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Review of Efforts to Improve Judicial Efficiency and Costs in China

CICETE

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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

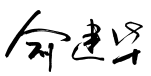
With the joint efforts of the European Commission (EC), United Nations Development Programme (UNDP) and the Chinese Government, the Governance for Equitable Development Project (GED) was officially launched in China in July 2007. The project aims to contribute to the Chinese Government's efforts in promoting 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.

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.

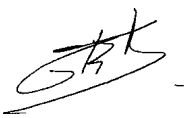
Strengthening the rule of law and promoting civil society participation in legal spheres have been joint objectives pursued by the Governance for Equitable Development (GED) project in China. Through a partnership between UNDP and the European Union (EU), including financial support from the EU, the 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.



Christophe Bahuet

UNDP China Country Director

Foreword

Years have flown by. Ever since its launching six years ago, Component A of the Governance for Equitable Development Project (GED), focused on increasing access to justice, has been developing in a sound manner with a satisfying result. The Supreme People's Court (SPC), in light of its own work and the current need for judicial reform, has conducted nine subjects with 100 activities including research, pilot schemes and promotional activities, from "the People Assessors System" to "the State Compensation for Victims of Crime". Thanks to its good beginning and solid foundation, the project has made remarkable achievements in the past six years, just as a tree growing strong and flourishing.

The SPC has been pushing forward judicial reform for over ten years. Over the past years, the judicial reform has been conducted in an all-around way along with "the First, Second and Third Five-Year Reform Programme" successively issued by the SPC. Moreover, foreign exchanges have been increased with fruitful results obtained. Since the implementation of international judicial cooperation is an important part of the SPC's foreign affairs, the SPC has performed dozens of judicial cooperative programmes with a number of international organisations, foreign governments and judicial institutions in order to meet the needs of judicial system and working mechanism reform of Chinese judiciary in the new circumstances as well as the needs of the court administration and trial reform. Among the judicial cooperative programmes implemented, the GED Project is one of the major international cooperative projects with the widest coverage of topics, the largest number of participating institutions and the largest amount of funding of its kind in China. Through the GED supported activities, a platform has been established for China's court system to step up its international exchanges. By doing so, project implementation has provided the function departments of SPC with the key support to moving forward judicial system and working mechanism reform in their respective fields.

The Stone of Other Mountains Can Be Used to Polish One's Own Jade.

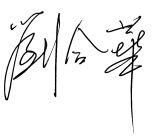
At present, the world is at a time of significant development, tremendous innovation and corresponding adaptation. It is moving further towards multi-polarity, globalization and countries are more closely interconnected than before. All-around, multi-field cooperation represents the trend of the times. Meanwhile, all the governments have increasingly realized the importance to coordinate international relations through legal means and facilitate the establishment of a new international political and economic order that is fair and rational. Under such circumstances, all the countries are faced with new demands and challenges in carrying

out their judicial exchanges and communication, yet they are also provided with a great opportunity and broad platform for deepening the pragmatic cooperation in the judicial field. No matter in Western or Eastern, in Continental law or Anglo-American law system, the spirit of rule of law proposed by the philosophers has universal value and is regarded as the achievement of the civilisations created by human kind, which is of great significance for every country and every society. We need to conscientiously sum up our own experiences and learn the useful experience and practices from other countries including EU member states, and do our jobs even better.

The work has a starting point while the career has no limits.

The judicial reform in China is a systematic programme that can only be achieved in stages through coordination and concerted efforts from all the parties. It is gratifying to see the satisfying results achieved from the GED Project. The Project has commissioned expert to write the report with the aim of inheriting the past achievements, from which we could take reference and seek further encouragement and inspiration for our future work. However, the formulation of any important policy, from its birth to completion, could not be achieved by few persons in a short period. The activities implemented under the theme '***Access to justice is increased'***, supported by the GED Project have played a remarkable role in the implementation of the third "Five-year Reform Programme of People's Court", which, I think, have the desired effect on expectation. We firmly believe that the successful cooperation will pave a solid and sound way for our future cooperation in the relevant fields.

Finally, on behalf of the SPC, we would like to thank the European Commission (EC), United Nation Development Programme (UNDP), China International Center for Economic and Technical Exchanges (CICETE), as well as all my colleagues from GED Project Management Office, for all your hard work to bring the GED Project to a success. Furthermore, our thanks go to our brother institutions, namely the Legislative Affairs Commission of the National People's Congress and Ministry of Civil Affairs, for whose collaboration making our objectives realized during the project implementation.



Liu Hehua
Director-General
International Exchanges & Cooperation Department
Supreme People's Court
May 2012

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contents

Review of efforts to improve judicial efficiency and costs

Prof. Stephanie Balme (鲍佳佳 – Sciences Po/Tsinghua)
with the assistance of M. He Xin① (何欣)

Between 2008 and 2012, the EU-UNDP GED② Project (hereafter *the Project*) together with the China Institute of Applied Jurisprudence (中国应用法学研究所) of the Supreme People's Court (SPC) have jointly conducted many activities implemented to support reform in the area of judicial cost and judicial efficiency.

The scope of this assignment is to understand how the EU-UNDP GED Project has promoted policy development in China and assisted the Supreme People's Court, the local courts and also the local professional community (policy makers, legal practitioners and scholars) in reducing judicial cost and improving judicial efficiency. During five years, the Project focused on improving the body of law and standards that sets out the rules that courts follow when adjudicating civil lawsuits or mediating civil cases. These standards govern how a case may be commenced, what kind of service of process is required, the types of statements of case, the timing and manner of depositions and discovery or disclosure, the conduct of trials, the process for judgment and etc.

This report can only evaluate the Project outcomes from the point of view of the institutions and actors who have been involved (the top-down approach) in implementing it. To be precise, this report mainly presents the point of view of the judiciary and less its perception by the litigants themselves (the bottom-up approach).

In European countries, since the 1990s, a wave of managerial reforms have spread as justice systems have been asked to improve services to citizens while at the same time reducing the cost of day-to-day operations. Since 2002, the Council of Europe has its own instance for promoting judicial efficiency: the European Commission for the Efficiency of Justice③ (CEPEJ). The CEPEJ shows a rare example of systematic evidence on the structure and performance of the judiciary and on the determinants of its performance. Participants are legal experts and developers from all the 47 member countries. The CEPEJ working Group on the evaluation

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① Research Assistant, Sciences Po Program: "Justice, Law and Society in China". The author of this report would like to address her special thanks for their help and warm welcome to M. Jiang Huiling (蒋惠岭) and M. Huang Bin (黄斌) from the China Institute of Applied Jurisprudence of the Supreme Peoples' Court, and to the judges of Nanjing and Gulou People 's Courts (Jiangsu Province), among others: Heng Yang (衡阳), 姚志坚, Feng Youfang (丰友芳), Huang Deqing (黄德清), Huang Weifeng (黄伟峰) and Wang Jing (王静).

② The European Union, the United Nations Development Programme and the Governance for Equitable Development.

③ See Report section III. http: //www. coe. int/T/dghl/cooperation/cepej/default_ en. asp ; http: //www. coe. int/T/dghl/cooperation/cepej/default_ en. asp

of judicial systems① is in charge of its management through an online process of collecting and processing comparative, both qualitative and quantitative, judicial data. One of the improvement areas has been "time management" in courts.

As Prof. Bjorn Ahl explained in 2010 in Jilin at a conference organized under *the Project*: in Germany, "the average duration of civil trials in the first instance is 4.5 months (local courts) and 8.1 (regional courts). 12.5% of disputes before regional courts last more than 12 months, 6.3% last more than 24 months. In a couple of cases, Germany has been found in violation of the European Human Rights Convention due to the extreme duration of trials". However, German courts benefit from a good reputation among the public and are trusted by the public opinion. In order to reduce the number of extremely long trials and improve efficiency, the Federal Ministry of Justice has proposed a draft bill "that (…) envisages granting the affected party 1200 Euros per year of delay" ②, concludes Bjorn Ahl showing that the two principles of "judicial efficiency" and "judicial cost" are essentially contradictory.

In China, the executive model of court governance makes it very difficult for courts to plan their operations. Therefore, cases overload as an enduring problem also affects China courts. However, according to Prof. Wang Yaxin, since the mid-1990s, and compared to Europe, China's judicial institutions have greatly improved their administrative process performance and have often found techniques and appropriate solutions to improve the efficiency of the judiciary.

In contrast with Europe, general lack of trust with the functioning of the courts seems to underlie the reforms in China. The courts find themselves subject to public debate and greater expectations as well as scrutiny by mass media. Courts in China are increasingly called upon to justify their decisions.

Outline

This report begins with (I) a brief introduction of the background, including recent historical development of judicial reform in China, with particular attention on courts and the Supreme People's Court's last Five-Year Reform Plan (2009 - 2013). Non-experts generally have preconceived ideas about the functioning of its judiciary. The last thirty years of the reforms plan reflects both a pragmatic and active approaches to judicial renovation. However, this policy has not been linear and some hesitations are still observed with regards to legal transplants and the role of Western comparative experiences in transforming China's judiciary.

The report then provides (II.1) a description and analysis of the EU-UNDP GED main outputs and research

① CEPEJ-GT-EVAL.

② Small Claims Procedure and Measures to Enhance Judicial Efficiency in Germany, Jilin International Seminar, November 2010.

oriented activities including (II. 2) the important work conducted through courts pilot projects. It is important to note that all the Project activities are related and interdependent. This report particularly focuses on the evaluation of the work performed by certain courts in Jiangsu province, in particular two pilot projects of small-claim procedures in Nanjing city.

The third part (III) outlines some of the major outcomes of the EU-UNDP GED *Project*. We will see that the 2012 Supreme People's Court "Working Guide to Enhance Judicial Efficiency" (提高司法效率工作指南) is the focal point where all the Project's activities converge. Some of the EU-UNDP GED project activities have allowed to push the line and to innovate within the already innovating plans of the Supreme People's Court research activities.

The last part (IV) of the report makes suggestions and proposes some policy recommendations to continue the reform process based on the specific conditions of China's development. As the potential for improvement in China's court system is indeed remarkable, it might be the time for China's judiciary to be included in other countries major research plans, especially at the European level. Interestingly, Europe represents a laboratory of experiences for the PRC. China's judiciary just like its counterparts should show compliance with international standards while adapting these "best practices" to its national characteristics.

This evaluation is generally very supportive to the initiatives conducted. It found that the whole Project resulted in a faster court process, which also has the potential to encourage a more cooperative approach between the parties involved.

Detailed outline

I. Judicial reforms in China, 1979 - 2012

Context and Policy Background

China's judicial system has been resumed in 1979. In thirty years, the reform Plan has evolved from quantitative reforms (re-establishing a judiciary, building courts, training judges and lawyers, etc.) to more qualitative reforms (as for example: better quality of judicial training, access to justice, appropriate alternative dispute resolutions techniques, etc.). Today, policy choices to reform the judiciary mean more difficult decisions because it becomes important to balance the viewpoints of groups with divergent opinions and standards.

In 1999, the Supreme People's Court published the *Outline of Five-year Reform (1999 - 2004)* as the first guiding instrument for enhancing the judiciary. The Outline completed the publication of the "2000 Measures on the Management of Publication of Judgment Documents" and was completed by the "Several Opinions of the Supreme People's Court on Strengthening the Work on Judicial Openness in People's Courts" (2007).

A Second Five Year Reform Program for the People's Courts (2004 - 2008) demonstrated the importance of bringing greater professionalism and integrity to the judiciary. The reform program called for courts to begin "exploring within a certain geographic area the implementation of a system of uniform recruitment and uniform assignment of judges for duties in the basic level courts." The SPC was also exploring the establishment of guaranteed national financing for local courts by inserting provisions in central and provincial government budgets. Conflicts of governance (budget, nomination, management and therefore judicial independence) between central and local judicial authorities seem to be a subject of constant worries for top judicial authorities.

In March 2009, the Supreme People's Court promulgated the *Third Five-Year Program for the Reform of People's Courts (2009 - 2013)*, initiating a new round of courts' modernization. The 2009 Program is

formulated with a view to (…), maintaining social fairness and justice, satisfying the new demands and new expectations of the general public regarding the judicial work (…).

With this third Reform Plan, a lot of attention has been paid to aspects of "judicial efficiency" such as the cost and speed of judicial procedures as well as enforcement of judicial decisions. This aspect is crucial to build more trust and confidence among the litigants. Since then, the main slogan of the SPC has been: "judicial efficiency and judicial fairness" ("司法效率与司法公正").

Still in 2009, the Political and Judicial Commission under the CPC Central Committee promulgated the *Opinions on Issues Concerning the Deepening of Reform of the System and Working Mechanisms of Justice*. In response, both the system of courts and the system of procuratorates have worked out programs for systemic reforms. So far, in the years 2000, most of the reform measures have been meant to readjust judicial working mechanisms.

The main background to the global reform for reducing judicial cost and enhancing judicial efficiency is that: 1) a revision of China's Civil Procedural Law is underway; 2) China's most developed cities are heavily burdened by massive numbers of cases and 3) within the Third Five-Year Judicial Reform Program, 8 tasks are directly related to judicial efficiency.

Civil justice in China has been overhauled over the last three decades. Broad ranges of reforms have been adopted, covering institutional as well as procedural aspects. Although the general context is different, the global aim of the reforms has been much the same as elsewhere in Europe where civil justice is being reformed: to ensure fair justice with greater efficiency, responding to an increasing demand from the public at large.

The Supreme People's Court thus began a slow but steady process of creating new civil procedure norms. Nowadays, the country is in the process of harmonizing various aspects of civil procedure, perhaps with the ultimate goal of codifying litigation procedures.

Case flow and caseload

Since the mid-2000s, Chinese courts handle annually around 8 millions of cases. Since the beginning of the judicial reforms in the 1990s, "the average rate of increase for civil and economic cases has been 26% annually". "The workload of the first instance of civil courts has rapidly increased by 94.6% from 1.8 million to 3.5 million in the period of 1989-99", according to Prof. Ji Weidong①.

① (2004) *The Composition of Chinese Judicial System; Judicial Reform Flows Between Public Opinion and Traceability,* Tokyo: Yuhikaku Press.

In his quantitative research study, Prof. Zhu Jingwen shows that the percentage of judgments made through formal procedures went up from 16.5% to 35.7%, from the mid-1990s to the mid 2000s①. One understands that the task burden of China's courts is very heavy, almost twice the size in ten years. Chinese courts struggle to manage the workflow of cases, with the balancing between process throughput-times and case quality. Concern for delays and fair procedural justice rise up regularly.

The reality in China is similar to that in many other countries: the annual growing number of litigations cases as well as the raising expectations of the society towards the judiciary demand better "productivity" in the sense of professionalism. To sum up, the *Third Five-Year Program for Reform of People's Courts* indicate that the main objectives are: "to further optimize the allocation of functions of the people's courts, enhance the budget guarantee system, make efforts to eliminate the contradiction between the increasing judicial demands of the people and the inadequate judicial capacity of the people's courts".

The principles for deepening the reform of the judicial system and working mechanisms of the people's courts are to: 1) enhance the capacities of the people's courts to perform their functions vested by law and 2) to make overall planning and coordination on the relationships between the central and local authorities, (…) and "between the courts at different levels" and between the people's courts and other political and law departments".

Also, the main tasks of the current judicial reform (2009 - 2013) is "to optimize the allocation of functions of the people's courts", "by centering on the trial and execution work and optimizing the allocation of functions among the trial departments". "We shall establish a trial information communication and coordination mechanism for new-type, complicated and mass civil cases so as to ensure the uniformity of judgment standards", explains the Reform Plan②.

Another objective is clearly to "formulate the criterions for case quality evaluation and checkup conforming to the objective law of trial work and the uniform administrative measures for trial flow applicable to the courts at the same level throughout the country". This concern is not formulated as a legal clause, as it is the case for example in various European States' Constitutions and with the "Equal Protection Clause" in the United States. However, the meaning is largely equivalent: the idea is not to provide "equality" among individuals or classes but only "equal application" of the law.

The current judicial reform plan also aims at reforming and improving technical governance issues such as the guarantee system of operating funds of the people's courts. As stipulated by the plan: the SPC should "assist

① 朱景文, Judicial Transformation and Legal Sociology in China, 2008.

② Opus. cit.

the relevant departments in reforming the current administrative operating fund guarantee system so as to establish an operating fund guarantee system based on "clear responsibilities, categorized burden, separating income from expenditure".

Also, to increase the degree of computerization of the people's courts, "we shall study and formulate implementation opinions on reforming the manners of keeping records of trial activities as well as "build a national case information database of courts and accelerate the construction of the case information inquiry system". These projects are all in line with the EU-UNDP GED Project activities.

From a quantitative to a more qualitative approach

Likewise, in 2011, "*adjudication cost accounting of People's courts*" was listed as one of the 15 key research subjects of the SPC. The recent reform projects issued by the SPC suggest improvements in judicial efficiency in the way to make courts more accessible to the public, justice more accessible to the people.

Establishing and improving diversified dispute resolution mechanisms is therefore considered as a priority. The reform plan asserts that the courts shall assist the departments "in their great efforts to develop alternative dispute resolution mechanisms, expand the scope of parties to be mediated, improve the mediation mechanism and provide more dispute resolution options to the people". An effective linkage between the pre-litigation mediation and mediation in litigation should "improve the coordination mechanism among the multiple dispute resolution methods, and improve conflict handling mechanisms".

Last but not least, in the second half of the years 2000, innovative measures in terms of judicial efficiency such as "distance acceptance of cases, on-line inquiry about acceptance of cases, circuit trial, expedient tribunal and distance trial" have been developed through pilot projects and then implemented at the national level.

The different activities operated under the EU-UNDP GED Project show that the potential for improvement in China's court system is indeed remarkable. However, experts usually consider that mediation in China should be more clearly separated from the process of litigation, pointing out that judges involved in the litigation of a case are also acting as its mediator. Experts have also often stressed the danger to "forced mediation".

This report will show that further reform projects speak in favor of resolving more simple cases through ADR and leaving more complicated cases to litigation. Also, pre-trial mediation should be made strictly voluntary.

II. Overview of GED Activities

For purpose of clarity, we will divide the activities conducted under the component A of the Project, in two parts: (II. 1) research and policy related activities and (II. 2) the study of some key pilot projects conducted in

various courts in China. As already stressed in the introduction, all the activities of the Project are interrelated. For example, the pilot court projects have greatly beneficiated from the previous researches conducted under the Project, especially international study tours, translations of foreign legislation, domestic workshops and international conferences involving both academics and judges. It is justifiable to say that throughout the Project, implementation all the activities are interrelated. The basic researches, interviews with local judges, seminars and international study tours were to provided an empirical basis for the practical activities of the Project in Chinese courts. This included: the launch of pilot courts and the follow-up appraisal activities. The amendment and upcoming official release of the "Working Guide to Improve Judicial Efficiency" will secure wider and long-term impacts of the Project on Chinese courts.

In terms of contents, the Project involved six areas: the rational allocation of judicial resources, especially the optimization of internal resources of the courts; the procedural reforms, especially those to promote the small claims and summary procedures, the reform and innovation in ADR mechanisms, especially the interrelationship of litigation-mediation; the promotion of the court funding system reform; the improvement of the judicial performance evaluation mechanism; and the application of science and technology in the work of the Chinese court system. The six areas basically cover all the main challenges existing in the fields of judicial costs and judicial efficiency.

In terms of methodology, the China Institute for Applied Jurisprudence was very active and has shown full commitment to the implementation of the different activities under the *Project*. The *Project* has also been implemented through very inclusive work practices. All relevant institutions have always been included in the process: courts at all levels and from different geographical origins, scholars and media. A good example is the "International Seminar on Judicial Costs and Efficiency" held in November 2010. The seminar was hosted in Jilin Province and co-organized by the SPC and Changyi District Court of Jilin City, Jilin Province. More than 80 participants including judges from different levels of courts nationwide, international and local experts were invited to attend the meeting.

II. 1. Research and policy related activities

To summarize, from June 2008 to June 2012, the following different kinds of research activities have been conducted and promoted under *the Project*:

1.1 - National and international conferences, professional seminars, preparatory workshops as well as studies, surveys and sample surveys.

1.2 - Study tours in different common-law countries (New Zealand, Australia, the Great Britain) and in one major civil law country in Europe, Germany.

1.3 - Numerous translations from English to Chinese of important comparative research policy documents. This work has led to many books and publications that are starting to build a professional knowledge related to judicial efficiency and judicial cost in China.

1.4 - Special media reports directly related to the Project activities and design to the promotion of the EU-UNDP GED project courts' management initiatives (judicial efficiency) and access to justice (judicial cost).

II - 1.1 International and domestic seminars, conferences, workshops, meetings.

As soon as May 2008, a study and a sample survey about the costs of litigation and other the China Institute of Applied Jurisprudence has conducted judicial actions in China, in Henan and Hubei provinces. The Institute distributed more than 200 copies of a questionnaire to judges of six different level courts. A consultation workshop was organized to solicit opinions from the local judges, practicing lawyers and scholars on enhancing the cost-effectiveness and efficiency of litigation.

In July 14 - 15, 2009, a workshop organized in Zhangye city, Gansu Province, aimed to disseminate the different research findings of previous activities and to work on the elaboration of the first draft of the Working Guide on Judicial Efficiency based on 6 main topics: judicial resources deployment, the sharing of judicial costs, mediation and judicial efficiency, judicial efficiency in the judicial proceedings, the costs and efficiency in court management and, at last, the evaluation mechanism of judicial efficiency. The final report from the project task force obtained a strong support from the senior management of the Supreme People's Court to build up the first Guide of this sort in China as an evaluation mechanism on its judicial efficiency.

In November 2009, the China Institute of Applied Jurisprudence undertook a field trip to 4 local courts in Nanjing Municipality of Jiangsu Province, namely, the Intermediate People's Court of Nanjing, Jiangning District Court, Lishui County Court and Xiaguan District Court. Along with the site visits, the Institute conducted four workshops with local courts with the participation of over 50 local judges. The field study has provided the Institute with the opportunity to select piloting sites.

Following the International Seminar on "Judicial Costs and Efficiency/Case Guidance System" held in Jilin (Jilin province) in November 4 - 7, 2010, two important books were published: "Empirical Study of Judicial Costs and Judicial Efficiency" and "Searching for Success in Judicial Reform: Voices from the Asia Pacific Experience".

One year later, in order to solicit opinions from local courts to improve the second draft of the Working Guide on Judicial Efficiency devised by the China Institute of Applied Jurisprudence and local piloting courts, a long workshop was organized from November 23 - 24, 2011, in Guilin (Guangxi Zhuang Ethnic Autonomous Region). Workshops and seminars have always focused on very specific themes and topics, with a constant will of improving the experiences of the pilot projects on the ground. The different publications produce in the

course of these seminars show that the contributions are of an uneven quality. However, the level of commitment of the judges involved is always very high.

II - 1. 2. Study tours in Common Law and Civil Law countries

Under *the Project*, a first study tour in Australia (New South Wales, NSW) and New Zealand has been organized (from May 24 2010 to June 2 2010) for a delegation of selected judges from the SPC's General Office, the first intermediate People's Court of Beijing, Wuxi City in Jiangsu Province and some senior officials of the Institute of China Applied Jurisprudence. Mr. Huang Bin, senior research fellow at the Institute has written a detailed report of the study tour①.

The delegation was particularly interested in better understanding the different approaches to judicial efficiency in common-law countries. The study report focuses on: 1) pre-trial mediation (with a remarkable 60% successful rate in NSW); 2) continuous adjudication through the detailed preparations of each case (relevant documentation, collection of evidences, the system of witnesses appearing in courts) as well as other procedural measures to ensure the quality of the whole process; 3) the "fast path" track for commercial disputes; 4) the good communication and interaction between judges and lawyers (most judges in Australia have more than 20 years of lawyer experience and the lawyers can make suggestions in the meetings of tribunal committee); 5) the "Small-Claims Tribunals" set up to settle minor disputes ; 6) Modern high-tech equipment in courts, including video equipment, long-distance witness equipment, and evidence in electronic format applied; 7) targeted and continuous judicial training programs to improve the working quality and capacity of judicial staff; 8) the uniform application of law in the sentencing process.

In 2011 (from November 30 to December 9), a second study tour in Germany and in England, organized under the Project, completed the knowledge and experiences brought by the first fieldwork abroad. In Berlin, the delegation paid visits to the Appellate Court of Berlin, the State Administrative Court of Berlin, the Berlin State High Court, the Justice Bureau of Berlin Municipality and the Administrative Court of Berlin Municipality; while in London, the delegation called on the newly established Supreme Court, the High Court of England and Wales and had court hearing including a workshop at the Magistrates Court of the City of Westminster.

The legal measures existing in Germany to simplify and speed-up civil procedures were explained to the delegation of selected Chinese judges. The German civil procedure law was reformed in 2002 in order to emphasise practices of conciliation and mediation, to increase transparency in the adjudication procedure, to increase efficiency by conferring more adjudicative tasks from panels on individual judges and to facilitate the access and to speed-up appeal procedures as well as to increase the influence of the Federal Court of Justice. ②

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① Huang Bin, 2010, "澳大利亚、新西兰司法成本与司法效率的考察报告"。Report on the Study Tour to Australia and New Zealand for the EU-China-UNDP-GED Project.

② Zivilprozessordnung-Reformgesetz of 17 May 2001.

In Germany, the reform introduced "a mandatory in-court conciliation hearing which takes place in 58% of the disputes brought before local courts and in 64% of the cases before the regional courts. This has led to an increase in the rate of amicable settlements from 21% to 29% in local courts between 2001 and 2004. In order to increase the acceptance of first instance judgments, judges are under an express obligation to advise the parties on all relevant factual and legal aspects of their dispute".① The introduction of those measures has led to a reduction of the appeal quota from 38% to 32% with regard to local court judgments and from 58% to 55% concerning regional court judgments between 2001 and 2004", explains Bjorn Ahl in his contribution to the EU-UNDP GED Project②.

Through the study visits, the delegation gained firsthand knowledge at the operational level of the efforts made by the courts system of visiting countries to reduce judicial costs and improve efficiency through managing public resources, maintaining a skilled workforce of judges and support personnel, use of information technology and developing rules and procedures that provide litigants with an easier access to the judicial process.

II - 1. 3. Translations and publications

In 2008, more than 10 policy papers or research articles on the evaluation of the legal system and judiciary performance have been collected from the European Commission for the Efficiency of Justice (CEPEJ), the Council of Europe, Denmark, the UK, Hungary, Italy, Poland and Sweden such as for example: the "Report on European Judicial Systems-edition 2006, CEPEJ", the "European Judicial Systems 2002: Facts and Figures on the basis of a survey conducted in 40 Council of Europe Member States".

From March to November 2009, the SPC China Institute of Applied Jurisprudence collaborated with the Beijing Jiaotong University to translate a selection of documents notably introducing the system of small-claims courts in the United States. This led to the publication of a EU-UNDP GED Project's book, by the People's University Press: "California Judges Bench book Small-Claims Court and Consumer Law, (co-edited by Luo Dongchuan and al.).

In 2010, a team of researcher from the China Institute of Applied Jurisprudence, co-edited other books: (1) "Empirical Study of Judicial Cost and Judicial Efficiency" (Publishing house: the China University of Political Science and Law); and (2), in the eve of the Asia Pacific Judicial Reform Forum hosted by the SPC: "Searching for Success in Judicial Reform: voices from the Asia Pacific Experience: Empirical Study of Judicial Cost and Judicial Efficiency". This book brings together reviews on the experience of judicial reform in 7 Asian countries

① Art 139 of the German Code of Civil Procedure.
② Bjorn Ahl, Opus. cit.

including India, Sri Lanka, Nepal, Cambodia, the Philippines, Indonesia and Vanuatu. The topics covered include implementation of judicial reform initiatives, promoting access to justice, ethics and accountability, judicial education and skills development, and case management. This work offers a comparative perspective to identify strengths and weaknesses of various judicial reforms programs in the region. It also presents the variety of existing good practices in various judicial systems according to their level of economic and social developments.

Within *the Project*, the Law and economics perspective has been introduced in China courts' studies through the translation, in 2012, of the "Economics of Courts and Litigation"① (*see references*) written by Spanish scholars Francisco Cabrillo (Professor of Economics, Complutense University in Madrid) and Sean Fitzpatrick (Economic and Social Committee Consultant of the Regional Government of Madrid). Co-edited by the China Institute of Applied Jurisprudence and the Law Institute of China Academy of Social Sciences, this book helps understand that delays in the resolution of cases are both costly and inefficient for a modern economy. Secondly, this comparative book presents an economic analysis of courts and litigation between the countries of the civil law tradition and stresses the differences and also similarities between the American and the continental European court systems. At last, this work proposes a long list of recommendations for a judicial reform agenda including simplifying law and litigation procedures, improving transparency of litigation process, ensuring the enforcement of judgments as well as the development of legal service marketization. In 2012, the translated version of Cabrillo and Fitzpatrick's research was sent by the China Institute of Applied jurisprudence to many jurisdictions across the country. This work will mainly nourish the interest of the academics' rather than helping the judges in their practices. Nevertheless, this initiative remains committed to providing constructive assistance to the drafters of China's next judicial reform plan. For this reason, the research described earlier holds an important heuristic value.

II - 1. 4. Media reports

From 2010 to 2012, the EU-UNDP GED Project has supported the information dissemination in the People's Judicature (人民司法), the Journal of Law Application (法律适用) and the People's Court Daily (人民法院报) on the results of researches, seminars and international study tours at all stages of the Project. Due to limited space, this report focuses on the articles related to the issue of judicial efficiency and judicial costs published in the People's Court Daily only.. This interesting initiative has contributed to the promotion of *the Project's* activities and to the growing awareness of courts' responsibilities in improving both their management skills and the quality of services provided to litigants. As shown in the table below, mostly senior judges have contributed to the articles published by the People's Court Daily.

The first nine articles of the table below focus on the diffusion of the different research findings in the first

① Original title: "The Economics of Courts and Litigation", Cheltenham: Edward Elgar, 2008.

phase of the Project activities. The second part of the table below (the last 5 articles) aimed at promoting the various pilot court programs.

List of articles published by the People's Court Daily under the name of the Project:

Author	English Title	Title in Chinese	Time of publication	Main topics
Jiang Huiling (蒋惠岭)	Forms of Judicial Cost and Judicial Benefits	司法成本与司法收益的构成	2010/12/01	Judicial Cost and Judicial Efficiency
Gu Lijun (顾利军)	A reasonable share between judicial cost and a comprehensive increase of Judicial Efficiency: International Conference on Judicial Cost and Judicial Efficiency, a summary.	合理分担司法成本 全面提升司法效率: 司法成本与司法效率国际研讨会综述	2010/12/08	Judicial Cost and Judicial Efficiency
Li Jie (李杰)	Facing a Deficit of Judicial Resources	应对司法资源不足的思路	2010/12/15	Judicial Cost
Yu Wentang (余文唐)	Five Combinations of Adjudication Management: Some Thoughts on "Intensive" Justice	谈审判管理五结: 基于"集约型"司法的思考	2010/12/22	Judicial Efficiency
Huang Bin (黄斌)	Judicial Efficiency Increasing in Australia: Food for Thoughts	澳大利亚提高司法效率的启示	2010/12/29	Judicial Efficiency
Tong Lei (仝蕾)	Evaluation of Case Quality, Lingering between Substantial Review and Procedural Review	徘徊于实质审查与形式审查之间的案件质量评查—对案件质量评查工作的一点思考	2011/01/05	Case management quality
Ai Jiahui (艾佳慧)	Three Dimensions of Judicial Efficiency	司法效率的三种维度	2011/01/12	Judicial Efficiency
Xiao Hong (肖宏)	Incitement Management and Judicial Efficiency	激励型管理与司法效率	2011/01/19	Judicial Efficiency
Luo Dongchua, Huang Bin (罗东川、黄斌)	Current Situation and Prospects for Judicial Efficiency Reform in China	我国司法效率改革的现状与展望	2011/01/26	Judicial Efficiency
Huang Deqing (黄德清)	Timely Resolving Disputes through Small-Claims Procedures	小额诉讼程序及时化解矛盾	2011/05/12	Small Claims
Li Xia, Qian Feng (李 侠、钱 峰)	Resources Allocation, Increasing Judicial Efficiency and Judicial Quality	优化资源配置，提升审判质效	2011/05/18	Judicial Efficiency and Judicial Quality
Zhang Hong (张弘)	Diverse types of Mediations in Courts and Optimization of Adjudication Resources	法院附设多元调解与审判资源优化	2011/05/25	Alternative Dispute Resolution (ADR)
Wang Jing Mei Haiyang (王静、梅海洋)	Resolving Social Disputes and Conflicts Cooperatively	合力化解社会矛盾纠纷	2011/06/01	ADR
Wang Jing Zhou Jiaming (王静、周家明)	Establishing New Modes of Circuit Trial	创建巡回审理新模式	2011/06/08	ADR

Because the article has been written by a Senior Judge, from a Court that the evaluator did not have the chance to visit and also because it tackles the issue of judicial efficiency versus judicial costs from the point of view of someone directly involved in the reform plan, the evaluator has chosen to briefly present here the article published in May 25 2011 by Judge Zhang Hong, from the Changyi People's Court of Jilin City (Jilin Province).

In his article untitled "Diverse types of Mediations in Courts and Optimization of Adjudication Resources ", Senior Judge Zhang Hong explains that in 2009, his court has established a specific office designed for the "diverse types of mediation" including among others: "a mediation office by the retired judges, a People's mediation office, a mediation bureau of the legal volunteers, an "industry mediation office" and a mediation office for "legal assistance". These structures have resolved a large number of disputes avoiding formal litigation. In 2008, among the 3522 civil and commercial disputed received by the court: 304 cases were resolved through pre-litigation instruction, 1081 cases were guided to be resolved through diversified mediation offices and 829 cases were successfully resolved through mediation. Only 561 cases (i. e. less than 16%) were resolved through adjudication. However, 50.2% of remain cases were resolved through rapid litigation processes.

According to the article, from "a pure economic perspective", multiple types of disputes resolution mechanisms have saved the equivalent of 613 950 RMB in litigation fees for the parties. This also helped saved 1 911 300 RMB for the courts considering that the average cost for a case is approximately 1380 RMB. From the perspective of judicial efficiency, in 2009 the number of the unclosed cases was reduced to 287 compared with 2008. "The rate of closing cases continued to increase of 16% in the first half year of 2009 compared with the same period in 2008", explains Judge Zhang Hong.

Although, Judge Zhang Hong expresses the point of view of a "receiver" or a practitioner of the reform, on the ground, his article still expresses the point of view of the judiciary. One understands in the article that the preparatory stage is organized so as to avoid long and protracted main hearings. Here, the use of mediation in a court sitting is considered with a view to obtaining a quick and amicable settlement. The article also shows that new technology has been of certain help in bringing down litigation costs in local courts.

As observed with the Court pilot projects, the long-term reform speaks in favor of leaving complicated cases to litigation and towards a greater specialization of courts.

Of course, Judge Zhang Hong discusses in his article one of the main focuses of the Project on judicial costs and efficiency. The above table shows that the articles published by the People's Court Daily cover not only the results of the theoretical researches, seminars and international study tours supported by the Project, but also the achievements in the practice of pilot courts. In terms of the areas involved, it is reasonable to say that

the articles basically cover all main areas of judicial costs and efficiency, including not only rational allocation of judicial resources and trial management but also reforms in small claims and ADR mechanisms among others. Frankly speaking, compared with the fruitful achievements made in the Project, the efforts of media promotion still have space for improvement, especially today in a time of highly developed media information. However, it is encouraging for us to note that the China Institute of Applied Jurisprudence opens a dedicated column of "Judicial Costs and Efficiency" at the recently opened China Applied Jurisprudence Law Website with its own fund. The column systematically introduces the Project progress and the main achievements. It is conceivable that the improvement in information dissemination will allow more legal professionals and public to recognize and share the results achieved by the Project and ensure the promotion efforts are sustained beyond the close of the Project in June 2012.

II - 2. The Courts Pilots Projects and their impacts on the development of judicial efficiency at the local level: A Case Study of Jiangsu tribunals

Different level courts in various provinces in China have been selected to participate to the EU-UNDP GED Project on "judicial efficiency and judicial cost": Jilin in Jilin province, Taiyuan in Shanxi province, the Nanjing People's Intermediary Court and different district or county People's Basic Courts located in Jiangsu province.

Given the differences among various parts of China and the case loads of courts at different levels, the pilot courts of the Project are selected from the courts in both economically developed eastern regions of China and the northeast and northern regions with moderate level of development. They include urban, suburban and county courts at both basic and intermediate levels. Actually there are two stages in the selection of pilot courts. At the first stage, three courts in Nanjing, Jiangsu were selected on the basis of research and discussion, and later, as the impact of the Project expanded, courts in Jilin and Shanxi were incorporated into the pilot scheme. In fact, the five pilot courts have different focuses. For Nanjing Intermediate People's Court, the focus is the trial management. For Nanjing Gulou District Basic People's Court, it is reform in small claims procedures. For Jiangsu Lishui County Basic People's Court, it is the rational allocation of judicial resources, especially the role of optimized internal resources in addressing the case overload. For Jilin Changyi District Basic People's Court, it is ADR mechanism reform and for Taiyuan Jinyuan District Basic People's Court, Shanxi Province, it is the reform in judgment and other documents produced by court and the application of science and technology in courts. Nevertheless, the areas covered by the Project are not totally isolated but interconnected. Therefore the pilot courts inevitably expanded their experiment beyond their specific focuses to other related areas. Considering the space of this report, we reviewed the two pilot courts in Nanjing, and built on this basis to analyse the role of the experimental work in the promotion of judicial efficiency in basic courts. This report also proceeds from these two pilot courts and covers other pilot areas as far as possible.

In China, the basic-level courts occupy officially the lowest tier of a four-tiered court system. According to the

Organic Law of Courts of the PRC, these basic-level courts have original jurisdiction over all civil, administrative, and criminal cases in the county except when law provides otherwise. For this reason, they adjudicate almost 80% of the legal cases in the whole country. The study of these courts therefore is extremely relevant to better understand the deep transformations of the Chinese judiciary, as well as how ordinary people feature their conceptualizations of law and their own rights.

In November 2010, a consultation on the selection of the courts pilot projects has been launched by the SPC, in collaboration with experts from the Tsinghua University School of Law and the Nanjing University School of Law. The Nanjing People's Intermediary Court has been selected as a pilot project for the study of case management reform; the Gulou's district basic People's Court for small-claims experience and the Lishui's county basic People's Court for all stages of litigation.

The pilot program, approved by the senior management of the Supreme People's Court was also designed to contribute, on the long run, to the amendment of China's civil procedural Law.

As observed in the two pilot courts visited in Jiangsu province, attempts to improve judicial efficiency under *the Project*, have mainly focused on:
—increasing financial resources and establishing new computerization systems,
—simplifying procedural law for small-claims procedures,
—the development of litigation service centers,
—simplifying legal procedures for civil disputes in general,
—the promotion of multiple dispute settlement mechanisms including alternative dispute resolution procedures such as diverse types of mediation and/or arbitration.

II - 2. 1. Increased resources for the judiciary have enhanced efficiency in Jiangsu's courts.

In March 2012, the author of this assignment has conducted a fieldwork research at the Nanjing People's Intermediary court① and at Nanjing's Gulou Basic Court②.

International legal scholars have often focused their research on judicial systems on documenting three categories of data: 1) the general inputs such as the number of judges, the budget of the judiciary branch and the number of administrative support staff, 2) access to justice, 3) the workload of judges measured by the number of cases filed and resolved within a given period.

① For further information, please refer to the court's Website: http: //fy. njgl. gov. cn/
② For further information, please refer to the court's Website: http: //www. njfy. gov. cn/site/boot/

Across the world, judicial officials and court personnel always cite the lack of resources and staff as the main factor constraining efficiency. In Jiangsu courts, while the litigation fees' management system has been reformed in 2007, courts' resources and budget have generally been increased and the courts system has been computerized. More resources have helped centralizing administrative work and therefore improved judges' management. Funding increases helped alleviate temporary backlogs in a local judicial system, which had previously made a serious effort to work better.

Between late 2006 and spring 2007, the litigation fees' management system has been reformed, along with the idea of separating the collection of litigation fees from court's expenditures. Litigation fees are no more supposed to be directly handed to courts but paid instead by litigants through designated banks which are now usually located within the courts. In April 2007, a State Council's decision promoted much lower litigation fees unified charging standards as well as unified bank accounts and litigation fees management system for all Chinese Courts.

The central government 2007 decision to drastically reduce the litigation fees "to diminish ordinary people's burden and facilitate access to justice" had a direct and immediate impact on Chinese courts sources of incomes. For courts whose economic situation was already fragile, their working budget severely decreased.

The NPC "Report on the Implementation of the Central and Local Budgets for 2006 and on the Draft Central and Local Budgets for 2007" states that "in 2006, the central authorities supported the strengthening of government authority at the county and township levels. Funds were set aside in the central budget in 2006 to help lower-level procuratorial, judicial and public security departments to improve conditions for processing cases"① . In September 2007, an article in the Legal Daily explained that courts had lost an average of 53.55% of their revenues. Consequently, 2.4 billions of RMB had been allocated to compensate local tribunals for the loss of courts budget. ②

In 2008, the situation drastically improved. Most respondents declared to have received a partial or total compensation for the loss budget and to have scrupulously implemented the regulation forbidding arbitrary fees.

The important financial resources of Nanjing local government largely explain the sufficient level of funding of the local court system. Located along the East coast, Jiangsu is the province with the highest population density in China (without mentioning provincial level municipalities) and with a population of approximately 78 million.

① Ministry of Finance, www. chinaview. cn - March 18, 2007, p. 9.
② September 22 2007.

With an annual average economic growth rate of 13 %, Jiangsu has the second highest GDP per capita (6000 Euros in average) of all Chinese provinces and is the largest recipient of foreign direct investment since 2006.

Since the 1990s, Nanjing has become particularly prosperous, being among the top 10 cities in China in gross domestic product. All courts visited in Jiangsu were very well equipped in computers, office rooms, modern courtrooms and facilities. The personnel employed within the judicial system, judges or assistant judges, is highly qualified. According to the statistics provided locally, the level of education and computer literacy rate (knowledge and ability to use computer) is very high, especially compared to China's national figures.

II - 2.2. The establishment of computerized monitoring evaluation systems has enhanced efficiency in Jiangsu's courts

For long time, the multimedia approach has been considered in China as a part of court management. The use of modern *information technologies* has been a considerable help in providing swift justice.

Alongside the 1999 - 2003 judicial reform Plan, the administration of justice has started to be virtualized. In addition, a "litigation cases flow management system"(案件审理流程管理制度) has been introduced by courts located in China's most developed areas.

In Jiangsu province, the new judges evaluation software has already had a direct influence on the work efficiency and service quality in 13 courts in Nanjing. Designed for the courts themselves, by a professional software company, the software system (called the "Evaluation system of quality and efficiency"质量与效率评估系统) evaluates a series of performances factors such as: case delays, methods of conflicts resolution, judge's performance (绩效考核), etc. Usually, from beginning to end, the same judge handles a case (the principle of "individual calendar") in order to move faster in courts. A significant delay in a certain case can thus be traceable to a specific judge thereby providing judges with incentives to quicken up procedures and improve accountability.

Judge's efficiency is evaluated through different criteria: time standards, mediation rate, small claims rate, simple procedures rates, accountability, number of meetings with the litigants, of appeal cases, of "letters and visits"(信访), etc. An alarm system based on three colors (red, green and orange) informs both judges and relevant court's personnel if a major problem occurs. Inspired by SPC's own computerized evaluation system called "案件质量评估体系", the new software system available in Nanjing courts provides, according to local judges, "an objective and comprehensive (综合性评价) work evaluation of a judge's performance". In average, small claims are solved in 10 days, in 40 days for simple procedure (简易诉讼), and in 4 months for regular civil litigation disputes.

In European courts, despite the growing emphasis on work evaluation, time standards and on the measurement of these standards, CEPEJ studies show that there is a serious concern among judges about the specific time standards set by the courts. This is also a consequence of sometime simplistic attitudes from the courts' administration towards the relationship between quality and time. Even the definition for "long duration" ranges, in greater Europe, from 3 months to 3 years.

The same way, Chinese judges do not always accept the computerized monitoring of their job performances. Legal professionals naturally want to rely on their own judgment and they often do not want to be evaluated or managed, nor do they usually take any interest in managing activities. This problem implies that the efforts for ensuring commitment to define standards for the management process of the courts would need to be achieved with the judges themselves. However, "computerized monitoring evaluation is the only way to evaluate independently and objectively (objectivity being the most important quality criterion of evaluation) judges' work", explained a judge-manager from Nanjing. Professionals need to be encouraged to "manage themselves", to be more autonomous and capable of self-evaluation without intrusive supervision. "Judges' participation in the improvement issues surrounding access to justice and legal procedures is crucial", concluded the judge.

In China's court system, as computerization seems to be an effective way to improve work efficiency and optimize work environment, even more complex and sophisticated software will be developed in the future.

Increasing resources only can temporarily help reduce delays in court procedures but the effect usually does not last long: as explained earlier, additional resources must be made simultaneously with the implementation of other judicial reform initiatives. Introduction of computer systems and other forms of e-management are effective in accelerating court procedures. Reputational effects seem also to be a crucial and growing determinant of courts' efficiency in China. Such improvement in judicial efficiency is deemed to be the result of a secondary effect of the mechanization, which primarily helps increase transparency and accountability①.

Our observation in Jiangsu courts confirms prior studies of legal sociologists that the easier it is for citizens to access courts and tribunals, the stronger these courts and tribunals become. ②But there is also a downside to this: the increasing workload of courts and institutional pressures of assuming increasing responsibility for key societal problems without necessarily assuming the powers or the means required to handle them.

Prof. Liu Zuoxiang from the China Academy of Social Sciences considers that after the "hardware" (technical equipment and court building) has been improved, the focus should now be shifted to improving the

① Botero et al. , Opus. cit.

② Herbert Jacob and al, -Courts, Law, and Politics in Comparative Perspective by Herbert Jacob, Erhard Blankenburg, Professor Herbert M. Kritzer and Doris Marie Provine, 1996, Yale University Press, p. 243.

"software", i. e. the training of judges. Provinces in China lacking of the sufficient funds and capacities for doing that should therefore be helped①.

II - 2.3. Litigation service centers (LSC) and multiple alternative dispute resolution mechanisms have enhanced judicial efficiency in Jiangsu.

In the courts pilot projects of Jiangsu province, two other types of structural reform have been adopted: the simplification of legal procedures especially in the handling case process for civil litigation and the generalization of multiple types of alternative dispute resolution mechanisms. Here, ADR mechanisms refer to formal arbitration procedures based on a simplified legal process.

In the 2002 World Development Report② on judicial systems around the world, Botero et al. point to "the lack of adequate incentives on the part of the legal profession and the excessive complexity of judicial procedures as major factors hampering judicial efficiency." Around the world, simplification of procedures has been found to improve judicial efficiency.

The Supreme People's Court " *Several Opinions on Further Enhancing Judicial Convenience for the People* (hereafter the "Opinions") published in February 2009 proposes to establish "desk or one-stop" litigation service department to provide a better litigation service. The same year, Jiangsu's Higher People's Court established many litigation service centers within the province's court.

According to Jiangsu courts internal documents: "the main goal is to bring judicial activism (司法能动) into full play and provide convenient and affordable litigation services to litigants" assuming that "in China, judicial activism is different from the concept in Anglo-American legal system where it refers to a kind of judicial philosophy when courts or judges make strong political or judicial decisions". "Judicial activism" means here that the judiciary should serve general economic and social duties. Both dimensions of "service (服务性)" and effectiveness (效力) characterize the concept of "activism", in the Chinese context.

II - 2.3.1 Although the Supreme People's Court has proposed LSC since 2009, the system remains under-developed in China's judicial system. Jiangsu courts, especially under the jurisdiction of Nanjing city, have introduced a very sophisticated system of Litigation Service Center (or LSC 诉讼服务中心).

Different reports from the Nanjing City People's Court research department introducing the project of

① Consultation meeting for the EU-UNDP Governance for Equitable Development Project Component A policy paper, May 3 2012, UNDP Beijing.

② World Bank (2002), "Chapter 6 The judicial system", in World Development Report 2002: Building Institutions for Markets.

"litigation service centers" are analyzed here. The first document, published at the end of 2011, emanates from the Nanjing Intermediary People's Court: "Summary on Working Rule of Litigation Service Center ("南京市中级人民法院诉讼服务中心工作规则")[①]. The second document is untitled: "Norms Innovations: Preliminary Research Report on the Existence and Development of Court Litigation Service Center. A Perspective of Building Media-like Litigation Service Center" (" 规范与创新：法院诉讼服务中心存在于发展的初步考证", "以打造媒介式诉讼服务中心为论证方向").

There are at least 3 types of LSC and operational modes:

—Temporary Litigation Service Center when, at the beginning, LSC simply acted as the "transfer agent" between the different courts department and the parties engaged in a dispute resolution.

—Intensive Litigation Service Center. After a period of time, courts set up a special office or desk, which becomes a growingly independently managed institution within the court.

—Clinical Litigation Service Center holds a distinct function of disputes settlement. The general concept borrows from medical and clinical procedures: LSC are established as clinics are established in hospitals. Simple cases would be handled and solved at the LSC while more complicated disputes "would be transferred to formal procedures just as when patients with difficult and complicated disease need to be hospitalized" (interviews in Jiangsu).

According to the document establishing the "Litigation Service Center working rules" in Jiangsu province:

—LSC is a distinct external "window" of the People's court, which provides "one-stop" judicial service for litigants and implements the principle of "justice for the People".

—LSC must improve the cooperation of filing cases with adjudication, enforcement, the "letters and visit system" (*xinfang),* judicial expertise, discipline inspection, judicial propaganda and judicial administration.

—LSC should (…) combine litigation and non-litigation procedures (非诉讼).

—In order to improve litigation quality services, LSC should establish relevant working offices for litigation guidance, legal consultation, disputes case flow, information, risks notification, case filing and review, legal aid,

① "In accordance with *the Opinion of Construction of Litigation Service Center over the Province* by the High Court of Jiangsu Province and the promotion of judicial democracy in all courts of Nanjing, the following working rule is enacted with the aim to regulating the work and functions of litigation service centers, increasing the quality and effect of litigation service and satisfying the judicial need of the people".

cases searching, receipt and transfer of materials.

In brief, LSCs aim at guiding litigants, collecting litigation fees, receiving and transferring materials, legal consultation by professional and non-professional mediators. LSC deals with postponed payment of litigation fees, provides legal aid and establishes an office for search-read legal materials.

(1) LSC shall also give instruction on disputes resolving mechanism and litigation procedures as well necessary risk notification (…).

(2) LSC shall establish a bank service to collect all relevant litigation fees.

(3) LSC shall establish a special box for receipt and transfer of materials. Except for litigants who want to submit personally their documents, special boxes for receipt and transfer of materials should be made available. If the parties want to meet judge without any notice or call order during a case adjudication or enforcement, the instructor for litigation shall help the litigants by informing the judge (…) or fulfilling appointment sheet.

(4) LSC shall publicize the criteria of accepting cases, the procedures of filing cases, standards of litigation fees, procedures of solving disputes and the like through electronic touch screen. In addition, "LSC shall provide litigants with standard litigation documents; papers and pens, glasses, drinking water, umbrellas, newspapers and magazines as well as service of printing, copying, fax and telephone".

(5) LSC must provide legal consultation to the people through the People's mediation office of the People's court. In addition, Law professors and students can also be invited to provide legal consultations if necessary.

(6) LSC shall deal with postponed payment of litigation fees, deduction of litigation fee and waive of litigation fee for those who conform to the requirement of judicial relief.

(7) LSC must provide legal aid to those who apply and are in conformity with the conditions for legal aid.

(8) LSC shall establish an office for search-read legal materials and provide service of search-read laws and regulations to the parties.

In this context, "judges are not simply adjudicators" and LSCs can also "satisfy people's unwillingness to resolve the disputes through litigation in a society where kinship, social relations or networks in general are culturally very important" (interviews in Nanjing).

This being said, "LSCs never out pass the boundaries of judicial power", asserts the Opinion. The goal of the LSC remains to "provide all kinds of services related to resolving disputes, adapt to the people's increasing demand of court's judicial capacity, and maintain the stability of society". " (…) The original purpose to establish LSCs was simply to enhance the service function of the court, humanize courts procedure, provide a service to litigants, widen the ways of resolving disputes and improve judicial efficiency"① .

Observations of LSC show that, in practice, the activity of the judge at the preparatory stage of a case has changed. The hearing must proceed according to a specific schedule, which has been prepared by the judge. By clarifying in advance what is actually at dispute between the parties, it becomes easier to concentrate the deliberations on what is relevant for the contested parties. This entails that the judge must take on a more active role than in the past.

II - 2.3.2 A Cost-Benefit Analysis of Litigation Service Centers

Within the China's judiciary, a debate exists whether the establishment of LSCs impairs the neutrality of judiciary, increases judicial cost and whether it actually improves judicial efficiency.

According to interviews with judges in Jiangsu province, costs for the litigants usually include litigation fee, transportation fee, lawyer fee, opportunity cost and judgment's enforcement fees. When a dispute is successfully resolved in the litigation service center, all these fees do not have to be paid by the litigants.

From a judicial cost point of view, on a short term, the establishment of LSCs increases costs in terms of human resources and capital costs. However, this does not take into account the part of judicial costs by the litigants. Actually, if an agreement can be reached through mediation, plaintiffs can save time and avoid a costly litigation procedure. The potential social cost of a dispute including the cost for making complaint to certain administrations such as the higher People's courts or the system of "Letter and Visit" – without mentioning the Petition System (上访) -should also be taken into account. Success to mediate might resort to non-judicial measures.

At last, from the perspective of the court and judges in general, LSCs reduce the possibility of appeal, the opportunity for withdrawing the mediation agreement and the non-enforcement of legal decisions.

In brief, access to justice has been enhanced and litigation cost has been greatly reduced for plaintiffs with the establishment of LSCs in all the courts visited in Nanjing for this report. Active preparation of a hearing can reduce the time needed for the main hearing with the ultimate result that time is gained for the parties (and

① Opus. cit.

therefore for the court) and that the total costs incurred are reduced.

According to Nanjing District's People's Court, LSCs should now be fully institutionalized and legalized along with new amendments and revisions of China's Civil Procedure Law. “ (…) Though our procedural laws contain detailed provisions concerning litigation procedures, there are few provisions concerning non-litigation settlement of disputes and few provisions concerning the connection between non-litigation settlement and litigation settlement of disputes (…), asserts the 2011 Preliminary Research Report.

LSC staff must be able to convey facts and details in a very efficient way. A successful LSC actually include hiring articulate, young or senior judges, with both legal and management experiences with a commitment to serve the public.

II. 2. 4. New procedures for small-claims cases (小额诉讼)

As the 2002 World Bank report on the judiciary argues: “in many countries, small-claims courts, which provide simple legal procedures for minor disputes involving a small amount of money, have proven effective in reducing the time required for legal procedures and expanding public access to justice”.

At the national level, China has not yet established “small-claims courts”(小额诉讼法庭 或小额法庭). However, in 2011, China's judiciary has started to regulate the simplified procedures for small claims.

In Nanjing city, under the Project, two pilot courts for small-claim procedures have been launched: the EU-UNDP GED program in Gulou People's District Court (court a) and the SPC pilot project in Xuanwu People's District Court (court b). Court “a” has initiated small claim courts in particular and has proactively implemented new procedures such as small claim courts and simplified procedures. The SPC tried to meet the challenge by drawing from the civil procedure Law rather than by imposing new concepts and by providing the necessary in-depth comparative background information (see International study tour and international seminars) on how foreign rules work.

According to the China Institute of Applied Jurisprudence: “the GED Project has created an environment of innovation for the judiciary to implement its ongoing 3rd Five Year Reform Program (2009 – 2013).” “The GED pilot court project has been approved by the SPC” (…), “sending the message that comparative case studies are welcome”.

We present here the translation of large sections of an important working document prepared by the Gulou District Basic People's Court which has established, under the pilot project, a small-claims specialized court. The document is untitled: “Innovation on the Way of Adjudication Resources Distribution to Promptly Solving the Conflicts of the People, People's Court of Gulou District, Nanjing, ” 创新审判资源配置方式，方便群众及

时化解矛盾-南京市鼓楼区人民法院”(2012).

Since 2010, under the EU-UNDP GED Project, the Gulou's Basic People's Court in Nanjing has actively conducted a pilot project for small-claims cases by introducing specific procedural option rights (still, in conformity with the requirements of parties' autonomy in civil procedures). Since November 2010, the Court in Gulou has solved more than 30% of small-claims disputes through the new procedures.

The general economic development of Gulou District in Nanjing City was taken into account to establish the following criteria for small claims:

—Object of action shall be under RMB 50 000 claim, delivery of negotiable security or specified goods.

—Object of action shall be over RMB 50 000 when there are clear facts and clear legal reasoning, when parties have agreed for a small claims procedure.

—However, cases with object of action under RMB 50 000 are excluded when related to divorce, adoption, tort or other personal nature or if case is considered complex.

—The same plaintiff, every year, cannot exceed a maximum of 5 small claims procedures.

Small claims procedures provide a quick, low-cost and informal way of solving disputes. However, preparatory work for such claims seems to be very important. Therefore, 1) judges' initiative should be fostered; 2) clerks should also actively participate in the procedures of small claims by informing all relevant procedures to the different parties, in a timely and comprehensible ways. 3) “small-claims judges” should be more familiar and trained with relevant laws, regulations and policies and make considerate arrangements of places and equipment for this kind of legal disputes. 4) legal aid and legal assistance should be emphasized throughout the small claims procedures.

In order to guarantee the efficiency of procedures of small claims, the Court in Gulou has established a specialized tribunal for small claims where an experienced judge or an assistant judge with special legal training and professional mediation training handle the procedures. Small claims tribunals can open a court session at noon or during evenings if convenient for the litigants. Also, parties can out pass many restrictions in terms of legal procedures as if operated in regular normal courts.

With the aim of reducing judicial cost – understood here as litigation fees-, the court encourages litigants to solve their dispute through peaceful methods and small claims procedures, without the representation of a lawyer or even a legal worker. “Ex officio” judges or assistant judges' role is emphasized in small claims procedures.

Encouraging litigants to give up their right to appeal (放弃上诉权利): the right to appeal is a lawful right for both parties (according to China's civil procedure law) and small claims procedures should not restrict parties' appeal rights. However, in order to reduce the litigants' judicial cost, they are encouraged to give up their appeal right when engaged in a small claims procedure. Parties can only ask for the review of the verdict by a special collegial bench within the court. "If parties insist on appealing after review of the verdict by special collegial bench, their appeal rights should be guaranteed. In addition, the court shall timely take enforcement measures when the obligor fails to perform his or her duties. The court should also inform the defendant of the possible coercive measures when giving the verdict"① .

Comparison between different measures adopted in the small claim pilots of Gulou District Court of Nanjing, and Xuanwu District Court of the same city

Court Area	Gulou District Basic People's Court of Nanjing, Jiangsu	Xuanwu District Basic People's Court of Nanjing, Jiangsu
Applicable procedures	Small claim procedures	Summary procedures
Time of delivery	The next day after case filing	The next day after case filing
Defence	The defendant is informed to submit his defence on the same day. The defendant's behaviour of making no objection is deemed as an implied waiver of his rights during the defence period	A defence period of 15 days is given to the defendant strictly according to law
Hearing	A hearing was arranged on the following day after the date of delivery. In the hearing the defendant admitted the fact of borrowing. Therefore the fact-finding and debate on the borrowing were omitted. Work was just carried out on the form of repayment. The defendant insisted that he had no money to repay the debt, and ultimately a judgment was directly made.	A hearing was arranged at the expiration of the defence period. Relevant procedures were adopted in strict accordance with law. Before the end of the hearing, the judge organized mediation between the two parties as they both intended for it, and finally an agreement was reached.
Duration of hearing	About 20 minutes	About one hour
Conclusion	A judgment was made and served in court, and the defendant made it clear that there would be no appeal.	A mediation agree was made in court.

The small claim procedures in both of the above mentioned courts have been approved by the Supreme People's Court. The difference is: Gulou District Basic People's Court is the pilot of the EU/China-UNDP GED Project, while the Xuanwu District Basic People's Court is the pilot of the Supreme People's Court's national small claims pilotscheme. The above comparison shows that the pilot of Gulou District Court is more independent, innovative and flexible, while the Xuanwu District Court is carrying out the pilot work within the framework set by the Supreme People's Court. In other words, if the Xuanwu District Court is making the "compulsory moves" required by the Supreme People's Court, then the Gulou District Court (GED pilot) is "making freestyle moves" with the approval of the Supreme People's Court, and is endowed with more

① See example of "People's Court of Gulou District, Nanjing-Civil Mediation Document for Small claims" – ex: No. 2445 for Civil Cases (2010).

flexibility and innovation. But it is for sure that the two courts in the same geographic area carrying out the pilot of small claim procedures form the basis of a "competitive pilot". Through comparison and dialogue, the courts can learn from each other and enrich their own experimental work. Moreover, in this way they can make more diversified and optional references to the progress of small claim procedures in China.

Pilot courts in Jiangsu show that simplifying procedural law can increase judicial efficiency. Procedural simplification tends to decrease time and costs and increase litigant satisfaction. The efficiency of small claims procedures seems to be driven by the simplicity of procedures. Streamlining the system by which judicial procedure itself is determined can be beneficial. In Jiangsu, efficiency was improved as a result of incentive-oriented reforms and by simplifying judicial procedures and increasing their flexibility.

At the beginning of the Project, an important objective was to reduce litigation costs, in particular for the parties involved. More importantly now is to ensure a fair and just distribution of the necessary costs (the principle of *proportionality)* implying that the costs and the procedural steps are proportionate to the size and importance of the claim.

Ⅱ. 2. 5. Access to Justice and legal education

Under the *Project,* the courts visited in Jiangsu have designed and distributed different brochures to educate the general public about legal and judicial procedures. We partly translate here the 14 brochures available and briefly present them. The Court's brochures cover almost all aspects of litigation or legal actions.

1. Litigation (起诉)

Litigation is the first step. This brochure elaborates the concept of "litigation", the conditions and ways (oral and writing) for instituting a litigation, the content of a complaint, others documents to be submitted, the time limit for deciding whether to accept the litigation (seven days), the existing remedies for the plaintiff if the court refuses to file the case (appeal to the higher court within 10 days upon receipt of the notice of refusal) and the payment of litigation fees.

2. Litigation Risk (诉讼风险)

This brochure summarizes the different risks involved during the litigation procedure: (1) the court might refuse to accept the case or dismiss the case, (2) claims without evidence can't be supported by the court, (3) the court may not adjudicate claims exceeding the period permitted, (4) if the plaintiff does not institute the litigation within the period prescribed by the laws, its claims shall not be supported by the court, (5) when the party entrusts the litigation representative to accept, relinquish, or modify the claim, to reach a settlement, or bring a counterclaim or an appeal, it should be clearly specified in the power of attorney, otherwise the litigation representative's opinion on the above issues shall be void, (6) if the party does not prepay the litigation fee on time or petition to the court to postpone, reduce or wave the payment of the litigation fee

during the litigation or appeal, the court will deem that the party has withdrawn the case, (7, 8 and 9) the collection of evidences and the burden of proof, (11 - 16), when the accused do not have enough property to perform the obligations under the effective legal documents, the court may suspend the enforcement, and etc.

This brochure presents a simple yet very detailed introduction to the risks encountered by plaintiffs during a litigation procedure.

3. Jurisdiction (案件管辖)

A first brochure of jurisdiction elaborates the jurisdiction of basic-level courts, intermediate courts and high court in Jiangsu Province for civil disputes. The second brochure specifies the jurisdiction of some special disputes, such as contractual disputes, insurance disputes, negotiable instrument disputes, tort disputes, Internet copyright disputes, patents disputes, copyright disputes, trademark disputes and domain name disputes. In addition, the second brochure of jurisdiction elaborates the jurisdiction of high court, intermediate courts and basic-level courts for administrative cases as well as administrative jurisdiction for immovable disputes.

With such a clear scope of jurisdiction of courts for civil and administrative cases, the parties can easily work out the appropriate court that should be contacted, then saving time, money and energy.

4. Legal representation (诉讼代理)

Generally, the legal representative of juveniles or mentally ill patients can entrust lawyers, immediate family relations, any person recommended by relevant social organization or work units or any other citizens permitted by the court to represent the litigants. The powers of the attorney consist of all the general powers such as instituting the litigation or providing the evidence as well as special powers such as accepting, relinquishing, or modifying the claim, reaching a settlement, or bringing a counterclaim or an appeal, which will need special authorization by the parties or the legal representative of juveniles or mentally ill patients.

5. So-called "Judicial Relief" (司法救助)

Litigants, who can't afford litigation expenses can petition to the Court to postpone, reduce or wave the payment. The brochure very clearly presents the different options for postponing, reducing or waving the payment of litigation fees when necessary.

6. Applying for Withdrawal. (申请回避)

Firstly, this brochure lists all situations when the adjudicators or the parties can apply for withdrawal without any cause. Secondly, it lists all the situations when the parties and their legal representatives can apply for withdrawal with due evidence. The brochure also explains the different ways of withdrawal, the withdrawal procedures and the time limit for the procedure.

7. Collection and Submission of Evidences. (收集、提交证据)

This brochure presents all issues related to collecting evidence in the whole trial process. Firstly it defines the seven types of evidences according to Chinese law, witnesses, and explains the notion of burden of proof in a trial and when litigants do not need to provide evidence. Then it elaborates when the court takes the initiative to collect the evidence and the measures to be taken when the evidences can be destroyed. Last, the brochure illustrates the time schedule for the parties to submit evidences to the courts in a trial.

8. Property Preservation and Prejudgment Enforcement (财产保全、先予执行)

In China, the enforcement of judgments is a serious concern. The brochure's main goal is to prevent all difficulties in enforcement of judgments by providing detailed information about property preservation and the like. The brochure also lists the situations when the parties can apply for prejudgment enforcement.

9. Prescription for Litigation (诉讼时效)

This brochure deals with the time limit of litigation in courts.

10. Opening a Court Session (开庭审理)

This brochure gives all information related to a court trial. It first lists the preparation works that the parties should have accomplished before opening the court session for trial. Then it gives a general picture of a court trial, e. g. whether all cases will be tried openly in public, how the court investigation proceeds, the court debates, the consequences if litigants refuse to appear in court or leave the court without permission, the court records if the parties refuse to endorse them.

11. Time Limit of Trial (审理期限)

This brochure deals with the time frame and the time limit of trials for civil and administrative cases. For civil cases, a simple procedure case should be adjudicated within 3 months and any other trial of first instance should be adjudicated within 6 months (a prolongation of 6 months can be decided by the Court's President or under special circumstances). For second instance, civil cases should be adjudicated within 3 months. For administrative cases, all cases should be adjudicated within 3 months, with the exception of decisions taken by province's court level or, when necessary, by the SPC. All second instances of administrative cases should be adjudicated with 2 months.

12. Appeal (上诉)

This brochure guides the parties to the appeal process when neither of them agree with the judgment of first instance. In this case, both litigants can make an appeal within 15 days or 10 days upon the receipt of the ruling. The document also explains how the litigants should make appeals either through the first instance court or directly by submitting a request to the higher court.

13. Application for Enforcement of a judicial decision (申请执行)

The document lists the conditions for application of a judgment, the time limit to make such application, the documents to be submitted, what to do if the parties do not agree with the enforcement by the court, the measures to be taken for the enforcement. In addition, it deals with enforcement settlements, how to proceed if one of the litigant has provided guaranty, the termination of the enforcement procedures and time limit for enforcement cases.

14. Petition and Application for retrial (申诉、申请再审)

This brochure gives some advices to the parties if they disagree with the judgments or rulings of the courts. After two trial instances, China Law still provides remedies for the parties who consider that their case hasn't been treated fairly. The document illustrates the conditions of a retrial case, post-judgment mediation, conditions and procedures to apply for retrial.

III. Major Project Outcomes

The EU-UNDP GED Project has greatly (III. 1) influenced policy and brought many changes in the way the issue of judicial efficiency is now conceived. All the activities previously described have led to important changes in the approaches of Civil Law procedures. Also, establishing and improving multiple alternative dispute resolution mechanisms is now considered as a top priority.

In April 2012, the Supreme People's Court has revealed (III. 2) a detailed "Working Guide to Improve Judicial Efficiency" (提高司法效率工作指南). The Working Guide is an unprecedented experience in China's court system. The guide achieves its goals by eschewing much technical language and complex conceptual elaboration, as well as by leaving various details for practice to develop. Once it comes into effect, it will provide the benchmark for local courts to directly evaluate their level of efficiency.

III. 1 A new approach to judicial efficiency

According to Botero et al., different schools of thought exist on ways to improve "judicial efficiency". The first school of thought believes: 1) that the problem of the judiciary system is attributable to insufficient funding being poured into the system. In this case, increasing the number of courts, judges and lawyers as well as providing more training and computer systems should solve the problem. The second school of thought believes that 2) excessive access makes the judicial systems inefficient. Therefore, "it would be necessary to raise the procedural hurdles for lawsuits and/or impose restrictions on lawyers with regard to their advertising activities and remuneration". A third school of thought 3) calls for provision of a greater variety of dispute settlement mechanisms provided that inefficiency of the judicial system is stemming from the lack of incentives from legal professionals. The fourth group points that 4) the prime cause of inefficiency is to be found in the rigidity and complexity of judicial procedures.

The Tsinghua University School of Law' former Dean, Prof. Wang Chenguang, argues that judicial efficiency includes three aspects: "efficient litigation without delay, good allocation of financial resources and a decrease of litigation costs"① . Therefore, in China, judicial efficiency requires People's Procuratorate, the People's courts and their personnel to perform judicial duties, in a serious, timely and effective manner as well as in strict compliance with Law.

It is often perceived that the concepts of judicial efficiency and judicial fairness would contradict each other. Prof. Cai Dingjian and Prof. Wang Chenguang considers that justice and judicial efficiency simply interact and complement each other. They have equal shares: "justice is justice, the ultimate and highest goal; efficiency is achieved through judicial fairness in the best condition". "Fairness is the principle that forms the foundation of a judicial system. Even though every case is individual, judicial procedures have to be standardized. Again, the two aspects complement each other: unfair justice would be inefficient and inefficient justice would be unfair".

The 20120 first "Working Guide to Improve Judicial Efficiency" adopts a rather comprehensive definition of the concept. Judicial efficiency is understood not only as a way to improve individual case efficiency but also as a way to respond to the different " social interests". "Judicial efficiency" is presented as a dynamic concept, in constant change and influenced by the external institutional environment②。In the Guide, the meaning of judicial efficiency is broader than 'just' efficiency in a narrow sense: it also emphasizes the quality and the effectiveness of justice. "Judicial efficiency" now refers to a sense of providing accessible, professional and fair dispute settlement services. This implies notably: incentive mechanisms for judges, the simplification of complicated dispute settlement procedures, the professionalization of judicial management system, the reinforcement of a variety of dispute resolution mechanisms including some "alternative" or non litigation procedures.

According to the "Working Guide for Improving Judicial efficiency" established by the SPC: "time adjudication for civil cases of first instances are as follow" (*translation*):

—ordinary litigation procedure shall be adjudicated within 6 months (can be prolonged with approval of the president of the court for another 6 months).
—litigations through simple procedures shall be adjudicated within 3 months (can be prolonged with approval of the president of the court for 30 days).
—cases of second instances shall be adjudicated within 3 months (can be prolonged with approval of the president of the court for another 3 months).
—civil ruling cases shall be adjudicated within 30 days.

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① Cai Dingjian and Wang Chenguang, China's Journey Towards the Rule of Law: Legal Reforms 1978 - 2008, Brilliant 2010 ② The Supreme People's Court, Working Guide for enhancing Judicial Efficiency (Revised version) " 提高司法效率工作指南" (修改稿), April 2012, p. 3。

—civil reconsideration case for fines or detain shall be decided within 5 days.
—petitions or retrial cases shall be reconsidered within 3 months (can be prolonged with approval of the president of the court for another 3 months).

III. 2 A new approach to ADR

Around the world, experiences on ADR mechanisms, including strong elements of mediation such as in Jiangsu province courts, conciliation and arbitration, have been generally positive. In China, mediations often allow judges to solve a case without (or with less) external interferences. Mediations are also much less bureaucratic and scripted. Judges and parties frequently engage in spontaneous, vigorous and dramatic debates. They can personalize their decisions and thus promote their professionalized independence in a way they cannot during trials. Mediated settlements may also be easier to enforce than court judgments.

One of the main concerns for the evaluator is the danger to "forced mediation". Under current practices, the danger is that courts try to leave more cases to mediation no matter whether litigants want it or whether it fits the case. Since the mid-2000s, many different texts published by the SPC provide that judges should try their upmost to mediate cases in all phases of the trial: see for example the "Provisions about Several Issues Concerning the Civil Mediation Work of the People's Courts (2004)" and "Several Opinions on Further Displaying the Positive Roles of Court Mediation in Building Socialist Harmonious Society (2007)"① . Besides, recent regulations have incorporated the number of mediated cases in the judges' performance evaluation indicators.

The main issue here is to find a way to triage cases, so that appropriate cases are mediated, whilst the rights of individuals to use the court system when they want to are preserved. The voluntary consent of litigants for pre-trial mediation is absolutely essential.

Since the 1980s, court mediation in cases in China has experienced a course of development from decline to regain interest and activities. The courts system has always applied the rational policy of "making mediation in cases in which mediation can be made, issuing a ruling in cases in which a ruling should be issued, combining mediation with adjudication, and settling the dispute by "wrapping up the case".

Since the mid - 2000s, mediation has again been given great significance, meaning that Litigation Service Centers shall make great efforts to persuade the parties to go through mediation. In 2009, the Supreme People's Court, in its annual Report on the Work of People's Courts, has put forward the policy of "*mediation first and combination of mediation with adjudication*". The key idea is that courts should not be turned into "mediation agencies". The same year, the SPC has promulgated the *Opinions on Establishment and*

① See also Liu Jie (刘洁), in 2010, the word "mediation" acquired a priority status in recent judicial reform. "The priority status of mediation in judicial reform: an analysis on ten key words for courts system in 2010" (2010 年度人民法院 十大关键词解读 调解优先 司法改革中的调解优先), in: People's Court Daily on 10th March, 2011.

Improvement of Disputes Settlement Mechanisms with Coordination between Litigious and Non-Litigious Means. This opinion was a major step made by the courts system to promote the development of multiple disputes settlement mechanisms including arbitration, administrative and civil mediation.

The same year, the Yangpu District Court from Shanghai City hired retired judges to work as community judges, responsible for mediation as well as preliminary registration of cases for adjudication. Afterwards, the establishment of the system of community judges has become a major aspect of the work of establishing and improving multiple disputes settlement mechanisms in China.

Evidences indicate that judgments' enforcement rate, provided it is voluntary, is higher when all parties agree to abide by the decision reached through mediation. On the contrary, the rigidity and formality of courtroom procedure often make it very difficult to use natural and spontaneous arguments in the formal courtroom. A factor also commonly associated with inefficiency in civil law countries is the predominance of written over oral procedures. Such constraints do not exist in the context of judicial mediations, however. Mediations procedures are much less bureaucratic and scripted. During mediation, a long period of time of the inquiry is devoted to exploring the personal backgrounds, emotive appeals and experiences of people involved. Judges and parties frequently engage in vigorous and dramatic debates.

During mediation, judges can personalize their decisions and have more leeway in their conducting tribunal hearings. There is also much less demand on the part of the judicial administration for quick judgments that present no enforcement problems. For these reasons, judges may find tribunal-based mediation to be a particularly effective way to deliver justice. Meanwhile, mediation can allow judges to solve a dispute with less external interferences. Development of ADR mechanism is key to improving "judicial efficiency". At last, ADR institutions play an important role in increasing competition among the existing courts and expanding options for settling disputes.

Up to nowadays, non-litigation settlement of disputes was mainly mediation before litigation, which included mediation by people's mediation office, entrusted mediation and mediation by judges before litigation. Mediation was supposedly based on "the voluntary principle, principle of fact-finding and distinguishing right from wrong". However, too much emphasis on mediation might also interfere with the procedural rights of the parties. This question is considered seriously as a growing number of litigation service centers are established.

III. 3. Working Guide for Increasing Judicial Efficiency

The 2012 Supreme People's Court "Working Guide for Increasing Judicial Efficiency" (提高司法效率工作指南, here after Working Guide) is the focal point where all related EU China-UNDP-GED Project's activities converge.

The Working Guide is divided in 10 parts (not including the preface) related to: the General Principles, the Litigation Procedures, the Small-Claims procedures, the Simple procedures, Adjudicative Documents,

Combination of Litigation and Mediation (Chapter 6), Adjudication Management, Judicial Capability, "Rejuvenating the Courts Relying on Science and Technology" and the notion of "job safety". A brief introduction to this important document is presented here.

"The combination of litigation and mediation is a combination between different procedures such as the People's mediation, administrative mediation, business and commercial mediation, arbitration and other non-litigation disputes resolution mechanisms". Basic principles are the following: (1) the coordination should be realized under the unified leadership of the Party Committee, (2) guiding mediation and voluntary mediation by the parties, (3) resolving social conflicts, (4) reasonable combination mechanism, convenience, flexibility and efficiency, (5) optimizing judicial resources.

—Basic People's courts can establish mediation mechanism and network mechanism of disputes resolution (6.1.3.1).

—Structures for mediation should be established in the courts and the current non-litigation disputes resolution mechanisms should be combined with the new mediation organizations as the main platform (6.1.3.4).

—Basic people's court and tribunals can establish non-litigation mediation structures, and hire and invite mediators to perform non-litigation mediation within the courts (6.2.2.1).

—Special Mediation Offices (6.2.2.2): all kinds of mediation offices can be established within the courts: People's mediation office, mediation office of retired judges, industry mediation office, mediation office of legal volunteers, civil mediation and the like. According to the type of mediation, "Internet remote mediation office" can also be set up. According to the types of disputes, different industry mediation offices can also be designed: financial mediation office, property disputes mediation office, medical disputes mediation office, consumers right protection mediation office and so on.

"New Disputes Resolving Process Combining Litigation and Mediation between the People's Court and the People's Mediation Office" (Source: the 2012 Working Guide)

<table>
<tr><td rowspan="7">Acceptance of Civil Disputes Mediation Procedure</td><td rowspan="5">Units of Acceptance</td><td colspan="2">1、Mediation structure at the domicile of the parties</td></tr>
<tr><td rowspan="4">2、Mediation organization where the dispute occurred</td><td>Place of tortuous act</td></tr>
<tr><td>Place of immovables</td></tr>
<tr><td>Place of main legacy or place of the registered permanent residence of the deceased</td></tr>
<tr><td>Lex Loci Contratus or loci solutionis</td></tr>
<tr><td colspan="2">Town mediation committee or relevant ones for complex and difficult cases or intraregional cases</td></tr>
<tr><td rowspan="3">Ways of Acceptance</td><td colspan="2">1、Oral or written application by the parties</td></tr>
<tr><td colspan="2">2、Interference by the mediation committee</td></tr>
<tr><td colspan="2">3、Entrusted or submitted by other departments</td></tr>
</table>

Acceptance of Civil Disputes Mediation Procedure	Conditions for Acceptance	1、there are definite parties for mediation	
		2、there are concrete mediation requirements	
		3、facts for application of mediation	
		4、the disputes are in compliance with scope of mediation committee	
Mediation Procedure	Preparation	1、Choose or confirm mediator	
		2、Facts Investigation and verification	
		3、Choose mediation scheme	
	Implementation of Mediation	1、Choose the venue for mediation	
		2、Steps for mediation	1、inform both parties of the rights and obligations
			2、hearing the statements by the parties
			3、mediation (inform the parties to institute a litigation if the mediation fails)
Performance of Mediation Agreement	Making Mediation Agreement	1、basic information of the parties	
		2、Simple facts of disputes	
		3、Rights and obligations of the parties	
		4、Ways, place and period of performing the agreement	
		5、Signatures of the parties and mediator and seal of mediation committee	
	Performance of Mediation Agreement	1、Consciously performed by the parties	
		2、Organizations at all levels persuade and educate the parties to perform	
		Refused to perform	1、Petition to the local government
			2、Institute a litigation to the court for the performance, modification and rescission of the mediation agreement
	Callback		Call back to the performance of the mediation agreement
Judicial confirmation			For those mediation agreements that require the affirmation of the courts, it should be filed and give the binding legal effect to the mediation agreement

IV. Policy Recommendations

The following concluding thoughts relate to the question of how valuable the presented measures to speed-up and simplify trial procedures are for assisting the Supreme People's Court to find solutions to increase judicial efficiency in jurisdictions across the country.

"In China, the understanding of judicial efficiency appears to be very broad including not only the acceleration of trials but also overall professionalisation, streamlining of internal administrative processes, computerization and general modernization of courts", explains Prof. Ahl①. Like elsewhere, litigants in China ask now for

① Opus. cit.

much higher service and quality expectations. Today's litigants are demanding that their disputes be handled with greater transparency and also uniformity in applying substantive and procedure law. Are the recent reforms or initiatives, which endorse new approach to mediation and a new approach to judicial efficiency appropriate? Are the existing management arrangements satisfactory? How could the quality of justice be further improved in the future, under a new international Project?

Recommendations are divided into 2 parts: (Ⅳ-1) institutional recommendations and (Ⅳ-2) general methodological recommendations in approaching judicial reforms as a public policy.

Ⅳ - 1.1. Under European Law, there is no general legal obligation of efficiency of court. However, the European Convention on Human Rights (ECHR) recognizes that there is an individual right to a timely trial. Article 6 (1) reads as follows: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". "Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice".

In addition, articles 5 (Right to liberty and security), 13 (Right to an effective remedy) and 14 (Prohibition of discrimination) of the European Convention on Human Rights establish the legal basis of the concept of "judicial efficiency".

The majority of Convention violations that the Court finds today are excessive delays, in violation of the "reasonable time" requirement, in civil and criminal proceedings before national courts, mostly in France and Italy. The heuristic value of article 6.1 of the ECHR could be considered and adapted to China's specific conditions.

Ⅳ.1.2. A network of pilot-courts could be set-up to highlight best practices or, more precisely, "international best practices with local characteristics"(国际水平，本土特色). The network could be a forum of information (within the network, China's pilot courts could cooperate and exchange information) and a forum of reflection. Vice versa, the SPC could rely on this network to promote its policies, the concept of quality of justice and all innovative time-management projects.

Ⅳ.1.3. Specialized courts. Creating greater specialized courts or "specialized courts" per se can change the structure of adjudication. Courts may be specialized around the subject matter (such as bankruptcy and commercial courts for example) or around the size of the claim. Recently, in Europe, Australia, Japan and the United States, establishing or extending small claims courts are among the most successful of all judicial

reforms. Specific small claims courts or small claims procedures can be found, especially, in Common Law jurisdictions such as Australia, Canada, Ireland, New Zealand, Hong Kong, England and Wales and the United States.

A special small claims procedure for cross-border cases was introduced by a new EU law regulation. ① The procedure is optional, offered as an alternative to the possibilities existing under the national laws of the Member States. ②

Specialized courts with a particular subject-matter jurisdiction can also increase efficiency. Such courts have been set up for social insurance (France), labor rights (France or Ecuador), streamlined debt collection (Germany, Japan, and the Netherlands). These specialized courts emphasize arbitration and conciliation over litigation as well as simple civil procedures overall rigid legal processes.

IV. 1. 4. New role for lawyers and *ad litem agents*. Legal professionals such as lawyers or other ad litem agents are usually not involved in mediation procedures. Actually, people specialized in the fields adjoining law in general, namely, judicial scriveners, and patent attorneys or also certified public tax accountants are not allowed to participate in such procedures.

While it is important to change the status quo of monopolization of legal procedures by attorneys in order to improve "judicial efficiency" in European countries, caution must be taken when it operates in a country such as China where the profession of lawyers is rather new and not yet well established. A majority of non-lawyer legal experts act already as agent *ad litem* in regular litigation procedures and lawsuits in China. In the future projects, the EU China-UNDP-GED Project should ensure representation from bench and bar, from small firms as well as from large and from different cities or provinces of the country.

IV. 1. 5. Current research on contemporary judicial systems, especially comparative studies and policy papers conducted by the CEPEJ advise to regulate ADR procedures or at least to create the institutional foundation for ADR mechanisms. China should continue to provide incentives to create a professional and social environment firmly based on the principles of ADR. Promoting information disclosure, enhancing people's understanding of ADR, and facilitating access to ADR are crucial steps in this direction.

More fundamentally, should be encouraged evolutions towards:

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① Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure.

② The Regulation does not apply to revenue, customs or administrative matters, to the liability of the State, or to the status or legal capacity of natural persons, matrimonial regimes, maintenance obligations, wills and successions, bankruptcy, compositions and similar proceedings, social security, arbitration, employment law, tenancies of immovable property, except for monetary claims, violations of privacy and of rights relating to personality, including defamation, Art. 2.

—advisory dispute resolution processes which focus on assisting the litigants by providing professional evaluative expertise.

—adjudicative dispute resolution processes, which focus on resolving disputes under the direction of a designated official "who is empowered to review the dispute and to impose an enforceable judgment."

— "hybrid" dispute resolution processes.

—court-based mediation procedures at the second-instance and/or at intermediate appeals levels.

IV - 2 - Method or general approach recommendations

IV - 2. 1. Avoiding a strictly official vision of the judiciary. The most popularand efficient method so far for assessing judicial performance relies on surveys based on public perceptions of the weaknesses or the strengths of the judicial system. The courts visited in Nanjing already perform such a duty but on a small scale and scope. However, in China, these surveys should be generalized and conducted when necessary by in-house legal experts who hold knowledge of the local judicial system.

IV. 2. 2. Creating a Chinese Commission for the Efficiency of Justice together with a local judicial efficiency index comparing different provinces and within the provinces, courts of the same and different levels.

Created in 2002, the aim of the European Commission for the Efficiency of Justice (CEPEJ) is the improvement of the efficiency and functioning of justice in the member States. In order to carry out these different tasks, the CEPEJ prepares benchmarks, collects and analyses data, defines instruments of measure and means of evaluation, adopts documents action, develops contacts with qualified personalities, non-governmental organizations, research institutes and information centers, organizes hearings, promotes networks of legal professionals, etc. CEPEJ's tasks are to analyze the results of the judicial systems, ? to identify the difficulties they meet, to define concrete ways to improve, on the one hand, the evaluation of their results, and, on the other hand, the functioning of these systems.

Every year the CEPEJ pursue a major report on efficiency of justice and adopts recommendations which contain ways to improve the evaluation both of fairness and efficiency of European judicial systems, based on quantitative and qualitative date collected by each European judicial system.

We do not know to what extent jurisdictions in China are themselves involved in establishing or organizing their financing. However, many voices in China now point for a greater transparency of court's budget and management and even a complete centralization of the budget allocated to judicial administrations.

IV. 2. 3. Building judicial trust

It is notable that "international cooperation on judicial efficiency in China is valuable and can be an entry point for more reform". However, strengthening public trust in and the credibility of the court system is what future projects should focus on. In today's China, lack of public trust in and credibility of the court system is actually the most pressing issues.

In China, one of the judges' main weakness is to work within a system that combines an extremely decentralized administration in terms of daily management with a centralized legal system where national laws tend to be abstract and local specificities given short shrift. Another major source of public distrust is that courts do not accept all kinds of legal disputes. Some of the most obvious examples of blatant unfairness are land expropriations and land compensation disputes and the fact that such disputes can't be brought to court.

Judicial reforms today tend to be more piecemeal than systemic. There are also more oriented towards access to justice for citizens than towards the reform of the judges' status. Reforms should involve a conceptual change of the understanding of judicial services conceiving justice as "a common good".

In summary, it seems important to build trust among judges and all the participants involved in courts' management; to remain flexible with planned new reforms and, also, to create mechanisms for institutionalizing changes and build the conditions for achieving sustainable changes.

Appendix 1:

Litigation Service Centers, Jiangsu Province, 2011: "Guarantee of Procedure Rights and Function of Disputes orientation and division before Litigation"

(1) Acceptance of Cases and Attachment before Institution of an Action

(a) LSC shall establish a window for acceptance of cases, which will be responsible for cases division and orientation

(b) Personnel for filing cases shall instruct the parties to choose non-litigation ways to solve the disputes and shall make clear explanations to cases that can be solved through people's mediation, administrative mediation or other special mediation.

(c) Personnel for filing cases shall carefully review the litigation materials. For cases with complete filing conditions or the cases that parties have refused to solve them through non-litigation ways, such personnel shall transfer the cases to relevant tribunals.

(d) For cases that parties have applied for attachment before institution of an action, personnel for filing case shall transfer to relevant personnel of attachment before institution of an action.

(2) LSC shall set up a window for inquiry of cases, which will provide basic information of first instance,

second instance, retrial, enforcement and the like. In addition, such basic information will also be provided through Internet, electronic touch screen and the like.

(3) The personnel from the "letters and visit" (*xinfang*) bureau endorse the task of answering questions after judgment.

(a) After answering questions, great efforts should be taken to persuade the parties to agree on the judgment and the presiding judge will meet the parties upon their inquiry.

(4) A judgment's enforcement office shall be set up. Meanwhile, enforcement supervision shall be taken in order to enforce the judgment. However, enforcement supervision shall voluntary.

(a) LSC shall set up a desk for appeal procedures. The *xinfang* office shall perform its duties according to the principle of "every letters and every visit shall be dealt and every complaint letter shall be returned". LSC's desk will accept all complaints related to discipline or behavior.

(5) The Court administrative personnel shall receive visitors by appointment or on specified days (…).

(6) LSC shall set up an office to establish the connections between litigation and mediation procedures and transfer failed mediation cases to litigation.

——Resolving Disputes:

(1) LSC shall set up an office of mediation responsible for resolving disputes before filing the cases. If mediation reaches agreement, relevant tribunal shall confirm or affirm the validity of the mediation agreement or shall issue mediation paper.

(2) Failed litigation or when parties wish to resolve disputed through litigation procedures, office of case filling and relevant tribunals shall cooperate to reach mediation agreement. As such, failed mediations shall be transferred to relevant tribunal timely.

LSC shall collect the complaints and people's opinions and recommendations through complaint call, complaint mail box, complaint email and the like by citizens, legal persons and other organizations (see picture below).

Appendix 2:

——The Supreme People's Court, "Working Guide for Improving Judicial Efficiency", Chapter 9 "Rejuvenating Courts Relying on Science and Technology", Diagram, p. 54.

"Business Integrative Guaranteeing Equipment"

Business Integrative Guaranteeing Equipment
Business Transportation Facility
Vehicles for Adjudication, Enforcement and Prisoners
Administrative Equipment of Litigation Archives
Equipment in Archives
Digitization System for Archives
Shelves for Archives, Book-binding Equipment, Purification and Controlling Equipment for Temperature, Humidity and Air, Anti-ultraviolet Equipment, Anti-magnetic Device
High-speed Scanner, Server, Router, Exchanger, Camera, Duplicating Machine and the like
Printing Equipment
Manuscript Typing, Printing, Bookbinding and Composition
Universal Business Equipment
Computers, Printer, Fax Machine, Duplicating Machine
Information Network Equipment
Systems and Application Software of Network, telecommunication, Audio/video, Security and Disaster Recovery
LANS, Safety Monitoring System, Storage and Back-up System, Network Security System, Information Exchange System
Procedure Exchange System, Communication Transmission System, Administrative Terminal System and Communication Power Supply System
Audio/video Collection and Editing System, Sound Amplification System, Centralized-control System and UPS Power Supply System
Operating System, database and middleware, Processing Software for Characters, pictures and videos
Judicial Administrative System, and Adjudication Management System
Password Equipment, Password Management Center, Security Software System
Systems for Network, Server, Storage, Security and Software
Implementation of Norms and Requirements Made by Password Management Department, including encryption of network, fax, video and the like
Safety Inspection Equipment
Safety check, X-ray Machine, Metal Detection and Entrance Guard System

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