

**The Impact of Canada's Assistance to Develop Legal Aid in China:
A Case Study of Canada's Soft Power in Promoting the Rule of Law Globally ***
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Summary

The success in assisting the development of a legal aid system in China is an outstanding example of Canada's soft power in promoting the rule of law and human rights globally. Even at present, we are still witnessing the positive impact of Canada's early work in this field. In 1998-1999, through the CIDA-funded CCLDLA Project, the Vancouver-based ICCLR became the international pioneer helping China to set up its legal aid framework for legal aid. In 2003, China's first Legal Aid Regulations were promulgated and, based on ICCLR's groundbreaking work and at China's request, the government of Canada launched a bilateral project CCLAS, with the CBA taking the lead in a consortium to assist staff training, setting up grass-root "model" legal service offices, and other working-level improvement in China. In 2012-2013, CBA launched another project for marginalized communities in China. Canadian program to assist Chinese law reforms ended in 2013. However, the results of Canada's assistance in Chinese criminal justice reforms, including criminal procedures, community corrections, and legal aid, are not lost. In 2021, China finally enacted the Legal Aid Law. Legal aid services have continued to improve and expand in the past decade. As Canadians we are always prepared to share our best practices with countries when they are willing to improve their systems in light of international standards of the Rule of Law and human rights.

Canada's soft power promoting the rule of law

In this world of intensified conflicts amongst states having fundamentally different political systems, liberalism is still a valid approach to better understanding international relations. Although Canada is usually seen as a middle power, Canadians should never underestimate the global influence of our soft power in international cooperation, especially in promoting the rule of law and human rights. Canada is widely recognized for its outstanding records of upholding the rule of law and human rights. In 2022, Canada's overall score ranked 12th across 140 countries in the World Justice Project Rule of Law Index.¹ Also, in the U.S. News rankings of "Best Countries" in the world, Canada is #3, and it is #6 as a country that cares the most about human rights.² Canada has scored highest even among the G7 democracies.

Equal access to justice through state-funded legal aid is one of the most important indicators of the rule of law and human rights. Under the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012), "legal aid is an essential element of a functioning criminal justice system that is based on the rule of law" and "a foundation for the enjoyment of other rights" in the criminal process.³

From a global perspective, one would still conclude that the overall Canadian legal aid system is one of the best. Canada is no doubt in a position to share its expertise, best practices, and lessons learned with other countries, especially those in the early stages of building a legal aid system.⁴

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¹ See World Justice Project, "Rule of Law Index", at: <https://worldjusticeproject.org/rule-of-law-index/global>

² See U.S. News, "U.S. News Best Countries 2022 Rankings", at: <https://www.usnews.com/news/best-countries/rankings>

³ This is "Principle 1. Right to legal aid". The full text is accessible at: https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf

⁴ At a training seminar in Japan, I found justice officials from 16 countries in Asia, East Europe, South America and Africa were interested in learning more about legal aid in Canada. See Vincent Yang, 2023, "The Strengths of Canada's Criminal Legal Aid System: A Lecture for the 180s UNAFEI International Senior Seminar", at: <https://icclr.org/2023/02/17/the-strengths-of-canadas-criminal-legal-aid-system-a-lecture-for-the-180th-unafei-international-senior-seminar/>

Canada's assistance to China's development of legal aid

In the 1990s, when China was implementing the policy of Reform and Openness mainly through projects funded by the Canadian International Development Agency (CIDA), Canada became the leader of international aid assisting law and justice reforms in China. Unfortunately, not many Canadians are aware of these projects.⁵ Two Canadian pioneers contributed the most and achieved groundbreaking results assisting the legal reforms in China: International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR), a think tank located at the University of British Columbia, Vancouver, and the Canadian Bar Association.

In 1996, legal aid was written into China's amended Law of Criminal Procedure and the Lawyer's Law. In 1997-1999, with limited funding support from CIDA, ICCLR implemented a China-Canada Legislative Research Project (CCLRP) to assist the National Legal Aid Center (NLAC) of China's Ministry of Justice (MOJ) to develop a legal aid system by setting up its legal framework. The project was personally endorsed by Xiao Yang, then Minister of Justice and later Chief Justice of the Supreme People's Court of China. Minister Xiao was considered a leading law reformer for having transformed Chinese "state legal workers" into independent legal practitioners and for advocating the borrowing of best legal aid practices from Hong Kong and overseas. Canada was the first foreign state to offer technical assistance.

In November 1997, during the APEC summit in Vancouver, ICCLR hosted Minister Xiao's delegation. During the visit, Mr. Xiao expressed a strong interest in Canada's legal aid system. With his endorsement and CIDA's support, ICCLR and NLAC almost immediately launched the CCLRP. With ICCLR's direct assistance, NLAC compiled, translated, and published three volumes of legislative documents, including 26 legal aid foreign laws and regulations (Canada, the US, UK, India, Japan, Korea, Netherlands, Switzerland, Hong Kong, and Macau) and 22 research reports in 18 months. Some 50% of the reports was originally produced by Canadian authors.⁶

In 1998, ICCLR's President Danial Prefontaine led a delegation to attend a major consultation conference in Beijing. Among the delegates were Dr. Ab Currie (Principal Researcher with Department of Justice Canada), Professor Paul Brantingham (Simon Fraser University), ICCLR Researcher Eileen Skinnider and myself. NLAC then sent a group of senior officials led by its director Gong Xiaobing to conduct a study tour of legal aid services in British Columbia, Saskatchewan, Ontario and Quebec. This was the first Chinese government delegation to observe the operation of legal aid services in a Western country. In 1998, the MOJ started the drafting process to develop the country's first legal aid legislation. In 1999, when the CCLRP was completed, for the Ministry, the NLAC developed a detailed "Model Legal Aid Law of P.R. China".⁷ By 2003, China's first set of national legal aid regulations was promulgated by the State Council, and the NLAC co-authored the official Annotations of Legal Aid Regulations.⁸

Canadian assistance to the development of legal aid in China continued in 2000-2013. ICCLR maintained an active working relationship with the NLAC after the completion of CCLRP. I had the pleasure to be one of the trainers for China's first generation of legal aid organization managers in a UNDP-funded NLAC program. In 2003, the Chinese government requested more technical assistance from Canada.

Subsequently, the government of Canada launched the Canada China Legal Aid and Community Legal Services Project (CCLAS). The Canadian Bar Association took the lead in a Canadian consortium to work with the NLAC over the following four years to set up model legal aid centers in four targeted provinces,

⁵ An exception is Prof. Muirhead of the University of Waterloo, who wrote about ICCLR's China projects. See B. Muirhead, "China and Canadian Official Development Assistance: Reassessing the Relationship", at: <https://www.asiapacific.ca/sites/default/files/filefield/RRChinaandODA.pdf>

⁶ X. Gong, V. Yang, et al. (eds.), 1999, NLAC, *Selected Foreign Legal Aid Laws and Regulations (China Canada Legal Aid Legislative Research Project Result 1)*. Beijing: China Fangzheng Publishing House. ISBN 7-80107-306-1. X. Gong, V. Yang, Z. Zheng (eds.), 1999, NLAC, *Theories of Legal Aid in Various Countries*. Beijing: China Fangzheng Publishing House. ISBN 7-80107-342-8.

⁷ X. Gong and Z. Zheng (eds.), 2001, NLAC, *Legislative Study on China's Legal Aid Law (China Canada Legal Aid Legislative Research Project Result 2)*. Beijing: China Fangzheng Publishing House. ISBN 7-80107-511-0/D.

⁸ Law Office of the State Council, NLAC, and Legal Education Branch of MOJ China, 2003, *Annotated Legal Aid Regulations*. Beijing: China Legal Publishing House. ISBN 7-80182-203-X/D.

develop policy options, and deliver training seminars for Chinese legal aid workers.⁹ As CBA's Project Implementation Advisor, I was able to observe and participate in the project activities and witness the results of Canada's assistance. In 2012-2013, the government of Canada funded another CBA project to "improve access to justice and due process for women and men from marginalized communities" in China. Unfortunately, this six-year project was terminated when Canada shut down all its development projects with China at the end of 2013.¹⁰

The immediate and long-term impact of Canada's assistance

ICCLR's contribution was openly acknowledged by Chinese officials not only in each of the NLAC publications¹¹ but also on major events by senior government officials. On November 19, 1998, the Deputy Minister of Justice Duan Zhengkun made the following statement in an official speech to welcome a Canadian government delegation:

The development of a legal aid system in China is still in its early stage and we need to broadly study and borrow the good experience of foreign legal aid systems. I am very glad to see that China's legal aid system at this initial stage has received the attention and cooperation from Canadian colleagues. With strong support from the Ministry of Justice of China, CIDA and the Canadian Embassy in Beijing, the Legal Aid Legislative Research Project jointly implemented by the NLAC of the MOJ China and ICCLR of Canada has made fruitful progresses. I sincerely wish that this project will reach its full objective and hope the Chinese and Canadian partners will continue to push ahead the exchanges and cooperation in the field of legal aid.¹²

By the end of 2001, China had set up 2,299 designated legal aid management agencies. They employed 7,956 designated legal aid workers, including 3,723 full-time legal aid lawyers, to deliver services together with contracted private lawyers and other service providers. In 1998, some 80,000 legal aid cases were processed. This number increased to 172,180, more than double, in 2001.¹³

An official NLAC acknowledgement of the 2003-2007 CBA project is still accessible on the website of the MOJ of China today. According to the NLAC, by "borrowing the advanced experience of Canada's legal aid system", this project helped China "achieve significant improvement in data collection/analysis and develop quality assurance and regulations for financial reimbursement and assistance in case management, HR management, skill training, legal aid promotion and public legal education."¹⁴

Canada's groundbreaking work was followed by the European Union in a four-year China-EU Access to Justice Programme (2013-2017). Like the ICCLR and CBA projects the EU Program had three components: dialogues between EU and Chinese experts on legal and policy development, capacity building for legal aid service providers, and introduction of good legal aid practices to China through pilot activities at selected sites in three provinces.¹⁵

The long-term impact of the Canadian and international assistance is far more significant. In 2021, after some two decades of improvement, the National People's Congress finally turned the Regulations into

⁹ See CBA, "Canada China Legal Aid and Community Legal Services Project", at: <https://www.cba.org/CBA-International-Initiatives/Our-Projects/Past-Projects/China/Canada-China-Legal-Aid-and-Community-Legal-Service>.

¹⁰ See CBA, "Rule of Law: Legal Aid for Marginalized Groups in China", at: <https://www.cba.org/CBA-International-Initiatives/Our-Projects/Past-Projects/China/Rule-of-Law-Legal-Aid-for-Marginalized-Groups-in-C>

¹¹ In the prefaces of all three NLAC books, Canada's technical assistance is specifically acknowledged by Gong Xiaobing, Director General of the NLAC.

¹² See NLAC, "President of CIDA and Ambassador of Canada to China visited NLAC", in NLAC bulletin Legal Aid Work Information, No. 9, Nov. 20, 1998. p.2. The Canadian delegation was led by Huguette Labelle, President of CIDA. According to the official agenda, the event was prepared for PM Chrétien's 100-member Team-Canada delegation but the PM changed the plan because of another commitment on that day.

¹³ Yan, Junxin, MOJ, 2008, "The Improvement of China's Legal Aid System – Speech at International Symposium on WTO and Legal Services", at NPC website: http://www.npc.gov.cn/c2/c189/c221/201905/t20190522_104996.html

¹⁴ NLAC, 2009, "Information Sharing on the China-Canada Legal Aid and Community Legal Services Project (CCLAS)", at: http://www.moj.gov.cn/pub/sfbgw/jgsz/jgszsdw/zsdwflyzxx/flyzxcxx/zcxcxgjwfyxx/202006/t20200616_189074.html

¹⁵ British Council, "China-EU Access to Justice Programme", at: <https://www.britishcouncil.cn/en/programmes/society/china-eu-access-justice-programme>

China's first-ever Legal Aid Law. The Law entered into force on January 1, 2022. In January 2023, the MOJ released the draft "Implementation Measures for the Legal Aid Law of the PRC (draft for solicitation of comments)".¹⁶ By the end of 2020, a total of 570,000 public legal service centers had been established throughout the country, and more than 600,000 villages and communities had appointed their own designated legal advisors. During the five years from 2016 to 2020, the 765,000 legal service institutions in China (including law firms and various other legal service providers) resolved a total of 6.4 million legal aid cases.¹⁷

Despite all the fallbacks in Chinese politics in recent years, the present Chinese legal aid system still recognizes some of the key principles so vigorously promoted by the Canadian projects and universally adopted by the UN in its 2012 resolution.

First of all, legal aid is a state responsibility. Among all the provincial, municipal and county governments in China, 92% have included legal aid expenditure in their annual budgets. Secondly, provision of legal aid must reflect equal access to justice. In 2021 alone, legal aid was delivered to 320,000 criminal cases, while duty counsels provided services to accused persons in over 550,000 cases.¹⁸ By the end of 2022, 90% of all the counties and county-level administrative districts in China enjoyed an expansion of criminal legal aid to all eligible defendants facing the possibility of a sentence of more than three years. China's MOJ is implementing an "experimental legal aid project" providing "full coverage of criminal defense services by lawyers". Thirdly, public-private partnerships are extending the reach of legal aid, with 75,000 service offices now operating in China.¹⁹ Law school and community based legal aid and service clinics are also common in China. For example, when I was Acting Dean of the Shantou University Law School in 2009-2010, its "legal aid research center" was operating as a clinic of legal aid services.²⁰

The Strengths and Values of the Canadian System

Canada succeeded in assisting China's rapid development of its legal aid system due to several important factors. We had good timing, the right approach, committed partners in China, and great support in Canada. Ultimately, however, the projects succeeded because of the strengths of the Canadian legal aid system.

From an international and comparative perspective, the Canadian legal aid system has demonstrated its strengths: First and foremost, the Canadian system of criminal legal aid is based on the core values of fairness and equality in Canadian society. Unlike in many other countries where "defending the criminals" is still a public perception issue, the Canadian public is generally supportive of legal aid for the poor and vulnerable people. The system is also a reflection of the belief in the rule of law and human rights amongst the government, the legal profession, and the public in Canada.

Secondly, unlike a unitary state, Canada has a decentralized legal aid system based on the division of powers between the federal government and the provinces and territories. The provinces and territories in Canada have far more decision-making powers than those in a unitary state. As a result, the 13 jurisdictions in Canada have developed 13 different legal aid plans to serve their particular needs and conditions. Therefore, Canada has one of the most diversified and complicated legal aid systems in the world. Because of such diversity of systems and practices, the Canadians are well equipped to provide diversified legal and practical options to countries seeking our technical assistance.

Thirdly, Canada is an outstanding role model in implementing international standards. The various Canadian legal aid plans are all compatible with internationally recognized principles and norms. They are

¹⁶ See translation of this document at: <https://www.chinalawtranslate.com/en/legal-aid-law-implementation-draft/>

¹⁷ MOJ, 2021, "Development Plan for the National System of Public Legal Services (2021-2025)", at: https://www.gov.cn/zhengce/zhengceku/2022-01/25/content_5670385.htm.

¹⁸ Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security, and Ministry of Justice, Nov. 9, 2022, "Opinions on Further Implementing the Experimental Work to Provide Full Coverage of Lawyer's Defense in Criminal Cases".

¹⁹ NLAC, "Let the sunshine of legal aid warm up more people – a review of one year's implementation of the Legal Aid Law", Legal Daily, March 7, 2023, at: https://www.moj.gov.cn/jgsz/jgszsdw/zsdwflyzxx/flyzxtpxw/202303/t20230307_473586.html

²⁰ See description at: <https://law.stu.edu.cn/info/1021/3645.htm>.

role models in the international community. Last but not the least, Canadians are constantly making the effort to improve our systems and services. We are always prepared to acknowledge, discuss and address problems in the status quo. Canadians are never tired of facing these challenges - the growing demand for aid vs. the limited and sometimes reduced funding, the need to improve services to the Aboriginal people and some other vulnerable communities, geographic barriers in the vast North, cultural and communication barriers among new immigrants. Hopefully, given the rapid development of AI technology and its application in legal services, we will soon be able to make the legal aid services far more effective and efficient than ever before.

Concluding Remarks

The Canadian-China legal aid projects were strategically designed and effectively delivered when China was in its best years of law reforms and opening up to the world. Apparently, such opportunities no longer exist because the windows are closed. Canada has officially defined China as “an increasingly disruptive global power”. There have been major policy shifts not only in China’s foreign relations but also in many aspects of its legal system. However, the positive impact of Canada’s assistance will last, and important lessons can still be learned. Furthermore, many other countries are looking for Canada’s assistance to set up and improve their legal aid systems. As always, Canadians are prepared to proudly share our best practices with countries when they have the genuine desire to build or improve their legal systems for more respect of the rule of law and human rights.