



公平发展 公共治理
Governance for Equitable Development

Governance for Equitable Development Project: Evaluation of Progress on Objectives and Indicators





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This document has been produced with the financial assistance of the European Union and the UNDP. The views expressed therein can in no way be taken to reflect the official opinion of the European Union and UNDP.

Foreword

With the joint efforts of the European Commission (EC), United Nations Development Programme (UNDP) and the Chinese Government, the Governance for Equitable Development Project (GED) was officially launched in China in July 2007. The project aims to contribute to the Chinese Government's efforts in promoting rule of law and civil society development through the improvement of law-making mechanisms, judicial institutional reform and the facilitation of the CSO construction. The project is so far the largest comprehensive one among the international cooperation projects of its kind in China.

Over the past five years, remarkable achievements have been made in all three components of the project, including Component A-**Access to justice is increased** in cooperation with the Supreme People's Court (SPC), Component B-**The law and policy-making system is improved** with the Legislative Affairs Commission (LAC) of the National People's Congress (NPC) and Component C-**Civil Society Involvement is broadened** with the Ministry of Civil Affairs (MoCA).

In accordance with China's national construction objectives, GED supported activities, either domestic or international ones, have encouraged useful research in relevant areas and facilitated the promulgation of laws and policies in China, making a positive contribution to the promoting rule of law and an open society.

The reports are completed by Chinese and international experts, present an overall analysis and review of project achievements and indicate future directions for reform. There are four reports. The first is an overall assessment against the objectively verifiable indicators (OVIs) of the project. The other three focus on parts of the three components of the GED project, namely **judicial efficiency**, **law making and the development of civil society**.

I wish to take this opportunity to extend my sincere thanks on behalf of the Ministry of Commerce to the EC, UNDP, the LAC of NPC, the SPC and MoCA for their efficient cooperation and contribution to the successful and fruitful implementation of the project. And my thanks also go to experts, scholars, CSOs and media for their great attention and assistance.



Yu Jianhua

Assistant Minister

Ministry of Commerce of the People's Republic of China

May 2012

Foreword

The European Union was established with a legal treaty and is founded on the principle of the rule of law. This concept centres on a set of rules governing all society's processes and interactions and being above all society's institutions and organisations. The rules or laws set the moral and ethical standards by which the behaviour of members of society and organisations are judged. For the rule of law and thereby civil society to flourish, it requires the citizens of a country to respect and trust legal processes, and the law to be applied in a consistent way to all. This gives people a feeling of inclusiveness and optimism about their future. The European Union's GOVERNANCE FOR EQUITABLE DEVELOPMENT (GED) project, implemented by the United Nations Development Programme (UNDP) from 2007 to 2012, has assisted China to benefit from knowledge of Europe's developed legal system and civil society through technical exchange, research and knowledge sharing.



As people's incomes grow and material living standards rise, their expectations about the quality of life, participation in civil society, protection of property and individual rights increase. Meeting these expectations for a better life in a rapidly urbanising society with a still significant rural population is one of the key challenges facing China today. This is where the GED project has supported China in moving to a more equitable, inclusive and vibrant civil society, based on the rule of law.

The project has worked with three key Chinese agencies, the National Peoples' Congress, the Supreme People's Court and the Ministry of Civil Affairs on topics ranging from law drafting and court efficiency to registration of civil society organisations. The project has produced remarkable results over five years, leading to an improved environment for civil society to flourish in China, increased citizen participation in law making, reduced barriers to seeking justice, increased transparency and efficiency of selected courts and progress in the consistency of court decisions.

This compendium of papers summarises the achievements of the GED project in the wider context of China's recent reforms and looks to topics on China's reform agenda where there is scope for future international co-operation. The papers presented contribute to the debate on China's reform, while indicating the benefits international co-operation can bring to the reform process.

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Markus Ederer

EU Ambassador to China and Mongolia

Foreword

In recent decades, China has achieved remarkable growth and development which has brought about equally dramatic reductions in poverty and improvements in people's living standards. Nevertheless, disparities continue to abound and there is much work that remains to be done if we are to ensure that China's poorest are able to participate more fully in, and benefit from social and economic progress. Within this context, the development of institutions and policy frameworks will be essential in reaching out to vulnerable individuals and groups and enhancing opportunities to improve their lives.



UNDP regards governance and the rule of law as an essential part of its cooperation with China. Together, our work includes support to the development of transparent and accountable legal processes that are effective and equitable, and that strengthen the rule of law. It also includes broadening the participation of citizens, through a robust civil society, in shaping decisions that affect their lives. In turn, this participation is increasing public trust in China's laws and institutions and reinforcing the rule of law.

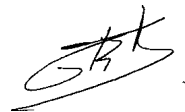
Strengthening the rule of law and promoting civil society participation in legal spheres have been joint objectives pursued by the Governance for Equitable Development (GED) project in China. Through a partnership between UNDP and the European Union (EU), including financial support from the EU, the GED project is the first international cooperation in China to bring together the Legislative Affairs Commission of the National People's Congress, the Supreme People's Court and the Ministry of Civil Affairs.

Five years of close cooperation have yielded impressive results, as indicated by research and assessments conducted. Laws and policies aimed at increasing access to justice, enhancing judicial transparency and openness, expanding access to courts and the reform of the people's assessors system have been introduced. Systems related to the drafting of laws and their application have been taken forward in an unprecedented manner, with an increasing focus being placed on consistency and public participation at different stages of law-making. Policy breakthroughs have also been made through the introduction of policies that support CSO development.

Yet, notwithstanding the significance of these achievements, a number of challenges remain in terms of the scale and extent with which policies are implemented. Looking ahead therefore, it is clear that further efforts

will be required to achieve effective policy implementation at both central and local levels and to further strengthen governance for equitable development.

This series of four research publications engages experts, practitioners and policy-makers to critically analyse the successes and lessons learnt from the cooperation. It contains constructive proposals for future approaches to further strengthening the rule of law and the value of civil society development in this process in China. The true value of the GED project lies in building this solid foundation on a path to good governance.

A handwritten signature in black ink, appearing to be 'CB' with a stylized flourish underneath.

Christophe Bahuet
UNDP China Country Director

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GOVERNANCE FOR EQUITABLE DEVELOPMENT (GED) PROJECT: REVIEW OF RESULTS AND ACHIEVEMENTS

Natalie Lichtenstein^① YANG Xinxin^②

1. The Governance for Equitable Development (GED) Project took as its goal supporting the process of governance in China towards more transparency and accountability while strengthening the emerging institutions of the national legislature, the judiciary and civil society. The Project aimed to contribute to the government's efforts by promoting civil society development and the rule of law through institutional reform, democratic law-making, participation, communications and piloting. The Project donors were the European Commission and United Nations Development Program. The Project was composed of three components:

- Component A (Access to Justice) was designed to promote policy development, enhance the capacities of the court system to deliver fair and transparent justice, and increase the transparency in court decision-making. Implementing Agency: Supreme People's Court (SPC).

- Component B (Law and Policy Making) was designed to improve the law and policy-making system, through institutionalizing public engagement and participation in law-making and broadening law harmonization. Implementing Agency: National People's Congress (NPC).

- Component C (Civil Society Involvement) was designed to improve the policy and legal environment for civil society organizations (CSOs), to enhance perceptions of CSO roles in development, and to build government and CSO capacities related to CSO development. Implementing Agency: Ministry of Civil Affairs (MOCA).

This Report reviews the results of GED Project activities under all three components in relation to Project indicators and identifies particular aspects where Project-related activities contributed to reforms.

I. INTRODUCTION AND SUMMARY OF FINDINGS

2. Introduction. The Project's design and intended results were set out in a matrix, the Project Logframe, which was most recently revised in late 2009 and agreed in early 2010. This format set out the intervention logic, the objectively verifiable indicators of achievement (OVIs), the sources and means of verification, as well as

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assumptions and risks. The Logframe was further subdivided into what can be called “Overall OVIs” for the Overall Objectives and Project Purposes, and “Operational OVIs” to measure the expected results under each of the three components.

3. The focus of this Report is to verify, to the extent feasible, whether the Overall OVIs and the Operational OVIs have been achieved, using available information, including sources and means of verification listed in the Logframe. Section II (Review of Overall Project Achievements) summarizes the changes over the Project period for each of the Overall OVIs. Section III (Review of Project Results By Component) presents the Context, Results and Project Contribution for each of the Operational OVIs. For each OVI, an introductory box quotes the OVI as in the Logframe, and shows the OVI Status (achieved, substantially achieved or partially achieved). Section IV (Project Contributions) highlights cross-cutting GED contributions. Section V (Conclusions) offers some observations on the Project and future cooperation, as well as brief conclusions.

4. Annex 1 (Status of Project Indicators) combines in one table all of the status boxes in the text, for easy reference. Annex 2 contains the outside references for the report, primarily for the Overall OVIs. Annex 3 records the sources of Project-related information available to the consultant team.

5. Summary of Findings. All five of the Overall OVIs were found to have been achieved based on the sources of verification provided in the Logframe. For the Project components, all of the Operational OVIs were considered to have been achieved: fully achieved (19), substantially achieved (1) and partially achieved (8). For Component A, seven OVIs were achieved, one substantially achieved and two partially achieved. For Component B, four OVIs were achieved, and five OVIs were partially achieved. For Component C, eight OVIs were achieved and one partially achieved.

6. Where OVIs were not fully achieved, it is not necessarily due to issues in Project implementation, though the coming Project evaluation may shed more light on this question. In general, it seems equally likely that incomplete OVIs are a reflection of changes after Project design in the relative priority and urgency of specific policy measures in the counterpart agency's reform agenda.

II. REVIEW OF OVERALL PROJECT ACHIEVEMENTS: OVERALL OVIs

7. Overall Objective: an open and equitable society based on the rule of law. The GED Project had as its overall objective support to the Chinese Government in its efforts to develop an open and equitable society based on the rule of law. The achievement of this overall objective was assessed by reference to developments since Project origin under four specific OVIs: (A) access to justice; (B) law and policy-making system; (C) civil society participation in judicial processes and law-making; and (D) rule of law in World Governance Indicators.

(A) ACCESS TO JUSTICE: Improvements in Policies, Laws and Regulations

OVI: Improved policies, laws and regulations aimed at leading to more open access to justice for more people in society.

Status: Achieved. Policies, laws and regulations aimed at access to justice have been improved in the Project period. Areas of improvement include aspects of judicial openness; access to courts; and reform of the people's assessors system. Reforms with indirect impact include: better court funding; guiding cases; sentencing guidelines; and mediation reforms.

8. Several dimensions of the current and previous judicial reform programs since 2007^① have been aimed, directly or indirectly, at more open access to justice for more people in society. Reforms in policies, laws and regulations that could indirectly lead to more open access to justice include: better funding for courts; anti-corruption measures; guiding cases; sentencing reform; and mediation reforms. Reforms more directly aimed at more open access to justice include: expansion of transparency (judicial openness); easier access to courts; reform of the people's assessors system; and expansion of legal aid.

(1) Reforms Indirectly Affecting Open Access to Justice

9. Better Funding For Courts. From a macro perspective, the reform and improvement of the system of guaranteed funding for the judicial system, and particularly the increased provision of central funding for poorer areas, will improve citizen's access to justice. In the past, the funding for local court expenditures came primarily from the local government at the same level and court case handling fees; funding for staff was often not fully guaranteed, especially for basic courts and intermediate courts in central and western provinces. Starting in 2009, China launched a reform in the guarantee of court funding. Central and provincial level governments, through an increase in transfer payments and capital investment, are providing funding for all types of local court expenditures. For the basic courts in the central and western provinces and intermediate courts in the areas with economic difficulties, the proportion of funding borne by the central and provincial governments averaged above 50%, with the highest at 90%. Through promoting these reform measures, there has been a considerable increase in funding for courts all across the country—in the first year of the reforms, 2009, funding for all courts was 16% higher than in 2008. ^②

10. Anti-corruption Measures. Reducing corruption and the perception of corruption in the judicial system is an important part of making the system more accessible to all people, at all income levels, from all walks of

^① SPC, *Third Five-Year Reform Outline for the People's Courts (2009-2013)*, March 17, 2009.

^② This paragraph is based on the keynote speech given by Judge Yu Lingyu, Director, Judicial Reform Office, on November 16, 2011, at the panel on Law and Development in China: Opportunities and Challenges, as part of the World Bank's Law, Justice and Development Week 2011.

life. The SPC has issued several documents aimed at anti-corruption, from the rules on the “five prohibitions” to the establishment of a system of supervisors,^① to the revisions of the Code of Conduct for judges.^② People’s assessors offer another mechanism that is often suggested as an inhibition on corruption. Both guiding cases and sentencing guidelines also reduce opportunities for corruption. The courts have also instituted an online forum where citizens can report on corrupt judges and monitor the progress of whistle-blowing tips.^③

11. Guiding Cases.^④ During this period, the SPC has developed and established a new system of guiding cases. This case guidance system differs from the system of precedents in common law countries, but reflects developments in other civil law jurisdictions. Case guidance can make up for gaps in written law, establish unified standards for adjudication, and reduce negative impacts on justice caused by differences in rulings in identical or similar cases issued by courts in different regions.^⑤

12. Sentencing Reform. Sentencing reform has multiple aspects, including better regulation of punishments, a relatively independent procedure for meting out punishments, and developing scientific and more quantitative means of punishment, supplemented by qualitative analysis.^⑥ The SPC issued Sentencing Guidelines in 2010 (with baseline sentences for 15 of the most commonly encountered crimes) that will help improve standardized sentencing, enhance openness and reduce the “same crime different penalty” phenomenon.^⑦

13. The introduction of sentencing guidelines and the case guidance system can contribute to better access to justice across the country. Both reforms seek to standardize the results of cases, so that similarly situated parties can have more predictable and regularized treatment regardless of the court, the judge or the location. At the same time, judges have some limited leeway to vary from sentencing guidelines or guiding cases, so that regularization need not prevent fairness in a particular case.

14. Mediation Reforms. Mediation, in various forms, and alternative dispute resolution (ADR) mechanisms can offer better access to justice, where, for instance, these non-litigation methods lower financial and human costs for parties in disputes and can lead to more satisfactory solutions that do not require additional efforts at

① Xu 2009. The five prohibitions are: prohibition of accepting dinner invitation or gifts giving, prohibition of unjustifiable contact with lawyers, prohibition of interference in cases handled by others, prohibition of malpractice for personal gains in activities of authorized evaluation or auction, and prohibition of divulging secrets from court trials.

② In December 2010, SPC issued the Model Judicial Behavior Code and the Basic Code of Professional Conduct for Judges, and recusal regulations (to prevent improper influence from family members and internal court personnel). CECC 2011, at 183-4.

③ CECC 2011 at 185.

④ The case guidance system is discussed under Component A, Result 1 b, in paragraphs 66-70.

⑤ Xu 2009.

⑥ Xu 2009.

⑦ Xu 2010.

enforcement. The reinvigoration of mediation reflects, in part, a shift away from emphasis on adjudication and procedure,^① although pilots like the court-connected mediation in the Pudong New Area Court provide a stronger legal and practical infrastructure for various types of mediation.^② A core principle of mediation, however, is the principle of voluntariness. In that light, the coercive overtones of the push to improve and sometimes require mediation in lieu of litigation raises concerns that the benefits for access to justice could be reduced or reversed.^③

15. A clear connection to open access to justice is evident in the 2010 adoption of China's *People's Mediation Law*, consolidating decades of experience with people's mediation. Citizens are selected to serve three-year terms on people's mediation committees at village committee meetings (in rural areas) and at resident's meetings of neighborhood committees (in urban areas). People's mediation committees are expected to have representation of women, and, in multiethnic areas, ethnic minorities. The mediation services are free of charge and resulting mediation agreements are legally binding on the parties. There is also provision for judicial confirmation of the mediation agreement, if the parties both agree to request it, which makes the agreement directly enforceable.

16. The reinvigorated system of people's mediation offers more participation in dispute settlement (by having community members serve as mediators) and lowers the cost of access to justice, for those cases where the parties agree to seek mediation. (The law also permits courts to advise parties of the option of mediation before cases are filed.) By providing a strong legal foundation for the resulting mediation agreements, the law also can aid access to justice.

(2) Reforms Directly Affecting Open Access to Justice

17. Expansion of Transparency (Judicial Openness) .^④ The Supreme People's Court's *Six Regulations on Judicial Openness*, issued in 2009, requires that six phases of judicial work must be timely and made public on a full scale: case filing, court trial, enforcement, hearing, documentation and administration of judicial affairs.^⑤ Activities to promote openness in 2010 included the Court's designation of 100 model courts for

① Liebman 2011, noting (at 180): “The return to mediation reflects frustration with some of the problems of adjudication, most notably the court's inability to enforce decisions and the perception that many litigants are dissatisfied with adjudicated cases.”

② ADR is discussed under Component A, Result 1d, in paragraphs 75-77, and the Pudong Pilot in Box 3.

③ According to CECC, there are reportedly mandatory mediation quotas and financial rewards and career advancements for judges with high rates of mediation, which could detract from the substantive fairness of the process and undermine the legitimacy of the court system. CECC 2011, at 183, quoting Carl Minzner, “China's Turn Against the Law,” Washington University in St. Louis Legal Studies Research Paper, No. 11-03-01 (2011), at 31-37. See also Liebman 2011 at 180.

④ Open trial reform is discussed under Component A, Result 2a, in paragraphs 81-85.

⑤ SPC, *Six Regulations on Judicial Openness and Several Provisions on the People's Courts Exposure to Public Supervision through Mass Media*, December 8, 2009.

Judicial Openness. Courts in several provinces have stated that decisions will be posted online, and trials streamed over the internet. ①For instance, at the local level, all three levels of courts in Shaanxi Province put all judgment documents on the web, Guangzhou Municipality Intermediate Court webcast the trial of a criminal case. ②Another element of judicial openness is the publication of draft judicial interpretations on the Supreme People's Court website for comment. ③

18. Reforms to create a more open system of judicial selection also promote more open access to justice from society. Selecting judges from among lawyers, and other legal workers is part of the proposed system, although experimentation so far has been limited. ④

19. Easier Access to Courts. In 2009, the Supreme People's Court issued its *Opinions on Further Strengthening Efforts to Make It Easy for the Public to Get Access to Judicial Service*, which requires courts at all levels to take multiple measures to improve access to justice. Some have suggested that such efforts need to be tempered with respect for judicial neutrality and passiveness. The Court has also promoted having some trials in different places, outside courtrooms, a kind of assizes system. ⑤

20. Reform of the People's Assessors System. ⑥While people's assessors have been part of China's judicial system for decades, the reforms initiated in 2004 by the NPC Standing Committee are aimed at more participation by citizens in court trials, selected in a fairer way and with a clearer role vis-a-vis judges in the same collegial panel.

21. Expansion of Legal Aid. China's legal aid system, administered by the Ministry of Justice, provides legal services for certain types of cases, through financial support for a nationwide network of legal aid offices. Central funding for legal aid has been increasing in recent years, as have special efforts to provide legal services in poorer regions. ⑦

22. However, improved funding for legal aid raises the parallel question of the scope of legal services that citizens can access. While the legal profession continues to grow, the distribution of lawyers around the country is uneven. In 2011, it was reported that only 5, 000 of China's 200, 000 lawyers work in the relatively

① Liebman 2011 at 182, citing Henan Province as an example.

② Xu 2010.

③ Horsley 2009, citing <http://www.chinacourt.org/wsdc/more.php?location=2602000000>.

④ Judicial recruitment is discussed under Component A, Result 3a, in paragraphs 91-93.

⑤ Xu 2009.

⑥ Reform of the people's assessors system is discussed under Overall OVIs in paragraphs 51-54 (and Box 1 on the Wuzhong Pilot), and under Component A, Result 2b, in paragraphs 86-90.

⑦ CECC 2011 at 189.

poorer central and western regions. ^①Moreover, the many media reports of restrictions on lawyers and the kinds of cases that they can take up on behalf of clients indicate that access to legal services is curtailed not only by economic factors but also by government policies. As one assessment put it, “in spite of apparent efforts to train more legal aid representatives, measurable positive effects in citizen's access to justice remain elusive.” ^②

(B) LAW-MAKING SYSTEM: Improvements in Systems of Law Drafting and Consistency of Application

OVI: Improved systems of law drafting and consistency of application.

Status: Achieved. Systems of law drafting and the consistency of application of laws have been improved during the Project period, including through improvements in public participation at different stages of law-making, evaluation mechanisms and institutionalizing the system of filing and review of legislation.

23. The system of law drafting has seen improvements in a number of areas since 2007. Mechanisms for public comment on draft legislation have been strengthened and standardized, both at the national and local level. The practice of post-legislation evaluation has been piloted. Inputs from society are sought in these evaluations, as well as in the legislative agenda-setting process. Technical drafting has seen improvements as well. Consistency of application has been enhanced through implementation of the filing and review system at the local and national levels, which provides for consistency review of new legislation by higher levels and on request from the public. Reviews of existing legislation also foster consistency of application.

(1) Improvements in Law Drafting

24. Expansion of Public Comment Mechanisms. The importance of public comments on legislation during the drafting process was recognized in the *Legislation Law*. That Law enshrined public participation in law-making in different forms (forums, seminars, hearings, etc.), ^③ reflecting that “taking public opinion into consideration in the drafting stages of legislation can enhance the legitimacy and enforceability of the final product.” ^④ Enhanced public comment also reflects a changing dynamic, between legislatures and government bodies. ^⑤

^① CECC 2011 at 189.

^② CECC 2011 at 182.

^③ Law on Legislation of the People's Republic of China, Articles 34 and 58.

^④ Paler 2005 at 311.

^⑤ Liebman 2011 at 168, observes that: “Many laws are now the product of significant debate, both in the National People's Congress and, at times, in the media, rather than being exclusively the product of decisions by party-state officials.” The role of social organizations is noted in Cho 2006 at 594: “In addition, social organizations have been emerging as new forces in lawmaking, supported by local legislatures in their attempt to improve their stand against government dominance in lawmaking politics.”

25. In 2008, the NPC Chairperson's Council decided that "in principle, all draft laws under deliberation by the Standing Committee should be released to the public on www.npc.gov.cn, that major bills should also be published by major national media organizations to solicit opinions from the general public, and that this should become common practice."^① Since the introduction of the new procedure in April 2008, the NPC Standing Committee had publicized 35 out of 38 draft laws through December 2011.^② Drafts have been revised to reflect some issues raised in public comments, such as the Individual Income Tax Law revisions^③ and the Social Insurance Law.^④ Similar processes have been introduced at the provincial and local levels.^⑤

26. Also in 2008, the State Council initiated a practice of publishing virtually all draft rules and regulations (other than those involving state secrets or national security). Similarly, the SPC has initiated a practice of soliciting comments on draft judicial interpretations on its website.^⑥

27. Technical Improvements in Drafting. A number of trends in law-making are aimed at technical improvements in drafting, including more expert involvement and better trained drafters (as China's legal education has expanded). The need for technical improvement continues to be recognized.^⑦ Looking for sources of technical expertise outside the responsible government agencies is another important dimension. A concern in Chinese legislative drafting had been "departmentalism" as many drafts were prepared by responsible ministries and agencies. Commentators have noted the importance of the legislature taking a more active and substantive role in drafting.^⑧ Some have also noted a more professional drafting process, combining international experience and the challenges of China's rapid social change in the reform era.^⑨

28. Inputs from Implementation. The practice of Post-Legislative Review (or evaluation) also has a foundation in the *Law on Supervision by the Standing Committees of the People's Congresses at All Levels (Law on*

① http://www.npc.gov.cn/englishnpc/Speeches/2009-03/16/content_1493447_4.htm Full Text of NPC Standing Committee Work Report 2009 (in English)

② The small number of laws where public comments on drafts was not solicited relate primarily to national security and military matters, such as the Military Service Law.

③ NPC Interview. For the Individual Income Tax Law, the threshold for tax liability was increased from the original RMB3000 to RMB3500.

④ CASS Institute of Law 2009. In 2009, in response to public opinions, provisions related to old age pensions and medical insurance were included in the draft Social Insurance Law after further research.

⑤ Public comment mechanisms are further discussed under Overall OVIs in paragraphs 55-57 (and Box 2 on Public Participation in Law-making at the Provincial Level) and under Component B, Result 1 a, in paragraphs 103-108. Hearings are discussed under Component B, Result 1 b, in paragraphs 109-112.

⑥ Horsley 2009, citing: for the State Council, Notice of the General Office of the State Council on Printing the State Council 2008 Legislative Work Plan; for SPC, <http://www.chinacourt.org.cn/wsdw/more.php?location=2602000000>.

⑦ Xu Xianming 2011: "legislation needs technical improvement to make [it] more precise and applicable."

⑧ Cho 2006 at 598.

⑨ Lubman 2011, noting specific examples of Tort Liability Law and Anti-Monopoly Law.

Supervision).^①Under this Law, reports on inspection of law enforcement should include not only an assessment of the problems that exist in implementation and suggestions for improving implementation, but also suggestions for revising the relevant laws and regulations in order to improve them.^②The NPC Standing Committee has been carrying out post-legislative review pilots in recent years, with public input as a part of the process. Provincial pilots have also been undertaken.^③

29. Setting the Legislative Agenda. Consultation on annual legislative agendas is another way of obtaining inputs from society. The role of NPC Deputies in suggesting items of legislation is also receiving attention, as part of the improvements to make legislation in a scientific and democratic manner. In 2009, for example, among 21 proposals on legislation made by Deputies, ten went into the agenda of the NPC Standing Committee for deliberation, and relevant Deputies attended subsequent meetings as observers.^④Public input is also sought, for example, in Jiangsu.^⑤The new NPC practice of pre-legislative review also features inputs in the selection of legislation to be prepared.^⑥

(2) Improvements in Consistency of Application

30. The need to strengthen consistency in the application of law across China has been recognized for some time. The *Legislation Law* established the hierarchy of sources of law, and laid the groundwork for filing of legislation (administrative regulations, local regulations and rules) within 30 days of promulgation.^⑦The *Legislation Law* further mandated that authorities should, in accordance with the principle of safeguarding uniformity, formulate procedures for examination of legislation that is filed.^⑧Nonetheless, examples have persisted of inappropriate local rules that sometimes directly contravene national law.^⑨

31. Filing and Review System.^⑩The *Law on Supervision* built on this foundation, by requiring the establishment by provincial-level people's congresses of procedures for review and annulment of inappropriate resolutions and decisions of lower level people's congresses as well as inappropriate decisions or order issued by the people's government at the same level. That law also clarified what was to be considered

① Law on Supervision, Chapter IV.

② Law on Supervision, Article 26.

③ Post-legislative review is discussed under Component B, Result 2, in paragraphs 113-120.

④ CASS Institute of Law 2009.

⑤ See Box 3.

⑥ Pre-legislative review is discussed in paragraphs 121-122.

⑦ Law on Legislation Articles 78-80, 89.

⑧ Law on Legislation Article 92.

⑨ Liebman 2011 at 169: "Numerous experiments in law-making involve local authorities adopting rules that directly contradict existing law," citing Zhongguancun 2001 regulations that permitted the formation of limited partnerships by individuals, although the Partnership Law requires two or more individuals to form a limited partnership; and Zhongguancun 2004 regulations that permit natural persons to be Joint Venture partners, even though Equity Joint-Venture Law permits only legal persons.

⑩ Filing and review is discussed under Component B, Result 3, in paragraphs 125-133.

“inappropriate”: (1) legislation exceeding the statutory limits of power in restricting lawful rights of citizens, legal persons and other organizations, depriving them of these rights, or in increasing obligations; (2) contravening the provisions of laws and regulations; or (3) other inappropriate ways that require annulment. ①

32. Since 2007, the system of filing and review has been set up across the country, and is becoming regularized for provincial level people's congresses, and for many sub-provincial people's congresses as well. The NPC Standing Committee has taken steps to deepen the system of review and filing, by encouraging the localities to set up rules to review regulatory documents. All provincial now have relevant rules on the books.

33. Review of Existing Legislation. Another mechanism for enhancing consistency of application is the proactive review and annulment or revision of existing law. In connection with China's entry into the World Trade Organization and adoption of the Administrative Licensing Law in the early 2000s, a major process of review and annulment/revision was undertaken. ② More recently, a similar exercise in 2009 resulted in the NPC's annulment of eight laws and revision of a package of 59 laws, with others added to the legislative agenda for further action. ③

(C) CIVIL SOCIETY: Increased Participation in Judicial Processes and Law-making

OVI: Development of mechanisms for increased participation of civil society in judicial processes and law-making.

Status: Achieved. Mechanisms for increased public participation in judicial processes and law-making have been developed during the Project period, as summarized under (A) and (B) above.

① Law on Supervision Article 29-30.

② State Council Information Office, 2008. “A total of 655 administrative regulations in force that had been promulgated before the end of 2006 have been reexamined, of which 49 have been repealed since the main content of these regulations have been replaced by new laws or administrative regulations; 43 declared invalid because their effective validity period had expired or they had lost their validity with the disappearance of their objects of regulation……From March 2003 to the end of 2007, the State Council examined 8, 402 local regulations, autonomous regulations, separate regulations, local government's rules and rules enacted by the departments of the State Council, which had been filed for the record by local governments and the departments under the State Council with legislative power, and addressed 323 problematic regulations and rules in accordance with the law.”

③ State Council Information Office 2011 (White Paper on Socialist Legal System with Chinese Characteristics). The White Paper further notes that, from 2009: “The State Council annulled seven administrative regulations and revised 107 administrative regulations. Local people's congresses and their standing committees annulled 455 local regulations, and revised 1, 417 local regulations. Such work has helped to solve the problem of incompatibility among laws and regulations.”

34. **Participation in Judicial Processes.** More mechanisms have been developed during the Project period for increased participation of civil society in judicial processes. These mechanisms include: aspects of judicial openness (open trial, publicly accessible documents); access to courts; and especially the reform of the people's assessors system. In addition, the expansion of people's mediation and other types of mediation (often court-connected) provide opportunities for members of society to become mediators and thus participate in judicial processes. The publication of draft judicial interpretations for public comment is another mechanism for participation.

35. These mechanisms are directed, in most cases, at the public at large, and not at civil society groups specifically. One area where civil society organizations (CSOs) have been active is in the provision of legal (aid) services. Some of these mechanisms have been reviewed through Project activities, such as reform of the people's assessors system, open trials and ADR.

36. **Participation in the Law-making System.** The mechanisms for increased participation in the law-making system discussed above include: public comment on draft legislation; legislative hearings; public participation in post-legislation evaluation and pre-legislation evaluation; and inputs into legislative agendas. Members of the public can also request review of legislation for consistency with higher-level legislation, under the filing and review system.

37. These mechanisms are not directed specifically at CSOs, but rather are open to the public at large to participate. Practice under some of these mechanisms has been reviewed through Project activities, such as legislative hearings, post-legislation evaluation and the filing and review system.

(D) RULE OF LAW: World Governance Indicators (WGI) Positive Trend

OVI: World Governance indicators: 'Positive trend in the Rule of Law' indicator 1998-2008 is maintained.

Status: Achieved. The World Governance Indicator 'Positive Trend in Rule of Law' improved slightly over the Project period. However, other assessments reviewed suggest continuing concerns.

(1) World Governance Indicators (WGI)

38. In the WGI, the indicator "Rule of Law" captures perception of the extent to which agents have confidence in and abide by the rules of society, in particular the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence. In the WGI 1996-2010 dataset, for the period from 2007 to 2010, China has improved from 40.7 to 44.5 percentile among countries included. There was a slight increase in raw score from 2007 to 2008 (-0.47 to -0.34), which was maintained for 2008-2010. Generally, this trend could be seen to reflect an improved perception of courts and increased confidence of general public in the legal system. The positive trend here means that the specific OVI has been met.

39. For the Voice and Accountability indicator, which is also mentioned in the verification sources in the

Logframe, China has shown some fluctuation in the period from 2007 to 2010. Voice and accountability measures the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media. China's percentile ranking improved from 4.8 in 2007 to 5.8 in 2008, then back to 5.2 in 2010. Raw scores improved slightly from 2007 to 2008 (-1.70 to -1.66), which was statistically maintained through 2010.

(2) Other Assessments

40. The sources for verification for the OVIs also include international thematic assessments of Rule of Law and Voice and Accountability in China (e. g. governance research reports from OECD, EU, ADB, WBI, Freedom House, and Human Rights Watch).^① Accordingly, the findings for rule of law issues in China generally in several international governance-type assessments are summarized below: Freedom House, Human Rights Watch, Bertelsmann Transformation Index, Global Integrity Report, World Justice Project, and OECD Review of Regulatory Reform.

41. Freedom House. The Freedom House online review, *Freedom in the World 2012*, reports a downward trend line for China. This review states: “Despite minor legal improvements regarding the death penalty and urban property confiscation, the government stalled or even reversed previous reforms related to the rule of law ….”^② The Freedom House *Countries at the Crossroads 2011: China* report, in its section on Rule of Law, describes a backlash since 2008 against earlier legal reforms, particularly in the role of courts and position of public interest lawyers.^③ Of particular relevance for the GED Project, this report includes within this backlash efforts by the Chinese authorities to reinvigorate mediation institutions and to discourage “judges and parties from resorting to courtroom litigation as a means to resolve citizen grievances.” In its Section on Accountability and Public Voice, the report notes a limited degree of public participation in the political system, and observes: “Legislative institutions have evolved marginally away from their Maoist-era role as simple rubber stamps.”

42. Human Rights Watch. The HRW Country Summary for China for 2009 noted restrictions on civil society and lawyers, and slow progress in rights awareness and judicial professionalization.^④ The HRW Country Summary for China for 2010, in its section on legal reforms, noted that “legal awareness among citizens continues to grow and legal reforms progress slowly, although the government's overt hostility towards genuine judicial independence undercuts legislative improvements.” This report also highlighted the May 2010 announcement of two directives excluding evidence obtained through torture, including confessions of

① Governance research reports covering China for the Project period (2007-2012) were not located on the public websites of OECD, EU and ADB.

② Freedom House 2012.

③ Freedom House 2011.

④ Human Rights Watch 2010 at 1, 3.

defendants and testimony of prosecution witnesses. ①The HRW Country Summary for China for 2011 notes that “ [d] espite their precarious legal status and surveillance by the authorities, civil society groups continue to try to expand their work, and increasingly engage with international NGOs. ” ② The section on legal reforms focuses on the debate over draft revisions to the Criminal Procedure Law. ③

43. The Bertelsmann Transformation Index (BTI) is a global ranking of transition processes in which the state of democracy and market economic systems as well as the quality of political management in 128 transformation and developing countries are evaluated. China's overall ranking among countries for this purpose declined slightly, from 85th in 2008 to 88th in 2010, the latest year available. The rule of law section in the *2010 China Country Report* observes that the legal system remains weak, and neither the judiciary nor the bar is politically independent. Improvements noted include the January 2007 decision to return the authority to review death sentences to the Supreme People's Court, “resulting in a visible decrease in death sentences and immediate executions. ” ④

44. Global Integrity Report. The Global Integrity Report assesses rule of law in China as weak, showing a slight improvement from a score of 62 in 2007 to 68 in 2008 and 2009, the latest year surveyed. The 2009 Report Highlights notes that the general public continues to report corruption, and that a majority of investigations by the anti-corruption agency and the judicial branch originate from citizen complaints. The Report also notes two small improvements, in citizen access to government documents and the increased role of the People's Congress in policy formulation. ⑤

45. World Justice Project (WJP) . The WJP Rule of Law Index presents a comprehensive set of indicators on the rule of law from the perspective of the ordinary person. ⑥China was included for the first time in the 2011 report, summarized as follows: “China does well among lower-middle income countries in most categories ……China has seen major improvements in the quality, effectiveness, and accountability of its legal institutions. Security is high (ranking 25th), and the criminal justice system ranks 2nd among its income peers. Enforcement of regulations is relatively ineffective (ranking 43rd globally and 8th among lower-middle income countries). The civil court system is relatively accessible and speedy, but judicial independence remains an area where more progress is needed. Indicators of fundamental rights are weak, including labor rights (ranking 61st out of 66), freedom of assembly (ranking 66th), and freedom of speech (ranking 66th).” ⑦

① Human Rights Watch 2011 at 3. The Report points out a particular case where the new regulations were not applied.

② Human Rights Watch 2012 at 1.

③ Human Rights Watch 2012 at 2-3.

④ Bertelsmann 2010 at 8.

⑤ Global Integrity Report 2009.

⑥ World Justice Project 2011.

⑦ World Justice Project 2011.

46. OECD. An OECD review of regulatory reform in China comes to some general conclusions about rule of law in China. ①Overall, the review notes that establishing rule of law rests not only on more effective enforcement, but, as importantly, on laws and regulations that are clear and well understood, and on reduced incentives and opportunities to violate them. In the case of China, two features of the lawmaking process create obstacles to the establishment of rule of law. First, high-level laws are drafted in terms of principles and goals more than concrete issues, leaving specifics to regulations and decrees. While offering flexibility, this practice also provides opportunities for inconsistent application. Second, laws, regulations and decrees are issued not only by central and local governments and agencies, but also by lower-level people's congresses and Party organs. The OECD review finds that the relative status of these instruments is often very unclear, making it difficult to determine which rule prevails in a specific case. ②Finally, the review emphasizes the need for reforms to strengthen the judicial system, both to remedy weaknesses in capacity and reduce external constraints on authority. ③

(3) Summing Up

47. The assessments reviewed above illustrate a range of concern for the future trend of rule of law in China. By way of summing up, it is useful to take note of recent comments by Professor Jiang Ping, a leading legal scholar and former member of the NPC Standing Committee. His comments (on the eve of the March 2012 NPC session) provide a balanced conclusion: “When we talk about the rule of law, we cannot speak in general terms. Some things are moving forward, such as legislation. And the government has made efforts with regard to specific issues such as increased transparency and the disclosure of government information, including the government's budget……Furthermore, in the years after China's Property Law was passed, protection of individual rights has also increased……However, I feel there are still several things lacking. One is the reform of the political system……Nor does our constitution sufficiently protect citizen's rights, especially the right to free speech, the right to publish and disseminate information, the freedom of the press and freedom of association. There has been no progress in these areas, and in some respects, the government's power is expanding. These are all evidence of regression.”④

48. These challenges in reaching rule of law serve as a reminder that rule of law is not an objectively verifiable indicator that can be marked off as “achieved” or not. Still, continuing a positive trend in rule of law indicators into the future will probably require progress in creating the kind of legal system envisaged by the NPC Standing Committee in 2011:

“ [A] s we continue to strengthen legislative work, we need to take active and effective measures to

① OECD 2009 at 25.

② OECD 2009 at 70-71.

③ OECD 2009 at 71.

④ Duan 2012.

genuinely guarantee the effective enforcement of the Constitution and laws. First, we need to uphold their authority and dignity. All state organs, armed forces, political parties, mass organizations, enterprises and institutions must abide by them. No organization or individual has any privileges that transcend them, and all violations of the Constitution and laws must be prosecuted. Second, we need to adhere to law-based administration and judicial justice. State administrative organs must perform their duties in strict compliance with statutory authority and procedures, and accelerate the development of law-based government. State judicial and procuratorial organs must exercise their judicial and procuratorial powers in an independent and just manner, and uphold social equity and justice. Third, we need to enhance the awareness of laws and the rule of law across society.”^①

(E) PARTICIPATORY AND INCLUSIVE APPROACHES: Mechanisms Tried and Reviewed

49. Project Purpose: participatory approaches in legislative, judicial and government processes. The Project Purpose was to promote participatory and inclusive approaches to selected legislative, judicial and government processes. These approaches are summarized here with a focus on legislative and judicial processes more closely related to the Project.

OVI: Increase in the range and numbers of mechanisms for participation of civil society in legal processes and policy development tried and reviewed.

Status: Achieved. Mechanisms for increased public participation in judicial processes and law-making have been developed during the Project period, as summarized under (A) and (B) above. Some of these mechanisms, such as pilots on people's assessors in Wuzhong, ADR in Pudong, open courts in Gansu, and post-legislative review have been reviewed through Project activities. Project activities included active consultations with civil society in development of CSO-related policies such as direct registration, tax exemption and CSO management.

(1) Judicial Processes

50. Several of the reforms noted above incorporate participatory and inclusive approaches to access to justice, including open trials, people ' s mediation committees, and courts working in society, outside the courtroom. GED activities supported a number of these reforms: court-connected mediation, judicial openness and reform of the people's assessors system. GED-supported pilots in people's assessors reforms (Box 1) and mediation reforms (Box 3) were reviewed through Project activities, as was the Gansu open court pilot.

51. People ' s Assessors Reforms. Under a decision of the NPC Standing Committee effective in 2005, individuals may be proposed for selection as assessors not only by their grassroots organizations, but also by

^① Standing Committee 2011 Work Report.

the individuals themselves. ①The number of people's assessors, appointed to five-year terms (by the LPC standing committee on nomination by the local court), should not be less than one-third of the number of incumbent judges in each grassroots court. Inclusiveness is emphasized in a 2010 SPC Notice, providing that "attention shall be paid to the structure and proportion of people from different walks of life and to absorbing the people of different industries, professions, ages, nationalities and genders, etc. so as to reflect the various backgrounds and representativeness of the assessors." ② The random selection of assessors for a particular case also heightens inclusiveness, and the selection by computer program, including from specialized assessor pools, enhances participation.

52. These reforms also offer some potential deterrence to overt judicial corruption and add legitimacy to the court system. ③Nevertheless, one question that continues from the past is whether people's assessor's participation in trials is substantively meaningful. One overview of the function of people's assessors prior to 2005 noted: "people's assessors do not constitute a restriction on the power of Chinese judges and usually are regarded as 'decoration's in the courtroom.'" ④ A 2007 survey in one province suggested that their role, with minor exceptions, remains purely symbolic. ⑤

53. A more recent survey points to improvements in the framework for people's assessors as well as a positive trend in their impact. ⑥First, the NPC Standing Committee Decision remedied some earlier problems in the system, such as lack of definition of assessor's powers, fairer selection of assessors, and too close a relationship with courts. Second, citing empirical research, the author concludes that people's assessors are now playing multiple roles in adjudication: in trials, in mediation of disputes, oversight over judges and publicity of rule of law. By getting a better understanding of court proceedings, rules of evidence, internal court rules and day-to-day work, people's assessors are better able to act as a constraint within a collegial bench and to increase transparency and credibility. The author concludes that "quite a lot of judges heed opinions and judgments of people's assessors" and the public has been positive. ⑦

54. As improvements in the framework for people's assessors were issued by the SPC in 2010 and 2011, more time may be needed to assess the impact of these reforms. In that light, it is perhaps more prudent to concur

① *Decision of the Standing Committee of the National People's Congress Regarding Perfecting the System of People's Assessors*, August 2004.

② *Notice of the Supreme People's Court on Issuing the Some Advice on Strengthening and Promoting the Work of People's Assessors*, June 2010.

③ Landsman & Zhang 2008 at 213.

④ Zhong & Yu 2004, citing Sun Jungong, *Renmin Peishenyuan Shi "Baishe" ma?* [*Are People's Assessors, "Decorations" in the Courtroom?*], FAZHI RIBAO [LEGAL DAILY], Feb. 19, 2001, available at http://www.legaldaily.com.cn/gb/content/2001-02/19/content_13509.htm.

⑤ Balme 2010 at 173.

⑥ Wang 2011.

⑦ Id.

with another observer that more empirical research is needed to determine the impact of various reforms in the people's assessors system. ^①

BOX 1. People's Assessors: The Wuzhong Pilot Reforms

Citizens are appointed by the local people's congress standing committee to serve a 5-year term as people's assessors, participating in cases of the first instance tried by a collegial panel of judges and assessors. In the usual 3-person panel, there would be one or two people's assessors, generally for: (a) criminal, civil and administrative cases with relatively great impact on society; and (b) cases where participation of assessors is requested by the defendant in a criminal case, the plaintiff or defendant in a civil case, or the plaintiff in an administrative case. A citizen over age 23 may be either recommended by his/her grassroots organization or apply directly to the district court for consideration. People's assessors are randomly selected for each case. People's assessors are members of the divisions of the courts in which they participate and enjoy equal rights with judges.

In March 2008, Wuzhong District Court was identified by the SPC to pilot reforms in the people's assessors system. Key elements of the pilot:

- **Appointment.** Residents or those who work in Wuzhong District and have at least 3 years of college education or are university graduates are eligible, but persons with legal training (lawyers, judges, prosecutors) are not eligible. The overall roster covers both urban and rural, with representation from all villages, towns and communities, as well as diversity of professions, age, and gender. In the past, most assessors were recommended by their work units, while today about 70% are self-proposed. Publicity was used to encourage applications with a lengthened application period; applications are now accepted continuously. Currently, Wuzhong has a database of potential applicants and currently 80 assessors appointed.
- **Participation.** Most of last year's 8, 000 cases were heard by a single judge; there were collegial panels in about 1, 000 cases. Assessors participated in 98% of these panels. Most panels included one judge and two people's assessors, except for legally complex cases where there would be only one assessor. The average caseload for a people's assessor is 12 cases per year. Compensation is about 120 RMB Yuan per case.
- **Selection in specific cases.** The people's assessor office is managed by one of the people's assessors, who uses a computer database for random selection of assessors. Assessors for a particular case can be selected at random within five different pools, depending on the needs of the case (e. g. , family, labor, juvenile, commercial or administrative cases.)
- **Role.** People's assessors enjoy equal rights with judges. If there is a disagreement on legal issues, the case may go to the judicial committee of the court, and the head of that committee would decide. Otherwise, majority rules, and two assessors can override the objections of one judge.

^① Cohen 2011, noting that “despite intermittent government efforts to bolster what is supposed to be a mixed court, people's assessors have failed to play an independent role.” The article discusses a jury panel model in Henan province.

(2) Legislative Processes

55. The government White Paper on Socialist Legal System with Chinese Characteristics (October 2011), echoing the NPC Standing Committee Report on Work in March 2011, emphasizes participatory and inclusive approaches in lawmaking:

“We will work to promote scientific and democratic legislation, and improve legislation quality. We will improve the mechanism whereby NPC deputies are involved in legislation, and bring their role to the full…… We will explore *channels and forms for the public to participate in legislation activities* in an orderly manner, improve panel discussions, feasibility study meetings, *hearings on legislation* and the gathering of public opinion through the *publication of draft laws and regulations*, and establish and improve the mechanism through which public opinion can be heard and feedback can be given, so as to let legislation reflect the will of the public. We will establish and improve a mechanism featuring *feasibility studies before making legislation* and *evaluation after making legislation*, constantly endeavor to make legislation more scientific and reasonable, and further improve the practicality of laws and regulations.”^①

Several of these approaches have been piloted in the period under review: increasingly common mechanisms for public comment on draft legislation, inputs from implementation, legislative agenda-setting, and post-legislative review.^② Legislative hearings are another of the participatory approaches being developed.^③

56. Box 2 illustrates examples of public participation in law-making at the provincial level. While the Jiangsu model, for instance, relies heavily on internet postings, which could restrict access to those with reliable and secure internet access, there is also provision for publicizing drafts in newspapers, and receiving comments by mail or in person. Sometimes, forums are held under the auspices of lower-level people's congresses, so that in person attendance in localities is also possible. The NPC practice also permits non-electronic access.

57. GED activities supported several of these reforms (public comment mechanisms, legislative hearings, post-legislation evaluation, and filing and review). Results of reform experiences were discussed and assessed in Project forums.

① State Council Information Office 2011, emphasis added.

② These mechanisms are discussed in paragraphs 24-33 above.

③ Hearings are discussed under Component B, Result 1 b, in paragraphs 109-112.

Box 2. Public Participation in Law-making at Provincial Level

In Jiangsu, the Local People's Congress (LPC) Standing Committee uses several channels under its 2009 Regulation on Promoting Public Participation in Law-making to get public input:

- Soliciting proposals for Five Year Legislative Agenda and Annual Legislative Plan. In the past 10 years, the LPC and Local People's Government have made their Five Year Legislative Agendas and Annual Legislative Plans available on internet and major media. The general public can make suggestions by mail, internet or office visits. For example, when developing its current Five Year Legislative Agenda, the Jiangsu Provincial PC collected 426 legislative proposals from all sources, including 23 proposals from 20 individuals, which led to six legislative agenda items.
- Seeking public comments on draft provincial legislation. Between the first and the second readings of LPC legislation, all drafts are posted on the LPC website for public comments. For those closely related to the society, the full texts are also publicized through major media (18 drafts through 2011). Lower-level LPCs have also routinely publicized their draft regulations on the websites of the people's congresses or governments.
- Conducting legislation research in various forms. Research is conducted for each draft regulation, with all relevant government agencies and stakeholders attending forums or seminars held across the province.
- Holding public hearings for laws closely related to people. A public hearing will be held, if the content of a legislation: concerns province-wide economic and social development; relates to important interests of citizens, legal persons or other entities; or causes major differences of view. Since 2000, five public hearings have been held. For each public hearing, a set of rules is issued, organizers and major participants are identified, hearing notice is publicized on local people's congress website and in major local media 20 days in advance. Hearing participants include similar numbers of speakers holding different views, relevant stakeholders and experts. All hearings are public, allowing media reports and public observation. During the hearings, views from different parties will be solicited and public attendants can also offer their opinions; debates have been introduced. Transcripts are posted promptly afterwards and a hearing report is submitted to the LPC within 10 workdays. Necessary research is conducted on various views presented during the hearing and responses are either included in hearing report or in the final review report on the regulations concerned.
- Soliciting views from people's representatives, scholars and experts. For each draft regulation, written letters are sent to the peoples' representative, scholars and experts to solicit their views (1400 responses in 2011).

In Shaanxi, two public hearings were conducted (in 2002 and 2004). In the near future, public hearings will be held every year on two to three drafts of legislation closely related to public life. Public comments will be solicited. So far, there is no uniform public hearing procedure applicable province wide. To guarantee hearing quality, representatives will be selected from general public to participate in the hearings.

Staff at the local PCs will bring draft legislation to the communities for public comments, and experts and people's representatives will be invited to participate in feasibility studies and give suggestions for revisions.

(3) Civil Society Participation

58. There are developments in the Project period that could affect the potential for civil society to take advantage of participatory approaches in judicial and legislative processes.

59. An important tool for civil society participation is access to information. In May 2008, China's Open Government Information (OGI) Regulations came into effect. Citizens may request government information that has not been disclosed, and may seek administrative or judicial review if governments refuse. Actual implementation of OGI reforms remains uneven. ①The government continued to promote administrative law reform to provide greater oversight of state agencies and government employees and to protect citizen's interests. ②Two new legislative developments that are part of these reforms are the *Administrative Supervision Law*, effective in June 2010, and the *State Compensation Law*, amended in December 2010.

60. The overall regulatory environment for establishment and operation of CSOs has continued to evolve over the period. The three regulations for social organizations, private non-enterprise units, and foundations, have been revised and sent to the State Council, with the expectation of issuance in 2012. Among other reforms, the draft regulations are expected to remove dual sponsorship requirements and permit single registration. Removing the sponsorship requirement is seen as a way to ease CSO establishment; it could also facilitate participation in judicial and law-making processes. ③

61. In general, more CSO participation in the policy process has been noted in recent years. One recent study noted: “a common trend emerges, which is the increasing participation by these groups in the policy process. In fact, many scholars have found that civil society groups participate in both service delivery and policy advocacy, even if only informally as part of the service-delivery role, in policy areas as diverse as education, health care, environment, poverty alleviation, business regulation and international trade. The environment has emerged as a policy area with the most civil society participation……” ④ Government consultation with CSOs on important issues, such as solutions to the global financial crisis, annual review regulation for international NGOs, tax exemption standards and direct registration system, was noted by MOCA under the Project. ⑤

① Freedom House 2011.

② CECC 2011 at 8.

③ Registration of CSOs is discussed under Component C, Result 2a, in paragraphs 146-150.

④ Teets 2011.

⑤ CSO participation in policy making is discussed under Component C, Result 1a, in paragraphs 136-138.

III. REVIEW OF PROJECT RESULTS BY COMPONENT: OPERATIONAL OVIs

COMPONENT A. ACCESS TO JUSTICE IS IMPROVED^①

Result 1. Institutional capacity of the judiciary is enhanced in the fields of a) criminal retrial, parole and sentence commutation, b) case guidance, c) state compensation for victims of crime and d) ADR.

(a) Criminal retrial, parole and sentence commutation

OVI: Improved criminal retrial procedure by issuing the regulatory document SPC's Regulations on Law Applications during the Trial Proceeding of Sentence Commutation and Parole.

Status: Achieved. The SPC issued the Regulations on Law Applications during Handling of Cases in relation to Sentence Commutation and Parole in 2012. The SPC also issued a related judicial interpretation on retrial. These interpretations improved criminal retrial procedure by introducing the principle against double jeopardy and by providing for more open trials in sentence commutation cases.

62. Context. Issues in retrial, parole and sentencing commutation include: (a) lack of due process and open hearings, as most cases are dealt with mainly by courts through desk review of written applications; (b) the offenders' voices are often excluded from the proceedings; and (c) in the cases of parole and sentence commutation, judges tend to rely heavily on the information provided by prisons, so that trial proceedings tend to approve whatever the prisons have requested.

63. Results. *Retrial*. In October 2011, the SPC issued a judicial interpretation *Several Opinions on How the People's Courts Should Adjudicate Cases Initiated by the Procuratorates according to the Trial Supervision Procedures*. This judicial interpretation clearly confirms the principle against double jeopardy applied in other countries: unless there is new evidence, a person should not be tried twice for the same offense. The interpretation also provides that if the retrial is initiated by the procuratorate, the court must file the case within one month.

64. *Parole and Sentence Commutation*. The SPC *Regulations on Law Applications during Handling of Cases in*

^① The Logframe lists the following sources and means of verification for Component A: new guidelines on precedents referential system filed with NPC; gazette of SPC news and articles; judicial interpretations filed with NPC; activity report and PMO monitoring report; project completion report; public media coverage; new guidelines for appointment of judges drafted and adopted; and number of judges trained and views of participants. All of these sources are mentioned in the following discussion, except for the project completion report which is not yet available. The information here on SPC views is largely derived from an interview with SPC officials in February 2012.

relation to Sentence Commutation and Parole were issued in February 2012. This judicial interpretation will further promote open trials in sentence commutation cases. It provides that courts should apply the procedure of first instance trials to six types of sentence commutation cases. Such clear provisions were absent in the past, so as to avoid the courts being overloaded. This new judicial interpretation requires a stricter notification and publicity procedure in sentence reduction cases in order to allow procuratorates and other agencies to give their views before the courts make the final decisions.

65. Project Contribution. Before the GED Project, the direction of reform in this area was not decided. Through many GED activities, such as workshops and seminars, the policy makers were able to collect local practices, gather experts' suggestions and cooperate with other departments (procuratorates, justice bureaus). Activity participants benefiting from the GED support came from all levels of relevant agencies, as well as scholars. Two international study tours also helped them to study international experience. As a result, the SPC developed national policies on these subjects.

(b) Case guidance

OVI: Field research (x3) contributes to formulation of the regulatory document to be issued SPC's Comments on Strengthening and Optimizing the Case Guidance System coming into effect.

Status: Achieved. The SPC issued the Regulations on Case Guidance Work in November 2011, set up a responsible division, and has issued the first group of guiding cases. Project field research contributed to the formulation of the system and its documentation.

66. Context. In recent years, similar cases have received very different judgements in China, recognized as a sign of injustice in trial practice. The introduction of a case guidance system is expected to bridge the gaps caused by inadequacy of law and judicial interpretation. Administrative interference is another factor that jeopardizes judicial independence. One rationale for case guidance is that judges, backed up by guiding cases issued by the SPC, will feel empowered to exercise their independence. The case guidance system is seen as a straightforward way to regulate the discretionary power of the judges, establish judicial authority and strengthen judicial independence.

67. Results. China's case guidance system has been institutionalized. The SPC issued *Regulations on Case Guidance Work* in November 2011. A new division was established within the SPC Research Department to compile and issue guiding cases, and the first cases have been issued. ① It is expected that the enactment of the *Regulation on Case Guidance Work* and the issuance of the guiding cases will lead to more predictable and

① The first four guiding cases were issued in December 2011, two criminal cases, and two civil cases. A second group of four cases was issued in April 2012, two administrative penalty cases, one construction project contract dispute and one corporate dissolution dispute. For English translations, see <http://cgc.law.stanford.edu/guiding-cases/>.

comprehensible results in judicial decisions. This is a strict system, with clear standards, that SPC hopes can contribute to future development and reform, promote stability and enhance local court consistency.

68. Project Contributions. GED inputs were especially valuable during the preparation of the Regulations and design of the system, both field research^① and international experience (especially from other civil law countries). These activities helped policy makers to build consensus on the following issues: (a) Should a case guidance system be established in China, a country with civil law traditions? (b) Are guiding cases judicial interpretations or otherwise legally binding? (c) Should only the SPC have authority to issue guiding cases, or would local high courts also have the authority? (d) What are the criteria for selection of guiding cases? (e) What are the procedures to issue guiding cases?

69. The policy consensus on these issues, fostered by Project activities, can be seen in the system now in place. Extensive discussions and field research demonstrated the need for a case guidance system. Guiding cases are not treated as binding judicial interpretations. However, the strict provisions on issuance (only by the SPC and only after approval by the SPC Judicial Committee) ensure that guiding cases are authoritative. Local courts are expected to refer to guiding case reasoning and provide specific explanations of deviations in court judgements. Five selection criteria were agreed: cases with extensive social impact or concerns; cases for which codified laws only provide principles; typical cases; complicated and new types of cases; and other cases suitable to be guiding cases.

70. Through study tours to civil law countries (i. e. Portugal, Germany, Belgium and France), the SPC participants learned about the converging trend between civil law and common law jurisdictions on case guidance. For example, from their visit to Germany, the SPC delegation learned that: (a) local court decisions seldom conflict with guiding cases of the highest court; (b) the highest court established a special division dealing with controversial cases; and (c) the highest court pays special attention to encourage local courts' creativity and regularly reflects upon the difference between local judgements and their judgements.

(c) State compensation for victims of crime

OVI: Enact a new policy on State compensation for victims of crime and implement nationwide.

Status: Substantially achieved. The new policy has reportedly been issued in March 2009, and victims across the country are already receiving compensation based on a systematic approach. Local level legislation has already been issued in about two-thirds of province-level jurisdictions.

71. Context. Providing protection and redress to crime victims has been recognized as a human rights issue in

^① The three field research activities were conducted in Qingdao (June 2009), Nanchang (September 2009) and Dongwan (June 2010).

China. It has also been recognized that the impact on victims of crime is not necessarily limited to physical injury, but may also include loss of property or other economic loss. However, the defendant may not have the financial ability to provide redress for the victims. Under these circumstances, the state could step in.

72. Results. The SPC advised that, in March 2009, a new national *Policy on State Compensation for Victims of Crimes* was co-signed by 8 central government bodies, including the NPC, SPC, Ministry of Public Security, Ministry of Justice (MOJ) and Ministry of Finance (MOF). This new policy provides the principles on funding source, compensation scope, and eligibility requirements. While the policy document has not been publicly issued, localities are deciding how to implement it internally. More than 20 provinces have issued implementation rules appropriate for their local and economic contexts. In other provinces, where it is more difficult to issue a stand-alone document, providing compensation to crime victims has been integrated as part of the local judicial assistance work.

73. Local implementation is being jointly carried out by local courts, local procuratorates and local police forces. In 2009, a total of RMB 50.11 million was issued to crime victims by local courts (RMB 43.55 million to 1800 crime victims), and local procuratorates (RMB 6.66 million to 285 crime victims). In 2011, a total of RMB 112.49 million was issued to crime victims by local police forces (RMB 23.77 million to 1497 victims), local procuratorates (RMB 11.77 million to 866 victims) and local courts (RMB 76.95 million to 2680 victims).^①

74. Project Contribution. The GED Project supported various seminars and discussions to gather local practice and facilitate the issuance of a new national policy. As this was a new area, many questions required research, such as: what is economic loss; how to handle severe cases; what if the defendant can't provide compensation; how to take care of victim's life where needs are not met; and temporary assistance. After the issuance of the policy document, the GED Project further supported activities for guidance of local implementation.

(d) Alternative Dispute Resolution (ADR)

OVI: Project activities contributed to enacting the judicial interpretation on *Several Opinions on the Relationship between ADR and Litigation* (i.e. the ADR Opinions).

Status: Achieved. The SPC has issued the ADR Opinions, as well as other related policy documents, and implementation has begun. Project activities contributed to the development of this reform.

75. Context. The SPC issued the ADR Opinions (*Several Opinions on the Relationship between ADR and Litigation*) as a judicial interpretation in 2009, setting out general requirements on ADR. The ADR Opinions

^① The review team was not able to review the policy document, but both SPC and GED-PMO confirmed its existence. With this confirmation and actual implementation, the rating is 'substantially achieved'.

were part of an effort to develop diverse dispute resolution mechanisms that can be connected to courts and litigation, with several objectives: alleviate caseload pressures on courts, save judicial resources (for more legally complex cases), increase trust in mediation organizations and promote their development, and reduce the cost of dispute resolution for the parties. ①

76. Results. Following the ADR Opinions, the *People's Mediation Law* was enacted by the NPC in 2010 and included provisions on judicial confirmation of the mediation agreements. In April 2011, *Joint Guidance on Pushing Forward ADR in Dispute Settlement* was jointly issued by 16 central government agencies, including the Central Political Legal Committee of the Party, SPC, the Supreme People's Procuratorate (SPP), the State Council Office of Legislative Affairs, and Ministry of Public Security. An institutionalized consensus and framework on ADR has been formed throughout the society. Some high courts have issued implementation rules for the July 2009 and April 2011 documents.

77. Project Contribution. ADR activities under the Project (pilots, research and study tours) supported the issuance of the ADR Opinions in July 2009. GED inputs after issuance of the ADR Opinions helped to monitor implementation of the new policy, strengthen coordination with different agencies involved, and learn from international practice. International exchange activities helped the policy makers to understand how the mediation system operates top-down / bottom-up. For example, in the *Guidance on Several Issues related to Mediation for Civil and Commercial Matters*, the European Union has required its member countries to satisfy some basic requirements on establishing a mediation framework. All major European countries have passed domestic legislation to promote mediation. In another example, Portugal has a good training system for mediators nationwide, using sociology and other disciplines. EU countries use national budgets to provide financial assistance and popularize ADR. The GED Project also helped in publicizing ADR (in People's Court Daily), and through a major seminar, where representatives of the NPC and the Central Political-Legal Committee also participated.

OVI: Court-connected mediation cases from 8% to 15% of all the concluded civil and commercial cases in the pilot site of Pudong New Area District Court.

Status: Achieved. The court-connected mediation system is in active use in the Pudong Court. In 2011, 22.6% of civil and commercial cases were resolved through court-connected mediation.

78. Context. In the Pudong New Area District Court (the Pudong Court), cases have continued to grow about 10% per year since 2002. To optimize the limited resources and to achieve better justice and efficiency, the Pudong Court started exploring ADR after 2006. The Pudong Court became a SPC local level pilot court in May 2008.

① Mediation is discussed under the Overall OVI on access to justice in paragraphs 14-16.

79. **Results.** In the past few years, the Pudong Court has established a system that not only allows judicial confirmation of the agreements of non-litigation mediation, but also enables the court to promote pre-litigation mediation and to connect the mediation and litigation procedures (with a fast-track process and small claims court pilot). (See Box 3.) Many disputes were resolved without enforcement actions, lessening pressure on the court, so the court could direct its efforts to more legally difficult cases. This ADR model has also strengthened mediation organizations in society, gave them legal support and a strong legal basis. In the past four years, the Pudong Court has dealt with 31, 570 mediation cases, which is about 1/5 of civil and commercial disputes. On average, mediation saves seven days in case handling and saved a total of RMB 687.7 million for all parties. In 2011, mediated cases numbered 16, 713 and litigated cases numbered 57, 322, so court-connected mediation resolved about 22.6% of civil and commercial cases, which exceeds the 15% OVI target.

80. **Project Contribution.** The Pudong pilot has benefited from many workshops and seminars supported by the GED Project. Judges from the Pudong Court confirmed that the GED-sponsored meetings and international seminars have been very useful. These were good opportunities to hear how other parts of the country and other jurisdictions were dealing with similar issues, and also to hear from scholars. These activities provided new ideas to bring back, and then moved the Court's work forward, improving by trying new things. For instance, after the GED activities, SPC came out with a normative document with a form and title for judicial confirmation, facilitating the judicial confirmation process.

Box 3. ADR: The Pudong Pilot

The Pudong New Area District Court is among the busiest courts in China, and cases have continued to grow about 10% per year to over 80, 000 in 2011. A series of piloting measures in ADR methods were begun after 2006 (some with GED support), both to deal with the increasing caseload and direct judicial resources to legally difficult cases, and to resolve disputes and reduce conflict in society.

- **Filing.** Parties are given choice of mediation at case filing, but the choice of mediation must be voluntary.
- **Litigation-Mediation Coordination Center.** This center combines litigation and mediation, based on the SPC 2009 ADR Opinions. Many different mediation organizations and staff (people's mediation, professional mediation, administrative mediation and commercial mediation) receive training, and participate in mediation work within the court.
- **Pre-litigation mediation.** Parties have a choice of litigation or pre-litigation mediation; more than 50% try pre-litigation mediation. If mediation succeeds, the court provides necessary legal documents, including, if requested, judicial confirmation to give legal effect to the mediation agreement. Sometimes, mediation does not succeed, but parties drop the case. In about 70% (of mediated cases), the mediation does not succeed, and parties proceed to litigation.
- **Fast-track process.** For cases where mediation fails and litigation ensues, a judge will hear the case within 45 days (less than the usual time).

- Small claims court. For civil cases where mediation fails, the amount at issue is 50, 000 RMB or less and the legal issues are simple, the parties can choose for the case to be heard by a single judge, within 1 month (instead of 6 months). The process is also simplified and flexible: fees are lower; notices may be sent using messages or email; hearings may be at night; and usually there is only one hearing with a decision announced from the bench. There is no appeal to higher court, but parties can request review by the Pudong District Court. Of more than 2, 000 cases since 2011, only 1-2% received judgments; others were settled or dropped. Only one case went for review.

- Results. Up to 30% of cases resolved through court connected mediation. (In 2011, cases resolved through court-connected ADR were 22. 6% .)

Result 2. Transparency in court decision making is increased through the development of a) open trials and b) the people's assessors system.

(a) Open Trials

OVI: Project activities contributed to the promulgation of the regulatory document Six Regulations on Judicial Openness issued by the Supreme People's Court.

Status: Achieved. The SPC's Six Regulations on Judicial Openness was issued, and included open trial reform. Project activities contributed to the issuance and implementation of the open trial reform.

81. Context. Open trial reform has been promoted under the *Six Regulations on Judicial Openness* issued by the SPC in 2009, along with another document *Several Decisions to Accept Media Supervision*.

82. Results. *Six Regulations* covers the following areas: (1) case filing, (2) trial, (3) enforcement, (4) hearing, (5) judgement and other documents produced by court, and (6) court trial administration. The *Six Regulations* also particularly addressed general public's complaints about inadequate explanation on why cases are not accepted by court, and how to inquire about the status of cases. In 2010, the SPC issued the *Decision on Online Broadcast of Live Court Trials* and selected 100 courts as Open Trial Model Courts. In 2010, Gansu province was selected to pilot judicial openness reforms in western China. In August 2011, the Gansu pilot was evaluated (including through GED activities) and the conclusion was that the Gansu High Court had served as a good model to promote judicial openness province-wide; provincial standards on judicial openness were issued by Provincial High Court.

83. Project Contribution. According to the SPC officials, more theoretical research on open trial was needed when the Project began. Different views remained on whether the court system should speed up or to slow down the open trial reform. Open trial reform largely depends on local economic development and internet

usage. Yet in remote and poor areas, lack of funds and institutional safeguards for open trial present a serious challenge.

84. With the support of the GED Project, the SPC conducted ten major activities related to open trials. For instance, a domestic seminar (2009) analyzed open trial practice in China, with local courts and experts participating; domestic experts conducted research. Study tours to the United Kingdom and Germany, and to Switzerland and France, also contributed. A wrap-up event (November 2011) was held with GED support to summarize lessons and experience on judicial openness in the past three years, and a series of good practices were reported in the People's Court Daily.

85. This set of Project activities supported several aspects of the reform, according to SPC officials. The reform has been rooted widely and deeply in the entire justice system, including trial administration, letter petition and implementation. The open trial mechanism has been further improved, with new software and hardware at all levels of courts, and a nationwide standard on open trials has been developed. In summary, GED activities allowed the SPC to obtain information on the different approaches to public trials with the objective of working out an integrated national policy. Project activities have thus contributed to the regulatory document *Six Regulations on Judicial Openness* issued and enacted in 2009.

(b) The People's Assessors System

OVI: Improved People's Assessors System by enlarging the scope of representativeness of citizens at the pilot site of Wuzhong District court from 9 to 50. People's assessors participation rate in cases increased from 10% to 75%.

Status: Achieved. In Wuzhong District Court, the people's assessors participation rate in cases has increased from 10% to 98% in first trial cases, and the number of assessors has increased from 9 to 80. The Wuzhong pilot served as the model for nationwide reform of the people's assessors system.

86. Context. People's assessors are members of the general public who participate in the judicial process. Assessors are appointed from the local community for a fixed period, to hear cases with judges in trials. In 2005, the NPC issued a decision to enhance the people's assessors system. Wuzhong District Court in Suzhou Municipality piloted this reform. ①

87. Results. The Wuzhong District Court has established several mechanisms to promote the people's assessors

① Reform of the people's assessors system is discussed under Overall OVIs in paragraphs 51-54 (and Box 1 on the Wuzhong Pilot).

system. Some provisions in the regulatory documents issued by Wuzhong for the pilot^① formed the basis for provisions in SPC documents applicable nationwide. ^② The contributions from the Wuzhong pilot include: clarifying the scope of cases where assessors would participate; defining the rights of litigants to request assessor participation; refining the procedure of random selection of assessors; and ensuring the protection of rights of assessors to hear the trial.

88. The success of the Wuzhong model can be seen from the following statistics: people's assessors participation rate in cases has increased from 10% to 98% in first trial cases, and the number of assessors (the OVI measure of representativeness) has increased from 9 to 80.

89. Project Contribution. The Project has supported the development of the Wuzhong pilot by assisting with research, information exchange and the formulation of guidelines for assessors. Under the GED Project, five seminars were held, a number of field research assignments under the pilot program were conducted and two international study tours were undertaken. Many workshops helped to work out the details of implementation. Through research and visits to courts in economically developed countries (e. g. Germany, Austria, Spain, and Portugal), they could better understand issues with systems similar to people's assessors elsewhere. From the GED-sponsored interventions, they could increase the enthusiasm and understanding of assessors, and work out how to regularize assessor's work (logistics, role, etc).

90. In addition to the GED impact on establishing and improving the Wuzhong model, the promotion of the Wuzhong model nationwide by SPC deepens the Project's contribution. The participation rate has increased nationwide, from 50, 000 persons in 2005 when the reforms were launched to more than 80, 000 in 2011. Representativeness has also increased and balance developed in terms of gender, age, education and profession. Fairness is promoted by the random selection mechanism. Training is provided to people's assessors to ensure that they possess the necessary professional knowledge and skills (the SPC requires 20 hours per person per year). Financial support is also provided to guarantee effective participation. In 2006, there were 340, 000 cases where people's assessors participated in the trial, and in 2011, this number increased to 1.2 million, according to the 2012 SPC Work Report.

^① *Rules and Regulations for People's Assessors Administration and Evaluation Framework of the People's Assessor Pilot*.

^② *SPC, Provisions on People's Assessors' Participation on Trial Activities and Response to Some Issues Related to People's Assessors, (November 2009)*.

Result 3. The judicial appointment and training system is enhanced and judicial efficiency is increased.

(a) Judge Recruitment

OVI: Increased transparency of recruitment of judges by carrying out the interim procedure for open selection of novice judges.

Status: Partially achieved. The interim procedure for open selection of novice judges has been developed but is not expected to be issued by the SPC pending other personnel reforms. However, some provinces are experimenting with new methods of recruiting judges from the public.

91. Context. One requirement for candidates for judgeships is passing the unified legal examination for lawyers, judges and prosecutors. Other requirements include a college degree and two years of working experience. Generally, recruitment of judges includes three categories: (1) non-judges within a court to be recruited as judges; (2) lower level court judges to be recruited to a higher level court; and (3) recruiting judges externally from the society. In 2008, the Organization Department of Party Central Committee issued *Provisional Measures of Public Selection of Novice Judges and Prosecutors*, providing that public selection is one way to recruit novice judges and prosecutors, that is, selecting eligible and qualified candidates from society.

92. Results. The *Interim Procedure for Open Selection of Novice Judges* is still at the internal discussion stage. Currently, the SPC is undergoing a personnel management reform in classification. Detailed selection procedures for all three categories above are pending issuance of a revised SPC personnel management classification. According to the SPC, many provinces have experimented with open recruitment of judges from the public. The general selection rate is 1: 3 or 1: 5 (one out of 3 or 5 candidates). However, in western China, where the numbers of qualified candidates are limited, the selection rate could be higher. Some provinces, such as Shanxi and Shaanxi, have issued selection procedures and criteria.

93. Project Contribution. Activities supported under the GED Project mainly focused on developing an interim procedure for open selection of novice judges. Two seminars were held in 2010 for court officials at all levels to share experience, challenges and lessons on recruiting novice judges externally from the society. The activities provided a forum for discussing the progress and challenges in the provincial experiments. In addition, a publication on judge recruitment came out in March 2012 (*Observations on Foreign Judges Management System*) and 3, 000 copies have been produced under the GED Project for dissemination.

(b) Cost efficiency

OVI: New Judicial Efficiency Guide distributed to courts nationwide.

Status: Partially achieved. The SPC has prepared a Judicial Efficiency Guide, based on research, study and experiences in eight province-level jurisdictions. The draft is being reviewed. The concepts are being piloted.

94. Context. The current debate on judicial cost and efficiency in the Chinese judicial system focuses on the following key issues: (a) efficient allocation of judicial resources, which includes both guaranteeing an efficient allocation of budgetary resources to the judicial sector and effective use of these resources within the judicial sector; (b) reasonably sharing judicial cost between parties and the courts and among different levels of courts; (c) establishing ADR to improve judicial efficiency; (d) further reforming civil and criminal procedures to improve efficiency; and (e) improving court management and evaluation systems.

95. Results. A pilot on reducing judicial costs and accelerating judicial efficiency was launched in Nanjing in November 2010. Three local courts in Nanjing have been selected as the piloting sites, one at the municipal level and two at the basic level, to pilot new measures on case management reform, small claims procedure and improving judicial efficiency in all stages of litigation. More recently, a district court in Jilin City in Jilin Province is piloting the connection between mediation and litigation, and a district court in Taiyuan Municipality in Shanxi Province is piloting reform of written judgements and improving technical strengths of courts.

96. Project Contribution. Under the GED Project, the China Institute of Applied Jurisprudence has conducted various studies, surveys and consultation workshops on litigation costs. According to the Institute's statistics, the Project supported: seminars; field study (16 local courts in four provinces); translation of foreign materials and books; study tours (Germany, UK, New Zealand and Australia); and extensive media reports in several mainstream journals (People's Justice, Law Application and People's Court News). Five courts were selected as pilots, and, based on their experience, a *Judicial Efficiency Guide* was drafted. Three books have been published under the Project: *Empirical Study of Judicial Cost and Judicial Efficiency*, *Searching for Success in Judicial Reform: Voices from the Asia Pacific Experience* and *California Judges Benchbook: Small Claims Court and Consumer Law*.

97. More than 700 judges participated in different Project activities in 8 different provinces, whether attending seminars (nearly 200), contributing ideas in field research (160, including 10 foreign judges), or participating in surveys (300). In addition, a considerable amount of reference material has been translated with papers published and disseminated to local courts. The pool of information has the potential to have an impact on the next judicial reform plan.

98. Project contributions can be seen in the following areas. (a) The concept of judicial cost-efficiency has been widely accepted. While previous research on this subject was mainly conducted at a very general level, more research today focuses on specific practice issues related to cost-efficiency. In 2011, the SPC promoted 10 judicial concepts nationwide and cost-efficiency was one of them. (b) The Project promoted some new SPC policies on cost-efficiency, such as the pilot on small claims. The extensive materials collected under the Project

laid a good theoretical foundation for further reform. (c) The Project has also promoted theoretical research in judicial cost-efficiency in academia. (d) The *SPC Judicial Efficiency Guide* has been drafted, and emphasizes practicality, innovation and foresightedness. The draft Guide has been used in the five pilot courts, with experience assessed in Project workshops. The Guide is currently under foreign experts' review. (e) The reach of the Project was broadened with the participation of basic court judges in international study tours.^①

(c) Judges Training

OVI: 500 judges received training on the application of law and understanding of newly enacted policies from the GED project.

Status: Achieved. Nearly 700 judges received training under the Project in related areas: judicial methodology, criminal retrials, parole and sentence commutation, amendment of Criminal Law and Criminal Procedure Law, case guidance and ADR.

99. Context. Specialized judicial training institutions were established in China in 1997; teaching methodology and course curriculum are under continuous development. For example, improving teaching materials was set as a work priority for the court system in 2010. Building the capacity of these training institutions and producing training materials that are suitable to the Chinese context have been critical for judicial modernization in China.

100. Results. Table 1 below shows that, with 798 trainees under this Component, the OVI target (500) is exceeded.

Table 1. Training Activities under Component A			
Date	Subject	Implementation Agency	Number of Participants
December 2008	Judicial Methodology	National Judges College	200
May 2009	Criminal Retrial	Trial Supervision Division, SPC	54
December 2009	Parole and Sentence Commutation	Trial Supervision Division, SPC	152
December 2010	The Amendment of Criminal Law and Criminal Procedural Law	Trial Supervision Division, SPC	130
December 2010	Case Guidance Work	Research Department, SPC	70
May 2011	Theory and practice on ADR	National Judges College	192
			798

^① A detailed review and assessment of the Project sub-component on judicial cost and efficiency is presented in Balme 2012.

101. Project Contribution. Training activities were conducted under this sub-component and throughout all the activities of Component A, with two objectives:

- To improve the professional capacity of the senior judges (focusing on adjudication methodology; criminal retrial, parole and sentence commutation; case guidance work; and court-connected mediation).
- To improve the training capacity of judicial training institutions (identifying training needs, exploring changes in training delivery, and training leaders in the court personnel departments to help them understand court management and professional training and be effective trainers).

Under the GED Project, efforts were made to explore training methodologies suitable to the Chinese context. One example is to use Chinese law and cases but to carry out training through interactive methods learned from Germany, to maximize the training impact.

102. Good progress has also been made in improving teaching materials. Chinese judicial training institutions have developed some training materials in the past few years, but these are not fully standardized and systematic. Through study tours to Hungary and Czech Republic, and an international seminar, Chinese training institutions found more systematic materials in other countries, such as separate teaching materials for basic and advanced levels of learning. In France, there is a five-year training program to build 13 capacities that the judges need. These findings were very useful for the improvement of Chinese judicial training materials.

COMPONENT B. LAW AND POLICY MAKING SYSTEM IS IMPROVED^①

Result 1. The participatory process for law-making is institutionalized.

103. Context. In China, three main forms of public participation in legislation are in use: public comments on draft legislation; legislative hearings; and soliciting proposals for legislation. Public comment processes have been institutionalized at the NPC level. There are no national rules for legislative hearings or soliciting proposals for legislation. Practices have developed at the provincial/local level in all three areas.^②

^① The sources and means of verification listed in the Logframe for Component B cover: NPC gazette, reports and publications (NPC website); project monitoring reports and project activity reports; media coverage; and State Council gazette, reports and publications on public participation. Since documents have not been officially issued, neither gazette was needed as a source. Media coverage is noted as relevant. The information here on NPC views is largely derived from an interview with NPC Legislative Affairs Commission officials in February 2012.

^② Public comment mechanisms are discussed generally under Overall OVIs in paragraphs 24-26, paragraphs 55-57 and Box 2 on Public Participation in Law-making at the Provincial Level).

(a) Public Participation In Law Drafting

OVI: Improved internal guidelines, including substantive and procedural standards, for public participation in law drafting. Guidelines distributed to peoples congresses nationwide.

Status: Partially achieved. To implement the NPC's 2008 policy regularizing public comment on draft legislation, the NPC Legislative Affairs Commission has instituted a detailed set of common practices (reportedly set out in internal guidelines). On that basis, the NPC has solicited public comment on almost all draft legislation since 2008. While guidelines for LPCs on public participation have not been made public, each province has issued rules on public participation in law-making, either as stand-alone legislation or within other legislation. Public comment processes are also in use in provincial level law making.

104. Results. Between April 2008 and December 2011, a total of 35 NPC draft laws were publicized, with many closely related to the public's interest generating considerable comments. (Three drafts were not publicized in this period related to national security or military matters, such as the Military Service Law.)

105. An internal working procedure for this public comment process was set up in 2008, to implement the new policy. According to the NPC staff, the process described for public comment is detailed. The drafts are usually released for comments after the first or second of the three Standing Committee Readings. Comments can be sent by email, letter, fax or telephone call. Designated staff at the NPC collect, organize and analyze each set of comments and provide a mid-term feedback to the public in the middle of the consultation period, usually around the 15th day of the one-month consultation period. NPC officials also interact with the general public through online dialogue. When the Standing Committee considers a law, there is usually a media briefing on the draft laws. Sometimes, the media publicizes the main content and major issues of the proposed legislation even before the draft law is publicized to the general public by the NPC. Generalized responses to comments received can be posted on the web. Of draft laws posted for comment, the Individual Income Tax Law revisions received the most public feedback, 230, 000 comments. Based on public opinion, the starting taxation point for individual income tax was increased from the original RMB 3000 to RMB 3500.

106. LPCs have their own standards. The NPC promotes the LPCs work in this area mainly through seminars and research activities; no nationwide guidelines have become public. To date, each province issued rules on public participation in law-making, either as stand-alone legislation or within other legislation. Public comment processes are also in use in provincial level law-making. Some innovation and flexibility have emerged in local practice, including entrusting higher educational institutions to solicit public opinions on behalf of the LPC.

107. Project Contribution. GED inputs helped to focus discussions on several key questions, as recounted by the NPC: (a) does engaging the general public in the legislation process show more symbolic value than

substantive value; (b) are experts' opinions valued more than the general public's opinions; (c) while the general public is enthusiastic about participation, can ordinary citizens provide inputs of high quality; (d) the absence of standard regulations, both substantive and procedural, on public participation; and (e) are explanations provided when public opinions are not accepted.

108. With GED support, publicizing draft legislation has become a practice of the NPC and the LPCs. The GED Project activities contributed to the consensus building that draft legislation must be publicized and inspired local PCs to issue rules guiding and institutionalizing public participation Workshops and study tours helped to change views and support this practice. (See Box 2 on provincial practice.)

(b) Legislative Hearings

OVI: More clarified substantive and procedural standards applied to enhancing the quality of public hearings in the legal processes.

Status: Partially achieved. All provinces have held public legislative hearings and produced rules, which have started to clarify applicable standards. However, national guidelines for public hearings (by the NPC) have not been issued.

109. Context. The first legislative hearing was in Guangdong Province in 1999, and the first sanctioning of the procedure (as a general option, not a detailed requirement) was in the *Legislation Law* in 2000. ^①Interestingly, the Guangdong hearing covered draft legislation on procedures for inviting and awarding construction contracts, a source of public frustration with concern over rampant corruption. ^②By December 2002, all provincial people's congresses (except the Xinjiang Autonomous Region), 19 municipalities and the four special economic zones had written hearings into their legislative procedural rules. Yet, even a few years later, there were still no established nationwide rules for hearings and only eight provinces and municipalities had created rules on hearings used throughout an entire jurisdiction. ^③

110. Results. Progress in the area of public hearings in legislative processes is limited, mainly because there is not yet a consensus on the nature and role of hearings. Public hearings have often been viewed as the confrontation of two sides holding opposite views, making it important to find two opposite sides well-matched. The organizing process could be extremely complicated and costly. ^④ The NPC has had only one hearing, in 2005, on the Individual Income Tax Law.

^① Paler 2005 at 311.

^② Paler 2005 at 314.

^③ Paler 2005 at 315.

^④ NPC Interview.

111. Since then, all 31 provinces have held public hearings and have applicable rules,^① although actual practice at the provincial level is limited.^② Common features of these hearings include: advance notice, publication of draft legislation in media for comment, registration of witnesses and observers (both attendance and participation often require advance approval), and media may be invited to attend.^③

112. Project Contribution. The contributions of the GED Project include: (a) providing a forum to summarize and exchange local practices, allowing the LPCs to share their own views on public hearings; (b) through various seminars, forming the consensus that a public hearing is not a confrontation but a routine channel to solicit public opinion; and (c) encouraging the LPCs to issue local rules. The NPC also has its own draft rules which are still under development.

Result 2. Enhanced capacities of the legislature (NPC) for law-making through post-legislative review (ex post impact assessment of legislation).

113. Context. Post-legislative review in China is also called evaluation of legislation effectiveness or legislative quality. This review aims to examine whether the mechanism established in the legislation is appropriate, the content of the legislation is focused enough to solve specific problems, the legislation has been enforceable and the legislation has generated good results. Work on post-review of NPC legislation began in 2006, but developed further with Project support. Provincial level practices are also emerging.

(a) Post-Legislative Review

OVI: New internal guidelines developed on post-legislative review.

Status: Partially achieved. National guidelines on post-legislative review are still under development, but practices are being developed and piloted. The NPC Standing Committee has called for practices to be improved, and regularized.

OVI: Piloting group established for work on post-legislative review.

Status: Achieved. Two pilots on post-legislative review were conducted in 2009 and 2010 respectively, and a piloting group set up.

OVI: Increased participation of experts in the post-legislative review process.

Status: Achieved. Experts were involved in the post-legislative review pilots.

114. Results. The NPC launched a pilot in post-legislative review in 2009, following more than 10 post-legislative review pilots at the local level. Two pilots were conducted on *Law on Science and Technology*

① NPC Interview.

② Huang & Peerenboom 2012 at 11.

③ Paler 2005 at 315.

Progress and Agricultural Technology Promotion Law and completed by 2011. The NPC review of the *Science and Technology Progress Law* included GED-connected activities in Nanjing, where the focus was on two particular articles. In addition to obtaining statistics from the province, the NPC team held a meeting with the relevant departments of the local people's government, followed by a forum with representatives from the local science and technology bureau, enterprises, science-related research units, universities and institutes. ^①

115. A pilot group was set up, according to GED-PMO, with experts from over 10 government organizations. Experts have played an important role in post-legislative review. More than 40 experts were engaged in research. ^②The *Science and Technology Progress Law* pilot heavily relied on experts in relevant technology departments to design surveys, develop working procedures and draft the review report. Many responses were received from online questionnaires (over 10, 000 on science/technology; over 6, 000 on agricultural technology).^③

116. The NPC Standing Committee highlighted these pilots in its 2012 annual report to the NPC:

“We objectively evaluated how scientific and practicable laws were as well as how effectively they were implemented, and focused on the ownership and use of intellectual property rights in scientific and technological projects, incentives for corporate investment in R&D, trans-regional mechanized farming services, subsidies for purchasing agricultural machinery, and fuel subsidies for agricultural machinery. The Standing Committee deliberated the relevant reports, and called for improving the mechanism for evaluating laws after they are passed on the basis of a review of the experiences gained from the pilot project and for carrying out such evaluations on a regular basis and in a standardized way.”^④

The NPC has decided to conduct two post-legislative reviews per year. Reviews have been launched for the *Law on Promotion of Medium- and Small-Sized Enterprises* and the *Law on Protection of Disabled Persons*.^⑤These reviews will follow the previous review procedure. The ultimate goal is to institutionalize the post-legislative review mechanism after a few more pilot projects, with formal rules to guide post-legislative review practice. Showing that these reviews lead to results, amendments to the *Agricultural Technology Promotion Law* were deliberated on at the NPC Standing Committee session in April 2012. ^⑥

① Jiangsu Provincial People's Congress Interview.

② NPC Interview. The GED-PMO 2011 Annual Report (Annex 3) has the figure of 20 experts.

③ GED-PMO 2011 Annual Report, Annex 3.

④ http://www.npc.gov.cn/englishnpc/Speeches/2012-03/19/content_1715295.htm (Full Text of the NPC Standing Committee Work Report 2012)

⑤ The *Securities Investment Fund Law* was also mentioned as a possible target for review. NPC Interview.

⑥ “China mulls amendment to agro-technology promotion law,” Xinhua, April 24, 2012. http://www.npc.gov.cn/englishnpc/news/Legislation/2012-04/25/content_1718809.htm.

117. Post-legislative reviews have also been undertaken at the provincial level.^①For example, the Jiangsu Provincial LPC conducted its first pilot in 2011 (Provincial Regulation on Road Transportation Management). A working group had members from the LPC finance and economic committee and some LPC deputies, provincial legal and transport bureaus, experts and scholars. Information was gathered from several sources: (a) an internal evaluation by the provincial transport bureau; (b) regional evaluation conducted by LPCs in two cities; (c) over 4600 surveys of LPC deputies, professionals in this area, and the general public distributed and analyzed by Nanjing University Law School; (d) seminars with stakeholders and site visits by the working group; and (e) public responses to a notice on the LPC website. The Shaanxi Provincial LPC will conduct its first post legislative review in 2012 (Provincial Regulation on Agriculture Comprehensive Development Regulation). The NPC post-legislative review pilots provided examples for the provincial pilots.

118. Project Contribution. GED inputs helped the development of post-legislative review from 2008 at the NPC level by promoting learning from local pilots, studying international experience, and funding pilot activities. First, there was a research proposal for post-legislative review and discussions were initiated with LPCs. LPC experiments in post-legislative review started in 2000; by 2008, more than ten local PCs had experimented with post-legislative review. The GED Project provided opportunities for the LPCs to exchange their experience and allowed the NPC to learn from local practice.

119. Second, under the GED Project, policy makers conducted study tours to England, France and Spain, as well as organizing one international seminar and exchanging views with more than 40 domestic and international experts. The NPC conducted feasibility studies and came up with pilot proposals based on various research reports.

120. Third, the GED Project funds provided direct support to the pilot projects. Research and seminars under the pilots were supported by the GED Project and these activities provided useful information to assess the above-mentioned laws scientifically. The two pilot projects were successful and provided concrete experience on issues such as the target and scope of post-legislative review as well as how to formulate the review report.

121. Pre-Legislative Review. The study tours supported by the GED Project also demonstrated the importance of “pre-legislative review”, especially cost-benefit analysis. Since last year, the NPC has started an experiment on pre-legislative review. In 2011, two pilots were conducted on potential legislation, a Waterway Law and an Anti-Domestic Violence Law. Concrete work procedures for pre-legislative review have been prepared, including the scope and procedure for review. Decisions on whether a law is needed in a certain area will take a more scientific, democratic, and quantitative direction in the future.

① Huang & Peerenboom 2012 at 17.

122. Surveys have been used as a main measure to ensure public participation. In the case of the Waterway Law, over 3, 000 surveys were distributed to relevant stakeholders, including government agencies and ministries, enterprises and trade associations. In the case of the Anti-Domestic Violence Law, about 3, 000 surveys were randomly distributed in selected communities. These pilots have also demonstrated the importance of engaging experts in the review process, especially for analysis of costs and efficiency, and for feasibility studies. After the study tours to Israel and India, the NPC is considering revisions to the *Legislation Law* and other laws to establish the pre-legislative review mechanism.

(b) Training

OVI: More than 2000 officials from the NPC and the local people's congresses receiving training from the project activities.

Status: Partially Achieved. Nearly 900 officials received relevant training under the Project, which exceeds the original indicator of 800 trainees. However, the current indicator is " more than 2000 officials" receiving training, and this has not been achieved.

123. Results. The Component B training activities are set out in the following table:^①

Table 2. Training Activities under Component B		
Year	Topic	Indicative Estimate of Participants
2008	Post Legislation evaluation	50
	Public participation and law-making	70
2009	People's representatives in law-making	100
	Public participation in law-making	70
	Regulation filing and review	100
	Review of regulatory documents	95
2010	Regulation filing and review	90
2011	Public hearing in the legislative process	70
	Regulation filing and review	90
2012	Law Harmonization	65
	Regulation Filing and Review	90
	TOTAL	890

^① The data in the table was provided by GED-PMO in March 2012, bearing in mind the difficulty of obtaining accurate and verifiable information. The GED-PMO 2011 Annual Report (at 5-6) shows more than 2400 GED trainees: in public participation in law-making (more than 1300); in regulation filing and review (more than 800); and in post legislation evaluation (more than 300). Huang & Peerenboom 2012 report similar figures, with only 600 trainees for regulation filing and review.

124. Project Contribution. Training organized under the Project covered public participation in law-making, public hearings, post-legislative review, review and filing, review of regulatory documents, and role of people's representatives in law-making.

Result 3. Law harmonization is improved through the review of regulations by the NPC and LPCs.

125. Context. The filing and review system is an important tool to ensure legislative supervision and legal harmonization. The 2000 *Legislation Law* provided that administrative regulations, local regulations, autonomous regions' regulations, stand-alone regulations and rules (regulatory documents) should be reported to the relevant organs for the record, within 30 days of promulgation. In 2004, a designated filing and review office was established at the NPC level. In 2007, the *Supervision Law* was passed with Chapter 5 being devoted to filing and review of regulatory documents. Since then, filing and review work has been promoted at the local level. Comprehensive and specific provisions on how LPCs should conduct filing and review are not found in current laws, leading to the situation where different localities have adopted different practices, sometimes arbitrarily. As a result, improving LPC capacity in conducting filing and review on regulatory documents has been an urgent challenge in China.

(a) Nationwide System of Filing and Review

OVI: System of filing and review established nationwide at the local people congresses.

Status: Achieved. The system of filing and review has been established nationwide. Most provinces (26) have established specific filing and review offices. In the other five provinces, filing and review work is conducted by designated staff in relevant agencies. More than half of the relatively large cities with local legislative power have established filing and review offices, and twenty percent of 300 city level PCs have established filing and review offices.

126. Results. The system of filing and review has been established at the LPC level nationwide, as well as at the NPC level. To date, 26 out of 31 provinces have established specific filing and review offices. In the other five provinces (Henan, Guangxi, Yunnan, Qinghai and Shaanxi), filing and review work is conducted by designated staff in relevant agencies. Among the 49 big cities which possess local legislative power, more than half have established filing and review offices. Among 300 city level PCs, 20% have established filing and review offices.

127. Project Contribution. GED inputs promoted exchanges between the NPC and the LPCs, and among the LPCs, to promote and encourage implementation at the LPC level. Project support also enabled the NPC to improve existing rules, including complaint registration, collective research for complex issues, and internal consultation rules.

128. When the Supervision Law was enacted in 2007, local congresses did not have designated supervision offices. The GED Project has supported a series of local research and seminars to promote experience exchange between the NPC and the LPCs and among the LPCs. Review methods include both active review and passive review (i. e. based on requests from the general public). For example, based on public opinions, NPC decided that the Interim Regulation on the Administrative Punishment for Speculation and Profiteering was out of date and the State Council terminated the implementation of this regulation.

129. Through GED activities, the NPC also encouraged local congresses to set up rules to review regulatory documents. The Project helped to strengthen interactions between the NPC and the LPCs and among the LPCs to facilitate sharing of experience. It also enabled the NPC to further improve existing rules, including complaint registration rules, collective research rules for complex issues, internal consultation rules for complex issues, filing rules and reporting rules.

(b) NPC Internal Guidelines on Filing and Review of Regulatory Documents.

OVI: Internal guidelines of NPC developed on filing and review of regulatory documents to enhance law harmonization.

Status: Partially achieved. NPC guidelines on filing and review of regulatory documents have not been issued. An NPC-published book on the filing and review system for regulatory documents has been circulated to LPCs to guide implementation. Provincial level LPCs have issued local rules (29) or internal procedures (2) in this area.

130. Results. The NPC issued Working Procedures for Filing and Review of Regulatory Documents in 2005. Beyond that, NPC internal guidelines are still under development, though rules on response to petitioners are being developed. ① However, a Project-supported book on the filing and review system for regulatory documents was prepared by the NPC, with 3, 000 copies distributed to LPCs, to guide implementation. For review of regulatory documents, almost all provinces (29) have issued local rules, either as stand-alone legislation or within the local supervision legislation. Beijing and Shanghai have internal working procedures. ② On that basis, this OVI is considered partially achieved.

131. Project Contribution. Under the GED Project, the NPC published Theory and Practice on Filing and Review System of Regulatory Documents, distributed to the LPCs to expand the impact and guide implementation. The NPC has also worked out an internal working plan on how to respond to public inquiry letters.

① Huang & Peerenboom 2012 at 14.

② The Beijing LPC deliberated on Regulations on Filing and Review of Regulatory Documents in March 2012, but enactment of the regulation has not been confirmed.

132. According to interviews, very few conflicts have been found each year out of the filing and review process. One explanation could be that a pre-clearance process (i. e. to clear the existing laws before new legislation is issued) has reduced the conflicts.

(c) Training of Local Officials

OVI: Improved national system of review and filing following the training of local officials.

Status: Achieved. Through Project-sponsored training of trainers, the training of local staff has been and will be expanded, particularly in more remote areas.

133. Project Contribution. To improve the LPCs' capacity in filing and review work, the GED Project held two training activities for the LPCs in ethnic minority regions, i. e. Zhejiang Training and Tibet Training. About 200 trainees received training. Many of these trainees are from remote areas of the country. Among them, about 100 people were from Tibet and about 90 people were from Beihai, Guangxi Province. Some trainees will further train their colleagues after return.

COMPONENT C. CIVIL SOCIETY INVOLVEMENT IS BROADENED^①

134. Chinese CSOs fall into several categories. There are three legal forms of CSOs in China: social organizations (shehui zuzhi), private non-enterprise units (minban fei qiye danwei) and foundations (jijinhui). In 2010, there were 446, 000 CSOs nationwide: the numbers of CSOs under each category are 245, 000 social organizations, 198, 000 private non-enterprise units and 2, 200 foundations.^② This Report uses the term CSO to refer to these organizations.

Result 1. Recognition of the positive role of civil society is increased.

135. Context. A major challenge facing China's emerging civil society is to gain the trust and confidence of both the Chinese government and the general public. From the government perspective, there were concerns that non-government meant anti-government, and about non-government organization (NGO) ties to foreign

^① The Sources and Means of Verification for this Component set out in the Logframe were available for this review. These were: positive media coverage of CSO actions; publication and distribution of CSO yearbook 2008-10; draft regulations and guidelines on registration and management of CSOs, private foundations and social associations; new regulation regarding tax deduction for contributions to CSOs available; training events held in different locations; active central government CSO Website; copies of a journal on CSO management distributed to government organs and CSOs; and evidence of forums and workshop being held. Additional information was provided through a February 2012 interview with MOCA officials.

^② MOCA Interview indicated that the final number for 2011 would probably be around 460, 000, about a 3% increase.

institutions. For the public at large, the proper role of CSOs is often seen as to “support” or “supplement” the work of government agencies. Recent scandals involving CSOs have also affected CSO credibility within the general public.

(a) CSO Involvement in Policy Making

OVI: Increased involvement of CSOs in policy making through participation of CSOs in seminars, forums, workshops.

Status: Achieved. There was considerable CSO participation in GED seminars, forums and workshops. MOCA cited examples of increased consultation with CSOs, including on tax exemption and registration reforms.

136. Results. Government consultation with CSOs on important issues, such as solutions to the global financial crisis and annual review regulation for international NGOs, has also increased, as observed by MOCA. When MOCA, MOF and the State Administration of Taxation (SAT) were working on tax exemption standards, CSOs views were solicited and accepted. When Guangdong, Shanghai and Beijing piloted a direct registration system, CSO were also the main participants in the policy making discussion. Numerous workshops and seminar under the Project focused on government policy consultation with CSOs.

137. Project Contribution. Project activities under Component C focused on changing the public's perception of CSOs to recognize their positive roles and on transferring research results to regulation and policy measures. For the 40-plus seminars, forums, and training activities held under the GED Project, CSOs were targeted as the main participants. GED activities were publicized online and open to all participants. Around 4, 200 CSOs had attended GED activities by mid-2011, and various workshops organized by MOCA have resulted in direct communication between CSOs and government on issues such as conflicts of interest, the management and evaluation of CSOs, and the contribution of CSOs to society. ①

138. The GED Project activities have been widely reported by media. For instance, a series of five episodes on the positive contributions of CSOs aired on national TV, and a book was published on the unique contributions of CSOs in Sichuan earthquake relief. A program of other publications supported by the Project is further described below. MOCA reports that these activities and media coverage have generated positive attitudes among scholars and experts. Many who previously held a critical attitude toward MOCA's work are now more willing to provide constructive suggestions.

① GED-PMO 2011 Annual Report at 7.

(b) CSO Registration and Development Website

OVI: Easier access to information on CSO registration and development via an official bilingual website.

Status: Partially achieved. The social organizations cooperation and communication website was established in 2008 (www.cnphzjl.org). The English version is still under construction. The website provides easier access; however, provincial information is not up to date or complete.

139. Results. An official bilingual website has been launched to collect CSO registration and management information from each province and to promote local good practice (www.cnphzjl.org). However, the English version is still under construction. This website is managed by the Social Organization Cooperation and Exchanges Division under MOCA's Bureau of NPO Administration, and is different from the Bureau's website (www.chinanpo.gov.cn).

140. Project Contribution. The website provides easier access to CSO information. However, provincial information is not up to date or complete. One challenge the website faces is to get adequate local information from each province. In order to encourage local provision of information, a new incentive structure is currently under consideration in order to encourage more local information submission. This bilingual website will continue to operate even after the GED Project has finished.

(c) Publications on CSO Management

OVI: Publication of a journal and books on CSO management, distributed to CSOs and government organizations.

Status: Achieved. A bimonthly journal, *Research on CSOs Development and Administration*, has been launched, distributed to government ministries, practitioners and scholars. A series of seven textbooks on CSO issues was published, distributed to CSOs and government agencies and used in training. The *CSOs in China Yearbook* series was produced for 2008-2011. In 2011, a series of six green-covered books of policy and research reports was published.

141. Results. A bimonthly journal, *Research on CSOs Development and Administration*, was launched, with GED seed money from 2007-2009. Copies of the journal are distributed to the State Council and all ministries; it is also read by practitioners and scholars. Project reports in 2008 noted distribution of 24, 000 copies. Another periodical publication, the *CSOs in China Yearbook* series, was produced for 2008-2011 (under GED).

142. A series of seven textbooks, serving as teaching and training materials on social organizations, was published in 2010. Topics covered included: general introduction of social organization, social group, non-

profit private enterprise, foundation, capacity building of social organization, financial management of social organization, administration and law enforcement of social organization. MOCA used a bidding process to contract with authors for these books. Some 1, 500 to 2, 000 copies have been distributed to local civil affairs bureaus, CSOs, local government agencies and scholars (about two-thirds to CSOs and one-third to government agencies). Another 3, 000 copies will be distributed this year. These books have been widely used as training manuals in GED training activities. While many consider that this series of books has been the most comprehensive and authoritative teaching materials on CSOs development to date, some users also pointed out that the content is more theoretical than practical with limited case studies and good practices.

143. Since 2008, MOCA has invited bidding proposals for research topics on frontier issues that MOCA has prioritized under its own plan and selected winners through a strict evaluation process. For example, in 2011, 609 research groups which include 3, 000 scholars have submitted research proposals. Seventy-five proposals have been approved, and to date, 73 of them have been completed. In 2011, a series of 6 green-covered books which include some GED-supported policy and research reports was published (with GED logo). Copies have been distributed to local registration bureaus and other agencies. Monographs on community-based organizations and government procurement of social services by CSOs were published. ^①

144. Project Contribution. The GED Project supported all of these publication activities: the bi-monthly journal, annual yearbooks, textbook series and policy and research reports. These publications added substantially to the newly-developing field of CSO management. By introducing the bidding process for the textbook and report series, the Project helped to generate scholarly interest and demonstrate the benefits of open competition. These bidding processes were an effective way to popularize the Project, encourage communication between scholars and other stakeholders and foster the growth of a group of new scholars on social organizations development.

145. Substantively, these publications also contributed to CSO development. The Yearbook Series was the first of its kind, providing a comprehensive reference source for scholars and practitioners. ^②The research papers also provided suggestions for policy changes, such as on disclosure of charity donation information. ^③

Result 2. The policy and legal environment for CSOs is improved in the field of a) registration of CSOs and b) tax deductions and exemptions for CSOs.

146. Context. The 1989 Regulations on Registration and Management of Social Organizations introduced the

^① Wu & He 2012 at 12.

^② Wu & He 2012 at 11-12.

^③ Wu & He 2012 at 11 (citing MOCA Guideline on Disclosure of Charity Donation Information).

dual management system, which requires approval and oversight by both the MOCA and a supervisory agency in the CSO's line of work. Due to the great difficulty of registration, many Chinese CSOs remain unregistered or register as commercial entities. Lack of registration results in legal uncertainty and can also affect benefits available to a CSO. Among these benefits can be exemption from most significant taxes, and the ability for donors to get charitable tax deductions for their contributions to a CSO.

147. The Twelfth Five-Year Plan for National Economic and Social Development (2011-2015) includes a chapter (39) on Strengthening Management for Social Organizations. The 12th Development Plan maps out several CSO-related reforms, including: (1) abolishing the dual management registration system; (2) expanding new tax deductions for social organizations; and (3) increasing transparency for nonprofits to raise their standards and credibility.

148. (a) Registration of CSOs

OVI: Drafting and submission of amendments to regulations to allow NGOs to register directly with government.

Status: Achieved. MOCA reported that drafts of amendments of all three CSO regulations (social organizations, private non-enterprise units and foundations), permitting direct registration, have been submitted to the State Council for review. Issuance is expected this year. While submitting drafts to the State Council would not improve the policy and legal environment for CSOs, local-level pilots in direct registration and MOCA policy pronouncements support the view that the policy environment is improving.

149. Results. Against this background, MOCA has prepared amendments to the relevant provisions (to permit direct registration) in all three CSO regulations (for social organizations, private non-enterprise units and foundations). These drafts have been submitted to the State Council. MOCA takes an optimistic view on the approval of these amendments in 2012. Pilot reforms are underway in several locations. Three pilots in Guangdong Province, for example, extend direct registration to specific types of CSOs (eight in Guangzhou and Foshan, and thus far four in Shenzhen), and in some cases, reduce qualification requirements. Beijing has a similar pilot in effect. A simplified form of registration (bei' an) is also part of reforms in some areas.

150. Project Contribution. GED support for the revisions to the regulations took many forms. Many workshops and research were used to look at policy issues and options. For example, an effective input to the revision process came through more than 10 research reports by 30 leading scholars on CSO development and regulation, which were submitted to senior officials from MOCA and other agencies. ①Project-supported pilots and consultations were also part of the revision process for the draft legislation. GED support for piloting of

① Wu & He 2012 at 13.

direct registration reforms in Guangdong can be seen in the workshops and well as a conference to disseminate and discuss local pilot experience. ① Other seminars included other concerned agencies, such as the key State Council Office of Legislative Affairs.

(b) Tax Deductions and Exemptions for CSOs

OVI: Introduction of tax relief policy to benefit NGOs and financial contributors to NGOs.

Status: Achieved. MOF and SAT issued a circular on the criteria for eligibility of CSOs for corporate charitable deductions, in light of the increase in the corporate deduction limit from 3% to 12%. MOF and SAT also issued a circular that exempts several categories of CSO income from taxation. Both CSOs and donors benefit from the changes.

151. Results. The 2008 Enterprise Income Tax Law raised the limit on tax deductions for charitable contributions by companies from 3% to 12% of annual taxable income. The proportion of tax deductions for charitable contributions by individuals remains at 30% of taxable income. MOF and the State Tax Administration (SAT) issued a *Circular on Management Issues Concerning Non-Profit Organization's Eligibility for Tax Deduction* (No. 2009-123) on the criteria for eligibility of CSOs for corporate charitable tax deductions. MOF, SAT and MOCA had issued an earlier circular on several questions on pre-tax deductions for charitable donations (No. 2008-160), providing details on the deductions from pre-tax income for donations to qualified CSOs. This circular was later supplemented in 2010 by Circular (No. 2010-45). As a result, contributions to more CSOs are now deemed qualified for this tax deduction; the number increased from fewer than 20 to 110, which accounts for a small percentage of the CSOs registered with MOCA. CSOs at the municipal (county) and provincial level can apply to their local authorities for qualification under these rules; reporting on 2009, project documents state that hundreds of CSOs at the local level have already gained qualification.

152. Second, in 2009, the MOF and SAT jointly issued a *Circular on Tax-Exempt Income for Non-profit Organizations* (No. 2009-122), which offers tax advantages to CSOs. This circular provides that five kinds of CSO income can be exempt from taxation: donations from society, budget transfer, membership income, interest accrued on non-taxable income and other qualified income. These changes together improve the environment for CSOs and their donors.

153. Project Contribution. MOCA undertook extensive GED-supported research and carried on discussions with CSOs, and with MOF and SAT, to bring about the breakthrough described above. GED-supported activities contributed to the underlying research and consultations for these changes. The activity reports conclude that Project-sponsored communication and consultation, where opinions and recommendations were sought from

① Wu & He 2012 at 14.

different stakeholders, especially CSOs, combined with research and seminars to contribute greatly to the outcomes. Moreover, the Project directly contributed to the establishment of an effective working dialogue among the different government departments, primarily MOCA, MOF and SAT. The Project also supported a pilot in Hubei on qualifications required for social groups that apply for tax deduction of charitable donations, and MOCA incorporated the Hubei experience with other experience in its Interim Measures for the Qualification Review of National Social Organizations on Tax Deductible Charitable Donations, in June 2011. ^①

Result 3. The government capacities to involve CSOs in public service delivery through partnerships and contracting are enhanced.

OVI: Improved capacity of around 800 local government officials and NGO staff via training to promote cooperation between Government and civil society organizations

Status: Achieved. In total, over 1200 participants benefited from 14 training activities under the Project. Training was offered for staff working at registration agencies, for staff working at CSOs and for training of trainers for both government officials and CSO staff. Training addressed improvement of the capacity of government officials and agencies to formulate policies and to implement policies.

154. Results. A summary of CSO training activities is provided in the table below.

Table 3. Summary of CSO-related Training Activities ^②	
Training Activities	Actual Output
Curriculum Development	22 courses developed, covering CSOs registration, internal governance, fund-raising, financial management, human resources, etc.
Training for CSO staff	6 trainings conducted within 3 years. Participants include a number of national CSOs and 476 local CSOs from 115 towns and villages of 28 provinces. Totally, 588 persons received training.
Training for registration staff	6 trainings conducted within 3 years. Participants include staff from 196 city and county level registration agencies from all 31 provinces. Totally, 391 persons received training.
TOT Trainings	3 trainings conducted within 3 years. Totally, 242 persons received training.
	TOTAL PARTICIPANTS: 1221

155. Project Contribution. According to the GED Evaluation Report by the Social Organization Service Center under MOCA, participants showed high satisfaction with the training activities as these trainings have enhanced both their individual performance in carrying out daily work and their organizational capacity in carrying out organizational mission. For improvement in daily performance, less than 10% of the participants reported minimal improvement; more than two-thirds of CSO and government participants alike reported significant or considerable improvement. For improvement in institutional capacity, a majority of participants

^① Wu & He 2012 at 14.

^② From GED Evaluation Report on CSOs Training Activities, prepared by the Social Organization Service Center under MOCA's Bureau of NPO Administration, dated December 13, 2011.

reported improvement in almost all categories. About half of CSO participants reported that training would increase their ability to get volunteers or funding, and almost half of government officials were positive about improved capacity for policy innovation.

156. Through interactive and two-way communication, the GED training activities enabled the registration agencies at various levels to comprehend the status and challenges associated with CSO survival and development. Notably, 46.7% of participants from the government registration agencies indicated that these training activities have inspired their institutions to promote local policy innovation on CSOs registration and management. For example, the Bureau of Social Organizations Administration in Jiangsu issued a series of normative documents on CSO management.

157. According to MOCA, the government officials and agencies have improved their capacity in two major aspects. First, the capacity to formulate policies has been strengthened. With support from the GED Project, relevant government agencies have conducted research and seminars, learned about foreign experience and local practice in China. These activities have progressively broadened their horizons, provoked their thoughts and inspired more effective measures. Second, the capacity to implement policies has been enhanced. Some government agencies have strategically increased engagement with CSOs in procuring social services.

Result 4. Coordination and communication among CSOs and between CSOs and the government are improved through networking mechanisms.

OVI: Improved communication between CSOs and government and CSOs via the joint GoC-NGOs organization of 15 bi monthly forum and workshops.

Status: Achieved. Bi-monthly forums (15) were held. Reports from participants indicate that GED activities have been helpful in facilitating networks among CSOs and between various CSOs and government agencies. However, the sustainability of these networks remains to be seen.

158. **Results.** The list of 15 bi-monthly forums is shown below.

Table 4. Summary list of GED CSO Forums				
	Date	Location	Participants	Topic
1	2008-3	Nanning	80	Standardized development of CSOs
2	2008-6	Tianjin	100	Capacity building on CSO registration and regulation
3	2008-6	Shenyang	90	Public credibility building of CSOs
4	2008-12	Beijing	170	Role and responsibility in global financial crisis
5	2009-5	Beijing	300	Positive function of NGOs in earthquake disaster relief
6	2009-7	Heihe	120	Development and innovation of CSOs in China
7	2009-7	Beijing	500	1 st private foundation development forum
8	2009-8	Shenzhen	100	Creative governance of NGOs
9	2010-5	Chengdu	700	Law enforcement of CSO regulation
10	2010-9	Nanchang		Public credibility of CSOs in China
11	2010-10	Beijing		2 nd private foundation development forum
12	2010-11	Haikou		How to attract managerial talents to CSO work
13	2011-4	Nanchang	80	Development models of China's CSOs
14	2011-11	Wuhan	100	CSO innovation and development
15	2012-3	Beijing	70	Legal environment improvement of CSOs
Total			2410 (including CSO staff, government officials)	

159. **Project Contribution.** Fifteen bi-monthly forums with CSO and government participation were organized by MOCA under the Project. In addition to providing networking activities in different locations around China, the forums covered a range of topics relevant to CSOs and government work with CSOs. Topics include internal CSO issues (registration and regulation; attracting managerial talent; creative governance) as well as issues related to CSOs and society (public credibility building; CSO role in disaster relief; innovation and development). Other Project activities of this type included the 2010 National CSO Exchange Conference, which reviewed the results of the piloting of a different CSO registration system in Guangdong; the 150 participants included many agencies, and the MOCA Minister.

160. Through these training activities, 60% - 70% of participants reported that they have formed an effective network with various CSOs and MOCA agencies at different levels, which broadens their sources for information and resources. However, post-training surveys also show that most participants do not stay in constant touch with their networks. About 6-13% of participants have never contacted other participants or MOCA agencies after the training, and most other participants' communication frequency with other participants is low or just about normal. ①

① From GED Evaluation Report on CSOs Training Activities, prepared by the Social Organization Service Center under MOCA's Bureau of NPO Administration, dated December 13, 2011.

Result 5. The institutional and professional capacities of CSOs are improved.

(a) Grant Fund

OVI: Grant funding of up to 20 projects with NGOs focused on enhancing their management and research capacities.

Status: Achieved. The first round of grants was disbursed in 2010 to 16 CSOs, and these grant projects have been completed. The second round of 34 projects is still under implementation. According to CANPO, this experience has effectively built CSO grant organization's capacity in project implementation and reporting. In 2012, the central government designated an additional RMB 200 million to support CSO service provision.

161. Context. The GED Grant Fund was launched in July 2009. USD 400, 000 was earmarked for management by the China Association of Non-Profit Organizations (CANPO) under the Fund. A fund management committee was established and committee members include CSO representatives, government officials, and scholars. Several management documents were published, including Annual Implementation Rules on Grant Fund and Implementation Rules on Donation.

162. Results. The first round of grant funding was carried out in 2010. The proposal solicitation notice was published online. CSOs could submit their own project proposals without any limitation on project scope and implementation methods imposed by CANPO. The selection process included initial selection and final selection conducted by both Committee members and external experts. The final selection results were also published online. If no challenge was raised during the specified period, CANPO would sign an agreement with the CSO grantees. Upon signing the agreement, 80% of the grant was transferred to the grantee, and the remaining 20% was transferred upon the receipt of CSO's final report.

163. A total of 299 CSOs submitted their proposals, and 16 were selected for the first round and 34 selected for the second round. All projects under the first round have been completed. The second round is still under implementation. All grant funding was given to CSOs for project development and implementation. CANPO does not charge any management fees. Instead, it contributed some money to operate this project.

164. Project Contribution. Some lessons learned from Grant Fund operation were reported by CANPO. CANPO should be given management fees and necessary training should be provided to CSO grantees. Most CSO grantees are grassroots organizations from remote areas without project management experience, project reporting knowledge or adequate internal governance structure. These organizations were not necessarily covered by the training provided under the GED Project, but could have benefited from training to carry out grant activities. However, due to the tight budget of the grant component, training was not possible and the

impact of grant on some CSO's long term development is limited. (See Box 4.)

165. CANPO also noted several benefits. Through email exchanges and the final report requirement, the CSO grantees have improved their awareness of and experience with formal project management procedures. For some CSOs, the funds offered fresh blood to their daily operation and improved their professional skills. The small amount of seed money from the grant has enabled some CSOs to be eligible for some co-funding opportunities provided by other donors. The GED Project has also inspired some local government innovation in CSO development. It enabled CANPO to better understand local CSO organizations, as well as providing it with experience in dealing with international organizations.

166. CANPO pointed to the decision of the central government to provide RMB 200, 000, 000 to support CSOs, indicating that the grant component has effectively built consensus and advanced policy development to promote CSO development. (CANPO will receive RMB 700, 000 for CSO training and capacity building.) CANPO noted that the GED Project has played an important role in deepening scholars' understanding of foreign theories and practice and enabling Chinese stakeholders to familiarize themselves with international practices on CSO management and development.

(b) Training

OVI: Around 1000 NGO leaders and staff trained in management, policy and regulations.

Status: Achieved. Specific figures for CSO participants in training activities under Result 3 indicate at least 588 CSO staff. In addition, the combined number of CSO participants and registration agency participants in CSO forums under Result 4 is 2410, and it is fair to assume that well over half of these participants were from CSOs. The content of these activities all fit within management, policy and regulations topics.

167. Project Contribution. The impact of the training, as outlined above, is discussed in detail under Results 3 and 4, respectively.

Box 4. GED Grant Fund for CSOs

Innovative Process. CANPO established a management committee, composed of CSO representatives, government officials, and scholars, for the operation of the Social Organization Development Fund (SODF).

- **Transparency.** CANPO published several management documents, including the Standards for Evaluation of SODF Projects, the Annual Implementation Rules on Grant Fund and the Implementation Rules on Donation.
- **Bidding.** An open bidding process was used to solicit grant proposals from CSOs, with the proposal solicitation notice published online. CSOs could submit their own project proposal without any limitation on project scope and implementation methods imposed by CANPO.
- **Selection.** The selection process included initial and final selection conducted by both the Committee members and the external experts. The final selection results were also published online, subject to challenges with a specified period.
- **Implementation Support.** CANPO provided substantial support to build the grantee's capacity to comply with the standardized requirements in grantee project management, evaluation and reporting. Recipient CSOs were required to submit an interim report to CANPO at the end of the first six months after the commencement of their projects. Upon completion, they were asked to submit a final self-evaluation report.

MOCA has been allocated RMB 200 million from the 2012 fiscal budget to fund CSOs through SODF, making this a sustainable mechanism even after the GED Project.

Shanghai Pudong Social Worker's Association (PSWA). One grantee CSO was PSWA, a social organization made up of social workers and other social work organizations in Pudong that promotes the specialization and profession of social work. There are currently 38 organization members and, as of 2010, more than 700 individual members. Most of its organization members started by doing social service projects as part of the PWSA and then became independent organizations (PSWA's incubator function).

- **Grant Project.** PSWA received a grant under the SODF first round to support a Research Project on the Theory and Practice of Shanghai Pudong Social Organizations, covering growth and development of Pudong social organizations; roles and relationships with the government, social work researchers in colleges and universities, profession of social workers; operational models, management styles and recruiting mechanism of Pudong social organizations; and the incubation function and the coordination function of PSWA, among other subjects. A research group of university scholars and CSO practitioners undertook literature research, individual interviews, forums and a number of social surveys, and interviewed the two government agencies responsible for CSOs registration and management. The final bound volume brought together the summing up of 10 year's experience along with several analytical pieces.

- **Impact:** The final report is publicly available and used as university teaching materials, with some sections published in journals. The report was presented to the local government, used in workshops and for many speeches. Impressed by the usefulness of the research report, the local government consulted the team for its views on development of social organizations, problems and solutions. These views had an impact on government programs and were reflected in the 12th Five Year Development Plan for Pudong, as well as Pudong's 12th Five Year Plan for Talent, which is a clear example of civil society participation in policy making.

IV. PROJECT CONTRIBUTIONS

168. General. In addition to the Project contributions detailed under each OVI, the GED Project also provided three cross-cutting types of contributions: (a) through implementation methods that promoted openness and transparency; (b) through empirical research and exchanges that brought out lessons from local practice; and (c) through expert advice, international seminars and study tours that drew out comparative experience.

169. Openness and Transparency. The Project activities to broaden civil society involvement (Component C) provided a number of opportunities to pilot open and transparent implementation methods, with lasting impact on MOCA and civil society. First, all GED activities were publicized online, and open to all, attracting wide participation, from CSOs, scholars and experts. Second, MOCA used a bidding process to select authors for the textbook series on CSO issues, as well as for research topics on frontier issues that were subsequently published in a six-volume series of policy and research reports. The process had strict evaluation procedures, adding to its credibility. This bidding process not only popularized the Project, it also encouraged communication among scholars and other stakeholders and fostered the development of a group of new scholars on social organizations development. Some 3, 000 scholars submitted research proposals.

170. Third, the process for selection of CSO projects to receive grants from the Grant Fund was also open and transparent. The proposal solicitation notice was published online, and CSOs could submit proposals without limitation on project scope and methods. After a selection process that included internal committee members and external experts, the selection results were published online, subject to challenges raised during a specific period.

171. Substantively, the Project promoted greater openness and transparency through support for open trial reforms and the Wuzhong people's assessors pilot under Component A. The NPC's procedures for public comment on draft legislation also promoted greater openness and transparency.

172. Lessons from Local Practice. China's reform program for the last 30 years has relied heavily on local experimentation to develop viable mechanisms that can be extended nationwide. In that context, support for local pilots and creating opportunities to assess pilot results, research and exchange local practice is an essential element of the reform process. The GED Project promoted several reforms in this way. For instance, the Project helped to develop, assess and popularize the Wuzhong pilot on people's assessors, the Pudong pilot on ADR and the Gansu pilot on open trials, though the decision on pilots and the main funding and implementation for them were part of the Court's own reform plans. Field research and local pilots were also supported as part of judicial cost and efficiency reforms and the new case guidance system.

173. Providing forums to share local practice and work towards a consensus was a key dimension of Project support for the law-making system. Examples include methods for public comment on draft legislation, legislative hearings, post-legislative review and the system of review and filing. Similarly, MOCA used a variety of workshops and other activities to get CSO input in the policy process, in particular, on tax exemption, direct registration and CSO management issues. Pilots played a role here, too (e. g. Hubei on charitable deductions).

174. Comparative Experience. Exploring the experience of other countries in detailed areas of reform has also been a hallmark of China's reform process. In China, as elsewhere, these explorations require a solid understanding of relevant foreign experience, since it is likely to require adaptation to make it workable in China's unique legal, economic, political and social context. Examples of Project provided opportunities for this kind of study include: case guidance practice in civil law systems; EU practice on mediation and with open trials; judicial training methods in other countries; and post-legislative review. These opportunities came through study tours as well as international seminars. Under the legislative component, two unanticipated contributions of the Project came directly from GED study tours: the new practice of pre-legislative review was fostered by a study tour to Israel and India, and compensation for mental harm was included in the final State Compensation Law amendments after a visit to England and Spain. For civil society development, the Project played an important role in deepening scholar's understanding of foreign theories, as well as enabling Chinese stakeholders to become familiar with international practices on CSO management and development.

175. Media Summary. In the Chinese media, the GED Project has been reported as an international cooperation project with the largest scale and broadest coverage in the field of democratic governance. The overall project objectives and contents are posted on the website of China International Center for Economic and Technical Exchange (and UNDP). Project activities have been widely reported by various newspapers and websites. For example, projects under Component A, Access to Justice, are reported on SPC's official website, People's Court Daily, Legal Daily, China Daily, Xinhua news agency, as well as in local newspapers where the activities were held. On-line media has been another effective tool to disseminate activity information and project achievements. For example, the Forum on Civil Society Organizations and Rural Development in China was reported on major Chinese news websites, including Sina, Sohu, QQ, Netease and Phoenix.

176. The recognition of the Project's rationale and its impact can be reflected from a UNDP-developed project popularization video. ① In the video, Mr. Yao Shenhong, National Programme Director at China International Center for Economic and Technical Exchange called the GED Project a successful model in international cooperation. When reflecting on the impact of the GED Project, a leader at SPC confirmed that their goal had been achieved, as Project support had enabled good progress in many areas and established regular contacts with international colleagues. Moreover, many Project participants recognized that the GED Project had

① http://v.youku.com/v_show/id_XMjg4MjAwNjY0.html.

generated positive impact in promoting judiciary's role in achieving social justice.

V. CONCLUSIONS

177. Observations. This review of OVI results and achievements was not intended to delve into the questions of what could have been done better and what could be supported next. Nonetheless, some observations can be offered about past and future donor assistance in these areas of governance in China, recognizing that the challenges and reform agendas are different for each of the three Implementing Agencies.

178. For the *SPC*, the three five-year reform plans to date have set the course for a complex and ambitious program of judicial reforms, with access to justice reforms part of the overall program. Allocation of government resources and attention for any proposed reform is more likely to be guided by SPC reform priorities than external project commitments. Yet, the content and impact of the reforms can be advanced through technical cooperation, as the GED contributions outlined in this Report demonstrate. A key factor is the judiciary's hierarchical structure, with reporting relationships between central and local levels. SPC as a counterpart can more easily oversee Project activities at the local level as part of its regular oversight and guidance functions. Future assistance for the judiciary could maximize these aspects by grounding technical cooperation in the next five-year reform plan. Project support for assessment of the 3rd five-year plan that ends with 2013 and for the design of the next plan would be one way to maximize the GED momentum.

179. For the *NPC*, the reforms in public participation were not part of a public, detailed, pre-set agenda. Public statements indicate a continued commitment to broadening citizen's input in legislation, and to continuous improvement in legislative drafting and harmonization. Reports suggest that much activity in these areas is taking place at the provincial and sub-provincial local level, without the apparent need for national guidelines and instructions. In China's reforms, local experience can often coalesce into national rules, rather than the other way around, making consolidating and comparing local practice is an important function. The absence of a hierarchical reporting structure between the NPC and LPCs suggests that direct engagement with LPCs (with NPC support) may prove productive. Again, a new agenda can be expected with the new congresses in 2013. Project assistance to review progress and design potential reforms and improvements for the next five-year term could prove valuable.

180. For *MOCA*, the Project review is less informative. Structural policy reforms in this area were a small part of GED activities, though the Project did contribute to research and CSO policy inputs in the preparation of tax changes and revised regulations. If those regulations are indeed enacted by the State Council, support for implementation could be beneficial. Roll-out activities could include detailed implementing rules for national and local levels as well as publicity and training for CSOs to take advantage of the new provisions.

181. Assessment. For the GED project that is now closing, the results and achievements are considerable. Overall, the Logframe indicators for the GED Project have been largely achieved. Reform and innovation in each of the three Project areas have been deepened and facilitated through Project activities. Considering the breadth of the Project and the challenges in the last five years of Chinese reforms, this is no small achievement.

182. What is more difficult to assess, let alone quantify, is how much impact these reforms and innovations have had on the development of a more open and equitable society based on the rule of law. Concluding that tightly-defined OVs (revised at Project mid-point) have been achieved, that the policy environment has improved and that CSO participation has increased completes the task of this review. While other reviews take on the evaluation of past performance and prescriptions for future assistance,^① this Report should prove an important resource in addressing those questions.

^① Reports have been prepared for each of the three components: Balme 2012 (Component A); Huang & Peerenboom 2012 (Component B); and Wu & He (Component C). A Project Evaluation Report has also been commissioned.

ANNEX 1

GOVERNANCE FOR EQUITABLE DEVELOPMENT: STATUS OF PROJECT INDICATORS		
Intervention Logic	Objectively verifiable indicators of achievement (OVI)	STATUS
Overall Objective: <i>To support the Chinese Government in its efforts to develop an open and equitable society based on the rule of law</i>	Improved policies, laws and regulations aimed at leading to more open access to justice for more people in society.	Achieved. Policies, laws and regulations aimed at access to justice have been improved in the Project period. Areas of improvement include aspects of judicial openness; access to courts; and reform of the people's assessors system. Reforms with indirect impact include: better court funding; guiding cases; sentencing guidelines; and mediation reforms.
	Improved systems of law drafting and consistency of application.	Achieved. Systems of law drafting and the consistency of application of laws have been improved during the Project period, including through improvements in public participation at different stages of law-making, evaluation mechanisms and institutionalizing the system of filing and review of legislation.
	Development of mechanisms for increased participation of civil society in judicial processes and law-making.	Achieved. Mechanisms for increased public participation in judicial processes and law-making have been developed during the Project period, as summarized above.
	World Governance indicators: 'Positive trend in the rule of Law' indicator 1998-2008 is maintained.	Achieved. The World Governance Indicator 'Positive Trend in Rule of Law' improved slightly over the Project period. However, other assessments reviewed suggest continuing concerns.
Project Purpose: <i>To promote participatory and inclusive approaches to selected legislative, judicial and government processes.</i>	Increase in the range and numbers of mechanisms for participation of civil society in legal processes and policy development tried and reviewed.	Achieved. Mechanisms for increased public participation in judicial processes and law-making have been developed during the Project period, as summarized above. Some of these mechanisms, such as pilots on people's assessors in Wuzhong, ADR in Pudong, open courts in Gansu, and post-legislative review have been reviewed through Project activities. Project activities included active consultations with civil society in development of CSO-related policies such as direct registration, tax exemption and CSO management.

COMPONENT A. ACCESS TO JUSTICE IS IMPROVED

Result 1. INSTITUTIONAL CAPACITY OF THE JUDICIARY IS ENHANCED IN THE FIELDS OF:		
a) criminal retrial, parole and sentence commutation	Improved criminal retrial procedure by issuing the regulatory document 'SPC's regulations on law applications during the trial proceeding of sentence commutation and parole.'	Achieved. The SPC issued the <i>Regulations on Law Applications during Handling of Cases in relation to Sentence Commutation and Parole</i> in 2012. The SPC also issued a related judicial interpretation on retrial. These interpretations improved criminal retrial procedure by introducing the principle against double jeopardy and by providing for more open trials in sentence commutation cases.
b) case guidance	Field research (x3) contributes to formulation of the regulatory document to be issued; 'SPC's <i>Comments on strengthening and optimizing the case guidance system coming into effect.</i> '	Achieved. The SPC issued the <i>Regulations on Case Guidance Work</i> in November 2011, set up a responsible division, and has issued the first group of guiding cases. Project field research contributed to the formulation of the system and its documentation.

c) state compensation for victims of crime and	Enact a new policy on State compensation for victims of crime and implement nationwide.	Substantially achieved. The new policy has reportedly been issued in March 2009, and victims across the country are already receiving compensation based on a systematic approach. Local level legislation has already been issued in about two-thirds of province-level jurisdictions.
d) ADR	Project activities contributed to enacting the judicial interpretation on “ Several Opinions on the Relationship between ADR and Litigation ” (i. e. ADR Opinions).	Achieved. The SPC has issued the ADR Opinions, as well as other related policy documents, and implementation has begun. Project activities contributed to the development of this reform.
	Court-connected mediation cases from 8% to 15% of all the concluded civil and commercial cases in the pilot site of Pudong New Area District Court.	Achieved. The court-connected mediation system is in active use in the Pudong Court. In 2011, 22.6% of civil and commercial cases were resolved through court-connected mediation.
Result 2. TRANSPARENCY IN COURT DECISION MAKING IS INCREASED THROUGH THE DEVELOPMENT OF		
a) open trials and	Project activities contributed to the promulgation of the regulatory document “ Six Regulations on Judicial Openness ” issued by the Supreme People’s Court.	Achieved. The SPC’s <i>Six Regulations on Judicial Openness</i> was issued, and included open trial reform. Project activities contributed to the issuance and implementation of the open trial reform.
b) the people ’ s assessors system.	Improved People ’ s Assessors System by enlarging the scope of representativeness of citizens at the pilot site of Wuzhong District court from 9 to 50. People’s assessors participation rate in cases increased from 10% to 75%.	Achieved. In Wuzhong District Court, the people’s assessors participation rate in cases has increased from 10% to 98% in first trial cases, and the number of assessors has increased from 9 to 80. The Wuzhong pilot served as the model for nationwide reform of the people’s assessors system
Result 3. THE JUDICIAL APPOINTMENT AND TRAINING SYSTEM IS ENHANCED AND JUDICIAL EFFICIENCY IS INCREASED.		
	a) Increased transparency of recruitment of judges by carrying out the interim procedure for open selection of novice judges.	Partially achieved. The interim procedure for open selection of novice judges has been developed but is not expected to be issued by the SPC pending other personnel reforms. However, some provinces are experimenting with new methods of recruiting judges from the public.
	b) New Judicial Efficiency Guide distributed to courts nationwide.	Partially achieved. The SPC has prepared a <i>Judicial Efficiency Guide</i> , based on research, study and experiences in eight province-level jurisdictions. The draft is being reviewed. The concepts are being piloted.
	c) 500 judges received training on the application of law and understanding of newly enacted policies from the GED project.	Achieved. Nearly 700 judges received training under the Project in related areas: judicial methodology, criminal retrials, parole and sentence commutation, amendment of Criminal Law and Criminal Procedure Law, case guidance and ADR.

COMPONENT B. THE LAW AND POLICY-MAKING SYSTEM IS IMPROVED

Result 1. THE PARTICIPATORY PROCESS FOR LAW-MAKING IS INSTITUTIONALIZED.		
	<p>a) Improved internal guidelines, including substantive and procedural standards, for public participation in law drafting.</p> <p>Guidelines distributed to peoples congresses nationwide.</p>	<p>Partially achieved. To implement the NPC ' s 2008 policy regularizing public comment on draft legislation, the NPC Legislative Affairs Commission has instituted a detailed set of common practices (reportedly set out in internal guidelines). On that basis, the NPC has solicited public comment on almost all draft legislation since 2008.</p> <p>While guidelines for LPCs on public participation have not been made public, each province has issued rules on public participation in law-making, either as stand-alone legislation or within other legislation. Public comment processes are also in use in provincial level law-making.</p>
	<p>b) More clarified substantive and procedural standards applied to enhancing the quality of public hearings in the legal processes.</p>	<p>Partially achieved. All provinces have held public legislative hearings and produced rules, which have started to clarify applicable standards. However, national guidelines for public hearings (by the NPC) have not been issued.</p>
Result 2. ENHANCED CAPACITIES OF THE LEGISLATURE (NPC) FOR LAW-MAKING THROUGH POST-LEGISLATIVE REVIEW (EX POST IMPACT ASSESSMENT OF LEGISLATION).		
	<p>a) New internal guidelines developed on post legislative review.</p>	<p>Partially achieved. National guidelines on post-legislative review are still under development, but practices are being developed and piloted. The NPC Standing Committee has called for practices to be improved, and regularized.</p>
	<p>b) Increased participation of experts in the post legislative review process.</p>	<p>Achieved. Experts were involved in the post-legislative review pilots.</p>
	<p>c) Piloting group established for work on post legislative review.</p>	<p>Achieved. Two pilots on post-legislative review were conducted in 2009 and 2010, respectively, and a piloting group set up.</p>
	<p>d) More than 2000 officials from the NPC and the local people ' s congresses receiving training from the project activities.</p>	<p>Partially Achieved. Nearly 900 officials received relevant training under the Project, which exceeds the original indicator of 800 trainees. However, the current indicator is “ more than 2000 officials” receiving training, and this has not been achieved.</p>
Result 3. LAW HARMONIZATION IS IMPROVED THROUGH THE REVIEW OF REGULATIONS BY THE NPC AND LPCS.		
	<p>a) System of filing and review established nationwide at the local people congresses.</p>	<p>Achieved. The system of filing and review has been established nationwide. Most provinces (26) have established specific filing and review offices. In the other five provinces, filing and review work is conducted by designated staff in relevant agencies. More than half of the relatively large cities with local legislative power have established filing and review offices, and twenty percent of 300 city level PCs have established filing and review offices.</p>
	<p>b) Internal guidelines of NPC developed on filing and review of regulatory documents to enhance law harmonization.</p>	<p>Partially achieved. NPC guidelines on filing and review of regulatory documents have not been issued. . An NPC-published book on the filing and review system for regulatory documents has been circulated to LPCs to guide implementation. Provincial level LPCs have issued local rules (29) or internal procedures (2) in this area.</p>
	<p>c) Improved national system of review and filing following the training of local officials.</p>	<p>Achieved. Through Project-sponsored training of trainers, the training of local staff has been and will be expanded, particularly in more remote areas.</p>

COMPONENT C. INVOLVEMENT OF CIVIL SOCIETY IS BROADENED

Result 1. RECOGNITION OF THE POSITIVE ROLE OF CIVIL SOCIETY IS INCREASED.		
1	a) Increased involvement of CSOs in policy making through participation of CSOs in seminars, forums, workshops.	Achieved. There was considerable CSO participation in GED seminars, forums and workshops. MOCA cited examples of increased consultation with CSOs, including on tax exemption and registration reforms.
	b) Easier access to information on CSO registration and development via an official bi lingual website.	Partially achieved. The social organizations cooperation and communication website was established in 2008 (www.cnphzjl.org). The English version is still under construction. The website provides easier access; however, provincial information is not up to date or complete.
	c) Publication of a journal and books on CSO management, distributed to CSOs and government organizations.	Achieved. A bimonthly journal, <i>Research on CSOs Development and Administration</i> , has been launched, distributed to government ministries, practitioners and scholars. A series of seven textbooks on CSO issues was published, distributed to CSOs and government agencies and used in training. The <i>CSOs in China Yearbook</i> series was produced for 2008-2011. In 2011, a series of six green-covered books of policy and research reports was published.
Result 2. THE POLICY AND LEGAL ENVIRONMENT FOR CSOs IS IMPROVED IN THE FIELD OF		
a) registration of CSOs and	Drafting and submission of amendments to regulations to allow NGOs to register directly with government.	Achieved. MOCA reported that drafts of amendments of all three CSO regulations (social organizations, private non-enterprise units and foundations), permitting direct registration, have been submitted to the State Council for review. Issuance is expected this year. While submitting drafts to the State Council would not improve the policy and legal environment for CSOs, local-level pilots in direct registration and MOCA policy pronouncements support the view that the policy environment is improving.
b) tax deductions and exemptions for CSOs.	Introduction of tax relief policy to benefit NGOs and financial contributors to NGOs.	Achieved. MOF and SAT issued a circular on the criteria for eligibility of CSOs for corporate charitable deductions, in light of the increase in the corporate deduction limit from 3% to 12%. MOF and SAT also issued a circular that exempts several categories of CSO income from taxation. Both CSOs and donors benefit from the changes.
Result 3. THE GOVERNMENT CAPACITIES TO INVOLVE CSOS IN PUBLIC SERVICE DELIVERY THROUGH PARTNERSHIPS AND CONTRACTING ARE ENHANCED.		
	Improved capacity of around 800 local government officials and NGO staff via training to promote cooperation between Government and civil society organizations.	Achieved. In total, over 1200 participants benefited from 14 training activities under the Project. Training was offered for staff working at registration agencies, for staff working at CSOs and for training of trainers for both government officials and CSO staff. Training addressed improvement of the capacity of government officials and agencies to formulate policies and to implement policies.

Result 4. COORDINATION AND COMMUNICATION AMONG CSOS AND BETWEEN CSOS AND THE GOVERNMENT ARE IMPROVED THROUGH NETWORKING MECHANISMS		
	Improved communication between CSOs and government and CSOs via the joint GoC-NGOs organization of 15 bi monthly forum and workshops.	Achieved. Bi-monthly forums (15) were held. Reports from participants indicate that GED activities have been helpful in facilitating networks among CSOs and between various CSOs and government agencies. However, the sustainability of these networks remains to be seen.
Result 5. THE INSTITUTIONAL AND PROFESSIONAL CAPACITIES OF CSOS ARE IMPROVED.		
	a) Grant funding of up to 20 projects with NGOs focused on enhancing their management and research capacities.	Achieved. The first round of grants was disbursed in 2010 to 16 CSOs, and these grant projects have been completed. The second round of 34 projects is still under implementation. According to CANPO, this experience has effectively built CSO grant organizations' capacity in project implementation and reporting. In 2012, the central government designated an additional RMB 200 million to support CSO service provision.
	b) Around 1000 NGO leaders and staff trained in management, policy and regulations.	Achieved. Specific figures for CSO participants in training activities under Result 3 indicate at least 588 CSO staff. In addition, the combined number of CSO participants and registration agency participants in CSO forums under Result 4 is 2410, and it is fair to assume that well over half of these participants were from CSOs. The content of these activities all fit within management, policy and regulations topics.

ANNEX 2

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ANNEX 3**SOURCES OF INFORMATION****1. GED Project Documentation**

- EC-UNDP Contribution Agreement—Governance for Equitable Development (May 2007)
- Government of the People's Republic of China-UNDP Project Document—Governance for Equitable Development (July 2008)
- Governance for Equitable Development (GED) - Strengthening Rule of Law and Civil Society Participation in China, Overall Work Plan (December 2007)
- Governance for Equitable Development - revised log frame (November 2009)
- Mid-Term Evaluation of the Governance for Equitable Development Programme (GED), Final Report (March 2010)
- Governance for Equitable Development Project Management Office, Annual Reports 2008, 2009, 2010, 2011
- Component A internal reports:
 - o Case Guidance Field Research Reports (3)
 - o Report on Judicial Selection Seminar
- Component B internal reports
- Component C internal reports
 - o Publication Lists
 - o CSO Forum Summary
 - o CSO Conference Summary
 - o Final Reports on Grant Fund (First and Second Round)
 - o Tax Circulars (122 and 123)
 - o GED Evaluation Report on CSOs Training Activities, prepared by the Social Organization Service Center under MOCA's Bureau of NPO Administration, dated December 13, 2011

2. Interviews and Field Visits (including materials provided)

- Beijing, February 16-23, 2012
 - o National People's Congress (NPC), Legislative Affairs Commission (LAC)
 - o Supreme People's Court
 - o Ministry of Civil Affairs (MOCA), Bureau of Administration of NGOs
 - o UNDP
 - o Governance for Equitable Development (GED) Project Management Office (PMO)
 - o China Association of Non-Profit Organizations (CANPO)
- Nanjing (Jiangsu), February 22, 2012

- o Jiangsu People's Congress, Legislative Affairs Committee
- Taiyuan (Shanxi), February 22, 2012
 - o Shanxi People's Congress, Law Commission
- Wuzhong (Suzhou, Jiangsu), February 23, 2012
 - o Wuzhong District Court
 - Shanghai, February 24, 2012
 - o Pudong New Area District Court
 - o Pudong Social Work Association