

*Empowered lives.  
Resilient nations.*

# Equal Access to Justice for Persons with Disabilities in China



# **Equal Access to Justice for Persons with Disabilities in China**

The information and designations used and the presentation of the material throughout this publication do not in any way imply the expression of an opinion on the part of the United Nations Development Programme or the United Nations System in China, concerning the legal status of any country, territory, city or area of its authorities, or concerning the delimitation of its frontiers or boundaries.

The presentation of the data and information contained in this publication, and the opinions expressed therein, do not necessarily reflect the position of the United Nations Development Programme or the United Nations System in China.

This publication has been translated into English. If there is any inconsistency or ambiguity between the English version and the Chinese version, the Chinese version shall prevail.

Published by the United Nations Development Programme © 2016

**All rights reserved.**

# Table of Contents

<b>Foreword</b> .....	<b>1</b>
<b>Acknowledgements</b> .....	<b>2</b>
<b>Executive Summary</b> .....	<b>3</b>
<b>1. Research Topic and Methodology</b> .....	<b>7</b>
1.1 Access to Justice for PWD .....	7
1.2 Literature Review .....	8
1.3 Research Methods.....	12
<b>2. Legal Framework and Policy of Access to Justice for PWD</b> .....	<b>14</b>
2.1 Legal Aid: A Crucial Component in Access to Justice for PWD .....	14
2.2 Institutional Framework of Legal Aid for PWD .....	17
2.2.1 Access to Legal Aid for PWD in Civil and Administrative Cases .....	18
2.2.2 Access to Criminal Legal Aid for PWD .....	18
2.3 Local Policy and Practice of Legal Aid for PWD .....	19
2.3.1 Exploring Different Channels for Raising Awareness of Legal Aid for PWD .....	19
2.3.2 Extending the Coverage of Legal Aid for PWD .....	19
2.3.3 Strengthening Specialized Skills of Legal Aid Providers .....	20
2.3.4 Prioritizing Accessible Facilities and Support .....	20
<b>3. Analysis of the Legal Needs of PWD</b> .....	<b>22</b>
3.1 General Dispute Resolution of PWD.....	22
3.2 Legal Knowledge and Awareness of Legal Aid.....	24
3.3 Experience of PWD in Specific Cases .....	30
3.3.1 Limited Competence in Taking Legal Actions.....	31
3.3.2 Accessible Communication and Access to Timely and Effective Legal Aid in Criminal Cases .....	32
3.3.3 Equal Rights Issues Difficult to Resolve through Judicial Process .....	34
3.3.4 Frustration and Lack of Self-confidence Due to Social Discrimination and Prejudice .....	35
3.4 Gender Analysis of the Legal Needs of PWD.....	36
3.5 Accessibility Support and Reasonable Accommodation Throughout the Whole Judicial Process.....	40

<b>4. Analysis of the Experience of Service Providers of Judicial Protection .....</b>	<b>44</b>
4.1 Lawyers and Legal Service Providers .....	44
4.2 Rights Protection Departments of DPFs and Community DPF Coordinators .....	46
4.3 Mediation as a Basic Channel and Significant Supplement to Legal Aid .....	47
4.4 Positive Influence of Other Stakeholders .....	49
4.5 The Significance of Diverse Dispute Resolution Mechanisms and Legal Empowerment.....	50
<b>5. Conclusions and Recommendations .....</b>	<b>54</b>
5.1 Challenges of Equal Access to Justice for PWD from the Demand-Supply Dimension .....	54
5.2 Strategies of Promoting Equal Access to Justice for PWD.....	55
5.2.1 Improve the Legal System.....	55
5.2.2 Produce Understandable Legal Information .....	56
5.2.3 Raise Awareness and Build Confidence of the Rights-holders .....	57
5.2.4 Provide Accessible Legal Services .....	57
5.2.5 Ensure Accessibility Support and Reasonable Accommodation Throughout the Whole Judicial Process .....	58

# Foreword

2016 marks the 10<sup>th</sup> Anniversary of the adoption of the groundbreaking UN Convention on the Rights of Persons with Disabilities (CRPD), as well as the year when the 17 Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development came into force. Persons with disabilities constitute 15% of the global population and are commonly amongst the poorest of the poor. Unless persons with disabilities are brought into the development mainstream, achieving the global goals by 2030 will be a serious challenge.

Among the first countries to ratify the CRPD, China has made remarkable progress in promoting the rights and entitlements of persons with disabilities, including the formulation of over 60 laws and regulations to safeguard disability rights. Nevertheless, in terms of rights infringement, persons with disabilities often have limited access to justice. Despite being one of the primary beneficiaries of the legal aid system in China, persons with disabilities are, in practice, the most marginalized group – of all the vulnerable groups that are targeted for legal aid services, persons with disabilities are one of the least likely to receive, and benefit from, these services.

There is an alarming gap between the legal needs of persons with disabilities and actual service delivery by practitioners. Yet little is known about the root causes of this gap, and what practical solutions should be brought forth to redress it. In this context, under the framework of the UN Partnership on the Rights of Persons with Disabilities (UNPRPD) Programme, UNDP China collaborated with Wuhan University Public Interest and Development Law Institute (PIDLI) to undertake a research initiative, collecting and analyzing empirical evidence of both the demand and supply of legal services for persons with disabilities in China.

The report delineates the legal, physical, perceptual and informational barriers faced by persons with disabilities during legal processes. Furthermore, it presents evidence-based policy recommendations to comprehensively remove the said barriers as a means to ensure effective access to justice for persons with disabilities on an equal basis with others.

We hope that this report serves as a call for joint efforts towards equality and justice for all. We believe that recognizing the rights and entitlements of persons with disabilities, proactively removing the obstacles faced by them, and empowering them to become effective agents of change and productive members of society are important measures that will bring enormous benefit to all people in China – with or without disabilities.



**Agi Veres**

Country Director, UNDP China

# Acknowledgements

The research and drafting of this report was supported by the United Nations Development Programme, and inspired and assisted by many fellow professionals. We would like to extend our deepest gratitude to Lawyer Cao Hongling, Lawyer Gao Wei, Lawyer Fan Xiaohong, Dr. Li Xuehui, Dr. Li Cheng and Ms. Liu Jiajia for their valuable comments offered during the drafting of this report; Ms. Cui Jing for enabling the participation of the deaf communities, Ms. Chen Wanzhen and Gong Yi for sign language interpretation at several workshops held during the course of the research; Ms. Zhang Qin for the instant screening of subtitles, and Ms. Huang Shixin and Liu Hanxu for visual description services.

The fieldwork of this study owes special thanks to the tremendous support of Beijing Dongsheng Public Interest and Service Center for Persons with Disabilities, Nanjing Disabled Persons' Federation, and Wuhan Disabled Persons' Federation. In addition, the report benefited from the direct participation and insights of many persons with disabilities, staff members at Disabled Persons' Organizations and legal practitioners, as well as the interns of Wuhan University Public Interest and Development Law Institute and Ms. Angelina Bishman from UNDP China who contributed to the proofreading and layout of the report.

We hope that the concerted efforts and solidarity that underpinned this report marks an important step forwards towards the equal access to justice for persons with disabilities in China— this would be the best form of a thank you to all our supportive friends.

Main authors of the Report: Zhang Wanhong, Ding Peng

UNDP Project Team: Di Wu, Adrian Lo, James Chan, Jade Mali Mizutani



## Executive Summary

In September 2016, the Chinese government issued a White Paper on human rights, *New Progress in the Judicial Protection of Human Rights in China*, which highlighted that, with regards the status of the comprehensive advancement of the rule of law in China, the judicial mechanisms for safeguarding human rights have become more robust, the provision of legal aid available has become stronger, the impartial administration of justice has been upheld, and civil rights have been forcefully protected.<sup>1</sup> It is against this backdrop that the United Nations Development Programme has partnered with Wuhan University Public Interest and Development Law Institute and Wuhan East-Lake Institute for Social Advancement to further explore the extent to which persons with disabilities (PWD) in China can effectively navigate the judicial system. Using Article 13<sup>2</sup> of the *United Nations Convention on the Rights of Persons with Disabilities and China's Law on the Protection of Persons with Disabilities* as analytical tools and reference points, the authors of this report have undertaken empirical research to illuminate the current situation and problems that PWD face when seeking access to justice and realizing their basic rights. By exploring a number of practical experiences, this report concludes with various policy recommendations that might rectify the problems delineated herein.

This study analyzes five key factors that contribute to equal access to justice for PWD:

- 1) A sound legal system;
- 2) Understandable legal information;
- 3) Legal awareness and positive attitudes of the rights-holder;
- 4) Accessible legal services;
- 5) Support of accessibility and reasonable accommodation throughout the whole judicial process.

Arguably, the provision of legal aid is the key to upholding these five objectives within the existing legal system. The advantage of such provision is that it covers a wide range of service institutions, and includes strong policy support and sufficient service providers. The legal aid system responds to the legal needs of PWD but is currently restricted in some areas due to the limited scope of the cases accepted, the low validity of its legal bases, and the inadequate capacities of relevant legal departments and government agencies in providing legal aid service.

In order to clarify the legal needs of PWD, this study employs a human rights perspective, focusing on the subjective experiences of PWD. Providing necessary accessibility

1. Information Office of the State Council, White Paper: New Progress in the Judicial Protection of Human Rights in China, Xinhua Net, [http://news.xinhuanet.com/politics/2016-09/12/c\\_1119549617.htm](http://news.xinhuanet.com/politics/2016-09/12/c_1119549617.htm).

2. See Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of China, adopted by the Committee at its Eighth Session (17–28 September 2012), articles 23–24, CRPD/C/CHN/CO/1.

support and reasonable accommodation, this study aims to allow for the subjects' own voices to resonate as much as possible. In addition, this study takes into account the needs of persons with different types of disabilities and a gendered perspective is strongly reflected throughout the research.

This study focuses on the experience of PWD in all aspects of accessing justice, from access to legal information, awareness of legal aid, to the use of legal services, taking legal action and the ability to resolve disputes. During this process, the challenges faced by PWD include:

- Limited legal knowledge, an inability to use legal services when their rights are infringed.
- Unaffordability of current legal services, and the general lack of knowledge about free legal aid services.
- For persons with mental and intellectual disabilities and others who are placed under adult guardianship, their legal capacity is restricted.
- In the process of providing criminal legal aid for persons with visual, hearing, speech and mental impairments, there is a lack of effective and timely support in communication and information accessibility.
- For persons with physical or visual impairments, if and when they face discrimination in the realms of transportation, education and employment, they cannot resort to the judicial system for equality.
- Women with disabilities are more vulnerable to rights infringement and have less access to justice.
- Continuous social discrimination and prejudice that all PWD face critically re-

stricts their ability to navigate the judicial system effectively in order to realize their human rights and also undermines their confidence and adds to their already existing dismay.

- The key to achieving equal access to justice for PWD, compared to other groups, is to provide greater accessibility support and reasonable accommodations throughout the whole judicial process.

There are disparities between the experiences of legal aid service providers and practitioners, and the legal needs of PWD. This study found that:

- Lawyers and legal service workers play a key role in providing legal aid services to PWD. However, there are important areas for improvement in terms of their knowledge and awareness about disability and equality.
- Local departments under the jurisdiction of the Disabled Persons' Federation (DPF) can play an important liaising and coordinating role, while the community-level DPF coordinators wield great potential in becoming grassroots legal advocates.
- Other stakeholders, such as universities and social organizations, are a necessary complement to the government-led legal aid system. The support of the media, family and social workers can also be significant in specific cases.

With regards the delivery of justice, this study emphasizes the importance of diverse dispute resolution mechanisms – especially in the areas of “people’s mediation” and judicial mediation. These methods constitute a microcosm for the rule of law, social development and individual rights. Additionally, the legal professionals use the “legal empowerment strategy” to partner with local social

workers, volunteers, community paralegals/grassroots legal advocates and other diverse forces with the aim of fostering equality and “lawyering with” PWD. These partnerships are decisive for advancing equal access to justice and realizing rights-based development.

This study concludes by advancing five major factors for fostering equal access to justice for people with disabilities. These factors are presented in conjunction with evidence-based legislative and policy recommendations for various stakeholders. This includes:

### 1) For legislation and policy makers:

- Confirming the equal legal capacity of PWD in the *General Rules of Civil Law*.
- Stipulating specific provisions that target PWD in legislation, such as the *Legal Aid Law* and the *Detention Facility’s Law*, and encouraging societal participation in providing legal aid services for PWD.
- Taking into greater consideration the needs of PWD in the implementation or judicial interpretation of existing litigation and procedural law, and laws such as *Anti-Domestic Violence Law* and the *Charity Law*.

### 2) For DPFs and other disabled persons’ organizations (DPOs):

- Using participatory methods to assess and express the needs of PWD.
- Through public legal education and legal empowerment, supporting and building the capacity of community DPF coordinators, and community leaders as “community legal advocates”.
- Innovating the content and forms of legal public education for PWD in collaboration with other stakeholders.

- In collaboration with other stakeholders, mainstreaming disability in state budgeting and mobilizing more social support for PWD to access justice equally.

### 3) For legal aid providers:

- Participating in Disability Equality Trainings (DET) for legal aid providers and other professional trainings.
- Ensuring accessible communication during service provision, and incorporating support from professionals such as judicial social workers and sign language interpreters.
- Adopting an overall “legal empowerment” approach that uses diverse dispute resolution mechanisms to work with PWD, such that not only their individual cases can be resolved, but also that their capacity to thrive in a rights-based life can be increased.

### 4) For legal agencies:

- Ensuring accessibility of the agency itself.
- Improving sensitivity to disability in the internal work protocols.
- Organizing DETs that are tailor-designed for legal practitioners.
- Collaborating with other stakeholders to mobilize more resources for accessibility support and reasonable accommodations in legal aid for PWD.

### 5) For researchers:

- Mainstreaming equality and rights perspectives in research, and ensuring the agency of PWD participants through accessibility support and reasonable accommodations.

- Paying attention to the different needs of persons with different types of disabilities in legal practices.
- Exploring and improving DET models for various stakeholders.
- Collaborating with other stakeholders to provide more evidence-based policy advocacy recommendations.

#### **6) For media:**

- Adopting an equality perspective when reporting about access to justice issues for PWD, with respect to their self-agency rather than portraying PWD as victims or passive recipients of aid.
- Developing and using accessible media, including new media channels, to provide legal information (especially legal aid) that is easier to understand for persons with different types of disabilities.

#### **7) For family members, friends and volunteers:**

- As family members and friends of PWD, learning and sharing basic legal knowledge, encouraging and taking actions with PWD, and providing support for PWD at each of the stages of accessing justice on an equal basis.
- As volunteers, participating in related trainings, using equality and rights perspectives at work, disseminating legal knowledge, identifying the diverse needs of PWD and providing accessible support.

# 1. Research Topic and Methodology

According to the *Convention of the Rights of Persons with Disabilities (CRPD)*, “persons with disabilities”(PWD) include those who have long-term physical, mental, intellectual or sensory impairments which, when encountering various barriers, may not fulfill their full and effective participation in society on an equal basis with others. “Disability” is an evolving concept and it results from the interaction between persons with impairments and the attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others. Disability should also be understood as a part of human diversity and humanity.

## 1.1 Access to Justice for PWD

When discussing “access to justice” with regards PWD, we refer to the ways that PWD should be able to participate, on an equal basis with others, in the formal and informal judicial systems, seek just remedies, receive fair trials and exercise other legal functions (such as serving as witnesses or on a jury). These actions should allow PWD to realize the fundamental and universal rights that are inherent and integral to them. Indeed, access to justice is a human right – it guarantees an essential relief for the rights of people in a society governed by law. The access to justice for PWD is expounded in the CRPD under Provision 1, Article 13:

*“ State parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through*

*the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, and in all legal proceedings, including at investigative and other preliminary stages. ”*

There has been a profound historical process and an evolution in the connotations of rights before the emergence of this provision. This research argues that the access to justice for PWD involves the following aspects:

- 1) A sound legal system, including the recognition of basic rights in legislation, enforcement and judicial practices, and the establishment of legal institutions featuring cooperation and checks and balances, the building of judicial supervisory procedures, the provision of equal public services, the inclusion of social forces, and the recognition of informal justice. It is also a direct representation of the basic principle of “promoting in accordance with the law, and including human rights into the terrain of rule of law” stipulated under the *Human Rights Action Plan (2016-2020)*.<sup>3</sup>
- 2) Understandable legal information;
- 3) Legal awareness and positive attitudes of the rights-holder;
- 4) Accessible legal services;
- 5) Support of accessibility and reasonable accommodation throughout the whole judicial process.

3. Information Office of the State Council, National Human Rights Action Plan of China (2016-2020), Xinhua Net, [http://news.xinhuanet.com/politics/2016-09/29/c\\_129305934.htm](http://news.xinhuanet.com/politics/2016-09/29/c_129305934.htm).

Among those mentioned above, legal aid is a free legal service offered by the government, and is an integral part for all the people in modern societies in realizing their basic rights and an elementary requirement for gaining access to justice. In 2015, the *issuance of Opinions on Perfecting the Legal Aid System* by the General Office of the Communist Party of China and the General Office of the State Council marked the new opportunities that would characterize legal aid in China during its development. Central ministries and commissions – including the Ministry of Justice and the Ministry of Public Security as well as most provincial People’s Congresses and judicial administrative organs – are engaged with the revision and perfection of the systems and practices pertinent to legal aid. It should be noted that despite this progress, the access to legal aid and justice for PWD is still predominated by multiple challenges. Due to various existing barriers, the voice of PWD has not yet influenced public policies and judicial practices effectively.

Taking all of these into account, this research attempts to uncover the actual situations that PWD encounter in the access to justice using the methodology of legal sociology with a rights-based perspective that places emphasis on the agency of PWD. It also aims to offer feasible recommendations for practitioners on policy making and capacity building.

Two additional points should be highlighted. First, the rights entitled to PWD are based foremost on the dignity and freedom of being human. Their access to justice is not a newly established, unique or exclusive right. Rather, it can be traced back to the *Universal Declaration of Human Rights* and multiple

other key conventions on human rights. The initial use of “access to justice” in the *CRPD* is but a further specification on the standards of human rights for people inhabiting in the current civilized society, and one of the major ways to ensure that all human rights must be realized. It also highlights the particular challenges confronting PWD in realizing this basic right. Second, the access to justice for PWD signifies that they should not be regarded as merely passive recipients of benefits from the legal system, but rather equal participants and interactive partners of the systems. They should, on an equal basis with others, be able to become legal professionals – such as judges, prosecutors, and lawyers – and serve as witnesses, “people’s jurors”, and “people’s supervisors”. It is only through such participation that PWD can make their own contributions to justice and exert their influence on the transformations of pertinent policies and laws.<sup>4</sup>

## 1.2 Literature Review

In the current literature on the access to justice for PWD, there is abundant information on legal knowledge and service providers – particularly the account of existing laws and policies, official data on legal aid, official “typical cases”, and mainstream media coverage on “Day of Persons with Disabilities” and public education on legal information. Conversely, information regarding PWD as demanders of legal services is scarce.

On the legal needs of PWD, a number of preliminary conclusions can be made by reviewing the existing literature. These include: 1) the legal needs of PWD are significant in the areas of marriage and family, land and demolition, employment, fraud, and rights in-

4. Stephanie Ortoleva, *Inaccessible Justice: Human Rights, Persons with Disabilities and the Legal System*, *ILSA Journal of International & Comparative Law*, Vol. 17, No. 297, 2011; Eilionoir Flynn, *Disabled Justice? Access to Justice and the UN Convention on the Rights of Persons with Disabilities*, Ashgate, 2015, p.13-20, 47-48.

fringement by guardians, and they often lack legal knowledge and understanding of the limitation of action;<sup>5</sup> 2) from the perspective of community-based public services, providing free legal services and defending equal rights for PWD are equally important as education, employment, and rehabilitation for PWD. Moreover, education, employment and income often inform the needs of PWD in rural areas for certain legal services – such as legal documents drafting, legal representation, and criminal defense;<sup>6</sup> 3) medical rehabilitation, assistive devices, poverty alleviation are regarded as the more apparent and direct demands of PWD, while legal demands are not so obvious.<sup>7</sup> Yet, most of the institutions offering public services such as rehabilitation, are social organizations that work in the areas of elderly care, rehabilitation nursing, and housekeeping. In effect, these institutions treat PWD as elders or patients instead of as integrated persons. They tend to focus on the impairments of PWD and overlook their

potential in participating in society.<sup>8</sup> Under the influence of these mainstream services, PWD are beset with difficulties in expressing their legal demands and also obtaining legal services.

On the issue of legal aid for PWD more specifically, the domestic research available appears to be sporadically presented in several academic journals and Master's dissertations – mainly in the form of general summaries of current policies and practices,<sup>9</sup> reviews of cases,<sup>10</sup> and specific examination of rights protection for PWD in custody.<sup>11</sup>

Currently, the majority of research on the legal needs of PWD lack the conceptual rigor and emphasis on equality that was advocated in the *CRPD*. Taking this further, the research on the legal issues relevant to PWD is constrained by ideas of “peculiarity” and “complexity”, whereby PWD are characterized first and foremost by their “impairments” and

5. Wang Changhong, The Protection of Rights and Interests of Employees with Disabilities Should Be Strengthened -- Research Report on Current Legal Needs of Persons with Disabilities in Beijing, China Staff Education, Vol. 2, 2007; Yu Beihong, Chen Mingyi, Where to Go? Research on Legal Aid and Preferential Policies for Persons with Disabilities in Fuzhou City of Fujian Province, Disability in China, Vol. 3, 2003.

6. Li Yueling, An Empirical Research on the Influence Factors of Northwest Rural Disabled Persons' Community Legal Demands, Lanzhou University Master Dissertation, instructed by Feng Shiping, May 2009; Feng Shiping and Feng Xuelan, Research on Community Service Needs of Persons with Disabilities in Northwest Rural Areas -- Persons with Disability in Rural Areas of Gansu Province as an Example, Disability Research, Vol. 1, 2012; Li Hongying, Research on Legal Service and its Preferred Strategy for Persons with Disabilities in Community -- Shanghai City as an Example, East China University of Political Science and Law Master Dissertation, April 2013.

7. The Second China National Sample Survey on Disability Office and Institute of Population Research of Peking University, The Statistics of China's Second National Sample Survey on Disabled People, Huaxia Publishing House, 2008, pages 196 -197; See also Beijing Disabled Persons' Federation and the School of Sociology and Population Studies in Renmin University, Survey Report on Beijing's Disabled Service Demand, 2009, <http://www.bdpf.org.cn/zwpd/llyj/zys/c15885/content.html>.

8. Zhang Jinming, Challenges of Home Rehabilitation Service for Persons with Disabilities, Talang Electronic Information for Persons with Disabilities, Vol. 1, July 2016.

9. Most of the authors are from official legal aid organs or disabled persons' federations, a few are from law schools. For example, Zhao Xiaozhi, How to Do Well in Legal Aid Work for Persons with Disabilities, Market Weekly, Vol. 11, 2010; Dai Dongguang, Present Situation, Problems and Strategies of Legal Protection of Persons with Disabilities, Disability in China, Vol. 5, 2012; Meng Yanhua, Practice and Thinking of Legal Aid for Persons with Disabilities in Henan Province, Rencai Ziyuan Kaifa, Vol. 7, 2012; Wang Lijun, The Importance of Legal Aid for Persons with Disabilities, Scientific Chinese, Vol. 1, 2014, etc.

10. Ding Peng, Equal Access to Justice for Persons with Disabilities: Legal Framework and Case Review, in Zhang Wanhong, ed., “Disability Rights Studies in China”, Vol. 2, No. 1, Social Sciences Academic Press, 2015; Bo Shaoye and Jia Wuguang, ed., Selection of Cases on Protecting the Rights of Persons with Disabilities in China, China Braille Press, 2007.

11. Zhang Wanhong and Ding Peng, Guide on Rights Protection of Pre-trial Detainees with Disabilities, in Zhang Wanhong, ed., “Disability Rights Studies in China”, Vol. 2, No. 2, Social Sciences Academic Press, 2016.

even “inherent deficiencies”. Here, little attention is paid to the role of external “barriers” faced by PWD. For example:

*“Disabled persons always feel depressed and inferior, and when they are affected by the pressures from outside, they are often inclined to react with hostility and revenge. Instead of seeking legal services, they would become extremists by either enduring them or taking revenge.”<sup>12</sup>*

*“Disabled persons are prone to have extreme views about the society because they are mentally closed and physically mutilated, and it is hard for them to communicate with lawyers.”<sup>13</sup>*

*“As disabled persons are discriminated against for a long time, they always suffer from depression and mental malfunction. Once it gets unbearable, their behaviors would become shocking - they would either become extremely sensitive and paranoid during the litigation process, disregard the rules of the court and do nothing but blame and accuse, or they would behave unreasonably, even act up, making it hard for the bailiff to take compulsive measures and for the judge to drive any conclusion.”<sup>14</sup>*

This research finds that the deep-rooted discrimination against PWD, especially in terms of defining PWD only by their “inherent defects” and “abnormalities”, is also shared by practitioners who provide legal aid.<sup>15</sup> Al-

though the Ministry of Justice called for the legal aid sectors nationwide to learn from the example of Panlong District, Yunnan Province, in offering “barrier-free” services to PWD as early as 2007,<sup>16</sup> there is still a long way for both researchers and practitioners to go in realizing this. In the aforementioned literature, only a few researchers who are acquainted with the *CRPD* can critically point out that, the social construction of PWD together with the self-identification of PWD themselves, create the stereotype that disabled persons are “poor”, “dependent” and “needy”. In effect, the true protection of the rights of PWD is compromised by denying their agency in decision-making and treating them as passive objects of charity.<sup>17</sup> The example of Taiwan can be used as a reference: Article 74 under the Law on the Protection of Persons with Disabilities prescribes that should PWD be involved in legal issues, the media shall not attribute the cause of the incident to the illness or other disabilities of the concerned parties if the court does not make a verdict that the cause of the incident is due to the illness or other disabilities of the concerned parties.<sup>18</sup>

Moreover, except for one researcher with the National Legal Aid Center under the Ministry of Justice who has argued that the improvement of legal aid services necessarily addresses various barriers that characterize different disabilities,<sup>19</sup> few have broached the topics of “accessibility” and “reasonable

12. Wang Lijun, The Importance of Legal Aid for Persons with Disabilities, *Scientific Chinese*, Vol. 1, 2014.

13. Tao Yang and others, Research on Disabled Persons’ Legal Aid System, *Humanities & Social Sciences Journal of Hainan University*, Vol. 3, 2016.

14. Li Yunfeng and Qiu Yujuan, On the Judicial Assistance to Persons with Disabilities: Case Analysis of a Basic Level Court, Xincheng Court of Xi’an City Net, <http://sxxcfy.chinacourt.org/public/detail.php?id=148>. Accessed on 1 October 2011.

15. From the author’s participatory observation on several Disability Equality Training (DET) of this project.

16. Ministry of Justice, Notice on Learning from the Panlong Experience of Strengthening Legal Aid for Persons with Disabilities, *Legal Daily*, Page 8, 20 May 2007.

17. Zhao Shukun, Issues and Research Trend of Legal Protection of Persons with Disabilities, *Academic Exchange*, Vol. 7, 2015.

18. Full text of this law can be found at <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=D0050046>.

19. Xia Hui, Problems and Advice on Legal Aid for Persons with Disabilities, *Justice of China*, Vol. 11, 2014.



accommodation”.<sup>20</sup> Section 3.3, 3.5 and 4.5 of this report argue that in the existing cases on the protection of the rights of PWD, service providers and journalists may lack the perspective of equality and accessibility.

In the international community, the topic of the legal needs of PWD and their access to justice is also relatively novel. Pertinent research include comprehensive explorations on the “access to justice” based on the *CRPD*;<sup>21</sup> guiding documents issued by international organizations such as the UNDP on the access to justice, the establishment of rule of law and the alleviation of poverty;<sup>22</sup> surveys on legal needs carried out at the national level, and particularly pointing out that PWD are more likely to encounter legal issues than other vulnerable groups;<sup>23</sup> monographic studies on the access to equal protection and fair trial for PWD in criminal justice,<sup>24</sup> as well as particular focus on the participation of persons with mental or intellectual dis-

abilities,<sup>25</sup> the deaf community,<sup>26</sup> indigenous disabled persons,<sup>27</sup> women and children with disabilities,<sup>28</sup> witnesses and jurors with disabilities<sup>29</sup> in judicial proceedings. Given that “access to justice” constitutes an essential part of Goal 16 of the UN Sustainable Development Goals (2015-2030) “promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable, and inclusive institutions at all levels”,<sup>30</sup> it can be anticipated that more research will emerge in the intersection of human rights and development.

To summarize, with regards the access to justice for PWD, the current Chinese literature is insufficient in empirical research and seldom incorporates a rights-based perspective. There is a limited number of in-depth explorations into the rich experience of the case handling departments, legal aid organizations and the rights-protection departments

20. During the early stage of legal aid in China, such as the brief of legal aid work for persons with disabilities from 1996 to 1998, some good practice had been developed and they are still useful for current practice, such as door-to-door service, “three priorities” service, extensive legal popularization (including the use of sign language to disseminate the information), setting up network which covers the whole rural community, etc. However, it still takes a long process to include the perspective of accessibility in above-mentioned experience in practice. See Du Yu, *Severe Law but Sensitive Humans – Review of the Disability Legal Service of the Past Two Years (Part 1 and Part 2)*, *Disability in China*, Vol. 2, Vol. 3, 1999.

21. Eilionoir Flynn, *Disabled Justice? Access to Justice and the UN Convention on the Rights of Persons with Disabilities*, Ashgate, 2015.

22. UNDP, *Practice Note on Access to Justice*, 3 September 2004, and its other reports on the access to justice for persons with disabilities, women, and minorities, such as *Strengthening Judicial Integrity through Enhanced Access to Justice*, 2013.

23. Christine Coumarelos and others, *Legal Australia-Wide Survey: Legal Need in Australia, Access to Justice And Legal Needs*, Volume 7, August 2012.

24. Claire Edwards, *Spacing Access to Justice: Geographical Perspectives on Disabled People's Interactions with the Criminal Justice System as Victims of Crime*, *Area*, Volume 45, Issue 3, pages 307–313, September 2013; The Law Council of Australia, *Access to Justice in the Criminal Justice System for People with Disability*, 2013, <https://www.lawcouncil.asn.au>, Jenny Talbot, *Fair Access to Justice? Support for Vulnerable Defendants in the Criminal Courts*, 2012, <http://www.prisonreformtrust.org.uk/portals/0/documents/fairaccesstojustice.pdf>.

25. Abigail Gray, Suzie Forell and Sophie Clarke, *Cognitive Impairment, Legal Need and Access to Justice*, [http://www.lawfoundation.net.au/ljf/site/articleIDs/2EDD47C8AEB2BB36CA25756F0018AFE0/\\$file/JI10\\_Cognitive\\_impairment.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/2EDD47C8AEB2BB36CA25756F0018AFE0/$file/JI10_Cognitive_impairment.pdf), 2009.

26. Jamie MacDougall, *Access to Justice for Deaf Persons in Nunavut: Focus on Signed Languages*, 2000, [http://www.justice.gc.ca/eng/rp-pr/aj-ja/rr00\\_17/rr00\\_17.pdf](http://www.justice.gc.ca/eng/rp-pr/aj-ja/rr00_17/rr00_17.pdf).

27. Carol Pollack, *Access to Justice for Indigenous Persons with Disabilities: Key Issues and Opportunities*, Columbia University Academic Commons, <http://dx.doi.org/10.7916/D8V986ZZ>, 2014.

28. Dorah Caroline Mafabi, *Legal Aid, A Tenet of Access to Justice: The Case of Women with Disabilities in Post-conflict Northern Uganda*, [www.pilac.ac.ug](http://www.pilac.ac.ug), 2014; Stephanie Ortoleva, *Forgotten Sisters – A Report on Violence Against Women with Disabilities: An Overview of its Nature, Scope, Causes and Consequences*, Northeastern University School of Law Research Paper No. 104-2012.

29. Janine Benedet, Isabel Grant, *Taking the Stand: Access to Justice for Witnesses with Mental Disabilities in Sexual Assault Cases*, *Osgoode Hall Law Journal*, Volume 50, Issue 1 (Fall 2012).

30. <http://www.un.org/sustainabledevelopment/zh/peace-justice/>.

of the Disabled Persons' Federation (DPF), as well as on the different experiences of PWD with various disabilities and genders.<sup>31</sup> Theoretically, these studies have not sufficiently analyzed the impacts that the access to justice for PWD can exert on building a society based on the rule of law and achieving individual development (including but not limited to effective poverty alleviation), and how the profounder movements on anti-discrimination and equal rights can influence the current legal systems.<sup>32</sup> Practically, the existing research fails to provide constructive recommendations on strategies to enhance the access to justice for PWD.

### 1.3 Research Methods

The research combines qualitative and quantitative research methods. The qualitative research includes interviews, participatory observations and case studies. The interviewees include around 20 persons with hearing impairments, a dozen community DPF coordinators with physical disabilities, and a dozen lawyers from Wuhan, Nanjing, and Beijing. Participatory observations mainly take place in the five Disability Equality Trainings (DETs) for legal aid providers in Beijing, Nanjing, and Wuhan. The sources of case studies include inquiries handled by the institution to which the researchers belong, the websites for open judicial documents, typical cases published

by the Supreme People's Court, cases selected as the "Top10 Legal Aid Cases for Persons with Disabilities" in H Province, as well as other pertinent cases on monographic websites and<sup>33</sup> in news reports and research papers.

The quantitative research is mainly based on 529 questionnaires handed out among PWD in Wuhan, Nanjing, and Beijing between April and June in 2016. The questionnaires were distributed by local community DPF coordinators or facilitators, and the interviewed families with disabled persons were defined through purposive sampling. The questionnaires were filled out in the households of the respondents or at the community center, and trained volunteers would provide necessary support – such as "read-out" services – to the respondents to help them complete the questionnaires. As the research conditions were limited, most of the respondents were urban residents. Moreover, to increase the likelihood that respondents had some form of knowledge of their legal needs, the sampling method prescribed that the respondents would be at least 18 years of age. Therefore, the demographic characteristics of the sampling are different from the statistics of China's Second National Sample Survey on Disabled People in terms of age, degree of disability, marriage status, employment (see Table 1), and proportion of the types of disability (see Figure 11).

31. Cross identities here could include more factors such as age, ethnicity, religion, sexual orientation and gender expression, etc.

32. Some authors have noted that as the development of China's Affirmative Action Movement, equal protection of persons with disabilities, in particular, may raise the question against the general policy that "Giving Priority to Efficiency with Due Consideration to Fairness" and lead to a "constitutional model" of anti-discrimination law reform. See Yan Tian, *Equal Rights Reform and Legal Change in China*, Tsinghua University Press, 2016, the preamble.

33. For example, cases collected from China Legal Aid Net (<http://www.chinalegalaid.gov.cn/>), Canjiren Jiayuan Net (<http://www.cjrj.org/>), etc.

<b>Table 1: Demographic characteristics of quantitative research sampling in the research</b>		
	<b>The statistics of the second China national sample survey on disability</b>	<b>Sampling data of the research</b>
<b>Gender ratio</b>	Male 51.5%; Female 48.5%	Male 52.5%; Female 47.5%
<b>Age ratio</b>	0-14, 4.7%; 15-59, 42.1%; 60 and above, 53.2%	0-18, 1%; 19-40, 24%; 41-60, 54%; 60 and above, 21%
<b>Level of disability</b>	Severe disabilities of Level 1, 2, 29.6%	Severe disabilities of Level 1 & 2, 40.2%
<b>Marriage status</b>	Unmarried 12.4%; Married 60.8%	Unmarried 24.6%; Married 61.3%
<b>Employment</b>	Urban employed PWD 38.7%	Urban PWD never employed 25.7%, unemployed 19.8%, employed 17.8%, retired 36.8%

Thus, the research will analyze the quantitative data by describing the sample and illustrating the legal needs and pertinent experiences of specific disabled groups, so as to support the qualitative research. Additionally, the quantitative research includes a comparative analysis of the pre and post-training questionnaires for more than 70 respondents

in the four Disability Equality Trainings (DETs) for legal aid providers. The analysis aims to illustrate the effectiveness of equipping legal aid service providers and other stakeholders with a better understanding of the issues of (in)equality that PWD face through participatory and inclusive methods.

## 2. Legal Framework and Policy of Access to Justice for PWD

This section seeks to uncover how PWD pursue justice under the current legal framework. Specifically, it asks which laws are applicable and what kinds of services and support can be obtained. Additionally, it asks, upon analyzing the practices in different regions, what kinds of policies help PWD overcome external obstacles to realize equality in judicial protection. With the same concern of the Commission of *CRPD*, this study, by focusing on China's legal aid system and combining the aforementioned five factors for the PWD's access to justice, will present related analysis and suggestions. Among them, legal framework and policy practice correspond to the first factor, "a sound legal system"; legal aid corresponds to the fourth factor, "assessable legal service". Additionally, the ways that PWD receive related information of law and policy in a convenient and accessible way relates to the second factor.

Due to constraints in space, this report will neither discuss the legal capacity of PWD in Article 12 of *CRPD* nor discuss the current debate on the legal capacity and guardianship system in the draft of *General Rules of Civil Law* in China. Conversely, our research focus will center on the general principle of the *CRPD*, which aims to respect and uphold the equality and freedoms of PWD. Specifically, this principle looks to reform the "substitutive decision making" in the past by focusing on "supportive decision making". Here, emphasis is placed on speaking with, rather than for, the individual with disabilities.<sup>34</sup> This

helps to avoid excessive representation in the judicial process and helps to foster the independent participation of PWD.

### 2.1 Legal Aid: A Crucial Component in Access to Justice for PWD

In the modern era, the development of legal aid in many societies founded upon the rule of law has transitioned from a "charity" based to a "rights" based model. Legal aid contains distinctive human rights features: first, for civil and political rights, economic rights, social rights, and cultural rights of individuals, legal remedy is the last resort for realizing these rights. For most of the poor and the weak in society, only when they know of and make use of the legal aid that is available to them can they be capable of claiming and upholding their own rights. Second, receiving timely, convenient, and effective legal aid is itself a basic human right. In this way, "legal aid", when seen as a right, should be spoken of in tandem with "rights-holders" and "duty-bearers", as well as "impact assessment criteria".

All human rights are interlinked and mutually constitutive, and thus are the rights stipulated in the *CRPD*. At a cursory glance, access to justice, especially legal aid, for PWD may appear to be exclusively a procedural right. However, it is actually inseparable with other substantive rights. Securing better rehabili-

34. Robert D. Dinerstein, Implementing Legal Capacity Under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road From Guardianship to Supported Decision-Making; Human Rights Brief, Volume 19, Issue 2, 2012, its Chinese translation can be seen in Chen Bo, Implementing Legal Capacity Under Article 12 of the UN Convention on the Rights of Persons with Disabilities: The Difficult Road From Guardianship to Supported Decision-Making, in Liu Xiaonan, ed., "Anti-Discrimination Law Review", Vol. 1, Law Press, 2014.

tation, education, and employment; receiving increased information and expressing opinions more effectively; and participating in family and social life are activities that are contingent upon and mutually interdependent with the issue of accessing justice. Correspondingly, the government's obligation in formulating relevant legislation and policies (Article 2 and 12 in the *CRPD*) is inseparable with its obligations in achieving a better understanding of "taking effective and proper action at once" (Article 8), guaranteeing equal accessibility support and reasonable accommodation (Article 5 & 9), providing public legal service (Article 13) and legal information (Article 21), and so forth.

According to the current legal system in China, legal aid refers to the free legal service that is provided by the State. Legal aid is used to guarantee necessary assistance, such as legal advice, procuration, and criminal defense, to impoverished citizens and persons involved in "special" cases. The legal aid system "with socialist Chinese characteristics" constitutes the leadership of the CPC Committee and the government, the execution of judicial administrative agencies, the coordination and collaboration of relevant departments, and the wide participation of the public. Legal aid is an important project affecting citizens' well-being and a basic public service.<sup>35</sup> Generally, the providers of legal aid include full time legal aid lawyers, social lawyers providing service assigned by legal aid authorities, notaries, judicial appraisers,

and legal service workers at grassroots level, as well as legal aid volunteers.<sup>36</sup>

Helping more PWD receive timely legal aid, legal service, and legal remedies has become an important agenda that is clearly explicated in documents including the *Outline of the 13<sup>th</sup> Five-Year Plan for Speeding up the Well-off Process of Disabled Persons and National Human Rights Action Plan of China (2016-2020)* in China.<sup>37</sup> Legal aid is at the center of equal access to justice for PWD due to the following distinctive features of China's legal aid system :

### **1) The broad coverage of grassroots-level legal aid service network.**

Until 2014, the justice department, after over 20 years of work, established 40,024 legal aid workstations<sup>38</sup> in 40,381 towns<sup>39</sup> by relying on local justice stations. Moreover, up until the end of 2015, throughout the entire country 2,847 legal aid workstations were established for PWD with support from local Disabled Persons' Federations.<sup>40</sup>

### **2) Clear and proactive legal aid policy.**

As mentioned in Section 2.2 and 2.3, from national laws and *Opinions on the Improvement of Legal Aid System* formulated by General Office of CPC and General Office of the State Council, to local legal aid policies, there are special provisions on providing legal aid for PWD that are, at the same time, being constantly updated and improved.

35. Sang Ning, Promoting the Modernization of Legal Aid Governance, Justice of China, Vol. 5, 2016.

36. Zhang Wanhong and Ding Peng, Legal Aid and Human Rights Protection, in Junru Li, ed., "Annual Report on China's Human Rights No.2 (2012)", Social Science Academic Press (China), 2012.

37. The State Council, Thirteen-Five Plan for Accelerating the Process of Well-Off Society of Persons with Disabilities, [http://www.gov.cn/zhengce/content/2016-08/17/content\\_5100132.htm](http://www.gov.cn/zhengce/content/2016-08/17/content_5100132.htm); Information Office of the State Council, National Human Rights Action Plan of China (2016-2020), Xinhua Net, [http://news.xinhuanet.com/politics/2016-09/29/c\\_129305934.htm](http://news.xinhuanet.com/politics/2016-09/29/c_129305934.htm).

38. The Ministry of Civil Affairs, 2014 Social Service Development Statistics Bulletin, <http://www.mca.gov.cn/article/zwgk/mzyw/201506/20150600832371.shtml>; there were 39,789 among all national towns in 2015 (<http://www.mca.gov.cn/article/sj/tjgb/201607/20160700001136.shtml>), here we use statistics of 2014 to compare with the legal aid statistics of 2014.

39. Legal Aid Division in Ministry of Justice, 2014 National Legal Aid Statistics ( I ), Justice of China, Vol. 6, 2015.

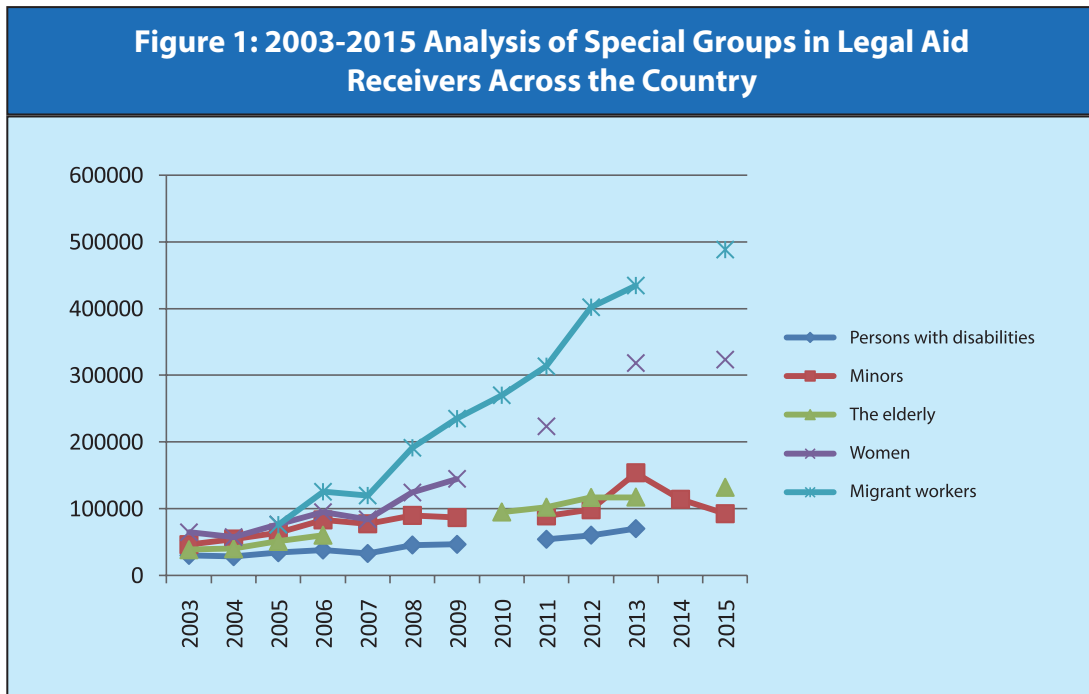
40. Liu Ziyang, Legal Aid Passes Special Love to Special Persons, [http://www.legaldaily.com.cn/index\\_article/content/2016-09/02/content\\_6789050.htm?node=6148](http://www.legaldaily.com.cn/index_article/content/2016-09/02/content_6789050.htm?node=6148).

### 3) A large number of legal aid providers.

By the end of 2014, there were 14,533 employees in legal aid agencies across the country, and 4,771 registered full time legal aid lawyers. Moreover, by the end of 2015, the number of practicing lawyers reached 297,000; from 2012 to 2015, the lawyers handled over 1.54 million legal aid cases and provided nearly 10 million cases of pro bono legal service.

It should be noted that the current legal aid for PWD still has huge room for improvement in terms of institutional arrangement, organizational structure, service provision, and commanding social influence. By analyzing the data of aid receivers from 2003 to 2015 (Figure 1), we find that PWD is a primary target group of legal aid since the issuance of *Legal Aid Regulations* in 2003. However,

since 2006, the number of migrant workers receiving legal aid has increased the most (including many cases of on-duty injury leading to disabilities), followed by the number of women who received legal aid. Although the proportion of minors and the elderly aid recipients are relatively small, the percentage of PWD is the lowest among all at merely 6%.<sup>41</sup> Looking at local data, there are 990,000 permanent residents in a relatively developed urban district in southern China, but the civil and criminal legal aid cases for PWD only counted for an average of 46 each year from 2011 to 2015, which constituted only 5% of the total number of legal aid cases that were handled.<sup>42</sup> In an underdeveloped city in central China, where the population is 2.89 million, there were 195 legal aid cases in 2015, among which only 11 targeted PWD, including three with mental disabilities.<sup>43</sup>



Resource: China Legal Aid on-line, [http://www.chinalegalaid.gov.cn/China\\_legalaid/node\\_24953.htm](http://www.chinalegalaid.gov.cn/China_legalaid/node_24953.htm), *China's Judicial and so on. Lacking of classified data of legal aid for PWD in the year of 2010, 2014, and 2015.*

41. Ding Peng, *The Equal Access to Justice for Persons with Disabilities*, in Zhang Wanhong, ed., "Disability, Rights and Justice -- Disability Law Textbook", Social Sciences Academic Press (in process), 2017.

42. Lawyer Ma's speech in a conference in July 2016.

43. Lawyer Xu's speech in a conference in July 2016.

## 2.2 Institutional Framework of Legal Aid for PWD

There are no fixed legal provisions that systematize the ways in which PWD receive legal aid. Instead, related provisions appear to be scattered in different laws and regulations (see Table 2). Overall, these legislations, and the practice thereof, have the following limitations: 1) They are relatively narrow in scope. For example, designated defense in criminal cases is limited to the blind, deaf, mute, and people with mental illness who have not completely lost the capacity to recognize or control their behaviors. In civil cases, there is a strict means test for applicants. 2) The systematized guarantee of legal aid is imperfect and the degree of legal effect of

the provisions is often not high enough. In other words, the majority of these stipulations are merely administrative regulations and the Legal Aid Law is only just being drafted. 3) For related legal departments, including the case-handling departments of public security agencies, justice department, and legal aid organizations, there is both a lack of knowledge and the necessary resources to implement current legal aid standards. 4) Implementation of the current legal aid standards requires coordination and cooperation from local governments and other departments, as well as the wider support from the public. All of these aspects hinge on further developing the overall governance of the country.

**Table 2: Laws & Regulations Related to Legal Aid for PWD**

<b>Laws</b>	Amended by National People's Congress • Article 33, <i>Criminal Procedure Law</i> , 2012
	Formulated or amended by the Standing Committee of NPC • Article 60, <i>Law on the Protection of Person with Disabilities</i> , 2008 • Article 57 & 58, <i>Civil Procedure Law</i> , 2012 • Article 5 & 19, <i>Anti-Domestic Violence Law</i> , 2015 • <i>Legal Aid Law</i> (being drafted)
<b>Administrative regulations</b>	Article 10, <i>Legal Aid Regulations</i> , 2003 by the State Council
<b>Local regulations</b>	e.g. <i>Legal Aid Regulations of Hubei Province</i> , 2011, and the legal aid regulations formulated by the People's Congress in other provinces
<b>Departmental regulations, Local governments' regulations</b>	<i>Regulations on the Work of Criminal Procedure Legal Aid</i> , issued by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, and Ministry of Justice in 2013 e.g. <i>Measure for Implementation of Criminal Procedure Legal Aid Work of Hubei Province</i> , issued by High People's Court, High People's Procuratorate, Department of Public Security, and Department of Justice of Hubei Province in 2015

### 2.2.1 Access to Legal Aid for PWD in Civil and Administrative Cases

The standards of applying for legal aid across the country usually consists of two conditions - “means test” and “scope of the case”, and the explicit details thereof are determined by local legal aid regulations or implementation measures. For example, according to related regulations of Hubei Province and Wuhan City, when the local PWD apply for civil or administrative legal aid, the standards of means test and scope of the case are as follows:

To provide evidence for economic hardships, PWD can: 1) present their PWD Certificate with evidence of lacking fixed source of income certified by local village committee or residence committee; 2) present the Minimum Living Allowance Certificate or Certificate of “Rural Households of *Wubao*” (livelihood guaranteed in five aspects), this serves as an alternative to providing other evidence of impoverished state; 3) in other situations, evidence should be provided that the monthly income of the applicant or the applicant’s family is lower than 1.5 times the minimum living allowance. Since 2015, the minimum living allowance in the urban areas and in the rural areas in Wuhan was 580 RMB per month and 320 RMB per month respectively. According to this standard, on average urban residents who earn less than 870 RMB per month and rural residents with less than 480 RMB per month can meet the means test standards for legal aid in Wuhan.

In civil and administrative cases, the scope of eligible cases for legal aid for PWD includes: all kinds of tort compensation claiming cases; claiming state compensation according to the law; requesting alimony, child-support

payment, and spouse-support payment; requesting pension, relief payment, and the minimum living allowance; advocating rights in labor dispute; claiming civil rights and interests for protecting public interest; claiming civil rights and interests for suffering from domestic violence, maltreatment, and abandonment; claim compensation for personal injury or property loss due to traffic accident, on-duty injury, medical negligence, food security, environmental pollution, bad quality of product, and agricultural means of production; and other cases demanding legal aid as approved by legal aid organizations.

In practice, legal aid organizations can properly broaden and flexibly apply the eligibility criteria of legal aid for PWD to protect the rights and interests of those who are in need.<sup>44</sup>

### 2.2.2 Access to Criminal Legal Aid for PWD

In analyzing how PWD receive legal aid in criminal cases, this report will take Wuhan in Hubei Province as an example. According to the current legal framework, there are several relevant situations:

First, designated defense or notified defense without application: i.e. if the suspects or defendants are blind, deaf, mute, or minors, or persons with mental illness that lack capacity to recognize or control their actions, or they face a death sentence or life imprisonment in the suspected case but are without a commissioned defender, the departments handling the case, including the public security organs, the procuratorate and the court, must appoint a free attorney for them.

44. According to the author’s interview with local legal aid lawyers in Wuhan in May 2016.



Second, application for criminal legal aid with exemption of means test: i.e. if the suspects or defendants are persons with disabilities, they can directly apply for criminal legal aid in the following situations: suspects are living with Degree-1 or Degree-2 intellectual disability; suspected of a joint crime and other suspects or defendants have already appointed their attorneys; the case is counter-appealed by the People's Procuratorate, or the case is considered "with significant social influence".

Third, for criminal cases other than the aforementioned, if the suspects or defendants are disabled, when they apply for criminal legal aid, they should satisfy the means test required by the local implementation measures of legal aid.

Moreover, if PWD are the victims in a criminal case of public prosecution, a claimer in cases of private prosecution, or another sort of participant in the judicial proceeding, they themselves or their legal representatives can apply for criminal legal aid according to the means test standards. In special situations, if PWD become the defendant of compulsory medical treatment from the suspect or defendant and has no designated attorney, the departments handling the case – including the public security agencies, the procuratorates, and the courts – must appoint a free attorney. This kind of legal aid does not require application from the suspected parties or the satisfaction of means test.

## 2.3 Local Policy and Practice of Legal Aid for PWD

Legal departments in various regions and the DPFs have explored many meaningful policies and practices related to implementing the above-mentioned laws and regulations.

### 2.3.1 Exploring Different Channels for Raising Awareness of Legal Aid for PWD

The local DPFs coordinates with legal aid agencies and related departments to establish legal aid workstations, disseminate legal aid information, assess legal aid demands, and timely provide legal aid in special education schools.<sup>45</sup> Besides, through government procurement of services, they also carry out "courtyard legal services", allowing lawyers to deliver legal service to PWD and their families in different villages.<sup>46</sup>

### 2.3.2 Extending the Coverage of Legal Aid for PWD

For example, in Beijing, persons with severe disabilities are no longer subjected to the means test. In 2015, legal aid organizations in Beijing handled in total 1,292 legal aid cases for PWD.<sup>47</sup> The government of Shandong Province has amended legal aid regulation by abolishing the limit on case scope. In 2015, Shandong Province handled 3,834 legal aid cases for PWD, which marks a 13% increase compared with the previous year.<sup>48</sup> Moreover, the Justice Department and DPF of Zhejiang Province required that all DPFs at

45. Department of Justice and Disabled Persons' Federation of Anhui Province, Notice on Further Strengthening Legal Aid Work for Persons with Disabilities (August 2013), <http://36.7.109.3:9012/upload/2014-04/2014042110201214007607621.pdf>.

46. Beijing Legal Aid Net, Three Measures to Do Well in Legal Aid and Human Rights Protection for Persons with Disabilities in Changping District, <http://www.bjlegalaid.gov.cn/tabid/338/Infoid/10301/Default.aspx>, 2016.

47. Huang Jie, Beijing: Green Channels of Legal Aid for Disadvantaged Groups, *Legal Daily*, Page 2, 10 March 2016.

48. Jiang Dongliang and others, Department of Justice of Shandong Province: Towards Innovation of Legal Aid in the Province, released on 10 March 2016, China Chang'an Net, <http://www.nxzf.gov.cn/gwxx/31771.htm>.

the county level across the province should establish legal aid workstations for PWD by the end of 2015. Also, they are to treat legal aid cases for PWD as priority cases, covering the basic living allowance, rehabilitation, school admission and entrance examination, and employment, and special cases of rights infringement involving discrimination and insult.<sup>49</sup>

### 2.3.3 Strengthening Specialized Skills of Legal Aid Providers

The legal aid organizations designate lawyers who are good at communication, understand the mentality of PWD, and at the same time have rich experience in rights protection to handle the legal aid cases for PWD.<sup>50</sup> In order to improve the service and capacity of these lawyers, local DPFs carry out trainings in practical skills, psychology, legal sign language, and so forth. These practices highlight the necessity of specialized trainings and the fact that in practice lawyers may need to be accompanied with a professional sign language interpreter or judicial social worker.

### 2.3.4 Prioritizing Accessible Facilities and Support

Many legal aid organization focus on improving the physical environment to ensure barrier-free facilities for PWD are available all

day long, providing people with mobility difficulties increased ease of travel.<sup>51</sup> All of the 15 legal aid organizations in Hangzhou City have established these barrier-free facilities.<sup>52</sup>

In criminal cases, due to the stipulation in the *Criminal Procedure Law*, departments of the Public Security Bureau, People's Procuratorate and People's Court will provide funding to ensure that persons with hearing impairments can get a sign language interpreter. Yet, there is no clear stipulation for the arrangement of sign language interpreters for legal aid lawyers. Several local regulations stipulate that if the legal aid lawyer needs an interpreter when meeting a deaf suspect, departments of the Public Security Bureau, People's Procuratorate and People's Court should help to arrange an interpreter, and the expense will be borne by the legal aid agencies responsible for the case.<sup>53</sup> Alternatively, if the conditions are permitting, the departments should provide the lawyer with staff who are familiar with sign language or an interpreter.<sup>54</sup> In civil legal aid, there is no clear stipulation on the responsible party for providing sign language interpretation. Some local policies point out that if the aid recipient has hearing disabilities, the DPFs should hire a sign language interpreter for them and bear the related expenses.<sup>55</sup>

49. Department of Justice of Zhejiang Province and Disabled Persons' Federation, Notice on Organizing the Special Events of "Legal Aid and Helping Persons with Disability in Sunshine", 8 June 2015, Department of Justice of Zhejiang Province Net, [http://www.zjsft.gov.cn/art/2015/6/8/art\\_9\\_41946.html](http://www.zjsft.gov.cn/art/2015/6/8/art_9_41946.html).

50. Department of Justice of Zhejiang Province and Disabled Persons' Federation, Notice on Organizing the Special Events of "Legal Aid and Helping Persons with Disability in Sunshine", 8 June 2015, Department of Justice of Zhejiang Province Net, [http://www.zjsft.gov.cn/art/2015/6/8/art\\_9\\_41946.html](http://www.zjsft.gov.cn/art/2015/6/8/art_9_41946.html).

51. Beijing Legal Aid Net, Three Measures to Do Well in Legal Aid and Human Rights Protection for Persons with Disabilities in Changping District, <http://www.bjlegalaid.gov.cn/tabid/338/Infoid/10301/Default.aspx>, 2016.

52. Legal Aid Center of Hangzhou City, Legal Aid Organs Keep the "Four Focus" and Help Persons with Disabilities in the Special Month of Disabilities, [http://hzfy.hzsf.gov.cn/flyzout/risen/tzgz/indexdetails.action?TZGZ\\_ID=1843](http://hzfy.hzsf.gov.cn/flyzout/risen/tzgz/indexdetails.action?TZGZ_ID=1843), 2016.

53. Measures for the Implementation of Criminal Legal Aid in Guizhou Province (November 2014) Article 44, <http://www.gzsft.gov.cn/contents/34/8125.html>.

54. Measures for the Implementation of Criminal Legal Aid in Hubei Province (September 2015) Article 25, [http://ls.xf.cn/publish/cbnews/201511/11/cb1513\\_1.shtml](http://ls.xf.cn/publish/cbnews/201511/11/cb1513_1.shtml).

55. Department of Justice of Anhui Province and Disabled Persons' Federation, Notice on Further Strengthening Legal Aid Work for Persons with Disabilities (August 2013), <http://36.7.109.3:9012/upload/2014-04/2014042110201214007607621.pdf>.

Moreover, there are barrier-free communication platforms for PWD (or barrier-free call service platforms), which provide accessible information and communication services mainly for persons with hearing, spoken, and visual disabilities. These services include emergency call-in messages, transition between landline and mobile phone, location navigation services, information inquiry, and so forth.<sup>56</sup> China Disabled Persons' Federation (CDPF) also requires the whole country to establish a service hotline "12385" for PWD.<sup>57</sup> Mainstreaming these services into the whole

process through which PWD access justice might help increase the accessibility of public services. For example, through government procurement of services, the DPF of Beijing provides a 2,000-hour legal sign language interpretation service that includes consultation, arbitration and litigation to empower persons with hearing disabilities to remove obstacles in defending their rights, and safeguarding the interests of PWD more generally.<sup>58</sup>

---

56. Disabled Persons' Federation of Beijing Net, <http://www.bdpf.org.cn/zhyy/jlpt/index.html>.

57. General Office of the China Disabled Persons' Federation, Notice on Issuing National Service Hotline 12385 Program, [http://www.cdpf.org.cn/ywzz/wq\\_188/xfgz/201603/t20160322\\_545416.shtml](http://www.cdpf.org.cn/ywzz/wq_188/xfgz/201603/t20160322_545416.shtml). Although the program includes "Rights Protection" into the hotline service, it points out that issues which should be or have been settled by legal ways such as litigation, arbitration and administrative reconsideration do not belong to the range of hotline service.

58. Wang Mingliang, City Disabled Persons' Federation "Legal Sign Language Rights Protection in Action" Program Has officially Launched, 18 May 2015, Beijing Disabled Persons' Federation Net, <http://www.bdpf.org.cn/zxpd/gzdt/wqzx/c24062/content.html>.

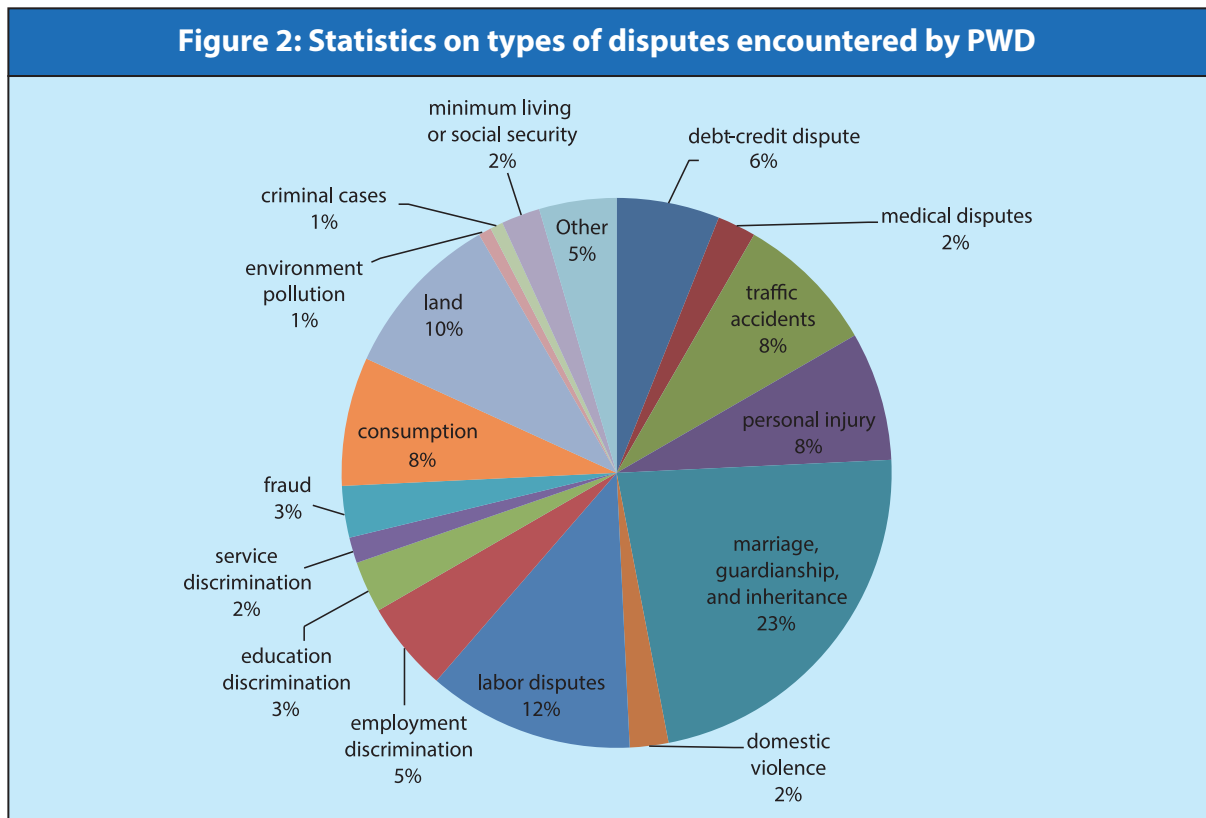
### 3. Analysis of the Legal Needs of PWD

The legal needs of PWD are closely related to the second key factor of equal access to justice, “legal information that is easy to understand”, and the third factor, “legal awareness and positive attitude of the rights-holder”. As per the experiences and demand of PWD, the fifth factor “accessibility and reasonable accommodation”, shall also be considered in assessing the current legal practices. Therefore, through a combination of quantitative data and qualitative research, this section will present dispute resolution experience of PWD, explain the degree of their legal aid awareness, delineate the experience of persons with different types of disabilities when accessing legal protections. All the while this section will apply a gendered perspective to analyze the legal needs of PWD and emphasize that PWD need support in terms of accessibility and reasonable accommodation throughout the whole judicial process.

#### 3.1 General Dispute Resolution of PWD

This project conducted questionnaire survey in three localities – Beijing, Wuhan, and Nanjing, and in total 529 valid samples are collected. In accordance to the survey, 112 responded to have encountered legal disputes personally or by family and friends, which constitutes 21.8% of valid responses. Figure 2 categorizes 132 cases of disputes according to different categories. We can see that marriage, guardianship, and inheritance disputes comprise the largest category, accounting for 23% of the disputes. They are followed by labor disputes, land, traffic accidents and personal injury. Noticeably, there are fewer criminal cases, service discrimination, as well as education discrimination cases. Discrepancies still exist between these types of disputes and the range of legal aid cases de-

Figure 2: Statistics on types of disputes encountered by PWD

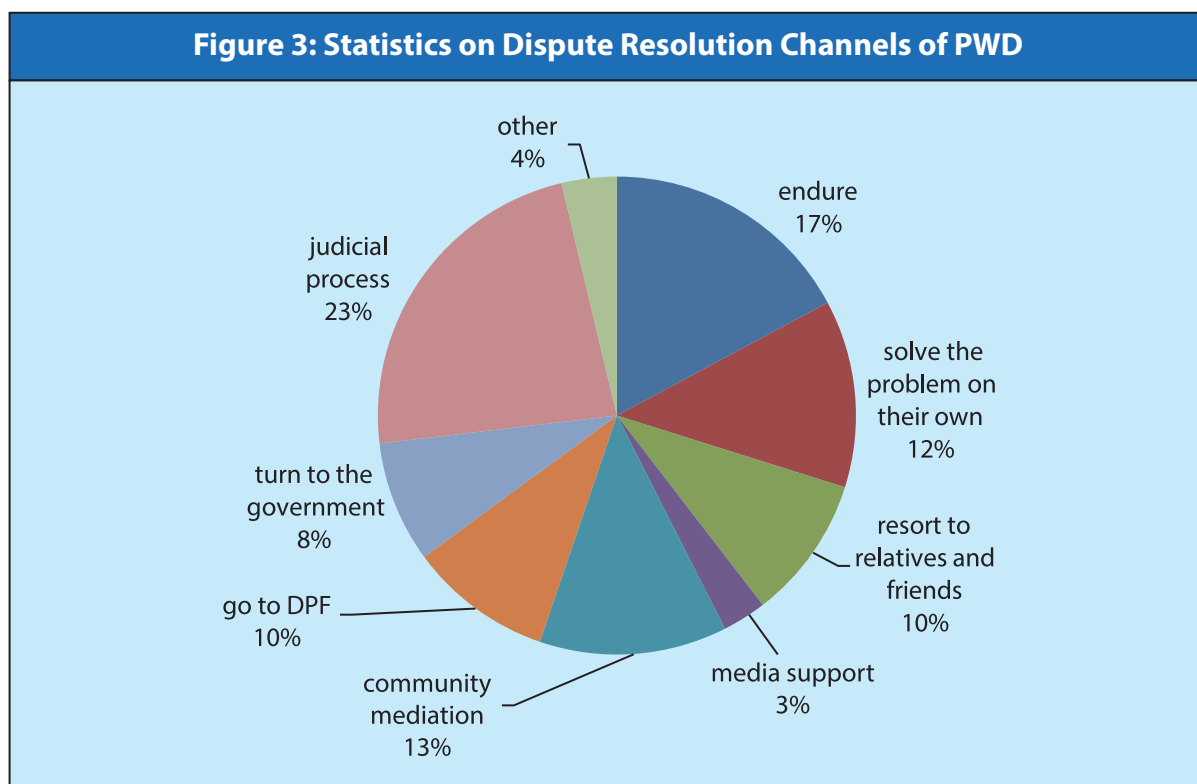


scribed in section 2.2, especially concerning aspects such as marriage and family and the compensation of land acquisition. There exists a coverage gap.

Figure 3 delineates the statistics of dispute resolution channels. 29% of respondents resorted to their “own methods” for resolving disputes (e.g. enduring or other informal solutions); 23% used formal judicial process; 23% seek support or mediation from local community or DPF; 10% went to their friends or family; followed by 8% of respondents turning to the government for help. A large-scale legal needs assessment survey conducted in Beijing can be used as a point of reference, in which nearly half of the respondents had encountered legal problems. More importantly, of these persons, most chose to approach their parents, friends and individ-

uals within their social network for resolution.<sup>59</sup>

When encountering the aforementioned disputes, the statistical depiction in which PWD, or their relatives and friends, turned to lawyers or legal professionals are as follows: 19% (n=20) received free legal services; 33.7% were charged for services, and 47.1% had no access to legal services. In cases wherein lawyers were involved, family disputes were predominant, followed by labor and land disputes (Table 3). In general, 83% of the respondents (n=59) felt that the lawyers or legal professionals’ service was helpful. These experiences may affect PWD’s future choices regarding the decision to use legal services, as well as related suggestions to their relatives and friends.



59. A Research Institute, Survey on Legal Service Needs and Related Service for Persons with Disabilities in B City, conference speech draft, December 2015.

**Table 3: Types of disputed handled by lawyers or legal professionals**

Debt-credit dispute	2
Traffic accident	2
Family dispute, such as marriage, guardianship, and inheritance	10
Labor dispute, such as asking for salary, on-duty injury, and occupational disease	4
Consumption infringement, such as buying fake and shoddy goods	2
Land and property rights, such as demolition and land acquisition compensation	4
Environmental pollution	1
Other	2
In total	27

### 3.2 Legal Knowledge and Awareness of Legal Aid

Through years of legal public education, the public (including rural residents) has developed a basic legal and rights awareness such that they are able to refer to laws and policies when their vital interests are affected.<sup>60</sup> However, questions remain as to whether PWD are aware of affordable legal services when seeking to protect their own rights. This is demonstrated by the following case:

*“Zhang, 60 years old, is a Degree-2 disabled person. He had already faced difficulties in walking, and this time he suffered a traffic accident, which made his poor family situation even worse. Out of desperation, he went*

*to the Legal Aid Center of Huairou District to try his luck.”<sup>61</sup>*

This “desperate and helpless” situation resulted from a lack of awareness of the legal aid that was in fact available to him<sup>62</sup>. In accordance with China’s *Second National Sample Survey on Disabled People* in 2006, only 0.5% of PWD have received legal aid services.<sup>63</sup> The quantitative research of this survey suggested that, on the issue of whether PWD know about legal aid, among over 500 respondents, only 1% of them have been recipients of legal aid, 7% understood the system quite well, 56% were familiar with what the basics of legal aid are and 36% were completely unfamiliar with the concept. Similarly, in 2012, only 1.1% of PWD families in Hubei province

60. Dong Leiming, *Mediation in Song Village: Authority and Order under the Great Changing Time*, Law Press, 2008, page 153.

61. Zhong Yonghui and Wang Qian, *Legal Aid in Huairou Has Opened A Green Channel*, [http://news.xinhuanet.com/local/2015-12/07/c\\_128503868.htm](http://news.xinhuanet.com/local/2015-12/07/c_128503868.htm).

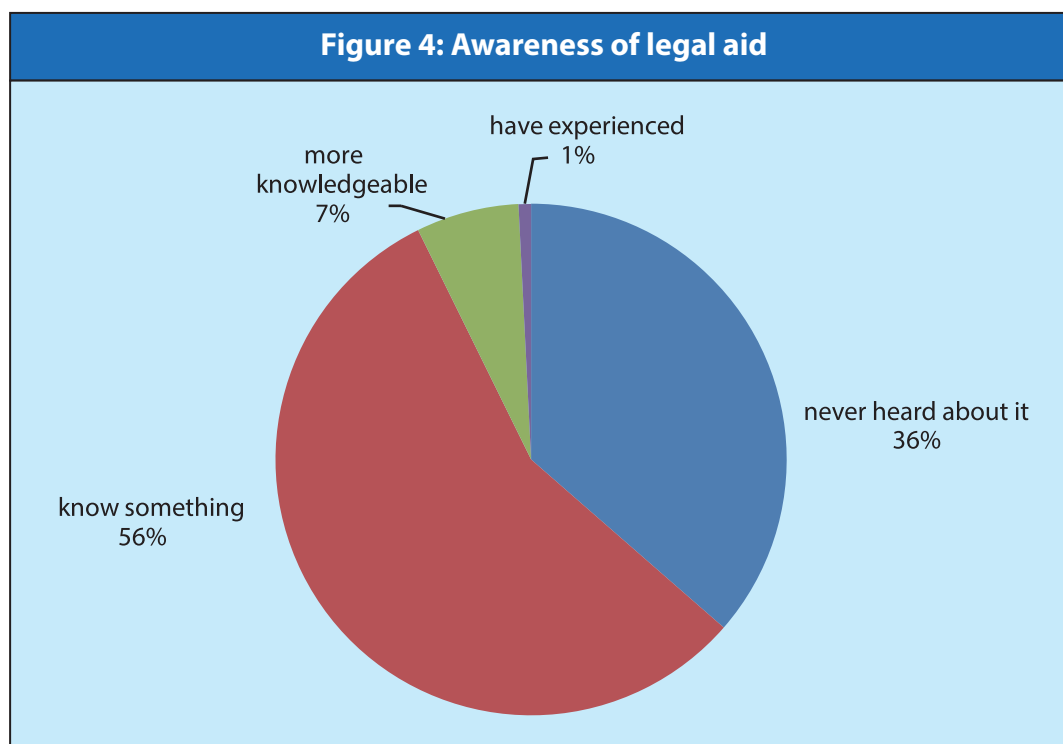
62. In most rights protection cases for persons with disabilities, this is usually caused by long-term unsettled petition or litigation. Especially in cases of disability caused by occupational diseases, due to reasons such as several employers’ prevarication, labor relations being hard to prove, and employers using litigation to delay the process, disabled persons have little power and find it impossible to use law to protect their rights, so they are in great distress. Related cases can be found in the recommended cases for “the Fourth Session ‘Best Ten Legal Aid Cases for Persons with Disabilities’ in H Province”, July 2016.

63. The Second China National Sample Survey on Disability Office and Institute of Population Research of Peking University, *The Statistics of China’s Second National Sample Survey on Disabled People*, Huaxia Publishing House, 2008, page 207.

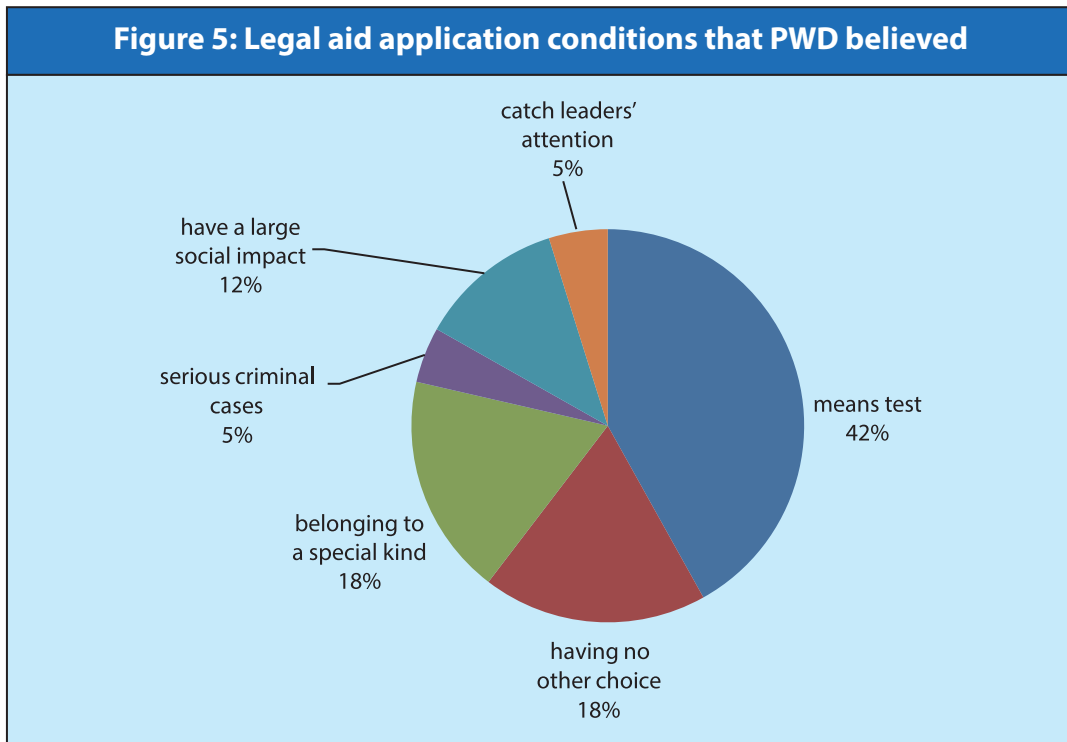
received legal services, and 0.75% of PWD families received legal aid or judicial assistance. In 2014, monitoring data demonstrated that 1.2% of PWD families received legal services, while no PWD family received legal aid or judicial assistance.<sup>64</sup>

Three additional testing questions were asked to determine the full extent of PWD awareness of legal aid: whether or not the respondent knew the address of the local legal aid center, whether legal aid is free of charge, and the application requirements of legal aid. The related statistical results are as follows: 1) 78.1% of the respondents did not know the address of the local legal aid center; 2) 70%

of the respondents thought that legal aid should be free, and only 15% considered it to require a fee; 3) A number of respondents considered that the coverage of legal aid should include (Figure 5): cases where subjects “have no other choice (18%)”, cases that “have a large social impact (12%)”, or cases that “catch leaders’ attention” (5%), which to some extent echoes the phenomenon that people only turn to legal aid when thrown into a “desperate situation”. The current governance practices and “stabilization policy” may also have played a role. Moreover, 42% of the respondents understood legal aid correctly in terms of the official “economic difficulties” standard.

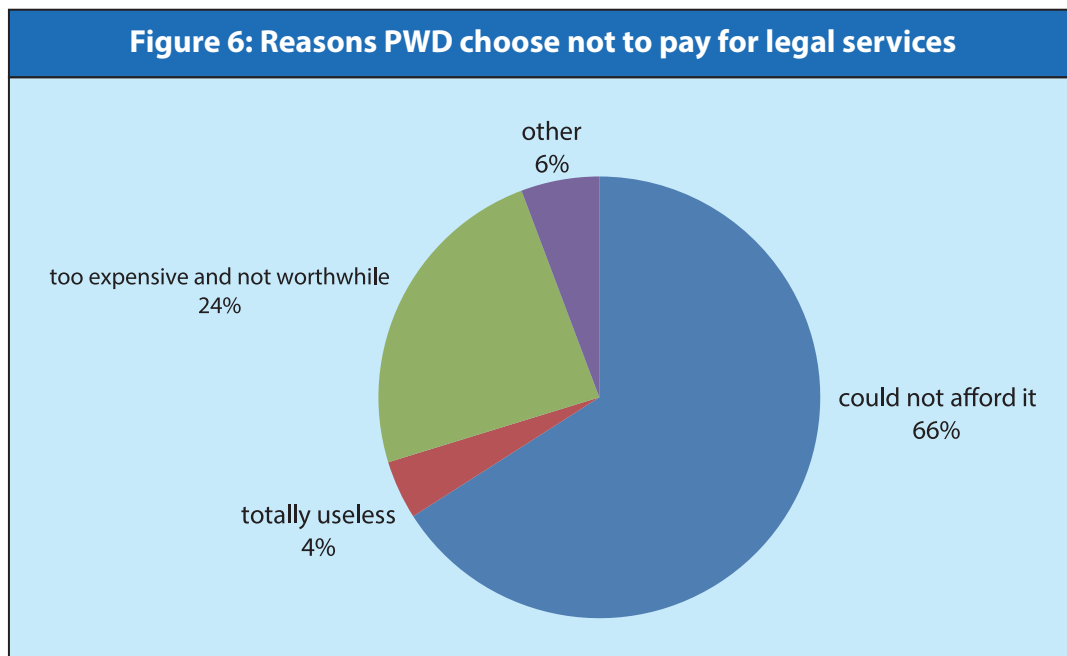


64. Monitoring Office of Disabled Persons’ Federation of Hubei Province, Analysis Report on Sampling Statistics on Disability in Hubei Province (Simple Version), May 2013, <http://www.hbdpf.org.cn/wcm.files/upload/CMSHbdpf/201607/201607290857021.pdf>; Monitoring Office of Disabled Persons’ Federation of Hubei Province, Analysis Report on Monitoring Statistics on Disability in Hubei Province, Hubei Daily, Page 17, 31 December 2015.



In terms of general legal needs, only 23% (n=107) expressed need, while 78% (n=284) responded that they would not choose to use paid legal services. When asked for the reason they would not choose paid services

(Figure 6), 66% of respondents (n=184) indicated that they could not afford it, and 24% thought it was too expensive and, therefore, not worthwhile.

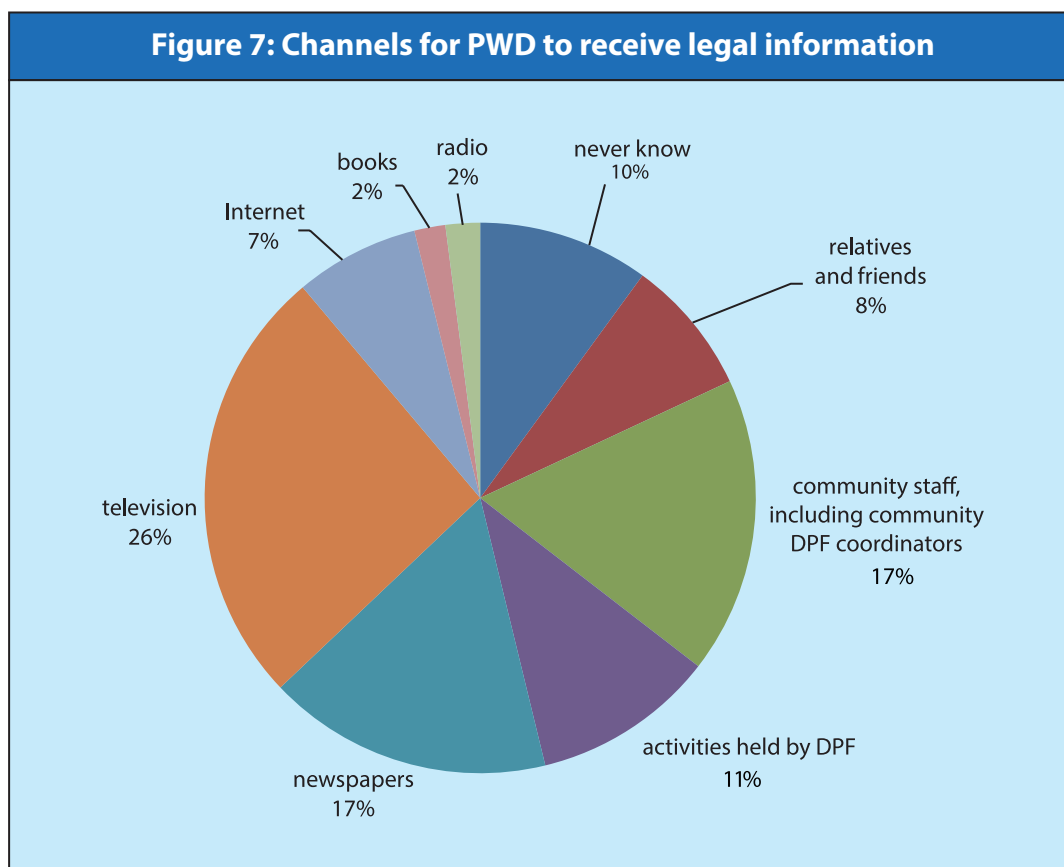




As is indicated from the above information, most respondents tend not to use legal services; they are open to free legal aid but are reluctant when considering paid legal services. Furthermore, key words such as “financial difficulties”, “no other choice”, and “free service”, were frequently mentioned by the respondents when filling in the questionnaire.

As such, enhancing PWD awareness of legal aid, can fill in a critical gap between the affordability of mainstream legal services and the needs of PWD to safeguard their rights. In order to do so, we should first understand what are the existing main channels by which PWD can obtain and/or receive legal information. According to the quantitative analysis undertaken, as is shown in Figure 7: 1) Television is the most frequently used medium, accounting for 26% of the infor-

mation channels, followed by newspapers, which account for 17%; 2) Community staff, including local DPF coordinators, accounts for 17%, and events organized by DPFs account for 11%. The influence of the latter two is comparably significant to television, which shows the advantage of the DPF system. The person-to-person engagement and interpersonal networks are essential for the dissemination of legal information and the relevant service information. In fact, 82% of the respondents are familiar with the DPF coordinators of their community; 3) Relatives and friends accounted for 8%, and they are an important source of social support. At the same time, the Internet accounted for 7%, the role of which should not be neglected either. 4) It is worth noting that 10% of the respondents said they had never received any legal information.



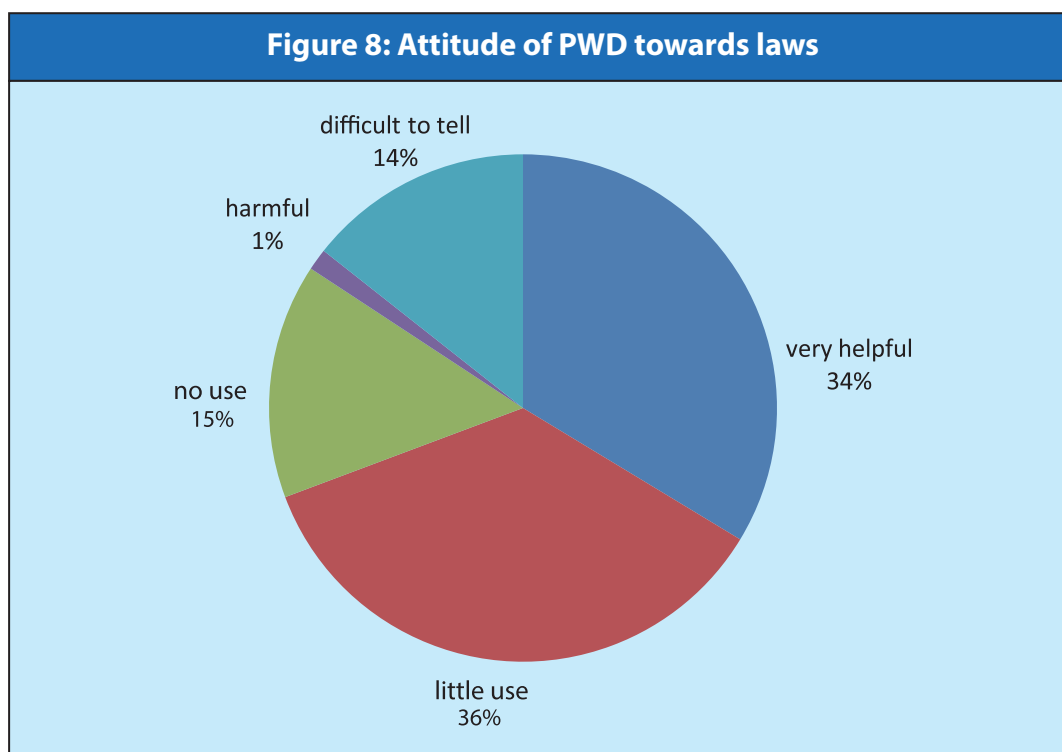
It is worth highlighting that 36% of respondents considered laws “somewhat useful” to PWD, 14% found it hard to make a judgment, while 15% considered them to be “useless”. Only 34% believed that the laws were very helpful (Figure 8). As a reference, a survey shows that 61% of the general public would choose laws as a first resort when dealing with problems. When respondents encountered problems and considered turning to legal professionals for help, 85% of the people did not know how to access these professionals, and 82% had to give up due to economic reasons. If there are legal professionals readily available for providing assistance, 77% are willing to consider this professional opinion.<sup>65</sup> It seems that PWD faith in navigating the legal system (which 34% believe to be useful) is lower than the general public (61% of whom recourse to the law, as first choice, when handling difficult situations), but in terms of economic difficulties and the inability to access assistance (legal aid), PWD are in similar situations with the general public. In the practice of Shanxi Province, the local government distributed a legal aid service booklet to every rural household. As a result, many rural residents have actually managed to find local legal aid centers and obtain the necessary services to resolve their problems.<sup>66</sup> In contrast, the ways in which PWD can effectively understand and access legal aid are comparably limited by the level of barrier-free communication and informa-

tion accessibility (refer to Section 3.5 and 5.2.2 of this report).

PWD perception of laws can also be analyzed by ascertaining the extent of their legal knowledge. As is shown in Table 4, respondents who are familiar with the *Law on the Protection of Person with Disabilities and Marriage Law* are relatively more common, altogether accounting for 25%. Even less know about the basic laws – such as property rights, contract, employment, tort, civil, and criminal procedures, among which the least number of people know about *Employment Promotion Law*, accounting for merely 11%. Although we cannot ensure that the more legal knowledge PWD have, the more positive feedback they may ascribe to the legal system – some may even be disappointed and feel that the laws are not helpful at all – the quantitative analysis undertaken nonetheless suggests that there exists a significant correlation (Pearson Correlation Detection) between PWD attitudes towards the laws’ efficacy and their knowledge of laws– such as *Law on the Protection of Person with Disabilities*, *Employment Promotion Law*, and *Tort Liability Law*. Some cases in this study also show that if a deaf person, with the assistance of legal professionals, acquires more legal knowledge, this person will improve their views toward the relevant laws and increase his or her confidence in applying them.

65. Zhou Changjun and Tian Doudou, Using Public Interest Legal Service to Instruct People in Finding Law, *People’s Daily*, Page 22, 28 September 2016.

66. The author’s interview with a client in a suburb legal aid center in Y city in Shanxi Province on 12 August 2016.



**Table 4: Legal knowledge of PWD**

	Very much (%)	Pretty well (%)	A little (%)	Never hear about (%)	Valid answers
Law on the Protection of Person with Disabilities	8.2	18.1	38.4	35.3	502
Marriage law	4	20.9	37.6	37.4	497
Inheritance Law	2.7	16.2	36.9	44.3	488
Labor Contract Law	4.1	17	34.3	44.6	493
Contract law	3.8	13.8	34.8	47.7	480
Criminal law	2.8	13.3	33.9	50	498
Law of Punishment for Public Security and Administration	2.6	11.3	34.2	51.9	497
Civil Litigation Law	2.4	12.3	29.8	55.4	496
CRPD	5.8	12.9	25.8	55.4	496
Criminal Procedure Law	2	11.1	30.6	56.3	496
General Rules of Civil Law	2.7	9.2	30.7	57.4	476
Tort Liability Law	2.9	8	28.9	60.2	477
Property Law	1.9	20.4	26.9	60.8	479
Employment Promotion Law	2.7	8	24.3	64.9	473

Although PWD have a relatively low level of limited understanding toward general legal knowledge, their attitudes towards laws and rights are not completely negative. For example, in response to the assertion that “Protecting the rights of PWD is costly and therefore depends on the further development of the society. However, such development, and the conditions thereof, has not yet been fully realized”, although 57% of respondents (n=291) agreed, there are still 23.6% (n=120) who strongly disagreed. In contrast, among the same group of respondents, 78% (n=394) agreed that “disability is a very unfortunate fate”, 75% (n=386) believed that “PWD are intrinsically flawed and cannot uphold their rights as ordinary people do”, and 76% (n=383) believed that “it is time-consuming for PWD to uphold their rights as to do so would create heavy burdens for both themselves and their families”. Therefore, although nearly one fifth (n=394-291=103) of the respondents attributed the challenges of being disabled to individual “defects” or “fates”, they still could not accept the assertion that it is too premature to protect the rights of PWD. In other words, based on a preliminary understanding of rights, they put forward clear requirements for supporting their equal participation in social life, which also agrees with the general principles of “social model” advocated by the *CRPD*. Correspondingly, although 58.5% of the respondents (n=296) considered that “to safeguard PWD rights, the key responsibility lies with their family”, as high as 83% (n=423) held the view that PWD required professional external support.

### 3.3 Experience of PWD in Specific Cases

The sections above have discussed the general opinions and experiences of PWD on disputes, laws, legal aids, and lawyer services. In this part, we examine a number of cases to highlight the possible challenges that PWD could face when receiving legal aid and proceed to identify ways to protect their individual rights. These challenges are, in some aspects, similar to those we see in general legal aid cases – namely, the state of poverty in which the PWD client suffers, the lack of faith in legal actions, the state of powerlessness, and the lack of social capital<sup>67</sup>. There are, however, challenges that are specifically disability-related: PWD have limited competence in taking legal action; they have restricted communicative abilities with the relevant legal stakeholders; they have limited access to timely and effective legal aid in criminal cases; they have difficulties claiming equal rights through judicial proceedings; and they often suffer from frustration and low self-confidence caused by social discrimination. The cases with which PWD face difficulties also show different characteristics due to a variety of capacities among different disabilities. For example, according to the data of the *Second National Sample Survey on Disabled People* conducted in 2006, the rate of persons with hearing impairments receiving legal aid service was the lowest at 0.23%, while that of persons with mental and intellectual disabilities was the highest, reaching about 1%.<sup>68</sup>

67. Zhang Wanhong and Ding Peng, Legal Aid and Human Rights Protection, in Junru Li, ed., “Annual Report on China’s Human Rights No.2 (2012)”, Social Science Academic Press (China), 2012.

68. The Second China National Sample Survey on Disability Office and Institute of Population Research of Peking University, The Statistics of China’s Second National Sample Survey on Disabled People, Huaxia Publishing House, 2008, page 210.

### 3.3.1 Limited Competence in Taking Legal Actions

According to the current *General Rules of Civil Law*, an adult person over 18 years of age is deemed a person with full capacity for civil conduct. It is only when an adult is living with mental illness and unable to realize or fully realize his/her own actions can he/she be deemed flawed in the capacity for civil conduct,<sup>69</sup> therefore requiring a guardian and a legal proxy. Yet in this research, 44% of respondents (n=218) reported to have been asked to provide “guardian information” when applying for a PWD Certificate, which is more than the number of minors (n=6), persons with intellectual disabilities (n=52), and mental disabilities (n=82) combined. Even counting persons with multiple impairments (n=23), persons who may need guardianship should only add up to 163 persons in this survey (as opposed to 218). In fact, adults with mental or intellectual disabilities are not always pre-determined as persons “without capacity of conduct” or with “limited capacity of conduct”, therefore requiring guardians. Yet, during the interviews, the researchers found that many adults with hearing impairments also had guardian information on their PWD Certificate. In some cases, married couples with hearing impairments would even serve as guardians of each other.

In general, local DPFs would, according to their own discretion, ask applicants for guardian information when issuing PWD Certificates. The rate has surpassed the standard set by *General Rules of Civil Law*. This could be a

result of consideration for the PWD to receive family care and for the DPFs to have greater access to PWD family members. Therefore the “guardian” information in this case should not be deemed equal to the guardianship stipulated by the *Civil Law*.

In effect, this practice has caused numerous problems in judicial proceedings. For example, a legal guardian filed a divorce lawsuit on behalf of his adult daughter who had intellectual disability against her will, which was rejected by the court;<sup>70</sup> a mother who was the legal guardian of a person with hearing impairment attempted to withdraw her son’s divorce lawsuit, which caused controversy;<sup>71</sup> a mother filed a divorce lawsuit on behalf of her daughter with intellectual disability, yet the case was rejected by the court as the husband held the legal guardianship.<sup>72</sup> Moreover, when lacking a legal guardian or when involved in cases with conflict of interests between relatives, such as inheritance or relocation compensation disputes, PWD clients under guardianship often lose their ability to take any legal actions. Especially when persons with mental disabilities or persons suspected to have mental disabilities appeal to the court for their own rights, these appeals are often rejected or denied by the court, or even fail to receive any response,<sup>73</sup> due to the appellants’ medical diagnosis or experiences of hospitalization.

To address this issue, Article 16 of the *Legal Aid Regulation* issued by the State Council dictates that when a person without capacity of conduct, or with limited capacity of

69. Huang Yi, Legal Capacity and Guardianship under the Current Law, <http://www.mdrights.org/html/1021.html>, 27 March 2013.

70. “Divorce Case of Zeng v. Zhang”, Ten Typical Cases of Rights Protection for Persons with Disabilities Announced by the Supreme People’s Court, <http://www.court.gov.cn/zixun-xiangqing-20871.html>, 14 May 2016.

71. The real case comes from a workshop on the “Access to Justice for Deaf Persons” in August 2016.

72. Cases from Li Yunfeng and Qiu Yujuan, On the Judicial Assistance to Persons with Disabilities: Case Analysis of a Basic Level Court, Xincheng Court of Xi’an City Net, <http://sxxcfy.chinacourt.org/public/detail.php?id=148>. Accessed on 1 October 2011.

73. Chen Bo, The Development of Right to Civil Litigation of Persons with Mental Disabilities in Practice: From Mental Health Law to the UN Convention on the Rights of Persons with Disabilities, in Zhang Wanhong, ed., “Disability Rights Studies in China”, Vol. 2, No. 1 (Summer 2015), Social Sciences Academic Press, 2015.

conduct, requires legal aid for a lawsuit or other disputes between the person and his/her legal proxy, the appeal should be applied for by another legal proxy with no stake in the disputed issue. Article 17 of the *General Rules of Civil Law* dictates that in case of controversy over the choice of a guardian candidate, the entity to which the person with mental disability belongs or the neighborhood committee / village committee of the person's residence shall appoint one from the person's close relatives. If the appointment is not accepted, and the issue is appealed to the court, the people's court shall rule on the issue. Yet these regulations do not clearly support the persons with mental disabilities to state their own thoughts and authorize a lawyer to launch law proceedings over the issue of the dispute on guardianship. When dealing with such cases, legal aid attorneys may still confront problems if the local village committee/neighborhood committee are reluctant to provide support due to fear of getting in trouble.

Article 82 of the *Mental Health Law* clearly grants persons with mental disabilities the right to appeal to the court when they deem that their legal rights have been compromised. There also has been some progress in legal practice. For example, a court verdict in 2014 wrote:

*"According to Article 82 of the Mental Health Law of the People's Republic of China, whenever a person with mental disabilities, or his/her guardian or family member deems that the administrative organs, the healthcare institutes, or other relevant entities have violated the provisions of this law and compromised the patient's lawful rights, a legal proceeding can be initiated. Though with*

*mental disabilities, Mr. Xia is qualified to proceed with the lawsuit."*<sup>74</sup>

Legal practices such as this will no doubt be helpful in encouraging legal aid workers to advance the protection of litigation rights of PWD through lawsuits, especially against the current backdrop where there is a lack of clear and relevant legal regulations. Moreover, there is a new regulation in Article 29 of the *Civil Law (Draft)* which dictates that when a dispute over guardianship occurs, the involved party can directly appeal to the people's court and have the court appoint a guardian. If a ward is unprotected of his/her body, property, and other lawful rights, the neighborhood committee/village committee of the ward's residence, related organizations regulated by the law, or civil administration should assume the role of temporary guardian. As to this, the DPF, as a statutory body can work with legal aid organs and function as a temporary guardian to achieve breakthrough according to Article 12 of the *CRPD*, and gradually strive for equal legal capacities for PWD, from capacities of civil conduct to capacities of legal action.

### 3.3.2 Accessible Communication and Access to Timely and Effective Legal Aid in Criminal Cases

The *Criminal Procedure Law* provided the clearest legal aid requirements with the highest level of legal validity for PWD including blind, deaf, mute, and persons with mental illness who have not yet fully lost the ability to realize and control their own actions. These requirements include providing sign language interpretation for persons with hearing impairments when participating in criminal legal procedures. This study has

74. Quote from Chen Bo, The Development of Right to Civil Litigation of Persons with Mental Disabilities in Practice: From Mental Health Law to the UN Convention on the Rights of Persons with Disabilities, in Zhang Wanhong, ed., "Disability Rights Studies in China", Vol. 2, No. 1 (Summer 2015), Social Sciences Academic Press, 2015.

found that sign language interpretation is still relatively marginalized in China's barrier-free service system. This has also affected the willingness and capacity of the legal sector to enforce related rules in the *Criminal Procedure Law*.

Take Hubei province for example. Among the judgments published on the website "China Judgments Online", there were 40 criminal cases that involved suspects with hearing impairments during the period from 2013 to 2015. 16 of these judgments recorded the provision of sign language interpretation. Among the interpreters of these cases, 1 was the suspect's daughter, 7 were teachers from special schools, and 4 were volunteers from local DPF. In addition, considering these 40 persons with hearing impairments were put in detention for an average of 147.6 days before trial, it is of undeniable importance how the detention facilities can provide barrier-free communication and realize equal management.

Some prosecutors have pointed out that, due to constraints in resources, at different stages of the criminal proceedings, various agencies usually rely on the same sign language interpreter who may not be certified. It is therefore not possible to verify the professional competence of the interpreter and determine if he/she has fulfilled the obligation of accurate interpretation. Furthermore, the agencies only have access to a limited number of interpreters. When the interpreters familiar to the legal agencies are unavailable, the progress of the case can potentially be stalled.<sup>75</sup> Sometimes the neutrality of interpretation can be compromised, espe-

cially when the interpreter is biased due to teacher-student or relative relations with the suspect, or holds prejudices against persons with hearing impairments due to long-time exposure to criminal cases where persons with hearing impairments have previously been convicted, or even becomes co-conspirators with legal agencies to lure or extort the deaf person into confession. Unprofessional and unstandardized operation of sign language may not only compromise the litigation rights of the deaf client, it may also lead to miscarriage of justice and therefore violate the principle of judicial fairness. Moreover, sign language interpreters hired by the legal aid providers may be denied access to the suspect in detention facilities, which is an issue in a number of regions.<sup>76</sup>

In the criminal judicial reform which puts the court trials at the center, positive changes occur when the courts play an active role in promoting legal aid for PWD. For example, a local court has consulted with the local justice bureau to expand the coverage of appointed defense to all sorts of PWD suspects beyond merely blind, deaf and mute persons, and include supplementary civil litigations launched by victims with disabilities in criminal proceedings.<sup>77</sup>

However, some cases have shown that, due to the obscured nature of mental disability, case-handling agencies may not be aware of the conditions even though the person might hold a PWD Certificate. In some cases, even when the agencies realize this fact, they may not inform legal aid organs to provide the assigned defense in a timely manner, leaving family members to hire an attorney

75. Yang Xinhui, Problems and Standards in the Current Sign Language Interpretation System, *Lingu Jiaoxue*, Vol. 11, 2011.

76. Yu Hui, "Silent Robbery" - Robbery Cases Related to Persons with Hearing and Speech Disabilities, in Yao Yanjiao, ed., "Selected Cases of Criminal Legal Aid for Migrant Workers", Law Press, 2014, page 126-128.

77. Hua Xuan, Courts Offer "Accessible Judicial Service" as Legal "Umbrella" to Protect Rights for Persons with Disabilities, Zhejiang Fazhi Online, <http://www.zjzfz.com.cn/index.php/cms/item-view-id-24535.shtml>, 11 April 2014.

or apply for legal aid lawyers to overcome this vulnerability.<sup>78</sup> In cases in which compulsory medical procedures may be applicable, it remains an unresolved issue as to how persons with mental disabilities subject to compulsory measures can access an “appointed proxy” of legal aid in a timely manner.<sup>79</sup>

It is necessary to emphasize that equal access to criminal legal aid for PWD should be ensured and the coverage should be expanded according to the law. Meanwhile, we should avoid labeling PWD as “flawed” or “incapable” and dismissing PWD opinion in favor of “the capable” or providing them with “defense” services that are dominated by parents/guardians.<sup>80</sup> While these services may look progressive, they only serve to reinforce the prejudices that society holds against PWD while neglecting what is indispensable for achieving real equality - accessibility and reasonable accommodation. Assigning defense attorneys to PWD itself does not suffice as a means of providing accessibility support. As Section 3.5 of this report points out, it is only when sufficiently accessible measures and reasonable accommodation are provided throughout the whole judicial process can the capacity of action of PWD be free of limitations and PWD can participate in trials equally without extra “care”. Granting PWD substantive special treatments simply for their impairments, as opposed to ensuring their equal procedural rights may end up

producing “reverse discrimination”, which may neutralize the effects of affirmative action.

### 3.3.3 Equal Rights Issues Difficult to Resolve through Judicial Process

This report has elaborated that persons with hearing, mental, or intellectual disabilities, due to their own legal states or restrictive arrangements with their guardians, may lack equal judicial protection. In some other cases, PWD are qualified to be a litigant. Even so, the issues that they seek to address may not be supported by the available legal aid or judicial procedures.

Persons with medium or low-degree physical impairments are usually able to express their own opinions in a way that is accepted by mainstream traditions and actively participate in the society. Yet they may also encounter public discriminations at various levels, including being denied service by airlines for “lacking adult company or self-help capacity”.<sup>81</sup> However, such cases where contracts are breached may not satisfy the eligibility criteria and coverage of legal aid.<sup>82</sup> Many PWD who encounter such discrimination in services either do not consider it an issue of where their equal rights have actually been compromised or choose to endure the situation because they deem legal procedures too cumbersome. It is fortunate that there is a small portion of clients, benevolent public

78. Zhu Huidong, Murder Suspect Detained has Got Medical Treatment through Legal Aid, *China Legal Aid*, Vol. 3, 2014.

79. Ding Peng, Equal Access to Justice for Persons with Disabilities: Legal Framework and Case Review, in Zhang Wanhong, ed., “Disability Rights Studies in China”, Vol. 2, No. 1, Social Sciences Academic Press, 2015; Bo Shaoye and Jia Wuguang, ed., *Selection of Cases on Protecting the Rights of Persons with Disabilities in China*, China Braille Press, 2007.

80. Tao Yang and others, Research on Disabled Persons’ Legal Aid System, *Humanities & Social Sciences Journal of Hainan University*, Vol. 3, 2016.

81. Chen Yiping, Juneyao Airlines was Sued Because of Refusing to Carry Persons with Disabilities: Willing to Compensate Rather Than Apologize in Public, [http://www.thepaper.cn/newsDetail\\_forward\\_1429307](http://www.thepaper.cn/newsDetail_forward_1429307), 4 February 2016.

82. In a legal aid case for persons with disabilities in H province, there was a litigation referring to passenger transport contract dispute, but the dispute was also related to a traffic accident, and in most places, traffic accidents belong to the range of civil legal aid. See the recommended cases for “the Fourth Session ‘Best Ten Legal Aid Cases for Persons with Disabilities’ in H Province”, July 2016.



interest lawyers and social organizations that are willing to make these cases into public interest litigation. In the case of “two wheelchair users against airline company” mentioned above, the attorney for the plaintiff was Mr. Jin Xi, who graduated from the law school of Ningbo University and was an intern attorney with visual impairments. When interviewed, he told the researchers that he wanted to contribute more for helping PWD achieve their equal rights. This goes to show that civil society actors can often provide complementary efforts to the official legal aid system and are therefore worth paying attention to.

Moreover, efforts were made to promote equal rights of persons with visual impairments. For example, Mr. Li Jinsheng, in a ground-breaking way, participated in the national college entrance examination in braille in 2014<sup>83</sup>; Mr. A Chong, an advocate for rights of persons with visual impairments, claimed that “blind people don’t do massage”<sup>84</sup>, and so forth. The issues raised include equal rights to education and employment for persons with visual impairments, as well as protection from sexual harassment in the workplace. However, such issues have hitherto rarely entered judicial procedures. In fact, the interviews of this study have revealed that issues concerning inclusive education, especially for children with physical or visual impairments, are mostly resolved through personal connections or supported by DPFs consulting with the local education departments.

### 3.3.4 Frustration and Lack of Self-confidence Due to Social Discrimination and Prejudice

Achieving equal access to justice for PWD requires more than just professional services with unbiased procedures, or benevolent persons performing charitable acts. From the very start, it requires that PWD have confidence and courage in taking actions and mobilizing support in a lawful way. During the course of this study, many PWD have shared their experiences of encountering discrimination and prejudice. Even though wide-spread discrimination against PWD does not in itself lead to a legal case, it profoundly affects the attitude, awareness and confidence of PWD in making decisions such as whether or not to leave home, to live on their own, or even to claim their rights (and seek legal services).

A PWD may feel embarrassed when a bus driver asks “Why do handicapped people like you even come out of your house?” or even when they hear the unique sound made by bus devices when identifying the card used by PWD for free rides. In W city, scooters used by physically impaired persons are not allowed on the bridge for they are not categorized as motored vehicles. Yet when taking a ferry to cross the river, the same scooters are charged fees given that they are classified according to the same standards as motorized vehicles. Furthermore, in the said cases in which airlines deny services to PWD, it is astonishing to see how the public expresses their discrimination and prejudice through online commentary:

83. In fact, there appeared reasonable accommodations for persons with visual disabilities in previous National College Entrance Examination. According to lawyer Jin Xi, he joined in the exam in 2008, and had someone read the questions for him and another complete the answer sheet after he wrote down the answers. As a result, he successfully entered the law school of Ningbo University. He participated in the judicial exam in 2010 and applied reasonable accommodations from the local bureau of justice. He was given a separate room with 2 supervisors. One person helped read the questions and write down his answers. He passed the judicial exam with high score. According to the interview with Jin Xi on 20 March 2016 and relevant interview by He Jiangyong, Special Exam Room in Ningbo Helped a Person with Visual Disabilities to Pass the Judicial Exam, <http://learning.sohu.com/20100914/n274930656.shtml>.

84. Wanqing, Massage Parlor Should Not be the Only Career for Persons with Visual Disabilities, [http://www.chinadp.net.cn/datasearch\\_/journal/springbreeze/2016-03/14-15162.html](http://www.chinadp.net.cn/datasearch_/journal/springbreeze/2016-03/14-15162.html), 14 March 2016.

*“It’s inconvenient for disabled persons to go outside in the first place. If you want to travel by air or high speed train, you better have an adult for company. It is not discrimination... after all it’s a long-distance travel, not just walking around in the neighborhood.”*

*“First it was ‘whoever is weaker wins’, now it’s ‘whoever is disabled wins’. I don’t discriminate against disabled people, but please do make appointments in advance and have someone accompany you.”<sup>85</sup>*

Similarly, some of the notifications issued by DPFs may also possess inappropriate connotations which encourages the self-isolation of PWD. For example: “please avoid going out during rush hours. By doing so not only the traffic pressure will be eased to give white-collars more convenience on their way, but also the safety of disabled persons on the road will be assured.”<sup>86</sup>

It is worth pointing out that social discrimination may even force PWD to relinquish existing procedural safeguards. For example, some suspects are unwilling to reveal their status of disability to the case handling agencies, which places them in an even more disadvantaged situation:

*“We asked Mr. Zhang about his health conditions before inquiring about the crime facts. He said that he had a history of mental illness and was taking medicines. Afterwards, in the casual conversation, he said that he would not tell about his conditions had we*

*not asked. Why? Because he was a construction contractor. If the information about his mental condition spread out he would not be approached for contracts any more.”<sup>87</sup>*

### 3.4 Gender Analysis of the Legal Needs of PWD

In May 2016, the Supreme People’s Court published 10 typical cases related to the rights protection of PWD. Among them there was the case of “Lin raping Feng with intellectual disabilities”, which involved protection of personal rights of women with disabilities; the case of “Zeng divorcing Zhang”, in which the court criticized the conduct of a father intervening in his intellectually disabled daughter’s autonomy in marriage; the case of “Dispute over inheritance between the Chen’s family”, in which the judgment protected the right of married women with disabilities to inherit according to the will; and the case of “Dispute over removal of obstacles between A Li and B Li”, in which the judgment banned a remarried father to expel his daughter and son-in-law who both have hearing disabilities, thereby preserving public order and good morals. Moreover, after the *Anti-Domestic Violence Law* came into effect on March 1 2016, reports of cases in which “legal aid helps disabled wife suffering from domestic violence”<sup>88</sup> and “legal aid helps wife with hearing and speech disabilities suffering from domestic violence”<sup>89</sup> have appeared throughout the country.

85 Chen Yiping, Juneyao Airlines was Sued Because of Refusing to Carry Persons with Disabilities: Willing to Compensate Rather Than Apologize in Public, [http://www.thepaper.cn/newsDetail\\_forward\\_1429307](http://www.thepaper.cn/newsDetail_forward_1429307), 4 February 2016, the comments.

86 Policy and Service Manual for Persons with Disabilities in Beijing, <http://www.bdpf.org.cn/zwpd/zcfg/zcjd/index.html>, May 2013.

87 Procurator Huang’s speech during a conference in July 2016.

88 Cheng Feifei, Legal Aid Helps Disabled Wife Suffering from Domestic Violence, *Anhui Fazhi Bao*, Page 2, 26 May 2016.

89. Duan Ning, Legal Aid Helps Wife with Hearing and Speech Disabilities Suffering from Domestic Violence, *Huaibei News Net*, <http://www.hbnews.net/xwsq/mshb/796770.shtml>, 17 July 2015.

From these cases, we can see that China's legal practices have indeed made progress in protecting the personal, property, marriage, and family rights for women with disabilities. Nonetheless, the grave storylines of each of these typical cases also reminds legal researchers and practitioners that there is still a long way to go in protecting the equal rights of women with disabilities. Aside from the general compromises in personal and property rights, in marriage and family-related cases, women with disabilities are more vulnerable to "dual discrimination" resulted from the interplay of gender and disability.

The data from the questionnaire of the study show that:

First, there is no clear correlation between the interviewees' gender and their type of disability, educational level, and income level. There is also no clear correlation between gender and the awareness of legal aid, legal knowledge, and the need of legal aid in daily life. A possible explanation is that PWD, regardless of their gender, have very limited knowledge of both legal provisions and legal aid services hence there is no significant difference in this regard.

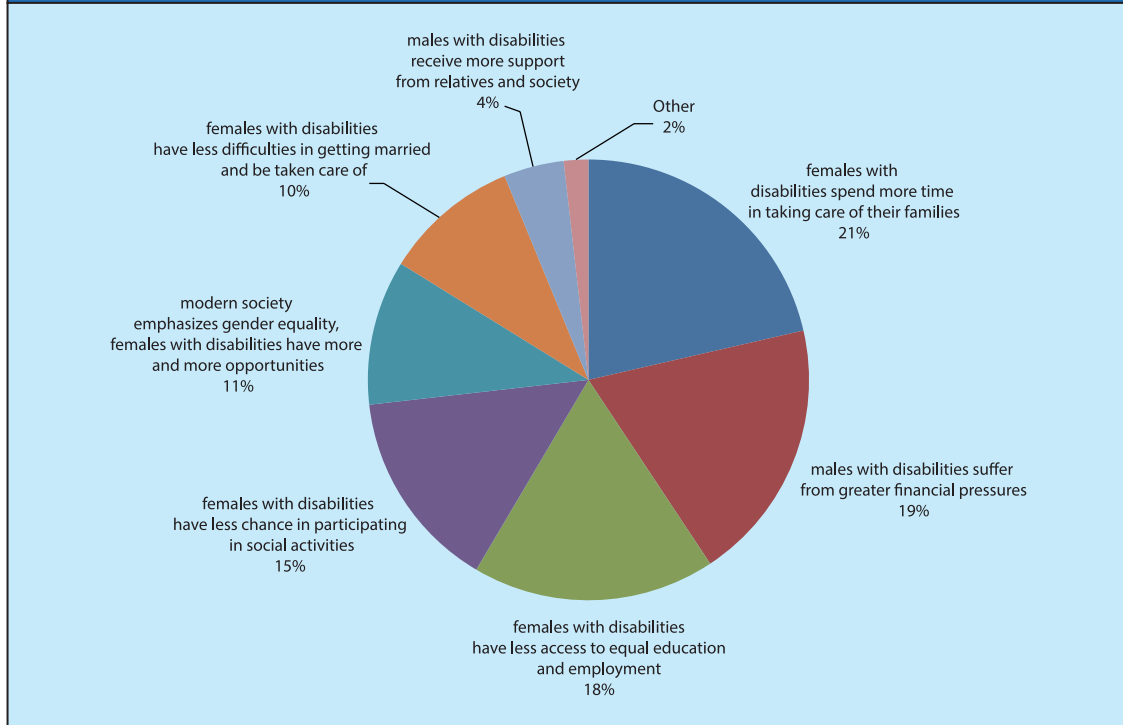
Second, 47.1% of the interviewees (n=249) are female. In contrast, 71.9% of respondents think that "women with disabilities are more vulnerable to rights infringement, and face

more difficulties in getting effective protection", while 59.6% of respondents think that "the situations of women with disabilities differ from those of men with disabilities" (the cause of gender differences shown in Figure 9). Among those who disagree that men and women with disabilities are in different situations, there is still a considerable portion of respondents who think that "women with disabilities have less access to equal education and employment", "women with disabilities spend more time in taking care of their families", "men with disabilities suffer from greater financial pressures", "women with disabilities have fewer opportunities in participating in the society", "men with disabilities receive more support from relatives and society", and "women with disabilities have fewer difficulties in getting married and receiving care". The analysis of the statistics of China's *Second National Sample Survey on Disabled People* shows that women with disabilities require more medical care, financial support, and life services than men with disabilities, but require fewer assistive devices and rehabilitation services. This may be caused by that women with disabilities, due to their perceived role in the society, are mostly considered subjects of care and support, while men with disabilities assume more social responsibilities.<sup>90</sup> Other studies have also confirmed these observations.<sup>91</sup>

90. The Second China National Sample Survey on Disability Office and Institute of Population Research of Peking University, *The Statistics of China's Second National Sample Survey on Disabled People*, Huaxia Publishing House, 2008, page 201.

91. According to the statistics of the second China national sample survey on disability in 2006, the proportion of female with disabilities unmarried over 15 years old (5%) is far below that of male (20%), the education level of the former one is also lower. See the Second China National Sample Survey on Disability Office and Institute of Population Research of Peking University, *The Statistics of China's Second National Sample Survey on Disabled People*, Huaxia Publishing House, 2008, page 159. Other local statistics can be found in Yu Dong and others, *Survey on Marriage Status of Persons with Disabilities in Hebei Province*, Journal of Handan College, Vol. 2, 2012.

**Figure 9: PWD's opinions on the cause of gender differences**



Third, the gender of respondents seems to bear no correlation with the answers to the first two questions, which are “women with disabilities are more vulnerable to rights infringement, and face more difficulties in getting effective protection” and “women and men with disabilities are in different situations”. However, such awareness is correlated with the “educational level” of respondents. Educational level is also correlated with types of disabilities.<sup>92</sup>

It can be inferred that: 1) women with disabilities are not necessarily more aware of gender equality; 2) better education and training opportunities can help to improve the awareness of gender equality among

the community of PWD; and 3) training programs should take into consideration the different educational backgrounds, accessibility support needs, and the specific demands of persons with different disabilities.

Based on the experiences of multiple “Disability Equality Trainings” (DETs) conducted by this project, a viable way can be identified to conduct training programs and raise awareness of gender equality while taking into consideration the different needs of persons with different disabilities. This can be achieved by a well-designed participatory session run by experienced facilitators, provided with necessary accessibility support and reasonable accommodations such as

<sup>92</sup> According to the Statistics of the Second China National Sample Survey on Disability, persons with mental disabilities have the highest education level and the multiple disabilities and intelligence disabilities has the lowest level; In this research, persons with physical or hearing disabilities tend to have higher education level, among them, children from 0 to 14 years old have the highest student enrollment rate according to the national survey. The Second China National Sample Survey on Disability Office and Institute of Population Research of Peking University, The Statistics of China's Second National Sample Survey on Disabled People, Huaxia Publishing House, 2008, page 137, 146.

real-time screening of subtitles, oral descriptions of images, and sign language interpretation, to disseminate the idea of equality and inclusion among various stakeholders. This approach can indeed bring about changes in the awareness of participants, including increased gender sensitivity.

It is notable that among grassroots-level legal aid staff (mostly male) working to provide legal aid, one can often hear comments like “we don’t have domestic violence here; in my house, my wife rules”. The researchers of this report have also heard male students from law schools frequently argue that, with so many female students in law school who achieve better grades and are responsible for making decisions, male students are more “marginalized”. This only serves to indicate that neither the future of elite legal practitioners nor current grassroots-level legal staff have understood the principles of disabled persons’ rights and gender equality as reflected in the *CRPD*, the *Anti-Domestic Violence Law*, and various judicial documents. Also, it attests to the fact that many of them cannot identify and respond to the prevailing discrimination issue in reality. In fact, according to a survey conducted by All China Women’s Federation in 2010, the proportion of males to females who agree with the idea that “men need to focus on social activities while women should focus on household affairs” were 61.6% and 54.8%, respectively, which is 7.7% and 4.4% higher than the number of the year 2000.<sup>93</sup> The local reports of women with disabilities suffering from domestic violence cited by this study, as well as consultations offered by the author’s institute to persons with hearing impairments suffering from domestic violence, both reflect such misunderstandings and prejudices which urgently needs to be redressed.

Moreover, cases where women suffer from on-duty injuries, have disabilities caused by traffic accidents, or are divorced against their own will because they have mental disabilities are worthy of our attention. In the 54 typical cases of legal aid for PWD during 2014-2016 selected by H province, 20 litigants were female. Among them, there were 6 cases of on-duty injury, 4 cases of traffic accidents, and 5 cases of women with mental disabilities abandoned by their husbands or divorced against their will. By contrast, there was not a single case in which a married man with mental illness was forced into a divorce against his own will. The rules of related judicial interpretation issued by the Supreme People’s Court and the stereotype held by general public against mental illness have made legal practitioners, such as attorneys and judges, heavily affected by the following idea, which, combined with gender inequality, proves to be more disadvantageous to women with mental disabilities:

*“Patients of mental illness are commonly seen in the trials as defendants to divorce lawsuits. The symptoms of mental illness often take forms of conduct such as suicide; actions of attacking and harming other people; different levels of self-control disorder; prolonged and clear anomaly in psychological activities such as awareness, emotion, will and motor behavior; inability of normal conduct of study, work and living; and actions being incomprehensible to common people. Mental illness often results in breakdown of emotional ties between husbands and wives. According to Article 3 of ‘Several Particular Opinions of the Supreme People’s Court on How to Identify Actual Breakdown of Emotional Ties between Couples in Divorce Cases; when one party suffers from mental illness in the marriage, and the illness is not cured*

93 The National Women’s Federation and the National Bureau of Statistics, The Major Statistics of the Third Survey on the Social Status of Women in China, [http://www.china.com.cn/zhibo/zhuanti/ch-xinwen/2011-10/21/content\\_23687810.htm](http://www.china.com.cn/zhibo/zhuanti/ch-xinwen/2011-10/21/content_23687810.htm).

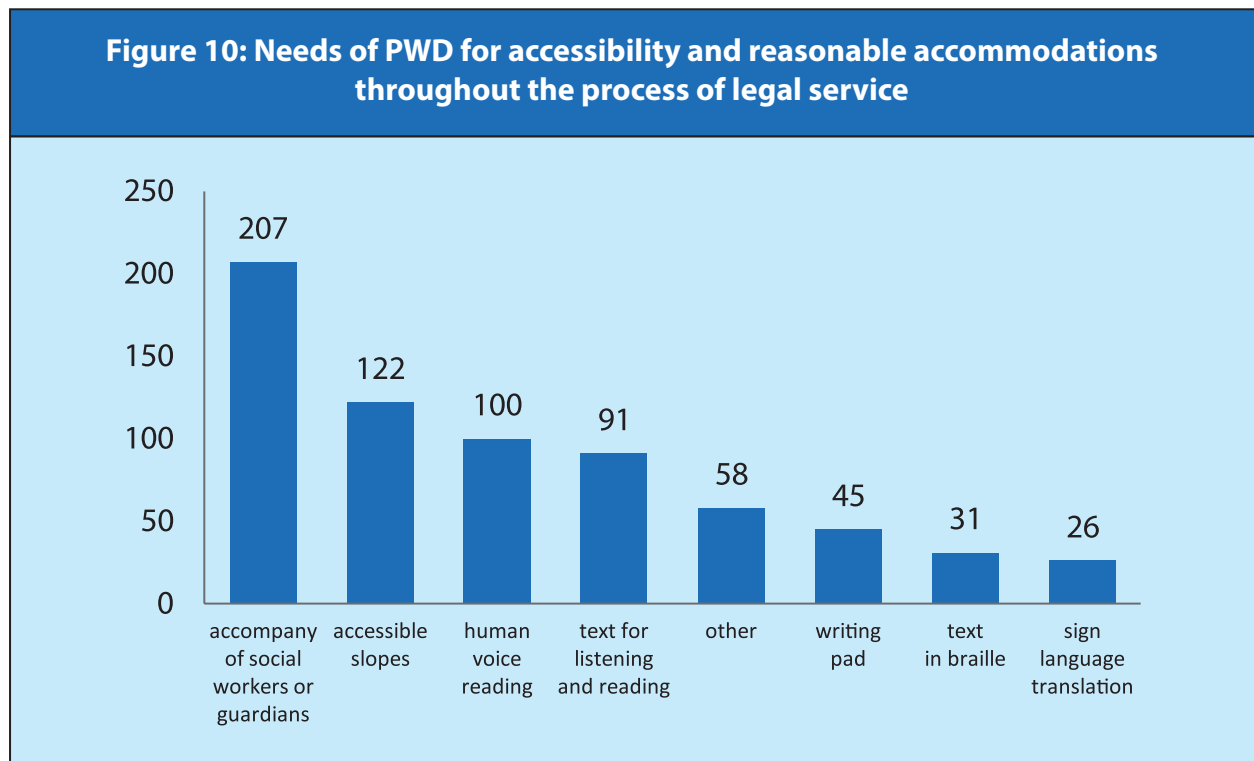
after prolonged treatment, the emotional tie between the couple can be deemed actually broken. The case of one party of the couple sues for divorce because the other suffers from mental illness fits the regulation of this judicial interpretation. ...we should not 'fear the notion of mental illness'...create a social atmosphere with no discrimination, more care and equal treatment to embrace every patient suffering from mental illness. "<sup>94</sup>

### 3.5 Accessibility Support and Reasonable Accommodation Throughout the Whole Judicial Process

According to the *Regulations on the Construction of Accessible Environments* issued by the State Council in 2012, building accessible environments refers to the construction of facil-

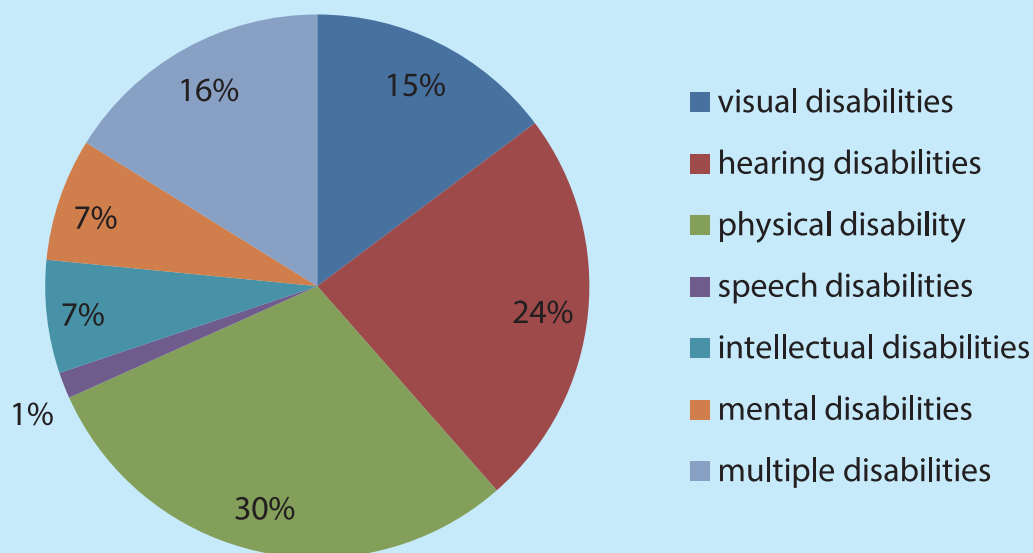
ities that enable members of the society such as PWD, elderly, pregnant women, children, and injured or ill persons to independently and safely access roads, enter buildings, use public transportation, exchange information, and acquire community services. The needs for accessibility and reasonable accommodation at different stages of legal service of the surveyed PWD in this study is shown in Figure 10:

Among over 500 respondents, 40% were not confident in facing the legal system alone, and required the "accompany of social workers or guardians". As discussed earlier, this indicates that, under current circumstances, PWD need external company and support in order to take legal actions. However, it does not mean that they need guardians under the current system to make decisions for them.

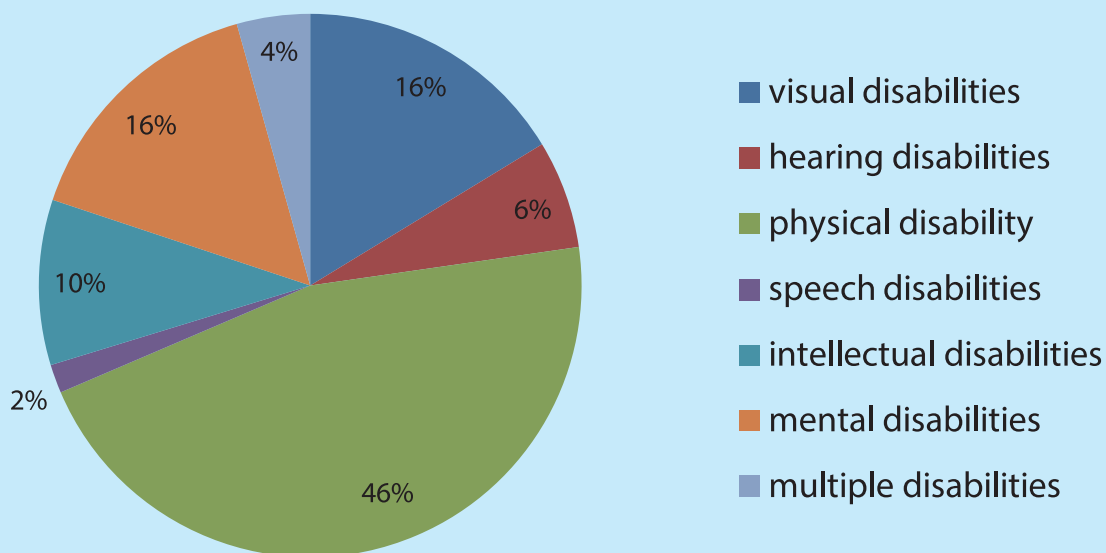


94. Tao Tao, Analysis on the Legal Application in Divorce Cases of Persons with Mental Disabilities, Yunnan Court Net, <http://www.gy.yn.gov.cn/Article/spsw/mssp/201311/35622.html>, November 2013. The sentences highlighted in the quoted paragraph come from the definition on mental diseases in a popular online encyclopedia, Baidu Baike (<http://baike.baidu.com/item/%E7%B2%BE%E7%A5%9E%E7%97%85/920>), and are frequently quoted by legal aid lawyers in practice.

**Figure 11a: Distribution of types of disabilities among interviewed PWD in national survey**



**Figure 11b: Distribution of types of disabilities among interviewed PWD in this study**



There is also a clear need for accessible slopes as well as reading and listening services. This is related to the high proportion of interviewees with physical and visual impairments in this study (see Figure 11). Moreover, based on interviews of over 20 persons with hearing impairments, it is necessary to make additional explanations to the relatively low demand of sign language interpretation service indicated by Figure 10. There were only 34 persons with hearing impairments and 9 with language impairments among the over 500 PWD who were surveyed. In practice, “written” communication is often ineffective for persons with hearing impairments for they usually lack a high quality education and do not have a strong command of Chinese grammar. However, they are usually completely competent at expressing themselves through sign language. While it is important that the legal aid attorneys of deaf clients are responsible and patient to communicate with their clients, an appropriate sign language interpreter is no doubt an essential component of a better solution moving forwards. In the case-handling stage of the legal aid, persons with hearing impairments often need the company of family members to be able to communicate with others, as several cases have confirmed in this research.<sup>95</sup> In contrast, the courts, upon accepting cases, usually have the resources to hire sign language interpreters.<sup>96</sup>

According to current laws, the interrogation of criminal suspects with hearing or speech impairments requires the presence of personnel with knowledge of sign language. If a suspect or defendant is unable to read, the transcript should be read out so that the

suspect or defendant can understand the content. Public security organs, the people’s procuratorate, and the people’s court should, according to the law, assist legal aid attorneys to conduct their work by providing sign language interpreters.

Moreover, according to the *CRPD* and the State Council’s *Regulations on the Construction of Accessible Environments*, the barrier-free environment and reasonable accommodations that PWD should have at their disposal during the process of legal aid include: 1) accessible slopes, handles, elevators, warning blind sidewalk, and barrier-free signs, as well as braille, voice and text guidance systems; 2) barrier-free communication channels including professional sign language interpreters, writing-pads or text-image communication boards, and screened reading devices or readers; 3) other reasonable accommodations which are not too burdensome for case-handling agencies and legal aid institutions such as temporary slopes and assistance provided by social workers. In practice, local legal aid organs also provide services including telephone and online applications, as well as case handling at the applicant’s home.

In contrast, the accessible facilities within the legal agencies themselves such as the police, procuratorate, court, and detention facilities, as well as law firms are still problematic:

*“I’ve found only one law firm which provides good barrier-free facilities. Yet the toilets there were of Japanese style, and there were no barrier-free handles. At the many conferences we organized, we had to apologize to*

95. “Medical Negligence Dispute Case of Zhan”, “the Fourth Session ‘Best Ten Legal Aid Cases for Persons with Disabilities’ in H Province”, July 2016; Case of Xiao Xie (a person with hearing disabilities), see Cui Jing, Analysis of the Experience of a Deaf Person Receiving legal Aid, *Talang Electronic Information for Persons with Disabilities*, Vol. 1, May 2016.

96. Duan Ning, Legal Aid Helps Wife with Hearing and Speech Disabilities Suffering from Domestic Violence, *Huaibei News Net*, 17 July 2015.



*every participant in wheelchair by saying: 'Sorry, but I'm afraid that you might be unable to use the W.C. for this half of the day as there are stairs'.* <sup>97</sup>

*"The Ministry of Public Security has a construction standard for detention facilities, yet until now the concept of barrier-free passage is still absent. The draft of the new law concerning detention facilities, which I have read, does not seem to have addressed the issue of barrier-free passages. This issue should be taken into consideration at the design stage."* <sup>98</sup>

As important as the barrier-free facilities in these agencies, the case handling agencies including police, procuratorate, and court should gradually improve their internal working protocols and include the information of PWD clients into their case handling systems. This information can be used as a warning or prompt in stages like the review of the lawfulness of the detention, monitoring the proper treatment during detention, notification of assigned defense, and providing sign language interpreters. Only by doing so can the accessibility and reasonable accommodation support for PWD be emphasized throughout the judicial process:

*"From the end of 2013 to the beginning of 2014, the prosecution system around the country applied the uniform working protocols. It is required that the procuratorate input relevant information when handling investigation of cases. However, the system does not require information on the suspect's health conditions, including the status of being blind, deaf, mute, as well as having mental illness."* <sup>99</sup>

*"In civil cases involving PWD, aside from the presence of a proxy, the involved person him/herself can also exercise the rights of statement and argument. It is therefore necessary to construct barrier-free passages. During the trial, oral explanations of types and contents of evidences presented by both parties should be provided to the clients with visual impairments. For clients with hearing impairments, the ongoing trial should be shown in text upon devices such as projectors in a timely fashion. It must be assured to the most extent that the client with disability knows what is happening."* <sup>100</sup>

97. Lawyer Fan's speech in a conference in July 2016.

98. Director Wang's speech in a conference in July 2016.

99. Procurator Huang's speech during a conference in July 2016.

100. Li Yunfeng and Qiu Yujuan, On the Judicial Assistance to Persons with Disabilities: Case Analysis of a Basic Level Court, Xincheng Court of Xi'an City Net, <http://sxxcfy.chinacourt.org/public/detail.php?id=148>. Accessed on 1 October 2011.

## 4. Analysis of the Experience of Service Providers of Judicial Protection

The experience of service providers of judicial protection is directly related to the fourth key factor of equal access to justice for PWD (“accessible legal services”) and the fifth factor (“support of accessibility and reasonable accommodation throughout the whole judicial process”).

As mentioned in Section 2.1, legal aid providers in most cases include full time legal aid lawyers or social lawyers, notaries, judicial authenticators, and community-level legal service providers and legal aid volunteers. This part is aimed to describe their experiences of providing legal aid services to PWD and introduce a number of other actors, such as the rights protection departments of the DPF, community DPF coordinators, and disabled people’s organizations (DPOs). Although they do not directly provide legal services, those entities are of vital importance for PWD to stay informed about legal aid and be offered judicial protection. Further, the nature of the judicial mediation performed by judges is not the same with the legal services offered by lawyers or the social organizations. Thus, it should not be counted as legal aid. Yet, considering its actual impact for PWD’s access to justice, this section also incorporates it.

### 4.1 Lawyers and Legal Service Providers

Lawyers are the most essential providers of legal aid to PWD. They usually are categorized into two types - lawyers employed at law firms (or referred to as “social lawyers”)

who offer free legal services for disabled clients by the designation of legal aid organs or provide pro bono services; and those who are full-time legal aid lawyers (or referred to as public servant lawyers) employed by governmental legal aid organs who deliver legal aid services as a matter of carrying out their duty. In certain instances, due to a shortage of manpower, non-lawyer staff in community-level legal aid bodies can also perform a number of case-handling functions.

Legal aid service covers litigation representation, criminal defense, notarization, judicial authentication, legal consulting, writing legal documents, and other forms. Therefore, some social lawyers participate in the services purchased by the government to provide free legal consultation to community residents on a regular basis. In fact, certain lawyers who work in the legal service offices of the “Warm Home” or “Sunshine Home” of the communities have found that PWD who came for consultation services asked most about the “minimum living allowance” and subsidies, than about marriage, alimony, inheritance, property and land; and few mentioned labor and employment.<sup>101</sup>

“Legal service workers” are persons who are not qualified as lawyers but are certified as legal service workers and offer paid legal services within community-level legal service organizations. As designated by local legal aid organizations, they also cover a significant amount of free legal aid. For example, in 2014, social lawyers managed 399,545 legal aid cases, while community-level legal

101. A Research Institute, Survey on Legal Service Needs and Related Service for Persons with Disabilities in B City, conference speech draft, December 2015.

service workers handled 361,137 cases.<sup>102</sup> During the Fourth Session of “Top10 Legal Aid Cases for Persons with Disabilities” in H Province, among the 54 selected relatively complex cases that mostly involved litigation, 6 were handled by legal services workers, 12 by legal aid lawyers, and 36 by social lawyers. At the grassroots level in the vast region of central and western China, due to underdevelopment, there is not only a lack of lawyers and governmental legal aid organs but also insufficient manpower and funds to manage legal aid cases. Thus, legal service workers have become the main force for case handling. They play a key role in delivering community-level justice and are in a better position to combine formal legal discourse with informal local knowledge to render the information more accessible to citizens.<sup>103</sup>

In addition to the previously mentioned issues, such as imperfect legal system and insufficient accessible communication, low subsidies also constitute a challenge faced by lawyers and legal workers who offer legal aid services to PWD. As a senior lawyer recounts, “After all, we are not a charity. We need to devote a large amount of efforts to providing PWD with legal aid, so the biggest problem of safeguarding their legal rights is the aid funds.”<sup>104</sup> However, this study also found that there is another issue that is of equal importance with funding. That is, legal practitioners and other staff do not have a conceptually rigorous or updated understanding of disability and equality more generally. This is demonstrated by the following quotes from many legal practitioners during the interview and training of the research project:

*“PWD only account for a small proportion in society. We seldom meet them in daily life.”*

*“I really want to help them, but I do not know how to deal with them; I am afraid of hurting their particularly sensitive self-esteem unintentionally.”*

*“I think compared with other clients, there is no difference in treating handicapped ones, except for those mentally disordered who are prone to violence, lawyers need to pay attention to protecting themselves.”*

*“Special concern for PWD and limited legal capacity are good for them and their protection.”*

*“Disabled persons have natural deflection and not enough capacity and resources, so it is hard to protect their legal rights.”*

*“You cannot see, why do you even come out?” (addressing a blind person who fell off the subway platform and was injured)*

*“It is easy to help a person with problems in the body, but hard for those with a disability in mind.” (addressing clients who abused the petition system)*

Therefore, it is necessary to explore a model of Disability Equality Training (DET) for legal aid providers. Further illustration of relevant practical experiences and strategies will be presented in Section 5.2.

102. Legal Aid Division in Ministry of Justice, 2014 National Legal Aid Statistics (III), Justice of China, Vol. 9, 2015.

103. Liu Sida and Wu Hongqi, Dispute Resolution and the System of Professions in the Frontier of the Legal Services Market, Sociology Studies, Vol. 1, 2010.

104. Zhang Shenglin, Problems and Strategies in Legal Aid for Persons with Disabilities, Disabilities in China, Vol. 10, 2005.

## 4.2 Rights Protection Departments of DPFs and Community DPF Coordinators

Rights protection departments of DPFs at each level are usually short of professional, full-time lawyers. They have weak case-handling capabilities, and need to undertake many other management and stability-maintaining functions, even including helping PWD apply for free public transportation card. As a result, DPFs in practice often cooperate with local legal aid bodies to set up offices to transfer cases, or pay lawyers to work on a rotation basis every week to provide PWD with free consultation.

By comparison, community DPF coordinators (also referred to as “full-time commissioners”) mostly come from the local communities (including rural areas). They earnestly represent public interest, have considerable working experience and skills, and are supported by the public welfare positions funded by the government. Under the guidance of DPF, they conduct extremely meaningful work, including collecting information of PWD, delivering information of policies, assisting related governmental departments to function at the community level, and representing the PWD communities to assert their rights and interests. Community DPF coordinators perform many roles and do not directly offer legal services, but promoting laws and policies constitutes a key part of their work.<sup>105</sup> With their wide coverage, familiarity of the local PWD and regular interaction with main-

stream governance mechanisms and society, these coordinators play a significant role in promoting equal access of PWD to public services and justice. In the interviews of the research, when talking about the marginalized position of PWD groups, some leading community DPF coordinators said, “Despite insufficient attention from the leadership, we must be united by ourselves.” The community-level work performed by the coordinators, their awareness and solidarity makes for a significant contribution in promoting the DPF system to represent the voices of PWD.

Generally speaking, in capital cities and more developed areas, community DPF coordinators in general play a rather distinctive role. However, in underdeveloped areas, especially in rural areas, the realization of their functions faces many constraints. For example, in an area of central China, coordinators are older in age and have lower levels of education, many are themselves in need of minimum living allowance, and lack social capital. In this area, 44% of the coordinators have never used computers, 27% know little about policies for PWD, and 44% never visited the families of PWD.<sup>106</sup> In some public legal education activities in suburban and rural areas organized by local DPF and legal aid organs, despite pre-assessments conducted by community DPF coordinators, there is still a lack of interest from local PWD in participating. This indicates that the current public legal education does not adequately meet the needs of PWD.<sup>107</sup> In some cases, the location of some “courtyard legal services” and advo-

105. The main roles of community disabled persons’ federation assistants or full time committee members include: regularly visiting the families with disabled members to know their situation and report their problems and needs; cooperating with relevant governmental departments for the efforts of rehabilitation, education, employment, cultural life, social security, and construction of accessible facilities for persons with disabilities; disseminating the information of law and preferential policies related to persons with disabilities; encouraging them to have self-esteem and self-confidence, realize empowerment and independence by themselves; and doing other work assigned by superiors.

106. Li Yunfeng, *Research and Reflections on the Performance of the Community Disabled Persons’ Federation Assistants - Take Changde City of Hunan Province as an Example*, *Disability in China*, Vol. 9, 2015.

107. A Research Institute, *Survey on Legal Service Needs and Related Service for Persons with Disabilities in B City*, conference speech draft, December 2015.

cacy events occurs on a play stage of the village, where wheelchair users had no means of getting to the stage.<sup>108</sup> These incidents demonstrate that more professional and technical trainings and support are needed to for rights protection departments of DPFs, community DPF coordinators, and legal aid providers to join forces.

The research also found that persons with physical disabilities account for a large proportion of the coordinators of the community DPF. They are more empathetic than able-bodied persons, but they are not necessarily equipped with the essential communication skills with other types of disabled groups, including blind, deaf, and persons with mental disabilities. Some job descriptions of local coordinators specifically point out that persons with mental and intellectual disabilities are not qualified, and require persons with physical, visual, hearing, and speech disabilities to be able to perform their work without accessibility assistance. As a result, only those with minor physical disabilities are able to meet the strict requirements.<sup>109</sup>

Therefore, to encourage and support more community DPF coordinators to become “community legal advocates” and play their roles more effectively in terms of promoting the access to justice of local PWD, it is important to improve the diversity of the workforce, establish an accessible environment and develop their capacities. Further recommendations will be presented in Section 5.2.

### 4.3 Mediation as a Basic Channel and Significant Supplement to Legal Aid

According to the *People’s Mediation Law*, the People’s Mediation Committee is a social organization set up in conformity with laws to settle civil disputes. Through persuading, comforting, and other methods, the mediator bring parties to a voluntary settlement on equal terms of negotiation, so as to resolve civil disputes.

Community-level peoples’ mediation is guided and managed by the “Community Affairs Office” rather than the “Legal Aid Office” of local justice departments, and it has its own independent budget and training support. The counting system of people’s mediation cases is not the same with that of legal aid. Community-level mediation cases are great in number, and many of them do not enter legal aid procedures, but mediation is a key mechanism for settling cases in civil legal aid.<sup>110</sup> In terms of actually advancing the access to justice, people’s mediation plays the role of balancing the rights and interests of citizens, legal authority and public order of the community. It is noteworthy that in each village, there are public security and mediation persons who settle many disputes via mediation under the guidance of the head of township justice station/legal aid station/people’s mediation committee (usually staffed by the same and only one person), with their legal knowledge, life experience and local authority. They receive meager

108. Lawyer Fan’s speech in a conference in July 2016.

109. Notice on Employing Community Disabled Persons’ Federation Assistants in Spring 2016 in Heping District in Tianjin, <http://www.tjtalents.com.cn/news/canlian2016/hepingqu.htm>; In a developed area, this notice requires the candidates to be within 40 years old and above high school education level, because its human resources are more than that of underdeveloped middle and western area in China.

110. For example, in 2014, the number of non-litigation cases in civil legal aid is 434,050, which amounts to 53.4% of all the civil cases. Legal Aid Division in Ministry of Justice, 2014 National Legal Aid Statistics (III), Justice of China, Vol. 9, 2015.

wages, strive to implement policies issued by local and central governments, and play a major role in bridging the gap between modern state-formulated laws, central-government policies, and local customs.<sup>111</sup>

The majority of staff in town-level legal aid stations also serves as mediators. During work, they flexibly switch from mediation to litigation and offer legal representation for disabled parties via legal aid if necessary. For example,

*“Persuaded by the staff, Zheng realized his problem (of domestic violence) and agreed to divorce with Fang with 20,000 yuan as economic support and compensation. The next day, Fang demanded to increase economic support. Legal aid office summoned the two parties again for mediation, but they did not make concession on the sum. In the end, Fang resorted to divorce by litigation. Considering that Fang had intermittent mental disabilities and economic problems, the office completed the legal aid assignment procedure for her in the quickest manner and actively contacted the ruling court to see the development of the case.”<sup>112</sup>*

It is worth mentioning that beside people’s mediation, there are also industrial mediation, administrative mediation, arbitration mediation, and judicial mediation. In particular, judges play a crucial role in resolving disputes of PWD through judicial mediation. Considering that PWD usually lack the support from lawyers, judges are encouraged to

take the initiative to investigate, collect evidence, acquire information of the case, and use the authority of law to illustrate to each party the risks of litigation, legal responsibilities, and ethic obligations, offer placation, provide the vulnerable party with a timely and practical relief plan, and even assist them to seek opinions from experts in other fields (such as whether needing to install active prosthesis and going home for rehabilitation) to considerably care about the life difficulties of PWD.<sup>113</sup> Sometimes, with the assistance of an attorney, judges successfully conduct judicial mediation of the cases that lawyers fail to settle by themselves. In the Fourth Session of “Top10 Legal Aid Cases for Persons with Disabilities” in H Province, among the 54 recommended cases, 17 were settled by court mediation. Some local courts even require that in disputes involving PWD, the casing-filing court shall conduct pre-litigation mediation. If the mediation fails, the case should also be timely transferred to the ruling court to shorten the handling period.<sup>114</sup>

With proactive intervention by courts, judicial mediation disputes could be resolved with merely “one step”. In this way, enforcement issues could also be avoided, especially when there is a shortage of legal aid providers:

*“During trial, it was found that as a disabled person, plaintiff Du had little legal awareness and could not present relevant evidence. The defendant was also an unqualified subject. To protect the lawful business rights and interests of the vulnerable disabled*

111. Zhang Wanhong and Ding Peng, Village Mediation and Governance in Modern China Constitutional Construction - A Legal Anthropology Analysis, Jiangsu Social Sciences, Vol. 6, 2012.

112. Cheng Feifei, Legal Aid Helps Disabled Wife Suffering from Domestic Violence, Anhui Fazhi Bao, Page 2, 26 May 2016.

113. Shen Zhixian, Selected Mediation Cases, Law Press, 2012, page 146-149; and Zhou Shuangyou and Liu Ning, Judge Used Mediation to Solve the Dispute When 24 Disabled Persons Could Not Get Their Compensation, Canjiren Jiayuan Net, <http://www.cjrj.org/index.php?m=content&c=index&a=show&catid=15&id=3548>, 15 June 2015, etc.

114. Wuernisha, Yuepuhu Court Opened “Green Channels” to Protect Interests of Persons with Disabilities, China Qiushixw Net, <http://www.qiushiw.com/shehuijiaojiao/13844.html>, 20 August 2015.

*persons and reduce their litigation burden, the People's Court enhanced its efforts of co-ordination and finally brought a mediation agreement between Du and the company of Yi, who was a person not initially involved in the case. Thus, the lawful business rights and interests of Du were protected in effect.*"<sup>115</sup>

This is one of the features of China's judicial system – it goes beyond litigation and integrates strategies of “flexible justice”, social stability and livelihood insurance. In fact, mediation is also a mechanism favored by DPFs and thus incorporated into its local stability-maintaining efforts.<sup>116</sup>

#### 4.4 Positive Influence of Other Stakeholders

The current legal aid system relies greatly on legal aid personnel, lawyers, and legal service workers at the grassroots level, but it also places emphasis on the participation of other forces of the society. This includes university legal aid centers and legal clinics, legal aid civil society organizations (CSOs) (such as Feng Yu Tong Zhou, a legal aid and research center for PWD), other DPOs, and legal aid volunteers.<sup>117</sup> Moreover, legal aid for PWD requires the participation of legal professionals as well as the support of other professionals. In the same way that sign language interpretation is an indispensable means of communication between lawyers and the deaf clients, the judicial social worker is an integral force to enable persons with

mental disabilities to express their will freely in judicial cases.

In solidarity with vulnerable groups, and as advocates for the public's best interest, media and journalists can also take part in promoting legal aid for PWD. However, there are also ongoing problems with regards the media. For example, members of the mass media often neglect the importance of providing accessible communication and tend to focus on the voices of family member or guardians rather than PWD themselves. In addition, they do not have a long-lasting attention span towards specific cases and cannot guarantee that the “committed” lawyers they collaborate with are not motivated by media coverage.<sup>118</sup> The press may also lack an awareness about issues of (in)equality when reporting about cases involving PWD, thereby reinforcing stereotypes surrounding disability and normalizing the use of pejorative phrases such as “defect”, “incompetent”, “pathos” and “difficult to engage in a lawsuit”.<sup>119</sup>

Moreover, rights awareness and the supportive attitudes of PWD family members is also very important. 58.5% of the PWD participated in this survey held the opinion that “a pivotal aspect in the protection of PWD rights is the level of responsibility that is undertaken by PWD family members”; 40% of the respondents were not sufficiently confident to independently navigate the legal system and preferred “the company of social workers or guardians”. Meanwhile, legal aid providers

115. “Property Damage Case of Du v. Zhang and He”, Ten Typical Cases of Rights Protection for Persons with Disabilities Announced by the Supreme People's Court, <http://www.court.gov.cn/zixun-xiangqing-20871.html>, 14 May 2016.

116. Qiu Deshuai, Sangzhi Town Actively Solves Disability Disputes, Zhangjiajie Daily, Page 2, 14 August 2015.

117. Zhang Wanhong and Ding Peng, Legal Aid and Human Rights Protection, in Junru Li, ed., “Annual Report on China's Human Rights No.2 (2012)”, Social Science Academic Press (China), 2012.

118. Cui Jing, Analysis of the Experience of a Deaf Person Receiving legal Aid, Talang Electronic Information for Persons with Disabilities, Vol. 1, May 2016.

119. Shu Di, Monitoring Report on the Press Media's Coverage of Disability in China, the Chinese People's Political Consultative Conference Net, <http://cppcc.people.com.cn/n/2013/1217/c34948-23857230.html>; Cai Cong, Media Should Report Persons with Disabilities in an “Equal Perspective”, <http://cul.qq.com/a/20140612/069149.htm>.

found that a great number of family members, out of love and affection, might place more emphasis on the equal justice acquired by PWD than the lawyers who “stick in the mud” of law. The case below is an example of this:

*“ At that time, she (mother of an intellectually disabled person, consulting about her son’s divorce) thought for a moment and said, “My child has suffered from discrimination and rejection by the society from the day he was born. But I always believe that my child can get married. He knows the one he loves, and he also knows who he should marry and who to break up with.” This mother said that her child is a whole person who can be a plaintiff and have the right to launch a lawsuit. ”<sup>120</sup>*

The reasons why lawyers providing legal aid services to PWD need support at the level of both the community and the family. Despite being responsible and hardworking, lawyers may have limited energy to partake in such cases; at the same time PWD, given their conditions, have to overcome many barriers (created by their own personal attitude, their family and the wider community) in order to access services from the lawyer. These ideas are encapsulated by the following case:

*“ In 2014, she (with Degree-3 mental disability) withdrew her lawsuit for divorce once. Two years later, the same story happened again. I met her this June and asked why she didn’t let me help her on the lawsuit and whether she has asked another lawyer for*

*help. She said no. Then I asked who helped her write the indictment, and she told me that she had spent 500 yuan to ask a lawyer to write this. Everyone knew about her intellectual disability, but nobody gave her proper guidance, not even her family. I also talked about her problem with the community staff. They just told me that she had lost her mind and was a problematic person. ”<sup>121</sup>*

#### 4.5 The Significance of Diverse Dispute Resolution Mechanisms and Legal Empowerment

To resolve the disputes of PWD and achieve equal access to justice, in addition to increased legal aid and legal representation in court, alternative dispute resolution mechanisms – such as mediation, reconciliation, and legal empowerment – carried out by community DPF coordinators can also provide effective systemic solutions.

When the legal aid system was first developed, the main method of protecting the rights of PWD was through carrying out a lawsuit. For example, among the 156 cases (before 2006) in the *Selection of Cases on Protecting the Rights of PWD in China*<sup>122</sup> (Figure 12-14), lawsuit cases reached as many as 112, whereby the majority of the cases centered upon persons with physical disability, and cases caused by traffic accidents, on-duty injury, and personal injury. These factors are highly correlated.

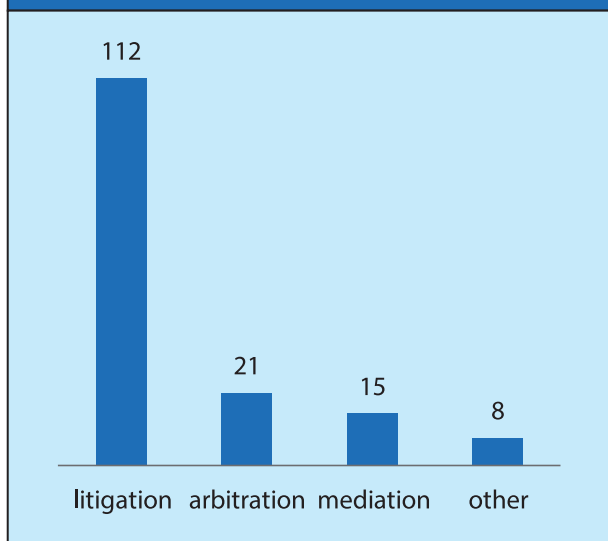
120 Lawyer Fan’s speech in a conference in July 2016.

121 Lawyer Cao’s speech in a conference in July 2016.

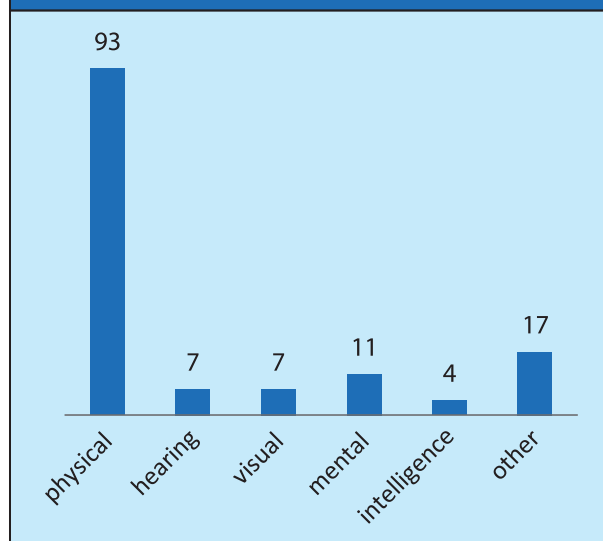
122 Bo Shaoye and Jia Wuguang, *Selection of Cases on Protecting the Rights of Persons with Disabilities in China*, China Braille Press, 2007.



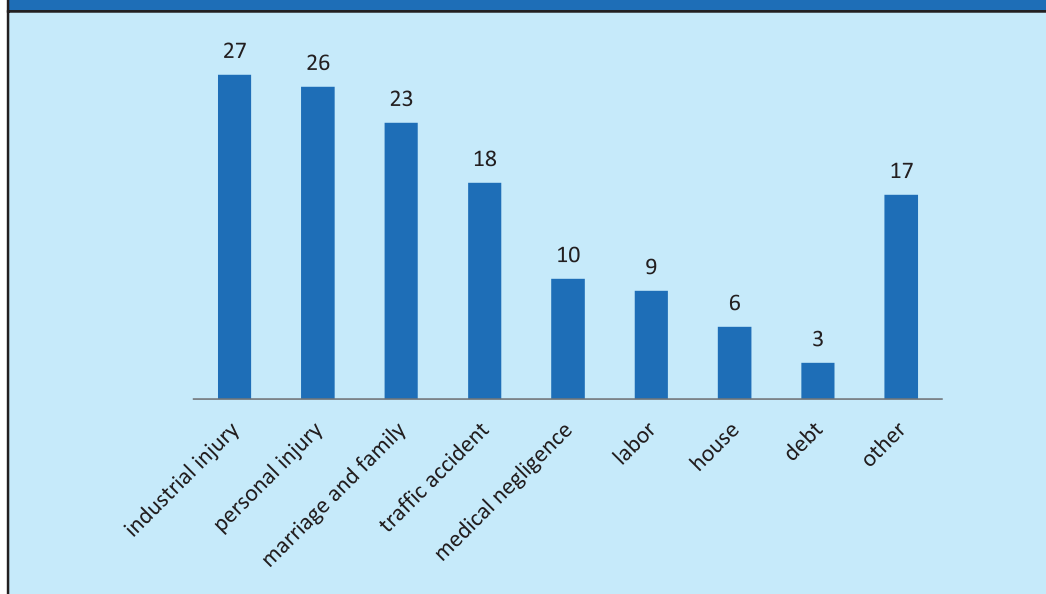
**Figure 12: Solution of the rights-protection cases of PWD**



**Figure 13: Disability statistics of clients who ask for rights protection**

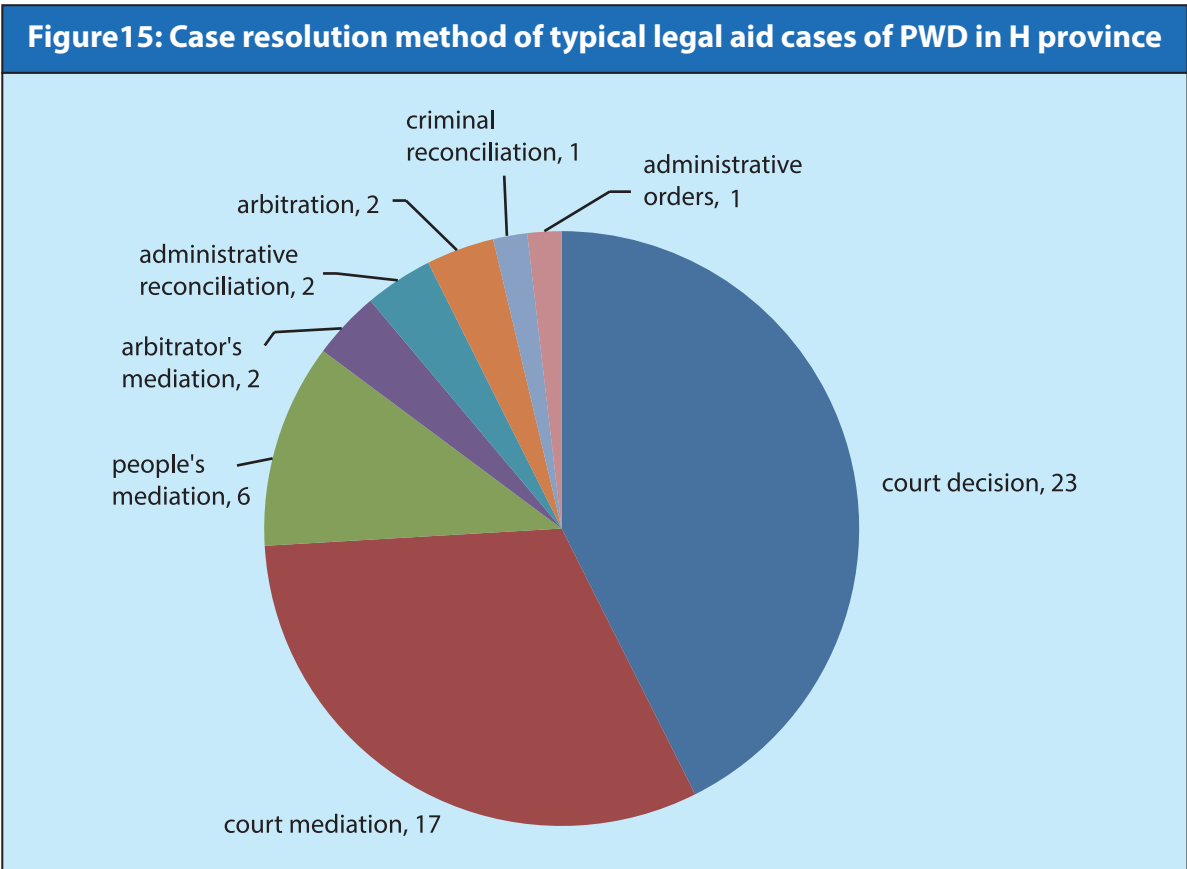


**Figure 14: Statistics of the reasons of the right-protection cases of PWD**



Until now, among the 54 selected cases in the Fourth Session of “Top10 Legal Aid Cases for Persons with Disabilities” in H Province (Figure 15), court decisions (cases of on-duty injury and traffic accident, divorce, maintenance, medical dispute, and other labor disputes) account for 42% and court mediation (including many traffic accidents, on-duty injury, and other labor disputes, and divorce, maintenance, inheritance, etc.) account for 30%. People’s mediation also plays an im-

portant role in cases such as compensation for on-duty injury, claim back salaries, compensation for the demolition of property. Moreover, the arbitrator’s decision and mediation during labor disputes, reconciliation in the administrative litigation, reconciliation before trial in criminal cases, and even the orders from administrative departments dealing with some policy problems can all serve as effective resolution mechanisms.



It is necessary to prioritize consolidating the existing dispute resolution systems to promote the equal access to justice for PWD on an individual, case-by-case basis. It is also important to explore the structural reasons within political, economic, social, and cultural dimensions that lead to the discrimination and unfair treatment of PWD and devise how best to take comprehensive legal empowerment actions under these constraints.

Interestingly, as the government is emphasizing the innovation of social governance, the equal provision of public service and the increased purchase of social services, many urban communities (sub-district level) have established organizations for PWD such as “warm home”, “sunshine home”, and “sun-

shine station”.<sup>123</sup> Services such as providing daily care, sheltered work placements and vocational training are provided for persons with severe physical disabilities and intellectual disabilities, and support for community-based rehabilitation is also provided for mentally disabled persons. Professional social workers are usually those responsible for providing these services. In particular, they are familiar with the concept of empowerment – “helping people to help themselves” – and work closely with the community DPF coordinators and other volunteers to overcome the usual limitations that characterize social work in order to empower PWD to further their own self-motivation and life improvements.

123 The State Council, Thirteen-Five Plan for Accelerating the Process of Well-Off Society of Persons with Disabilities, [http://www.gov.cn/zhengce/content/2016-08/17/content\\_5100132.htm](http://www.gov.cn/zhengce/content/2016-08/17/content_5100132.htm).

Here, empowerment means that PWD have increased confidence, capacity and freedom to make choices and take actions by themselves. More specifically, legal empowerment refers to the ways that PWD are equipped to make the best use of formal and informal laws to increase their equal access to justice through individual or collective action, realize their rights-based development, be relieved from poverty, and gain mastery over their lives.<sup>124</sup> Under the context of promoting the rule of law, judicial reform, and judicial protection of human rights national-wide, legal practitioners should focus on upholding the social work principle of “help people to help themselves”. This can be achieved by integrating the law and institutional frameworks with the inherent dignity and rights of PWD into community-based, multi-stakeholder actions led by PWD.

Therefore, legal professionals and community legal advocates (in particular, community DPF coordinators and activists from diverse PWD communities) not only play a role in resolving the individual cases of PWD but also in terms of creating a space for “alternative

legal aid”. This means that they cannot just focus on the specific legal questions of the case but need to go beyond the traditional attorney-client relationship to strengthen the capacity of PWD in their daily lives. This can be made possible by employing a comprehensive strategy that also considers providing various public services for PWD such as rehabilitation, caregiving, education and employment. Solving the almost insolvable problems of PWD— the so called “the most difficult of all the difficulties” by the government<sup>125</sup> – depends on PWD themselves (individually or organized) to fight for their basic rights. Legal professionals and community legal advocates should be lawyering *with* PWD, rather than for them. Together, they can target the social roots of the problems, share basic legal knowledge and skills, and build the confidence and resources of PWD to make the law work for everyone.<sup>126</sup> Besides the provision of legal aid on a case-by-base basis, these actions also include public interest litigation, self-advocacy, community development and mobilization, support and capacity building of community legal advocates.

124 Zhang Wanhong and Ding Peng, *Village Mediation and Governance in Modern China Constitutional Construction - A Legal Anthropology Analysis*, Jiangsu Social Sciences, Vol. 6, 2012. The explanation for legal empowerment can be found in the UN Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone*, the Chinese version of the report can be seen on the official website of the United Nations Development Programme.

125 The State Council, *Thirteen-Five Plan for Accelerating the Process of Well-Off Society of Persons with Disabilities*, [http://www.gov.cn/zhengce/content/2016-08/17/content\\_5100132.htm](http://www.gov.cn/zhengce/content/2016-08/17/content_5100132.htm).

126 Zhang Wanhong, *Report on the Public Interest Litigation in the Philippines*, LuoJia Law Forum, Wuhan University Press, 2011.

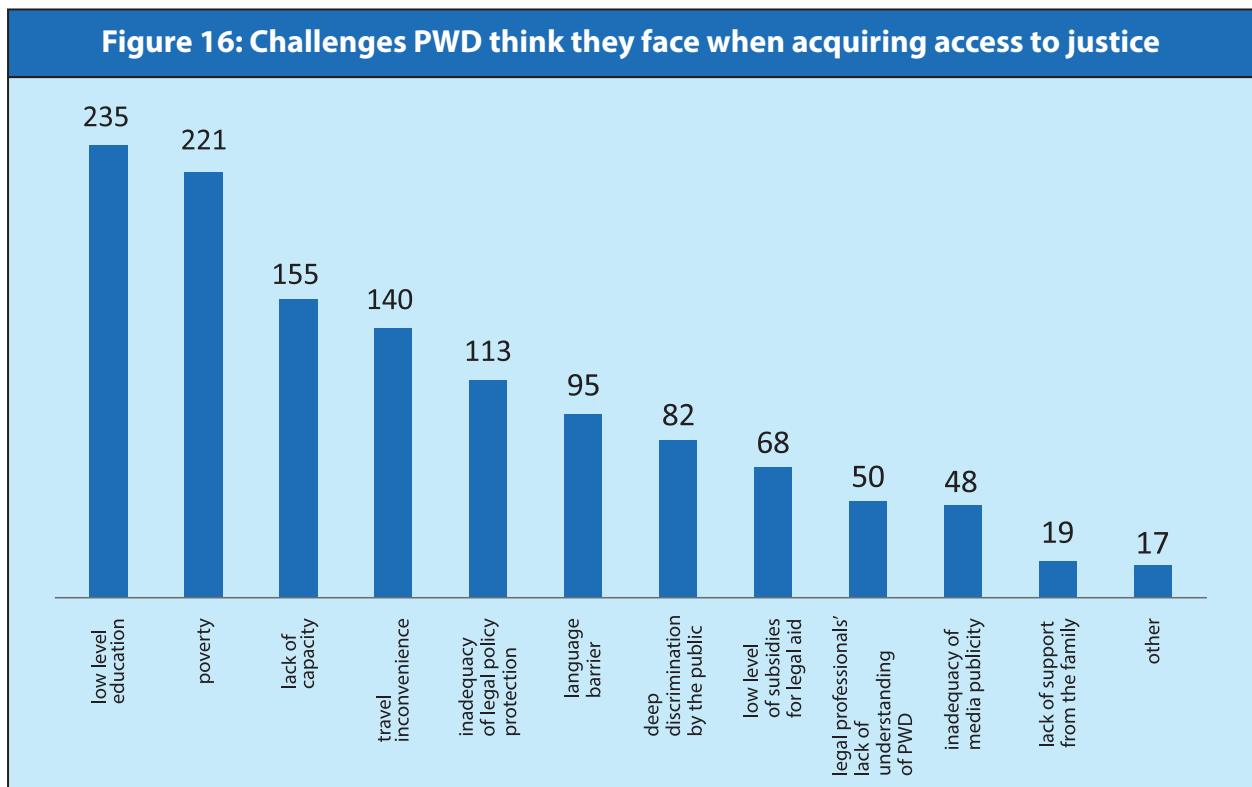
## 5. Conclusions and Recommendations

This report does not intend to merely draw attention to the relevant macro-level issues that hamper PWD access to justice – such as the stark lack of funding and manpower for providing legal aid. Rather, it seeks to argue that scholars and practitioners alike should not assume the mindset of “pleading for the vulnerable” when engaging with PWD issues in their respective lines of work. Instead they must show true respect for the diversity of people, focus on bringing the agency of PWD into consideration, adhere to a two-way communication with PWD in a way that advances the latter’s equal participation in dialogue, and devote committed and sustained efforts to achieve real change. The study presents the specific legal needs, rights awareness and access to justice experience of PWD, as well as feasible bottom-up strategies for social governance innovation at the grassroots level, including how to assess legal needs of PWD, influence stakeholders’

rights awareness, provide support for key community legal advocates (DPF coordinators), and encourage participation of pro bono lawyers and social organizations in the provision of legal aid services. The scaling up of these improvements certainly depends on the promotion of national legislation and policy-making. In this context, the study also provides recommendations for relevant evidence-based legal and policy advocacy.

### 5.1 Challenges of Equal Access to Justice for PWD from the Demand-Supply Dimension

For the over 500 PWD involved in the questionnaire survey of the study, the biggest challenges or obstacles they met when seeking to acquire equal access to justice and safeguard their legitimate rights and interests are shown in Figure 16:



In light of the analysis in Sections 3 and 4 of this report, the following challenges exist in PWD's equal access to justice:

On the topic of legal demand:

- The disputes of PWD reflect that their lives are still largely confined to the domestic sphere, as well as their injuries in the workplace and traffic accidents, and they have less opportunities to participate in other areas of social life (3.1, 4.5);
- The rights awareness of PWD is limited. Especially under the influence of social discrimination and prejudice, they are not confident of their ability to take legal action for resolving disputes and protecting their rights. Moreover, gender awareness of PWD has yet to be improved (3.2, 3.3.4);
- PWD do not know much about relevant laws (3.2);
- It is difficult for PWD to access affordable legal services, and little is known about legal aid (3.2);
- Many rights-related issues in the lives of PWD can hardly be resolved through judicial process (3.3.1, 3.3.3);
- The lack of accessibility support and reasonable accommodation through the whole judicial process makes it hard to respond effectively and timely to the legal needs of PWD (3.3.2, 3.5);

On the topic of service delivery:

- Legal service providers, including lawyers, legal service workers, and staff of public security organs, procuratorial organs and people's courts and other departments lack a comprehensive and conceptually rigorous understanding of both disability and equality (4.1);

- The barrier-free facilities of legal institutions are yet to be improved (3.5);
- The internal work protocols of the legal departments are insensitive to disability related issues (3.5);
- Limited involvement of other stakeholders, including the rights protection departments of the DPFs, the Women's Federation and other social groups, the community DPF coordinators and DPOs (4.2, 4.4);
- The current dispute resolution mechanisms for PWD and realizing their rights are not fully diversified and incorporated into the rule of law, and they lack the perspectives of legal empowerment (4.3, 4.5).

## 5.2 Strategies of Promoting Equal Access to Justice for PWD

This section will respond to the five key factors to ensure equal access to justice mentioned in Section 1.1, put forward specific recommendations of legal advocacy, and share actionable experiences and strategies.

### 5.2.1 Improve the Legal System

In accordance with Article 2 and Article 12 of the *CRPD* and in response to the relevant issues raised in Section 2.2 above, the following evidence-based legislation and policy advocacy can be conducted:

- 1) Advocate that national legislation includes special provisions on disability in the *Legal Aid Law* and the *Detention Facility's Law*, which are currently being drafted such that it encourages the participation of social forces in providing legal aids to PWD, and establishes the equal legal capacity for PWD in the drafted *General Rules of Civil Law*;

- 2) Provide advice on the local implementation and enforcement of national laws (such as the *Anti-Domestic Violence Law*<sup>127</sup>) such that they show an attention to PWD equality; and also focus on the implementation of the *Charity Law* to further improve the mechanisms for CSOs' participation in the provision of legal aid services. Under the circumstances where local justice departments are limited in their capacity to provide direct legal aid services due a lack of resources,<sup>128</sup> relevant government departments need to take into account the vigorous development of CSOs in China to mobilize the participation of social resources in the provision of public services and protection of human rights,<sup>129</sup> further enlarge the relevant policy space to increase support and encourage the participation of diverse social organizations in the provision of legal aid services that are more extensive and more specialized.
- 3) Engage in the promotion of local dispute resolution methods and social governance policies, pay attention to the significance of mediation and other informal dispute resolution channels and encourage local governments to provide trainings for people's mediators which incorporates the critical perspectives of equality (especially gender perspective and disability equality

awareness), to reduce instances of human rights violations in the process of mediation.

## 5.2.2 Produce Understandable Legal Information

In order to disseminate more understandable legal information among PWD, the following can be done in accordance with Article 8 and Article 21 of the *CRPD*:

- 1) Innovate the forms of legal public education. For example, organize theater-style legal education for both people with and without hearing impairments,<sup>130</sup> disseminate sign language-interpreted legal aid videos<sup>131</sup>, produce tailor-made Q & A booklet on how PWD can access legal aid. Some local DPFs for instance have compiled a consumer's rights manual for PWD<sup>132</sup>;
- 2) Considering that TV was indicated in the questionnaire survey as an important channel through which PWD obtain legal information, it is necessary to integrate the requirements of the *Outline of the 13<sup>th</sup> Five-Year Plan for Speeding up the Well-off Process of Disabled Persons* on providing accessible information and adding subtitles and sign language interpretation in TV programs in response to the different needs of PWD;

127 This research found that for some county level government branches, local women's federation, disabled persons' federations, and even local law-enforcing and judicial departments, they lack guidance in implementing the anti-domestic violence law and are waiting for the issue of related judicial interpretation or local enforcement regulation.

128 For example, most justice stations at township level in the west and the middle provinces which provide legal aid are still in the status of "one staff, one station", "one staff, many responsibilities" and have limited ability to provide service. See Xiao Han, *The Role and Function of Justice Organs Should be Emphasized during the Judicial Reform - A Case Study of Changsha City*, *Public Administration & Law*, Vol. 1, 2015.

129 Ding Peng and Zhang Wanhong, *The New Development of Social Organizations and its Role in Human Rights Protection - A Case Study of Wuhan*, in Junru Li, ed., *Annual Report on China's Human Rights (2015)*, Social Science Academic Press (China), 2015.

130 It is a small grant of the third session public interest programs of Wuchang District Wuhan City in 2016 carried out by Wuhan East-Lake Institute for Social Advancement, a local registered social organization involved in public service.

131 Link of the video: <http://v.qq.com/x/page/t0310x5dsdr.html>; The 9-minute video has been viewed for more than 44,000 times in three months since it was put online. Persons with hearing disabilities in many places all over the country have sent messages to the author of the video, including legal consultation. It has shown the influence of this form of legal popularization.

132 Disabled Persons' Federation of Qidong City, *Make Persons with Disabilities Know How and Dare to Protect Their Rights*, [http://cl.nantong.gov.cn/art/2015/12/11/art\\_42437\\_2006726.html](http://cl.nantong.gov.cn/art/2015/12/11/art_42437_2006726.html).

- 3) Noting the growing influence of smart-phones, develop mobile application software (APP) that facilitates the online dissemination of legal information, and incorporate legal and rights information in the new forms of service and support, such as online employment and cloud service;
  - 4) Develop community-based legal public education in response to different needs of persons with different disabilities;
  - 5) In the development of legal materials, incorporate the experience of PWD, including the community DPF coordinators and other community legal advocates, so as to make the content of legal information easier to understand.
- 2) Understand the legal needs of PWD in the community, especially using the participatory community needs assessment method, to make the voice (claims) of PWD heard by more people.
  - 3) Conduct community-based human rights education to raise rights awareness of PWD and other stakeholders, encourage more PWD to claim their rights to free legal services provided by the government, and actively use the law to protect their rights and interests.

### 5.2.3 Raise Awareness and Build Confidence of the Rights-holders

Rights awareness and positive attitudes of the PWD as rights-holders are the basis on which PWD can independently pursue their equal access to justice. Therefore, the following can be done in accordance with Article 8 of the *CRPD*,

- 1) Explore in-depth community legal empowerment strategies which could include PWD, working with community legal advocates, primarily the community DPF coordinators and activists of diverse disability communities, as well as other professionals who have long been going to the community to provide volunteer services; support and encourage them to coordinate the mobilization of the community's multiple stakeholders and adopt alternative legal aid strategies to realize the right-based development of PWD when "law is not enough" (such as the mediation case shown in 3.3.4).

### 5.2.4 Provide Accessible Legal Services

Providers of legal services are still the most dominant force in the system of access to justice by PWD, and to ensure that they provide equal and accessible legal services to PWD, the following can be done in accordance with Article 13 of the *CRPD*:

- 1) Develop and promote Disability Equality Training (DET) that is tailor-designed for legal aid providers.

The pre- and post-questionnaires and interviews on DET in this study show that it is possible to change the awareness and attitudes about disability and equality among diverse stakeholders. For example, the participants are more likely to show recognition of disability as a form of human diversity, identify the equal rights of PWD in education, employment, and access to justice, show care for the needs of PWD, agree with expanding the support of professional services available to PWD, and realize the need to remove external barriers faced by PWD. As one participant of DET from the legal departments said, "the training has changed my understanding of PWD. I had been avoiding facing PWD squarely, but now the idea that everyone should be treated equally is rooted deeply in my brain."

2) Disseminate new ideas of disability equality and establish a coordination platform through the trainings mentioned above and with the help of related institutions, encourage more legal professionals and social forces to participate in providing accessible legal services for PWD.

### 5.2.5 Ensure Accessibility Support and Reasonable Accommodation Throughout the Whole Judicial Process

The main reason why the access to justice of PWD shall be highlighted by a specialized human rights convention, as referred to in Section 1.1 of this report, is that the barriers PWD are more likely to face shall be removed in accordance with Article 5 and Article 9 of *CRPD*, to provide support for and reasonable accommodation throughout the whole process:

- 1) Cooperate with various professional organizations to explore best practices, encourage and supervise the legal departments and legal service agencies to take the lead in implementing the *Regulations on the Construction of Accessible Environments*;
- 2) Develop and promote DETs designed for the legal departments (public security organs, procuratorial organs, and people's courts). As paragraph 2, Article 13 of the *CRPD* states: "In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of the administration of justice, including police and prison staff." There are also many reports in the international community which point out the significance of training for civil servants on disability equality awareness.<sup>133</sup> Meanwhile, at the domestic level, grassroots legal aid agencies have a high demand for training, but in reality, there is a great lack of experienced trainers and expert support for continuing professional development.
- 3) Conduct empirical studies, develop monitoring and evaluation frameworks for the trainings, and scale up the trainings. Additionally, explore more effective solutions that better connect the PWD communities with the decision-makers of the legal sector.

133 For example, Australian Human Rights Commission: Access to Justice in the Criminal Justice System for People with Disability, Issue Paper, April 2013, <https://www.humanrights.gov.au/our-work/disability-rights/publications/access-justice-criminal-justice-system-people-disability>.