

China

Community Paralegals: Recognition & Financing



Community paralegals are trained in basic law and in skills like mediation, organizing, education, and advocacy.

They are called different names in different places – including "community legal worker," "barefoot lawyer," "grassroots legal advocate," or a host of other titles. All share a common purpose: to help people to understand, use, and shape the law.

Introduction

Community paralegals are dedicated to legal empowerment: they help people to understand, use, and shape the law. These advocates are called different names in different places – including "community legal worker," "barefoot lawyer," "grassroots legal advocate," or a host of other titles. They are trained in law and policy and in skills like mediation, organizing, and advocacy. Some are generalist – they engage whatever justice issues community members bring to them. Others specialize – they may focus on supporting survivors of sexual violence, or protecting community land rights, or in addressing failures in the delivery of public services.

Community paralegals are client-facing. Although they are called "community paralegals," they are not the kind of paralegals who primarily serve as lawyers' assistants. Community paralegals work with clients to seek concrete solutions to instances of injustice, often at the community or administrative levels. They form a dynamic, creative frontline that can engage formal and traditional institutions alike. Moreover, just as primary health workers are connected to doctors, community paralegals are often connected to lawyers who may help to pursue litigation or high-level advocacy if frontline methods fail.

This research brief is part of a series that reviews the nature of the work undertaken by community paralegals, and the extent to which that work is recognized or funded by government. Please note that the first briefs published for this series focus on the types of community paralegals who have been formally recognized either in law or policy. We acknowledge that this is just a small part of a much larger picture. Beyond the government-recognized paralegals discussed in these briefs, a broader, dynamic ecosystem of community paralegals operates effectively without state recognition in many countries. We aim to one day expand our research to offer a more comprehensive analysis of this larger universe. For now, however, our research briefs are limited to offering summary information and illustrative examples of the community paralegals who have been formally recognized by law or policy.

Each of these briefs is a living document-- if you have an update, addition or a correction, please contact us at community@namati.org.

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		Notes
NATURE OF WORK		
Recognition*		
Are community paralegals formally recognized?	Yes	In regulations on legal aid and laws related to civil and administrative litigation.
What are community paralegals called?	-	Formally, “personnel” of “legal aid institutions,” “persons of other social organizations,” or “citizen-representatives.” Informally, “basic legal service workers,” “legal aid workers,” or “barefoot lawyers.”
Recognized Functions		
Educating community and clients about the law?	N/S	Not specified, but occurs in practice.
Mediating disputes?	N/S	Not specified, but occurs in practice.
Organizing community members for collective action?	N/S	
Advocating to authorities?	N/S	
Monitoring for violations of rights?	N/S	
Litigating (with or without the help of lawyers)?		
- Criminal	N/S	
- Civil	N/S	
Navigating administrative processes?	Yes	
Recognized Places of Work		
Government-run offices or legal aid centers?	Yes	
Non Governmental Organizations?	Yes	The law does not forbid this, but it is difficult for NGOs to work in this sector, so there are very few.
Independent practice?	Yes	“Citizen-representatives” only, not legal “personnel”.
INDEPENDENCE AND ACCOUNTABILITY		
Is the independence of community paralegals explicitly protected?	No	
Are there boards or bodies that monitor community paralegals?	Yes	
If so, are these boards or bodies separate from the government (e.g. Ministry of Justice)?	No	
If so, do these boards or bodies include civil society representatives?	N/S	
QUALITY AND STANDARDS		
Must community paralegals meet certain criteria in order to practice?	N/S	
Is there a board, body, or certification scheme to recognize qualified community paralegals?	Yes	Not occurring regularly in practice.

Notes

SCALE AND FINANCING

Does any public revenue fund community paralegals? Yes

Do Community Paralegals Work on this Issue?

Is Community Paralegal Work on this Issue Formally Recognized?

Does the Government Fund Community Paralegals who Work on this Issue?

Note: The Chinese Government funds generalist paralegals to work on a limited set of issues.

Issues

Criminal Justice	No	No	No
Civil and Political Rights	Yes	?	Yes**
Education	Yes	?	Yes
Environmental Justice	Yes	?	?
Family Law	Yes	Yes	Yes
Health	Yes	?	Yes
Housing	Yes	?	Yes
Labor & Employment	Yes	Yes	Yes
Land & Natural Resources	Yes	?	Yes
Migrants, Refugees, & Citizenship	Yes	?	?
Peace-building	Yes	?	?
Transparency	Yes	?	?
Water & Sanitation	Yes	?	?

Key

N/S = Not specified

? = Unknown. To share data on this point, contact community@namati.org

* Note that we consider the following as sources of formal recognition: legislation, regulations, policies, court judgments, memorandums of understanding, etc.

** Article 10 of the Regulations on Legal Aid states that legal aid may be provided for “claiming the civil rights and interests arising from the courageous act.”

The Law In Practice

Defining Community Paralegals

Are community paralegals recognized? How are they defined?

The Regulations on Legal Aid issued by the State Council in 2003 establish a basic framework and principles for China's legal aid system. According to Article 21, "personnel" of legal aid institutions or "persons of other social organizations in accordance with the demand" may conduct legal aid.¹ This indicates that non-lawyers like community paralegals are authorized to provide legal aid. However, the Regulations do not provide further guidance on the role, minimum qualifications, or practices of non-lawyer legal aid providers.

A survey on the Chinese legal aid system by China's Ministry of Justice identifies the following main categories of legal aid providers in addition to lawyers: (i) notaries; (ii) workers in government-run legal aid institutions (also known as "legal aid personnel"); (iii) basic legal service workers (also known as "grassroots legal services workers" or "legal aid workers"), who serve rural areas, have some form of legal training, and are licensed by the provincial justice bureau, either by an exam or by meeting other requirements; and (iv) legal aid volunteers of social organizations or law schools.

In addition to these categories, China's Civil Litigation Law and Administrative Litigation Law authorizes ordinary citizens who are not legal professionals to act as representatives in civil and administrative litigation or to participate in court proceedings. Order No. 44 of the President of the People's Republic of China opened the doors for citizen-representatives to represent clients in court in some instances by stating that, "A lawyer, a near relative of the party, a person recommended by a relevant social organization or a unit to which the party belongs or any other citizen approved by the people's court may be appointed as the party's agent ad litem".² Some of these citizen-representatives provide services beyond their acquaintance networks; they have become known as "barefoot lawyers." Unlike basic legal service workers, barefoot lawyers are self-trained and not licensed.³

In this brief, we discuss three types of community paralegals and refer to them as "legal aid personnel," "basic legal service workers" or "legal aid workers;" "barefoot lawyers," and by other means.

¹ *Regulations on Legal Aid*, Article 21, (promulgated by the Chinese State Council, July 16, 2003, effective Sept. 1, 2003), <https://www.cecc.gov/resources/legal-provisions/regulations-on-legal-aid>

² *Civil Procedure Law of the People's Republic of China*, CHINA.ORG.CN, Chapter V, Section II, Article 58, (April 9th, 1991), <http://www.china.org.cn/english/government/207339.htm>.

³ Xing Ying, *Barefoot Lawyers and Rural Conflicts*, in *RECLAIMING CHINESE SOCIETY: THE NEW SOCIAL ACTIVISM*, 64-82, 64-65 (You-Tien Hsing & Ching Kwan Lee eds., 2010).

What do community paralegals do? What issues do they focus on?

Legal aid personnel are salaried employees of state-run legal aid institutions, which administer pro bono legal services for eligible applicants. Legal aid personnel provide legal counseling and guidance to walk-in cases and telephone call-ins. They access court records, interview clients, and in some provinces act as legal representatives in all proceedings except criminal trials.⁴

Basic legal service workers, also known as legal aid workers, are not employees of the state. They earn their income by charging modest fees for their services, at rates far lower than those charged by licensed lawyers. However, legal aid workers do work closely with local justice bureaus and are based out of Legal Service Offices operated by township governments. Legal aid workers assist with legal education campaigns, offer legal counseling, draft documents, mediate disputes, provide general non-procedural aid, and represent parties in civil and administrative cases, but not criminal ones.⁵

Barefoot lawyers assist fellow villagers in navigating the formal legal system, writing documents, and assisting with court procedures.⁶ They have attracted attention as vocal opponents of political corruption and advocates of human rights.⁷ They are prohibited by law from charging fees.⁸

According to Article 10 of the Regulations on Legal Aid, legal aid may be provided for the following matters: (i) seeking state compensation in accordance with the law; (ii) seeking social insurance treatment or minimum living guarantee treatment; (iii) seeking pension benefits; (iv) seeking payment for support of parents and grandparents, child support or alimony; (v) seeking labor benefits; or (vi) claiming for civil rights and interests arising from the courageous act.

Most provincial legislation on legal aid has enlarged the scope of legal aid to include one or more categories of the following cases, (i) labor cases especially industrial injury cases; (ii) violation of rights of juveniles, women or persons with disabilities; (iii) traffic accidents or other personal injuries; (iv) medic treatment disputes.

⁴ Allen C. Choate, *Legal Aid in China*, in THE ASIA FOUNDATION WORKING PAPER SERIES, WORKING PAPER #12, 16-17 (The Asia Foundation: April 2000).

⁵ *China's Judiciary – XI. Legal Assistance*, CHINA INFORMATION CENTER. <http://www.china.org.cn/english/Judiciary/31005.htm>; Benjamin L. Liebman, *Prepared Statement at Roundtable on Access to Justice in China*, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, (July 12, 2004), <http://www.cecc.gov/pages/roundtables/071204/liebman.php>.

⁶ Liebman *supra* Note 5, at 3.

⁷ Julia Lovell, *The Barefoot Lawyer by Chen Guangcheng review – a story of imprisonment, escape, and tenacity*, THE GUARDIAN (April 23, 2015, 5:00 PM), <https://www.theguardian.com/books/2015/apr/23/the-barefoot-lawyer-chen-guangcheng-review-determination>. See also, Ying, *supra* Note 3, at 66-9.

⁸ China's Law on Lawyers decrees that only lawyers or basic legal service workers, and not citizen-representatives, are allowed to charge a fee for legal services. Some citizen-representatives, known as "black lawyers," violate the rules and seek compensation. Barefoot lawyers, meanwhile, offer complimentary services. See Ying, *supra* Note 3, at 64-5.

Recognized Places of Work

Legal aid personnel operate out of government-run “legal aid centers” or “legal aid stations.”⁹ These centers are organs of China’s national legal aid system, where cases are screened and assigned to staff attorneys, private lawyers (who are mandated to provide pro bono services and receive subsidies for doing so), or non-lawyer legal aid providers.

Basic legal service workers work out of Legal Services Offices, which are administered by township governments.¹⁰ They are most popular in rural areas where licensed lawyers are scarce.¹¹ Barefoot lawyers primarily work in rural areas, as well. In underdeveloped localities, Legal Services Offices and legal aid centers may share facilities.¹²

Independence and Accountability

Is the independence of community paralegals explicitly protected?

No. Pursuant to Article 4 of the Regulations on Legal Aid, the judicial administrative department of the State Council supervises and manages legal aid conducted nationwide.

Are there boards or bodies that monitor community paralegals? If so, are these boards or bodies separate from the government (e.g. Ministry of Justice)? Do these boards or bodies include civil society representatives?

Article 4 of the Regulations on Legal Aid provides that the Ministry of Justice and the judicial administrative organs at all levels are in charge of the supervision and management of legal aid work. The Department of Legal Aid and the National Legal Aid Center established by the Ministry of Justice are responsible for, among other things, supervising and managing legal aid agencies and workers, guiding social institutions and volunteers to

⁹ China’s legal aid system has four tiers. At the national level, the National Legal Aid Center does not provide direct legal services but coordinates legal assistance across the country. At the provincial, prefecture and city, and county and district levels, legal aid centers have been established that supervise, coordinate, and administer legal aid programs in their respective jurisdictions. Most cases are handled at the lower levels, in municipal and county legal aid centers. See China Information Center.

¹⁰ Fu Hualing, *Away from Grass-roots? The Irony of Rural Legal Service*, No. 26 UNIVERSITY OF HONG KONG FACULTY OF LAW RESEARCH PAPER, 4 (May 20, 2012), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2063115; The national legal aid system is managed by the Justice Ministry. Justice bureaus and Legal Service Offices are managed by township governments.

¹¹ In 2000, China boasted 33,219 grassroots-level legal service agencies and 122,000 basic legal service workers. After a reform of grassroots legal services by the Ministry of Justice in 2000, the number of licensed basic legal service providers dipped to 70,000. The number of grassroots legal service agencies fell to 26,889. Only 30,000 legal aid personnel worked in rural areas. The ratio of legal aid providers to the rural population is 0.003 percent. See Ying, *supra* Note 3, at 73.

¹² There are typically two tiers of legal service providers operating in rural regions of China. Since the 1980s, the lower – and less professionalized – tier of legal service providers has had a murky legal relationship with the government. Rural, non-professional legal service providers were designated as civil servants in the 1990s and then required to take an accreditation exam in 2000. A privatization policy was adopted in late-2000 and then abandoned again in 2003 when township legal service firms were again brought under the supervision of local governments. Further, local government has not been authorized to license these lower tier legal workers since 2004; see Hualing Fu, *supra* Note 10, at 4.

carry out legal aid, organizing legal aid training, and evaluating the quality of legal aid. No role is specified for civil society representatives.

Quality and Standards

Must community paralegals meet certain criteria in order to practice? Is there a board, body, or certification scheme to recognize qualified community paralegals?

The Regulations on Legal Aid do not specify any criteria or certification process for non-lawyer legal aid providers. However, Article 22 of the Regulations of Legal Aid states that personnel conducting legal aid shall abide by professional ethics and practice disciplines. Moreover, basic legal service workers must obtain a qualification certificate by taking a legal-services qualification examination organized by the Ministry of Justice and administered at the provincial level by the Department of Justice.¹³ Article 8 of the Ministry of Justice's "Management Rules of Grassroot Legal Service Workers" administrative regulation requires that basic legal service workers have an undergraduate/regular college degree in law or, alternatively, five-years working experience in the legal field in addition to an undergraduate degree in a field other than law. As there is no full-time course degree requirement, many community paralegals satisfy these requirements through self-taught correspondence courses. In practice, many provinces in China have not carried out these qualification examinations over the past ten years due to protest from lawyers and as a result of the Ministry of Justice having revoked the power of CSOs to establish new grassroots legal centers in 2004.¹⁴

Beyond that, the situation varies from province to province. Due to a dearth of lawyers, for example, Guizhou became the first province in China to set standards for and certify paralegal workers in its legal aid centers. Paralegals in Guizhou must have a 2-year or above college education with law specialization, undergo special training, and be full-time employees of a government legal aid center.¹⁵

Is community paralegal training available? What does it look like?

The Regulations on Legal Aid do not describe training for legal aid providers. However, subject to funding, legal aid training is made available. Several university law schools and the Committee of Chinese Clinical Legal Education, sometimes in collaboration with overseas universities, offer opportunities for clinical legal education or conduct trainings.

¹³ *Management Rules of Grassroot Legal Service Workers*, MINISTRY OF JUSTICE OF THE PEOPLE'S REPUBLIC OF CHINA, Art. 7, (2000), http://www.gov.cn/gongbao/content/2001/content_61297.htm.

¹⁴ *On the Present Situation and Management of Basic Legal Service*, JIANGNING DISTRICT JUSTICE BUREAU CAI YIHUA, (May 24th, 2017), http://www.njsfj.gov.cn/30175/201705/t20170524_4508045.html.

¹⁵ Choate, *supra* Note 4, at 16.

Public Financing

Does any public revenue fund community paralegals?

The main source of funding for legal aid comes from local and central governments. Contributions to legal aid from society and social organizations are also encouraged. China has established five legal aid foundations, including the China Legal Aid Foundation and Beijing Legal Aid Foundation, which accept and manage contributions from within China and abroad, from both public and private sources. Funds cover case handling costs as well as subsidies for legal aid providers.

The central government began allocating special funding for the handling of legal aid cases for the poor in 2005. By 2014, 1.4 billion yuan RMB had been spent via special funding. Beginning in 2009, portions of the central lottery income were earmarked toward legal aid for special groups, including farmers and people with disabilities. This Public Welfare Fund on Legal Aid from Lottery (so called 中央专项彩票公益金法律援助项目) has thus far distributed 600 million yuan RMB. At the provincial level, special funds for legal aid have been set up in 23 provinces. As of 2014, the total financial allocation for legal aid across the country was 1.7 billion yuan RMB.¹⁶

Practitioner Perspectives on Community Paralegals

General observations about the law as it is implemented in practice

The establishment and implementation of a Chinese legal aid system became a priority for the Ministry of Justice in 1994. The effort grew out of a need to channel disputes into formal legal systems. It also reflected China's policy of addressing income inequalities and assisting the disadvantaged who were unable to afford legal services or keep pace with China's rapid economic development.

Building on the Criminal Procedure Law of the People's Republic of China and the Lawyers Law of the People's Republic of China, which include provisions relevant to legal aid, the Regulations on Legal Aid were enacted in 2003 to realize China's constitutional principles of giving citizens equality before the law, to perfect social insurance systems, and to provide for human rights protection.

The Regulations on Legal Aid made in 2003 are administrative regulations issued by the State Council. They are not laws enacted by the National People's Congress or its Standing Committee. However, these regulations, combined with ensuing local legislation and the promotion of the Ministry of Justice, led to the establishment of the legal aid institutions in almost all the townships of China.

As of 2014, there are 40,024 township legal aid stations (out of the total 40,381 townships) providing services to grassroots communities. In 2013, 100,000 civil legal aid cases were granted compared to 997,000 in 2014. About

¹⁶ Legal Aid Center of Ministry of Justice, P.R. China, *Legal Aid in China*, LEGAL AID CENTER OF MINISTRY OF JUSTICE, (June 23, 2016), http://subsites.chinadaily.com.cn/legalaidcenter/2016-06/23/c_52593.htm; (Article 3 of the Regulations on Legal Aid Legal states that legal aid is the duty of government, and that the people's governments at the county level shall take active measures to provide financial support for legal aid).

53% of the civil legal aid cases are solved through non-litigation methods, most of them being handled by non-lawyers. In 2014, basic legal service workers handled 361,137 legal aid cases, while private lawyers handled 399,000 legal aid cases.

Academic research suggests that the quality of service of the grassroots legal aid advocates is fairly good, especially in terms of cases involving non-litigation solutions. The law and policy encourages the community paralegals to solve legal disputes for the poor, look out for their livelihoods, and restore the harmony of the community.

Challenges facing China's legal aid system include: (i) Imbalanced development of legal aid infrastructure in urban and rural areas. Most of the township legal aid stations are understaffed, equipped with only one staff for many years. They are the least attractive positions for law graduates. (ii) Insufficient number and quality of legal aid workers to satisfy the demand for legal aid, particularly in rural areas. (iii) Inadequacy of government funding. (iv) Poor public legal literacy and the visibility of legal aid needs. (v) Need to enhance the awareness of human rights principles, the knowledge of the formal law, and the capacity to use this knowledge among community paralegals; and (vi) Need for formal recognition and support of civil society legal aid providers.

There may be impending legislative changes to China's legal aid system. On June 29, 2015, the State Council, China's cabinet, issued an instruction to improve China's legal aid system and to expand the scope of legal aid to protect the rights of vulnerable groups. The instruction proposed to raise the quality of legal aid. It indicated that central authorities would explore models for developing more professional legal aid providers, including legal aid workers. The instruction highlighted the need to pass further legislation relating to the provision of legal aid. A draft of a Legal Aid Law had been transferred to the State Council from the Ministry of Justice for further discussion by the end of 2015. The draft legislation clarifies the tasks of authorities involved in legal aid and aims to improve the quality and professionalism of legal aid.

ANNEX: The Law (Excerpts)

Regulations on Legal Aid (2003)

...

Article 3 Legal aid is the duty of government, the people's governments at county level shall take active measures to promote legal aid work, provide financial support for legal aid, and to ensure that legal aid progresses in coordination with the economy and social progress.

Legal aid fund shall be used for its specified purposes only, and accepts the supervision of financial and auditing departments.

Article 4 Judicial administration department of the State Council supervises and manages legal aid works nationwide. Judicial administration departments of the people's governments above county level supervise and manage legal aid work of this region of administration. The all-china Lawyers Association and the local lawyers associations shall assist the implementation of legal aid work in accordance to this regulation according to the articles of association of lawyers associations.

Article 5 Judicial administration departments of the people's governments of municipalities directly under the State Council, cities which are divided districts or at county level decide the legal aid institutions in this region of administration according to requirement.

Legal aid institutions shall hold responsibilities for entertaining and examining the application for legal aid, assign or arrange personnel provide the legal aid for citizens meeting the stipulations of this regulation.

...

Article 7 The state encourages society to provide contribution for legal aid activities.

Article 8 The state supports and encourages social societies, institutional units and other social organizations to use their own resources to provide legal aid for citizens with financial difficulties.

...

Article 10 In any of the following situations where any citizen needs an agent and fails to entrust one due to economic difficulties, he or she may apply to the legal aid institutions for legal aid: (1) requesting for state compensations; (2) requesting for social insurance treatment or minimum life alimony treatment; (3) requesting for survivor's pensions or relief funds; (4) requesting for the payment for supporting parents or grandparents, and children; (5) requesting for the payment of labor remunerations; or (6) civil rights and interests arising from the brave act of righteousness.

The people's government of the provinces, autonomous regions, and municipalities directly under the Central Government may make supplementary provisions regarding the legal aid matters other than those as described in the preceding paragraph.

Citizens may seek legal consultation from the legal aid institutions in terms of the matters prescribed in paragraph 1 and paragraph 2 of this article.

...

Article 13 The standard of financial difficulties referred to in this regulation shall be stipulated by the people's governments of provinces, autonomous regions and municipalities in accordance with the economic development situations of this region of administration and the requirement of legal aid career.

Where the standard of financial difficulties of the place of the applicants is not consistent with the standard of financial difficulties of the place of the legal aid institutions entertaining the application, the standard of financial difficulties of the place of the legal aid institutions entertaining the application shall be implemented.

...

Article 21 Legal aid institutions may assign law firms to arrange lawyers or arrange its own personnel to conduct legal aid cases; may also arrange the persons of other social organizations in accordance with the demand to conduct legal aid cases. For the cases which defending is designated by the people's court, legal aid institutions shall reply the names of handling persons decided to the designating people's court before 3 days of session.

Article 22 Personnel conducting legal aid cases shall abide by professional ethics and practice disciplines, and may not accept any property in providing legal aid.