since 1979.

The Foundation has helped provide legal services to tens of thousands of migrant women workers.

The Foundation has supported legal aid centers in Guizhou, Shanxi, Yunnan, and Xinjiang.

The Asia Foundation is supporting a program to develop a draft Administrative Procedure Act (APA), which will be submitted to the National People's Congress by the end of 2003.

Supporting migrant women workers. The Asia Foundation supports the Guangdong Women's Federation for the continuation and expansion of a legal aid services program for at-risk migrant women in the Pearl River Delta. With Foundation support, telephone hotlines for legal advice, and consultations were set up, over 13,000 copies of *Learn to Protect Yourself*, a handbook on women's basic legal rights, was distributed, and a special news column entitled, "Self-protection of Migrant Women Workers," was launched.

ADMINISTRATIVE LAW REFORM

Asia Foundation programs seek to develop mechanisms that will restrain the arbitrary exercise of state power by regularizing the functions of government agencies at different levels, defining citizens' rights, providing redress for citizens who have been wronged by the actions of government, and punishing offending officials. In the 1990s, legal reformers in China worked to establish the basic structures of administrative law and curtail arbitrary administrative discretion through increasingly specific definition and interpretation of existing laws and rules. The enactment of the Administrative Litigation Law (1989), State Compensation Law (1994), Administrative Punishment Law (1996), and Administrative Reconsideration Law (1999) provided rights such as:

- the right of persons affected by decisions of administrative agencies to appeal to courts,
- the ability to seek private legal action and compensation against administrative agencies,
- the ability to invalidate punishments that lack legal basis or fail to meet procedural requirements through the right to appeal to administrative authorities and courts,
- and the ability to seek external, non-judicial review of certain administrative acts.

China's 2001 entry into the WTO further spurred efforts at legal reform in order to comply with its WTO commitments.

The Asia Foundation administrative law reform programs are designed and implemented in cooperation with the National Institute of Administration, China's only civil service training institution; Peking University Law School; and the China Administrative Legislation Research Group, a national network of legal scholars, jurists, and officials who support legal drafting and interpretation of law by the National People's Congress.

Drafting an Administrative Procedure Act. The Asia Foundation currently supports a program to develop a draft Administrative Procedure Act (APA), which will be submitted to the National People's Congress by the end of 2003. This Act will mandate transparency, including prior notice and comment, public hearings, consultations and require consistency in rule making across bodies of law and at different levels in China. In support of the APA drafting process, the Foundation assisted in identifying and recruiting the most respected and experienced international administrative law experts to provide a comparative perspective and in-depth technical expertise.

Training in administrative law. In cooperation with the Office of Legislative Affairs (OLA) of the State Council, The Asia Foundation provided training in administrative law and issues related to their compliance with WTO rules and regulations for national, provincial, and municipal level officials. OLA officials from every province in China, including the autonomous region of Tibet, participated in training on one of the major WTO promises — the uniform and transparent implementation and impartial review of rules and regulations. The three-phase training program began with a series of lectures by international experts on the principles of administrative law. The second phase brought the group to the United States to see those principles in action, and to gain a more nuanced and practiced view of administrative law and rule making. After returning to their posts in China, the final phase will bring the group back together to discuss their experiences and ways to solve on-the-ground, practical problems.

The Asia Foundation is a private, non-profit, non-governmental organization working to advance mutual interests in the United States and the Asia-Pacific region. It is funded by contributions from corporations, foundations, individuals, and governmental organizations in the U.S. and Asia, and an annual appropriation from the U.S. Congress. Through its programs, the Foundation builds leadership, improves policies, and strengthens institutions to foster greater openness and shared prosperity in the Asia-Pacific region.



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