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MIGRANT ACCESS TO CIVIL JUSTICE IN BEIJING

Margaret Y.K. Woo, Christopher Day, & Joel Hugenberger

I. Introduction

In the last three decades, approximately 140 million Chinese—an estimated 3.2 million in Beijing alone—have migrated to cities from rural towns and villages left behind during China’s great economic leap forward. This migration has occurred despite a government policy of pervasive and strict migration control, called the household registration or "hukou" system, which has never officially sanctioned movement into large cities. China’s rural-to-urban wave is vast not just in its sheer numbers but especially in its effect on Chinese society. While

† Professor of Law, Northeastern University School of Law.
‡‡‡ J.D. candidate, Boston College Law School, 2007; Managing Editor, Boston College Law Review, B.A., Middlebury College, 2001. I would like to thank my parents, my siblings, and my fiancée Edwina Ng, without whom this project would not have been possible.
‡‡§§ This paper cites interviews conducted with scholars, officials, practitioners, and migrants working in the Beijing legal aid community in summer 2005. Because of the sensitivity of the information contained, only some specific information is given in the citations. To learn more about these interviews or the subjects herein, please contact the authors. The authors would also like to thank our interview subjects who shared their insights and assisted us with our research, often at substantial personal costs.
Particular thanks to Prof. L., CQH, WF, and CXF.

1 See China’s Floating Population Tops 140 Million, People’s Daily Online, July 27, 2005, http://english.peopledaily.com.cn/200507/27/eng20050727_198605.html; see also Beijing Shi Tongjiu 2003 Nian Guomin Jingji He Shehui Fazhan Tongji Gongbao [2003 National Economic and Social Development Statistical Report] (Feb. 12, 2004), available at http://www.stats.gov.cn/was40/wdndetail.jsp?docid=141551 (noting that there are 4 million non-officially registered citizens in Beijing’s total population of 14.5 million, of which roughly 20% (3.19 million) are migrant laborers or entrepreneurs). The precise number of migrants is, for a variety of reasons, difficult to determine with accuracy. See Dorothy Solinger, Contesting Citizenship in Urban China: Peasant Migrants, the State, and the Logic of the Market 17–18 (1999) (noting the disparate population estimates of migrants and showing that temporary migration patterns and difficulties in coaxing illegal migrants to cooperate with official Chinese surveys may skew population numbers). Independent sources claim that official statistics may substantially undercount the population in Beijing, leading the government to grossly underestimate the number of social workers required to service migrant populations. See Interview with several attorneys at a leading advocacy firm, in Beijing (Aug. 20, 2005) [hereinafter Advocacy Attorneys].


3 See generally Solinger, supra note 1; Li Zhang, Strangers in the City: Reconfigurations of Space, Power, and Social Networks Within China’s Floating Population (2001).
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immigration has given China’s rural peasants some benefit from the country’s economic gains, it has also created an urban underclass that is denied essential social services and susceptible to abuse from both local residents and fellow migrants.\(^4\)

Separated from traditional familial and village support, these migrants test the efficacy of China’s legal system in protecting those most vulnerable.

Concurrent with market reforms and mass migration, China has touted the “rule of law” as the means and legitimacy of its governance.\(^5\) New legal institutions have been established, reams of legislation passed, and the lawyer’s bar revived.\(^6\) The Chinese government has encouraged its citizens to file their grievances in the courts rather than air their discontent in the streets—a serious concern in a country where protests have intensified in recent years.\(^7\) With significant assistance from the international community and grassroots organizations within the country, the government has established an ambitious but underfunded legal aid program to redress widespread injustices against its poorest residents and to foster respect for the rule of law.\(^8\) In response, citizens have seized

\(^4\) See Human Rights in China, Institutionalized Exclusion: The Tenuous Legal Status of Internal Migrants in China’s Major Cities 59–64 (2002), available at http://www.hrichina.org/public/contents/10528 [hereinafter Institutionalized Exclusion] (describing the litany of discriminatory measures that Beijing regulations place on migrants without temporary residency permits, including the inability to rent housing legally, get a job, or start a business). The abuse of migrant populations runs the gamut—from sexual harassment of female migrant workers to the razing of entire migrant villages. See id. at 91–100 (stating that migrants are subject to a range of abuses in the workplace, including exposure to hazardous conditions, unpaid wages, and physical violence); Solinger, supra note 1, at 243–45 (noting that up to 40% of the migrants in Beijing are female and are subject to frequent sexual harassment); Xin Frank He, Regulating Rural-Urban Migrants in Beijing: Institutional Conflict and Ineffective Campaigns, 39 STAN. J. INT’L L. 177, 184 (2003) [hereinafter Regulating Rural-Urban Migrants] (reporting that Beijing authorities razed migrant villages in periodic efforts to crack down on migrants living illegally in the city).

\(^5\) See generally Stanley B. Lubman, Bird in a Cage: Legal Reform in China (1999); Randall Peerenboom, China’s Long March Toward Rule of Law (2002); Pittman B. Potter, The Chinese Legal System: Globalization and Local Legal Culture (2001). The content and definition of “rule of law” are disputed, but it is generally used to refer to the admittedly Western notion that legal principles should guide people’s behavior and legal institutions should be free from political pressure. See generally Richard H. Fallon, Jr., The Rule of Law as a Concept in Constitutional Discourse, 97 COLUM. L. REV. 1 (1997). “Rule of law” is translated as fazhi in Chinese. A homonym using a different Chinese character means “rule by law,” leading to an obvious word play for those inclined to note China’s schizophrenic and instrumentalist attitude towards law. See Yuanyuan Shen, Conceptions and Receptions of Legality: Understanding the Complexity of Law Reform in Modern China, in The Limits of the Rule of Law in China 20, 24 (2000); Randall Peerenboom, Globalization, Path Dependency and the Limits of Law: Administrative Law Reform and Rule of Law in the People’s Republic of China, 19 BERKELEY J. INT’L L. 161, 167 n.23 (2001).

\(^6\) See generally Lubman, supra note 5 (examining the development and reform of China’s legal system and lawyer’s bar).

\(^7\) See, e.g., Philip Pan, “High Tide” of Labor Unrest in China: Striking Workers Risk Arrest to Protest Pay Cuts, Corruption, WASH. POST, Jan. 21, 2002, at A01 (placing the number of labor disputes at eighty a day); see also Virginia Harper Ho, Labor Dispute Resolution in China: Implications for Labor Disputes and Legal Reform 2–3 (2003) (stating that “[t]he rise in strikes, demonstrations, and more violent forms of worker protest have brought labor relations to the fore”).

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upon these changes, adopted the language of rights, and filed lawsuits in record numbers.\textsuperscript{9}

This article examines the interaction between these two cataclysmic changes: rural-to-urban migration and the rapid development of China’s fledgling legal institutions, as brokered through legal aid. Other studies have adeptly explored how substantive laws affect migrant populations and how migrants respond to the law.\textsuperscript{10} This article, however, will assess whether and how migrants in Beijing access the courts through legal aid in seeking resolution to their disputes.\textsuperscript{11} To the extent that “rule of law” entails formal rules and institutions, rather than discretionary powers, it is important to analyze whether formal legal institutions are open to the needs of ordinary citizens such as migrants. The obstacles these migrants face could predict the success of the “rule of law” in China.\textsuperscript{12}

\textsuperscript{9} See Lubman, supra note 5, at 224–38, 255 (noting the rise in reported civil cases and the shrinking role of mediation committees and mediators in resolving disputes). Despite the rise in litigated claims, most instances of perceived injustice are likely to be tolerated rather than litigated. See Neil J. Diamant et al., Law and Society in the People’s Republic of China, in Engaging the Law in China: State, Society, and Possibilities for Justice 3, 7 (Neil J. Diamant et al., eds., 2005).


\textsuperscript{11} This article will not address migrants’ experience with the criminal justice system, which is, to a significant degree, still opaque to foreigners. The Chinese government has technically made legal aid for criminal defendants the responsibility of the state and has allowed legal aid organizations to represent indigent accused criminals regardless of residency status under certain conditions. See Regulations on Legal Aid, art. 11, 15 (adopted July 16, 2003 by the St. Council, effective Sept. 1, 2003), available at http://www.ccc.gov.cn/pages/selectLaws/ResidencySocWelfare/regsLegalAid.php. In fact, criminal cases comprise the majority of cases that most legal aid offices handle. Choate, supra note 8, at 20. However, the reality is that many criminal defendants do not receive legal representation, probably because of official intimidation. Furthermore, it is unclear how many migrants in particular are represented; indeed, migrant criminal defendants may make unpalatable clients, because, rightly or not, they are blamed for the perceived upsurge in crime in urban areas. See Solinger, supra note 1, at 131–34. See generally Guoan Ma, Population Migration and Crime in Beijing, China, in Crime and Social Control in a Changing China 65 (Jianhong Liu et al., eds., 2001). Suffice it to say, with respect to any criminal defendants, the well-known problems with China’s criminal justice system, rather than access to legal representation, is likely the far greater impediment to justice. See CECC 2006 Annual Report, supra note 2, at 42–60 (counting the use of torture and arbitrary detention on criminal suspects and frequent criminal detentions based on an individual’s political opinions or membership in ethnic, religious, or social groups).

\textsuperscript{12} In discussing migrant access to courts, this paper does not directly examine all of the potential routes to redress, as encompassed by the phrase “access to justice.” For a fuller discussion on the relationship between the concepts of “access to justice” and “rule of law,” see Mauro Cappelletti & Bryant Garth, Access to Justice: The Worldwide Movement to Make Rights Effective, in Access to Justice, Vol. I: World Survey 3, 6 (Mauro Cappelletti & Bryant Garth, eds., 1978); Bryant G. Garth, Access to Justice, in Judicial Reform in Latin America and the Caribbean 88, 88 (1995); Joel B. Grossman & Austin Sarat, Access to Justice and the Limits of Law, 3 L. & POL’Y Q. 125, 129 (1981); see also Asian Discourses of the Rule of Law: Theories and Implementation of Rule of Law in Twelve Asian Countries, France and the U.S. (Randall Peerenboom, ed., 2004) (noting the importance of access to justice to governmental efforts to establish rule of law in China and several other countries). Recent

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Migrant access to courts is a recent phenomenon. Prior to 2003, migrants lacking urban temporary residency permits had little access to courts or other dispute resolution institutions. Migrants were unable to exercise their legal rights in part because many cities refused to provide them legal aid. Admittedly, considering the plethora of problems migrants face—including their difficult living conditions and fear of being sent back to their home villages—and the well-noted problems within China’s legal system, going to court is often not the best, and certainly not the first, recourse for the vast majority of migrants.

Other legal avenues of redress, such as mediation, arbitration, and petitioning government officials, are frequently utilized first. But, given the unequal bargaining power between migrants and Beijing employers, these routes are often biased against migrants.

Growing discontent within the migrant population, as well as pressure from both citizens and foreign governments, prompted the Chinese government to promote greater utilization of formal dispute resolution mechanisms for migrants. This shift is all the more notable because it occurs against a backdrop of local and national policies that have systematically denied essential services to this population. In response, migrants have increasingly turned to courts, despite their arguable lack of success.

scholarship indicates that the peasants and migrants who use formal legal channels to resolve their disputes often do not report having achieved "justice." See generally Mary E. Gallagher, Mobilizing the Law in China: "Informed Disenchantment" and the Development of Legal Consciousness, 40 LAW & SOC'Y REV. 783 (2006) (examining legal aid plaintiffs in Shanghai and concluding that their experience with the law leads to disenchantment, but also further, better informed action); Ethan Michelson, Justice from Above or Justice from Below? Popular Strategies for Resolving Grievances in Rural China, 187 CHINA Q. (forthcoming 2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=922072 (reporting that local solutions to grievances in rural China are more successful and lead to greater satisfaction than appealing to higher authorities or the court system).

13 Up until 2003, several cities limited legal aid to local hukou holders or those with temporary residency permits. See Cong.-Executive Comm. on China, Freedom of Residence and Travel, Annual Report: 2004, at n.557 (2004) [hereinafter CECC 2004 Annual Report], available at http://www.cecc.gov/pages/virtualAcad/Residency/annRpt04section.php (citing Guangdong sheng falü yuanzhu tiaoli [Guangdong Province Legal Aid Regulations], art. 10(1) (issued Aug. 20, 1999); Zhejiang sheng falü yuanzhu tiaoli [Zhejiang Province Legal Aid Regulations], art. 7 (issued Oct. 29, 2000); Shaanxi sheng falü yuanzhu tiaoli [Shaanxi Province Legal Aid Regulations], art. 8 (issued Sept. 25, 2001)); see also Liebman, supra note 8, at 244–45 (noting that as of 1998, many legal aid offices refused to service migrants); Choate, supra note 8, at 20–21 (stating that as of 2000, legal aid clients were usually required to be a resident of the area in which the legal aid center was located).

14 See CECC 2004 Annual Report, supra note 13, at 72 (stating that the “formal legal system is almost entirely absent from the lives of most of China’s citizens”).

15 See Ho, supra note 7, at 36–82 (examining the Chinese labor dispute resolution system of engaging in mediation and arbitration before litigation). See generally Donald C. Clarke, Dispute Resolution in China, 5 J. CHINESE L. 245 (1992) (examining the Chinese form of mediation); Philip C.C. Huang, Court Mediation in China, Past and Present, 32 MODERN CHINA 275 (2006); Carl F. Minzner, Xinfang: An Alternative to Formal Chinese Legal Institutions, 42 STAN. J. INT’L L. 103 (2006) (examining the process of seeking legal redress through “letters and visits” to government officials).


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Legal aid is crucial for migrant access to courts for several reasons. Although a growing number of parties in civil cases represent themselves in China’s courts, the technicalities of a lawsuit make bringing a case to court without legal assistance difficult even for ordinary Chinese citizens, let alone uneducated rural migrants. Migrants typically lack the bargaining power and knowledge of local law to argue successfully and often cannot afford even the minimum court filing fees, not to mention lawyers. A few registered Chinese lawyers represent clients on a contingency fee basis, but many are reluctant to represent migrants because of an entrenched cultural bias and the fear that migrants will abscond with the fees, which by law go to the client first. Registered lawyers are less likely to accept migrant cases, both because these cases involve minor amounts and are therefore not profitable, and because culturally they look down on migrant laborers as uneducated. While most migrants are unable to afford legal representation, they are also more likely to need it because they are particularly susceptible to workplace injuries, non-payment of wages, and other forms of exploitation. Legal aid, when available, is often a migrant’s first contact with the formal legal system and the “gatekeeper” to a migrant’s use of the courts. A migrant’s access to justice, therefore, is tied as equally to the limitations of legal aid as to the court system through which legal aid operates.

China is a huge country, and disaggregation of the population is necessary to understand how policies have had differing impacts. In terms of subject matter, although several studies have focused generally on legal aid or labor disputes in

18 See Benjamin L. Liebman, Class Action Litigation in China, 111 HARV. L. REV. 1523, 1534 (1998) (examining the impact of court fees); Margaret Y.K. Woo & Yaxin Wang, Civil Justice in China: An Empirical Study of Courts in Three Provinces, 53 AM. J. COMP. L. 911, 920–23 (2005) (noting the disparate levels of attorney representation in rural versus urban areas). The typical salary of a migrant nationwide is estimated to be 1,100 yuan ($137.50). See Migrant Workers Expect Higher Monthly Salaries, XINHUA NEWS AGENCY, Feb. 7, 2006, available at http://china.org.cn/english/null/157162.htm. To alleviate the burden of court fees on migrants, the Beijing Higher People’s Court recently ruled that migrant workers who file cases against their employers would not have to pay court fees. See Migrant Workers Get Legal Help To Claim Owed Wages, CHINA DAILY, July 27, 2005, available at http://au.china-embassy.org/eng/xw/t205034.htm. Whether this ruling has been effectively followed is unclear; the attorneys we talked to in August 2005 did not mention it.

19 See Ethan Michelson, The Practice of Law as an Obstacle to Justice: Chinese Lawyers at Work, 40 LAW AND SOC’Y REV. 1, 18–21 (2006); see also SOLINGER, supra note 1, at 54 (stating that officials and urban residents viewed migrants as “almost a pariah class” and as “subjects, never as citizens”).

20 See generally Michelson, supra note 19 (exploring Chinese lawyers’ systematic denial of access to legal services through screening of poor laborer and migrant cases because of a lack of economic incentive and cultural biases). Because Professor Michelson limited his findings to registered lawyers taking cases on a fee-basis and excluded legal aid providers, or even registered lawyers who are assigned migrant cases in satisfaction of pro bono requirements, one cannot draw from his article a more general (and more pessimistic) conclusion that migrants have no legal recourse.

21 See INSTITUTIONALIZED EXCLUSION, supra note 4, at 93–100. Legal aid organizations thus have an almost bottomless well of potential cases from which to draw, which leads some to select particularly egregious but easily proveable cases of injustice. See Interview with American Law Professor Teaching in China, in Beijing (Aug. 8, 2005).

22 See Michelson, supra note 19, at 1.

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China, most have not addressed in detail migrant involvement in either. In terms of geography, Beijing, as the seat of government (not to mention the host of the 2008 Olympiad) is a bellwether for the government’s efforts to establish more meaningful access to legal institutions. Not surprisingly, lawyers, legal institutions, and legal aid are more abundant in Beijing, and therefore the city serves as an illustrative, if not representative, example of the state of migrant access to legal institutions in China’s other urban areas.

This article examines the legal aid providers available to migrant workers in Beijing, the forms of aid they provide, and the ways in which they broker “justice.” These legal aid providers can be roughly divided into six categories depending on their structure and level of government involvement: government-sponsored legal aid, migrant-based initiatives, advocacy law firms, community-based organizations, individual attorneys, and law school clinics. Despite their level of cooperation, these various legal aid providers often reflect different, if not divergent, goals in providing aid to migrants. Through extensive interviews and case studies, this article follows the experience of Beijing migrants as they interact with legal aid organizations and navigate the Chinese judicial system.

Ultimately, this article concludes that migrant access to the formal court system is promising but limited. As Charles Epp has argued, the protection of individual rights is largely a “bottom-up” process, not merely a “top-down” one: legal mobilization requires a support structure of rights advocacy organizations, sympathetic government agencies, and eager lawyers capable of strategic and sustained litigation, not simply constitutional guarantees or an activist judiciary. Under this formulation, the recent establishment of a support structure of legal aid for migrants marks a significant stride in China’s, or at least Beijing’s, legal development. The mere existence of a substantial network of legal aid providers in Beijing aiming to redress migrant abuses has the potential to strengthen the rule of law, deter abuses, and expand the rights of migrants. Yet there are also substantial impediments that may stunt the growth of this legal mobilization: for instance, the divergent goals of the various providers, the uneasy mix between government and non-government involvement, and the limited

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24 See, e.g., Ho, supra note 7; Institutionalized Exclusion, supra note 4; Mary E. Gallagher, "Use the Law as Your Weapon!" Institutional Change and Legal Mobilization in China, in Engaging the Law in China, supra note 9; Liebman, supra note 8.

25 See Ethan Michelson, Unhooking from the State: Chinese Lawyers in Transition 32–33 (Aug. 2003) (unpublished Ph.D. dissertation, University of Chicago), available at http://www.indiana.edu/~em-soc/Dissertation.html (noting that even though there are more lawyers in Beijing than in any other city and the city’s population and level of development calls into question its representativeness, it is a city at the vanguard of China’s legal profession). Indeed, recent efforts on the part of the state and NGOs to expand legal aid for migrants to other cities seemed to have used the approach of Beijing and other more developed cities as a template. See, e.g., Hubei Sets Up First Legal Aid Center For Migrant Workers, CHINA DAILY, Aug. 23, 2004, available at http://www.chinadaily.com.cn/english/doc/2004-08/23/content_368083.htm.

26 See infra Part IV.B.

27 See infra Part V.

areas of the law eligible for legal redress. In addition, the sheer size of the migrant population in Beijing and its variety of needs require an expansion of the funding and scope of legal aid to protect migrant rights more fully.

This article is comprised of seven parts. Part II briefly describes the history of urban migration in China and efforts to extend legal services to migrants. Part III gives an introduction to the methodology underlying our data. Part IV describes the various gatekeepers—governmental, quasi-governmental, and non-governmental—that provide legal services for migrants in Beijing. Part V examines the relationships between these gatekeepers and how their differing goals may limit their effectiveness. Part VI draws upon an in-depth case study to illustrate these points. Part VII concludes that the substantial involvement and cooperation of various actors in providing court access to Beijing’s migrant community may provide migrants with a key weapon in the arsenal of rights, but also may raise troubling questions.

II. The History of Migrant Laborers and Court Access in Beijing

China’s migrant workers—known variously as liudong renkou ("floating population"), nongmin ("peasants"), or simply mingong ("workers")—huddle at the fringes of China’s increasingly urban society. Their status is largely a function of government policy. Beginning in the 1950s, the Chinese government rigidly controlled internal migration through a system of registering its citizens in their residences called the hukou system. Although economic changes and reforms have relaxed and decentralized some of the hukou controls, the system still prevents low-income rural migrants from receiving essential public services. The state’s policy has clearly favored affluent urban centers over poorer rural areas and serves as a major tool in upholding the one-party regime.

A. A Brief History of the Hukou System

Though it has analogues in Chinese history, the current form of the household regulation system arose in response to an influx of rural peasants in the early years of the People’s Republic of China ("PRC"). From 1949 to 1957, approxi-
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approximately twenty-six million peasants migrated to China’s cities to seek jobs in the country’s newly established industries. Concerned that a massive influx of rural migrants would decrease social stability and undermine its Soviet-style economic plan, the government established a national household registration system in 1958 to segregate urban from rural Chinese. From 1958 until the late 1970s, no resident could legally move from where they were registered without first presenting documents to the local authorities and obtaining official approval—a permission that was rarely granted. Since all services were tied to where the household was registered, migrants without a residency permit in a city were denied basic services such as housing, education, employment, and even food. This policy was highly effective—rural-to-urban migration within China was essentially halted until the late 1970s.

Beginning in the late 1970s, however, market reforms unleashed a surge in rural-urban migration as rural residents flocked to the cities in search of better opportunities. The decollectivization of rural agricultural communes created a surplus of rural laborers, and new markets from which goods and services could be purchased freed rural peasants to move in search of work. The state’s establishment of Special Economic Zones and its focus on urban development also instigated rural-to-urban migration. As the economic disparity between the coun-

33 See R.J.R. Kirkby, Urbanization in China: Town and Country in a Developing Economy 22 (1985); see also Solinger, supra note 1, at 38 (noting that the early 1950s were a time of relatively unrestricted movement in China).

34 See Hukou dengji tiaoli [Regulations on Hukou] (promulgated by the Nat’l People’s Cong., Jan. 9, 1958) (P.R.C.), available at http://news.xinhuanet.com/ziliao/2005-01/06/content_2423627.htm (establishing a nationwide hukou system). The National People’s Congress (NPC) is China’s highest legislative body. Because the NPC meets only once a year, most law-making is promulgated by the Standing Committee, but the executive branch of PRC, headed by the State Council, also has the power to enact regulations and administrative measures. At the provincial level, people’s congresses may also enact a wide range of local regulations, but laws and regulations at the national level trump local regulations if they are inconsistent.

35 See Regulating Rural-Urban Migrants, supra note 4, at 181; Zang, supra note 3, at 26–27; Kahn, supra note 2. As Professor Fei-Ling Wang notes: “Chinese citizens need their hukou documentation for education, marriage, passports, travel, employment, business licenses, and even to open an account for a public utility . . . .” Wang, supra note 2, at 67. Every household in China, even today, is given one of two designations: rural or urban. This designation is reflected on their national identity card.


37 See Wang, supra note 2, at 47–48 (noting that with the exception of the beginning of the Cultural Revolution (1966–76) and for those seeking college education or military training, migration essentially halted until 1978). This policy was not only enforced by government officials, but also by neighborhood watchers, typically older women wearing red armbands, who would question passersby who looked out of place. See Ma, supra note 11, at 66.

38 See generally Solinger, supra note 1. The degree to which market forces versus state policies have contributed to rural-urban migration is a matter of debate. Compare Solinger, supra note 1, at 150–53 (maintaining that the hukou system and bureaucratic policies served as an impediment to market forces pushing for migration) with Lei Guang, The State Connection in China’s Rural-Urban Migration, 39 Int’l Migration Rev. 354, 355–56 (2005) (highlighting that China’s internal migration has been facilitated by the state); see also Kam Wing Chan & Li Zhang, The Hukou System and Rural-Urban Migration: Processes and Changes, 160 China Q. 818, 819 (1999) (stating that the hukou system is not primarily designed to block migration, but to serve multiple state interests).
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country and the cities widened, the lure of higher-paying jobs in the cities and special economic zones proved irresistible to many rural peasants.

In response to these market forces, China began to relax some of the *hukou* restrictions on population mobility.\(^3^9\) Perhaps in recognition that migration would spur economic development by providing abundant cheap labor, as well as alleviate the problem of unemployment in the countryside, the central government in 1985 began to authorize temporary urban residency permits for those with legitimate business or employment reasons for migrating.\(^4^0\) Further reforms since the 1990s have greatly increased the mobility of selected groups of rural *hukou* holders. Currently, rural *hukou* holders who have a stable source of income and reside in a small city or town can apply for an urban *hukou* after two years.\(^4^1\)

However, these legal means of migrating have been limited mainly to the wealthy or educated and have not yet been extended to large cities such as Beijing and Shanghai.\(^4^2\) In addition, at the same time that the government loosened the *hukou* shackles for some people, it granted local officials substantial discretion to exclude certain groups called the *zhongdian renkou* or “targeted people.”\(^4^3\) Those targeted include people local governments deem to pose a threat to urban stability, such as criminals, political subversives, and those with violent tendencies.\(^4^4\) Because migrants are often linked to the rise in urban crime and social instability, local officials also interpret “targeted people” as applying to poor, rural migrants and can sometimes deny them legal entry into the city.\(^4^5\)

Even apart from legal procedures, however, millions of poor, rural Chinese have migrated to cities without any formal registration. By 2003, government estimates placed the number of rural migrants in China’s urban areas at 140 million.\(^4^6\) In Beijing alone, there are currently over three million migrants, constituting roughly one-quarter of the city’s total population.\(^4^7\)

\(^3^9\) The legal foundations of the *hukou* system are not entirely clear; it has been governed mostly by internal decrees and directives, and its operations are still cloaked with secrecy. *See* WANG, supra note 2, at 28.

\(^4^0\) *See* Provisional Regulations on the *Hukou* Management of Temporary Urban Residents (promulgated July 13, 1985); *Regulation on Resident’s Personal Identification in the People’s Republic of China* (promulgated September 6, 1985); *see also* Regulating Rural-Urban Migrants, supra note 4, at 183.

\(^4^1\) *See* Statement of Prof. Fei-Ling Wang, supra note 31, at 30. Recently, under pressure, the government has deepened some of the *hukou* reforms. *See* Kahn, supra note 2. Although this has been erroneously reported in the Western press as the end of the *hukou*, social services in urban areas are still largely conditioned on *hukou* status. *See* CECC 2006 ANNUAL REPORT, supra note 2, at 116 & n.21.

\(^4^2\) *See* WANG, supra note 2, at 54.

\(^4^3\) *See* id. at 107–11.

\(^4^4\) *See* id. at 109.

\(^4^5\) *See* id. at 110. The government has had some difficulty actually putting this system into practice; because of their mobility, many migrants are able to elude control and surveillance by the authorities. *Id.*

\(^4^6\) *China’s Floating Population Tops 140 Million, supra* note 1.

B. Overview of Beijing’s Migrant Population

The migrant population in Beijing is far from monolithic. Migrants come from various corners of China and speak different dialects—for some, Mandarin, the lingua franca of China, is a “foreign” language. Some migrants settle in neighborhoods within Beijing with other migrants from their same province, while other migrants float from worksite to worksite. Still others, after a few years, migrate back to their home villages.

Migrant occupations divide along gender lines. An estimated 60% of migrants in Beijing are males, of whom at least 300,000 work in the construction jobs that have reshaped the city’s skyline overnight. Female migrants flock to factory jobs or the service sector, working as shopkeepers and nannies for the nascent middle and upper classes. Migrants are also young—their average age is 28.6 years. Migrants working in factories or on construction grounds usually live in squalid camps at their worksites and work marathon shifts to keep construction or production running for twenty-four hours a day. Migrants working in the service industry seem to have a slightly easier time: they are required to maintain a clean demeanor and are allowed to work fewer hours per week.

Despite their diversity, migrants in Beijing are united in one respect—they lack urban hukou or even temporary residency permits and therefore are not afforded many of the rights and services received by hukou-holding locals. Because migrants are seen as draining the resources of local governments and as a source of social ills and competition for jobs and living space, Beijing has erected a variety of discriminatory measures against them. The city has limited essential services—such as education, health, and even jobs—to local residents only.

48 Perhaps the most famous, and certainly the most studied, is “Zhejiang Village,” a portion of southern Beijing that specializes in garment production and whose residents hail from Zhejiang province. See Solinger, supra note 1, at 231–34, 249–56; Sporadic Law Enforcement Campaigns, supra note 10, at 124–26.
49 See Solinger, supra note 1, at 21.
50 See generally Victor Yuan & Xin Wong, Migrant Construction Teams in Beijing, in Internal and International Migration, supra note 32, at 103.
53 See Yuan & Wong, supra note 50, at 104 (characterizing migrant construction jobs as the hardest and most tiring of all migrant occupations).
55 This may be due to the fact that three levels of government—the central government, the rural governments, and the host governments—have overlapping jurisdiction over migrants. Their policies in response to migration vary widely. See generally Regulating Rural-Urban Migrants, supra note 4. Rural officials generally encourage migration, urban governments discourage it, and the central government is somewhere in between. Id.
56 For instance, for years Beijing restricted migrants from engaging in certain occupations, such as taxi driving. Beijing shi waidi laijing wugong jingshang renyuan guanli tiaoli [Ordinance for the Man-
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Education of migrant children, in particular, is provided on an unequal basis.\textsuperscript{57} The Beijing government also periodically engages in law enforcement campaigns against migrants to combat crime and restore social order.\textsuperscript{58} Indeed, as recently as 2000, Beijing authorities leveled entire migrant villages in a brazen effort to "control" the migrant population.\textsuperscript{59} There even have been rumblings that the Beijing authorities may again expel large numbers of migrants to "clean up" the city in advance of the 2008 Olympics.\textsuperscript{60}

C. Migrants and Dispute Resolution

Although migrants are subject to a wide variety of injustices and discriminatory treatment, they have legal recourse to address only a small portion. This is due in part to the limitations of Chinese law; many legal protections, such as the country's labor laws, are unenforced.\textsuperscript{61} But this is also due in part to the restrictions of legal aid. For instance, government-sponsored legal aid limits its coverage to claims involving state compensation, government benefits, support payments, labor compensation, and other undefined measures in the public interest.\textsuperscript{62} Thus, the injustices that migrants bring to legal aid, and occasionally to court, tend to fall into three categories: non-payment of wages, workplace accidents, and, to a far lesser extent, sexual harassment.

\textsuperscript{57} Despite a revised national Compulsory Education Law, which requires migrant children to be enrolled in local state-run schools, Beijing requires five certificates—a temporary residence permit, work permit, proof of residence, certificate from the place of origin, and household registration booklet—in order to attend local, state-run schools. Many migrants lack this documentation, not to mention the means to afford substantial local school fees. They therefore have established their own schools in Beijing to fill the void. \textit{See Prepared Statement of Chlod Froissart, Roundtable Before the Cong.-Executive Comm. on China, 109th Cong. (2005). Because these schools are unregistered and technically illegal, they are subject to arbitrary closure by the authorities. \textit{See Beijing Closes Schools for Migrant Children in Pre-Olympic Clean-up, \textit{Human Rights Watch}, Sept. 25, 2006, available at http://www.hrw.org/english/docs/2006/09/26/china14263.htm.}

\textsuperscript{58} \textit{See generally Sporadic Law Enforcement Campaigns, supra note 10.}

\textsuperscript{59} \textit{See generally Zhang, supra note 3 (tracing the destruction and reconstruction of a migrant enclave in Beijing).}

\textsuperscript{60} \textit{See Beijing Closes Schools for Migrant Children, supra note 57.}

\textsuperscript{61} For this reason, even a revised draft of China's labor law that expands legal protections and the role of labor unions may do little to protect migrants, who tend to work illegally at smaller businesses. \textit{See David Barboza, China Drafts Law to Empower Unions and End Labor Abuse, \textit{N.Y. Times}, Oct. 13, 2006.}

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Aware that migrants lack sophisticated legal knowledge and are desperate for money to support family members left behind in their hometown villages, employers take advantage of a contract law that, up until recently, required written evidence of employment. Employers deliberately refused to sign an employment contract and later used this as an excuse to refuse to deny migrant employees their wages. In fact, some studies suggest half of all migrants have been unpaid for work. Migrants also tend to work in dangerous industries with lax safety codes, leading to gruesome workplace accidents. Migrant women face the additional problem of sexual harassment from bosses and co-workers and are often fired if they become pregnant.

The vast majority of disputes involving China’s migrants end up in non-formal channels. Migrants frequently tolerate abuse, or pursue informal methods of dispute resolution such as mediation, arbitration, or petitioning government officials directly for redress—a process called xinfang or “letters and visits.” But mediation and arbitration function best when there is some degree of similar social status, which is rarely the case for civil actions involving migrants. Likewise, petitioning a government official through an office dedicated to such requests, which can either supplement or replace a formal lawsuit, hinges on the subjective receptiveness of an official who may have little to gain from resolving

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63 See Wang Ye, Projects to Further Protect Migrant Workers, CHINA DAILY, Mar. 10, 2006, at 3, available at http://www.chinadaily.com.cn/english/doc/2006-03/10/content_530649.htm (quoting the vice-chairman of the All-China Federation of Trade Unions as saying his organization “will strive to ensure 90 per cent of migrant workers have a labour contract with their employers by 2008”). Although judges are no longer supposed to bar labor disputes where there was no written contract, in reality the substantial discretion that judges are granted may allow many of them to do so. See generally Margaret Y.K. Woo, Law and Discretion in the Contemporary Chinese Courts, 8 PAC. RIM L. & POL’Y J. 581 (1999).

64 Many migrants, used to more communal and informal social arrangements in their villages, do not understand the importance of written contracts or official work relationships.

65 See BEIJING QINGSHAONIAN FALU YUANZHU YU YANJIU ZHONGGUO NONGMINGONG WEIQUAN CHENGREN, ZHONGGUO NONGMINGONG WEIQUAN CHENGBEN: DIAOCHA BAO-GAO [REPORT: THE IMPACT OF MIGRANTS EXERCISING THEIR RIGHTS] 1 (2005) (on file with authors) (noting that 48% of migrants in Beijing have reported being unpaid for work).


69 See CECC 2004 ANNUAL REPORT, supra note 14, at 72–75; See also Isabelle Thireau & Hua Linshan, One Law, Two Interpretations: Mobilizing the Labor Law in Arbitration Committees in Letters and Visits Offices, in ENGAGING THE LAW IN CHINA: STATE, SOCIETY, AND POSSIBILITIES FOR JUSTICE 84 (Neil J. Diamant et al., eds., 2005) (comparing workers’ expressions of injustice in xinfang administrative bureaus and arbitration committees).
the dispute. Indeed, some estimates place the rate of response at 0.2%. Protests, another age-old form of addressing injustice, can occasionally be successful but carry great risks for their participants, who may face retribution. Because of the fickle and dangerous nature of these methods, it is perhaps not surprising that China’s poorer citizens and their advocates have increasingly turned to the courts for redress.

Migrants’ use of the court system, though, is predicated on legal aid. In general, migrants are significantly poorer than the average urban resident and cannot pay for legal services provided by registered lawyers. Until the turn of the century, however, many cities barred migrants without temporary residency permits from using city-sponsored legal aid, preferring to earmark their aid for local residents instead. As early as 1996, the central government enacted a Lawyers Law that imposed obligations on registered lawyers to engage in pro bono representation. The law, however, did not directly address migrants, and local officials often did not extend legal aid to non-residents. Although Beijing’s migrants occasionally were represented by nongovernmental organizations (“NGOs”) prior to 2000, few chose to seek legal aid for a variety of reasons.

Beginning in 2001, however, several developments made it easier for migrants to bring their cases to court and focused public attention on migrant legal rights. A 2001 Chinese Supreme Court decision clarified the country’s Labor Law, making it easier for migrants engaged in labor disputes to file suit. Two years later, in 2003, the death of a young migrant arrested in Guangzhou for failing to produce a temporary residency permit triggered national attention on the plight of migrants and led to a reevaluation of the system of repatriating “urban vagrants and beggars” (shourong qiansong) to their home villages.

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71 See generally ELIZABETH J. PERRY, CHALLENGING THE MANDATE OF HEAVEN: SOCIAL PROTEST AND STATE POWER IN CHINA (2002). Increasingly, appealing to the Chinese media has been an effective accompaniment to any of these methods of seeking redress. See generally Benjamin L. Liebman, Watchdog or Demagogue? The Media in the Chinese Legal System, 105 COLUM. L. REV. 1 (2005) (exploring several ways in which the Chinese media influences the courts).

72 See Liebman, supra note 8, at 244–45 (noting that as of 1999, regulations in many Chinese cities stated that legal aid is available only to local residents or to those with temporary residency permits); see also Choate, supra note 8, at 20.


74 For example, in 1995 Beijing established a migrant worker service center designed to assist in resolving labor disputes between migrant workers and management. See SOLINGER, supra note 1, at 93.

75 See Chinese Supreme Court Guiding Principle (Mar. 22, 2001), available at http://law.chinallaw info.com/newlaw2002/SLC/SLC.asp?Db=Chl&Gid=35573. What constitutes a “labor dispute,” however, is narrowly defined under Chinese law, so the effect of this pronouncement was not as far-reaching as it appears. See Ho, supra note 7, at 41 (noting that the legal protections of the 1995 Labor Law do not apply to temporary workers and contractors, many of whom are migrants).

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Also in 2003, the government under new Premier Hu Jintao adopted national Legal Aid Regulations. These regulations implicitly extended legal aid to migrant workers; Article 6 states that applicants seeking legal aid can obtain a statement proving economic need either from the authorities in their place of hukou registration or their actual place of residence.\textsuperscript{77} The national Legal Aid Regulations also explicitly state that legal aid is the responsibility of the state, but at the same time, invites NGOs to supplement state-sponsored legal aid, a stance that came as a surprise.\textsuperscript{78} Despite the government’s rosy pronouncements, however, legal aid remains chronically underfunded at the local level and often fails to reach those in need.\textsuperscript{79}

Three main obstacles often prevent migrants from filing lawsuits even apart from the need for free legal services. First, the cost for bringing a lawsuit (filing fees, gathering evidence, etc.) is too high for migrants in contrast to the small amounts of recovery. Secondly, migrants rarely have a basic awareness of their rights nor are they familiar with court process. Finally, the Chinese legal system does not make it easy. At the time of the interview, there were over 900 national laws and regulations governing labor, and local provinces generally have their own and often contradictory labor laws. For example, migrants often do not inquire about legal actions—or are even made aware of actionable transgressions—until long after the migrants can legally state a claim.

Migrants’ use of courts coincides with the central government’s push to channel politically acceptable disputes through its legal institutions.\textsuperscript{80} Admittedly, the government’s efforts to establish a rule of law are partially motivated by a desire for social control—placing disputes in the courts takes them out of the streets where they may foment social unrest. But that does not necessarily mean that migrant cases lack any social impact. As the rise in cases brought by migrants demonstrates, even the establishment of a structure of legal aid can have some impact on migrants’ legal rights.


\textsuperscript{78} See Prepared Statement of Benjamin L. Liebman, \textit{Roundtable Before the Cong.-Executive Comm. on China}, 108th Cong. 7, 24 (2004) (noting that prior to 2003 there was a fear that the government would channel all legal aid through the Ministry of Justice).

\textsuperscript{79} See CECC 2006 \textit{ANNUAL REPORT, supra} note 2, at 135.

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III. Methodology

In August 2005, we interviewed Beijing legal aid organizations from six different categories of providers.81 These legal aid organizations varied in many respects, including their financial support from the city, funding levels from NGOs, goals, and legal expertise. In most cases, we interviewed multiple members of each organization. When applicable, these interviews included the groups' main decision-makers as well as the direct service providers. Interviews were conducted at the legal aid office with the assurance of anonymity for all interview subjects. In several instances, the publications or files each organization produced supplemented our interviews. Additional supplemental documents included copies of case files, advocacy papers, and publications given directly to migrants.

Additionally, to understand migrants' perception of legal aid providers and migrant labor law, we interviewed a pair of migrant plaintiffs who had attempted to gain assistance from several legal aid providers, as they pursued an all-too-common nonpayment action against a former employer.82 Substantively, our interviews focused on what legal aid organizations perceived to be the goals of their organizations, and how they functioned individually and with each other.

IV. Legal Aid Gatekeepers and Migrants

Our legal aid providers identified several resources necessary to service migrants' legal aid needs. Our interviews also highlighted the procedures and challenges faced by these legal aid providers and the different manner used to achieve their legal aid goals.

A. Overview of Migrant Legal Aid Providers' Resources

We interviewed six different forms of legal aid providers working with Beijing's migrant population. The six providers span a spectrum in the recognition they receive from local and national governments and the types of legal aid services they provide migrants.83 All of them work with the migrant population but vary in their strategies and goals because of their particular constraints. These constraints included prosaic concerns, such as limited financial resources, legal training, access to a dedicated workforce, access to migrants, and status and reputation. An individual provider's lack of a certain resource often drives them to establish relationships with other providers in hopes of furthering their own or-

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81 Interviews were conducted at the legal aid providers' worksites with the assurance of anonymity for all interview subjects. In most cases, we interviewed multiple legal aid organizations (and multiple members of these organizations) within each category. For the purpose of this article, we have selected one organization from each category which best demonstrates the themes we observed across all examples of each category.

82 See infra Part V.A.

83 The variety of legal aid organizations is perhaps surprising. Prior to 2003, some predicted that the government, through the Ministry of Justice, would dominate legal aid and snuff out private providers. See Prepared Statement of Liebman, supra note 78, at 24 (noting that prior to 2003 there was a fear that the government would channel all legal aid through the Ministry of Justice).
ganization’s goals. A brief overview of the resources identified as invaluable by the providers follows. They include financial resources, trained and dedicated workforce, access to migrant communities, and reputation.

1. **Financial Resources**

Perhaps the most ubiquitous challenges faced by migrant legal aid organizations are limited resources and funding. Clearly, a well-funded organization is potentially better able to offer services for migrants. Since the financial costs associated with filing cases are high for migrants and even the rare victorious case often fails to result in attorney fees, organizations hoping to represent migrants must be ready to do so at a monetary loss. At present, most legal aid organizations still rely on government support, most notably from the provincial government. Thus, legal aid varies greatly from province to province. Pro bono services from bar associations are only in its infancy; domestic private contributions to legal assistance programs are even rarer. By and large, legal assistance programs are found in law school clinics and some are externally funded by foreign organizations.

2. **Legal Training**

Given the developing nature of migrant advocacy, it has become important for organizations to improve their legal training and knowledge by familiarizing themselves with both substantive laws relating to migrant rights and the unique means courts and administrative bureaus address migrant-related cases. Because providers working with migrants enter legal aid with diverse backgrounds, individual providers may have little, if any, formal legal training. Even for well-trained attorneys, relevant statutes are numerous and may include various national and city-wide statutes in multiple areas of law. The unique issues migrants face in the judicial process can range from lack of evidence to difficulty in communications as differences in dialect and culture test the patience of both lawyers and clients. Representing migrants often becomes an exercise in busywork such as unearthing evidence, filling endless forms, and navigating a large bureaucratic system on behalf of clients. For the lawyer, working with a migrant population means training not only in law, but also in cultural and social sensitivity.

3. **Access to a Dedicated Workforce**

Limited legal training may circumscribe such providers’ impact or efficiency within the Chinese legal system. Since private lawyers in business practices can be more readily profitable, legal aid organizations struggle to identify, utilize, and retain a properly trained workforce. Currently, few lawyers or organizations

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84 See generally Liebman, supra note 8.
85 For example, there are 963 national statutes regarding labor law, one of multiple areas of national laws (not to mention city- or province-specific laws) that may be relevant in bringing a migrant action. See Advocacy Attorneys, supra note 1.
profit from migrant representation and fewer lawyers remain in migrant practice for long. Alternately, nonlawyer advocates may be more dedicated to migrant representation and advocacy, especially if they have personal connections with the migrant population.

4. Access to Migrant Clients

Even with an experienced workforce, outreach to migrants is problematic. Migrants often distrust seemingly official institutions. Much like their relationships with courts and bureaus, legal aid organizations must establish guanxi with migrants or migrant leaders to earn their trust. Since many of the providers are Beijing residents, reaching these migrants may also require overcoming dialect and cultural differences. Many migrants still retain strong ties to their home villages and may only trust lawyers originally from their home provinces.

5. Status and Reputation

Finally, an organization’s reputation often proves to be a nearly indispensable asset. Traditionally, establishing strong guanxi between attorneys and judges is an important element of litigation. In civil cases, it was common practice for attorneys litigating a civil suit to treat the presiding judge to dinner and drinks prior to the trial—all on the client’s tab—to argue the merits of the case and foster a positive personal relationship with the judge. In a migrant case, where the migrant clients cannot afford to establish such relationships with judges, an organization’s existing relationship with officials is an even more significant asset to migrant representation.

Each of these resources can limit and define an organization’s actual work, apart from its stated goals. Exploring the organization’s full ambit of influence would require not only an examination of its professed aims but also a probing of the five resources listed above.

B. Migrant Legal Aid Providers

Migrant legal aid providers can be divided generally into six categories—government-sponsored, individual practitioners, advocacy law firms, university-sponsored clinics, community-based organizations, and migrant-sponsored initiatives.

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86 See Michelson, supra note 19, at 19 (observing that Zhou Litai, the famed lawyer for migrant industrial workers, was engaged in litigation against his former clients for failing to pay his attorney’s fees).

87 Guanxi refers to a vaguely Confucian concept of relationships, social order, and the brokering of favors. The connection between the Chinese concept of guanxi, and formal law has been examined in the past. See Ethan Michelson, Chinese Lawyers: Guanxi as a Substitute for Rights, Paper Presented at Human Rights in China: Progress, Problems, and Prospects, at University of Chicago, Apr. 19, 2003.

88 See Interview with Chinese law professor and practitioner who has represented migrants, in Boston (Mar. 27, 2006) [hereinafter Chinese Law Professor].
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1. Government-Sponsored Legal Aid Centers for Migrants

The Chinese government has fostered the development of government-sponsored legal aid since the mid-1990s, when several legal aid centers were opened in cities across the country. In 1994, Beijing began to require local lawyers to engage in legal aid work and three years later, Beijing established a centralized legal aid center to coordinate these efforts. Migrant eligibility for government-sponsored legal aid in Beijing, however, was not clear-cut until the 2003 law on legal aid. Since then, migrant usage of the government legal aid offices has increased markedly; by 2005, migrants constituted 80% of the cases one Beijing legal aid office handled. This is significant for at least two reasons. First, many government-sponsored legal aid clinics in other cities tend to ignore migrant issues, choosing instead to focus limited legal aid resources on local residents. In contrast, Beijing’s government-sponsored legal aid system can be seen as comparatively supportive of migrant issues. Secondly, and more cynically, the government’s reason for responding to migrant legal needs may have less to do with empowering a deprived population or advocating for class equality. Rather, it is designed to instill respect for the law, or more specifically, to maintain social control. This goal informs how they respond to migrant cases.

We visited a Beijing government-sponsored legal aid office in a Beijing district to examine how the office screens and processes its cases. Within government-sponsored legal aid, the coordination is elaborate and theoretically hierarchical. The district legal aid center, for instance, operates as a district office under the purview of Beijing’s central legal aid office. However, increasingly, the district legal aid office’s day-to-day interactions and services for migrant workers must take place independent of centralized supervision or assis-

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89 Interview with Director of Government Sponsored Legal Aid Office, in Beijing (Aug. 18-19, 2005) [hereinafter Director Interview]. Unless otherwise noted, all information in Part IV.B.1 derives from this interview.

90 See Liebman, supra note 8, at 219–20 (reporting that the 1994 draft of the Lawyer’s Law included a provision stating that the government would provide legal aid to assist those unable to afford legal fees).

91 Beijing’s legal aid center traditionally assigns attorneys to assist indigent clients who qualify for aid. Id. at 229.

92 Cf. Shanghai Municipality Decisions on Legal Aid [Shanghai shi falu yuanzhu ruogan guiding], art. 5 (May 9, 2005), available at http://www.fengcn.cn/assistance/0653022350588.html (finally clarifying in 2005 that migrant workers were eligible for government-sponsored legal aid for labor disputes, occupational injuries, and domestic violence).

93 A large number of these, however, may have been criminal cases. See sources cited supra note 11. While our interview subject anecdotally noted that this represented a substantial increase in the percentage of serviced migrant workers, she also stated that her office did not possess accurate records of aid recipients prior to 2003.

94 See sources cited supra note 13.

95 See infra Part V.

96 See infra Part V.A.

97 In fact, the director of the district office only consented to our interview after learning that the Beijing office had provided us with an interview. The director also asked several questions about the content of our interview with the Beijing office before her own interview. See Director Interview, supra note 89.
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tance. In part, this is because of the sheer distances between offices, and mi-
g्रants' inability to reach more distant central legal aid offices. As a result, dis-
trict legal aid offices working with migrant workers increasingly function self-
sufficiently in order to provide even minimal services. In addition to managing
their own resources, local offices establish their own policies regarding case in-
take and service procedures and develop relationships with local alternative legal
services.

To determine whether a case rises to the level of a litigable claim, the city-
sponsored district legal aid office’s performs an intake consultation during which
a case worker or telephone operator responds to a migrant’s or migrants’ com-
plaints and weighs the case’s merits. If an intake worker determines that a partic-
ular case is litigable, the case is then farmed out to local attorneys to fulfill their
mandated pro bono requirements. The initial screening procedure is often a brief
and perfunctory process. Evidence suggests that only a small percentage of mi-
grant disputes pass this first step. This procedure emphasizes the processing of
high caseloads of relatively simple disputes.

As an initial matter, aid workers determined whether the migrant seeking as-

sistance qualifies for legal aid based on the potential client’s income. Second,
the migrant must present a problem that can be remedied under the law—a deter-
mination wholly within the discretion of the caseworker. Finally, aid workers
ask clients to produce documentation to support their claims. This proved to be
the most serious deterrent for migrants seeking assistance.

The need for documentation by aid workers essentially meant that many cases
brought to the office were disposed of without resolution. Most migrant workers
provide employers with anonymous labor and are willing to work without identi-
fication or paper documentation. Even in cases where migrants can provide doc-
umentation of their employment, it is difficult to demonstrate that the terms of
employment have been violated. Chinese civil trials rely largely on documentary
evidence. In cases where oral testimony is the only available evidence, the lack
of documentation often proves to be an insurmountable barrier to recovery, but
also allows pro bono attorneys to represent clients with more straightforward
claims. This policy of asking for documentation serves government-sponsored

98 Migrants often do not have the time or capital needed to travel across the city via Beijing’s con-
voluted public transportation. In addition, migrants, who generally arrive and operate in the city within a
tong bao, are often afraid to travel individually in the city or even leave their job sites for extended
periods for fear of arousing their employers’ suspicions.

99 See 1000 ming waidi mingong zhong, zhengzheng nenggou huode falü yuanzhu de bu zu 3% [Of
1000 Migrant Workers, Less Than Three Percent Are Actually Able to Receive Legal Aid], BEIJING
12/content_1271931.htm.

100 See China Simplifies Legal Aid for Migrant Workers, PEOPLE’S DAILY ONLINE, July 27, 2006,
departments no longer examine the migrant worker’s financial status before giving aid”).

101 Though the office’s director stated that all “relevant personnel” had legal training from reputable
undergraduate law programs, it is unclear whether these graduates include the caseworkers who initially
screen migrant complaints.
legal aid's dual goals of servicing more cases and encouraging attorneys to comply with their pro bono requirements.

In order to make the best use of limited funding, the district legal aid center divides migrant complaints into three categories. From most to fewest, these cases include: 1) laborers who are generally unskilled and often work within their tongbao, generally on construction jobs; 2) service workers of various skill levels, ranging from cleaning ladies to round-the-clock nurses; and 3) self-employed migrants, who earn a living buying, growing, or making inexpensive items for sale on city streets.

Resources are allocated in a manner that allows caseworkers to maximize the number of migrants helped. Since it is common practice for construction developers—often with the help of several layers of middle men—to hire dozens, or even hundreds of individual workers from a single village or area at a time, a single settled case in the construction area could provide remedy for many migrants at one time. This is also true in actions involving migrants working in the service industry, such as female hotel workers, which could allow the provider to service a dozen or more migrants at a time. In comparison, addressing complaints about smaller employers is likely to only service the needs of an individual or a family of migrants.

Focusing on civil actions from clients within these categories (with an emphasis on the first two) allows legal aid to focus on cases with straightforward and non-controversial legal elements such as worker's compensation or breach of contract and maximizes the number of migrants helped. The first two categories of cases also provide some semblance of a formal employer-employee contract, even though producing documentation is a recurring challenge for the legal aid offices. Few criminal cases are accepted because there is a lack of qualified attorneys to represent criminal clients. Additionally, though our interview subjects did not explicitly allude to such challenges, bringing criminal actions against employers could place the government-sponsored legal aid offices in direct opposition to government-sponsored employers investing in local and national development—a showdown the legal aid offices are determined to avoid.

Government legal aid offices, such as the one we interviewed, largely handle cases that are non-controversial in terms of upsetting established legal and social norms. Although large numbers of complaints are funneled through their intake system, these cases are not designed to be "impact" cases that lead to a change in

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102 Tongbao is a phrase roughly translated to "fellow countryman." Migrants and legal aid workers, however, often use this phrase to describe the groups of migrants from the same rural area who enter the city together and are hired as a group.

103 Migrant workers often refer to these middle-men as xiao laoban, or "minor employers." It was understood that each level of "employers" took a cut of the fees paid from the original developer. In some extreme cases, like the case study outlined in Part V, "employers" midway through the chain have taken the entirety of the moneys paid them and simply disappeared, leaving an ostensible employer with hundreds of unpaid workers he has never met on an individual basis. See infra Part V.

104 This is possible because of the Chinese rules on class action. See Benjamin L. Liebman, Class Action Litigation in China, 111 Harv. L. Rev. 1523 (1998). However, China is increasingly discouraging class actions for fear of the class action's potential to organize dissatisfied citizens and create social unrest.
the laws. Rather, the office will take on those cases that will most expeditiously appease the greatest number of migrants. Its purpose is to calm social dissatisfaction rather than address the root causes of such dissatisfaction.

2. Individual Attorneys

Private, registered attorneys in Beijing have traditionally not been receptive to representing migrant clients. The private lawyers who do assist migrants usually do so to satisfy pro bono services or, in the rare case, through contingency-fee type arrangements. Beginning in 1993, Beijing was the first city to require lawyers to provide legal aid through city-sponsored legal aid offices. To satisfy these requirements, some lawyers represent migrants assigned to them by local city legal aid offices. While city-sponsored legal aid officials have tried to identify attorneys skilled at working migrant cases, pro bono attorneys are often unfamiliar with legal matters pertinent to migrants.

At present, there is no systematic training of lawyers for migrant-related problems. National and local labor and migrant laws are convoluted and often inconsistent. Pro bono attorneys are often unable to provide complete or even competent advice to migrant clients, limiting the impact of most pro bono attorneys. For these reasons, in addition to the lack of income for migrant representation, attorneys often dislike working on pro bono cases and represent such clients with mixed results. However, assigning attorneys otherwise uninvolved with migrants to represent migrant-related cases does raise the legal community's overall awareness of migrant issues.

There are attorneys who reach out to the migrant communities themselves by establishing relationships with migrant-sponsored initiatives. An emerging

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105 Interview with private migrant attorney, in Beijing (Aug. 9, 2005) [hereinafter Private Attorney]. Unless otherwise noted, all information in this Part IV.B.2 derives from this interview.

106 See Michelson, supra note 19, at 15, 21 (noting that Beijing lawyers are unlikely to take on migrant labor cases because of the low fee potential and the lawyers' cultural stereotypes against poor migrants); see also Michelson, supra note 25, at 210–12 (stating that most Beijing law firms dislike providing pro bono representation because it reduces their paycheck and the firms therefore tend to shunt the cases to the most junior lawyers). In recognition of lawyers' entrenched reluctance to assist migrants, in November 2004, the Ministry of Justice promulgated a directive calling on lawyers to accept more cases from migrant workers trying to collect back wages and to reduce or waive migrants' legal fees in doing so. Ministry of Justice, Construction Division, Guanyu wei jiejin jianshe tuoci gongcheng he yimingong gongzi wenti tigong falu fuwu he falu yuanzhu de tongzhi [Circular on the Provision of Legal Services and Legal Aid to Resolve the Problem of Construction Fee Arrears in the Construction Industry and the Problem of Back Wages Owed to Migrant Workers] (Ministry of Justice Document No. 159), (promulgated Nov. 6, 2004), available at http://www.cin.gov.cn/indus/file/2004120901.htm.

107 See Liebman, supra note 8, at 229.

108 See Director Interview, supra note 89.

109 See id.

110 See generally Michelson, supra note 25.

111 The attorney we interviewed worked in a mergers and acquisition firm and has established a working relationship with such community-based organizations. In this capacity, the attorney has represented at least three migrant clients brought to his attention by the organization on issues such as workplace injury and accident liability. Echoing challenges observed by other aid providers, these lawyers found that representing migrant plaintiffs required large amounts of time to gather evidence often for unsuccessful claims. Given the time demands, lawyers willing to work with migrants must be financially
handful of registered lawyers have specialized in migrant representation as the mainstay of their client base. Capitalizing on occasionally generous damage awards for workplace accidents, these lawyers provide legal services to migrants on a fee basis. The best known example of such a lawyer is Zhou Litai, who operates out of Shenzhen and Wuhan. Zhou has earned national and international renown for his work in 1998 where he won a record amount for a workplace injury. All of the providers we spoke to were aware of Zhou’s practice and expressed surprise that he had created a profitable practice from a migrant client base. While the impact of his work is difficult to determine, some attorneys have noted that Zhou’s profitable work may encourage more attorneys to represent migrants in court, or at least demonstrate to employers that courts are willing to enforce migrant rights and encourage employers to follow labor and migrant regulations.

The motivations for private lawyers working on migrant cases are varied. When our interview subject was asked why he chose to take migrant cases, he refused to offer a more specific explanation beyond the fact that he is “interested” in migrant cases and that he “had extra time.” When probed further as to what interested him about migrant work, the attorney noted that his time at his firm served as a means of making a living and that working with migrants in his own time is more engaging. This lawyer acknowledged the need of migrants for more legal representation since city-sponsored legal aid offices, which are funded by district budgets, often acquiesced to pressure from “local indigents” and focused city-sponsored funds on these populations rather than migrants.

Through his collaboration with the migrant initiative, this attorney has met five or six other individual attorneys who also represent migrant cases pro bono. While differing in professional backgrounds and ages, these attorneys all demonstrate extensive interest in migrant issues and recognize the need in working with migrants. These pro bono lawyers handle few cases, but generally provide some resolution to disputes. Relationships between these lawyers extend beyond a shared interest for profitability to a broader concern about social justice.

secure with some flexibility in their schedules. Many pro bono lawyers prefer working with migrant-run organizations so that the organizations can pre-screen cases and perform many of the more menial and time-consuming tasks involved. The above sentiments suggest that even attorneys working on straightforward migrant cases require a significant amount of sacrifice and commitment.

Mr. Zhou’s representation on behalf of migrant workers has been profiled often both within and beyond China. See, e.g., Shai Oster, Chinese Lawyer Raises Legal Bar, CHRISTIAN SCI. MONITOR, Aug. 7, 2001, at 6.

However, Zhou’s much-publicized and successful career success may ironically have at least a minor adverse impact on practitioners willing to work with migrants. According to Zhou, several migrants have balked on paying his fees after the collection of damages. In 2004, Zhou claimed that 161 former migrant clients had refused to pay his fees, resulting in a loss of five million RMB. Zhou has gone so far as to bring suits against some of his former clients for nonpayment and defamation, demonizing him to migrants and the popular press alike. The client who received the 1998 settlement has gone on record to describe Zhou as “a money-hungry ambulance chaser (who) overcharges his clients.” This backlash against Zhou may give many attorneys pause before taking on labor cases involving migrants. Indeed, none of the providers we interviewed knew of any Beijing-based migrant attorneys with such fee arrangements. See Yao Ying, Legal ‘Savior’ fighting for His Fees, CHINA DAILY, July 5, 2004, available at http://www.chinadaily.com.cn/english/doc/2004-07/05/content_345478.htm.
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Indeed, although a few private lawyers have established profitable practices by bringing migrant suits, far more represent migrants out of a sense of justice or to fulfill Beijing’s pro bono requirements. Resolving individual migrant cases is a time-consuming process, exacerbated by migrants’ unfamiliarity with Beijing and legal culture. Providers working toward settlement must be both willing and able to spend large amounts of time or resources for their migrant clients. Whether pro bono or for profit, these lawyers offer assistance with the deceptively simple intention of settling an individual client’s dispute, but ultimately may reflect a growing sense of public-mindedness among the legal profession.

3. Advocacy Law Firms

In the last few years, several Chinese “advocacy law firms” have cropped up to address the growing needs of China’s underserved populations.115 We interviewed one Beijing law firm that supplements its representation of migrant clients with scholarship and grassroots legal education for migrants as a form of advocating for legal change. Established in late 2003 as an offshoot of a firm representing children, the five-attorney firm provides pro bono consultation and representation for migrants. Though all of the attorneys graduated from esteemed law schools and passed the bar, they earn a fraction of most private lawyers’ income.116 The firm differentiates its staff from city-sponsored legal aid providers, which rely largely on individual and often uninterested lawyers fulfilling pro bono obligations. By contrast, these firm lawyers represent a fiercely committed and idealistic workforce. At the time of the interview, the firm had hired a new licensed associated who had graduated from one of China’s top law schools and intended to hire five more lawyers within the year.

With a combination of funding from foreign NGOs and Chinese government grants, the advocacy law firm provides three forms of direct legal services to migrants at no cost to their clients. They provide outreach legal training sessions, a nationwide migrant telephone hotline, and formal representation for migrants in legal proceedings. These lawyers travel to migrant populations to present training sessions or “teaching classes” about basic migrant rights. At the time of the interview, the firm conducted two migrant classes per month.

None of the lawyers are Beijing natives, a fact that “helped them relate better to the migrants.” The firm fosters relationships with local migrant community leaders to increase their knowledge of migrants’ needs and challenges. The firm found migrant camps by contacting local government officials. Their reasons for using government connections are twofold. First, government connections made finding and organizing migrants more convenient for the lawyers from the firm.

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114 Unless otherwise noted, all information in Part IV.B.3 is derived from Advocacy Attorneys, supra note 1.

115 See Liebman, supra note 8, at 277–78 (noting the growing role of lawyers as activists and advocates for legal change in China).

116 One of the lawyers noted with some bitterness that she earned between two and three thousand yuan—less than some of her more enterprising migrant clients.
Secondly, the firm believed that if local officials organized the training sessions, other governmental bureaus would be less likely to oppose the training sessions. Adopting strategies used by both city-sponsored legal aid and migrant initiatives, the firm has also established a national telephone hotline, which it uses to advise migrants facing legal complications. Using the hotline, the firm vastly increases the number of migrants it can assist, since these calls often last between three and five minutes. Allied with like-minded legal providers across the country, the firm often refers callers to local providers willing to work with migrants.

Finally, the firm represents migrants from the Beijing area in court for cases requiring more assistance than could be provided via a telephone consultation. At the time of the interview, each of the four lawyers was working on an average of five to ten court cases per month. Half of these cases were for non-payment of employment and the other half were worker injury cases. Migrant representation includes courtroom visits, but unlike school- or community-based providers, lawyers from this firm were often able to negotiate and reach settlements directly with employers. The firm provides all of their services free of charge, even covering their client’s travel costs to and from the courts. In some instances, the expenses accrued by the firm in litigating these cases exceed the value of the collected damages.

These services, however, only represent a single facet of the firm’s practice. The firm lawyers believe that migrants’ main obstacle to receiving fair treatment under the law is lawmakers’ fundamental misunderstanding about migrant populations and the challenges they face. As a result, the firm’s primary function is to serve as an advocacy group, aimed at dispersing migrant-related information and advocacy to lawmakers. By contrast to government legal aid, perhaps, this law firm seeks to address the root cause of migrant problems by seeking to change the established legal norms.

Incorporating conversations with members of the migrant communities, notes from their hotline consultations, and discussions with migrants they personally represented, the firm produced periodic reports about migrant difficulties in and out of court. The reports, which include both original qualitative and quantitative data, underscore issues facing migrants and advocate for migrant legal reforms. Multiple reports are distributed to government offices that shape migrant policy. The firm is uncertain as to the impact of these reports, or if they are even being read by their intended audiences. To increase the chances that a government official will read their publications, the firm publishes its reports under its parent firm’s name, which has a better-established reputation among the courts.

As one migrant client stated, the firm operates as more of a “public welfare policy firm/think tank” than a law firm. Although additional migrant-focused organizations have been established since 2003, this is the one of the few organization with full-time lawyers and a migrant-centric practice. Since all the lawyers in the firm have passed the bar, the firm feels that they command the respect
of judges and other practitioners when they work independently. Consequently, the firm focuses its relationships with other organizations as a means of establishing contact with more migrants. The advocacy law firm thus largely services migrants through education and advocating for policy and legal changes. Having strong relationships with other organizations as well as the government assists this law firm in spreading its influence.

4. University-Sponsored Clinics

Several universities have funded and run migrant-sponsored legal aid clinics out of their law departments. Following the example of foreign university-sponsored clinics, particularly those based in the United States, these clinics are staffed by student attorneys working under the supervision of law professors. Many were originally established with funding and support from foreign NGOs. Besides direct financial support, NGOs also sponsor foreign legal professionals to work in clinics and establish exchange programs between Chinese and Western professors in an effort to develop clinical legal education in China. Several of these school-sponsored initiatives began working with migrants in 2003, after the central government increased its focus on migrant rights. This shift meant that school clinics, almost all of which are run from state-sponsored universities, could work with migrant workers without risk of exposing their sponsoring universities to politically-motivated sanctions.

We interviewed several students and directors at a legal aid clinic located on the campus of one of Beijing’s premier universities. Although the clinic initially specialized in products liability claims, in 2003 it shifted its focus to labor disputes. The clinic is not exclusively focused on migrants, but its new emphasis on labor law, coupled with its income eligibility restrictions, has resulted in a majority of migrant clients. Like many of their Western counterparts, Chinese law schools traditionally do not emphasize lawyering skills, research, or collaboration, making the clinic a singular experience for many of the student volun-

117 See Chinese Law Professor, supra note 88 (stating that since judicial appointments have traditionally been considered administrative positions, many judges have not received a legal degree and may sometimes be unfamiliar with substantive areas of law).

118 Interview with students and directors at a worker-focused, university-sponsored clinic, in Beijing (July 26, 2005, Aug. 20, 2005) [hereinafter University Clinic]. Unless otherwise noted, all information in Part IV.B.4 is derived from these interviews. We interviewed several students and directors, including the assistant director who helped establish the clinic’s current incarnation.

119 See Kara Abramson, Paradigms in the Cultivation of China’s Future Legal Elite: A Case Study of Legal Education in Western China, 7 ASIAN-PAC. L. & Pol’y J. 302, 320 & n.58 (2006) (noting the recent history of university-run legal clinics). Though universities do offer graduate law degrees, Chinese legal degrees are usually undergraduate programs.

120 This practice of looking to the West for its legal aid models has been criticized. See Michael William Dowdle, Preserving Indigenous Paradigms in an Age of Globalization: Pragmatic Strategies for the Development of Clinical Legal Aid in China, 24 FORDHAM INT’L L.J. S56, S57 (2000) (arguing that international development programs focused on China’s clinical legal aid have inadvertently suppressed potentially more effective indigenous legal aid models).

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teers. The students we interviewed felt that the clinic helped them develop their practical legal skills and heighten their sense of public-mindedness.

Students in the legal aid clinic undertake several activities under a professor’s direction. Responsibilities include manning hotlines, securing the intake information of potential clients, accompanying clients to various bureaus, collecting evidence, and appearing before judges. Because of the university’s reputation, the clinic is often able to convince defendant employers to settle their cases rather than face off against a well-respected and well-funded institution. Students use the same reputation to gather data and evidence from entities that may otherwise be unwilling to provide the information to migrants themselves.

At this university legal aid clinic, student volunteers are both undergraduate and graduate students. Generally, graduate students undertake the more complex cases and play greater roles in developing case strategies. Since migrant representation is, with rare exceptions, largely unprofitable, it is perhaps unsurprising that none of the students interviewed expressed interest in working in migrant-related field following graduation. Nevertheless, the students note that they are more aware of migrants’ struggles and issues after participating in the clinic.

To further serve the clinic’s pedagogical aims, the clinic does not select cases based on the severity of an individual client’s needs or the substantive area of law a case may address. Instead, cases may be selected to expose a student attorney to civil procedure, trial techniques, or courtrooms themselves. In some instances, the clinic will take cases with little chance of succeeding in court. While this provides migrants with last-ditch assistance in seeking legal redress, it may also provide them with false hope. The impact of such false hope may be emotionally draining and financially disastrous.

Furthermore, court filing fees and travel costs to and from the clinics also contribute to the cost of litigation. Migrant workers can risk losing all of their limited savings to have a day in court. In other instances, the clinic may choose to represent clients with especially simple or straightforward cases for similar pedagogical purposes rather than focusing on migrants who may be particularly needy. The following narrative is illustrative.

Compared to the Socratic method largely adopted by American Law Schools, Chinese law classes involve very limited student discussion or collaboration, relying mostly on large lecture-format classes with an emphasis on memorization and recitation. See Chinese Law Professor, supra note 88.

One of the lawyers working at the advocacy firm profiled earlier in this section, however, worked in a different legal clinic at another top-ranked University before joining her current firm. See supra, Part IV.B.3.

For a migrant who is often not working while litigating a case, living within the city is a significant expense. The cost of living in Beijing is exponentially higher than their rural hometowns. The workers profiled in Part V stated that the food fees their employers docked from their wages each day could feed their families for a week in their home province.

We interviewed one nineteen-year old student who recounted such a case. The student represented a thirty-five-year-old migrant surnamed Yen, who served as the spokesperson for eighty-two other migrants from his home province. The student attorney stated that working on the case allowed her to gain in-court experience and gave her a better understanding of both the legal community and the community at large. She also credited the clinic with teaching her more compassion and self-reliance, time management skills, and broadening her point of view, traits that the clinic is uniquely positioned to groom within the law school.
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After the conclusion of a year-long construction engagement, an employer who had hired Yen and his tongbao claimed that none of the contracts the migrants signed were binding and refused to pay any of the migrants. The migrants claimed they were owed over 70,000 RMB. As the group’s representative, Yen spent considerable time and effort researching and preparing his case. Yen only contacted the university-sponsored legal aid clinic after several of his own in- and out-of-court attempts to recover the money failed.

Yen’s case was much stronger than the vast majority of migrant cases. First, Yen was able to borrow money during the months he spent researching his case, collecting evidence, and filing claims. He amassed about 3,000 RMB of debt while pursuing his case. In addition to allowing him to pay for forms and complaint filing fees, these funds also freed him from several of the practical restraints migrant plaintiffs often face when litigating their cases, including being able to travel freely during business hours and openly pursuing the legal claims without concealing these actions from current employers. Additionally, Yen, who was literate and relatively educated, was also able to consult a relative who helped him understand the process of filing claims and the types of evidence needed to support his case. Most importantly, Yen was able to produce evidence that was highly probative of his relationship with the developer. He had the uncommon foresight to insist on written documentation proving his relationship with the developer and the developer was needy enough for immediate workers to provide it for him. When the validity of this evidence was called into question, Yen was able to collect additional evidence, going so far as to surreptitiously record conversations with the developer’s employees to support his claims.

Due to its straightforward nature and the limited legwork required by the students, this case proved to be ideal for the Tsinghua clinic. Students were able to work on the legal aspects of the case while Yen conducted the more mundane aspects of the preparation such as finding and preparing documents or collecting necessary forms. Individual students were brought on to work with Yen during specific portions of the trial such as discovery, the trial, attempted collection of damages, and appeal.

5. Migrant Community-Based Organizations

In recent years, community-based organizations have been established by migrant leaders and their local supporters, often with funding from foreign non-profit organizations. These organizations are created to serve specific segments of the migrant population such as school-aged immigrants, sex workers, or women. Often created to serve as a de facto resource and community center for migrant sub-groups, community-based organizations provide legal aid as an extension of their regular services.

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126 Interview with assistant director, migrant-run women’s organization, in Beijing (Aug. 5, 7, 2005) [hereinafter Migrant Women’s Organization]. Unless otherwise noted, all information in Part IV.B.5 is derived from these interviews.

127 See Li, supra note 10, at 172–76 (describing several migrant-based legal organizations).
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One of the oldest migrant-established community-based organizations in Beijing focuses on women. Founded in 1996 with financial support and training from several international non-profit organizations, this organization was one of the first to target migrant women in Beijing. Initially a project directed by the publishers of a nationwide advocacy periodical, the office has grown to foster its own community and identity. At the time of the interview, the organization provided multiple services from its center in addition to its legal work. These services included employment-skills development programs, publication of migrant-written advocacy papers, literacy programs, regular social events, and suicide counseling. In the time we spent with this organization, we encountered multiple foreign scholars working directly with migrants, including an American professor, a Taiwanese sociology PhD candidate, and a British theater professional. Despite the apparent invasion of foreign scholars, however, the organization remained migrant-run with the underlying goal of raising migrant women's status in the city and self-respect overall. The assistant director we spoke to was a female migrant worker, as were the majority of the organization's directors.

The assistant director felt that migrants’ greatest difficulty in receiving aid stems from migrants’ limited—if not nonexistent—understanding of their rights. In providing legal aid, the organization’s primary goal is to provide outreach programs and materials that educate migrants about their rights. Outreach initiatives include flyer and checklist distributions, magazine publications, and visits to migrant camps. In order to learn about legal rights, staff members invite individual attorneys to educate the organization’s staff on issues such as evidence gathering, workplace rights, and forming valid contracts. When this material is in turn presented to invited migrant classes or local migrant communities, staff members, rather than attorneys, present the training and information sessions. Depending on the migrants’ ages and sophistication, the organization has utilized multiple techniques to teach migrants about their rights. The British theater professional, for instance, was subsidized by foreign NGOs to use theater techniques such as role-play simulations and the performance of migrant-created plays to educate younger women about their rights against sexual harassment.

Pragmatically, the associate director feels that it is important for staff members, themselves migrants, to establish a strong rapport with migrants who are often reclusive and distrustful of outsiders. Additionally, staff members are well-positioned to introduce legal concepts and precautions in manners which migrants are more likely to understand. For the organization, however, it is equally important to empower the migrants they serve. Rather than leaving migrant fates within the control of agencies run by local professionals or government bodies, the organizations hope that empowering migrants with an understanding of basic legal rights will eventually result in a more self-sufficient population. Migrants who participate in the organizations’ training programs are encouraged to share information they learn with other migrants they live or work with.

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128 One teenage migrant who attended the organization’s training session stated that prior to attending the organization’s workshops, she was unaware of the concept of sexual harassment.

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In addition to their rights-education outreach efforts, the organization has also connected some of its members whose rights have been violated with legal practitioners willing to represent migrants in a personal capacity. The organization matches volunteer lawyers with migrant clients. Many of these volunteer attorneys also have ongoing practices of their own, leaving the organization's staff to conduct the time-consuming tasks related to litigation such as evidence-collection and client interviews. Though these tasks are completed under the volunteer attorneys' supervision and direction, the assistant director noted that after collaborating with so many attorneys, several of the staff members had become familiar with basic legal principles and some particular substantive laws relevant to their members. Staff members have used these experiences to provide rudimentary legal suggestions to their members. At the time of our interview, the organization's volunteer attorneys had litigated forty cases on behalf of migrants.

6. Individual Migrant-Sponsored Initiatives

At least one migrant has undertaken the daunting task of assisting fellow migrants without the direct support of other non-migrant domestic or foreign entities. A migrant farmer surnamed Chen, who tilled fields near Beijing University until the University displaced him to make way for faculty housing, has established a hotline for migrants to call to ask for general advice and air grievances. For migrants with legal issues, Chen serves as a conduit between migrants and legal advisors sympathetic to migrants. To Chen, however, this service is ancillary to his primary goal of establishing a communal spirit and sense of identity within the migrant communities across the country.

Chen is a thirty-something year old Hebei native, who migrated in search of work. He settled in a migrant camp in Beijing's Haidian district, in a one-room shack he shared with his mother and, later, his father. The area was predominantly filled with migrants; Chen estimated that 4,000 individuals in the area were Beijing natives while 15,000 were migrants. While he worked and lived within this migrant village, Chen developed a reputation within his migrant village as a compassionate and mature listener for migrants seeking advice and opinions. Though Chen claimed that others spoke to him merely because he had been in Beijing longer than most, several migrants and legal aid providers working with Chen noted that he was a perceptive individual who was also a talented speaker, an admired trait in China.

In January of 2003, Chen decided to nationalize his practice of speaking with migrants in need. Sponsored initially by the little excess income his parents gen-

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129 This includes the attorney profiled in Part IV.B.3.
130 Interview with Chen Jun, migrant activist, in Beijing (Aug. 21, 2005) [hereinafter Migrant Activist]. Unless otherwise noted, all information in Part IV.B.6 is derived from this interview.
131 The shack, made of wooden planks and the original brick wall, was not meant to be a permanent structure. At the time of the interview, Chen Jun had been informed that the Beijing Government intended to take the land on which he cultivated vegetables and sell it to a local developer within a few weeks.
132 Perhaps contributing to his reputation as a talented man of words, Chen is also a self-taught poet. When local media write articles about his hotline, they often include a sample of his original works.
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erated from their small garden, Chen took out several advertisements in migrant-read newspapers and printed hundreds of flyers with his phone number. Referring to the migrants across China as his "friends," Chen invited migrants to contact him on his "hotline" to discuss issues they faced in their adopted cities. To his knowledge, his is the only migrant-run hotline for migrants in the country. Chen believes that this allows him to present more consistent points of view and explain issues in ways that migrants can better understand.

Initially, few people called, leaving Chen to spend numerous nonworking hours in his shack beside the telephone, reading bootlegged books about migrant issues, the Chinese legal system, and introduction to psychology. By 2004, however, word of Chen's hotline began to spread. Chen answered between 300-400 calls a month at all hours, leading to him eventually rent a small room with a cot. In the year-and-a-half since Chen established his hotline, he estimates that he has answered over 5,000 phone calls, most of them since the latter portions of 2004. Given its popularity, several local citizens, including several lawyers, began sponsoring part of Chen's costs.\footnote{As a result of the sponsorship, Chen began to use a more organized approach to his venture and itemized his costs on a receipt which he distributed to his sponsors.}

The popularity of his hotline generated media coverage across China, which in turn increased the number of received calls. With the expansion of his hotline, Chen also developed a small network of local organizations willing to help his callers. He attended grassroots community building seminars hosted by foreign NGOs and in time, formed a relationship with individual attorneys working at the advocacy law firm and other lawyers to provide free legal advice over the phone. He also established similar relationships with psychiatric experts who were willing to listen and counsel migrants over the phone. Faced with a caller who has issues beyond his knowledge or ability, Chen would pass the specialist's contact information to the caller.

However, Chen faced significant resistance in convincing callers to contact established specialists. In light of this observation, Chen has changed his methodology in answering calls. Rather than only directing his callers to established legal aid providers, Chen now provides rudimentary legal advice, which he has learned by consulting basic law books. Chen's advice often focuses on preventative measures. For example, even when callers contact him regarding unrelated issues, Chen reminds migrants to sign contracts with future employers.\footnote{Like more formally trained counterparts, Chen is aware of the inherit problem with insisting on contracts. Migrants insisting on contracts are less likely to find employment because there is an abundance of labor, and employers may see those migrants as potential troublemakers.} He also teaches his callers to refer to migrant rights and legal aid providers in conversations with their employers to demonstrate that they have a basic awareness of their rights and possible avenues of relief. Chen considers his messages as encouragement for migrant self-improvement and characterizes his message as a step toward social equality for migrants. As a migrant himself, Chen feels that this is an important distinction; he promotes his hotline as means to foster an independent grassroots migrant community.

\textsuperscript{133} As a result of the sponsorship, Chen began to use a more organized approach to his venture and itemized his costs on a receipt which he distributed to his sponsors.

\textsuperscript{134} Like more formally trained counterparts, Chen is aware of the inherit problem with insisting on contracts. Migrants insisting on contracts are less likely to find employment because there is an abundance of labor, and employers may see those migrants as potential troublemakers.
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Chen does not believe that formal legal aid—even if it continues its rapid expansion—could provide significant assistance to addressing the issues of migrants. Instead, Chen believes that only pro-active migrants can foster significant improvements to legal issues facing migrants. Chen feels that his migrant-sponsored hotline furthers his primary goal of educating and empowering the migrant population.

V. The Goals of and Relationships between Legal Aid Organizations

As can be seen above, legal aid for migrants in Beijing is provided through a variety of institutions running the full spectrum of government support and recognition. As a result, these providers have developed different strategies in serving migrants, even as their resource limitations have required the interaction between them to increase.

A. Legal Aid’s Goals in Addressing Migrant Disputes

The goals of Chinese legal aid services are multifaceted. Besides the overarching, shared goal of resolving individual disputes, these goals include exercising social control, increasing rights consciousness among migrants themselves, advocating for change in migrant legal and social protections, and even utilizing migrant cases to further legal pedagogy among new practitioners. Clearly, these goals are fluid and not mutually exclusive; individuals working within each provider’s system may feel that he or she is providing aid for reasons completely different those of the provider itself. Nevertheless, whether by a providers’ own choice, a sponsor’s recommendation, or in reaction to the needs of their migrant clients, migrant legal aid providers largely focus on one or two of the four identified goals. Interestingly, the strategies adopted by each provider to assist migrants would vary depending on the dominance of particular goals.

1. Legal Aid for Migrants as a Means of Exercising Social Stability

Government legal aid also has the goal of settling social unrest, but processing cases as quickly as possible to minimize unrest may override the goal of actually resolving disputes. In Beijing, city-financed legal aid operates to both directly serve migrant clients and as a means of symbolizing the government’s stance against the exploitation of migrant workers. City-financed legal aid thus strategically publicizes its migrant cases as a means of demonstrating that the government is following through with its promise to empower migrant workers and to

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135 Chen acknowledges that there have been some improvements in the migrants’ status under the law since he moved to Beijing. He noted that the government had recently identified migrants as a protected class of people. The importance of such an action does not stem only from the protection itself, but given the significance Chinese society has traditionally given names, the mere naming of migrant workers as a class has elevated the standing of migrants within cities.

136 See supra Part III; see also Liebman, supra note 8, at 224–37 (profiling five models of legal aid).
deter migrant exploitation. While government-sponsored legal aid may be the only provider whose main goal appears to be maintaining social stability, it is also the most robust, well-known, and consulted provider. To a large degree, this means that the de facto purpose of most legal aid efforts is directed towards maintaining social control.

When asked about their office’s most significant effects on the migrant population, legal aid directors did not describe the services they provided or the individuals assisted, but instead referred to their office’s encouragement of social stability and the potential impact on employers’ treatment of migrants. The term fada, which roughly translates as “develop prosperously,” was used to describe both the developments in migrant legal aid and Beijing’s growing economy and infrastructure. Individual migrant cases that may not further these goals may be weeded out through the provider’s extensive screening processes. This could be particularly problematic for migrant plaintiffs seeking to file politically sensitive suits.

The city legal aid office’s emphasis on its symbolic influence rather than actual services may also stem from more pragmatic reasons: Beijing’s legal aid offices currently lack the resources necessary to serve the needs of the migrant population. According to the district director, 80% of her office’s caseload since 2003 is migrant-related. The astronomical number of migrant workers also makes it imperative for the central government to control this population in order to maintain national stability. With three million migrants in Beijing, government-sponsored legal aid offices have recently begun to adopt strategies to try to lower the number of migrant clients they serve, even as they steer increasingly toward symbolic action.

Finally, the city legal aid office’s emphasis on the symbolic—wherein the appearance of providing aid may be as important, if not more so, than the actual aid—also has a historical basis. Chinese law has traditionally been characterized and criticized as simply implementing government policies and maintaining social stability. The hukou system and sporadic law enforcement campaigns against migrant encampments are earlier examples of the Beijing’s largely unsuccessful attempts to use law to implement migrant policy and prevent social instability.

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138 By way of comparison, there are 3,023 government-sponsored legal aid organizations, while only thirty universities have established legal aid clinics. Id.

139 See Director Interview, supra note 89. More interestingly, this legal aid provider sees migrant legal aid as an extension of the nation’s more general goals of economic and social expansion.

140 Id.

141 See Liebman, supra note 8, at 276; see also CECC 2006 ANNUAL REPORT, supra note 2, at 135–36 (2006) (reporting that the government has restricted representation for suits alleging government abuses).

142 Support for such an ideological approach to law has a long history in China, including the closing moments of Zhang Yimou’s 2002 film Yingxiong (“Hero”).

143 See generally SOLINGER, supra note 1; Mallee, supra note 2.

144 See generally, Regulating Rural-Urban Migrants, supra note 4.
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unrest. The shift in central government policy toward raising awareness of migrant issues and assisting the entire demographic is part and parcel of the latest government campaign to maintain social stability.

2. Legal Aid as a Means of Migrant Empowerment

Other non-governmental legal aid organizations also voiced quelling social unrest as a goal, but with a different emphasis and hence, a different strategy. Mirroring government legal aid, several community legal aid providers such as the advocacy firm and the migrant-led initiatives render services because they hope to empower migrants to express themselves in court and to raise migrants’ consciousness of individual rights. These providers hope that such empowerment will help migrants integrate within the Beijing community. These providers advocate for migrants with the hope that advocacy will offer a means for migrants to become stakeholders in their adopted communities.

These providers argue that migrant laborers are often exploited in Beijing not because there are no laws defining migrants’ rights, but simply because migrants are typically unaware of these rights. Providers note that migrants are often unable to speak out affirmatively to prevent abuse or to seek legal action when abuses do occur. When abuses do occur and migrants bring cases against employers, their legal actions are often stillborn, since migrants do not know to sign contracts or establish some other proof of employment before beginning work. Thus, migrant community-based providers direct their legal aid efforts largely toward outreach programs, describing basic personal, employment, and housing laws to migrants in the hopes of preventing abuse. Notably, however, this goal requires that legal institutions through which empowered migrants seek redress can adequately address migrant needs. In this sense, this goal illustrates legal aid’s delicate balance between advocating for change and at the same time, relying on the Chinese legal system.

3. Legal Aid for Migrants as a Means of Advocating for Change in Migrant Legal Status

A third goal among some migrant legal aid providers is advocacy for change in social and legal norms. Advocacy law firms tout this as their primary goal; their strategy is not to contact as many migrants as possible, but to gather data and formulate policy recommendations for submission to relevant authorities. Their reports outline migrants’ roles in urban society or advocate for specific reforms to migrant-related statutes. Some articles, often funded by govern-

145 See Advocacy Attorneys, supra note 1; Migrant Women’s Organization, supra note 126.
146 See Advocacy Attorneys, supra note 1; Migrant Women’s Organization, supra note 126.
147 See Austin Sarat, Access to Justice, 94 Harv. L. Rev. 1911, 1911 (1980-81) (book review) (“Access to justice is both evocative and double-edged: It argues for legal change, yet reaffirms faith in law and legal procedure and in the justice they provide”).
148 Examples of article titles from a May 2005 publication produced by the advocacy law firm interviewed for this paper included “Migrant’s Economic Contributions,” “Delay of Migrant Payment,” “Reasons for Migrants’ Current Status,” and “Simplify the Labor Procedures.” (On file with the authors).
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ment bodies, highlight discrepancies between official statistics and their own calculations of migrant numbers and trends. Other articles attempt to describe migrant situations from migrant perspectives.149 The advocacy law firm published detailed case studies of migrant cases they had successfully litigated, including detailed accounts of the facts of the case and procedural and substantive approaches they utilized, in the hope that they could serve as guidelines for future cases.150 The advocacy law firm must establish relationships with all sectors (other legal aid, government, migrants) to ensure that their recommendations are well received.

Legal aid organizations representing migrants with the intent of encouraging migrant rights would sometimes use migrant cases litigated by other legal aid providers as research for advocacy-driven reports. While the impacts of these “joint advocacy” reports on governmental policy-makers are beyond the scope of this paper, these advocacy papers will be circulated within the migrant legal aid community. Notably, advocacy papers are rarely traded between two specific organizations, but they are often made possible when there is express or inadvertent cooperation between multiple providers.

4. Legal Aid for Migrants as a Pedagogical Tool

Finally, there is a pedagogical goal in migrant legal aid. Law school clinics are developed to train student lawyers, while pro bono lawyers may wish to hone their own skills. Migrants represent an ideal population for many students or attorneys to develop their litigation skills. Their cases often present clear-cut and egregious instances of injustice. There are many potential migrant cases available, many of which have similar general fact patterns, allowing more experienced practitioners to guide newer ones. Individual migrant cases often involve discreet substantive areas of law, allowing providers to become intimately familiar with a particular practice. As individual cases (collective cases are another matter), migrant cases are unlikely to disturb formal political interests because Beijing is making a conscious push to improve migrants’ legal status. This allows legal aid providers to continue training future practitioners without fear of being shut down or having funding removed. Legal aid clinics tend to handle fewer cases, but give each case greater attention.

Additionally, providers familiar with specific legal issues may deliberately choose to provide formal or informal training to other legal aid providers. Training may be offered deliberately to encourage the spreading of migrant knowledge.

149 For example, in an article addressing the reasons for payment delays, migrants were directly surveyed and were quoted liberally throughout the essay. (On file with the authors).

150 The firm described the case of a nineteen-year-old migrant graduate of a parochial school who was hired, under contract, to work as a secretary. After a month of work, the migrant was fired and did not receive any wages for hours worked or compensation for the sum she spent on transportation to and from the office. Upset, she contacted the firm through their hotline. The firm represented the migrant in negotiation and eventually secured 450 RMB, a fraction of the amount the girl was owed (580 RMB is the minimum monthly wage for legally-hired employees in Beijing). The “success” of this case would seem dubious to practitioners reading this case study, however, in addition to providing free legal services, the firm absorbed the costs of court filing fees and the client’s travel expenses. These costs were far in excess of 580 RMB.
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of legal rights. In other circumstances, less-formally trained legal aid providers acquire rudimentary legal knowledge merely by working with other providers. This training and exchange marks yet another form of interrelationship between legal aid organizations.

In sum, government legal aid, while representing a seismic shift in the way the government perceives and addresses migrants, maintains social stability as its goal. By contrast, migrant-sponsored legal initiatives arguably have more migrant-empowerment goals, and see utilization of courts as a means of advancing “rights-consciousness.” School-sponsored migrant clinics, meanwhile, in receiving financial support from foreign NGOs and operating under the purview of the government, must simultaneously balance the needs and restrictions of working within an academic environment.

B. Cooperation and Limitations among Migrant Legal Aid Providers

Legal aid organizations increasingly do not work in isolation. Due to the need for additional resources, providers have, by choice or necessity, established formal and informal networks to service and reach the migrant population. Since individual legal aid providers have different, if not contrary, goals, each provider may be better suited for certain specific tasks. But several official and unofficial working relationships have emerged between the organizations. Out of necessity, these organizations are coordinating and interacting in a way that generates a legal culture that can be called “public-minded.”

Not all of the migrant organizations are willing or capable of advising or representing every migrant who comes in the door. Those that do represent migrants often establish parameters about the clients they can represent and the scope of that representation. Legal aid organizations often recommend migrants they cannot personally assist to other organizations better suited to the migrants’ needs. Individual migrant cases are passed off to other groups in hopes that another organization may be better equipped or more willing to address specific cases. Cooperation between organizations entails an exchange in expertise.

When individual cases are referred to different legal aid providers, migrants are ideally directed toward providers whose goals are more closely tailored to the client’s needs. In some circumstances, such as when government-sponsored legal aid directs migrants toward pro bono attorneys uninterested in migrant issues, this aim may not be exactly realized. In other cases, such as when migrant-run community based organizations direct individual migrants to the advocacy firm, the former is generally very clear about the latter’s goals and the types of cases it typically takes. In these circumstances, both organizations work toward providing migrants with the most appropriate aid possible. However, whether an individual client receives appropriate aid in these circumstances is then dictated

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151 See Michelson, supra note 25, at 210–11 (reporting that Beijing’s private attorneys typically dislike performing legal aid work assigned to them and try to shunt such cases to lower-level associates, which is possible because the cases are assigned to the firm rather than the individual attorney).

152 See Migrant Women’s Organization, supra note 126.

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by an element of chance—whether the first provider they contact can redirect them successfully.153

Legal aid organizations also benefit more directly from cooperation. Legal aid providers with less experience gain greater knowledge by working with more experienced providers. On the other hand, less-experienced providers, such as the migrant advocate Mr. Chen, sometimes have closer relationships with the migrant community than their better-trained counterparts, such as the advocacy firm.154 Organizations are able to educate each other as well as able to pass on such legal knowledge to migrants directly.

The relationship between the city-sponsored legal aid provider and the advocacy firm further demonstrates the impact of expertise exchanges. The advocacy firm readily accepts cases from the city-sponsored legal aid clinic—a welcome relief for the overworked government-sponsored provider.155 In taking on these cases, the advocacy firm broadened its capacity to locate cases to further its research and maximized the resources it has dedicated to finding appropriate cases themselves. The advocacy firm also uses this relationship with government-sponsored entities to serve as a conduit for two-way communication and influence the migrant policies established by the central government.156

C. The Effect of Legal Aid’s Differing Goals and Interaction on Migrants

Despite their differing goals, the relationships between these organizations ultimately have increased migrant access to courts.157 Given the limited success migrants have traditionally had in the legal system, it is perhaps unsurprising that many of them have become disenchanted with the system as a whole and with the individual providers established to assist them.158 Migrants are not docile players in this relationship. They are increasingly savvy in utilizing both the recent media attention focused on them and the resources of multiple providers in their attempt to access justice.159 As we noted earlier, some migrants themselves have established their own forms of legal aid specifically to increase the migrant population’s usage of other providers’ resources.160

153 See infra Part V.C. (illustrating the difficulty migrants faced in receiving aid after being rebuffed by private attorneys and government legal aid).

154 See Migrant Activist, supra note 130 (explaining that the activist regularly directs cases towards the advocacy firm and learns basic legal principles, such as the importance of written contracts, through this relationship).

155 See Advocacy Attorneys, supra note 1.

156 Id. (stating that their firm often uses its relationship with government-sponsored legal aid and government officials to further the impact of their publications on the plight of migrants).

157 See supra notes 70–77 (explaining the recent extension of legal aid to migrants).

158 See generally Gallagher, supra note 12 (contending that legal aid plaintiffs’ experience with the legal system leads to disenchantment, but also to better informed action).

159 See supra Part IV.B.4 (describing a case study wherein a migrant client used a university-sponsored legal aid clinic to further his specific goal of having a trained student attorney present his own research and preparation in a courtroom).

160 See supra Parts IV.B.5 and 6.
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Migrants understand that providers have different goals and some have learned to treat legal aid more as a buffet than as a single entrée. They consult several parallel organizations at once in hopes of being directed to an organization that may ultimately assist them. Legal aid providers are beginning to understand how migrants seek legal aid, and adapt their procedures to accommodate this buffet-style approach in seeking access to courts.

Although migrants are increasingly savvy in seeking legal assistance, the different policies and goals of legal aid offices have had a disparate impact on migrants. For migrants, this system can be overwhelming. When they are directed from one provider to another, some cannot continue to earn wages since seeking assistance can be a time-consuming endeavor. Furthermore, new-found employment can invalidate eligibility to receive legal aid. Mundane tasks such as traveling across the city to meet with providers, leasing a cell phone to communicate for meetings, renting a place to live, or purchasing food in the expensive city can prove prohibitively expensive for migrants attempting to bring legal action. Where in some extreme cases, providing aid to migrants is only tangentially related to a provider’s actual goals, the nature and quality of service received by an individual client is often mixed.

While the increased interaction between legal aid providers is encouraging in some respects, it can also be problematic. The more aid providers pass off migrants to other providers, the more the migrants’ lack of income and continued expenditures cumulate. This leaves migrants to reconsider whether pursuing legal action is worth the continued financial, emotional, or even physical costs. Migrant cases that are eventually litigated, therefore, are the exceptional ones, representing a combination of determined migrant litigants and a timely cooperation by a relevant legal aid provider or a group of providers working efficiently together.

VI. Case Study in Migrant Access to the Courts

The following case study illustrates the tortuous course of migrant laborers seeking legal assistance but also how they affirmatively advocated their case. The case involved two migrants seeking to recover back wages from a Beijing-based employer. As the migrants were directed to different providers, they quickly compiled a surprisingly in-depth understanding of how each provider could or could not assist them and the limitations of the legal system itself.

In March 2004, about two dozen men from Guanyuan Guangyuan city in Sichuan province, ranging in age from twenty to fifty-eight, arrived in Beijing seeking work as unskilled construction workers. Most were distantly related to each other; all of them were connected by their common dialect, shared background, and outsider status in the city. Only four or five of them had previously

161 See Interview with migrant plaintiffs, in Beijing (July 27, 2005) [hereinafter Migrant Plaintiffs]. Unless otherwise noted, all information in Part V.C is derived from this interview. It was conducted with the assistance of the student attorney representing the migrant plaintiffs. At the migrants’ request, this interview was not recorded.

162 See University Clinic, supra note 118.
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worked in Beijing in construction, but none expected or wanted to stay in Beijing. Largely uneducated, they elected one of their more savvy members—a thirty-two year-old surnamed Chen—to serve as their spokesman in finding work. Chen left behind his wife and seven-year-old son and sporadic work as an electrician to seek work in Beijing. Chen planned to use money he saved from construction to allow his son to continue his education beyond elementary school.

Upon arriving in Beijing, Chen and his tongbao met a Sichuan province migrant, surnamed Liao, who had worked in Beijing for a number of years. For a portion of their expected wages, Liao promised to contact a local manager who needed migrants to create the mortar for a building contract. Liao asked for one-half of an RMB for each eleven RMB the tongbao earned. The rate was agreed to orally, with no representatives for the developer present. This rate made Chen suspicious, since xiao laoban—the lower level bosses—often take a portion of one-and-a-half RMB per eleven RMB earned. While discussing the situation with two other migrant representatives who were offered the same deal—Pang, an older man representing four migrants and Wang, a thirty-four year-old former farmer representing twenty migrants—they told Chen to inform them when Liao was given wages for distribution.

Chen referred to Liao as a xiao laoban—a “small employer”—meaning that Liao was a migrant entrepreneur one step closer to the source of payment. The man who had hired Liao to find laborers, in turn, was probably another xiao laoban who also kept a portion of the payment handed down. Chen did not know of any individuals closer to the developer than Liao’s “superior.” Chen suspected that there were probably six or seven layers of xiao laoban between the migrants and the developers. Though Beijing illegalized the labor practice in recent reforms, this feudal hierarchy remains common and allows developers to unofficially create a business structure without establishing direct contact or relationships with the almost any of the migrant laborers working on a building project. See also Yuan & Wong, supra note 50, at 103, 106 (describing the hierarchy of relationships between migrants and bosses on a typical construction site in Beijing). According to Chen, migrant workers often do not even know who is funding the projects they are building. With so many layers of middle-men involved in hiring migrant labor, Chen estimated that only fifty to sixty percent of the money paid by developers eventually reaches the migrant workers.

For each square meter of mortar a team of migrants lays out, the team was promised eleven RMB. According to Chen, a team of six migrants working ten or more hours a day can lay out 4,000 square meters over a six-month period if they work everyday. Teams are paid upon the completion of the construction site in order to ensure that migrants do not leave the site midway through the job and facilitate the calculation of the amount of work completed. In theory, migrants could each earn over 1,200 RMB for each month’s work, a staggering improvement over the 400 or 500 RMB households earn each month in the village when there is work available. However, in addition to the percentage that xiao laoban take, migrants have additional costs to work at a construction site. Though they are provided free housing—un-heated and un-cooled rooms filled with over a dozen men and women per room—and a bathroom to share with up to 100 other migrants, workers are docked eight RMB every day to pay for the three meals provided by the developers. These meals usually consist of boiled rice and a few vegetables, fare that would cost less than a fraction of an RMB in a local market. Since they lack access to cash, migrants can only buy marked-up food or cigarettes—a nearly ubiquitous habit—by purchasing supplies from developer-run stands. Some migrants borrow cash from local foreman on credit to buy rice or other foodstuffs beyond the workplace. A 2003 amendment to the statutes governing migrant worker rights has made the payment of migrants upon completion of a job or the garnishing of wages for food unlawful. Violations of these amendments remain rampant, however, as there have been almost no legal actions brought against violators.

Chen knew from experience that migrants were sometimes cheated out of their full wages. By his estimation, migrants lost a modest amount of the wages—110 to 200 RMB—once or twice for every ten
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Chen, Pang, Wang, and their respective tongbao worked on the construction site for six months. Upon completion of the project around September 27, 2004, the three migrant representatives learned that Liao had stolen their wages several days earlier, in violation of a 2003 statute requiring migrants to be paid directly. When they discovered that Liao had absconded with their wages, they contacted Liao’s “superior” in the wage-distribution hierarchy, who in turn claimed that his hands were tied. The superior and Liao both hailed from the same county, leading Chen and Wang to suspect that they had conspired to steal the wages. The migrant representatives then attempted to contact the developer. The developer disclaimed responsibility to the individual migrants, stating that he had already distributed the full amount to Liao, and recommended that they find Liao themselves. Both Chen and Wang agreed that given the size of Beijing and their meager resources, locating Liao was nearly impossible. According to the migrants, they were denied ninety thousand RMB of wages.

The three migrant representatives eventually decided to approach the legal aid office in Beijing’s Haidian district, their local government-sponsored bureau. The migrants were slow to arrive at this decision—traveling to the legal aid office was difficult given the size of Beijing. Finding safety in numbers, the migrants were also generally hesitant to travel alone. If all of the migrants left at the same time, however, the developers could refuse to allow reentry or deny knowing them. If a substantial fraction of the migrant workers left the worksite with the representatives, the developers could grow suspicious and forcibly remove the migrants staying at the site. As it were, several of the migrants decided to cut their losses and leave the camp either to return home or to find new work elsewhere. The remainder initially stayed on the worksite, paying rent but not working, preventing the developer from bringing in new workers. A few migrants from both Chen and Wang’s tongbao accepted small cash payments of 1,000 RMB and 3,600 RMB from the employer—a fraction of what they were owed—and agreed to leave the worksite.\(^{166}\) Seeing their leverage and perceived safety in numbers dwindle, the three groups of remaining migrants decided to pool their numbers together to facilitate efforts to seek help from legal aid offices.

When the migrants arrived at the Haidian district legal aid, caseworkers told the migrants that the district office could not—or at least would not—address the migrants’ problems and directed them to the Beijing legal aid office, which had more case-workers. The migrants went to the Beijing office, a much farther and more challenging trip, but the Beijing office claimed that they lacked jurisdiction and referred the case back to the Haidian office. Upon revisiting the Haidian office, the Haidian caseworker again claimed that he lacked authority to address the migrants’ cases. Beyond a cursory understanding of their situation, neither of the legal aid centers looked into the legal merits of the case.

\(^{166}\) The payments were handed to the migrants by safety inspectors who were not directly employed by the developer, allowing the developer to maintain that it had no official working relationship with the migrants.
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The migrants opted not to continue seeking aid from the government legal aid bureau. Instead, they sought assistance from an administrative office addressing labor issues (siji qing laodong ke). With the threat of the bureau investigating and reporting corporate construction violations, the developer cooperated. The developer did not dispute the migrants’ statements, but refused to pay the entirety of the ninety thousand RMB. Because it was the Chinese New Year, a holiday where work is set aside and family is emphasized, the bureau relied on the “holiday spirit” to ask the developer for at least partial reparations to allow the migrants to return home. The developer agreed to pay for a portion of the back wages for this purpose. On December 26, a team of five of Chen’s tongbao received ten thousand RMB while eleven members of Wang’s tongbao received thirty thousand for their work. Referring to the payment as “going home money,” the developer hoped that these payments would end the dispute. Several of the migrants accepted this offer and left Beijing nearly a year later, bringing home a fraction of the wages they were owed.

The remainder of the migrants, however, remained in Beijing, seeking to collect the outstanding fifty thousand RMB they felt they were still owed. Initially believing that a lawyer would not accept their case, these migrants next approached the local workers’ bureau office (laodong ju) for assistance. The caseworker at the workers’ bureau who heard their case sympathized with the situation but could not guarantee any action on the migrants’ behalf. For three months, the migrants visited the office several times each week to plead their case, to little avail. During these three months, the migrants did not take on any new jobs. The bureau did help them procure temporary housing at a construction site dormitory, where their rent was deferred. The administrative bureau also sent a representative on-site to investigate the migrants’ case. Eventually, the worker’s bureau fined the employer for the amount it would cost to send the migrants back home to their home province. After the migrants learned that the bureau had collected the payment from the developer, the migrants visited the bureau three times in as many weeks before receiving payment. Disheartened, most of the migrants accepted this partial payment and returned home. Of the sixteen who went to their home province, five returned to attempt to collect their wages. Others, who had returned in earlier months, returned to Beijing to support Chen and Wang’s attempt to recover their losses.

While the migrants were confined to their shelter for three months, they began to learn more about their rights, from other migrants and by reading newspapers.

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167 The bureau required a receipt for this transaction, which contained signatures from all of the migrant representatives. No representative from the developer signed this receipt. This document would turn out to be the only record indicating that the migrants had worked for the developer.

168 In part, this was because during the Chinese New Year, construction jobs were scarce. Since canvassing for the few available jobs would require the migrants to travel away from their construction site, the migrants opted to stay closer to their former employer to ensure that they could collect their damages.

169 Chen and Wang stayed in the city during the holiday period to ensure that the developer would not disappear. At one point when he was in the city himself, Chen received a telephone call in the middle of the night. One of the developer’s overseers offered to provide Chen with some money if he were to meet the overseer immediately. Fearing for his safety, Chen refused to meet the caller.
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These migrants tried to contact the few private lawyers with migrant-focused practices, but soon found that either the lawyer’s fees were far too high for them to afford even a consultation or the lawyers were not interested because the case lacked documentation or evidence. Through a newspaper advertisement, the migrant workers eventually contacted the Tsinghua University’s student-run legal aid program. After their case was presented to a student intake-worker, the faculty advisor agreed to take the case. On March 22, 2005, three students were assigned to work on the migrants’ case.

Under guidance from their director, the students managed to bring the case before a preliminary hearing with seventeen plaintiffs. The judge ruled that these issues should be brought up as seventeen separate cases rather than as a collective case, and indicated that there was little to no evidence to support their claims. Sensing that they had a weak case because of the court’s relative disinterest and the dearth of evidence concerning the relationship between the migrants and the developers, the clinic representatives eventually recommended that the migrants withdraw their case before being required to pay unrecoverable court fees. Unable to risk more money and time away from work, the migrants accepted the clinic’s recommendation. More than a year after their xiao laoban absconded with their money, the migrants withdrew their case without ever presenting it in court. The Tsinghua legal aid clinic has not heard from this group of migrants since. It is not clear at the time of this writing if the migrants have pursued other legal means to recover their wages.

VII. Conclusion

Migrant access to courts in Beijing is no longer an oxymoron. Despite significant obstacles, migrants have increasingly turned to the courts to redress their grievances. This is the result of the state’s desire to ensure stability by channeling its disgruntled citizens through a court system, the public’s enhanced awareness of a legal means of redress, and the increasing availability of legal aid services. Legal aid for migrants is also the result of the efforts of a variety of actors: the Chinese government, semi-public institutions such as universities, nongovernmental organizations, lawyers, and migrants themselves.

Although both governmental and public awareness of migrant issues has increased, migrants in Beijing remain a particularly vulnerable population. They are outsiders in their own country’s capital, set apart by a web of official and unofficial discrimination, not to mention cultural and linguistic differences. Their communities are perceived by officials and fellow citizens as a potential threat to social stability, and they face the possibility of displacement and abuse.

In the last few years, legal aid providers in Beijing have attempted to provide migrants with a forum to address some of these wrongs. These providers serve not only as migrants’ gatekeepers to the court system, but as transmitters of legal norms. In many cases, legal aid providers are not simply advocates, but counselors and instructors who teach migrants about the existence of their rights.

Yet the variety of legal aid providers and the differing goals they serve can be daunting to migrants. These goals range from enforcing social control to em-
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powering the migrant population to promoting social change. Legal aid providers are hampered, to differing degrees, by resource limitation, legal training, and recognition by state agencies. Out of necessity, however, they have begun to form cooperative relationships with each other. Since migrant-provider relationships are established as often through convenience and serendipity as they are through similarities between client needs and provider methods, the actual services provided vary widely. In some cases, such as in school-sponsored legal aid clinics, the pedagogical value of migrant cases for law students may overshadow the goal of providing successful legal aid to individual migrants. In sum, the increased variety of legal aid services may result paradoxically in migrants having more difficulty finding services appropriate for their needs.

Furthermore, it is important to keep in mind that legal aid will not unilaterally change the plight of migrants within the city without additional reforms. At its worst, legal aid for migrants may only offer migrants false hope and inform would-be oppressors which individual migrants are troublemakers. From the migrant’s perspective, even a victorious case may not necessarily be helpful. In the absence of real social change in other areas of their life, a migrant’s ability to file lawsuits is unlikely to change their social situation significantly. Chen Jun, the migrant hotline operator introduced above, provides a sadly ironic example of this: even as he reaches out to migrant callers seeking deliverance from their grievances, Beijing University housing is dispossessing him of his land.

Despite these lingering questions, though, the mere fact that migrant legal aid is available is an encouraging sign. Although legal aid’s approach to problems facing China’s migrant population could be cynically described as a band-aid on a wound, the Chinese government’s tacit support of the various legal aid agencies suggests that Beijing’s migrant population may serve as an incubator for ideas and best practices for rights advocacy in China as a whole.

Tensions within China’s legal aid and its migrant population provide insight into how China’s legal system may develop. Legal aid providers focus a significant portion of their efforts towards raising migrants’ rights consciousness. Given migrants’ propensity to operate as their own underground society and the ever-increasing formal and informal lines of communication among migrant groups, it seems reasonable to presume that rights-consciousness among migrants will continue to grow. As a result, the vulnerable—and previously invisible—urban population of migrants will quickly become knowledgeable about the concept of their rights as individuals.

Similarly, the scale of potential migrant cases may force the Chinese legal system to develop quickly. Legal aid must not only continue to service more migrants, but must also begin to more consistently provide victorious outcomes. Already, the government’s adjustment of its legal aid practices, acknowledgment of school-sponsored clinics and tacit support of similar private enterprises suggests that Chinese legal system is trying to adjust to this wave of litigation. If such services meet the demands of migrant litigants, the developing judicial sys-

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170 See Migrant Activist, supra note 130.
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tem may grow in a direction that legitimizes the rights of China’s most vulnerable groups.

In the long run, access to the court system may provide migrants with a key weapon in the arsenal of individual rights. But given the inconclusive results faced by migrants in the courts today, this weapon has yet to be equated with the ability to redress grievances effectively. Perhaps, then, the most that legal aid offices can be credited with currently is adding to the rising expectation among the Chinese that law and the legal system can and should be used to address their grievances. Ultimately, however, the true impact of these organizations may become clear—with sufficient funding and social support, these providers have the potential to agitate for migrant rights, deter abuses, and help raise the status of China’s migrants to that of full-fledged citizens. For now, the existence of these organizations themselves, and the developing coordination amongst them, suggest the promise of a “civil society.”