TOWARD LEGAL EMPOWERMENT: 
AN EMPIRICAL ACCOUNT OF GRASSROOTS 
LABOR ORGANIZATIONS IN THE PEARL 
RIVER DELTA OF CHINA 

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ABSTRACT 

Legal empowerment of the poor has been a new conceptual instrument for legal aid and poverty eradication, indicating a paradigm shift from what was conventionally narrowly focused on courts, lawyers and state institutions to a broader concept that goes beyond the confine of formal legal systems and extends the reach of civil society and capacity-building of the underprivileged. Among many forms that legal empowerment takes place, the role of non-governmental organizations (NGOs) merits special appreciation. In recent years, a growing number of domestic and international legal aid projects have been implemented by the staff members of grassroots NGOs, namely ‘paralegals’ or ‘non-lawyer specialists’ in the discourse of international development agencies. According to pertinent assessments, NGO paralegals have provided important alternatives to the traditional lawyer-focused approaches, and have widened the scope of legal empowerment by integrating both legal and non-legal services. This study contributes to the knowledge base by giving an empirical account of NGO paralegals who work in the area of labor rights protection in China. Based on empirical and comparative analyses, the study aims to facilitate the understanding of the legal empowerment work by NGO paralegals in China, and to distill specific elements that the Chinese model shares with international experience.
INTRODUCTION

In 2005, the Commission on Legal Empowerment of the Poor was initiated by the United Nations Development Programme (UNDP) to advance the global strategy of law and development.¹ Legal empowerment of the poor, as an innovative conceptual tool for poverty eradication,² was first coined in a report by the Asian Development Bank in 2001³ when the international aid discourse underwent a paradigm shift, from what was conventionally narrowly focused on courts, lawyers and other state institutions, to a broader concept that goes beyond the confines of formal legal systems and extends the reach of civil society and capacity-building of the underprivileged.⁴

Among many forms that legal empowerment takes place, the use of paralegal services merits special appreciation as it has gained increasing acceptance by the international community. In the field of law and development, “paralegals” and “non-lawyers” are usually interchangeable terms, referring to laypersons who receive specialized (but not professional) legal training and provide an array of legal and non-legal assistance to the disadvantaged.⁵ In recent years, a growing number of legal empowerment programs have been implemented by paralegals of non-governmental organizations (NGOs).⁶ For example: a recent review of justice initiatives in Sierra Leone indicates that NGO paralegals significantly furthered the empowerment of the local poor;⁷ according to the World Bank reports, an assessment of an NGO program supporting disadvantaged women in Ecuador found that, as compared to non-client citizens, their clients enhanced self-esteem and experienced less domestic violence;⁸ an empirical study by the Asian Development Bank presents similar results, revealing that the Philippine NGOs and

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¹ The commission was co-chaired by the former U.S. secretary of state Madeleine Albright and Hernando de Soto, the Peruvian economist and founder of the Institute for Liberty and Democracy. For more basic information please see the official website at http://web.undp.org/legalempowerment/who/co_chairs.html; for important remarks by the co-chairs, see Madeleine Albright & Hernando de Soto, Giving the Poor Their Rights: How Legal Empowerment Can Help Break the Cycle of Despair, TIME, July 16, 2007.

² Dan Banik, Legal Empowerment as a Conceptual and Operational Tool in Poverty Eradication, 1 HAGUE J. ON THE RULE OF LAW 117, 118 (2009).


⁴ For a thorough examination of various definitions of legal empowerment, see Stephen Golub, What is Legal Empowerment: an Introduction, in LEGAL EMPOWERMENT: PRACTITIONERS’ PERSPECTIVE 10 (Stephen Golub & Thomas McInerney eds., 2010).

⁵ Stephen Golub, Nonlawyers as Legal Resources for Their Communities, in MANY ROADS TO JUSTICE: THE LAW RELATED WORK OF FORD FOUNDATION GUARANTEES AROUND THE WORLD 297 (Stephen Golub & Mary McClymont eds., 2000).


⁸ WORLD BANK, IMPACT OF LEGAL AID: ECUADOR 11-12 (2003).
paralegals contributed to a variety of issues such as agrarian reform and environmental protection.\(^9\)

This study contributes to the knowledge base by giving an empirical account of NGO paralegals who work in the area of labor rights protection in China. As defined by the Commission on Legal Empowerment of the Poor, like property and physical assets, labor must be legitimately recognized since human capital is “the greatest asset of the poor”.\(^10\) Thus, labor rights comprise one of the core pillars for legal empowerment and encompass certain universal values, such as abolition of child labor or forced labor; and elimination of unequal working conditions or discrimination in access to employment.\(^11\) In this connection, being the world’s factory and the largest developing country, China provides an important case study of labor rights protection in a transitional market economy.

The study stemmed from empirical findings of the fieldwork conducted in the Pearl River Delta – the pioneer of China’s economic miracle. While the issue of grassroots labor NGOs in this region has attracted some discussion, the study took a different perspective and focused on the role of labor NGOs in legal empowerment.\(^12\) Based upon empirical and comparative analyses, the study aims to facilitate the understanding of the legal empowerment work by NGO paralegals in China, and to distill specific elements that the Chinese model shares with international experience.

The remainder of this article proceeds as follows. Part I reviews the background against which labor NGOs have grown in the Pearl River Delta. Part II introduces the focus of the fieldwork and the research methodology. Part III and Part IV present the findings of the fieldwork in relation to three major issues: human resources, financial resources, and the services of labor NGOs. As a crucial contribution of the empirical study, Part V provides a specific examination of the collaborative legal services between lawyers and NGO paralegals. In its conclusion, the article draws further implications and recommendations for the development of labor NGOs, as well as for their domestic and international partners.

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\(^9\) Golub & McQuay, supra note 3.


\(^11\) With respect to the livelihoods of the poor, composed of fundamental assets and survival activities, three empowerment domains are identified as vital: property rights, labor rights and business rights. See supra note 10, 25-28.

\(^12\) Halegua analyzed the role of one NGO in labor dispute resolution, whereas his work only provides a case study of that particular NGO. See Aaron Halegua, Getting Paid: Processing the Labor Disputes of China’s Migrant Workers, 26 BERKELEY J. INT’L L. 254, 254-322 (2008); a more recent survey by He and Huang examined the operation and organization of labor NGOs in the Pearl River Delta, but did not include observational data on paralegal services. See He Jingwei & Huang Hui, Zhujiang Sanjiaozhou Diqu Nomingong Weiquan Feizhengfu Zuzhi Miaoshuxing Fenxi [NGOs Defending Migrant Labor Rights in the Pearl River Delta Region: A Descriptive Analysis], 35 XIANGGANG SHEHUI KEXUE XUEBAO [HONG KONG J. OF SOC. SCI.] 41, 41-71 (Autumn/Winter, 2008).
I. EMPOWERING MIGRANT WORKERS IN THE PEARL RIVER DELTA

Industrialization accompanies with mobilization of low-cost labor forces. Nowhere is this better demonstrated in China, where nearly 200 million internal migrants have left their original rural residencies, most of which became “migrant workers (mingong)” in urban and suburban areas.\(^{13}\) In the past few decades, approximately half of these migrant workers were employed in labor-intensive industries around the Pearl River Delta of China,\(^{14}\) contributing to the high value of export and foreign investment.\(^{15}\)

However, migrant workers are often victims of bias and lack representation in legal processes. For one thing, as a result of the “hukou (household registration)” system, migrant workers are not entitled to many urban public services and social welfare, including government-subsidized housing and health care services as provided to local urban citizens.\(^{16}\) For another, some industries in the Pearl River Delta have been condemned as consisting of “sweatshops (xuehan gongchang)”.\(^{17}\) Due to different forms of exploitation, migrant workers are, more often than not, vulnerable in various aspects such as unpaid wages, excessive working hours, industrial injuries and poor working conditions.\(^{18}\) In spite of the growing inequality, state institutions are nevertheless slow

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\(^{14}\) The Pearl River Delta is one of the three leading industrial centers of China. The other two are Yangtze River Delta (around Shanghai) and Bohai Bay Rim (along with Beijing, Tianjin and Dalian).

\(^{15}\) Some estimated that 80 million migrant workers have concentrated in this region. Each of the Pearl River Delta cities, such as Shenzhen, Guangzhou and Dongguan, has performed a GDP growth above 10% over the past decade. See Marsha Smith et al., Labor Conditions and Indigenous NGOs in the Pearl River Delta, ASIANETWORK EXCHANGE (2007); LIU KAIMING, BIANYUAN REN [MARGINALIZED PERSONS: MIGRANT WORKERS IN SOUTH CHINA] (2003).

\(^{16}\) The “hukou” system was designed to plan and distribute various resources in terms of controlling migration between rural and urban areas. Under this system, each person is registered either with the “agricultural hukou” or the “non-agricultural hukou” according to his/her birth place or family location. Since many public services are limited to where the households have been registered, migrant workers without local “hukou” are denied access to these local public services. In spite of recent reforms, to be eligible for a variety of urban social welfare, the rural-to-urban migrants are still required to obtain local “hukou”, or at least the “temporary stay permits” (zanzhuzheng). See Hein Mallee, Migration, Hukou and Resistance in Reform China, in CHINESE SOCIETY: CHANGE, CONFLICT AND RESISTANCE 140 (Elizabeth Perry eds., 2nd ed. 2005); He Xin, Regulating Rural-urban Migrants in Beijing: Institutional Conflict and Ineffective Campaigns, 39 STAN. J. INT’L L. 177, 184 (2003).

\(^{17}\) Further information can be accessed in mass media publications such as the China Labor Bulletin; a typical report is available at http://www.clb.org.hk/chi/node/1300289; a more frightening piece of evidence alerts that every year at least 30,000 fingers of migrant workers are cut off at workplaces due to the poor working conditions and absence of essential safety equipment. See Hu Yazhu, Meinian Sanwan Duanzhi An, Zhusanjiao Fanrong de Daijia? [Thirty Thousands Severed Fingers Every Year, the Price for the Prosperous Pearl River Delta?], NANFANG NONGCUN BAO [SOUTHERN RURAL NEWS], July 10, 2008, available at http://news.163.com/08/0710/09/4GFV5FF700011229.html.

\(^{18}\) An investigation led by Dongguan Municipal Labor Bureau in 2005 found that 76% factories in the city owed workers their wages. Total amount of unpaid wage and overtime reached more than 3,000,000 CYN
and sometimes dysfunctional in responding to the concerns of migrant workers. For example, local officials usually find themselves in a dilemma to balance the dual tasks of attracting investment and protecting migrant workers; the party-state-affiliated trade unions are accused of failing to represent migrant workers, and lacking determination to challenge local authorities or state-owned enterprises. Against this backdrop, some have cited an urgent need for the growth of citizen-founded, community-based NGOs to help migrant workers.

In the Pearl River Delta, the first wave of emerging grassroots labor NGOs occurred in the period between 1998 and 2003, during which ten new NGOs were founded. The first labor NGO, Panyu Dagongzu Wenshu Fuwubu (Panyu Laborer Document Services Center) was created in 1998, though it was not widely known by the public until recent years. However, the estimated number of these NGOs varies greatly (from twenty to fifty), depending on different definitions for grassroots labor NGOs. In general, this messy situation results from the harsh policies against NGOs. The People’s Republic of

(about 3.9 million US dollars) as high. In some factories, migrant workers’ monthly burden of working overtime inconceivably reached 208.5 hours, whereas the cap set by law was only 36 hours. See Chen Si & Xu Xin, Dongguan Laodong Zhengyi Diaocha Baogao [Investigative Report on Labor Disputes in Dongguan], 4 HUZHONG FALU PINGLUN [HUST L. REV.] (2009).


20 This is generally because foreign and private investment has been an important engine for the local economic growth, which has been a crucial criterion for the evaluation of local officials’ performance. See Su Yang & He Xin, Street as Courtroom: State Accommodation of Labor Protest in South China, 44 LAW & SOC’Y REV. 162 (2010); Mary Gallagher, Hope for Protection and Hopeless Choices: Labor Legal Aid in China, in GRASSROOTS POLITICAL REFORM IN CHINA 196-227 (Merle Goldman & Elizabeth J. Perry eds., 2007).

21 In China, the All-China Federation of Trade Unions (ACFTU) is the national association and the sole representative of Chinese workers. The leaders of the ACFTU and its local branches are not elected through democratic procedures but are appointed by the government. See Mary Gallagher, The Limits of Civil Society in a Late Leninist State, in CIVIL SOCIETY AND POLITICAL CHANGE IN ASIA 419-54 (Muthiah Alagappa ed., 2005).

22 Xu Jianxin, Justice and the Need for Legal Aid NGOs in China, 3 CHINA RIGHTS FORUM 71, 71-73 (2005); Peng, X.H., Civil Legal Aid and Labor Rights, 6 FORUM: CHINA LABOR RESEARCH & SUPPORT NETWORK (2004).


25 He & Huang, supra note 13.
China since its establishment in 1949 has adopted the Leninist-style administration, where social organizations should be part of the government-funded or party-state-affiliated system. A turning point occurred in the early 1980s when the Chinese Communist Party (CCP) embraced the idea of market economy and permitted the existence of private businesses. Consequently, certain forms of social organizations started to emerge and fill in the gaps of state transformation. Yet the overall policy environment remains unfavorable for NGOs. For example, the Regulations on the Registration and Administration of Social Organizations in 1998 stipulated certain restrictions to the licensing for grassroots NGOs.

According to official statistics, by the end of 2009 a total of 431,069 “NGOs” have been registered as such in China. Yet, this number does not reflect the total number of civil society organizations or “would-be” NGOs in China, because some groups are not allowed to or do not choose to register as NGOs despite the public-interest and non-governmental nature of their work. To circumvent a variety of political and legal constraints, many grassroots NGOs have to register as commercial entities or even operate without formal legal status. A vast majority of grassroots labor NGOs follows this pattern. In consideration of the limited resources (e.g. time and budget) that were available for the author, this fieldwork study is confined to examining those labor NGOs which have been commonly acknowledged in existing literature.

II. DATA AND METHODOLOGY

The fieldwork was conducted between August and October of 2010. In terms of qualitative investigations, it focused on the operation of labor NGOs and the services provided by NGO paralegals, aiming to address the following three issues:

26 Chan Kin-man, Qiu Haixiong & Zhu Jiangang, Chinese NGOs Strive to Survive, in 1 SOC. TRANSFORMATION IN CHINESE SOC’Y 131-59 (2005).
27 Since the mid-1990s, a growing number of NGOs have been established, leading to what has been conceptualized as an “associational revolution” in China. See Wang Shaoguang & He Jianyu, ASSOCIATIONAL REVOLUTION IN CHINA: MAPPING THE LANDSCAPES, 35 KOREA OBSERVER 485-533 (2004); Lester Salamon & Helmut Anheier, The Civil Society Sector, 34 (1) SOC’Y 60-65 (1997).
28 For example, according to the registration procedures, an NGO shall first secure the agreement by a relevant state organ (i.e. a government department or a government-affiliated organization) to be its “business supervisor unit”. See Shehui Tuanti Dengji Guanli Tiaoli (社会团体登记管理条例) [Regulations on Registration and Administration of Social Organizations] art. 3, (promulgated by the St. Council, Oct. 25, 1998, effective Oct. 25, 1998) (Lawinfochina) (China).
(1) The human resources issue. Who are the people staffing the labor NGOs?
(2) The financial resources issue. Where does the money come from to support these labor NGOs?
(3) The services issue. What services (including those of dispute resolution) do labor NGOs offer to their clients?

The Interview Schedule

In order to break down the three issues into practical topics for structured interviews, an interview schedule was prepared, comprising of fourteen questions as below:

**Issue 1: Human Resources of the Labor NGOs**
1. Why did you take on this job?
2. What was your job before joining in this NGO?
3. Do you have a law degree or any other qualifications about law?
4. How many full-time employees do you have?
5. How many part-time employees do you have?

**Issue 2: Financial Resources for the Labor NGOs**
6. What is the main source of funding for this NGO?
7. What is your main source of income?
8. Do you have other sources of income?

**Issue 3: Services available from the NGO paralegals**
9. Do all of the employees represent clients in dispute resolution?
10. What types of cases do you usually receive?
11. After receiving the cases, what do you do to assist your clients in solving their problems?
12. What avenues or methods do you usually advise your clients to solve their disputes?
13. Which avenue or method do you think would be the best way to solve disputes, e.g. litigation, mediation, arbitration, petitioning (“letter-and-visit”) or any other?
14. Could you estimate the respective proportion of cases solved through the avenues aforementioned?

Notes: (1) The above questions represent the English translation of the questionnaire. The original Chinese-language questionnaire is available at the appendix;
(2) Directors of the NGOs were interviewed with all the fifteen questions, while non-director employees were not required to give responses to Questions 4 and 5.

The Research Sites

The labor NGOs included in this fieldwork are located in three cities (A-city, B-city and C-city) around the Pearl River Delta. The growing number of labor NGOs benefit
greatly from their location in the Pearl River Delta and its proximity to Hong Kong. First of all, the majority of labor NGOs in the Pearl River Delta region receives certain forms of financial support from Hong Kong. Secondly, they obtain other kinds of resources such as training and an overseas network. For example, the Asia Monitor Resource Center, the Hong Kong Polytechnic University and the Chinese University of Hong Kong have organized a variety of training programs and other annual activities for the convenience of these labor NGOs. All these opportunities are helpful for labor NGOs to exchange information, update knowledge, and increase the possibilities of collaboration. Thirdly, the Pearl River Delta shares a similar culture with Hong Kong, thereby being closer to the western concepts of civil society than other regions of China. For example, although the term “volunteers” is translated in Mandarin Chinese as “zhìyuánzhe”, many scholars, NGO staff or even local officials in the Pearl River Delta cities prefer using the term “yígōng”, which is a Cantonese translation originated in Hong Kong.

Overall, targeting the NGOs in this region was felt to facilitate the data collection in terms of three aspects: (1) as manufacturing industrial hubs, cities around the Pearl River Delta are hot spots of labor conflicts, exemplifying labor dispute resolution in China; (2) with more resources offered by organizations in Hong Kong, labor NGOs located in the Pearl River Delta are generally better developed than those in other regions; and (3) the author was introduced by the Hong Kong “partners” of the labor NGOs, and, for these reasons, the NGO respondents tended to trust the author and were willing to participate in the fieldwork.

The Respondents (Interviewees) and Their Responses

Six NGOs were included in this fieldwork study. They are based in three cities: two in A-city (NGO-A1 and NGO-A2), two in B-city (NGO-B1 and NGO-B2) and two in C-city (NGO-C1 and NGO-C2).

The author interviewed a total of twenty-one respondents. Fourteen respondents were actually working in labor NGOs and included director and non-director personnel. The remaining seven respondents were from other institutional backgrounds involved in labor-law practices, whose responses may provide a broader context within which to evaluate the information provided by the NGO respondents.

The first category, NGO respondents, consisted of (1) ten full-time staff (including two directors of NGO-A1 and NGO-A2) and (2) four part-time volunteers (all of whom served in NGO-A1). All the NGO respondents attended structured interviews and gave responses according to the prepared interview schedule. In addition, two of them provided supplementary information during informal talks with the author when they

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32 In addition to these events held in Hong Kong, some Hong Kong scholars and professionals also coordinate with the Sun Yat-sen University in Guangzhou to organize specific programs for labor NGOs.
33 An example is the translation of the Guangzhou Association of Volunteers as “Guangzhou Yígōng Lìán”.
34 These Hong Kong partners include charities, NGOs and scholars. For confidentiality the author leaves out their information in this chapter.
attended a conference in Hong Kong and met the author over light refreshment in a university canteen in October 2010.

The second category, the respondents from other institutional backgrounds in B-city, consisted of: (1) three lawyers from two law firms; (2) three judges (two in the basic-level court and one in the intermediate court); and (3) one official in the bureau of justice. Given that an interview schedule was not prepared in advance specifically for the respondents in this category, the author only collected their responses through informal talks and telephone interviews.

Data Collection and Data Processing

Most of the structured interviews were recorded simultaneously in handwriting at the research sites. Only the two interviews with the directors of NGO-A1 and NGO-A2 were tape-recorded, as other non-director staff refused to permit the author to do so. There may be many reasons for the different attitudes on taped interviews between directors and non-director staff. One possible explanation is that because the directors are actually the “bosses” of these NGOs, they intended to publicize what they have done in this area and had clear ideas of how they could benefit from interactions with outsiders. In contrast, the non-director personnel were employed by the NGO directors and work in the NGOs on unstable short-term contracts, and have no idea of what should be publicized and what consequences there would be if they commented on issues relating to their employers and colleagues.

In addition to the structured interviews, supplementary data were collected by means of informal talks and telephone interviews, in order to overcome two methodological constraints: first, some respondents were unable to attend structured interviews, but were available for informal talks or telephone interviews; second, additional references and verifications were needed to widen the interpretation of data collected in the structured interviews, as disparities and ambiguities sometimes arose in the responses.35

Supplementary information generated during all the structured interviews, telephone interviews, informal talks and other social occasions with the respondents was recorded in handwriting immediately after the events. Given that some of the NGO personnel are somewhat controversial figures in China, for confidentiality the author has to disguise the names of cities, labor NGOs and the NGO personnel, where the information is so distinctive that identification might be otherwise possible. (Further Details of the Interviews and Interviewees are provided in the Appendix)

35 It is not uncommon that respondents gave a different view which was inconsistent with that found by other researchers. There is also a danger that opinions given during interview are inaccurate or misleading because, for example, the opinion is not grounded in actual experience; the respondent wishes to emphasize a particular picture which is at variance with general experience; the respondent provides an answer simply in order to not appear ignorant etc. As the author cannot explain these disparities confidently, additional references and verifications are necessary in data analysis and it is also a function of research method to recognize this limitation.
III. HUMAN AND FINANCIAL RESOURCES OF LABOR NGOS

Paralegals serving in legal aid projects are lay people working directly with the poor or otherwise members of the disadvantaged groups. In India and South Africa, for example, legal empowerment programs were staffed by community-based paralegals drawn from the indigenous groups they served.\(^{36}\) Compared with many professional lawyers, paralegals tend to be closer and more in touch with the communities they serve; they are “of” those communities, while lawyers are often perceived as outsiders and elites.\(^{37}\) In addition, the scale of human resources and the training for paralegals largely rely upon the financial resources available. As will be discussed later, the source of incomes has been an important determinant not only to the management of human resources, but also to the planning of legal services and other development activities.

A. HUMAN RESOURCES

The six labor NGOs included in this research were established by their present directors. All the directors were internal migrants, who had moved to the city from elsewhere; some of them had previously been migrant workers and later devoted themselves to the calling of labor rights protection. NGO-A1 was established in 1998 by the director who graduated in law but did not take the bar examination; NGO-C1 was set up by an injured migrant worker in 2003, with the assistance of Hong Kong labor NGOs; NGO-C2 originated in a “hotline office” created by a migrant worker in Beijing, and has now developed on a larger scale, with its headquarters in Beijing and two branch offices in Shenzhen and Shenyang. Other employees who were not directors came from similar backgrounds. All of them were internal migrants from elsewhere. Most of them had once been migrant workers and shared a high degree of empathy with migrant workers.

Full-time and Part-time Employees

Owing to the different financial conditions of different NGOs, the number of full-time personnel ranges from only one person (for example, NGO-B1 only has one employee, the director himself) to more than twenty (for example, NGO-C2 headquarters in Beijing and has branch-offices in Shenzhen and Shenyang).

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\(^{37}\) The report upon paralegal programs in Sierra Leon argues that NGO paralegals are able to address justice-related problems due to the confluence of a certain level of legal training and their identities as indigenous community members. See OPEN SOC’Y INST., *supra* note 7, at 34.
Table 1: Human Resources of the Three Largest Labor NGOs

<table>
<thead>
<tr>
<th>NGO</th>
<th>Branch Offices</th>
<th>Full-time Personnel</th>
<th>Volunteer Non-lawyers</th>
<th>Volunteer Lawyers</th>
</tr>
</thead>
<tbody>
<tr>
<td>NGO-A1</td>
<td>3</td>
<td>7</td>
<td>≥ 6</td>
<td>2</td>
</tr>
<tr>
<td>NGO-C1</td>
<td>N/A</td>
<td>5</td>
<td>≥ 3</td>
<td>3</td>
</tr>
<tr>
<td>NGO-C2</td>
<td>2</td>
<td>12</td>
<td>≥ 8</td>
<td>≥ 20</td>
</tr>
</tbody>
</table>

Notes: Data updated to December of 2010; the number of full-time personnel and part-time volunteers in each NGO are subject to changes every month.

As pointed out by the directors of NGO-A1 and NGO-A2, the period of an employment contract can vary between full-time personnel in an NGO. For instance, in NGO-A1, the auditor signed a two-year contract, while a new college graduate was employed on a half-year contract. In some cases, the difference in the employment period represented the employee’s level of competence or experience, and in others it indicated different commitments between NGO personnel. For example, an employee in NGO-A1 explained,

“I signed a one-year contract, but I consider it a temporary employment (linshigong), not a formal one (zhengshigong) …… I haven’t thought about any long-term plan, because I am not sure whether I will be there (working in NGO-A1) later.” (Interview record: N-ABC0804)

Education and Legal Training

Most respondents only had received secondary-school level education before joining the labor NGOs. Except for the director of NGO-A1 referred to above, who had obtained a bachelors degree in law, other staff members had not received university education. Although some young staff recently employed by NGO-A1 and NGO-C2 had obtained certificates from vocational colleges, they had not specialized in law.

Most of the NGO staff received legal training after employment, namely “on-the-job” training (“zaizhi peixun”); for example, by attending vocational training classes or gaining experience in real cases that were supervised by external lawyers. In addition to “on-the-job” training, some of them received so-called “before-the-job” training (“ganqian peixun”). For example, five respondents from NGO-A1 and NGO-C2 reported that they received some form of legal training during their internship. For instance, during their internship, they attended a one-month training project organized by a leading university in southern China. Classes in the context of this project were taught by NGO leaders and university professors. Moreover, in order to acquire updated legal knowledge and information, lectures and training programs were also included as a part of continuing education for NGO staff.
“I often invited scholars, and sometimes invited judges or labor bureau officials to give lectures for our staff.” (Interview record: N-A0801)

“Some had experience on their own cases of labor arbitration or litigation before joining us …… They can guide the workers in many aspects.” (Interview record: N-A0802)

“We have regular contacts with our Hong Kong partners and they are very kind to provide a lot of support including training; we attend conferences or training camps (xunlianying) two to three times per year in Hong Kong.” (Interview record: N-A0803)

Collaboration with Lawyers as a Form of Legal Training for NGO Personnel

As will be touched upon later, NGO paralegals collaborate with lawyers in provision of legal services. The collaborative practice functions as a special form of legal training for NGO personnel. Existing studies suggest that repeated experience of dispute resolution enables many migrant workers to become post-dispute junior specialists or so-called “little experts”. The junior level of expertise can be obtained by those who have more opportunities to collaborate with professional lawyers.

With the propensity to take repeated legal actions, even ordinary migrant workers could be post-dispute “little experts”, not to mention the staff members of NGOs who are trained and organized to be legal services providers. Drawing on the growth of legal training through collaborative services with lawyers, NGO directors believed that their staff members were competent at helping migrant workers to solve labor disputes by legal means.

“After collaborating with so many lawyers, our personnel have become familiar with basic legal principles and some particular labor laws. Thus they can use these experiences to provide basic legal services.” (Interview record: N-A0801)

38 Such newfound expertise in labor law leads many workers to give advice and even serve as witnesses or citizen representatives in the cases of other aggrieved workers. The increased capacity inspired most plaintiffs to turn their lawsuit into a learning experience that not only helped them and their case but could also be transmitted to others including family members, friends, and fellow workers. See Mary Gallagher, Mobilizing the Law in China: “Informed Disenchantment” and the Development of Legal Consciousness, 40 L. Soc’y Rev. 783, 809 (2006).

This is consistent with the experience of paralegal programs in other developing countries where education of paralegals includes learning through experience, often by soliciting advice from lawyers or other professional groups as concrete issues arise.\textsuperscript{40} Similarly, as revealed in this project, the collaboration between lawyers and NGO staff can be defined as a reciprocal process for both sides. It not only alleviates the burdens of lawyers, but also improves the ability of NGO staff.

\textit{Executive and Advisory Structures}

The executive team of a labor NGO usually consists of a director, an administrative assistant (or associated director), and an auditor. In order to secure a better organizational structure and fulfill the fundraising requirements, all the six labor NGOs the author contacted had established “advisory boards (\textit{guwen weiyuanhui})”, consisting of external advisors such as lawyers, professors, enterprise managers, public intellectuals and mass-media leaders.

The purpose of inviting external advisors is to set up a supervisory framework. External advisors did not supervise the daily operation of NGO personnel, nor were they involved in auditing or budget planning for the NGO. However, according to the director of NGO-A1, the supervision by external advisors enhances the credibility and reputation of a labor NGO, enabling the NGO to be more competitive in the fund-raising market.

“All of them are well-known figures (\textit{zhiming rensi}) in different areas; they often gave useful advice on how to improve our management level (\textit{guanli shuiping}).” (Interview record: N-A0801)

External advisors also help to secure a broader social network and more institutional support for the labor NGOs. For example, several NGOs have established working relationships with lawyers, academics and social workers. For cases that are beyond the capacity of NGO paralegals, they might seek assistance from academics, or refer the case to lawyers or social workers.

\textit{Inherent Advantages of NGO Paralegals}

Community-based NGOs were often closer to their clients than any other professional groups could be. The trust between migrant workers and labor NGOs may be built upon their longstanding interactions. All the labor NGOs included in this project were located in migrant communities and their staff kept in touch with migrant families on a regular basis. As pointed out by the director of NGO-A1,

\textsuperscript{40} Golub, \textit{supra} note 36, at 33.
“They [migrant workers] are more or less reclusive and distrustful of ‘outsiders’. For our staff members [NGO personnel], it is easier to establish a sense of rapport (qinqiegan) and a sense of trust (xinrengan) with them (migrant workers).” (Interview records: N-A0801)

Communication with some clients who are not well educated or even illiterate can demand unusual patience and commitment. Given that many staff members of labor NGOs were once migrant workers themselves or from similar background, equal and effective communication between migrant workers and NGO personnel can be easily maintained. This was brought home to the author when he encountered an NGO staff member whose nickname is Plate (panzi). Plate lost his right hand in an industrial accident when he was a migrant worker. His misfortune did not cause him to give up, rather, it provided him with the encouragement to join NGO-C1 and help other migrant workers. During the interview, the author observed and was touched by Plate’s sincerity and patience: Plate wrote down his contacts very slowly with his left hand, and carefully mapped the route to his workplace and the adjacent bus-stops. Although it would have been more efficient for the author to use internet or his mobile phone to search for this information rather than wait for it to be written down by Plate, the author took it as an example of the way that Plate helps migrant workers with great patience. This case illustrates the close and empathetic relationship that can exist between migrant workers and NGO paralegals such as Plate.

B. FINANCIAL RESOURCES

Reliance on Overseas’ Funding

The past three decades have witnessed tremendous contributions to labor NGOs by funding from overseas. Although international organizations may encounter a number of bureaucratic and administrative hurdles in delivering their assistance, many Chinese NGOs have greatly benefited from financial support provided by the international community.41

Before 2000, the majority of overseas funding came from organizations in the United States, such as the Ford Foundation, Freeman Foundation, Rockefeller Foundation, and Starr Foundation.42 In recent years, financial aid from Europe and Hong Kong has also

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41 According to the Asia Foundation’s 2003 estimation, over five-hundred international organizations offered more than one-hundred million US dollars for projects in China each year. See To Serve the People: NGOs and the Development of Civil Society in China: Statements at the Roundtable Before Congressional-Executive Comm. on China, 108th Cong. 40 (2003) (statement of Nancy Yuan, Vice President, the Asia Foundation).

steadily increased. For example, both NGO-C1 and NGO-A1 received funding from the Hong Kong Branch of Oxfam Charity (UK) and from Evangelischer Entwicklungsdienst (EED, or Church Development Service), a German Protestant association that has supported many Chinese NGOs since the late 1990s.

Nonetheless, the reliance on overseas’ funding can be interpreted in a negative way. Lacking governmental support and domestic funding, grassroots labor NGOs have to rely upon overseas’ funding. For example, apart from the overseas’ funding described above, none of the labor NGOs observed in the fieldwork received any other sources of funding, including funding from domestic charities. The director of NGO-A2 explained,

“Domestic donors are inclined to be involved in less sensitive areas such as rights of women and children; for sure they are unwilling to support those [groups] who might get them into trouble.” (Interview record: N-A0802)

Hence, NGOs engaged in labor rights’ protection are usually not in the funding-list of domestic charities.

The Shortage of Financial Resources

Due to uncertainties about fund-raising performance, donors tend not to promise a long period of funding for a specific NGO. Instead, they prefer to offer funding for independent projects for a short period (usually two to three years). According to the directors of NGO-A1 and NGO-A2, the projects were selected based upon the “proposals, credits, reputation and track records of previous projects” presented by different NGOs, as well as on the interests of donors or funding managers. Given that most labor NGOs have only run for a few years and practiced in an “unstable environment”, donors have not been prepared to entrust them with “large scale” or “long-term” projects. (Interview record: N-A0801; N-A0802)

Lacking domestic financial resources, all the NGO directors interviewed expressed anxiety about the unstable situation of their financial support. NGO-A1 serves as a case study. In 2007, a European foundation offered a project of one million RMB to NGO-A1. According to the contract signed with the foundation, NGO-A1 had to use this amount of funding within three years. Calculating the annual amount on average, the funding after tax was approximately three hundred thousand RMB for each year (twenty-five thousand RMB per month). Nevertheless, the director of NGO-A1 complained that this amount was insufficient to meet their annual expenses. During the period between 2008 and 2010, the regular monthly expenses of NGO-A1 had already amounted to twenty-five thousand RMB, consisting of: (1) twenty thousand RMB for salary and social insurance; (2) two thousand for renting the offices; (3) the remainder for business tax and miscellaneous fees. There was no budget for any ad hoc expenses, and they had to charge for some of
their services in order to secure additional sources of income. (Interview record: N-A0801)

Another noteworthy finding was the disparity between the financial situation of directors and that of non-director personnel. During the interview, a staff member of NGO-A1 pointed out that few labor NGOs would pay “social insurance (shehui baoxian)” (including medical insurance) for entry-level personnel. Taking himself as an example, he received a salary of less than three thousand RMB every month, and no insurance. What he was paid, as he described, was only enough to maintain his family on “a minimal living standard (in A-city)”.

He further explained,

“My wife was pregnant and should have undergone a physical examination every month …… I was unable to pay so much, and brought my wife to hospital only once during the past half year …… I felt very guilty.”

(Interview record: N-A0803)

Given that this young employee worked on a full-time basis for NGO-A1, he did not have extra time to secure other sources of income. Inferring from his expression during the interview, he was not satisfied with his earnings from NGO-A1.

IV. SERVICES AVAILABLE FROM LABOR NGOS

As one of the most promising legal empowerment methods, paralegal services have provided a crucial alternative to much more expensive lawyer-focused approaches. By and large, NGO paralegals complement formal legal aid schemes and widen the scope of legal empowerment in several ways. First, paralegal programs commonly proposed legal training for non-lawyers as a way of leveraging indigenous human resources in developing countries; secondly, paralegals offer practical solutions to everyday problems of the poor by using formal legal channels and by adapting and responding to local context, including informal systems of justice; thirdly, paralegals reinforce the legal empowerment work by means of comprehensive services such as community education, capacity building and other forms of assistance at the level beyond individual cases.

Different NGOs have taken different service strategies to position themselves in the market. In the Pearl River Delta, labor NGOs mainly deliver services based on the needs of migrant workers and the programs required by their sponsors. More specifically, a certain portion of labor NGOs focused on services of dispute resolution or rights’

43 In the year 2010, the annual average salary of urban working units in A-city was 54,496 RMB (4541.25 RMB per month).
44 Golub, supra note 36.
protection (*weiquan*), such as NGO-A2; some focused more on non-legal services including public education and activities relevant to capacity building, such as NGO-A1; a few NGOs had no specific focuses for their services, and instead arranged their workload according to ad hoc projects or short-term market demands.

A. SERVICES OF LABOR DISPUTE RESOLUTION

Unlike many lawyer-centered legal aid programs, NGO paralegals in developing countries address justice-related problems by drawing on their broader set of tools and reserve the use of litigation for when it makes strategic sense. In the context of legal empowerment, most legal issues affecting the poor are solved not by judiciaries but by administrative law, alternative dispute resolution and informal processes. Where the courts are an option, the poor often prefer alternatives because they are far more accessible, affordable and comprehensible.45 Even in developed jurisdictions such as England and Wales, policy proposals also claimed that the best practice adopted by the not-for-profit sector was to take a “holistic approach” for various solutions, many of which were not court-based. Therefore, NGO paralegals offered greater prospects for innovation and improved client choice.46

Integrating Judicial and Non-judicial Dispute Resolution for Migrant Workers

Except for the auditors in NGO-A1 and NGO-C2, all the respondents reported that they had helped migrant workers in certain stages of labor dispute resolution. The usual types of cases they represented include unpaid wages, work injuries and illegal termination of labor contracts. Depending on their level of sophistication and the needs of migrant workers they help, dispute resolution services may range from providing basic information and advice to representing the client in judicial and non-judicial processes.

In China, to solve labor disputes by legal means, the ordinary process begins with government-sponsored labor arbitation, and ends with civil litigation in local courts.47 Labor arbitration is a compulsory but not binding step which must precede the litigation stage.48 The arbitration process is handled by the “labor arbitration committee (laodong

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46 In England and Wales, the policy justifications were to extend “the supplier base providing services in the areas of social welfare law which are underprovided by current suppliers”. See LORD CHANCELLOR’S DEP’T, LEGAL AID – TARGETING NEED: THE FUTURE OF PUBLICLY FUNDED HELP IN SOLVING LEGAL PROBLEMS AND DISPUTES IN ENGLAND AND WALES 23 (Lord Chancellor’s Dep’t. 1995); LORD CHANCELLOR’S DEP’T, MODERNISING JUSTICE CM 4155 (Lord Chancellor’s Dep’t. 1998).
48 To allow a few exceptions of this mandatory procedure, the Supreme People’s Court issued a set of judicial interpretations in 2006, providing only limited relief and allowing workers to go directly to court in
zhongcai weiyuanhui), which is set up and administered by the local labor bureau. Each committee consists of one enterprise representative, one representative from the trade union, and one labor bureau official who often serve as the presiding arbitrator of the committee. The governmental affiliation and bureaucratic operation of the labor arbitration committee are among the most criticized in reform and implementation. 49

Not surprisingly, the directors of NGO-A1 and NGO-A2 stated that they tended to advise migrant workers to “ignore the arbitration process” and, instead, “spend more effort on preparing the subsequent [first-instance] trial in the court”. 50 In sum, their responses suggested that labor arbitration was more often a prerequisite step to be conducted before litigation, not a preferred one for migrant workers. (Interview records: N-A0801; N-A0802) This point of view can explain why a growing number of labor arbitration awards have been appealed against in recent years. 51

The sole use of civil litigation is neither encouraged by NGO paralegals. In actual practice, as pointed out by staff members of NGO-A1 and NGO-B1, employers would rather participate in court proceedings as “a strategy for delaying dispute resolution”, because the long and complicated process is often “more detrimental to the poorer party”. (Interview record: N-A0803) The difficulties for migrant workers to conduct litigation were described by several NGO respondents as below,

“Even if the migrant worker is able to win, the length of legal processes may enable the bosses [employers] to evade [judicial] enforcement, for example, by transferring assets to make [a decision against them] unenforceable.”
(Interview record: N-A0801)

“They [migrant workers] need to solve their disputes in a cheap and quick way; so the best thing for them is to recover the losses as soon as possible.”
(Interview record: N-A0803)

In most cases, as pointed out by the staff of NGO-A1, migrant workers forfeit their rights to compensations, and compromise to settle for less than they were owed. 249


49 See Halegua, supra note 13.
50 An appeal against the arbitration award can be lodged with the court within fifteen days of its issue for a trial of the original dispute. In the subsequent first-instance procedure, the court is required to try the case de novo.
51 According to national statistics, more than 40% of labor arbitration cases were appealed to the court. See MINISTRY OF LABOR & SOC. SEC., RESEARCH ON THE QUESTION OF REFORMING CHINA’S LABOR DISPUTE RESOLUTION SYSTEM (2005).
“Many migrant workers never expect to get the full amount of wages [in the disputes of unpaid wages]; they are often ‘satisfied’ in accepting half of that amount.” (Interview record: N-ABC0804)

According to an internal report provided by the basic-level court of B-city, more than ninety percent of labor cases initially filed with a government authority were solved in various ways (i.e. negotiation, mediation or other administrative remedies) before being tried by a court.

Table 2: Labor Cases Filed with the Labor Bureau Finally Entered into Litigation

<table>
<thead>
<tr>
<th></th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>filed with the Labor Bureau</td>
<td>18717</td>
<td>27500</td>
<td>33394</td>
<td>333796</td>
<td>43406</td>
</tr>
<tr>
<td>Cases entered into First-Instance Trial</td>
<td>728</td>
<td>1755</td>
<td>2186</td>
<td>4131</td>
<td>2921</td>
</tr>
<tr>
<td>Ratio</td>
<td>3.89%</td>
<td>6.38%</td>
<td>6.55%</td>
<td>12.22%</td>
<td>6.73%</td>
</tr>
</tbody>
</table>

Source: Internal Report of the Basic-level Court in B-city

Some estimated that migrant workers gave up more than twenty percent of legal actions by themselves because they ran out of time or money. For this reason, many of them resort to alternative dispute resolution. Ideally, as advised by the directors of NGO-A1 and NGO-A2, migrant workers should in the first place engage in negotiation or mediation with the employer, “backed by the threat of using litigation” as a last resort. Regardless whether the case would be filed to the court eventually, the availability of litigation increased the bargaining power of migrant workers. (Interview records: N-A0801; N-A0802) In light of this experience, the combination of judicial and non-judicial channels would be more effective if they could be conducted in an integrated way, by which different kinds of services reinforce each other and the whole would thus be greater than the sum of the parts.

52 The author was shown, on a confidential basis, a copy of an internal report prepared by the basic-level court in B-city. The author was introduced to the report by a professor in a mainland university who coordinated in this research project and the composition of the report. The report contains the statistics from local justice bureau, labor bureau and the courts in B-city, consisting of six parts: (1) mediation; (2) administrative remedies; (3) litigation; (4) social insurance; (5) legal aid; (6) recommendations for reform.


55 It is similar to the case of Sierra Leon, where the most crucial among formal legal tools for NGO paralegals is the background threat of, and the strategic use of litigation as the teeth behind paralegals’ ongoing advocacy on the ground. See *Open Soc’y Inst.*, supra note 7, at 34-35.
Labor Monitoring: a Useful Administrative Remedy for Employees

Since 2004, the “labor monitoring (laodong jiancha)” procedure has been promoted by the State Council. According to the Regulations on Labor Protection Monitoring (Laodong Baozhang Jiancha Tiaoli), local labor bureaus are responsible for monitoring local compliance with labor-related laws and regulations. The State Council has streamlined the administrative procedures to facilitate the use of this remedy, and has reinforced the enforcement power of the labor bureau. First, the officials of local labor bureaus are authorized to investigate a labor dispute and secure the compulsory enforcement ordered by the court. Second, officials are also authorized to impose fines and penalties, and to punish employers who fail to comply with the law or an administrative decision.

Previously, labor monitoring measures (including on-site visits and further investigations) were often initiated by citizens’ applications or complaints, not by government officials themselves. To improve the external supervision of administrative responsibilities, the new Labor Contract Law in 2007 stipulated that government officials who neglected or failed to perform their duties were liable to workers for damages, and could be subject to administrative punishments or even criminal penalties.

Most importantly, according to the new law, once the official failed to fulfill the administrative responsibilities as aforementioned, the applicants could sue the labor bureau for its “administration omission (xingzheng buzuowei)”. Therefore, NGO staff commonly regarded labor monitoring as one of the most efficient remedies for employees.

“In one case in which a jewelry-making factory refused additional compensation for overtime work, I tried to sue the labor bureau [for the

56 E.g., Laodong Baozhang Jiancha Tiaoli (劳动保障监察条例) [Regulations on Labor Protection Monitoring] (promulgated by the St. Council, Nov. 1, 2004, effective Dec. 1, 1998) (Lawinfochina) (China) (cases should be concluded within 60 days of being filed, or 90 days if they are complicated).
57 For example, the labor bureau can inspect whether employers have signed labor contracts or paid minimum wages. If an illegal conduct is discovered, officials of local labor bureaus can issue “xingzheng caijue [administrative decisions]” ordering the employer to correct the problem by a certain date. If the employer fails to comply and has not taken any judicial action against the decision, the labor bureau may apply for the compulsory enforcement of its decision ordered by the court.
58 Although officials do not always impose these penalties, they usually threaten to do so, attempting to push employers to comply with administrative decisions and rectify any illegal conduct. A fine could be levied between 2000 and 20,000 RMB for the violation. The penalties vary according to the type of violation. For instance, violating the labor rights of women and children yields a fine of 1000-5000 RMB per worker. If an employer required employees to work hours that exceed official limits, the agent may impose a fine of 100-500 RMB per worker. For other violations, however, such as failure to sign a labor contract, the Regulation simply instructs agents to order the employer to correct the situation without mention of a fine.
worker], and the officials came to investigate [the dispute] and then forced the boss to pay.” (Interview records: N-G0801)

“Now we often told the workers to adopt this strategy, that is, keep urging the labor bureau officials to review your case, and threaten to sue them if they fail to do so.” (Interview records: N-A0801)

Although NGO paralegals may assist their clients in litigation, their typical advice to clients has been to first use administrative remedies, and to use civil litigation only as a last resort. 60

“At the initial stage, we usually advise them [migrant workers] to complain to the labor bureau.” (Interview record: N-A0803)

“You should first bargain with the boss, and threaten him/her with further actions, such as calling for governmental interferences. I think this way is more useful than pure lawsuits (da guansi).” (Interview record: N-ABC0804)

A New Role of Labor NGOs in Mediation

Labor dispute resolution is officially defined as a three-step process (mediation, arbitration, and litigation) that begins with mediation at the workplace through a trade union-directed mediation committee. 61 However, the mediation stage is not compulsory. Since the mid-1990s, rates of mediation have fallen dramatically. 62 The decline is the result of many reasons: for example, a growing number of private firms do not have functioning trade unions and therefore do not have the institutional capacity to form mediation committees; disadvantaged employees routinely refuse mediation at the workplace due to the shortcomings of the firm’s trade union. 63

Against this backdrop, some labor NGOs have sought to play a role in mediating labor disputes. In the past, NGO paralegals tended to act as labor advocates who represented the employee side in labor disputes. Recently, their focus has shifted to acting in a new role, as mediators. This trend was pointed out by the director of NGO-A1, who said:

60 Such a strategy has also been suggested by other studies. See Peerenboom & He, supra note 54, at 36-37; Su Yang & He Xin, Street as Courtroom: State Accommodation of Labor Protest in South China, 44(1) L. SOC’Y REV. 157, 157-84 (2010).
61 In either arbitration or litigation proceedings, arbitrators or adjudicators are mandated to attempt mediation before the making of the arbitration awards or of the court judgments.
62 See Gallagher, supra note 39, at 789-791.
63 At the central and local levels, the branches of the All-China Federation of Trade Unions (ACFTU) are not independent and are controlled by the Chinese Communist Party at that level. At the firm level, trade union officials are often managerial-level and double-posted employees (serving in a management capacity and as trade union member).
“It is more convenient (fangbian) for us [NGO staff members] than any others to mediate labor cases, because we have already met with the employee and initially examined the case context.” (Interview record: N-A0801)

“What we need now is just a government-recognized status (zhengfu renke de shenfen). The government also hopes that we play a more impartial role in labor disputes where we are still on the side of employees (shizhong daibiao yuangong de liyi).” (Interview record: N-A0801)

The case of NGO-C2 may be seen as a milestone achievement. This NGO expanded the scope of its services to include mediation and it established a formal relationship with the Bureau of Justice in Beijing. In 2004, a mediation office entitled the “NGO-C2 Peoples’ Mediation Committee” was set up in the Donghuamen Sub-District of Beijing. Although this mediation office is a part of the NGO and is recognized by the government as one of “social organizations (shehui tuanti)” or “mass groups (qunzhong zhuzhi)”, staff members of NGO-C2 explained that their roles had become different from their previous experience, because now they had connections with the local government and had “the appearance of governmental agencies”. This mediation initiative has meant that personnel of labor NGOs now take an active role as mediators to resolve labor disputes, and effectively use this formal status to persuade the employers to settle.64

B. DIVERSIFICATION OF NGO SERVICES

The purposes of NGO services are not only to provide direct legal assistance, but also to improve the working conditions and social status for migrant workers, in the hope of empowering migrant workers with a variety of self-help and mutual-aid abilities. Legal services can certainly in and of themselves constitute and produce legal empowerment, but experience drawn from international aid programs indicates that greater impact can be achieved when they are integrated with related activities, which could be any that complement legal services but not inherently law-oriented in nature. For example, according to programs in Sierra Leon and Bangladesh, paralegals have developed a flexible set of empowering tools at their disposal, including literacy training, rights education, alternative dispute resolution and community organizing.65

Similarly, in addition to “rights protection (weiquan)” and dispute resolution, labor NGOs in China also provide a wide range of non-legal services, such as visiting injured workers, helping workers’ families, and providing education and publications. For

64 For more details, see Halegua, supra note 13.
65 See OPEN SOC’Y INST., supra note 7, at 34-35; Golub, supra note 36, at 36.
example, as shown in the following diagram, NGO-A1 spent more than half of their workload on providing non-legal services in the period between 2009 and 2010.


Notes: According to the director of NGO-A1, during the past two years, NGO-A1 allocated its duties and works as in the following proportions: 30% on visits to injured workers; 30% on “rights protection (weiquan)” and dispute resolution; 10% on teaching classes for migrant workers; 10% on distribution of publication or other printed materials relating to labor issues; 20% on others. (Interview record: N-A0801)

Visits to Injured Workers

NGO-A1 offers regular visits to workers who have been injured in industrial accidents. The visiting sites include hospitals and the homes of injured workers. During the visits, respondents from NGO-A1 explained that they provided legal assistance to injured workers as well as to their families. As one NGO director stated, “Sometimes they (the injured workers and their families) need to know that they are not alone in cities.” (Interview record: N-A0803)

In addition to legal advice, non-legal services such as face-to-face psychological counseling are also provided. Timely support such as these is necessary for migrants who suffer from accidents but lack of financial resources and social support. After the first visit, NGO personnel continue to help the injured workers and their families to deal with a variety of problems, including rehabilitation therapies and taking care of children.

Legal Education and Group Formation

Given that many migrant workers are uneducated, they have almost no choice but to rely on external assistance.⁶⁶ To promote widespread legal knowledge and awareness of

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⁶⁶ One survey revealed that over 46% of migrant workers did not know the name or contact details of their employers, and were even unaware of whether their employers had business licenses. Moreover, should a labor dispute arise, over 50% of migrant workers did not know where to go or what to do. This situation resulted from a number of reasons including (in sequence of ratio): (1) a consideration that legal process takes too long (20.97%); (2) a belief that government officials would not take any action (17.98%); (3) lack of money to start the legal process (16.94%); (4) the amount of wages, debts or liable payment in dispute is not worth of legal actions (15.28%); (5) lack of evidence (12.92%); (6) fear of reprisal by the employer (9.72%). See Tong Lihua & Xiao Weidong, Zhongguo Nongmingong Weiquan Chengben Diaocha Baogao [Investigative Report on the Rights Protection Costs of Chinese Migrant Workers] (2005), available at
labor rights, several NGOs have sought to educate migrant workers by providing classes or training programs, and by circulating publications or printed materials. The director of NGO-A1 stated the purpose of these activities as this, “What we are pursuing is to assist the workers in learning to rely on their own efforts and skills (ziligengsheng).” (Interview record: N-A0801)

NGO-A1, NGO-A2 and NGO-B1 offered role-playing or moot-court classes for migrant workers, teaching them about legal knowledge that they should find useful for daily life. (Interview record: N-A0801; N-A0802; N-A0803) During the class, for example, NGO personnel explained relevant legal provisions in plain language and provided useful information such as terms and clauses that should be included in an employment contract. (Interview record: N-A0803) Those who participated in these classes were encouraged to “share what they learned with their fellow workers or other migrants”. (Interview record: N-A0803)

Apart from teaching, NGOs have also introduced other more convenient ways to promote public education as well as to diffuse useful information within migrant communities. For example, NGO-A1 and NGO-C2 organized annual or bi-monthly gatherings for migrant workers, and hosted other social events such as trips, sports and singing competitions. (Interview record: N-A0801; N-A0802) Moreover, NGO-A1 used internet resources such as creating “blogs” or “QQ groups” (online chat-groups) to facilitate daily contact between NGO personnel and migrant workers. (Interview record: N-A0803)

NGO Publications

Publications and other printed materials have been another useful way of diffusing information and promoting legal knowledge. While teaching events focus more on fundamental laws and regulations, printed materials adopt more user-friendly formats that answer frequently-asked questions. For example, NGO-C1 distributed free pamphlets including “Workers Handling Issues Step by Step (Dagongzhe Bubuweiying)” and “Workers’ Safety Guiding Lights (Dagong Anquan Zhiludeng)”67 NGO-B1 published handbooks of labor protection knowledge, such as “A Requisite Handbook for Employees (Wugong Bixie Shouce)” and “A Handbook of Knowledge for Injured Workers (Gongshang Gongyou Zhishi Shouce)”. Taking the latter as an example, the handbook consists of five parts: (1) “comprehensive knowledge (zonghe zhishi)”, such as injured rehabilitation, psychological care, family support and future planning; 68 (2)


67 These pamphlets conveyed plain messages for migrant workers, such as advising them never to pay an employment deposit to the employer (which is illegal); to demand a written contract and to refrain from working for employers lacking a valid business license. The pamphlets also explain the skills or strategies to be taken in the event of a labor dispute arising, such as negotiating with the boss and tape-recording the conversation. See the pamphlets composed by NGO-C1.

“injured rights knowledge (gongshang quanyi zhishi),” including the application and procedures for injury maintains, compensations for injury and dispute resolution; 69 (3) “occupational diseases (zhiyebing),” including the healthcare information about prevention, diagnosis, cure and compensation; 70 (4) “compensation for illegal employment (feifa yonggong peichang),” including the legal rules and case studies; 71 (5) appendices, including labor laws, addresses and phones of legal aid and other authorities concerned, the contacts of NGO-B1, and the hotlines of other labor NGOs. 72

V. COLLABORATION BETWEEN LAWYERS AND NGO PARALEGALS

The emphasis on the use of paralegals is not to dismiss the roles of professionally-trained lawyers. In developing countries where legal empowerment programs have been implemented, paralegals are connected to lawyers in two ways: first, they receive training and ongoing supervision from lawyers; secondly, lawyers take up litigation and high-level advocacy for a subset of cases which come to paralegals. 73 By comparison, what would be unique in China is that the Civil Procedure Law permits non-lawyers to represent litigants in court proceedings, thereby encouraging the legal practice of non-lawyer representatives and further stimulating their initiatives in collaboration with lawyers in litigation cases. 74 According to the experience of lawyers and judges that were interviewed for the purpose of this project, many litigants who were employees appointed both lawyers and non-lawyers during the same case of labor arbitration or litigation in the Pearl River Delta.

High Ratio of Legal Representation in Labor Cases

In China, it was estimated that the overall ratio of lawyer representation in civil cases was between 12 per cent and 14 per cent at the national level. In other words, only one out of every eight civil litigants was represented by a lawyer. 75 Although these figures

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69 Id. at 18-50.
70 Id. at 51-59.
71 Id. at 60-64.
72 Id. at 65-69.
73 See OPEN SOC’Y INST., supra note 7, at 33.
74 See Zhonghua Renmin Gongheguo Minshi Susong Fa (中华人民共和国民事诉讼法) [Civil Procedure of the People’s Republic of China] art. 57 (promulgated by the Nat’l People’s Cong., Apr. 9, 1991, effective Apr. 9, 1991) (Lawinfochina) (China). Pursuant to this provision, to perform as an agent ad litem or a legal representative in civil litigation, a person must be in one of the following three categories: (1) a lawyer; (2) a party’s near relative; (3) a person recommended by a relevant public organization or the unit to which a party belongs or any other citizen approved by the court. Therefore, a non-lawyer may represent clients in civil cases, performing as the second or third category of litigation representatives aforementioned. Article 57 has become well known as a provision authorizing “gongmin daili ren [citizen representatives],” and allowing any ordinary Chinese citizen to represent any other individual in civil litigation, regardless whether the representative is a qualified lawyer or not.
represent a significant improvement on previous decades, they are considered relatively low in comparison with other more developed jurisdictions.\textsuperscript{76}

However, as shown in the local statistics of B-city, more than 40 per cent of litigants who were employees (including those of migrant workers) were represented by lawyers; more than 20 per cent of employee-litigants were represented by non-lawyers (including NGO staff and other groups of non-lawyers). Simply put, either the ratio of lawyer representatives or that of non-lawyer representatives in labor cases in B-city is higher than the national average.

Table 2: \textit{Ratio of Different Types of Representatives Appointed by Employee-Litigants in First-Instance Trials of Labor cases in B-city (2001-2006)}

<table>
<thead>
<tr>
<th>Representatives</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-lawyers (including NGO personnel)</td>
<td>29.54%</td>
<td>20.87%</td>
<td>25%</td>
<td>28.73%</td>
<td>28.89%</td>
<td>22.39%</td>
</tr>
<tr>
<td>Lawyers</td>
<td>45.46%</td>
<td>40.30%</td>
<td>33.98%</td>
<td>47.27%</td>
<td>47.56%</td>
<td>56.72%</td>
</tr>
<tr>
<td>N/A (Unrepresented)</td>
<td>25.00%</td>
<td>38.83%</td>
<td>41.02%</td>
<td>24.00%</td>
<td>23.55%</td>
<td>20.90%</td>
</tr>
</tbody>
</table>

Source: \textit{Internal Report of the Basic-level Court in B-city}

While the high ratio of litigation representation in B-city could be the result of various factors, a certain portion of litigation representation was created by collaborative services between lawyers and non-lawyers.

\textit{NGO Personnel as “External Paralegals” Collaborating with Lawyers}

Interviews with lawyers representing migrant workers in labor cases indicated unusual sacrifice and commitment on their behalf. While conducting a litigation case, typical services provided to a client should include not only advocacy in the court or advising at key stages, but many other demanding tasks such as interviews with clients or witnesses, legal research, processing documents and other administrative tasks.

As described by the director of NGO-A1, “lawyers might earn much less or even nothing from the practice of legal representation for migrant workers; they [lawyers]...”

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\textsuperscript{76} For example, approximately 50\% of litigants in civil cases in England and Wales and in Hong Kong are represented by lawyers. See Camille Cameron & Elsa Kelly, \textit{Litigants in Person in Civil Proceedings: Part 1, 32 HONG KONG L.J. 313-42 (2002); DEP’t OF CONSTITUTIONAL AFFAIRS (UK), LITIGANTS IN PERSON: UNREPRESENTED LITIGANTS IN FIRST INSTANCE PROCEEDINGS, (Richard Moorhead et al., 2005), available at http://www.law.cf.ac.uk/research/pubs/repository/1221.pdf.}
usually have other sources of business (yewu) and would not spend much time on labor cases.” (Interview record: N-A0801) The reluctance of some lawyers to get involved in this process was expressed by a lawyer in B-city:

“Not many lawyers would like to keep in touch with those migrant workers who always pay little but impose their company on you; in some cases they even left you out of pocket …… Sometimes you have to treat them to lunch or buy train tickets for them, even though you get nothing from their cases.” (Interview record: L-B0801)

“I was tired of seeking evidence from those [migrant workers] who did not sign employment contracts or never kept “ written things (shumian de dongxi) …… even working for cases with clear merits still requires considerable patience and sacrifice from me …… merely being sympathetic (tongqingxin) is not enough for a lawyer to often get involved in labor cases …… We [lawyers] are not working for the government, nor working for charities.” (Interview record: L-B0801)

Having the demanding tasks undertaken by non-lawyers, the collaboration has enabled lawyers to provide legal services in a more flexible and cheaper way. It has been noted that paralegals can play a significant role in helping lawyers to deal with legal cases. 77 For example, they could offer preliminary guidance to clients (migrant workers) at the first meeting; they could perform as “gatekeepers”, recording the profile of clients, pre-screening case files, and deciding whether the case is appropriate to refer the cases to lawyers (or to another professional person such as a psychologist or a social worker). 78 As one lawyer stated, “many of these tasks are very time-consuming, and some are ‘trivial (suosui)’”; yet most of them “are still important to the outcome”. (Interview record: L-B0802) For instance, a lot of effort was made to collect documented evidence or to communicate with migrant workers who are illiterate. 79

In traditional practice, many time-consuming tasks are often undertaken by paralegals in law firms in order to help lawyers prepare legal documents and generate proper

77 For instance, after coming to the NGO office, the first task is often to conduct the first meeting with the client, during which the client’s profile and the case summary can be recorded. Subsequently, NGO staff can provide preliminary advice for migrant workers. Among many other things, perhaps the most useful guidance may be the information about how to find a lawyer or apply for legal aid. See Margret Woo, Christopher Day & Joel Hugenberger, Migrant access to civil justice in Beijing, 4 LOY. U. CHI. INT’L L. REV. 101, 167 (2007).
78 Id.
79 A considerable amount of migrant workers are employed anonymously and willing to work without written contracts. In cases where oral testimony is the only available evidence (without witnesses appearing in the court), the lack of documentation often proves to be a major obstacle to the recovery of truth. Failing to provide documentation, many cases brought to legal aid offices or other administrative agencies would be disposed of without resolution. For more details, see Woo, Day & Hugenberger, supra note 77.
solutions for their case. However, law firm paralegals are not specialized in labor law and have no experience with migrant workers. Comparatively, the use of NGO paralegals is a more cost-effective alternative to the use of law firm paralegals. This point was explained by one lawyer during the interview:

“It would be more efficient that problem areas or legal issues of the case can be generally identified in the initial meetings with the client …… Lawyers also need assistants to deal with many clerical works (wenshu gongzuo); we would like to have these things sorted out by means of ‘contracting out (waibao)’, as you know, they [external paralegals] have more experience in some kinds of cases but are not as expensive as our paralegals (lvshi zhuli).”

(Interview record: L-B0801)

Furthermore, labor cases were often first received by NGO paralegals and then referred to lawyers, because paralegals had close connections with the communities and secured better access to information about the sources of labor cases. For example, some non-lawyers often “visited the hospitals” or even “collected the first-hand information about injured workers from doctors or nurses.” (Interview record: L-B0802)

The Provision of Unbundled Legal Services and Its Ethical Challenges

A certain portion of collaborative legal services in the Pearl River Delta can be described as analogous to the concept of “unbundled legal services”80. This type of legal practice has become increasingly popular and has attracted discussion in the context of reducing the cost of legal services.81 Broadly, when providing unbundled legal services, lawyers are involved in a limited scope of legal work, being retained only at key stages such as endorsing legal documents or advocating in court hearings, instead of being retained for the full duration of the case.82 Unbundled legal services are often delivered in the following forms: (1) consultation, such as giving advice and direction; (2) documentation, such as filling out the forms requested by legal processes; and (3) limited representation in court procedures.83 This practice may enable the client to have legal representation in “separated stages” by paying for “separated bundles (items) of services”.84

82 Id.
84 Rochelle Klempner, Unbundled Legal Services in New York State Litigated Matters: a Proposal to Test
Some ethical issues were caused by the practice of unbundled legal services. For example, the director of NGO-A1 revealed that, in some labor cases, the lawyer representatives were “only paid to appear in court hearings (tingshen)”, but contributed little else; some were even not necessarily familiar with the case in question. (Interview record: N-A0801) In another case reported by the director of NGO-A1, where a migrant worker was represented by a lawyer who collaborated with NGO staff in C-city, “the lawyer was only responsible for signing legal documents and appearing at court hearings; the NGO staff did everything of the case.” (Interview record: N-A0801)

While the lawyers in these two cases might be criticized for making insufficient efforts in respect of client care and duties owed to a client, perhaps a more controversial situation is the “documenting agent services (wenshu dai li fuwu)”. This is where a lawyer prepares a document for a fee but does not sign on the document, while the lawyer has no responsibility for the document’s statements. This practice takes place in a similar manner to what is called “ghostwriting” in the United States. As pointed out by a judge who tried several collaborative cases, it is difficult to identify who should be responsible for any frivolous actions or illegal conducts during the collaboration. Especially in the cases of documenting agent services, it would be more difficult to sanction the misconducts or negligence of lawyers because they did not endorse the documents. (Interview record: J-B0801) Although respondents reported with anecdotal evidence in this aspect, their worries were not groundless. According to a mess media report, some non-lawyer representatives were to blame for scams and other forms of market disorder. For instance, some of them solicited labor cases or represented migrant workers in labor arbitration or litigation, in return for a share of the debts collected or damages recovered. In these cases, lawyers drafted legal documents with no signatures, only for sharing “commissions (fen cheng)” with the NGO staff. Looking ahead, the ethical issues arising from the collaborative practice show a need of further regulatory measures. Therefore, greater number of empirical studies should be conducted with other categories of paralegals and with other stakeholders in judicial system such as the clients and the court administration staff.

87 This is a typical practice charging on a “no win, no fees” basis. It is known as contingency fee agreements, which have been commonly applied in labor cases and personal injuries cases, whereby fees would only be paid if the case was won. Ethical risks in this practice have already been discussed in common law jurisdictions regarding “claims companies” and “recovery agents”. See, e.g., Hong Kong Legislative Council, Background Briefs for the meetings on Apr. 23, 2007 and Feb. 23, 2009 (Panel on Administration of Justice and Legal Services).
88 Zhang & Qin, supra note 86.
CONCLUSION

The empirical and comparative analyses in this article have suggested that paralegal programs can be an important and cost-effective component of the legal empowerment movement, and are replicable across different subject areas, including but not limited to the protection of women, peasants and migrant workers. Furthermore, the empirical findings urge further attention to be paid to the functioning of NGO paralegals in the process of legal empowerment.

First of all, NGO paralegals are trusted by disadvantaged groups as they may have come from similar backgrounds. Secondly, NGO paralegals have been trained as non-professional specialists equipped with a certain level of legal knowledge, since they serve in a specific area such as labor rights protection. Thirdly, NGO paralegals adopt a strategy of combining different kinds of services, which often takes place in two ways: the first involves the combination of dispute resolution services, such as advising a hybrid of litigation and non-litigation methods, and encouraging the use of labor monitoring procedures; the second way takes place where legal services blend with non-legal services, including hospital visits, public education, group formation and other activities about capacity building.

Fourthly and most importantly, what would be unique in strategies of legal empowerment by Chinese labor NGOs is the collaboration with lawyers in delivery of litigation services. The collaboration functions not only as a special form of legal training for NGO paralegals, but also as a form of unbundled legal services for migrant workers. In a critical perspective, however, the collaboration model is not without its problems. Certain ethical issues were reported by some respondents, indicating a need of regulation and further attention that should be paid to professional responsibilities. But overall, the collaboration model is of great importance for the legal empowerment paradigm, with much potential for future growth and refinement.

One issue worthy of more concern is the financial situation of labor NGOs. In comparison with paralegal programs elsewhere, existing support for paralegal efforts is often piecemeal and ad hoc, coming under the auspices of small-scale or short-term programs. Furthermore, as revealed in the case of China, given the reliance on limited amount of overseas funding and the lack of domestic and governmental funding, labor NGOs are financially unstable and even unsustainable in the long run. Therefore, expanding the pool of financial resources – especially more long-term investment – is necessary for the future growth of these modestly staffed NGOs. Generally speaking, although no one can say with certainty that all paralegal mechanisms are effective, competent and dedicated in legal empowerment, trials and errors must be part of the

89 See Open Soc’y INST., supra note 7, at 4.
learning process. This article serves as a small step in that learning process, in the hope that, with increasing support from the international community, paralegal programs will be one contributing institution among many ongoing legal empowerment innovations that, in the aggregate, will make the law and justice work for everyone not only in China but also across the globe.
APPENDIX: INTERVIEW RECORDS

Interviews with NGO Respondents (August – September 2010)

<table>
<thead>
<tr>
<th>Code of interview records</th>
<th>Institutional background (A,B,C = A-city; B-city; C-city)</th>
<th>Meeting site</th>
<th>Description of interviews</th>
</tr>
</thead>
<tbody>
<tr>
<td>N-A0801</td>
<td>NGO-A1</td>
<td>Workplace</td>
<td>Structured interviews with 1 director, 1 full-time staff and 4 part-time volunteer during their working hour at the office</td>
</tr>
<tr>
<td>N-A0802</td>
<td>NGO-A2</td>
<td>Workplace</td>
<td>Structured interview with 1 director during his working hour at the office</td>
</tr>
<tr>
<td>N-A0803</td>
<td>NGO-A1, NGO-B1</td>
<td>University</td>
<td>Informal talks with 2 full-time (non-director) staff during their visits to an university</td>
</tr>
<tr>
<td>N-ABC0804</td>
<td>NGO-A1, NGO-B1, NGO-B2, NGO-C1, NGO-C2</td>
<td>Restaurant</td>
<td>Structured interviews with 5 full-time (non-director) staff from different NGOs, during an annual gathering of labor NGOs</td>
</tr>
</tbody>
</table>

Notes: The interviews recorded as N-ABC0804 include five separate interviews conducted with the five respondents from different NGOs. The gathering was held in a summer camp in Hong Kong and was organized by a Hong Kong sponsor. The author was introduced by the Hong Kong organizers during the lunch and started to interview the respondents in the afternoon.

Interviews with NON-NGO Respondents (August – September 2010)

<table>
<thead>
<tr>
<th>Code of interview records</th>
<th>Institutional background (A,B,C = A-city; B-city; C-city)</th>
<th>Meeting site</th>
<th>Description of interviews</th>
</tr>
</thead>
<tbody>
<tr>
<td>L-B0801</td>
<td>Law firm-B1</td>
<td>Café</td>
<td>Informal talks with 2 lawyers (one is partner and the other is trainee at the same office)</td>
</tr>
<tr>
<td>L-B0802</td>
<td>Law firm-B2</td>
<td>N/A</td>
<td>Telephone interview with 1 lawyer</td>
</tr>
<tr>
<td>J-B0801</td>
<td>Basic-level court of B-city</td>
<td>Restaurant</td>
<td>Informal talks with 2 judges of Civil Division, during an academic conference</td>
</tr>
<tr>
<td>J-B0802</td>
<td>Intermediate court of B-city</td>
<td>N/A</td>
<td>Telephone interview with 1 judge of Civil Division</td>
</tr>
<tr>
<td>GOV-B0801</td>
<td>Bureau of Justice in B-city</td>
<td>N/A</td>
<td>Telephone interview with 1 official in charge of basic-level legal services</td>
</tr>
</tbody>
</table>