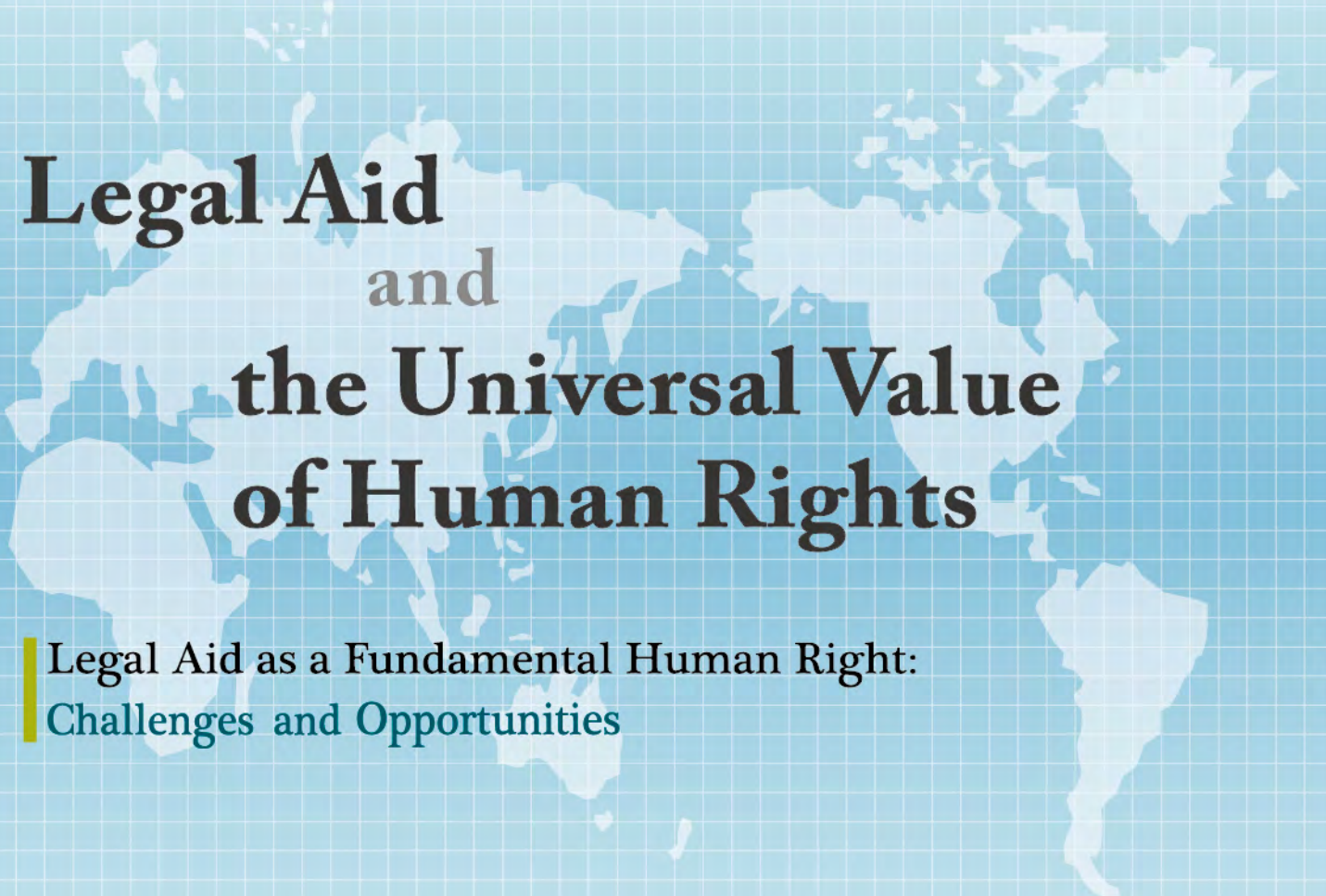




**2014**

**International Forum on Legal Aid**

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# **Legal Aid and the Universal Value of Human Rights**

**Legal Aid as a Fundamental Human Right:  
Challenges and Opportunities**

## **Conference Proceedings**

October 25-October 27, 2014

Howard Civil Service International House, Taipei, Taiwan

[www.laf.org.tw/ifla2014/index.html](http://www.laf.org.tw/ifla2014/index.html)





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## 2014 International Forum on Legal Aid

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Editor : Pei-Fen Cheng

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**Keynote Speech**

**Legal Aid and the Universal  
Value of Human Rights**

**Speaker: Mr. Dunstan Mlambo**

Judge President of the Gauteng Division of the High Court,  
Department of Justice and Constitutional Development

# Legal Aid and the Universal Value of Human Rights

## Introduction

The overarching objective of our gathering here is to share our thoughts and experiences regarding the state of access to justice in general. Yes, our underlying theme has to do with Legal Aid, but the true objective of our meeting here is to develop strategies and action plans to advance that cause. In truth access to justice has featured in many a conference, but the stark reality is that the road ahead remains long and bumpy to say the least. I look forward in this engagement here, to a frank appraisal of some of the reasons for the slow pace in achieving desired outcomes.

## Legal Aid and Poverty

Poverty is a global phenomenon. It is the single biggest barrier to access to justice and basic human rights. Talking about poverty, I'm reminded of the statement by E. Clinton Bamberger, in a Speech at the National Conference of Bar Presidents, Chicago, Illinois, February 8, 1966 where he said - "*Our responsibility is to marshal the forces of law and the strength of lawyers to combat the causes and effects of poverty. Lawyers must uncover the legal causes of poverty, remodel the system which generates the cycle of poverty and design new social, legal and political tools and vehicles to move poor people from deprivation, depression, and despair to opportunity, hope, and ambition.*" I echo that statement here and hope we all heed it.

In a UN report released in 1995, the following was observed: '*It is important to step back and assess the state of the world since the UN was established. What has emerged is an alarming picture of unprecedented human development and unimaginable human suffering. Of humanity's advance on several fronts coupled with humanity's retreat on several others, of a breath-taking globalisation of prosperity side by side with a breath-taking globalisation of poverty.*'

The global levels of poverty and particularly in my continent, Africa are well documented. So too, is the extent of such poverty and its effects on the people of the continent. Legal aid is, by its very nature, concerned with law and poverty and as



such, constitutes an important corollary of 'access to justice'.

Perhaps in our discussion about the right to legal aid I must restate some basic tenets of access to justice which are sometimes overlooked. First, we should emphasise that access to justice is not only a purely court-centred concept. I advance the proposition that, properly considered, the nature of access to justice is primary and secondary. The primary kind consists in access to relevant information; general legal advice and non-litigious assistance. This is sometimes referred to as front line or entry level access. The secondary type consists in the main in access to courts and litigious legal assistance and representation. Primary access is very critical and touches a lot more needy persons yet, it is the secondary type that touches less numbers of persons. It is however the secondary type that consumes a lion's share of whatever resources is available on any access to justice programme.

If poor people are to realize meaningful access to justice, they need access to information and to the institutions which determine whether they will be eligible to receive justice. In large measure, these are administrative officials and bodies. When I say this, I should not be understood to be relegating the importance of courts, but access to justice has to go beyond a primary focus on courts. Except for those persons facing criminal charges, most people who need legal advice and assistance are not involved in any kind of dispute thus, promoting disputes may be of no practical help to them. Even when disputes arise, most of them never give rise to litigation because, one would expect, that if the law is working effectively, it provides reasonably clear guidance, if necessary through professional advice, without the need to resort to conflict. Of the relatively small proportion of disputes that result in court proceedings, most are settled without the need for a judicial decision. This is achievable because the parties and their lawyers are able to form a common view about what the outcome of a judicial decision is likely to be. Again, the spectre of Legal Aid becomes relevant. The marginalised and poor require it to partake in the process.

There has been a growing recognition of legal aid as an important aspect of fair trial human rights on an international level. Major international and regional conventions, to which our countries are signatories, provide for the provision of legal aid. I mention three namely, the African Charter on Human and People's Rights, the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights. It is apparent in these instruments that access to

legal aid services is necessary to ensure that those who are indicted but are without means, acquire the services of a legal representative who is knowledgeable about the intricacies of the law and the complexity of the legal system in order to meet the demands of a fair trial. The purpose of the fair trial system is to protect the innocent and not to assist “criminals” as is often misconstrued.

Amongst the topics we need to discuss in this engagement, is that of - unmet legal need as well as access to relevant information. For most people, their most pressing legal need is not, and is never likely to be, litigation in the High Court. Their need is for practical, reasonably affordable, advice and assistance in the conduct of their ordinary affairs. In the case of family separation, for example, equality of access to information about resulting legal obligations may be an elementary aspect of justice. Regrettably, there are many areas in which injustice results from nothing more complicated than lack of knowledge. People, who know their rights, and their potential liabilities, can use that knowledge, within the limits of their individual capacities, to seek to fulfil their individual and collective aspirations. People who can afford private legal services are usually best served when their legal representatives keep them out of court. Providers of legal aid, and public or private pro bono legal work, perform public service of immeasurable benefit in the same way, often avoiding the need for conflict which by its nature is inherently adversarial. Imparting information to those requiring it is very much an unmet need and is a critical component of legal aid.

## **The Developing World and Legal Aid**

Despite the commitment to ensure services delivery in the area of justice, developing countries are still not putting enough resources where needed, supposedly because of other constraints such as the debt burden, improper prioritisation of components such as health and education as critical and relegating access to legal aid as less important. Other factors in the developing world context revolve around conflict and instability and poor governance. I’m the first to concede that developing countries have limited financial resources with many competing demands. Prioritization is a mechanism often employed to allocate available resources and as I have just mentioned, it often leads to the exclusion of deserving cases and the perpetuation of a system of compartments. When advocating for proper and sustainable budgeting for legal aid I have more often than not been met with the retort – “there can be no financial resources for criminals” or “that’s the responsibility of

NGOs". The result is the perpetuation of legal aid remaining an unfunded component and adding more pressures to the legal NGO sector.

In 2004 some 128 delegates from 26 countries, predominantly developing countries, met in Lilongwe, Malawi to discuss legal aid services in the criminal justice system in Africa. In 2007 those delegates met again in Kyiv to discuss and identify best practices in the protection and promotion of human rights through the provision of legal services and legal aid. Delegates included Government representatives, legal aid practitioners, academics and representatives from human rights, legal advocacy and legal and justice sector reform organisations. The Kyiv and Lilongwe Declarations on the Right to Legal Aid, were adopted by consensus at the conclusion of those conferences, with a request that they be forwarded to national governments, to legal aid bodies and organisations, public and private, at national level, and to relevant national and multilateral bodies engaged in developing or implementing policies and programmes addressing legal aid, access to justice and the rule of law.

Did these declarations have the desired effect? I venture to ask, whilst acknowledging at the outset that such declarations have limited binding force as they serve only as statements of principles and create no rights and obligations, their importance cannot be written off. They, due to the role players and delegates involved in their compilation, give a clear indication of the principles held as necessary for the effective provision of access to justice and as such, have persuasive force in having governments realign their policies and programmes to ensure that the enunciated principles are embraced and adopted. Unresponsive governments have time and again been identified as the biggest challenge to the success of these tools and access to justice in general, despite their well-documented obligations in International instruments. Government obligations in this regard relate to the establishment of sustainable legal aid schemes for the poor and marginalised sections of their citizenry. The Lilongwe Declaration, in particular, raised the bar and focussed the attention of the world on the plight of those living on the fringes of society, the poor and vulnerable. That Declaration was a decisive development for the right to legal aid as we have come to realize. Whilst the Lilongwe Declaration was premised on addressing continental realities that call resonated in a much wider context in the developing world.

Civil society in the developing world and progressively now in the so-called first

world countries, is confronted by a number of fault lines. The most glaring being conflict, poverty and inequality. Legal aid is, by its very nature, concerned with these features of civil society. It is closely related to poverty eradication and human development. There are strong links between establishing democratic governance, reducing poverty and securing legal aid. Democratic governance is undermined where access to justice for citizens (irrespective of gender, race, religion, age, class or creed) is not realized. I say legal aid is linked to poverty reduction since being poor and marginalized means being deprived of choices, opportunities, access to basic resources and a voice in decision-making. Broadly expressed, it should be viewed as consistent within the overall objectives towards the fulfilment of the Millennium Development Goals. Empowering the poor and disadvantaged to seek remedies for injustice, strengthening linkages between formal and informal structures, and countering biases inherent in both systems, can provide access to justice for those who would otherwise be excluded. Expressed differently, lack of legal aid limits the effectiveness of poverty reduction and democratic governance programmes as participation, transparency and accountability are ultimately limited. Clearly therefore legitimate justice systems need legal aid. Without legal aid, a legal system is merely an instrument of control by the ruling elite and will eventually alienate the large majority thus threatening the rule of law and democracy in the final analysis.

Legal aid is a right and governments are obliged to implement sustainable, quality controlled, legal aid programs that deliver legal aid services without discrimination to all people in their jurisdictions, subject only to a transparent and reviewable assessment of need, and with special attention to women and other vulnerable groups such as children, the elderly, persons with disabilities, persons living with HIV/AIDS, the mentally ill, asylum seekers, refugees, internally displaced persons, stateless persons, foreign nationals, prisoners, and other persons deprived of their liberty.

Non-Governmental Organisations have played a leading role in the face of these societal challenges in ensuring access to justice and providing legal aid, though under extremely challenging financial circumstances. The valiant efforts of these organisations, some of whom are represented here, must be saluted. They have done so predominantly relying on donor funds. The developing world has been the recipient of a very sizeable slice of donor funds regarding the provision of access to justice, so much so, that some of our governments have lapsed into treating donor agencies as extensions of their departments. We need to constantly remind our governments of

the obligation to fulfil their responsibilities in this regard – the provision of legal is a responsibility of government within the whole context of democratic governance.

Legal practitioners and others concerned with human rights in the developing world often study legal aid systems in the developed world. We remain inspired by some seemingly successful legal aid schemes in the developed world, especially in European and North America. Most access to justice activists however get discouraged upon their realisation that their governments will not be able to afford to budget between US\$ 30 to US\$ 60 per annum per head of population for legal aid in their lifetimes.

The task ahead of us is without doubt daunting, but to despair at the odds will not aid our case. We need to assist our governments in understanding that legal aid systems must be established and developed as the developing world grows and develops to reach all those who need it. What is important is not to have a full suite of legal aid services tomorrow, but to build on sound foundations in a sustainable manner. If we can achieve this, we will make an important contribution to development as long as our governments do not abdicate their obligation to embrace their responsibility and lead the drive.

Paradoxically, legal aid is most needed in the areas where it is usually least in evidence, namely the rural areas. In urban areas there are many lawyers, and many people will find a way to reach them. In rural areas there are only a few, and most of them are not natural allies of the poor. Clearly therefore legal aid schemes need to be widely distributed. Governments should therefore make appropriate fiscal, budgetary and operational arrangements to cater for sustainable legal aid programmes, making provision for a broad range of legal aid services, the establishment of infrastructure, implementation of an independent, cost-effective, professional and quality driven case management system with the ability to satisfy the needs of the community in the long term, a reality.

Governments should always be mindful of the need for an accessible structure that would facilitate the utilization of legal aid services. One visit to a Justice Centre in South Africa could require the equivalent of a person's daily income. It is therefore not surprising that people may be put off by the cost of accessing legal aid centres and elect not to pursue their rights. People are poorly informed of the legal aid

providers in their area, and, even where there are providers in the area, the lack of resources prevents them from making their available services known.

In my view governments also have an obligation to support active measures to inform people of their rights. I have stated earlier that the right to information and knowledge sharing is an integral component of the right to legal aid. If people are not aware of their rights, they will not be able to enforce them. The result will be that they will not have access to justice. What is required is a variety of forms of public legal education. This ought to start in schools, and continue beyond schools. Non-governmental organisations and the media also have a critical role to play in this regard, but the primary responsibility remains that of government. It is also important not to neglect the key role of elected public representatives at national, provincial and local level. They have a critical role to play in monitoring the impact of legislation, in ensuring that the officials responsible for implementing the legislation do their job properly, and in bringing back to the appropriate legislative body proposals for change which will enable the legislation to achieve its intended purpose. What comes to mind here, is legislation dealing with the establishment of legal aid schemes and structures.

There is further a need for institutions which advise people on how to enforce their rights. In the South African context, these are typically institutions such as community advice centres and advice offices. They provide advice directly to members of the public, informing people of what their rights are, and how they can assert them without litigation. They provide referrals to lawyers where appropriate. In South Africa and elsewhere in the continent, these organisations are run by “paralegals”. This is why public interest law centres can often punch above their weight – the impact of their work can reach beyond the size of the organisations concerned. From a study of the growth of civil rights in the USA, Britain, India and Canada, the conclusion was that the most significant determinant of the development of the “rights revolution” is not the constitutional structure, but rather the existence and growth of what is called “support structures” for legal mobilisation – rights-advocacy organisations and rights-advocacy lawyers.

In the context of developing countries, it can be readily acknowledged that informal and traditional mechanisms of justice are often more accessible to poor and disadvantaged people and may have the potential to provide speedy, affordable and meaningful remedies to the poor and disadvantaged. But they are not always effective

and do not always necessarily result in justice.

There is therefore a need for organisations and institutions which are able to undertake skilled, strategic and focused litigation aimed at achieving an expanded concept of the rights in issue, and of the right of access to those rights - and to defend the rights against retrogressive interpretation or systemic failure to implement them. What comes to mind here are organisations such as the Legal Resources Foundation in Zambia, Legal Resources Centre and Lawyers for Human Rights in South Africa and a number of other organisations in other countries in the developed world.

So far I have spoken of legal aid in general terms as one pillar of access to justice. I have elaborated on legal aid in the provision of court access encompassing representation by lawyers. This is unfortunately the approach whenever the establishment of a legal aid scheme is mooted. This is however, secondary access to justice and as I mentioned earlier, it consumes the bulk of available resources, whereas the majority are assisted by non-lawyers through entry level assistance or primary access to justice.

To be sustainable and cost effective, particularly in a developing world context, a legal aid program must of necessity encompass legal advice and assistance in addition to court centred legal assistance and representation. Access to justice has a much wider meaning than access to litigation. Even the incomplete form of justice that is measured in terms of legal rights and obligations is not delivered solely, through courts or other dispute resolution processes. To perceive justice exclusively in an adversarial legal context if the truth be told is misdirected.

Governments should therefore consider appropriate alternatives to the use of lawyers through the provision of complimentary legal and related services by non-lawyers such as lay advocates, law students, paralegals, legal assistants, and other service providers. Speaking of paralegals, wherever in the developing world poor people have been oppressed by a legal system and have been unable to afford the cost of legal practitioners, paralegals have sprung up. Paralegals have also stepped into the breach in post conflict situations to provide front line legal assistance. In the developing world they are the single biggest service provider on primary access to justice unequalled even by the organized legal professions.

What paralegals have in common with formal legal profession is a practical knowledge of the operation of the law or some area of the law and a willingness to help others in their community. They cannot recite Latin passages from Cicero or Justinian but they can help poor people with their legal problems and they care enough to do so. Very often, their ability to assist members of their community is undermined by the restriction of certain classes of reserved work to the organised legal profession and the lack of access to formal legal services by either the paralegals or their clients.

There is however a clear need for basic regulation of the occupation of paralegals. The other hazard in dealing with community-based paralegals arises from their lack of formal legal qualifications, certification and supervision. A paralegal out of his/her own depth may do irreparable harm to a client's case. I also venture to suggest that limited supervision and professional oversight would be to the public's advantage in developing countries. Legal aid agencies can play a key role in the constructive use and development of community based paralegals but there may be some battles to be fought against those who seek to marginalise them.

Paralegals usually have no formal appearance rights, even in the most minor of courts. Community based paralegals cannot obtain insurance against professional negligence because they are not working under the control and supervision of an admitted attorney. The state is usually unwilling to provide any funding and, given the fierce competition for private funding in the developing world, income, if any, is uncertain.

In the developing world, we need to move away from an 'all or nothing' dichotomy. While it is preferable that the poor, like the rich, should enjoy access to a full range of qualified legal practitioners, resource constraints make this impossible. In the interim, community based paralegals can and have always played a vital role in providing entry-level access to justice or primary access to justice to be more specific. Governments should be encouraged to recognise and regulate paralegals.

A notable example of this type of delivery of legal services at entry level is the Legal Services Counters in The Netherlands. These Centres provide entry level legal services at a fraction of the cost of secondary or court based legal services provided by the Legal Aid Board in the Netherlands. Herein is a lesson that I think



should be embraced namely that legal aid should not only focus on court based access. This can be done mindful of regional and/or local contexts. We heard in our last engagement here from Julie Bishop about the NGO funding model introduced in Australia some years ago, in terms of which Non-Governmental Organisations tender for funds to provide a variety of legal services to indigent persons. Whilst there may be issues related to independence I venture to suggest that current resource realities, in the developing world, dictate that such developments not be rejected outright. Governments must therefore be encouraged to establish cooperative arrangements with a wide range of stakeholders – such as non-governmental organisations, community-based organisations, professional bodies and associations and academic institutions – and ensure effective public participation in the formulation of legal aid policies, programs and legislation.

The core business of any legal aid system is to provide legal assistance including legal representation for the poor. In almost all modern democracies, the right to represent a client for reward before a court is restricted to legal practitioners who have satisfied admission criteria and who practise according to ethical and professional standards enforced by a regulatory body.

In most modern countries the bulk of the prosecutions are conducted by civil servants working under the control of an Attorney General or similar senior officer of the state. Few would question that the most cost effective way to handle the bulk of prosecutions is by salaried lawyers in the employ of the state.

It is surprising therefore, that outside the USA borders, and South Africa there is still a debate about employing full-time salaried legal professionals to handle the bulk of legal aid work. Sound business principles for any enterprise dealing primarily in services demand that the enterprise should not contract out of its core business. To do otherwise, when the core business of an enterprise is to provide legal aid, is to reduce the legal aid agency to a mere conduit or middleman whose “value add”, if any, is limited.

However, while the legal profession has great men and women all over the world who strive for “...justice for all...” for the whole of their professional lives, the legal profession also has its share of less noble practitioners who perceive the legal aid system as a cow waiting to be milked. Some of the milkmen dominate the regulatory

bodies and try to demand that the legal aid agency should only/mostly instruct private practitioners.

The usual stratagem is to insist that salaried legal aid practitioners cannot be admitted to the profession and/or the regulatory body. Obstacles to admission to the legal profession and to professional practice are placed in the path of those who seek careers as salaried legal aid practitioners. Surrendering to the milkmen is to condemn any nascent legal aid system in a developing country to unsustainable costs.

I again reiterate that the lesson for legal aid in developing countries is that statutory intervention may be necessary to prevent vested interests in the profession from marginalising those who choose to pursue a career as salaried legal aid practitioners. This will enhance the right to legal aid in a sustainable manner.

A discussion on the organised legal professions should also include the attitudes of the profession to paralegals. The professions have often opposed any recognition of, or right of audience for, paralegals. This has been done under the pretext of maintaining standards in the legal profession for the protection of the public. Intentionally or otherwise, the result has been to deny access to the legal profession and in the process to restrict access to justice to the rich and advantaged.

With respect to the organised legal profession, I suggest that its future lies not in reserved work and restricted access to the profession but in providing:

- Greater variety of value-adding services
- Better quality services
- More cost effective services

All of this needs to be supported by increased participation by lawyers in private practice, in promoting access to justice thus enhancing the right to legal aid. In most countries, the major legal resource lies in the private profession. Access to justice will not be achieved as long as it remains the concern of a marginal part of the profession. If the private profession is thoughtful of access to justice – which it should be, if only in its self-interest, let alone in the underlying professed values of the profession –

then it ought to take measures to promote access to justice. Lawyers are able to assist in many of the activities which I have described. They can do so through representing individual clients by means of pro bono work, reduced fee arrangements, and contingency fee arrangements. They can strengthen the various institutions, such as Legal Aid Institutions and Legal NGOs, by providing them with advice, support and guidance.

There is an old Roman times tradition of legal practitioners reducing or waiving their fees to assist the poor. The pro bono tradition needs to be harnessed and maximized in developing countries. To rely on state funded legal aid alone, in a developing country, is to place a financial burden on the state that demands more political will than our governments are able to muster.

It must be recognized, in fact emphasised, that the legal profession is a profession and not a business; that its members have a duty to temper their pursuit of individual self-interest; and that they have a collective obligation to do their best to make legal services available to indigent people. Collectively, this is a matter of duty, not generosity. Naturally, however, within the profession there are those who take on more than their fair share of their profession's responsibility, and their individual generosity is to be admired

I pause here to reflect on our meeting 9 years ago. Our gathering then as it is today, is the quest to find ways of enhancing access to justice thus promoting the right to legal aid. Our gathering in 2005 was just after the adoption of the Lilongwe Declaration in 2004 as I have pointed out earlier. We now have the UN Principles & Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted two years ago by the United Nations General Assembly. That the international community has been able to reach consensus over time in respect of a wide range of issues regarding the right to legal aid, is nothing short of impressive, given both the divisions and the diversity that characterises that community and often expressed in differences in culture, religion, location and worldview. Civil and political rights, socio-economic rights, the right to a clean and healthy environment, women's rights, children's rights, the rights of people with disabilities, the rights of detained persons as well as institutional arrangements relating to the judiciary, civil society and democratic processes and norms have all enjoyed attention and found expression. This in my viewpoint is a decisive development in enhancing the right to legal aid. This is a

global instrument that advances the right to legal in many ways. To me, the fact that the United Nations General Assembly has embraced the Principles and Guidelines on Access to legal aid in Criminal Justice Systems suggests that the intended destination cannot remain elusive for long, and this conference must ensure that the necessary mind shifts take place.

## **UN Principles and Guidelines on Access to legal aid in Criminal Justice Systems**

The Principles deal with the issues I have outlined above, but they affirm in the strongest of terms, that access to legal aid is a fundamental human right and an essential element of a functional criminal justice system, that it is a foundation for the enjoyment of other rights, especially the right to be presumed innocent until found guilty by a competent court as well as the right to a fair trial. This is a critical safeguard that ensures fundamental fairness and public trust in the criminal justice process. Ultimately it ensures adherence to the rule of law which is the cornerstone of any democracy. The UN Principles and Guidelines are cognisant of other Global and Regional instruments which articulate the universal truth that access to legal aid is a necessary guarantor to meaningful access to justice by the poor and vulnerable.

The UN Principles and Guidelines provide a framework which guides member states on how legal aid systems in criminal justice systems should be incorporated into their domestic legal framework. They are drawn from international standards and recognized good practices, which are aimed at providing guidance to countries on the fundamental principles on which a legal aid system should be based. They also outline the specific elements required for an effective and sustainable national legal aid system, in order to strengthen access to legal aid.

The UN Principles and Guidelines express a developing international consensus on the importance of effective legal aid systems for the indigent when in conflict with the law. They provide a model for countries still at the early stages of developing public legal aid schemes or where such systems don't exist. The UN Principles and Guidelines reinforce the notion that legal aid providers must have the resources and independence to provide effective legal aid to all persons accused of crimes, regardless of economic or social status.

The UN Principles and Guidelines recognize that to bolster public trust in the criminal justice system and fundamental fairness, all states should guarantee the right to legal aid in the national systems at the highest possible level including, where applicable in the constitution, to establish the right to a fair trial. The UN Principles and Guidelines are based on the recognition that States should, where appropriate, undertake a series of measures that, even if not strictly related to legal aid, can maximize the positive impact that the establishment and/or reinforcement of a properly working legal aid system may have on a proper functioning criminal justice system and on making access to justice available to all.

In order to ensure the effective roll out of legal aid, the UN Principles have been paired with Guidelines which are designed to educate the public including isolated and marginalised groups, suspects, arrested and detained accused of their right to legal aid. Of vital importance is the education of police officers, prosecutors and judicial officers to inform unrepresented persons, whether imprisoned or detained, of their right to legal aid and other procedural safeguards. This will guarantee the right to legal aid at an early stage of the criminal justice process.

It provides a useful framework for policymakers and practitioners to develop context-specific approaches to institutional legal aid reforms and to ensure more effective international assistance programming. The UN Principles and Guidelines will lead to more rational and effective decision-making and increase accountability and respect for the rule of law.

For the first time, states are given clear guidance on how to fulfil their obligations to provide legal aid for suspects, defendants, witnesses and victims involved in the criminal justice system, and minimum standards are set for implementation. Adopting and implementing these measures will ensure that people, in all countries, will be able to obtain legal aid, advice and assistance in the interests of justice.

The guidelines make it clear that legal aid includes information and education, so that all members of the community, not only those facing criminal proceedings, can be made aware of their rights and have access thereto. They also recognise the particular difficulties faced by women in seeking access to justice and the need for a gender perspective to be applied to the provision of legal aid.

I therefore encourage all and sundry, to heed the Principles and ensure that they usher a new world order in the realm of access to justice and in enhancing the right to legal aid. I also encourage all in attendance to engage in programmes aimed at publishing and perpetuating the aims of the UN principles.

We held an International Conference in South Africa in June this year centred on the Principles. At the conclusion of that conference we adopted the so-called Johannesburg Declaration. The message of the Declaration is simple, yet poignant and addressed to States, Legal Aid Providers and the International community. I have taken the liberty to attach a copy thereof.

I conclude by sounding a cautionary note. The modern human rights movement has grown exponentially in the past 65 years since the adoption of the Universal Declaration of Human Rights in Paris in December 1948. There have been conventions, declarations, norms, guidelines and statements of intent covering virtually every aspect of human activity. Of course the same commitment to norm-making has hardly been evident in giving effect to the obligations and the spirit of the many agreements reached. It is hardly surprising that attempts to advance greater equality, reduce poverty and create a world where the potential of each person can be realised still remain dangerously unfulfilled in many parts of the world. Under these circumstances, the obvious question that emerges is, why is there a massive disjuncture between the commitments in progressive and comprehensive human rights charters (international, regional and domestic) and their fulfilment? We should therefore work relentlessly to ensure that the resolutions and action plans we include in the Declarations are implemented.

The Task ahead is formidable but not insurmountable. It is a task in which we must succeed. If not the observation of Professor Thomas Pogge in his book – “Freedom from Poverty as a Human Right” may well be rendered true. He noted - ‘When they are vague and fuzzy, proclamations of human rights become a substitute for real progress. Great battles are fought and glorious victories won over rhetorical details that in the end make precious little difference in the lives of ordinary people’

# The Johannesburg Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

Johannesburg, South Africa

June 24-26, 2014

We, the participants of the *International Conference on Access To Legal Aid In Criminal Justice Systems*, assembled on 24-26 June 2014 in Johannesburg, South Africa to discuss effective strategies to improve access to justice in criminal justice systems consistent with the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (UN Principles and Guidelines)* unanimously adopted by the General Assembly in its resolution 67/187 in December of 2012.

The Conference brought together over 250 participants from 67 countries who are legal aid policy makers and practitioners including Ministries of Justice, the Judiciary, bar associations, as well as legal aid lawyers, community based paralegals, civil society members, and experts to discuss common challenges in providing access to effective legal aid services in criminal justice systems and to propose practical and achievable solutions.

The three days of deliberations produced this declaration, which was adopted at the closure of the Conference, with the request that it be publicised widely to legal aid networks and forwarded to national governments, the UN Human Rights Council, regional commissions, the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice to be held in Doha in April, 2015, and shared in discussions on the post-2015 sustainable development agenda on eradicating extreme poverty and inequality worldwide.

Without access to effective legal representation millions of poor, vulnerable,

and marginalised persons face the risk of arbitrary, extended, or illegal pretrial detention, as well as torture, coerced confessions, wrongful convictions, social stigma, detrimental impacts on health and livelihood and other abuses. In this regard, these groups also have many unmet legal needs in civil matters, which need to be addressed. We acknowledge that in post-conflict and developing countries people who are provided free legal aid and representation are less apt to resort to non-lawful self-help alternatives and thereby, avoid situations which erode security and lead to conflict.

Moreover, the cost of not providing free legal assistance supersedes the cost of its provision and has significant financial ramifications for individual pre-trial detainees, their households, and communities - and for states processing large numbers of pre-trial detainees. Legal aid and early assistance schemes reduce excessive and arbitrary pre-trial detention, improve the administration of justice, increase public trust in justice and can boost socio-economic development at the family and community level.

We reaffirm that 'legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law and that it is a foundation for the enjoyment of other rights, including the right to a fair trial...' and should be guaranteed by the State as set forth in the *UN Principles and Guidelines*.

We are convinced that speedy and effective implementation of the UN Principles and Guidelines is crucial to the improvement of the functioning of criminal justice systems worldwide as violations of human and legal rights of those caught in criminal justice systems have reached a grave scale in most parts of the world.

### **In line with the recommendations of the participants attending the Conference we resolve the following:**

- I. We call upon all States*** to proclaim and demonstrate political will and commitment to achieve the aspirations and objectives as set out in this declaration and fully implement the provisions of the UN Principles and Guidelines, as well as the related provisions under other relevant international and regional instruments. I. For topic speeches: The host is given 5 minutes whereas the speaker is given 35 minutes to speak.



**II. We call upon all legal aid service providers** to continue providing meaningful legal aid services for people who would otherwise not be able to access justice by properly monitoring and evaluating the quality of all services. Furthermore, we encourage legal aid systems to utilise lawyers and also paralegals, civil society organisations, university legal aid clinics and other services and develop partnerships with each other to facilitate access to legal aid services for poor, vulnerable and marginalised groups.

**III. We call upon the international community**, including regional cooperation mechanisms, international and regional civil society networks and organisations, international donor organisations, bi-lateral agencies and the UN system to support implementation of the UN Principles and Guidelines by the means of financial and technical assistance, in particular in developing and post-conflict countries, in order to build their capacity to provide and ensure access to effective legal aid in all matters and in all its forms.

### **Action Points:**

- A. Support the application of existing international standards and best practices, including through the provision of technical support to develop systems for legal aid delivery and prioritisation of national budgets for legal aid programmes, with mechanisms to assess and evaluate the effectiveness of these standards on a regular basis.
- B. Engage in international forums to ensure that the recommendations from this meeting are taken forward and to advocate for the inclusion of equal access to legal aid as part of the international development and crime prevention agendas in a concrete and measurable manner.
- C. Establish international and regional cooperation mechanisms among legal aid authorities and defence services, including for the purpose of international assistance and cooperation in the representation of persons detained, arrested, suspected of, or charged with a criminal offense or imprisoned.
- D. We encourage the Doha Congress delegates in 2015 to recognize the

importance of effective application of the UN Principles and Guidelines in its final declaration and to recommend the development of a mechanism on international cooperation among defence services or address the needs of the defence in the review process of existing mechanisms.

- E. In line with UN GA resolution 67/187 operative paragraphs 6-9, we ask the UN to continue to report on the implementation of the UN Principles and Guidelines and further request the Commission on Crime Prevention and Criminal Justice to consider the establishment of a mechanism for continuous assessment of the implementation of the UN Principles and Guidelines and the collection of relevant statistical information.
- F. We ask States to collect on a continuous basis relevant statistics and information concerning the provisions of legal assistance in criminal matters and provide that information to the UN system. The data collected should be instrumental in targeting policy and budget priorities, tailoring technical assistance and ensuring accountability for the implementation of the UN Principles and Guidelines and promoting equal access to legal aid services.
- G. We call on States to include the rule of law and access to justice, including equal access to legal aid as a target of the post 2015 development agenda.

# **National (Reginal) Reports I**

**Taiwan, Australia, Canada,  
United Kingdom, Hong Kong, Indonesia, Japan**

**Moderator: Ms. Michele McCreddie**  
General Manager, Legal Aid Services, Ministry of Justice,  
New Zealand



## 2014 International Forum on Legal Aid



**National Report**

**Taiwan**

**Speaker: Hsing-ling Hsieh**

Deputy Secretary-General of the Legal Aid Foundation, Taiwan

## National Report

### 1. Introduction

Along with the societies in Taiwan have developed in the stages of democratization and legalization, the demand for the access to justice has increased accordingly. In 1998, groups from private sector, such as Judicial Reform Foundation, Taipei Bar Association, and Taiwan Association for Human Rights, launched a legislative movement for the establishment of Legal Aid Foundation. Under the help of the Judicial Yuan, the Legislative Yuan passed the “Legal Aids Act,” which was promulgated by the President in January 2004. The Judicial Yuan then contributed and established the Legal Aid Foundation (hereinafter referred to as LAF) in July of 2004. Meanwhile, five branch offices were set up to start taking applications for legal aids.

LAF has entered its 10<sup>th</sup> year by 2014. Comparing with its initial stage, as of 2004, which had only five branch offices, LAF has now expanded to have 21 branch offices. As of 2014, LAF’s organizational form, supervisory organ, status of legal aid services, criteria, service types, financial eligibility for legal aid, review mechanism (responsible for the decision making on applications for legal aid), and job assignment for private lawyers are introduced below. At the end, this report states LAF’s current challenges, and actions in plan to respond to them.

### 2. Country Information

Country	Legal Aid Organization Name	Date of Establishment	Poverty line and number of population below the line	Total number of Practising Lawyers and number of private lawyers (staff-lawyers and contracted)
Taiwan	Legal Aid Foundation	July 1 <sup>st</sup> , 2004	The poverty line changed to NT10,869 in 2014 <sup>1</sup> , approx. 700,000 persons	8,110 lawyers, as of August 31st 2014, 2,928 private lawyers and 14 staff-lawyers.
Population	GDP	Total No. of Applications Received in the Past Year	Total No. of Applications Approved in the Past Year	Total No. of Applications Refused in the Past Year
23,373,517 persons, as of December 31 <sup>st</sup> , 2013 <sup>2</sup>	2013 average per person, approximately USD21,283 <sup>3</sup> .	Total 136,065 cases in 2013 <sup>4</sup> (80,670 legal counseling cases)	Total 38,090 cases in 2013 <sup>5</sup>	Total 14,212 cases in 2013 <sup>6</sup>

Comments

1: Data from Ministry of Health and Welfare.

2: Data from Directorate General of Budget, Accounting and Statistics, Executive Yuan

3: Data from Directorate General of Budget, Accounting and Statistics, Executive Yuan

4: This is the total number of cases applied to LAF, excluding the labor projects and indigenous people projects commissioned from the Ministry of Labor and the Council of Indigenous People to LAF. This two projects received 2,110 applicants and 606 applications in 2013 respectively.

5: LAF granted aid to 36,225 cases with the remaining being commissioned cases.

6: LAF granted turned down aid to 13,361 cases with the remaining being commissioned cases.

### **3. Nature of Organization and Supervision**

#### **(1) Nature of Organization**

LAF is an organization in form of a foundation established by donations from the Judicial Yuan in July of 2004 under the Legal Aids Act promulgated in January 2004. The nature of LAF is a private organization founded by the government. Since the judicial system of Taiwan adopted a private-public dual system, of which the dispute resolution mechanism is designed based on both the relationships of public law and private law, which makes LAF unique. Hence, the premise for choosing a dispute resolution mechanism is to determine the nature of the dispute belongs to public-law relationship or private-law relationship. LAF, as a foundation, is supported by funds donated by the government with annual budgeting to run business. The nature of LAF, whether it is a public organization or private organization, will affect the nature of LAF's decision in granting/rejecting legal aids. If LAF is defined as a public organization, then its subsequent remedies have to follow relevant provisions specified in the Administrative Remedial Law. If LAF is defined as a private organization, further study is required to determine if a decision made for granting or rejecting an application is an administrative entrustment by the government, then the subsequent remedial procedures can be determined to follow either administrative proceedings or civil proceedings. The answer to such disputed-questions cannot be found in the provisions of Legal Aids Act. Although the Act specifies that LAF Reconsideration Committee are responsible to review all decisions made by Examining Committee. If an applicant refused to accept Examining Committee' decision, he/she can apply to Reconsideration Committee for reconsideration. The applicant cannot re-appeal against the decision of the reconsideration. However, it still needs further discussion as regards to if the provisions prohibit the applicant to initiate legal proceedings. Currently some applicants, who refused to accept the decisions made by Reconsideration Committee, have brought suits to either the Civil Court or Administrative Court. By now, the courts have ruled that the decision made by Reconsideration Committee cannot be challenged because this is a special provision specified in the Legal Aids Act. The dispute itself is an incident of public law or an incident of private law, has not been discoursed upon. Therefore, the nature of LAF is still undefined.

#### **(2) Supervision**

The supervisory mechanisms over LAF include, in addition to internal Board

of Supervisors, the Supervision and Management Committee of the competent authorities, the Judicial Yuan, as the responsible agency to supervise LAF. Therefore, LAF's budget is subsidized from annual budgeting by the Judicial Yuan, and then should be subject to the review by the Legislative Yuan. Moreover, various private NGO groups also form the Legal Aid Protection Alliance to play the role of supervision and balancing force in private sector.

- I. LAF Board of Supervisors: The President of the Judicial Yuan appoints five supervisors for LAF, unpaid positions with a 3-year term, consisting of representatives from the Executive Yuan, Judicial Yuan, a lawyer recommended by national and regional bar association, a specialist with background in accounting or other related professional knowledge, and a person of social justice. The Board forms the internal supervision mechanism of LAF.
- II. Administrative Supervision: The Judicial Yuan, the competent authority of LAF, established an additional Supervision and Management Committee (hereinafter referred to as SMC) as the responsible agency in supervising LAF. The Committee is comprised of nine members appointed by the President of Judicial Yuan, including the Deputy Secretary-General of Judicial Yuan, heads of relevant offices, external experts, and scholars. The Deputy Secretary-General serves as Chairperson, and currently, there are four internal committee members and five external committee members. SMC, with the scope of supervision covering fields of finance, business, and annual major measures of LAF, reviews monthly each resolution made by the Board of Directors of LAF (excluding personnel hiring), for which the outside world doubts the overlapping of functions between the Board of Directors and SMC. Moreover, because SMC also has the authority to review not only the legitimacy of BOD's resolutions but also the eligibility of them, SMC's reasonable scope of supervision becomes a controversy.
- III. Parliamentary Supervision: The budget of LAF mainly comes from the subsidies of the Judicial Yuan through annual budgeting. According to relevant laws of budgeting, both the Chairperson and the Secretary General are required to present in the Legislative Yuan to be addressed inquiries. Therefore, LAF can receive opinions from elected representatives representing a variety



of interests, which may enrich the depth and breadth of LAF's services. In addition, because legislators' opinions may differ from those of the Judicial Yuan, the discrepancy of opinion between administrative and parliamentary supervision could be balanced.

IV. Supervision by Legal Aid Protection Alliance: The private NGO played a significant role in the legislation of Legal Aids Act, and have a close relationship with and care highly about the operation of LAF since its establishment. Moreover, the Board of the Directors of LAF undergoes reorganization in every three years, which affects the direction and implementation of LAF's policies. Hence, the relevant private NGOs formed the Legal Aid Protection Alliance to continue supervise the routine operations and the reorganization of LAF's Board of Directors.

## **4. Organizational Structure and Business Overview**

### **(1) Organizational Structure**

The highest decision-making body of LAF is the Board of the Directors, under which, there are one Secretary-General, one Deputy Secretary-general, in addition to 21 branch offices and six specialist committees. The Secretary-General reports to the Chairperson of Board of Directors and is responsible for commanding and supervising the staff at all levels of the Foundation to implement the affairs at the Foundation and direct branch offices to handle branch affairs. Each office has its Examining Committee responsible for reviewing applications for legal aid, and LAF set up a Reconsideration Committee at Foundation's headquarters with responsibilities for reviewing the cases that applicants have refused to accept the decisions made by Examining Committee of a branch office. As of August 31, 2014, LAF has 227 full-time staff, 15 temporary personnel, and 14 staff-lawyers at both the Foundation's headquarters and branch offices.

#### **I. Board of the Directors**

The Board of the Directors is the highest decision-making body of LAF, comprised of 13 unpaid directors appointed by the President of Judicial Yuan, serving a term of 3 years, including 5 representatives of government agencies (in particular, 2 representatives of Judicial Yuan, and 1 representative from

the Ministry of Justice, and Ministry of National Defense, and Ministry of the Interior, respectively), 8 representatives from private-sector (4 lawyer, 2 experts/scholars, and 1 representative of the disadvantaged group and 1 indigenous representative). The 13 directors elect one director as the President to represent the Foundation. The first three presidents were scholars, while the current fourth president is a lawyer.

## II. Secretary-General and Deputy Secretary-General

The Board of the Directors appoints one Secretary-General and one Deputy Secretary-General responsible for commanding and supervising the staff at all levels of the Foundation to implement the Foundation's policies and direct branch offices to handle branch affairs. Under Secretary-General and Deputy Secretary-General, there are six departments, including Department of Legal Affairs, Department of General Affairs, Department of Business, Department of Promotion cum International Affairs, Department of Administrative Management (in control of General Affairs, Human Resource, Information Management, Document Control, and Cashier), Department of Accounting, and Office of Secretary, as well as a Northern Center for staff-lawyers.

## III. 21 Branch Offices

LAF has set up 21 branch offices, which are located according to the areas of jurisdiction of district courts, to review and execute directly individual legal aid applications, to handle the payment or return of relevant lawyers' fees and litigation expenses, and to share or burden jobs of review and execution. The Board of Directors appoints an unpaid Director, with a term of three years, for each branch office by inviting a local lawyer or expert or scholar of zeal and good reputation. Each branch office has a certified lawyer as full-time executive secretary in charge of the operations of a branch's regular affairs.

## IV. Examining Committee

Each LAF branch office's Examining Committee consists of unpaid Examining Committee members, each with a 3-year term. Each branch office director elects judges, prosecutors, military judges, lawyers, or other scholars/experts with professional legal knowledge, and submits to LAF for appointment. By the end of June, 2014, the number of Examining Committee members has reached 1,340. The responsibilities of Examining Committee are as follows:

- A. Granting/rejecting, revoking, and terminating legal aid incidents.
- B. Pre-paying, paying, reducing, or cancelling lawyer's fees and other necessary expenses.
- C. Applicant's share of lawyer fees and other expenses.
- D. Mediating and preparing mediation articles for disputes between the recipients and legal aid provider.

V. Reconsideration Committee

An applicant who refused to accept the decision made by Examining Committee may apply for Reconsideration, for which LAF set up, at headquarters, a Reconsideration Committee to accept and hear reconsideration cases. The Reconsideration Committee consists of unpaid members including senior judges, prosecutors, military judges, lawyers, or other experts/scholars with professional legal knowledge, for a term of three year. As of the end of June, 2014, the number of Reconsideration Committee members reached 233.

(2) Business Overview

- I. The total number of applications for legal aid in 2013 reached 136,065 and in particular, the applications for legal counseling services were 80,670 cases. The types of application and cases are shown below in Table 1.
- II. The types of legal aid cases can be divided into "general cases" and "special projects."
  - i. "General cases" refer to the cases which the applicants apply for private lawyers' "representation and defense," "mediation or settlement" or "legal document drafting," including civil, criminal, family, and administrative cases. The number of general cases granted with legal aid is 28,584.
  - ii. "Special projects" are divided into "Law Enforcement Project," "Consumer Debt Clearance Project," "Expansion of Legal Counseling Project," and "Law Enforcement Project Involving Indigenous," etc. The number of project-based cases that received legal aid is 70,120. In particular, 1,852 cases were law enforcement cases, 4,495 cases were consumer debts clearance cases (including 2,727 cases for legal counseling in consumer debt clearance), 59,752 cases for expansion of legal counseling, and 4,021

cases for law enforcement project involving indigenous.

- iii. According to Article 2 of “Staff-Lawyer Assignment Guidelines,” the quantity assigned by LAF to staff-lawyers should be within 20% of the total number of legal aid cases.

III. Analysis of 2013 cases of legal aid by type: “Representation and defense” is the majority of general legal aid cases and accounts for 87.78% of the total cases of legal aids. The types of legal aid cases are shown in details in the following Table 2-4.

Table 1: Total Legal Aid Application Statistics							
Total (excluding commissioned cases) (a=b+c+d+e+f)	LAF Cases					Commissioned Cases	
	General Cases (b)	Project-Based Cases				Labor Litigation Legal Aid Project	Indigenous People Legal Aid Project
		Law Enforcement Cases (c)	Consumer Debt Clearance (including legal counseling)(d)	Expansion of Legal Counseling Cases (e)	Law Enforcement Cases for Indigenous		
(f)			5,754	80,670	4,025	2,110	606
136,065	43,277	2,339	5,754	80,670	4,025	2,110	606

Table 2: Statistics of Total Legal Aid Cases					
Total No. of Legal Aid Cases (a=b+c+d+e+f)	No. of General Cases (b)	Project-Based Cases			
		No. of Law Enforcement Cases (c)	No. of onsumer Debt Clearance Cases (including insolvency legal counseling) (d)	No. of Expansion of Legal Counseling Cases (e)	No. of Law Enforcement Cases for Indigenous (f)
98,704	28,584	1,852	4,495	59,752	4,021

Table 3: (General Cases) Statistics of Types of Legal Aid Granted				
Type	Representation and Defense	Legal Document Drafting	Mediation or Settlement	Research Legal Consulting
No. of Cases	25,092	3,325	167	0
Ratio	87.78%	11.63%	0.58%	0.00%

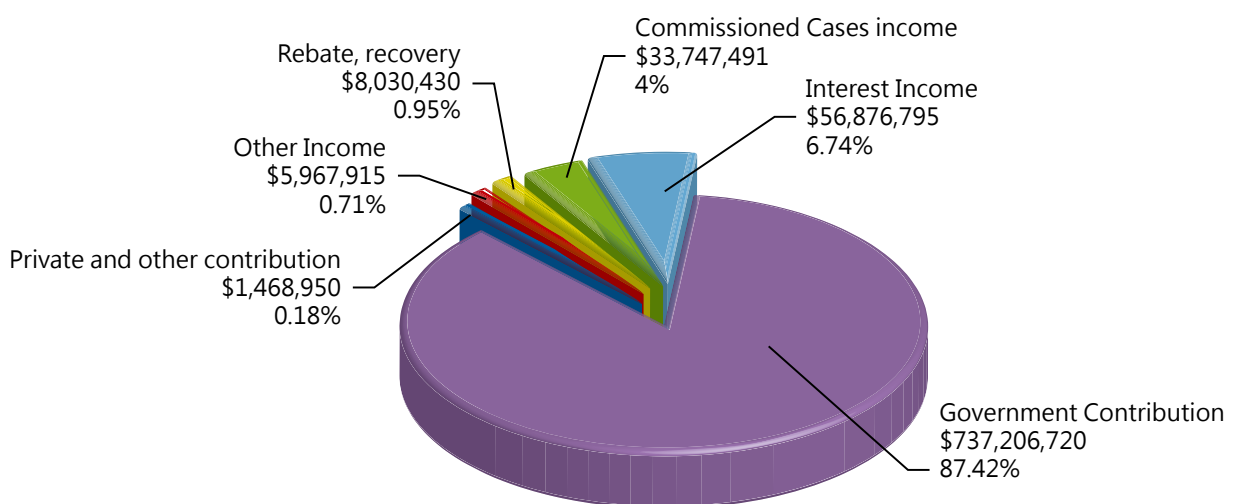
Note: Research Legal Consulting cases refer to the legal aid services involving private lawyers' counseling and drafting legal counseling opinions after being approved by review, which differs from the cases giving oral consultation on site.

Types	Applications		Cases Granted Legal Aid	
	No. of Cases	Ratio	No. of Cases	Ratio
Criminal	24,110	55.71%	16,408	57.40%
Civil	10,587	24.46%	6,378	22.31%
Family	7,941	18.35%	5,572	19.49%
Administrative	537	1.24%	226	0.79%
Blank	102	0.24%	-	0.00%
Total	43,277	100.00%	28,584	100.00%

## 5. Financial Status

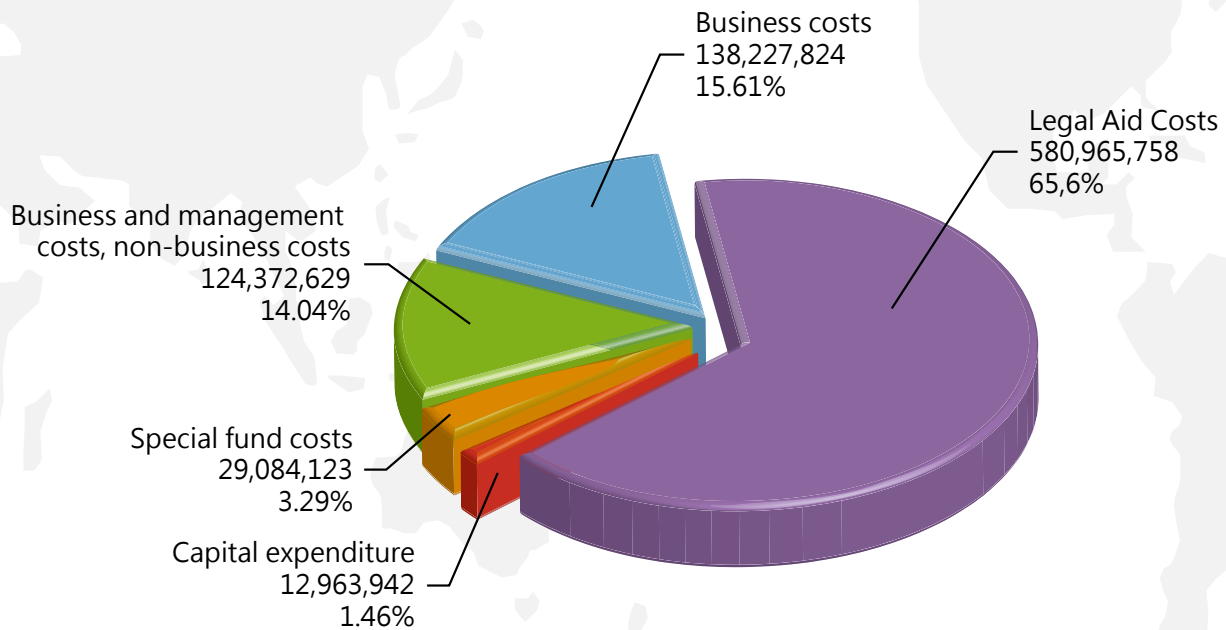
### (1) Funding

According to Article 6 of Legal Aids Act, Judicial Yuan, the competent authority of LAF, shall prepare annual donation budget. As of 2013, the total funds revenue for LAF was NTD 843,298,301 (equivalent to USD 28,000,000). The income items are shown as follows:



2013 Total LAF Funds Revenue Analysis

**(2) Total Expenditure:** 2013 total expenditure for LAF was NTD885,614,276. The details are shown in the following diagram.



2013 Total LAF Expenditure Analysis

**(3) Funding had been suspended by Legislative Yuan without substantial reduction:**

The average funds of LAF's is approximately between USD 20,000,000 and USD 25,000,000. Generally, the funding is based on the estimation of the number of cases for legal aid the year, with an exception for one year when Legislative Yuan was dissatisfied with LAG's performance on private contributions and decided to reduce NTD 50,000,000. The budget remains relatively steady without substantial reduction for years, in spite of some increase and decrease in the past budgets.

**(4) Are there caps on annual spending?**

The annual funding for LAF is estimated based on the number of legal aid cases for the year. However, LAF carries out legal aid services by following the standards provided by the Legal Aids Act and its authorization, LAF in general is not constrained by the annual funding of the year. Moreover, the payment for private lawyers is divided into pre-paid fees and case-closing fees. Therefore, there are case-closing

fees of old cases and pre-paid fees for new cases in the same funding year. In the event of funding tightening, LAF will adjust the time to pay fees to the private lawyers and will not immediately suspend the accepting process of legal aid applications. By now, there is no any suspension of legal aid applications, in part or in whole, due to insufficient funding.

## **6. Performance assessment and branch offices performance**

LAF has set up an assessment mechanism to evaluate the performance of the headquarters and the branch offices. Prior to 2009, the items for performance evaluation for the headquarters include “completing annual plan, counseling to branch nationwide, project planning and innovation, and others.” The evaluation procedure starts from the headquarters submits the annual work report to the Board of the Directors. The Board of the Directors determines the annual performance of the headquarters. The performance evaluation items for branch offices include “number of cases, service quality, and implementing behavior, function, and others.” The evaluation procedure starts from the headquarters sending assigned stall to branch offices to conduct business evaluation, and then submit evaluation reports to the Board of the Directors for determining their annual performance assessment.

However, due to the lack of explicit connection between the assessment standards of the aforementioned evaluation and the long-term objectives of LAF, the lack of objective and quantitative standards for the assessment items, and the lake of performance index that could motivate the colleagues. LAF has introduced KPI since 2009, configuring scores of quantitative performance measurement indices such as the number of cases and service satisfaction, etc., then, evaluated each branch offices’ performance based on their achievements in each performance indices. This assessment system has been operated for 3 years before entering general review. LAF discovered that the KPI assessment is likely to encounter deviation, difficulty of configuring assessment indices, inability to highlight a branch’s characteristics, time-consuming in the process of assessment and calculation, non-conformance to costs and assessment standards involving in individual cases. As a result, the system did not have achieved expected effects. Hence, LAF, at the beginning of 2014, revised the performance assessment system again and submitted a new assessment plan.

According to the revised assessment system, the performance evaluation items

for the headquarters include “Foundation’s planning and execution, branch offices management and supervision, and others.” Similarly, the headquarters submits annual work outcome report to Secretary-General for preliminary evaluation, and then the President submits the results to the Board of Directors for resolution. Branch offices’ performance evaluation items include “service quality, execution of policy and business, and others.” The evaluation method includes document review, on-site interview, and in-field sampling (The three offshore islands, including Penghu, Kinmen, Matsu, will be primarily based on document review only). During the assessment period, the Secretary-General assigns responsibilities to the Deputy Secretary-General for establishing an assessment team to conduct in-field visit, during the assessment period, records survey, and personnel interview to understand the annual performance and business outcomes of each branch office. Through a comprehensive review on each branch’s service outcomes, the standards for benchmarks learning among branch offices were thereby established and the effects of motivation between colleagues and of encouraging late comers were achieved.

## **7. Legal aid service models and fees**

### **(1) Sources of private lawyers (by type)**

There are two types of lawyers undertaking LAF legal aid cases. One is staff lawyers (or staff-lawyers) hired by LAF, and the other type is private lawyers. The budget is designed for containing 18 staff lawyers and by August 2014 LAF has currently appointed 14 lawyers. There are 2,928 private lawyers as of August 2014 (accounted for 35% of the number of lawyers in Taiwan). Staff lawyers are responsible for handling major public welfare cases, such as major environmental pollution proceedings (RCA case) and the state compensation cases (the wiped-out of Xiaolin Village in Morakot Typhoon), while other remaining legal aid cases are all handed by private lawyers. Statistics show that among the cases that LAF granted legal aid, the ratio of cases undertaken by staff lawyers was only 1.6%, between January and September in 2014, 1.5% in 2013, and 1.7% in 2012. Private lawyers still play the major role in handling LAF legal aid cases.

### **(2) Eligibility for a lawyer to join LAF as a private lawyer.**

In general, the lawyer must practice legal business for at least 2 years before



joining the LAF. This LAF's requirement for private lawyers to be equipped with basic litigation experience is in order to assure the quality of legal aid cases.

A lawyer with less than 2 years of practice can prepare 15 proceedings memorials that he/she has actually undertaken and submit to LAF for review the eligibility before joining LAF, to become a private lawyer.

Additionally, private lawyers have low intention to process insolvency cases and law enforcement investigation cases, since these cases are usually held at midnight or early in the morning. From time to time, LAF relaxes eligibility for lawyers with less than 2 years of practice upon meeting certain conditions to apply for and join the aforementioned types of private lawyers (please refer to the article in Appendix 3).

### **(3) Assignment mechanism**

A qualified lawyer is required to join the regional bar association and register at a branch office to become a legal aid lawyer at LAF. Each branch will take turn to assign a case to a private lawyer. In general, each private lawyer will be able to handle at most 24 legal aid cases each year.

### **(4) Lawyer's fees**

The fee for LAF private lawyer is relatively lower than that of the market fee rate, approximately 1/3 to 1/2 of the average market fees. For this reason, the circle of lawyers has constantly demanded for reasonably higher fees. It is believed that excessively low fees will affect the service quality of private lawyers. Nonetheless, LAF's budget is constrained by the Judicial Yuan and an increase of fees will require the consent of the Judicial Yuan. Although LAF has currently passed new payment regulations and slightly increased the fees for the lawyers involved in legal aid cases with considerably low fees. The Judicial Yuan agreed in general. Overall, however, the fees still far below the market level.

**(5) For more information about the supervision system and issues related to LAF private lawyers, please refer to the paper in Appendix 3.**

## **8. Types of legal aid services**

### **(1) Service types**

As for the types of legal aid cases, LAF, in principle, does not provide legal aid to specific items (mainly for commercial activities and objects of action with excessively low values, which is not worth suing). (However, with the consent of the Director of the branch office, legal aid may be provided, whenever necessary). LAF provides legal aid for applicants in other cases, including civil, criminal, family, and administrative. LAF offers legal aid for various cases with primary services, including legal counseling, representation and defense, legal document drafting, mediation and settlement. For more information about the analysis of case types, please refer to point 4 (2) of this report.

### **(2) Content of legal aid**

Upon approval of an application, the branch office assigns a private lawyer to take over the case. LAF is not only responsible for lawyer fees but also the necessary expenses for ongoing cases, which in general will to be paid. As for the cases that require to pay judicature fees, the court should temporarily exempt payment obligations in general, according to the provisions set forth in Legal Aids Act. If the Examining Committee of a branch office deems that a legal aid incident is likely to win, and is necessary to petition for a temporary restraining order, LAF should also present a warranty to replace the security deposit that a recipient of legal aid should pay.

### **(3) LAF's resource allocation**

For more information about issues related to LAF resource allocation, please refer to the paper in Appendix 2.

## **9. Application procedures and criteria for granting aid**

### **(1) Application procedures**

LAF has set up 21 branch offices. People can apply to a branch office, depending on convenience. Because the application concerns an applicant's means test and case diagnose, in principle, the applicant has to apply in person to a branch office and be interviewed by review commissioners of the Examining Committee. The Examining Committee will determine if legal aid should be granted, after the interview. However, for an applicant being behind bar or detained, to protect their rights, he/she can apply for legal aid by submitting a written application.

## **(2) Criteria for granting aid**

LAF divided the cases into general cases and special cases, and they have different set of criteria for offering legal aid. In a layman's terms, the general cases are required to review an applicant's (including spouse, parent, children, property and/or residency sharing relatives) means test, but the special cases do not, as shown below:

### **I. General cases**

A person, as long as conform to the following conditions, may apply to LAF for legal aid services, whenever necessary, regardless of types of the cases (including civil, criminal, family, and administrative cases). Upon being approved, LAF will provide proper legal aid, depending on the requirements of individual cases. This is so-called a general case.

- i. Legal residents in Taiwan: LAF only require a applicant who holds legal residence status in Taiwan, and Taiwan nationality is not required.
- ii. Financial eligibility must conform to Criteria for Means Testing (as shown in the following table); however, some special conditions are treated flexibly:
  - A. An applicant's income or assets may be higher than the amount listed in the table, however, if the excess is within the range of 20% of the level, LAF may offer partial legal aid, and the recipient of legal aid should be responsible for 1/3 or 1/2 of the lawyer fees and necessary expenses.
  - B. In practice, LAF discovered that requesting foreign workers and spouses to provide documents for means tests is quite difficult. Moreover, applicants of Consumer Debt Clearance, because their relationship with their family are often on bad term, are hard to expect that their family will provide them the documents. In addition to considering the

difficulty to get the documents, most of foreign workers and spouses are tear themselves away from their native places, due to difficulty to make a living in their mother countries; and the applicant of insolvency cases, inasmuch as insolvency, their financial eligibility should be in poor condition. Therefore, the means test at LAF can be replaced by an applicant's affidavit to attest the truth of a statement; therefore submitting of a financial eligibility document becomes not necessary.

Criteria for Means Testing						Unit:NTD
	Single-person household		2-person household		3-person household	
	Monthly disposable income	Disposable assets	Monthly disposable income	Disposable assets	Monthly disposable income	Disposable assets
Taipei City	below 28,000	below 500,000	below 40,522	below 500,000	below 60,783	total below 650,000
New Taipei City	below 23,000		below 37,318		below 55,977	
Taichung City			below 35,580		below 53,370	
Tainan City			below 32,608		below 48,912	
Kaohsiung City			below 35,670		below 53,505	
Taiwan Province or other areas			below 22,000		below 32,608	
Regulations for Means Testing	subparagraph 1, Article 3		subparagraph 2, Article 3		subparagraph 2, Article 3	

Note:

1. Excluding single-households, for a status not listed above, the standard for calculating disposable income for each additional person in a household depends on the identification of the competent verification organ at the county (city) where the applicant resides, by following the qualifications for determining the income of a low and middle income household specified in Public Assistance Act.
2. Disposable assets: This item does not include residential houses nor self-cultivated farmland at reported current value lower than NT\$5,500,000. In addition, the amount of disposable assets increases NT\$150,000 for each additional person starting from the third person in a household.

## II. Special cases

For certain specific cases under special circumstances, the Board of Directors of LAF has reached resolutions to offer applicants of legal aid free from means tests, provided that it is within the scope of the resolution, and hence, regardless of an applicant's means test, the services will be delivered. The types of special cases that LAF currently operates:

- i. The program for Lawyer's Company for First Investigation: In regard to the criminal defendants' or suspects' right to counsel, the history of the development of Taiwan's criminal lawsuit system went from having a lawyer to be present only in the stage of trial, extended to have a defender in the public procurator' investigation, and then to include a defender in the police detective work. Considering that the unfamiliar questioning procedures or fear cause an ordinary people to be unable to give the statement of opinion freely, to guarantee the right of due process of law under the Constitution, the Board of Directors of LAF reached a resolution to offer a lawyer's company for the first questioning free of charge, and to guarantee a citizen's right of action and right of equality, the service is also free from means tests.
- ii. Material, disastrous incidents happened in the society: Considering that the victims of a catastrophe have to face immediately the legal problems of the destroyed home, which he/she is not able to claim, and the death of loved ones, for which the inheritance procedures are complicated, LAF's Board of Directors will immediately pass a resolution for offering a special legal aid program, when a disaster occurred. For example, LAF has established an August-8 Typhoon Disaster Project for the disaster areas of Typhoon Morakot, to offer the victims legal aid services without requiring means tests, except engaging in a lawsuit is necessary. In another word, the project includes legal counseling, and representation of mediation or settlement, and other legal aid for non-contentious proceedings, without taking a means test. In addition, from July 31 to August 1, 2014, in the early morning, the incident of gas explosions occurred in Kaohsiung. The Board of Directors of LAF reached a resolution to follow the precedent of August-8 Typhoon Disaster Project to offer the services for non-contentious proceedings without taking means tests.
- iii. Legal counseling services: In view of the considerable differences between legal counseling, which is delivered without providing a written document of opinions, and legal aid, which requires application and approval, providing simple legal counseling to citizens to deal with legal problems is a basic service for a legal aid organization in advanced countries. To treat each people equally, be convenient for people, and to save administrative resources, the Board of Directors of LAF reached a resolution to provide legal

counseling for people without the requirement of any means test.

### **(3) Criteria for granting aid of government commissioned projects**

LAF, starting from March 2009 and from April 2013, accepted administrative entrustments by the Ministry of Labor and by the Council of Indigenous Peoples, respectively, to provide legal aid for both the laborers and the indigenous peoples. The qualifications for applicants of MoL' project are looser than those of general cases, and the qualifications for indigenous peoples are free from means test. For more information, please refer to an attached article in Topic 2.

## **10. Monitoring the quality of legal aid services**

Upgrading service quality and ensuring the recipients' rights and interests are always LAF's major projects. Mechanisms having been carried out recently are as follows:

### **(1) Case-in-process monitoring**

- I. The mechanism for requesting pre-payment LAF require that a private lawyer should start to process a case within two months after accepting the case, and after reporting with the documents about current status of the case to the branch office, he may request a pre-payment.
- II. LAF set up reminders on the software system for the services: A deadline is set up according to the type of legal aid cases. If a case is past due without reporting conclusion of the case, the branch office will actively find out the causes of delay, in order to master the case's schedule.

### **(2) Case-closing monitoring**

- I. A private lawyer should, within one month after completing a case, collate relevant documents and report back the conclusion of the case. Upon finishing the case conclusion review by the branch office, the lawyer can get his/her case conclusion fees.

II. The fees may be raised during case conclusion review, depending on the complexity of the case or favorable results of judgment in a criminal case. However, if there is an improper performance of duty imputable to the private lawyer, the fees may be reduced by varying degrees, depending on the circumstances.

### **(3) Summary**

To some special cases, if there are private lawyers with specialties available to handle the cases, it would be able to guarantee the quality still further, though LAF adopted the aforementioned quality control scheme. LAF is aware of the importance of having specialty departments; therefore, has divided lawyers into three special domains, including labor, consumer insolvency, and domestic cases, to carry out a trial implementation of assigning a lawyer with specialties to a relevant case, starting from March 1, 2015. In principle, only lawyers with specialties qualified by LAF's review can be assigned to cases in relevant domain.

LAF, since its founding ten years ago, has faced many challenges in private lawyer's quality control. For example, a private lawyer's fee rate is evidently lower than that of market rate, which contradicts to quality improvement, as many critics described. In addition, the mechanisms of appeal and review have operated many years, but only screened out a few lawyers. The mechanisms' ability to select capable private lawyers in the future has been challenged. For more information about the quality control of legal aid services, please refer to the attached article of Topic 3

## **11. Informing potential applicants of the availability of legal aid services**

### **(1) Advertising campaigns and participating in advocacy of legal aid**

LAF distributes information about services through a variety of publicity activities to the public. Each branch office frequently go to remote districts in its responsible area to carry out legal counseling, offering the possibilities for people in those district to obtain legal counseling and be informed of the content of services.

### **(2) Setting up "Legal Aid Supporting Network" stands**

To strengthen communications and referral channels, LAF has invited local governments, institutions, and societies to jointly build a “Legal Aid Supporting Network” and place various information kits at each station of the network, to make people know about the services provided by LAF.

### **(3) Issuing media releases**

#### **I. Publishing through government sector’s public good channels**

LAF has produced short films and radio ads for a variety of topics and broadcast them through government sector’s public good channels to popularize its business information.

#### **II. Working with media in public welfare issues and interviews**

To distribute publicity of important service projects, LAF co-operates actively with media or makes arrangements of interviews. For example, television news tickers were used for broadcasting the proposal-to-debtors tour held at various locations in Taiwan in 2014.

#### **III. Strengthening publicity on the Internet**

Including updating LAF’s official website, answering questions in blogs, and setting up social networking service (Facebook) to strengthen communications with the public. To distribute publicity, LAF provides service project information for websites, blogs, and forums, where the relevant groups often gather, and put shot films on the Internet for people to click in for information, in order to increase publicity.

#### **IV. LAF, in co-operation with radio stations, has arranged schedules regularly for lawyers to explain common legal problems to the public.**

### **(4) Mobile vehicle—“Mobile Legal Aid Service Vehicle” patrolling the streets to announce the availability of legal aid services.**

## **12. Reducing the amount of disputes which resort to the courts, including law reform and community legal education**

### **(1) Offering private lawyer participated services in mediation and settlement cases**



LAF currently provides lawyer services, including representation of parties in mediation and settlement cases, as well as drafting documents and representation of parties in court, that is, the private lawyers participate in mediations and settlements, either extra-litigation or during litigation, to assist the recipients of legal aid to resolve the cases as soon as possible to avoid time-consuming judicial actions.

But, LAF in itself does not act as a meditational organ; however, a lot of public figures require LAF to be one and hope that LAF uses its neutral and professional stance to increase people's willingness to use mediation system. With this, LAF is carrying out a comprehensive assessment, including training of conciliators and law and regulations, and whether or not to limit it to only for the recipients of legal aid involved in mediation cases.

## **(2) Advocating institutional reform**

LAF has developed an approach by using special assistance cases to initiate institutional reforms to deal with issues involving the disadvantaged. For example, in 2006, the staff-lawyers of LAF had faced many difficulties when they were representing over 300 debtors to negotiate plans for discharge of debts with the banks and discovered that Taiwan lacked an individual bankruptcy mechanism. LAF worked together with NGO, who was also concerned with the debt issue, to help materialize the legislation of the Consumer Debts Clearance Act in July 2007, and set up a project for debtors to discharge consumer debts in March 2008, which is still continuing today. In addition, LAF's staff-lawyers have assisted many exploited foreign workers, and through this accumulated practical experiences, the lawyers helped the legislation of the Human Trafficking Prevention Act in 2009, providing more comprehensive protection for the victims of human trafficking. Moreover, the Inheritance Act of Taiwan has changed from a universal succession system to a limited succession system (limited liability for satisfaction of inherited estates) from 2008 to 2009. This is also an example that LAF and NGO have worked together to help materialize the reform of important legal institutions. In 2014, LAF, in cooperation with environmental groups, draw up a draft amendment for Water Pollution Control Act. LAF hopes, through these institutional reforms, to make more people's legal problems can be resolved.

## **(3) Offering legal education**

To expand the connections between resources, LAF in co-operation with National Open University has produced and broadcast programs to promote legal knowledge in multiple forms, such as e-learning. Lawyers assigned by LAF explain relevant issues of material social cases and legal problems of common people in the programs, in the hope that it can improve the attainment of citizen's legal education in Taiwan.

Additionally, each branch office, in co-operation with local bar association, county or city government, and educational institutions, has assigned private lawyers to explain legal common sense to the public in various campuses.

### **13. Making legal services accessible through technology**

#### **(1) Video-conference legal counseling services**

Working and transportation are the two obstacles that are difficult to overcome when the disadvantaged are looking for legal assistance. How to make people in remote districts to obtain the right to legal aid without being blocked by a long journey becomes a challenge to LAF.

Since 2013, each branch office of LAF, step by step, in co-operation with local governments, has allowed people to go to a nearest affiliated unit and use video conference device to connect to and have a video conference counseling with a branch office's lawyer. Consequently, the network of the Internet replaces the network of roads and spares the disadvantaged living in a remote district the hardship of a journey. By September 30, LAF has set up 207 stations of video conference for legal counseling services, and accomplished 1,693 cases of legal conference. Some people living on a off-shore island had connected with staff-lawyers at LAF's headquarters at northern Taiwan. LAF hopes that, in the future, the system can be developed to provide an all-time, area-wide legal conference counseling services.

#### **(2) Hotlines for legal counseling**

LAF presently directs toward material social incidents and disasters to provide timely legal counseling in emergency, before being granted the legal aid services. People can dial a hotline, then leave contact information and name, and a LAF's staff-lawyer will call back and answer legal questions.

LAF is planning to provide nation-wide hotlines in the near future for selected legal counseling services, in the hope that people can have multi-channel services of legal aid.

### **(3) Blog and Facebook**

LAF has set up blogs and Facebook platforms maintained and answered by responsible lawyers every day. At the same time, a case may be referred to another branch office for other legal aid, whenever necessary, for example, legal counseling, application for legal aid, etc. In addition, the blogs and Facebook are able to advertise the relevant information of LAF's services to have a real-time dissemination.

## **14. Difficulties encountered and strategies**

- (1) Indefinite nature of the organization: Is LAF a public corporation or a private corporation, though it is established as a foundation organization? The question is open to debate. As a result, it becomes difficult to answer the Legislative Yuan's demands. For example, the Legislative Yuan asked LAF to improve private fund raising ability and apply for appropriation of publicly-owned houses as LAF's offices in order to reduce the costs of renting offices. But, the Ministry of Health and Welfare, the competent authorities of private fund raising matters, considered initially that LAF is a quasi-government organization, which is not allowed to raise funds in open, though the Ministry later changed its opinion and considered that LAF could cite a special provision of the Legal Aids Act to raise funds in public. Furthermore, National Property Administration, on the other hand, interpreted that LAF is a private corporation and cannot use publicly-owned houses appropriated. It is evident that the nature of LAF is interpreted differently in different domains. In addition, the relationships between LAF and an applicant; LAF and a private lawyer, because the relationships involve how to select a appropriate remedial approach when a applicant or a lawyer decided against LAF's decisions. These are issues LAF will eventually face.
- (2) Balance between autonomy and supervision: Over a long period of time, the Supervisory and Management Committee of the Judicial Yuan has offered many assistance to LAF, in terms of the establishment of the system and business development. However, many criticisms pointed out that the Committee's supervision is too detailed, which even overlaps the function of Board of Directors.

How to strike a balance between the two has also become an important issue.

- (3) **Revising the Legal Aids Act:** The Legal Aids Act is the fundamental law for LAF to carry out its businesses. Since its establishment, the Act, in principle, remains the same, though it has been amended twice. However, through a decade of operation and the changes of social environment, it does have many portions incompatible with present needs. Moreover, all orders of society have many additional demands and imaginations; therefore, the Act has reached a point that it has to be revised. LAF has, at its third Board of Directors, passed a recommendation of revisions and submitted it to the Judicial Yuan (LAF does not have the right to submit a bill to the Legislative Yuan), but, the Judicial Yuan has its own opinions that have to be consolidated and therefore, has not yet brought up a draft of amendments. On the other hand, private groups have proposed, through joint signatures with legislators, many versions of amendments to the Legislative Yuan, which also have to wait for the submission of the Judicial Yuan's official version and let the Legislative Yuan to review them all together.
- (4) **Crisis of brain drains:** Although LAF is a foundation organization and more than half of its directors are private directors, it depends on funds donated by the Judicial Yuan, the competent authorities, and is intensively monitored by the Supervisory and Management Committee of the Judicial Yuan. LAF's regulations of organization or personnel are all subject to the agreement of the Committee; thus its discretionary limits are next to nothing, as a result, LAF's organization and personnel systems incline toward a system of public affairs, rigid salary structure; however, its staff member do not have the protections of a public servant status. Talents are lost easily, which is detrimental to the Foundation's long-term development.
- (5) **How to respond timely to the demands of emerging disadvantaged minorities:** LAF continually directs toward emerging or material incidents occurred in the society to provide legal aid services. However, LAF is unable to provide comprehensive legal aid services for the persons involved in class sections in connection with environmental or public welfare issues, because an applicant's financial qualification is limited by the Legal Aids Act, which should resort to amendment to the law.

- (6) How to simplify workflows: To a legal aid application, LAF, in principle, requires the applicant to bring means test and case information to a branch office in person to let examining commissioners to inquire. How to appropriately open for written applications, or applications by a lawyer on an applicant's behalf; how to negotiate with state taxation authorities to agree that a LAF branch office can directly access to the applicant's household taxation and property information; and how to properly streamline the review methods and processes for obvious legal aid cases, are the key points that LAF has been reviewing.
- (7) How to strike a balance between a lawyer's service quality and reasonable fees: To provide the recipients of legal aid high quality lawyers' services, LAF has, presently, set up many quality mechanisms for controlling a private lawyer's affiliation, case assignment, after-assignment case management, and case closing management. However, a private lawyer's fee rates are far lower than those of lawyers on the market. To balance the gap between the quality and reasonable fees, LAF Board of Directors has revised the standards for the relevant fees (to be approved by the Judicial Yuan). In the future, LAF will review the standards at least every three years, which may be able to help in providing reasonable fees.
- (8) How to utilize new technology to construct multi-channel services: The development of new technology brings an imagination that it could introduce convenient and effective legal aid services. Hence, LAF has established a video conference legal counseling services, and is planning to provide nation-wide hotlines in the near future for selected legal counseling services. In addition, LAF is planning to establish an on-line Q&A for legal questions to offer people self-help services. However, LAF is also aware of the limits of using new technology to provide services and understands the knowledge gap and predicaments of the disadvantaged in using the new technology. Therefore, new technology is used as an auxiliary tool in primary face-to-face services, to supplement, not to replace, face-to-face approach.

## **15. Mechanisms of co-operation with legal aid organizations abroad**

Taiwan has not yet established mechanisms of co-operation with other international legal aid organizations. However, given that international mutual

assistance can manifest and fulfill the value of the spirit of universal human rights, Taiwan will, in this international conference, enter into mutual aid agreements with legal aid organizations of other countries. We also hope that the conference organized by Taiwan could offer legal aid organizations around the world a research platform for regular gatherings. In addition, for more information about Taiwan's needs for mechanisms of co-operation with legal aid organization abroad and the predicaments, please refer to the article in Appendix 1.

## **16. Conclusion**

Since its founding, LAF has been challenged by many tough questions, including determination of its nature, balance between autonomy and supervision, and others. However, members of LAF uphold, all the time, the intent to offer legal aids as fundamental human rights and continue to guard the legal rights of the disadvantaged.

Over the past decade, LAF held International Forum on Legal Aid in 2005 and 2009 in hope of sharing the experiences from around the world, and members of LAF have paid multiple visits to and studied in more developed countries. From its initial preparations, after the approval of Legal Aids Act, to now, LAF has expanded to having 21 branch offices, 242 staff members, 2,928 private lawyers, accumulated 514,213 cases that have been granted legal aid, and received over 720,000 applications. LAF expects that through 2014 IFLA, LAF can continue to have exchanges with participating legal aid organizations and to go a step further, make valuable experiences learned into nutrients and motive power for sustained reform and advancement.

## **Appendix 1**

### **International Mutual Assistance On the implementation of the United Nations Principles and Guidelines on access to legal aid through the mutual assistance offered by legal aid organizations from various states**

#### **Provision of Legal Aid to Foreigners**

The Principle 6 “Non-discrimination” of the United Nations Principles and Guidelines on Access to Legal Aid opportunities in the Criminal Justice System (hereinafter referred to as UN Principles and Guidelines) specifies that “States should ensure the provision of legal aid to all persons regardless of age, race, color, gender, language, religion or belief, political or other opinion, national or social origin or property, citizenship or domicile, birth, education or social status or other status.”

According to the Article 15 of Legal Aids Act of Taiwan, foreigners, regardless of their nationality, if legally reside in Taiwan Area and pass means and merits tests, can usually be eligible for legal aid. With regard to the recipients of non-Taiwan who has obtained the legal aid from this Foundation, but left the country since, the Legal Aid Foundation (LAF) of Taiwan has also expanded the scope of the assistance through the interpretation of the Act. For example, the recipients who sought for legal aid from LAF “based on the same facts” should be determined according to their legal residence status in Taiwan Area when the facts occurred, a condition setting out in Article 15 of the Legal Aids Act that “all people whom legally reside in Taiwan Area.”

Regrettably, although the Article 62 of the Legal Aids Act provides that: “An indigent person who has received legal aids form the Chapter applies the litigation in forma pauper is to the court during the legal proceeding shall be granted. However, this rule is not applicable to a person who fails to meet the requirements in applying legal aids.” However, the majority of the judges in Taiwan, in practice, still consider the reciprocity of the Article 108 of the Taiwan Code of Civil Procedure must take priority. Because Taiwan does not have many reciprocal agreement countries, many foreigners cannot access to legal aid in criminal justice processes.

To help more foreign nationals, the Board of LAF also recommended that the

competent Judicial Yuan should amend Article 15 to make the legal aid accessible to persons who do not have ROC nationality, but are qualified to have one of the following conditions: (1) A person who lost the right of residence due to the particulars of a matter not attributable to the person (such as foreign workers who lost their legal residence due to labor disputes). (2) The victim or suspected in a human trafficking case. (3) A non-resident person in Taiwan Area who obtained legal aid from LAF for the same facts. (4) A non-resident person in Taiwan Area who may excise the rights due to the death of other people, in accordance with ROC laws. (5) A resolution reached at a meeting of the Foundation, in addition to the existing legal residents in Taiwan.

LAF has also discovered some unreasonable parts of the Act in the process of offering legal aid. For example, the Hsinchu Chapter of LAF, after accepting and hearing a car accident case involving Ms. Nguyen, of Vietnam, found that Ms. Nguyen has previously abandoned her Vietnamese nationality in order to apply for ROC nationality by naturalization. In the accident case, she was charged with violation of accidental homicide, but since having reached a settlement with the family of the victim with a good attitude, she was sentenced by Taiwan Hsinchu District Court to 6 months in prison and given 5 years' probation. Unfortunately, the Ministry of the Interior, for this reason, rejected her application for naturalization, holding she has a criminal record that does not meet the requirements specified in the subparagraph 3, paragraph 1, Article 3 of the Nationality Act of "He/she behaves decently and has no records of crime." Ms. Nguyen, after being turned down her application for naturalization, has since become a stateless person during her stay in Taiwan. Without having a nationality, she has been unable to apply for a passport to return to Vietnam to visit her father, who was seriously sick. She usually responds to wanted ads with a temporary residence permit which is effective for less than a year and cannot have a bank account in Taiwan, for which employers often refused to employ her for having only short-term stay and no any payroll accounts, as a result, she cannot find a regular full-time job. And, her Taiwanese spouse, a physically disabled person, has almost no ability to work. Ms. Nguyen has to raise a young daughter and to provide for the family by doing odd jobs single-handedly. After LAF's Hsinchu Chapter discovered this, the Chapter informed the Ministry of the Interior by letter asking for an interpretation and vouchsafing careful discretion to the applicant in circumstances of crime, attitudes after committing the crime, family background, socioeconomic status, human rights considerations, etc., and in application for naturalization, if a reasonable condensive interpretation can be given to a foreigner with an unintentional crime



record, based on the relevant provisions of the Nationality Act, to protect the person's civil liberties and the right to existence and to embody the protection of human rights, after the signing of two International Covenants. The Ministry of the Interior has so far not given a favorable interpretation, and the Chapter has asked lawyers to study how they can provide subsequent assistance.

### **Existing Status of Detention Concerning Foreign Spouses, Foreign Workers, Fishermen, and Foreigners**

The economy of Taiwan was affected by industrial restructuring, increasing the national income, the rapid growth of the service industry, enhancing of education level, changing in the concept of value of work, and other factors, which have resulted in a maladjustment of supply and demand in the labor market and labor shortages at grassroots level. To solve these problems, the Ministry of Labor, with effect from October 1989, has introduced foreign workers in succession from Thailand, Philippines, Indonesia, Malaysia, Vietnam, Mongolia, and other countries, relieving temporarily the labor shortage of industries and households. As of the end of December 2013, in Taiwan, there were 489,134 foreign workers, of whom 54.33% workers were engaged in the manufacturing sector, 0.69% in the construction industry, 2.00% worked as the fishing crew, 42.54% as care workers, and 0.44% as domestic workers. The top three countries of labor sources were Indonesia, Vietnam, the Philippines, accounting for 43.59%, 25.59%, and 18.20%, respectively. Consequently, the incidents of the uncertain whereabouts of foreign workers have also been reported now and then. As of July 31, 2014, the cumulative number of foreign workers whose whereabouts were unknown was 190,551, of which 144,449 workers have been investigated and deported. However, in Taiwan, there are still 45,579 foreign workers of uncertain whereabouts and 523 workers currently in detention centers.

As for foreign fishermen, the government currently do not carry out active supervision, because national laws do not apply to fishermen hired beyond the borders of the state, resulting in the incidents that some foreign fishermen were hired through agencies who provided deceitful information and improperly treated, or even worse, became victims of human trafficking. Maritime labor work in an environment very different from those of labor working on the land, and their working time, similar to that of housework labor, is difficult to define and regulate. They, when working on fishing vessels, have to face the weather, the loneliness of isolated sea life,

lack of adequate leisure, and communication difficulty between foreign fishermen and captains and other crew members of different nationalities. In July 2013, the Taiwanese captain and chief engineer of Tehongxing 368, a fishing vessel registered at Suao, were killed on board by foreign fishermen. The trial is still ongoing. LAF has offered legal aid for those foreign fishermen. According to the information currently known, it seems like the incident was arising from work related disputes between the two and the expatriate fishermen.

With regard to the foreign spouses, the cumulative total number of the spouses of foreign origin (referring to foreign nationals who were naturalized or obtained citizenship) and the spouses of foreign nationality (referring to foreigners who hold valid residence permits or permanent residence permit), in cities and counties in Taiwan, was 160,085, as of July 2014. Among which the majority of foreign spouses is identified to have national origin of Vietnam, Indonesia, or Thailand, accounted for 56%, 18%, and 5%, respectively. Concerning the ratios of married pairs and divorced couples between Taiwan nationals and foreigners, one of every 7.9 pairs of newlyweds in Taiwan in 2014 was a marriage between a Taiwan national and either a foreign or a mainland spouse, and one of every 4.6 pairs of divorced couples was a marriage between a Taiwan national and either a foreign or a mainland spouse.

In addition, regarding the detention of foreigners, as of July 31, 2014, the numbers of detained foreign nationals (including legal and illegal immigrants of foreigners and people from mainland China) in all existing detention centers are 204 in Yilan, 187 in Hsinchu, 195 in Taipei, 196 in Nantou, and 7 in Lianjiang, totaling 789 persons.

## **A Project for Human Trafficking Cases**

In UN Principles and Guidelines, the Principle 10 “Equity in access to legal aid” specifies that “Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. Such measures should address the special needs of those groups, including gender-sensitive and age-appropriate measures.”

Along with the globalization, the trend of population movement has brought with it human trafficking. Taiwan became an importing country of marriage immigration and labor force from the Southeast Asia, and human smuggling syndicates have profited by engaging in unlawful trafficking, a serious violation of human rights. In view of the seriousness of human trafficking, LAF has not only actively participated in the drafting of the civil version of Human Trafficking Prevention Act, but also founded, in October 2007, a project to provide legal aid for the victim, relax the conditions for the victim's access to legal aid, establish referral mechanisms with related organizations, organize and participate in domestic and international conferences and seminars of related topics, and offer training program for lawyers, in order to protect the victim in a positive way.

After the establishment of the project, as of July 31, 2014, LAF has been assisting in 1,936 cases filed by cross-border human trafficking victims. During 2013, LAF received 321 applications, of which 316 cases were granted full aid, 2 cases were offered legal advisory services, and only dismissed 3 cases, having an assistance rate of 99%. From January to July, 2014, 221 applications had been filed, of which 212 cases were granted full aid, dismissed only four, and offered five legal advisory assistance, reaching a legal aid rate of 98.19%.

LAF is aiming at relaxing the vetting criteria of the legal status specified in the regulations that an applicant is required to have in Taiwan, in addition to assisting trafficking victims in successfully applying for legal aid. If an applicant is identified by a law enforcement agency as a victim of human trafficking and helped settle down in the territory, LAF deems the applicant a legal resident who is compliant with the provisions of Article 15 of the Legal Aids Act. A human trafficking victim without relevant documents of ROC tax authorities for his means test can provide an affidavit explaining his/her financial capability is eligible for the legal aid provided by LAF. As for accepting applications from human trafficking victims or of foreign workers referred to LAF, each Chapter of LAF can consult the social worker's preliminary assessment form, investigation report, or legal aid survey, and other information resulting from investigations or interviews carried out by social welfare or government organizations to determine the procedure of its means test.

It is quite often that the victims of human trafficking, suspected victims, and foreign workers, after their cases were decided, want to apply for reconsideration or

appeal. However, the legal remedial procedure is fixed and has an urgent time frame, and legal aid recipients are often lack of legal resources. LAF would ask its Branch office to coordinate legal aid lawyers to write and file first a remedial memorial, while deferring the logistical work of concluding the case at the current trial level or the procedure of investigation, and wait for the legal aid lawyers to institute a reconsideration or grounds of appeal, then the lawyers would apply to the Chapter for raising reasonable remuneration, taking into account the circumstances.

On offering assistance to victims of trafficking, LAF has established a special project to assist Indonesia care-givers involved in the case of payroll withholding by Chizhi Group. Because the victims were all over Taiwan, LAF, since 2009, in cooperation with the Ministry of Labor and local Labor Affairs Bureaus, voluntarily sought for and assisted the victims who were willing to request civil damage and unjust enrichment in applying for legal aid. In May 2013, after the final judgment of the case's criminal trial of second instance was rendered, and the judgment of related incidental civil procedures was also rendered and enforced in succession. LAF, in 2013, continued to follow up and control the processing of the case and assist the victims who were still working in Taiwan in the procedures to apply for false performance and forcible execution.

The Human Trafficking Prevention Act came into force in Taiwan in June 2009, and relevant regulations were formulated for apprehending and prosecution of offenders and for protection and resettlement of victims. However, in 2014 June investigation report, the Control Yuan indicates that in practice the Act has the following issues: (1) The identification carried out by the judicial police authorities was called in question, because it was too loose and did not involve other relevant parties. (2) Although the identification process of a victim of human trafficking is a dynamic model, the current legal system does not give the victim the right of appeal, after a victim is unwilling to accept the result did not identify him/her as a victim of human trafficking. The protection is still inadequate. (3) If the disposition of a human trafficking case is not to institute a public action by the prosecutor, a victim's status should be re-identified, and therefore, the victim's status will not necessarily be lost, according to the letter issued by the Ministry of Justice. But, the law does not expressly provide that if a victim will be or not be stripped of his/her status, after the acquittal becomes final and binding. (4) Some vague wordings, such as, "labor to which pay is not commensurate with the work duty," "illegal debt bondage,"

“making use of the victim’s inability, ignorance or helplessness,” etc., are used in Human Trafficking Prevention Act, resulting in identification difficulty and execution predicament. The criterion of imposing penalty is obviously too low. Between 2008 and 2012, the offenders who committed the crime of human trafficking and were only sentenced to six months or less in prison accounted for in the range of 50% to 70%. (5) The National Immigration Agency and the Ministry of Labor do not actively pursue costs that should be paid by the offenders, including expenses of protecting, resettling, and repatriation, which in accordance with the law should be made by the offenders. (6) The Ministry of the Interior has established a special compensation account for the victims of human trafficking since March 2010. However, the account amounts to zero, because various District Prosecutors Offices affiliated with the Ministry of Justice did not follow the law to allot the forfeited cash and the sale proceeds of criminal possession, though they legally confiscated and impounded offenders’ proceeds of crime property or property interest from human trafficking. (7) Between 2009 and 2013, up to 30% to 80% of victims of human trafficking could not return to their home countries at will, because they had to cooperate in the investigation and trial procedures with the judiciary. Some victims had even been resettled for more than two years. Foreign remote interrogation measures should be deliberated and promoted, including setting up remote interrogation equipment at embassies or representative offices, to increase judicial officers’ willingness to agree the repatriation of victims of trafficking, giving consideration to the victim’s right to return home and the judicial officer’s right to cross-examine the accused. In addition, the justice practitioners in Taiwan, including lawyers, do not have sufficient knowledge about human trafficking. All of these should be addressed in the future.

## **The Right to an Interpreter**

In UN Principles and Guidelines, the Guideline 3 “Other rights of persons detained, arrested, suspected or accused of, or charged with a criminal offence” specifies that “To inform all foreign detainees and prisoners in a language they understand of their right to request contact with their consular authorities without delay;” and “To provide the services of an independent interpreter, whenever necessary, and the translation of documents where appropriate.”

Regretfully, judicial interpreter resources are still relatively insufficient in Taiwan when assisting foreigners who are not fluent in Chinese, especially workers from the

Southeast Asian, foreign spouses, or victims of cross-border human trafficking. For example, in 2014 February investigating report, the Control Yuan points out that when carrying out legal proceedings involving foreigners in Taiwan, litigation documents used in Prosecutors Office or the courts have not translated into the language the foreigners understand, and in some of the cases the defendants had not been provided an interpreter when opening a court session. Moreover, some Prosecutors Offices or courts did not serve litigation documents on the agents whom were appointed by foreigners, a serious interference with the foreigners' exercise of the right of action. The report also indicates that a judicial interpreter has a key position in proceedings, and the interpreter's function not only protects the defendant's right of defense, but also has a significant effect on finding criminal facts and results of judgment. A procuratorial organ's use of employment service agents as interpreters is not only unable to obtain the trust of the defendant, even the complainant questioned the objectivity and impartiality of their translation. Therefore, to ensure interpreters' neutrality, objectivity, and impartiality, it is appropriate for the Judicial Yuan and the Ministry of Justice to deliberate on the measures to expressly provide that, in relevant laws and regulations, employment service agents are not suitable to serve as interpreters to prevent damaging the judicial impartiality.

To replenish the interpreter resources, LAF organized in 2010, in cooperation with Taipei Women's Rescue Foundation, four training programs for interpreters, and in the following year, held three advanced classes for the students to offer enhanced workshops on legal perspective. Through education and training, LAF has gradually built personnel database of interpreters with judicial expertise. In 2012, LAF began to offer interpreter services for "cases in applying at a chapter" and "stationed legal consulting cases," and the interpreter services are paid by hour plus traveling expenses. In 2013, business-related personnel at LAF's Branch office has applied for access to the interpreter talent database of the National Immigration Agency to cope with the demand for interpreters of minority languages.

LAF in 2013 also entered a cooperation agreement with the National Immigration Agency, Ministry of the Interior, which is primarily for protecting the right of action and right of equality of new residents and foreign detainees, integrating legal aid resources, and enhancing the legal education of new residents, in order to promote the relationship of cooperative partnership. The government provides venues and LAF assigns counsels to help the new residents and foreign inmates obtaining legal

advice, judicial interpreter, legal seminars, etc., to promote legal aid education. The government provides venues and LAF assigns counsels to help the new residents and foreign inmates obtaining legal advice, judicial interpreter, legal seminars, etc., to promote legal aid education.

## **International Mutual Assistance**

The introduction of UN Principles and Guidelines mentions that: “Provision of legal aid to foreign nationals should conform to the requirements of the Vienna Convention on Consular Relations and other applicable bilateral treaties.” Guidelines 18 “Technical assistance” specifies that “Technical assistance based on needs and priorities identified by requesting States should be provided by relevant intergovernmental organizations, such as the United Nations, bilateral donors and competent non-governmental organizations, as well as by States in the framework of bilateral and multilateral cooperation, with a view to building and enhancing the national capacities and institutions for the development and implementation of legal aid systems and criminal justice reforms, where appropriate.”

Taiwan has yet established mechanisms of mutual assistance with other international legal aid organizations, but is now actively negotiating mechanisms of mutual legal aid with South Korea and the Philippines and discussing the content of signing the contract. The content that has been currently negotiating is as follows:

- (1) Between mutual assisting countries, each legal aid organization of the contracting party should, upon request by the legal aid organization of the other contracting party, provide prompt, free lawyer counseling for nationals of the other mutual assisting country.
- (2) Between mutual assisting countries, each legal aid organization of the contracting party should, upon request by the legal aid organization of the other contracting party, provide prompt, individual lawyer counseling at prisons or detention centers for nationals, in prison or custody, of the other mutual assisting country, and may accept directly their applications for legal aid, where necessary.
- (3) Between mutual assisting countries, each national of contracting party who has received legal aid from the organization of the other contracting party, if he/

she has subsequently left the country, should receive continued assistance and contact for follow-up instances of the same case.

- (4) Between mutual assisting countries, each legal aid organization of the contracting party should provide equal legal aid to the nationals of the other contracting party.
- (5) Between mutual assisting countries, each legal aid organization of the contracting party, when providing services described above to the nationals of the other contracting party, should also provide, where necessary, appropriate interpreter services.
- (6) Between mutual assisting countries, each legal aid organization of the contracting party should establish a list of lawyers who can offer legal aid to the nationals of the other contracting party for their reference in selecting a lawyer.
- (7) Between mutual assisting countries, each legal aid organization of the contracting party should be willing to assist the nationals of the other contracting party in making referrals to other social resources (such as emergency assistance), in addition to providing legal resources.

As for human trafficking victims who returned home from Taiwan, the difficulties of how to provide them with assistance in litigation or to protect their personal safety, as well as how to access to their perpetrators' property information in their country, have often encountered in practice. Therefore, for Taiwan and the countries that their nationals have close bilateral contacts, it may be more practical and feasible to take an approach of issue-on-the-agenda to joint relevant organizations from both governments and formulate action plans to provide international mutual assistance (such as the issue of human trafficking or new immigrants).

For example, on May 9, 2013, Guang Da Xing No. 28, a Taiwanese fishing boat registered at Liuqiu, was shot by the Philippines' official patrol boat, within the overlapping exclusive economic zones of Taiwan and the Philippines. The incident led to the death of Taiwanese fisherman Hung Shih-cheng. Fortunately, Taipei Economic and Cultural Office in the Philippines appointed Philippine lawyers to assist our witnesses in appearing in court to present statements, facilitate the investigation procedures, and help the Philippine prosecutor in investigating the evidence. Finally,



the prosecutor made the decision to prosecute. The case also highlights the importance of international mutual assistance under Taiwan's unique international status.

## **A Labor Brokerage Fraud Case in Taiwan**

The defendant Lu had been, in the Republic of the Philippines (the Philippines), engaged in brokering Filipino labor to work in Taiwan. He thus knew Baby Reyes, who engaged in the same business in the Philippines, and starting from 2009 onwards, he worked in cooperation with Filipino companies, including R, D, and M.W., to provide brokering services for Filipino workers to work in Taiwan. The way they had cooperated in the business is as follows: Lu was responsible for contacting the agencies in Taiwan. After receiving Taiwanese agencies' orders, he searched for eligible Filipinos, and through Baby Reyes' contact, he arranged, on behalf of the agencies mentioned above, the Filipino workers to go to Taiwan. Baby Reyes commissioned Secretary M., a R company employee, to handle the documents, including Employment Contract for Caregiver, Foreign Worker's Affidavit for Wage / Salary and Expenses Incurred before Entering the Republic of China for Employment, Waiver: Foreign Workers should fully understand the related regulations of the Employment Service Act (ESA), etc., and subsequent exit formalities to Taiwan. The defendant, Baby Reyes, Secretary M, and a M.W.'s male Filipino employee worked together to carry out their unlawful intent, knowing that the victims do not know that Filipino workers do not need to pay for any brokerage or other expenses to work in Taiwan and taking advantage of the victim A's anxiousness to come to Taiwan to work and make money and lack of knowledge of the two countries brokerage charging regulations. Lu and Baby Reyes first used the approach described above to select Filipino candidates to work in Taiwan. Then, Secretary M or the M.W.'s male Filipino employee, at a certain time before the victims were departing for Taiwan, at an unknown location in the Philippines, lied to A and others, individually, that there are other fees, after deducting fees paid, payable to work in Taiwan, and this part of the costs have been paid in advance, but it is required to sign documents with a paper company (in fact, no such company) and the defendant Zeng or Yao to process the loans before going to and working in Taiwan smoothly, and so on. This caused A and others to make mistakes and sign service commission agreements, affidavits, confessions, promissory notes, evidence of debt, and other loan documents. Soon after A and others arrived in Taiwan, Secretary M emailed the documents mentioned above to Lu's email box, and Lu then forwarded them to Zeng. After printing the documents out, Zeng took them to A and others and

their employers to confirm the aforementioned loans. At this point, A and others, without suspicion, remitted money, or commissioned their ignorant employers to withhold salary and remit a monthly payment ranging from NT \$ 6,000 to \$ 8,850, respectively, to the defendants' accounts, following the instructions, and therefore, the defendants got the proceeds by fraud. Consequently, because the victims sought for external assistance, prosecutors began to search for clues, carried out investigations, and brought the case to court. LAF's full-time lawyers assisted in filing the lawsuit, and the defendants were sentenced to one and a half years to two years, respectively, in prison, or the penalties might be commuted to fines. From the case we see that foreign workers do not necessarily understand brokerage regulations, as a result, the unworthy is able to use all sorts of excuses to overcharge foreign labor agency fees, in the name of loans to exploit foreign workers.

In this connection, the Ministry of Labor, to strengthen the agency management in Taiwan, on November 9, 2001, amended the charging standard of agency fees, specifying that the agencies in Taiwan should not charge any brokerage fees to foreign workers, but may only charge a service fee every month, which should not exceed NT 1,800 per month for the first year, NT 1,700 per month for the second year, and NT 1,500 per month for the third year. And on March 2, 2010, the provision was amended again, specifying that an agency cannot charge any service fees in advance, in order to avoid causing burdens on foreign workers.

In November 2001, measures were taken to cut foreign labor brokerage fees, and the labor-exporting countries were recommended that the labor agency fees may not exceed the limit of the labor's one month's basic salary. Coordination has been carried out to verify with certainty that "Foreign Worker's Affidavit for Wage / Salary and Expenses Incurred before Entering the Republic of China for Employment" that the foreign workers signed when they process their entry visas to check if the foreign workers were overcharged for agency fees. The Employment Service Act amended and published on January 21, 2002, stipulates that an agency's charging improper fees may be punished with increase of fine, suspension, revocation of licenses, and other sanctions.

The "Direct Hiring Service Center" was established in December 31, 2007, in order to reduce the burden of high brokerage fees on foreign workers. In addition, Workforce Development Agency set up five service windows at public employment

service agencies in the northern, central, southern, eastern, and western Taiwan, respectively, to help employers in recruiting their original foreign workers without going through a manpower agency, to reduce expenses charged by domestic and/or foreign brokerage companies. The service windows also shorten the re-entry time and procedures for foreign workers, and provide consultation, inquiry, forwarding, transfer shipping, and SMS or E-mail services in different languages to remind employers of handling related follow-up matters after foreign workers entering the country.

### **A Foreigners' Overdue Detention Case**

In July 2011, full-time lawyers of LAF's Banqiao Chapter, in the process of providing legal advice, found that the problem of overdue detention was very serious at Taipei Detention Center, including two foreign workers with Thai nationality, who did not commit any crime, had been detained for more than 11 months. Separately, multiple Thai nationalities, Indonesian nationalities, and Vietnamese nationalities who were the defendants of prosecutor's petitions for summary judgment and belonged to cases undertaken, respectively, by three judges of a certain Section of Taiwan Taoyuan District Court, but the judges went so far as to delay opening court sessions for several months, and did not make any decisions. However, the National Immigration Agency held that these cases were in accordance with the subparagraph 4, paragraph 1 of Article 38 of the Immigration Act, so-called "other facts, if found necessary, may be temporarily detained," on account of the pendency of the litigation in the District Court or Prosecutor's Office, and consequently, the detentions were extended repeatedly. It was very common for a detainee whose period of detention was more than six months, and many were more than one year.

After a joint consultation among the president, executive secretary, and full-time lawyers of the Banqiao Chapter, they decided that LAF should come forward to rescue. Thereupon, many civil societies, including the Taipei Bar Association; Judicial Reform Foundation; Taiwan Association for Human Rights; the Garden of Hope Foundation; TransAsia Sisters Association, Taiwan; New Immigrants Labor Association; Hope Workers' Center; Migrant and Immigrants Service Center; and Văn Phòng Trợ Giúp Công Nhân và Cô Dâu Việt Nam, among others, jointly petitioned the Judicial Yuan and the Ministry of Justice to carry out a thorough investigation into law-officers' dereliction of duty about the cases. The representatives of the societies mentioned above joined together and convened an impromptu press conference in front of the Control Yuan,

and also petitioned Control Yuan to remedy the mistake of the National Immigration Agency and impeach officials who made illegal detention actions.

Subsequently, the Judicial Yuan and the Ministry of Justice, in their reply letters of investigation, stated that they did not see any excess of the time limit of handling the cases. But, the Control Yuan, in its investigation report, indicated that “Part of judges with Taiwan Taoyuan District Court heard detainees’ petitioning for summary judgment, ... The detainees had pleaded guilty, during the investigation, by submitting multiple petitions and asked the judges to hear as soon as possible. The judges still ignored their petitions. Furthermore, these cases of summary judgment do not need to hold a court, and the terms of penalty of final guilty sentence range from tens of days to six months, which are far below those of their long detained period, as a result, the detainees’ rights have been seriously violated. Therefore, the negligence is verified.” “A detainee, because of his witness status in a criminal case, was put in detention by the National Immigration Agency in accordance with the letter the Ministry of Justice, and the detention was extended to 335 days, which is far longer than the average 38.32 days in detention for detainees of non-criminal case, according to Agency’s 2011 statistics. This violates the provision of Article 8 Article of the Constitution of the Republic of China and the intent of Judicial Yuan’s interpretation over the years that personal freedom shall be guaranteed to the people. However, the report did not specifically impeach officials of offence of misconduct in public office.

After the above joint efforts of the ten civil societies and LAF Banqiao Chapter, the criminal judgments related to the detainees in the Taipei Detention Center were sent out like “avalanche,” and the criminal cases the detainees had been implicated were all thus determined. Dozens of detainees, including the above two Thai witnesses, in August and September 2011, had quickly been repatriated.

With regard to the foreigner detention system, the Justices of the Constitutional Court, Judicial Yuan, in February 6, 2013, declared that the paragraph 1 of Article 38 of the Immigration Act shall become null and void from the date of proclaiming this interpretation, or no later than the expiry of two years, since the paragraph 1, which specifies the conditions for temporary detention due to the reasonable processing time needed for deportation, does not give the temporary detainee prompt judicial remedy; and, the detained time exceeding the aforementioned temporary detention, because it was not determined by court review, has violated the intent of the paragraph 1 of

Article 8 of the Constitution of the Republic of China to protect personal freedom.

## Conclusion

To comply with the principle of non-discrimination of UN Principles and Guidelines, legal aid has been provisioned to all persons regardless of nationality. In addition, the scope of the legal aid has also been expanded through the interpretation of the Act. In response to increasing numbers of foreign spouses, foreign workers, foreign fishermen in Taiwan, how to ensure that these people are not victims of trafficking and to ensure their rights are increasingly important. LAF established a special project to deal with human trafficking issue and promoted legislation to comply with the principles of the UN Principles and Guidelines, which specify that states should take special measures to provide legal aid for special groups. The regulations and laws concerning foreigners being extendedly detained have been changed through the actions of legal aid organizations. As for foreigners' right to an interpreter at court, LAF also accesses the government's interpreter talent database to look for appropriate interpreters to help foreign applicants or legal aid recipients.

From the experience in providing assistance for victims of both the labor brokerage fraud case and Guang Da Xing No. 28 case, LAF realized the importance of mutual assistance between international legal aid organizations. In particular, because of the special international status of Taiwan, it is the most pragmatic to start with an unofficial cooperation. In this international conference, Taiwan will enter into mutual aid agreements with other countries, and the hope is, for the future, to expand from bilateral cooperation to multilateral cooperation. We also hope that the conference platform organized by Taiwan could encourage the legal aid organizations in the Asian region and even legal aid organizations around the world to have a research platform for regular gatherings similar to those of ILAG (The International Legal Aid Group, ILAG) organizations in Europe and America, in order to deepen the idea of legal aid.

## Appendix 2

### **On Proper Allocation of Legal Aid Resources for Protection of Human Rights According to the International Covenants and UN Principles and Guidelines**

#### **I. Category and Scope of LAF Legal Aid Cases**

According to Article 17 of Taiwan Legal Aid Act , Legal Aid Foundation (hereafter referred to as LAF) may decide the category of legal aid and the scope of legal representation or legal defense depending on the funding of the Foundation. LAF's Board of Directors, based on the authorization of the Article, formulated the Regulations and Scope for Implementing Legal Aid. According to the regulations, the Foundation accepts natural persons as the recipients of legal aid, excluding legal persons or organizations.

Furthermore, LAF provides aid for recipients in civil, domestic, criminal, or administrative proceedings, except for the excluded categories specified in the regulations. However, an applicant who has received more than three cases of legal aid for the type of either representation or defense in court within one year of the application, without the consent of the Director of LAF Chapter, should not apply for further legal aid. In addition, according to Article 2 of the same Act, LAF offers legal aid with the methods including legal advice, mediation, settlement, legal document drafting, and representation or defense in litigation or arbitration.

LAF does not provide legal aid for the following types of criminal cases: representation in complaint or reporting offenders in court proceedings; representation for private accusations; defense in retrial or extraordinary appeal; representation in requesting committal for trial or actual hearing procedures; representation in filing lawsuits for the cases involving investment in stocks, securities, derivative financial products, real estate, bonds, funds, or other investment activities; and representation in filing a lawsuit for trademark rights.

Civil cases for which LAF does not provide legal aid include: electoral actions; small claims or its compulsory execution procedures; retrial cases; cases involving investment in stocks, derivative financial products, real estate, funds, or other

investment activities; trademark or patent rights cases. Administrative cases for which the LAF does not provide legal aid include: retrial cases; cases involving investment in stocks, derivative financial products, real estate, funds, or other investment activities; trademark and patent rights cases.

In principle, LAF does not provide legal aid for the aforementioned categories of cases. However, if a legal aid is truly necessary, an exception may be granted by the consent of the Director of the Chapter. In addition, LAF offers legal aid for any applicant who has been sentenced to death, whether it is a criminal retrial case or extraordinary appeal.

In 2013, LAF received 136,065 applications, of which LAF provided legal aids for 38,090 applications, excluding 80,670 applications for general legal counseling. The primary methods of legal aids are representation or defense in court, which accounted for 87% of total applications.

Generally, both civil cases (including family cases) and criminal cases accounted for, respectively, about a half of overall cases that received legal aid. However, the number of criminal cases has been on the rise year by year. In 2012, for example, criminal cases accounted for 52.77%, civil cases for 24.68%, family cases for 21.83%, and administrative cases for 0.73%. In 2013, criminal cases accounted for 57.40%, civil for 22.31%, family for 19.49%, and administrative for only 0.79%. Among 16,408 criminal cases that received aid, 8,193 compulsory defense cases, the largest amount, accounted for 50%, of which the majority of cases were charges of felony carrying a minimum 3-year fundamental punishment.

LAF provides legal aid in civil and family cases, which include mediation and settlement, in addition to representation the recipients in court. In 2013, for example, 26% of civil cases and 32% of family cases were successfully mediation or settled out of court. In this connection, LAF's policy has been trying to facilitate legal aid lawyers to achieve settlements in civil and family cases, whenever possible. Therefore, in a case of successful settlement, the lawyer may apply for additional fee in the range of NT\$1000 to NT\$3000<sup>1</sup> on the top of original remuneration.

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Comments

1: LAF, in Article 6 of the Regulations for Calculation of Legal Aid Service Fees, states: "Legal aid lawyers who have facilitated successfully in settlement cases may apply for additional one, up to three, base(s) of fee, without discretionary reduction of the original fees." In Articles 2 of the same Regulations, legal aid lawyer's fee is NT\$1,000 per base. The Regulations is a resolution reached at the 17th meeting of the 4th Board of Directors in July 2014, and waiting for approval by the Judicial Yuan.

The percentage of LAF's aid in administrative cases has always been on the low side. For example, in 2013, there were only 226 cases, which accounted for 0.79% of the total applications. Additionally, the numbers of the appeal and administrative cases that have been rejected were among the highest, and based on win-loss statistics, appeals have only a 22.22% chance to succeed and 14.29% for administrative cases, which are far lower than those of other types.

One of the causes may be that "It's a mercy that the government provides welfare" is a prevailing concept of value in Taiwanese society, rather than a right; therefore, people are not conscious of their rights and lack of knowledge to search for legal remedy, when their rights are aggrieved. Since Taiwanese nationals had experienced a history of authoritarian rule, and thus many have the thought of "Be submissive in front of an official," leading to being less willing to seek for administrative remedy. In addition, the trial practices of administrative lawsuits in Taiwan lean toward favoring administrative organizations, and because people had lower chance to win, they were reluctant to file administrative lawsuits.

## **II. LAF's Special Projects**

Although LAF provides legal aid for applicants in various cases, except for excluded categories of cases specified in principles, the Foundation aims at the issues that have involved disadvantaged minorities, and based on current affairs, has established specific projects to provide special legal aid for them.

### **1. Legal Aid for Consumer Debt Clearance**

In 2005, since the overall economic situation of Taiwan experienced a huge change, coupled with the results of many years of massive issue and promotions of credit cards by the banks, many credit card holders was facing financial crisis, creating a huge group of cardholders suffering insolvency. Furthermore, because the banks used a variety of means to demand repayment of the debt, many cardholders found themselves stuck in the mire; some went so far as to commit suicide, bringing about the entire society's solicitude for the situations.

However, at the time, there was no reasonable mechanism for liquidation of personal claims in Taiwan. To address this problem, LAF joined with several private



organizations to promote the Consumer Debt Clearance Act (referred to below as CDCA). The Act has legislated on June 8, 2007 and went into effect on April 11, 2008. To facilitate the implementation of the Act, each LAF's Chapter conducted 24 legal advocacy seminars by the end of 2007. LAF revised the regulations about legal aid scope of implementation, revoked the stipulation that LAF should not offer legal aid for bankruptcy cases, and started to provide legal aid for personal debt clearance cases.

When the CDCA was first put into force, LAF was flooded with 24,000 applications by the end of 2008. However, the court's attitude was overly conservative, and therefore, very few cases were successful in courts, which affected debtors' willingness to apply. As a result, there were only 9,750 applications in 2009. In 2013, the number of applications lowered to 5,754, and from January to August 2014, it reduced to 3,799 cases, decreasing annually.

Since the court's attitude was conservative, private organizations proposed revising the Act. As a result, the success rate of rehabilitation approval has improved gradually to 60%, the rate of discharge of debts has increased to 40%, and the percentage of settlement of obligation lowered from 50% to 10% or 20%. Still, the number of debtors who are willing to apply for redemption of debt in court has not yet significantly increased, indicating that the issue still faces many challenges.

## **2. Lawyer's Company for First Criminal Interrogation**

In regard to the criminal defendants' or suspects' right to counsel, the history of the development of Taiwan's criminal lawsuit system went from having a lawyer to be present only in the stage of trial, extended to have a defender in the public procurator's investigation, and then to include a defender in the police detective work. On September 17, 2007, LAF launched the Lawyer's Company for First Criminal Interrogation project to guarantee right of action and right of equality. The objectives of the project are to improve the efficiency and accuracy of investigation and trial, at the same time, to offset the gap of professional legal knowledge between ordinary citizens and criminal investigation organ, help people exercise their right of defense, and protect the involved party's rights. The project provides lawyer's accompanying services in the process of criminal interrogation, 24 hours a day, all the year round.

Although this project does not carry out applicant's means test, it is limited to

the arrested or detained persons who are involved in committing a crime carrying a minimum 3-year limited imprisonment and are asked to be investigated for the first time for the case, except for indigenous and the mentally disabled. By the end of 2013, LAF has provided legal aid for 3,753 cases.

Since the project is limited to provide legal aid for the defendants of felony cases, the law does not require a lawyer to be present during police interrogation or procurator investigation, and the police are unaccustomed to the presence of lawyers, while they are handling a case, the project has only limited success and is in need of improvement.

### 3. Legal Aid for Indigenous Peoples

By the end of September 2014, the number of indigenous population in Taiwan was 538,439, having 16 tribes<sup>2</sup>. They accounted for 2.30% of the total population (23,410,280) in Taiwan.

Taiwan is a society of multi-culture. Under the value of multi-culture, one should respect the world view that has been constructed in the process of each civilization's self-surviving, and should allow each ethnic group, following its common determination approach, to parallel institute each ethnic group's life and pursue sustainable development, and to achieve the goal of multiculturalism through the model of cultural diversity and social organization management presented by the multi-culture.

However, indigenous customs and culture had not been respected through the ages, creating numerous conflicts. For example, indigenous tradition, due to its uniqueness, has clashed with the state's laws and systems. Or, the state's policies have encroached on the indigenous. Therefore, they need professional legal aid. Unfortunately, regular lawyers are unfamiliar with such types of cases, and hence LAF actively intervene in providing legal aid.

Since April 2013, LAF has, in cooperation with the Council of Indigenous Peoples organized the project of "Legal Aid for Indigenous Peoples." Any indigenous, in addition to the cases apparently considered to have no way to relieve and regardless

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Comments

2: The Republic of China in Taiwan currently recognizes 16 indigenous ethnic groups: Amis, Atayal, Paiwan, Bunun, Puyuma, Rukai, Tsou, Saisiyat, Yami, Ita Thaw, Kavalan, Taroko, Sakizaya, Seediq, Hla'Alua, and Kanakanavu.

of financial ability, can apply to LAF for legal aid for legal problems, legal consultation, legal document drafting, or legal representation in litigations and defense. By the end of 2013, there were 606 applications, of which 280 applications accorded with the project requirements and granted legal aid. By August 2014, there were 1,144 applications, of which 981 applications met the requirements of the project.

#### **4. Immediate Support Program for Labor Litigation**

Starting from March 2, 2009, LAF was commissioned by the Ministry of Labor to operate the “Immediate Support Program for Labor Litigation.” The program provided legal aid for workers involved in labor dispute cases. Its qualifications for application were less strict than those of regular LAF applications. The goal was to help offset the disadvantage of laborers in relevant actions due to their disadvantaged economic status. From the start of the program until September 2014, 12,901 laborers met the legal aid criteria, and according to the analysis of litigation results, around 76% of cases resulted in favor of the laborers.

#### **5. Support Program for Human Trafficking Victims**

Along with increasing awareness of human trafficking issues in the international community, Taiwan, as a state of exporting, importing, transferring the victims of human trafficking, has established measures of preventing human trafficking crimes too. On October 2007, LAF established a Human Trafficking Victims Support Program and actively conducted a series of actions to protect the victims. LAF has helped in drafting and promoting the private version of the Human Trafficking Prevention Act, in addition to offering legal aid to the victims of human trafficking in individual cases. The Act was finally proclaimed by the President on January 23, 2009, and put into operation by the Executive Yuan on June 1, 2009.

LAF’s Human Trafficking Victims Support Program, according to Article 15 of the Act of original version, was initially limited to legal inhabitants of Taiwan. Since 2008, the legal aid program has expanded to include the victims of human trafficking identified by prosecutors or police organs. Additionally, according to Article 3 of the Regulations and Scope for Implementing Legal Aid, LAF, in principle, does not provide legal aid in representation of complaint in criminal trials. However, legal aids are desperately needed, in view of the disadvantaged situation of human trafficking

victims due to suffering psychological trauma, coupling with the complexity of the large number of defendants, locality of crimes in multiple countries, difficulty in collecting evidences, etc. Therefore, in September 2013, a resolution was reached at the 7th meeting of the 4th LAF Board of Directors to revise the aforementioned Regulations to provide legal aid, in principle, for the victims of human trafficking undergoing trials.

Until July 2014, LAF provided legal aid to 1,936 victims of human trafficking. From January to July 2014, LAF received 221 applications, of which 212 were granted full legal aid, 4 rejected, and 5 received legal advice, reaching legal aid rate of 98.19%.

### **7. Expanding Legal Counseling and Utilizing New Technology to Provide Legal Aid**

Since there are numerous organizations and groups in Taiwan provide legal counseling, LAF initially did not provide simple legal counseling services. Later, after observing the operations of similar organizations in other countries, members of LAF realized that if problems can be solved through counseling, the litigations can become unnecessary, and legal resources can be saved. Therefore, LAF started to offer legal counseling services and expanded the services since March 2009, and the number of applications has been growing since. In 2013, the number of cases reached 59,752, indicating obviously that people do have needs for legal counseling.

In order to make legal consultation services more popular, convenient, and cost-effective, LAF, starting with Pingtung Chapter in 2006, offered video conference of legal consultation, followed by other Branch office. Later, LAF started actively negotiating and cooperating with other organizations to increase the number of service stations. Benefitting from the convenience of new technology, LAF will continue to evaluate and monitor its development and tangible advantage to provide legal aid for people by taking advantage of new technology, which also can be viewed as expending new types of services.

## **III. Adjustment of Resource Allocation**

### **1. Criminal Compulsory Defense Cases**

The Article 31 of the Code of Criminal Procedure, prior to 1997, required only that if a defendant was not defended by a lawyer in a trial, the presiding judge should appoint a public defender for defendants with a minimum 3-year fundamental punishment or cases

of the first instance under the Jurisdiction of High Courts. The same applies to other trials, whenever necessary.

In 1997, the Code was revised to count certain cases to be compulsory counsel cases, if the cases involve mentally disabled defendants who are unable to state opinions completely and do not have a defender in the trial. In 2003, it expanded to include low-income defendants who do not have a defender but request one. In 2006, it extended further to include mentally disabled defendants who are unable to state opinions completely and do not have a defender during investigation. In January 2013, it extended to include the cases in compulsory counsel category, if the cases, in prosecution or trial, involve defendants of both middle-income and low-income persons who apply for appointing a defender; and the cases involve defendants who have indigenous identification. In addition, it specially specified that if indigenous defendants who in the process of investigation do not have a defender, the public procurator, judicial police official, or judicial police should inform legal aid organizations to appoint a lawyer to be present for their defense.

From the history of legal revisions, it shows that compulsory counsel cases have expanded from the trial to investigation; however, in the investigation stage, it is still limited to include only defendants of indigenous and the mentally disabled.

In order to meet the requirements of aforementioned compulsory defense, Article 14 of the Legal Aids Act stipulates that defendant's means test is not required for compulsory defense cases. Therefore, nearly 80% of the cases were granted legal aid, which is much more than regular cases' 69%. In 2013, 28,584 cases were approved for legal aid, of which 8,193 were compulsory defense cases, accounting for 28.66%.

Since the police sometimes tried to obtain involuntary confessions during the interrogation process, LAF, in order to provide necessary defense rights at early stage of a criminal case, established Lawyer's Company for First Criminal Interrogation Program to provide lawyer's company service at the first questioning for the arrested or detained suspects involved in charges of felony with a minimum 3-year punishment. However, to protect human rights in criminal justice processes, it is essential to extend the scope of the Program to cover any cases potentially involved in fixed-term imprisonment, considering that the defendants or the suspects in the process of investigation, because the scope of investigation is still undefined, if it is a case of

felony is still uncertain, and the questioning process has a great impact on the rights of the defendants or the suspects, regardless of the type of cases to be compulsory counsel cases, in addition to the disadvantaged status when they are facing a governmental machine.

## 2. Defense in Death Penalty Cases

LAF has also established a special program for death penalty cases<sup>3</sup>. LAF revised relevant regulations to allow a capital punishment case appointing up to three lawyers<sup>4</sup>, in addition to no turning down allowed when reviewing the cases. In many cases, LAF's full-time staff attorney and lawyers outside of LAF have organized as a team to handle capital cases.

As for the special remedy procedure of extraordinary appeal or retrial of capital cases, LAF also provides that in principle, the legal aid should be offered. LAF has specially held several training sessions for lawyers of death penalty cases, and worked together with NGOs to compile a manual for death penalty defense.

## 3. Major High-Profile Public Welfare Lawsuits

LAF actively provides legal aid for a variety of major high-profile public welfare cases, including major labor disputes (such as Laborers from Closed Factories), state compensation for major natural disaster (such as Typhoon Morakot), and major collective environmental pollutions (such as the RCA and Tainan Zhongshihua cases), etc., to provide timely legal aid for in public welfare litigations of major environmental and human rights protections.

When participating in these cases, LAF faced many problems. In the Laborers from Closed Factories case<sup>5</sup>, only part of the laborers were able to pass means test,

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### Comments

3: Guideline 4 of Regulations for Members of LAF Review Committee: "The following should be taken into account when dealing with compulsory counsel cases:... death penalty cases must not be rejected because of merits."

4: Article 5 of the LAF Regulations for Calculation of Legal Aid Service Fees states: "In criminal defense cases, the Secretary-General may approve a maximum of 3 lawyers to participate in cases that may be sentenced to death penalty and are material, complex, and unable to be sufficiently handled by one lawyer. Lawyer fees will be calculated separately." The Regulations is a resolution reached at the 17th meeting of the 4th Board of Directors in July 2014, and waiting for approval by the Judicial Yuan.

5: The Protest Incident of Laborers from Closed Factories Line can be divided into two stages. The first stage occurred around 1996, when a number of textile mills and clothing factories were underwent involuntary bankruptcy, leaving workers without retirement funds or severance pay. Workers from several factories assembled the National Laborers from Closed Factories Line, and started a series of protests, including the Lianfu Clothing Company workers' Railroad-Lying Incident in Taoyuan, led by Zeng Maoxing on December 20, 1996. This eventually induced regulations of the Entrepreneurship Loan for Laborers from Closed Factories and the Re-Employment Loan for Laborers from Closed Factories. Moreover, these incidents may have brought about or sped up the New Retirement System and Factory Closing Acts (This was never established and replaced later by the Act for Worker Protection of Mass Redundancy). Following this, the various relief organizations worked on their own but were hardly able to retrieve lost wages from the original employers. The second stage occurred in 2012. Since the deadline of prosecution for Entrepreneurship Loan for Laborers from Closed Factories was approaching, the Ministry of Labor ordered workers to repay their loans in a letter and allocated funds for civil cases. Unfortunately, the workers felt that this violated the spirit of the subrogation originally promised by the Ministry of Labor; thus provoked a new wave of protests, including the Railroad Lying Incident at Taipei Main Station on February 5, 2013. In March 2014, the Ministry of Labor announced that it will not appeal the cases, and for the most part this ended the whole incident. The National Laborers from Closed Factories Line became a labor-movement group and continues to participate in protest incidents, such as, the National Highway Fee Collectors and Hualong Rescue Foundation.

which LAF could provide legal aid, but, for the others who were not qualified, they had to hire their own lawyers. To avoid having divided lawsuit strategies, LAF and private pro bono lawyers organized a team to formulate objectives and strategies together. In addition, to meet the lawyer team's need, LAF searched for a variety of experts to invite them participating in discussions, organized seminars to deepen relevant discourses, and submitted the results to the lawyer team. In other words, it was an attempt by LAF to work with pro bono lawyers, the communities, and scholars to handle a major social dispute.

#### **IV. LAF's Institutional Responses to International Covenants**

1. In accordance with Article 6 and 14 of International Covenant on Civil and Political Rights and the principle of right to legal aid specified in the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, LAF, in 2013, revised its remedial approaches to provide legal aid for the offenders of capital punishment in retrials and extraordinary appeal procedures, changing from "in principle, do not offering legal aid" to "should provide them legal aid," in order to guarantee the right of life for the offenders of capital punishment,
2. In accordance with Article 8 of International Covenant on Civil and Political Rights, "No one shall be held in slavery; slavery and slave-trade in all their forms shall be prohibited." Therefore, in October 2007, LAF organized a project for handling issues related to human trafficking to provide special legal aid for victims of human trafficking.
3. In accordance with Article 9 of International Covenant on Civil and Political Rights, "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention." On September 17, 2007, LAF launched a program "Lawyer's Company for the First Criminal Interrogation" to help people in exercising their right to defense, in order to offset the gap of professional legal knowledge between investigative organ and ordinary people.
4. In accordance with Article 27 of International Covenant on Civil and Political Rights, concerning aboriginal policy, LAF also organized an Indigenous Program to provide the indigenous comprehensive legal aid, especially in the cases involving traditional customs and cultural preservation.

5. In accordance with Article 21 of International Covenant on Civil and Political Rights, concerning the right of peaceful assembly, LAF's Board of Directors, on March 28, 2014, authorized the Secretary-General the power to adjust flexibly the scope of legal aid in criminal investigation and defense cases involving high-profile activities of public welfare. The Secretary-General reviews relevant cases, and then decides, case by case, if legal aid is needed, whenever necessary, he/she may follow the project of "Lawyer's Company for First Criminal Interrogation" to provide legal aid.
6. In accordance with Article 9.4 of International Covenant on Civil and Political Rights, requiring prompt arraignment to determine the lawfulness of detention, LAF's Board of Directors, on June 27, 2014, reached a resolution to organize a project "Lawyer Accompanied Arraignment." Anyone arrested or detained by an organ other than a court, after the court issued a writ of certiorari, may call a hotline to request a lawyer for accompanying him/her to state opinions before the court, in order to ensure immediate remedy for people being stripped of their rights without a court order.

## **V. Future Prospects:**

Along with the development of the economy, the poverty gap has been widening, which in turn brings about the need for providing legal aid for disadvantaged groups. In order to provide prompt legal aid services and meet the needs of these groups, LAF has been planning for establishing mechanisms to respond timely to the legal needs of emerging disadvantaged groups.

1. Allocate properly the legal aid resources through analyses of social associations and effectiveness of legal aid provision in a variety of legal aid cases over the years.
2. Understand timely the nations' needs for legal aid through legal aid survey mechanisms, from which the collected data serve as reference for allocating legal aid resources.
3. LAF has established a Development Committee composed of representatives of social welfare groups, scholars, and experts in order to serve as a platform for serving the needs of disadvantaged groups, formulating legal aid policies, and referral cooperation. The committee's functions and operations will be strengthened in the future.



## Appendix 3

### **The Quality of Legal Aid Lawyers– How to Ensure the Quality of Legal Aid Lawyers to the Requirements of the Role of Lawyers Regulated in International Conventions or the UN Principles or Guidelines?**

#### **I. The dramatic increase of the number of lawyers in Taiwan, so does that of legal aid lawyers**

Under Taiwan's old bar examination system, the pass rate of lawyers was mostly less than 8% with only double digits, or even single digit, of individuals past. Starting from 2011, new bar examination system began to adopt the ratio system that allows examinees with top 33% performance in the first round of examination to attend the second round and those who achieve the top 33% performance in the second round can become the members of the bar. That is to say, the annual pass rate remains about 11% and in these three years, annually, we have additional 1,000 lawyers in Taiwan. When practicing lawyers join the Legal Aid Foundation(hereinafter referred to as LAF), they became legal aid lawyers, and the number was 2,419 in 2010, 2,580 in 2011, 2,771 in 2012, and 2,805 in 2013. By August 2014, there have been 8,110 practicing lawyers national wide and among them, 2,928 have registered as LAF's legal aid lawyers accounting for 35% of practicing lawyers. The above numbers indicate the gradual huge increase of LAF's legal aid lawyers each year due to the high pass rate of lawyers.

The gender ratio of LAF's legal aid lawyers is about 2 to 1. Their seniority and ages are listed in the table below. Most practicing legal aid lawyers have the seniority between more than 11 years and less than 20 years (35%) and they are mostly at the ages between 31 and 50 (accounting for 72%).

Seniority Years	Percentage
Less than 2 Years	2%
More than 2 Years and less than 6 years	17%
More than 6 years and less than 11 years	26%
More than 11 years and less than 20 years	35%
More than 20 years	20%

Age	Percentage
Less than 30 years old	4%
Between 31 and 40 years old	38%
Between 41 and 50 years old	34%
Between 51 and 60 years old	14%
Between 61 and 70 years old	6%
70 years old and up	4%

## II. Obligations for the practicing lawyers to serve as LAF’s legal aid lawyers

As regulated by Taiwan’s Legal Aid Act, when the LAF appoints a lawyer to provide legal aids, the lawyer shall not refuse the appointment<sup>1</sup>. Article 24.1 of the said act, however, regulates “The Foundation may retain or appoint lawyers to provide legal aids,” indicating the arbitration freedom and the flexibility of the appointment for legal aid cases. In compliance with the Legal Aid Act, the application, review, and lawyer-appointed of legal aid cases are conducted by each Branch office branch office of LAF<sup>2</sup>. People requiring legal aid service have to firstly submit an application form to the branch office of LAF which he/she is located at Branch office, and after approved by the Audit Committee, if the applicants request to appoint lawyers, in principle, the Branch office shall appoint the lawyer required by them. If there is no such requirement, the Branch office will appoint an legal aid lawyer to each case via the fair appointment system established by the LAF ; before appointment, the Branch office will contact the lawyers via telephone calls to explain the case and the court session as well as the willingness to take the cases. If there is a legitimate reason such as court session or interest conflict, the Branch office will according to the said fair appointment system to inquire the next lawyer until the appointment is completed and the relevant documents are sent to the legal aid lawyers.

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Comments

1: According to Article 25.1 of the Legal Aid Act, “Every lawyer shall provide legal aids set forth in this Law in the bar associations he or she joined. But if a lawyer has a legitimate reason to exempt himself or herself from providing legal aids, the lawyer is not required to provide legal aids” as well as according to Article 27.2 of the same act, “If a lawyer is retained or appointed to provide legal aids, the lawyer cannot decline the representation without a legitimate reason..”

2: According to Article 11 of the Legal Aid Act, “The matters handled by the Chapter are as follows:1. reviewing and executing the approval, denial, revocation and termination of the legal aids applications. 2...” and Point 1 Governing the Appointment of Legal Aid Lawyers by the LAF regulates that “the Chapter shall follow the guidelines to apply for and appoint legal aid lawyers for legal aids.”

### **III. For the handling of major and special cases, LAF retains the staff lawyers**

In order to ensure the smooth implementation and the quality of legal aids, to respond to the actual demands in some rural areas, and to handle other special situations, according to Article 24 of the Legal Aid Act, LAF shall have the right to retain staff lawyers to process cases with special professionalism, charity, and significance such as those related to environmental litigation, human trafficking, and capital punishment that may not be often processed by general practicing lawyers.

Since April, 2006, LAF began retaining its staff lawyers with the purposes to:

- 1. Assist the minority issues:** LAF assists mostly the new inhabitants (foreign or Chinese spouses), the disable, labors (especially foreign labors) or the aborigines with less adequate expression and communication abilities and relying heavily on the assistance of lawyers. Form the cases we assisted, we are able to identify the minority issues that LAF shall develop programs to give assistance. For example, in 2006, LAF's staff lawyer on behalf of more than 300 consumer debtors negotiated with banks about clearing off debts. Although many difficulties were identified, yet the discovery of the lack of individual bankruptcy mechanism in Taiwan was also made. LAF, thus, worked with NGOs that care about the issue and finally in July, 2007, promoted the completed enactment of the Statute for Consumer Debt Clearance; LAF in March 3, 2008 developed the program for consumer debt clearance and the program has been continuously promoted. Additionally, LAF staff lawyers have assisted many foreign labors being exploited and through the accumulated practical experiences, we assisted Taiwan to ratify the Human Trafficking Prevention Law to ensure more comprehensive protection for the victims of human trafficking. Moreover, cases of public hazards and environmental protection and capital punishment cases are strangers to the general practicing lawyers and they can be assisted by LAF's staff lawyers.
- 2. Provision of necessary legal services for residents in remote areas or areas lack of legal services:** Because Taiwan's legal resources (including where lawyers practice laws) concentrate mostly on the west, especially in the metropolitan areas. For residents in the east, non-metropolitan areas, remote areas, offshore islands such as Kinmen, Penghu, and Matsu, there have been

significantly insufficient legal resources. LAF would like to close down the gap of legal resources by providing the support of staff lawyers to the remote areas.

**3. Assistance to urgent cases:** Some applications for legal aids face the due dates of expiration, court sessions, appeals, or counter appeals within days, and they are looking for urgent processing. LAF through the help of staff lawyers handles these urgent cases to safeguard the rights of applicants.

To improve the quality of lawyers has long been the priority of LAF, and each year, LAF interviews those being assisted legally to understand the presenting state. Interview contents include whether cases are discussed, the sincerity of lawyers, preparation of legal documents, satisfaction toward contents, court sessions accompanied by the lawyers and satisfaction towards the performance of lawyers on the court, and outstanding parts or shortcoming of lawyers. LAF uses questionnaire to screen and identify lawyers that are concerned and requests the review of peer lawyers<sup>3</sup>. Interviewees do not exclude those assisted by the LAF's staff lawyers, and therefore, the questionnaire results help to know whether the staff lawyers are active, sincere, and professional and whether they are especially praised or complained by those being assisted.

In addition, LAF through the appraisal system understands the processing quality of the staff lawyers. LAF's appraisal on the staff lawyers is conducted by the Audit Team composed of five to seven members with samplings of document quality, professionalism, sincerity, court performance, communication attitude and other relevant items. Because the said telephone interviews are not mass surveys and may not include all cases taken by the staff lawyers. Thus, LAF conducts the appraisal on the staff lawyers and again uses questionnaire to understand the interaction between the staff lawyers and those being assisted, the court, the prosecution agency, social clubs or other relevant personnel. Members of the Audit Group includes Secretary-General, Deputy Secretary-General, two to four lawyers with the seniority more than ten years suggested by the Secretary-General and approved by the Chairman of LAF Board as well as one to two representatives of social clubs or experts and scholars in legal or other professional fields.

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Comments

3: For lawyer assessment system please refer to 8.5 Assessment Mechanism of Legal Aid Lawyers.

Besides presenting quality, LAF also focuses on occupational behaviors including work attitude, work capability, coordinating ability, and learning ability. Due to LAF's staff lawyers present at the Branch office and at the Northern Taiwan Staff lawyer Center, the appraisal on occupational behaviors has been conducted by the director of each Branch office or the supervisor of the Center. For the staff lawyers who take the position as supervisor, their leadership is included in the appraisal. The above appraisal system has long been conducted and implemented after the resolution adopted by the LAF Board of Directors but not been regulated (past by the Board of Directors in August, 2014 but pending for the approval of Ministry of Justice before implementation). At present, LAF's staff lawyers have been regulated in terms of their employment and appraisal. The staff lawyers are the contracted workers of LAF, and they are applicable to the appeal and reward systems of LAF<sup>4</sup>.

According to existing Article 2 of the Employment Method of LAF's Staff lawyers, LAF shall retain the maximum number of 30 staff lawyers, but due to the budget concern, we are able to retain 18 and by September 2014 actually retain 12 including 3 in Taipei Branch office, 2 in Banqiao Branch office, and 1 in Tainan Branch office as well as 6 at Northern Taiwan Staff lawyer Center. The cases presented by the LAF's staff lawyers accounted for 1.6% from January to September, 2014, 1.5% in 2013, and 1.7% in 2012. Hence, LAF does not attempt to retain the staff lawyers to replace legal aid lawyers but has them to present as the relevant party or for cases on special issues.

Since April, 2006, LAF began retaining the staff lawyers. At the beginning, each Branch office retained lawyers according to the individual needs. Taipei Branch office is the first one that first retained the staff lawyers. Because of the occurrence of a major environmental case<sup>5</sup>, Taiwan Branch office also retained the staff lawyer while Banqiao Branch office also retained the staff lawyer due to the involvement in several major criminal cases and the cooperation with NGOs on the issue of social welfare.

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Comments

4: According to Point 11 Governing LAF's Appeal Processing, "For the appeals of the full-time lawyers at the Chapter, the investigation shall be conducted by the President of the Chapter. When necessary, an independent social representative can be appointed to participate in the investigation. (Item 2), for the appeals of the full-time lawyers of the Foundation, the investigation shall be conducted by the Secretary-General. When necessary, an independent social representative can be appointed to participate in the investigation. (Item 3), investigation results shall be submitted to the final decision of the Board of Directors according to Point 11 Governing Personnel Reward and Punishment. LAF's Point 11 Governing Personal Reward and Punishment regulates that "the case of reward and punishment of the full-time lawyers shall be investigated by the Secretary-General; if the full-time lawyers are present at the Chapter, the President of the Chapter shall be in charge of investigation. Investigation results shall be submitted to the final decision of the Board of Directors. If it is in major violation of Lawyer's Act, the ethical code of lawyers, and rules and regulations of LAF, LAF shall process according to Points of Attention Governing the Appraisal of Service Quality of LAF's Legal Aid Lawyers as well as the rules and regulations of the Employment Method of the Full-time Lawyers."

5: In 2003, the major public hazard incident at "Ann-Shun Site of China Petrochemical Development Cooperation" broke out in Tainan, Taiwan. Nearby residents in 2007 received blood check and found the excessive Dioxins level. They, thus, applied from LAF for assistance to claim national compensation from Ministry of Economic Affairs, China Petrochemical Development Corporation, Tainan City Government, and Environmental Protection Bureau of Tainan City Government. Due to the large number of plaintiffs and the complexity of issues involved, Tainan Chapter thus retained the full-time lawyers to take charge of the major environmental protection case.

On December 22, 2012, the Northern Taiwan Staff lawyer Center has been established under LAF with the purposes below: (1) cultivating professionalism; (2) promoting the mentor system; (3) conducting the in-depth studies on the minority issues; and (4) influencing academic and legal works. In September, 2013, the Northern Taiwan Staff lawyer Center began its operation by aborigine group and domestic affairs group. It is hoped that through group operation, resources from various fields can be integrated to exchange with NGOs regularly for the building of communication platform in order to serve the minority better.

LAF's staff lawyers present at each Branch office are retained due to special needs. They are able to provide legal aids as the relevant party or for cases on special issues as well as assist the Branch office to conduct legal education and promotional activities to work closely with the Branch office. The Northern Taiwan Staff lawyer Center, however, belongs to LAF headquarters that does not appoint legal aid lawyers. Appointment of legal aid lawyers is the responsibility of each Branch office, and therefore, the linkage between each Branch office and headquarters is weak besides the appointment of legal aid lawyers. The staff lawyers support the evaluation of each project and presentation efficiency. It is urgent to solve the issues on what cases with significance shall be taken by the full-time employers and the retaining purpose of the staff lawyers. At present, each Branch office encounters issues involving the traditional custom of aborigines such as the recovery of traditional territories, ownership of hunting guns, hunting of wild animals, the use of forestry by-products and these are first presented by the Staff lawyer Center. It is hoped that through individual cases, experiences can be accumulated for the in-depth studies.

#### **IV. Qualification to serve as LAF's legal aid lawyers**

According to Point 2 Governing the Appointment of Legal Aid Lawyers, lawyers with more than two years of practicing experiences or 1. used to serve as judges, prosecutors, military judges, military prosecutors, or public defendants or 2. Attached with 15 copies of documents presented at different case numbers to obtain the approval of LAF can all apply to serve as the legal aid lawyers from each Branch office of LAF. In addition, LAF Board of Directors can flexibly adjust the qualification of legal aid lawyers according to the characteristic and needs of cases that look for legal aids.

LAF, at the beginning, posed no limitation on the seniority of legal aid lawyers;

in order to respond to the improved quality requirement of each field, in October, 2011, LAF Board of Directors considered the lack of actual litigation experience of junior lawyers with the seniority less than two years and decided to limit on the seniority for appointment. This measure was regulated in the said Points Governing the Appointment of Legal Aid Lawyers in the amendment made in February, 2014. Since the resolution adopted by the Board of Directors has been implemented, LAF's Branch offices found that due to the unique characteristics and demands of each case of legal aids in operation, the limitation of the seniority of two years in general is lack of flexibility. For some major cases, the seniority over two years cannot ensure the protection of the rights of applicants. Thus, when amending the above points, Article 2.3 especially reserves the rights for LAF to conduct flexible adjustment.

LAF since March, 2008, began the "Consumer Debt Clearance Legal Aid Program" (hereinafter referred to as "the Consumer Debt." Because of the low payment made to lawyers and the complicated case procedure and data preparation, the willingness for the legal aid lawyers to take the cases is influenced and there has been a significant shortage of the legal aid lawyers of the Consumer Debt in each Branch office. Due to the involvement of fewer disputes of the Consumer Debt, even lawyers who has practiced the law less than two years, through educational training shall be able to communicate with those being assisted with empathy and patience to help them during the process to clear out debts. In March, 2014, therefore, LAF Borad of Directors liberated the limitation on the qualification of the legal aid lawyers that assist the Consumption Debt. As long as lawyers who practice the law less than two years receive 6-hour training at LAF or the court or the bar association and join the communication platform built by the LAF, they are eligible to present the Consumer Consumption cases handled by the LAF. These lawyers after successfully present the first case and approved by the President of each Branch office can continuously be appointed to repsetn the Consumer Consumption cases handled by the LAF. However,the case number presented is limited to 12 a year. By the end of September, 2014, LAF has conducted seven educational trainings around Taiwan including contents of attention items for audit of LAF consumer debt clearance cases, negotiation and mitigation, self-supporting, clearance related legal points, and the description of speciality of mindset of the debtors. Thorough the diversified training courses, lawyers are equipped with the professional abilities to proces cases of consumer debt clearance.

In September, 2007, LAF began the “Program for Lawyers to Accompany to the suspect who is Investigated by the Police and Prosecutors in his first time” (hereinafter referred to the Duty Lawyer Program to the Police and Prosecutor’s Investigation”). Since its launch, Branch offices responded with the shortage of duty lawyers and the difficulty of appointment, and the Bar Association also expressed that young lawyers with complete educational trainings and experiences shall be encouraged to participate in the Program. Therefore, in May 2014, LAF Board of Directors removed the limitation on the two-year seniority requirement of lawyers for the Program. As long as lawyers who has practiced the law less than two years participate in the educational training for the accompany to the police and prosecutor investigation (three hours), they are qualified to be appointed. LAF and Judicial Reform Foundation jointly published the guideline for the accompany to the police and prosecutor investigation to improve the accompany skills of the lawyers as well as organized seminars to share experiences. Exchange platform has also been developed to assist young lawyers with the willingness to participate in the duty lawyer program to the police and prosecutor investigation.

## **V. LAF’s specialty appointment and contracted lawyer system**

In order to improve the quality of legal aid and to safeguard the rights of those legally aided, LAF has planned the specialty appointment of lawyers in professional fields for the implementation in March, 2015. At the initial stage, specialty fields have been selected in labor, domestic affairs, and consumer debt clearance cases (hereinafter referred to as specialty cases) and later depending on the achievement results and actual needs, more specialty fields will be included. LAF’s legal aid lawyers shall be equipped with one of the following qualifications in order to be appointed as the lawyers for specialty cases: (1) personally presenting at least ten cases of specialty cases and approved by the Specialty Audit Committee of LAF’s Legal Aid Lawyers (hereinafter referred to as LAF’s Specialty Audit Committee); (2) certified with specialty lawyer certificates by Taiwan Bar Association; (3) with teaching experiences in universities and colleges as Assistant Professor and above for the legal subjects related to the specialty field for more than one year; (4) Participating in more than 30 hours of trainings related to specialty fields organized by LAF, justice agencies, or bar associations; (5) publishing paper at the length of more than 10,000 words or more than three relevant papers of specialty fields. In addition to the above qualification required to apply as LAF’s specialty lawyers, when one of the following



situation occurs, application is banned: (1) Punishment of terminated appointment has been imposed within one year after application by the LAF and the punishment execution has been completed less than one year; or (2) applicants are used to be punished to suspend to practice laws.

In order to encourage the lawyers to advance their professionalism, after they become LAF's specialty lawyers, each year, they are required to receive more than six hours of continuous trainings or educational trainings in the specialty fields and to incorporate with LAF's needs, they will share presentation experiences in the training courses. Meanwhile, if one of the following situation occurs, they will be disqualified for the appointment as specialty lawyers: (1) confirmed punishment for LAF to terminate appointment; (2) confirmed punishment for the lawyer to suspend his/her practice of law; and (3) poor presentation quality decided by the LAF Specialty Audit Committee to ensure the quality of specialty appointment.

Because of the lack of marketability of issues of legal aid cases, general practicing lawyers may not gain more cases with those looking for legal aids and lawyers have low willingness. In addition, the law practicing areas of lawyers are not evenly distributed. There are limited numbers in the east, non-metropolitan areas, remote areas, and offshore islands. LAF, thus, has the difficulty to appoint specialty lawyers. Furthermore, LAF, at present, appoints mainly the individual legal aid lawyers not law firms. Taiwan's law firms mostly are small-scale ones composed of individuals or less than five people. LAF Branch offices are heavily relied on the investment of manpower for control and fail to satisfy the needs of residents in the remote areas for lawyers. Hence, LAF is planning to adopt "contracted lawyer" system to sign contracts with scaled law firms with good reputations to assign cases to the law firms, and the law firms shall take care of the quality control or appoint their lawyers to support legal aid cases in areas with insufficient resources. This can ensure quality control via the internal management mechanism of contracted law firms and solve the issue of insufficient resources in the remote areas.

## **VI. Educational training of LAF's legal aid lawyers**

LAF requests its legal aid lawyers to actively participate in the on-the-job educational trainings, seminars, and conferences organized by LAF and incorporate with on-the-job training methods of Taiwan Bar Association, they shall attend the

courses. Among the courses, LAF requests at least three-hour training of consumer debt clearance and accompany to the police and prosecutor investigation for lawyers to present the relevant cases. By doing so, legal aid lawyers are able to update and improve their professional legal skill and presentation quality in order to safeguard the rights of those being assisted<sup>6</sup>.

The ROC Legislative Yuan, on March 31, 2009 ratified the “International Covenant on Civil and Political Rights” and the “International Covenant on Economic, Social, and Cultural Rights”(hereinafter referred to as two covenants) and the act of implementation of two covenants. On December 10 of the same year, the rights protected by the two covenants regulate the domestic legal status of two covenants applicable to the ROC courts. When the relevant parties file litigation, they can actively claim the protection of two covenants. In lieu of the compliance with the two covenants by the cases presented, the LAF (sometimes with bar associations or other NGOs) conducts various educational trainings for the legal aid lawyers to be familiar with international covenants or the UN principles or guidelines to cultivate relevant knowledge about the practical cases of two covenants. In addition, the LAF each year targets on different issues to organize or work with bar associations and NGOs to conduct educational trainings such as issues of domestic affairs, defenses for capital punishment, the aborigines or newly amended laws to improve the professionalism of lawyers.

## VII. LAF legal aid lawyers’ remuneration

LAF, according to the difficulty of cases, set up remuneration methods and standards and the Audit Committee determined the lawyers’ remuneration for their legal aid services.<sup>7</sup> For example, the remuneration for the Procedure of the First General Instance is normally between Twenty to Thirty Thousand New Taiwan Dollars(hereinafter used the same currency), but due to less difficulty, the Procedure of the First Simple Procedure is between Fifteen to Twenty Thousand Dollars. If

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### Comments

6: According to Attention Point 5 for LAF’ s Legal Aid Lawyers to Provide Legal Aids, “LAF requests its legal aid lawyers to actively participate in the on-the-job educational trainings, seminars, and conferences organized by LAF and incorporate with on-the-job training methods of Taiwan Bar Association, they shall attend the courses. The LAF shall have the rights to request the legal aid lawyers to complete certain types and hours on-the-job training courses before being appointed to specific types of legal aid cases of the LAF.”

7: According to Article 28.1 and 31.2 of Taiwan’ s Legal Aids Act, “The lawyer who provides legal aids shall be paid by the Branch office, and the remuneration shall be calculated based on the following standards:1. the remuneration shall be 1 to 5 radixes when the lawyer provides legal consultation or provides legal services necessary to other legal matters. 2. the remuneration shall be 2 to 10 radixes when the lawyer provides legal services in mediations or settlements, or drafts legal documents without involving legal representation or legal defense in litigations or arbitrations and 3. the remuneration shall be 15 to 50 radixes when the lawyer provides legal representation or legal defense in the litigation or arbitration for each level of trial” and “The remuneration and necessary fees is calculated based on legal aids provided in every level of trial or every event of legal dispute.

The rules governing the calculation of the remuneration radixes, payment in advance, payment, reduction or cancellation of the remuneration and necessary fees shall be established by the Foundation and submitted to the competent authority for review and approval.”

the cases get more complicated, after the cases are closed, they can apply for the additional maximum remuneration of ten thousand dollars. LAF pays the remuneration about one third to one half of market prices and fails to have the flexibility to pay lawyers according to the specialty of cases. Hence, in July, 2014, LAF Board of Directors ratified the amendment methods of remuneration and enacted reasonable working hours table.<sup>8</sup> If working hours of legal aid lawyers exceed enacted ones to a certain degree, the application for additional remuneration is allowed. At the same time, standards of increase or reduction mechanism of lawyers' remuneration were also enacted.<sup>9</sup> For example, if legal aid lawyers did not discuss or meet with those in need of legal aids or related parties, three thousand dollars ( equal to 100 USD ) shall be deducted.

Although the LAF Board of Directors has the right to adjust the remuneration of legal aid lawyers, yet according to the previous Article 2.2 and 9 of Remuneration Payment Methods, "the amount calculation of the said radixes can be increased or deducted by 20% due to the needs of the Foundation," and "the Board of Directors can deem the financial status of the Foundation to make the adjustment of the amounts paid according to the Remuneration Payment Standards Table between plus or minus 50%".<sup>10</sup> Although the budget does not increase along with the increased number of legal aid cases, yet till now, the LAF Board of Directors has not initiated the said adjustment mechanism.

## VIII. Quality control of LAF legal aid lawyers

To improve legal aid service quality and ensure the rights of clients has long been the priority work of LAF with the adoption of mechanism below:

### 1. Report of the legal aid lawyers after taking the cases:

In compliance with Guidelines for LAF Legal Lawyers in processing Legal Aid

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#### Comments

8: LAF Remuneration Payment Methods are enacted according to the authorization in Article 31.2 of Legal Aids Act, and as regulated in Article 12 of Legal Aids Act, "The enactment, amendment and abolishment of the rules enacted under this Law shall be reviewed and approved by the competent authority," so the methods need to be reviewed by the Ministry of Justice.

9: Please see C (1) below for the increase and reduction mechanism of remuneration.

10: These two items were integrated after amendments into Article 7, "The Board of Directors shall due to the needs and depending on the financial status of the Foundation, between the range of 50% increase and deduction to adjust the radixes in the attached Remuneration Payment Standards Table as well as between the range of 20% increase and deduction, the calculation amount of remuneration radixes regulated in Article 2." Item 2 was added with "The Board of Directors shall review the radixes and calculation amount of remuneration of the legal aid lawyers; where there is special situation, methods shall be reviewed from time to time" enacting the obligation for the Board of Directors to review remuneration regularly (pending for the ratification of the Judicial Yuan before Implementation).

Cases (hereinafter refer to Guidelines for LAF Legal Lawyers)<sup>11</sup>, legal aid lawyers shall process the appointed cases within two months and report back the processing status back to the Branch office for the application of prepaid remuneration.<sup>12</sup> If the reports from the lawyers are not received within time, the Branch office will withdraw the case appointment from the lawyers and when necessary, lawyers will be replaced.

## **2. No more than 24 cases taken by the legal aid lawyers a year:**

In order to avoid the influence of excessive cases taken by lawyers on quality, LAF set up the limitation on case numbers. According to Point 7 of Appointment of Legal Aid Lawyers, the legal aid lawyers cannot take more than 24 cases a year. But there are exceptions when (1) clients appoint the lawyers or the lawyers have the experience to provide assistance for the procedure of instances or (2) clients appoint the lawyers or the lawyers have the relevant experience to provide assistance for the procedure of instances; the consideration of the mutual trust to some degrees shall be taken to protect the rights of clients. Additionally, for the types of some cases such as clearance of individual debts and the accompany to the first investigation by the police and the prosecutor, the willingness for legal aid lawyers to take the case is low. For encouragement, they shall be excluded in the calculation of the said 24 cases. Furthermore, due to the unbalanced distribution of practicing areas of lawyers, some Branch offices may have the difficulty to appoint the legal aid lawyers, and they shall be also exempted from the said limitation on 24 cases.

## **3. Mechanism to review case closure:**

### **(1) Increase and reduction mechanism of remuneration**

Since its initial establishment, LAF in order to encourage lawyers to take legal aid cases paid 80% remuneration in advance (prepaid remuneration). But later due to the excessive or insufficient amount of remuneration after the closure of legal aid cases, LAF often needed to collect the remuneration back from lawyers as well as there had been delays of reports from the lawyers, the Branch office needed to

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#### Comments

11: Article 7.3 of Attention Items for Legal Aid Lawyers regulates "The legal aid lawyers shall process legal aid cases within two months after taking the cases and fill in and send the formal copy of remuneration receipt and case processing status report back to the Branch office; those who fail to report back within time will be terminated with case appointment and when necessary, lawyers shall be replaced."

12: LAF's lawyer remuneration is divided into prepaid and case closure remuneration. The former is paid with partial payment at the beginning before the lawyers process the cases while the latter is paid after cases are closed. The Branch office according to relevant information sent by the lawyers pays the remuneration. At present, the prepaid remuneration is about 50% of the amount ratified by the Audit Committee.

spent huge manpower to trace the processing situation regularly. LAF also needed to consider the use of budget. Since February, 2010, the prepaid remuneration has been made by 50% of the total amount, and after documents sent by lawyers are received and the Branch office reviews the case closure, the rest remuneration can be applied (case closure remuneration). The amount of remuneration after reviewed by the Audit Committee, in principle, cannot be changed but if the cases are complicated, lawyers need to spend more time and efforts or results of criminal cases are sentenced with innocent or suspended sentence, the application for additional remuneration is allowed<sup>13</sup> but if there is any cause attributable due to the failure of the legal lawyers to carry out their obligations properly, then remuneration shall be deducted according to the serious level<sup>14</sup>.

## (2) Obligations for legal aid lawyers to report back the case closure

Legal aid lawyers shall within one month after legal aid cases are closed fill in the report of case closure and according to the types of legal aid cases attach proof documents. Then Legal aid lawyers shall send all the said proof documents to the Branch office in time. If there is incomplete information in the report and no improvement has been done within 15 days after receiving the notification from the Branch office, the Audit Committee shall then calculate the case closure remuneration upon the request of the Branch office<sup>15</sup>. In order to simplify the case closure operation, when presentation quality of legal aid lawyers is reviewed and approved by the Branch office, the Branch office shall have the right to exempt the obligation for the said attachment requirement of documents and relevant ones, but to ensure quality, sampling from time to time is still required, a mechanism to balance between the reporting obligation of lawyers and the protection of rights of clients.

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### Comments

13: Article 8 of Remuneration Payment Methods regulated “when one of the following situation occurs, the legal aid lawyers shall have the right to apply from the Branch office for additional remuneration but the total remuneration radixes shall not exceed the maximum stated in Article 28.1 of the Act (Legal Aids Act): 1. Working hours engaged in legal aid cases exceed those regulated in Standard Working Hours Table of Legal Aid Remuneration Calculation (Attached Table 2), and for each excessive hour, the Branch office shall increase 0.5 radix according to the application with the maximum of additional 10 radixes and 2. Due to the defense assistance by the legal aid lawyers, clients are sentenced with innocent or suspended sentence” (pending for the ratification of the Judicial Yuan before implementation).

14: According to Article 11 of Remuneration Payment Methods, the deduction standards are listed below:

1. When legal aid lawyers do not discuss cases or meet with clients or the related parties, 3 radixes shall be deducted.
2. For legal aid cases that are approved to use agent and defendant for litigation or attribution, legal aid lawyers without any proper reasons do not prepare documents shall be deducted with 5 radixes.
3. If document quality related to factual sentence or verbal sentence of instance prepared by legal aid lawyers is significantly poorer than those prepared by general practice peers, legal aid lawyers shall be deducted with 10 radixes or cancelled with remuneration payment.
4. When legal aid lawyers fail to present themselves to the court during court session or for the expression of opinions without proper reasons, legal aid lawyers shall be deducted with 5 radixes or cancelled with remuneration payment.
5. When legal aid lawyers do not study case documents without proper reasons, they shall be deducted with 2-5 radixes.
6. Legal Aid lawyers violating Article 8 of Items of Attention for LAF’s Legal Aid Lawyers to Take Legal Aid Cases shall be deducted with 3 radixes” (pending for the ratification of the Judicial Yuan before implementation).

15: This is based on Article 1 and 2 of Point 35 of Items of Attention for Legal Aid Lawyers.

According to operation experience of each Branch office, the investment of human resources for case closure is huge. If legal aid lawyers are able to report back after case closure, the Branch office can control the quality in time and effectively use LAF's budget. Thus, LAF include alert function in the administration software developed on its own to set up different time limit for various types of legal aids. If reports are not received within the limited time, the Branch office is able to use the search system of decision made by the Judicial Yuan and inquiry from legal aid lawyers and applicants to understand the status of cases. According to Article 35.3 of Guidelines for legal aid lawyers,, if cases are closed completely (such as decisions made by the court), lawyers fail to report for closure within the required time, and no reports have been sent back within 15 days after notified by the Branch office, the Branch office shall directly send to the Audit Committee for remuneration reduction or cancellation. Appraisals will also be conducted by Lawyer Appraisal Commission (hereinafter referred to as "The Appraisal Commission") according to LAF's Points of Attention for Legal Aid Lawyer Appraisal.

#### **4. Appealing mechanism**

LAF's appealing mechanism aims to protect the rights of the applicants and clients as well as to improve quality of legal aids. The parties applicable include LAF staff, staff lawyers, members of Audit Committee, and legal aid lawyers. According to Points Governing the Appointment of Legal Aid Lawyers, lawyers apply from the Branch office to become the legal aid lawyers, Thus, appeals of legal aid lawyers shall be investigated by the President of each Branch office in person or secretary shall be appointed for the investigation. When necessary, an independent social representative shall be appointed to participate in the investigation. After investigation, according to violation, the President of Branch office shall be able to advise, consult, and encourage the improvement with the punishment of three-year termination of appointment. The President shall have the right to send the appraisal to the Appraisal Commission.

From 2010 to September, 2014, there were 361 appeals of legal aid lawyers made, and among them, 124 depending on violations were punished including: lawyers did not meet those clients during prison and sentence, lawyers did not prepare documents required, lawyers prepared documents without due care, lawyers appointed non-lawyers to represent clients in court proceedings, lawyers did not present the clients in court proceedings and did not authorize other lawyers

to do so to the court, seals and signature made without the approval of the related parties, lawyers presented the clients in cases of Procedure of Third Instance without submitting causes of appeals within the required time.

## 5. Appraisal mechanism of legal aid lawyers

In order to ensure legal aid quality, LAF set up the Commission in charge of lawyer appraisals composed of 9 members. Besides Secretary-General, there are one judge (recommended by the Judicial Yuan), one prosecutor (recommended by the Ministry of Justice), two lawyers (recommended by national bar associations), and two social representatives or scholars and experts with legal or other professional fields retained by the Board of Directors serving a three-year term respectively.

According to Point 6 of Appraisal, sources for LAF to conduct appraisals include (1) performance quality results from the questionnaire; (2) decision made by the President of Branch office to send for appraisal; and (3) appraisals deemed necessary to improve the service quality of lawyers. Based on violation determined by the appraisal, the Commission shall have the right to request improvement in writing according to Point 24 of Appraisal, suspend appointment for the maximum period of three-year, remove from legal aid lawyer list, and punishment according to Lawyer's Act given by the Lawyer Discipline Commission (hereinafter referred to as the Discipline Commission).

Between 2007 and September, 2014, 51 legal aid lawyers were disciplined by the appraisal agency with reasons below: violation to ethical code of lawyers ( about 33%, for example, delay the appeal time and failure to make appeal); doubts of legal aid quality (45%, for example, failure to prepare documents, provision of over simplified documents, failure to present the clients at the court, without meeting the clients or working with bad attitude), violation to LAF rules and regulations (16% such as violation to Guidelines including the appointment of non-lawyers to represent clients in the court proceedings, failure to inform LAF to apply for security procedure and guarantee documents), and failure to incorporate with LAF administrative affairs (about 6%, for example, the refuse to turn in documents for appraisal or false information reported in the case closure). Among them, delay to submit reasons for the Procedure of the Third Instance greatly affects the rights of clients. LAF generally suspend the legal aid services of lawyers and send them to the Discipline Commission. But the

discipline agency often resolved to give defamation punishment, and that shows the unbalance between processing and violation. LAF according to laws has appealed for the second reviews.<sup>16</sup>

The lawyer appraisal mechanism helps to eliminate lawyers who practice law with poor quality and recognize the good ones. Till now, 24 lawyers have been honored and recognized on the annual celebration of LAF. These awarded lawyers work with sincerity and positive attitude and have been highly recognized by the clients. They present complete and persuasive reasons in the statements of written documents and demonstrate high services quality in their profession.

There are several challenges below for LAF lawyer's appraisal mechanism: (1) the need to establish appraisal standards: LAF clients are the minority and they involved in issues without market orientation, and therefore, legal aid lawyers need to be professional and shall show their empathy. Hence, the appraisal mechanism shall be focused on finding out those who are suitable to provide legal aid services not to punish and eliminate a small number of lawyers. In order to achieve this purpose, we need to establish the evaluation standards; (2) the link to other mechanism: LAF has overlapped case closure review system, appeal system, and lawyer appraisal system and how to prevent loops or repetition requires more efforts; and (3) how to construct standard operational procedure for the quality of lawyers is the common challenge faced by the LAF and the legal field.

## IX. Conclusion

Lawyers have the mission to protect human rights, realize the access to justice, and promote democracy and shall be autonomous based on the ethical consciousness to protect the dignity and honor of the profession. However, lawyers practicing law in Taiwan pay less attention to the ethical code. After the establishment of LAF, in lieu of the insufficient self autonomous management of lawyers to ensure the rights of clients, we have to adopt the above mechanism to control quality. But with significantly low remuneration compared to market prices, we often receive critiques about the efficiency to improve quality. It is indeed very difficult to find the balance.

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### Comments

16: Taiwan's lawyer discipline system classifies into discipline and the second review procedure operated by the Commission; disciplines include warning, defamation punishment, termination of less than two-year legal services, and delisting. According to Article 42 of Lawyer's Act, when a group that sends the discipline request holds objection for the decision made by the Lawyer Discipline Commission, it shall appeal for the second review by the said Commission.



In compliance of the first paragraph of Article 14.1 of International Covenant on Civil and Political Rights, “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law” and Sub-paragraph 5 of the same article, “Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law,” the establishment purpose of legal aid institutions is to help the minority and protect their rights to litigate. Hence, the LAF shall work hand in hand with the minority, and in the near future, the LAF will work more actively to assist legal aid lawyers to realize each international covenant, to provide legal aids by lawyers with sincerity and professional abilities, to establish quality control mechanism, to facilitate the protection right of the clients, and to ensure the rationality of remuneration paid to legal aid lawyers. It is hoped that participants of Taiwan’s legal aid services (staff and legal aid lawyers) to work with sincerity and passion and continue carrying out the goal to protect the legal right of the people in need like what we have done in the past decade.



## 2014 International Forum on Legal Aid



**National Report**

**Australia**

**Speaker: Mr. Anthony John Reilly**  
Chief Executive Officer, Legal Aid Queensland, Australia

## National Report

### 1. Country Information - Australia

Australian has a population of 23.6 million people and a Gross Domestic Product of 1,500 US\$bn. Percentage of population in poverty: In 2010, 12.8% of Australians lived below the poverty line, measured being below 50% of median income.

### 2. Main providers of legal aid services in Australia

There are 5 main legal aid service providers in Australia:

- Legal aid commissions – Australia is a federation that is divided into 8 States and Territories. Each State and Territory has a legal aid commission, established by statute. Consequently there are 8 legal aid commissions. Legal aid commissions are funded by the Commonwealth and State governments and are the largest providers of legal services to financially disadvantaged people in Australia. Legal aid commissions have a main office in each State or Territory capital city and also regional offices across their jurisdiction. Legal aid commissions use a mixed service delivery model through which legal representation services are provided by employed lawyers and also private lawyers.
- Community legal centres – there are about 200 community legal centres in Australia located in metropolitan and regional areas across Australia. Community legal centres work with their local geographic catchment area or in a specialist area of interest such as tenancy or disability discrimination, and have close connections to their respective communities. They primarily provide advice and/or information and referral, community legal education and some case work services. Community Legal Centres are mostly funded by the Commonwealth and/or State/Territory governments, although some do not receive any funding and rely exclusively on volunteers.
- Aboriginal and Torres Strait Islander Legal Services – There are 8 ATSILS. ATSILS are Aboriginal community controlled and funded by the Commonwealth government to provide legal assistance including legal representation to Aborigines and Torres Strait Islanders. Aboriginal and Torres Strait Islander peoples are also able to seek legal assistance from legal aid commissions if

they wish.

- The Family Violence Prevention Legal Services - There are 14 Aboriginal community controlled FVPLS funded by the Commonwealth government to provide front line legal assistance services to Aboriginal and Torres Strait Islander victims of family violence. Many of the FVPLS are in remote areas.
- Private profession – members of the private legal profession will represent people on a grant of legal aid. About 70% of legally aided representation work is done by the private legal profession. They also volunteer at community legal centres and do occasional free legal work.

My role is the chief executive officer of Legal Aid Queensland, which is Queensland's legal aid commission. We are the third largest legal aid commission in Australia, with an annual budget of about \$110M, 14 offices, and about 440 employees. We also have a network of about 350 private law firms who are available to do legal aid work.

The directors of Australia's 8 legal aid commissions work closely together and are member of a collective body called National Legal Aid.

Across Australia, we work very closely with our colleagues in the community legal centres, the Aboriginal and Torres Strait Islander Legal Services, the Family Violence Prevention Legal Services and the private profession to provide a matrix of complementary services. Each state/territory has a collaborative group that meets regularly, and nationally representatives of respective peak bodies meet as the Australian Legal Assistance Forum (ALAF) at least twice a year to discuss future directions for legal assistance.

As I work for Legal Aid Queensland, the remainder of this paper focusses on services provided by legal aid commissions and specifically Legal Aid Queensland.

### **3. Legal aid commissions and recent business figures**

As mentioned earlier, Australia is a federation, with a national Commonwealth government, and eight State and Territory governments. There are eight Legal

Aid Commissions throughout Australia, representing each State or Territory. The Commissions are independent statutory authorities, established under the respective State or Territory enabling legislation. Each legal aid commission has a board, a director, and employees.

Applications for legal aid across Australia in 2013-14 were as follows:

- received – 160,895
- approved – 129,853
- refused – 28,892

In terms of the types of matters aided, in 2013-14, legal aid commissions across Australia granted aid in the following areas:

- criminal – 80,755
- family – 45,277
- civil – 3,821

Other services provided by legal aid commissions, using 2012-13 figures, include:

- 16 million information and referral services, community legal education activities and website page views
- 374,000 instances of legal advice and minor assistance
- 382,000 duty lawyer services
- 8,000 family dispute resolution conferences

#### **4. Australia's legal aid funding arrangements**

Legal aid commissions received \$618M in income in 2013-14, of which \$213.7M was provided by the Commonwealth government, \$291M was provided by the State and Territory governments, \$85.6M was provided by State governments from interest on solicitors trust accounts, and the remainder was from other sources (such as self-generated income through client contributions).

The table below is taken from the National Legal Aid website and sets out funding

details for all 8 legal aid commissions in 2013-14.

Commissions' Budgeted Income and Expenses - 2013/2014 (excluding funding for CLCs)						
LAC	Budgeted Income					Budgeted Expenses
	CW Input Grants(\$' 000)	State Input Grants (\$' 000)	Spec.Trust & Statutory Interest(\$' 000)	Self Generated Income(\$' 000)	Total Income (\$' 000)	Total
NSW*	66,964	109,418	35,347	7,451	219,180	223,042
VIC*	46,300	67,886	25,663	5,820	145,669	143,695
QLD	46,509	44,201	19,351	3,895	113,956	113,956
SA	16,832	20,231	2,941	2,543	42,547	44,701
WA	22,227	33,158	1,000	5,185	61,570	62,918
TAS	6,483	5,933	0	335	12,751	13,330
ACT*	4,468	5,778	1,328	598	12,172	12,507
NT*	3,950	4,785	0	1,504	10,239	10,273
Total	213,733	291,390	85,630	27,331	618,084	624,422

## 5. Evaluating performance

Legal aid commissions use various methods to evaluate their performance. Methods include:

- Reporting to government funders about performance against benchmarks established in service delivery agreements. For example the current Commonwealth funding agreement requires legal aid commissions to report annually against a range of performance benchmarks.
- Reporting annually to their respective State and Territory parliaments. Legal aid commissions provide an annual report about their performance that is usually tabled in their respective State or Territory parliament, and made available to the public on the web.
- Reporting to boards about performance. Each legal aid commission provides

regular reports to their boards about performance. For example, at Legal Aid Queensland we provide a financial report, a report on our achievement of government performance benchmarks, and also report on a range of performance indicators relating to efficiency, quality and timeliness of services.

- Client satisfaction surveys
- Various reviews, conducted by internal or external bodies. Two recent reviews, publicly available on the web include:
  - Review of the National Partnership on Legal Assistance Services by Allen Consulting
  - Access to Justice Arrangements inquiry conducted by the Australian Government Productivity Commission.

## **6. Service delivery methods**

Legal aid commissions use a mixed service delivery model, which means that we deliver services through employed lawyers and also through private lawyers. While the use of private lawyers varies across jurisdictions, across Australia about 70% of legally aided legal representation work is undertaken by private lawyers.

Most legal aid commissions maintain panels of quality assured law firms who enter into an agreement with the legal aid commission to provide legal aid services. Panels are typically based on areas of law, and also types of matters. For example, there may be a general crime panel and a special panel for large trials. To be listed on the panel, law firms must demonstrate that they have relevant experience in the area of law.

The agreements between legal aid commissions and law firms will usually address issues relating to service quality. For example the agreements used by Legal Aid Queensland includes provisions about supervision of junior lawyers, requires compliance with case management standards, and also co-operation with file audit processes.



The rules and procedures for assigning approved cases to legal aid lawyers vary from commission to commission depending upon local circumstances. At Legal Aid Queensland there is no choice of solicitor, which means that we have the capacity to direct a grant of aid to a particular law firm or to one of our employed lawyers if we choose to do so. Most of the time, however, if a law firm electronically lodges an application for aid, then the same private law firm is assigned the approved grant of aid. In the case of an application lodged by a client, our employed lawyers are usually provided with the first opportunity to have the case assigned to them. However if they are unavailable to take on the matter because they already have a sufficient file load or because there is a conflict of interest, then the matter is allocated to a private law firm. The method of allocation is simply a listing approach.

Wages paid to lawyers also vary between legal aid commissions. At Legal Aid Queensland we based our wages on government pay rates, and as a result are competitive with other government agencies for lawyers.

## **7. Types of legal aid services and types of matters aided**

Legal aid commissions provide legal services to financially disadvantaged peoples in areas of law such as crime, family, child protection, domestic violence and a range of civil law areas such as anti-discrimination and consumer law.

The services provided by legal aid commission include:

- Community legal education
- On-line and face to face legal information and resources, such as publications
- Legal advice and minor assistance. Minor assistance involves minor follow up services to advice such as drafting letters.
- Duty lawyer services, referring to court based legal services. Criminal law duty lawyers represent defendants on charges. However family law duty lawyer services, are more akin to a court based advice service.
- Dispute resolution services. The dispute resolution services provided by legal

aid commissions are principally family law lawyer assisted dispute resolution services which seek to achieve a negotiated outcome to family disputes and so avoid the need for a family court hearing.

- Legal representation services.

Some legal aid commissions have call centres to triage requests for legal assistance. All legal aid commissions have websites, which are well utilised by Australians to obtain legal information.

Legal aid commissions use a mixed service delivery model, which means that we deliver services through employed lawyers and also through private lawyers. While the use of private lawyers varies across jurisdictions, across Australia about 70% of legally aided legal representation work is undertaken by private lawyers.

Numbers and types of grants of aid are included in Section 3.

## **8. Application procedures and criteria for granting aid**

Legal aid commissions use strict criteria when granting aid for legal representation. This way we can make sure we are using our funding to help those who are least able to afford a lawyer.

We use three sets of criteria to determine if legal aid will be granted. These are the means test, funding guidelines and in most cases, a legal merits test.

The means test looks at your income and assets to see if you are financially eligible for legal aid. If you rely on government welfare payments for your income, you will usually be eligible for legal aid, as long as your assets are within the set limits.

The guidelines tell us the types of cases we can fund, based on the priorities set for us by the state and federal governments.

Some of the priorities for Legal Aid Queensland are:

- Criminal law

- o District and Supreme Court criminal proceedings
  - o Indictable offences in the Children's Court (these are serious offences)
  - o Appeals to the Court of Appeal or High Court
  - o Magistrates court committal hearings where the maximum penalty is more than 14 years in jail
  - o Bail applications.
- Commonwealth Family law
    - o Urgent matters where a child's safety or welfare is at risk or the applicant's safety is at risk
    - o Urgent matters where there is an immediate risk of a child being removed from Australia or to a remote location in Australia
    - o Separate representation of children
    - o Parenting plans and orders
    - o Location and recovery orders
    - o Injunctions relating to family violence.
  - State Family law
    - o Child protection proceedings
    - o Domestic and family violence matters
  - Civil law
    - o Discrimination matters.
    - o Consumer law matters.

Under the merits test we assess the merit of each person's case by looking at:

- the legal and factual merits of the case and if it is more likely to succeed or fail if it goes to court
- if a sensible person would risk their money to take the case to court
- if the benefit the applicant will receive from having a lawyer justifies spending limited public funds on their particular case.

## **9. Special services or standards designed specifically for disadvantaged groups**

Legal aid commission's guidelines are often designed to assist access to services for disadvantaged groups.

For example, many legal aid commissions operate call centres that filter access to free legal advice services. The filtering criteria used for this purpose often involve client characteristics such as intellectual disability or age, or type of law, such as domestic violence.

In prioritising funds available for and deciding whether a grant of legal assistance is to be made, the particular circumstances of the applicant are often taken into consideration. For example, the grant of aid guidelines used by most legal aid commissions for family law matters priorities grants of aid for the following types of non-urgent legal matters:

- there is, or is a likelihood of, domestic violence, especially if an allegation of domestic violence has been made
- concerns as to the safety, welfare and psychological wellbeing of a child have been identified and require further investigation
- the applicant has a language or literacy problem
- the applicant has an intellectual, psychiatric or physical disability
- it is difficult for the applicant to obtain legal assistance because the applicant lives in a remote location
- the child/children are Aboriginal or Torres Strait Islander as defined under section 4 of the Family Law Act 1975.

Also our grants of aid guidelines have been developed to help identify applicants who would not usually meet our means test, but deserve special consideration because they experience multiple disadvantages – such as living in a remote area or having an intellectual, psychiatric or physical disability or other disadvantage.

## **10. Monitoring quality**

Legal aid commissions utilise a range of different methods to measure quality. I

have referred to how we monitor quality at Legal Aid Queensland.

First, for our employed lawyers we have a Quality Legal Services Framework with a number of elements including a detailed set of case management standards, regular file audits, and training. We have a performance benchmark of 90% satisfactory file audit outcomes.

Second, for private lawyers, we also audit their legally aided files from the perspective of both compliance with case management standards but also from a financial audit perspective. Again we have a benchmark of 90% satisfactory outcomes.

Third, for grants of aid, we audit our grants officers' files to ensure that they are complying with policies and procedures. We also have a performance benchmark of less than 6% of grants refusal being overturned on external review.

Fourth, we have a complaints system that is oversighted by a governance unit in our corporate services area. All complaints are investigated and followed up, and we have regular reporting on complaints outcomes to our executive management team.

Fifth, we conduct a client satisfaction survey once every two years.

## **11. Informing potential applicants of the availability of legal aid services**

All legal aid commissions have a range of strategies to make the community aware of the availability of legal aid services.

Strategies utilised by legal aid commissions to make the community aware of the availability of legal aid services include:

- Duty lawyer services. Due to their location at courts, duty lawyer services are a practical way to raise awareness of legal aid services.
- Maintaining websites with information about service availability. There has been strong growth in website usage in recent years.
- Issuing media releases about service availability, particularly in regional

areas. For example, Legal Aid Queensland issues media releases about the availability of family law duty lawyer services when the Family Court of Australia visits regional centres.

- Distributing posters, pamphlets and other publications about the availability of legal services to courts, other legal service providers, government agencies and non-government organisations.
- Outreach work to smaller communities to raise awareness of services.
- Participating in community events.
- Operating call centres which are accessible through a toll free number

## **12. Reducing the amount of disputes which resort to the courts, including law reform and community legal education.**

Strategies utilised by legal aid commissions to reduce the amount of disputes which resort to the courts include early resolution legal processes, community legal education, and law reform.

Examples of early resolution legal processes include:

- Family law dispute resolution conferencing programs – see Section 7 above.
- Grants of aid for other mediation and conferencing – grants of aid are usually available for mediation processes. For example, in child protection matters, grants of aid are available for court ordered conferencing.

In terms of community legal education, legal aid commissions also provide a range of community legal education activities. Typical types of community legal education activities include publications, information on websites, conducting community legal education sessions for community members and also non-legal community workers, and activities at community events.

At a national level, legal aid commissions seek to collaborate on community legal education activities through the National Legal Aid Community Legal Education Working Group. A good example of a national legal aid program was the What's the Law? Australian Law for new arrivals resource to help newly arrived refugees and

migrants understand the Australian legal system.

Legal aid commissions also engage in law reform. Following amendments to the National Partnership Agreement on Legal Assistance Services, our law reform activities are largely restricted to responding to government requests for feedback on law reform proposals, rather than pro-active advocacy for law reform.

### **13. Making services accessible through technology**

As discussed above, legal aid commissions all maintain websites with information about service availability. There has been strong growth in website usage in recent years.

Many commissions also have systems that enable private lawyers to apply for legal aid electronically, rather than in paper form. In Queensland, about 50% of all applications are now electronically lodged.

Legal aid commission also utilise video technology to access clients in remote locations or prisons. Legal aid commissions have not yet implemented any web based legal advice systems; however there is growing interest in this area.

### **14. Difficulties encountered in promoting legal aid work in recent years**

Legal aid commissions have a great deal of freedom to promote legal aid work. The only restriction on legal aid work imposed in recent years has been amendments to the National Partnership Agreement on Legal Assistance Services, as a consequence of which our law reform activities are largely restricted to responding to government requests for feedback on law reform proposals, rather than pro-active advocacy for law reform.

### **15. Mechanisms of co-operation with legal aid organisations abroad**

Australia's legal aid commissions do not currently have formal instruments of co-operation with legal aid organisations abroad. However legal aid commissions do



## 2014 International Forum on Legal Aid

provide training and support to some legal aid commissions outside of Australia. For example in recent years Legal Aid Queensland has been hosting lawyers and other officers from legal aid bodies in Papua New Guinea and the Solomon Islanders.



## National Report

# Canada

Speaker: Mr. Mark Benton, Q.C.  
CEO, Legal Services Society, British Columbia, Canada.

# National Report

## 1. Country Information

County	Legal Aid Organization Name	Date of Establishment	Poverty Line & Percentage of Population in Poverty	Total No. of Practising Lawyers
British Columbia Canada	Legal Services Society	In the current form in BC - 1997	Canada - 10% BC – 12.5%	Canada – 104,000 BC - 10,000 Lawyers doing legal aid work; Canada 10,450 BC 992
Population	GDP	Total No. of Applications Received in the Past Year	Total No. of Applications Approved in the Past Year	Total No. of Applications Refused in the Past Year
Canada 33.3 million BC 4.14 million	Canada C\$1.819.967.000 BC C\$219.994.000	Canada 745,000 BC 40,300	Canada 490,000 BC 27,350	Canada 98,160 BC 12,900

## 2. Please describe the main provider(s) of legal aid services in your country:

Canada has 13 provincial/territorial legal aid jurisdictions. Each jurisdiction has a legal provider. Each jurisdiction is funded separately, sets its own criteria for legal aid eligibility and the range of legal aid services it provides. Details of each plan can be found through the following links:

- British Columbia
- Alberta
- Saskatchewan
- Manitoba
- Ontario
- Quebec
- New Brunswick
- Prince Edward Island
- Nova Scotia
- Newfoundland and Labrador

- Nunavut\*
- Northwest Territories
- Yukon

\*The Nunavut Legal Services Board may be contacted as follows:  
 Maliiganik Tukisiiniakvik  
 P.O. Box 29  
 Iqaluit NU X0A 0H0  
 General Line (toll free) 1-866-202-5593  
 Poverty Line (toll-free) 1-866-677-4726

**(a) What is the nature of the provider's organization (ie, a government department, an independent statutory body or association)?**

Most Canadian legal aid plans are established as legal entities independent of government. The smallest plans are often part of government; one plan is a non-statutory corporate entity.

**(b) If supervised by another authority, how does the provider maintain independence in decision-making and in carrying out its duties and responsibilities?**

Most Canadian legal aid entities are governed by an independent board of directors.

**(c) Please describe the legal aid organization and the recent business figures:**

**BC's Legal Services Society:**

Mandate

The Legal Services Society (LSS) provides legal aid in British Columbia. Created by the Legal Services Society Act in 1979, LSS is a non-profit organization that remains independent of government. Our priority is to serve the interests of people with low incomes.

Under section 9 of the LSS Act, the society's mandate is: to help people resolve their legal problems and to facilitate access to justice; to establish and administer an effective and efficient system for providing legal aid to people in BC; and to provide advice to the Attorney General about legal aid and access to justice for people in BC.

Vision and mission

Our vision is a British Columbia where all people are able to find timely and lasting solutions to their legal issues that improve their quality of life.

Our mission is to provide innovative and integrated services that enable clients to effectively address their legal issues in a broad social context.

Funding

The society receives approximately 90% of its revenues from the provincial government. It also receives funding from the Law Foundation of BC and the Notary Foundation of BC, which collect interest earned on lawyer and notary trust accounts and pay a portion to LSS. The federal government reimburses the province for legal aid costs related to immigration and federal prosecutions. In 2012/2013, LSS had revenues of \$83.5 million, including \$78.4 million from the provincial government, \$3.8 million from the Law Foundation, and \$510,000 from the Notary Foundation.

Governance

The society is governed by a nine-member board of directors. Five are appointed by the Lieutenant-Governor in Council on the recommendation of the Attorney General, and four are appointed by the Law Society of BC after consultation with the executive of the BC Branch of the Canadian Bar Association.

LSS is committed to strong corporate governance practices that enable public accountability and transparency. Analysis of the matter types aided in the past year.

**Information services**

Publications: Legal information, self-help manuals, and legal aid awareness materials produced by the Society.	Publications distributed: 256,254
LIOWs: Legal information outreach worker information requests.	Client interactions: 8,216
LSS website: Features publications on various aspects of the law, as well as information about LSS and legal aid services.	Visits/month: 33,160
Family Law in BC website: Helps people to understand and use the law to resolve their family law problems.	Visits/month: 65,648

## Advice Services

Criminal duty counsel: Provide accused persons with advice about the charges against them, court procedures, and legal rights.	Client visits: 69,596
Immigration duty counsel: Duty counsel for people in detention at the Canada Border Services Agency's enforcement centre in Vancouver.	Client visits: 1,153
Family duty counsel and advice lawyers: Advice on family law matters and child protection issues.	Client visits: 37,794
Brydges line: Province-wide, toll-free telephone advice service for persons who have been arrested, detained, or are under active investigation by a law enforcement agency.	Calls handled: 18,834
Family LawLINE: Phone service for financially eligible people that provides information on a variety of family law issues (as of November 1, 2010).	Calls handled: 4,996

## Representation by a lawyer

Criminal: Financially eligible clients charged with a criminal offence who, if convicted, face a risk of jail (including house arrest), direct loss of livelihood or immigration complications.	Client referrals: 19,569
Family: Financially eligible clients facing situations where their safety or the safety of their children is at risk, they have been denied access to their children, or there is a risk that a child will be permanently removed from the province.	Client referrals: 3,708
CFCSA: Financially eligible clients whose children have been, or are at risk of being, removed from the client's home by the Ministry of Children and Family Development, or clients who are facing legal proceedings initiated by the director of the MCFD, or if there are custody or access issues relating to a child in the care of the MCFD.	Client referrals: 2,544
Immigration: Clients whose cases have a reasonable chance of success and who need help with a refugee claim, have an immigration problem that could lead to their removal from Canada or are appealing an immigration decision.	Client referrals: 638

- (d) **What is the number and percentage of cases conducted by in-house/staff attorneys and legal aid lawyers in private practice?**

98% of cases are handled by private practice lawyers.

### **3. Please describe your country's (or organization) legal aid funding arrangements:**

Provinces and territories fund the legal aid programs. The federal government (Canada) provides a contribution to that funding. Some legal aid plans in Canada also receive private foundation funding and/or statutory income streams, typically from the interest revenue from lawyers trust accounts.

- (a) **What are the sources and amount of legal aid funding?**

In British Columbia more than 90% of funding comes from government. This is typical of most Canadian legal aid plans

**Are there caps on annual spending?** No, in most cases there is not however spending is typically limited by revenue. An exception is BC where there is a statutory prohibition on deficit spending.

- (b) **Has your organization experienced large-scale funding cuts?**

If so, what were the strategies for responding to such situation? There have not been any major funding reductions since 2009. In that year LSS faced a \$2.5 million (3%) reduction in non-government revenue (as a result of the global economic downturn. In 2002 LSS faced a 40% reduction in government revenue. In both circumstances services and staffing were reduced; LSS closed all but two offices and in 2002 laid-off 60% of its staff. LSS moved to a contracted service model for applications, eliminated most of its staff lawyer service delivery, introduced an enhanced family duty counsel model in lieu of representation in family matters, and moved to telephone and internet for the delivery of information and advice services.

- (c) **What is the percentage of funding spent on paying lawyers' fees and costs, and on administration expenses respectively?**

LSS administrative costs are 9.5%.

- (d) **Does assistance extend to covering costs such as court costs, government charges, and costs awarded against the legal aid recipient?**

In BC legal aid covers Court fees but does not cover costs awarded against the legal aid recipient. If costs are awarded in favour of the legal aid recipient they are deemed to belong to the legal aid plan

#### **4. How does your organization evaluate performance?**

Staff are subject to performance planning and assessment, including file reviews. Private lawyers are audited on a complaints basis. Overall service effectiveness is assessed through extensive surveying. These evaluations are published at <http://www.legalaid.bc.ca/about/evaluations.php>, What are the effective tools or methods of evaluation? If your organization has established branch offices, -Monitoring of volume, workloads and approval rates, staff lawyer and paralegal file reviews, and individual performance planning and evaluation

#### **5. Please describe the methods of service delivery in your country (or organization): see 2(d) above**

- (a) **Are the bulk of the approved cases conducted by in-house/staff attorneys or by lawyers in private practice?**

More than 95% by lawyers in private practice

- (b) **What are the conditions of registering as a legal aid lawyer?**

Being a lawyer in good standing. Some cases and services are restricted to lawyers with more experience.

- (c) **What are the rules and procedures of assigning approved cases to legal aid lawyers?**

Clients can select the lawyer of their choice (80% of cases) in the community where the legal proceeding will take place. Where the client does not request a lawyer LSS distributes cases equitably to lawyers with the requisite experience

- (d) **How do the salaries and fees paid to legal aid lawyers compare with the general market rate?**

BC legal aid salaries are less than market and as much as 30 less than

comparable government lawyer salaries. Private lawyer rates are about 30% of the rates a private client would pay. More detail on the rates paid to private lawyers follows:

Private lawyers who represent legal aid clients or provide duty counsel services are paid according to a schedule of fees and disbursements known as the tariffs. Details of the tariffs are available on the LSS website at: <http://www.lss.bc.ca/lawyers/tariffGuide.asp>.

The society uses a three-tiered system of tariff rates based on years of experience.

Year of Call	Block Tariff	Hourly Tariff
Less than 4 years	Amount specified in the tariff	\$83.90
4 or more s & less than 10	Amount specified in the tariff plus 5%	\$88.10
10 or more years	Amount specified in the tariff plus 10%	\$92.29

Note: most criminal law services are paid according to a block tariff rather than an hourly rate. Note also that disbursement rates are not affected by tiered rates.

### Enhanced fees

Enhanced fees may be available for senior counsel in cases LSS considers to be complex criminal matters. To qualify for enhanced fees:

- The lawyer must have 12 years experience in criminal law or have demonstrated to the satisfaction of LSS that he or she has proven experience in criminal, and;
- at least 50 per cent of the lawyer’s practice must be criminal law.

LSS’s Enhanced Fees Policy is available at: <http://www.lss.bc.ca/lawyers/enhancedFees.asp>).

Enhanced Fees	Hourly Rate
Senior Counsel	\$125.00
Junior Counsel	\$62.93 - \$83.90



### **Exceptional responsibility premium**

LSS will pay an exceptional responsibility premium of 15 per cent in cases where Crown Counsel is being paid a premium in “Recognition of Exceptional Responsibilities” (as per the British Columbia Crown Counsel Association Agreement with Respect to Crown Counsel). This premium applies to very few cases.

### **Lawyer fees**

In 2012/13, lawyers earned a median amount of \$36,137 for legal aid work.

## **6. Please describe the types of legal aid services provided in your country (or organization), and the types of matters aided.**

### **Information services**

- Publications: LSS staff produce legal information and self-help materials in a number of languages to help clients identify, avoid and resolve common legal problems. Topics include: Aboriginal law; children; criminal; consumer and debt; family law; housing; immigration and refugee law; pensions; and welfare rights. A complete list is available at [legalaid.bc.ca/publications](http://legalaid.bc.ca/publications).
- Family law website: Includes self-help guides, informational videos and fact sheets on a variety of family law topics including custody, access, guardianship, child and spousal support and uncontested divorces. The site also includes direct links to court forms, legal information publications and other helpful organizations. See [familylaw.lss.bc.ca](http://familylaw.lss.bc.ca).
- LSS website: Includes information about the Legal Services Society, how to apply for a legal aid lawyer, information and advice services, online publications office locations and more. See [lss.bc.ca](http://lss.bc.ca).
- Clicklaw: LSS is a contributor organization for Clicklaw, a website designed to give the general public access to all of the public information resources available through participating legal organizations. See [clicklaw.bc.ca](http://clicklaw.bc.ca).

- **Supreme Court Self-Help Centre:** LSS works in partnership with government agencies and community organizations to provide legal information through the Supreme Court Self-Help Information Centre in Vancouver. See [supremecourtselfhelp.bc.ca](http://supremecourtselfhelp.bc.ca).
- **Advocate and education support:** LSS provides community advocates and intermediaries with legal education and advocacy training to help them assist their clients.
- **Legal Information Outreach Workers:** LIOWs help low-income people find legal information and understand court forms. They also provide referrals to other resources and give presentations at Aboriginal, women's, immigration, social service, and other community agencies.
- **Aboriginal Community Legal Workers:** ACLWs provide legal information and summary advice about family and child protection law, and issues such as residential schools, housing, and wills and estates.
- **Community Partners:** Community partners provide free legal information and direct clients to legal aid services. A list of community partner locations throughout BC is available at [legalaid.bc.ca/legal\\_aid/communityPartners.php](http://legalaid.bc.ca/legal_aid/communityPartners.php)

### **Advice services**

- **Duty counsel:** LSS contracts with private lawyers to provide legal advice (but not representation) at courthouses around BC.

Family duty counsel advise on family law matters and child protection issues. They can also assist clients at family case conferences and judicial case conferences.

Criminal duty counsel provide accused persons with advice about the charges against them, court procedures and legal rights. Duty counsel can also represent people at a guilty plea and sentencing, or on an application for release.

Immigration duty counsel at the Canada Border Services' Vancouver enforcement centre provide legal advice to people who are being held in custody as a result of immigration proceedings. Duty counsel represent clients at initial detention hearings and may represent them at subsequent hearings if there has been a change in circumstances that could result in release.

- Family law advice lawyers: Low-income parents experiencing separation or divorce may be eligible for up to three hours of free legal advice from a family advice lawyer. These lawyers can provide advice about: custody; access; guardianship; child support; property (limited advice); tentative settlement agreements; and court procedures. This service is available at the Vancouver Justice Access Centre, the Nanaimo Justice Access Centre, the Family Justice Centre in Kelowna, the New Westminister Family Justice Centre and at courthouses in Kamloops, Prince George, Surrey and Victoria . You must be referred to a family advice lawyer by a family justice counsellor or a child support officer.
- Family LawLINE: Family LawLINE lawyers give brief "next step" advice about family law issues such as custody, access, guardianship, child support, spousal support, property division, family agreements, adoption, and court procedures.

**Criminal law telephone advice services:**

- LSS maintains a province-wide, toll-free telephone advice service for persons who have been arrested, detained or are under active investigation by a law enforcement agency. This service is available 24 hours a day, seven days a week.
- LSS also maintains a province-wide, toll-free telephone advice service for persons in custody awaiting a bail hearing outside normal office hours, on weekends or on statutory holidays.

Clients must meet a financial eligibility test for family advice services. There is no financial eligibility test for criminal or immigration duty counsel advice.

## Representation by a lawyer

- **Family:** Representation by a lawyer is available to financially eligible clients who are facing serious family situations where their safety or the safety of their children is at risk; they have been denied access to their children on an ongoing basis; or there is a risk that a child will be permanently removed from the province. For more information, see the Family law services fact sheet.
- **Child protection:** LSS provides legal representation to financially eligible clients who have a legal problem under the Child, Family and Community Service Act and the children have been removed or are at risk of being removed from the home by the Ministry of Children and Family Development, the client is facing legal proceedings initiated by the Director, or there are custody and access issues relating to a child in the care of the Ministry. For more information, see the Child protection services fact sheet.
- **Criminal:** Legal representation is available to financially eligible adults who are charged with a criminal offence and if convicted, face a risk of jail (including house arrest), loss of livelihood, or immigration complications that could result in deportation. Legal representation is also provided to financially eligible applicants who have a mental or physical disability that prevents them from representing themselves or are Aboriginal, have a defense based on Aboriginal rights, and their ability to follow a traditional livelihood of hunting and fishing could be affected if convicted. Youth charged with federal offences are also eligible for representation. For more information, see the Criminal law services fact sheet.
- **Immigration:** LSS provides legal representation for financially eligible clients with cases that have a reasonable chance to succeed and who need help with a refugee claim, have an immigration problem that could lead to their removal from Canada to a country where they would be at risk or are appealing an immigration decision. For more information, see the Immigration law services fact sheet.
- **Mental health:** LSS contracts the Community Legal Assistance Society to

provide representation services at Mental Health Review Panels hearings for people who have been involuntarily detained in a mental health facility under the Mental Health Act. CLAS and private lawyers also provide representation at BC Review Board hearings under the Criminal Code for people found to be not criminally responsible for a crime or unfit to stand trial by reason of a mental disorder. For more information, see the Mental health law services fact sheet.

- Appeals: Applicants who are financially eligible may receive legal representation if they are responding to appeals initiated by another party (such as a Crown appeal from an acquittal) and the case is one the society normally would cover. Otherwise, LSS funds only those appeals that fall under the society's regular coverage criteria and have a reasonable chance of success.
- Prison law: Legal representation may be provided for prisoners facing internal disciplinary hearings, involuntary transfers to higher security, detention hearings at the point of statutory release, segregation, and parole suspension or revocation.

## **7. Please describe application procedures and the criteria of granting legal aid.**

Individuals apply in person or by telephone. LSS provides in person application services at major courthouses and through local offices and agents .

Eligibility guidelines are as follows:

### **Financial eligibility for legal representation**

To be eligible for legal representation, the case must fall within LSS's coverage rules and the applicant must meet LSS's financial eligibility rules. Verification of income, personal property, assets, and expenses is required. The onus is on the applicant to satisfy LSS eligibility requirements.

LSS's financial eligibility guidelines are based on Human Resources Development

Canada's "Market Basket Measure" of goods and services adjusted by LSS for inflation.

Household Size	Net Household Monthly Income	Personal Property Exemption
1	\$1,480	\$2,000
2	\$2,070	\$4,000
3	\$2,670	\$4,500
4	\$3,260	\$5,000
5	\$3,850	\$5,500
6	\$4,450	\$6,000
7 or more	\$5,040	\$6,000

- Household income: Usually includes all money or benefits earned or received by adult family members who are living together. A limited number of income sources are not included such as the BC family bonus and child tax benefits. A limited number of deductions are also made including daycare expenses, required medication, and child or spousal maintenance payments.
- Personal property: Includes but is not limited to: accounts receivable; antiques; bank accounts; cash; collections (coins, stamps); household furnishings; insurance policies; jewelry; livestock; other personal property; pending settlements; recreational equipment; recreational boat; stocks/bonds/investments; and works of art.
- Assets: Applicants whose income is below the guidelines may own some assets and still be eligible for legal representation. However, if their share of equity in assets is above the asset guidelines, they are ineligible for legal representation regardless of their net monthly income.

Generally the family home is not exempt if the applicant's available equity in it exceeds \$100,000. Exceptions include when a lending institution denies the applicant a loan against the property and, in family cases, when the applicant and opposing party lived in the family home.

Applicants are ineligible if their total share of disposable real property (other than the family home) exceeds \$10,000.

Applicants are ineligible if their total share of equity in vehicles exceeds \$15,000. Exceptions include a moderately priced vehicle for employment, or a vehicle needed for personal use in a remote area, or a vehicle modified to accommodate a disability.

Applicants are ineligible if they have any available equity in business assets unless the assets are required to generate the person’s income, the applicant cannot borrow against them, or the assets cannot be sold within a reasonable time for fair market value.

Applicants are ineligible if their total equity in personal property or savings exceeds the limits based on household size. RESPs and children’s savings are exempt.

Residential school settlement payments (except for monies paid as an income replacement) are exempt from LSS’s asset test for legal representation services.

- Reassessments: Clients may be reassessed to determine if they are still financially eligible for legal representation. Reassessments may occur if a client’s financial circumstances change, the client changes lawyers, or the client receives money or assets as a result of the case. If the client is no longer financially eligible, his or her referral is terminated and the client must make private arrangements with his or her lawyer.

**Financial eligibility for legal advice**

LSS uses a separate financial eligibility test for LawLINE advice services and most family duty counsel and family advice lawyer services.

Financial Eligibility Guidelines for Legal Advice	
Household size	Net monthly income
1 - 4	\$3,265
5	\$3,860
6	\$4,470
7 or more	\$5,055

There is no asset test for advice services.

### **Services with no financial eligibility requirements**

There are no financial eligibility requirements for:

- Legal information
- Criminal duty counsel
- Immigration duty counsel
- Criminal telephone advice services.

### **8. In order to satisfy demand:**

- (a) **Are there services or standards specifically designed to help disadvantaged groups, such as women, children, indigenous people, labor and residents living in remote areas?**

Yes for Aboriginals facing hunting and for fishing charges where an aboriginal rights defence is available.

- (b) **Are there special standards or rules for deciding whether (and how much) legal aid resources should be allocated to assist complex cases (eg, environmental lawsuits or other class action lawsuits)?**

Yes but only for large and complex criminal prosecutions.

### **9. How does your organization monitor the quality of legal aid lawyers' services?**

Investigations are launched based on LSS staff concerns or on receipt of complaints from clients, lawyers, judges, or others.

### **10. How does your country (or organization) inform potential applicants (particularly residents living in remote locations) of the availability of legal aid services?**

In BC LSS advertises in telephone directories, in criminal cases police advise



of the right to legal advice and make contact available, and LSS works closely with intermediaries who facilitate clients accessing legal aid.

**11. How does your organization help to reduce the amount of disputes which resort to the courts? Does your organization participate in law reform or offer legal education to the public? If so, please describe these activities or services.**

In BC LSS focusses on assisting people to resolve their legal problems, this is part of the statutory mandate. LSS ensures that a full array of relevant and useful advice and legal information is available throughout the province. These services please refer to answer 6.

**12. Please describe recent initiatives which made services accessible through the use of technology. If self-help services are available, please comment on the effectiveness of these services.**

LSS utilizes two websites to deliver legal information; a general service corporate site at <http://www.lss.bc.ca/> and a website dedicated to family law issues at <http://www.familylaw.lss.bc.ca/> . LSS evaluates the utility of its self-help services, see for example our most recent family services evaluation at <http://www.legalaid.bc.ca/about/evaluations.php>

**13. Please describe the difficulties encountered by your country (or organization) in promoting legal aid work in the recent years, and the strategies for responding to these difficulties.**

Repeated funding reductions cuts have severely reduced the society's capacity to support justice reform and pursue other opportunities. Demand for legal aid services is affected by decisions made elsewhere in the justice system in most cases it is not obvious that the impact on LSS's budget is considered.

Current funding is inadequate to meet the legal needs of low-income people, to support an efficient and effective justice system, and to support LSS participation in reform initiatives.

LSS salaries are below those of similar positions in government and private industry making it difficult to attract and retain staff.

In each of the past six years groups of legal aid lawyers have withdrawn services to protest inadequate service levels and poor remuneration (these rates have increased only once in the past 22 years and are below what government pays for similar work). The number of lawyers accepting legal aid cases dropped 40% from 1995 to 2010.

Non-government, interest-based revenue is dropping.

An absence of “systems thinking” among justice system institutions results in collateral costs to LSS.

Like many other Canadian legal aid plans LSS works with government stakeholders, the judiciary and lawyers to support increased government funding for legal aid. In 2012 LSS published a report, Making Justice Work, that stressed that legal aid should be seen as an investment in justice efficiency and effectiveness (<http://www.legalaid.bc.ca/assets/aboutUs/reports/submissions/makingJusticeWork.pdf> ).

#### **14. Has your country (or organization) established any mechanisms of co-operation with legal aid organizations abroad?**

No

#### **15. How does your country (or organization) adopt United Nations legal aid principles and guidelines in policies and services?**

No formal steps have been taken although all of Canada’s plans are considered to be compliant with the standards

**National Report**

**England and Wales**

**Speaker: Mr. Hugh Barrett, Director**  
Legal Aid Commissioning and Strategy, Legal Aid Agency,  
Ministry of Justice, U.K.

## National Report

### 1. Country Information

- Country: England and Wales
- Legal Aid Organisation name: Legal Aid Agency
- Date of establishment: 1st April 2013
- Total number of practising lawyers: 140,000 (Barristers and Solicitors combined-private practice)
- Total number of PDS (in house): 48
- Population: 57 million (2013)
- GDP: \$2.5 trillion<sup>1</sup>
- Poverty: 16.8% of the population are in poverty<sup>2</sup>
- Total number of applications received in the past year: in total we provided 1.8 million acts of assistance; we received 630,000 applications for legal aid representation.
- Total number of applications approved in the past year: we granted 600,000 applications
- Total number of applications refused in the past year: we refused 28,000 applications.

### 2. The main providers of legal aid services in your country

- (a) We contract with private legal firms who provide our services. They can instruct barristers and experts to assist them in the case. We also employ a small number of public defender service solicitors and barristers.
- (b) The public defender service maintains independence from the Legal Aid Agency and the Ministry of Justice. Public Defender Service ('PDS') lawyers are able to operate and advise clients free from any risk or suggestion of political or other interference. The independence of the PDS is set out in the PDS code of conduct and includes a number of provisions which impose duties on their lawyers.

### 3. The Legal aid Agency organisation and recent business figures

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Comments

1: GDP figure stated is UK wide GDP.

2: Institute of Fiscal studies (2014 report) measured before housing costs

- (a) The Legal Aid agency ('LAA') is an executive body of the Ministry of Justice. It was established in April 2013 following the introduction of Legal Aid Sentencing and Punishment of Offenders Act 2012. The LAA replaces previous services that administered legal aid such as the Legal Services Commission.
- (b) The following matter types were aided last year (2013/14): Total Legal Aid Spend: \$2.9billion
- Family \$1.2billion
  - Other Civil \$0.1billion
  - Police Station \$260million
  - Magistrates Court \$325million
  - Crown Court \$980million
- (c) The PDS undertakes a small amount of work equating to approximately 0.14% of the total legal aid spend.

#### **4. The Legal Aid Agency's funding arrangements**

- (a) The legal aid budget forms part of the Ministry of Justice's Budget. In 2013/14 the actual spend was \$2.7bn. This budget is set in consultation with the Treasury and the amount of spending is agreed annually.
- (b) In 2012 the Legal Aid Sentencing and Punishment of Offenders Act 2012 was introduced this led to scope cuts and spending cuts in civil legal aid through a programme called legal aid reform. In 2013 the Legal Aid Transformation programme was introduced this has introduced scope cuts for prison law and fee cuts for crime.
- (c) 94% of the fund is spent on paying lawyers' fees experts, PDS and charities. 6% was spent on administration expenses.
- (d) In most cases legal aid can cover court fees where representation at court is required and provides protection to legal aid recipients where costs awarded against them.

## 5. Evaluating performance

The LAA evaluates performance of providers through the use of peer review. Peer review is an independent quality assessment tool and is undertaken either on a sample basis or a targeted basis, the files are evaluated using a standard criteria and ratings system. Ratings are awarded based on the quality of advice and legal work. The quality of advice is assessed on a 1-5 rating with one being excellent and five being failure in performance, if a provider receives a four or a five then a further review will be conducted if the rating is not improved, this could have an impact on the providers contract. The LAA also uses contract management mechanisms to monitor quality and evaluate performance of providers. These include; auditing firms and Key Performance Indicators ('KPI's) which measure the providers' performance against the contract and allow contract managers to identify key areas of concern.

## 6. Methods of service delivery

- (a) The bulk of legal aid cases are undertaken by private practice lawyers although some criminal cases are undertaken by the PDS.
- (b) Legal Aid lawyers must hold a legal aid contract in order to undertake legal aid work, to be awarded a contract they must meet the criterion set out in the tender such as the quality standards, regional presence, financial stability criteria etc.
- (c) Clients are able to select their own legal aid solicitor (provided they hold a contract in the relevant category of law) or choose a duty solicitor (in crime) to represent/ assist them in their case. If the client selects the duty solicitor in criminal cases then the duty solicitor will be assigned on a rota basis and will be contacted by the police to let them know that there is a client waiting.
- (d) This information is not available.

## 7. The types of legal services provided in England and Wales

Legal aid is available for both civil and criminal matters. A table setting out the categories of law which are covered and the types of advice available in each area is set out in annex A.

## **8. Criminal legal aid application process and criteria for granting legal aid**

To apply for criminal legal aid in the magistrates' court and the Crown Court a provider must submit an application form and supporting financial evidence. This can either be on a paper form or the e-form, an electronic version of the form that allows providers to submit their application online. Clients who are not passported and whose annual income exceeds the threshold (\$20,491) per annum must submit a financial statement. Legal aid applications should be submitted either to the court or to the LAA (depending on the location).

Civil legal aid consists of a number of different forms of legal services, the funding of which is governed by a number of civil legal aid regulations. In order to apply for legal aid the client will usually need to provide information to satisfy a financial eligibility test and an assessment that the case is meritorious for public funding, for example the prospects of success are good. While legal aid for some advice and assistance can be granted by the provider, usually where advocacy or representation at court is required, the application will be made to the Legal Aid Agency to grant funding.

## **9. Special services or standards designed specifically for disadvantaged groups**

- (a) Government departments have a duty, in accordance with section 149 of the Equality Act 2010, to have due regard to the need to:
- eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Equality Act 2010;
  - advance equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it; and
  - Foster good relations between persons who share a Relevant Protected Characteristic and persons who do not share it.

All legal service providers that hold a contract with the Legal Aid Agency are required to meet the specific equality and diversity requirements included within the contract (e.g. as set out in section 5 of the 2014 Standard Civil

Contract Standard Terms). All legal aid contract holders are also required to ensure that the advice services they provide are accessible to all clients across England and Wales.

Additionally, as an entry requirement to obtaining a legal aid contract, legal service providers must hold a recognised quality standard (i.e. either the Specialist Quality Mark Standard, the Mediation Quality Mark Standard, or the Law Society's Lexcel Practice Management Standard). All of these quality standards require the legal service provider to have in place equality and diversity process in place which is available and followed by all staff.

The CLA advice service can benefit many people who may have difficulty accessing face-to-face advice services during normal working hours e.g. disabled people, people with caring responsibilities

The CLA service utilises a range of service adaptations to support people to access the service including:

- An interpretation service for people who have limited or no spoken English, including British Sign Language users who can use a digital video relay interpretation service. Welsh language staff are also available
- The option to ask someone to communicate with the service on their behalf.
- There are clear protocols to protect the privacy of all users, although this can be of particular benefit to victims of abuse.
- All staff are required to complete specific training on how to support all our users e.g. supporting victims of abuse, disabled users and suicidal users.

(b) When a civil case becomes complex and expensive it may need to be managed under a very high cost case contract. A civil high cost case is any civil case where the final costs either to settlement or final hearing are likely to exceed \$40,000.

## 10. Monitoring quality

The LAA monitors quality through the use of peer review (see question 5) and



contract management mechanisms. There are also certain standards that must be met before an organisation can be awarded a contract for example the organisation must hold or obtain a recognised quality mark and have supervisors who have experience in the relevant category of law. Hugh Barrett will discuss quality mechanisms and how the LAA monitors quality in detail in his presentation.

## **11. Advertising legal aid**

In criminal cases potential applicants are informed of their right to legal aid upon arrest. This is a statutory requirement. Posters also advertise the availability of legal aid in magistrates' courts and the police stations.

In civil legal aid the gov.uk website contains a tool to find a local legal adviser based on town or postcode. There is also a national telephone line that includes a diagnostic facility and can signpost eligible clients to their nearest legal aid provider.

In addition to this representatives of the professional bodies such as the Law Society have launched advertising campaigns highlighting the availability of legal aid.

## **12. Reducing the number of court disputes**

Civil Justice policy rests with the Ministry of Justice (MoJ) although the LAA works closely with the MoJ in implementing such policy developments. The MoJ has strategies to increase awareness of mediation and the availability of legal aid in order to encourage individuals to resolve issues as early as possible and outside of court proceedings. These strategies have included publicity campaigns and requiring parties bringing court proceedings in private family law matters to first consider mediation. Later this year the LAA will also begin paying for the first Family Mediation session for both parties where one party is financially eligible for legal aid.

## **13. Developing a digital service**

The CLA advice service launched in 2004, initially only a telephone based advice service, has been developed to enable people to communicate with CLA staff digitally via the government website gov.uk. An online calculator also enabled them to make an initial self-help assessment of whether they may be financially eligible for legal aid

before contacting the service.

In 2012 this calculator was replaced with a self-help tool that would enable people to check whether their problem fell within the scope of legal aid as well as their financial eligibility. Depending on the result users are then directed to a legal aid provider or an alternative source of help.

In 2013 a digital transformation project was launched to redevelop the existing CLA digital service into a fully Digital by Default service in line with the UK Governments Digital Strategy. The new service is expected to be launched late in 2014,

The gov.uk service will enable people to complete a more accurate assessment of whether they will qualify for the CLA advice service, funded by legal aid. Where they do qualify they will be able to complete relevant details about their problem and their finances for review by CLA staff before contact is made to provide advice.

#### **14. Please see question 11.**

#### **15. Promoting legal aid**

The LAA has established mechanisms of co-operation with legal aid organisations in Northern Ireland, the Republic of Ireland, Scotland, the Channel Islands and the Isle of Man.

**16. Within England and Wales, all public bodies (including the LAA) have a duty to ensure that all services are compliant with the European Convention on Human Rights in particular with Article 6.1 (the right to a fair trial).**

Annex A

Civil Legal Aid (Covering advice and representation)		Criminal Legal Aid	Description
Category	Description		
Actions against the Police	In relation to an abuse of position or power by the police or any other public authority with the power to prosecute, detain, or imprison or where the case is a claim for personal injury based on allegations of deliberate abuse of a person whilst in the care of a public authority or other institution.	Advice in the police station	This includes advice when a person voluntarily attends a police station and advice where a person is arrested and questioned outside of the police station.
Community Care	In relation to community care assessments, issues around the delivery of services, grants for the provision of services for disabled persons	Advice and representation at the magistrates court	
Clinical Negligence	Specifically in relation to claims for damages in respect of clinical negligence which caused a neurological injury to a infant which left them severely disabled.	Representation in the Crown Court	
Debt	Where the client owns their own home and is at risk of losing that home	Representation in the Crown Court (Very High Cost Cases)	These are cases that are classified as Very High Cost Cases; they must be likely to last for over 60 days and involve complex matters.
Discrimination	In relation to the Equality Act 2010 and predecessor legislation	Prison law advice and assistance	Prison law is available for disciplinary cases that engage article 6.1 of the ECHR, parole board cases in which the parole board has the power to direct the release of the prisoner and in disputes involving the calculations of a client's sentence.

Civil Legal Aid (Covering advice and representation)		Criminal Legal Aid	Description
Category	Description		
Education	Special Educational Needs and discrimination only	Judicial review proceedings where they are related to a criminal case	
Family	All public law family cases and those private law family (children and finance disputes) where there is a risk of child abuse or domestic violence	Proceedings in relation to Proceeds of Crime Act	
Family Mediation	Family Mediation and supporting legal advice.		
Housing	Where the client rents their home and is at risk of losing that home.		
Immigration and Asylum	Cases under the refugee conventions and cases involving Articles 2/3 of the Human Rights Convention; advice on immigration detention; immigration advice to victims of trafficking or domestic violence.		
Mental Health	Civil legal services in relation to matters arising from the Mental Health Act 1983, the Mental Capacity Act 2005 and 5(2) of Repatriation of Prisoners Act schedule 1984. Advice and assistance on inherent jurisdiction of the High Court in relation to vulnerable adults.		
Public Law	Public law challenges to the acts, omissions or decision of public bodies.		
Welfare Benefits	<ul style="list-style-type: none"> <li>• Appeals on a point of law in the Upper Tribunal, Court of Appeal and Supreme Court for all welfare benefits.</li> <li>• Appeals on a point of law relating to a council tax reduction scheme from the Valuation Tribunal to the High Court, Court of Appeal and Supreme Court.</li> </ul>		



Ministry of  
**JUSTICE**

# National Report England and Wales

Hugh Barrett  
Director of Legal Aid Commissioning and Strategy



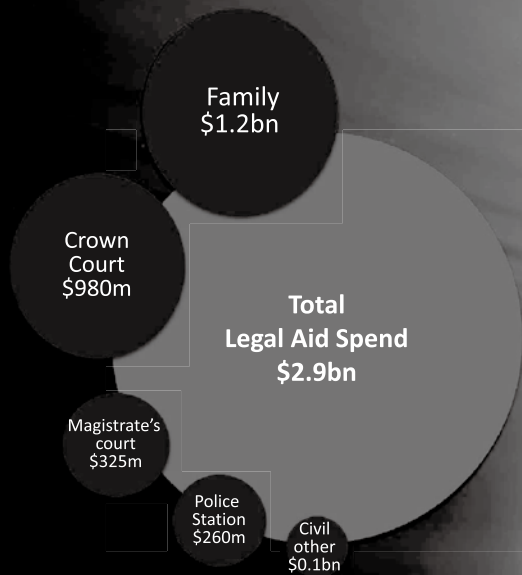
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Ministry of  
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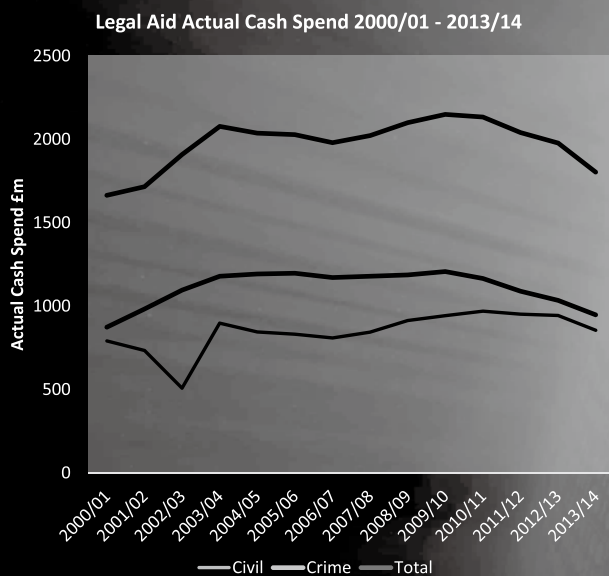


## The Legal Aid Agency is an Executive Agency of the Ministry of Justice

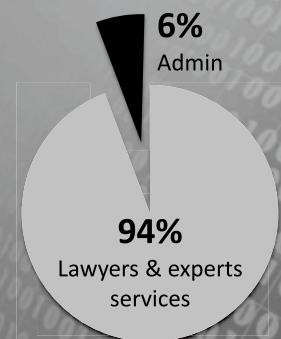


	Means Tested	Merits Tested
<b>Crime</b>		
Police station	✗	✗
Magistrates Court	✓	✓
Crown Court	✓	✗
<b>Civil</b>		
Family	✗	✗
Mental Health	✗	✗
Asylum	✗	✗
Other Civil	✓	✓

## Legal aid spend per capita is \$52.70

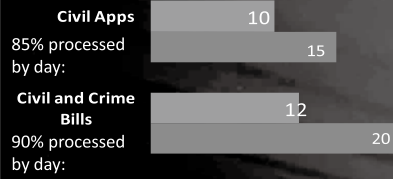


Admin spend is 6% of the overall legal aid spend

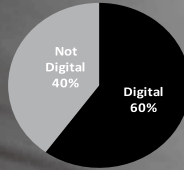


## Key Performance Indicators

### Service Delivery



### Digital Transactions



### Digital by default

- Online civil applications
- Crime online
- Criminal Justice System efficiency- introducing the use of technology across the justice system
- Telephone advice service linked with online digital service -50 % online take up by 2019.

### Telephone call volumes





## 2014 International Forum on Legal Aid





**Regional Report**

**Hong Kong (SAR)**

Speaker: Mr. Yiu-Leung Cheung  
Barrister, Hong Kong

## National Report

### Legal Aid Information

The following information is meant to be an outline of the Hong Kong legal aid system. There are two institutional legal aid services, independent of each other, in operation in Hong Kong, namely, the Legal Aid Department and the Duty Lawyer Service.

#### 1. Legal Aid Information

Legal Aid Department (LAD) was established in 1970. There are currently about 2000+ private legal practitioners (i.e. barristers and solicitors) enrolled into the legal aid panels.

#### 2. Please describe the main provider(s) of legal aid services in your country

**(a) What is the nature of the provider's organization (ie, a government department, an independent statutory body or association)?**

LAD is a government department. Currently it is under the Home Affairs Bureau.

**(b) If supervised by another authority, how does the provider maintain independence in decision-making and in carrying out its duties and responsibilities?**

LAD is also subject to the supervision of the Legal Aid Services Council (LASC), which is a statutory body established by law. LASC cannot interfere with the day-to-day running of LAD and neither can it direct LAD in individual cases. It, however, has the statutory power to formulate policies for LAD and to advise CE on the policies and budget of LAD. One of the statutory duties of LASC is to advise the CE on the desirability and viability of the independence of legal aid. The members of LASC are comprised of lawyers from the 2 legal professional bodies and non-lawyer. The chairman is appointed by CE. Director of Legal Aid (DLA) is also a member.

### **3. Please describe the legal aid organization and the recent business figures:**

#### **(a) Organizational structure**

There are 4 Divisions: Application and Processing Division, Litigations Division, Crime Division and Administration Division. There are 538 employees comprising 74 lawyers and 169 law clerks. The rest are supporting staff. They are civil servants.

#### **(b) Analysis of the matter types aided in the past year.**

In 2013, among the 15,691 civil legal aid applications, 7,386 were granted aid. Among the 3,797 criminal legal aid applications, 2,785 were granted criminal legal aid. In civil legal aid, 100% of the wage claims (i.e. unpaid salary claims) were conducted by in-house legal aid lawyers. 82 % of the matrimonial cases were assigned out. 18% were conducted in-house. For the others, 94% cases were assigned out whereas 6% were conducted in-house. For public law cases, all were assigned out. In the criminal legal aided cases, all District Court cases were assigned out. Some of the High Court cases were conducted in-house in the role of instructing solicitors. All advocacy works were assigned out.

### **4. Please describe your country's (or organization) legal aid funding arrangements:**

#### **(a) What are the sources and amount of legal aid funding? Are there caps on annual spending?**

The legal aid fund is part of the annual fiscal budget of the government. The budget for legal aid is fixed, but if that is not sufficient then LAD can apply to the Legislative Council ("Legco") for additional fund.

#### **(b) Has your organization experienced large-scale funding cuts? If so, what were the strategies for responding to such situation?**

The legal aid fund has remained relatively stable in recent years. There was

cut in staff size in the financial crisis in 2000+. LAD was then reduced from a force of 700+ to the present size. To remedy the staff cut, computerization and streamlining of processes were introduced to enhance productivity.

**(c) What is the percentage of funding spent on paying lawyers' fees and costs, and on administration expenses respectively?**

The annual budget for 2013/2014 is HK\$ 842m (i.e. just over US\$100 million). Over HK\$ 570million (i.e. US\$73 million) were legal aid expenses. HK\$ 253million (i.e. US\$32 million) were remuneration for staff. There was also income from contribution and costs for that year in the sum of HK\$ 22.5million (i.e. US\$3 million).

**(d) Does assistance extend to covering costs such as court costs, government charges, and costs awarded against the legal aid recipient?**

All costs incidental to the aided proceedings were covered by the legal aid fund.

**5. How does your organization evaluate performance? What are the effective tools or methods of evaluation? If your organization has established branch offices, how are their performances evaluated?**

Questionnaires were sent out to aided persons at the end of the proceedings to gauge the satisfactory level of the aided persons towards the services provided by the assigned solicitors and LAD. Complaint procedures are available to investigate complaints from applicants and aided person. Records of the complaints will be periodically reviewed by the management.

**6. Please describe the methods of service delivery in your country (or organization):**

**(a) Are the bulk of the approved cases conducted by in-house/staff attorneys or by lawyers in private practice?**

Please see answers at 3(b).

**(b) What are the conditions of registering as a legal aid lawyer?**

Lawyers in private practice can join the legal aid panels on voluntary basis.

**(c) What are the rules and procedures of assigning approved cases to legal aid lawyers?**

Issue certificate with scope and deliver papers as set out in the Legal Aid Ordinance.

**(d) How do the salaries and fees paid to legal aid lawyers compare with the general market rate?**

The basis of the assigned lawyers' fee are by taxation, fixed costs and by agreement with reference to taxation.

**7. Please describe the types of legal aid services provided in your country (or organization), and the types of matters aided.**

In criminal cases, all cases from District Court to the Court of Final Appeal and the committal proceedings in the Magistracy. As to the other cases in the Magistracy, they were covered, in so far as they are imprisonable cases, by the Duty Lawyer Service. In the civil legal aid, all cases as referred to in Part 1 of schedule 2 of the Legal Aid Ordinance but excluding the excepted proceedings as referred to in Part 2 in Schedule 2.

**8. Please describe application procedures and the criteria of granting legal aid.**

Applicants passing the means and merits tests are eligible for legal aid.

**9. In order to satisfy demand:**

**(a) Are there services or standards specifically designed to help disadvantaged**

**groups, such as women, children, indigenous people, labor and residents living in remote areas?**

Employees and aged are more advantageous under the current legal aid system. otherwise all applicants and aided persons are equal.

**(b) Are there special standards or rules for deciding whether (and how much) legal aid resources should be allocated to assist complex cases (eg, environmental lawsuits or other class action lawsuits)?**

No. All cases are allocated resources in accordance to its need.

**10. How does your organization monitor the quality of legal aid lawyers' services?**

See answers at 5 above.

**11. How does your country (or organization) inform potential applicants (particularly residents living in remote locations) of the availability of legal aid services?**

Legal aid service in HK is well known to the community. Pamphlets of legal aid service in minorities' languages are available in places frequented by the minorities and their communities. There are also standing arrangement with the Correctional Services for prisoner/ detained persons to apply for both criminal and civil legal aid.

**12. How does your organization help to reduce the amount of disputes which resort to the courts? Does your organization participate in law reform or offer legal education to the public? If so, please describe these activities or services.**

Once legal aid granted in litigation, mediations, as part of the proceedings, are covered by legal aid. LAD, together with the other government departments, is consulted in relevant law reform. Officers from LAD are available for giving talks to the public and to some officials from Mainland China.

**13. Please describe recent initiatives which made services accessible through the use of technology. If self-help services are available, please comment on the effectiveness of these services.**

To enhance the information technology used in LAD.

**14. Please describe the difficulties encountered by your country (or organization) in promoting legal aid work in the recent years, and the strategies for responding to these difficulties.**

Touting activities in employment compensation claims and personal injury cases are the current challenge to the legal aid system as those touting agents would use the nomination arrangement to direct the legal aid cases to be assigned to those law firms collaborating with them. With the endorsement from LASC, assignment quota are fixed so that the number of cases a firm can obtain in a given period of time will be monitored.

**15. Has your country (or organization) established any mechanisms of co-operation with legal aid organizations abroad?**

No.

**16. How does your country (or organization) adopt United Nations legal aid principles and guidelines in policies and services?**

No.

**Duty Lawyers Service**

With very few exceptions, the magistrates court deals with criminal cases. Statistically, over 90% of the criminal cases are dealt with and disposed of in the magistracy.

The Duty Lawyers Service provides criminal legal aid service solely in the

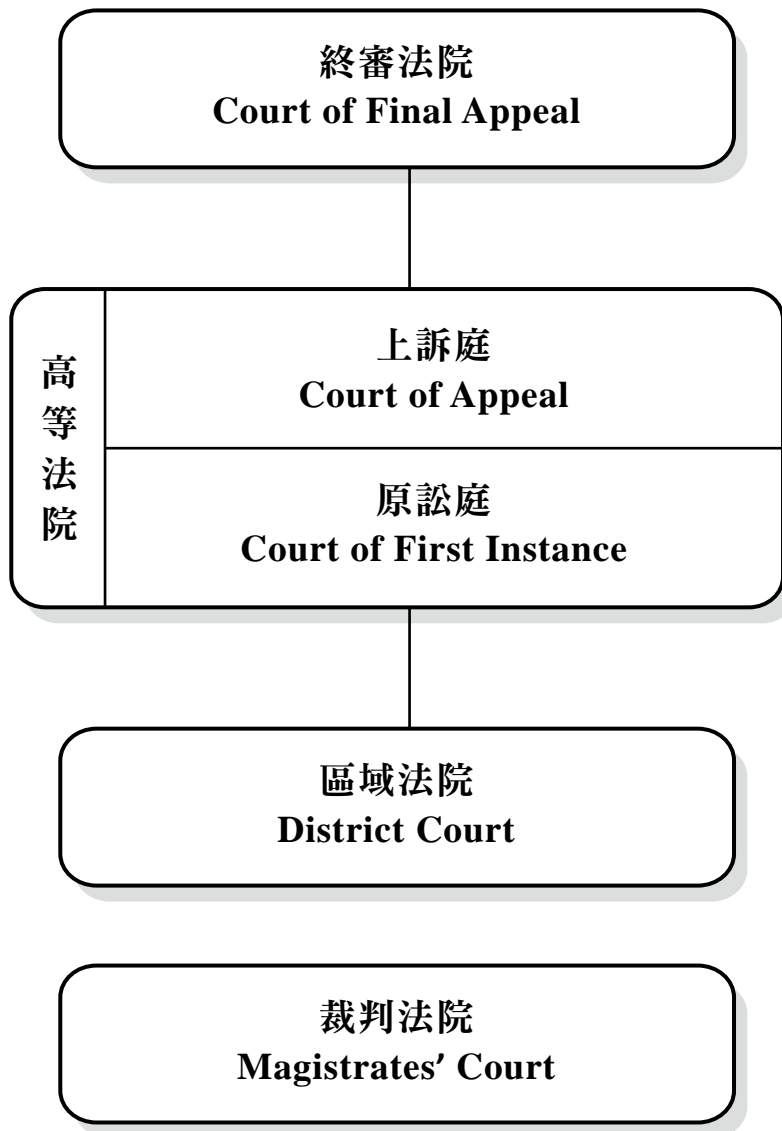
magistrates courts (There are now 8 court buildings). Private legal practitioners can voluntarily enroll in the Service and they will be assigned to attend one of those 8 magistrates courts every now and then, from 9 a.m. to 1 p.m., and if necessary also 2.30 p.m. to 4.30 p.m. on the court's sitting session, to assist and represent the public attending the court.

The defendants subject to a personal means test will be offered free legal service in the magistrates court proceedings.

Every day a varied number of lawyers (from at least 2 to 3, to often up to 7 to 8 in each magistrates court) will be assigned to attend the magistrates court, in which they will handle, advise and represent those members of the public who attend the court proceedings on the day and seek legal service.

Each assigned lawyer will be remunerated according to a fixed scale. Currently, HK\$3,000 (US\$385) for half day (i.e. 9 a.m. to 1 p.m.), and HK\$6,000 for their service for the whole day.





死因庭 Coroner's Court

勞資審裁處 Labour Tribunal

土地審裁處 Lands Tribunal

小額錢債處 Small Claims Tribunal



## 2014 International Forum on Legal Aid



**National Report**

**Indonesia**

**Speaker: Dr. Enny Nurbaningsih**

Head of National Law Development Agency, Ministry of Law and  
Human Rights RI, Indonesia

## National Report

### 1. Country Information

Country	Legal Aid Organization Name	Date of Establishment	Poverty Line & Percentage of Population in Poverty	Total No. of Practicing Lawyers & Legal Aid Lawyers (including in-house and private practice)
Republic of Indonesia	National Law Development Agency, Ministry of law and Human Rights through 310 Legal Aid Providers	Under Act No. 16/2011 about Legal Aid for the Poor, the legal aid program was started on July 2013	11,66 %	Under the implementation Act 16/2011, there are 1610 advocates and 2342 paralegals in 310 Legal Aid Providers
Population	GDP	Total No. of Applications Received in the Past Year	Total No. of Applications Approved in the Past Year	Total No. of Applications Refused in the Past Year
252,124,458	5.12 %	1110 Litigations, 1105 Non Litigations	1110 Litigations, 1105 Non Litigations	

### 2. Please describe the main provider(s) of legal aid services in your country:

(a) What is the nature of the provider's organization (ie, a government department, an independent statutory body or association)?

Under Act No. 16/2011 on Legal Aid for the Poor, there are 2 (two) stake-holders in providing legal aid:

1. Legal Aid Administrator: National Law Development Agency, Ministry of Law and Human Rights of Republic of Indonesia.

Legal aid administrator has duties to establish legal aid policy and regulations, legal aid standard and mechanism, legal aid budget and report to the parliament. The administrator selected legal aid providers by verification/ accreditation. After that, the administrator will supervise and monitor legal aid providers.

## 2. Legal Aid Providers: 310 Legal Aid Organisations

Those legal aid organisations were selected from 593 NGOs in a Verification/Accreditation, and among them were classified as A/B/C according to the number of cases they handled, the numbers of advocates and paralegals in their organisations. They were spread all over Indonesia.

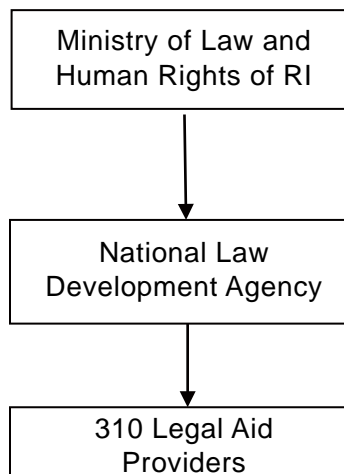
The legal aid services are Litigation (criminal cases, private cases and administrative cases) and Non Litigation (Consultation, Mediation, Negotiation, Investigation, Out-of-court Custody, Document drafting, Legal awareness campaign, Legal research and People legal empowerment)

### (b) If supervised by another authority, how does the provider maintain independence in decision-making and in carrying out its duties and responsibilities?

Although National Law Development Agency, Ministry of Law and Human Rights supervise Legal Aid Providers, the independence is guaranteed by the Act 16/2011 because the legal aid services include the administrative cases, meaning that even poor people can bring a case against the state and it is funded by the government.

## 3. Please describe the legal aid organization and the recent business figures:

### (a) Organizational structure.



(b) Analysis of the matter types aided in the past year.

No	Legal Aid Services	Procentage
1	Type of legal aid	Litigation: 70%, Non Litigation: 30%
2	Type of Litigation	Criminal: 73%, Private: 23%, Administrative: 1%
3	Type of Criminal Cases	Drugs: 34 %, Theft: 14 %, Molestation: 11 %, Rape: 8%
4	Type of Private Cases	Divorce: 86 %, Other: 14 %
5	Type of Non Litigation	Consultation: 31 %, Mediation: 9 %, Negotiation: 14 %, Investigation: 8 %, Out-of-court Custody: 2 %, Document drafting: 3 %, Legal awareness campaign: 22 %, Legal research: 5 %, People legal empowerment: 8%

#### 4. Please describe your country’s (or organization) legal aid funding arrangements:

(a) What are the sources and amount of legal aid funding? Are there caps on annual spending?

The source of legal aid funding is National Budget. The main caps for our first year annual spending are the reimbursement system according to state accounting standard which is not familiar for all of legal aid providers; and the capacity of human resources.

The amount of budget for 2013 is IDR 40 billion, and increase in 2014 IDR 50 billion.

(b) Has your organization experienced large-scale funding cuts? If so, what were the strategies for responding to such situation?

No, there is no funding cut

(c) What is the percentage of funding spent on paying lawyers’ fees and costs, and on administration expenses respectively?

No	Budget Allocation	2013	2014
1	Preparation	1,57%	1 %
2	Monitoring	4,59%	9 %

3	Litigation	60,97%	60 %
4	Non Litigation	32,87%	30 %

**(d) Does assistance extend to covering costs such as court costs, government charges, and costs awarded against the legal aid recipient?**

The assistance is only for legal aid services both litigation and non litigation. It is not included the court cost.

**5. How does your organization evaluate performance? What are the effective tools or methods of evaluation? If your organization has established branch offices, how are their performances evaluated?**

For the monitoring/evaluation, we establish the Monitoring Committee in State and Province Level. The committee monitor legal aid service directly (by visiting the court or detention house) and indirectly (by people's report). Also we establish Application called Legal Aid Information Database System which will be developed as our Case Management System. By this system, all of activities and beneficiaries are recorded.

**6. Please describe the methods of service delivery in your country (or organization):**

**(a) Are the bulk of the approved cases conducted by in-house/staff attorneys or by lawyers in private practice?**

As the scheme, the approved cases are conducted by lawyers in Legal Aid Providers.

**(b) What are the conditions of registering as a legal aid lawyer?**

Since the scheme is providing legal aid service by legal aid organisations, Ministry of Law and Human Rights verifies and accredits legal aid providers based on numbers of cases, numbers of advocates/paralegals and legal entities of the NGOs

**(c) What are the rules and procedures of assigning approved cases to legal aid lawyers?**

Legal aid provider should use the application and attach some documents according the Ministry of Finance Regulations. Province Monitoring Committee will validate the reimbursement and report to National Law Development Agency. Finally, the Ministry will reimburse the services.

**(d) How do the salaries and fees paid to legal aid lawyers compare with the general market rate?**

Since Indonesia is very large and most of the areas are archipelagos, the service rate of Legal Aid is felt enough for those who handled the case inside the city, but it is not enough in the remote area, especially in the archipelago. So, we will evaluate the rate based on geographical element.

**7. Please describe the types of legal aid services provided in your country (or organization), and the types of matters aided.**

The legal aid services are Litigation (criminal cases, private cases and administrative cases) and Non Litigation (Consultation, Mediation, Negotiation, Investigation, Out-of-court Custody, Document drafting, Legal awareness campaign, Legal research and People legal empowerment)

**8. Please describe application procedures and the criteria of granting legal aid.**

The applicant should apply to legal aid provider. The only criteria of the beneficiary is that he/she is in poverty and it is proven by the poverty-proof letter issued by local village government. Legal aid providers should help the applicant to get this letter.

**9. In order to satisfy demand:**

**(a) Are there services or standards specifically designed to help disadvantaged**



**groups, such as women, children, indigenous people, labor and residents living in remote areas?**

So far, as long as the disadvantaged group can show the poverty-proof letters, they can access the legal aid.

**(b) Are there special standards or rules for deciding whether (and how much) legal aid resources should be allocated to assist complex cases (eg, environmental lawsuits or other class action lawsuits)?**

There is no special standard for complex cases

**10. How does your organization monitor the quality of legal aid lawyers' services?**

So far, we do not monitor the substance of legal aid providing (for example how legal aid providers proceed in the court or how they make the plea), but we focus on the consistency of legal aid services (for example the lawyers should always accompany the beneficiary in the court, etc).

**11. How does your country (or organization) inform potential applicants (particularly residents living in remote locations) of the availability of legal aid services?**

We encourage legal aid providers to promote legal aid by legal awareness campaign in remote area and detention house. Our office also make legal awareness campaign to reach people in remote area by directly coming to the sites or by media (television/radio)

**12. How does your organization help to reduce the amount of disputes which resort to the courts? Does your organization participate in law reform or offer legal education to the public? If so, please describe these activities or services.**

Basically we are in public legal education business. We campaign to use court as the last resort. We promote mediation and out-of-court settlement even by using informal justice (such as custom law mechanism). We use media such as internet,

TV and Radio for above-the-line activities, and Legal Awareness Scouts, Mobile-Van, legal awareness communities and some public activities for direct public legal education.

**13. Please describe recent initiatives which made services accessible through the use of technology. If self-help services are available, please comment on the effectiveness of these services.**

We are developing the case management system which can be accessed online. It will be launched at the end of this year.

**14. Please describe the difficulties encountered by your country (or organization) in promoting legal aid work in the recent years, and the strategies for responding to these difficulties.**

The difficulties include the geographical factors of Indonesia. The strategies include running another verification/accreditation to get more legal aid providers, especially in remote areas.

**15. Has your country (or organization) established any mechanisms of co-operation with legal aid organizations abroad?**

So far, we learn best practices of legal aid providing from South Africa, Georgia, Ukraine and Australia (Victorian and New South Wales Legal Aid). We also learn much from International Conference on Legal Aid in South Africa this year.

**16. How does your country (or organization) adopt United Nations legal aid principles and guidelines in policies and services?**

Some principles are adopted in Act 16/2011 on Legal Aid and become our standards in Government and Ministerial Regulation

## National Report

# Japan

Speaker: Mr. Keita Abe

Senior Researcher of Research Division Director of Information  
System Management Division Japan Legal Support Center

## National Report

### 1. Country Information

- Country : Japan
- Legal Aid Organization : Japan Legal Support Center
- Date of Establishment : April 10, 2006
- Poverty Line & Percentage of Population in Poverty: 1,120,000yen, 16%<sup>1</sup>
- Total No. of Practicing Lawyers (as of March 2014): 35,045
- Total No. of Staff Lawyers: 243(0.7%)
- Total No. of Legal Aid Lawyers: Civil and family Panel: 19,159 (54.7%)
- Criminal Panel: 24,055(68.6%)
- Juveniles Panel: 9,637(27.5%)
- Victims Support Panel: 3,700(10.6%)
- Population: 127,187,000
- GDP: 472,596 billion yen ( 2012)<sup>2</sup>
- Total No. of Cased in the Past Year (From Oct.2006 to March 2014)

Types of Legal Aid		Application	Approved	Denied
Civil Legal Aid	Legal Consultation	-	1,802,774	-
	Representation	762,395	711,784	8,908
	Documentation		41,703	-
Criminal Legal Aid	Suspects	-	297,273	-
	Defendants	-	454,139	-
	Juveniles	-	2,606	-
Crime Victims		-	1,431	-

### 2. Organization

The Japan Legal Support Center (JLSC) was established on 10 April, 2006 by the Comprehensive Legal Support Act<sup>3</sup> (approved and promulgated in 2004).The JLSC is a public corporation funded from the national government. This requires that the administration and activities of the JLSC must be fair, neutral and highly transparent,

Comments

1: As of 2009, Ministry of Ministry of Health, Labor and Welfare. <http://www.mhlw.go.jp/toukei/saikin/hw/k-tyosa/k-tyosa10/2-7.html>  
 The poverty line is by here taken as half the median household income. (OECD)  
<http://www.oecd-ilibrary.org/sites/factbook-2010-en/11/02/02/index.html?itemId=/content/chapter/factbook-2010-89-en>  
 2: [http://www.esri.cao.go.jp/en/sna/data/kakuhou/files/2012/26annual\\_report\\_e.html](http://www.esri.cao.go.jp/en/sna/data/kakuhou/files/2012/26annual_report_e.html)  
 3: <http://www.japaneselawtranslation.go.jp/law/detail/?id=1832&vm=04&re=02>

and its organizational framework follows that of an incorporated administrative agency. Incorporated administrative agency refers to a legal entity established in accordance with legislation for the purpose of efficient and effective implementation of public business and fulfilling duties that are essential for people's lives, which may not be necessarily appropriate for direct implementation by the government while at the same time may not be accomplished solely by the private sector.

Although the JLSC is under jurisdiction of the Ministry of Justice, the Supreme Court also participates in establishment and administration of the JLSC, because the JLSC provides services and activities relating to the fundamental basis of the judicial system such as services relating to court-appointed defense counsel and civil legal aid.

The president of the JLSC, as the executive head of the organization, presides over and is also responsible for the JLSC's business administration. Nomination of the president is made by the Minister of Justice after obtaining an opinion from the Supreme Court. The president is assisted by four executive directors appointed from a wide range of professions and not just legal professionals.

### **3. Organization and the recent business figures:**

#### **(a) Organizational structure**

The JLSC is headquartered in Tokyo and has 110 local offices throughout the country (as of March 2014). There are four types of local offices: (1) district office, (2) district branch office, (3) sub-branch office, and (4) local law office.

The JLSC provides five services; information services, civil legal aid, services related to court-appointed defense counsel, crime victim support and the services in the area with limited legal services. Each type of office operates a respective range of services.

#### **(1) District Offices**

District offices are set up at 50 locations at each of the main benches of the district courts. Each district office provides all services provided by the JLSC.

(2) District Branch Offices

District branch offices are set up at 11 locations in cities with high populations or with a significant number of matters before the court where the relevant district office cannot sufficiently cover the area by itself. These offices provide the five principal services of the JLSC.

(3) Sub-Branch Offices

There are three sub-branch offices in Tokyo and one in Osaka (as of March 2014). Sub-branch offices provide information services and civil legal aid. By March 2013, the JLSC had set up seven sub-branch offices in Iwate, Miyagi, and Fukushima prefectures, the main disaster areas of the Great East Japan Earthquake.

(4) Local Law Offices

Local law offices are established in regions where residents cannot easily access legal services such as due to a limited number of attorneys in the area. As of March 2014, there are 37 local law offices where the JLSC's staff attorneys are stationed on a regular basis.

(b) Analysis of the matter types aided in the past year.

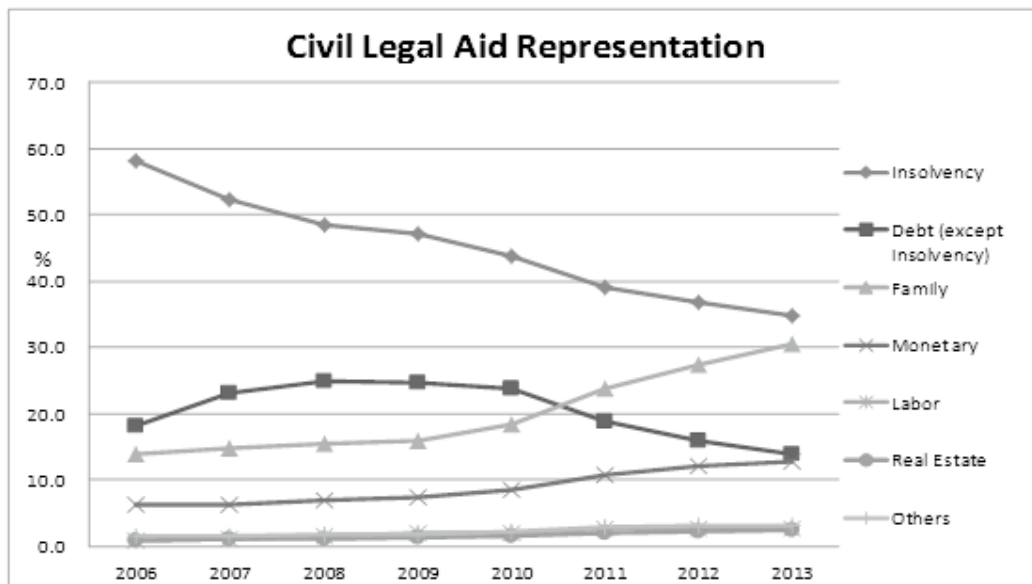
(1) Performance of 8 years

		2006 Oct-March	2007	2008	2009	2010	2011	2012	2013
Information Service	Call Center	128,741	220,727	287,897	401,841	370,124	339,334	327,7593	313,488
	Local Office	--	--	188,661	247,172	234,614	198,963	210,432	209,093
Civil Legal Aid	Legal Consultation	64,837	147,430	179,546	237,306	256,719	280,389	314,535	322,012
	Representation	32,768	68,910	80,442	101,222	110,217	103,751	107,718	106,756
	Documentation	2,024	4,197	5,101	6,769	7,366	6,164	5,449	4,633
Criminal Legal Aid	Suspects	3,436	6,775	7,415	61,857	70,917	73,209	73,664	72,118
	Defendants	37,717	71,305	69,756	74,658	69,634	67,374	63,695	60,269
	Juveniles	--	210	533	552	423	469	419	445
Court-appointed counsel for Crime Victims		--	--	29	204	231	282	302	383

(2) Civil Legal Aid

In civil legal aid, the ratio of family cases such as divorce, custody and child support and so on is increasing.

On the contrary the ratio of debt problems is decreasing. Debt problems include insolvency, court mediation and negotiation.



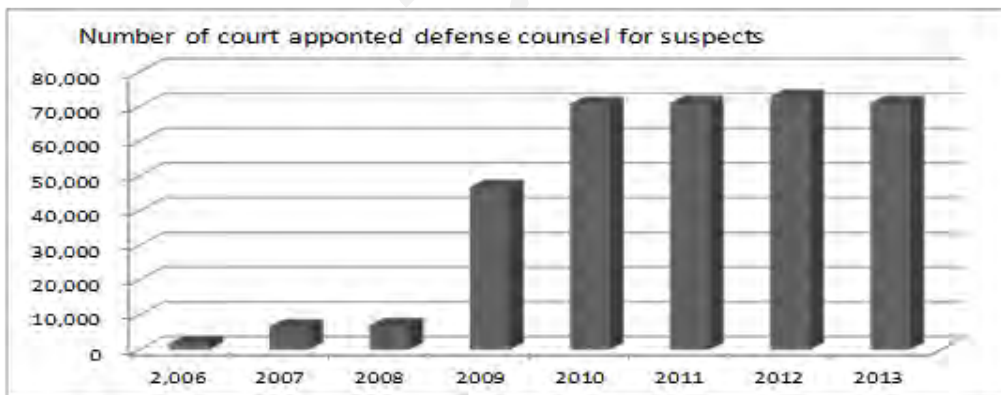
	2006	2007	2008	2009	2010	2011	2012	2013
Insolvency	58.2	52.3	48.4	47.1	43.7	39.0	36.8	34.7
Debt (except insolvency)	18.2	23.0	24.8	24.7	23.7	18.9	15.9	13.9
Family	13.9	14.8	15.5	15.9	18.5	23.8	27.4	30.6
Monetary	6.3	6.3	6.9	7.3	8.5	10.8	12.0	12.7
Labor	0.9	1.0	1.6	2.0	1.9	2.6	2.6	2.7
Real Estate	0.9	1.0	1.0	1.2	1.5	2.0	2.2	2.4
Others	1.6	1.6	1.8	1.8	2.2	2.9	3.1	3.0
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

### (3) Criminal legal aid

In 2009, the scope of court-appointed defense counsel was expanded, and consequently, the number of court-appointed defense counsel for suspects increased by approximately 10 times.

Number of court appointed defense counsel for suspects

year	2,006	2007	2008	2009	2010	2011	2012	2013
number	1,760	6,625	6,964	46,765	70,675	70,960	72,871	70,956

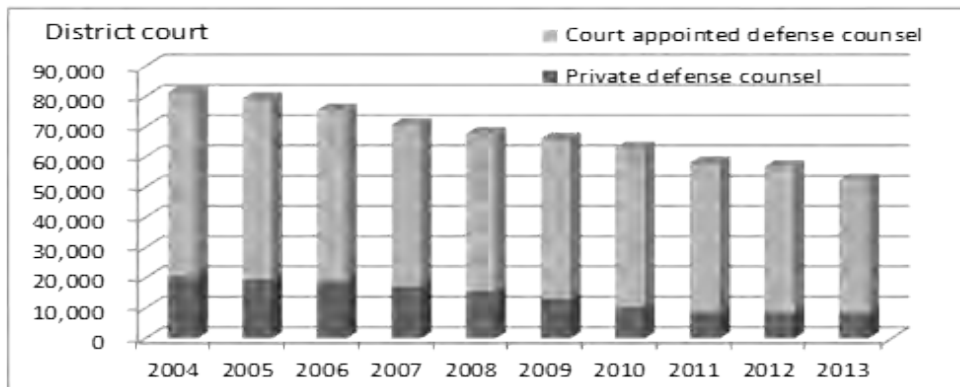




Defense counsel for defendants

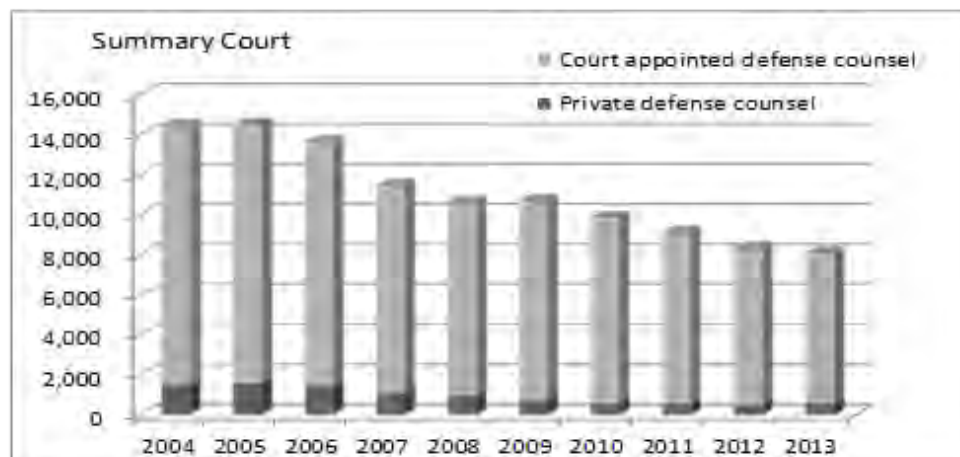
(1) District Court

	Private defense counsel	Court appointed defense counsel	ratio of court appointed defense counsel
2004	20,283	60,968	75.0%
2005	19,366	59,837	75.5%
2006	18,880	56,490	75.0%
2007	17,339	53,271	75.4%
2008	15,343	52,301	77.3%
2009	13,117	52,758	80.1%
2010	10,061	52,779	84.0%
2011	8,639	49,329	85.1%
2012	8,459	48,275	85.1%
2013	8,198	44,031	84.3%



(2) Summary Court

	Private defense counsel	Court appointed defense counsel	ratio of court appointed defense counsel
2004	1,483	12,965	89.7%
2005	1,564	12,985	89.3%
2006	1,460	12,186	89.3%
2007	1,092	10,390	90.5%
2008	929	9,703	91.3%
2009	695	10,020	93.5%
2010	550	9,326	94.4%
2011	543	8,599	94.1%
2012	498	7,842	94.0%
2013	555	7,554	93.2%



- (c) Number and percentage of cases conducted by staff attorneys and private practitioners

Most of the cases are conducted by private practitioners. The percentage of the case conducted by staff attorneys in FY2013 is 3.7% in civil legal aid and 2.7% in criminal legal aid.

#### **4. Funding arrangements:**

- (a) sources of funding

Funding of JLSC is divided into two categories; services relating to court-appointed defense counsel and the other services.

The total budget of JLSC in FY2012 is approximately 48 billion yen.

The breakdown is as follows;

15 billion yen (31%) is for services relating to court-appointed defense counsel and it is fully funded by the government. There is no cap on court-appointed defense counsel expenditure.

For other services (civil legal aid, information services, crime victim support and services in the area with insufficient legal services), 16 billion yen (33%) from the government, 11 billion yen (23%) from the civil legal aid recipient for repayment, 4 billion yen (8%) from other business income and 2 billion yen (4%) from JFBA. These services have caps on annual spending.

- (b) Large-scale funding cuts and the strategies

The JLSC has never experienced large-scale funding cuts, because its scope of services has been expanded. Especially criminal legal aid, victims support and the services in the area with insufficient legal services are expected to expand more.

But the JLSC is required to make the effort for the improvement of the

efficiency because its organizational framework follows that of an incorporated administrative agency. JLSC Medium-term plan (2014-2017) stated it reduces general administrative costs by 3% and project costs by 1% every year.

(c) What is the percentage of funding spent on paying lawyers' fees.

As mentioned in 3(c), most of the expenses not only civil and criminal legal aid but other expenses such as personnel costs are for delivering services by private practitioners.

(d) Assistance covering costs such as court costs, government charges.

A recipient of civil legal aid lacks the financial resources to pay the expenses necessary for preparing for and conducting a suit, the attorney of the recipient is required to make a petition for judicial aid. If a person receives an order to grant judicial aid he/she is suspended to pay the court costs. If the court does not make an order to grant judicial aid, and JLSC deems it appropriate and necessary, the court costs may be covered by JLSC. Government charge such as fee for issuing resident certificate, official family registry and other official certificates etc. is included in the actual expenses which shall be paid by JLSC.

## **5. Evaluation of the performance**

The Comprehensive Legal Support Act authorizes the Minister of Justice as the supervising authority and directs the JLSC in achieving its mid-term objectives concerning business administration goals to be accomplished within the next four years. This is based upon the JLSC's formulation of a mid-term and annual plan to achieve the objectives set out by the Minister. The JLSC independently proceeds with its operation and provision of services to meet the goals of the annual plan with improvement of service quality and efficiency in mind. Each year, business performance is evaluated by a third party evaluation committee, set up within the Ministry of Justice.

## **6. Methods of service delivery**

JLSC adopt the model so-called "Mixed Model" delivery. This is a combination of

staff attorneys and private practitioners providing the services to the clients.

(a) Delivery of Bulk of cases

In Japan there is no method of delivering a bulk of cases.

(b) Conditions of registering as a legal aid lawyer

In order to handle legal aid cases, attorneys have to enter into the contract between JLSC. The JLSC has established the rules for the handling of legal affairs to be handled by contract attorneys (the rules for the handling of legal affairs) prior to the commencement of the business.

The rules for the handling of legal affairs contains matters concerning the criteria for the handling of legal affairs by contract attorneys, matters concerning measures to be taken if contract attorneys violate their duties stipulated by the contract.

In criminal legal aid and victim support, attorneys must be enrolled in the panel made by the local bar association.

(c) Rules and procedures of assigning cases to legal aid lawyers.

In civil, family or administration cases, a person who faces legal issues but have financial difficulties can have legal consultation either at the JLSC's local offices or the offices of contract attorneys at no charge.

If it becomes necessary to refer a matter to an attorney for legal representation at trial, mediation or arbitration, or for preparation of legal documentation, an assessment will be made to determine (pursuant to certain pre-defined criteria) whether a matter qualifies for further assistance. For a matter that qualifies for such assistance, the JLSC will make an advance payment of fees for an contracted attorney's services. Japan does not grant direct financial support for civil matters but provides a pre-installment for users of legal services to cover their legal fees and costs. A recipient of civil legal aid must repay the full amount of installment by monthly payment. Most of the civil cases, applications procedure

are made by the contracted attorney who consulted his/her cases.

In criminal or juvenile cases, when a court-appointed defense counsel is to be appointed based on the provisions of the Code of Criminal Procedure or the Juvenile Law, the court requests the JLSC to nominate and notify candidates for court-appointed defense counsel.

Upon request from the court, JLSC nominate candidates for court-appointed defense counsel out of the contract attorneys panel and notify the court. A certain number of candidates are assigned by each local JLSC office every day.

After the JLSC's notification of the candidates, the court appoints him/her the court-appointed defense counsel.

(d) Salaries and fees paid to legal aid lawyers

Salaries of JLSC staff attorneys are set to the same level of judges and public prosecutors with the same experience.

It is difficult to define the market rate of lawyer's fee, because its fee table is decided by each law office and it depends on the matter or the procedure it needs to be taken.

## **7. The types of legal aid services and the types of matters aided.**

(a) Civil Legal Aid

Civil legal aid is available for any civil, family, or administrative matters that are subject to the civil legal procedures. There are three types of services; Legal Consultation Aid, Documentation Aid and Representation Aid.

(b) Criminal Legal Aid

In Criminal cases, if defense counsel cannot be retained due to a person's financial difficulties, defense counsel will be appointed at such person's request or by authority of the court if he or she is detained in connection with a criminal case or is indicted.

For juvenile cases, the family court handles the cases, and if the court determines the case meets the criteria for certain serious cases, an official attendant will be appointed for the juvenile.

## **8. Application procedures and the criteria of granting legal aid.**

### **(1) Civil Legal Aid**

Civil legal aid procedures, see 6(c). There is a means test and merit test to grant civil legal aid. Merit test requires a possibility of a successful outcome. The criteria of means test is as follows,

The financial resources of the applicant must be below a certain amount.

The applicant's spouse's income and assets will be added except in the case of dispute between a husband and a wife.

The range of monthly income (1/12 of the after-tax annual income) is as follows:

- Single-person household - 182,000 yen or less (200,200 yen or less)
  - Two-person household - 251,000 yen or less (276,100 yen or less)
  - Three-person household - 272,000 yen or less (299,200 yen or less)
  - Four-person household – 299,000 yen or less (328,900 yen or less)
- \* The figures in parentheses show the threshold to be applied to those who live in major cities such as Tokyo and Osaka.
- \* The amount of rent or housing loan payments, if any, will be added to the above amount up to the maximum amount shown below:
- Single-person household - 41,000 yen
  - Two-person household - 53,000 yen
  - Three-person household – 66,000 yen
  - Four-person household – 71,000 yen

Besides the conditions above, the applicant's assets must be below a certain amount.

The total amount of cash and deposit savings must be under the following range:

- Single-person household – 1,800,000 yen or less
- Two-person household – 2,500,000 yen or less
- Three-person household – 2,700,000 yen or less
- Four-person household – 3,000,000 yen or less

## (2) Criminal Legal Aid

In criminal cases, suspects held in pre-indictment detention for certain serious offences are entitled to ask for court-appointed counsel if they are unable to appoint one because of indigence or other reasons.

The Indigence criterion is 500,000 yen. If the total of cash and saving of a suspect is not exceeding 500,000 yen, a court requests JLSC to nominate a candidate of court-appointed defense counsel.

## 9. In order to satisfy demand

### (a) Services for disadvantaged groups

In Japan, the system to provide legal support for victims of crime was first introduced around 2000. In that year, the Act on Measures Incidental to Criminal Procedures for the Purpose of Protecting the Rights and Interests of Victims of Crime was enacted and in 2008 the victim participation system and the system of court-appointed counsel for victims were established.

See No.11 for services for people in the remote area.

### (b) Special standards or rules

The Great East Japan Earthquake of March 11, 2011 caused unimaginably devastating damage over a wide area and deprived a large number of people of their peaceful daily lives. The earthquake, tsunami and nuclear power plant accident raised various legal issues related to real estate, double loans, inheritance, and compensation for damages, among many others. Resolution of these legal problems is crucial for restoring and reconstructing the disaster areas and re-establishing healthy lives of the victims. Moreover, most of the areas suffer from a shortage of attorneys.

Immediately after the disaster, the JLSC provided legal support for disaster victims in accordance with the framework of the JLSC's information services and civil legal aid programs. "The Act concerning Special Measures on Legal Aid by Japan Legal Support Center for the Victims of the Great East Japan Earthquake" followed to provide legal support for disaster victims and, since April 2012, the JLSC has provided the Great East Japan Earthquake Legal Aid under this law together with its services rendered under the Act.

This new system enables disaster victims to receive legal support more easily, compared to civil legal aid. Particular features of this special aid include: providing support for residents of certain "disaster areas" at the time of the earthquake regardless of their financial status; expanding the scope of support provided under Representation Aid and Documentation Aid to reach beyond ordinary court proceedings and cover certain processes such as the newly established alternative dispute resolution (ADR) process to address compensation of damages in relation to the nuclear power plant accident; and suspending of repayment of legal fees while a legal matter is ongoing.

The JLSC opened the Minamisanriku sub-branch office in Miyagi prefecture in October 2011, and subsequently established seven (7) sub-branch offices in total. Each sub-branch office is located along the tsunami-hit seashores or where evacuees currently reside after fleeing the site of the nuclear power plant accident. The sub-branches are equipped with mobile "meeting" vehicles in which legal consultations may be provided by attorneys. As the closest source of legal aid for disaster victims, the core service of these sub-branches is to provide frontline support under the Great East Japan Earthquake Legal Aid. Because disaster victims often have multiple issues and problems associated with the disaster, to facilitate their resolution, the JLSC tries to ensure "one-stop shop" for disaster victims by also providing free consultations with other professionals such as tax accountants or public consultants on social and labor insurance at the sub-branch office, in addition to free legal consultations by legal professionals.

## **10. How to monitor the quality of services?**

### **(1) Civil Legal Aid**

In civil legal aid case, a contracted attorney must submit the initial report



within 3 months after launching the case. The head of local office may request interim report when the case takes more than 2 years.

On concluding a civil legal aid case, a legal aid lawyer must submit a concluding report to JLSC and the Examining Commissioner will review it in order to decide the amount of closing fee.

## (2) Criminal Legal Aid

In criminal case, every police station is equipped with “interview note”. It was introduced in 2009 to record the date and the time of the interview, the name of the defense counsel and the suspect. It was carbon copied, one for defense counsel and the other for police station.

The court appointed defense counsel for suspect must submit the report with “interview note”, so as to JLSC can monitor the activity of the counsel.

After the indictment, courts make the “trial memo” to record the date and time for every case. After judgment courts submit the memo to JLSC. JLSC calculate the enumeration of the court appointed defense counsel by the report of the defense counsel, and JLSC uses the memo as a reference.

Through these processes, the quality of services provided by legal aid lawyers is generally maintained.

## **11. Measures for areas with limited legal services**

In Japan, the court system consists of 50 district courts and 203 branches. When the JLSC started its operation in October 2006, there were 38 branches in areas with no attorneys or only one attorney practicing in a branch’s jurisdiction. The number of under-served branches was decreased and eventually eliminated in December 2013 as result of measures taken by the JLSC, together with contributions of the JFBA and its programs based on the “Himawari Fund” established by the JFBA in 1999. Generally, it would be desirable that two or more attorneys would reside within the jurisdiction of each branch but maintaining this standard is very challenging. The JLSC establishes its local law offices in such areas suffering from a shortage of

attorneys as well as in areas where residents have no legal experts nearby or have poor accessibility to legal services.

Of the attorneys contracted to provide services through the JLSC, the JLSC has permanent staff attorneys in addition to attorneys in private practice. Each of the JLSC's local law offices has one or more staff attorneys working onsite on a full-time basis. As of March 2014, there are 243 staff attorneys, stationed at 86 offices in total.

## **12. Services related to out-of-court settlement and legal education to the public.**

In Japan, the scope of civil legal aid is basically limited to court proceedings in civil, family or administration cases. But if negotiations or ADR that are deemed necessary for the settlement of disputes in advance of court proceedings legal aid is granted.

In 2013 JLSC held symposium on legal education twice and many of the district offices held seminars and workshops for the public in the region.

Also JLSC staff attorneys provide various services and activities tailored to the needs and other characteristics of each local communities region, including giving lectures at seminars and promoting legal education in the region.

## **13. Technology**

The JLSC provides free information on relevant laws and the justice system in response to questions and will make referrals to an appropriate authority or organization. The JLSC's referral network consists of approximately 25,000 points of contact for various bar associations, judicial scriveners' associations, local government organizations and other relevant organizations. To facilitate access and ease of use, there are several ways for users of legal services to obtain information.

### **1. Hotline**

The JLSC operates a call center, known as "Houterasu Support Dial", which is

open from 9 am to 9 pm on weekdays, and from 9 am to 5 pm on Saturdays. The charge for a telephone call for making an inquiry is a flat rate 8.5 yen per three (3) minutes, from anywhere in Japan. At Houterasu Support Dial, operators who have completed certain trainings will answer the calls.

## 2. E-mail, through Website

The JLSC accepts email inquiries through the JLSC's website. The website also provides a keyword-searchable section of FAQs (approximately 4,300 FAQs). Information regarding the 25,000 access points across Japan is also searchable on the website.

## 3. Toll-Free Telephone Service for Earthquake Victims

Since November 2011, Houterasu Support Dial operates a special toll-free telephone service to provide legal information to the disaster victims of the Great East Japan Earthquake.

# 14. Challenges and strategies

Ministry of Justice set up the advisory panel on the measures for enhancing comprehensive legal support in March 2014. The report was presented in June 2014 after the 8 times session.

In the report the advisory panel proposed that the measures should be taken to fulfill the services for elderly or mentally/physically challenged person, to prolong the support for the Great Earthquake Victims and to expand the legal aid to victims who may be seriously damaged by domestic violence, stalking or child abuse.

As mentioned in section 9(b), JLSC has provided the Great East Japan Earthquake Legal Aid since April 2012. "The Act concerning Special Measures on Legal Aid by Japan Legal Support Center for the Victims of the Great East Japan Earthquake" was enacted as temporary legislation with a 3-year term limit.

But the disaster victims still need legal support from April 2015 onward. The

amendment of the act in order to continue the JLSC support will be needed.

Crime relating domestic violence, stalking or child abuse is a big social problem. Not a few cases are at the risk of being harmed. To prevent to harm victims, legal support should be provided at the early stage.

The amendment bill of Comprehensive Legal Support Act is planned to be submitted to the Diet in 2015.

## **15. Co-operation with legal aid organizations abroad**

The JLSC and Korea Legal Aid Corporation entered into the Memorandum of Understanding in 2009 aiming to set up the bilateral cooperation in the exchange of information, research and study of legal aid system and overall related issues in respective country.

## **16. UN legal aid principles and guidelines**

The JLSC does not directly adopt the UN legal aid principles or guidelines in its policies. But a great effort was made by the Japan Legal Aid Association, the Japan Federation of Bar Associations, the Ministry of Justice to ensure the international standards on access to justice. They made research trips to UK, Germany, France, Canada, US, Australia and Korea.

To study the international experience and challenges, JLSC has participated in various international conference held by Legal Services Research Centre, International Legal Action Group and UCL Centres for Empirical Legal Studies, Ethics and Law and Access to Justice.

## **National (Regional) Reports I**

# **Q & A**

**Moderator: Ms. Michele McCreadie**  
General Manager, Legal Aid Services, Ministry of Justice,  
New Zealand

## Ques1

- **Yang, Qi-Hong (Lawyer):**

I am Yang, Qi-Hong, a lawyer practicing in Taiwan. Upon hearing the brief presentations from the international speakers, I have a question for the representative from Hong Kong, lawyer Mr. Yiu-Leung, Cheung. We all know that recently in Hong Kong there has been an Occupy Central movement to fight for voting rights. A civil rights movement is usually followed by legal risks. I would like to ask what roles does the legal aid organization in Hong Kong play in this civil rights movement? And did you encounter any difficulty and challenge in the process of providing assistance?

- **Mr. Yiu-Leung, Cheung (Barrister, Hong Kong) :**

Yes, you have asked the right person. I was one of the so-called “ad-hoc” in English. We formed a temporary lawyer representative group and provided immediate help to anyone who got arrested. Fortunately, for a significant time period till now, there were not many arrests within one month and those arrested were released immediately. So far there have not been any charges filed against them, perhaps due to graciousness on the police's part or for other reasons. I guess they are scared. The more people they arrest, the more people come out. The more heavily they monitor, the more lawyers get involved. So the police are scared.

Today we are talking about legal aid, so I do not want to discuss too much about politics. However, when the society is faced with a crisis, lawyers can play their role. There is a tendency at present as follows: Everyone knows who our opponent is. It is like in the story of David and Goliath. The students and the people are David, and the opponent is Goliath. In the process, our opponent resort to all sorts of measures, including legal measures and the so-called injunction, to prohibit us from demonstrating. This is where we counter them at their own game. They can prohibit us, but we can oppose the prohibition. Now the trial is proceeding in the high court. It is interesting. I wonder how the judge will determine. We shall have to wait for further developments. They used personal money to prohibit our Occupy Central movement. I don't know where their money comes from. We have

applied for legal assistance against their opposition to Occupy Central. We used public money to support us to oppose their injunction.

## Ques2

- **Huang, Qien-Yun (Lawyer) :**

I am Huang, Qien-Yun, a lawyer from Taiwan. As I was listening to the national reports, I heard that in Japan there are 240 staff lawyers providing assistances to remote areas, and in Australia that 70% are private lawyers, and I am not sure if the remaining 30% are the so-called staff lawyers. In Canada, 98% of legal aid cases are handled by private lawyers; does that mean 2% of the lawyers are staff lawyers? Currently, the Legal Aid Foundation of Taiwan has 14 staff lawyers. What I would like to ask the international representatives is regarding the rationale of having staff lawyers in the legal aid organizations in your country. Other than providing assistance to remote areas, is there any difference in the types of cases that these staff lawyers handle? What is the purpose of having them? Can you briefly explain to us?

- **Ms. Hsieh Hsing-ling (Deputy Secretary-General of the Legal Aid Foundation):**

First, I would like to talk about the staff lawyers in Taiwan. Actually, I already mentioned that we have very few staff lawyers, and the number of cases that they handle does not reach 2% of all the legal aid cases. The number is approximately 1.6-1.7%. However, the cases that our staff lawyers handle are quite special. For instance, a few years ago there was a serious case—August 8 typhoon—where state compensation is sought. An entire village was destroyed, and more than 400 deaths were caused. Compensation is currently being sought from the government. This class action was handled by our staff lawyers. They also handled significant cases such as the Radio Corporation of America(RCA)factory leaving pollution in Taiwan, and the defense of the recent Taipei MRT(Mass Rapid Transit system) murder case.

- **Mr. Anthony John Reilly (CEO, Legal Aid Queensland, Australia):**

We use staff lawyers in Legal Aid Queensland because their quality is very

high. And because they care a lot about their clients and that's a really important, fundamental thing. Secondly, we have staff lawyers because they're very useful for us in terms of liaison with the courts, policy responses to governments, state-wide training for the profession, and so on. And also very importantly, for setting standards about the conduct of cases that we didn't require the private lawyers to comply with as well. And that's very important as well.

Two final reasons. Firstly, flexibility. So most Legal Aid Commissions you know we're like a big bureaucracy that cranks out all these cases, but we also have to have smaller targeted programs focusing on particularly disadvantaged groups. And having staff lawyers can really help you with that flexibility and to provide unique solutions for particular problems.

Finally staff lawyers are also very good for efficiency in many ways. Because in two ways: they can help you with managing demand at the front end. So, for example, that duty lawyers in the criminal justice system are very good at cleaning matters up quickly. But sometimes the private lawyers aren't so good at cleaning up quickly. And finally the back in with the big expensive cases they are very useful as an alternative service provider that enables us to manage our costs with the private lawyers. So that's some of the reasons.

• **Mr. Mark Benton (CEO, Legal Services Society, British Columbia, Canada):**

The Canadian perspective is that the best models mix both private and public lawyers doing the work. There are a couple of reasons for that. I am just going to focus on the public lawyers for a moment.

Part of it is about knowledge management and carrying the knowledge through the organization that relates to succession within the organization. People who are doing the staff lawyer work tend to be people who get a sense of how the organization works, and ought to run, and how it changes. And because they have to work with private lawyers routinely, have a sense of what that dynamic is about. We tend to use them for coordination on really difficult issues, in my jurisdiction that recently included immigrant marine arrivals. So that we were with these Tamil migrants who had landed to make refugee claims after lengthy sea voyages.



And in those circumstances, met high government opposition, including high government legal opposition to fight their ability to even make a refugee claim. We used to have one of our staff lawyers to coordinate all the private lawyers.

Around that it was something that I think he could do with. He had the means to do it. Because we could guarantee a salary while he was doing the coordinating. It's not something if using in private practice as he could easily do. It allows us; it has been mentioned already, to really monitor cost and quality issues, against the private bar. So it also gives us in-house capacity and expertise that way. And there are areas where you just need it for expertise because there is no other real market out there. And it could be a real niche market for us it's often been around particular refugee groups.

- **Mr. Hugh Barrett (Director, Legal Aid Commissioning and Strategy, Legal Aid Agency, Ministry of Justice, U.K.):**

In England and Wales, 99.5 percent of the work is done by private lawyers. However, we do employ roughly 50 lawyers who deliver criminal defense services. And essentially we have them for two reasons.

The first is understanding and development of new techniques and procedures in the criminal justice system. So for example we are moving to a system where all evidence is produced electronically and transmitted electronically between the police, the prosecutors and the defense. And it's very helpful to have staff lawyers to be able to work on those sorts of projects.

The second reason is alternative service provision. We have been recently cutting the fees that we pay to criminal lawyers. For example, about a year ago we reduce the fees we pay in very high cost cases by 30 percent. The independent bar decided that they would no longer work for those fees, so we recruited an additional 25 barristers, including 7 Queen's Counsels to do those cases, and said to the independent bar that we will continue that recruitment if they didn't get back to work. And as a result of that move and some other changes to the fee schemes, we have got them back to work on those very high cost cases. So those are the two prime reasons that we employ staff lawyers.

• **Mr. Yiu-Leung Cheung (Barrister, Hong Kong):**

Well I think Hong Kong is a city with a population of 7.2 million. In the city I think of things can be handled more easily and conveniently. Yes, indeed our model is quite similar with that in the UK. A vast majority of the cases are handled by private lawyers. Those employed in the legal aid department and the duty lawyer services as I said, they handle administration mainly.

And on some occasions they will handle some, for example, we call it pre-trial proceedings, pretty straight forward, housekeeping matters. But for some substantive matters, again as I said, over 99 percent of them are handled by private lawyers. And we don't seem to have this problem as private lawyers unwilling to take on board legal aid cases.

For one thing, for civil legal aid, they are paid according to the market rate. Because they can charge and eventually subject to taxation. So they are free to charge I mean whatever they want to charge. But of course subject to contention and taxation and the courts of ruling.

And for criminal cases, not highly remunerative I must say, but reasonable. So still, it's reasonably attractive. So that we have sufficient members of the bar, and indeed some solicitors as well who are willing to take on criminal cases.

• **Dr. Enny Nurbaningsih (Head of National Law Development Agency, Ministry of Law and Human Rights RI, Indonesia):**

As you know, the legal aid providers in Indonesia are the organizations of a new system set up by the government. They've been running for two years I think. Before that the poor received legal assistance but the source was not enforced by the government. Now in Indonesia, we have 310 legal aid providers and they are divided into 3 levels. The certified Level A providers get a maximum number of cases to serve the poor, the marginal society there.

I think in Indonesia, after we issued the Act of No. 16/2011, we can organize the legal aid providers better according to the new law. And then many cases can be served by legal aid providers in Indonesia, including criminal cases and private

cases (family and civil ones). They can solve litigation and non-litigation cases.

- **Mr. Keita Abe (Senior Researcher of Research Division, Director of Information System Management Division Japan Legal Support Center, Japan):**

As I explained in the presentation, Japanese staff lawyers were introduced to provide legal services in the remote areas, islands or very far away city. So every kind of legal services were delivered in the local rural areas. But these days staff attorneys also station in the city area because Japan is an aging society and more and more elderly people have legal problems on welfare problems. So there are some pilot projects going on by staff attorneys to handle the welfare problem.

### Ques3

- **Mr. Wang (Participant) :**

My name is Wang, and I am just an average Joe. I would like to ask the representative from Japan. Could you please share with us the implementation of the Victim Participation system in Japan since 2000? As I know, the Japan Legal Support Centre has provided assistance in five victim support tasks.

- **Mr. Keita Abe (Senior Researcher of Research Division, Director of Information System Management Division Japan Legal Support Center, Japan):**

In 2013, we have new legislation for the victim of crimes. Victim participation system grant victims the rights to attend the court express their opinions and raise their questions. The victims of crimes can also have the attorney. So in the victim participation system, the court appoints counsels to represent victims of crimes. But the number of it is small so far. It has just started.



## 2014 International Forum on Legal Aid



**Special Report**

# **Comparing Legal Aid Systems**

Moderator: Mr. Anthony John Reilly  
CEO, Legal Aid Queensland, Australia

Speaker: Prof. Maurits Barendrecht  
Tilburg University, the Netherlands

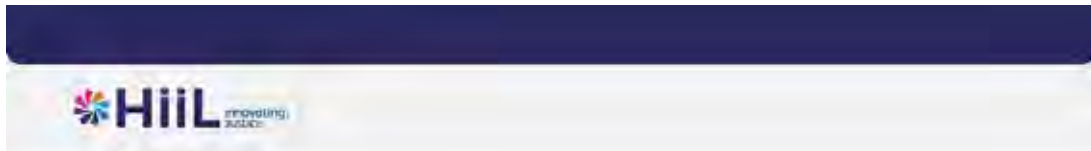


## Comparing legal aid systems

October 2014

International Forum on Legal Aid, Taipei

Prof. Maurits Barendrecht,  
Tilburg University





## The legal aid challenge ...

- How much legal aid will she need for receiving child support from her former husband?
- Access to justice depends on:
  - What help and advice is available?
  - How cooperative is the former husband?
  - Which third parties (mediator/adjudicator) can she go to (informal/formal)?
  - How difficult and effective is this procedure for her (and for her lawyer)?
  - Other helpers besides a lawyer available in procedure?



## What follows

What we know and do not know about ...

1. Overall spending
2. Types of problems that need to be resolved
3. Quality
4. Best practices for legal aid and access to justice
5. Legal aid cooperation in the future



## Hiil Innovating Justice

- **The Hague, City of Peace and Justice**
- **Not for profit research and advisory institute for justice sector**
  - Justice Innovation Lab for designing innovative procedures
  - Measuring access to justice
  - Innovation strategies for justice sector organizations
- **Joint venture with Tilburg University for valorization of research on dispute systems**

@Mauritsbarendr, @innojustice, maurits.barendrecht@hiil.org



## Sources expertise legal aid/access to justice

- Two comparative studies European legal aid systems
  - Sweden, UK, Germany 2003
  - Nine countries, 2014
- Study with Oxfam: Models for Sustainable Legal Aid: Experiences from NGO's in Five Lower Income Countries
- International Legal Aid Group member since 2006
- Editor Working Group Report Access to Justice UN Commission Legal Empowerment of the Poor 2008
- Board-member Dutch Legal Aid Board 2000-2010
- Trend Report Towards Basic Justice Care for Everyone, 2012
- Academic publications (see ssrn.com)





## Basis for analysis today

- **Comparative research European 9 legal aid systems**
  - Belgium, England & Wales, Finland, France, Germany, Ireland, Netherlands, Poland, Scotland
  - Commissioned by Dutch Ministry of Justice
  - Methodology: desk research and expert interviews
  - Cooperation with legal aid boards or research institutes
  - *Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?* [www.hiil.org](http://www.hiil.org)
- **9 national reports for this conference**
  - Australia, Canada (BC), England & Wales, Japan, Malaysia, New Zealand, Philippines, South Korea, Thailand



### 1. Overall spending



## Huge variety in government spending

	Country	% GDP		Country	% GDP
1	England & Wales	0.1300	10	Belgium	0.0200
2	Scotland	0.1300	11	France	0.0200
3	Netherlands	0.0800	12	Philippines	0.0150
4	Ireland	0.0600	13	Poland	0.0100
5	New Zealand	0.0600	14	Japan	0.0100
6	Canada (British Col)	0.0400	15	South Korea	0.0060
7	Australia	0.0400	16	Thailand	0.0006
8	Finland	0.0300	17	Indonesia	0.0004
9	Germany	0.0200			



## What can explain huge differences in spending?

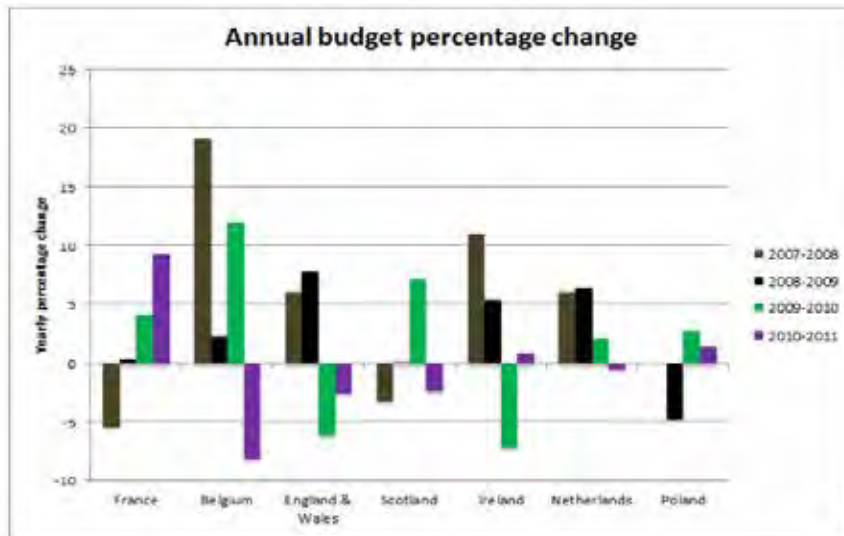
### Major influence likely:

- Availability and complexity of procedures at 3rd parties
- Scope/outreach of programs
- Lobby of lawyers and political priorities
- Donor programs and private (collective) solutions

### Less influence likely:

- Nr of problems (no huge variation across jurisdictions according to surveys)
- Eligibility criteria (cover 15 – 35% population)

## No clear European trends



## Private legal aid?

On the continent, legal expenses insurers offer coverage + fixed fee products for consumer, personal injury, neighbour, housing, administrative issues

### Total expenditure per capita (euros)

1. England & Wales	39.37
2. Scotland	34.28
3. Netherlands	29.11
4. Ireland	21.18
5. Finland	12
6. Belgium	6.96
7. Germany	6.52
8. France	5.40
9. Poland	0.59

### Premium income of legal expenses insurance

1. Netherlands	47.90
2. Germany	36.65
3. Belgium	33.55
4. France	14.15
5. Finland	12.96
6. Poland	11.27
7. Scotland	not available
8. Ireland	not available
9. England & Wales	not available



## Spending overall

- **Know:**
  - Government budgets from 0.1300 to 0.0004 of GDP
- **Also relevant (possible trade-off):**
  - Budgets for courts, tribunals, ombudsmen, other 3rd parties
- **Not know and relevant:**
  - Funding access to justice programs by private donors
  - Size collective mechanisms (legal expenses insurance, consumer organizations, trade union membership)



## 2. Types of problems that need to be resolved



## Legal aid is about helping ...

- A man taken in custody ...
- A woman wanting a separation and child support ...
- A family loosing their home or land...
- An employee being fired or not being paid ...
- A buyer of an inadequate product or service ...
- A citizen in need of government services ...



## Which problems?

### **Biggest spending in most countries:**

- Police custody/pretrial detention
- Criminal defence
- Divorce/separation and other family

### **Less spending but also relevant:**

- Consumer, employment, refugee and immigration, debt, personal injury, housing, social security

### **High volumes in some countries:**

- Debt cases/insolvency (Japan), Overdue wages (South Korea)



## Specific areas

- What causes differences in spending here?
- European report zooms in on specific problems:
  - Police custody/pretrial detention, criminal defence, family, consumer, employment, refugee and immigration, debt, personal injury, housing, social security



## Criminal defense: Huge differences in spending

Country	Spending per head €	% of legal aid budget
Eng	21.3	51
Scot	23.8	63
Neth	9.3	35
Ire	13.0	59
Bel	2.1	38
Fra	1.8	33



## Family cases (divorce and children): Huge differences in spending

Country	Spending per head €	% of legal aid budget
Eng	15.9	37
Neth	5.1	23
Bel	0.9	17



## Refugee and immigration cases: tribunals help to reduce costs

	Spending per head €	% of legal aid budget
Eng	0.92	1.9
Scot	1.16	3.1
Neth	2.95	17
Ire	1.1	5
Bel	2.1	13



## Our hypothesis from European systems

- **Traditional court procedures very costly to operate for lawyers and thus for citizens and thus for legal aid budgets**
  - General civil and criminal procedures
- **When specialized, modernized (tribunal) procedure, legal aid costs tend to be much lower**
  - Migration/refugee tribunals in UK and other countries
  - Indonesia religious family courts
  - Phillipines mandatory mediation employment disputes
  - Problemsolving courts for drug crime - youth crime



### 3. Monitoring quality?





## Monitoring quality of legal aid services

- Many ways to do this
- No comparative data
- Uncertain what the effects are of:
  - Audits
  - Peer review
  - Training and qualifying legal aid lawyers
  - Experience requirements
  - Complaints and investigation systems



## Monitoring quality of access to justice

- Some indications of quality access to justice
- Comparative data exist
  - Mostly survey data: Eurobarometer Justice Survey 2013, World Justice Project Rule of Law Index (yearly)
  - Mostly reporting impressions not experiences
- New methods emerge:
  - Surveys of access to justice as experienced by citizens
  - Quality of procedure, outcome and costs

Country	Legal aid budget (%GDP)	% Fairness civil justice judgments (very) good (Eurobaro)	People can access and afford civil justice (WJP)	Due process of law and rights of the accused (WJP)	Civil justice ranking (WJP)	Criminal justice ranking (WJP)	Number of EHRM violations per 100,000 people
Eng	0.13 (1)	63 (4)	0.66 (4)	0.82 (4)	11 (4)	11 (4)	0.19 (2)
Scot	0.13 (2)	--	--	--	--	--	--
Neth	0.08 (3)	76 (1)	0.73 (1)	0.89 (2)	2 (1)	6 (2)	0.26 (3)
Ire	0.06 (4)	62 (5)	--	--	--	--	0.33 (4)
Fin	0.03 (5)	66 (3)	0.69 (3)	0.91 (1)	5 (3)	2 (1)	1.8 (8)
Ger	0.02 (6)	56 (7)	0.71 (2)	0.77 (5)	3 (2)	9 (3)	0.15 (1)
Bel	0.02 (7)	69 (2)	0.65 (6)	0.76 (6)	18 (6)	18 (6)	0.95 (6)
Fra	0.02 (8)	58 (6)	0.66 (4)	0.74 (7)	17 (5)	21 (7)	0.83 (5)
Pol	0.01 (9)	41 (8)	0.62 (7)	0.86 (3)	22 (7)	16 (5)	1.35 (7)



## Some first impressions

- **England & Wales, Scotland: expensive, quality OK**
- **Netherlands: rather expensive, high quality**
- **Finland/Germany: most value for money**
- **France/Belgium: cheap systems, quality uncertain**

**Just indications where to look for best practices!**



## New methods to assess quality

- Population survey access to justice
  - Which problems? Which paths to justice? Legal empowerment? Quality processes and outcomes?
- Done in Indonesia (small sample), Mali, Netherlands, Yemen
- More countries considering



## Fairness on paths to justice

People use formal and informal processes to resolve their legal problems. In our methodology the commonly applied justice processes are called *paths to justice*. HiiL measures each paths to justice through asking the people who use them about 10 easy to understand indicators. In this way we measure justice from the bottom-up.

1. **The costs of to justice**
  - Monetary costs: out-of-pocket costs for legal fees, travel, advisors
  - Time costs: time spent to search for information, attend hearings, travel
  - Stress and negative emotions
2. **The quality of the procedure**
  - Voice&Neutrality: process control, decision control, neutrality, consistent application of rules,
  - Respect: respect, politeness, propriety communication
  - Procedural clarity: timely explanation of procedures and rights
3. **The quality of the outcome**
  - Fair distribution: distribution is fair according to needs, equity and equality criteria
  - Damage restoration: fair compensation for monetary damage, emotional harm and damage to relationships
  - Problem resolution: extent to which the problem is solved and the result has been enforced
  - Outcome explanation: the extent to which the people receive outcome information access

For each path to justice we plot the justice dimensions in a spider-web. On the scale 1 means bad and 5 means good.

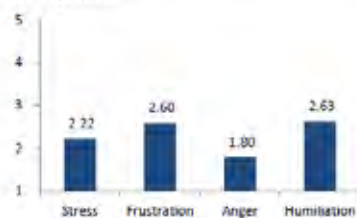
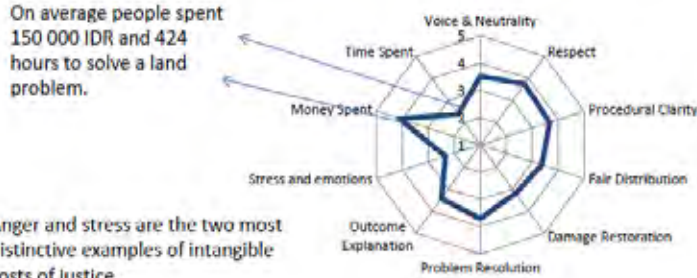


## Zooming in on land disputes

### How people experience land disputes?

On average people spent 150 000 IDR and 424 hours to solve a land problem.

Anger and stress are the two most distinctive examples of intangible costs of justice.



What are the steps necessary to improve the process for resolving land problems? How improvements will affected the perceived quality and accessibility of justice in land disputes?

44



## Possibilities for international cooperation

- Monitoring access to justice is possible
- Data about justice needs and how well they are served
- Provides learning, incentives and rational basis for funding
- In partnership
  - Legal aid programs (private NGOs/public legal aid boards)
  - Donors (Open Society Justice Initiative, EU, MoJs, MoFA)
  - See [www.hiil.org](http://www.hiil.org) for more information



#### 4. Best practices for legal aid and access to justice



### Best guesses about what works from comparing European systems:

For lower costs, higher quality of legal aid:

1. Reducing complexity of procedural routings
2. Specialized procedures/tribunals for most frequent and urgent problems
3. Services integrating other disciplines (debt, family)
4. Reducing services under professional lawyer monopoly  
– Finland, France, Netherlands, UK
5. Improving legal information and advice infrastructure



## And also

6. **Getting rid of hourly fees**
  - Still in some parts of UK and Netherlands systems
7. **Fixed fees in market for legal services**
  - German tradition, emerging model everywhere
8. **Closed budget**
  - Belgium, French approach
9. **Reducing compensation levels for lawyers**



## Less can be expected from

1. **Availability of legal expenses insurance**
  - Unless family and criminal can be covered
2. **Preventing legal problems**
3. **Mediation as a separate service (unless mandatory)**
4. **Raising own contribution and income levels**
5. **Recovering legal aid from applicants, defendants, other sources (claw-back)**



## Does legal aid policy follow main strategies to enhance access to justice?

1. Empowerment through (legal) information
2. Hybrid, problemsolving services (integrating mediation), for fixed fees
3. Specialized, simple court/tribunal procedures
4. Best practices and protocols
5. Online platforms for resolving disputes

(See, for instance, literature review and expert opinions in: HiiL Trend report Towards basic justice care for everyone, 2012)



## Examples of programs that follow strategies

- LawAccess and similar websites, guides/leaflets (Australia, CanadaBC, New Zealand, Skorea)
- Community law/legal aid centres providing information and advice (Au, CBC, Japan, Malaysia, NZ, Ph, SK)
- Parenting through separation and similar dispute resolution (Au, NZ)
- Integrating mandatory conciliation, mediation in procedures employment/local administrative cases (Philippines)



## But if you follow the money ...

- **70-90% of budgets still spent on lawyers**
  - In individual cases
  - Mostly in litigation
  - Mostly before courts
- **0-20% budgets spent on information and advice**
- **Not much spending on**
  - Hybrid, problemsolving services; improving (court) procedures; developing protocols/best practices; online dispute resolution platforms



5. Legal aid cooperation in the future:  
An online, problemsolving self-help court?





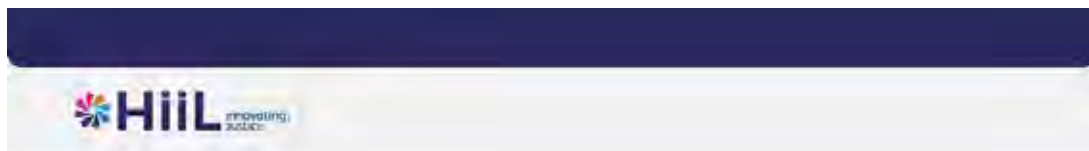
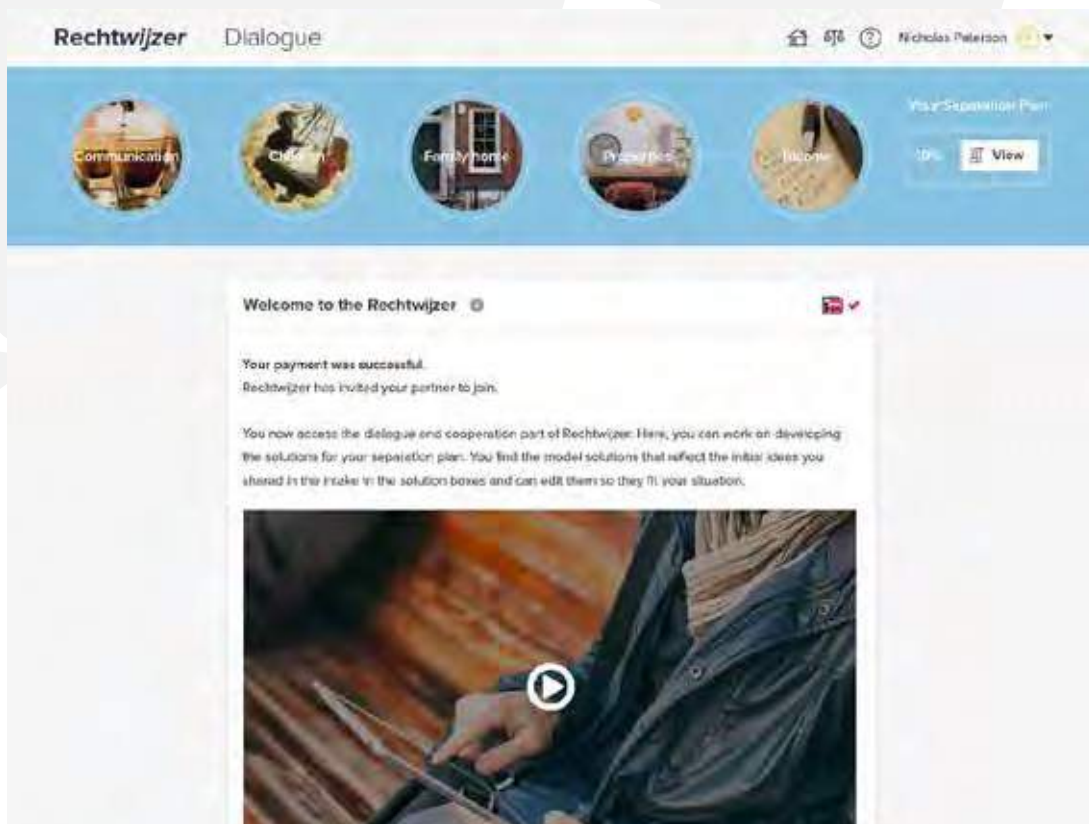
## How could the future look like?

### Trends already coming together

- 1000s of online information and advice sites for end-users and (para)legals ...
- Widespread availability of problemsolving legal services, with decreasing fixed fees ...
- Ever more tribunals and specialized courts ...
- More international best practices and protocols to deal with the most difficult problems ...
- LegalZoom and many other online platforms supporting this ....



An online, problemsolving self-help court?



## Empowerment through (legal) information

Rechtwijzer

Diagnosis

You worry about your relationship. You can read more here:

- Signs of Relationship Breakdown**  
 Relationships change. But, when do you know a relationship does not work anymore? There may be some signs. For example: you fight more often. You do less things together. You can not put up with each other as you did before. There is very little left to talk about. Or, there is someone else.
- Relationship test**
- What goes well and what does not go well?**
- Communication tips**
- We do want to go on, but how?**
- When staying together is not an option**

Continue Back

Rechtwijzer

Diagnosis

**Separation in our country**

- 1 in 3 relationships fail**  
 A bit more than 32% of married couples separate. The average marriage last for 14 years. Men on average separate at the age of 46 and women on average separate at the age of 42. The percentage of cohabiting people who separate is slightly higher. Per year, about 93.000 couples go through a separation.
- 6 out of 10 couples file for divorce** it is increasingly normal to separate in a collaborative manner. When there are children this "shik-montage" is highly important.
- 70,000 children**
- Why do people separate?**
- Emotions**
- Decrease in income**

**What happens in your life when you separate?**

- Children**
- Family home**
- Properties**
- Income**

**Rechtwijzer** Nicoletta Petrusson

**Diagnosis**

**Separation and work and income**

**Maintenance**  
 Maintenance is one partner's contribution to another partner's cost of living. Those entitled to maintenance can be the partner (partner maintenance) or the children (child support).

**Child support**

**How is child support calculated?**

When calculating child support, three aspects are important. You can calculate this together with your partner:

- Household income;
- The children's expenses;
- The paying partner's capacity to pay.

You and your partner need to agree on how costs of upbringing and child care are divided. The parenting plan should include how much the child support will be and who is going to pay for this. What each partner paid for the children's expenses during your relationship can be a starting point. Also, identify children's expenses such as the cost of clothing, grooming (hair, eyelids), hobbies, sports, school and so on.

Rechtwijzer provides a calculator so that you may use to calculate the amount of child support. The calculator is based on the same standards that the court uses when determining child support.

**Obligation and duration of child support**

**Partner maintenance**

**More information**

**Rechtwijzer** **Intake** Home, Print, Help, Profile

**Your details** **Communication** **Children** **Family home** **Property** **Income**

**CHILDREN**

- Visitation 0/1
- Belongings 0/1
- Information 0/1
- Decisions 0/1
- Costs 0/1
- Details 0/1

**You have one child who is younger than 18 years**

For your child you are going to make agreements regarding when he/she will stay at which parent's place.

**What are your initial ideas for this?**

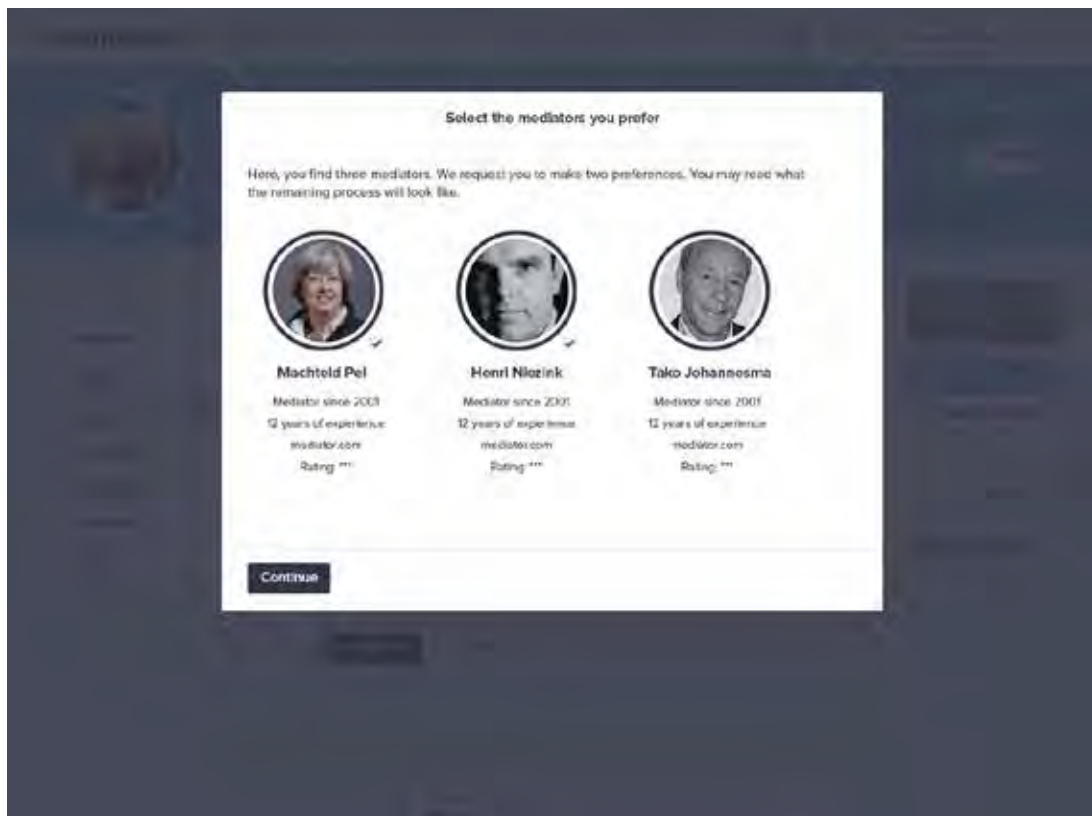
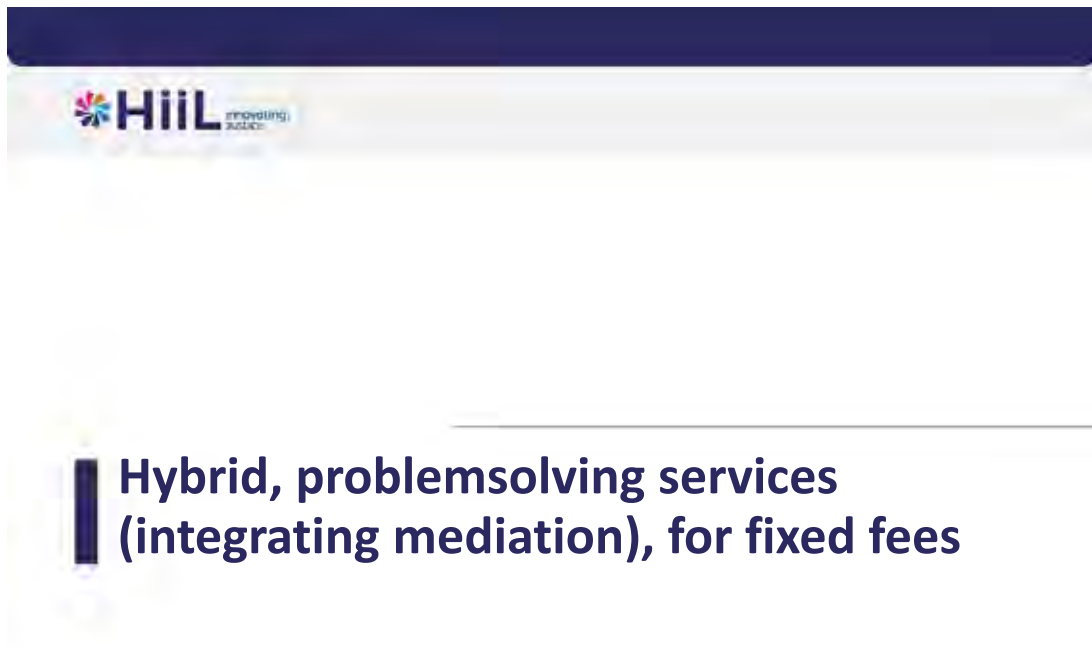
**At father's place**  
 Children regularly stay at their father's place and visit the mother together.

**At mother's place**  
 Children regularly live at their mother's place and visit the father together.

**Co-parenting**  
 Children stay at their mother's and father's place equally.

**Other**  
 My initial idea is not listed.

**You have not made a decision! Select one of the two options**



**Rechtwijzer** Separation plan Henri Mezinik

Communication Children Family home Properties Income

**Separation plan of Nicholas and Rachel** Close agreement

A GOOD FUTURE FOR KIMBERLY

**Visiting arrangements and living situation for our children** Legal version

Kimberly will go to Nicholas during the weekend once every fourteen days, in the even weeks. The weekend starts on Friday afternoon at 16:00 and ends on Sunday evening at 18:00. The parent who the children stayed with last, takes the children to the other parent when a switch has to be made.

Approved  Not approved View

**Housing registration**

Kimberly will be registered at her mothers address.

Approved  Not approved View

**Division of belongings**

The belongings of Kimberly will go in her room at Rachel's place. For Kimberly's room at Nicholas' place, both her parents will buy new belongings, including at least a bed, toys and some basic sets of clothing.

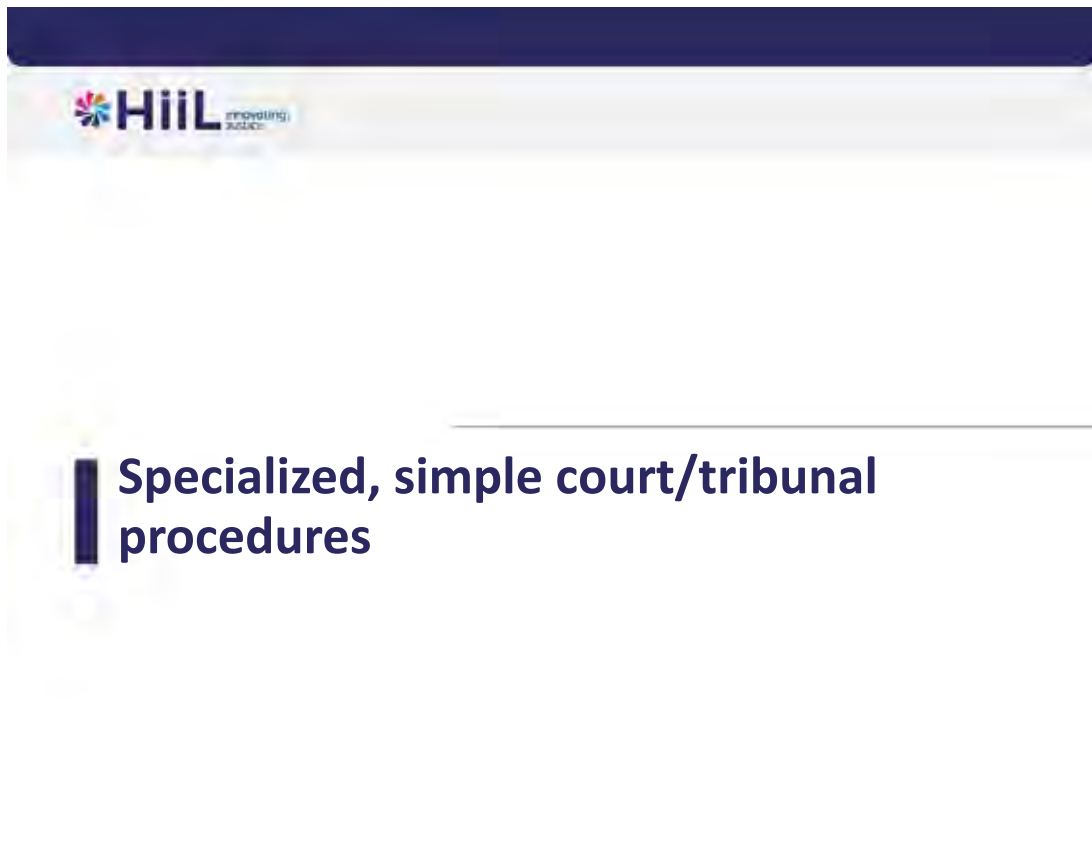


## Services facilitated ...

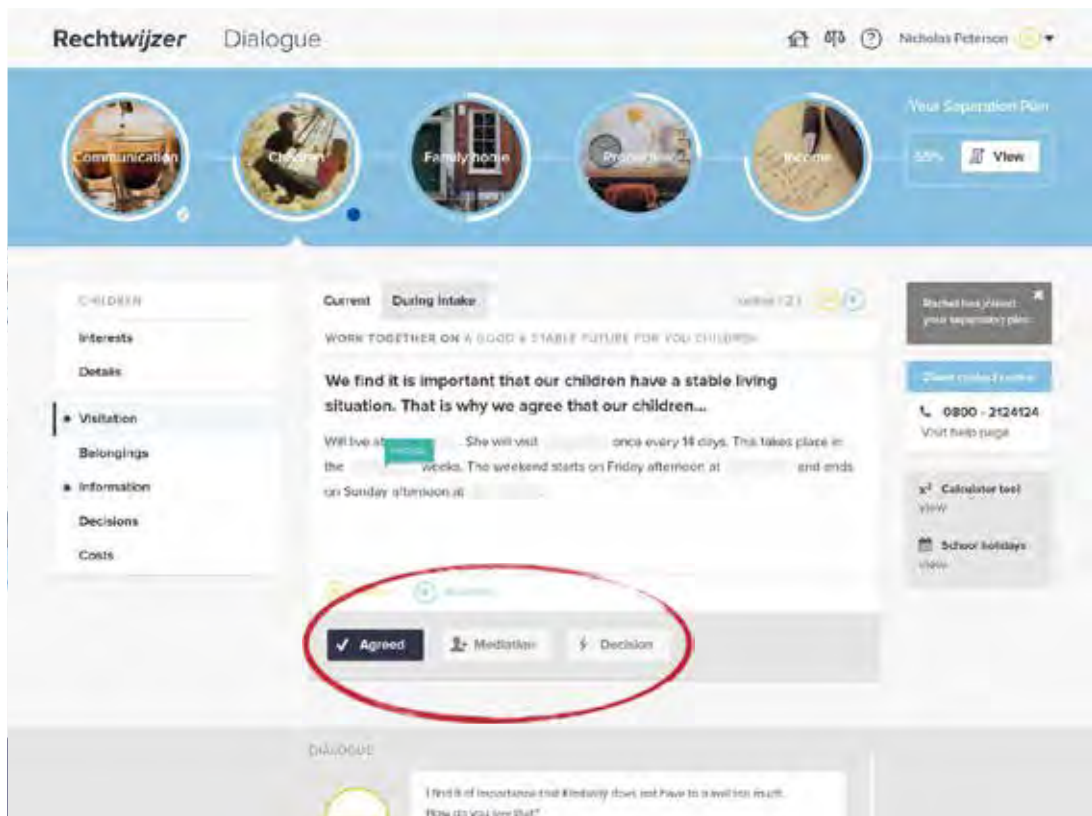
- Guided negotiation (parties)
- Help by telephone (paralegals)
- Mediation of issues not resolved (lawyer/mediators)
- Decision of issues not resolved (judge/adjudicator)
- Review of solutions (lawyer/reviewer)

### To be developed:

- Specialised, added value services (lawyers/other service providers)



## Specialized, simple court/tribunal procedures





## Configurable platform

Currently specialized procedures for:

- Divorce
- Landlord/tenant
- Neighbour problems

Also possible:

- Consumer, employment, social security, criminal ...



## Best practices and protocols





## Quality control

Platform can easily facilitate:

- **Best practices for dealing with ...**
  - Special issues such as pensions, domestic violence
- **Monitoring ...**
  - Quality of each service provider
  - Quality of results
  - Client satisfaction



## Online platform



## New way of international cooperation

- **Legal aid organizations**
  - Legal aid board Netherlands (supported by MoJ)
  - Legal Services Society BC
  - Open to new jurisdictions: Finland, Singapore already interested
- **IT/ODR provider**
  - Modria (San José, CA)
- **Configurations and dispute system design**
  - HiiL Innovating justice



## Rechtwijzer exemplifies the benefits of international cooperation in legal aid

- **Sharing deep knowledge**
- **Sharing best practices for resolving justiciable problems**
- **A joint legal aid agenda with clear priorities**
- **Sharing costs of system development and maintenance**



## Conclusions

- **Spending hugely different, justiciable problems similar**
- **Main variables policy makers should look at**
  - Procedural routings for most frequent and urgent problems
  - Structure of market legal services
- **International cooperation in legal aid works and is expanding**
  - Increasing quality and effectiveness + monitoring
  - Innovative platforms for delivery



## 2014 International Forum on Legal Aid



**Special Report:  
Comparing Legal Aid Systems**

**Q & A**

## Ques1

- **Mr. Dunstan Mlambo (Judge President Gauteng Division of the High Court of South Africa):**

Thank you professor for a very illuminating research study. I just have two questions for you. One is the categorizations of Netherlands as one of the more expensive countries. I'm not sure whether you looked at just the Legal Aid Board there or whether you looked at Legal Services Counter as well. Because the Legal Services Counter I know it operates separately, but it refers people to the Legal Aid Board. But that's entry level in primary, and when I visited those counters, they showed me that it's very cost-effective to provide legal aid services in that way. That's the first question. And you could also deal with the Community Legal Centers in Australia because that too tells me it's another cost-effective way of providing legal aid. But the other question was on the quality of legal services. Did you in your studies find any legal aid service provider that has an in-house quality assurance unit? Because we have that in South Africa, and it has helped in terms of creating confidence in the quality of our services.

- **Mr. Maurits Barendrecht (Professor of Tilburg University, the Netherlands):**

The Legal Services Counters in the Netherlands and community justice centers in many other countries tend to be included in the figures that I showed on percentages of GDP. If you look at how much is spent on these local centers, it's often a rather small percentage of the legal aid budget. It's fewer than 20 percent. So, I completely agree that these outreach centers are very important to provide people with legal information and advice. They are not that expensive or we don't spend enough on it. We don't know which of two options is true.

As to the quality assurance programs, we see quite some programs that have quality assurance units and work on it very hard. For me as an external reviewer of these systems, it is very hard to see how effective these quality assurance programs are. But I'm sure that people doing that type of thing are generally doing the right thing and enhancing quality in some ways.

## Ques2

- **Mr. Jerry Cheng (Presiding lawyer of Justice Law Firm):**

You just mentioned as I know some different types of legal aid systems. I saw your analysis on the United Kingdom. The percentage about the GDP is higher and another type is maybe just like Germany. Maybe use the insurance system, use premium. Can you analyze these two types? Which one maybe useful or effective or efficient? And the second question is, I saw your analysis but there's no Taiwanese figure, why?

- **Mr. Maurits Barendrecht (Professor of Tilburg University, the Netherlands):**

It's always better not to include the host country in your comparisons, because you know too much. But I haven't access to the data. The question about the German system I think the German system is very interesting to study. There's a traditional fixed fees. There's also tradition of fee schedules, so that lawyers are used to for small cases to ask for a small fee, which is not enough to cover all their expenses, so there's an element of pro bono in that, but it has worked for many years.

The interesting thing from fixed fees as a kind of principle in your legal system is that it tends to make your core procedures more effective and faster. Because lawyers they have an interest to make more money, but they can do that mostly by attracting more cases by solving more problems. Once they have a problem, they have the interest to solve it rather quickly. And of course it could, fix fees could lead to quality problems. But if you look at the satisfaction of the population in Germany with access to justice, that doesn't seem to be much of a quality problem in the legal system. So it's very interesting to look at.

## Ques3

- **Ms. Hsieh Hsing-ling (Deputy Secretary-General of the Legal Aid Foundation):**

My name is Hsieh Hsing-ling, the Deputy Secretary General of Legal Aid Foundation in Taiwan. I would like to ask you about the fixed attorney fees in

Germany that you mentioned earlier. I don't know if you researched the comparison between the fixed fee and the market prices in Germany. The attorney fee that the Legal Aid Foundation in Taiwan pays for the lawyers is only about half to a third of the market price. This is a serious issue for the Foundation because the attorney fee is lower than the market price, but meanwhile, we want the lawyers to do quality work. Is there any solution in your research for a dilemma like this?

• **Mr. Maurits Barendrecht (Professor of Tilburg University, the Netherlands):**

We are now going into questions which could much better be answered by economists. What is the effect if you offer a lower fixed rate for legal aid then it presents on the market? It might be that there is a quality problem. It might also be that the lawyers know that they can charge people with a higher income, a higher rate.

I know a little bit about economics and one of the challenges is also when you have a product not to let everybody pay what he can afford, and maybe then a little bit more quality is added. But when you go to the supermarkets you see that the quality differences are probably not as high as the differences in image or in added value to the product that it's not really the core of whether it helps you washing your hair or whatever. So I'm not sure that offering legal aid lawyers a lower rate is really jeopardizing quality. We have to find out by research with economists.

## Ques4

• **Ms. Ta-Hua Yeh (Secretary-General, Taiwan Alliance for Advancement of Youth Rights and Welfare):**

My name is Ta-Hua Yeh, Director of Legal Aid Foundation in Taiwan. I have two questions for the professor. You mentioned in your presentation that you discovered most legal aid organizations use 70% of their funds on lawyers and less on formulating strategy. May I ask, what is your advice on formulating strategies? Such as the strategy on research and development? Or on education and promotion? This is the first question.

I have a second question. I am not a lawyer myself. As you mentioned in



your presentation, legal aid systems often seem to be monopolized by lawyers. This is very similar to what we've found in Taiwan from the perspective of NGO organizations. Regarding this issue, you mentioned interdisciplinary professionals such as social workers or other professionals. Could you please provide more details about your findings on the monopoly from EU's point of view? Whether a monopoly actually has both a positive side and a negative side? And how to train more interdisciplinary workers to participate in legal aid?

• **Mr. Maurits Barendrecht (Professor of Tilburg University, the Netherlands):**

I think there's a clear desire that the part of legal aid programs is to look at prototypes of providers. Because people from different disciplines with different skills can also help to solve the legal problems of everyday life. Whether these other services are sufficiently represented in decision making about legal aid budgets, are they represented in the boards of legal aid boards? Are they represented when government officials talk about legal aid policies? My impression is that there's still a lot of work to do in that respect. But we haven't study it very carefully. But I think you're right that representation of different providers of different types of legal aid in policy making is an important issue.



## 2014 International Forum on Legal Aid



# **National (Regional) Reports II**

**Republic of Korea, Malaysia, New Zealand,  
The Philippines, Thailand, U.S.A., Vietnam**

**Moderator: Mr. Mark Benton, Q.C.**  
CEO, Legal Services Society, British Columbia, Canada



## 2014 International Forum on Legal Aid



**National Report**

**Republic of Korea**

**Speaker: Mr. KANG Byung Sam**  
Staff Attorney, Korea Legal Aid Corporation

## National Report

### 1. Country Information

Country	Legal Aid Organization Name	Date of Establishment	Poverty Line & Percentage of Population in Poverty	Total No. of Practicing Lawyers & Legal Aid Lawyers (including in-house and private practice)
Republic of Korea	Korea Legal Aid Corporation	September 1, 1987	10,680,000 KW <sup>1</sup> , 16.5% (2012)	17,880 (as of July. 31. 2014). 96 Staff Attorneys, 227 Public-Service Advocates <sup>2</sup> (as of Aug 2014)
Population	GDP	Total No. of Applications Received in the Past Year	Total No. of Applications Approved in the Past Year	Total No. of Applications Refused in the Past Year
51,141,463 (2013)	1304.5 billion USD (2013)	142,299	136,747	188

### 2. Please describe the main provider(s) of legal aid services in your country:

(a) What is the nature of the provider's organization (ie, a government department, an independent statutory body or association)?

Korea Legal Aid Corporation (KLAC) was established by the Korean government in 1987, in succession of all the rights and duties of its predecessor, the Korea Legal Aid Association (founded in 1972), based on Legal Aid Act. KLAC is a main provider of legal aid service in Korea, as a public organization supervised by the Ministry of Justice. There are also civil organizations such as Korea Legal Aid Center for Family Relations, Korean Bar Association Legal Aid Foundation.

(b) If supervised by another authority, how does the provider maintain independence in decision-making and in carrying out its duties and responsibilities?

Comments

1: KW=Korean Won. 1 U.S. Dollars = 1,014 Korean Won (as of Aug 30, 2014)

2: The Minister of Justice appoints the Public-Service Advocates(PSAs), among lawyers enlisted under the Military service Act, and orders to serve in legal aid(mostly in KLAC), or related affairs, such as State litigation.

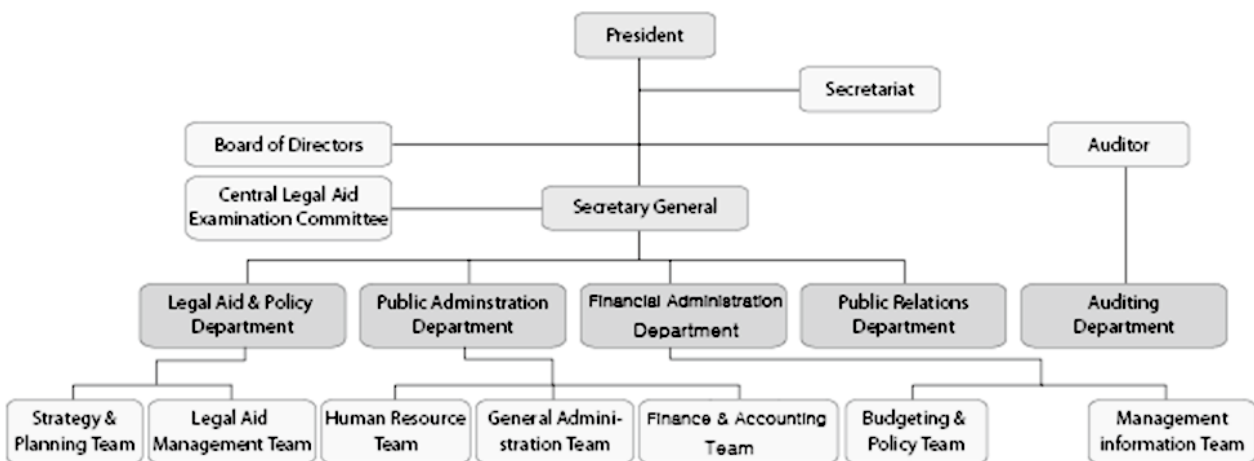
The Minister of Justice shall guide and supervise legal aid corporations. KLAC shall prepare a project plan and a budget estimate for each business year and submit them to the Minister of Justice annually. Also, the rules of KLAC, which determines the requirements and procedures of legal aid KLAC carries out, should be approved by the Minister of Justice.

However, Legal Aid Act states that the guidance and supervision shall not apply to specific cases of legal aid services. KLAC lawyers are able to carry out their litigation independently.

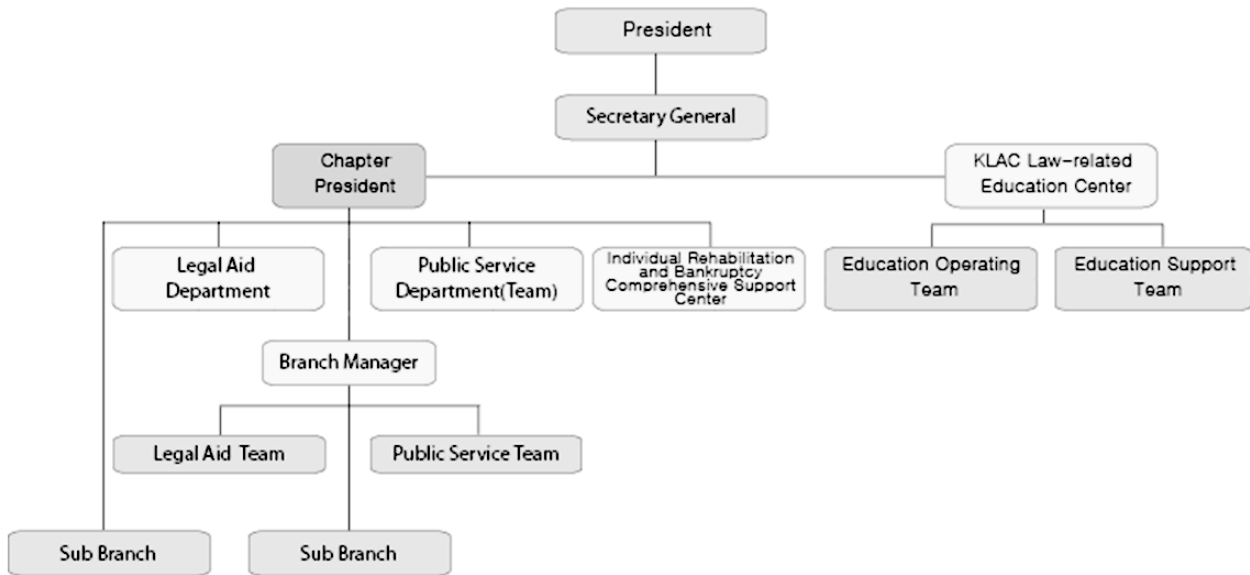
**3. Please describe the legal aid organization and the recent business figures:**

(a) Organizational structure.

- Headquarter:



- Local Offices:



- The Headquarter moved from Seoul to Gimcheon in 2014.
- KLAC Law-related Education Center is in Gimcheon.
- 18 Chapters (where there are district courts)
- 40 Branches (where there are branch courts)
- 67 Sub-Branches (where there are sub-branch courts)

(b) Analysis of the matter types aided in the past year.

Category	KLAC Legal Aid Cases (2013)	Change over 2012
Civil, Family, Administrative, etc	136,747	+7%
Criminal	16,257	+19%
Legal Advice	1,482,762	+5%

- Civil, Family, Administrative cases

	Legal Aid provided for:	cases	Percent (%)
1	Overdue wages <sup>3</sup>	134,064	66

Comments

3: Korean Ministry of Employment and Labor sponsors legal aid for workers with overdue wages and retirement benefits(including foreign residents). These cases mostly come to KLAC via Labor Board, which certifies back pay, and the amount of wages.



2	Low - Income Citizens (other than basic living security receivers)	15,700	8
3	Victims of Crime (other than Victims of domestic assault and sexual assault)	15,044	7
4	Individual Rehabilitation and Bankruptcy	9,510	5
5	Basic living security receivers (except individual rehabilitation and bankruptcy cases)	6,427	3
6	The Disabled	5,853	3
7	Farmers	4,964	2
8	Children in need, Basic old age pensioner	2,710	1
9	Victims of domestic assault and sexual assault	2,578	1
10	The Court-granted litigation aid cases	2,400	1

The Amount of Dispute (KW)	Cases	Percent (%)
0 ~ 5 million	55,565	41
~ 10 million	23,979	17
~ 20 million	18,381	13
~ 50 million	26,747	20
~ 80 million	4,934	4
~ 100 million	1,750	1
Over 100 million	5,392	4
Total	136,747	100

Legal Aid Fee	Cases	Percent (%)
Charged	8,222	6
Non-charged (free)	128,525	94
Total	136,747	100

- Criminal Cases

Category	Cases	Percent (%)
Via KLAC	4,331	27
Court-appointed	11,926	73
Total	16,257	100

(c) What is the number and percentage of cases conducted by in-house/staff attorneys and legal aid lawyers in private practice?

Category	Cases (KLAC)	Percent (%)
Staff Lawyers (includes PSAs)	152,939	99.95
Lawyers in private practice <sup>4</sup>	65	0.05
Total	153,004	100

#### 4. Please describe your country's (or organization) legal aid funding arrangements:

(a) What are the sources and amount of legal aid funding? Are there caps on annual spending?

- KLAC shall be operated with the following financial resources: Contributions and subsidies provided by the Government, Cash and other property contributed by persons other than the Government<sup>5</sup>, Borrowed funds, Proceeds derived from business of KLAC, Other proceeds.

- KLAC 2014 Budgets are as follows:

Category	Budget (in Millions of KW)	Percent(%)
Government subsidies	35,454	44
KLAC acquired	45,106	56
Total	80,560	100

(b) Has your organization experienced large-scale funding cuts? If so, what were the strategies for responding to such situation?

Not experienced.

(c) What is the percentage of funding spent on paying lawyers' fees and costs, and on administration expenses respectively?

Comments

4: Explained in question 6.(a)

5: Banks, Farmers' association, etc.

- According to KLAC Financial report of spending in 2013:

Category	Spending (in Millions of KW)	Percent
Personnel expenses <sup>6</sup>	37,907	49.3
Ordinary expenses	5,304	6.9
Legal Aid expenses	33,635	43.7
Total	76,846	99.9

(d) Does assistance extend to covering costs such as court costs, government charges, and costs awarded against the legal aid recipient?

- The government and non-government organizations donate funds to KLAC for specific cases. In these cases, such as cases for overdue wages, victims of crime, the disabled, etc, KLAC covers most costs and reimburses from the accumulated donation fund. See the table below.
- In other cases, the legal aid recipients are to pay the costs that KLAC spent for the case. If he or she won the case, the recipients can charge the costs to the other party.
- The assistance does not extend to the costs award against the legal aid recipient.

Category	Reimbursed costs(KW)	Percent (%)
Charged cases	4,712,708,000	9
Non-charged cases	51,308,740,000	91

**5. How does your organization evaluate performance? What are the effective tools or methods of evaluation? If your organization has established branch offices, how are their performances evaluated?**

- KLAC regularly assess its performances based on its own guidelines. The assessment includes the performances of every office (Chapters, branches, sub-branches).

Comments

6: This includes the payment to the staff attorneys, however, the above-mentioned respective expenses data are not available, as KLAC staff's duty includes not only litigation, but also administrative work. This does not include salaries paid to Public-service Advocates, as they are directly paid by the government.

- The assessment evaluates the amount and the result of the legal aid cases (75%), customer satisfaction (20%), training results (5%).

**6. Please describe the methods of service delivery in your country (or organization):**

(a) Are the bulk of the approved cases conducted by in-house/staff attorneys or by lawyers in private practice?

- Basically, KLAC assigns every case to its own attorneys(including Public-service Advocates)
- If it is inappropriate for KLAC to litigate the case(when there is a conflict of interest, etc), the office manager can appoint a lawyer in private practice as a designated legal aid lawyer.

(b) What are the conditions of registering as a legal aid lawyer?

- No specific registering is needed for a legal aid lawyer in Korea. But anyone who intends to render legal aid services as a corporation shall register with the Minister of Justice by meeting requirements for assets and persons engaged in legal aid services, etc. under conditions prescribed by Presidential Decree.
- KLAC annually employ their staff attorneys among many applicants.

(c) What are the rules and procedures of assigning approved cases to legal aid lawyers?

- Before approval phase, if it seems that litigation is needed, the lawyers investigate the case and report to the managing attorney who later approves the case. The manager assigns the case usually to the investigating lawyer(the staff attorney or the Public-service Advocate) or to the other, on his or her own judgment.
- When the Court or the Constitutional court assigns a case to KLAC members, the case is also regarded as the managing attorney assigned the staff attorney or the Public-service Advocate of that case.

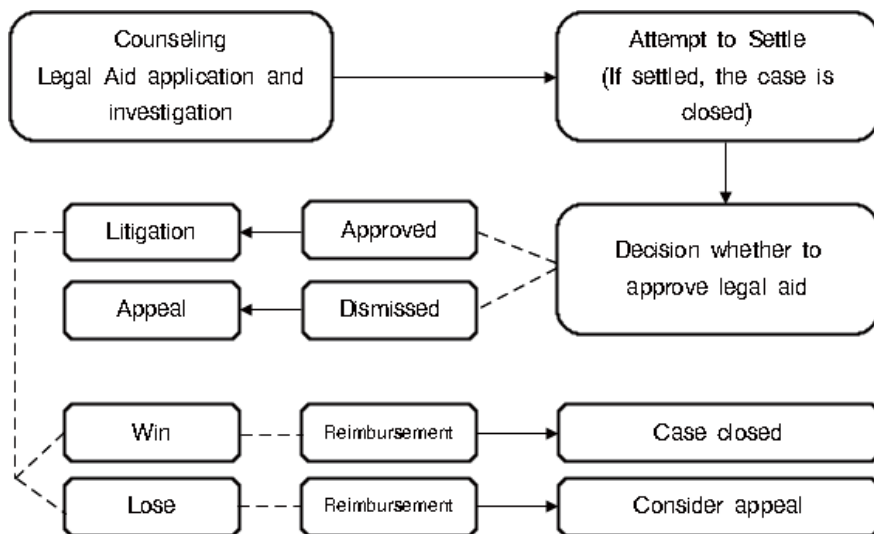
(d) How do the salaries and fees paid to legal aid lawyers compare with the general market rate?

- The general market rate does not apply to the legal aid cases. The basic wages paid to the KLAC staff attorneys are equivalent to those of public prosecutors. KLAC staff attorneys additionally are paid performance-based bonuses every quarter.

**7. Please describe the types of legal aid services provided in your country (or organization), and the types of matters aided.**

- legal counseling (for everyone, every matter)
- litigation (civil, family, administrative, constitutional cases)
- Individual rehabilitation or bankruptcy petition
- Criminal defense
- Sexual assault victim assistance program

**8. Please describe application procedures and the criteria of granting legal aid.**



\* If the legal aid application is dismissed, the applicants can appeal to Central Legal Aid Examination Committee.

To grant legal aid, the chance of winning, the eligibility and adequacy of legal aid must be considered. As most people apply for legal aid after they are legally advised in KLAC, the counseling personnel explains about and arranges the application.

## **9. In order to satisfy demand:**

(a) Are there services or standards specifically designed to help disadvantaged groups, such as women, children, indigenous people, labor and residents living in remote areas?

- The victims of domestic assault and sexual assault, workers who suffers overdue wages, children in need are eligible for legal aid, without expenses.
- KLAC has many offices in rural areas, and also runs legal counseling buses for those who live in remote area.
- Sentenced persons, as well as the pretrial detainees, are also eligible for legal counseling, as KLAC lawyers regularly visit prisons or detention facilities near their offices upon request.

(b) Are there special standards or rules for deciding whether (and how much) legal aid resources should be allocated to assist complex cases (eg, environmental lawsuits or other class action lawsuits)?

- Special standards or rules upon the matter are not set.

## **10. How does your organization monitor the quality of legal aid lawyers' services?**

- KLAC auditing department and an experienced staff attorney who is designated for inspection, are regularly inspecting legal aid activities, including litigations.
- Each staff attorney is encouraged to have expertise areas, and to form studying societies, which are to submit research papers for the annual seminar.
- KLAC has appointed 58 medical doctors for legal advice for the related legal cases.

- KLAC conducts annual legal aid seminar and PSA seminar, for exchange of knowledge and discussion.

**11. How does your country (or organization) inform potential applicants (particularly residents living in remote locations) of the availability of legal aid services?**

- In connection with the local governments and farmers association, KLAC regularly visits remote areas, and provides legal service by sending its ‘counseling bus’, which functions as a small mobile office. This specially reformed bus has computers, network system and a copy machine in it. The visiting events are often held with educational lectures on basic legal matters.



(See the table below)

- KLAC has public relations department, which advertises its legal aid activities, deals with media, and publishes ‘Legal Aid’, a quarterly publication.

Year	Visits	Legal Counseling	Legal Aid Application Received	Lecture	
				Held	Attendee
2012	100	1,455	91	21	1,200
2013	105	1,473	96	22	1,374

**12. How does your organization help to reduce the amount of disputes which resort to the courts? Does your organization participate in law reform or offer legal education to the public? If so, please describe these activities or services.**

- Before bringing the case to the court, if the case can be settled, the staff

attorney considers to solve the case by ADR.

- As the main legal aid provider in Korea, KLAC is frequently requested to present opinion in law reform.
- KLAC Law-related Education Center, opened in 2011, is an educational facility to help adaptation of immigrants, by teaching Korean legal system and basic legal matters. It can accommodate 136 persons. (See the table below)

Category		Group	Attendee	Satisfactory rate (based on Survey)
mar-riage-based immigrants	2012	54	2,285	94.37
	2013	53	2,218	94.95
Residents Es-caping from North Korea	2012	2	76	95.28
	2013	5	142	96.09
Students	2012	1	30	98.6
		9	316	90.25

**13. Please describe recent initiatives which made services accessible through the use of technology. If self-help services are available, please comment on the effectiveness of these services.**

- KLAC Home Page ([www.klac.or.kr](http://www.klac.or.kr)) / Mobile Home Page (<http://m.klac.or.kr>): Appointment (or cancellation) of visiting for legal counseling are available. Also contains various legal aid cases (FAQs) and legal forms.
- Cyber-counseling: A brief legal counseling is available for everyone, at the KLAC website, by uploading a post.
- Individual Rehabilitation and Bankruptcy Comprehensive Support Center Home Page (<http://resu.klac.or.kr>): Self-test system on Individual Rehabilitation and Bankruptcy  
Individual Rehabilitation and Bankruptcy forms (automatic filling)  
Instructing videos on Individual Rehabilitation and Bankruptcy



- 132 Call Center system (<http://132call.klac.or.kr>): A brief legal counseling is available for everyone, simply by pressing 132 on phone.
- SMS system: Those who applied for legal aid get messages (e.g. 'the application received', 'legal aid approved', 'trial date set') from KLAC by automatic SMS system.

**14. Please describe the difficulties encountered by your country (or organization) in promoting legal aid work in the recent years, and the strategies for responding to these difficulties.**

- Legal aid is being carried out by several justice agencies (the Ministry of Justice, the Supreme Court, the Constitutional Court), and civil agencies. Some legal aid activities are overlapped, and not well-connected. From the perspective of legal aid recipients, it is not desirable.
- A central legal aid organization is needed for coordinating connection and cooperation, and building legal aid network for the legal aid recipients. The country's main legal aid provider, who has the nationwide network and years of experience, shall be suitable for the job.

**15. Has your country (or organization) established any mechanisms of co-operation with legal aid organizations abroad?**

- MOU between KLAC and IALS(Institute of Advanced Legal Studies), University of London (November 4, 2009)
- MOU between KLAC and Japan Legal Support Center - international relationship on legal aid system and information interchange (November 6, 2009): KLAC and JLSC are exchanging correspondents
- MOU between KLAC and Korean Residents Union on Japan - establish the mutual cooperative relationship for promoting the human rights and legal welfare of Korean residents in Japan (June 13, 2011)

**16. How does your country (or organization) adopt United Nations legal aid principles and guidelines in policies and services?**

- Republic of Korea considers the provision of legal aid their duty and responsibility, and enacted specific legislation which is Legal Aid Act, and established Korea Legal Aid Corporation.
- KLAC is a nationwide organization, which especially has 67 sub-branches, many of them in rural and remote area, to provide legal aid service to disadvantaged groups.
- KLAC has legal aid programs for victims of crime, children, women, which the United Nations guidelines request.
- Those who are detained, arrested, charged with a criminal offence is fully eligible for legal aid if they cannot afford private legal services. KLAC lawyers regularly visit prisons or detention facilities, as legal aid at the post-trial stage.
- The report submitted by the Korean government to United Nations regarding UN International Covenant on Civil and Political Rights contains and emphasizes the role of Korea Legal Aid Corporation.

**National Report**

**Malaysia**

Speaker: Mr. Victor Paul s/o Dorai Raj  
Chairperson of Legal Aid Centre Kedah

## National Report

### 1. Please provide the following country<sup>1</sup> information:

Country	Legal Aid Organization Name	Date of Establishment	Poverty Line & Percentage of Population in Poverty	Total No. of Practicing Lawyers & Legal Aid Lawyers (including in-house and private practice)
Malaysia	Legal Aid Department (LAD)	1970	USD8.50 per day (2012* share of households below the national poverty line 1.7% (2012)*	15,754 Out of this there are 1300 lawyers under the Legal Aid Centres supervised by the Malaysian Bar (LAC) and 1566 lawyers under the National Aid Foundation (NLAF). Under the Legal Aid Department(LAD), which is a Government established and funded legal aid scheme there are 82 in house counsels.
	National Legal Aid Committee (LAC)	1983		
	National Legal Aid Foundation (NLAF)	2011		
	Court Assigned Counsel Scheme	1946		
Population	GDP	Total No. of Applications Received in the Past Year	Total No. of Applications Approved in the Past Year	Total No. of Applications Refused in the Past Year
30 million	USD 312.44 Billion	No information	Refer to 3(b)	No information

\* [www.worldbank.org/en/country/malaysia](http://www.worldbank.org/en/country/malaysia)

### 2. Please describe the main provider(s) of legal aid services in your country:

#### (a) What is the nature of the provider's organization (ie, a government department, an independent statutory body or association)?

There are three (3) providers of legal aid services in Malaysia namely.

- (i) The Legal Aid Department (LAD) is a Government established and funded legal aid scheme. It's primary objective is to provide legal aid and advisory service to the indigent on legal issues commonly associated with them. The type of matters covered by LAD is rather limited and does not provide the adequate coverage on all frontiers. At the beginning, the LAD was placed under the Attorney - General's Chambers and following the setting up of the

Ministry of Law in 1985 it was placed under the Ministry until May 1995. It now comes under the wings of the Legal Affairs Division of the Prime Minister's Department.

- (ii) The Malaysian Bar operates a dual legal aid scheme. The first being the establishment of a legal aid centre in every state dealing with a wide array of legal issues. These Legal Aid Centres are supervised by the National Legal Aid Committee of the Malaysian Bar (LAC). The Malaysian Bar was established under the Advocates & Solicitors' Ordinance 1947 (subsequently replaced by the Legal Profession Act 1976).

The second is the National Legal Aid Foundation (NLAFF) scheme administered by the Legal Aid Centers. The NLAFF is an independent body, granted Government funding that will fund the provision of criminal legal aid, enhance services for lawyers to represent those needing legal representation, determine the guidelines for the administration of the national legal aid scheme, and to initiate and carry out educational programmes designed to promote understanding amongst the members of the public and their rights and duties under the laws of Malaysia. The aim of NLAFF is to provide access to justice to all Malaysians.

- (iii) The Malaysian courts also assigns counsels who are registered with them to Malaysians as well as Non-Malaysians who are facing Capital Punishment at no costs.

**(b) If supervised by another authority, how does the provider maintain independence in decision-making and in carrying out its duties and responsibilities?**

Not applicable to the Legal Aid Department.

The Legal Aid Centers are self-regulatory as all the chairpersons of the individual centers, sit on the National Legal Aid Committee, thus ensuring independence. There are currently two co-chairpersons appointed by the President of the Malaysian Bar.

As for the NLAFF, their policies are made by the National Legal Aid Committee subject to approval from the Board as listed in 3.ii below.

### **3. Please describe the legal aid organization and the recent business figures:**

#### **(a) Organizational structure.**

##### **i. Legal Aid Department**

- Director General
- Deputy Director General (Civil)
- Deputy Director General (Syariah)
- Director of Research and Policy
- Director of Panel of Solicitors (Civil)
- Director of Mediation (Civil)
- Director of Litigation and Advice (Civil)
- Senior Assistant Director
- Director of Litigation and Advice (Syariah)
- Director of Mediation (Syariah)
- 14 Directors from each state in Malaysia
- 8 Assistant Directors

##### **ii. National Legal Aid Committee ( LAC):**

- 2 Co- Chairpersons
- 3 Deputy Co-Chairpersons
- 12 Members (Chairperson of the Legal Aid Centre of each state within Peninsular Malaysia)

##### **iii. National Legal Aid Foundation (NLAF):**

- Attorney General (Chairman)
- President of the Malaysian Bar (Vice Chairman)
- Secretary General of the Treasury
- Director General of Legal Affairs Division
- Director General of Social Welfare Division
- Director General of Legal Aid Department
- President of the Sabah Law Association
- President of the Advocates Association of Sarawak
- A Dean of a Faculty of Law nominated by the Patron; and
- Two representatives from non-governmental organizations nominated by the Patron.

iv. Court assigned counsel scheme

- comes under the purview of the Chief Registrar of the Federal Court

**(b) Analysis of the matter types aided in the past year.**

**NLAF (Purely criminal cases involving Malaysian Citizens)**

	ARREST	REMAND	MITIGATION/BAIL	HEARING	TOTAL
APR 2012 - DEC 2012	2394	37,495	8267	1061	49217
JAN 2013 - DEC 2013	3583	73,095	12,537	2329	91544
<b>TOTAL</b>	<b>5977</b>	<b>110,590</b>	<b>20,804</b>	<b>3390</b>	<b>140,761</b>
*Criminal cases aided under the National Legal Aid Foundation					

**Legal Aid Centre matters**

LACs	Number of clients (2013)
Johor	17
Kedah	73
Kelantan	560
Kuala Lumpur	15,751
Malacca	152
Negeri Sembilan	274
Pahang:	501
Penang	1,792
Perak	348
Selangor	1078
Terengganu	276
<b>TOTAL</b>	<b>20,822</b>

\*Work carried out comprised of matters pertaining:  
 Criminal offences (very minimal upon the introduction of the NLAF)  
 Public Interest cases – urgent arrest team  
 Housing/tenancy issues  
 Labor/ employment  
 Family law matters  
 Syariah cases  
 Domestic violence  
 Migrant/refugees issues  
 Immigration issues (passport, overstaying, illegal entry)

**Legal Aid Department (LAD) 2013**

Shariah, Civil and Criminal Cases	-	15,905
Mediation	-	36,956
		-----
Total	-	52,861
		=====

**Court assigned counsels scheme**

Criminal cases involving Capital Punishment.

**(c) What is the number and percentage of cases conducted by in-house/staff attorneys and legal aid lawyers in private practice?**

- i. All work carried out by the Legal Aid Department is carried out by in-house counsel.
- ii. All work carried out by the dual scheme (LAC & NLAFF) and the court assigned counsels is done by lawyers in private practice.

**4. Please describe your country's (or organization) legal aid funding arrangements:**

**(a) What are the sources and amount of legal aid funding? Are there caps on annual spending?**

- (i) Legal Aid Department obtains funding from the Government.
- (ii) Bar Council Legal Aid Centers funding is based on monies collected from subscription fees paid by members (lawyers) of the Malaysian Bar.
- (iii) NLAFF funds are derived from a fixed amount of money given to the Foundation on an annual basis by the Government.

**(b) Has your organization experienced large-scale funding cuts? If so, what were the strategies for responding to such situation?**

NLAFF government funding started in 2012. It is just 2 years old. We hope that it does not happen.



**(c) What is the percentage of funding spent on paying lawyers' fees and costs, and on administration expenses respectively?**

Lack of statistical data.

**(d) Does assistance extend to covering costs such as court costs, government charges, and costs awarded against the legal aid recipient?**

No assistance is given in terms of costs under the Legal Aid Centers scheme or the National Legal Aid Foundation scheme. However under the Legal Aid Department scheme court costs are waived by virtue of the Legal Aid Act.

**5. How does your organization evaluate performance? What are the effective tools or methods of evaluation? If your organization has established branch offices, how are their performances evaluated?**

We have just started an audit scheme whereby a team of lawyers are sent to the courts to observe lawyers carrying out NLAFF work. This team comprises of some trainers, as well as trainees and is currently at its trial stages at the nation's capital. The system will be implemented nationwide once the proper mechanisms are worked out.

**6. Please describe the methods of service delivery in your country (or organization):**

Carried out via the Bar Council Legal Aid Centres in each state in West Malaysia and Legal Aid Department in each state in Malaysia

**(a) Are the bulk of the approved cases conducted by in-house/staff attorneys or by lawyers in private practice?**

The majority of cases are carried out by lawyers in Private Practice.

**(b) What are the conditions of registering as a legal aid lawyer?**

Generally all NLAFF lawyers will have to undergo a 3 part training organized by trainers from the NLAFF Steering Committee. This steering committee comprises

of members of the National Legal Aid Committee. Senior practitioners are exempt from the 3rd part of the training that explains and teaches the trial process to trainees.

**(c) What are the rules and procedures of assigning approved cases to legal aid lawyers?**

Under the NLAF scheme there are several procedures in place for a lawyer to carry out cases. The first being the lawyers have to be registered as a NLAF lawyer. This is followed by the lawyers signing letters of undertaking when they want to do NLAF work. Such undertaking is prevalent at each stage of the superior courts in Malaysia. A general letter of undertaking states that he/she will not ask, demand or accept payment from clients. In addition in the event they wish to conduct criminal trial in the Magistrate and Sessions Court or handle Criminal appeals they will have to sign a letter of undertaking stating the following.

**For criminal trial at Magistrate and Sessions Courts**

That they have;

- (a) Attended all the three parts of the NLAF training or attended the Part 1 and II of the training AND
- (b) Handled a minimum of three (3) Criminal trials.

**For criminal Appeal at the High Court**

That they have;

- (a) Attended Part 1 and Part 11 of the NLAF training AND
- (b) Have been in legal practice for a minimum of three (3) years AND
- (c) Have attended Part 11 of the NLAF training OR have handled a minimum of three (3) Criminal trials in the Magistrate or Sessions Court.

**For Criminal Appeals at Court of Appeal**

That they have;

- (a) Attended Part 1 & Part 11 of the NLAF training

- (b) Have been in legal practice of a minimum of five (5) years AND
- (c) Handled a minimum of five (5) criminal trials in Magistrate and/or Sessions Court and/or High Court AND
- (d) Handled two (2) criminal appeals in the High Court

**(d) How do the salaries and fees paid to legal aid lawyers compare with the general market rate?**

Significantly lower.

**7. Please describe the types of legal aid services provided in your country (or organization), and the types of matters aided.**

Refer to question 3(b)

**8. Please describe application procedures and the criteria of granting legal aid.**

**For Legal Aid Department & LAC scheme**

Clients will be subject to a means test to access income, to decide if they qualify

**NLAF Scheme**

For arrest, remand, bail, mitigation - all Malaysians (irrespective of their financial means) will be provided free legal assistance.

For all Trial and Appeals - all Malaysians whose income does not exceed RM36,000.00 per annum will be entitled to receive legal aid (without having to make any payment).

**Court assigned counsel scheme**

For Capital Punishment cases the courts will assign counsel to all Malaysian as well as Non Malaysian at no cost.

**9. In order to satisfy demand:**

**(a) Are there services or standards specifically designed to help disadvantaged groups, such as women, children, indigenous people, labor and residents living in remote areas?**

None. However, the Legal Aid Centers do work closely with local and international non-governmental organizations to cater and assist disadvantaged groups.

**(b) Are there special standards or rules for deciding whether (and how much) legal aid resources should be allocated to assist complex cases (eg, environmental lawsuits or other class action lawsuits)?**

None.

**10. How does your organization monitor the quality of legal aid lawyers' services?**

Refer to question 5

**11. How does your country (or organization) inform potential applicants (particularly residents living in remote locations) of the availability of legal aid services?**

Yes. Through TV commercials and radio , legal aid clinics set up in remote and rural locations and through the distribution of brochures and pamphlets in their indigenous language .

**12. How does your organization help to reduce the amount of disputes which resort to the courts? Does your organization participate in law reform or offer legal education to the public? If so, please describe these activities or services.**

The Legal Aid Centers do not carry out mediation programme, however there is Malaysian Mediation Centre formed by the Bar Council which advocates the use of Mediation as a form of alternative dispute resolution. The Legal Aid Centers also creates law awareness by educating the public through seminar, talks and distribution of brochures and pamphlets on various matters such as employment law, family

matters etc.

**13. Please describe recent initiatives which made services accessible through the use of technology. If self-help services are available, please comment on the effectiveness of these services.**

None.

**14. Please describe the difficulties encountered by your country (or organization) in promoting legal aid work in the recent years, and the strategies for responding to these difficulties.**

Currently Legal Aid provided under the NLAF Scheme is only for Malaysian citizens; however we are continuously lobbying to convince the government to expand the NLAF Scheme to the migrant workers as well.

**15. Has your country (or organization) established any mechanisms of co-operation with legal aid organizations abroad?**

None.

**16. How does your country (or organization) adopt United Nations legal aid principles and guidelines in policies and services?**

Article 8 (1) of the Federal Constitution of Malaysia declares “All are equal before the law and are entitled to equal protection of the law” From this declaration it can be safely assumed that Legal Aid or access to justice is a fundamental human right in Malaysia.

Further Article 5(3) of the Federal Constitution states that “when a person is arrested he shall be informed as soon as may be of the grounds of his arrest and he shall be allowed to consult and be defended by a legal practitioner of his choice”. To give meaning to Article 8(i) and Article 5(3) of the Federal Constitution, NLAF was established by the Malaysian Government and funded by the Government to provide legal assistance and advice in relation to criminal matters to all Malaysians

(irrespective of their financial means) at the police station, the remand hearing and when they are charged in court. In so far as hearing is concerned, a means test will be applied and only those who pass the means test will qualify to receive legal assistance.

This scheme requires the police and all other enforcement agencies to inform NLAFF of every arrest, remand and charge.

The lawyers who do work for NLAFF will be trained and paid by NLAFF.

The Bar Council Legal Aid Centres (LAC) work closely with NLAFF to assist it in its delivery of services which means that any Malaysian who requires legal assistance from NLAFF need to contact the nearest LAC.

In order to ensure smooth delivery of its services the head of each state prosecution unit meets up with the district police chiefs and all other enforcement agency chiefs together with the representatives from every state Legal Aid Centres every quarterly to review the efficiency of the services provided under the NLAFF scheme.

In addition for all capital punishment cases, the court will assign counsel to all Malaysians and non- Malaysians at no cost.

**National Report**

**New Zealand**

**Speaker: Michele McCreadie**

General Manager, Legal Aid Services, Ministry of Justice,  
New Zealand



# National Report

## 1. Country information:

Country	Legal Aid Organization Name	Date of Establishment	Poverty Line & Percentage of Population in Poverty	Total no of practising lawyers & Legal Aid lawyers (including in house and private practice)
New Zealand	Legal Aid Services, Ministry of Justice	Legal Services Agency established in 2000, merged into Ministry of Justice in 2011	New Zealand does not have an official national poverty line	1858 private legal aid lawyers and 142 in house Public Defence Service
Population	GDP	Total No. of Applications Received in the Past Year	Total No. of Applications Approved in the Past Year	Total No. of Applications Refused in the Past Year
In 2014 New Zealand has an estimated population of just over 4.5 million, up from the 4,027,947 recorded in the 2006 census	The Gross Domestic Product (GDP) in New Zealand was worth 182.59 billion US dollars in 2013	In 2013-14 financial year 80,157 applications for legal aid were received.	In 2013-14 financial year 70,796 applications for legal aid were approved.	In 2013-14 financial year 6974 applications for legal aid were refused and 2503 were rejected (duplicates or not in prescribed manner)

## 2. Please describe the main provider(s) of legal aid services in your country

### (a) What is the nature of the provider’s organisation?

Legal Aid Services is a business unit within the New Zealand, Ministry of Justice (a government department)

### (b) If supervised by another authority, how does the provider maintain independence in decision making and in carrying out its duties and responsibilities?

The Legal Services Act 2011, disestablished the former Legal Services Agency and merged the services previously provided by the Agency into the Ministry of Justice. The 2011 Act created a new statutory position the Legal Services Commissioner. The Legal Services Commissioner must act independently when performing the following functions:



- granting legal aid in accordance with the Act and the regulations:
- determining legal aid repayments where legal aid is granted:
- assigning a provider of legal aid services or specified legal services to an aided person:
- in relation to salaried(in house) lawyers,—
  - deciding the allocation of cases among salaried lawyers:
  - overseeing the conduct of legal proceedings conducted by salaried lawyers:
  - managing the performance of salaried lawyers:

### **3. Please describe the legal aid organisation and the recent business figures:**

#### **(a) Organisational structure**

Legal Aid Services is a business unit within the Legal and Operational Services division of the Ministry of Justice. The Deputy Secretary/Legal Services Commissioner is the overall lead for the division. Legal Aid Services are led by the General Manager, Legal Aid Services, Michele McCreadie.

#### **Grants staff**

Grants officers are responsible for the management, consideration and decision making on criminal, family, civil and Waitangi Tribunal applications for legal aid. Their decisions are independent of the Deputy Secretary and under the delegation of the Legal Services Commissioner. Grants officers prepare submissions to the Legal Aid Tribunal (LAT).

There are 11 legal aid offices nationwide employing approximately 150 staff. The 11 offices are located in three regions: Northern, Midland and Southern.

#### **National Specialist Advisors**

There are six internal and 30 external National Specialist Advisors (NSAs). All are experienced litigation lawyers specialising in family, civil, criminal and Waitangi Treaty law. NSAs provide recommendations to grants staff when a case falls outside the standard processes, or is complex or high profile. The NSAs also carry

out file examinations and assist in managing litigation involving Legal Aid Services.

### **Debt Management Group (DMG)**

DMG are responsible for managing, securing and recovering outstanding legal aid debt. DMG staff register and release caveats and statutory land charges over clients' property and in some cases work with lawyers to release relevant securities. DMG have an establishment of 31 staff.

### **Operations Support and Improvement Team**

The Operations Support and Improvement Team is responsible for implementing, maintaining, reviewing and enhancing LAS information systems, policy and procedures. The team provides daily support to LAS staff, the media and the general public and oversees litigation cases for Legal Services as well as monitoring the decisions coming from the Legal Aid Tribunal for policy and practice matters. The team has an establishment of 12 staff.

### **Provider Services**

The Provider Services team is responsible for the management of legal aid lawyers contracts, approvals, cancellations, audits and complaints investigation. The team has an establishment of 8 staff.

## **(b) Analysis of the matter types aided in the past year**

- Criminal cases – 54,927
- Family cases – 23,172
- Civil cases -1,986
- Waitangi Tribunal cases 72

## **(c) What is the number and percentage of cases conducted by in house/staff attorneys and legal aid lawyers in private practice?**

In 2013-14, 28% of criminal legal aid cases were conducted by the Public Defence Service 'in house' salaried lawyers.

All family, civil and Waitangi legal aid cases are conducted by legal aid lawyers in private practice.

#### **4. Please describe your country's legal aid funding arrangements:**

**(a) What are the sources and amount of legal aid funding? Are there caps on annual spending?**

Up until 2010 legal aid expenditure was demand driven. As part of the budget process in 2010 a baseline (appropriation) was established. The appropriation is adjusted to match throughput via a five year forecast of legal aid expenditure reviewed and re-forecast on an annual basis with quarterly updates. The appropriation and forecast expenditure are set at the start of each financial year. The appropriation is not a capped budget. Any under spend is transferred to the centrally managed Justice Sector Fund and then returned to legal aid if required.

**(b) Has your organisation experienced large scale spending cuts? If so, what were the strategies for responding to such situation?**

In New Zealand legal aid expenditure increased significantly from \$111m in 2006/07 to \$173m in 2009/10. This expenditure was too high to sustain over the medium and longer term. The New Zealand government took steps to reduce expenditure alongside initiatives to reduce offending which along with the overall reduction in crime have helped to lower legal aid costs

Three broad areas of work were undertaken to control expenditure:

- New purchase approaches to restrict the cost per case (grant)
- Eligibility changes to reduce the number of grants
- Changes to repayment policies and user charges to improve revenue

**(c) What is the percentage of funding spent on paying lawyers' fees and costs and on administration expenses respectively?**

- In 2013-14 legal aid expenditure (lawyer's fees and costs) was \$119,321,526
- In 2013-14 the cost of the administration of legal aid was \$29,156,000 however

this includes a number of other costs outside of the operational administration of legal aid eg corporate costs such as ICT, Communications, Finance and the cost of administration of other services such as Community Law Centres and Family Dispute Resolution.

- A more accurate cost of the administration of legal aid services would be around \$21million.

**(d) Does assistance extend to covering costs such as court costs; government charges and costs awarded against the legal aid recipient?**

Court costs – in civil and family cases court filing fees are paid as a disbursement to the legal aid lawyer. In civil cases the court will waiver security of costs if the person is legally aided.

Costs awarded against the legally aided person - An order of costs can be made against an aided person in extraordinary circumstances in family and civil proceedings. When such an award of costs is made it is usually modest and may be established as part of the legal aid debt and paid as part of the overall debt. The aided person can submit a request to write-off this debt.

A second option and more usual option for the court is to make a ‘but for’ order. That is ‘but for the person being legally aided I would have ordered costs of .....’ The successful party can then apply for costs to be paid. Legal aid has discretion as to whether we pay and how much.

**5. How does your organisation evaluate performance? What are the effective tools or methods of evaluation? If your organisation has established branch offices, how are their performances evaluated?**

We use a range of measures to monitor and evaluate performance across both legal aid granting and debt recovery functions. Externally, we report on the quality of legal services as assessed by independent quality and value audits, timeliness in assessing applications for criminal legal aid and total debt recoveries.

We use additional measures internally within our service. We monitor legal aid processing by decision timeliness, decision accuracy, work on hand, productivity

and cost efficiency. Each of the 11 legal aid offices have targets for work on hand, timeliness and quality. The debt recovery operation is monitored against target recoveries, service levels, productivity and cost efficiency.

The legal services management system, the finance system, internal quality reviews, the debt management system and a call centre telephony system are all used to collect this performance information. Performance management information is available on a 'real time' basis to legal aid managers and staff. Management reports are reviewed by the leadership team on a monthly basis.

## **6. Please describe the methods of service delivery in your country?**

### **(a) Are the bulk of the approved cases conducted by in-house/staff attorneys or by lawyers in private practice?**

In 2013-14, 28% of criminal cases were conducted by the Public Defence Service 'in house' salaried lawyers.

All family, civil and Waitangi legal aid cases are conducted by legal aid lawyers in private practice.

### **(b) What are the conditions of registering as a legal aid lawyer?**

Legal aid services can only be provided once a lawyer has been approved by the Secretary for Justice (Secretary) to provide legal services in that area of law. The areas of law a lawyer can apply for are:

- Criminal
- Family
- Civil
- Court of Appeal and Supreme Court
- Waitangi Tribunal, Maori Land Court and Maori Appellate Court
- Mental Health,
- Refugee and Protected Persons
- Duty Lawyer
- Police Detention Legal Assistance.

A lawyer can apply to be a supervised or lead provider in all areas of law except Court of Appeal and Supreme Court. There are four levels of Criminal approval that depend on the seriousness of the offending and the lawyer's level of experience.

When a lawyer applies to become a legal aid provider we consider the application to determine whether the application meets the criteria set out in the Legal Services (Quality Assurance) Regulations 2011. The criteria include, relevant skills, experience and business systems to effectively manage and represent legally aided persons. The application may also be sent to a Selection Committee for consideration.

Selection Committees are made up of senior lawyers in different regions who provide advice and make recommendations on the suitability of lawyers to provide legal aid services in each area of law. The Secretary makes the final decision and may impose conditions, such as mentoring, on a provider's approval. If a lawyer's application is declined or conditions are imposed, the lawyer can apply to have a decision reviewed by the Review Authority whose decision is binding on both parties.

A lawyer may be approved as a lead provider for two to five years and as a supervised provider for up to two years. When a provider's approvals expire they are required to reapply for approval in order to continue providing legal aid services. The re-approval process is shorter than the initial approval application as we already hold much of the information required. The primary focus of the re-approval process is to ensure that providers have maintained active involvement in the area of law they are applying for, and that no adverse complaints or issues have been raised.

We also utilise limited and temporary approvals. A limited approval is granted to a lawyer to provide legal aid services in a specific case, or in an area where the need is required. The lawyer has to demonstrate a need for the service that cannot be met by the existing legal aid provider pool. A temporary approval can be granted once a lawyer has submitted a full application to become a legal aid provider and is waiting for the outcome of their application.

**(c) What are the rules and procedures of assigning approved cases to legal aid lawyers?**

In less serious criminal cases PAL (Provider Approval Level) 1 and PAL2 (formerly criminal summary) cases are assigned to legal aid lawyers by system driven, strict rotation. The Public Defence Service is present in the 14 highest volume criminal courts, working from 10 offices across New Zealand. 50% of PAL 1&2 cases in the courts where the PDS is present are assigned by rotation to the Public Defender. In PAL 3&4 more serious cases the legally aided person is able to choose their lawyer who must be approved as a legal aid provider. If the legally aided person does not prefer (choose) a lawyer then they will be assigned a lawyer again by strict rotation, 50% of non preferred cases are assigned to the PDS.

In Family and Civil cases the legally aided person chooses their legal aid lawyer who usually assists them to apply for legal aid. Once the application is approved the case will be assigned to that lawyer if they have the required legal aid approval.

**(d) How do the salaries and fees paid to legal aid lawyers compare with the general market?**

We do not have information on the fees paid to lawyers by private clients. Those rates will vary significantly depending on the service being provided, the type of firm or individual lawyer and the experience level of the lawyer.

**7. Please describe the types of legal aid services provided in your country and the types of matters aided?**

- Police Detention Legal Assistance – if a person within New Zealand has been arrested, held (detained) without being arrested or are being questioned about an offence, they are able to talk to a lawyer for free under the Police Detention Legal Assistance scheme.
- Duty Lawyer services - a duty lawyer is a lawyer on duty at the criminal courts. They provide free legal help to people who have been charged with an offence and don't have their own lawyer.
- Criminal legal aid - may be available if you are charged with an offence that could be punished with a prison term of six months or more. Legal aid may also be

available if you are appealing your conviction or sentence for one of these offences. Legal aid is less likely to be available for minor charges as the duty solicitor can assist you in these matters.

- Family legal aid - may be available for family disputes or problems that could go to court. This includes:
  - disputes over relationship property, child support or maintenance, and care of children
  - protection orders
  - care and protection orders for children and young persons
  - adoption
  - paternity
  - mental health (compulsory treatment orders)

Legal aid is not available for problems that wouldn't go to court (such as drawing up a will), or for divorce proceedings.

- Family Legal Advice Service - is free legal advice to help an individual understand the legal aspects of settling a dispute about caring for their children. This service can also help an individual fill out Family Court forms if needed.
- Civil legal aid - may be available for disputes or problems that could go to court or a tribunal. This includes proceedings over debt recovery, breaches of contract, defamation, and bankruptcy.

It also includes proceedings before tribunals or specialist courts such as the:

- Employment Relations Authority
- Employment Court
- Environment Court
- Human Rights Tribunal
- Legal Aid Tribunal
- Maori Land Court
- Refugee Status Appeal Authority
- Social Security Appeal Authority



- Taxation Review Tribunal
- Tenancy Tribunal
- Waitangi Tribunal

Legal aid is not available for Disputes Tribunal or Motor Vehicle Disputes Tribunal cases, some immigration matters (except refugee matters), reviews by Work and Income (although legal aid may be available to appeal a decision made by the Social Security Appeal Authority), and problems with schools, universities and other educational institutions (such as suspension meetings before the school's board of trustees).

Legal aid is not available for companies or groups of people (except in some cases, such as Waitangi Tribunal matters).

## **8. Please describe application procedures and the criteria for granting legal aid?**

A person who would like to apply for civil or family legal aid should start by contacting the lawyer whom he or she would like to represent them. The applicant must first check that this lawyer is able to do legal aid work. Provided that the lawyer is able to take the case, the lawyer will help the applicant to complete a legal aid application form and submit it to Legal Aid Services for an assessment of eligibility.

If a person would like to apply for criminal legal aid, he or she can contact a duty lawyer at their local district court. The duty lawyer will assist the applicant in completing the legal aid application form.

When assessing an application for legal aid, for civil and family cases, we will consider whether the applicant has reasonable grounds for taking or defending the proceedings or being a party to the proceedings.

The merits decision for Criminal legal aid under s8(1)(c) is made by determining if the:

- offence is punishable by a maximum term of imprisonment of six months or more or

- interests of justice require the applicant to be granted legal aid (see 'Factors to consider under s8' below).

The thresholds for financial eligibility for legal aid are set out in the Legal Services Regulations 2011 (which are available online at [www.legislation.govt.nz](http://www.legislation.govt.nz)).

If the applicant exceeds either of the relevant gross annual income or disposable capital thresholds set out in the Regulations, legal aid will be refused, unless it can be shown that there are special circumstances that would nevertheless render a grant of legal aid appropriate. When assessing whether there are special circumstances, we will consider the likely cost of the proceedings to the applicant and the applicant's ability to fund the proceedings if legal aid is not granted.

## **9. In order to satisfy demand:**

- (a) Are there services or standards specifically designed to help disadvantaged groups such as women, children, indigenous people, labor and residents living in remote areas?**

The Legal Services Act 2011 allows specified applications to have a lower threshold to be granted legal aid. It may also exempt the applicant from certain requirements such as paying a user charge, or making repayments. Specified applications include applications for legal aid for proceedings involving

- vulnerable persons such as victims of domestic violence
- persons subject to compulsory treatment orders
- applicants for refugee status
- children subject to protection orders
- persons who lack full mental capacity
- Treaty of Waitangi claims brought by Maori relating to actions or omissions of the Crown are also specified applications

- (b) Are their special standards or rules for deciding whether (and how much) legal aid resources should be allocated to assist complex cases (eg environmental lawsuits or other class action lawsuits?)**

High Cost Case (HCC) management in criminal cases aims to more closely manage from the outset criminal grants of legal aid which have the potential to become high cost. It seeks to reduce expenditure via transparent case management practices, with all funding decisions being approved on a staged basis in advance of work being undertaken.

Some of the most expensive legal aid cases are those for Waitangi Tribunal proceedings. The Tribunal is a permanent commission of inquiry charged with making findings and recommendations on Treaty of Waitangi claims brought by Maori relating to actions or omissions of the Crown. Unlike other Commissions of Inquiry which may be set up, legal aid is available for claimants appearing before the Waitangi Tribunal. Separate operational policy defines the legal services that may be funded for Waitangi proceedings.

We are currently in the process of designing complex and high cost management frameworks for family and civil cases.

### **Class action lawsuits**

The Legal Services Act 2011 requires that we must refuse aid in connection with a matter in which numerous persons have the same interest. We would not fund the application unless the whole group was eligible for legal aid which is unlikely.

## **10. How does your organisation monitor the quality of legal aid lawyers services?**

We undertake an annual audit programme for legal aid providers under s 91 of the Legal Services Act 2011. This includes audits of both private legal aid lawyers and Public Defence Service lawyers. Audits are undertaken to ensure legal aid providers provide the required standards of quality and value when representing legal aid clients. The audits are an important way of ensuring confidence in legal aid services and also providing feedback to providers about areas for improvement.

Clients and others can make complaints about legal aid providers. All complaints received must be investigated by our dedicated complaints investigator. The

investigation of complaints may result in a range of outcomes/sanctions, including referral into our audit programme, to the New Zealand Law Society (NZLS), or to the Performance Review Committee.

We refer substantiated serious complaints to the New Zealand Law Society for further investigation. The NZLS sends us Standards Committee determinations on legal aid providers.

**11. How does your organisation inform potential applicants (particularly residents living in remote locations) of the availability of legal aid services?**

People needing legal help can find extensive information about legal aid services on the Ministry of Justice website. They can also find out about legal aid from legal aid brochures that are distributed in the community. These are supplied free to local community organisations such as Community Law Centres and Citizens Advice Bureaux. These brochures are also available in courts. Information about legal aid is also available by telephone from any legal aid office. An 0800 (free call) service will be in place from November 2014.

**12. How does your organisation help to reduce the amount of disputes which resort to the courts? Does your organisation participate in law reform or offer legal education to the public? If so, please describe these activities or services.**

Parenting through Separation is a free parenting information programme where participants get practical advice about helping them and their children deal with separation. It will also help participants plan how they will care for their children after separation. The programme can also help grandparents and or wider family members work out a dispute about how children will be cared for.

Family Dispute Resolution is a mediation service to assist parents or guardians resolve disputes about how to care for their children during separation. The Family Dispute Resolution Service aims to reduce the number of cases being heard in the Family Court. If agreement cannot be reached then the Family Court may be needed

to make a decision. However, in most cases clients will need to demonstrate that they have attempted Family Dispute Resolution before their case is heard in Court.

Family Legal Advice Service is free legal advice available to eligible people to help them understand the legal aspects of settling a dispute about caring for their children. This service can also help an individual fill out Family Court forms if needed.

Community Law Centres lawyers and advocates give people free initial legal help so they can deal with their legal problems quickly. If the legal problem is complicated, the Community Law Centres may be able to provide ongoing legal help if they do not have the financial means. Community Law Centres also provide law related education to the general public. Law related education involves the delivery of education on law related matters in the form of course seminars or classes for the general public, groups with specific interests or individuals. Law related education may be provided either on demand or as a result of an individual initiative.

LawAccess website has easy to read information on areas of New Zealand law where people often experience problems. The site is a great starting point to search for information about the law and legal issues.

**13. Please describe recent initiatives which made services accessible through the use of technology. If self help services are available, please comment on the effectiveness of these services.**

In 2012, we developed a vision for the future management of legal aid services a 'Future Operating Model'. The Future Operating Model was developed from the perspective of the legally aided person. The overall plan for the future is to 'automate the simple and focus people on the complex'. Section 16a Legal Services Act 2011 was introduced in Sep 2013 the new section enables the automation of non discretionary decisions for certain grants of legal aid. We are planning to move to on line application and automation of non discretionary decisions. However, the speed of implementation of this change is limited by the available financial resources and will need to be compliant with privacy and information security legislation and regulations.

**14. Please describe the difficulties encountered by your country in promoting legal aid work in recent years and the strategies for responding to these difficulties.**

We have not experienced difficulties in promoting legal aid work in recent years, our focus over the past four years has been on reforming the legal aid system to improve the quality and increase the cost effectiveness of the services provided. Our focus over the next two years is to improve the efficiency and cost effectiveness of the administration of legal aid.

**15. Has your country established any mechanisms of cooperation with legal aid organisations abroad?**

Legal Aid Services in New Zealand have developed a number of mechanisms of cooperation for learning and sharing best practice with overseas legal aid organisations. The General Manager, Legal Aid Services is a member of the National Legal Assistance (NLA) Australia, Directors Group and attends meetings two or three times per year. New Zealand is also able to attend and participate in NLA sub groups. A strategic relationship to learn and share best practice has also been developed with the Scottish Legal Aid Board.

**16. How does your organisation adopt United Nations legal aid principles and guidelines in policies and services?**

The New Zealand Bill of Rights Act 1990 affirms the fundamental rights and freedoms set out in the International Covenant on Civil and Political Rights. All legal aid policies and guidelines must comply with the Bill of Rights Act 1990.

**National Report**

**Philippines**

**Speaker: Ms. Persida V. Rueda-Acosta**  
Chief Public Attorney, Public Attorney's Office,  
Department of Justice, the Philippines

## National Report

### **The Public Attorney's Office: Scaling Greater Heights and Embracing a Wider Breadth in the Fulfilment of Its Mandate**

The Public Attorney's Office (PAO) is an agency of the Philippine government founded on October 23, 1972<sup>1</sup> and mandated "to render, free of charge, legal representation, assistance, and counselling to indigent persons in criminal, civil, labor, administrative and other quasi-judicial cases."<sup>2</sup> The PAO is an independent and autonomous office, attached to the Department of Justice (DOJ) only for purposes of policy and program coordination.<sup>3</sup>

Compared to one which is under departmental supervision and control or administrative supervision, an attached agency has a larger measure of independence from the department to which it is attached. Attachment refers to the lateral relationship between the Department or its equivalent and the attached agency or corporation for purposes of policy and program coordination. Matters of day-to-day administration or all those pertaining to internal operations are left to the discretion or judgment of the executive officer of the agency or corporation.<sup>4</sup>

The independence of the PAO decision-making and carrying out of its functions is further guaranteed by the fact that the law grants security of tenure to its officers. The law explicitly provides that "the Chief Public Attorney, Deputy Chief Public Attorneys and Regional Public Attorneys shall not be removed or suspended, except for cause provided by law"<sup>5</sup>.

Following the mandate of the law, the Public Attorney's Office is headed by the Chief Public Attorney. She is aided by two Deputy Chief Public Attorneys (DCPAs) - one designated as DCPA for administration, and the other as DCPA for Operations.

Likewise, part of the organizational structure of the PAO are the six (6) line

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#### Comments

1: The Office is formerly called Citizens Legal Assistance Office (CLAO) which was created thru Letter of Implementation No. 4, s. 1972 issued pursuant to Presidential Decree No. 1 September 24, 1972. On July 25, 1987, CLAO was renamed Public Attorney's Office under Executive Order No. 292, otherwise known as the "Revised Administrative Code of 1987" .

2: Section 14, Chapter 5, Title III, Book IV, Revised Administrative Code of 1987 as amended by Republic Act No. 9406

3: Ibid.

4: Section 38, Chapter 7, Id.

5: Section 16-A, Chapter 5, Id.



services of the Central Office. Under the supervision of DCPA for Administration are three (3) of the line services namely, the Administrative, Financial Planning and Management, and the Executive Support Staff. The remaining three services, which are the Special and Appealed Cases, Legal Research, and the Field Services and Statistics, are under the supervision of the DCPA for Operations.

Below the structure are the seventeen (17) regional offices, two hundred ninety-two (292) district offices, five (5) sub-district offices, two (2) regional special and appealed cases units, and one (1) annex and (1) satellite offices. A total of three hundred eighteen (318) offices outside of the Central Office are located at strategic places across the country to effectively and efficiently deliver free legal aid services to indigent and other qualified clients.

At present, the Public Attorney's Office has one thousand five hundred twenty-two (1,522) public attorneys and one thousand sixteen (1,016) non-lawyer employees who carry out its mandate. All the cases of the PAO are handled by public attorneys who are employed by the Office. Hence, a hundred percent of the cases presently taken by PAO are handled by in-house lawyers.

Since the approval of Republic Act No. 9406 or the PAO Law on March 23, 2007, the Office has been consistently serving more or less five million (5,000,000) clients and handling more or less five hundred thousand (500,000) cases per year. Remarkably, these figures leaped to 6,735,603 clients and 710,457 cases in the year 2012, and in 2013, the PAO's number of clients and cases soared even more to 7,126,565 clients and 746,161 cases, respectively. These statistical data could serve as a barometer regarding public awareness on the free legal services of the PAO, and even the people's level of trust and confidence to the Office.

The millions of clients of the PAO are part of the estimated 99.52 million population<sup>6</sup> of the Philippines, 24.9%<sup>7</sup> of which are living below the poverty line. The country has gross domestic product amounting to Php 11,548.191 billion<sup>8</sup>, which is equivalent to US\$272.018 billion<sup>9</sup>.

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Comments

6: Estimated population for the year 2014 based on the 2010 Official Population Count of 92.34 million at 1.89% annual population growth rate. Source: [http://www.nscb.gov.ph/secstat/d\\_popn.asp](http://www.nscb.gov.ph/secstat/d_popn.asp).

7: As of the 1st semester of 2013. Source: <http://www.nscb.gov.ph/#>.

8: Gross Domestic Product (GDP) for the year 2013 based on the National Statistical Coordination Board estimates. Source: [http://www.nscb.gov.ph/sna/2014/1st2014/tables/1Q1-Rev\\_Summary\\_93SNA.pdf](http://www.nscb.gov.ph/sna/2014/1st2014/tables/1Q1-Rev_Summary_93SNA.pdf).

9: GDP, current prices for the year 2013. Source: <http://www.imf.org/external/pubs/ft/weo/2014/01/weodata/weorept.aspx?pr.x=97&pr.y=13&sy=2013&ey=2019&scsm=1&ssd=1&sort=country&ds=.&br=1&c=566&s=NGDPD%2CNGDPDPC%2CPPPDP%2CPPPDP%2CPPPDP&grp=0&a=>

## **PAO's Funding and Free Legal Services**

As per the General Appropriations Act for 2014, the legal aid funding for the PAO from the Philippine Government is Php1.8 billion. 95% of which goes to the payment of the salaries of the personnel and the remaining 5%, to the Maintenance and Operating Expenses of the Office. The Office has minimal operating expenses owing to the fact that a lot of local government units extend financial and other support in the form of honoraria, free office space, equipment, furniture, stationery, manpower to the Office in faithful adherence with the provision of Sec. 16-E of R.A. No. 9406. Local government units also defray utility expenses of these offices.

PAO clients are exempted from payment of docket and other fees incidental to instituting an action in court and other quasi-judicial bodies, either as an original proceeding or an appeal.<sup>10</sup> This basically covers the filing fees required to be paid when instituting a case or filing an appeal. However, other court or government charges as well as costs awarded against the legal aid recipient are not covered by the exemption, and are payable by the client.

### **• Judicial and Non-Judicial Services**

The services offered by PAO is divided into two broad categories: Judicial and Non-Judicial.

Judicial services refer to legal representation in court or quasi-judicial bodies. One of the mandates of the Public Attorney's Office is to render free legal representation to indigent persons in criminal, civil, labor, administrative and other quasi-judicial cases. Thus, the Office handles criminal and civil cases, whether ordinary or special, falling within the jurisdiction of the regular courts, as well as labor, administrative and other quasi-judicial cases recognizable by special courts or quasi-judicial bodies. The Office handles these types of cases from their institution up to finality of judgment, including the appeals, subject to existing PAO law, rules and regulations.

Non-judicial services refer to the instant services and outreach activities of the

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Comments  
10: Sec. 16-D, Id.

Office. The instant services include legal counselling and documentation (i.e. preparation of affidavits, notices, etc.), administering oaths, and mediation and conciliation of disputes. On the other hand, outreach activities include police custodial investigation and inquest proceedings, jail visitations and barangay (the basic political unit in the Philippines) outreach programs.<sup>11</sup> These services are likewise available subject to existing PAO law, rules and regulations.

- **Application Procedures and the Criteria of Granting Legal Aid**

Persons seeking legal assistance undergo interview with a public attorney or personnel to ascertain their qualification.<sup>12</sup> In this regard, a prospective client is required to accomplish an interview sheet.

In evaluating the qualification for legal aid of a prospective client, the Office applies the Merit and Indigency Tests.

A case shall be considered meritorious, if an assessment of the law and evidence on hand, discloses that the legal services of the office will assist, or be in aid of, or in the furtherance of justice, taking into consideration the interests of the party and those of society. A contrario, a case is deemed unmeritorious, if it appears that it has no chance of success, or is intended merely to harass or injure the opposite party, or to work oppression or wrong.<sup>13</sup>

However, in case the prospective client is the defendant or respondent in a pending civil or administrative case, the Office can still represent or extend legal assistance to the client in order to protect his rights, notwithstanding the determination as to the merit of the case. Similarly, in criminal cases, the cases of the accused-defendants are considered meritorious taking into consideration the presumption of innocence granted by the Constitution.<sup>14</sup>

As to the Indigency Test, the Office adopts the following standards:

Taking into consideration recent surveys on the amount needed by an

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Comments

11: Sec. 1, Art. X, PAO Operations Manual.

12: Sec. 1, Art. VIII, Id.

13: Sec. 2, Art. II, Id.

14: Ibid.

average Filipino family to (a) buy its “food consumption basket” and (b) pay for its household and personal expenses, the following shall be considered indigent persons:

1. If residing in Metro Manila, whose net income does not exceed P14,000.00 a month;
2. If residing in other cities, whose net income does not exceed P13,000.00 a month; and
3. If residing in all other places, whose net income does not exceed P12,000.00 a month.

The term “net income” as herein employed, shall be understood to refer to the income of the litigant less statutory deductions.

“Statutory deductions” shall refer to withholding taxes, GSIS, SSS, Pag-ibig, Health Insurance and Philhealth premiums as well as mandatory deductions.

For this purpose, ownership of land shall not per se, constitute a ground for disqualification of an applicant for free legal assistance, in view of the ruling in *Juan Enaje vs. Victorio Ramos, et al.* (G.R. No. L-22109, January 30, 1970), that the determinative factor for indigency is the income of the litigant and not his ownership of real property.

To ensure that only those qualified shall be extended free legal assistance, the applicant shall be required to execute an Affidavit of Indigency, and to submit any of the following documents:

1. Latest Income Tax Return or pay slip or other proofs of income; or
2. Certificate of Indigency from the Department of Social Welfare and Development, its local District Office, or the Municipal Social Welfare and Development Office having jurisdiction over the residence of the applicant; or
3. Certificate of Indigency from the Barangay Chairman having jurisdiction over the residence of the applicant.<sup>15</sup>

The free legal aid services, particularly handling of cases, are also subject to determination whether a conflict of interest would exist. Thus, where both the complainant and respondent apply for legal assistance and both are qualified, the first to seek assistance shall be given preference.<sup>16</sup> Where the PAO is precluded from accepting the case under the conflict of interests rule, the applicant shall be duly informed and advised to seek the services of a private counsel or legal aid organization.<sup>17</sup>

- **Rules and Procedures of Assigning Approved Cases**

The assignment of approved cases, which denotes that the client passed the Merit and Indigency Tests of the Office and there is no conflict of interest, depends on whether the case is already pending in a specific court or quasi-judicial body.

Cases which are yet to be filed, or those already filed but not yet raffled to a specific court or quasi-judicial body, are assigned to public attorneys through rounds system. Thus, a lawyer who receives a case will receive another case only after all the lawyers in the concerned district office or service division are given their respective cases.

However, the assignment of cases which are already pending in a designated court or quasi-judicial body is different. Under the PAO Operations Manual, public attorneys are given specific court assignments.<sup>18</sup> The public attorney assigned to a specific court handles all the cases in that court. Hence, cases which are already pending in a designated court are assigned to the resident public attorney of such court or quasi-judicial body.

- **Services or Standards for Disadvantaged Groups**

Recognizing the specific needs of certain disadvantaged groups, the PAO designed and adopted special rules and standards to promptly and adequately address their concerns.

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Comments

16: Sec. 3.1, Art. VIII, Id.

17: Sec. 3.2, Id.

18: Sec. 2, Id.

In the case of women who are victims of violence falling under the Anti-Violence against Women and their Children Law, the Office may render legal assistance regardless of the indigency requirement.<sup>19</sup>

In the case of children in conflict with the law (CICL), the PAO Operations Manual prescribes specific rules and procedures to be observed by public attorneys from the initial contact with the CICL, to custodial investigation, inquest proceedings or preliminary investigation, arraignment, trial up to the promulgation of judgment and discharge of the CICL if applicable.<sup>20</sup> The prescribed rules and procedures ensure that every right and remedy available under the law if afforded to the CICL.

For farmer-beneficiaries of land covered by the Agrarian Reform Law, there is a subsisting Memorandum of Agreement between the Department of Justice and the Department of Agrarian Reform with respect to legal assistance and representation of farmer-beneficiaries in agrarian-related civil or criminal cases pending before the courts, and in cases against farmer beneficiaries pending before the courts or the Department of Agrarian Reform Adjudication Board where one of the parties is already represented by a lawyer from the Department of Agrarian Reform.<sup>21</sup>

For refugees, a Memorandum of Understanding was signed between the Public Attorney's Office and the Office of the United Nations High Commissioner for Refugees regarding access to free legal assistance, counselling and representation of refugees, stateless persons, and those seeking recognition as refugees and/or stateless persons in the Philippines.<sup>22</sup>

The Office is also tasked to assist certain specialized groups and/or cases.

Victims of torture may seek free legal assistance from the Public Attorney's Office. The Office is mandated to render legal assistance in the investigation and monitoring and/or filing of the complaint for a person who suffers torture and other cruel, inhuman and degrading treatment or punishment, or for any interested party.<sup>23</sup>

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Comments

19: Sec. 1, Art. V, Id.

20: Art. IV, Id.

21: Memorandum of Agreement dated May 8, 1991 between DAR and DOJ.

22: Memorandum of Understanding dated January 8, 2013.

23: Sec. 11, Republic Act No. 9745

Similarly, the Office is directed by law to provide legal representation and consultation services for barangay health workers in cases of coercion, interference, and in other civil and criminal cases filed by or against barangay health workers arising out of or in connection with the performance of their duties as such.<sup>24</sup>

Included also among the so-called special clients of the Office are: persons with disabilities, senior citizens, land and sea-based overseas Filipino workers, those who are members of indigenous groups, and those with cases relative to the Comprehensive Dangerous Drugs Act (Republic Act No. 9165).

### **Hiring of Public Attorneys, Evaluating Their Performance and Monitoring the Quality of Their Service**

The hiring of public attorneys is strictly based on merit and fitness in accordance with the Constitution of the Philippines and pertinent laws and rules concerning civil service. Hence, applicants for the position of public attorneys are required to go through stringent process which includes written examination on laws and their knowledge about the rules and regulations being observed by the Public Attorney's Office, psycho-neurological test, panel interview, and computer skills test.

To monitor and evaluate their performance, the Office requires public attorneys to submit monthly and semestral reports of their cases and accomplishments. The semestral report also serves as a score card with respect to the performance of a public attorney. The semestral report contains the evaluation of the immediate supervisor/head of the concerned district office or service and other higher ranking officials of the Office regarding the performance of a particular public attorney. The score card grades the efficiency of a public attorney as well as his behavioural conduct.

Every client of the Office is likewise given a survey form which indicates his or her level of satisfaction or dissatisfaction, as the case may be, to the service provided by the public attorney and other office personnel. Lines for comments and recommendations are likewise provided in the survey form. These survey forms are dropped in a sealed box and reviewed by the head of the district office or service.

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Comments  
24: Sec. 6(d), Republic Act No. 7883

The Office also monitors the quality of its free legal aid services via a system of review. Before filing in court, a complaint, petition, motion, memorandum, position paper, brief, and other court document and pleading prepared by a public attorney, the said documents are reviewed by a senior public attorney, which is usually designated as a section head, and the head of the district office or service. This system ensures that the papers or pleadings prepared by the Office for its clients are checked before they are filed in court.

### **PAO's Outreach Program to Communities and Information Dissemination Activities**

The Public Attorney's Office conducts barangay outreach programs. This activity aims to reach out to the people and inform them of the free legal services offered by the Office.

The PAO also makes use of the mass media and the internet to inform a greater number of people about the free legal services it offers. The Office, likewise, utilizes these information tools to render free legal advice and mediation on television.

For more than two (2) years, Public Atorni, a reality-mediation show, hosted by the Chief Public Attorney had given legal advice to warring parties and promoted out-of-court settlement of their disputes. The said show provided an avenue for alternative dispute resolution (ADR). (Public Atorni was produced at no cost to PAO. Its producer then was the Associated Broadcasting Company (ABC/TV5), one of the biggest television networks in the Philippines.)

Public Atorni's efficacy in mediating and administering justice to warring parties on air earned accolades for both the show and the host (the Chief Public Attorney) from reputable award-giving bodies in the Philippines like the Filipino Academy of Movie Arts and Sciences, the Philippine Movie Press Club, and the Catholic Mass Media Awards, as well as the USA-based, Gawad Amerika Foundation.

The PAO has also made use of radio programs (where PAO officials or other authorized public attorneys are interviewed or are invited as resource persons) to publicize its legal aid services. It also maintains a website: <http://www.pao.gov.ph/>.



The PAO, through the Chief Public Attorney, likewise maintains regular columns/ segments with several newspaper publications where queries from readers concerning the law are answered. Currently, the Chief Public Attorney has four (4) pro bono columns in leading newspapers in the Philippines. These are: Dear PAO (published daily by The Manila Times); Magtanong kay Attorney (published daily by Bulgar); Say Mo Attorney? (published every Monday, Wednesday & Friday by People's Tonight); and Attorney First published every Monday, Wednesday & Friday, as well, by Pinoy Parazzi). The Chief Public Attorney has also published a book on legal aid entitled, Legal Eagle's Counsel: Solutions to Everyday Legal Problems.

- **Mediation: PAO's Assistance to the Courts and the Public**

To help reduce the number of cases reaching the courts and aid in declogging court dockets, the Office offers mediation and conciliation of disputes service.<sup>25</sup> This provides an avenue for the disputing parties to discuss their conflicting claims and try to settle the same without going to court. This mediation service is generally available in disputes which are civil in nature.

Mediation is one of PAO's non-judicial services. While the Supreme Court of the Philippines conducts court-annexed mediation through the Philippine Mediation Center, the PAO carries out mediation for disputes not yet filed in court. For the period covering January to December 2013, it handled a total of 449,611 disputes and resolved a total of 333,630 thereof.

## **PAO'S Participation in Legal Reforms and Education**

The Public Attorney's Office participates in legal reforms by sending representatives to conferences both in the Philippines and abroad (such as the ones being conducted by the International Legal Aid Foundation and International Corrections and Prisons Association), as well as to organized committees, like the Criminal Code Committee which is an inter-agency body mandated to review the existing penal laws of the country and to draft a simple, modern, and organic Criminal Code of the Philippines.<sup>26</sup>

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Comments

25: Sec. 4, Art. X, PAO Operations Manual.

26: <http://www.doj.gov.ph/criminal-code-committee.html>.

The work of the Committee and its members involves regular expert group meetings, focused group discussions, presentations and special lectures, roadshow consultations, and writeshops including submission of policy papers when needed.

In connection with this, the Chief Public Attorney was invited by the Hanns Siedel Foundation to be a part of the Philippine delegation which attended an activity on Crafting a Modern Criminal Code of the Philippines, held in 2011 in Berlin, Germany.

In 2012, through the efforts of the members of the Code Committee composed of representatives from the Supreme Court, Philippine National Police and the Department of Justice, including the Public Attorney's Office, the Committee finished the first phase of the project which is the completion of the draft of Book I of the proposed Code of Crimes. After polishing the draft and roughly two (2) years after the Committee started its work, the proposed amendments to Book I of the present Revised Penal Code were submitted to Congress for deliberation in August 2013. The bill was docketed as House Bill No. 2300, entitled, "An Act Instituting the Philippine Code of Crimes to Further Strengthen the Criminal Justice System, Repealing for the Purpose Book One of Act No. 3815, As Amended, Otherwise Known as the Revised Penal Code of the Philippines and other Special Laws on Crimes," or "The Philippine Code of Crimes." A year after the proposed amendments to Book I of the present Revised Penal Code were submitted to Congress, the draft for the remaining half of the Revised Penal Code or Book II was completed.

With regard to PAO's involvement in legal education, the Chief Public Attorney, who, herself, is a law professor and reviewer, allows public attorneys to teach and share their legal knowledge to students. The privilege to teach is subject to the requirement that the concerned public attorney first secures an authority to teach to ensure that the same does not impede or impair the ability of the Office to deliver legal aid services to the general public.

In 2008, the Ateneo de Manila University Law School, one of the premier law schools in the country, requested the Chief Public Attorney to teach Seminar on Public Legal Assistance. The Chief Public Attorney, together with the administration of the said law school, designed it as an elective course aimed to enhance law students' knowledge about legal aid and expose them to this noble practice. The course is taught through a combination of theoretical instruction and field exposure to give law

students first-hand experience in rendering legal aid to those who have less in life. The Chief Public Attorney taught the said course for two (2) years. Consequently, there have been students in the said subject who have joined the Public Attorney's Office.

The partnership of the Public Attorney's Office and the Ateneo de Manila University Law School in promoting legal aid, further bloomed in 2011, when a Memorandum of Agreement was signed between the two institutions, allowing the latter's law students to take their internship course at the Public Attorney's Office. The said agreement enabled the PAO to reach out to law student interns, give them an opportunity to experience practicing in the field of legal aid, and motivate them to support and actively participate in the administration of the free legal assistance of the Office. The Public Attorney's Office internship program is also open to all qualified applicants from other schools.

## **Adoption of the United Nations Legal Aid Principles and Guidelines in Policies and Services**

The Philippine Constitution expressly declares that the country adopts the generally accepted principles of international law as part of the law of the land.<sup>27</sup> The Philippines adheres to the doctrine of incorporation where rules of international law form part of the law of the land and no further legislative action is needed to make such rules applicable in the domestic sphere.<sup>28</sup> As such, rules of international law may be directly used as a source of rights. Even so, domestic law, rules and practices would show that the UN legal aid principles and guidelines are espoused by the Philippine legal system.

### **• On Responsibilities of the State**

The Philippine Constitution guarantees that free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.<sup>29</sup> To fulfil this provision, the Public Attorney's Office was created to provide free legal assistance to indigent persons and

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Comments

27: Sec. 2, Art. II, Constitution.

28: Sec. of Justice vs. Lantion, G.R. No. 139465, January 18, 2000.

29: Sec. 11, Art. III, Constitution.

other qualified persons in criminal, civil, labor, administrative and other quasi-judicial cases. To effectively carry out its role, the office was established as an independent and autonomous office attached to the Department of Justice for purposes of policy and program coordination.<sup>30</sup>

- **On the Right to Legal Aid of Accused in Criminal Cases**

To protect the rights of an accused, the Constitution likewise guarantees the right to counsel from the start of the criminal investigation until the finality of judgment. The Constitution provides that any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.<sup>31</sup> Hence, government officials, particularly law enforcement officers, investigating a person for commission of a crime are mandated to inform him or her of the right to counsel, and if the latter does not have the capacity to secure one, then the investigating authority must provide an independent and competent counsel to the person under investigation.

This Constitutional mandate is reinforced by Republic Act No. 7438 by making such violation criminal in nature. The said law imposes a penalty of imprisonment or fine, or both on any arresting public officer or employee, or any investigating officer, who fails to inform any person arrested, detained or under custodial investigation of his right to remain silent and to have a competent and independent counsel preferably of his own choice. Thus, erring government officials may be subject to criminal sanctions in addition to administrative penalties.

For its end, the Public Attorney's Office has adopted an inquest duty system where inquest lawyers and assistants are assigned to be on duty for the purpose of responding to requests for legal assistance at police stations/precincts and jails particularly during custodial investigation, inquest

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Comments

30: See Note 1.

31: Sec. 12, Art. III, Constitution.

investigation proceedings and jail visitation activity even beyond office hours, and during holidays, Saturdays and Sundays.<sup>32</sup> Regional public attorneys and district public attorneys are also mandated to ensure the availability of office telephone lines during office hours and mobile phones at all times even beyond office hours and during holidays, Saturdays and Sundays to station commanders to facilitate efficient coordination and orderly referral of requests for inquest and custodial investigation assistance.<sup>33</sup>

Upon reaching the court, the Constitution grants the accused the right to be presumed innocent until the contrary is proved and to be heard by himself and counsel during the prosecution of his or her criminal case among other rights.<sup>34</sup> To make the right effective, the Revised Rules on Criminal Procedure supplements the constitutional provision at different stages of trial.

Before arraignment, the said law instructs judges to inform the accused of his right to counsel and ask him if he desires to have one. Unless the accused is allowed to defend himself in person or has employed counsel of his choice, the court must assign a counsel de oficio to defend him.<sup>35</sup> In appointing a counsel de oficio, the court shall consider the gravity of the offense and the difficulty of the questions that may arise and appoint as counsel de oficio only such members of the bar in good standing who, by reason of their experience and ability may adequately defend the accused. But in localities where such members of the bar are not available, the court may appoint any person, resident of the province and of good repute for probity and ability, to defend the accused.<sup>36</sup>

At the trial stage, the Revised Rules on Criminal Procedure states that the accused shall be entitled to be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. The accused may, however, be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his rights without the assistance of counsel.<sup>37</sup>

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Comments

32: Memorandum Circular No. 002, Series of 2008, PAO, April 8, 2008.

33: *Ibid.*

34: Sec. 14, Art. III, Constitution.

35: Sec. 6, Rule 116, Revised Rules on Criminal Procedure.

36: Sec. 7, *Id.*

37: Sec. 1, Rule 115, *Id.*

Should the case reach the appellate courts, it is the duty of the clerk of court to ascertain from the appellant, if he be confined in prison, whether he desires the Court of Appeals or the Supreme Court to appoint a counsel to defend him de officio.<sup>38</sup> In the affirmative, the clerk of the Court of Appeals shall designate a member of the bar to defend him or her.<sup>39</sup>

To assist the court and to provide prompt legal aid service to persons, the Public Attorney's Office is allowed to accept cases, albeit provisionally, pending verification of the applicant's indigency and evaluation of the merit of his/her case, in the following instances:

1. When a warrant of arrest has been issued, and assistance is needed in filing a Motion to Post Bailbond or Reduction thereof for his/her provisional liberty;
2. When a person is arrested and/or detained, and appropriate immediate legal action is necessary to protect his/her rights;
3. When a pleading has to be filed immediately, to avoid adverse effects to the applicant;
4. When an appeal or petition for certiorari or prohibition has to be perfected or filed immediately;
5. When the Public Attorney is appointed by the court as counsel de officio, to represent the defendant during the trial of the case, provided, however, that if a subsequent investigation discloses that the client is not indigent, the lawyer should request the court to relieve him/her by filing a Motion for Withdrawal of Appearance from the case;
6. Where the Public Attorney is designated on the spot, as counsel de officio for the purpose only of arraignment, pre-trial or promulgation of decision;
7. In cases involving Children In Conflict with the Law (CICLs), where there is an immediate need of counsel;<sup>40</sup>

Should the Office be constrained to deny the case for legal reasons, such as

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Comments

38: Sec. 13, Rule 122, Id.

39: Sec. 2, Rule 124, Id.

40: Sec. 4, Art. II, PAO Operations Manual

conflict of interest or if later investigation reveals that the client is not indigent, then office policy and practice dictate the attending lawyer to refer the person to other legal aid offices such as the legal aid office of the Intergrated Bar of the Philippines, legal aid clinics in law schools, or appropriate non-government organizations.

- **On the Right to Legal Aid of Victims of Crime**

The mandate of the Public Attorney's Office is to provide legal assistance to indigent and other qualified persons in criminal, civil, labor, administrative and other quasi-judicial cases. It does not distinguish whether the indigent persons is the complainant or defendant in the case. Thus, the Office may lawfully represent victims of crime. Where both the complainant and respondent apply for legal assistance and both are qualified, the first to seek assistance shall be given preference.<sup>41</sup>

In the event, however, where the case is forwarded to the court, the prosecution of the case shall be turned over to the National Prosecution Service of the Philippines in accordance with law.

- **On Other Rights**

Republic Act No. 10389 institutionalized recognizance as a mode of granting the release of an indigent accused person who is held in custody. As defined in the law, recognizance is a mode of securing the release of any person in custody or detention for the commission of an offense who is unable to post bail due to abject poverty.<sup>42</sup> This law aims to equalize entitlement of an accused to the right to bail, which essentially translates to the right to be released while the criminal case is being heard in court, giving the poor and marginalized an effective and reasonable means to avail the same.

To this end, the Public Attorney's Office assists persons in filing a motion to post bail bond or reduction thereof, or recognizance whenever applicable.

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Comments

41: See Note 11.

42: Sec.3, Republic Act. No. 10389.

Thus, those found to have been held in custody beyond the period equal to or more than the maximum/minimum imposable penalty for the offense charged are informed that through a proper motion, they could be released pending trial or appeal or be released on a reduced bail or on their own recognizance, as the case may be. The discovery of such a situation should be relayed to the counsel de parte of the detention prisoner or the PAO resident lawyer for immediate action.<sup>43</sup>

Diversion programs and schemes also abound in the Philippine legal system. Persons who have been adjudged guilty beyond reasonable doubt may, instead of appealing the case, file a petition for probation under the Probation Law<sup>44</sup> to ask the court to be released subject to conditions imposed by the court and to the supervision of a probation officer. Moreover, the grant of probation is subject to the criteria and disqualifications mentioned in the law.

Similarly, under the Indeterminate Sentence Law<sup>45</sup>, a convicted person may file an application for parole after serving his minimum sentence subject to the conditions set by law. This grants a convicted person the privilege to be released on parole and avoid the need to serve his maximum sentence in prison.

The Juvenile Justice and Welfare Act<sup>46</sup> also promotes diversion programs for children in conflict with the law. The diversion system includes mediation, family conferencing and conciliation, rehabilitation program, counselling for the child in conflict with the law and the child's family, attendance in trainings, seminars and lectures, participation in education, vocation, life skills and community-based programs including community service, and institutional care and custody.

To ensure that CICL clients of the Public Attorney's Office are afforded their rights, the PAO Operations Manual specifically details the prescribed rules and procedures to be observed by public attorneys in handling CICL cases. The Manual details the protocol from the initial contact with the CICL, to custodial investigation, inquest proceedings or preliminary investigation, arraignment,

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Comments

43: Sec. 6.2, Art. X, PAO Operations Manual.

44: Presidential Decree No.968.

45: Act No. 4103.

46: Republic Act. No. 9344.



trial up to the promulgation of judgment and discharge of the CICL if applicable.

Concerning alternative dispute resolution, such mechanisms are encouraged in the country. Prior to filing a case in court, disputes between parties who reside within the same city or municipality are required by the Local Government Code<sup>47</sup> to undergo conciliation in the barangay where respondent resides, subject to certain exceptions.

The Alternative Dispute Resolution Act<sup>48</sup> provides alternative dispute resolution system, rules and procedures as a means of settling dispute other than by adjudication of a presiding judge of a court or an officer of a government agency. This includes arbitration, mediation, conciliation, early neutral evaluation, mini-trial, or a combination of the foregoing.

Even cases reaching the courts or quasi-judicial bodies are encouraged to go to mediation. The Supreme Court of the Philippines issued guidelines<sup>49</sup> to expand the coverage of court-annexed mediation and judicial dispute resolution. Similarly, the Labor Code<sup>50</sup> prescribes that all issues arising from labor and employment shall be subject to mandatory conciliation-mediation. The Labor Arbiter or the appropriate Department of Labor and Employment agency or office that has jurisdiction over the dispute shall entertain only endorsed or referred cases by the duly authorized officer.

With a similar end in view, as mentioned above the Public Attorney's Office likewise offers mediation service<sup>51</sup> as part of its non-judicial services to provide an additional avenue for parties with conflicting claims to discuss and try to amicably settle their dispute.

## Challenges in Fulfilling the PAO's Mandate

For the Public Attorney's Office to be more effective in the performance of its mandate, there is a need for a faithful compliance and fulfilment of the provision on Republic Act No. 9406, which provides that "there shall be a corresponding number of

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Comments

47: Chapter VII, Republic Act No. 7160. Local Government Code,

48: Republic Act No. 9285.

49: Resolution A.M. No. 11-1-6-SC-PHILJA.

50: Presidential Decree No. 992 as amended by Republic Act No. 10396.

51: See Note 20.

52: Sec. 7.

public attorney's positions at the ratio of one public attorney to an organized sala and the corresponding administrative and support staff thereto"<sup>52</sup>

As of now there are 1,522 public attorneys who actively handle criminal and civil cases in more or less 3,000 courts nationwide. About 61 of them devote themselves to appealed cases before the Court of Appeals, the Supreme Court and the Office of the President. However, the handling of criminal and civil cases, where they represent clients in courts is only a part of the functions of public attorneys. They also appear in and handle administrative and labor cases, the so-called quasi-judicial cases and such other limited and special cases. Aside from all these, as mentioned above, they also render non-judicial services.

In view of the disparity in the number of public attorneys and the courts, and the heavy workload of the former, the creation of additional plantilla items for public attorneys and staff is of utmost necessity for the Public Attorney's Office. Nonetheless, even in its current predicament, the Office has continuously thought on how to better serve its clientele and the public through its legal aid innovations like its Legal, Medical, Dental, Optical Mission and Jail Decongestion Program; Victims' Assistance Unit; and, the PAO Forensic Laboratory.

Since the creation of the PAO, jail visitation has been one of its regular outreach activities. However, the Chief Public Attorney deemed it necessary to widen the scope of this program for the welfare of the inmates and the progress of the criminal justice system in the Philippines. Hence, on April 12, 2007, medical (with dental and optical) services were included to the regular legal assistance of the Office.

This outreach program for inmates was cited by the Office of the President in its Technical Report for His Excellency President Benigno S. Aquino III's 2012 State of the Nation Address. The Office of the President noted that a total of 40,969 inmates were freed from overcrowded jails and prisons nationwide through the PAO's jail visitation and decongestion program from July 2010 to April 2012.

Two years after this citation, on July 13, 2014, the PAO Jail Visitation Team which is headed by the Chief Public Attorney, received the Excellence Award in Criminal Justice from the Filipino Academy of Movie Arts and Sciences (an institution in Philippine movie production which also honors worthy endeavors outside of the film

industry). It recognized the contributions of the PAO Legal, Medical, Dental, Optical Mission and Decongestion Program in alleviating the plight of inmates in various jails, detention centers, and correctional facilities in the Philippines.

The PAO's Victims Assistance Unit was created on July 12, 2012 to address the needs of victims of mass disasters, natural calamities, torture, massacres, extrajudicial killings, and Violence Against Women and their Children, children in conflict with the law and other similar cases of persons who have requested legal assistance from the Public Attorney's Office, on first come first served basis. Providing medico-legal and forensic assistance to clients who seek the help of the PAO Victims' Assistance Unit is the PAO Forensic Laboratory. The latter was launched on January 27, 2010, and since then it has made Forensic Science an accessible tool in seeking justice, especially for the poor.

In 2012, one of the beneficiaries of these two complementing legal aid innovations was PAO client, Bonita Baran, a former household helper who was allegedly maltreated by her previous employers until she lost her right eyesight. Her case helped in creating awareness and drawing support to a bill for domestic workers that was approved by President Benigno S. Aquino III on January 18, 2013 and is now known as Republic Act No. 10361 or the Domestic Workers Act.

All of these and the seeds of dedicated public service and zealous protection of the rights of its clients through the years have yielded good fruits for the Public Attorney's Office. Recently, its Central Office, and most of its Regional and District Offices have all garnered a final descriptive rating of Excellent in the delivery of public service in the Anti-Red Tape Act Report Card Survey conducted by the Civil Service Commission in 2013.

In the midst of the challenges of public service, the Public Attorney's Office will continue scaling greater heights and embracing a wider breadth in rendering free legal aid in the country and even beyond the Philippine national borders for as long as it is within the ambit of its mandate.



## 2014 International Forum on Legal Aid



**National Report**

**Thailand**

**Speaker: Ms. Sayamol Kaiyoorawongs**  
Deputy Secretary General, The Office of Law Reform  
Commission of Thailand

## National Report

### 1. Please Provide the following country information

- Country : Thailand
- Legal Aid Organization Name : The Office of Law Reform Commission of Thailand (On Legal Aids Project under Justice Reform Commission)
- Date of Establishment : 12th May 2011
- Poverty Line & Percentage of Population in Poverty : 2,422 THB (US\$ 78.12/ person/month)<sup>1</sup>
- Total No.of Practising Lawyers and Legal Aid Lawyers (Including in-house and Private practice) : n/a
- Population : 64,871,000<sup>2</sup>
- GDP : 7.7<sup>3</sup>
- Total No of applications received in the past year : n/a
- Total No of applications approved in the past year : n/a
- Total No. of applications Refused in the past year : n/a

### 2. please describe the main provider(s) of legal aid services in your country

#### (a) what is the nature of the provider's organization (ie, a government department, an independent statutory body or association)?

The following organizations/agencies from state sector and civil society sector have a mission or work to provide legal aid to people.

#### 1. State Sector

- 1.1. The Office of the Court of Justice, disseminates legal knowledge among the people, provides legal aid either by organizing a lawyer or a legal counsellors to individuals in need and provide subsidies for litigation costs.
- 1.2. The Office of The Department of People's Rights Protection and Legal Aid, the Office of the Attorney General provides judicial related services to the

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#### Comments

1: The present poverty line as of 2011 data published by the Office of National Economic and Social Development Board, which is in the current circulation, revised on 1st March 2013, published by the the Office of National Economic and Social Development Board, consulted at <[http://social.nesdb.go.th/SocialStat/StatReport\\_Final.aspx?reportid=490&template=1R1C&yeartype=M&subcatid=71](http://social.nesdb.go.th/SocialStat/StatReport_Final.aspx?reportid=490&template=1R1C&yeartype=M&subcatid=71)>

2: Thai population in 2014, at mid-year estimation in 2014 (1 July 2014) [http://www.ipshr.mahidol.ac.th/ipshr-th/population\\_thai.html](http://www.ipshr.mahidol.ac.th/ipshr-th/population_thai.html)

3: Data from the fourth quarter 2013 by the Office of National Economic and Social Development Board

public as prescribed by law to be under the authority of and under the duties of public prosecutors. The services involve cases, in which the Civil and Commercial Code stipulates that it shall be under the authority of public prosecutors, i.e. an application to the court to appoint a trustee. The office also assists and provide legal advices on contracts and legal transaction for the poor and provides arbitrations and dispute resolution services for amendable civil and criminal offenses. The assistances will to take into account the status of each individual on case by case basis.

- 1.3. The Lawyer Council of Thailand disseminate legal related knowledge and provide legal assistance by counseling or recommendation services to the people. Moreover, the Lawyer Council of Thailand also disseminates legal knowledge , provides legal counseling or recommendation services, helps with legal transactions and contract drafting and provide lawyers for litigation for the poor who are suffering injustice.
- 1.4. The Rights and Liberties Protection Department, Ministry of Justice provides protection of people's rights and liberties by educating legal knowledge, conflict management and and community dispute resolutions. The Department also provides legal counseling, receive complaints, and protects accused persons' rights in criminal investigation under the virtue of Section 134/1 of the Criminal Code.

## **2. Legal Aid Services by Universities**

- 2.1. Faculty of Law Center, Faculty of Law, Thammasat University;
- 2.2. Legal Counseling Center, Faculty of Law, Chiang Mai University;
- 2.3. Law Student Volunteers Training Center, Faculty of Law, Khon Kaen University;
- 2.4. Legal Clinic, College of College of Politics and Governance, Mahasarakham University;
- 2.5. Legal Aid for People Project, Faculty of Law, Thaksin University;
- 2.6. Legal Aid for People Center, Faculty of Law, Prince of Songkla University.

Legal aid services by universities focuses on providing knowledge and counseling. Only at Faculty of Law Center, Faculty of Law, Thammasat University has standing lawyers to proceed legal cases.

**3. Legal aid provided by civil society sector,** as non-profit foundation provides specific assistances for very vulnerable groups of people such as children, youth and including women in cases of domestic violence or sexual offenses, the migrants, the stateless residents living in the Kingdom of Thailand. They also conduct litigation for public interests, such as the case of natural resources and the environment cases, where the condition of the dispute cases a risk to public or the people at large and cases of human rights offenses that state officials are the other party to the litigations.

**(b) If supervised by another authority, how does the provider maintain independence in decision-making and in carrying out its duties and responsibilities?**

n/a

**3. Please describe the legal aid organization and the recent business figures :**

**(a) Organizational structure. :** n/a

**(b) Analysis of the matter types aided in the part year. :** n/a

**(c) What is the number and percentage of case conducted by in-house/staff attorneys and legal aid lawyers in private practice? :** n/a

**4. Please describe your country's (or organization) legal aid funding arrangements :**

**(a) What are the source and amount of legal aid funding? Are there caps on annual spending?**

The legal aid funding is mainly derived from the government's fiscal budget. The Ministry of Justice is the key organization to oversee the spending of the budget for the legal aid mission.

The Justice Fund Under the supervision of the Department of Rights and Liberties Protection, Ministry of Justice for the 2014 fiscal year is 2,486,346.15 USD (80 million THB ). The Legal Aid Fund under the supervision of the Lawyer Council



of Thailand received an annual subsidiary from from the state over 1,553,966.35 (50 million THB) per year through the Ministry of Justice. The Ministry of Justice itself was allotted the budget of 616,439,801.92 USD (19,843.4 million THB) in 2014 fiscal year. Other agencies that have the legal aid mission may allocate the annual budget of the entity to provide legal aid for the people. In 2014, Court of Justice has received a total budget of 453,472,243.27 USD (14,590.8 million THB), and the Office of the Attorney General has received a total budget of 234,726,616.59 USD (7,552.5 million THB).

The budget for the 2014 has been spent on education strategy, ethics, quality of life and equality in the society, access to justice by creating opportunities was proposed at the amount of 262,868,94.71 USD(845.8 million THB) to the public to promote public access to the justice system, through developing strong legal aid service. Additionally, the Community Justice Network has been implemented to promoting public awareness on rights and access to fast and convenient services.

**(b) Has your organization experienced large-scale funding cuts? If so, what were the strategies for responding to such situation?**

n/a

**(c) What is the percentage of funding spent on paying lawyers' fees and costs, and on administration expenses respectively?**

n/a

**(d) Does assistance extend to covering costs such as court cost, government charge, and cost awarded against the legal aid recipient?**

n/a

**5. How does your Organization evaluate performance? What are the effective tools or methods of evaluation? If your organization has established branch offices, how are their performances evaluated?**

n/a

**6. Please describe the methods of service delivery in your country (or organization):**

**(a) Are the bulk of the approved cases conducted by in-house/staff attorneys or by lawyers in private practice?**

n/a

**(b) What are the conditions of registering as a legal aid lawyer?**

n/a

**(c) What are the rules and procedures of assigning approved cases to legal aid lawyers?**

A volunteer litigator system in the court of justice is a system that register litigators in each the court's rosters. A defendant may request a litigator or the court may arrange for a litigator. A volunteer litigator will be called upon according his/her registration number the on the roster.

Provision legal aid service by the Lawyer Council of Thailand is on a voluntary basis and on willingness of each individual lawyer to assist in various type of cases that the Lawyer Council of Thailand provide legal assistance to the public.

**(d) How do the salaries and fees paid to legal aid lawyers compare with the general market rate?**

State agencies will pay fees to litigators who provide a legal aid service when a state agency requests such service from a litigator or when a defendant request a litigator. The details of each agencies/organizations are as follows:

1. The Court of Justice in the case of legal aid or volunteer litigator:

Subject to Section 173 of the 2005 Criminal Procedure Code, the gratuity and expenses are prescribed in the Regulation of the Court of Justice

Administration Committee based on the rates of gratuity and expenses to a litigator appointed by the court for a defendant or an accused person. The Court of the First Instance set up fixed rates from the fiscal budget of the Office of the Court of Justice.

2. The Department of People's Rights Protection and Legal Aid, the Office of the Attorney General

Litigators provided legal aid on voluntary basis, thus the fees depend on court orders or verdicts as volunteer litigators may not demand the fees from individuals seeking legal assistance. Litigators may request reimbursements for traveling expenditure to courts and fact-finding trips each time they perform the aforementioned duty. The 1990 Department of Public Prosecution's Regulation sets rates of fees for providing legal aid to the people. The budget is from the fiscal budget of the Office of the Attorney General.

3. The Lawyer Council of Thailand

Lawyers who provide legal aid to the people received stipends and/or honorarium, traveling and accommodation expenditure. Volunteer lawyers in Bangkok and provincial areas can submit a reimbursement request at the end of their mission along with an operational report or a case report and the court's proceeding report. Subsequently, the Legal Aid Committee or a Regional Lawyer Council Executive Board, as the case may be, will consider the reports and requests and will grant reimbursements according to the regulation. Under Section 77 of the Lawyer Act 1985, the budget is derived from, (1) An annual budget allocated from the Lawyer Council's fund at the minimum 10 per cent of the income from registration fees, membership fees and other fees and charges from the past year; (2) A government's subsidy, currently at the amount of 50 million baht per annum; (3) Donations; and (4) Interests of properties/funds under (1), (2) and (3).

The above fees and stipends for lawyers providing legal aid by an arrangement of state agencies is not in a relationship with the rate from a defendant's direct employment or regular professional rates.

**7. Please describe the types of legal aid services provided in your country (or organization), and the types of matters aided.**

The Office of Law Reform Commission of Thailand does not provide a direct legal aid service to the public but it promoted and support the public to access legal services by disseminating legal knowledge, including rights of the people, based on the respect for human rights, paralegals training and coordinating with state agencies and civil society sectors that provide legal aid services to the people to ensure a collaboration for a systematic legal aid to the people in the provincial level.

**8. Please describe application procedures and the criteria of granting legal aid.**

n/a

**9. In order to satisfy demand:**

- (a) Are there services or standards specifically designed to help disadvantaged groups, such as women, children, indigenous people, labor and residents living in remote areas?

State's legal aid services only pertains specific issues and currently the services provided were prescribed by the law such as in the cases with high penalties and the cases for children and/or juvenile offenders. For other cases apart from those, the civil society sector in specific areas will provide assistances and promote an access to justice among specific populations such as services for migrant workers in Thailand, for ethnic group members in Thailand who cannot speak official Thai language in case they become accused persons or defendants in criminal cases.

- (b) Are there special standards or rules for deciding whether (and how much) legal aid resources should be allocated to assist complex cases (eg, environmental lawsuits or other class action lawsuits)?

n/a

**10. How does your organization monitor the quality of legal aid lawyers' services?**

n/a

**11. How does your country (or organization) inform potential applicants (particularly residents living in remote locations) of the availability of legal aid services?**

The Office of Law Reform Commission of Thailand coordinates a network to provide legal aid services among legal aid service providers in Thailand such as the university legal aid centers, the civil society sector's legal aid centers and independent lawyers. The Office has set up a center in the Northern Region at Chiang Mai province and a lower Northern Region center at Phitsanulok province, two centers in the Northeastern Region at Khon Kaen province and Ubon Ratchathani province and a center at the Southern Region at Trang province. At the five centers, each center selects a local sub district areas for one to two sub-districts in each region to provide legal aid services and to disseminate legal and rights knowledge. The areas -are remote areas from city centers.

**12. How does your organization help to reduce the amount of disputes which resort to the courts? Does your organization participate in law reform or offer legal education to the public? If so, please describe these activities or services.**

The Office of Law Reform Commission of Thailand works on all aspects of law reform, particularly on the judiciary process. The Office is now working on the Master Plan for Judicial Process Reform, development of the (draft) Act of the Right of the People to Access Legal Services B.E. .... , which intends to create participations from every sector providing legal related services to draft the legislation. The Office also disseminates legal and rights knowledge of the people and creates a learning process for the paralegal networks in regions of Thailand.

**13. Please describe recent initiatives which made services accessible through the use of technology. If self-help services are available, please comment on the effectiveness of these services.**

n/a

**14. Please describe the difficulties encountered by your country (or organization) in promoting legal aid work in the recent years, and the strategies for responding to these difficulties.**

Our difficulties are coordinating budgets to provide the legal services to all parties equally and provide public access to legal services from the upstream to the downstream of the justice system to ensure fairness. The Office has developed a draft legislation on the Rights of People to Access Legal Services B.E. ... to enable a mechanism and a budget for such support. The mobilization for the legislation is extremely difficult for us. Thus, the Office has formulated the Legal Aid Network strategy and the Paralegal Network strategy to give opinions and support for such legislation. There is still a need for ongoing campaigns and mobilization to reach a better and broader understanding of the mechanisms of the judiciary process to the public.

**15. Has your country (or organization) established any mechanisms of co-operation with legal aid organizations abroad?**

The Thai government has not established any agencies for a legal aid coordination in the regional level and international level.

However, the Thai CSOs collaborate with international bodies/organizations to provide legal aid services in specific areas such as a collaboration to train lawyers to conduct an autopsy for victims of torture, a coordination or a dispatch of an expert witness to testify in a case.

**16. How does your country (or organization) adopt United Nations legal aid principles and guidelines in policies and services?**

Thailand, through the Thai government is trying to bring the UN legal aid service guideline to improve legal aid services. There is collaboration with the United Nation Development Program (UNDP) and other agencies such as the Rights and Liberties Protection Department, Ministry of Justice and the The Office of Law Reform Commission of Thailand, the collaborations for such improvement and development is in the initial period.

**National Report**

**U.S.A**

**Speaker: Mr. Wilhelm H. Joseph, Jr.**  
Executive Director, Maryland Legal Aid, Baltimore, Maryland, U.S.A

## National Report

Human rights are rights that every single person has by virtue of being human. Human rights reflect the minimum standards necessary for people to live with dignity. They belong to all people equally regardless of status and are considered essential to the full development of individuals and communities. Human rights also guarantee people the means necessary to satisfy their basic needs so that they can they can take full advantage of all opportunities. Maryland Legal Aid adopted the human rights framework to uphold these principles in the provision of legal services to the poor. Simultaneously, the pivot to a human rights frame seems to have reinforced a growing consensus about the role access to justice plays in actualizing poor people’s human rights and lifting them out of poverty. In a recent report, the United Nations (U.N.) Special Rapporteur on extreme poverty and human rights stated that access to justice is not only a fundamental human right in itself, but it is an essential prerequisite for the protection and promotion of all other civil, cultural, economic, political and social rights.<sup>1</sup> Mary Robinson, the former High Commissioner for Human Rights, is a key leader in the push to include access to justice in the U.N.’s post-2015 Development Goals, which recognize the “lack of legal protection as a form of repression and an affront to human dignity.”<sup>2</sup> Both sources recognize that achieving access to justice for the poor necessitates legal services for the poor, underscoring the import of our collective work.

### 1. Please provide the following organization information:

Country	The United States of America
State	Maryland
Legal Aid Organization Name	Legal Aid Bureau, Inc. (Maryland Legal Aid)
Date of Establishment	1911
Poverty Line (for a family of 4) in Maryland	\$23,501
Percentage of Population in Poverty in Maryland	9.4% (557,308)
Total No. of Practicing Lawyers at Maryland Legal Aid (including in-house and private practice)	145 attorneys
50 paralegals	5,928,814
Population of Maryland	5,928,814
GDP of Maryland; Per Capita GDP	\$268.7 billion; \$46,720
Total # of Applications Received in FY13	84,573
Total # of Applications Approved in FY13	78,461
Total # of Applications Refused in FY13	6,112

Comments

1: Report of the Special Rapporteur on extreme poverty and human rights, A/67/278, August 9, 2012.

2: See, Justice 2015 at <http://www.opensocietyfoundations.org/sites/default/files/justice2015-statement-06122014.pdf>

3: To clarify at the outset: the terms “legal aid,” “legal services,” and “legal aid services” are used interchangeably in this report and carry the same meaning of the provision of legal assistance to those that cannot afford such services.



## **2. Please describe the main provider(s) of legal aid services in your state:**

Maryland Legal Aid is the largest provider of free civil legal services<sup>3</sup> to low-income citizens in the state of Maryland. A private non-profit law firm, the organization was founded over a hundred years ago and operates out of 13 offices across the state. In FY13, Maryland Legal Aid continued its century-old tradition of providing high-quality civil legal services and responded to more than 84,000 requests for assistance. Its services range from providing information and referrals to representation in federal and state trial and appellate courts. Maryland Legal Aid provides legal services in the family, juvenile rights, public benefits, housing, consumer, employment, elder, health care, and education areas. In addition to providing services to individuals, it also works to address systemic issues affecting clients and their communities. The priority areas for representation for Maryland Legal Aid are preservation of housing, income maintenance (public benefits and employment), access to health care, consumer rights, domestic violence, custody and access to education.

Maryland Legal Aid's ability to span such a wide spectrum of substantive areas enables it to address the often intertwined and multiple challenges that low-income individuals and families face and to help those individuals and families achieve stability and address the barriers that keep them in poverty. Many of the clients who contact Maryland Legal Aid do so after a major family crisis or economic hardship such as a death in the family, serious illness, or loss of a job or other source of income. Maryland Legal Aid provides assistance that directly addresses the most basic and essential needs of individuals and families. This includes helping parents maintain custody, obtaining needed healthcare and disability benefits and unemployment insurance coverage, recovering unpaid wages as well as housing advocacy. Without Maryland Legal Aid, thousands of Maryland citizens would effectively be denied access to our system of civil justice resulting in potentially life and death situations.

Maryland Legal Aid also partners with many other civil legal services providers as well as pro-bono attorneys in Maryland to enhance client services. Other providers for civil legal services include the Public Justice Center, Maryland Disability Law Center, The Homeless Persons Representation Project, Pro Bono Resource Center and Maryland Volunteer Lawyers Service.

Maryland Legal Aid does not work on criminal matters. The Office of the Public

Defender is an independent government agency that provides indigent criminal defense in Maryland, making it the largest legal services provider in the state. The Public Defender's Office was created after the passage of a statute by the Maryland legislature, following a finding of a right to counsel in criminal matters in the landmark U.S. Supreme Court case of *Gideon v. Wainwright*.<sup>4</sup> For cases in which the Public Defender is unable to provide representation due to a conflict of interest, the state retains and contracts with "panel attorneys" – private attorneys selected by the local Public Defenders offices for their trial experience.

**(a) What is the nature of the provider's organization (i.e. a government department, an independent statutory body or association):**

Maryland Legal Aid operates as a private non-profit organization that is governed by a twenty-one member board of directors. The composition of the board of directors is dictated by federal law, which requires that 60% of the board consist of attorneys admitted to practice law in Maryland. These attorneys are selected by the board of governors of the Maryland State Bar Association after consultation with local and minority bar associations. At least one-third of the board is made up of client members – persons who are, when selected, eligible for Maryland Legal Aid services. The composition of the board reflects the range of interests and needs of eligible clients with attention to racial, gender and geographic diversity. The board exercises oversight of the organization and its activities. Maryland Legal Aid employs top professionals to manage its work, including staff in charge of finances, human resources, information technology, resource development, communications, and, of course, direct delivery of legal services.

**(b) If supervised by another authority, how does the provider maintain independence in decision making and carrying out its duties and responsibilities?**

Maryland Legal Aid is an independent non-profit organization. It is not supervised by another entity. It can make its own decisions and carry out its duties and responsibilities. Maryland Legal Aid is, however, regulated by many grantor entities that attach conditions to the organization as a precursor to receiving funding.

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Comments  
4: 372 U.S. 335 (1963).

One such grantor entity is the Legal Services Corporation (LSC). LSC provides federal funding to legal services organizations, such as Maryland Legal Aid, who provide free legal services to the poor. It is Maryland Legal Aid's third largest funder. As an LSC grantee, Maryland Legal Aid may not file class actions; initiate legislative advocacy; organize; or attempt to influence government policy or law. Maryland Legal Aid is also restricted from representing special classes of vulnerable populations, including undocumented (and even some documented) immigrants and the incarcerated. The restrictions do not only apply to the amount of funding received by LSC, but rather extend to each of the organizations' funding sources. For example, LSC comprises only 13.4% of Maryland Legal Aid's funding, but the restrictions extend to the whole of its \$27 million dollar budget.

### **3. Please describe the legal aid organization and the recent business figures:**

#### **(a) Organizational structure:**

Maryland Legal Aid is lead by a three person executive unit, which is housed in the central office in Baltimore City. The executive unit oversees all 13 offices across the state. The executive unit is composed of the Executive Director, the Chief Operating Officer and the Chief Counsel, each of whom supervises different functions of the organization. Maryland Legal Aid employs professionals and has departments of communication, resource development, finance, administrative services, human resources, intake services and IT, in addition to administrative support and legal staff. Each of the 13 offices is lead by Chief Attorneys who report directly to the Chief Counsel. Maryland Legal Aid also has a Statewide Advocacy and Support Unit whose function is to direct advocacy on a state-wide level and support the work of attorneys in all offices. For more information, please see the attached organizational chart.

#### **(b) Analysis of the matter types aided in the past year.**

Below, please find a chart of the matter types aided by Maryland Legal Aid in FY13:

Legal Problem Category	Cases Closed
Child in Need of Assistance (CINA)	12355
Consumer/ Finance	13264
Education	120
Employment	1213
Family	22494
Juvenile (other than CINA)	68
Health	596
Housing	15782
Immigration	0
Income maintenance	1855
Individual rights (other than immigration)	1690
Wills/ Power of Attorney/ Trusts	197
Miscellaneous	5971
Total cases closed	75585

**(c) What is the number and percentage of cases conducted by in-house/ staff attorneys and legal aid lawyers in private practice?**

Below, please find a breakdown of the cases conducted by staff attorneys v. those in private practice:

	Closed In-House (staff/ contractual)	Closed Pro Bono	Closed Reduced Fee	All Funds
Brief Advice, Information and Referral	59390	161	168	59719
Counseling	1557	25	1	1583
Negotiations	252	12		264
Representation in Administrative Proceedings	301			301
Representation in Judicial Litigation	13310	46		13356

Other Appropriate Remedies **	353	9		362
Total Cases Closed	75163 (99.44%)	253 (0.33%)	169 (0.22%)	75585

**4. Please describe your organization’s funding arrangements:**

**(a) What are the sources and amount of legal aid funding? Are there caps on annual spending?**

Maryland Legal Aid prides itself on its diverse funding stream, which includes funds from government entities, private foundations and private donations from individuals, businesses or other organizations. There are no caps on annual spending.

The operating income budget for FY13 was \$27,417,236 dollars. The overwhelming majority of that funding was derived from government sources, including federal, local and state grants and contracts. Maryland Legal Aid’s primary funder is the Maryland Legal Services Corporation (MLSC). In FY13, MLSC provided \$10,497,107. LSC, MLSC’s federal counter-part, provided \$3,725,631.

Maryland Legal Aid also receives grant support from foundations, businesses and organizations including: American University Washington College of Law, BJ's Charitable Foundation, Community Foundation of Frederick County-Justice for all Fund, Frank M. Ewing Foundation, Inc., The Fund for Change, Freddie Mac Foundation, LaVerna Hahn Charitable Trust, David and Barbara B. Hirschhorn Foundation, Johns Hopkins Children’s Center - Project Heal, Zanyvl and Isabelle Krieger Fund, The John J. Leidy Foundation, Inc., Eugene and Agnes E. Meyer Foundation, Samuel Rubin Foundation, George L. Shields Foundation, The Jean & Sidney Silber Foundation, Inc., Leonard and Helen R. Stulman Charitable Foundation, Alvin and Fanny Thalheimer Foundation, United Way of Cecil County, United Way of Central Maryland, and The Harry and Jeanette Weinberg Foundation.

Further, a volunteer fundraising entity comprised of leading attorneys in Maryland called the Equal Justice Council spearheads an annual fundraising campaign on behalf of Maryland Legal Aid. Council members work together to increase Maryland Legal Aid's financial resources by securing contributions from

the private bar. The Council averages 500 individual donors and 100 law firm donors annually. As with any donor base, many are loyal donors who donate yearly. Others donate on a more sporadic basis.

**(b) Has your organization experienced large-scale funding cuts? If so, what were the strategies for responding to such situation?**

As noted, Maryland Legal Aid operates with a diverse revenue base as its funding is derived from numerous financial streams, which include local, state and federal government agencies, foundations and private donors. In addition, Maryland Legal Aid has a full-time Resource Development unit, which pursues additional revenue opportunities with various fundraising activities. Regardless of the diversity of funding sources, in these difficult economic times, Maryland Legal Aid has faced tremendous challenges in maintaining its funding streams. In fact, it has successfully averted several very serious challenges that may have resulted in large-scale funding cuts.

Maryland Legal Aid's top funder is the Maryland Legal Services Corporation (MLSC). MLSC is an entity established by the Maryland General Assembly to raise funds and make grants for the provision of civil legal assistance to low income persons in Maryland. MLSC's principal funding sources are the Interest on Lawyer Trust Account (IOLTA) program<sup>5</sup>, surcharges on court filing fees and the Abandoned Property Fund. All three programs were created through state legislation and some periodically require going to the legislature for renewal. During the economic downturn, due to low interest rates, funding from the IOLTA program steadily declined. At the beginning of the Recession in 2008, IOLTA was providing approximately \$7 million in funding to MLSC; by 2013, that was down to approximately \$2 million. To close the funding gap, MLSC, along with a team of legal services partners, fought first increase the surcharge on filing fees in 2010 and then to ensure in 2013 that the increases would continue and not sunset. Similarly in 2012, Maryland Legal Aid averted another large-scale funding cut when it successfully challenged the decision by its second largest funder, the State of Maryland, to terminate a contract with this organization for the provision

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Comments

5: IOLTA is a fund where attorneys place nominal or short-term funds into a commingled interest-bearing account, where the interest generated accrues to MLSC to provide grants for civil legal services for the poor. Attorneys would place moneys in IOLTA where the amount of money that needs to be held on behalf of a client is small or for a short period of time and it would be impractical to establish separate interest-bearing accounts for individual clients.

of advocates for Children in Need of Assistance (CINA).

**(c) What is the percentage of funding spent on paying lawyers’ fees and costs, and on administration expenses respectively?**

Please find the breakdown of Maryland Legal Aid’s expenditures in the chart below:

Activity	Percent of Total Budget
Fundraising	1%
Administrative costs	14%
Program services, including lawyer fees and costs	85%

**(d) Does assistance extend to covering costs such as court costs, government charges, and costs awarded against the legal aid recipient?**

Maryland Legal Aid’s assistance does not cover the costs incurred by the legal aid recipient. However, Maryland Legal Services Corporation (MLSC) has successfully advocated for the waiver of service fees and court costs for clients of Maryland Legal Aid. The fee schedule promulgated pursuant to Section 7-202 of the Courts and Judicial Proceedings article in the Maryland Code says that “a clerk shall not collect a filing fee, surcharge for the Maryland Legal Services Corporation or other court cost in advance” ... “in a case in which the representation is being provided by Maryland Legal Aid.” A similar exemption is provided for plaintiffs represented by a pro-bono or other legal services providers recognized by MLSC. There are also exemptions for specific types of cases.

**5. How does your organization evaluate performance? What are the effective tools or methods of evaluation? If your organization has established branch offices, how are their performances evaluated?**

Maryland Legal Aid evaluates performance based on a few metrics. Maryland Legal Aid seeks to maintain high quality work product by imposing quality control measures through the entire life-cycle of the case. At the outset, cases are “staffed,” for merit at the office or unit level. At these staffings, advocates have an opportunity to discuss case theory, case strategy and receive feedback. Thereafter, chiefs and

supervisors conduct official case reviews with all staff on a quarterly basis. Informal case reviews occur on an as-needed basis. If staff is interested in appealing a case to the Court of Special Appeals or the Court of Appeals, the case must be staffed again with the whole organization. At this point, pleadings and briefs associated with the case are shared within the organization and the case is dissected at the staffing to determine if the appeal should move forward. If the case is approved for appeal, attorneys are provided support from Directors of Advocacy in the Statewide Advocacy and Support Unit and the final briefs must be reviewed and approved by the Directors before they are submitted to ensure quality work-product.

Maryland Legal Aid does have 13 offices across the state. To evaluate performance between offices, Maryland Legal Aid employs a comparative analysis to ensure parity. It evaluates the number of cases handled by each office according to substantive area; does a comparison of caseloads of attorneys across different offices; and engages in an economic analysis of the monetary impact of our casework by office. Results of these evaluations are discussed and analyzed at meetings between the Chief Counsel and the Chief Attorneys of each office.

## **6. Please describe the methods of service delivery in your organization:**

### **(a) Are the bulk of the approved cases conducted by in-house/staff attorneys or by lawyers in private practice?**

Over 99% of Maryland Legal Aid's cases are handled by staff attorneys. A very small number, approximately 0.56% are handled by outside private attorneys (see detailed chart in Question 3, above).

### **(b) What are the conditions of registering as a legal aid lawyer?**

Attorneys at Maryland Legal Aid have to have attended law school and passed a bar exam, preferably the Maryland Bar Exam. Those barred in other states may join the Maryland Legal Aid team, but subsequently will be required to become barred in Maryland.

### **(c) What are the rules and procedures of assigning approved cases to legal aid lawyers?**



Maryland Legal Aid operates 13 offices across the state, each headed by a Chief Attorney. In addition, its main office in Baltimore City houses several substantive area units that are also headed by Chief Attorneys. Offices and units use a combination of methods to assign work and base their decisions upon a variety of factors, including the workload of the advocate, the advocate's expertise and experience level, the advocate's interest, the allocation of cases among the advocates in the office, and the resources available to support the case. Depending upon the size of the office or unit, assignments of non-emergency cases may await a weekly meeting or "staffing" at which staff collectively discusses the merits of an application for service. Support staff is generally assigned work as determined by the chief/supervising attorney and the office manager of the office or unit. All of these methods are subject to adjustment where determined necessary for quality control by supervisors.

**(d) How do the salaries and fees paid to legal aid lawyers compare with the general market rate?**

According to a 2010 National Association for Law Placement (NALP) study, civil legal aid lawyers are still the lowest paid members of the entire legal profession, earning less than public defenders, many other public interest lawyers and in most instances far less than their counterparts in the private sector. The statistics from NALP's 2010 Public Sector and Public Interest Salary Report showed that entry-level civil legal aid lawyers earn a median salary of \$42,000 a year—less than local prosecutors, public defenders and lawyers at public interest organizations. By comparison, the median starting salary of a first-year lawyer at a private law firm is \$115,000. The starting salary at Maryland Legal Aid is \$50,425. The study showed that the salary situation for legal aid lawyers does not improve over time. If a legal aid lawyer stays with a legal aid program for 11 to 15 years, he or she can expect to earn about \$63,000 a year, still less than all other public and private sector lawyers with similar experience. These findings are consistent with the LSC's salary statistics, which show that first-year staff attorneys at LSC grantees earn an average of \$43,000 a year and can expect to earn about \$59,000 a year after 10 to 14 years of experience.

Maryland Legal Aid understands that one of its most critical needs is attaining comparability in attorney salaries. Maryland Legal Aid's salaries are

still significantly behind those of the offices of the public defender, the state's attorney, and the attorney general, particularly for attorneys with three to seven years of experience. Furthermore, Maryland Legal Aid has not been able to increase its salaries for at least the last two years because of the financial impact of the nation's economic downturn. Maryland Legal Aid loses some of its best attorneys to the agencies named above and to others (e.g., federal agencies, trade associations, and public interest organizations) in the Washington D.C. area because of their higher salaries. Moreover, even with enhancements to federal education loan repayment programs, Maryland Legal Aid attorneys still face substantial challenges in meeting the repayment requirements of their law school and college debts. In order to retain high-quality staff and remain competitive, Maryland Legal Aid recognizes the need to increase salaries as budgets allow.

**7. Please describe the types of legal aid services provided in your organization and the types of matters aided.**

With an organizational vision to protect and advance human rights so as to effect lasting social change, Maryland Legal Aid achieves its clients' goals through a broad continuum of services ranging from brief advice and service, pro se assistance and targeted referrals, pro bono coordination and referrals, community education, policy and impact advocacy, transactional work, collaborative endeavors with other organizations, and litigation in state and federal trial-level and appellate courts. The priority areas for representation are family/domestic, housing, income maintenance (public benefits and employment), consumer, and education law.

**8. Please describe application procedures and the criteria for granting legal aid.**

Maryland Legal Aid provides legal services in civil matters to individuals and families in Maryland with incomes below 125% of the federal poverty level, and, in some instances, to those whose income is less than one-half of Maryland's median income. Maryland Legal Aid also screens applicants to make sure that assistance to the individual will not create a conflict with a current or former client and is within the scope of legal assistance that Maryland Legal Aid can provide.

Maryland Legal Aid sets priorities for service delivery based on the expressed and

assessed needs of potential clients. To date, demand for services has been highest on issues related to family/domestic law, housing, consumer and income maintenance (both employment and public benefits) law. Maryland Legal Aid's 2007 comprehensive assessment of client community needs indicated that affordable housing, employment that provides a living wage and access to health care were the highest priority needs identified among the poor in all Maryland counties. These findings continue to be relevant based upon issues presented by clients at intake and through feedback from community forums and outreach activities. In addition, Maryland Legal Aid has increased its focus on serving the needs of limited English-proficient populations in Maryland, to the ethnic and cultural diversity of Maryland's low-income population and to veterans. Maryland Legal Aid attempts to strategically coordinate advocacy and resources to meet these needs statewide.

## **9. In order to satisfy demand:**

### **(a) Are there services or standards specifically designed to help disadvantaged groups, such as women, children, indigenous people, labor and residents living in remote areas?**

Targeted service delivery both guides the legal assistance provided to clients and permits Maryland Legal Aid to continually assess the needs of the populations it serves. Maryland Legal Aid has dedicated resources to address the needs of these populations with special projects. Experience also has enhanced our awareness of the legal needs of senior citizens, long-term and assisted-care residents, migrant farmworkers, and neglected and abused children. Senior citizens are challenged primarily by debt arising from health care expenses and Medicaid (Medical Assistance) eligibility; farmworkers by substandard housing and exploitative employer practices; and children and youth by family and community environments, which are unsafe and hinder healthy development. Service is provided through the use of telephone hotlines (including the Senior Helpline, the Sixty Plus Legal Program, and the Telephone Intake Unit, which assists clients over age 60 and non-seniors within MLSC income guidelines); through outreach to, and intake of, senior citizens are served without regard to income through the Senior Legal Helpline and Title III-B of the Older Americans Act (low-income seniors receive priority under this funding source); through outreach to community service providers and to other vulnerable populations such as migrant

farm-workers and persons living with HIV and AIDS; and by the provision of legal representation to children in child protection, foster care, and termination of parental rights proceedings. These programs are also funded through dedicated resources that are made available through federal and state grants.

**(b) Are there special standards or rules for deciding whether (and how much) legal aid resources should be allocated to assist complex cases (e.g. environmental lawsuits or other class action lawsuits)?**

Maryland Legal Aid assesses resource allocation to assist with complex cases on an as-needed and case by case basis. Maryland Legal Aid reviews each case individually to assess the potential impact of the complex case, personnel and resource constraints within the individual offices, competing demands and expected time allocation to the complex case. For example, since 2012, Maryland Legal Aid decided to redirect a senior attorney's time away from the handling individual cases to focus on a large-scale administrative complaint that sought relief for all poor tenants with a specific type of housing subsidy in a county in Maryland. The Complaint alleged that the county as a whole was failing in its obligation under federal law to provide options for affordable housing for the poor. Work on this Complaint and the resulting negotiations consumed the bulk of the senior attorney's time over the last year. In this case, Maryland Legal Aid assessed that the benefit to poor residents of the entire county out-weighed the reduction in individual representation of clients.

**10. How does your organization monitor the quality of legal aid lawyers' services?**

Maryland Legal Aid monitors the quality of legal aid lawyers' services through client satisfaction surveys as well as through case reviews and evaluations. Applicants and clients are also given copies of the brochure, *Welcome To Legal Aid* (also translated into Spanish), which outlines the grievance procedure for dissatisfied clients. Maryland Legal Aid has a progressive client grievance process, with grievances reviewed by the Chief Attorney of local offices and units, and by the Chief Counsel if the grievance cannot be resolved locally. In addition, clients often write thank you letters to advocates in appreciation of their efforts on behalf of clients and Maryland Legal Aid promotes those within the organization to reinforce the mission

and set the expectation for high quality.

Typically, Maryland Legal Aid sends out client satisfaction questionnaires to some clients upon closing of cases. Certain specialty programs within Maryland Legal Aid, however, have also conducted more thorough client surveys. For example, a program targeted to the elderly implemented a post-closing telephone survey six months after their cases were closed to gain more information about the measurable outcomes achieved from the program. After surveying more than 100 clients, it was determined that clients had obtained increased security in achieving and protecting their basic needs and human rights, including food, shelter, health care, personal safety, and family relationships. The majority of survey participants were able to obtain legal resolutions to their problem and reported that they were better off having received legal assistance. More than 70% reported that Maryland Legal Aid made a difference in their lives. The clients also learned what options were available to solve their legal problems. Over 70% of participants stated that they understood their options, and over 60% said that Maryland Legal Aid helped them have their voices heard in the legal system. Overall, the survey participants were satisfied with the services they received; with over two-thirds of the participants reporting that the services were excellent or very good. In another program, Maryland Legal Aid developed a Client Satisfaction Survey for clients receiving services with its Ryan White Part A funded program. The overwhelming majority of the survey participants (90%) reported that they were satisfied with the level and quality of services received, and that they would recommend Maryland Legal Aid to a friend or family member.

In addition to client surveys, Maryland Legal Aid utilizes staff development protocols to guide evaluation and professional growth to ensure staff competency and to help staff realize their full potential. Each office or unit at Maryland Legal Aid is managed by a chief or supervising attorney. Chief Attorneys are responsible for office staff supervision. Chiefs are assisted by supervising attorneys in Legal Aid's largest offices, including those in Baltimore City, Prince George's/Howard County, Baltimore County, Montgomery County, and Anne Arundel County. Chiefs are supervised by Legal Aid's Chief Counsel. During an initial probationary period, the activities of new case handlers are monitored by their respective chiefs/supervisors. Subsequently, the supervision of advocates includes quarterly, face-to-face case reviews, which are supplemented by monthly reviews of case reports generated by the case-management system. Daily informal interaction between chiefs/supervisors and advocates also

provides oversight to staff work. All staff are subject to annual evaluations. Prior to filing any major litigation or appeal, a statewide staffing is held where issues are reviewed and analyzed, and a decision is made on whether and how to proceed. The Statewide Advocacy Support Unit oversees all major litigation, appeals and policy advocacy, and provides substantive support for the casework of all legal advocates.

### **11. How does your organization inform potential applicants (particularly residents living in remote locations) of the availability of legal aid services?**

Maryland Legal Aid employs a mix of different strategies to inform potential clients of the availability of legal services. Foremost, the fact that Maryland Legal Aid has a state-wide presence, through 13 physical offices in different geographic areas of the state (including the Western mountainous region, the Eastern shore region and the Southern rural region) allow it to work on a local level to inform potential applicants of the existence of legal services. Further, partnerships on the local level with other community service entities, government agencies and the courts allow for partner organizations to serve as a referral mechanism to Maryland Legal Aid. Additionally, Maryland Legal Aid engages in continuous outreach into vulnerable communities that may require legal services, such as to communities of older adults, veterans, farm-workers and HIV-positive individuals.

Maryland Legal Aid also uses technology to inform potential applicants of services offered by the organization. Maryland Legal Aid revamped its website in the last year and added online intake as a means to allow flexibility to applicants seeking our services. Maryland Legal Aid also continues to offer telephone advice and referral services. Telephone intake is done at all of Legal Aid's offices throughout the state.

Once applicants become clients, for those that may have physical disabilities, accessible interview and appointment space is available, and when necessary, staff will visit clients at home, in nursing homes, hospitals or other facilities. Where absolutely necessary and if the client agrees, the client may designate a representative to assist with the case. Clients who lack transportation are provided with a home visit or are met at a mutually acceptable and accessible location with confidential meeting space. Clients who are institutionalized are seen at their facilities. In addition, clients with physical disabilities and transportation difficulties

are accommodated by the aforementioned telephone advice, referral services and self-help services. Services offered through the Senior Legal Helpline, Baltimore City Telephone Intake Unit, Sixty Plus Legal Program, the Family Law Hotline and the District Court Self-Help Center often reduce or eliminate the need for face-to-face contact with clients.

**12. How does your organization help to reduce the amount of disputes, which resort to the courts? Does your organization participate in law reform or offer legal education to the public? If so, please describe these activities or services.**

Maryland Legal Aid is actively engaged in the community and works with a range of partners to achieve results beneficial to clients and the poor in Maryland inside and outside the courtroom. The main avenue to interact with the public and offer information and advice occurs at outreach events. More in-depth education is offered through classes and clinics in different substantive areas. Maryland Legal Aid is also currently exploring a partnership with the Administrative Office of the Courts whereby cases in which Maryland Legal Aid cannot provide representation can be referred to alternative dispute resolution modalities for resolution.

An example of legal education provided by Maryland Legal Aid is the organization's elder law work, which includes significant emphasis on community legal education. In FY14, Maryland Legal Aid staff conducted 30 educational presentations to older adults, their families, caregivers, and the professionals who serve them, serving more than 900 participants. Highlighting the needs of the poorest and most vulnerable populations in Maryland, the educational sessions included programming on consumer issues, public benefits, and access to long-term services and supports. Prior to this in 2013, Maryland Legal Aid participated in more than 20 outreach events for older adults, providing legal information, answering questions, and distributing brochures. Staff speaking engagements and participation in community fairs and events reached over 67,960 individuals. It also distributed more than 53,500 brochures and newsletters on substantive topics. In addition, radio and television interviews, as well as articles in legal publications, newspapers, and community newsletters, reached hundreds of thousands of elderly and low-income individuals.

Four of Maryland Legal Aid's offices conduct pro se bankruptcy classes.

Participants receive instruction and education in filing a Chapter 7 bankruptcy. The class provides comprehensive training in the basics of bankruptcy law, practical instruction in preparing a petition and schedules, and what to expect after filing at each step in the process toward discharge of debts. Maryland Legal Aid staff are available to answer questions and provide information and advice along the way. For those individuals who encounter complex issues in their cases that make it impossible for them to continue representing themselves, Maryland Legal Aid provides either referrals to low-cost or free attorneys, or enters an appearance and represents the debtors before the bankruptcy court. In addition, staff at Maryland Legal Aid's Lower Shore office have completed a pro se bankruptcy video, which can be used in lieu of an actual live class to reach broader audiences more frequently. The video is now available at the Wicomico County Public Library. Statewide, more than 340 people participated in Maryland Legal Aid's pro se bankruptcy classes in FY13.

Another one of Maryland Legal Aid's offices is working with the Business and Employment Center in their local jurisdiction to conduct monthly criminal expungement clinics. Many low-income people are denied housing or employment due to the existence of a criminal record. At these clinics, clients are taught about the expungement process and are provided assistance in completing Petitions for Expungement of Records. The Housing/ Consumer Unit of another one of Maryland Legal Aid's offices provides Tax Sale Education Seminars to local seniors. These classes focus on tax sale lien certificates and how to avoid losing one's home in a tax sale. Offered in conjunction with other legal services providers, nonprofit organizations, and government officials, these classes have been well received by homeowners and communities suffering from the impact of tax sale foreclosures.

**13. Please describe recent initiatives, which made services accessible with technology. If self-help services are available, please comment on the effectiveness of these services.**

Last year, Maryland Legal Aid revamped its website. The upgrade provided an exciting new option to access legal assistance through an online intake form. Since November 2013, Marylanders have been able to complete an application for services from their own home, local library, or anywhere they can access the internet. Since

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Comments

7: MDJustice is an online tool established to promote information-sharing between all the civil legal services organizations in Maryland. MDJustice is organized by substantive issue areas and advocates can post articles and legal developments, have discussions, schedule meetings, etc. through MDJustice.



being deployed, the online intake process has generated 2,438 requests for services. (Maryland Legal Aid has conducted intake and provided information, referral and advice to clients by phone for many years.)

Further, Maryland Legal Aid maintains an outreach presence to clients and the community via MDJustice.org<sup>7</sup>, Facebook, Twitter, YouTube, custody interview materials on the People's Library website, and a Google+ page. Last year, Maryland Legal Aid reached 27,437 people via Facebook, 15,691 people via Twitter, 163 via Google+ and 3006 via YouTube (where two public videos have been posted, both on human rights issues). In addition, MDJustice.org currently has 522 members and 3250 pages of materials.

As for self-help services, Maryland Legal Aid operates two family law pro se centers in the circuit courts for Anne Arundel and Cecil Counties and a District Court Self-Help Center (DCSHC) in Anne Arundel County with funding from the Administrative Office of the Courts (AOC). These collaborations provide opportunities for staff to work with court personnel on improving services to self-represented litigants, including the revisions of procedures and the refinement of court forms. During FY14, more than 10,200 self-represented litigants were assisted by the Family Law Self-Help Center in Anne Arundel County, which has one staff attorney and 1.2 FTE paralegals working five days a week. More than 1,000 people were assisted in Cecil County, which has one attorney working two half-days a week.

The DCSHC, a pilot project launched by the District Court of Maryland with the assistance of the Maryland Access to Justice Commission, opened to the public on December 1, 2009. The DCSHC provides assistance statewide to self-represented individuals with civil cases pending in the District Courts of Maryland. In 2011, the DCSHC expanded from walk-in assistance to provide assistance via phone and live chat. This expansion resulted in a dramatic increase in the number of unrepresented litigants assisted, from approximately 5,700 per year to more than 22,000 for the last reporting period. Of this number, 8,617 visitors were assisted in consumer and small claims cases, 8,425 visitors were assisted in housing matters and 694 were assisted in peace and protective order cases. The Center is currently staffed by one supervising attorney, five staff attorneys, a full-time administrative assistant and a part-time administrative assistant. Due to its success, there are plans to expand DCSHC into two new counties that present high volume dockets.

**14. Please describe the difficulties encountered by your organization in promoting legal aid work in recent years and the strategies for responding to these difficulties.**

Maryland Legal Aid has not encountered difficulties in promoting legal aid work in recent years. In fact, the exact opposite is true. Since the economic downturn of the Great Recession, Maryland Legal Aid has experienced a spike in the demand for services. Maryland Legal Aid has been able to respond to the increased demand by sustained emphasis on maintaining levels of funding. Where some funding streams suffered during the downturn, others were created as demand for certain types of services related specifically to the Recession necessitated expansion. For example, because the lynchpin of the economic downturn in the U.S. was tied to the housing crisis, Marylanders needed legal assistance in stemming the tide of foreclosures. Maryland Legal Aid started the Foreclosure Legal Assistance Project (FLAP) to meet the demand for services in 2010. Thereafter, in 2012, Maryland Legal Aid applied for and received \$3.6 million in funding from an Attorney General's settlement to expand FLAP.

**15. Has your organization established any mechanisms of co-operation with legal aid organizations abroad?**

Maryland Legal Aid's primary mechanism for co-operation with legal aid organizations abroad has been through participation in the Legal Aid Foundation's International Forums on Legal Aid. These Forums have provided invaluable opportunities to engage in dialogue with legal aid organizations from all over the world. With Maryland Legal Aid's official adoption of the Human Rights Framework, however, it is possible that co-operation with foreign legal aid organizations may increase. Through the adoption of the Framework, Maryland Legal Aid has joined an international movement and may have opportunities to engage in international and regional advocacy at the United Nations and the Inter-American Commission to shine a spotlight on entrenched domestic issues. Expanding our reach in this way may well lead to working with legal aids across the world as human rights provides a common language through which to discuss access to justice and poverty alleviation.

**16. How does your organization adopt United Nations legal aid principles and guidelines in policies and services?**

Maryland Legal Aid is the first direct legal services organization in the U.S. to adopt a human rights framework. It adopted the framework after engaging in a thorough needs assessment and strategic planning process. The needs assessment showed that throughout the state, low-income residents of Maryland identified affordable housing, jobs that pay a living wage and affordable health care as their most pressing needs – needs that if unmet, would not allow them to overcome poverty.

After the completion of the needs assessment, in March 2008, Maryland Legal Aid formed the Strategic Planning Oversight Committee (SPOC) to use results from the needs assessment to develop a strategic plan. SPOC noted that Maryland Legal Aid's case acceptance guidelines addressed the needs of low-income Marylanders imperfectly because although individuals and groups who had legal problems with housing, employment, and health care were given high priority for representation, their needs could be pursued more vigorously and boldly. SPOC members, after studying international human rights law, recognized that the organization needed to pursue a goal of lasting social change for low-income Marylanders by advancing the vision of human rights for all Marylanders. Maryland Legal Aid's internal leadership accepted SPOC's recommendations and secured official approval from its Board to adopt the human rights framework in 2009.

Adopting the human rights framework was a watershed moment for Maryland Legal Aid. While the U.S. government's track record in creating and promoting human rights norms overseas is well-established, the record at home is less stellar. A movement to Bring Human Rights Home (BHRH) started in the U.S. about a decade ago and is still in its nascent stages. Wade Henderson, the Director of the Leadership Conference on Civil and Human Rights (the organization added "human rights" to its name 2010) and a leader in the BHRH movement has repeatedly said that "civil and human rights must be measured by a single yardstick, both at home and abroad." Maryland Legal Aid joining the movement has provided an important boost because of the organization's unique reach into impoverished communities and into state-level trial courts.

Due to its established track record in human rights, Maryland Legal Aid got a chance to propel its human rights advocacy to the next level in 2012. Maryland Legal Aid was selected as one of two legal aid programs in the country to partner with the Local Human Rights Lawyering Project at the Center for Human Rights and Humanitarian Law at American University's College of Law. The partnership

is the first of its kind in U.S. history, connecting a highly respected law school and foremost experts in the field of human rights with legal services attorneys to help them incorporate human rights arguments, strategies and methodologies into their work. Through the partnership, Maryland Legal Aid hired its first Human Rights Project Director, who was charged with implementing human rights principles within Maryland Legal Aid's advocacy, client-staff relationship, and office systems.

Since its inception, Maryland Legal Aid's Human Rights Project has engaged in creative and ground-breaking advocacy, becoming a national leader in the movement to apply human rights principles in the U.S. and a model for creativity and innovation for other legal services organizations. Several factors have aided the normalization of human rights within Maryland Legal Aid. Foremost, having the leadership of the organization invest in a dedicated person within the organization with the sole charge of building the Human Rights Project has been invaluable. This has allowed the Project Director to be the ambassador for human rights within the organization and outside of it among the legal services and client communities. Within the organization, a Human Rights Workgroup led by the Project Director functions as a mechanism to share information, garner feedback and get guidance for the work of the Project.

The Project has focused on several areas in order to integrate human rights into all parts of the organization's services and policies, including capacity building to use human rights in day to day casework, human rights day events, impact projects, international advocacy and the staff-client relationship. Each is described below in more detail.

### **Capacity Building to use Human Rights in Day to Day Case-work:**

Human rights is not part of the regular public discourse in the U.S., leading to a lack of knowledge and familiarity with human rights law and language, both among attorneys and advocates as well as applicants and clients. Therefore, from the outset, the Human Rights Project emphasized training and building capacity among staff and clients about human rights. Since its inception in June, 2012, the Project, in partnership with American University, has offered over 20 educational webinars and in-person trainings to build staff capacity in human rights law and in how best to strategically use it in judicial or administrative advocacy. Training topics have included housing, HIV/AIDS, domestic violence, international legal research, workers'

rights, legal ethics, the Inter-American Commission, disability rights, immigration, child abduction, healthy environment and right to counsel. Further, the Project has also focused on providing specialized training for supervisors and advocacy directors to elevate the use of human rights frames in day-to-day case work. By using knowledge from these trainings and employing the Human Rights Handbook, a resource created for legal aid attorneys by American University's Local Human Rights Lawyering Project, Maryland Legal Aid advocates have incorporated human rights language in trial advocacy, administrative proceedings, appellate briefs and amicus briefs.

Many attorneys remain hesitant to include human rights arguments in their cases, however, citing as impediments, the judiciary's lack of knowledge about human rights. In response, the Project has also focused on interacting and engaging with the bench to raise awareness of human rights law. In 2013, for the first time, a human rights training was offered to judges at the Maryland Judicial Institute, the annual training for judges. Another concern the attorneys have expressed is that they are already overburdened and lack the time to research and learn a new set of laws that may or may not impact the outcome of their case. To address this issue, the Project is now focusing on creating resources for attorneys that will provide maximum ease of use of human rights law and language. The Project is in the process of creating two resources: 1. one-pagers on common case-types that will provide all pertinent human rights law and language and demonstrate to the attorney how to build the human rights argument for that case-type; and 2. model pleadings where the Project will insert human rights language into pleadings that are commonly used by staff to promote their use.

### **Human Rights Day Special Event:**

Since adopting the human rights framework, Maryland Legal Aid has established a tradition of conducting all-staff, mandatory trainings focusing on human rights as a way to celebrate Human Rights Day, which occurs on December 10 every year. The first such training took place in 2010 and focused on providing a human rights "toolkit" for our staff that spelled out human rights law, discussed human rights framing and spoke of the larger movement for human rights. In 2011, the training focused on highlighting how staff from around the state had incorporated human rights into their work, especially in casework. In 2012, the focus of the training shifted from human rights in advocacy to human rights in the staff-client relationship. The purpose of the

training was to explore how human rights principles could be layered onto the rules of professional conduct that govern the lawyer-client relationship. The 2013 training focused on the Convention on the Elimination of All Forms of Racial Discrimination (CERD). All staff was educated about this ratified treaty, which imposes obligations on the U.S. and subjects it to treaty compliance review before the UN CERD Committee. During the training, all staff explored ways to utilize the treaty review process to highlight local injustices on a global stage and learned from other legal services organizations on how to incorporate issues of structural racism into daily practice. The 2014 will focus on issues related to language access and ensuring that our staff is well-versed in how best to serve clients with Limited English Proficiency (LEP).

### **Impact Projects:**

Another way the Project has aimed to normalize the use of human rights in Maryland Legal Aid advocacy is by developing and implementing three impact projects in the areas of children's rights, disability rights, and housing rights. Respectively, the projects aim to develop and publish a graphic novel to educate and empower foster youth about their rights; develop resource lists and training to strengthen staff capacity to improve interactions and relationships with clients that present with mental or behavioral health issues; and conduct state-wide monitoring and documentation of abuses of rent court processes and procedures across Maryland.

The children's rights project focuses on raising awareness about human rights among all foster youth in Maryland (Maryland Legal Aid has a contract with the state to be children's advocates for the bulk of, but not all foster youth in Maryland). To appeal to the sensitivities of young children, the project decided to create a graphic novel that educated foster youth about their human rights and modeled how human rights could empower youth to better advocate for themselves within the foster care, judicial and medical systems with which they regularly interact. After the project committee researched and created scripts exploring eight substantive children's human rights, the committee solicited pro-bono partners to assist with the design of the graphic novel. The Project partnered with an Arts and Advocacy Program at Harford Community College to bring the graphic novel to fruition. A set of students from the Program were assigned the design of the first chapter of the novel as their semester-long class project. Committee members are also in the process of re-purposing the scripts to create a play for children on human rights.

The second impact project was created by advocates specializing in public benefits and elder law. This committee observed that more and more of Maryland Legal Aid's clients presented with mental or behavioral health conditions and sought to build staff capacity on how best to uphold the human rights of this population. The committee was sensitive to the fact that historically, people with mental or behavioral health issues have suffered the gravest of human rights violations and that human rights law also had only recently started paying attention to the plight of this population. Therefore, the committee designed the training from the clients' perspective, which was different for Maryland Legal Aid. Past Maryland Legal Aid trainings were generally law related, where the perspective of the advocate dominated. This training centered around understanding the struggles of our clients, building empathy, exploring respectful ways to communicate – essentially, developing a dignity-oriented approach to service.

This project delivered two end products: first, the committee developed geographic-specific resource lists to aid staff in identifying services in different categories for clients with mental and behavioral health issues; second, the committee designed and implemented a state-wide all staff training. The purpose of the training was to strengthen staff capacity and learn how best to uphold the human rights of clients with mental and behavioral health issues. The committee partnered with the Mental Health Association of Maryland, who developed and conducted 10 separate 6 hour customized trainings for Maryland Legal Aid staff in every part of the state. Approximately 200 staff members (ranging from administrative assistants to office chiefs) were trained. The training topics included mental/ behavioral health illnesses and symptoms; effective communication strategies for a dignity-oriented approach to service; expectation and boundary-setting; de-escalation; and self-care. Feedback from the trainings was exceptionally positive – many people commented that this was the “best training they have ever received at Legal Aid.” The committee then evaluated the trainings to find that the resource lists and training had a positive impact on staff's interactions and practice with behaviorally and mentally ill clients.

The third impact project focuses on housing – specifically conducting the first-ever statistical study monitoring human rights abuses and violations of process and procedure in rent courts across the state of Maryland. Maryland Legal Aid attorneys have a long history of representing low-income Marylanders in housing cases and have deep concern about the fair application of the law in rent court. Maryland Legal

Aid chose to focus on rent court because although courts may treat rent cases as mundane proceedings, the process is the lynchpin of upholding the human right to housing. In practical terms, rent court is the speediest and most informal forum through which landlords can regain almost immediate possession of their rented property from a tenant. Rent court dockets are large; trials usually do not last more than a minute or two; due process and evidentiary requirements are minimal; and tenants can be evicted from their property within weeks of the proceeding, possibly rendering them homeless.

Taking these factors into account, the project seeks to study rent court processes and procedures to gauge impact on users of rent court. The study includes data collection from 1,380 cases from all 24 jurisdictions across the state. Maryland Legal Aid partnered with the Administrative Office of the Courts and the Chief Judge of the District Courts to access information from the rent courts to conduct this study and to lay the foundation for a mutually beneficial approach to reviewing and responding to the data findings. The housing project further collaborated with the Human Rights Clinic at Columbia University to help prepare the written report, with plans to share it with the Maryland judiciary by the end of 2014. The housing project is also receiving pro-bono assistance from an expert statistician through the American Association for the Advancement of Sciences' Scientific Responsibility, Human Rights and the Law Program. The housing project designed the survey instrument, created the random sample, received the bulk of the data from the courts and at present, is wrapping up data collection with 2,459 out of 2,760 data points collected (each case in the random sample has to be collected by two distinct data collectors). The next phase of the housing project is data analysis and report writing. Presentation of the report is expected to coincide with Human Rights Day, December 10, 2014. Ultimately, the hope is to strengthen mechanisms to uphold the right to housing.

### **International Advocacy:**

Maryland Legal Aid, through the Human Rights Project, was also among the first legal services organizations to engage with international human rights mechanisms to shine an international spotlight on entrenched local issues. Maryland Legal Aid has raised issues about access to migrant farm-worker labor camps; the use of psychotropic medication in foster youth; and the restrictions imposed on LSC-funded legal services organizations as violations of the three treaties that the U.S. has signed



and ratified – the International Convention on Civil and Political Rights (ICCPR); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention Against Torture (CAT).

### **Staff-Client Relationships:**

Another sustained area of work for the Human Rights Project has been to explore ways to infuse human rights norms into Maryland Legal Aid's service delivery model. The 2012 Human Rights Day training served as the kick-off for the work on human rights in staff-client relationships. Following this training, a committee formed to develop Maryland Legal Aid's own Principles for Staff-Client Relationships and then determine how those Principles would guide the organization's system of Intake. In order to create Maryland Legal Aid's Principles, the committee applied human rights principles from the Universal Declaration of Human Rights (UDHR) directly to Maryland Legal Aid's practice. Posters of the Principles titled "Our Commitment to You" were distributed to all 13 offices at the 2013 Human Rights Day training to be displayed in areas most visible to the public. On the charge of exploring the application of the Principles to Maryland Legal Aid's Intake process, the committee started with designing and conducting a thorough survey of the Intake process in all 13 offices (it is not uniform). The committee is now in the process of analyzing the responses to formulate recommendations to improve service delivery to clients.

The Project also fostered the work of committees working on Lesbian, Gay, Bisexual, Transgender (LGBT) issues and Language Access issues. Work on both committees focuses on ensuring that services to these vulnerable populations align with the Principles. The LGBT committee prepared and analyzed a survey about LGBT issues within the organization and conducted an all staff sensitivity and skills training on the topic. The committee is now in the process of finalizing recommendations to strengthen internal policies and practices to provide the highest level of services for this client population. The Language Access Initiative sought to train staff on how best to serve LEP individuals. Maryland Legal Aid had already developed a policy of language access, but the mandatory training component of the policy had yet to be realized, until now. Through the work of the committee, the 2014 Human Rights Day training will focus on aligning Language Access policies and practices with human rights norms.



## 2014 International Forum on Legal Aid



**National Report**

**Vietnam**

**Speaker: Ms. Nguyen Thi Pha**

Legal expert, National Legal Aid Agency, Ministry of Justice,  
Vietnam

## National Report

### 1. Please provide the following country information:

Country	Legal Aid Organization Name	Date of Establishment	Poverty Line & Percentage of Population in Poverty	Total No. of Practising Lawyers & Legal Aid Lawyers (including in-house and private practice)
Vietnam	National Legal Aid Agency (NLAA), under Ministry of Justice (MOJ)	Since 1997	400,000 VND (\$19)/ person/month for person resides in countryside and 500,000 VND (\$24) person/month for person resides in cities (It may be higher depend on the condition of cities/ provinces) <sup>1</sup> ; About 6.6% of population	8,233 practising Lawyer, of which 1,055 persons are legal aid collaborator lawyers; 483 legal aid officials <sup>2</sup>
Population	GDP	Total No. of Applications Received in the Past Year	Total No. of Applications Approved in the Past Year	Total No. of Applications Refused in the Past Year
89.708.000 people in 2013	About 3.584.262 billion VND (169 billion USD) in 2013 <sup>3</sup>	No statistic	81,813 applications in 2013	No statistic

### 2. Please describe the main provider(s) of legal aid services in your country:

(a) *What is the nature of the provider's organization (ie, a government department, an independent statutory body or association)?*

According to Law on Legal Aid, legal aid is the State's duty. Legal aid system in Vietnam is divided into 2 branches. State legal aid organizations and organizations participating in legal aid

(b) *If supervised by another authority, how does the provider maintain independence in decision-making and in carrying out its duties and responsibilities?*

Comments

1: Decision 09/2011/Q -TTg dated 30 January 2011 of Prime Minister promulgating the poverty line, the potential poverty line of households in 2011-2015.

2: Count to June 2013.

3: According to General Statistics Office, Ministry of Planning and Investment.

The Provincial Legal Aid Centers (PLACs) and legal aid providers carry out their duties and responsibilities based on Law on Legal Aid, proceedings laws and related laws. Therefore they can provide legal aid services independently.

### **3. Please describe the legal aid organization and the recent business figures:**

*(a) Organizational structure:*

- The NLAA is a unit directly under the MOJ. The NLAA has the function to assist the Minister of Justice to conduct State management on legal aid nationwide.

It has the function as below:

- Building and proposing the MOJ, Prime Minister, Government, National Assembly to promulgate strategies and plans for the legal aid development and legal normative documents in relation to legal aid.
- Promulgating legal aid documents implementing about-mentioned documents and guidelines on legal aid.
- Managing and directing the organization and operation of PLACs and their branches; Managing and training legal aid providers;
- Implementing the regimes of reports and statistics on legal aid;
- Building and managing the Legal Aid Fund;
- Inspecting, checking and resolving complaints and denunciation, awarding, penalizing and settling breaches in legal aid activities.
- Conducting international cooperation in legal aid.

The NLAA has 01 Director, 02 Vice Directors, 36 staff members and 06 Divisions as Professional Management Division; Division for Monitoring the Quality of Legal Aid Service; Office; Financial and Accounting Division; Professional Training Center; and Legal Aid Fund.

- The PLACs and their branches: there are 63 PLACs under the Provincial Departments of Justice with their 199 branches provide directly legal aid services. Each PLAC may have 04 Divisions. 63 PLACs have 1,244 staff members, of which 483 persons are legal aid official .<sup>4</sup>

In addition, there are 277 law officers/firms, 40 legal consultant centers under mass-organizations or universities registered to provide legal aid (organizations participating in legal aid). There are 8,980 legal aid collaborators of which 1,055 persons are lawyers. There are 4,345 Legal Aid Clubs at the commune level .<sup>5</sup>

The PLACs and organizations participating in legal aid are called as legal aid organizations. Legal aid officials and legal aid collaborators are called as legal aid providers.

*(b) Analysis of the matter types aided in the past year.*

In 2013, the PLACs resolved 81,813 legal aid cases (increased by 23.4% in comparison with 2012), including 75,158 advice cases, 5, 584 court cases, 99 cases of representative beyond legal proceedings and 972 others.

83,777 persons were provided legal aid services in 2013, including 41,204 the poor, 42,573 people contributed meritorious services to the Revolution, 22,754 ethnic minorities, 1,170 elderly persons, 440 disabled persons, 3,113 children, 1,228 women who are victims of domestic violence or victims of trafficking in persons, 29 persons living with HIV/AIDS and 22,969 others.

*(c) What is the number and percentage of cases conducted by in-house/staff attorneys and legal aid lawyers in private practice?*

In 2013, 53% of the total number of cases was resolved by legal aid officials, 13% by lawyer collaborators and 34% by other collaborators.

#### **4. Please describe your country's (or organization) legal aid funding arrangements:**

*(a) What are the sources and amount of legal aid funding? Are there caps on annual spending?*

According to the Law on Legal Aid, the State has the responsibility to ensure

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Comments

4: Count to June 2013.

5: Count to June 2013.

budget for its legal aid system. At the central, the Government shall support budget for the NLAA. At the provincial level, Provincial People's Committees shall support budget for the PLACs.

In 2013, the total number of legal aid budget is 110,078,792,091 VND (5.2 million USD), of which the central budget is 16,122,173,912 VND (0.8 million USD) and the local budget is 93,952,618,179 VND (4.4 million USD). The legal aid budget is quite small (gains 0.0033% GDP) in comparison with legal aid budget of other countries.

About volunteer legal aid activities beyond the State, funds for these activities are based on contribution and support of agencies, organizations and individuals.

*(b) Has your organization experienced large-scale funding cuts? If so, what were the strategies for responding to such situation?*

When Vietnam declared to escape from list of poor countries (2010), ODA was finished. Therefore, budget from the Government (about 4 million USD per year) is not enough for sustainable development of legal aid in Vietnam.

Responding to such situation, the NLAA have been directing Provincial People's Committees to increase funds for legal aid; directing the PLACs to focus on main activities; and strengthening international cooperation to seek more supports for legal aid.

*(c) What is the percentage of funding spent on paying lawyers' fees and costs, and on administration expenses respectively?*

There is an imbalance in the structure of legal aid budget. The budget for legal aid cases is very limited. In 2012-2013, only 1.14% central budget was spent on legal aid cases, the remain budget was spent on communication, printing legal leaflets, meetings of Legal Aid Clubs, training legal aid collaborators at commune level and members of steering board of Legal Aid Clubs. 3.25% local budget was spent on legal aid cases, the remain budget was spent on salaries of legal aid officials and legal experts of the PLACs (69.9%), professional legal aid activities (32.3% ) and other works (6.7%).

*(d) Does assistance extend to covering costs such as court costs, government charges, and costs awarded against the legal aid recipient?*

Legal aid services are free of charge. Legally aided persons do not have to pay any fee, cost or money. Legal aid services delivered through forms as legal advice, participation in proceedings (court cases), representation beyond proceedings and other forms.

**5. How does your organization evaluate performance? What are the effective tools or methods of evaluation? If your organization has established branch offices, how are their performances evaluated?**

According to the Legal Aid Law, we have to evaluate legal aid performance. Evaluation is State management activity on legal aid. We have the Standards code of evaluating the quality of legal aid cases (promulgated by Circular 02/2013/TT-BTP dated 05 January 2013 of the MOJ). Most of evaluation is performed by the PLACs and annually report to the NLAA. In addition, annually, Departments of Justice and the NLAA conduct visits to the PLACs to evaluate legal aid cases. The evaluation bases on reviewing reports; visits; complaints of legally aided persons; complaints of related organizations, individuals or media; surveys. If cases are not fulfilled the quality standards, the legally aided persons have rights to request to be re-provided legal aid services or claim for damages caused by providing legal aid services (if any); the Legal aid officers shall be settled according to the Law on civil servants, legal aid law and the related laws.

**6. Please describe the methods of service delivery in your country (or organization):**

*(a) Are the bulk of the approved cases conducted by in-house/staff attorneys or by lawyers in private practice?*

Please, see Section 3 (c)

*(b) What are the conditions of registering as a legal aid lawyer?*



According to Law on Legal Aid, legal aid lawyers must have the following conditions:

- having a bachelor of law;
- having at least two years working in the legal sector;
- Fullfil lawyer training course conducted by Judicial Academy;
- Fullfil training course for potential persons for legal aid lawyer.

Collaborator lawyers are practising lawyers, registered to provide legal aid services and granted collaborator card by the Director of Departments of Justice.

Other collaborators are paralegals who have registered to provide legal aid services and granted collaborator cards by the Director of Departments of Justice.

In addition, other private lawyers have obligation to provide legal aid services according to the Law on Lawyers.

*(c) What are the rules and procedures of assigning approved cases to legal aid lawyers?*

In head office of legal aid organizations: In advice cases, legal aid providers have to immediately provide services after the legal aid applications are approved. In court cases, cases of representative beyond legal proceedings, legal aid providers have to report to the Director of legal aid organizations to assign legal aid officers or collaborator lawyers to provide legal aid services.

In case proceedings agencies request to assign defenders, the Director of legal aid organizations shall assign legal aid officers or collaborator lawyers to participate in legal proceedings.

*(d) How do the salaries and fees paid to legal aid lawyers compare with the general market rate?*

The salaries of legal aid officials are much lower in comparison with the salaries of other judicial titles (prosecutors, judges, notary pulic...). Salaries of legal aid officials are equal to 44% the salaries of procurators.

The payment for collaborator lawyers is very low in comparison with the general market rate (the payment for collaborator lawyers is equal to 20% the general market rate).

## **7. Please describe the types of legal aid services provided in your country (or organization), and the types of matters aided.**

According to Law on Legal Aid, there are the following forms of legal aid:

1. Legal advice;
2. Participation in proceedings;
3. Representation beyond proceedings;
4. Other forms of legal aid (mediation, performing works related to administrative and complaint procedures and other activities stipulated by laws).

According to the Law on Legal Aid, legal aid is provided in areas relating to legitimate rights and interests of legally aided persons excluding of business and trade.

## **8. Please describe application procedures and the criteria of granting legal aid.**

When receiving legal aid applications, legal aid providers have to examine and response to the applicants quickly.

A legal aid cases is granted if it meets the conditions as below: (1) applicant provides documents to show that he/she is a legally aided person; (2) the case is related to legitimate rights and interests of the applicant, but is not business and trade; (3) it is in accordance with the operation scope of legal aid of legal aid organizations; (4) it is not case of refusal or termination of legal aid.

If the applications do not fulfill the condition to be provided legal aid services, legal aid providers have to inform the applicants. If the applications are approved, legal aid providers have to provide legal aid services in advice cases. In court cases, cases of representative beyond legal proceedings, legal aid providers have to report the Director of legal aid organizations to assign legal aid officers or collaborator lawyers

to provide services.

## **9. In order to satisfy demand:**

*(a) Are there services or standards specifically designed to help disadvantaged groups, such as women, children, indigenous people, labor and residents living in remote areas?*

According to the Law on Legal Aid, legally aided persons are (1) the poor, (2) persons contributed meritorious services to the Revolution, (3) ethnic minorities, (4) elderly people, (5) disabled persons, (6) people living with HIV, (7) children under 16 years old, (8) ethnic minorities, (9) victims of trafficking in persons, (10) legally aided persons according to treaties to which Vietnam is a party, (11) others.

*(b) Are there special standards or rules for deciding whether (and how much) legal aid resources should be allocated to assist complex cases (eg, environmental lawsuits or other class action lawsuits)?*

Annually, the NLAA support some money to the PLACs to provide legal aid services in some complex cases (eg, cases are raised by media, under the direction of the Minister of Justice...).

## **10. How does your organization monitor the quality of legal aid lawyers' services?**

It is similar to evaluation performance in Section 5.

## **11. How does your country (or organization) inform potential applicants (particularly residents living in remote locations) of the availability of legal aid services?**

The LNAA and the PLACs use many forms to advertise legal aid to the public. At the central level, the NLAA regularly informs the public about legal aid activities through the NLAA website: [trogiupphaply.gov.vn](http://trogiupphaply.gov.vn), media and organizing some communication conferences. At the provincial level, the PLACs advertise legal aid services through the following main activities: printing leaflets introducing about legal

aid services in provinces; putting posters on legal aid in offices of Judicial Agencies and People's Committees in Provinces; broadcasting information about legal aid services on local televisions and radios; advertising legal aid services on local newspapers.

To help persons living at grass-roots level, remote areas to access legal aid, the PLACs often organize legal aid mobile clinic at communes and hamlets. In addition, the PLACs support People's Committees in Communes to establish Legal Ai Clubs and maintain their meetings monthly. When people have legal problems, they can rise in the meetings and legal aid providers can support to settle there.

**12. How does your organization help to reduce the amount of disputes which resort to the courts? Does your organization participate in law reform or offer legal education to the public? If so, please describe these activities or services.**

Legal aid service helps to reduce the amount of disputes. Legal aid helps legally aided persons protect their legitimate rights and interests, raise their legal awareness and their attitude to respect and comply with the law, contributing prevention and control of conflicts and violations of the law. Through advice cases and mediation cases (95% total number of cases), legally aided persons are analyzed the content of cases, their rights and obligations relating to cases, proposal of different ways to settle their cases... Base on advices, legally aided persons can chose the appropriate way to settle their cases instead of resorting to the courts.

The NLAA is a State management agency, so one of its functions is regulating and proposing to regulate legal aid documents. In addition, the NLAA participate in drafting and implementing other legal documents and policies relating to legal aid as the Strategy of Judicial Reform to 2020 (regulated by the Solution 49-NQ/TW dated 02 June 2005 of the Central Committee of Communist Party), the Constitution 2013, Civil Law, Criminal Law, Civil Proceedings Code, Criminal Proceedings Code, Administrative Proceedings Law...

Through providing legal aid services, the PLACs also raise legal awareness of people and conduct legal education to the public.

**13. Please describe recent initiatives which made services accessible through the use of technology. If self-help services are available, please comment on the effectiveness of these services.**

The NLAA has been building a national data base to manage and coordinate resources (both human and financial resources) for various regions and localities nationwide.

**14. Please describe the difficulties encountered by your country (or organization) in promoting legal aid work in the recent years, and the strategies for responding to these difficulties.**

In recent years, legal aid system have been facing some difficulties as (1) legal aid normative documents have appeared some drawbacks; (2) the structure of current legal aid apparatus is applied throughout the country without taking into account local specifics of different areas and regions; (3) several PLACs, other than focusing on performing legal aid cases, particularly on participation in the legal proceedings, just pay attention to communications and legal clinics or legal aid club activities; (4) budget from the Government is not enough for sustainable development of legal aid in Vietnam.

To deal with these difficulties, the NLAA is drafting a Reform Project to submit to the Prime Minister. The Project focus on: (1) accelerating the socialization of legal aid activities with appropriate and feasible mechanisms to leverage all the social resources available and engage mass-organizations forces particularly lawyers in carrying out legal aid activities; (2) maintaining the role of the State in managing, attracting and coordinating resources (both human and financial resources) for various regions and localities nationwide, in ensuring a certain proportion of the annual State budget for legal aid activities is set aside to coordinate the performance of cases particularly participation in the legal proceedings and beyond-proceedings representation; (3) doing pilot scheme (in term of legal aid model, activities and financial mechanism) to propose to draft Law amending the Law on Legal Aid (2015 - 2016).

## **15. Has your country (or organization) established any mechanisms of co-operation with legal aid organizations abroad?**

According to the Law on Legal Aid, the NLAA has the function to cooperate with legal aid organizations abroad. Since 1997, the NLAA have been cooperating with nearly 20 international organizations and countries in the world through international cooperation projects, cooperation activities or visits<sup>6</sup>. The content of cooperation focus on sharing international legal aid experiences; supporting finance and facilities to legal aid organizations and activities; providing technique assistants to strengthen the ability of legal aid providers...

## **16. How does your country (or organization) adopt United Nations legal aid principles and guidelines in policies and services?**

Although Vietnam has not announced official statement to adopt the United Nations legal aid principles and guidelines, many principles are implemented. Vietnam performs rights and obligations of the member of 08 international conventions relating to human rights, especially the CCPR, the CESCR and the CRC<sup>7</sup>.

To fulfill all principles in this document, the recent years, Vietnam has been conducting a lot of important judicial reforms. The Constitution 2013 regulates the right to be defended of arrestees, accused (Clause 4 Article 31), the right of protection of legitimate rights and interests of parties in proceedings (Clause 4 Article 103) and the principle of institute proceedings against is guaranteed in trials (Clause 5 Article 103). In addition, the Central Steering Committee of Judicial Reform of Communist Party has just summarized 8-year implementation of the Strategy of Judicial Reform to 2020. One of directions is increasing the percentage of lawyers to participate in criminal courts (from 20% to 30 - 40% at the first instance). Based on this direction, the Criminal Proceedings Code is amended and supplemented with direction to have lawyers in all criminal cases of over-15-year imprisonment...

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### Comments

6: Oxfam Novib - the Netherlands; Swiss Agency for Cooperation and Development (SDC); The Swedish International Development Agency (Sida); Save the Children, Sweden (SCS); European Union; New Zealand Agency for International Development (NZAID); Asia Foundation; Denmark Human Rights Institute (DHRI); International Organization for Migration (IOM); United Nation Development Program (UNDP); United Nation Office on Drugs and Crime (UNODC); United Nation Children Foundation (UNICEF); the Government of Denmark, Sweden, Ireland, Hungary, United State...

7: CCPR - International Covenant on Civil and Political Rights (24/8/1982); CEDAW - Convention on the Elimination of All Forms of Discrimination against Women (17/02/1982); CERD - International Convention on the Elimination of All Forms of Racial Discrimination (09/06/1982); CESCR - International Covenant on Economic, Social and Cultural Rights (24/9/1982); CRC - Convention on the Rights of the Child (28/02/1990); CRPD - Convention on the Rights of Persons with Disabilities (22/10/2007); CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (22/12/2001); CRC-OP-SC - Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (20/12/2001).

## National (Regional) Reports II

# Q & A

**Moderator: Mr. Mark Benton, Q.C.**  
CEO, Legal Services Society, British Columbia, Canada.

## Ques1

- **Ge Guangwei :**

As a representative of the National Immigration Agency under the Ministry of the Interior in charge of affairs relating to foreigners, I would like to take this opportunity to learn more about the forms and scope of legal aid rendered to foreigners in other countries. Do these foreigners need to meet certain requirements in order to obtain legal aid? Do they need to pay for the assistance?

- **Mr. Mark Benton (CEO, Legal Services Society, British Columbia, Canada):**

Can we start with Korea? The question is, if I understand it correctly, do you differentiate your services based on nationality? And if so, how do you restrict those services or what special tests for access do you provide?

- **Mr. Kang Byung Sam (Staff Attorney, Korea Legal Aid Corporation, Republic of Korea):**

There is difference like I introduced. Let me tell you with examples. In overdue wages cases, in Korea Legal Aid Corporation, every foreign worker is eligible for legal aid, if their monthly pay is under about 4,000 US dollars. And if your monthly pay is over that, you should hire your own lawyer.

And for example, for other categories of law, it differs case by case. If that is back pay case, your nationality does not matter. But in other cases, you should be Korean. If you are a victim of a crime, your nationality does not matter. But if that is just a simple money lending case, then you are not eligible for legal aid. I hope that answers your question.

- **Mr. Victor Paul Dorai Raj (Chairperson, Legal Aid Kedah, Malaysia):**

From the Muslim Malaysian perspective, generally we do not provide legal aid assistance to foreigners. But the scheme that is operated by the Bar Council for those foreigners who seek help through the Bar Councils, we do offer free legal aid services. The kind of areas that we do provide the services, are very subjective.



But ultimately it depends on a case by case basis. So long as it's a deserving case, we do provide the services.

For criminal cases, regardless of their nationality, for capital punishment cases, the government provides a court-appointed counsel. I hope that answers your question.

• **Ms. Michele McCreddie (General Manager Legal Aid Services, New Zealand):**

In New Zealand, we don't discriminate against people who are not New Zealanders. So, as long as you fulfill the eligibility criteria for legal aid, then you will get legal aid. So if you're from a different country, and you've committed a crime, or have any other requirement for legal aid, you would get it. As long as you fulfilled the other eligibility tests, the means and merits etc.

We also have a specific. We do provide legal aids for refugees and protected persons. And we have a specific set of lawyers who provide those services for refugees and protected persons.

• **Mrs. Persida V. Rueda-Acosta (Rueda-Acosta, Chief Public Attorney, Public Attorney's Office, Department of Justice, the Philippines):**

In the Philippines, yes, we serve the indigent aliens. But despite they are not indigents, their Embassy may refer them to us. On first come first serve basis, they can make a formal or informal request to us. And later at four o'clock I'll be discussing about cross-border cooperation, and make some details about our current assistance to foreigners.

• **Mr. Mark Benton (CEO, Legal Services Society, British Columbia, Canada):**

Like New Zealand, in Canada, there is no restriction.

• **Ms. Sayamol Kaiyoorawongs (Deputy Secretary General, Office of the Law Reform Commission of Thailand):**

Yes, in Thailand as well. No state agencies to help the foreigner, but the

nonprofit organizations help the foreigner, and the lawyer council of Thailand helps the foreigner.

- **Mr. Wilhelm H. Joseph, Jr. (Executive Director, Legal Aid Bureau, Inc., Baltimore, Maryland):**

In the US, generally if you are charged with a crime, you would be entitled to a lawyer, if you cannot afford one. In the civil area, in which we work, if you receive any money from the federal government, which we do, you are prohibited from representing any non-citizen or non-permanent resident, except in a few instances. For example, if you are a victim of domestic violence, or victim of human trafficking, you will be entitled to services from my organization. Because we receive only 14 percent of funding from the federal government, but that 14 percent puts the restriction on every other dollar we get from every other source.

- **Ms. Nguyen Thi Pha (Officer, The National Legal Aid Agency, Ministry of Justice, Vietnam):**

In Vietnam, we provide legal aid for 10 groups including legally aided persons according to treaties to which Vietnam is a party, but in fact this group is limited in Vietnam.

## Ques2

- **Mr. Jerry Cheng (Presiding lawyer of Justice Law Firm):**

I want to ask the delegate from Australia. I read the report of Australia. In your report, it is said that you help not only citizens but also foreigners in criminal cases, but how about in civil cases? Are the services for the citizens and for the foreigners the same or different?

- **Mr. Mark Benton (CEO, Legal Services Society, British Columbia, Canada):**

Are you asking about Australia?

- **Mr. Jerry Cheng (Presiding lawyer of Justice Law Firm):**

Sorry, New Zealand.

- **Mr. Mark Benton (CEO, Legal Services Society, British Columbia, Canada):**

Many of us think of them like Australians.

- **Ms. Michele McCreadie (General Manager Legal Aid Services, New Zealand):**

Oh you will be in so much trouble for that.

- **Ms. Michele McCreadie (General Manager Legal Aid Services, New Zealand):**

It would depend on whether or not you met the tests in a civil case. So in a civil case it would be that would be means-test and there would be merits, and then there would be prospects to success test. So civil legal aid is quite a small part of our work. So you wouldn't be, you would not get legal aid because you're not a New Zealander. But the other tests are much more stringent.

### Ques3

- **Mr. Mark Benton (CEO, Legal Services Society, British Columbia, Canada):**

If there are no more questions, I'd like to just canvass the panel, and ask for two more questions. We've got 6 minutes left. The two questions are: what are you doing that's the most promising thing for your organization or program? So what's looking the most promising right now? And the other question is: what's the biggest challenge? What's the hardest thing you're working on? Panelists, get that question. So what you gonna turn up that's going to be great? And what's the hardest thing you've got to deal with right now?

- **Ms. Michele McCreadie (General Manager Legal Aid Services, New Zealand):**

I'll go first. Okay so what's the biggest things that we working on at the moment? As I said we're trying to do something for our administration of legal

aid. So moving into a world where you could apply online, and complete your application and provide the information in an online environment and also putting requirements into our legal aid system. That means in the very simple cases, you would get a very quick answer because if you fulfill certain criteria, you would be deemed to be eligible very quickly, and we could reply within minutes. So that requires rules into our system to enable that to happen, but we have got legislation things in place to do that, we just need the money to watch and make that happen. So that would be our biggest thing that we're working towards at the moment. And what was the other question about?

• **Mr. Mark Benton (CEO, Legal Services Society, British Columbia, Canada):**

Biggest challenge.

• **Ms. Michele McCreddie (General Manager Legal Aid Services, New Zealand):**

So our biggest challenge over the... there have been two really. One has been reducing the overall legal aid expenditure. But the other one has been our relationships to private profession. We've had private legal profession with that we met some major challenges, following a very critical review in New Zealand. And they took us to court on a very large and expensive case, and tried to stop the introduction of our fixed fees. And remember Mark and gentleman from the Netherlands talked about fixed fees, we introduce them two years ago. They took us through every court they could and trying to stop us introducing those fixed fees. We actually did win in the end. But it does mean that we have quite a challenge in terms of rebuilding our relationship with the private profession.

• **Mr. Mark Benton (CEO, Legal Services Society, British Columbia, Canada):**

Anybody else on the panel? Care to jump in on that, Victor?

• **Mr. Victor Paul Dorai Raj (Chairperson, Legal Aid Kedah, Malaysia):**

Facing challenges, and what was the other one?

• **Mr. Mark Benton (CEO, Legal Services Society, British Columbia, Canada):**

The most promising program or initiative.

• **Mr. Victor Paul Dorai Raj (Chairperson, Legal Aid Kedah, Malaysia):**

Challenges, again I think it is a universal problem on budget. We do not have enough money to provide as much service that we want to. And we also pushing the Malaysian government to provide for criminal cases across the board, regardless of you know whether you are local or foreigner. I think that should be forthcoming quite soon.

What we are proud of, what we're happy about, is the fact that initially most of the funds come from the fellow lawyers, they contributed a certain sum. So now the government has stepped in with the National Legal Aid Foundation, so that goes a long way in assisting criminal cases.

Nevertheless, the amount of funds is not that great. And we do not have the sufficient number of volunteers to carry out the work.

• **Ms. Sayamol Kaiyoorawongs (Deputy Secretary General, Office of the Law Reform Commission of Thailand):**

In Thailand, we have a problem. The budget is funded by the government. But actually the government now likes to buy aid from a civil society and they don't want to support the budget to the nonprofit organization. But actually non-profit organization is quite active to do the legal aid for the disadvantaged group and vulnerable group. Particularly the immigrant workers, yes, and also just the women and child violence. But this is the reason why we want to draft, to push up the Legal Aid Act like a new mechanism that raises fund from the government to support all the legal aid provider organizations in the whole country, particularly for the civil society and non-profit organizations and independent active lawyer to help them.

• **Mrs. Persida V. Rueda-Acosta (Chief Public Attorney, Public Attorney's Office, Department of Justice, the Philippines):**

The big challenge is that the creation of additional item suppliers and staff.

We shall be equal to the number of our organized salary of courts. Because up to now we are just half the number of the courts, and half the number of our prosecutors. And there should be a full compliance by the state of the retirement packages for our retirees, which is equivalent to the packages being given to our public prosecutors, because we have been advocating equal voice between the prosecutors and the defense. And that's a big challenge.

- **Mr. Wilhelm H. Joseph, Jr. (Executive Director, Legal Aid Bureau, Inc., Baltimore, Maryland):**

I mention a couple of challenges but I left off many. I believe the biggest accomplishment about which we are proud, is that since the economic downturn around the world, every or I should say most legal aid organizations in United States have shrunk, have closed offices and laid off staff. In Maryland, we have not had to do that, we have actually expanded the program.

The biggest challenge, I believe, is trying to achieve progress in addressing issues that are within the Convention on Economic, Social, and Cultural Rights. This is a big challenge. The issues affect poor people such as the access and rights to housing, healthcare, education, a job that pays a decent wage and those basic human needs. Those are the biggest challenges.

- **Mr. Mark Benton (CEO, Legal Services Society, British Columbia, Canada):**

We're out of time. So my apologies to Korea, Vietnam. They haven't got a chance to respond to that last point. I would be grateful though if all of you would recognize their efforts, for having packed in 6 minutes, basically what they do in their lifetime of work. And in the last minute and a half, talked about what are the biggest challenges and the biggest problems. So, to the panel please.

## Panel Discussion I

# Cross-border co-operation:

**Applying the standards outlined in United Nations legal aid principles and guidelines through cross-border co-operation between legal aid organizations**

**Moderator:** Mr. Wilhelm H. Joseph Jr.

Executive Director, Legal Aid Bureau, Inc., Baltimore, Maryland, U.S.A.

**Speakers:**

1. Mr. Jerry Cheng, Committee Member, International Affairs Committee, Legal Aid Foundation, R.O.C. (Taiwan)
2. Mrs. Persida V. Rueda-Acosta, Chief Public Attorney, Public Attorney's Office, Department of Justice, the Philippines
3. Mr. Anthony John Reilly, CEO, Legal Aid Queensland, Australia

## **Panel Discussion (1-1)**

### **International Collaboration - Working Together towards Achieving UN's Legal Aid Principles and Guidelines**

Speaker: Jerry Cheng, attorney at law

The people have the right to fair trial and the right to legal aid. International and regional human rights conventions have recognized free legal aid as the basic element to fair trial. Article 14-3-(d) of the International Covenant on Civil and Political Rights states that: "everyone shall be entitled... in the determination of any criminal charge against him... to defend himself in person; or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."

Article 18-3-(d) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families is fundamentally identical to the International Covenant on Civil and Political Rights. The Convention on the Rights of the Child states that every child deprived of his or her liberty and those who have been accused, indicted or convicted of crime "shall have the right to prompt access to legal and other appropriate assistance" (Article 37-(d) and Article 40-(2)-(b), items (ii) and (iii)), but does not mention about free legal aid.

Nevertheless, the Committee on Children's Rights has emphasized in its general opinion #10 that legal aid should be provided without payment.

Some regional literatures have established that the European and American legal systems do in fact recognize the people's right to free legal aid.

Article 6-3-(c) of the European Convention on Human Rights states that everyone charged with a criminal offense has the "minimum right" to defend himself in person or through legal assistance of his own choosing, or to be given it free when the interests of justice so require if he has not sufficient means to pay for legal assistance.

Article 8-2-(e) of the American Convention on Human Rights states that the



people has the "inalienable right" to be assisted by counsel provided by the state, but unlike the European Convention, the American Convention neither mentions the interests of justice nor the defendant's financial capabilities.

Many UN documents including "Standard Minimum Rules for the Treatment of Prisoners," "Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment," "Basic Principles on the Role of Lawyers," "Rules for the Protection of Juveniles Deprived of Their Liberty" ("the Havana Rules") and "Standard Minimum Rules for the Administration of Juvenile Justice" ("the Beijing Rules") all mention about the people's right to free legal aid.

In December 2012, the UN General Assembly passed its Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, which "aim to provide guidance to States on the fundamental principles on which a legal aid system in criminal justice should be based and to outline the specific elements required for an effective and sustainable national legal aid system."

Although these principles and guidelines focused solely on legal aid in criminal justice, the UN Special Rapporteur still considered them as the most comprehensive legal documents to date for developing and enhancing a state's legal aid system.

Human rights conventions available today have yet to give any definitions on legal aid. The only world-recognized definition is found in "Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems". Under the "Principles and Guidelines," the term "legal aid" includes legal counsel, assistance and representation to people who have been held in custody, arrested or detained for criminal charges, and suspects, defendants, the prosecuted, victims and witnesses in a criminal proceeding.

The Principles and Guidelines also mention that legal aid should be given without payment to those who have not the means to pay, and where the interests of justice so require. In addition, "legal aid" also embodies services such as legal education, legal information, dispute resolution and retrospective justice.

The UN Special Rapporteur held the opinion that the purpose of legal aid is to assist those who are otherwise unable to seek legal assistance, hire legal

representation or undergo legal proceedings on their own. The availability of legal aid should help them eliminate damages, obstacles and disadvantages encountered in the search for justice. Legal aid should be provided without payment not only during criminal proceedings, as stated in Article 14-3-(d) of International Covenant on Civil and Political Rights, but also when rights and obligations are being determined during any judicial or extrajudicial procedures.

The UN Special Rapporteur believes that access to legal aid can be considered a human right on its own as well as a means of protecting other human rights such as rights to freedom, security, equality in court and tribunal, a fair trial and legal representation. Access to legal aid can have profound benefits, given the scope of impact, which is why the people's right to legal aid should be acknowledged, protected and enhanced whether in criminal or non-criminal cases. (Please refer to: United Nations Human Rights Council 23rd Session.

Agenda Item 3 - Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul)

Furthermore, to secure the people's rights to legal aid described above, the state shall be responsible for providing an adequate budget not only in criminal cases, but also in civil and administrative litigations.

The UN's special report also concurred with the idea: "Regardless of the form of the legal aid system, it is important that the state provides a budget equivalent to the level of service required, so as to guarantee timely and effective legal aid to every citizen within the respective region who would otherwise be unable to afford litigations.

These budgets should be spent on providing legal aid for criminal, civil and administrative cases. Some countries have separated legal aid for criminal cases from those of civil cases, while other countries have combined them together. Although there is no sign to suggest which system is superior, but in any case, the division of budget should never be made at the expense of legal aid for civil and administrative cases. The cases chosen for this publication are "impact litigations" that should suffice

in establishing good precedents as far as civil legal aid are concerned."

The notion of legal aid conveyed in UN's international conventions have been implemented differently from state to state.

However, the progress would definitely be more significant if there were international collaborations. Below is an introduction to the various cross-border efforts that the Legal Aid Foundation has made over the last ten years in an attempt to deliver the level of legal aid required by the conventions mentioned above.

We hope to inspire greater level of collaboration across countries in this regard.

## **I. Cross-border collaboration on legal aid cases**

### **1. Hong Kong, 2005**

During the 2005 WTO conference held in Hong Kong, a student from National Taiwan University traveled to Hong Kong to protest against globalization of the economy and was arrested for it.

The Legal Aid Foundation then contacted Hong Kong Legal Aid Department and arranged to have Hong Kong Legal Aid Department coordinate legal aid for the arrested student.

### **2. Coordinated legal aid for leprosy patients between Taiwan, Japan and Korea**

In the 1900's, at a time when Taiwan was still under Japanese rule, people held strong discriminations against leprosy patients because they lacked proper knowledge towards the disease.

The government then forcibly gathered leprosy patients into a designated camp that would later be known as the "Lo-Sheng Sanatorium."

The Legal Aid Foundation joined public interest lawyers from Japan and Korea to help occupants of Lo-Sheng Sanatorium file a class suit for their interests.

This movement had led to the enactment of "Act of Human Rights Protection and Compensation for Hansen's Disease Patients" by the congress, giving leprosy patients the compensation and care they deserved from the government.

## **II. Assistance to legislation of legal aid systems**

1. In 2007, Legal Aid Foundation organized a visit to LSC in the UK that later progressed into more productive interactions, including the introduction of "legal representation at first interrogation" into Taiwan.
2. The Legal Aid Foundation worked with Japanese legal advisors to learn the debt rehabilitation system currently implemented in Japan. This effort would later give birth to the "Consumer Debt Rehabilitation Regulation" that helped credit card debtors start anew.

## **III. Collaborations with legislators around the world**

1. Taiwan hosted its first International Forum on Legal Aid in 2005, during which representatives from 19 countries had participated.
2. Taiwanese, South African and Thai representatives participated in Indonesia's legal aid conference, which later enabled Indonesia to develop legislative framework for its legal aid system in 2011.
3. Taiwanese representatives participate in Malaysia's legal aid conferences to collaborate on the exchange of knowledge.

## **IV. Prevailing challenges that still need to be improved through cross-border collaborations**

1. The case of sexual assault against foreign worker in Tainan is currently assisted by Legal Aid Foundation; however, it still requires the collaboration between two nations to fundamentally improve the labor agency system.

2. Although most of the legal aid offered in countries around the world do extend to foreigners; however, closer cross-border collaboration is still required to protect the interests of help seekers.

## **V. Collaborations currently feasible among legal aid institutions across the world**

1. Case-by-case collaboration.

Such as the example between Legal Aid Foundation and Hong Kong Legal Aid Department.

2. Regular convention of international legal aid forums.

For the purpose of promoting consensus and collaboration between countries.

3. **Contractual arrangements across legal aid institutions on ways to collaborate in individual cases.**

**Countries may develop long-term and systematic relations through the use of cross-border agreements.**

These agreements may embody the following terms:

- (1) Offering free and immediate legal aid upon being notified by one contract party.
- (2) Offering immediate on-site legal counsel to citizens being held in custody when notified by one contract party, and the authority to accept legal aid request where necessary.
- (3) In a scenario where a citizen has received legal aid and has subsequently left the country, the aiding party shall continue to provide assistance on all subsequent proceedings.

- (4) The requirement to entitle foreigners the same quality of legal aid as do local citizens.
- (5) Provision of interpretation services where necessary to facilitate legal aid mentioned above.
- (6) Creation of a list of lawyers who are available to provide legal aid, which may be used as a reference to those seeking assistance.
- (7) Provision of other social resources (e.g. emergency assistance) to foreigners in need, apart from legal services.

**4. States may assist each other on the legislation of legal aid system, and collaborate towards satisfying the requirements of UN conventions.**

Lastly, I would like to thank all representatives for your presence in this international forum, especially those from Korea and the Philippines, who had agreed to work with the Legal Aid Foundation at the very first instance.

Together, we shall facilitate closer interaction and offer more comprehensive legal aid for locals and foreigners, and achieving greater protection of human rights for one another.

## Panel Discussion (1-2)

### **The Public Attorney's Office: Responding to the Call of Cross-Border Cooperation with Pro Bono Legal Services As Its Tool**

Speaker: Ms. PERSIDA V. RUEDA-ACOSTA

Chief Public Attorney, Public Attorney's Office  
Philippines.

The vital importance of the rendition of free legal assistance as a human right goes beyond national boundaries and geographical borders. The Public Attorney's Office (PAO) has recognized this truism and has acted accordingly even during its infancy as to its establishment as the Philippine government's principal legal aid office. The PAO, formerly known as the Citizens Legal Assistance Office (CLAO)<sup>1</sup>, was created in 1972. Two (2) years after its inception, the Public Attorney's Office started dispensing free legal assistance to indigent aliens. They are included in the roster of "Persons/Entities Qualified for Legal Assistance Pursuant to Memoranda of Agreement, Department of Justice directives and special laws," as stated in Section 5, Article II of the PAO Operations Manual. Such assistance stemmed from an Indorsement, dated March 25, 1974, to PAO by the then Undersecretary of Justice. This single referral, but with singular significance, started the dawning of the PAO's contribution to the formal administration of pro bono legal services to non-nationals in the Philippines.

Certainly, "legal aid is an essential element of fair, humane and efficient justice system that is based on the rule of law. Legal aid is a foundation for the enjoyment of other rights, including right to a fair trial."<sup>2</sup>

"The term legal aid includes legal advice, legal assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process

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#### Comments

1: The Citizens Legal Assistance Office traces its roots to three offices: the Agricultural Tenancy Commission, the Tenancy Mediation Commission, and the Office of the Agrarian Counsel. The Agricultural Tenancy Commission was later renamed as the Tenancy Mediation Commission. With the passage on August 8, 1963 of Republic Act No. 3844, otherwise known as the "Agricultural Land Reform Code," the Tenancy Mediation Commission was further strengthened and renamed as the Office of the Agrarian Counsel. In 1972, this paved the way for the creation of the Citizen's Legal Assistance Office or CLAO, under P.D. No. 1 and Implementation Order No. 4. With the advent of the Administrative Code of 1987 (E.O. 292) on July 25, 1987, the Citizen's Legal Assistance Office was renamed the Public Attorney's Office or PAO.

2: Page 4, Paragraph 1, Introduction to United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, (Annex, E/CN.15/2012/L.14/REV.1, V.12-52823).

that is provided at no cost for those without sufficient means or when the interest of justice so require. Furthermore, “legal aid” is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.”<sup>3</sup>

Clearly as stated in the 1987 Philippine Constitution that, “No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.”<sup>4</sup>

Thus, whenever a person is in need of legal aid and assistance, whether as a Filipino national or a non-national, it is considered that the Philippines, as a State, has the obligation to provide any person of the needed, adequate and competent legal aid and assistance.

“States should ensure the provision of legal aid to all persons regardless of age, race, color, gender, language, religion or belief, political or other opinion, national or social origin or property, citizenship or domicile, birth, education or social status or other status.”<sup>5</sup>

As aptly pointed out, considered, and recognized through the pertinent United Nations Instrument,<sup>6</sup> following the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, cross-border cooperation or mutual cooperation for legal aid assistance among nations had already earned synergies and responses all over the world, beginning the ratification and execution of extradition treaties for criminal cases.

## **The Need for Mutual Assistance Schemes**

“With advances in technology, and the ease of global travel, the world we live has become, in many ways, as Marshall McLuhan predicted “a global village.” This has had a dramatic impact on many aspects of life and society and law enforcement

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### Comments

3: Page 5, Paragraph 8, , Introduction to United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, (Annex, E/CN.15/2012/L.14/REV.1, V.12-52823).2: Page 4, Paragraph 1, Introduction to United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, (Annex, E/CN.15/2012/L.14/REV.1, V.12-52823).

4: Article III, Section 1, 1987 Philippine Constitution.

5: Page 7, Principle 6. Non-discrimination, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, (Annex, E/CN.15/2012/L.14/REV.1, V.12-52823).

6: United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems



is no exception.”<sup>7</sup> Kimberly Frost wrote in 1998, the then Senior Counsel, Director of International Assistance group, Department of Justice, Canada.

She cited, among others, in the same document she wrote the 1989 case of *United States of America v. Cotroni*,<sup>8</sup> where the Supreme Court of Canada made the following Statement:

“The investigation, prosecution and suppression of crime for the protection of the citizen and the maintenance of peace and public order is an important goal of all organized societies. The pursuit of that goal cannot realistically be confined within national boundaries. That has long been the case, but is increasingly evident today.”<sup>9</sup>

Hence, instruments, especially in cross-border criminal prosecution have always been helpful in combating skilled criminals “using national borders to protect themselves and the evidence and profits of their crime from the detection of law enforcement.”<sup>10</sup>

## **The Foremost Challenge in Cross-Border Cooperation**

Accordingly, based on the same study by Ms. Kimberly Frost, “the challenge for law enforcement authorities in every nation is sovereignty, a fundamental principle which grounds the relations of states, is also a major tool in the armoury of the criminal element in our societies. Criminals depend heavily upon the barriers of sovereignty to shield themselves and evidence of their crimes from detection. Organizations which orchestrate transnational crime and which disperse and conceal the proceeds of their illicit activities the world over, have no regard for national borders.”<sup>11</sup>

Today, it is a given that “mutual assistance in criminal matters is a process by which states seek and provide assistance in gathering evidence for use in criminal cases. It is likewise a means of cooperation which had significantly advanced for the

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### Comments

7: Frost, Kimberly, *Breaking Down the Barriers: Inter-National Cooperation in Combating Transnational Crime*, accessed through: [www.oas.org/juridico/mla/en/can/en\\_can\\_frost.en.html](http://www.oas.org/juridico/mla/en/can/en_can_frost.en.html).

8: 488 C.C.C. (3d) 193 at 215 (1989).

9: *Ibid.*

10: *Ibid.*

11: *Ibid.*

12: *Ibid.*

last decades.”<sup>12</sup>

With the increasing cross-border cooperation, the confinement of mutual cooperation for criminal cases must now necessarily complement the need for other proceedings involving parties within or outside the National borders.

“The governing philosophy for mutual assistance must be to provide the widest scope of assistance possible and to provide that assistance in a usable form for a requesting state.”<sup>13</sup>

Success of the mutual cooperation is however limited. Legal parameters by the requested state must always be taken into consideration. Anything prohibited by the requested state remains prohibited.

“For mutual assistance to succeed, the operative principle must be that requests will be executed in accordance with the law of the requested state and to the extent not prohibited by that law, will be provided in the matter sought by the requesting state.”<sup>14</sup>

The European Integration, for one, heightened the need for guaranteed cooperation on the basis of practicality.<sup>15</sup>

Homogeneity<sup>16</sup> of legal basis may be one of the long term effects of mutual cooperation upon ratification of certain legal instruments that will bind State Parties or the participating states.

This is, aside from the fact that machinery and strategy for pursuit of persons under the jurisdiction of a legal process may likewise be eased.

## **Concerns in Cross-Border Cooperation: Philippine Setting**

Provision of Free Legal Aid in the Philippines is generally done by the Public

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Comments

13: Ibid.

14: Ibid.

15: Gabbe, Jens, Legal Status of Cross-Border Co-operation Structures – past, present and prospects, accessed through: [admin.interact-eu.net/downloads/40/AEBR\\_FactSheet\\_Legal\\_Status\\_Of\\_Cross-Border\\_Cooperation\\_Structures\\_Past\\_Present\\_and\\_Prospects.pdf](http://admin.interact-eu.net/downloads/40/AEBR_FactSheet_Legal_Status_Of_Cross-Border_Cooperation_Structures_Past_Present_and_Prospects.pdf).

16: Ibid.

Attorney's Office (PAO),<sup>17</sup> the Department of Justice (DOJ), the Integrated Bar of the Philippines (IBP), and/or such other Legal Aid Offices/Organizations sanctioned by the proper government authorities.

In the advent of Republic Act No. 9999 or the "Free Legal Assistance Act of 2010," individual lawyers in the country are mandated to render free legal services for a minimum of sixty (60) hours per year to indigent litigants in conjunction with the provisions of BAR Matter No. 2012, and at the same time, encouraged the latter to render free services to the extent of having up to ten percent (10%) allowable deduction to the gross income derived from the actual performance in the legal profession.<sup>18</sup>

The free legal aid and assistance offered by the above-mentioned institutions and professionals are available to all persons needing legal advice, assistance or representation, whether a Filipino national or non-national.

While it may be a requirement that for persons to avail of free legal aid services in this law is that they should be an indigent according to the parameters of the relevant Philippine Law defining what is an indigent or a pauper litigant, instances when immediate need for legal services based on emergent and exigent situations becomes the exception.

Bureau of Immigrations Commissioner, Hon. Siegfred B. Mison, however confirmed that one of the difficulties encountered in attempts to provide legal aid services to non-nationals is the fact that there is a tendency for some non-nationals to outrightly refuse assistance due to language barriers and trust issues.<sup>19</sup>

For the "stateless persons" or more commonly referred to as refugees, aside from the evident language barriers, verification about the person through their country representative or embassy are likewise rendered difficult for the lack of identity documentation or bilateral arrangements between the countries.

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Comments

17: Note for the the enabling law for the Public Attorney' s Office, as amended by Republic Act No. 9406 or the New PAO Law.

18: Section 5, R.A. No. 9999.

19: This was cited during an interview/conversation with Bureau of Immigrations Commissioner, Hon. Siegfred B. Mison, dated 22 August 2014. He said, this was the case on the recent apprehension of Chinese Poachers in the Philippine Jurisdiction.

Should the situation of a non-national differ however, such that when s/he is not a considered resident and his/her legal problem is not emergent and exigent, and s/he is in need of legal aid, how then can the s/he prove his or her indigency? To be sure, this is also another challenge, which must be directly addressed.

Considering that sovereignty, which is inherent in every State, is an important concern in any mutual cooperation, reconciliation of laws on Evidence and Legal Remedy (Remedial Law and Procedure) must at least find some uniformity and integration among state parties or participating states.

## **PAO's Participation in Cross-Border Cooperation**

In spite of the abovementioned difficulties that are being encountered in cross-border cooperation, the PAO has been forging on with its efforts toward this endeavour. The discussion below provides illustrative cases relative to this undertaking, viz:

1. Angelica's case (2002) – Angelica (not her real name) was a 13-year-old deportee from Sabah, Malaysia, who was raped in a detention camp there. Her harrowing experience angered many Filipinos. The Department of Foreign Affairs of the Philippines even filed a diplomatic protest, and former President and current member of the House of Representatives, Honorable Gloria Macapagal-Arroyo conveyed the outrage of the Filipino people to then Malaysian Prime Minister Mahathir Mohamad.

Angelica's father was a Malaysian, and her mother was of Filipino origin. Therefore, from the point of view of the Philippines, Angelica was a Filipina, and from Malaysia's, a Malaysian.

This author, who was only a year in her position as Chief Public Attorney, was joined by two (2) Malaysian lawyers, when she personally informed former President Arroyo of the veracity of the minor's statement regarding the said rape case. (Prior to this, the Chief Public Attorney and the Malaysian lawyers interviewed Angelica and found her answers congruent with the medico-legal findings.)

2. Gwen Aguilar's case (2006) - Gwen was a Filipino domestic helper, who was convicted of Homicide in Singapore, for killing Jane La Puebla, also a Filipino domestic helper.

This author rendered free legal aid to Gwen, by coordinating with the Department of Foreign Affairs and the latter's Singaporean lawyer in working for the reduction of the crime that was initially charged against her, which was Murder. This was downgraded to Homicide due to her mental state. A psychiatrist in Singapore testified that Gwen suffered from "masked depression".

Gwen has already been released from incarceration.

3. Cases of Chinese nationals (2014) - Chinese and Vietnamese nationals are among the foreigners who have been assisted by the PAO.

Its district office in Puerto Princesa City, Palawan, assisted twelve (12) Chinese nationals for the violation of Republic Act No. 10067 or the Tubbataha Reefs National Park (TRNP) Act of 2009, specifically Sec. 26f (Poaching by Foreigners), from May 14, 2014 to August 14, 2014. On May 14, 2014, PAO-Puerto Princesa City became the lawyer of the said Chinese nationals, when their private counsel withdrew his appearance from their case. On August 5, 2014, they were convicted of the crime charged. On August 14, 2014, the said district office filed a Notice of Appeal after conferring with the accused through an official from the Chinese Embassy and their bondsman. For purposes of Appeal, the accused engaged the services of a private counsel.

4. Cases of Vietnamese nationals (2014) - In its communication, dated September 3, 2014, to the PAO-Central Office, the PAO-Palawan District Office reported that during the arraignment for its eleven (11) Vietnamese clients, it would propose to the prosecution and the court that the accused be allowed to enter a plea-bargaining agreement to a lesser penalty. As of this writing, no comment has been received yet regarding the proposal. The accused were charged for the violation of Republic Act No.

9147 or the Wildlife Resources Conservation Act, specifically its Sec. 27 (f), for “collecting, hunting or possessing wildlife, their by-products and derivatives.”

5. Cases of Filipino accused, deportees, and evacuees in connection with the armed conflict between the alleged Royal Sultanate of Sulu Forces and Malaysian Forces in Lahad Datu, Sabah (2013 up to the present) - 27 Filipino nationals were accused of multiple offenses before the High Court in Sabah and Sarawak in connection with the armed conflict between the alleged Royal Sultanate of Sulu Forces and Malaysian Forces in Lahad Datu, Sabah. 38 accused were charged with Inciting to War, Illegal Possession of Firearms and Violation of the Commission on Elections Gun Ban before a regional trial court in Bongao, Tawi-Tawi, Philippines, in connection with the said armed conflict.

The Filipinos who were charged in Sabah and Sarawak have Malaysian lawyers in their defense team. Sometime in August 2013, the Regional Public Attorney of PAO-Zamboanga Peninsula (joined by the District Public Attorney of PAO-Jolo District Office) conferred with them regarding the defense strategy for the accused. Meanwhile, the cases of 37 accused (originally 38. One died while in detention at Bongao Provincial Jail) are on-going trial in a regional trial court in General Santos City. (Prior to this, the motions to post cash bail bond in a reduced amount filed by them was granted by the court. Hence, they were all released from incarceration pending trial, except for the one already mentioned, who died while in detention before he could post bail.)

The public attorneys of PAO-General Santos City, who have been assigned to handle their cases reported last September 5, 2014 the manifestation they made in open court:

“...We manifested in open court that the accused have requested their counsels to file a petition for change of venue to the Supreme Court nearer to the Court of Origin, Bongao, Tawi-Tawi, considering the distance they have to travel from Tawi-Tawi to General Santos City, which would take days, taking into consideration also that these accused do not have the financial means to cover their travel, food and lodging expenses....”

The said public attorneys then asked to be allowed to file the abovementioned petition. There being no objection from the state prosecutor, the court reset the hearing on February 2, 2015.

In connection with the incident in Lahad Datu, Sabah, there had been deportees, evacuees, and detainees from Sabah, which also needed legal assistance. This author in her capacity as the nationwide head of the PAO, together with her team, personally rendered appropriate pro bono legal aid services to them, while they were temporarily accommodated in a naval station in Tawi-Tawi.

In the rendition of free legal assistance in the above-enumerated cases, the PAO had to deal with sensitive diplomatic and security issues astutely (and still has to handle the same concerns in on-going cases and similar cases with the same caution and incisiveness). This author has taken upon herself to remind the handling lawyers of the PAO, the vital importance of the amity which the Philippines has painstakingly built through the years in the Asian region and beyond; hence, the same must be considered even as the Office observes the rule of law.

Aside from the free court representation which the PAO continuously renders to qualified foreign nationals, the latter also benefitted from the former's non-judicial services and other legal services without cost. This was in consonance with the Memorandum of Agreement which the Public Attorney's Office and the Bureau of Immigration had signed on February 4, 2009. The said services were available to the combined clientele of these two (2) offices from 2009 to 2013. (The same services could still be availed of from the PAO's main office as well as from its regional and district offices nationwide.)

As per the aforementioned agreement, the public attorneys formerly assigned at the Bureau of Immigration, rendered legal assistance and legal advice to the clients therein, both Filipinos and foreign nationals, in the processing of different visa applications.

They, likewise, provided them with free notarization of their immigration documents which, during the abovementioned public attorneys' detail, had greatly eradicated "fly-by-night" notaries who charged onerous amounts for such service. The foreign nationals trusted the free notarization service of the PAO, because their

respective documents were done in their presence and within the vicinity of the bureau.

Equally important was the detailed public attorneys' rendition of legal representation (during administrative hearings in the bureau) to hundreds of foreign nationals who were confronted with deportation charges. Most of these charges sprung from overstaying in the Philippines beyond the period to which they were allowed, being undocumented aliens, becoming public charge within five (5) years after their entry, violation of any limitation or condition under which they were admitted as non-immigrants, and the like. Several of them were exonerated from the administrative charges filed against them, while those who opted for voluntary deportation were assisted by the PAO in coordinating with their respective embassies/consular offices, as well as with Filipino local authorities, in the processing of their immediate expatriation.

In addition to the said foreign nationals, the PAO renders free legal assistance, counselling and representation to refugees, stateless persons and those seeking recognition as refugees and/or stateless persons in the Philippine context, provided that such persons qualify as indigents. This is pursuant to the Memorandum of Understanding between the Public Attorney's Office and the Office of the United Nations High Commissioner for Refugees in the Philippines (UNHCR).

## **Establishment and Mechanisms for Mutual Assistance Schemes**

Integration of nearby countries in the Asian continent is nearing and inevitable. Given the challenges as above-stated, there is a need for Legal Aid Organizations to establish Mutual Assistance Schemes for appropriate training on each country's or state's prevailing laws. It may likewise be an avenue for exchange of knowledge with respect to the most common cases, which maybe faced by each organization at any given time, to cater to the legal needs of both the nationals and non-nationals.

Multi-lingual trainings may likewise address problems of language barriers.

As in any other systems, good practice in execution of mutual cooperation agreements is the key for success.



In order to facilitate justice, mutual assistance schemes must have a determined or defined procedure and must be in the form of time-bound cooperation.

Time-bound cooperation simply means that there must be deadline suggestions or that the partnership should have a tested time limit for responses. There must likewise be prompt information to the requested state if the requested information is no longer needed.

Provisions on trial by supervised teleconferencing or such other media is likewise encouraged. The use of modern technologies may facilitate in the prompt disposition of every case.

In the establishment of mutual assistance schemes, the parties may have difficulties in addressing specificities on varying governing laws of each state, which may affect the totality of mutual assistance such as when a prohibitory law of one country affects the use of evidence being obtained by the requesting state or vice versa. Thus, disclosure of laws or alignment of the same among participating countries must be made in order to complement the need of each other and in order to render the mutual assistance schemes effective.

International mutual assistance schemes should include processes that encompass not just criminal prosecution of cases but such other civil and administrative cases, which are greatly numbered today. Mechanisms for these may be strived to be uniform in most ways, if the same cannot be made perfect.

Delegation of tasks and centralization of documentations should likewise be determined.

International mutual assistance schemes should likewise provide approaches in cases of refusal of state parties to disclose or allow certain requests, including but not limited to, listing of matters only tolerated for refusal and the elements or requirements needed to be satisfied to allow the same.

## **Panel Discussion (1-3)**

### **Applying the standards proposed in United Nations legal aid principles and guidelines through cross-border cooperation between legal aid organizations.**

Speaker: Anthony Reilly

Chief Executive Officer  
Legal Aid Queensland  
Australia

1. What difficulties have legal aid organizations experienced in providing legal aid services to non-nationals? What are examples of workable or effective solutions?
2. Should legal aid organizations establish international mutual assistance schemes? If so, what are the possible obstacles in implementing such schemes? What might be effective solutions?
3. What should be included in international mutual assistance schemes?

## **Introduction**

Although Australia is a signatory to the International Covenant on Civil and Political Rights, there is no right to legal aid in Australia's domestic laws, other than the limited right established in the High Court decision of Dietrich and some State legislation. Despite this Australia observes most of the United Nations legal aid principles on access to justice in criminal justice systems.

Importantly, for the purpose of this panel discussion, Australia's legal aid commissions do not distinguish between nationals and non-nationals in providing legal aid for criminal law matters. As legal aid is available for non-nationals in Australia for these matters, it is not currently a priority for legal aid commissions to enter into formal arrangements such as international mutual assistance schemes.

## **Legal aid in Australia**

Australia is a federation that has a national government, which is our Commonwealth government, and also 8 States and 2 Territories, which are like

provinces. There is no national legal aid commission. Instead each State and Territory has a legal aid commission. For example, I am the chief executive officer of Legal Aid Queensland, which has responsibility for delivering economical legal services to financially disadvantaged people in Queensland, which is Australia's third largest state by population. I should also note that the contents of my paper do not represent the views of any of the other legal aid commissions in Australia, nor of the Australian government or State and Territory governments.

Legal aid commissions are funded by the Commonwealth and State governments and are the largest providers of legal services to financially disadvantaged people in Australia.

Legal aid commissions use a mixed service delivery model, which means that we deliver services through employed lawyers and also through private lawyers. While the use of private lawyers varies between jurisdictions, across Australia about 70% of legally aided legal representation work is undertaken by private lawyers.

Applications for legal aid for representation in court are filtered through a means test, guidelines, and a merit test. The means test results in only the poorest Australians accessing legal aid.

The other providers of free legal assistance in Australia are primarily community legal centres and Aboriginal and Torres Strait Islander Legal Services. There are 200 community legal centres in Australia located in metropolitan and regional areas across Australia, who provide advice and information and community legal education – but only limited case work services. There are also 8 Aboriginal and Torres Strait Islander Legal Services, who are funded by the Commonwealth government to provide legal assistance to Aborigines and Torres Strait Islanders. Indigenous Australians are also able to seek legal assistance from legal aid commissions if they wish.

## **The right to legal aid in Australia**

Australia is a signatory to many international instruments, including the International Covenant on Civil and Political Rights, which states in article 14 the right of everyone charged with a criminal offence to be legally assisted when defending him or herself. However the provisions of ratified treaties like the ICCPR do not form part

of Australia's domestic law unless incorporated into our law by legislation.

Unlike many countries, Australia also does not have a bill of rights. However our national constitution does protect some rights such as the right to vote and a limited protection of freedom of religion.

Sometimes human rights in Australia are contained in legislation as enacted by our national parliament or one of our state or territory parliaments. For example, our national parliament and most state parliaments have enacted legislation prohibiting discrimination on the basis of sex or race.

At other times, our rights are to be found in our common law, particularly in the decisions of our High Court of Australia. For example the High Court has confirmed that the right of an accused to receive a fair trial according to law is a fundamental element of our criminal justice system.

There is no national legislation creating a right to legal aid in Australia. Nor do the states and territories, in the main, create such a right.

An exception is s.25 of the Victorian Charter of Human Rights and Responsibilities Act 2006, an Act of the state of Victoria, which provides that a person charged with a criminal offence is entitled without discrimination to defend himself or herself personally or through legal assistance chosen by him or her or, if eligible, through legal aid provided by Victoria Legal Aid under the Legal Aid Act 1978; and also to have legal aid provided if the interests of justice require it, without any costs payable by him or her if he or she meets the eligibility criteria set out in the Legal Aid Act 1978. As you can see the right to legal aid in section 25 is a qualified one as the person must "be eligible" and the "interests of justice" must "require it."

While there is little in the way of legislation creating a right to legal aid, there is a 1992 High Court decision in the matter of *Dietrich v The Queen*, in which it was held that only exceptionally will a trial for a serious criminal offence be fair where the accused has been forced to go unrepresented because she was without the financial means to fund legal representation.

The *Dietrich* decision has had the practical effect of requiring legal aid commissions

in Australia to provide legal aid for all persons who satisfy the means test for the defense of serious criminal offences – regardless of the merits of their application.

## **The provision of legal aid in the Australian criminal justice system**

Legal aid commissions received \$618M in income in 2013-14, of which \$213.7 million was provided by the Commonwealth government, \$291 million was provided by the State and Territory governments, \$85.6 million was provided by State governments from interest on solicitors trust accounts, and the remainder was from other sources (such as self-generated income through client contributions).

The manner in which legal aid commission utilise this funding is determined by the legal aid commissions within the priorities set by Commonwealth and State government service delivery agreements.

A lot of the funding provided by State governments is directed to funding legal assistance for criminal matters. This is because in Australia the criminal justice systems – being essentially the police, courts, prisons and community corrections services – are the responsibility of the States. However some Commonwealth funding is also used for this purpose as there are specific offences created by Commonwealth legislation.

Assistance is provided in a number of ways including legal advice, duty lawyer services and legal representation in some court matters.

Legal assistance is not generally available for a lawyer to attend police interviews with persons being investigated in relation to a criminal offence. However, a person who is accused of an offence can ring legal aid for advice prior to participating in the police interview, as often occurs in Queensland.

Duty lawyer services are available to provide advice and represent clients in the lower courts where less serious matters are heard. Duty lawyers also have access to persons who are detained in cells in police stations prior to appearing in court.

The lower courts experience very high volumes of work and clients may only have a small amount of time to talk to a duty lawyer prior to their matter being heard. The duty

lawyer may enter a plea of guilty on behalf of the defendant, or seek an adjournment to enable an application for a grant of aid for legal representation for a complex plea or a trial to be made. Duty lawyers, in Queensland at least, do not conduct summary trials.

While grants of aid for legal representation in the lower court are available, access to them is a lot more restricted in the lower courts than in the higher courts, where more serious offences are heard. This is basically because the abovementioned principle in *Dietrich* is not considered to apply to matters being heard in the lower courts. For example, it is common amongst Australia's legal aid commission that a grant of aid is only available for a summary trial in the lower courts when the defendant not only satisfies the means test, but also is at risk of imprisonment and has a reasonable defence.

As already mentioned, in the higher courts, due to the *Dietrich* principle, poorer Australians have a right to a grant of aid for legal representation. Representation is available for pleas of guilty and trial, and, subject to a merit test, for appeals.

## **Legal aid for non-nationals in Australia**

Importantly for the subject of this paper, legal aid commissions in Australia do not differentiate between nationals and non-nationals in providing advice or duty lawyer services or assessing applications for grants of aid for assistance in criminal matters. In essence, a non-national who is charged with a criminal offence in Australia has the same right to legal aid as an Australian national.

An illustrative recent example is the provision in recent years of legal aid by various legal aid commissions to a large number of Indonesian fishermen who were charged by the Commonwealth government with people smuggling of asylum seekers. The facts of the cases involved the fisherman transporting asylum seekers in small, wooden fishing boats from Indonesia down to Australia's northernmost seas. Here they were picked up by Australian authorities, before being transported to Australian prisons and charged with offences such as people smuggling. The fishermen were very poor, of varying ages and varying levels of culpability for the crimes with which they were charged. Few spoke English, and in fact in many cases they spoke local dialects for which there were few interpreters in Australia. Legal aid commissions across Australia provided legal aid to the defendants in these matters not only for trial,

but also for appeals to the High Court of Australia.

Some of those charged identified as being younger than 18 years of age. Legal Aid Queensland funded three private law firms to represent three such alleged people smugglers who were being detained in an adult prison in Queensland.

The three firms worked cooperatively to obtain documentary evidence from Indonesia to support the age claims of the detained youths. A report was also obtained to challenge the wrist x-ray technology that was relied upon by the Commonwealth to determine they were 18 years or older. On the basis of submissions provided by the firms, the charges were withdrawn.

Another common example in Queensland is of young tourists, whom we call backpackers, who come from all over the world but sometimes get into trouble with the law. They will be provided with the same access to Legal Aid Queensland's advice, duty lawyer, and grant of aid services as any Australian citizen or resident.

As far as I am aware, legal aid commissions have not experienced any problems providing legal aid services to non-nationals. Even in the above case of the Indonesian fishermen charged with people smuggling, where the number of defendants who required legal aid put some strain on the funding of the legal aid system, their fundamental right to legal aid for legal representation was not questioned.

In this context, the question of whether Australian jurisdictions should establish mutual assistance schemes is an interesting one. As Australia's legal aid commissions already provide legal aid in criminal justice system matters for non-nationals who are charged with offences in Australia, it has not been considered a priority, as far as I am aware, to seek to enter into any formal agreements with other countries in relation to such matters. This is certainly the case in Queensland. In fact, there is possibly a risk that seeking to enter into such schemes in Australia might simply draw community and official attention to the issue and raise questions about the current practice.

I hope the above information has been helpful in providing you with some insights in to Australia's legal aid for criminal justice matters, both for nationals and non-nationals.



## 2014 International Forum on Legal Aid





## Panel Discussion II

# Appropriate resource allocation:

**Allocating legal aid resources to provide services which reflect international human rights standards and principles**

**Moderator:** Mr. Kuo-Cheng Chen

Director, Department of Administrative Litigation and Discipline,  
Judicial Yuan, R.O.C. (Taiwan)

**Speakers:**

1. Ms. Ta-Hua Yeh, Board Member, Legal Aid Foundation, R.O.C. (Taiwan)
2. Mr. Wilhelm H. Joseph, Jr., Executive Director, Legal Aid Bureau, Inc., Baltimore, Maryland, U.S.A.
3. Ms. Michele McCreadie, General Manager, Legal Aid Services, Ministry of Justice, New Zealand

## Panel Discussion (2-1)

### **How to Achieve the Appropriate Allocation of Legal Aid Resources in Accordance with Human Rights Protection Requirements in International Conventions and UN Principles and Guidelines**

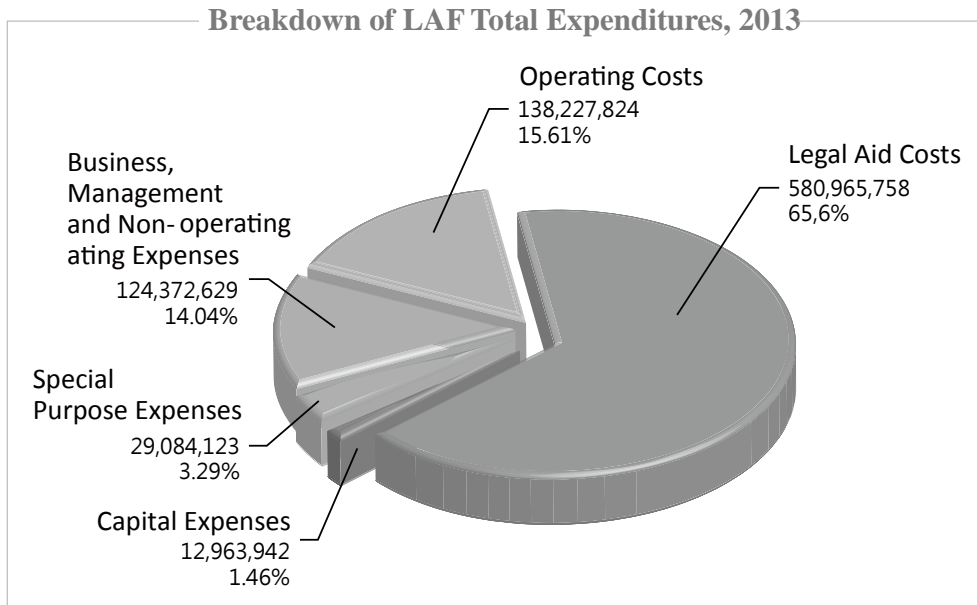
Speaker: Ta-Hua Yeh

Legal Aid Foundation, Taiwan

The Legal Aid Foundation (LAF) was established with an endowment from Taiwan's Judicial Yuan in accordance with the Legal Aids Act passed in January 2004. It is a government-established, privately-run non-profit corporation. As required by Article 6 of the Legal Aids Act, the LAF is funded out of the annual budget of its competent authority, the Judicial Yuan. In accordance with relevant budget laws, the chairperson and secretary-general of the LAF must attend annual interpellations in parliament (i.e. the Legislative Yuan). The average annual budget for the LAF ranges from US\$20 million to US\$25 million, meaning that the annual legal aid budget per capita is only around US\$1. This is quite low compared to many other countries where the annual budget per capital exceeds US\$10.

The budget is allotted based on the estimated number of aid cases for the year. The LAF proposes the budget, with reference to the number of cases in past years among other factors, and the budget is made as part of the yearly work plan. However, the budget must first be negotiated with the Judicial Yuan through the communication platform, approved by the Foundation board, and then pass Legislative Yuan review. Funding and personnel allocations must also be discussed with the branch offices. Currently, most of LAF's expenditures are legal aid costs, including attorney remuneration and litigation expenses; this accounts for 60 to 70 percent of total expenditures. The remaining expenditures include personnel costs, operating costs, administrative expenses, etc.

To reduce personnel costs, though the Foundation has staff attorneys, most cases are undertaken by attorneys from outside firms. They are paid by the Foundation on a per-case basis. In addition, members of the Foundation's Legal Affairs Committee, Examining Committee, Reconsideration Committee, etc., all occupy part-time positions and are not full-time staff. Over 70% of the full-time positions are on the legal service staff, so most of the personnel and funding are used directly on legal aid.



The budget allocation is based on the estimated number of aid cases for the year. A review of budget execution over the last three years shows that the need for legal aid keeps growing. However, under current budget restrictions, attorney remuneration is often reduced. Currently, the remuneration for legal aid attorneys in general cases are approximately one-third that of regular attorneys, while legal aid attorneys in credit card debt cases is one-tenth that of regular attorneys (see Table 1 below). The low pay makes it difficult to develop a stable system of aid lawyers for disadvantaged groups, such as those with heavy credit card debt. This has also indirectly impeded the LAF from providing comprehensive aid. The Foundation is currently discussing ways to increase attorney remuneration with the private Alliance to Defend Legal Aid. In addition to reducing expenditures, perhaps we must also think about how to triage cases through more convenient, efficient, and low-cost legal consultation (such as telephone, video chat, or internet consultation) at the front end, so that the aid goes to cases that genuinely need representation by attorneys.

**Table 1: LAF Total Stated Attorney Remuneration Amount, 2011-2013**

Unit: NT\$1,000

Case Category	Attorney Remuneration, 2013			Attorney Remuneration, 2012			Attorney Remuneration, 2011		
	Amount	Proportion of Total	% Total Funding	Amount	Proportion of Total	% Total Funding	Amount	Proportion of Total	% Total Funding
General Cases	501,090	92.4%	62.1%	451,155	92.5%	57.1%	413,226	93.1%	52.3%
Expanded Consultation	13,517	2.5%	1.7%	13,834	2.8%	1.8%	15,311	3.4%	1.9%
Debt Cleanup Cases	16,050	3.0%	2.0%	16,511	3.4%	2.1%	10,041	2.3%	1.3%
Debt Cleanup Consultation	1,914	0.4%	0.2%	2,715	0.6%	0.3%	3,018	0.7%	0.4%
1st Interrogation Cases	9,878	1.8%	1.2%	3,341	0.7%	0.4%	2,280	0.5%	0.3%
Total	542,449	100.0%		487,556	100.0%		443,876	100.0%	

From the organizational operations perspective, a reasonable allocation of personnel and operational funding is part of a reasonable allocation of legal aid resources. A look at LAF's current allocation of funding among its business operations (see Table 2) reveals that research and development funding, which is crucial for assessing performance, studying emerging needs, and innovating new services, accounts for less than 0.1% of total funding expenditures. With so little funding, how is effective assessment of reasonable caseloads and service performance possible? In addition, the recipient of legal aid are disadvantaged groups; special cases in particular require more direct and customized information transmission. This requires large amounts of public education and media promotion. However, less than 0.5% of funding is devoted to this kind of work, making it difficult for the disadvantaged to participate in legal aid.

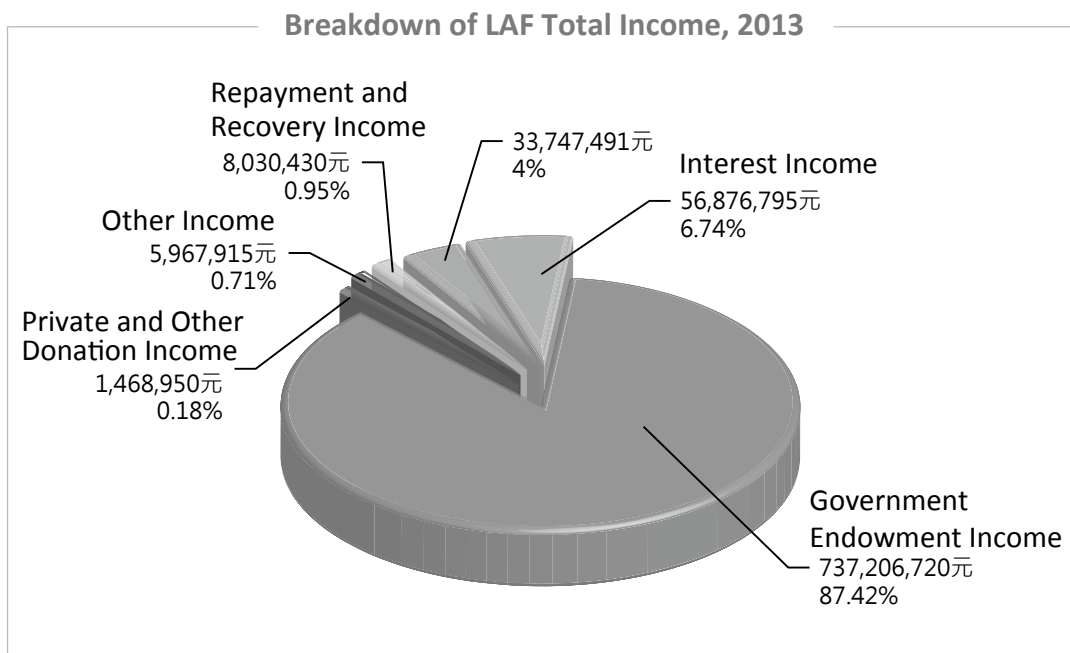
**Table 2: LAF Total Stated R&D and Education and Promotion Expenditure Amounts, 2011-2013**

Statement Year	R&D Funding (1)	% Total Funding	Education and Promo-tion Funding (2)	% Total Fund-ing
100	586,919	0.07%	2,787,229	0.35%
101	195,932	0.02%	2,927,688	0.37%
102	410,153	0.05%	2,227,441	0.26%

(1) There have been no research projects contracted to outside institutions in the past three years, so the R&D funding is comprised of overseas visits and domestic conferences.

(2) Education and promotion refers to publicity and legal education events targeted at the general public.

LAF's total income in 2013 was NT\$843,298,301 (approximately US\$29.52 million). A detailed breakdown of income sources is as below, revealing that the main sources of LAF funding are the Judicial Yuan's annual contributions and the interest from the Foundation's NT\$10 billion endowment. Compared to LAF's total 2013 expenditures of NT\$885,614,276, we can see that though most of the spending was funded, the funding still fell short by approximately NT\$40 million. LAF's budget has varied over the years, but so far it has not seen any major cuts.



## I. The Categories and Scope of LAF Aid Cases

- I. LAF is characterized by the wide and diverse range of legal aid that it provides. Aid is not provided as a rule for certain categories of cases (chiefly cases regarding business activities, or cases that involve amounts too low to justify the cost of aid), but exceptions may be made with the approval of the branch office director; aid is provided for all other cases, including civil, criminal, family, and administrative cases. The services that LAF provides for cases include legal consultation, representation in court proceedings, legal document drafting, and representation in mediation proceedings and settlement negotiations. Aid is provided for both ROC citizens and foreigners, making LAF inclusive and diverse. The total number of applications for legal aid in 2013 reached 136,065 and in particular, the applications for legal counseling services were 80,670 cases. The types of application and cases are shown below in Table 1.
  
- II. LAF is characterized by the wide and diverse range of legal aid that it provides. Aid is not provided as a rule for certain categories of cases (chiefly cases regar
  - i. *“General cases” refer to the cases which the applicants apply for private lawyers’ “representation and defense,” “mediation or settlement” or “legal document drafting,” including civil, criminal, family, and administrative cases. The number of general cases granted with legal aid is 28,584.*
  
  - ii. *“Special projects” are divided into “Law Enforcement Project,” “Consumer Debt Clearance Project,” “Expansion of Legal Counseling Project,” and “Law Enforcement Project Involving Indigenous,” etc. The number of project-based cases that received legal aid is 70,120. In particular, 1,852 cases were law enforcement cases, 4,495 cases were consumer debts clearance cases (including 2,727 cases for legal counseling in consumer debt clearance), 59,752 cases for expansion of legal counseling, and 4,021 cases for law enforcement project involving indigenous.*
  
  - iii. *According to Article 2 of “Staff-Lawyer Assignment Guidelines,” the quantity assigned by LAF to staff-lawyers should be within 20% of the*

*total number of legal aid cases.*

III. Analysis of 2013 cases of legal aid by type: “Representation and defense” is the majority of general legal aid cases and accounts for 87.78% of the total cases of legal aids. The types of legal aid cases are shown in details in the following Table 2-4.

Table 1: Total Legal Aid Application Statistics							
Total (excluding commissioned cases) (a=b+c+d+e+f)	LAF Cases					Commissioned Cases	
	General Cases (b)	Project-Based Cases				Labor Litigation Legal Aid Project	Indigenous People Legal Aid Project
		Law Enforcement Cases (c)	Consumer Debt Clearance (including legal counseling) (d)	Expansion of Legal Counseling Cases (e)	Law Enforcement Cases for Indigenous (f)		
136,065	43,277	2,339	5,754	80,670	4,025	2,110	606

Table 2: Statistics of Total Legal Aid Cases					
Total No. of Legal Aid Cases (a=b+c+d+e+f)	No. of General Cases (b)	Project-Based Cases			
		No. of Law Enforcement Cases (c)	No. of Consumer Debt Clearance Cases (including insolvency legal counseling) (d)	No. of Expansion of Legal Counseling Cases (e)	No. of Law Enforcement Cases for Indigenous (f)
98,704	28,584	1,852	4,495	59,752	4,021

Table 3: (General Cases) Statistics of Types of Legal Aid Granted				
Type	Representation and Defense	Legal Document Drafting	Mediation or Settlement	Research Legal Consulting
No. of Cases	25,092	3,325	167	0
Ratio	87.78%	11.63%	0.58%	0.00%

Note: Research Legal Consulting cases refer to the legal aid services involving private lawyers' counseling and drafting legal counseling opinions after being approved by review, which differs from the cases giving oral consultation on site.

Table 4: (General Cases) Statistics of Applications and Types of Cases Granted Legal Aid				
Types	Applications		Cases Granted Legal Aid	
	No. of Cases	Ratio	No. of Cases	Ratio
Criminal	24,110	55.71%	16,408	57.40%
Civil	10,587	24.46%	6,378	22.31%
Family	7,941	18.35%	5,572	19.49%
Administrative	537	1.24%	226	0.79%
Blank	102	0.24%	-	0.00%
Total	43,277	100.00%	28,584	100.00%

For the first three years after LAF was established in 2004, civil cases were the most common targets of aid, accounting for 60% of total aid cases. In 2011, the number of criminal cases surpassed that of civil and family cases combined, and have accounted for over 50% of total aid cases for the past three years. **80% of the criminal cases where aid was approved were compulsory defense cases**, in which financial criteria were waived. At the inception of the First Interrogation Program, which provided attorneys free of charge to accompany interrogation, the number of cases remained low because the program required the aid recipient to sign a statement of financial need. It was not until Article 31 of the Code of Criminal Procedure was amended in 2012 that the number of cases grew rapidly. The Indigene



Interrogation Program, a subsidiary program, offered aid regardless of case category; after the program was implemented, it was discovered that it may demand too much resources. From the above, we can see that LAF has, despite limited resources, continued to develop new special programs in response to emerging social needs, human rights issues, and amendments to laws and regulations. For this it should be commended. However, without a systematic evaluation of these special programs to assess actual demand and reasonable aid amounts, the quality and results of aid will be affected. Resources may be misallocated or under-provided without an assessment of resource allocation priorities.

## II. LAF's Special Projects

Although LAF provides legal aid for applicants in various cases, except for excluded categories of cases specified in principles, the Foundation aims at the issues that have involved disadvantaged minorities, and based on current affairs, has established specific projects to provide special legal aid for them.

### 1. Legal Aid for Consumer Debt Clearance

In 2005, since the overall economic situation of Taiwan experienced a huge change, coupled with the results of many years of massive issue and promotions of credit cards by the banks, many credit card holders was facing financial crisis, creating a huge group of cardholders suffering insolvency. Furthermore, because the banks used a variety of means to demand repayment of the debt, many cardholders found themselves stuck in the mire; some went so far as to commit suicide, bringing about the entire society's solicitude for the situations.

However, at the time, there was no reasonable mechanism for liquidation of personal claims in Taiwan. To address this problem, LAF joined with several private organizations to promote the Consumer Debt Clearance Act (referred to below as CDCA). The Act has legislated on June 8, 2007 and went into effect on April 11, 2008. To facilitate the implementation of the Act, each LAF's Chapter conducted 24 legal advocacy seminars by the end of 2007. LAF revised the regulations about legal aid scope of implementation, revoked the stipulation that LAF should not offer legal aid for bankruptcy cases, and

started to provide legal aid for personal debt clearance cases.

When the CDCA was first put into force, LAF was flooded with 24,000 applications by the end of 2008. However, the court's attitude was overly conservative, and therefore, very few cases were successful in courts, which affected debtors' willingness to apply. As a result, there were only 9,750 applications in 2009. In 2013, the number of applications lowered to 5,754, and from January to August 2014, it reduced to 3,799 cases, decreasing annually.

Since the court's attitude was conservative, private organizations proposed revising the Act. As a result, the success rate of rehabilitation approval has improved gradually to 60%, the rate of discharge of debts has increased to 40%, and the percentage of settlement of obligation lowered from 50% to 10% or 20%. Still, the number of debtors who are willing to apply for redemption of debt in court has not yet significantly increased, indicating that the issue still faces many challenges.

## 2. Lawyer's Company for First Criminal Interrogation

In regard to the criminal defendants' or suspects' right to counsel, the history of the development of Taiwan's criminal lawsuit system went from having a lawyer to be present only in the stage of trial, extended to have a defender in the public procurator's investigation, and then to include a defender in the police detective work. On September 17, 2007, LAF launched the Lawyer's Company for First Criminal Interrogation project to guarantee right of action and right of equality. The objectives of the project are to improve the efficiency and accuracy of investigation and trial, at the same time, to offset the gap of professional legal knowledge between ordinary citizens and criminal investigation organ, help people exercise their right of defense, and protect the involved party's rights. The project provides lawyer's accompanying services in the process of criminal interrogation, 24 hours a day, all the year round.

Although this project does not carry out applicant's means test, it is limited to the arrested or detained persons who are involved in committing a crime carrying a minimum 3-year limited imprisonment and are asked to

be investigated for the first time for the case, except for indigenous and the mentally disabled. By the end of 2013, LAF has provided legal aid for 3,753 cases.

Since the project is limited to provide legal aid for the defendants of felony cases, the law does not require a lawyer to be present during police interrogation or procurator investigation, and the police are unaccustomed to the presence of lawyers, while they are handling a case, the project has only limited success and is in need of improvement.

### 3. Legal Aid for Indigenous Peoples

By the end of September 2014, the number of indigenous population in Taiwan was 538,439, having 16 tribes<sup>1</sup>. They accounted for 2.30% of the total population (23,410,280) in Taiwan.

Taiwan is a society of multi-culture. Under the value of multi-culture, one should respect the world view that has been constructed in the process of each civilization's self-surviving, and should allow each ethnic group, following its common determination approach, to parallel institute each ethnic group's life and pursue sustainable development, and to achieve the goal of multiculturalism through the model of cultural diversity and social organization management presented by the multi-culture.

However, indigenous customs and culture had not been respected through the ages, creating numerous conflicts. For example, indigenous tradition, due to its uniqueness, has clashed with the state's laws and systems. Or, the state's policies have encroached on the indigenous. Therefore, they need professional legal aid. Unfortunately, regular lawyers are unfamiliar with such types of cases, and hence LAF actively intervene in providing legal aid.

Since April 2013, LAF has, in cooperation with the Council of Indigenous Peoples organized the project of "Legal Aid for Indigenous Peoples." Any indigenous, in addition to the cases apparently considered to have no way

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Comments

1: The Republic of China in Taiwan currently recognizes 16 indigenous ethnic groups: Amis, Atayal, Paiwan, Bunun, Puyuma, Rukai, Tsou, Saisiyat, Yami, Ita Thaw, Kavalan, Taroko, Sakizaya, Seediq, Hla'Alua, and Kanakanavu.

to relieve and regardless of financial ability, can apply to LAF for legal aid for legal problems, legal consultation, legal document drafting, or legal representation in litigations and defense. By the end of 2013, there were 606 applications, of which 280 applications accorded with the project requirements and granted legal aid. By August 2014, there were 1,144 applications, of which 981 applications met the requirements of the project.

#### 4. Immediate Support Program for Labor Litigation

Starting from March 2, 2009, LAF was commissioned by the Ministry of Labor to operate the “Immediate Support Program for Labor Litigation.” The program provided legal aid for workers involved in labor dispute cases. Its qualifications for application were less strict than those of regular LAF applications. The goal was to help offset the disadvantage of laborers in relevant actions due to their disadvantaged economic status. From the start of the program until September 2014, 12,901 laborers met the legal aid criteria, and according to the analysis of litigation results, around 76% of cases resulted in favor of the laborers.

#### 5. Support Program for Human Trafficking Victims

Along with increasing awareness of human trafficking issues in the international community, Taiwan, as a state of exporting, importing, transferring the victims of human trafficking, has established measures of preventing human trafficking crimes too. On October 2007, LAF established a Human Trafficking Victims Support Program and actively conducted a series of actions to protect the victims. LAF has helped in drafting and promoting the private version of the Human Trafficking Prevention Act, in addition to offering legal aid to the victims of human trafficking in individual cases. The Act was finally proclaimed by the President on January 23, 2009, and put into operation by the Executive Yuan on June 1, 2009.

LAF’s Human Trafficking Victims Support Program, according to Article 15 of the Act of original version, was initially limited to legal inhabitants of Taiwan. Since 2008, the legal aid program has expanded to include the victims of human trafficking identified by prosecutors or police organs. Additionally,

according to Article 3 of the Regulations and Scope for Implementing Legal Aid, LAF, in principle, does not provide legal aid in representation of complaint in criminal trials. However, legal aids are desperately needed, in view of the disadvantaged situation of human trafficking victims due to suffering psychological trauma, coupling with the complexity of the large number of defendants, locality of crimes in multiple countries, difficulty in collecting evidences, etc. Therefore, in September 2013, a resolution was reached at the 7th meeting of the 4th LAF Board of Directors to revise the aforementioned Regulations to provide legal aid, in principle, for the victims of human trafficking undergoing trials.

Until July 2014, LAF provided legal aid to 1,936 victims of human trafficking. From January to July 2014, LAF received 221 applications, of which 212 were granted full legal aid, 4 rejected, and 5 received legal advice, reaching legal aid rate of 98.19%.

#### 6. Expand legal consultation and use new technology to offer legal aid

As many agencies and organizations provide legal consultation in Taiwan, LAF did not initially offer standalone legal consultation services. Later, we studied the operations of legal aid organizations in other countries and discovered that more effective allocation of resources was possible if problems could be resolved in consultation without requiring litigation. We therefore gradually began offering legal consultation services, with an expansion of the service in March 2009. The number of cases grew every year, reaching 59,752 general legal consultation cases in 2013. This shows that the demand for legal consultation exists in society.

In addition, the Pingtung Branch began offering video consultation in 2006 in order to provide more widely available, convenient, and low-cost legal consultation services. Other branches also began offering such services. LAF has also been proactive in discussing collaboration with external agencies and groups to add more service locations. Using the convenience of new technology to provide legal consultation and aid can be considered an expansion of a new category of service. LAF will continue to evaluate and observe how this kind of service develops and what real benefits it brings.

### III. Adjustment of Resource Allocation

#### 1. Criminal Compulsory Defense Cases

The Article 31 of the Code of Criminal Procedure, prior to 1997, required only that if a defendant was not defended by a lawyer in a trial, the presiding judge should appoint a public defender for defendants with a minimum 3-year fundamental punishment or cases of the first instance under the Jurisdiction of High Courts. The same applies to other trials, whenever necessary.

In 1997, the Code was revised to count certain cases to be compulsory counsel cases, if the cases involve mentally disabled defendants who are unable to state opinions completely and do not have a defender in the trial. In 2003, it expanded to include low-income defendants who do not have a defender but request one. In 2006, it extended further to include mentally disabled defendants who are unable to state opinions completely and do not have a defender during investigation. In January 2013, it extended to include the cases in compulsory counsel category, if the cases, in prosecution or trial, involve defendants of both middle-income and low-income persons who apply for appointing a defender; and the cases involve defendants who have indigenous identification. In addition, it specially specified that if indigenous defendants who in the process of investigation do not have a defender, the public procurator, judicial police official, or judicial police should inform legal aid organizations to appoint a lawyer to be present for their defense.

From the history of legal revisions, it shows that compulsory counsel cases have expanded from the trial to investigation; however, in the investigation stage, it is still limited to include only defendants of indigenous and the mentally disabled.

In order to meet the requirements of aforementioned compulsory defense, Article 14 of the Legal Aids Act stipulates that defendant's means test is not required for compulsory defense cases. Therefore, nearly 80% of the cases

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#### Comments

2: Guideline 4 of Regulations for Members of LAF Review Committee: "The following should be taken into account when dealing with compulsory counsel cases:... death penalty cases must not be rejected because of merits."

3: Article 5 of the LAF Regulations for Calculation of Legal Aid Service Fees states: "In criminal defense cases, the Secretary-General may approve a maximum of 3 lawyers to participate in cases that may be sentenced to death penalty and are material, complex, and unable to be sufficiently handled by one

were granted legal aid, which is much more than regular cases' 69%. In 2013, 28,584 cases were approved for legal aid, of which 8,193 were compulsory defense cases, accounting for 28.66%.

Since the police sometimes tried to obtain involuntary confessions during the interrogation process, LAF, in order to provide necessary defense rights at early stage of a criminal case, established Lawyer's Company for First Criminal Interrogation Program to provide lawyer's company service at the first questioning for the arrested or detained suspects involved in charges of felony with a minimum 3-year punishment. However, to protect human rights in criminal justice processes, it is essential to extend the scope of the Program to cover any cases potentially involved in fixed-term imprisonment, considering that the defendants or the suspects in the process of investigation, because the scope of investigation is still undefined, if it is a case of felony is still uncertain, and the questioning process has a great impact on the rights of the defendants or the suspects, regardless of the type of cases to be compulsory counsel cases, in addition to the disadvantaged status when they are facing a governmental machine.

## 2. Defense in Death Penalty Cases

LAF has also established a special program for death penalty cases<sup>2</sup>. LAF revised relevant regulations to allow a capital punishment case appointing up to three lawyers<sup>3</sup>, in addition to no turning down allowed when reviewing the cases. In many cases, LAF's full-time staff attorney and lawyers outside of LAF have organized as a team to handle capital cases.

As for the special remedy procedure of extraordinary appeal or retrial of capital cases, LAF also provides that in principle, the legal aid should be offered. LAF has specially held several training sessions for lawyers of death penalty cases, and worked together with NGOs to compile a manual for death penalty defense.

## 3. Major High-Profile Public Welfare Lawsuits

LAF actively provides legal aid for a variety of major high-profile public

welfare cases, including major labor disputes (such as Laborers from Closed Factories), state compensation for major natural disaster (such as Typhoon Morakot), and major collective environmental pollutions (such as the RCA and Tainan Zhongshihua cases), etc., to provide timely legal aid for in public welfare litigations of major environmental and human rights protections.

When participating in these cases, LAF faced many problems. In the Laborers from Closed Factories case, only part of the laborers were able to pass means test, which LAF could provide legal aid, but, for the others who were not qualified, they had to hire their own lawyers. To avoid having divided lawsuit strategies, LAF and private pro bono lawyers organized a team to formulate objectives and strategies together. In addition, to meet the lawyer team's need, LAF searched for a variety of experts to invite them participating in discussions, organized seminars to deepen relevant discourses, and submitted the results to the lawyer team. In other words, it was an attempt by LAF to work with pro bono lawyers, the communities, and scholars to handle a major social dispute.

#### **IV. LAF's Institutional Responses to International Covenants**

1. In accordance with Article 6 and 14 of International Covenant on Civil and Political Rights and the principle of right to legal aid specified in the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, LAF, in 2013, revised its remedial approaches to provide legal aid for the offenders of capital punishment in retrials and extraordinary appeal procedures, changing from "in principle, do not offering legal aid" to "should provide them legal aid," in order to guarantee the right of life for the offenders of capital punishment,
2. In accordance with Article 8 of International Covenant on Civil and Political Rights, "No one shall be held in slavery; slavery and slave-trade in all their forms shall be prohibited." Therefore, in October 2007, LAF organized a project for handling issues related to human trafficking to provide special legal aid for victims of human trafficking.
3. In accordance with Article 9 of International Covenant on Civil and Political



Rights, “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.” On September 17, 2007, LAF launched a program “Lawyer’s Company for the First Criminal Interrogation” to help people in exercising their right to defense, in order to offset the gap of professional legal knowledge between investigative organ and ordinary people.

4. In accordance with Article 27 of International Covenant on Civil and Political Rights, concerning aboriginal policy, LAF also organized an Indigenous Program to provide the indigenous comprehensive legal aid, especially in the cases involving traditional customs and cultural preservation.
5. In accordance with Article 21 of International Covenant on Civil and Political Rights, concerning the right of peaceful assembly, LAF’s Board of Directors, on March 28, 2014, authorized the Secretary-General the power to adjust flexibly the scope of legal aid in criminal investigation and defense cases involving high-profile activities of public welfare. The Secretary-General reviews relevant cases, and then decides, case by case, if legal aid is needed, whenever necessary, he/she may follow the project of “Lawyer’s Company for First Criminal Interrogation” to provide legal aid.
6. In accordance with Article 9.4 of International Covenant on Civil and Political Rights, requiring prompt arraignment to determine the lawfulness of detention, LAF’s Board of Directors, on June 27, 2014, reached a resolution to organize a project “Lawyer Accompanied Arraignment.” Anyone arrested or detained by an organ other than a court, after the court issued a writ of certiorari, may call a hotline to request a lawyer for accompanying him/her to state opinions before the court, in order to ensure immediate remedy for people being stripped of their rights without a court order.

## V. Future Outlook:

As the economy has developed, the gap between rich and poor has also widened. The richest families in Taiwan now have incomes over 100 times that of the poorest. New needs for legal services are emerging among disadvantaged groups. Over the past decade since its founding, LAF has fulfilled the role of

an aid organization that focuses on representing disadvantaged groups. In the past decade, it has allocated resources in accordance with the requirements of relevant laws and regulations (such as Consumer Debt Clearance Act, the Code of Criminal Procedure, and the Family Affairs Act). However, without any standard for estimating reasonable aid case numbers, caseloads tend to be dictated by external funding sources. At the same time, the Foundation is working to fulfill the expectations of civil society and respond to major societal events. With limited resources, attention must be paid to the remuneration of aid workers, working conditions, and aid quality. The question is: Given LAF's resource allocation and current practice of evaluating and controlling service quality through service KPIs, how could it discover and respond to social needs, or even drive changes in the justice system? In addition, while the current LAF funding allocation complies with the laws, it is not conducive to discovering new service needs and driving innovation and change. It is legal but not reasonable. Regarding how to find a balance between the two in order to appropriately allocate resources to respond to the need of disadvantaged groups for legal aid, I have the following suggestions:

- I. Create research positions or a research department either under the Board or the foundation headquarters, whose job will be to conduct systematic analyses the social relevance and performance results of past aid cases. The research will form the basis for short, medium, and long-term annual vision projects, which will be regularly reviewed and publicly announced and communicated. In so doing, LAF can discover emerging social needs and drive the amendment of relevant laws and regulations to appropriately allocate legal aid resources.
- II. Understand the public's legal aid needs through public legal service need surveys, and use the results to help decide how to allocate legal aid resources.
- III. Take stock of and review the current allocation of legal aid funding. In particular, many special programs rely on education and promotion (such as debtor information sessions) to deliver resources to aid recipients in a timely fashion, yet the programs do not receive the appropriate resources. I recommend conducting rolling assessments and corrections for the

performance of special programs in order to achieve a more appropriate allocation of funds.

- IV. LAF has a Development Committee comprised of representatives from various social welfare groups as well as experts and scholars. The committee can be a platform for referrals and collaboration on the needs of disadvantaged groups and the drafting of legal aid policies. In the future, the committee's responsibilities and operations should be strengthened. The North Legal Aid Staff Attorneys Center, established in 2012, strengthened assistance for special disadvantaged groups. However, a cost-effective model for the positioning and development of similar organizations should be found, so that such a model could be duplicated in areas that have greater needs. Perhaps a variety of local NGOs could be engaged in developing such organizations.



## 2014 International Forum on Legal Aid



## Panel Discussion (2-2)

### **Implementing international conventions: allocating legal aid resources to provide services which reflect international human rights standards and principles.**

Speaker: Wilhelm H. Joseph, Esq.\*

Executive Director  
Maryland Legal Aid  
USA.

*Human rights are rights that every single person has by virtue of being human. Human rights reflect the minimum standards necessary for people to live with dignity. They belong to all people equally regardless of status and are considered essential to the full development of individuals and communities. Human rights also guarantee people the means necessary to satisfy their basic needs so that they can take full advantage of all opportunities. Maryland Legal Aid adopted the human rights framework to uphold these principles in the provision of legal services to the poor. Simultaneously, the pivot to a human rights frame seems to have reinforced a growing consensus about the role access to justice plays in actualizing poor people's human rights and lifting them out of poverty. In a recent report, the United Nations (U.N.) Special Rapporteur on extreme poverty and human rights stated that access to justice is not only a fundamental human right in itself, but it is an essential prerequisite for the protection and promotion of all other civil, cultural, economic, political and social rights.<sup>1</sup> Mary Robinson, the former High Commissioner for Human Rights, is a key leader in the push to include access to justice in the U.N.'s post-2015 Development Goals, which recognize the "lack of legal protection as a form of repression and an affront to human dignity."<sup>2</sup> Both sources recognize that achieving access to justice for the poor necessitates legal services for the poor, underscoring the import of our collective work.*

### **In light of limited resources, what considerations guide the prioritization of services offered?**

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Comments

\* Reena Shah, Esq., Director of Maryland Legal Aid's Human Rights Project was a principal collaborator on this report.

1: Report of the Special Rapporteur on extreme poverty and human rights, A/67/278, August 9, 2012.

2: See, Justice 2015 at <http://www.opensocietyfoundations.org/sites/default/files/justice2015-statement-06122014.pdf>

With an organizational vision to protect and advance human rights so as to effect lasting social change, Maryland Legal Aid achieves its clients' goals through a broad continuum of services ranging from brief advice and service, pro-se assistance and targeted referrals, pro-bono coordination and referrals, community education, policy and impact advocacy, transactional work, collaborative endeavors with other organizations, and litigation in state and federal trial-level and appellate courts. The priority areas for representation are family/domestic, housing, income maintenance (public benefits and employment), consumer, and education law.

Maryland Legal Aid sets priorities for service delivery based on the expressed and assessed needs of potential clients. To date, demand for services has been highest on issues related to family/domestic law, housing, consumer and income maintenance (both employment and public benefits) law. Maryland Legal Aid's 2007 comprehensive assessment of client community needs indicated that affordable housing, employment that provides a living wage and access to health care were the highest priority needs identified among the poor in all Maryland counties. These findings continue to be relevant based upon issues presented by clients at intake and through feedback from community forums and outreach activities. In addition, Maryland Legal Aid has increased its focus on serving the needs of limited English-proficient populations in Maryland, to the ethnic and cultural diversity of Maryland's low-income population and to veterans. Maryland Legal Aid attempts to strategically coordinate advocacy and resources to meet these needs statewide.

### **What are the ways in which legal aid organizations may effectively offer legal aid services at the early stages of criminal investigations?**

Legal Aid lawyers assume a critical role at the beginning of a criminal prosecution to safeguard poor and low-income people's most important human right – their freedom against unlawful government action. Yet, in many countries including the United States, an accused may remain in jail without a lawyer for long periods before having had a trial, thus depriving them of liberty and a fair opportunity to defend against government's charges. Published studies show that a lawyer's early representation and advocacy often makes the critical difference between an accused being freed or remaining incarcerated for lengthy periods before trial. Governments

would save substantial money investing in lawyers at poor people's first appearances before a judicial officer. Guaranteeing early counsel would not only reduce the cost of managing the pretrial jail populations; it could also be a significant step forward to level the playing field for impoverished defendants.

The state of Maryland has recently taken a major step in recognizing the right of criminal defendants to receive counsel at the early stages of criminal investigation. On September 25, 2013, in the landmark case of *DeWolfe v. Richmond*,<sup>3</sup> the Maryland Court of Appeals held that an indigent criminal defendant is entitled to state-furnished counsel at the defendant's initial appearance before a District Court commissioner and during bail reviews before District Court judges under Maryland's Public Defender Act. This decision expanded the right to counsel in criminal proceedings that was found under the U.S. Supreme Court case of *Gideon v. Wainwright*,<sup>4</sup> which initially prompted the creation of The Office of the Public Defender in Maryland. As a result of the *DeWolfe* case, the right to counsel now attaches in any proceeding that may result in incarceration, including in any pre-trial matters.

The Maryland judiciary has been tasked with implementing the *DeWolfe* decision. At this point, however, the Office of Public Defender of Maryland, which is responsible for providing indigent criminal defense after the pre-trial stage, and is the largest legal services organization in the state, will not have any official role in the implementation of *DeWolfe*. Instead, programs have focused on recruiting private attorneys to do this work. For example, during the summer of 2014, the judiciary launched the Appointed Attorneys Program (AAP) to provide legal counsel for indigent defendants at appearances before district court commissioners. The AAP will provide compensation of \$50 an hour, plus mileage and tolls, to attorneys who contribute their legal expertise and time to assist low-income Marylanders. Attorneys must also comply with the program's training requirements, certify that the rules on initial appearances have been reviewed, and complete an application form and sworn statement. Further, the Maryland General Assembly passed the state budget for fiscal year 2015, setting aside \$10 million to pay private attorneys to represent indigent defendants at those bail hearings.

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Comments

3: Case No. 34 (MD Ct. App., Jan. 4, 2012).

4: 372 U.S. 335 (1963).

## **What are the ways in which legal aid organizations may maximize the benefits of out-of-court dispute resolution for legal aid applicants or recipients?**

Alternative Dispute Resolution (ADR) includes processes for resolving disputes without going to trial. In Maryland, there are several entities that offer alternative dispute resolution programs such as mediation, settlement conferences and community conferencing. Further, the court operates its own Alternative Dispute Resolution Office that offers mediation and settlement conferences for pending civil cases at no charge on the day of the trial or before the trial date. Parties that successfully reach an agreement reap numerous benefits by avoiding trial. ADR saves money and time, helps to preserve the relationship of the parties, and increases control over their particular outcome.

Legal aid organizations may maximize the benefits of ADR by encouraging applicants to participate in ADR processes by either facilitating the process or referring the parties to a qualified mediator. Additionally, legal aid organizations can educate applicants or recipients of their rights so that when they enter ADR processes, they have a greater command of the factual and legal basis for his/her claim and can obtain a favorable outcome.

To maximize benefits of ADR, Maryland Legal Aid is working on an innovative ADR program that will increase access to justice for underserved people in Baltimore. In collaboration with the Maryland Judiciary's Mediation and Conflict Resolution Office, the Pro-Bono Resource Center, the University of Baltimore Law School's Family Law Mediation Clinic, the University of Maryland Law School's Center for Dispute Resolution and the Baltimore City Community Mediation Center, Maryland Legal Aid is creating a program to screen the hundreds of people who come to the Maryland Legal Aid office in Baltimore City every day and must be turned away because they do not meet the qualifications for representation by Maryland Legal Aid.

Those not meeting Maryland Legal Aid's qualifications will be screened during intake and appropriate cases will be referred to mediation. The Pro Bono Resource Center will provide pro-bono lawyers to represent each party, solely for the purposes of the mediation. These lawyers will prepare the clients for mediation, represent them during mediation and draft mediated agreements. The mediators will be skilled



and trained law students or skilled and trained community mediators. Mediation successfully helps opposing parties reach full or partial agreement in approximately 75% of cases. This pilot program will collect data and survey all of the participants to monitor and evaluate the program. If, as is hoped, it is successful, it can be replicated across the state and across the country.

### **What is the extent to which legal aid organizations may provide legal aid services through the use of technologies? What are the limitations?**

There is great promise for legal aid organizations to provide legal aid services through the use of technologies. Indeed, at Maryland Legal Aid, most legal research now happens via computer as does all of the organizations' case management. Maryland courts also demand the use of technology, now requiring that certain types of cases be filed only online and all documents associated with the case, including pleadings and exhibits, be submitted only digitally. Of course, the organization has employed some form of technology in the provision of legal services for many years. For example, Maryland Legal Aid has conducted intake and provided information, referral and advice to applicants and clients by phone for many years. It also uses the "language line" a telephone-based interpretation service, to serve clients who are limited English proficient.

Last year, Maryland Legal Aid began to provide a new option to access legal assistance through an online intake form. Online intake allows Marylanders to complete an application for services at any time from their own home, local library, or anywhere they can access the internet. Since being deployed, the online intake process has already generated 2,438 requests for services, suggesting that there was tremendous demand to receive services in this manner.

Maryland Legal Aid also uses technology to inform potential applicants of services offered by the organization through the use of its website. It also maintains an outreach presence to clients and the community via MDJustice.org, Facebook, Twitter, YouTube, custody interview materials on the People's Library website, and a Google+ page. Last year, Maryland Legal Aid reached 27,437 people via Facebook, 15,691 people via Twitter, 163 via Google+ and 3006 via YouTube (where two public videos have been posted, both on human rights issues). In addition, MDJustice.org

currently has 522 members and 3250 pages of materials.

Beyond intake and outreach, Maryland Legal Aid also experienced a spike in its ability to offer self-help services through use of technology. Maryland Legal Aid operates two family law pro se centers in the circuit courts for Anne Arundel and Cecil Counties and a District Court Self-Help Center (DCSHC) in Anne Arundel County with funding from the Administrative Office of the Courts (AOC). The DCSHC, a pilot project launched by the District Court of Maryland with the assistance of the Maryland Access to Justice Commission, opened to the public on December 1, 2009. The DCSHC provides assistance statewide to self-represented individuals with civil cases pending in the District Courts of Maryland. In 2011, the DCSHC expanded from walk-in assistance to provide assistance via phone and live chat. This expansion of services resulted in a dramatic increase in the number of unrepresented litigants assisted from approximately 5,700 per year to just under 23,000. Due to the success of the pilot project, DCSHC plans to expand into two additional high-volume jurisdictions in the state.

Further, legal aid organizations are continually exploring other creative way to use technology to reach more clients and better serve them. The Legal Services Corporation, which is premiere funder of legal services nationally, has a special track of funding called Technology Initiative Grants (TIG). In 2013, TIG grants were awarded to legal services organizations for a range of purposes, including developing online “triage” assessment and referral systems; developing online interactive training resources for pro-bono attorneys; and creating an online legal forms and document center.

Legal services organizations could also utilize technology in other ways to enhance the provision of legal services. For example, organizations could use video-conferencing to conduct client interviews to reduce time and travel costs, especially when trying to reach applicants or clients in remote areas. Indeed, a Maryland Legal Aid attorney used video-conferencing in a case last year to enable her bed-bound client to testify in court. Another technology under exploration for use by legal services is SMS because it does not require an internet connection or any internet savvy.

While technology can improve certain types of services offered to clients, such

as information or intake, it cannot serve as a panacea. For example, it is difficult to imagine that face-to-face interaction during the course of legal representation will be obviated. Further, Maryland Legal Aid understands that reaching some vulnerable populations is not possible through technology and requires other, more personal, strategies. Maryland Legal Aid's state-wide presence through 13 physical offices allows for strong outreach at the local level. Maryland Legal Aid also assures that clients with disabilities who may not have access to technology can still access our services through home-visits and/or community outreach.

### **Should legal aid organizations play a prominent role in death penalty issues?**

Legal aid organizations should play a prominent role in death penalty issues. Maryland's example demonstrates that having the Office of the Public Defender (OPD) deeply engaged for decades in capital punishment cases had the tremendous impact of actually repealing the death penalty in Maryland. On March 6, 2013, the Maryland General Assembly voted to repeal the death penalty. The repeal was signed into law on May 2, 2013, putting an end to the state's 375 year history of capital punishment. Although the numbers vary by source, approximately 300 people were executed since the inception of the colony that became the state of Maryland in 1638, but only 5 have been executed since the creation of the OPD in 1971.

Maryland's OPD was founded following the landmark Supreme Court decision in *Gideon v. Wainwright* which mandated that criminal defendants had a right to counsel. The Maryland OPD had a separate unit just to handle capital defense litigation and this group became a national model for how best to represent inmates on death row. OPD successfully mastered team driven representation and worked incrementally to achieve the ultimate goal of abolishing the death penalty. Some of OPD's cases went all the way to the U.S. Supreme Court. Those cases had the effect of narrowing the instances when the death penalty could be granted. The OPD's zealous representation succeeded in maintaining one of the smallest death rows in the country. Due to their involvement, not a single person received the death sentence in Maryland since 2004.

The OPD also engaged in studies of the death penalty that emphasized the following: the existence of both racial and jurisdictional bias in death sentencing;

the monetary cost, which was estimated to have exceeded \$186 million dollars; the negative effects of prolonged litigation on the family members of the victims; arbitrariness in the imposition of the death sentence; the fact that the death penalty fails to act as a deterrent to the commission of homicides; and the risk of executing an innocent person. Citing these factors, a 2008 report prepared by the Maryland Commission on Capital Punishment concluded that the application of the death penalty in Maryland resulted in both “failure and futility.” The totality of OPD’s involvement in death penalty representation as well as advocacy to limit the application of the death penalty, ultimately led to its repeal in Maryland. This strongly suggests that sustained involvement by a legal services organization can have a tremendous impact on people facing the death penalty.

### **Should legal aid organizations play a prominent role in assisting indigenous people?**

Legal aid organizations can and do play a role in assisting indigenous people, but could do more to meet the legal needs of this poor and vulnerable population. Federally recognized American Indian tribes in the United States have sovereignty and the authority to govern themselves as independent tribal nations. Each federally recognized tribe has its own tribal government, laws and courts. Native Americans thus have unique and specialized legal needs because they are governed by tribal law and a complex web of federal law.

Legal aid organizations interested in playing a role in assisting indigenous populations must have expertise in both U.S. law and tribal law. The Legal Services Corporation (LSC), a federal funder for many legal services organizations across the U.S., has a special funding track to serve Native American populations. The Bureau of Indian Affairs also provides special funding for programs to federally recognized tribes. Therefore, the availability of legal services targeted to indigenous populations in the U.S. depends on the federal recognition of the Native American populations as sovereign tribal nations.

This differentiation has resulted in tailored and targeted services for Native Americans only in states with large federally recognized tribes. The state of Maryland, for example, has nine tribes identified by the Maryland Commission on Indian Affairs

as being indigenous to Maryland, but none of them is federally recognized. As such, Maryland Legal Aid does not have any specialized program targeted to Native Americans. In contrast with this, are states with large federally recognized indigenous populations that either have a sub-section within the organization that serve indigenous populations or have entire organizations dedicated to serve the indigenous population. In California, for example, the frequency and complexity of legal problems faced by California's Native American population led to the formation of the California Indian Legal Services (CILS). In instances where tribal law is enforced or the matter takes place in tribal court, CILS has specially trained advocates with both tribal law and state law to properly handle the case.

## Panel Discussion (2-3)

### Implementing international conventions: allocating legal aid resources to provide services which reflect international human rights standards and principles.

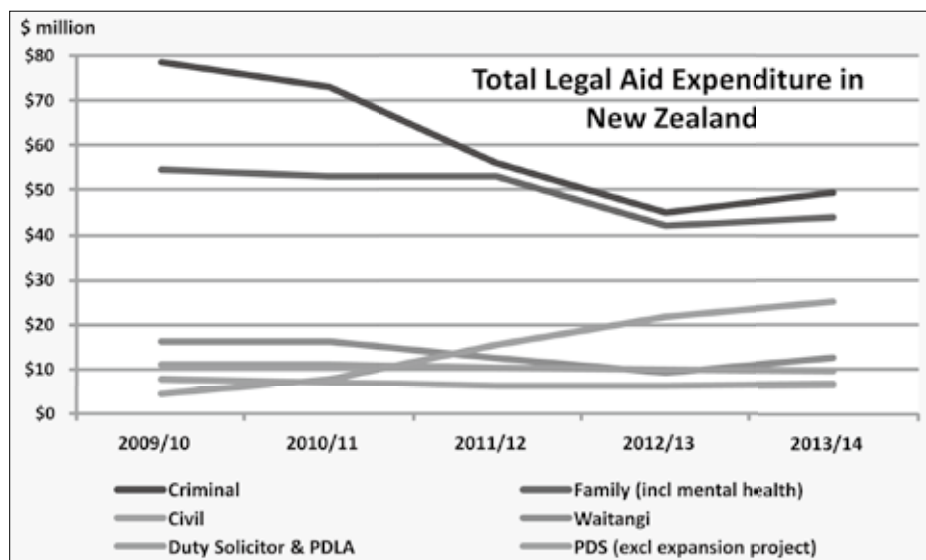
Speaker: Michele McCreddie

General Manager, Legal Aid Services  
New Zealand

### Overview of Legal Aid in New Zealand

- Legal Aid available in New Zealand since 1912 for criminal, 1969 for civil
- Legal Services Act 2011 is the current legislation
- Legal Services Commissioner – statutory position, independence of decision making
- Legal Aid Reform programme of change over past 4 years in response to critical review (Bazeley Report)
- New Zealand population 4.6million
- In 2013-14, 80,157 applications, 70,796 grants
  - Criminal \$61.2m, private lawyers
  - Criminal \$24.8m, Public Defence Service
  - Family \$44.8m
  - Civil \$6.1m
  - Waitangi Tribunal \$12.7m

### Legal Aid Expenditure in New Zealand

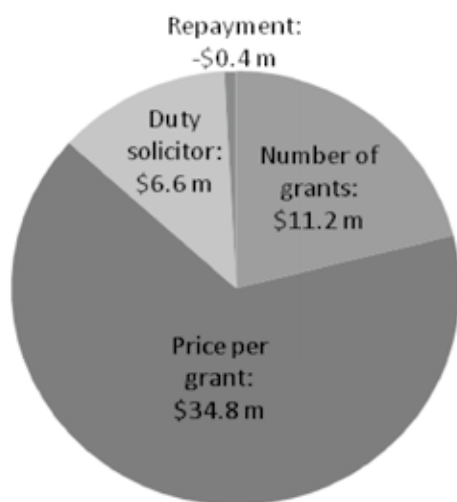


## Legal Aid Expenditure in New Zealand – drivers of growth

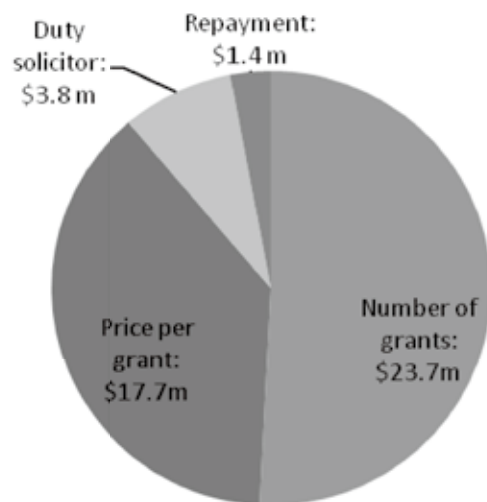
- Legal Aid Expenditure increased by 66% between 2000 and 2010. An average of 13% per annum from 2005-6
- Expansion of eligibility – especially family cases
- Increases in legal aid lawyer payments – rates and amounts claimed
- Increase in number and length of court cases

## Legal Aid Expenditure in New Zealand – drivers of growth as at 2010

Growth over past decade: \$52.1m



Growth over past 3 years: \$46.7m



## Legal Aid Expenditure in New Zealand – options to control expenditure

- Three broad areas of work to control expenditure
  - New purchase approaches to restrict the cost per case (grant)
  - Eligibility changes to reduce the number of grants
  - Changes to repayment policies and user charges to improve revenue
- Many of the options required legislative change

## Legal Aid Expenditure in New Zealand – control of expenditure, factors to consider

- New Zealand Bill of Rights Act 1990 affirms fundamental rights and freedoms set out in the International Covenant on Civil and Political Rights

- New Zealand Bill of Rights Act 1990 Section 24(f) provides that everyone charged with an offence 'shall have the right to receive legal assistance without cost if the interests of justice so require and the person does not have sufficient means to provide for that assistance'
- New Zealand Bill of Rights Act 1990 Section 19 if a policy disproportionately targets one demographic group it may be considered to be discriminatory
- Protection of access to justice for certain 'specified' proceedings - domestic violence, mental health, intellectual disability, care and protection, refugees and victims civil proceedings
- Any eligibility restrictions that would disadvantage people on low incomes who have few options to find legal services elsewhere – young Maori men in criminal cases and women with children in family cases
- Waitangi Tribunal proceedings – Government commitment to support the process with legal aid

## **Legal Aid Expenditure in New Zealand – Controlling the cost per case (grant)**

### **New purchase approaches**

- Development of a mixed model 'public' and private provision
- Pilot of the Public Defence Service (PDS) in 2008
- Expansion of the PDS – to highest volume criminal courts
- Expansion of the PDS– increasing the share of legally aided cases
- Removal of 'preferred lawyer' in lower level criminal summary cases
- 50% of criminal summary cases assigned to PDS by strict rotation system
- Aligns with Bill of Rights Act 1990 principles
- PDS currently managing 28% of criminal legal aid cases nationally
- Considered trial of public provision in family – not progressed

### **New approaches**

- High Cost cases – 1% of cases accounted for 26% of I expenditure in 2008/09
- High Cost Criminal case management – introduced Oct 2012
- Operational policy for Waitangi Tribunal legal aid cases – introduced Oct 2012



- High Cost Family and Civil case management – new processes to be implemented late 2014
- Lawyer remuneration reviews are required to be undertaken from time to time
- Introduction of fixed fees for service – Criminal (March 2012) Family and Civil (ACC)(July 2012)
- Revised disbursements policy (Nov 2012)
- Criminal Bar Association v Legal Services Commissioner – protracted and expensive court case \$500k in legal fees
- Lessons learned especially consultation approaches
- Currently revising fees and introducing new schedules - Employment

## **Legal Aid Expenditure in New Zealand – reducing the number of grants**

### **Options to restrict eligibility - Means**

- Three tests - whether the proceedings are eligible, merits of the case and means of the applicant
- Who will be affected by changes – gender and ethnicity considerations. If a policy disproportionately targets one demographic group it may be discriminatory under Section 19 Bill of Rights Act
- Removing indexation of means thresholds – remove automatic adjustments to financial eligibility
- Initially small effect but has grown over time – strongest effect in family combined with recent changes to procedure in Family
- Restricting criminal eligibility – Section 24(f) Bill of Rights Act
- Not jeopardise the operation of the criminal justice system

### **Restricting eligible proceedings**

- If a policy disproportionately targets one demographic group it may be discriminatory under Section 19 Bill of Rights Act
- Not possible for Waitangi Tribunal – would target Maori population and risk to government targets

- Focus on family – would target women 66% of family applicants, potential harm to women affected by domestic violence, equal voice for parents in care of children
- May create expenditure elsewhere in justice or social system

### **Legal Aid Expenditure in New Zealand – increasing revenue**

- Lack of incentives to repay legal aid debt
- 25% of cases will have a repayment (debt) established
- Legal Services Amendment Act 2013
  - Re-introduction of the ‘user charge’ in Family and Civil legal aid cases
  - Application of interest to legal aid debt – cost to government of ‘lending’, capital charge rate 8% not compounding
  - Use of attachment orders – mechanism of last resort
- Discretion to ‘write off’ debt and/or interest including where would cause serious hardship
- Clear exceptions for domestic violence, mental health, intellectual disability, care and protection, refugees and victims civil proceedings

### **Legal Aid Expenditure in New Zealand - Management of total expenditure**

- In New Zealand legal aid is demand driven
- Budget 2010 set a guideline budget for the first time
- Guideline budget adjusted to match throughput via annual forecasting exercise for next five years
- Allow time for changes to manage back within guideline budget
- Forecast and appropriation (budget) set at start of financial year – no cap
- Under spends transferred to Justice Sector Fund then returned as required

### **What are ways in which legal aid organisations may effectively offer services at the early stages of criminal investigations?**

- **Police Detention Legal Assistance Scheme** – service designated under Legal Services Act 2011. Free to all who are arrested, detained or being questioned about an offence.
- **Duty Lawyer Service** – Free legal help to people charged with an offence who don't have a lawyer.
- **Community Law Centres** – free legal education, initial legal advice, minimal means test.
- **Section 16a, Legal Services Act 2011.** – Automation of non discretionary decisions in certain criminal cases - speed up decision making on legal aid in the early stages of criminal cases
- Information provided to Police Prosecutions re legal aid assigned counsel each working day
- Bring together Defence and Prosecution as soon as possible
- Early provision of Police disclosure to the Defence

### **What are ways in which legal aid organisations may maximise the benefits of out of court dispute resolution services for legal aid applicants or recipients?**

- Criminal Procedure Act 2013 – legal aid fee schedules structured to incentivise the behaviours required to maximise the benefits
- Legal aid fee schedules linked to case processes – incentivise behaviours required to resolve disputes at an early stage
- Funding for mediation of disputes in some civil cases eg ACC, employment (55% of employment cases settle in mediation)
- Recent Family Justice changes introduced Family Dispute Resolution – Family Legal Advice Service available to eligible people in out of court phase. Simple financial means test

### **What is the extent to which legal aid organisations may provide legal aid services through use of technologies? What are the limitations?**

- Development of a vision for the future – Future Operating Model from the perspective of legally aided person
- Clear picture of the attributes of the future – automate the simple (non discretionary) and focus people on the complex
- Section 16a Legal Services Act - automation of certain criminal grants where discretion not required
- Move to on line applications for legal aid
- Limited by legislation, financial resources and privacy/security

### **Should legal aid organisations play a prominent role in death penalty issues?**

- Not relevant in New Zealand
- New Zealand removed the death penalty for murder in 1961, and for treason in 1989

### **Should legal aid organisations play a prominent role in assisting indigenous people?**

- Treaty of Waitangi signed in 1840 between most Maori chiefs and Crown (Queen Victoria)
- Treaty of Waitangi – principles include a duty of partnership, duty to act reasonably, protect Maori interests and remedy past breaches
- Waitangi Tribunal – primary forum for hearing and reporting on Maori claims against the Crown alleging breaches of the Treaty
- ‘Truth and reconciliation’ process
- Established by statute in 1975 as a standing Commission of Inquiry
- Waitangi Tribunal establishes that a breach of the principles has happened
- Settlement process follows the Tribunal process
- Aims to advance the wellbeing of the Crown- Maori relationship
- Statutory duty to inquire into every claim registered
- Legal aid is available for Waitangi Tribunal cases

## **Should legal aid organisations play a prominent role in assisting indigenous people?**

- Applicant must be Maori, must be a member of the group making the claim
- Statement of claim must be made to the Tribunal – claim must be registered by the Tribunal
- Case law – Lands Case resulted in changes to the Legal Services Act
- Legal Services Act has a protective umbrella for Waitangi proceedings
  - No financial means test at time of application
  - If there is reason to believe that the claimant group are reasonably able to fund legal representation, then we may seek details.
  - In practice this rarely happens and never been enacted
  - Not subject to repayment
- Legal aid services in Waitangi Tribunal proceedings must be
  - directly relevant to the Treaty claim
  - necessary to progress the Treaty claim
  - consistent with what aid has been granted for and any conditions applied to that grant of aid
  - cost effective
- Waitangi Tribunal legal aid \$12m in 2013/14 – 10% of total expenditure



## 2014 International Forum on Legal Aid



## Panel Discussion III

# Legal aid lawyers' services:

**Ensuring the quality of legal aid lawyers' services conform to international principles concerning the role of lawyers.**

**Moderator:** Prof. Maurits Barendrecht

Tilburg University, the Netherlands

**Speakers:**

1. Mr. Ping-Cheng Lo, Board Member, Legal Aid Foundation, R.O.C. (Taiwan)
2. Mr. Hugh Barrett, Director, Legal Aid Commissioning and Strategy, Legal Aid Agency, Ministry of Justice, U.K.
3. Mr. Keita Abe, Senior Researcher of Research Division, Director of Information System Management Division, Japan Legal Support Center

## **Panel Discussion (3-1)**

### **Taking Measures to Raise the Quality of Legal Aid Lawyers (Taiwan)**

Speaker: PING-CHENG LO

Legal Aid Foundation, Taiwan

#### **I. Introduction: Scope and Methods of Investigation**

- 1.1 The quality of legal aid lawyers is correlated with the degree of success of the legal aid service they provide. Given that legal aid is considered a basic human right, it is necessary not only to establish a sound “system guarantee” to properly implement and operate it, but also to ensure and improve the quality and effectiveness of such service under limited resources and conditions, with the aim of complying with international conventions, United Nations principles, and other standards relating to requirements for lawyer quality, so as to realize the goal of legal aid as a human right of excellent quality.
  
- 1.2 Taiwan is not a member of the United Nations, nor is it a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR) or the International Covenant on Civil and Political Rights (ICCPR). But based on Taiwan’s obligations as a member of the international community and on the constitutional value of safeguarding human rights, the Legislative Yuan, on March 31, 2009, ratified and enacted this law to adopt the ICESCR and the ICCPR as the “law of the land” and give these two covenants an official position in law. Moreover, provisions in the UN’s Basic Principles on the Role of Lawyers and in Recommendation R(2000)21 of the Committee of Ministers to member states on the freedom of exercise of the profession of lawyer regarding legal education, pre-job and on-the-job training, and discipline system for lawyers are to be applied. Regarding general standards for ensuring lawyer quality, before implementing the ICESCR and ICCPR in Taiwan, it is necessary for an appropriately sound system governing the legal profession and ethics standards for lawyers to be put in place as an incentive to lawyers to meet basic requirements for service quality. And the issue of how to further improves the quality of legal aid lawyers and



their effectiveness in handling cases is an important one in the continuing implementation of the legal aid system.

- 1.3 In Taiwan, there are two categories of lawyers taking part in legal aid cases. The first category consists of staff lawyers working in the Legal Aid Foundation (henceforth called “the Foundation”); the second category is private lawyers. A total of 18 positions are budgeted in the former category (currently only 14 are actually serving), while those belonging to the latter (called “legal aid lawyers” in this paper) total 2,928 as of August 2014; this is about one third of the total number of lawyers in Taiwan. There is a considerable gap between these two figures. The quality of the staff lawyers is ensured by the Foundation’s overall management system, and they lie outside the scope of this paper. This paper primarily addresses the service quality of legal aid lawyers.
- 1.4 The relationship between Taiwan’s legal aid lawyers and the Foundation is not on a contract basis (as in the UK); instead, cases are assigned on a case-by-case basis via the Foundation’s “case assignment system.” The Foundation cannot and need not apply a bureaucratic management system like that of a large law firm to manage a nearly 3,000-strong force of legal aid lawyers; as such, there are specific strategic ideas and methods regarding how to boost the service quality of legal aid lawyers, and we will introduce Taiwan’s experience in this respect through empirical surveys and exposition on historical development.

## **II. Prior controls and entry mechanisms**

### **2.1 Limitations on qualifications of legal aid lawyers**

The Foundation’s rules, in principle, require a lawyer to have at least two years of professional experience to serve as a legal aid lawyer. Exceptions are made for a few types of cases, such as consumer debt settlement cases. For example, in 2011, legal aid lawyers with less than two years of experience accounted for 2.62% of the total; 18.6% had two to five years of experience; and 78.02% had six or more years of experience. It can be said that most legal aid lawyers are professionals with considerable experience.

## 2.2 Management of case assignments

In 2012, the Foundation revised particular case assignment rules in order to conduct fair case assignments and ensure case quality, clearly defining an upper limit of 24 cases annually that each legal aid lawyer can accept, in principle (such limit to be annulled with the approval of the Board of Directors in rural areas with fewer legal aid lawyers), to prevent excessive caseloads from affecting quality of case work. And for the same reason, when a legal aid lawyer has accumulated 20 unfinished legal aid cases, case assignment shall be halted temporarily.

## 2.3 Legal aid lawyer specialization

2.3.1 On March 15, 2014, the Taiwan Bar Association (TBA) passed the Regulations Governing the Conferral of Professional Lawyer Licenses, planning to first establish a conferral system for granting professional lawyer licenses for seven categories: real estate law, family law, labor law, construction and engineering law, tax law, financial law, and intellectual property law. Because this new system has been ratified only recently, there are as yet no practicing lawyers who have obtained their professional lawyer licenses per these regulations.

2.3.2 Given the short time since the TBA passed the aforementioned regulations and the resulting lack of practicing lawyers who have obtained their lawyer licenses through this means, and given the nature of legal aid cases and their requirements, the Foundation's goals for formulating regulations are somewhat different from those of the TBA. As such, the Foundation was eager to establish a specialized system for legal aid lawyers. On September 26, 2014, the Foundation's Board of Directors passed the Specialty Case Assignment Pilot Program, first designating labor, family, and consumer debt settlement cases for specialty case assignments. Those who meet the qualifications according to these regulations shall apply to become specialty case assignment lawyers, and those specialty case assignment lawyers who are deemed by the Lawyer Review Committee to provide high quality case work may have

increased numbers of cases assigned if they wish, unrestricted by the aforementioned limit of 24 cases a year. This two-year pilot program is set to begin on March 1, 2015.

2.4 On-the-job training:

In addition to the on-the-job training of lawyers conducted by the TBA, the Foundation or any of 21 branch offices shall independently or in conjunction with other NGOs carry out on-the-job training for lawyers annually. These training sessions, symposiums and seminars in areas such as capital punishment defense, indigenous peoples' cases, debt settlement and ICESCR-related cases will be provided by experts, in order to elevate the professional quality of legal aid lawyers. Some categories (such as debt settlement cases) will be designated as propriety case assignments for on-the-job training, in order to encourage legal aid lawyers to continue studying while on the job.

### **III. Posterior controls and exiting mechanisms**

3.1 Regular auditing to monitor case progress

The Foundation employs specialized software to monitor the progress of cases assigned to legal aid lawyers. If a legal aid lawyer has not claimed advance payment beyond two months following the case assignment, a thorough investigation will be made regarding the case to better understand the progress of the case handling.

3.2 Reporting concluded cases

When reporting concluded cases, legal aid lawyers shall provide written judgments and other documents involved in concluding the case as well as legal briefs and other documents involved in the case work, so that data on the quality of the case work may be compiled.

3.3 Complaints system

According to the Foundation's appeals processing rules, investigations of a legal aid lawyer may be initiated at any time in the event of a complaint. If it is determined that there has indeed been a violation of regulations, disciplinary action shall be applied forthwith (for example: advisement,

verbal warning, written warning, or cessation of case assignment). In serious circumstances, the head of the chapter refer the case to the Foundation's Lawyer Review Committee for review (detailed below).

### 3.4 Lawyer review system

3.4.1 In order to elevate the service quality of legal aid lawyers, the Foundation passed and enacted a legal aid lawyer evaluation system on December 22, 2006. After five revisions, the Directions for Conducting Legal Aid Lawyer Reviews took effect; thus far it has been in place almost eight years.

#### 3.4.2 General survey

Based on the aforementioned rules, the Foundation shall carry out surveys to rate the degree of satisfaction of the following three parties: 1) the legal aid recipient(s); 2) the presiding judge and prosecutor of the legal aid case; and 3) case referral groups. These will be used to rate the professionalism, diligence, and attitude of legal aid lawyers. The first telephone survey, carried out in 2007, successfully interviewed 3,228 legal aid recipients, and the average satisfaction rate for legal aid lawyers was 77.3%. In the second telephone survey, in 2009, the sample size was too low, so no data was available regarding satisfaction rates. In the third telephone survey, in 2012, of 1,783 successful responses, the average satisfaction rate was 86.37%.

Besides providing average satisfaction rates for legal aid lawyers, the results of these three surveys also provided information identifying outstanding lawyers and subpar lawyers according to relevant standards. The first survey identified 12 subpar lawyers, the second identified 31, and the third evaluation is still underway. To date, 8 subpar lawyers have been referred to the Lawyer Review Committee for evaluation. As a result of these reviews, 17 lawyers have been barred from legal aid work, 14 have had their case assignments halted for a set time, and 8 have had their caseloads reduced for a set time. 12 letters have been issued asking lawyers to improve the

quality of their legal aid work. On top of this, the number of lawyers referred to the Lawyer Discipline Committee totals 16.

#### 3.4.3 Diversified lawyer evaluation channels

Lawyer evaluation methods to control the service quality of legal aid lawyers must be multipronged for there to be effective results. Besides evaluating lawyers through the aforementioned two channels (investigating case complaints and conducting a general survey), the Foundation this year (2014) received legal aid lawyer review data from the Judicial Yuan conducted between 2012 and 2013 by judges, regarding 3,274 criminal cases and 3,097 civil cases (total 6,371), as well evaluations of 71 criminal cases and 49 civil cases, for a total of 120 cases, carried out January through August, 2014. The Foundation will compile a list of “negative coded” legal aid lawyers, categorize them, and then through each of its branches conduct surveys and reports on results of case work, with the authority to launch inquiries into complaints. This innovative lawyer evaluation channel is conducted on a case-by-case basis on legal aid lawyers by special judges, and is compared to the already-compiled survey results from the legal aid recipients. The judges’ opinions on the case evaluations can provide a more accurate quantitative analysis. The results are still being awaited.

#### 3.4.4 Deficiencies in the lawyer evaluation system

A lawyer evaluation system with overly strict control or which lays too much emphasis on evaluation can create anxiety among legal aid lawyer and cause them to turn down cases; moreover, the amount of human and physical resources expended in such a system are enormous. Regarding the efficiency of the Lawyer Review Committee in conducting such examinations, it has to deal with nearly 3,000 legal aid lawyers, and the means available for management are severely restricted (i.e., there is a lack of both carrots and sticks); as such, it is very difficult to effectively oversee the case work quality of each legal aid case. This is one of the reasons why the Foundation is eager to turn toward contract-based legal aid lawyers.

#### **IV. Conclusion: quality, a perennial problem**

No matter which kind of legal aid lawyer system is adopted, there will be different quality control problems. As to how to form a feasible strategy to address the issue under limited resources and conditions, different countries offer different thoughts and approaches. This is a perennial problem.

It must be said that the amount that legal aid lawyers are paid definitely affects the quality of their service. It is hard to attain high quality at low cost; after all, by the very nature of legal aid cases, it is difficult to completely apply the “rules of the market” to enhance their quality. Based on their mission to protect the vulnerable and fight for social justice, lawyers, in contrast, are a prime example of the saying, “You can’t have your cake and eat it too.” But by observing the reality of human nature, there is indeed the concern that unreasonably low remuneration or rigid, pre-set fee calculation standards will damage and diminish the average quality of legal aid lawyers. To safeguard this basic human right effectively, it is necessary to apply more flexible and diverse strategies (reasonable adjustments to legal aid lawyer fees, different system of remuneration for huge cases, instilling a greater sense of honor among lawyers, etc.) to cater to different trends.

## Panel Discussion (3-2)

### Ensuring the quality of legal aid lawyers' services conform to international principles concerning the role of lawyers

Speaker: Hugh Barrett

Director of Legal Aid Commissioning and Strategy, UK.

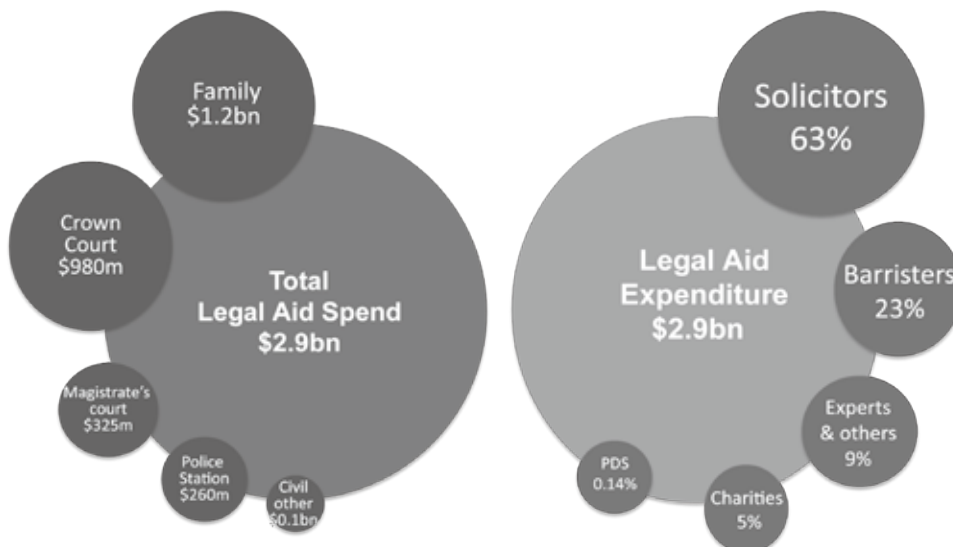
#### The justice system- an overview

The justice system in England and Wales is an adversarial system- each side is responsible for putting forward their own case; collecting evidence, interviewing witnesses and retaining experts. Juries and Judges make decisions based on the evidence.

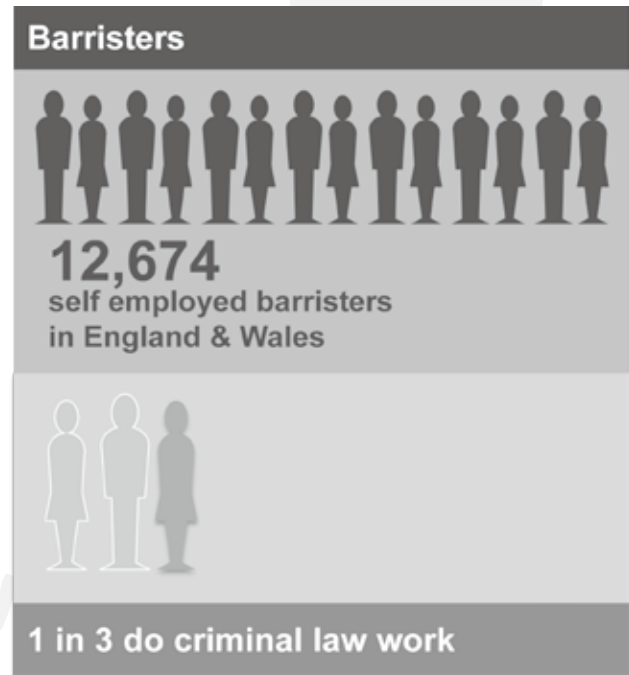
#### The parties in the justice system include

<p>Government Departments</p>		<p>The prosecutors (the Crown Prosecution Service)</p>
<p>Public Authorities</p>		<p>Clients</p>

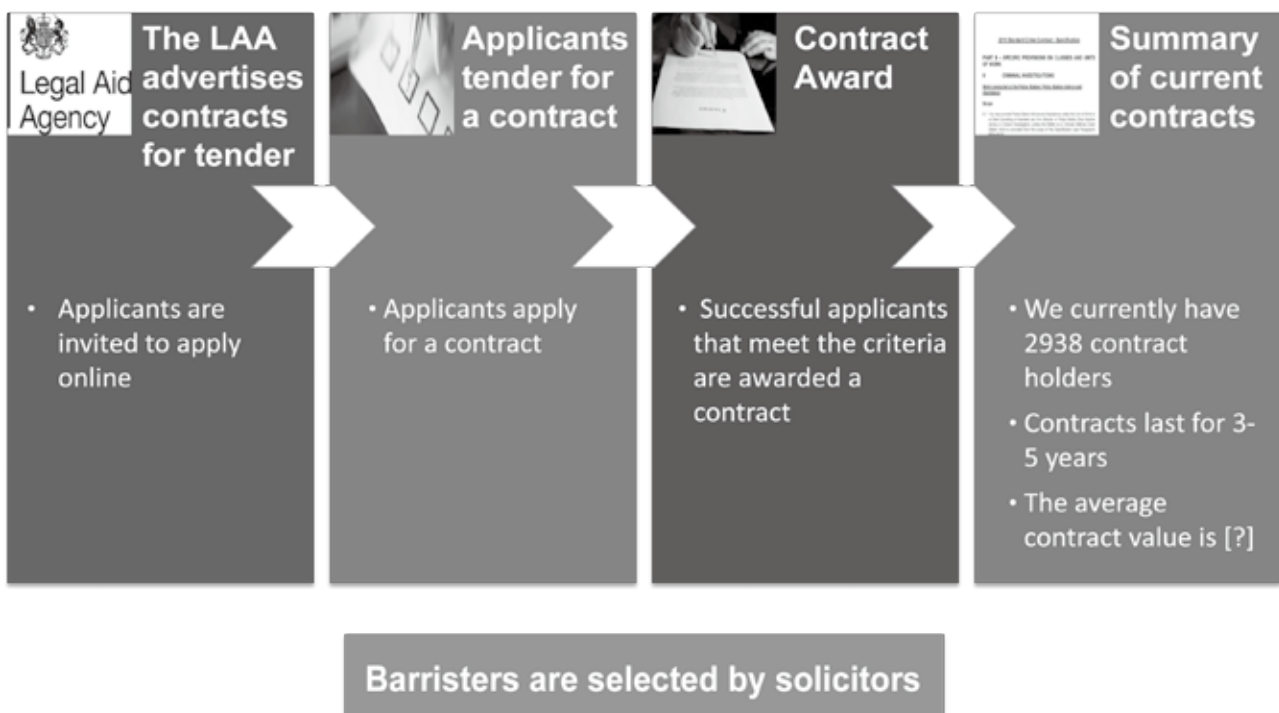
#### The majority of Legal Aid cases are undertaken by the private market



**Legal aid is 7% of the overall legal services market which is valued at \$48bn.**



**How does the LAA select reliable and quality legal aid lawyers?**






## Legal aid contracts are awarded on quality not price



## How does the LAA effectively monitor legal aid lawyers services?

### Contract Management

Key Performance Indicators



Measures providers performance and allows contract managers to identify areas of concern e.g. proportion of successful outcomes in civil cases

Auditing



Control mechanism to check providers files for consistency and ensure contract compliance e.g. ensure contract holders hold recognised quality marks.

Peer review



Independent lawyers review the quality of advice provided by legal aid lawyers.

## Quality Assurance- Peer Review



Peer review is an independent quality assessment tool – it was developed by the Institute of Advanced Legal Studies

Peer review is undertaken either on the basis of a random sample or on a targeted basis.



Peer reviewers are experienced legal aid practitioners.

They assess a random sample of a providers case files using a standard criteria and ratings system



Peer reviewers award ratings based on the quality of advice and legal work.

The quality of advice is assessed on a 1-5 rating with 1 being excellent and 5 being failure in performance



If a provider receives a 4 or 5 a further review will be conducted if the rating is not improved- this could have an impact on the contract

## Quality Controls

	Family		Crime		OtherCivil	
	Solicitors	Barristers	Solicitors	Barristers	Solicitors	Barristers
Supervisor Standards	✓	✗	✓	✗	✓	✗
Recognised Quality Standards	✓	✗	✓	✗	✓	✗
Peer Review	✓	✗	✓	✗	✓	✗

## Quality Assurance Scheme for Advocates (QASA)



Since 2010 it has been led by the regulators – Bar Standards Board, Solicitors Regulation Authority and CILEX Professional Standards.

Legal Services Board provides oversight.



First scheme designed to systematically assure the quality of advocates appearing in criminal courts in England and Wales. Judges will complete evaluations and will be able to raise any concerns about the quality of an advocate with the relevant regulator.



Advocates will be accredited at levels 1-4 via judicial assessment. Advocates at level 1 can undertake magistrates court cases and advocates at level 4 can undertake the most serious Crown Court cases.

## Providers promote themselves based on quality and reputation

### Client Choice and quality

- Clients are able to select which legal aid lawyer they would like to represent them.
- Solicitors promote themselves based on quality and reputation
- We do not pay more for quality service but a solicitor who provides a high quality service is more likely to get a contract and likely to get more clients.

## **Panel Discussion (3-3)**

### **The expansion of criminal legal aid in Japan and the International Human Rights Standards**

Speaker: Keita Abe

Senior Researcher  
Japan Legal Support Center

#### **1. Introduction - A Right to defense counsel in Japan**

Significant changes have been made to both civil and criminal legal aid in Japan through the implementation of the Comprehensive Legal Support Act 2004.

Before the amendment of Code of Criminal Procedures (CCP) and the establishment of Japan Legal Support Center (JLSC) in 2006, the scope of court appointed defense counsel had been limited only after indictment stage for about 60 years. This meant the indigent suspects actually had no right to counsel and might have been detained in the police station and interrogated for as long as 23 days without counsel.

To establish the public defense system which covers pre-indictment stage had been considered a top priority issue by the Japan Federation of Bar Associations (JFBA) for long time.

This paper provides the background and context to current situation of criminal legal aid in Japan. It details the initiatives for enhancing the court-appointed defense system by the JFBA and the utilization of the internationally recognized norms relating to human rights.

#### **2. Brief history of legal aid in Japan**

1946 New Constitutional Law was enforced. Indigent defendants have a right to counsel at the government's expense under the constitution and the code of criminal procedure, but suspects not.

1952 The Japan legal Aid Association (JLAA), a private organization sponsored mainly by the JFBA was established.

- 1958 A subsidy from the Ministry of Justice for civil legal aid was delivered to the JLAA. But the amount had been remained very low for long time.
- 1989 The JFBA proposed the enhancement of criminal defense at pre-indictment stage in the 32rd annual Human Rights meeting of the JFBA.
- 1990 The JFBA established the Criminal Defense Center.
- 1990 The Oita and Fukuoka bar associations started to offer duty attorney .<sup>1</sup>
- 1992 The JFBA and all local bar associations started to offer duty attorney.
- 1992 The JFBA started to offer criminal legal aid for suspects through the JLAA at the JFBA's expense.
- 1999 The statement is released by the Chairman of the Judicial Reform Council, demanding improvement in the legal aid system.
- 2000 The Civil Legal Aid Act was enacted and became effective. (Criminal legal aid system was not changed. Instead, the JFBA continued to offer criminal legal aid for suspects at the JFBA's expense.)
- 2001 The statement is released by the Justice Reform Council, including fundamental reform in the legal aid system.
- 2004 The Comprehensive Legal Support Act was enacted.
- 2006 The JLSC was established and commenced its services. The JLSC took over the civil legal aid from JLAA and services related to court-appointed defense counsel for defendants from the courts. Court-appointed counsel for suspects charged with certain felony case started.<sup>2</sup>
- 2008 The JLSC started Court-appointed counsel for victims.
- 2009 The scope of court-appointed counsel for suspects was expanded to certain misdemeanor cases.<sup>3</sup>

### 3. Back ground and the activities of JFBA

The JFBA and local bar associations has played a central role in Japanese

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Comments

1: The system was modeled on the duty solicitor system in the United Kingdom

2: By the amendment of CCP in 2006, court-appointed defense counsel for suspects started for indigent suspect who have been detained and charged with an offence punishable with the death penalty, or imprisonment for life or a minimum period of one year or more.

3: By the amendment of CCP in 2009, the coverage of court-appointed defense counsel for suspect expanded to those who have been detained and charged with an offence punishable with the death penalty, or imprisonment for life or a maximum period of three years or more

legal aid system. Because both in civil and criminal legal aid the services had been provided by solely private practitioners for long time. Even after the JLSC was established and it introduced staff attorneys, most of legal aid cases are handled by attorneys in private practice.

To become qualified to practice as an attorney, judge, or prosecutor, one must complete a law school curriculum, pass the bar examination, and complete a one-year apprenticeship at the Legal Training and Research Institute of the Supreme Court. The new system requiring graduation from law school as a qualification for the bar examination commenced in April 2004. Under the old system, anyone could take the bar examination, but this system ended in 2010.

The JFBA has currently about 35,000 members including 230 JLSC staff attorneys. It is compulsory for all Japanese practicing lawyers ("Bengoshi") to be members of the JFBA. There are 52 local associations set up in principle in each District Court jurisdiction, through which lawyers join the JFBA.

Article 1 of the Attorney Act declares that 'a lawyer is entrusted with the mission to protect fundamental human rights and to realize social justice.' All lawyers are expected to work for this mission, and the JFBA and each local bar association are also working to accomplish this mission.

The JFBA established the JLAA to provide civil legal aid services in 1952, and the local bar associations fully supported the organization's activities, providing office space and staff members. But for long time Japanese legal aid system had been (or has been) quite insufficient in both in scale and depth.

In criminal legal aid system, before JLSC was established and the CCP was amended in 2006, there had been a big difference between before and after the indictment. Only after the indictment, state funded counsels had been appointed for indigent people through the court-appointed defense counsel system. Before the indictment, there had been no public defense system for indigent suspects.

Article 34 of the Constitution of Japan states:

*No person shall be arrested or detained without being at once informed*

*of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel.*

Article 30 of the Code of Criminal Procedures (CCP) states:

***The accused or the suspect may appoint counsel at any time***

But the article 36 of CCP (before the amendment in 2006) stated:

*When **the accused** is unable to appoint counsel because of indigency or other reasons, the court shall appoint counsel for the accused upon his/her request; provided, however, that this shall not apply when counsel has been appointed by a person other than the accused.*

In 1978 the President of the JFBA consulted the Court-appointed Defense Counsel Committee on the system for the court-appointed defense counsel for suspect. In the final report submitted in 1985 the Committee emphasized the need for the new legislation for public defense system on the condition that the bar associations be poised to respond to the expansion of public defense. At that time the JFBA itself had to admit that it could not bear the burden because there were still many areas with few criminal legal aid lawyers and moreover with no lawyers or only one lawyer.

In 1987 the JFBA held the first symposium on court-appointed defense counsel to discuss the new public criminal defense system. After that the JFBA held the symposium every year. Many lawyers and academics gathered from all around the nation and discussed the future of criminal defense system.

In 1980's four convicted death rows were acquitted in retrials after pleading their innocence for many years.<sup>4</sup> These fights were fully supported by JFBA's Human Rights Protection Committee (HRPC).

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Comments

4: In the Menda Case Sakae Menda was granted re-trial at which he was acquitted on July 15, 1983, in the Saitagawa case, Shigeyoshi Taniguchi was acquitted on March 12, 1984, in the Matsuyama Case, Yukio Saito was acquitted on July 11, 1984, and in the Shimada case, Masao Akahori was acquitted on January 31 1989, and these persons had once been sentenced to death by the Supreme Court.

The HRPC seeks relief for people declared guilty through faulty court proceedings when they are in fact innocent. The Retrial Committee, working under the HRPC, had sought relief in these miscarriages of justice and had indeed proven innocence in retrials.

Many people recognized that one of the main reasons of miscarriages of justice is the lack of defense counsel at the pre-indictment stage. The JFBA decided to take the strategy to enhance the criminal legal aid to suspects on its own budget and transform the system into the public defense system in the near future.

In 1992 the JFBA and all local bar associations started to offer duty attorney and criminal legal aid for suspects.

The duty attorney system has been maintained and operated up until now, in order to effectively guarantee the right of suspects to attorneys. When requested by a suspect, the duty attorney promptly visits the place at which the suspect is under arrest or detention and interviews him/her, regardless of nationality or visa status. If the suspect is a foreign national, an interpreter accompanies. The first consultation with a duty attorney and interpretation fee is free of charge.

The criminal legal aid for suspects had been operated by the JLAA. No government subsidy was provided for the system, so the JFBA and the local bar associations mainly funded for this system. The JFBA collected a special membership fee from their members to make the subsidy in addition to a regular membership fee. Also the important funding source was atonement donation by suspects and defendants. This donation was made to express their deep remorse and heartfelt apology.<sup>5</sup>

Through these activities the JFBA started to study and utilize the internationally recognized norms relating to human rights.

#### **4. Development of international human rights standards in criminal legal aid**

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Comments

5: In 1994 JLAA's business expenses for legal aid for suspect and juveniles was approximately 190 million yen. In the same year the amount of government subsidy for civil legal aid was 222 million yen and atonement donation was 313 million yen.



The International Covenant on Civil and Political Rights (ICCPR) is a key international human rights treaty, providing a range of protections for civil and political rights. Japan ratified the ICCPR in 1979.

Article 14 paragraph 3 and (d) of ICCPR states:

*everyone shall be entitled to the following minimum guarantees, in full equality: (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it*

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988) defined "Detained person" as any person deprived of personal liberty except as a result of conviction for an offence.

Principle 17(2) states:

*If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.*

Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba in 1990 states:

- 1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.*
- 5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.*
- 6. Any such persons who do not have a lawyer shall, in all cases in which the*

*interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.*

*7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.*

In the early 1980s ICCPR and other internationally recognized norms relating to human rights had not been brought to the attention among the Japanese lawyers.

In the late 1980s the problems of Japanese criminal procedures had been drawn to the attention of the international community, through the initiatives of a number of Japanese attorneys who attended or submitted documentation to various United Nations bodies dealing with human rights. Communications had also been submitted to the Human Rights Committee, which, in 1988, reviewed Japan's Second Periodic Report (CCPR/C/42/ Add.4 and Corrections) and under Article 40 of the International Covenant on Civil and Political rights.<sup>6</sup>

The JFBA produced alternative report in 1993 and 1998 which focus heavily on criminal procedure. Through the regular process of government report and alternative report, the Japanese government has been forced into a dialogue, not only with the international experts on the HRC but also domestically with the home NGOs.<sup>7</sup>

In the alternative report by the JFBA to the Fourth Periodic Report of the government of Japan<sup>8</sup>, presented in accordance with the ICCPR, the JFBA proposes the establishment of a system of state-appointed attorneys for suspects before their indictment as follows:

*According to article 14 paragraph 3(d) of the Covenant, however, all suspects under criminal charge are entitled to have legal assistance assigned by the state in any case where the interests of justice so require, hence the requirement*

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Comments

6: Karen Parker and Etienne Jaudel , Police Cell Detention In Japan: The Daiyo Kangoku System(1989), Association of Humanitarian lawyers  
<http://standpointjapan.com/jaudel-parker-report.html#recommendations>

7: Ian Neary, Human Rights in Japan, South Korea and Taiwan (2002), Routledge, p.53

8: [http://www.nichibenren.or.jp/activity/international/library/human\\_rights/liberty\\_report-4th\\_jfba\\_en.html](http://www.nichibenren.or.jp/activity/international/library/human_rights/liberty_report-4th_jfba_en.html)

*of the appointment of counsel by the state is not limited to the post-indictment stage. Especially in a country like Japan where the suspect's statement in the interrogation phase decides the case for all practical purposes, the requirement of a fair trial must be made effective from the time of the arrest. Furthermore, since article 9 paragraph 4 of the Covenant guarantees anyone deprived of liberty the right of recourse to a court for the remedy of a habeas corpus action, and the assistance of an attorney is indispensable for such an action, then a person must be guaranteed the right of access to counsel as soon as he is deprived of liberty. Therefore, a suspect deprived of his liberty has the right to the assistance of an attorney in the double sense and, if the suspect is not wealthy enough, the state must appoint counsel at its expense.*

*Hence, the lack of the institution of state-appointed counsel for the pre-indictment phase obviously violates article 9 paragraph 4 and article 14 paragraph 3(d) of the Covenant.*

In the concluding observations of the Human Rights Committee adopted in November 1998, following is the one of the principal subjects of concern and recommendations.<sup>9</sup>

*The Committee is deeply concerned that the guarantees contained in articles 9, 10 and 14 are not fully complied with in pre-trial detention in that pre-trial detention may continue for as long as 23 days under police control and is not promptly and effectively brought under judicial control; the suspect is not entitled to bail during the 23-day period; there are no rules regulating the time and length of interrogation; there is no State-appointed counsel to advise and assist the suspect in custody; there are serious restrictions on access to defense counsel under article 39(3) of the Code of Criminal Procedure; and the interrogation does not take place in the presence of the counsel engaged by the suspect. The Committee strongly recommends that the pre-trial detention system in Japan should be reformed with immediate effect to bring it in conformity with articles 9, 10 and 14 of the Covenant.*

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Comments

9: The Human Rights Committee considered fourth periodic report of Japan (CCPR/C/115/Add.13 and Corr. 1) at its 1714th to 1717th meetings (CCPR/SR.1714-1717), held on 28 and 29 October 1998, and adopted the concluding observations at its 1726th and 1727th meetings (CCPR/C/SR.1726-1727), held on 5 November 1998.

[http://www.nichibenren.or.jp/activity/international/library/human\\_rights/liberty\\_report-4th\\_observation\\_en.html](http://www.nichibenren.or.jp/activity/international/library/human_rights/liberty_report-4th_observation_en.html)

In fact these activities by the JFBA and human rights NGOs deepened discussions on the public defense system in Japan. But to change the government's attitude which seemed reluctant to accord the internationally recognized norms relating to human rights, the JFBA had to wait until the discussion on overall justice system reform started in late 1990s.

## 5. Justice Reform in Japan

In the 1990s, Japan was experiencing a drastic structural change in the society and economy. The society was shifting from an “ex ante regulation society”, where activities of individuals and corporations were controlled through the government-led ante regulations or guides, to an “ex post facto check society”, where each individual would act at one's will at one's own responsibility and any resulting disputes would be resolved by law through legal processes. The society also rapidly internationalized. Along with such a social change, “dispute resolution by law” had come to play more important role than ever before.

Under such circumstances, reform of the justice system initiated with the aim of “establishing an easy to use and accessible, proper and prompt, and reliable judicial system” (the “Justice System Reform”). In June 2001, recommendations of the Judicial Reform Council (JRC)<sup>10</sup> were published.

In the recommendations JRC stated as follows:

*Criminal justice is further strongly required to properly check the violations of the rules and to effectively sanction such violations through fair procedures in order to support a free and fair society in the coming age. In order to have criminal justice in Japan meet the expectations of the people and secure their trust hereafter, it is necessary to establish an appropriate system, perceiving the demands of the times and of society, paying attention to the above-mentioned purposes of criminal justice, checking the current problems of related systems in a composed and fair manner, and respecting the ideal of the guarantee of human rights set forth in the Constitution, including the guarantee of the defense rights of the suspects and the defendants.*

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### Comments

10: The Judicial Reform Council is a deliberative body established under the Cabinet in July 1999. Its statutory mission is to consider fundamental measures necessary for judicial reform and judicial infrastructure arrangement by defining the role of judicature in Japan in the 21st century.  
<http://japan.kantei.go.jp/judiciary/2001/0612report.html>

JRC also stated in the section of the “Establishment of Public Defense System for Suspects and Defendants” as follows:

- *A public defense system for suspects should be introduced, and a continuous defense structure covering both the suspect stage and the defendant stage should be established.*
- *The organization that manages the public defense system should be fair and independent, and public money should be introduced for operation of the system through a proper mechanism.*
- *While it is appropriate that technically the courts appoint and remove the defense counsel as in the case of the current court-appointed defense counsel system for the defendant, the above-mentioned organization should be responsible for the other services concerning administration of the system.*
- *The above-mentioned organization should take responsibility for the administration of the system vis-a-vis the people, and should establish a system that can offer thorough defense activity nationwide. In particular, it is critical to establish a structure that can support the effective implementation of the new popular participation system in the trial proceedings.*

In 2002 the “Plan for Promotion of Justice Reform<sup>11</sup>”, which later became a guideline of the reform, was published. The major issues addressed in the plan included:

- *Expansion of civil legal aid,*
- *Increase in the number of judicial access points and providing comprehensive legal information through promotion of networks among related authorities, and*
- *Development of a public defending system for suspects and defendants (by establishing a fair and neutral entity operated by public funds).*
- *In light of the above, the Comprehensive Legal Support Plan was introduced, in effort to make available for people anywhere in the country all information or services necessary to resolve any legal problems, civil or criminal.*

This Comprehensive Legal Support Plan is embodied in the Comprehensive Legal Support Act (approved on May 26, 2004 and promulgated on June 2, 2004), with the JLSC designated as the central organization to provide comprehensive legal support.

## 6. Expansion of criminal legal aid

Under the current criminal justice system in Japan, if defense counsel cannot be retained due to a person's financial difficulties or other reasons, defense counsel will be appointed at such person's request or by authority of the court if he or she is detained in connection with a criminal case (a suspect, including a minor) or is indicted (a defendant).

As entrusted by the state, upon a court's request, the JLSC will select candidates for defense counsel from a list of attorneys registered with the JLSC. The JLSC enters into contracts with such attorneys and is responsible for making payments of fees and expenses for the court-appointed defense counsels. For juvenile cases, the family court handles the cases, and if the court determines the case meets the criteria for certain serious cases, an official attendant will be appointed for the juvenile. The JLSC provides services with respect to such official attendant in the similar matter with court-appointed defense counsel.

In principle, a notification from JLSC to the court of a nomination of defense counsel within 24 hours is desired. In practice, more than 95% of the nominations have been notified within 24 hours of such a request and were promptly followed up with direct contact with the suspect by appointed counsel. Counsel nominations can be made any day including weekends and holidays.

In 2009, the scope of cases for which a court-appointed counsel may be appointed for a suspect was expanded, and consequently, the number of applicable cases increased by approximately 10 times. In addition, since the saiban-in (lay judge) system was introduced, further expansion of services was sought for.

Of the total criminal matters in 2011, the court appointed defense counsel for 75.4% of the suspects, 85.6% of the defendants at district court, and 95.3% of the defendants at summary court.<sup>12</sup> Services relating to court-appointed defense counsel are provided exclusively by the JLSC.

## **7. Quality assurance and the role of lawyers**

Quality assurance and assessment of legal services have proceeded most effectively in England and Wales, Scotland, and the Netherlands, and South Africa and parts of Canada followed suit.

In Japan quality is rising on the agenda. The JLSC is required to proceed with its operation and provision of services to meet the goals of the Mid-term plan and the annual plan with improvement of service quality and efficiency.

Currently the JLSC does not have audit or peer review system, but has contract and monitoring system.

### **(1) Lists of legal aid lawyers by bar associations**

Practicing lawyers must be a member of both the local bar association and the JFBA. Every local bar association has the committees on criminal defense, rights of children and crime victims.

The criminal defense committee of bar association is responsible for the operation of duty attorney system, the matter concerning court-appointed attorney system, training and the activity relating to the reform of criminal procedures.

Before entering into legal aid contract with the JLSC, attorneys must be enrolled in the lists (criminal, juvenile or crime victim support), made by the local bar association. Currently bar association is responsible for making the respective lists.

### **(2) Contract**

In order to handle legal aid cases, attorneys have to enter into a contract with the JLSC. The JLSC has established the Rules for the Handling of Legal Affairs to be handled by contract attorneys (RHLA).

The RHLA contains matters concerning the criteria for the handling of legal affairs by contract attorneys. If contract attorneys violate their duties, the contract may be cancelled or suspended for certain period after the decision of the Judging Committee of JLSC.

The RHLA also contains the standards of handling cases, for example in criminal cases:

- 14 *A contract attorney for court-appointed defense counsel shall strive to provide at all times the best defense to a suspect, a defendant or a juvenile to protect such person's interests and legal rights in light of their rights to a defense being guaranteed.*
- 15 *A contract attorney for court-appointed defense counsel shall endeavor to secure necessary interview opportunities with suspects, defendants and juveniles and their release from physical confinement.*
- 16 *A contract attorney for court-appointed defense counsel shall provide suspects, defendants and juveniles with the necessary explanations and advice regarding the right to remain silent and other rights to a defense, endeavoring to take necessary measures against unlawful or undue restrictions of the right of a suspect, defendant and juvenile to a defense and the right of the criminal counsel to a defense.*

These standards of handling cases are basically similar to that of the Basic Rules on the Duties of Practicing Attorneys (formerly the Code of Ethics) of JFBA and conform to the UN Basic Principles on the Role of Lawyers.

### **(3) Monitoring criminal legal aid cases**

For court-appointed defense counsel's cases, every police station is equipped with "Interview Note". It was introduced in 2009 by JLSC to record the date and the time of the interview, the name of the defense counsel and the suspect. It was carbon copied, one for defense counsel and the other for police



station.

A court appointed defense counsel for suspect must submit the conclusion report with “Interview Note”, so as to JLSC can monitor the activity of the counsel.

After indictment, the JLSC makes “Trial communication Memo” and submit it to the court. This was introduced to record the date and the time for every trial of court-appointed defense counsel for defendant. After the conclusion of the case, courts submit the “Memo” to JLSC. JLSC calculate the remuneration of the court appointed defense counsel by the report of the defense counsel, and JLSC uses the “Memo” as a reference.

For persons under arrest, prompt access to a lawyer is very important. JLSC set the criteria in the Mid-term plan that the JLSC district office shall notify the candidate of defense counsel to the court within 24 hours. The defense counsel is required to visit the police station on the day or next day of the appointment. It means that most of the court-appointed defense counsels for suspect are to visit the police station and interview the suspect within 48 hours from the request.

If the court defense counsel for suspect does not visit the suspect or visit way late, the JLSC reports the fact to the local bar association. In such cases the criminal defense committee of the bar association makes the research on the cases. If the committee judges the attorney is not competent for criminal defense, the committee takes his/her name from the candidates list.

#### **(4) Training and education**

Training and education to the legal aid lawyers plays an important role in maintaining and improving the quality. All the district offices of JLSC hold the training seminar or workshop for both civil and criminal legal aid lawyers at least once a year. For court-appointed attorneys many of the training seminar are hold in cooperation with the criminal defense committee of the bar association.

The JFBA is enhancing training programs for attorneys in order to maintain the quality legal services and to adequately respond to the legal needs. Specific training programs are ethical training, training for newly-registered attorneys and

training to improve practical skills. These training programs include the legal aid procedure and practical skills in court appointed defense counsel.

For staff attorneys the JLSC established the Support Office for Staff Attorneys and the Research Office for the Skill of Defense in Lay Judge Trial. Senior attorneys who have the experience and expertise in civil and criminal legal aid are stationed in the two offices and contacted from staff attorneys all around the nation. The offices also hold the fulfilling training seminars periodically for staff attorneys.

Through these processes, the quality of services provided by staff attorneys is improving. JLSC staff attorneys are also expected to help to improve the skills of lawyers in private practice especially in lay judge trial.

## 8. Conclusion

This year in 2014 we celebrate the 10th anniversary of Legal Aid Foundation and 8<sup>th</sup> anniversary of JLSC.

In these eight years the JLSC has been heavily involved in responding the expansion of legal aid services. In 2006 it started to offer legal information service and the support for crime victims. It also experienced the increase of civil legal aid cases, expansion of the court-appointed defense counsel to the pre-indictment stage. Furthermore in 2009 court-appointed defense counsel for the suspect increased tenfold in number.

We still have plans in the future to continue our expansion. The plans include enhancing the services for elderly or mentally/physically challenged person, to prolong the support for the Great Earthquake Victims and to expand the legal aid to crime victims who may be seriously damaged by domestic violence, stalking or child abuse.

Ensuring quality legal services is one of the largest missions of the JLSC. But we are still at the stage of studying tools and approaches developed in other countries. This International Forum is a wonderful experience to be with the colleagues from all around the world.

We hope to share the experience of quality assurance and assessment with participants of this International Forum.

# Workshop Conclusions and Q&A

• **Moderator Mr. Wei-Shyang Chen (Secretary-General, Legal Aid Foundation):**

The three international forums over the past decade marked the different phases of development of Legal Aid Foundation of Taiwan. I am honored to have participated in the whole development of the Legal Aid Foundation of Taiwan and in the three international forums. Someone once asked me: "What do you benefit from convening these international forums?" I think there are three main benefits.

The first is to open up an international horizon. We see legal aid organizations at different levels of development from all over the world. They operate in various manners. There is much to be learned. Secondly, a platform for information and experience exchange resembling an international legal aid organization has been established through the three international forums. In this third forum, we meet a lot of foreign representatives again and they are just like our old friends. I think the third benefit is making friends and planting a seed for future co-operation among all the legal aid organizations. I believe there will be good results in the future.

I heard a few representatives say that they hope the Legal Aid Foundation of Taiwan will continue holding international forums. This is an affirmation for us, but to tell the truth, it also brings us some pressure. To convene such an international conference requires an all-out effort from the Foundation, including the decision on topics, the arrangement of agenda, and all the details, which all rely on the devotion from our staff. I would like to take this opportunity to thank all our staff. Next, let us welcome the sharing from the speakers and the panelists.

**[Topic 1] Cross-border co-operation: Applying the standards outlined in United Nations legal aid principles and guidelines through cross-border co-operation between legal aid organizations**

• **Speaker Mr. Jerry Cheng (Presiding lawyer of Justice Law Firm):**

The first topic of the 2014 International Forum on Legal Aid is "Cross-border co-operation: Applying the standards outlined in United Nations legal aid principles and guidelines through cross-border co-operation between legal aid organizations". About cross-border co-operation, Taiwan truly needs to learn from the legal aid

organizations of the other countries, considering that the Legal Aid Foundation of Taiwan was only established 10 years ago and that Taiwan was forced to leave the UN for political reasons in 1971.

Although it has only been 10 years since the establishment of the Legal Aid Foundation of Taiwan, we have actually accumulated some experiences on international co-operation. I have made friends with many of the representatives of international legal aid organizations through the Foundation since 2005 and have made contacts with other countries.

I would like to thank Wilhelm, the representative from the U.S. I organized a group of 23 delegates for Taiwan's Jury Association to visit the U.S. this year in order to understand the jury system, the trial system, and the prosecutor system. The delegation also observed the legal aid operation of Legal Aid Bureau. The delegation received great assistance from Wilhelm, so I would like to take this opportunity to thank him. It was with Wilhelm's help that the delegation could learn the jury system, the prosecutor system and the legal aid system in Baltimore, Maryland, U.S. and had comprehensive discussion with many public defenders. I would also like to thank Mr. Yiu-Leung Cheung, the representative of Hong Kong. He provided us with the same assistance in 2012 to understand the court operation in Hong Kong. All of this originated from the 2005 International Forum on Legal Aid. In addition, I would like to thank Mr. Hugh Barrett, the representative from the U.K. We had a speaker, attorney Yu-Fan Chen who went to the U.K. to learn with the help from LSC, and gained valuable knowledge on legal aid as well as friendship. Attorney Chen also went to the U.K. for further education later.

This year, the Foundation sent its staff to the Netherlands, which was also assisted by the Legal Aid Board. Therefore, I think cross-border co-operation among legal aid organizations is very important. Also, I would like to thank the representative of the Philippines, Mrs. Persida V. Rueda-Acosta. She has brought more than 20 delegates from the Public Defender's Office for the second and third International Forums. It is really a great help and crucial participation, and thus I'd like to express my gratitude to all of the delegates from Philippines.

I think a great deal of friendship has been established through an international conference like this. For example, we keep contact with the organization in

Indonesia, and the organization in Vietnam also participated for two times. The U.K. representative in 2009 was none other than Mr. Hugh Barrett here. Especially the representative of Japan, Mr. Keita Abe also participated in the first and second forums. Our friendships will deepen, which in turn will surely benefit the application of the standards outlined in United Nations legal aid principles and guidelines in the participating countries. The goal of legal aid is no different from all the justice and social systems, which is to establish an ideal society which ensures "access to equality and justice for everyone". We should all keep working towards this goal.

Now I am giving a brief report on the general opinions of our discussion. The report can be divided into four subtopics. The first subtopic is the potential difficulties faced by foreigners. We reached a consensus through discussion, which is interpretation and translation. Interpretation and translation services are very important, and all foreigners should obtain assistance in these aspects. This point should be a consensus. But the majority of the country representatives also mentioned that they encountered difficulties in interpretation and translation. Sometimes it is hard to find someone who can speak the language of an extreme minority ethnic group, which would cause problems. Another issue that the representatives mentioned was the quality of interpretation and translation. In the cases of foreign laborers and foreign spouses, such as those in Taiwan, sometimes the interpreters/translators were the agents or were found through the agents, and there might be a conflict of interest. So attention should be paid on conflicts of interest when searching for an interpreter/translator. On the other hand, how can we ensure the quality of interpretation/translation? The representatives noted that if the second generation of the immigrants can settle down and serve as interpreters/translators, the quality might be improved.

Another point is that some people leave the country shortly after receiving legal aid, such as our experience in Taiwan, and I believe the same goes for other countries. After they leave the country, Legal Aid Foundation cannot locate them. In some cases, we helped to claim monetary compensation, but we could not give the money to the aided persons because we had no way of contacting them. Another issue is that normally foreigners have very little knowledge of the legal system of the host country, and thus they are easily bullied or exploited. It is important to give them sufficient information. That is my summary of the opinions on the first subtopic.

The second subtopic is the content of the Agreement on Mutual Legal Assistance (AMLA). This can be organized in three points. First, AMLA has to be flexible and creative to suit different cases and types of legal aid. For instance, foreign laborers and foreign spouses will need different types of legal aid. Different types of assistance and co-operation might be needed. Secondly, the mutual agreement should provide the same content of assistance for foreigners as that for domestic citizens. There cannot be any difference for nationals and foreigners. □□

Thirdly, foreigners may encounter issues other than litigation. They need various kinds of assistance. Therefore, the content of AMLA shall cover assistance in aspects other than litigation.

The third subtopic is regarding the effect and enforcement of AMLA. There are four points. The first is to ensure that the agreement is implemented through a single access point and constant communication. The Korean representative gave a very good example. He mentioned that Korea had co-operated with Japan once. Korea sent delegates to Japan to observe and intern for six months, and vice versa. I think it is a very good model. Legal Aid Foundation of Taiwan can follow this model to realize cross-border co-operation. The second point is that it is through effective communication and disclosure of information that the quality and quantity of legal aid can be improved. The third point is that legal aid lawyers shall also understand the laws of other countries. The fourth point, which was especially noted by the Australian representative, is that the agreement can sometimes be achieved through official agreement, and other times it can be achieved through unofficial measures, in order to minimize political influence and ensure the implementation.

The fourth subtopic is how to establish the platform and reach consensus on cross-border co-operation. The first point mentioned that forums can be held by the government, citizen groups or NGOs to thoroughly discuss relevant issues of co-operation, localization of the UN legal aid principles and formulation of corresponding domestic regulations. The second point mentioned that South Africa has a successful experience. They hosted an international conference with the participation of around 60 or 70 countries. The Johannesburg Declaration also mentioned how to improve legal aid through international co-operation. I think that is also something worth considering and learning.

Thirdly, I would like to bring forth a conclusion. Because Taiwan is faced with diplomatic difficulties, we would very much like to contact and cooperate with the legal aid organizations of other countries regularly and irregularly, in order to improve mutual understanding to strengthen legal aid. I would like to quote Mother Teresa of India, "Love is to see our own responsibility in the needs of others." We hope that there will be no more unfair treatment in the court and access to equality and justice can be realized for everyone. Best wishes to you all.

• **Moderator Mr. Wei-Shyang Chen (Secretary-General, Legal Aid Foundation):**

Thank you, Mr. Cheng, for the presentation. I think cross-border co-operation on legal aid is a consensus here. The difficulties in cross-border co-operation are also shared by all of us. Now the real question lies in "How can we co-operate?" There are different views on the practical question of how to co-operate. Some think that a platform of information exchange should be established first, and some think we need to take a step further, such as signing an agreement. That is to say that the real difficulty of the whole co-operation concept lies in the actual implementation.

• **Speaker Mrs. Persida V. Rueda-Acosta (Chief Public Attorney, Public Attorney's Office, Department of Justice, the Philippines):**

A very pleasant good morning to everyone. I thank the Legal Aid Foundation of Taiwan for inviting me for the third time, including our delegation from the Philippines. The daytime experience shared by fellow legal aid and human rights advocates in this conference is a wellspring of information and inspiration for me. You may ask why I decided to be a signatory on behalf of my beloved country, with South Korea, Taiwan for the AMLA (Agreement on Mutual Legal Assistance). Because we have the so-called enabling law, mandating and giving authority to the Chief Public Attorney of the Republic of the Philippines. It says, "the authority in the exercise of the mandate of the Public Attorney's Office shall be vested upon the Chief Public Attorney. So I did not consult the President of the Republic, rather, I would sign this. Because the law itself vested upon this humble representation the power to determine what shall be the scope of the mandate of our office. I may understand the predicament of other delegates, because of the so-called binding effect within your states, or respective state. So in the future, I hope there shall



be more states that will sign this conformity, that there should be co-operation and mutual coordination between the states to guard their nationals residing in a foreign state. I will be signing this memorandum of agreement or understanding in consonance with the United Nations guidelines and principles on legal aid. And if you will look on your manual or handbook, International Covenant on Civil and Political Rights Article 26 states non-discrimination, and it says, “26 States shall ensure the provision of legal aid to all persons, regardless of age, race, color, gender, language, religion or belief, political or other opinion, national or social origin, property, citizenship or domicile, birth, education or social or other status.” We are not violating any law in forcing this agreement; in fact, we are trying to implement the essence of the UN guidelines and principles. I can vividly recall how Judge Dunstan Mlambo presided over us in the Vienna Convention and Experts Meeting regarding this guideline when we were still drafting these principles. So I’m very happy today because South Korea, the Philippines and Taiwan shall be starting this effort, and this could be a model to other states. We need co-operation and mutual coordination. In giving justice to everyone, we should not merely pay for our citizens. It should be justice, like a blindfolded woman carrying a balance. You should give justice to everyone, not just because he is your national, he would prevail over a non-national.

In my fourteen years of being the head of this Office, I tried myself to be fair with everyone. I remember when illegal aliens was charged of drug trafficking, I worked for their freedom, and they were all back in Nigeria and they even showed the renewal of their tickets without any return from then. So every one of us are not mere people of your country. We are the people of the world. We should work with one another, and foster co-operation, amity, and friendship with everyone. So whenever I am being invited by legal aid organizations, like the International Legal Aid Group, the Japan Legal Aid Association, now Japan Legal Support Center, and I thank Keita Abe from Japan for being generous to me. What I am now, is the product of your efforts. Like the USAID, UN bodies, Taiwan Legal Aid Foundation, the Nippon Foundation of Japan, UNODC, and the US Department of State have invited me as an international visitor, and even Harvard University. So this moment is very momentous on my part, I cannot even express my happiness because all the efforts of the experts sent by the UN to Vienna are now a success.

• **Moderator Mr. Wei-Shyang Chen :**

Thank you, Mrs. Persida, for your heartfelt sharing. Persida is quite correct on that our gathering here is actually a realization of cross-border co-operation. Moreover, we are going to sign an agreement to strengthen the co-operation. Based on the UN's principles and guidelines, we make step-by-step breakthroughs in cross-border co-operation and begin to have actual results. We hope the signing of the Agreements on Mutual Legal Assistance (AMLA) by Legal Aid Foundation of Taiwan with the Philippines, and South Korea respectively will have leading effects, and more countries will join in the future.

The second topic is on resource allocation. There is never enough money, but the needs are always endless. How to use limited resources to assist with so many needs is a dilemma. Please welcome Ms. Ta-Hua Yeh to share the summary of Topic 2.

## **[Topic 2] Appropriate resource allocation: Allocating legal aid resources to provide services which reflect international human rights standards and principles**

- **Speaker Ms. Ta-Hua, Yeh (Secretary-General, Taiwan Alliance for Advancement of Youth Rights and Welfare):**

I am honored to share the summary of Topic 2. First, on the topic of resource allocation, the biggest question is precisely what Judge Mlambo mentioned, "how to spend the money on the most crucial issues". This is a question that any legal aid organization, NGO or government agency should think about, and they should ask themselves, "What are the most crucial issues?" Professor Maurits from the Netherlands also brought forth many key points. He thought that we should allocate the resources based on the clients' needs. He mentioned the long-term research and development in the HiiL institute (The Hague Institute for the Internationalisation of Law) and gave concrete recommendations on resource allocation, such as 10% of legal aid resources for IT services, and in the aspect of frontline service, 30% for prevention and early intervention, including administrative expenses of legal aid organizations, such as online consultation, or self-help consultation system to improve the efficiency for the public to access legal information through modern technology.

He also recommended that appropriate videos can be uploaded to platforms such as YouTube in order to minimize the public's misunderstanding of legal aid information or waste. The promotion helps the public or the other government agencies understand how to use legal assistance in a more efficient way.

The emphasis is on listening and understanding the clients to find out which manner of resource allocation would provide the most responsive assistance to them in the whole process.

The second part was to establish a third-party independent and objective institute to monitor and facilitate reasonable allocation of legal aid resources.

Some representatives mentioned that in the resource allocation, more aggressive lobbying should be involved on behalf of the disadvantaged groups to fight for more resources, considering that this involves fundamental human rights and the values of democracy and should therefore be listed as top priority in the allocation of social resources. Others noted that in the screening of eligibility, if the clients can be filtered more effectively, a lot of subsequent handling fees can be saved. That is to say a more efficient method is needed in the means/merits tests.

Also, Judge Mlambo mentioned a key point which impressed me deeply, which is that the government should have more confidence in the allocation of legal aid budgets. But would the government actually have more confidence in the legal aid budget? What legal aid organizations can do is to make the allocation of budgets transparent to the public, to be accountable to the society and to follow the requirements of the legislative department. That would give confidence to the agencies that provide funds, and help them understand reasonable investment in the allocation of legal aid resources, and perhaps even convince the government agencies and investors that it is actually cost-effective. For example, if someone was going to prison for two years, it would cost the government two year's worth of resources. However, if his imprisonment was shortened with the help from legal aid lawyers, the governmental expenditure on prison fees can be saved. This is his viewpoint.

Another point emphasized the importance of early intervention in criminal cases. Ensuring a lawyer by the side through criminal proceedings is a

fundamental human right. Therefore, legal aid lawyers should have full intervention in the criminal proceedings, including the investigation by the police, the prosecution service, and the trial in the court. This would reduce the miscarriage of justice to a certain degree. In addition, some representatives mentioned that how early legal aid service can intervene really depends on the allocation of legal aid resources in each individual country. Each country is different and there is no formula in this aspect. The third part is how to increase the resources. For example, would people rather fight for more government funding or encourage sponsorship from corporations? Each country has a different view. For example, Legal Aid Foundation of Taiwan is discussing whether it is appropriate for us to request a certain percentage of contribution back from the clients who receive legal aid? The South African method is to grant legal aid to clients who are nearly at the edge of eligibility, provided that they make donations of a reasonable amount. This is the South African approach, and the other countries might have different measures. For example, the Australian representative mentioned that they have certain reimbursement mechanisms such as gaining compensation for winning the lawsuits, or the work income of those imprisoned. These can be the possible ways as contribution back to the legal aid funds. Another opinion came from the representative of the U.S. He noted that legal aid organizations can lobby to have "the suspended bank accounts with small amount" listed as their source of funds.

The last part is regarding how to make best use of resources. The South African representative suggested that staff lawyers shall be employed to deal with big amounts of cases because the cost of hiring a full-time lawyer is one-third of that of referring to private lawyers. Cases that are comparatively simple and of large volume can be assigned to the full-time staff lawyers and the more complicated and time-consuming cases can be commissioned to the private lawyers with good credibility and efficiency. A reasonable attorney fees for the external private lawyers can be bargained in order to lower the cost for legal aid.

Some recommended that an intranet shall be established within the legal aid organization so that information from different service centers/branches can be integrated. Meanwhile, the information can help people who need consultation access assistance promptly without long journeys. Another point brought forth was that legal aid organizations should involve actively in policymaking and promotion. Moreover, public legal education is also considered to play an important role

Though the quality of casework is important, active provision of appropriate information to the general public, prevention in communities, and the realization of public legal education can also help improve the efficiency of resource allocation.

• **Moderator Mr. Wei-Shyang Chen (Secretary-General, Legal Aid Foundation):**

Thank you, Ms. Yeh, for your summary, analysis and sharing. Exactly as what Judge Mlambo reminded us of in the forum, our traditional way of legal aid that focuses on litigation support might have neglected the needs of many disadvantaged people who have not entered the stages of dispute resolution or litigation. Professor Maurits of the Netherlands also came up with concrete recommendations on reasonable resource allocation from a macroscopic view and mentioned that investment of funds may not be absolutely correlated with the quality of service.

• **Mr. Wilhelm H. Joseph, Jr. (Executive Director, Legal Aid Bureau, Inc., Baltimore, Maryland):**

I will touch only on three points: of our deliberations, agreements, and conclusions. The first point is that we all agree conclusively, that access to justice is a human right, and that the right must be meaningful. That means that jurisdictions must ensure that their systems, their processes, etc. accommodate the special circumstances of applicants for service, and eventual clients. This should include their assistance of competent counsel when necessary. And jurisdictions must allocate sufficient resources to support necessary systems, processes and assistance that may include lawyers and other providers as well. Point number two, we exchange a great amount of information about how different jurisdictions seek to ensure access to justice in an efficient and effective manner. We all can take away something to improve what we do. I surely have learned a lot, and will take that knowledge back to the U.S. and employ it to serve our clients better. My final point, point number three, there are some issues and approaches that require, in my opinion, further study. At least one of these issues is a practice in some jurisdictions of requiring certain payments from poor clients, particularly when this practice involves possible seizure of the property from the family of a poor client. More study of this practice is needed. My personal concern is that potential clients with serious needs for assistance may be reluctant to seek such

assistance. And also another concern is that people who've come to legal aid for assistance are in fact poor. We should be careful not to employ measures that help to keep them and their families in a permanent state of poverty.

• **Moderator Mr. Wei-Shyang Chen (Secretary-General, Legal Aid Foundation):**

Thank you, Mr. Wilhelm, for your thoughts and encouragement. I think that is a great encouragement for Legal Aid Foundation of Taiwan, inspiring us to move forward and reminding us of how to provide more sufficient services to the poor and not to increase their burden.

Next, let us move on to Topic 3 on ensuring quality. That, too, is a difficult question. All the professional providers of legal aid shall be able to conduct self-management through professional regulations. However, that is quite unlikely in reality. There is a dilemma between self-management of professional lawyers and external control. If the control is too strict, the cost of management will be too high, and moreover, whether the intervention is too excessive on the professionals' discretion. This is a big difficulty for us. Next, let us welcome Ms. Yi-Ting Hu, Executive Secretary of Parents' Association for Persons with Intellectual Disability, Taipei City Taiwan, to share her thoughts and findings.

**[Topic 3] Legal aid lawyers' services: Ensuring the quality of legal aid lawyers' services conform to international principles concerning the role of lawyers**

• **Speaker Ms. Yi-Ting Hu (Executive Secretary, Parents' Association for Persons with Intellectual Disability, Taipei City):**

I was quite nervous when the Legal Aid Foundation invited me to speak at the forum. I remember when the LAF staff called me, I answered, "Did you call the wrong person? I am not a lawyer." But he said, "No. It is exactly what we are looking for, to have an NGO representative at the discussion." So I would like to respond Ms. Ta-Hua Yeh's call on that more NGOs should be invited to participate in discussion on legal aid. After all, our clients are usually the clients of Legal Aid Foundation. We share the same goal.

Precisely as what moderator Mr. Wei-Shyang Chen mentioned, quality of lawyers is not an easy topic to address because there is hardly any consistent standard. I will try to summarize and present the discussion results. For selection, we all agreed that to be a legal aid lawyer, basically the seniority of practice, the experience, résumé, and the level of handling average cases in the past should all reach a basic standard. When registering as a legal aid lawyer, the candidate can be evaluated through interview and general review from the practitioners in the field. When it comes to this, most people would say that the personality traits of a legal aid lawyer are the key because a legal aid lawyer needs to be enthusiastic about charity work and helping the disadvantaged. This is the first part.

The character education and formation is also important. In order to infuse a legal aid lawyer with a sense of responsibility to his cases, on-job training should be enhanced and the case handling cannot always be judged by monetary value, especially since most legal aid lawyers deal with unprivileged groups. For example, the clients of my service are people with intellectual disabilities. They often have problems answering questions or even expressing their own needs. So the lawyer needs to be aware that the people s/he faces often cannot express themselves or collect evidence. S/he must acknowledge that more patience is required than he normally does with average cases. That is the second part.

The representatives also talked about the so-called "contract system" because the U.K. has such a system. They cooperate with law firms through contracts. The benefit of this is that the firm will conduct quality control on the lawyers it hires and the legal aid organization can be relieved of some burdens. However, the contract system also has a flaw, which is that the remuneration has to be competitive in the market; otherwise it will be hard to find a firm to sign a contract with. On entry mechanisms, some mentioned that in the future lawyers shall gradually establish specializations for division of labor". Currently, it has not been realized in Taiwan yet.

There are three main parts in terms of the management systems. First is internal control, which is to establish an internal management among the legal aid lawyers. Personality traits are the basic, but not everything. It is hoped that in the future a sense of honor as being a legal aid lawyer can be established. It is also recommended that legal aid organizations widely promote the missions of legal aid

to the general public so that they will understand and respect the legal aid lawyers wholeheartedly. That will help the legal aid lawyers establish the sense of mission. This is the first part: internal control.

The second part is more realistic: "reasonable lawyer's fee". The amount of lawyer's fee indeed relates to the quality of service. Fees that are too low are not a good thing. As for how to make them reasonable, the social conditions need to be considered and thereby made the fees fair. Post-service lawyer's fees can be a good approach as well. The fees will be offered based on the quality after the service. Thus if the service is not good enough, the lawyer may not obtain any fee at all. The cost of staff lawyers currently varies considerably among different countries. Therefore, some effective management and even elimination systems need to be adopted to make the lawyer's fee acceptable for the general public and the legal aid lawyers. This is what we discussed regarding reasonable lawyer's fees.

The third part is "external management and control", which has several different approaches. The first is to conduct audit when the legal aid lawyer deals with the case, in order to prevent delay of timing and damage on the client's rights. Some representatives suggested that the monitoring can be done by phone calls or progress charts. The second approach is to include IT software in the management, such as the establishment of an IT system to produce reminders for the cases that need to be handled quickly. The third is the regular review with the purpose of finding distinguished lawyers and award them with more honors to stimulate optimal competition. I think that between the carrot and the stick, which is incentive and punishment, in the legal aid field, the incentive shall prevail. After all, this is a charity service, the same as in NGOs, especially social workers. We normally reward the good performance and cover up the bad deeds in hopes of establishing good models. As for the ones who do not perform well, we will encourage or manage them in private. It is not appropriate to publicize the bad performances because it will discourage people from participating the legal aid provision. Some mentioned that if a legal aid lawyer fails at his/her job, the client is entitled to seek compensation. In more serious cases, the lawyer can be stripped of his qualifications. And sharing and experience exchange through the international forum can help formulate better quality standards for assessment and facilitate mutual learning.



Next is the so-called assessment or evaluation and how to establish a standard for evaluation. The representatives all agreed that establishing a quality control standard is absolutely necessary and mentioned that the standard needs to have credibility and cannot only consist of peer review or the litigation results as the only criterion. That would not be objective. The dimension shall be broader, such as incorporating the client's feeling, or even the client's experience throughout the litigation process into the quality control.

As for the assessor, the representatives did not reach a consensus. Some opposed to the idea of judges auditing legal aid lawyers, saying that it was not appropriate. After all, the judge's duty is not the same as that of the lawyer. Especially in criminal proceedings in court, the judge will condemn the lawyers for acquitting the defendants. Therefore, some representatives think the difference in the standpoints makes it inappropriate for judges to evaluate lawyers. That is the opposing party's opinion. The agreeing party thought that the performance of a legal aid lawyer in court is seen most clearly by the judge. Although it is possible to evaluate the lawyer through reviewing their documents, it cannot compare to on-site observation. So the agreeing side thinks it is appropriate for judges to evaluate lawyers.

The final part related to the personality traits and management. It is hoped that strong incentives can be introduced to motivate the legal aid lawyers' participation. For example, the South African representative shared that they recommend legal aid lawyers who perform well to be promoted to the judge's position. That is also a good incentive. If we can let the legal aid lawyers feel that they have gained additional benefits after their participation in legal aid, such as professional training in more dimensions, in the environmental protection issues, laborer issues, foreigner issues, and Family Law issues and so on, which cannot be earned without participation, then the service quality of legal aid lawyers can be improved.

• **Moderator Mr. Wei-Shyang Chen (Secretary-General, Legal Aid Foundation):**

Thank you, Ms. Hu, for your sharing from the perspective of an NGO instead of a lawyer. In fact NGOs can offer inspiring recommendations on the quality of lawyer from the perspective of a user and person in need of legal aid service.

Next, let us welcome the representative from the LAA (Legal Aid Agency), U.K., the country which is a role model in quality control of lawyers, Mr. Hugh Barrett to share his thoughts.

- **Mr. Hugh Barrett (Legal Aid Commissioning and Strategy, Legal Aid Agency, Ministry of Justice, U.K.):**

Thank you, Ms. Hu, for a very comprehensive summary of the findings of the three groups. I'm going to cover very quickly three areas. Firstly I want to mention the relationship between quality and money. And Wilhelm will be very disappointed if I hadn't done that. I would contend that's as described in Philip B. Crosby's seminal work: quality is free.

In other words, it costs no more on a whole system basis to do a good job, but it does to do a poor job. And this, to my mind, means that spending more on legal aid does not guarantee high-quality, nor, and this is very important for my country, spending less on legal aid automatically means lower quality of legal advice.

Having said that, as very movingly demonstrated in the opening video on lost workers, its the commitment, energy, determination, and dare I say, enthusiasm of legal aid providers, the very often makes a difference between success and failure in difficult cases. And someone who measures quality in the work that I do, I would recognize that measuring this commitment, energy, determination and enthusiasm is frankly, probably mission impossible, or to use a phrase now been coined here in this forum in Taipei, it's as difficult as killing a skinny mosquito.

Yesterday we heard from Maurits about a framework for assessing quality. He talked about the importance of looking at the quality of inputs, the quality of the process, the quality of the outputs, in order to do the most important thing, which is to have good quality outcomes. What I've learnt over the last day is that-regardless of the age of ones' legal aid system, whether you have like in New Zealand a system that's over a century old, or one that is relatively young, like that of Taiwan, which is celebrating its 10th anniversary this year;. regardless of whether you have staff lawyers, regardless of whether you employ external lawyers, or, as many others do, have a mixed model of delivery; whether you spend \$50 dollars per capita or one dollar per capita on legal aid-measuring the quality of the service

provided to disadvantaged members in our societies is vital to improve the quality of outcomes. In other words, to ensure that the human rights of all in society are protected.

Once again, I'd like to add my thanks to those of the other speakers and to the organizers of this event. And certainly from my perspective and I know that many of my colleagues from overseas, we've learned a tremendous amount from this three-day forum. And I would like to conclude by thanking you all for your contributions to what has been, in my mind, a very successful event.

## Q&A

### Ques1

- **Moderator Mr. Wei-Shyang Cheng (Secretary-General, Legal Aid Foundation):**

Thank you, Mr. Hugh Barrett, for the reminder and encouragement. Time is like legal aid resources—there is never enough. The time is up, and I believe the audience has a lot of questions to ask. Now let's proceed to the Q&A. The audience can ask a representative from any organization to answer, not just the ones on stage. Please keep your questions clear and concise.

- **Participant:**

I want to ask Mr. Barrett, the delegate from UK. Can you kindly say something about the B-CORP which is quite famous? Would that be helpful for the legal aid system? I mean B-CORP is a kind of system which is quite popular and ongoing in the UK. It's quite similar or even equal to the so called social enterprises. Yesterday I brought forth a motion that legal aid can evolve to a social enterprise model which is more sustainable. I think it will be cost effective for the public sector and consumer friendly for the private sector. How do you think about that? And the B-CORP is just an example for the question.

- **Mr. Hugh Barrett (Legal Aid Commissioning and Strategy, Legal Aid Agency, Ministry of Justice, U.K.):**

Very briefly. Within the UK anyway, social enterprises are a small but important parts of the framework of provision. And we would treat them in the same way that we would treat legal firms. And so they have an opportunity to participate in the provision of all legal aid to members of the public. It's a relatively small but actually it's growing and has grown over the last few years.

- **Mr. Wilhelm H. Joseph, Jr. (Executive Director, Legal Aid Bureau, Inc., Baltimore, Maryland):**

I have one possible suggestion. There is a gentleman in the United States, who was one of the earliest founders of the government-supported legal aid system. And he is developing an interesting approach to serving poor people. And he calls it "Time dollars." "Time dollars," in other words, when a poor person receives free services, those services can be given a value and that poor person would have an opportunity to render some kind of service that is equal to the amount of service they got. So, it could be simply as a babysitter, or mowing a lawn, or painting a building, or whatever. But the fact is that they would then provide equal amount or significant amount of time donated, which has a value. And that value can be matched with the value of the free service they received. A very interesting approach.

## Ques2

- **Mr. Dunstan Mlambo (Judge President Gauteng Division of the High Court of South Africa):**

Thank you very much for that opportunity. I just want to comment on the quality aspect. I have one point about that. And I think also one comment about the advocacy role we can play as legal aid providers.

On quality, I think my experience in South Africa is that there's a tendency to try and measure the quality of legal aid providers by the number of acquitters we get. I think let's be vigilant that would not lapse into that. Because, as legal aid providers, we are there to provide access to justice, right? Some of us come from jurisdictions where there's a pro-convictions approach from the government. You'll find that the prosecution agency is financed three times more than the

legal aid providers, like we have in my country. But if you're able to demonstrate that because of your involvement as a legal aid provider, the prosecution body is unable to prosecute everyone who is arrested, and that's where their role of the front line legal aid providers is key. Because it is because of your involvement as a legal aid provider at the pre-trial stage more, that results in a lot of withdrawals that do not go to trial. So let's just not lapse into it. Into saying, well, I have less acquittal therefore I'm useless. Let's just be mindful of that, because that's not correct yet to measure quality. That's the one aspect.

The other aspect relates to advocacy. The advocacy role we can play as legal aid providers. We tend to be different to the judiciary. There's very little criticism of how judiciary's function. And I don't know why. I'm speaking as a judge now. I remember some nine years ago, I think that was during year 10 as the chairperson of legal aid South Africa. I asked the chief justice to give me an audience to speak to the heads of the South African High Court. And he asked me what you want to speak about, and I said I want to speak about the attitude of judges to legal aid lawyers and poor people who come to their courts. Because our lawyers had demonstrated in report that it's easier for judges to write short thrift of legal aid cases that come to the court simply because they want to make way for privately-funded cases. You find a judge would find it easy to simply postpone a legal aid represented case. Because the view is, well it's government-funded, so there's no loss at stake here. But the attitude that unfortunately creates the perception that if you are poor, you are subject to a different approach from the judiciary. So let's be mindful that our role is to continue to advocate. I was able to demonstrate to the heads of the courts there that with the introduction of the minimum sentencing legislation, the life-sentencing population of South African prisons more than tripled. And if you look at the people serving those life sentences, these are poor people. And I ask the question why. Why it is so easy for judges to sentence poor people more to life and the rich and able people to less than that. So we have a role as legal aid providers to make sure that we advocate and make sure would not lapse into a system where societies start thinking that if you are rich and able, you'll be treated differently to whether you are poor and vulnerable.

- **Mr. Wilhelm H. Joseph, Jr. (Executive Director, Legal Aid Bureau, Inc., Baltimore, Maryland):**

Judge Mlambo , I want to applaud you for passionately speaking about an issue that many legal aid programs have to face. In the United States, I believe this was an issue for a very long time. I think it is much less of an issue today. In fact, I can tell you in Maryland, when you carry the name legal aid lawyer, you're looked at with great respect and high esteem. Because the track record of actual practice in the courts, the track record of the appellate level will show that we are some of the best.

But one sure way to improve this situation. Remember, most judges would have been a lawyer at some point in time. Ours is a salaried system, but the more we have private lawyers involved in all the activities in which we engage, the more knowledgeable they become what we do. If they are involved in pro bono cases, looking side by side with our lawyers, they get an insight into what we can do. If they are there raising funds and money for us they understand, and so on, and so forth. And the more informed they are, the better they understand the facts. And of course the performance of the lawyers must speak for itself.

• **Moderator Mr. Wei-Shyang Cheng(Secretary-General, Legal Aid Foundation):**

Thank you. It seems that I am not a good moderator because the schedule is somewhat delayed. I can see all of you are still having enthusiastic discussions, but we have to stop here because there are other sessions coming up. The time is up for the formal discussion of 2014 international forum. Please give a grand applause to the speakers and panelists on the stage. Thank you!

## General conclusions

### [Summary of 2014 International Forum on Legal Aid]

Prepared by Department of Legal Research and Legal Affairs, Legal Aid Foundation

The forum focused on the following three topics: (1), How to realize UN's Legal Aid Principles and Guidelines through cross-border co-operation; (2), How to appropriately allocate legal aid resources to provide services which reflect international human rights standards and principles; and (3), How to ensure the quality of legal aid lawyers' services conforming to international principles. Participants from within the country and abroad shared, contemplated and discussed these three topics in the forum. The relevant results from the discussion of the aforementioned three topics are mainly presented in the focused dialogue and the 2014 Taipei Declaration on Legal Aid. The content is summarized as follows:

#### **I. Cross-border cooperation: Applying the standards outlined in United Nations legal aid principles and guidelines through cross-border co-operation between legal aid organizations**

(1) Possible difficulties faced by foreigners:

The delegates brought forth the possible difficulties faced by foreigners based on their experiences, including:

1. Difficulties in interpretation and translation, such as difficulties in locating interpreters and translators, in ensuring the quality, and the shortage of interpreters/translators. Group A suggested in the discussion that the countries can establish a list of selected interpreters/translators through an AMLA beforehand in order to ensure reliable service when needed.
2. Difficulties in retrieving documents for eligibility from the home country. Group B suggested that the difficulties in the retrieval of such materials can also be resolved through AMLA (Agreement on Mutual Legal Assistance).
3. Invisible discrimination from the investigation or trial agencies is most likely to happen to unprivileged immigrant laborers or immigrants.

4. Difficulties in continual and subsequent aid to foreigners who have returned to their countries, such as how to transmit the monetary compensation to the victims who have returned to their countries? And if a foreigner died in Taiwan, how does his/her family come apply for the death benefits?
5. A foreigner's limited knowledge of the laws can cause damages to his/her rights or lead to violation of the law by accident.

(2) Content of the Agreement on Mutual Legal Assistance (AMLA):

1. In regard to the content of AMLA, delegates noted that flexibility and creativity are required to suit different type of cases and different needs. Also, foreigners may face a variety of issues; therefore legal aid service can provide service not only for litigation, but also assistance for non-litigation matters, such as rental, foreign exchange, or notarization.
2. In addition, AMLA provides, in principle, the same legal aid to foreigners and citizens alike. The majority opinion of Group B emphasized that a platform for international information exchange and contact is crucial, and AMLA can be the means to establish such a platform.

(3) Effects and enforcement of AMLA:

1. In regard to the effects and enforcement of AMLA, most delegates mentioned that long-term and constant contact should be conducted through a single access point. For example, after Korea and Japan signed an AMLA, Korea sent delegates to Japan to do internship and learn for six months, and afterwards Japan sent delegates to Korea to stay for six months. This is a good example of experience exchange and interaction.
2. However, the representative of the Netherlands suggested that AMLA should not be overly rigid, such as a single access point may not be necessary, in case an issue occurs with the access point that affects the case or investigation, causing the failure to achieve the results of AMLA.
3. To ensure effective and high quality legal aid, effective communication



and disclosure and sharing of information among the countries shall be emphasized. In addition, the representative of the Netherlands reminded that AMLA involves allocation of resources to foreigners and therefore the agreement shall avoid political controversy as much as possible. Finally, the legal aid lawyers who provide assistance to foreigners shall receive cross-border legal training such as foreign laws in immigration, refugee and asylum seeking, etc., and shall take the specific cultural background and family factors of the foreign clients into account, in order to provide quality legal aid.

(4) How to establish an international platform and reach consensus through cross-border mutual assistance:

1. Regarding this topic, the delegates thought that international forums can be convened by the government, citizen groups, or law reform organizations to discuss the formulation of relevant guidelines. For example, South Africa once invited 60 countries to discuss international mutual legal assistance on legal aid and formulated the Johannesburg Declaration accordingly.
2. Due to the fact that Taiwan does not have a diplomatic relationship with most countries, regular contact, information exchange and meetings with the legal aid organizations of other countries have become ever more important in order to improve mutual understanding and to stimulate dialogue and opportunities for cooperation.

## **II. Appropriate resource allocation: Allocating legal aid resources to provide services which reflect international human rights standards and principles**

(1) What is the best means of allocation?

1. The most reasonable way to allocate legal aid resources:

- A. First of all, due to the fact that the importance and priority of issues usually involve social and cultural differences and thus vary among different countries, how to "correctly" allocate resources is a dilemma in

itself. There is no set standard.

- B. Legal aid is a basic human right, and safeguards important values such as democracy and freedom. Therefore, legal aid service shall take top priority in the allocation of the social resources. For this reason, legal aid organizations shall more actively and proactively lobby the government on behalf of the disadvantaged groups in order to obtain more resources.
- C. The delegates mentioned that the establishment of an independent and objective third-party monitoring institute can help allocate legal aid resources in a reasonable way. For example, an independent monitoring committee can be established to regularly assess and monitor the suitability of the resource allocation and legal aid expenses.
- D. In addition, legal aid services shall strive to effectively screen the eligible clients at the front line to ensure that the subsequent processes and resources are indeed applied to the people who need the assistance most, so that the resources are best utilized.
- E. Among them, the representative of the Netherlands used the allocation mode suggested by the HiiL institute of the Netherlands (The Hague Institute for the Internationalisation of Law) as an example to recommend that 10% of legal aid resources shall be used for IT services, 10% for research cost, 30% for administrative fees for handling the frontline service (such as consultation) and the remaining 50% shall be used for casework. Although IT service only takes up 10% of the budget, appropriate utilization of IT can save a fairly large amount of cost. For example, the production and replay of a video informing the client of his rights can save costs on manpower. In addition, a 15-minute phone call or webcam technology used in legal advice can possibly create a value of USD 100 because the lawyer does not have to travel.
- F. Finally, alternative dispute resolution (ADR) has become a trend. Through ADR, the cost can be effectively reduced as well. The majority opinion of Group A suggested that whether the ADR system can be

expanded by legal aid organizations can be studied, in order to reduce the number of disputes into courts and to save legal aid resources in the future.

2. How can legal aid provide early intervention in criminal cases? What are the service models?

A. According to the principles and guidelines outlined by the UN regarding the access to legal aid in the criminal justice system, having a lawyer by the side for representation through criminal proceedings is a basic human right for the accused. Therefore, legal aid lawyers should have full intervention in the criminal proceedings (including the investigation by the police and prosecution service, the trial and the subsequent enforcement procedures) and should not compromise due to a lack of funding. In addition, early intervention by the lawyer in the criminal proceedings can prevent improper arrest, torture, over-crowdedness in the court and prison, and can therefore reduce the entire costs of the judicial system. Meanwhile, this can also fairly decrease the miscarriage of justice to a certain degree.

B. However, how early legal aid service can intervene depends on how far the legal aid resources can be expanded and utilized in each country respectively. Therefore, increasing the investment on legal aid resources will help earlier intervention in criminal cases.

(2) How to raise additional resources:

1. First of all, legal aid organizations shall make their best efforts to fight for more funding from the government. The participating legal aid organizations all rely on their government sector to invest resources in legal aid through cooperation between the government and the organizations and grants or subsidies. Therefore, the government play an important role in the investment and maintenance of legal aid resources.

2. Of course, legal aid organizations shall also encourage sponsorship from corporations, such as emphasizing the fact that corporate social

- responsibility (CSR) benefits the brand image, etc.
3. In addition, the delegates also mentioned that the legal aid organizations can encourage the clients to donate back or implement the mechanisms of contribution and reimbursement. For example, in the systems of upfront contribution and reimbursement in Australia, the clients shall contribute part of their compensation when winning the lawsuit or their work income during the imprisonment. Therefore, even those who are financially disadvantaged or those who serve time in prison can also give back to the society.
  4. Legal aid organizations can also employ new technology, such as online application for legal aid or consultation, to facilitate usage by the public and to reduce the administrative costs of the organization.
  5. Finally, the representative of the U.S. brought forth the idea of possible listing of the suspended accounts with small amount as a source of legal aid funds in the U.S. The small amount suspended account in the U.S. refers to the account that has not had monetary flow for a designated period of time and the account holder cannot be reached (in most cases, the account holder deceased and no heir has come forward to claim the rights). According to the Unclaimed Property Act of individual states of the U.S., such accounts in a bank or a financial institute shall be listed as suspended accounts by the government and the government also assumes custody of these to protect the account holder's property from being disposed by the bank or the institute. The government would also post a public notice for the holder or the heir to claim the right. If no one claims the right over the account after the notice period expires, then the state government will retrieve such unclaimed property and list it as unclaimed/abandoned property fund. At this time, the property can be listed as a source of legal aid funds. In Taiwan, with respect to unclaimed inheritance, Article 1185 of the Civil Code also has similar regulation that states, such inheritance will be incorporated into the national treasury if no one claims it before the court's notice period (stipulated in Article 1178) expires. Therefore, if the usage of the unclaimed inheritance or other unclaimed property can be legislated and managed properly, such property can be listed as a source

of legal aid funds. This is something worth considering.

(3) How to best utilize resources:

1. First, a well-constructed intranet within the legal aid organization shall be established to understand the service provision, grasp the information and liaise with other departments/offices throughout the country.
2. The review of applications for legal aid depends on the lawyer's capacity to make effective prior evaluation, which may decide whether the legal aid resources can be best employed after granting the aid.
3. The South African representative also shared their experience. Since the cost of a staff lawyer in a legal aid organization is one-third of that for external private lawyers, the legal aid organization thus assigns the relatively simple cases which are also of big volume to staff lawyers and commission more complicated and time-consuming cases to private lawyers in order to save the costs.
4. In addition, legal aid organizations shall also actively participate in the policymaking and discussion instead of passively doing casework. A designated department should be responsible for formulation of future strategies and participation in policymaking. Through the proactive planning, legal aid quality can be enhanced and the entire environment of justice can be subsequently improved.
5. Legal aid organizations shall also participate in the formulation and revision of the national policies and laws as well as provide a review on the unsolvable issues in the current legal system to prevent misallocation or waste of resources. Through a huge amount of casework and experiences of working with the NGOs, legal aid organizations can provide valuable opinions on policies and law reform.
6. Finally, through constant promotion and public legal education, public awareness and understanding of law can be improved, and thereby invisible waste of legal aid resources can be avoided. For example, online

videos informing the mission of legal aid, clients' rights or legal knowledge can be useful when the citizens encounter problems. Relatively simple legal questions can be answered and solved in this way.

### **III. Legal aid lawyers' services: Ensuring the quality of legal aid lawyers' services conform to international principles concerning the role of lawyers**

#### (1) Anterior control and entry criteria :

1. The selection criteria for legal aid lawyers in various countries normally involve the following factors: the seniority of practice, working experience, résumé, peer review and interview. The delegates also stated that the personality traits of a legal aid lawyer is a key factor because legal aid lawyers who are enthusiastic about charity work usually do quality work.
2. After a legal aid lawyer is enlisted, on-job training and continuous professional development shall be emphasized and enhanced, especially since legal aid cases normally deal with the needs of disadvantaged groups. Therefore, in addition to the professional abilities, character development and training on professional ethics are also important.
3. Finally, the establishment of a specialist system with different specializations will also benefit the selection of legal aid lawyers and the quality of assistance in different types of cases.

#### (2) Posterior control and disqualification:

1. It is essential for the legal aid organizations in all countries to establish a quality control standard and a credible assessment system. The standard shall be multi-dimensional, including the client's feeling and experience, rather than consisting of peer review or the litigation results only.
2. The delegates also discussed who are entitled to assess the performance of legal aid lawyers. It is generally agreed that the evaluation shall consist of opinions from multiple sources, including the clients, legal aid

organizations and judges. However, some delegates considered that judges are not appropriate candidates for assessing the lawyers due to their different standpoints on cases.

3. The quality control shall be conducted during the proceedings of a legal aid case, in case time delay causes severe damages to the client's rights, which cannot be reverted or compensated.
4. Legal aid organizations can employ IT software technology to conduct case progress management. For example, the Korean representative mentioned that his corporation uses software to send email reminders about the deadlines of a certain case.
5. In regard to the lawyer's fees for legal aid lawyers, a certain correlation can be found with the service quality. However, this can be compensated through an enhancement in the lawyers' sense of honor and responsibility.
6. Some countries pay the lawyer's fees to the legal aid lawyers after the case is fully completed to ensure the legal aid service to be provided in a timely and devoted manner and thus maintain the service quality.
7. In addition to regular review and commendation of the outstanding legal aid lawyers to stimulate optimal competition, delegates also noted that a training system or strong incentives can encourage lawyer's performance. For example, in South Africa, legal aid lawyers who perform well will be recommended for the position of a judge.
8. As for legal aid lawyers who do not perform well or receive bad review, in addition to disqualification for a certain period, some countries will aggravate the punishment such as permanent disqualification as a legal aid lawyer. In some countries, legal aid clients can also seek compensation from the delinquent lawyers.
9. Finally, delegates stated that through the international forums, legal aid lawyers are able to interact and exchange experiences with the delegates from other countries, which helps improve the quality of legal aid.



## 2014 International Forum on Legal Aid





# Appendix

- Appendix I Conference Information
- Appendix II Moderators and Speakers
- Appendix III Panel Discussion (I-III) Group Discussion Topic and List
- Appendix IV United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems
- Appendix V 2014 Taipei Declaration on Legal Aid
- Appendix VI Agreement on Mutual Legal Assistance for Citizens of both Countries
- Appendix VII 2014 International Forum on Legal Aid Organizing Committee
- Appendix VIII Photo Gallery



## 2014 International Forum on Legal Aid



**Appendix I**

**2014 International Forum on Legal Aid  
Conference Information**

**Saturday, 25 October, 2014**

<b>Time</b>	<b>Activity</b>
08:00-08:45	<b>Registration</b>
08:45-09:40	<p><b><u>Opening Ceremony</u></b> Blessing Ceremony by Katratipulr,piyunumayan</p> <p><b>Remarks:</b> K.C. Fan, Organizing Committee, 2014 International Forum on Legal Aid Chun-Jung Lin, Chairperson, Legal Aid Foundation</p> <p><b>Guest Speakers:</b> Ying-jeou Ma, President of Republic of China (Taiwan) Hau-Min Rai, President of Judicial Yuan, Republic of China(Taiwan)</p> <p><b>Opening Video:</b> Abandoned Workers</p>
09:40-10:20	<p><b>Keynote Speech:</b> Legal Aid and the Universal Value of Human Rights</p> <p><b>Moderator:</b> Mr. Chih-Kuang Wu, Board Member, Legal Aid Foundation, R.O.C. (Taiwan)</p> <p><b>Speaker:</b> Mr. Dunstan Mlambo, Judge President of the Gauteng Division of the High Court, Department of Justice and Constitutional Development</p>
10:20-10:40	<b>Tea Break</b>
10:40-11:40	<p><b>National (Regional) Reports I</b></p> <p><b>Moderator:</b> Ms. Michele McCreadie, General Manager, Legal Aid Services, Ministry of Justice, New Zealand</p> <p><b>Speakers:</b> Taiwan, Australia, Canada, England &amp; Wales(U. K.), Hong Kong (SAR), Republic of Indonesia, Japan</p>
11:40-11:50	<b>Break</b>
11:50-12:40	<p><b>Special Report:</b> Comparing legal aid systems</p> <p><b>Moderator:</b> Mr. Anthony John Reilly, CEO, Legal Aid Queensland, Australia</p> <p><b>Speakers:</b> Prof. Maurits Barendrecht, Tilburg University, the Netherlands</p>

12:40-14:00	<b>Lunch</b>
14:00-15:10	<p><b>National (Regional) Reports II</b></p> <p><b>Moderator:</b> Mr. Mark Benton, Q.C., CEO, Legal Services Society, British Columbia, Canada.</p> <p><b>Speakers:</b> Republic of Korea, Malaysia, New Zealand, The Philippines, Thailand, U.S.A., Vietnam</p>
15:10-15:25	<b>Tea Break</b>
15:25-16:30	<p><b>Panel Discussion I: Cross-border co-operation: Applying the standards outlined in United Nations legal aid principles and guidelines through cross-border co-operation between legal aid organizations.</b></p> <p><b>Moderator:</b> Mr. Wilhelm H. Joseph, Jr., Executive Director, Maryland Legal Aid, Baltimore, Maryland, U.S.A.</p> <p><b>Speakers:</b> Mr. Jerry Cheng, Committee Member, International Affairs Committee, Legal Aid Foundation, R.O.C. (Taiwan) Ms. Persida V. Rueda-Acosta, Chief Public Attorney, Public Attorney's Office, Department of Justice, the Philippines Mr. Anthony John Reilly, CEO, Legal Aid Queensland, Australia</p>
16:30-16:40	<b>Participants move to Workshop rooms</b>
16:40-18:10	<b>Workshop I: Group Discussions (3 groups)</b>
19:00-21:00	<b>Welcome Banquet (by invitation)</b>

**Sunday, 26 October, 2014**

<b>Time</b>	<b>Activity</b>
09:00-09:30	Registration
09:30-10:35	<p><b>Panel Discussion II: Appropriate resource allocation: Allocating legal aid resources to provide services which reflect international human rights standards and principles.</b></p> <p><b>Moderator:</b> Mr. Kuo-Cheng Chen, Director-General of Department of Administrative Litigation and Discipline, Judicial Yuan</p> <p><b>Speakers:</b> Ms. Ta-Hua Yeh, Board Member, Legal Aid Foundation, R.O.C. (Taiwan) Mr. Wilhelm H. Joseph, Jr., Executive Director, Maryland Legal Aid, Baltimore, Maryland, U.S.A. Ms. Michele McCreadie, General Manager, Legal Aid Services, Ministry of Justice, New Zealand</p>
10:35-11:00	<b>Tea Break (Participants move to Workshop rooms)</b>
11:00-12:30	<b>Workshop II: Group Discussions (3 groups)</b>
12:30-14:00	<b>Lunch</b>
14:00-15:05	<p><b>Panel Discussion III: Legal aid lawyers' services: Ensuring the quality of legal aid lawyers' services conform to international principles concerning the role of lawyers.</b></p> <p><b>Moderator:</b> Prof. Maurits Barendrecht, Tilburg University, the Netherlands</p> <p><b>Speakers:</b> Mr. Ping-Cheng Lo, Board Member, Legal Aid Foundation, R.O.C. (Taiwan) Mr. Hugh Barrett, Director, Legal Aid Commissioning and Strategy, Legal Aid Agency, Ministry of Justice, U.K. Mr. Keita Abe, Senior Researcher of Research Division, Director of Information System Management Division, Japan Legal Support Center, Japan</p>
15:05-15:30	<b>Tea Break (Participants move to Workshop rooms)</b>
15:30-17:00	<b>Workshop III: Group Discussions (3 groups)</b>
17:00-17:10	<b>Participants move to the Roundtable meeting room</b>
17:10-18:10	<b>Roundtable meeting(invited speakers &amp; delegates only)</b>

## Monday, 27 October, 2014

Time	Activity
09:00-09:30	<b>Registration</b>
09:30-10:40	<p><b>Workshop Conclusions and Q&amp;A</b></p> <p><b>Moderator:</b> Mr. Wei-Shyang Chen, Secretary-General, Legal Aid Foundation, R.O.C.(Taiwan)</p> <p><b>Panel I:Cross-border co-operation: Applying the standards outlined in United Nations legal aid principles and guidelines through cross-border co-operation between legal aid organizations.</b></p> <p><b>Speaker:</b> Mr. Jerry Cheng, Committee Member, International Affairs Committee, Legal Aid Foundation, R.O.C. (Taiwan)</p> <p><b>Discussant:</b> Ms. Persida V. Rueda-Acosta, Chief Public Attorney, Public Attorney's Office, Department of Justice, the Philippines</p> <p><b>Panel II:Appropriate resource allocation: Allocating legal aid resources to provide services which reflect international human rights standards and principles.</b></p> <p><b>Speaker:</b> Ms. Ta-Hua Yeh, Board Member, Legal Aid Foundation, R.O.C. (Taiwan)</p> <p><b>Discussant:</b> Mr. Wilhelm H. Joseph, Jr., Executive Director, Maryland Legal Aid, Baltimore, Maryland, U.S.A.</p> <p><b>Panel III:Legal aid lawyers' services: Ensuring the quality of legal aid lawyers' services conform to international principles concerning the role of lawyers.</b></p> <p><b>Speaker:</b> Ms. Yi-Ting Hu Executive Secretary of Parents' Association for persons with intellectual Disability, Taipei City</p> <p><b>Discussant:</b> Mr. Hugh Barrett, Director, Legal Aid Commissioning and Strategy, Legal Aid Agency, Ministry of Justice, U.K.</p>
10:40-11:00	<b>Tea Break</b>
11:00-11:40	<b>Closing Ceremony</b>
12:00-13:30	<b>Lunch</b>
13:30-18:00	<b>Courtesy Visit &amp; Tour(by invitation)</b>
18:30-21:00	<b>Farewell Banquet(by invitation)</b>

**Appendix II**

**Moderators and Speakers**

(Listed in alphabetical order by name)

[ Taiwan ]

- Mr. Anthony Carlisle  
International Affairs Supervision, The Garden of Hope Foundation

[ Australia ]

- Mr. Anthony John Reilly  
CEO, Legal Aid Queensland

[ Taiwan ]

- Mr. Awi Mona  
Associate Professor, Department of Educational Management, National Taipei  
University of Education

[ Taiwan ]

- Mr. Bo Tedards  
Director of the Taiwan Section of Amnesty International

[ Taiwan ]

- Mr. Chih-kuang Wu  
Professor, School of Law, Fu Jen Catholic University

[ Taiwan ]

- Mr. Chin-Feng Hsueh  
Executive Member of Council, Taipei Bar Association

[ Taiwan ]

- Ms. Chu-Fang Chang  
Director, Legal Aid Foundation (Shilin Branch)

[ Taiwan ]

- Mr. Chun-Jung Lin  
Chairperson, Fourth-Term Board of Directors, Legal Aid Foundation

[ South Africa ]

- Mr. Dunstan Mlambo  
Judge President Gauteng Division of the High Court of South Africa

[ Indonesia ]

- Mr. Enny Nurbaningsih  
Head of National Law Development Agency, Ministry of Law and Human  
Rights RI

[ Taiwan ]

- Ms. Hsieh Hsing-ling  
Deputy Secretary-General of the Legal Aid Foundation

[ U.K. ]

- Mr. Hugh Barrett  
Director, Legal Aid Commissioning and Strategy, Legal Aid Agency, Ministry of Justice

[ Taiwan ]

- Mr. Jerry Cheng  
Presiding lawyer of Justice Law Firm

[ Taiwan ]

- Mr. K.C. Fan  
Honorary Professor of Law, National Taipei University Law School; Founding Partner & Special Counsel, Formosa Transnational Attorney-At-Law

[ Korea ]

- Mr. Kang Byung Sam  
Staff Attorney, Korea Legal Aid Corporation, Republic of Korea

[ Japan ]

- Mr. Keita Abe  
Senior Researcher of Research Division, Director of Information System Management Division Japan Legal Support Center

[ Taiwan ]

- Mr. Kuo-Cheng Chen  
Director, Department of Administrative Litigation and Discipline, Judicial Yuan

[ Canada ]

- Mr. Mark Benton  
CEO, Legal Services Society, British Columbia

[ Netherlands ]

- Mr. Maurits Barendrecht  
Professor, Tilburg University



[ Taiwan ]

- Ms. Mei-Nu Yu  
Legislator

[ New Zealand ]

- Ms. Michele McCreadie  
General Manager Legal Aid Services

[ Vietnam ]

- Ms. Nguyen Thi Pha  
Officer, The National Legal Aid Agency, Ministry of Justice

[ Philippines ]

- Mrs. Persida V. Rueda-Acosta  
Chief Public Attorney, Public Attorney's Office, Department of Justice

[ Taiwan ]

- Mr. Ping-Cheng, Lo  
Attorney-at-Law, Wen & Lo Law Firm

[ Thailand ]

- Ms. Sayamol Kaiyoorawongs  
Deputy Secretary General, Office of the Law Reform Commission of Thailand

[ Taiwan ]

- Ms. Ta-Hua Yeh  
Secretary-General, Taiwan Alliance for Advancement of Youth Rights and Welfare

[ Malaysia ]

- Mr. Victor Paul Dorai Raj  
Chairperson, Legal Aid Kedah

[ Taiwan ]

- Mr. Wei-Shyang Chen  
Secretary-General, Legal Aid Foundation

[ U.S.A. ]

- Mr. Wilhelm H. Joseph  
Jr. Executive Director, Legal Aid Bureau, Inc., Baltimore, Maryland



## 2014 International Forum on Legal Aid

### [ Taiwan ]

- Ms. Yi-Ting Hu  
Executive Secretary, Parents' Association for Persons with Intellectual  
Disability, Taipei City Taiwan

### [ Hong Kong ]

- Mr. Yiu-Leung Cheung  
Barrister

**Appendix III**

Panel Discussion (I-III)  
Group Discussion Topic and List

**[Topic 1]**

**How to carry out UN's Legal Aid Principles and Guidelines  
through mutual legal assistance**

**1. Possible difficulties faced by foreigners**

- I. How to resolve current problems such as foreign workers' access to healthcare, lack of morality or quality in interpretation services, residential permit procedures in cross-border marriage, and cross-border drug trafficking? Are there any other problems faced by foreigners?
- II. In what situations may locals require legal aids in a foreign country? What kind of legal aid do they need?

**2. Mutual legal assistance agreements (MLAA)**

- I. Would a MLAA suffice just by offering foreigners the same level of legal aid as locals? Or if different services are needed given foreigners' special conditions?
- II. For two countries that provide different levels of legal aid, how can the MLAA be structured to ensure equality? Is it reasonable for a country to offer better legal aids for foreigners than it does for locals because of the MLAA?

**3. Efficacy and execution of MLAA**

- I. How to ensure execution of MLAA terms?
- II. How to collaborate with local authorities (e.g. immigration agencies) or NGOs to ensure timely legal aids for foreigners?

**4. How to establish the platform and consensus through a MLAA?**

- I. Are current international conventions or guidelines helpful in establishing cross-border MLAAs? If so, how are they being implemented?
- II. Do international conferences or forums suffice as means for establishing MLAAs? Is multilateral consensus and co-operation possible through bilateral agreements?

## Group Discussion List

### Group Discussions (A) Conference Room

**Moderator:**

Mr. Jerry Cheng—Committee Member, International Affairs Committee, Legal Aid Foundation, R.O.C. (Taiwan)

**Discussant:**

- Ms. Tsefang Sun, Executive Secretary of Shilin Branch, Legal Aid Foundation, R.O.C. (Taiwan)
- Mr. Kuo-Chang Lin, Director of Yilan Branch, Legal Aid Foundation, R.O.C. (Taiwan)
- Mr. Byung Sam Kang, Staff Attorney, Korea Legal Aid Corporation
- Mr. Maurits Barendrecht, Professor, Tilburg University
- Mr. Dunstan Mlambo, Judge President of the Gauteng Division of the High Court, Department of Justice and Constitutional Development
- Ms. Nguyen Thi Pha, Officer, The National Legal Aid Agency, Ministry of Justice, Vietnam
- Ms. Sayamol Kaiyoorawong, Deputy Secretary General, Office of the Law Reform Commission of Thailand

### Group Discussions (B) R.101

**Moderator:**

Ms. Chu-Fang, Chang—Director of Shilin Branch, Legal Aid Foundation, R.O.C. (Taiwan)

**Discussant:**

- Ms. Sophia Pan, Chairman, Chinese Association for Foreign Spouses & Labors' Voices.
- Mr. Tsong-Shyan Lin, Executive Secretary of Banciao Branch, Legal Aid Foundation, R.O.C. (Taiwan)
- Mr. Anthony John Reilly, CEO, Legal Aid Queensland, Australia
- Mr. Hugh Barrett, Director, Legal Aid Commissioning and Strategy, Legal Aid Agency, Ministry of Justice, U.K.

## [Topic 2]

### Allocation of legal aid resources

#### 1. What is the best allocation?

- I. What is the reasonable way to allocate legal aid resources? Should it depend on the type of case, the needs or financial status of the parties involved, or the source of budget?
- II. How to provide legal aids as early as possible in criminal cases? What are means of service?
- III. Alternative dispute resolution is an upcoming trend. How should legal services be adjusted to align with this trend? What roles can it play?

#### 2. How to raise additional resources?

- I. What is the most suitable size of budget for legal aids? How is it raised?
- II. In what situations should beneficiaries return part or all cost of legal aid provided? How to ensure that this is done?

#### 3. How best to utilize resources?

- I. How to reduce administration costs? How to simplify application or review procedures?
- II. How to assess the applicant's financial background in the quickest manner? Are there any privacy concerns in retrieving the applicant's financial background through connecting with the taxation government authorities, whether as an individual or as a household?
- III. How to assist in class action or complex cases involving public interests?
- IV. Apart from providing assistance on a case-by-case basis, should legal aid organizations involve actively in policymaking?

## Group Discussion List

### Group Discussions (A) Conference Room

**Moderator:**

Ms. Ta-Hua Yeh, Board Member, Legal Aid Foundation, R.O.C. (Taiwan)

**Discussant:**

- Mr. Han-Wei Chou Lawyer of Lin&Sbib Law Firm
- Mr. Ling-Tse Kung, Director of Taoyuan Branch, Legal Aid Foundation, R.O.C. (Taiwan)
- Mr. Byung Sam Kang, Staff Attorney, Korea Legal Aid Corporation
- Mr. Maurits Barendrecht, Professor, Tilburg University
- Mr. Dunstan Mlambo, Judge President of the Gauteng Division of the High Court, Department of Justice and Constitutional Development
- Ms. Nguyen Thi Pha, Officer, The National Legal Aid Agency, Ministry of Justice, Vietnam
- Ms. Sayamol Kaiyoorawong, Deputy Secretary General, Office of the Law Reform Commission of Thailand

### Group Discussions (B) R.101

**Moderator:**

Ms. Mei-Nu Yu—Legislator

**Discussant:**

- Mr. Po-Hsiang Yu, Member, Legal Affairs Committee, Legal Aid Foundation, R.O.C. (Taiwan)
- Mr. Chia-Ying Liang, Staff Attorney, Legal Aid Foundation, R.O.C. (Taiwan)
- Mr. Anthony John Reilly, CEO, Legal Aid Queensland, Australia
- Mr. Hugh Barrett, Director, Legal Aid Commissioning and Strategy, Legal Aid Agency, Ministry of Justice, U.K.
- Dr. Enny Nurbaningsih, Head of National Law Development Agency, Ministry of Law and Human Rights RI, Indonesia
- Mr. Victor Paul Dorai Raj, Chairperson, Legal Aid Kedah

- Mr. Wilhelm H. Joseph, Jr., Executive Director, Legal Aid Bureau, Inc., Baltimore, Maryland, U.S.A.

## **Group Discussions (C) R.103**

### **Moderator:**

Mr. Awi Mona—Board Member, Legal Aid Foundation, R.O.C. (Taiwan)

### **Discussant:**

- Mr. Shih-Hsiang Lo, CEO, Taiwan Association for Innocence
- Mr. Lin-Sheng Lee, Director of Hsinchu Branch, Legal Aid Foundation, R.O.C. (Taiwan)
- Mr. Mark Benton, CEO, Legal Services Society, British Columbia, Canada.
- Mr. Keita Abe, Senior Researcher of Research Division, Director of Information System Management Division, Japan Legal Support Centre
- Ms. Michele McCreadie, General Manager, Legal Aid Services, Ministry of Justice, New Zealand
- Mr. Yiu-Leung Cheung, Barrister, Hong Kong
- Ms. Persida V. Rueda-Acosta, Chief Public Attorney, Public Attorney's Office, Department of Justice

## [Topic 3]

# How to achieve the standard of service required by international conventions among legal aid lawyers

## 1. Eligibility control and entry mechanism

- I. How to select good legal aid lawyers? What are the advantages and disadvantages between contracting system adopted in UK, the case assignment systems adopted in Taiwan and Japan?
- II. How to assign cases according to lawyers' specialties?
- III. What are the advantages and disadvantages between in-house lawyers and external lawyers?

## 2. Performance control and exit mechanism

- I. How to manage the quality of service? Should the level of fees be associated with quality of service? Will the service quality be better if fees are paid in lump-sum after the service is completed?
- II. Do legal aid organizations provide proper systems that help the applicant choose the lawyer he or she wants? Should the applicant be given relevant information to aid in their selection? How should information be disclosed?
- III. How to eliminate legal aid lawyers who exhibit inadequate performance?
- IV. Is there any monitoring for ongoing cases, such as the need to report back case progress at certain time intervals?
- V. Is there any possibility to have judges evaluate the performance of legal aid lawyers?

## 3. Challenges

- I. Is it appropriate for legal aid organizations to evaluate lawyers' quality on their own? How should this be done?
- II. How to examine whether legal aid lawyers have conformed with international standards?



- III. How to demand average service quality when legal aid lawyers are paid fees below the market rate?
- IV. Are there any other incentives beside fees for legal aid lawyers to improve service quality and devote in pro bono?

## Group Discussion List

### Group Discussions (A) Conference Room

**Moderator:**

Mr. Ping-Cheng Lo—Board Member, Legal Aid Foundation, R.O.C. (Taiwan)

**Discussant:**

- Ms. Yu-Fan Chen, Duty CEO, Judicial Reform Foundation, R.O.C. (Taiwan)
- Mr. Kuang-Lu Wu, Director of Taichung Branch, Legal Aid Foundation, R.O.C. (Taiwan)
- Mr. Byung Sam Kang, Staff Attorney, Korea Legal Aid Corporation
- Mr. Maurits Barendrecht, Professor, Tilburg University
- Mr. Dunstan Mlambo, Judge President of the Gauteng Division of the High Court, Department of Justice and Constitutional Development
- Ms. Nguyen Thi Pha, Officer, The National Legal Aid Agency, Ministry of Justice, Vietnam
- Ms. Sayamol Kaiyoorawong, Deputy Secretary General, Office of the Law Reform Commission of Thailand

### Group Discussions (B) R.101

**Moderator:**

Mr. Chin-Feng Hsueh—Executive Member of Council, Taipei Bar Association

**Discussant:**

- Ms. Ying-Chiu Tu, Social Work Supervisor, The Garden of Hope Foundation
- Mr. Tsao-Ping Wei, Director of Miaoli Branch, Legal Aid Foundation, R.O.C. (Taiwan)
- Mr. Anthony John Reilly, CEO, Legal Aid Queensland, Australia
- Mr. Hugh Barrett, Director, Legal Aid Commissioning and Strategy, Legal Aid Agency, Ministry of Justice, U.K.
- Dr. Enny Nurbaningsih, Head of National Law Development Agency, Ministry of Law and Human Rights RI, Indonesia
- Mr. Victor Paul Dorai Raj, Chairperson, Legal Aid Kedah
- Mr. Wilhelm H. Joseph, Jr., Executive Director, Legal Aid Bureau, Inc., Baltimore, Maryland, U.S.A.

## Group Discussions (C) R.103

### Moderator:

Ms. Yi-Ting Hu—Director-General, Parents' Association for Persons with Intellectual Disability, Taipei City

### Discussant:

- Ms. Yu-Lin Hsu, Director, Department of Business & Management, Legal Aid Foundation, R.O.C. (Taiwan)
- Ms. PIN-HUI SHI, Director-General, Kaohsiung Bar Association
- Mr. Mark Benton, CEO, Legal Services Society, British Columbia, Canada.
- Mr. Keita Abe, Senior Researcher of Research Division, Director of Information System Management Division, Japan Legal Support Centre
- Ms. Michele McCreadie, General Manager, Legal Aid Services, Ministry of Justice, New Zealand
- Mr. Yiu-Leung Cheung, Barrister, Hong Kong
- Ms. Persida V. Rueda-Acosta, Chief Public Attorney, Public Attorney's Office, Department of Justice



## 2014 International Forum on Legal Aid



Appendix IV

United Nations Principles and Guidelines on Access to  
Legal Aid in Criminal Justice Systems

United Nations

E/CN.15/2012/L.14/Rev.1



**Economic and Social Council**

Distr.: Limited  
25 April 2012

Original: English

**Commission on Crime Prevention  
and Criminal Justice**

**Twenty-first session**

Vienna, 23-27 April 2012

Agenda item 8

**Use and application of United Nations standards and  
norms in crime prevention and criminal justice**

**Georgia, Philippines and South Africa:\* revised draft resolution**

The Commission on Crime Prevention and Criminal Justice recommends to the Economic and Social Council the approval of the following draft resolution for adoption by the General Assembly:

**United Nations Principles and Guidelines on Access to Legal Aid in  
Criminal Justice Systems**

*The General Assembly,*

*Recalling* the Universal Declaration of Human Rights,<sup>1</sup> which enshrines the key principles of equality before the law and the presumption of innocence, as well as the right to a fair and public hearing by an independent and impartial tribunal, established by law, along with all the guarantees necessary for the defence of anyone charged with a penal offence, other minimum guarantees and the entitlement to be tried without undue delay,

*Recalling also* the International Covenant on Civil and Political Rights,<sup>2</sup> in particular article 14, which states that everyone charged with a criminal offence shall be entitled to be tried in his or her presence and to defend him or herself in person or through legal assistance of his or her own choosing or assigned to him or her where the interests of justice so require, in a fair and public hearing by a competent, independent and impartial tribunal established by law,

\* On behalf of the States Members of the United Nations that are members of the Group of African States.

<sup>1</sup> General Assembly resolution 217 A (III).

<sup>2</sup> General Assembly resolution 2200 A (XXI), annex.

*Bearing in mind* the Standard Minimum Rules for the Treatment of Prisoners,<sup>3</sup> approved by the Economic and Social Council in its resolution 663 C (XXIV) of 31 July 1957 and extended by the Council in its resolution 2076 (LXII) of 13 May 1977, according to which an untried prisoner, for the purposes of his or her defence, shall be allowed to receive visits from his or her legal adviser,

*Bearing in mind also* the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,<sup>4</sup> principle 11 of which states that a detained person shall have the right to defend him or herself or to be assisted by counsel as prescribed by law,

*Bearing in mind further* the Basic Principles on the Role of Lawyers,<sup>5</sup> in particular principle 6, which states that any persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services,

*Recalling* the Bangkok Declaration on Synergies and Responses: Strategic Alliance in Crime Prevention in Criminal Justice,<sup>6</sup> especially paragraph 18, in which Member States are called upon to take steps, in accordance with their domestic laws, to promote access to justice, to consider the provision of legal aid to those who need it and to enable the effective assertion of their rights in the criminal justice system,

*Recalling also* the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World,<sup>7</sup> especially paragraph 52, in which it is recommended that Member States endeavour to reduce pretrial detention, where appropriate, and promote increased access to justice and legal defence mechanisms,

*Recalling further* Economic and Social Council resolution 2007/24 of 26 July 2007, on international cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa,

*Recognizing* that legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law and that it is a foundation for the enjoyment of other rights, including the right to a fair trial, as a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process,

*Recognizing also* that the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, annexed to the present resolution, can be

<sup>3</sup> *First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat* (United Nations publication, Sales No. 1956.IV.4), annex I.A; and Economic and Social Council resolution 2076 (LXII).

<sup>4</sup> General Assembly resolution 43/173, annex.

<sup>5</sup> *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3, annex.

<sup>6</sup> General Assembly resolution 60/177, annex.

<sup>7</sup> General Assembly resolution 65/230, annex.

applied by Member States, taking into account the great variety of legal systems and socioeconomic conditions in the world,

1. *Notes* with appreciation the work of the open-ended intergovernmental expert group on strengthening access to legal aid in criminal justice systems at its meeting held in Vienna from 16 to 18 November 2011 to develop a set of principles and guidelines on access to legal aid in criminal justice systems;

2. *Adopts* the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, annexed to the present resolution, as a useful framework to guide Member States on the principles on which a legal aid system in criminal justice should be based, taking into account the content of the present resolution and that all elements of the annex will be applied in accordance with national legislation;

3. *Invites* Member States, consistent with their national legislation, to adopt and strengthen measures to ensure that effective legal aid is provided, in accordance with the spirit of the Principles and Guidelines, bearing in mind the diversity of criminal justice systems among different countries and regions around the world and the fact that legal aid is developed in accordance with the overall balance of the criminal justice system, as well as the circumstances of countries and regions;

4. *Encourages* Member States to consider, where appropriate, the provision of legal aid and to provide such aid to the maximum extent possible;

5. *Also encourages* Member States to draw upon the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice, as appropriate, and in accordance with national law, in undertaking national efforts and measures to strengthen access to legal aid in criminal justice systems;

6. *Requests* the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources, to continue to provide advisory services and technical assistance to Member States, upon request, in the area of criminal justice reform, including restorative justice, alternatives to imprisonment and the development of integrated plans for the provision of legal aid;

7. *Also requests* the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources, to make the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems widely available, including through the development of relevant tools such as handbooks and training manuals;

8. *Invites* Member States and other donors to provide extrabudgetary resources for those purposes, in accordance with the rules and procedures of the United Nations;

9. *Requests* the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its twenty-third session on the implementation of the present resolution.

## Annex

### United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

#### A. Introduction

1. Legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. Legal aid is a foundation for the enjoyment of other rights, including the right to a fair trial, as defined in article 11, paragraph 1, of the Universal Declaration of Human Rights, a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.

2. Furthermore, article 14, paragraph 3(d) of the International Covenant on Civil and Political Rights states that everyone should be entitled, among other rights, “to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it”.

3. A functioning legal aid system, as part of a functioning criminal justice system, may reduce the length of time suspects are held in police stations and detention centres, in addition to reducing the prison population, wrongful convictions, prison overcrowding and congestion in the courts, and reducing reoffending and revictimization. It may also protect and safeguard the rights of victims and witnesses in the criminal justice process. Legal aid can be utilized to contribute to the prevention of crime by increasing awareness of the law.

4. Legal aid plays an important role in facilitating diversion and the use of community-based sanctions and measures, including non-custodial measures; promoting greater community involvement in the criminal justice system; reducing the unnecessary use of detention and imprisonment; rationalizing criminal justice policies; and ensuring efficient use of State resources.

5. Regrettably, many countries still lack the necessary resources and capacity to provide legal aid for suspects, those charged with a criminal offence, prisoners, victims and witnesses.

6. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, which are drawn from international standards and recognized good practices, aim to provide guidance to States on the fundamental principles on which a legal aid system in criminal justice should be based and to outline the specific elements required for an effective and sustainable national legal aid system, in order to strengthen access to legal aid pursuant to Economic and Social Council resolution 2007/24, entitled “International cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa”.



7. In line with the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa and the Lilongwe Plan of Action for the implementation of the Declaration, the Principles and Guidelines follow a broad concept of legal aid.

8. For the purpose of the Principles and Guidelines, the term “legal aid” includes legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require. Furthermore, “legal aid” is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.

9. For the purpose of the Principles and Guidelines, the individual who provides legal aid is herein referred to as the “legal aid provider”, and the organizations that provide legal aid are referred to as the “legal aid service providers”. The first providers of legal aid are lawyers, but the Principles and Guidelines also suggest that States involve a wide range of stakeholders as legal aid service providers in the form of non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations and academia. Provision of legal aid to foreign nationals should conform to the requirements of the Vienna Convention on Consular Relations and other applicable bilateral treaties.

10. It should be noted that States employ different models for the provision of legal aid. These may involve public defenders, private lawyers, contract lawyers, pro bono schemes, bar associations, paralegals and others. The Principles and Guidelines do not endorse any specific model but encourage States to guarantee the basic right to legal aid of persons detained, arrested<sup>a</sup> or imprisoned, suspected<sup>b</sup> or accused of, or charged with a criminal offence, while expanding legal aid to include others who come into contact with the criminal justice system and diversifying legal aid delivery schemes.

11. The Principles and Guidelines are based on the recognition that States should, where appropriate, undertake a series of measures that, even if not strictly related to legal aid, can maximize the positive impact that the establishment and/or reinforcement of a properly working legal aid system may have on a properly functioning criminal justice system and on access to justice.

12. Recognizing that certain groups are entitled to additional protection or are more vulnerable when involved with the criminal justice system, the Principles and Guidelines also provide specific provisions for women, children and groups with special needs.

13. The Principles and Guidelines are primarily concerned with the right to legal aid, as distinct from the right to legal assistance as recognized in international law.

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<sup>a</sup> The term “arrest”, “detained person” and “imprisoned person” are understood as defined in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173, annex).

<sup>b</sup> The right to legal aid of suspects arises before questioning, when they become aware that they are the subject of investigation, and when they are under threat of abuse and intimidation, e.g. in custodial settings.

Nothing in these Principles and Guidelines should be interpreted as providing a lesser degree of protection than that provided under existing national laws and regulations and international and regional human rights conventions or covenants applicable to the administration of justice, including, but not limited to, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. However, this should not be interpreted as meaning that States are bound by international and regional instruments that they have not ratified or acceded to.

## **B. Principles**

### **Principle 1. Right to legal aid**

14. Recognizing that legal aid is an essential element of a functioning criminal justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process,<sup>c</sup> States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution.

### **Principle 2. Responsibilities of the State**

15. States should consider the provision of legal aid as their duty and responsibility. To that end, they should consider, where appropriate, enacting specific legislation and regulations and ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible. States should allocate the necessary human and financial resources to the legal aid system.

16. The State should not interfere with the organization of the defence of the beneficiary of legal aid or with the independence of his or her legal aid provider.

17. States should enhance knowledge of the people about their rights and obligations under law through appropriate means, in order to prevent criminal conduct and victimization.

18. States should endeavour to enhance the knowledge of their communities about their justice system and its functions, the ways to file complaints before the courts and alternative dispute resolution mechanisms.

19. States should consider adopting appropriate measures for informing their community about acts criminalized under the law. The provision of such information for those travelling to other jurisdictions, where crimes are categorized and prosecuted differently, is essential for crime prevention.

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<sup>c</sup> The term “justice process” is understood as defined in the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex). For the purpose of the Principles and Guidelines, the term shall also encompass extradition, transfer of prisoners and mutual legal assistance proceedings.

**Principle 3. Legal aid for persons suspected of or charged with a criminal offence**

20. States should ensure that anyone who is arrested, detained, suspected of or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process.

21. Legal aid should also be provided, regardless of the person's means, if the interests of justice so require, for example, given the urgency or complexity of the case or the severity of the potential penalty.

22. Children should have access to legal aid under the same conditions or more lenient conditions as adults.

23. It is the responsibility of police, prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are provided access to legal aid.

**Principle 4. Legal aid for victims of crime**

24. Without prejudice to or inconsistency with the rights of the accused, States should, where appropriate, provide legal aid to victims of crime.

**Principle 5. Legal aid for witnesses**

25. Without prejudice to or inconsistency with the rights of the accused, States should, where appropriate, provide legal aid to witnesses of crime.

**Principle 6. Non-discrimination**

26. States should ensure the provision of legal aid to all persons regardless of age, race, colour, gender, language, religion or belief, political or other opinion, national or social origin or property, citizenship or domicile, birth, education or social status or other status.

**Principle 7. Prompt and effective provision of legal aid**

27. States should ensure that effective legal aid is provided promptly at all stages of the criminal justice process.

28. Effective legal aid includes, but is not limited to, unhindered access to legal aid providers for detained persons, confidentiality of communications, access to case files and adequate time and facilities to prepare their defence.

**Principle 8. Right to be informed**

29. States should ensure that, prior to any questioning and at the time of deprivation of liberty, persons are informed of their right to legal aid and other procedural safeguards as well as of the potential consequences of voluntarily waiving those rights.

30. States should ensure that information on rights during the criminal justice process and on legal aid services is made freely available and is accessible to the public.

### **Principle 9. Remedies and safeguards**

31. States should establish effective remedies and safeguards that apply if access to legal aid is undermined, delayed or denied or if persons have not been adequately informed of their right to legal aid.

### **Principle 10. Equity in access to legal aid**

32. Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum-seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. Such measures should address the special needs of these groups, including gender-sensitive and age-appropriate measures.

33. States should also ensure that legal aid is provided to persons living in rural, remote and economically and socially disadvantaged areas and to persons who are members of economically and socially disadvantaged groups.

### **Principle 11. Legal aid in the best interests of the child**

34. In all legal aid decisions affecting children,<sup>d</sup> the best interests of the child should be the primary consideration.

35. Legal aid provided to children should be prioritized, in the best interests of the child, and be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children.

### **Principle 12. Independence and protection of legal aid providers**

36. States should ensure that legal aid providers are able to carry out their work effectively, freely and independently. In particular, States should ensure that legal aid providers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; are able to travel, to consult and meet with their clients freely and in full confidentiality both within their own country and abroad, and to freely access prosecution and other relevant files; and do not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

### **Principle 13. Competence and accountability of legal aid providers**

37. States should put in place mechanisms to ensure that all legal aid providers possess education, training, skills and experience that are commensurate with the nature of their work, including the gravity of the offences dealt with, and the rights and needs of women, children and groups with special needs.

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<sup>d</sup> “Child” shall mean any person under 18 years of age, in line with the Convention on the Rights of the Child.

38. Disciplinary complaints against legal aid providers should be promptly investigated and adjudicated in accordance with professional codes of ethics before an impartial body and subject to judicial review.

**Principle 14. Partnerships**

39. States should recognize and encourage the contribution of lawyers' associations, universities, civil society and other groups and institutions in providing legal aid.

40. Where appropriate, public-private and other forms of partnerships should be established to extend the reach of legal aid.

**C. Guidelines**

**Guideline 1. Provision of legal aid**

41. Whenever States apply a means test to determine eligibility for legal aid, they should ensure that:

(a) Persons whose means exceed the limits of the means test but who cannot afford, or do not have access to, a lawyer in situations where legal aid would have otherwise been granted and where it is in the interests of justice to provide such aid, are not excluded from receiving assistance;

(b) The criteria for applying the means test are widely publicized;

(c) Persons urgently requiring legal aid at police stations, detention centres or courts should be provided preliminary legal aid while their eligibility is being determined. Children are always exempted from the means test;

(d) Persons who are denied legal aid on the basis of the means test have the right to appeal that decision;

(e) A court may, having regard to the particular circumstances of a person and after considering the reasons for his or her refusal of legal aid, direct that that person be provided with legal aid, with or without his or her contribution, when the interests of justice so require;

(f) If the means test is calculated on the basis of the household income of a family, but individual family members are in conflict with each other or do not have equal access to the family income, only the income of the person applying for legal aid is used for the purpose of the means test.

**Guideline 2. Right to be informed on legal aid**

42. In order to guarantee the right of persons to be informed of their right to legal aid, States should ensure that:

(a) Information on the right to legal aid and what such aid consists of, including the availability of legal aid services and how to access such services and other relevant information, is made available to the community and to the general public in local government offices and educational and religious institutions and through the media, including the Internet, or other appropriate means;

(b) Information is made available to isolated groups and marginalized groups. Use should be made of radio and television programmes, regional and local newspapers, the Internet and other means, in particular following changes to the law or specific issues affecting a community, of targeted community meetings;

(c) Police officers, prosecutors, judicial officers and officials in any facility where persons are imprisoned or detained inform unrepresented persons of their right to legal aid and of other procedural safeguards;

(d) Information on the rights of a person suspected of or charged with a criminal offence in a criminal justice process and on the availability of legal aid services is provided in police stations, detention centres, courts and prisons, for example, through the provision of a letter of rights or in any other official form submitted to the accused. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children; and such information should be in a language that those persons understand. Information provided to children must be provided in a manner appropriate to their age and maturity;

(e) Effective remedies are available to persons who have not been adequately informed of their right to legal aid. Such remedies may include a prohibition on conducting procedural actions, release from detention, exclusion of evidence, judicial review and compensation;

(f) Means of verification that a person has actually been informed are put in place.

### **Guideline 3. Other rights of persons detained, arrested, suspected or accused of, or charged with a criminal offence**

43. States should introduce measures:

(a) To promptly inform every person detained, arrested, suspected or accused of, or charged with a criminal offence of his or her right to remain silent; his or her right to consult with counsel or, if eligible, with a legal aid provider at any stage of the proceedings, especially before being interviewed by the authorities; and his or her right to be assisted by an independent counsel or legal aid provider while being interviewed and during other procedural actions;

(b) To prohibit, in the absence of any compelling circumstances, any interviewing of a person by the police in the absence of a lawyer, unless the person gives his or her informed and voluntary consent to waive the lawyer's presence and to establish mechanisms for verifying the voluntary nature of the person's consent. An interview should not start until the legal aid provider arrives;

(c) To inform all foreign detainees and prisoners in a language they understand of their right to request contact with their consular authorities without delay;

(d) To ensure that persons meet with a lawyer or a legal aid provider promptly after their arrest in full confidentiality; and that the confidentiality of further communications is guaranteed;

(e) To enable every person who has been detained for any reason to imminently notify a member of his or her family, or any other appropriate person of

his or her choosing, of his or her detention and location and of any imminent change of location; the competent authority may, however, delay a notification if absolutely necessary, if provided for by law and if the transmission of the information would hinder a criminal investigation;

(f) To provide the services of an independent interpreter, whenever necessary, and the translation of documents where appropriate;

(g) To assign a guardian, whenever necessary;

(h) To make available in police stations and places of detention the means to contact legal aid providers;

(i) To ensure that persons detained, arrested, suspected or accused of, or charged with a criminal offence are advised of their rights and the implications of waiving them in a clear and plain manner; and endeavour to ensure that the person understands both;

(j) To ensure that persons are informed of any mechanism available for filing complaints against torture or ill treatment;

(k) To ensure that the exercise of these rights by a person is not prejudicial to his or her case.

#### **Guideline 4. Legal aid at the pretrial stage**

44. To ensure that detained persons have prompt access to legal aid in conformity with the law, States should take measures:

(a) To ensure that police and judicial authorities do not arbitrarily restrict the right or access to legal aid for persons detained, arrested, suspected or accused of, or charged with a criminal offence, in particular in police stations;

(b) To facilitate access for legal aid providers assigned to provide assistance to detained persons in police stations and other places of detention for the purpose of providing that assistance;

(c) To ensure legal representation at all pretrial proceedings and hearings;

(d) To monitor and enforce custody time limits in police holding cells or other detention centres, for example by instructing judicial authorities to screen the remand caseload in detention centres on a regular basis to make sure that people are remanded lawfully, that their cases are dealt with in a timely manner and that the conditions in which they are held meet the relevant legal standards, including international ones;

(e) To provide every person, on admission to a place of detention, with information on their rights in law, the rules of the place of detention and the initial stages of the pretrial process. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children and be in a language that the person in need of legal aid understands. Information provided to children should be provided in a manner appropriate for their age and maturity. The information material should be supported by visual aids prominently located in each detention centre;

(f) To request bar or legal associations and other partnership institutions to establish a roster of lawyers and paralegals to support a comprehensive legal system for persons detained, arrested, suspected or accused of, or charged with a criminal offence, in particular at police stations;

(g) To ensure that every person charged with a criminal offence has adequate time, facilities and technical and financial support, in case he or she does not have sufficient means, to prepare his or her defence and is able to consult with his or her lawyer in full confidentiality.

#### **Guideline 5. Legal aid during court proceedings**

45. To guarantee that every person charged with a criminal offence for which a term of imprisonment or capital punishment may be imposed by a court of law has access to legal aid in all proceedings at court, including on appeal and other related proceedings, States should introduce measures:

(a) To ensure that the accused understands the case against him or her and the possible consequences of the trial;

(b) To ensure that every person charged with a criminal offence has adequate time, facilities and technical and financial support, in case he or she does not have sufficient means, to prepare his or her defence and is able to consult with his or her lawyer in full confidentiality;

(c) To provide representation in any court proceedings by a lawyer of choice, where appropriate, or by a competent lawyer assigned by the court or other legal aid authority at no cost when the person does not have sufficient means to pay and/or where the interests of justice so require;

(d) To ensure that the counsel of the accused is present at all critical stages of the proceedings. Critical stages are all stages of a criminal proceeding at which the advice of a lawyer is necessary to ensure the accused's right to a fair trial or at which the absence of counsel might impair the preparation or presentation of a defence;

(e) To request bar or legal associations and other partnership institutions to establish a roster of lawyers and paralegals to support a comprehensive legal system for persons suspected, arrested, detained, accused or charged with a criminal offence; such support could include, for example, appearing before the courts on fixed days;

(f) To enable, in accordance with national law, paralegals and law students to provide appropriate types of assistance to the accused in court, provided that they are under the supervision of qualified lawyers;

(g) To ensure that unrepresented suspects and the accused understand their rights. This may include, but is not limited to, requiring judges and prosecutors to explain their rights to them in clear and plain language.

#### **Guideline 6. Legal aid at the post-trial stage**

46. States should ensure that imprisoned persons and children deprived of their liberty have access to legal aid. Where legal aid is not available, States shall ensure that such persons are held in prison in conformity with the law.



47. For this purpose, States should introduce measures:

(a) To provide all persons, on admission to the place of imprisonment and during their detention, with information on the rules of the place of imprisonment and their rights under the law, including the right to confidential legal aid, advice and assistance; the possibilities for further review of their case; their rights during disciplinary proceedings; and procedures for complaint, appeal, early release, pardon or clemency. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children and should be in a language that the person in need of legal aid understands. Information provided to children should be provided in a manner appropriate for their age and maturity. The information material should be supported by visual aids prominently located in those parts of the facilities where prisoners have regular access;

(b) To encourage bar and legal associations and other legal aid providers to draw up rosters of lawyers, and paralegals, where appropriate, to visit prisons to provide legal advice and assistance at no cost to prisoners;

(c) To ensure that prisoners have access to legal aid for the purpose of submitting appeals and filing requests related to their treatment and the conditions of their imprisonment, including when facing serious disciplinary charges, and for requests for pardon, in particular for those prisoners facing the death penalty, as well as for applications for parole and representation at parole hearings;

(d) To inform foreign prisoners of the possibility, where available, of seeking transfer to serve their sentence in their country of nationality, subject to the consent of the States involved.

#### **Guideline 7. Legal aid for victims**

48. Without prejudice to or inconsistency with the rights of the accused and consistent with the relevant national legislation, States should take adequate measures, where appropriate, to ensure that:

(a) Appropriate advice, assistance, care, facilities and support are provided to victims of crime, throughout the criminal justice process, in a manner that prevents repeat victimization and secondary victimization;<sup>e</sup>

(b) Child victims receive legal assistance as required, in line with the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime;

(c) Victims receive legal advice on any aspect of their involvement in the criminal justice process, including the possibility of taking civil action or making a claim for compensation in separate legal proceedings, whichever is consistent with the relevant national legislation;

(d) Victims are promptly informed by the police and other frontline responders (i.e. health, social and child welfare providers) of their right to

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<sup>e</sup> “Repeat victimization” and “secondary victimization” are understood as defined in paragraphs 1.2 and 1.3 of the appendix to Recommendation Rec (2006) of the Committee of Ministers to Member States on Assistance to Crime Victims of the Council of Europe.

information, their entitlement to legal aid, assistance and protection and how to access such rights;

(e) The views and concerns of victims are presented and considered at appropriate stages of the criminal justice process where their personal interests are affected or where the interests of justice so require;

(f) Victim services agencies and non-governmental organizations can provide legal aid to victims;

(g) Mechanisms and procedures are established to ensure close cooperation and appropriate referral systems between legal aid providers and other professionals (i.e. health, social and child welfare providers) to obtain a comprehensive understanding of the victim, as well as an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation and needs.

#### **Guideline 8. Legal aid for witnesses**

49. States should take adequate measures, where appropriate, to ensure that:

(a) Witnesses are promptly informed by the relevant authority of their right to information, their entitlement to assistance and protection and how to access such rights;

(b) Appropriate advice, assistance, care facilities and support are provided to witnesses of crime throughout the criminal justice process;

(c) Child witnesses receive legal assistance as required, in line with the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime;

(d) All statements or testimony given by the witness at all stages of the criminal justice process are accurately interpreted and translated.

50. States should, where appropriate, provide legal aid to witnesses.

51. The circumstances in which it may be appropriate to provide legal aid to witnesses includes, but is not limited to, situations in which:

(a) The witness is at risk of incriminating him or herself;

(b) There is a risk to the safety and well-being of the witness resulting from his or her status as such;

(c) The witness is particularly vulnerable, including as a result of having special needs.

#### **Guideline 9. Implementation of the right of women to access legal aid**

52. States should take applicable and appropriate measures to ensure the right of women to access legal aid, including:

(a) Introducing an active policy of incorporating a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid to ensure gender equality and equal and fair access to justice;

(b) Taking active steps to ensure that, where possible, female lawyers are available to represent female defendants, accused and victims;

(c) Providing legal aid, advice and court support services in all legal proceedings to female victims of violence in order to ensure access to justice and avoid secondary victimization and other such services, which may include the translation of legal documents where requested or required.

**Guideline 10. Special measures for children**

53. States should ensure special measures for children to promote children's effective access to justice and to prevent stigmatization and other adverse effects as a result of their being involved in the criminal justice system, including:

(a) Ensuring the right of the child to have counsel assigned to represent the child in his or her own name in proceedings where there is or could be a conflict of interest between the child and his or her parents or other parties involved;

(b) Enabling children who are detained, arrested, suspected or accused of, or charged with a criminal offence to contact their parents or guardians at once and prohibiting any interviewing of a child in the absence of his or her lawyer or other legal aid provider, and parent or guardian when available, in the best interests of the child;

(c) Ensuring the right of the child to have the matter determined in the presence of the child's parents or legal guardian, unless it is not considered to be in the best interests of the child;

(d) Ensuring that children may consult freely and in full confidentiality with parents and/or guardians and legal representatives;

(e) Providing information on legal rights in a manner appropriate for the child's age and maturity, in a language that the child can understand and in a manner that is gender- and culture-sensitive. Provision of information to parents, guardians or caregivers should be in addition, and not an alternative, to communicating information to the child;

(f) Promoting, where appropriate, diversion from the formal criminal justice system and ensuring that children have the right to legal aid at every stage of the process where diversion is applied;

(g) Encouraging, where appropriate, the use of alternative measures and sanctions to deprivation of liberty and ensuring that children have the right to legal aid so that deprivation of liberty is a measure of last resort and for the shortest appropriate period of time;

(h) Establishing measures to ensure that judicial and administrative proceedings are conducted in an atmosphere and manner that allow children to be heard either directly or through a representative or an appropriate body in a manner consistent with the procedural rules of national law. Taking into account the child's age and maturity may also require modified judicial and administrative procedures and practices.

54. The privacy and personal data of a child who is or who has been involved in judicial or non-judicial proceedings and other interventions should be protected at all stages, and such protection should be guaranteed by law. This generally implies that no information or personal data may be made available or published, particularly in the media, that could reveal or indirectly enable the disclosure of the

child's identity, including images of the child, detailed descriptions of the child or the child's family, names or addresses of the child's family members and audio and video records.

#### **Guideline 11. Nationwide legal aid system**

55. In order to encourage the functioning of a nationwide legal aid system, States should, where it is appropriate, undertake measures:

(a) To ensure and promote the provision of effective legal aid at all stages of the criminal justice process for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims of crime;

(b) To provide legal aid to persons who have been unlawfully arrested or detained or who have received a final judgement of the court as a result of a miscarriage of justice, in order to enforce their right to retrial, reparation, including compensation, rehabilitation and guarantees of non-repetition;

(c) To promote coordination between justice agencies and other professionals such as health, social services and victim support workers in order to maximize effectiveness of the legal aid system, without prejudice to the rights of the accused;

(d) To establish partnerships with bar or legal associations to ensure the provision of legal aid at all stages of the criminal justice process;

(e) To enable paralegals to provide those forms of legal aid allowed by national law or practice to persons arrested, detained, suspected of or charged with a criminal offence, in particular in police stations or other detention centres;

(f) To promote the provision of appropriate legal aid for the purpose of crime prevention.

56. States should also take measures:

(a) To encourage legal and bar associations to support the provision of legal aid by offering a range of services, including those that are free (pro bono), in line with their professional calling and ethical duty;

(b) To identify incentives for lawyers to work in economically and socially disadvantaged areas (e.g. tax exemption, fellowships and travel and subsistence allowances);

(c) To encourage lawyers to organize regular circuits of lawyers around the country to provide legal aid to those in need.

57. In the design of their nationwide legal aid schemes, States should take into account the needs of specific groups, including but not limited to the elderly, minorities, persons with disabilities, the mentally ill, persons living with HIV and other severe contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum-seekers, foreign citizens, refugees and internally displaced persons, in line with guidelines 9 and 10.

58. States should take appropriate measures to establish child-friendly<sup>f</sup> and child-sensitive legal aid systems taking into account children's evolving capacities and the need to strike an appropriate balance between the best interests of the child and children's right to be heard in judicial proceedings including:

(a) Establishing, where possible, dedicated mechanisms to support specialized legal aid for children and support the integration of child-friendly legal aid into general and non-specialized mechanisms;

(b) Adopting legal aid legislation, policies and regulations that explicitly take into account the child's rights and special developmental needs, including the right to have legal or other appropriate assistance in the preparation and presentation of his or her defence; the right to be heard in all judicial proceedings affecting him or her; standard procedures for determining best interest; privacy and protection of personal data; and the right to be considered for diversion;

(c) Establishing child-friendly legal aid service standards and professional codes of conduct. Legal aid providers working with and for children should, where necessary, be subject to regular vetting to ensure their suitability for working with children;

(d) Promoting standard legal aid training programmes. Legal aid providers representing children should be trained in and be knowledgeable about children's rights and related issues, receive ongoing and in-depth training and be capable of communicating with children at their level of understanding. All legal aid providers working with and for children should receive basic interdisciplinary training on the rights and needs of children of different age groups and on proceedings that are adapted to them; and training on psychological and other aspects of the development of children, with special attention to girls and children who are members of minority or indigenous groups, and on available measures for promoting the defence of children who are in conflict with the law;

(e) Establishing mechanisms and procedures to ensure close cooperation and appropriate referral systems between legal aid providers and different professionals to obtain a comprehensive understanding of the child, as well as an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation and needs.

59. To ensure the effective implementation of nationwide legal aid schemes, States should consider establishing a legal aid body or authority to provide, administer, coordinate and monitor legal aid services. Such a body should:

(a) Be free from undue political or judicial interference, be independent of the Government in decision-making related to legal aid and should not be subject to the direction or control or financial intimidation of any person or authority in the performance of its functions, regardless of its administrative structure;

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<sup>f</sup> "Child-friendly legal aid" is the provision of legal assistance to children in criminal, civil and administrative proceedings that is accessible, age-appropriate, multidisciplinary and effective, and that is responsive to the range of legal and social needs faced by children and youth. Child-friendly legal aid is delivered by lawyers and non-lawyers who are trained in children's law and child and adolescent development and who are able to communicate effectively with children and their caretakers.

(b) Have the necessary powers to provide legal aid, including but not limited to the appointment of personnel; the designation of legal aid services to individuals; the setting of criteria and accreditation of legal aid providers, including training requirements; the oversight of legal aid providers and the establishment of independent bodies to handle complaints against them; and the assessment of legal aid needs nationwide; and the power to develop its own budget;

(c) Develop, in consultation with key justice sector stakeholders and civil society organizations, a long-term strategy guiding the evolution and sustainability of legal aid;

(d) Report periodically to the responsible authority.

### **Guideline 12. Funding the nationwide legal aid system**

60. Recognizing that the benefits of legal aid services include financial benefits and cost savings throughout the criminal justice process, States should, where appropriate, make adequate and specific budget provisions for legal aid services that are commensurate with their needs, including by providing dedicated and sustainable funding mechanisms for the national legal aid system.

61. To this end, States could take measures:

(a) To establish a legal aid fund to finance legal aid schemes, including public defender schemes, to support legal aid provision by legal or bar associations; support university law clinics; and sponsor non-governmental organizations and other organizations, including paralegal organizations, in providing legal aid services throughout the country, especially in rural and economically and socially disadvantaged areas;

(b) To identify fiscal mechanisms for channelling funds to legal aid, such as:

(i) Allocating a percentage of the State's criminal justice budget to legal aid services that are commensurate with the needs of effective legal aid provision;

(ii) Using funds recovered from criminal activities through seizures or fines to cover legal aid for victims;

(c) To identify and put in place incentives for lawyers to work in rural areas and economically and socially disadvantaged areas (for example, tax exemptions or reductions, student loan payment reductions);

(d) To ensure fair and proportional distribution of funds between prosecution and legal aid agencies.

62. The budget for legal aid should cover the full range of services to be provided to persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence, and to victims. Adequate special funding should be dedicated to defence expenses such as copying relevant files and documents, collection of evidence, expenses related to expert witnesses, forensic experts and social workers, and travel expenses. Payments should be timely.

### **Guideline 13. Human resources**

63. States should, where appropriate, make adequate and specific provision for staffing the nationwide legal aid system that are commensurate with their needs.

64. States should ensure that professionals working for the national legal aid system possess the qualifications and training appropriate for the services they provide.

65. Where there is a shortage of qualified lawyers, the provision of legal aid services may also include non-lawyers or paralegals. At the same time, States should promote the growth of the legal profession and remove financial barriers to legal education.

66. States should also encourage wide access to the legal profession, including affirmative action measures to ensure access for women, minorities and economically disadvantaged groups.

#### **Guideline 14. Paralegals**

67. States should, in accordance with their domestic law and where appropriate, recognize the role played by paralegals or similar service providers in providing legal aid services where access to lawyers is limited.

68. For this purpose, States should, in consultation with civil society and justice agencies and professional associations, introduce measures:

(a) To develop, where appropriate, a nationwide scheme of paralegal services with standardized training curricula and accreditation schemes, including appropriate screening and vetting;

(b) To ensure that quality standards for paralegal services are set and that paralegals receive adequate training and operate under the supervision of qualified lawyers;

(c) To ensure the availability of monitoring and evaluation mechanisms to guarantee the quality of the services provided by paralegals;

(d) To promote, in consultation with civil society and justice agencies, the development of a code of conduct that is binding for all paralegals working in the criminal justice system;

(e) To specify the types of legal services that can be provided by paralegals and the types of services that must be provided exclusively by lawyers, unless such determination is within the competence of the courts or bar associations;

(f) To ensure access for accredited paralegals who are assigned to provide legal aid to police stations and prisons, facilities of detention or pretrial detention centres etc.;

(g) To allow, in accordance with national law and regulations, court-accredited and duly trained paralegals to participate in court proceedings and advise the accused when there are no lawyers available to do so.

#### **Guideline 15. Regulation and oversight of legal aid providers**

69. In adherence with principle 12, and subject to existing national legislation ensuring transparency and accountability, States in cooperation with professional associations, should:

(a) Ensure that criteria are set for the accreditation of legal aid providers;

(b) Ensure legal aid providers are subject to applicable professional codes of conduct, with appropriate sanctions for infractions;

(c) Establish rules to ensure that legal aid providers are not allowed to request any payment from the beneficiaries of legal aid, except when authorized to do so;

(d) Ensure that disciplinary complaints against legal aid providers are reviewed by impartial bodies;

(e) Establish appropriate oversight mechanisms for legal aid providers, in particular with a view to preventing corruption.

**Guideline 16. Partnerships with non-State legal aid service providers and universities**

70. States should, where appropriate, engage in partnerships with non-State legal aid service providers, including non-governmental organizations and other service providers.

71. To this end, States should take measures, in consultation with civil society and justice agencies and professional associations:

(a) To recognize in their legal systems the role to be played by non-State actors in providing legal aid services to meet the needs of the population;

(b) To set quality standards for legal aid services and support the development of standardized training programmes for non-State legal aid service providers;

(c) To establish monitoring and evaluation mechanisms to ensure the quality of legal aid services, in particular those provided at no cost;

(d) To work with all legal aid service providers to increase outreach, quality and impact and facilitate access to legal aid in all parts of the country and in all communities, especially in rural, economically and socially disadvantaged areas and among minority groups;

(e) To diversify legal aid service providers by adopting a comprehensive approach, for example, by encouraging the establishment of centres to provide legal aid services that are staffed by lawyers and paralegals and by entering into agreements with law societies and bar associations, university law clinics and non-governmental and other organizations to provide legal aid services.

72. States should, where appropriate, also take measures:

(a) To encourage and support the establishment of legal aid clinics in law departments within universities to promote clinical and public interest law programmes among faculty members and the student body, including in the accredited curriculum of universities;

(b) To encourage and provide incentives to law students to participate, under proper supervision and in accordance with national law or practice, in a legal aid clinic or other legal aid community scheme, as part of their academic curriculum or professional development;



(c) To develop, where they do not already exist, student practice rules that allow students to practice in the courts under the supervision of qualified lawyers or faculty staff, provided such rules are developed in consultation with and accepted by the competent courts or bodies that regulate the practice of law before the courts;

(d) In jurisdictions requiring law students to undertake legal internships, develop rules for them to be allowed to practice in the courts under the supervision of qualified lawyers.

**Guideline 17. Research and data**

73. States should ensure that mechanisms to track, monitor and evaluate legal aid are established and should continually strive to improve the provision of legal aid.

74. For this purpose, States could introduce measures:

(a) To conduct regular research and data collection disaggregated by gender, age, socio-economic status and geographical distribution of legal aid recipients and to publish the findings of such research;

(b) To share good practices in the provision of legal aid;

(c) To monitor the efficient and effective delivery of legal aid in accordance with international human rights standards;

(d) To provide cross-cultural, culturally appropriate, gender-sensitive and age-appropriate training to legal aid providers;

(e) To improve communication, coordination and cooperation between all justice agencies, especially at the local level, to identify local problems and to agree on solutions to improve the provision of legal aid.

**Guideline 18. Technical assistance**

75. Technical assistance based on needs and priorities identified by requesting States should be provided by relevant intergovernmental organizations, such as the United Nations, bilateral donors and competent non-governmental organizations, as well as by States in the framework of bilateral and multilateral cooperation, with a view to building and enhancing the national capacities and institutions for the development and implementation of legal aid systems and criminal justice reforms, where appropriate.



## 2014 International Forum on Legal Aid

**Appendix V**

**2014 Taipei Declaration on Legal Aid**

*The 2014 International Forum on Legal Aid was held from October 25 to 27 in Taipei, Taiwan R.O.C., including representatives from 15 countries. During the conference, representatives discussed three main topics including “cross-border cooperation,” “legal aid resources allocation” and “quality of legal aid services.” Participants considered and discussed the following declaration.*

**Preamble**

Legal aid is a fundamental human right recognized by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. It is the responsibility of the state to ensure that legal aid funding is available, and also to ensure the functional independence of legal aid organizations in the conduct of legal aid work. These principles are consistent with effective legal assistance and other related services.

**Cross-border cooperation**

There is significant value in legal aid organizations establishing cross-border cooperation schemes with each other to implement the above international instruments:

1. Legal aid organizations should enhance communication with each other to share information and best practices, better ensure access to legal services, and maximize opportunities for learning from each other to facilitate their operation and continuous improvement.
2. When providing legal aid services to foreign nationals, legal aid organizations should endeavor to provide access to the same entitlements as nationals.
3. Legal aid organizations should ensure the provision of appropriate language interpretation and translation services.
4. Where appropriate, legal aid organizations may establish feasible cross-border cooperation schemes with each other, including advice or referral schemes.

## **Resource allocation to fulfill international standards**

The above international instruments provide guidance on the allocation of legal aid resources.

1. Significant value would be added by legal aid organizations regularly surveying legal aid needs and prioritizing services accordingly.
2. Legal aid organizations should endeavor to offer diversified services which deal with disputes before they resort to the courts.
3. Legal aid organizations should give particular attention to groups with special needs including indigenous peoples, women, persons of diverse gender identities, juveniles, victims of human trafficking, and migrants and deliberate on the ways to improve assistance provided to such groups.
4. Legal aid organizations should endeavor to make legal services available to criminal suspects or defendants at the earliest possible stage of their cases.
5. In countries which have not abolished the death penalty, legal aid organizations should ensure at a minimum that the rights of the accused in death penalty cases provided by Article 6 and Article 14 of the International Convention on Civil and Political Rights are protected.
6. Legal aid organizations should endeavor to provide assistance in criminal cases, civil cases and other legal problems that affect basic human needs.
7. To strengthen the implementation of the rule of law, legal aid organizations should collaborate with a wide range of partners to maximize time, talent, monetary and material resources.

## **Quality of legal aid services**

Legal aid organizations should endeavor to ensure that legal aid services meet the quality standards provided by the above international instruments:

1. Legal aid organizations should promote the application of the above international instruments, principles and rules through individual cases where aid is provided.
2. Legal aid organizations should assign cases to lawyers and other providers who demonstrate commitment and professional competence.
3. Legal aid organizations should implement measures to monitor service quality and protect the rights of legal aid recipients.
4. In order to promote effectiveness and quality of services legal aid organizations should ensure that legal aid lawyers and other providers receive reasonable compensation, training and supervision.



## 2014 International Forum on Legal Aid



Appendix VI

Agreement on Mutual Legal Assistance for  
Citizens of both Countries

**Agreement between the Legal Aid Foundation, R.O.C. (Taiwan),  
and Korea Legal Aid Corporation on Mutual Legal Assistance  
for Citizens of both Countries**

In order to safeguard the basic right of citizens to receive legal assistance and to facilitate sharing and exchange among legal aid organizations, the Legal Aid Foundation, R.O.C. (Taiwan), and Korea Legal Aid Corporation have, after a negotiation process, entered into the following agreement regarding mutual legal assistance for citizens of both countries and liaison mechanisms between the two parties.

**1. Cooperation Items**

With regards to the provision of legal aid services, the two parties agree to provide the following assistance to each other:

- (1) Both parties shall provide legal aid to citizens of the other party's country in the same manner as they offer their own citizens.
- (2) In addition to law-related resources, the two parties shall endeavor to refer other social resources (for example, emergency assistance) to citizens of the other party.

**2. Practical Exchanges**

Both parties agree to collectively arrange conferences, visits and training programs for relevant managers and personnel; as well as sharing of information on policies, systems, case studies and other related information.

Specifics on the implementation of this agreement shall be discussed and decided by both parties.

**3. Contact Person**

The two parties shall appoint a contact person from their respective executive departments to coordinate and implement matters agreed on in the Agreement.

**4. Request for Legal Assistance**

The two parties agree to submit requests for legal assistance by means of facsimile, e-mail or other written documents. In case of emergency, however, the request may be submitted orally, subject to agreement by the other party and confirmed in writing within 10 days.

The requesting document should include the following information: the party requested to provide assistance, purpose of the request, explanation of relevant issues, case summary, as well as other information required for executing the request.

If it is impossible to execute the request due to insufficient information in the relevant document, the party receiving the request may contact the other party to request provision of additional information.

**5. Executing the Request**

Both parties agree that they shall execute the request of the other party based on the Agreement and their own policies. They shall, in a timely manner, keep the other party updated of progress in execution of such requests.

If the requested party is unable to fulfill the request, a reason should be given to the other party and relevant documents returned.

**6. Confidentiality Obligation**

Both parties agree to keep confidential all information relating to the assistance requested and the process in executing such request. The confidentiality obligation, however, shall not apply to cases including but not limited to those where the information is used to execute the request.

**7. Limited Usage of Information**

Both parties agree that they shall use the information provided by the other party only for the purposes stipulated in the requesting documents. This shall not apply, however, if the usage of such information has been otherwise agreed on by both parties.

**8. Mutual Exemption of Certification of Documents**

Both parties agree that they shall not request for certification in any form of the evidence, judiciary documents or other information requested or provided under the Agreement.

**9. Expenses for Providing the Assistance**

Both parties agree that expenses incurred in the provision of assistance shall be waived reciprocally. This, however, shall not apply to expenses which citizens of the other party's country should pay according to the internal regulations of both parties and cases where both parties have otherwise agreed on the expenses to be paid.

**10. Agreement Performance and Amendment Procedures**

Both parties shall observe the terms and conditions of the Agreement.  
Any amendment to the Agreement shall be negotiated and agreed by both parties and confirmed in writing.

**11. Dispute Settlement**

If there is any dispute arising from the Agreement, both parties shall discuss and settle the matter in as timely a manner as possible.

**12. Matters Not Covered in the Agreement**

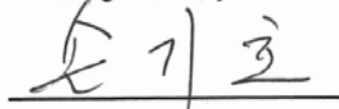
For matters not covered in the Agreement, both parties shall, separately, discuss and settle the matter in an appropriate manner.

**13. Validity of the Agreement**

The Agreement shall become effective on the date when it is signed by the two parties.

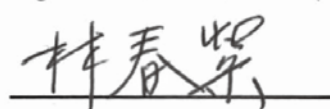
In witness whereof, the legal representatives of the two parties hereby execute this Agreement in Taipei, on October 27, 2014, in English. Each party shall hold one original of the English version.

Korea Legal Aid Corporation



Son Ki Ho, Acting President

Legal Aid Foundation, R.O.C. (Taiwan)



Lin Chun-Jung, Chairperson



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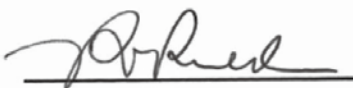
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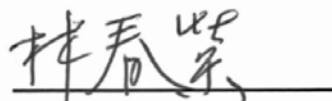
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Public Attorney's Office, Department of Justice,  
the Philippines

Legal Aid Foundation, R.O.C. (Taiwan)



Persida V. Rueda-Acosta  
Chief Public Attorney



Lin Chun-Jung, Chairperson

**Appendix VII**

**2014 International Forum on  
Legal Aid Organizing Committee**

- Mr. K. C. Fan  
Honorary Professor of Law, National Taipei University Law School  
Founding Partner & Special Counsel, Formosa Transnational Attorney-At-Law
- Mr. Chih-kuang WU  
Professor, School of Law, Fu Jen Catholic University, Taiwan  
Director of Graduate Department of Law
- Ms. Ta-Hua Yeh  
Secretary-General, Taiwan Alliance for Advancement of Youth Rights and  
Welfare
- Mr. Awi Mona  
Associate Professor, Department of Educational Management, National Taipei  
University of Education
- Mr. Ping-Cheng, Lo  
Attorney-at-Law, Wen & Lo Law Firm
- Mr. Wei-Shyang Chen  
Secretary-General, Legal Aid Foundation, Taiwan
- Mr. Anthony Carlisle  
International Affairs Supervision, The Garden of Hope Foundation
- Mr. Hao-Ren Wu  
Associate Professor, Department of Law, Fu Jen Catholic University
- Huang-Cyuan Ciou  
Attorney-at-Law, Kew & Lord Law Office
- Mr. Joseph(Yong-Sung) Lin  
Former Director of the Taipei Branch Office, Legal Aid Foundation, Taiwan;  
Attorney at Law, Lin & Shih Law Office
- Ms. Stephana Wei  
Director, Rerum Novarum Center
- Mr. Bo Tedards  
Director of the Taiwan Section of Amnesty International
- Mr. John C.Chen

Attorney-at-Law, Formosa Transnational Attorneys at Law

- Mr. Guo-Chang Huang  
Assistant Researcher Institutum Iurisprudentiae, Academia Sinica
- Mr. Fort Fu-Te LiaO  
Assistant Researcher Institutum Iurisprudentiae, Academia Sinica
- Mr. Jerry Cheng  
Presiding lawyer of Justice Law Firm;  
Member of Review Committee of the Legal Aid Foundation
- Mr. Pi-Song Tsai  
Attorney-at-Law, Wong & Co Law Offices

Appendix VIII Photo Gallery

# Day 1.

## Opening Ceremony



Rahan (archpriest) of the Katatipu Community of the Puyuma Tribe, Mr. Wen-Shyang Lin, and former chairperson of the youth association of the Katatipu Community, Mr. Guan-Jie Chen give blessings to the Forum



Opening speech by Mr. K.C. Fan, Chairperson Mr. Chun-Jung Lin, President Ying-Jeou Ma, President of Judicial Yuan, Hau-Min Rai



A total of 21 delegates of the legal aid organizations from 15 countries and the scholars and experts in the field participated and shared their work experiences in legal aid

# Day 1.

## Keynote Speech and National (Regional) Reports I



Participating honored guests view the opening video, "Abandoned Workers", which describes the comprehensive victory in the largest collective lawsuit by laborers in the judicial history of Taiwan



Judge President of the Gauteng Division of the High Court and Chairperson of the Board of Directors for Legal Aid South Africa, Mr. Dunstan Mlambo gives the keynote speech "Legal Aid and the Universal Value of Human Rights"



CEO of Legal Aid Queensland, Australia, Anthony John Reilly gives a speech



Hong Kong delegate, Barrister Yiu-Leung, Cheung, in his reply, explains the role that legal aid organizations in Hong Kong play in civil movements



Japan delegate, Mr. Keita Abe answers the question on the actual implementation status of the system of Victim Participation in Japan

Group photo of the delegates of Taiwan, Canada, U.K. Hong Kong, New Zealand, Australia, Japan, and Indonesia (from left to right) after the National Report



# Day 1.

## Special Report and National (Regional) Reports II



Group photo of the delegates of Korea, Malaysia, New Zealand, Canada, the Philippines, USA, and Vietnam (from left to right) after the National Report



Professor Maurits Barendrecht of Hague Institute for the Internationalisation of Law (HiiL) conducts comparison on legal aid systems based on research on the legal aid systems of nine European countries



USA delegate Mr. Wilhelm H. Joseph, Jr. answers the question on the types or scope of legal aid that his organization can provide to foreigners

# Day 1.

## Tea Break



Active interaction among the delegates during the tea break



Tea break is also a great time for exchange





Photo of the moderator and the speaker of Panel Discussion I



Korea delegate, Kang, Byung-sam, of group A speaks in Group Discussion



In Group B of Group Discussion, discussant Chairman of Chinese Association for Foreign Spouses & Labors' Voices, Ms. Sophia Pan speaks



In Group C of Group Discussion, Staff Attorney of Legal Aid Foundation, Ms. Ellen Lee speaks



The audience in Group Discussion listens to the speaker with undivided attention

## Day 1.

### Panel Discussion I and Group Discussions



Chairperson, Mr. Chun-Jung Lin, toasts to the honored foreign guests in appreciation for their visit to Taiwan to participate in the Forum



Foreign guests enjoy the buffet at Living One



Canadian delegate appreciates the Rukai folk song with great attention



The Banquet begins with a Rukai band of two, whose Rukai songs accompanied by drums and guitar are well received by the foreign guests

# Day 1.

## Welcome Banquet

Foreign guests gather at Living One, waiting for the banquet and the aboriginal music performance





Photo of the moderator, Director-General Mr. Kuo-Cheng Chen and the speakers



Participants focus on the contents of the report

## Day 2.

### Panel Discussion II and Group Discussions



In Panel Discussion II, the speaker, Board Member Ms. Ta-Hua Yeh, voices her opinion



Group A of Group Discussion



Group B of Group Discussion



Group C of Group Discussion

## Day 2. Panel Discussion II and Group Discussions

Photo of the moderator,  
Board Member Mr.  
Ping-Cheng, Lo and the  
speakers



## Day 2.

### Panel Discussion III and Group Discussions



U.K. delegate Mr. Hugh Barrett gives a speech



Board Member Mr. Ping-Cheng Lo voices his  
opinion

Top: Group A of Group Discussion  
Middle: Group B of Group Discussion  
Bottom: Group C of Group Discussion



## Day 2. Roundtable meeting

Foreign guests and the delegates from the Foundation have an active discussion to reach an agreement on the 2014 Taipei Declaration on Legal Aid



## Day 3. Workshop Conclusions and Q&A



Group photo of the moderator, Secretary-General Mr. Wei-Shyang Chen, the speakers, and the participants



Foreign guest in the audience asks questions regarding the content of the speech



In Opinion Exchange and Sharing Sessions, Committee Member Mr. Jerry Cheng, Board Member Ms. Ta-Hua Yeh, and Committee Member Ms. Yi-Ting Hu take turns giving their report on the three main topics

Judge President of the Gauteng Division of the High Court and Chairperson of the Board of Directors for Legal Aid South Africa, Mr. Dunstan Mlambo reads the 2014 Taipei Declaration on Legal Aid



## Day 3. Closing Ceremony

Group photos taken to mark the occasion of the signing ceremonies of the Taiwan Korea mutual legal assistance agreements (MLAA) and the Taiwan-Philippines MLAA



Chairperson of Board of Directors of Legal Aid Foundation of Taiwan, Mr. Chun-Jung Lin, and President of Korea Legal Aid Corporation, Mr. Son Ki Ho sign the MLAA



Chairperson of Board of Directors of Legal Aid Foundation of Taiwan, Mr. Chun-Jung Lin, and the representative of Public Attorney's Office, Department of Justice of the Philippines, Mrs. Persida V. Rueda-Acosta sign the MLAA





Group photo of the staff and speakers of the 2014 International Forum on Legal Aid



Group photo of the speakers of the 2014 International Forum on Legal Aid



Closing speech by Mr. K.C. Fan



Participants view the photos of the three-day Forum

## Day 3. Closing Ceremony

## Day 3. Half-day tour of Dadaocheng



Foreign guests visit the former residence of the lyric writer Lin-Qiu Li and listen attentively to the introduction



Foreign guests enjoy Chinese-style tea snacks and Taiwanese tea at South St. Delight



Group photo of foreign guests

## Day 3.

### Half-day tour of Dadaocheng



The foreign guest has a good time putting on Taiwanese-style bamboo hat



Foreign guests listen attentively to the explanation of the tea-making process



Foreign guests are particularly fond of Taiwanese bamboo handicrafts



Foreign guests visit Wang's Tea



Foreign guests visit the Chinese herbal medicine shop

# Day 3.

## Farewell Banquet



Group photo of the foreign guests, LAF staff, and the preparation committee members



Farewell Banquet at TAV Cafe, serving the foreign guests with aboriginal-style dishes and Taiwanese cuisine



Chairperson Mr. Chun-Jung Lin presents the Tao tribe hand-sculpted wooden ships as gifts to the foreign guests



Foreign guests and LAF staff sing together



Foreign guests, LAF staff, and the preparation committee members have fun dancing





| Host :  **Legal Aid Foundation**

| **Advisory Organizations :**

Judicial Yuan 、 Ministry of National Defense 、 Ministry of Justice 、  
Ministry of Labor 、 Ministry of Foreign Affairs 、 Council of Indigenous Peoples

| **Co-Host :**

Taiwan Bar Association 、 Keelung Bar Association 、 Taipei Bar Association 、  
Hsin Chu Bar Association 、 Miaoli Bar Association 、 Taichung Bar Association 、  
Chang Hua Bar Association 、 Chiayi Bar Association 、 Tainan Bar Association 、  
Kaohsiung Bar Association 、 Yilan Bar Association 、 The National Open University

| **Sponsor :** Taiwan Jury Association