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New Challenges and **Opportunities**

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Table of Contents

Keynote Speech

Getting Ahead of the Curve：Challenges and Opportunities of Recessions for Legal Aid 1

Panel Discussion I：The Rights of Non-nationals and Legal Aid 11

Ms. Suzan Cox (QC) 13
Ms. Daniela Dwyer.....19
Mr. Hao-Jen Wu 33

Workshop I：The Rights of Non-nationals and Legal Aid 41

Group Discussion List 43
Conclusion of Panel Discussion I.....45

Panel Discussion Ⅱ：Criminal Justice, Human Rights and Legal Aid.....49

Ms. Kelli Thompson 51
Mr. Hugh Barrett 59
Mr. Ping-Cheng Lo 65

Workshop II：Criminal Justice, Human Rights and Legal Aid 71

Group Discussion List 73
Conclusion of Panel Discussion II 75

Panel Discussion III：Poverty, Debt and Legal Aid 81

Mr. Paul Chan 83
Ms. Saya Oyama.....87
Mr. Joseph Lin 91

Workshop III：Poverty, Debt and Legal Aid 133

Group Discussion List 135
Conclusion of Panel Discussion III 137

National (Regional) Reports I 143

National Report：Taiwan.....145
National Report：Australia.....161
National Report：United Kingdom.....171
National Report：Finland 185
Regional Report：Hong Kong (SAR).....193

National Report：Indonesia 201
National Report：Japan 211
National (Regional) Reports I Discussion 219

National (Regional) Reports II 223

National Report：Republic of Korea 225
National Report：Malaysia 231
National Report：The Netherlands 239
National Report：The Philippines 259
National Report：Thailand 269
National Report：United States 275
National Report：Vietnam 283
National (Regional) Reports II Discussion 295

Appendices 299

Appendix I Conference Program 301
Appendix II Topic outlines -- Country (or Regional) report 305
Appendix III Overview of 2009 International Forum on Legal Aid 307
Appendix IV Text of Speech by President Ma Ying-jeou 309
Appendix V Forum Organizing Committee 311
Appendix VI Conference Photos 313

Keynote Speech

Getting Ahead of the Curve Challenges and Opportunities of Recessions for Legal Aid

• **Keynote Speaker :** Mr. Albert W. Currie
Chief Researcher, Research and Statistics Division,
Department of Justice, Canada

Getting Ahead of the Curve: Challenges and Opportunities of Recessions for Legal Aid

Albert W. Currie
Chief Researcher
Research and Statistics Division
Department of Justice, Canada

In the Grip of a Recession - Again

Many legal aid systems around the world find themselves in the grip of the current recession, often called the great recession because it is said to be the most serious economic downturn since the Great Depression of the 1930's. Recessions are nothing new to the mature legal aid systems that have been in existence for many years. In Canada, for example, a national legal aid system, with 13 separate legal aid programs (one in each province and territory) supported by a federal and provincial/territorial shared funding program has been in existence since 1972. Interestingly, a recession occurred in 1971-72, the same year the national program for funding criminal legal aid was established. Since then, legal aid has experienced three recessions, in the early 1980's, the early 1990's and the current recession. As well, there have been several serious economic slowdowns that did not quite meet the technical definition of a recession. The recurring nature of recessions and economic downturns provides an instructive history of the experiences of and responses to recessions by legal aid organizations. This paper will touch on both current responses to the great recession and will draw on a few examples of responses to the challenges of past recessions, drawing mainly, but not entirely, on the Canadian experience. The fact that recessions are regular and recurring events that challenge legal aid service providers is significant in itself. This suggests that it might be useful to consider not only the challenges and responses of legal aid to the most recent recession but to recessions more generally.

'Top Down' and 'Bottom Up' Pressures Arising from Recessions

Recessions give rise to what might be referred to as bottom-up and top-down pressures. Bottom-up pressures are the increased legal needs that result from rising unemployment which is a defining feature of recessions. These pressures typically become critical as legal aid systems are squeezed between increasing need and static, or even, declining resources.

Top-down pressures are more directly financial in nature. These pressures take the form of decreasing funding due to declines in interest rates that are characteristic of recessionary periods. Top down pressures reflect the global character of global recessions. Local or regional economies may remain relatively sound in a global recession and thus may not generate the bottom-up pressures of increased demand related to unemployment. However, top-down pressures can still be a factor. Top-down pressures typically arise from declining interest rates triggered by changes in global financial markets that reduce the funding received by legal aid plans from sources such as Law Foundation investments or from interest on lawyer's trust accounts. Top-down pressures also come from the impact of failing financial markets on government revenues and, in turn, levels of government funding for legal aid.

Recession and Increased Need for Criminal Legal Aid

This section provides an example, drawing on the experience of one Canadian legal aid organization in the early 1990's, of how the demand for legal aid was affected by recession and how that that legal aid system responded. The pressure on legal aid for criminal matters is driven by rising unemployment caused by recession. Changes in rates of unemployment are strongly related to changes in rates of certain types of crime, for example robbery and theft. In turn, increasing crime is usually reflected in increases in applications for legal aid. This does not always mean an increase in legal aid service. Legal aid services are often budget-driven rather than demand-led. Coverage policies and financial eligibility guidelines are often used as the safety valves that control the level of service, keeping demand in line with available resources. However, the sections below provide an example from the 1990-1991 recession in Canada, which coincided with a 1990-1993 global recession, in which the recession did trigger substantial increases in caseloads. The response resulted in a significant and lasting change in the legal aid delivery model.

Prior to that recession the Ontario Legal Aid Plan (now known as Legal Aid Ontario) was a demand-led legal aid system with an open-ended budget. Funded almost entirely by the federal and Ontario governments, if demand increased, government funding increased to meet the increased costs. High unemployment during and following the recession in the early 1990's fuelled a 22% increase in approved applications for criminal legal aid during the three-year period from 1990-91 to 1993-94. Coupled with an even greater increase in civil legal aid, which will be discussed below, the cost increase associated with the increase in demand and the level of service resulted in the

introduction of a fixed level of government funding for legal aid. The number of full service legal aid certificates[1] declined significantly from 1993-1994 onward, currently 57% below the 1993-1994 level.

Legal Aid Ontario responded to the challenge by introducing a significantly different delivery model for criminal legal aid services called expanded duty counsel. The approach can also be referred to as dispositive duty counsel because the objective is to dispose of as many matters as possible early in the criminal justice process and, in particular for legal aid, prior to a written application for service. Briefly, expanded duty counsel rests on the reality in the criminal justice system that most matters are relatively simple. In Canada, 90% of all criminal matters are resolved by guilty pleas. In contrast to the traditional facilitating model of duty counsel, in the expanded duty counsel approach the same lawyer is assigned to the same court on a continuous basis. Thus the lawyer is able to assist an accused person for more than the first appearance. For many criminal cases, a quick review of the disclosure, a discussion with the Crown and the continuity of assisting a client for two or possibly three brief appearances can resolve the matter. This has proven to be faster and less expensive than the cost of providing the service by means of issuing legal aid certificates to private bar lawyers. Since 1990-1991 the number of duty counsel services has increased by 167% from about 330,000 to 883,000 in 2007-08, while the number of approved applications for full service declined by 35% from 94,000 to 61,000 over the same period. The expanded duty counsel approach has continued to become an increasingly important part of the Legal Aid Ontario criminal legal aid delivery model. This early stage service approach is slowly taking hold in other provinces.

Recession and Increased Need for Civil Legal Aid

Rising unemployment in recessions also propels the need for legal assistance in civil justice problems. Survey research on the prevalence of civil law problems shows that people who are unemployed experience more problems than those who are employed. Also, people who report that unemployment has frequently been a problem during their adult lives are likely to experience a greater number of problems than people who say that unemployment was never a life problem. The results of a recent international survey carried out for the AIG Investment Group showed that people in several countries reported that the 2008-2009 recession has “added stress” to, “strained” or “ruined” their marriages.

Turning again to the experience of Ontario, Canada in the 1990-1991 recession, the recession drove up the number of certificates for family law services by 38% in the three-year period following 1990-1991. This was another part of the financial crisis experienced by Legal Aid Ontario driven by the recession.

1 Legal Aid Ontario has a judicare or private bar delivery model.

Similar to the response to increased demand for criminal legal aid, Ontario shifted away from reliance on a private bar certificate model to the greater use of expanded family duty counsel. Dealing with family law matters is, of course, more protracted than dealing with criminal matters. However, family duty counsel lawyers, assigned to the same court on a continuous basis in a manner similar to expanded duty counsel in criminal court, can resolve immediate issues such as restraining orders and interim custody arrangements. This proved to be an extremely valuable service that can be provided quickly, without a written application for legal aid, resolving immediate legal issues and, stressful and urgent family and child-related problems. Much like the expanded duty counsel approach in criminal matters, expanded family court duty counsel has continued to become an increasingly important part of the Legal Aid Ontario family legal aid delivery model. The number of family law duty counsel services increased by 194% between 1990-91 and 2007-08 from 67,000 to 196,000 per year. Over the same period the number of approved applications for family legal aid declined by one third. It was an effective response to the crisis brought about by the 1990-1991 recession and has become a durable part of the overall delivery model.

An Organizational Response to an Economic Downturn

The Legal Services Society of British Columbia (LSS) provides an example of a different response to economic crisis. Like Ontario, LSS experienced a series of budget cuts following the recession of the early 1990’s. However, the LSS experienced a devastating 40% budget cut over several years beginning in 2000. This coincided with a severe economic downturn beginning in that year that had a strong effect on the British Columbia economy. This serves as a reminder that crises in legal aid can be triggered by economic downturns as well as full-blown recessions. The budget crisis resulted in a small reduction in criminal legal aid service, significant reduction in family law service and the almost complete disappearance of service in non-family civil legal aid. In the wake of that crisis, with a small funding increase of about $5 million, LSS introduced a series of service delivery innovations designed to provide services at less cost in place of the traditional service provided by lawyers. These included a telephone law information line, a web-based advice service, and several priority family law services for cases with a high risk of domestic violence and for complex Supreme Court matters. As a package, this was designed as a “continuum of service” approach to provide the appropriate, although perhaps minimal service, to the particular legal matter. Unfortunately, the government was not sufficiently impressed with these progressive service delivery innovations and budget cuts continued. The experience of managing through this worst-case scenario demonstrated to the LSS management that in these difficult circumstances the organization’s greatest strength is its human resources. Through the series of crises LSS has emphasized staff development, leadership training and careful, extensive communication with staff concerning organizational changes resulting from budget cuts. The experience has left a valuable lesson learned for weathering the effects of severe economic slowdowns and recessions; that the

organization can withstand and adapt to enormous changes by strengthening internal capacity and human resources.

General Observations on Challenges and Opportunities for Legal Aid in Recessions

The preceding sections have illustrated how legal aid has effectively responded to the pressures brought on by a recession. These are examples of responses that worked, that improved the legal aid system in the longer term and that probably have made legal assistance more accessible in the current recession. The following section offers some more general observations about needs for legal services that are exacerbated by recessions and how legal aid might respond to them.

As a result of the legal problems research that has been carried out in several countries around the world beginning with the seminal Paths to Justice research[2] carried out by Hazel Genn in the U.K., we know a great deal about civil justice problems. The following are some of the main generalizations from the Canadian of research[3] .

- civil legal problems that people consider to be serious and difficult to resolve are highly prevalent in all countries where research has been carried out. About one third to one half of adults experience one or more legal problems within a one-year to three-year period.
- many people receive no assistance or inadequate assistance.
- problems frequently do not occur in isolation. According to the Canadian studies, about 15% to 18% of adults experience three or more legal problems within a three-year period.
- there is a momentum to experiencing civil justice problems. The probability of experiencing even more increases with each successive problem experienced.
- legal problems trigger other legal problems. In the Canadian research about one third of legal problems were triggered by another legal problem.
- the impacts of legal problems are not confined within legal silos. Legal problems trigger mental and physical health problems, family and other social problems. In about 30% of cases, according to Canadian data, legal problems trigger a health or social problem.
- civil justice problems, along with a range of health and social problems, are strongly related to crime. The results of the most recent Canadian research shows that 85% of all respondents arrested or changed with a criminal offence experienced one or more civil law problems compared with 45% of the total sample.
- People experience clusters of multiple problems that are associated with social exclusion, a process whereby people fall away from the mainstream, from lives of relative self-sufficiency to lives of disadvantage and dependency on public assistance.

A recession exacerbates this situation. The number of problems experienced by people is likely to increase. Moreover, the dynamics of legal problems, the clustering of multiple problems propelled by the trigger and cascade effects, and the clustering of interrelated legal and non-legal problems are probably further propelled by the increased economic hardships experienced by greater numbers of people in a recession. Legal aid could potentially address these problems.

In general terms, legal aid has at least three very broad functions; the enforcement of rights, assuring access to entitlements for public services and the resolution of conflicts. It can be argued that if legal aid effectively exercised these functions, it could have significant impacts on recessions. Legal aid could diminish the impact of the recession on individuals. It could lessen the impact of the recession on the health care system because legal problems are known to trigger health problems and increased visits to physicians. Finally, legal aid might lessen the impact of recession on the social safety net. Much of this need arises because unemployment leads to mortgage defaults and foreclosures. Large scale policy interventions are necessary to address systemic or structural problems in the mortgage and financial services sectors. However, there are a number of examples in which legal services providers have developed programs to assist individuals facing foreclosures, loss of a family home and the consequences of that train of events. For example, in the U.S the Washington State Northwest Justice Project and the North Carolina Foreclosure Prevention program have been established to prevent foreclosures with apparent success. Victoria Legal Aid, in Australia, has established a similar program to assist people with housing problems.

Recession-related increases in legal problems are more wide-ranging or varied than housing and mortgage foreclosures. In Canada, the Law Help centre in Ontario reports a 30% increase in individuals seeking legal assistance. California court-based self-help centres report approximately a 25% increase in the number of clients. One type of program that several legal services providers acknowledge to be extremely helpful is on-line legal forms. Self-help centres in New York and in California have had great success with programs that allow people access to downloaded and completed court forms, and have the forms reviewed by a lawyer or trained paralegal before the individual appears in court to file the document. The emphasis on programs to assist people with so-called “do-it-yourself” legal forms makes sense with reference to results from the 2008 Canadian Survey of Legal Problems. Respondents who had attempted to resolve a legal problem through self-help measures were asked; in retrospect, what do you think would have helped achieve a more satisfactory outcome? 16.4% identified someone to explain the legal aspects and help complete legal forms. The percentage of respondents identifying this form of assistance was highest for

2 Genn, Hazel, Paths to Justice: What People Do and Think and Do About Going to Law, Oxford, 1999
3 Currie, Ab, The Legal Problems of Everyday Life, in Rebecca L. Sandefur (ed.), Sociology of Law, Crime and Delinquency, Emerald Group Publishing, 2009, pp. 1 - 42

problems with disability pensions, 66.7%; immigration problems, 50%; and family law problems, 44.4%. Other volunteered responses were: additional or better information, 30.4%; an advocate or mediator to intervene on my behalf with the other party, 24.4%; and a lawyer to resolve the problem by legal means, 28.9%.

This example of assistance with legal forms suggests the value of pro bono lawyers to assist self-representing litigants and others taking self-help measures. This recalls a response that was widespread among U.S. legal service providers in the recession that occurred during the early 1980's. During that period many legal services providers experienced severe budget cuts and reductions. In response, the Legal Services Corporation required that 10% of LSC funding must be devoted to developing pro bono legal services[4]. Pro bono legal assistance is currently a strong component of legal services to the poor overall in the U.S. The legal services network, with a strong pro bono component is possible stronger today, and better able to meet the demands of recessions, in part, because of this early response.

Many legal aid providers are experiencing the top-down pressures described above. It has been reported that overall in the U.S. IOLTA funding has declined by 21% since the beginning of the recession in 2007, leading to a crisis in legal aid funding for many legal services providers. This is a direct consequence of falling interest rates caused by the recession. Similarly, in several Canadian provinces, the legal aid commissions are suffering from declines in funding from Law Foundations, again a consequence of falling interest rates.

It has been suggested that one approach to smooth out these impacts of recessions could be achieved by establishing dedicated funds that would accumulate surpluses in good or, high interest periods, and use the accumulated monies to even out funding to legal aid in poor or, low interest periods. It would be necessary for foundations to establish and manage the long-term dedicated funding mechanisms. It would also mean lowering contributions to legal aid as a trade-off for stability.

A Longer View of Recessions and Legal Aid

There are many good ideas from both current and past experience about how to deal with the pressures brought about by recessions. Some of them, drawn from legal aid systems with long histories and several experiences with recessions have stood the test of time. However, initiatives that work in one place and time do not always work in another. 'What works' depends on the specific types of legal problems, the nature of client populations, the laws and the manner in which the courts and other parts of the justice system operate. Proclaiming with confidence what will work is risky business.

4 Moses, Joy, And Justice for All: Prioritizing Free Legal Assistance During the Great Recession, Centre for American Progr ess, 2009

This section will step back from the great recession and take a look from a wider angle. By listening to economists, we know a couple of basic things about recessions. We are never sure if a recession is coming. We never know if a recession is upon us until fully in the midst of one. Economists are almost always, of necessity, looking backwards at the statistics for the last quarter. We are never sure if a recovery is underway or what the timing will be. And, for sure, we never know when the next one will be coming. We know that recessions are, if anything, uncertain.

There is another thing we know about recessions. We know that recessions are inevitable. Economic slowdowns and their more severe cousins, recessions, are normal aspects of market economies. Paradoxically, while the onset and the impacts of recessions might be very unpredictable, it might be possible to prepare for them in advance. In fact, given the uncertainty surrounding recessions, anticipatory action might be the best thing that can be done.

Are 'Mature" Legal Aid Organizations More Vulnerable to Cuts During Recessions?

This section will examine this question by looking briefly at the history of legal aid in Canada. There have been three periods in the expenditure history of legal aid in Canada; the growth period, the "dirty 90's and the post 2000 revival. During the growth period, from the early 1970's to 1990, year over year expenditures increased continuously. A major recession that occurred in the early 1980's and several economic slowdowns seem to have little effect on legal aid. In the entire period from the early 1972-1973 to 1989-1990, taking into account all legal aid plans, there were only 5 budget cuts in the entire period taking into account all the legal aid commissions. By way of contrast, there were 40 major reductions in expenditures during the "dirty 90's", covering the period from 1990-1991 until the end of the decade. It is worth noting that the decline in GDP during the 1981-1982 recession was 6.7% compared with the 3.4% decline in the 1990-1991 recession. The reasons why tough economic times had comparatively little effect in the growth period are not entirely clear. Perhaps it is because legal aid was a new institution, growing from very small beginnings. Budgets were small. Perhaps the idea of access to justice had greater evocative power.

This brings to mind somewhat of a parallel with circumstances in the current recession. Several mature legal aid plans are suffering in the current recession. In England and Wales the Legal services Commission is experiencing staffing constraints and is relying increasingly on contracting out to control costs. As well, in England and Wales, a reduction of 30% in fees for barristers has been proposed to bring payments in line with those of prosecutors. The legal aid commission in the Republic of Ireland had an 8% budget cut. The legal aid commissions in several Australian states are struggling with static budgets and increasing demand. At the national level in the United States, the Legal Services Commission budget has been increased by $40 million. However, there are reports that many legal aid organizations are experiencing budget cuts and reductions in the level of service. On the other hand, several eastern European countries are establishing new legal aid

systems; Georgia, Bulgaria, Lithuania and Hungary. In particular, it has been reported that Bulgaria has increased spending on legal aid by 30% during the past year.

It is possible that new legal aid systems are not perceived, as their older cousins seems to be, as "black holes" voraciously consuming public funds, not perceived as producing value for money and therefore not politically popular. This suggests that managers of emerging legal aid systems should look cautiously down the road to the next recession, and consider how they should prepare when they will be at the helm of more mature legal aid systems.

The recession that hit Canada in 1990-1991, that was part of the 1990-1993 global recession, triggered a very bleak decade for legal aid in Canada. This is an example of the most severe impacts of recessions on legal aid. The recession was accompanied by high government debt, declining government revenues resulting from the recession. Because of these factors, governments were predisposed to cut public sector budget, including legal aid. The impact of the recession that occurred in the early 1990's was compounded by a major economic slowdown in 1995-1996 that arrived on the heels of the earlier recession. Expenditures and levels of service declined throughout the decade. Generally, the largest of the provincial legal aid systems experienced the most severe budget cuts. As well, the budget cuts experienced by Canadian legal aid commissions that following the 1990-91 recession occurred mostly in the years after the recession as governments struggled with the high debt and reduced revenues left in the wake of the recession.

The impacts of the current recession are becoming clear only now as politicians and economists are now predicting its imminent end. This is not surprising since it seems that there is often a lag between the onset of a recession and its full impact on legal aid. There are a number of reasons. The depth and duration of a recession are usually not clear and governments may delay decisions about financial cuts. Legal aid budgets are set a year in advance. Reductions in interest rates likely affect next year's funding. Unemployment, a major factor driving demand for legal aid, rises later in the recessionary cycle and usually remains high following a recession.

Based on the Canadian experience, it is also curious that although in the midst of the most severe recession since the Great Depression the impacts are, so far, not what one might have expected. There has been little impact so far. One of the thirteen Canadian legal aid "plans", in the Province of New Brunswick, has experienced a budget cut directly related to the recession. Several others are experiencing reductions in Law Foundation grants because of low interest rates. Fortunately, these sources of funding a relatively small compared with funding form the provincial and federal governments. It is surprising, on the other hand, that the Province of Ontario, the part of the country effected most strongly be the recession, has announced in the midst of the recession a $150 million increase in legal aid funding over the next four years. This was in part a responseby the government to a withdrawal of services by lawyers for serious cases such as homicides.

Nonetheless, this does emphasize the uncertainty surrounding the impact of recessions on legal aid. However, on the less positive side, because of the high unemployment that typically follows in the wake of recession and the government constraints on funding that may occur after the recessionary period, impact will likely continue after the "technical" recession has ended.

Concluding Observations

The last section offers three concluding observations; mere observations being much safer than conclusions, recommendations or advice when faced with uncertainty.

In a recent discussion of the impact of recessions on legal aid, the CEO of one European legal aid organization said with a mix of cynicism and seriousness; 'Don't let a good crisis go to waste". Recessions do indeed present opportunities. Crises often allow organizations to make changes that would be unacceptable in more stable times. Financial constraint, inadequate funding to meet demand and doing more with less have been constant features of legal aid. On the slightly more positive side, however, because constraint has been a constant in legal aid, so also has innovation. There are always changes and innovations one wants to introduce. Moreover, recent research has taught legal services providers a great deal about legal problems and the nature of legal needs. This body of research following the Paths to Justice study has taught us how needs can be better understood and addressed. However, organizations are often characterized by inertia, especially when budgets are inadequate and the demand exceeds the resources available. The squeeze between demands and resources may become greater, even critical, in times of recession. However, crises often allow organizations to make changes that would be resisted in better times. Examples from Ontario, Canada following the recession in the early 1990's and from the U.S. following the recession of the early 1980's show how responses to recession can result in beneficial and durable changes to legal aid delivery. However, responding to recession after it has taken hold can be painful.

Don't wait for the next recession to occur. Many things about recessions are uncertain, except that another recession or economic slowdown will inevitably come along sooner or later. One might think of viewing recessions as "peaks" or "spikes" exacerbating the balance of resources and demand along a long path of less than adequate funding, of doing more with less. It may be possible to prepare for the next recession(s) by making research and innovation a constant part of the legal aid organization. However, that condition should be thought of as 'necessary but not sufficient'.

A perennial problem is that legal aid is often not well understood by policy makers and its importance as a part of the justice system is not appreciated. That suggests that legal aid organizations must be able to demonstrate the value of legal aid. The following suggestions might help being prepared for recessions when the first indications of trouble appear on the horizon.

- Make research and innovation a constant.
- Focus on outcomes, not only outputs (outcomes are the effects you want to achieve).
- Be able to answer the question: what is the value of legal aid to the society? Funding for legal aid competes for scarce resources with other public services.
- Be able to show how legal aid contributes to an effective and efficient justice system.
- Be able to show how legal aid links with broader issues of public policy.

Finally, the combined effects of budget cuts and increasing demand will place increasing stress on legal aid staff. Cuts in programs may be unavoidable. However, one legal aid society in Canada that has experienced significant budget reductions following a recession in the early 1990's and again following an economic slowdown in 2000 has learned that investing in internal communication and staff development builds the internal capacity to deal with the impacts of recession. It has been the experience of the legal aid plan in British Columbia, Canada that money spent on change management workshops to assist staff to adjust to organizational change, training and development for staff, leadership training have given the organization the capacity to deal with wrenching organizational change.

Recessions may indeed present opportunities. However, it might be possible to lay the groundwork to seize on those opportunities well in advance. Of course, recessions will present immediate needs for assistance with problems related to loss employment, mortgage foreclosures and other legal needs that may be especially critical in recessionary times. As well, there may also be opportunities to build longer term, durable capacity to ride out the next recession better than the last one. The great 19th century American landscape photographer, Ansel Adams, once said: "chance favours the prepared mind."

Panel Discussion I

The Rights of Non-nationals and Legal Aid

- **Moderator : Mr. Wei-Shyang Chen**

  Deputy Secretary-General of Legal Aid Foundation (Taiwan)

- **Speakers :**

  1.Ms. Suzan Cox (QC)

  Director, Northern Territory Legal Aid Commission, Australia

  2.Ms. Daniela Dwyer

  Staff Attorney, Florida Legal Services, Inc., Lake Worth, Florida, U.S.A.

  3.Mr. Hao-Jen Wu

  Associate Professor, Department of Law, Fu Jen Catholic University, Taiwan

Panel Discussion I : Moderator, Mr. Wei-Shyang Chen (second right) , and speakers

Mr. Wei-Shyang Chen, Deputy Secretary-General of Legal Aid Foundation (Taiwan)

Ms. Suzan Cox (QC), Director, Northern Territory Legal Aid Commission, Australia

Ms. Daniela Dwyer,Staff Attorney, Florida Legal Services, Inc., Lake Worth, Florida, U.S.A.

Mr. Hao-Jen Wu,Associate Professor, Department of Law, Fu Jen Catholic University, Taiwan

Panel Discussion I

The Rights of Non-nationals and Legal Aid

Ms. Suzan Cox (QC)
Director, Northern Territory Legal Aid Commission, Australia

The Legal Aid Commissions

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. The Commissions are funded by the Federal and State or Territory Governments to provide legal assistance to disadvantaged people.

All Legal Aid Commissions aim to ensure that the protection or assertion of the legal rights and interests of people are not prejudiced by reason of their inability to:

- obtain access to independent legal advice;
- afford the financial cost of appropriate legal representation;
- obtain access to the Federal and State/Territory legal systems or obtain adequate information about access to the law and the legal system.

Commission Services and funding arrangements generally

Each of the Legal Aid Commissions offers a range of legal services to all members of the community including information, referral, advice, minor assistance (such as writing a letter or making a phone call), community legal education (including publications and presentations) and, upon the making of a grant of legal aid, dispute resolution and representation.

Each State, or the Commission in the respective State, and Territory has an agreement with the Commonwealth of Australia through the Commonwealth Attorney-General's Department for the provision of legal assistance services.

Each of these agreements specifies Commonwealth Legal Aid Priorities. The Priorities set out matters arising under Commonwealth law for which the funding provided can be used by Commissions in making grants of legal assistance for representation by a lawyer. The agreements also contain as a schedule the Commonwealth Legal Aid Guidelines ("the Guidelines").

Commission services and funding arrangements in relation to immigration matters

Under the Guidelines legal representation in migration matters is severely restricted and limited to test case matters in the Federal or High Court.

Due to the restrictive Guidelines and corresponding lack of funding not all the Legal Aid Commissions provide aid in respect of immigration matters. Three of the Commissions do not provide legal aid in immigration matters. These Commissions refer people seeking immigration advice to either a Refugee and Immigration Legal Service (RAILS), a Community Legal Centre (CLC) which has a contract to deliver immigration services, or to registered immigration agents. The other five Legal Aid Commissions have contracts with DIAC (Department of Immigration and Citizenship) under the Immigration Advice and Application Assistance Scheme (IAAAS) to provide immigration and advice to asylum seekers and some other non-citizens in the community and in immigration detention. Under the IAAAS Scheme, a detainee is referred to the Commission for legal advice and assistance soon after such assistance is requested by the detainee.

In addition to the IAAAS detention contracts, some Commissions also hold IAAAS Community Contracts through which "disadvantaged" people can be provided with free advice and, in some cases, application assistance. The funding provided under the community contracts is inadequate to meet the need in the community. Community funding is subject to means and merit tests. By way of example, in the Northern Territory, the vast majority of assistance that we provide is to clients who have arrived in Australia on humanitarian visas and who are seeking to be reunited with family through the offshore humanitarian program. Under the IAAAS contract we receive funding to assist these clients because they meet the double disadvantage test. That is, they are in financial hardship and from a non-English speaking background, or illiterate in their own language, or have a physical or psychological disability. In addition, although we are not funded to provide any further assistance under the IAAAS contract, we do provide minor assistance such as preparing statutory declarations and helping to complete forms on an advice basis.

1.SCOPE OF SERVICES

(a) All residents in Australia have the same entitlements to access the services provided by the Legal Aid Commissions. There is no restriction of service based on visa or citizenship status. Foreign workers, foreign spouses and other non-nationals in Australia, legally or illegally, are entitled to the same services as citizens of Australia. Generally, however, the Commissions do not assist foreign workers for visa issues due to lack of funding in this area. If the foreign worker is employed then he or she may not satisfy our means test. In certain cases if there is particular merit and client has no means, assistance may be provided, but we do not receive any direct funding unless they are seeking protection. For example, if a worker has been exploited by his or her employer or by his or her training provider if he/she is on an occupation training visa. However, this is rare and work is done unfunded.

Generally foreign spouses will be assisted by the Commissions where they have separated from their partner and are seeking permanent residence on the basis that either there is a child of the relationship or they have suffered domestic violence at the hands of their sponsoring spouse.

(b) Legal Aid Commissions do assist other non-nationals (non-citizens) in Australia, including those who have arrived on false documents or have not been cleared by Immigration. Those Commissions which do immigration work predominantly assist asylum seekers who seek refugee status under the International Refugees Convention. Asylum seekers are arguably the most vulnerable of clients because as non-citizens they are denied many of the rights taken for granted by other client groups. Asylum seekers, while awaiting their determination of their refugee status are not entitled to social security support, access to English classes, resettlement assistance or public housing. A small number are entitled to income support from the Australian Red Cross.

Commissions are very aware of the problems faced by women who have been trafficked to Australia. Commissions provide assistance to these women to access the appropriate visas. These may be protection visas or temporary and permanent witness protection visas for those who may have assisted police and would be in danger if they returned to their country of origin.

The five Commissions which receive funding through the IAAAS contracts provide advice and assistance for protection and non-protection visas (in cases of domestic violence) for disadvantaged persons. Commissions assist people both in the community and in immigration detention.

If a person enters Australia without a valid visa or passport and is detected, then he or she is detained in an immigration detention centre. In the Northern Territory, for example, we have a number of people attempting to enter Northern Australia by boats organised by people smugglers based in Indonesia. Throughout Australia people often try to enter Australia on false documents or with no documents at the airport. Under the IAAAS agreements special funding is given to aid such people in detention and, in the majority of cases, these people are referred to the Commissions by the DIAC. If the unauthorised arrival has also committed a criminal offence, such as illegal fishing or illegal drug importation, for example, then the Commission would be notified by the Prosecuting Authority. Legal Aid is available for representation in respect of any criminal charges.

In addition, some Commissions also receive funding to assist clients in the community who have been cleared by immigration. Some of these people may have valid documents and some may not for a number of reasons. Funding from IAAAS enables the Commissions to provide free advice and, in some cases, application assistance to eligible "disadvantaged" visa applicants, including onshore asylum seekers.

(c) The Commissions do not distinguish between the lawfulness of foreigners in Australia. The Commissions receive funding to assist both those who have arrived on false documents

and those who have entered without documents or entered illegally. In addition, general immigration advice and assistance across a broad range of visa types, such as spouse visas, orphan relative visas, carer visas and vulnerable child visas are given either under IAAAS or general legal aid funding (not always under IAAAS).

2.APPLICATION PROCEDURES

(a) The same procedures apply for citizens and non-citizens. All applicants are treated equally as long as they are present in Australia.

(b) In Australia the law essentially adopts the Refugee Convention Definition of a refugee, namely a person who is outside their country of nationality or their usual country of residence and:

- unable or willing to return to or seek the protection of that country due to a well founded fear of prosecution for reasons of race, religion, nationality, membership of a particular social group or political opinion;
- not war criminals or people who have committed serious non-political crimes.

There are some legislative qualifications to this definition. The Legal Aid Commissions, which have an IAAAS contract, provide application assistance to asylum seekers in the community and in detention. Usually an assessment is made by a solicitor at the Commission and aid is then granted. Clients who are in detention are referred for legal advice and assistance by DIAC. Clients who are in the community are identified by the Legal Aid Commission as requiring assistance and likely to have prospects of successfully establishing refugee status. To be eligible for Legal Aid they must also satisfy a means test and the IAAAS disadvantage criteria. It is the Department of Immigration and Citizenship, however, that makes the decision as to whether an applicant for asylum meets the criteria for refugee status.

(c) There are many challenges facing Legal Aid lawyers in providing services in this area. The restrictions on what Commissions are allowed to do under the Guidelines or IAAAS contracts, plus the lack of funding, is compounded by the vulnerability of the clients and their multi-faceted issues, which may include:

- the person's timely access to legal services when they are in immigration detention – especially where they are held in an off-shore excised place;
- building trust and understanding with clients;
- obtaining appropriate interpreters;
- dealing with traumatised people;
- strict time limits in some cases to lodge visa applications;
- client's financial hardship;
- lack of social support.

The reality for the Commissions is that a lot of the work which is done for these clients is done on a pro bono basis and through attempts to link clients with other specialist services, which in turn are often under-funded or unfunded.

Other challenges are the restrictive Guidelines and conditions of the IAAAS contracts, the lack of funding which affects the capacity of the Commissions to take on work in this area of obvious legal need, as well as the volume of work including those matters which may fall outside the IAAAS contracts. To try and meet the need, the Commissions liaise with other IAAAS providers in their State or Territory in relation to capacity and with other providers to link clients into particular services. At other times, Commissions will make a policy decision to give Legal assistance although no specific funding is available.

Non-nationals placed in Immigration Detention

(d) Clients who are not cleared through immigration are detained in immigration detention. These may be specific detention facilities or it may be that in the State or Territory a prison has been declared an immigration detention centre. In the Northern Territory, for example, we have a detention centre, but from time to time people are detained in the prison and not only those who have other criminal charges concerning their unlawful entry, such as illegal fishing or people smuggling.

People who enter Australia illegally either on boats or at airports are detained, as are people who have overstayed their visas or have had their visas cancelled. The Legal Aid Commissions are able to assist some of these clients. Asylum seekers get legal representation under the IAAAS scheme but other non-citizens in detention may not get assistance.

Those Commissions which are working under the IAAAS contracts and providing assistance to clients in detention will give those clients regular updates in relation to their cases.

Some of the detention centres are offshore, such as on Christmas Island. Those asylum seekers on Christmas Island are denied access to the onshore refugee determination process. They have no right to access the court system. Those clients, who have managed to land in Australia but who are then taken to detention on Christmas Island, have entered Australia and are therefore legally entitled to the onshore refugee determination process. However, due to the isolation of these clients, it is often very difficult for them to access this assistance. None of the Legal Aid Commissions are contracted to provide the service to those offshore in places like Christmas Island. The Victorian Legal Aid Commission, which has the largest and most

vocal immigration practice, has provided assistance to applicants on Christmas Island, in relation to their rights to judicial review of tribunal decisions via telephone conferencing.

3.UNDERSTANDING ISSUES FACING NON-NATIONALS

(a) The understanding of lawyers and the judiciary in respect to the issues facing non-nationals varies. Generally, it is our experience that there is limited understanding of the legal issues affecting non-citizens on the part of those lawyers and members of the judiciary who do not specialise in migration law.

All the Legal Aid Commissions have community legal education sections. Through these community legal education sections Commissions produce materials and give presentations to highlight issues faced by the newly arrived refugees. Some of this work is through the Commissions' culturally and linguistically diverse education programs (CALD). Although the audience targeted in the CALD programs are refugees themselves, the promotion of these programs has led to engagement with the courts, police and other agencies, which has improved understanding in the wider community of the issues facing these particular communities. A lot more, however, could be done in this area.

4.INTERNATIONAL COOPERATION

If a client is legally assisted, then all efforts necessary for the case are made to engage international cooperation. For example, when assisting with a refugee family reunion the Legal Aid Commission would liaise with the UNHCR officers and embassies overseas, the International Red Cross and the International Office for Migration. In an application for refugee status the Commission may work closely with Amnesty International. No doubt more could be done to improve and develop our international relationships with organisations but funding for immigration matters remains severely limited.

5.MARKETING ACTIVITIES

(a) The majority of Legal Aid Commissions provide community legal education information sessions to new and emerging communities, such as the Congolese community, the Sudanese community, the Afghani community and Iraqi community in relation to their rights under Australian law. Victorian Legal Aid also provides sessions to NGO workers, court networkers and others who support these communities. Interpreters are provided where necessary, and all Commissions provide publications across all areas of law including refugee law and these are provided in a number of languages. The largest Commissions, NSW Legal Aid Commission and Victorian Legal Aid Commission provide information pamphlets in many different languages.

6.ADVOCACY

National Legal Aid (NLA) represents the Directors of each of the eight State and Territory Legal Aid Commissions. National Legal Aid is involved in making submissions for law reform to government on behalf of the combined Legal Aid Commissions. We have just finalised a submission to the Senate and Legal Constitutional Joint Standing Committee on Migration Amendment (Immigration Detention Reform Bill). Individual Commissions are better resourced and more vocal than others. In particular, the Victorian Legal Aid Commission participates in advocacy and reform of international human rights law through involvement in high level consultation with the Department of Immigration and relevant stakeholders, including the UNHCR, the Refugee Council of Australia, Foundations for Survivors of Torture and Trauma and the International Red Cross. Individual Commissions, as well as the combined Commissions (NLA) contribute to law and policy reform in this area.

At the present time all the Legal Aid Commissions are about to renegotiate funding which is undertaken every four years. Those Commissions which do immigration work will be advocating for increased funding with less restrictions on the immigration work we can undertake so as to meet our client's needs.

Panel Discussion I

The Rights of Non-nationals and Legal Aid

Ms. Daniela Dwyer
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Introduction

Before examining the rights of non-nationals with respect to legal aid in the U.S., it is a pre-requisite to understand the social and political contexts in which American legal services are viewed, regardless of the nationality of the recipient. The services that most U.S. civil legal aid programs provide to non-nationals are extremely limited, due largely to the historical context in which such federal and state programs were established and continue to exist.[2] In the U.S., there are two fundamental and inter-related distinctions in the delivery of legal aid services: whether the legal services offered address civil or criminal issues and whether the legal aid agency accepts federal funding from the Legal Services Corporation for those services.

There is a federal right to counsel in criminal cases which as been recognized to exist in the Bill of Rights to the U.S. Constitution. That federal right, established through due process cases such as the U.S. Supreme Court ruling in *Gideon v. Wainwright*, 372 U.S. 335 (1963), has been extended to defendants facing state as well as federal criminal charges. The right to counsel when faced with a criminal charge has been interpreted to include the appointment of counsel, at the government's expense, when a defendant is arrested, "arraigned on [an arrest] warrant before a judge," and "committed by the court to confinement".[3] Since the right to a court-appointed, government-funded attorney is a matter of federal, Constitutional right in most criminal cases, those attorneys (generally called "public defenders") are state or federal government employees and such defender programs funded through state or federal appropriations.

In stark contrast, the American legal system has not recognized a universal, government-funded right to counsel for indigents who need to participate (either affirmatively or defensively) in civil cases. The lack of a "civil Gideon", even in cases that affect fundamental constitutional rights, has become a major civil rights issue, which has been taken up by the American Bar Association (ABA).[4]

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[1] First, I would like to express my sincere appreciation to the Legal Aid Foundation of Taiwan for selecting this timely and critical discussion topic for the 2009 International Forum on Legal Aid. While the opinions expressed in this paper are solely mine (or those of cited authors), I am especially indebted to Mr. Wilhelm Joseph, Esq., Executive Director of Maryland Legal Aid, and Ms. Joan Yeh, of the Legal Aid Foundation of Taiwan, for allowing me the privilege to discuss such a multi-dimensional topic with this esteemed group of international colleagues.

[2] For an excellent history of civil legal services in the U.S., see "Securing Justice for All: A Brief History of Civil Legal Assistance in the U.S.", authored by staff attorneys Alan Houseman and Linda Perle (2007) for the non-profit Center for Law and Social Policy (CLAS), and which is available online at http: s242739747.onlinehome.us publications/legal aid history 2007.pdf.

[3] *Rothgery v. Gillespie County*, 554 U.S. , Slip Opinion, p. 20.

[4] See, for example, Howard H. Dana, Jr.'s law review article entitled, "2006 Edward v. Sparer Symposium: Civil Gideon: Creating a Constitutional Right to Counsel in the Civil Context:

Currently, the American system for the representation of the poor in civil cases remains one that relies upon governmental charity, or discretionary funding, in addition to private donations. The primary funding for civil legal services in the U.S. comes from the quasi-governmental agency, the Legal Services Corporation (LSC), which places a number of restrictions upon the use of their funds, and indeed, any other funds that an LSC-funded agency may receive. Attorneys who work for civil legal aid organizations are neither state nor federal government employees, although many are unionized. Legal aid advocates do not receive access to the generous federal or state benefits (such as government pensions and salary-scale), nor the attendant litigation budgets, which their counterparts do. Turn-over amongst staff attorneys working in civil legal aid, especially within the first five years of their legal career, and which is largely due to financial stress, is a constant concern for legal aid programs nationwide. Forced to rely upon government and private charity, there is no American state that has sufficient funding to meet the civil legal services needs of its poor domestic citizenry. Indeed, in Maryland approximately five hundred and seventy-six thousand (576,000) Marylanders are eligible for legal aid.[5]

Immigration law, and thus, foreign nationals, exists in a grey area between criminal and civil law. Technically, immigration proceedings are civil proceedings (including deportation proceedings). Nonetheless, the Immigration and Customs Enforcement (ICE) department of U.S. Homeland Security, is allowed to detain foreign nationals in jails because, according to the U.S. Supreme Court (our highest court of law), pre-trial detention and deportation of immigrants is "not punishment".[6] On average, "an alien is detained 30 days", a number which is kept down by the large number of foreign nationals who agree to "voluntary departure" in exchange for no longer be confined in jails.[7] Given the detainee's strong desire to be released from custody as soon as possible, and the difficulty in obtaining counsel if you are indigent, it is no wonder that so many people "voluntarily" agree to allow the U.S. to remove them from the country even though they probably have never spoken to a lawyer about their case. Some civil legal aid organizations provide assistance to foreign nationals in deportation proceedings, especially those that are not LSC-funded, but given the highly technical and specialized area of that law, they are few and far between.

Thus, despite the best intentions of most legal aid programs, the legal needs of foreign-nationals are often only addressed as secondary or specialty programs (excluding immigration law assistance), if they are addressed at all. As a result, the funding for programs assisting immigrants is often even more tenuous than that of legal aid's "core"

Introduction: ABA 2006 Resolution on Civil Right to Counsel". *Temple Political & Civil Rights Law Review* 15. In August 2006, the ABA urged states to provide a lawyer for low-income people in civil proceeding involving shelter, sustenance, safety, health, or childcare. The then-ABA President stated that "poor [civil] litigants have basic human needs which deserve as much attention as the interest in liberty found to be the basic of criminal right to counsel in *Gideon*." *Id.*

[5] Those who are eligible for services from Maryland Legal Aid must have incomes that do not exceed one hundred and twenty-five percent (125%) of federal poverty guidelines.

[6] *Zadvydas v. Davis*, 533 U.S. 678, 609 (2001).

[7] On October 6, 2009, the Secretary of the U.S. Homeland Security Administration, Ms. Janet Napolitano, released a report from the sub-agency, Immigration and Custody Enforcement, (ICE). The "Napolitano Report" is entitled "Immigration Detention Overview and Recommendations". Page 6 of the Napolitano Report contains detailed statistics on the number and types of foreign nationals currently in U.S. immigration custody.

or general services delivery programs. Such programs often consist of targeted grants of limited tenure, narrow geographical focus and constricted scope of subject-matter (such as fellowship programs which allow recent graduates to address a legal problem, such as human trafficking, for their first two years post-law school graduation). Upon the conclusion of those two years, legal aid programs are then confronted with either raising funds to continue the program or face a loss in project services and momentum. Justifying the continuation of such pilot programs is difficult for legal aid programs when the general services being provided are already facing critical shortages.

These are by no means excuses. However, it is within this context of nationalism, limited civil and political rights and related-resource shortages (for poor nationals and non-nationals), that the discussion of the provision of legal services to foreign-nationals in the U.S. takes place. Those factors have played, and continue to play, a critical role in the American allocation of civil legal services of any kind.

1. Scope of Services:

(a) Does your organization provide legal aid services for foreign workers, foreign spouses and other non-nationals in your country?

Yes, the Maryland Legal Aid Bureau ("Maryland Legal Aid") provides some legal aid services for particular categories of foreign workers, foreign spouses and other non-nationals. However, which types of non-nationals Maryland Legal Aid is allowed to serve, what types of legal problems we can address for those approved non-nationals, and the litigation strategies from which we may choose, are limited by one of our funder's, the federal Legal Services Corporation's (LSC's), particular funding restrictions.

LSC's federal funding restrictions do not solely apply to funds they grant to legal aid programs across the United States, such as Maryland Legal Aid. The "LSC-restrictions" have wide-reaching impact because they also limit the use of recipient program's non-LSC funds, such as private donations and state grants, with some exceptions. The LSC restrictions regarding legal services to non-nationals begin from the presumption that services cannot be provided to foreigners. However, those ineligibility rules contain numerous exceptions, and they are some of the federal agency's most detailed and confusing ones. For example, "certain legal aliens, including lawful permanent resident aliens, and in employment related cases, H-2A nonimmigrant temporary agricultural workers [and, recently, H-2B nonimmigrant temporary forestry workers] can be represented using both LSC and non-LSC funds [i.e. funds provided by states, private donors, etc.] In addition, recipients can use non-LSC funds to provide legal assistance to aliens who have been battered or subjected to extreme cruelty by a spouse, parent or family member and aliens whose child has been battered or subjected to extreme cruelty by a spouse, parent or family member, although the legal assistance must be directly related to the prevention of, or obtaining relief from, the battery or cruelty."[8]

Victims of sexual assault or trafficking, and victims of crime who (might) qualify for a U-visa (immigration relief for those who cooperate with law enforcement in the prosecution of a crime), are also eligible for LSC-funded services. However, that legal

[8] Memo by Alan W. Houseman, Esq. and Linda E. Perle, Esq., Staff Attorneys, entitled "What Can and Cannot Be Done: Representation of Clients by LSC-funded Programs", Center for Law and Social Policy (CLASP), August 9, 2001, available at www.clasp.org.

assistance must be directly related to the prevention of, or obtaining relief from, the battery or cruelty, or the crimes listed in certain sections of the U.S. Immigration and Nationality Act (INA).[9] Escaping from the abuse or victimization, ameliorating the current effects of the abuse or protecting against future abuse or victimization are all areas in which LSC-funded programs can assist non-nationals. For further details and examples, please see the attached Maryland Legal Aid Bureau May 2007 Policy on the Scope of Permissible Representation Assistance to Citizens and Non-Citizens.

(b) **Is legal aid available for undocumented foreigners, refugees and victims of human trafficking in your country?**

As discussed above, legal aid programs that receive LSC-funding are generally prohibited from providing undocumented foreigners with representation, or even legal advice, unless the legal issue involves domestic violence, human trafficking, etc. As a result of those restrictions, there are some non-federally-funded organizations that have attempted to fill this void. However, they are typically smaller legal services organizations that lack stable budgets, especially of the size necessary to fund large-scale litigation or meet large consumer demand.

Legal aid is available in the U.S. for victims of human trafficking, but the scope of those services depends, again, upon whether the legal services provider is federally funded. LSC-funded legal aid organizations may assist human trafficking victims, but only in certain circumstances. LSC-funded legal services are primarily limited to preventing or escaping battery, abuse, cruelty or victimization by certain types of crime. The fact, however, that such services are permitted at all is a testament to LSC's recognition that victims of human trafficking are uniquely deserving of assistance.

In particular, there are two LSC Program Letters that have been authored on this topic. In October 2005, LSC President Helaine M. Barnett drafted Program Letter 05-2, on the "Eligibility of Immigrant Victims of Severe Forms of Trafficking and [Their] Family Members for Legal Services" (a copy of which is attached). In that memorandum, President Barnett defined the situations in which LSC-funded programs may assist individuals who would otherwise be ineligible for LSC or non-LSC-funded services due to their status as a non-national. This October 2005 memo was significant because it not only clarified that trafficking victims are eligible for legal aid services, it also clarified that certain members of their families are eligible for legal services too. The memo clearly states that LSC-funded programs may use any funds to assist such clients with applying for trafficking or crime victims' visas (T and U visas, respectively). However, if the U.S. government denies the client's visa application process, pursuant to 45 C.F.R. 1626's restriction on the representation of aliens, the legal aid organization must discontinue their representation of that client, while remaining in accord with their local rules of attorney professional responsibility.

In February 2006, President Barnett issued another LSC Program Letter, this one entitled, "Violence Against Women Act 2006 Amendments". This memo was written in response to an expansion of the federal Violence Against Women Act (VAWA 2006).

[9] LSC-funded legal aid programs may provide representation, without regard to immigration status, to a person who qualifies for a "U" visa (for victims of crime), as defined by the INA's section 101(1) (15) (U).

The memo explains that LSC-funded programs are now authorized to use LSC and non-LSC funds to represent an otherwise ineligible alien (under LSC regulation Section1626) with services "directly related" to the prevention of, or amelioration of battery or cruelty, sexual assault or trafficking, crimes discussed in the U visa category (described above), or whose child has been similarly victimized. That memorandum also stated that LSC-funded legal aid programs may also use any funds to assist clients who are victims of domestic abuse, even if they are not married to (or the child of) their abuser.

Pursuant to LSC regulation Section 1626.4(c), refugees or asylees who are lawfully present in the U.S., pursuant to a lawful admission, or who have been granted asylee status, are fully eligible for federally funded legal assistance without limitation on the scope of services they may receive.

(c) **In providing legal aid, does your organization distinguish between the lawfulness of foreigners' presence in your country?**

Yes, as explained above, the Maryland Legal Aid Bureau, along with all other legal services organizations that are LSC-funded, is required by federal law to distinguish between the lawfulness of foreigners who seek our legal services. Most of those federal funding restrictions are contained in Section 1626 of the federal Regulations of the Legal Services Corporation (LSC), which begin at the U.S. Code of Federal Register Chapter 45, Part 1600, *et al.* The LSC federal funding restrictions on legal assistance to aliens are contained in Part 1626, a copy of which is attached to this report.

2. Application Procedures:

(a) **Are application procedures the same for local applicants and non-nationals, including foreign workers/spouses, undocumented foreigners, refugees, victims of human trafficking and other non-nationals?**

Maryland Legal Aid's application procedures are the same for citizen applicants and non-nationals, although we are required to follow the particular LSC regulations on the verification of an applicant's citizenship or eligible alien status. Thus, while non-nationals are asked the same questions as citizens with respect to their household size and income, and are permitted to apply for our services through any of the methods available for citizens (such as by phone or in-person), non-nationals do have to answer particular screening questions regarding their immigration status. Section 1626.6 of the LSC regulations discusses the required procedures for the verification of all applicants' immigration status. Any applicant who claims to be a U.S. citizen, and who is provided more than brief advice and consultation by telephone, must attest in writing (on an LSC-approved form) that they are a U.S. citizen.[10] Further evidence of citizenship is not required, unless a legal aid staff has, "reason to doubt that an applicant is a citizen".[11]

In contrast, Section 1626.7(a) states that "an alien seeking representation shall submit appropriate documents to verify eligibility" unless they only receive brief advice via telephone. Copies of documents submitted by the applicant (such as their visa) must

[10] LSC Restriction Section 1626.6(a).
[11] LSC Regulation Section 1626.6(b).

be maintained in the applicant's file. Thus, the burden for proving eligibility for LSC-funded services lies with non-nationals, whereas those who claim citizenship need only attest to that claim unless the program suspects they are being untruthful. Aside from the particular questions relating to their immigration status, the application procedure is identical for citizens and non-national.

While the application procedures are largely the same, legal aid organizations have been trying to educate intake staff and advocates about the need to identify further facts and legal problems that may uniquely impact foreign nationals. Thus, when an intake staff member is interviewing a prospective applicant regarding a wage non-payment issue, if the immigrant explains that they are in the U.S. pursuant to a work-related visa, the intake worker should know to inquire about whether the employer has unlawfully confiscated the applicant's visa documents in an effort to control the worker. Such situations are not uncommon, for example, in guest worker arrangements. However, an intake worker who has only ever assisted citizens might not automatically think to inquire about such relevant facts absent particular training on the unique legal issues that immigrants might experience.

(b) If your organization provides legal aid for refugees, what are the criteria for identifying an applicant as refugee? Is your organization responsible for making the identification, or is this done by another agency?

According to LSC regulation Section 1626.4(c), refugees or asylees who are lawfully present in the U.S., pursuant to a lawful admission, or who have been granted asylee status, are fully eligible for federally funded legal assistance without limitation on the scope of services. Those regulations require either a lawful admission (such as the prospective client's entry into the U.S. under a visa before applying for refugee or asyelee status once on U.S. soil), or having obtained asylum status regardless of how the immigrant arrived. Given those restrictions, federally funded legal aid organizations are generally not primarily involved in identifying foreigners who are eligible for such statuses. Rather, federally funded legal aid organizations that have chosen to serve immigrants, such as Maryland Legal Aid, try to cultivate relationships with immigrant-oriented social service agencies. Those social service agencies, such as the Baltimore Resettlement Center in Maryland, work closely with the federal government to receive incoming refugee populations. Those organizations identify prospective clients who already have refugee or asylee status (or assist them with obtaining such status). Then the social service agencies refer those foreign nationals who are in need of other, non-immigration-related legal services, to legal aid.

Such organizations are our most reliable sources for identifying immigrant-related legal problems and directing affected community members to our offices. Cultivating relationships with social service agencies that have established ties to immigrant communities is critical to building trust in a variety of immigrant communities. Such partnerships allow legal aid organizations to begin overcoming cultural and language barriers, especially where the legal aid programs may not be able to employ multilingual and multicultural advocates from every immigrant community that resides in their service delivery area. American immigrant communities still rely heavily upon word of mouth referral and advice from community elders or respected advocates. Being able to assist a few of those "liaisons" through a formal (or informal) partnership is the first-step in establishing credibility and comfort in foreign national communities.

(c) What are the challenges facing legal aid lawyers in providing services to foreign workers/spouses, undocumented foreigners, refugees, victims of human trafficking and other non-nationals? What are the ways of overcoming them? Does your organization provide any assistance?

The primary challenge facing legal aid lawyers in providing services to foreign workers/spouses, etc. is lack of resources, especially unrestricted federal funding for legal aid, as discussed above. However, even if eligibility for legal services were a non-issue, challenges in the representation of foreign nationals would remain. Foreign nationals, and the legal aid organizations which represent them, are constantly faced with language and cultural barriers that must be overcome both inside and outside of the courtroom.

For example, even in a world of perfect communication, the U.S. legal system, especially the civil legal system, is not set-up to easily accommodate the needs of foreign nationals, much less low-income foreign nationals lacking lawful immigration status. As civil legal services attorney Cathleen Caron stated in her groundbreaking journal article on this subject, "Justice, unlike migrants, does not easily cross borders."[12] American legal services advocates have thus begun developing the human rights theory that there should be "portable justice", or access to justice that is at least as easy to obtain as access to a foreign, and therefore easily exploitable, workforce. Caron's international NGO, called the Global Workers Justice Alliance, is one of two international NGOs aimed at assisting American legal aid organizations. Her organization focuses on putting American legal services programs (both federally and non-federally-funded) in touch with advocates and workers from Central America in order to protect those workers rights when they work (or have worked) in the U.S.[13] The companion organization, Centro de los Derechos del Migrante (the Center for Migrant Workers' Rights), was founded by legal services attorney Rachael Micah-Jones, and focuses on establishing the same relationships between U.S. and Mexican advocates and workers.[14] Both of these organizations were founded within the last ten years after U.S. worker advocates experienced widespread obstacles when trying to enforce foreign national clients' rights.

Some American legal aid organizations lacked even the most basic litigation budgets needed to communicate with clients who had returned to their home countries once their work visas had expired. Other programs' clients lacked telephones or mail service where they could be reached even if programs could afford it. Once a suit was filed, say to enforce the workers' contract and wage rights, legal aid advocates lacked ways to obtain interrogatory responses or discovery (such as gathering documents from their client and other witnesses) from those in foreign countries, where many worker abuses begin or continued upon their return. Still further, securing permission for their

[12] "Portable Justice, Global Workers, and the United States", by Cathleen Caron, attorney and Executive Director of the Global Workers Justice Alliance, Clearinghouse REVIEW Journal of Poverty Law and Policy, Jan.-Feb. 2007 edition, available online at www.globalworkers.org
[13] The Global Workers Justice Alliance website may be viewed at www.globalworkers.org.
[14] The Centro de los Derechos del Migrante (CDM) website may be viewed at www.cdmigrante.org.

clients to enter the U.S. for deposition or trial was extremely difficult. The U.S. does not have a "court visa" process and is likely to deny humanitarian or tourist visas to clients who, due to their indigence, the government considers likely to overstay their visas and/or remain in the U.S. without permission indefinitely. Assuming those obstacles are overcome, the enforcement of U.S. court judgments against foreign entities (from a jurisdictional and practical perspective) is difficult and requires knowledge of foreign law that most American legal services advocates do not usually receive in law school. If a judgment is paid (or a settlement prior to judgment is reached), sending the money to clients who reside in foreign countries, and who may lack identification or bank accounts, is also challenging. The inability to distribute settlement proceeds to all affected workers plays into employers' hands, which often receive refunds of unclaimed compensation.[15]

Most importantly, it is extremely difficult for American advocates to educate prospective guest workers (or foreign nationals who may decide to work in the U.S. without legal permission) about their rights *before* they arrive in the U.S. whereupon they become particularly vulnerable. Prior to the establishment of GWJA and CDM, American advocates had an inconsistent approach to conducting community education in Mexico, for example, and little support from state or local Mexican officials who generally have a vested interest in support the U.S.'s demands for cheap labor. While the establishment of GWJA and CDM has by no means completely resolved those challenges, they have gone a long ways towards reducing many of those barriers. They now conduct regular community education programs to foreign workers who will be coming to the U.S., which helps them understand their rights from the beginning of work-contract negotiations. Their services also help put migrants in contact with U.S. advocates much earlier in the dispute process. Further, there are now several legal services organizations that are well versed in conducting depositions in their clients' home countries. The arrangements for such events are sometimes made by GWJA or CDM who have scouted technologically appropriate facilities in numerous rural and urban locations in clients' home countries. While many barriers remain, it has become much less difficult to vigorously represent foreign nationals, especially those who have not remained in the U.S.

(d) When non-nationals are placed in shelters that restrict their liberty under the relevant laws, are they informed of the progress of their court cases? While they are in these shelters, are they able to exercise their right of appeal? How do legal aid lawyers provide assistance on this point?

As of October 6, 2009, the guidelines for the detention of non-nationals by the American federal government have changed dramatically. Especially during the Bush administration's tenure, immigrant advocates, including legal services advocates, worked tirelessly to publicize the inhumane and often times, deadly, conditions that many foreign nationals in U.S. immigration detention experienced. Those conditions included being held with violent post-adjudication, criminal populations even though illegally entry to the U.S., in and of itself, is a civil violation.[16] Most recently, in 2008, the New York Times published a series of articles, investigated by reporter Nina Bernstein, which exposed the thousands of foreign national deaths that occurred while they were in custody as a result of the government's medical neglect.[17]

Consequently, the Obama administration's Secretary of Homeland Security, Ms. Janet Napolitano, announced on October 6, 2009, that her agency was dramatically restructuring the nation's approach to foreign nationals who are taken into custody. Previous to this announcement, non-nationals in federal custody were not held in "shelters", they were held in jails. This included the pre-trial jailing of families, including their young children, who were housed in some facilities with the worst conditions, such as the now infamous T. Don Hutto Family Residential Facility, in Hutto, Texas. According to Ms. Napolitano's new policy guidelines, some of which are effective immediately, Immigration and Customs Enforcement (ICE) will "detain aliens in settings commensurate with the risk of flight and danger they present".[18] Sometime this fall, ICE "will submit to Congress a nationwide implementation plan for the Alternative to Detention Program (ATD)" whereby aliens who are not considered flight risks or dangers to society will no longer be housed in jails.[19] Rather, those eligible for ATD may be housed in "converted hotels, nursing homes and other residential facilities as immigration detention facilities for non-criminal, non-violent populations."[20]

Practically speaking, foreign nationals in immigration detention in the U.S. are entitled to appeal their detention and/or conviction. However, it is their right to counsel (or lack thereof) that is critically important to ensuring that those rights are in fact exercisable. Of primary importance is the ability for family members and/or attorneys to be able to locate the detainee as soon as they are taken into custody, and before they may be transferred to a federal facility in another state (or across the country) and away from the legal and social support systems. Although Napolitano has proposed a nationwide locator system to facilitate the quick location of detainees, such program does not currently exist and many detainees therefore lose out on their ability to place a bond to be released from detention before they are transferred to a federal facility.[21]

Nor is there any guarantee, even under the Napolitano reforms, that foreign nationals are entitled to an attorney even if they are in deportation proceedings or in government custody. As the introduction of this paper explained, immigration

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[15] Caron's "Portable Justice" article, *id.* at page 551.

[16] According to the Napolitano Report, "Ice operates the largest detention and supervised release program in the country. A total of 378,582 aliens from 221 countries were in custody or supervised by ICE in FY 2008; activities from 2009 remain at a similar level. On September 1, 2009, ICE had 31,075 aliens in detention at more than 300 facilities throughout the U.S. and it territories, with an additional 19,160 aliens in Alternative to Detention programs". *Id.* at page 2. The report continues that, "although the majority of the [current] population [in immigration detention] is characterized as having a low propensity for violence ... with only a few exceptions, the facilities that ICE [currently] uses to detain aliens were built, and operate as jails and prisons to confine pre-trial and sentenced felons." *Id.*

[17] Indeed, the New York Times has a whole web page dedicated to their, and other press, coverage of foreign nationals' deaths while in U.S. custody. That web page may be viewed at: http: topics.nytimes.com top reference timestopics/subjects/i immigration detention_us incustod y_deaths index.html.

[18] The U.S. Department of Homeland Security's October 6, 2009, Fact Sheet entitled, "ICE Detention Reform: Principles and Next Steps."

[19] *Id.*

[20] *Id.*

[21] *Id.*

proceedings are civil proceedings under American law yet they carry severe criminal consequences if a foreign national attempts to re-enter the country illegally after having been deported. Without counsel to defend against the deportation, or adequately explain the criminal consequences of re-entry after deportation, many foreign nationals are ignorant of the full consequences of the legal proceedings to which they are subject. Napolitano's October 2009 report contained requirements for improving access to detainees for attorneys and consular officials, expanding the government's small legal orientation program (LOP), translation and interpretation services, and law library access and materials.[22] However, such requirements, along with medical care tracking, have yet to be fully outlined and adopted.

As discussed above, most foreign nationals in detention are ineligible for federally funded legal aid services. Thus, what little assistance they do receive is provided through non-federally funded legal aid organizations or private attorneys (generally, for a fee). That said, the Napolitano Report contains a list of legal aid "stakeholders" who were surveyed and provided input into what changes the new administration should undertake.[23] Those agencies were instrumental in pressuring the federal government to adopt essential reforms to the American immigration system.

3. Understanding Issues Facing Non-nationals:

(a) Do lawyers and the judiciary in your country have sound understanding of the legal issues and barriers to judicial process facing foreign workers/spouses, undocumented foreigners, refugees, victims of human trafficking and other non-nationals?

Foreign nationals not only experience procedural barriers to accessing justice (i.e. the lack of a right to a civil attorney, as discussed above), they also face substantive barriers to justice as a result of their migrancy.[24] The American justice system is implicitly oriented towards litigants who reside in the U.S. For example, many federal courts require the parties (not just their attorneys) to appear at least once in the jurisdiction where the suit has been filed, a near impossibility for many foreign nationals who have returned to their home country or who are in state or federal custody.[25] State workers' compensation systems, which are provided to workers who have been injured on the job and purportedly without regard to the workers' immigration status, generally require that the worker remain in the U.S. for medical treatment. Many state laws, and therefore the judiciary, consider a claim abandoned if a patient does not consistently see a U.S. doctor, even if the patient's visa status does not permit her to remain.[26]

So too the American law is developing on whether foreign workers may be required to admit their current immigration status when trying to claim damages for breach of their employment contract. It is a generally accepted principal in American

[22] *Id.*
[23] *Id.*
[24] *See* the "Portable Justice" article by Caron, referenced above, and the answer to Question 2 (c).
[25] *See*, e.g. U.S. District Court, Middle District of Florida Local Court Rule 3.04(b) requiring nonresident plaintiffs to appear in the jurisdiction at least once for deposition.
[26] *See* Caron's "Portable Justice" article, *id.* at page 554.

employment and contract law that employees have a duty to mitigate (i.e. lessen) their damages by seeking other work if they are not provided with all of the work promised to them under their contract. However, foreigners who have worked in the U.S. for longer than their visas allowed, or for employers, who were not authorized to hire them, risk incriminating themselves if they truthfully admit to having met their civil legal obligations to reduce their damages. The use of judicial "protective orders" and invocation of the U.S. Constitution's 5th Amendment right against self-incrimination has become increasingly common where such client's admissions may otherwise be used to subject the worker to a permanent bar upon re-entry to the U.S. and/or criminal penalties for having entered or remained in the U.S. illegally.[27]

(b) How does your organization improve their understanding of these issues?

Foremost, Maryland Legal Aid relies upon the strong national network of legal aid advocates to keep abreast of developing strategies to address the needs of foreign nationals. For example, Maryland Legal Aid's farmworker advocates (who often represent guest workers) are members of an electronic listserve whereby farmworker advocates from other legal services organizations, nationwide, may discuss litigation strategies, publicize favorable court opinions, share expert witness contact information, refer prospective clients who need to know which legal services advocate to contact in a particular jurisdiction, and track and discuss common defendants. Maryland Legal Aid is also a members of the National Language Access Advocates Network (N-LAAN), a national organization comprised of legal aid advocates who focus upon the language access rights of limited-English proficiency clients (regardless of citizenship).[28] N-LAAN not only provides technical support to legal aid organizations on how to find a qualified interpreters for their clients, and test the language abilities of prospective employees, but also discusses substantive legal concepts such as federal or state requirements that government services be offered in a manner that is "materially the same" to those offered to English-language speakers, such as requiring that food stamp applications and personnel provide bilingual services to those applying for benefits.

Maryland Legal Aid is also a leader on immigrant issues within the state of Maryland. In 2005-2006, we conducted a statewide survey of the needs of low-income people in Maryland who have limited-English proficiency (LEP) (the report is called the "2006 Maryland Legal Aid LEP Report). As part of that study, Maryland Legal Aid advocates interviewed our staff, third-party social service providers, individuals who are low-income, surveyed state and federal data, and conducted focus groups of non-English speakers who are in poverty. As a result of that report, Maryland Legal Aid developed a statewide "task force" whereby legal services advocates from across the state meet bi-monthly to discuss the needs of the limited-English proficient communities in their various counties. Such discussions include how we can improve the bilingual capabilities

[27] For detailed information on immigration-related protective orders, and other legal strategies involving the representation of migrant workers in the U.S. legal system, see the Global Workers Justice Alliance training manual entitled, "Challenges in Transnational Litigation: Representing Absentee Migrant Workers in U.S. Courts", self-published in November 2008, and available at www.globalworkers.org.
[28] The N-LAAN website is http: www.probono.net nlaan/.

of all of our legal aid offices, what emerging legal needs seem to be especially impacting immigrant communities, and encouraging state agencies to comply with language access requirements in their own provision of government benefits.

(c) How does your organization help them become more ethnically sensitive and improve their awareness towards multi-culturalism?

Maryland Legal Aid helps the judiciary to become more ethnically sensitive and multi-cultural primarily by educating ourselves about the unique barriers immigrants face and then educating ourselves about novel legal strategies to overcome them. For example, when an attorney explains to a federal court judge that her client cannot appear for a deposition in the U.S., despite desperately wanting to do so, because the U.S. will not issue her client a visa, the advocate educates the judge about the strictness of U.S. immigration law, an area about which civil state court judges are generally unaware (immigration law being an area of specialized, federal practice). So too have our advocates been trained on the psychological and physical abuse that a batterer can wield against an immigrant victim of domestic violence, when the batterer threatens to deport them and/or refuses to sponsor their application for lawful permanent residency if a victim reports having been abused.

Aside from the particular education of the judiciary that goes on in all of our cases involving foreign nationals (or non-English-speakers who are citizens), Maryland Legal Aid also participates in state and local forums where they raise those populations' particular needs. For example, in 2009, the Court of Appeals of Maryland (Maryland's highest Court) instituted an Access to Justice Commission. That commission included a subcommittee on the needs of immigrants and non-English-speakers. Maryland Legal Aid has a representative on that commission who has provided critical information to the courts on how court rules (such inconsistent rules for the requesting of an interpreter) play out in our client's experiences with the judicial system.[29] We have also ensured that foreign nationals (generally our clients) appear to testify at public hearings that the Court or legislature may hold on matters impacting immigrants.

(4) International Cooperation:

(a) In providing legal aid for foreign workers/spouses, undocumented foreigners, refugees, victims of human trafficking and other non-nationals, does your organization engage in international co-operation with governmental agencies or NGOs from other countries?

Yes, at times American legal aid organizations, including those that are federally funded, such as Maryland Legal aid, engage in international co-operation with

[29] For a comprehensive study of American state courts' interpreter duties and policies, see the New York University School of Law's Brennan Center for Justice's July 2009 report entitled, "Language Access in State Courts", authored by Laura Abel, which is available at www.brennancenter.org.

governmental agencies or NGOs in other countries. Those efforts are described throughout this paper. However, many more such efforts are needed.[30]

5. Marketing Activities:

(a) Does your organization inform non-nationals of the availability of legal aid for foreign workers/spouses, undocumented foreigners, refugees, victims of human trafficking and other non-nationals? What are the methods and channels of marketing (e.g., work with NGOs)? How does your organization overcome any language barriers?

As discussed above, American legal aid organizations, including Maryland Legal Aid, recognize the critical importance of informing foreign nationals of their rights, especially in the foreign nationals' native language. For example, supporting GWJA and CDMs' efforts to educate guest workers before they arrive in the U.S. is one of American legal advocates' primary successes. Once in the U.S., all legal aid organizations that serve farmworkers, for example, also have some sort of "outreach plan" whereby their staff visits the migrant workers who are living in their jurisdiction. For Maryland Legal Aid, this requires staff to locate the migrant labor camps throughout the state (and which sometimes change locations annually), to enter the property (with the permission of the farmworkers, although the property is typically employer-owned), and to conduct impromptu "Know Your Rights" workshops with the workers who express interest. Given that most of those workers are required to work 10 hours a day or more, such visits usually occur in the evenings or on weekends, during what little free time the workers have available. Conducting "migrant outreach" at migrant camps therefore requires the participating legal aid advocates to have flexible work-schedules and to be brave and adventurous when finding and eventually speaking with workers who may be fearful of immigration officials and/or living in locations unfit for human habitation.

Almost all U.S. farmworker programs have literature they distribute at migrant camps. Such literature describes the particular state rights of migrants in that jurisdiction (such as the potential right to a state minimum wage which exceeds the federal wage) and should always include a toll-free phone number that migrants can call to request assistance. Outreach workers are trained to explain that the phone number operates toll-free throughout the U.S. and, if the program has one, they also provide the toll-free phone number that the worker can use to call them from their home country.

Outreach workers orally summarize as much information as possible because an estimated 85% of farmworkers have difficulty obtaining information from printed materials.[31] Therefore, while the written literature is important, the most import educational strategy is discussing with migrant workers their rights in a conversational manner and emphasizing the phone number they can use to call for further information. Some programs are also experimenting with audio CDs or pictographic cartoon literature

[30] For further details, see the above-stated response to Question 2(c) and the 2008 Global Workers Justice Alliance Manual on Transnational Litigation.

[31] The U.S. National Agriculture Workers Survey (NAWS), sponsored by the U.S. Department of Labor, March 2000. The same study found that seventy-three percent 73% of U.S. farmworkers completed what education they do have in their native country of Mexico.

that may be a more culturally appropriate manner of communication than the written word. As more indigenous peoples enter the U.S., especially to perform low-wage agricultural work, it is a constant challenge for legal aid programs to keep their literature and advocates updated on regional dialects. For example, Mixteco is a native Mexican language which growing numbers of farmworkers in California speak and which has little in common with the Spanish-language.

The best method that American legal aid advocates use to communicate with current and prospective clients who have limited-English proficiency is through the hiring of bilingual staff. However, Maryland Legal Aid recognizes that knowing how to speak another language does not necessarily mean that the staff person also understands the requirements and skills of formal legal interpretation. Thus, Maryland Legal Aid makes its best efforts to provide their staff with training on how to properly work with, and serve as, an interpreter. Maryland Legal Aid has developed a formal policy against the use of children as interpreters and discourages the use of family-members as interpreters whenever possible. For advocates who do not speak their client's languages, federal law (pursuant to Title VI of the 1964 Civil Rights Act) requires all recipients of federal-funds to provide interpreters where at least five percent (5%) of their prospective client population speaks a particular language other than English. Thus, if there is no trained legal aid staff available that speaks the client or applicant's language, staff is instructed to call "the Language Line", a national company with whom we have contract for them to provide telephonic interpretation in a wide-variety of languages. A critical first-step in alerting prospective clients to the availability of this interpreter option is the display by Maryland Legal Aid of "I speak" posters, which allow people to point to a posted phrase (stating "I need an interpreter in [Arabic, Farsi, French, Spanish, Russian, etc.]). That way the intake staff can identify the language the applicant client speaks, even without an interpreter being immediately present, and allows them to accurately identify which language the requested interpreter should speak.

6. Advocacy:

(a) Does your organization participate in the advocacy and reform of international human rights laws?

Participation in the advocacy and reform of international human rights law is not something that traditional, federally-funded, legal services organizations have done much of in the past three decades, especially since "lobbying" is prohibited by the LSC restrictions.[32] While there are exceptions to those regulations, their impact seems to have had a wider "chilling effect" on advocacy undertaken outside the courtroom.

However, despite the LSC-restrictions, interest in using international law for the benefit of U.S. legal aid clients is growing. For example, Maryland Legal Aid is one of the LSC-funded (i.e. federally-funded) organizations that have recently adopted a "human rights approach" to its service delivery. Maryland Legal Aid just completed a two-year

[32] According to Section 1612.1, "The purpose of this part is to ensure that LSC[-funds] recipients and their employees do not engage in certain prohibited activities, including representation before legislative bodies or other direct lobbying activity, grassroots lobbying, participation in rulemaking, public demonstrations, advocacy training, and certain organizing activities."

strategic planning process, which involved the systematic reconsideration of all the types of legal services it delivers. Rather than focusing exclusively on traditional models of legal services delivery, where the types of cases and legal problems handled by the organization are outlined in strict, and static categories, Maryland Legal Aid adopted a more flexible approach whereby the changing needs of Maryland's varied poverty population could be more precisely addressed. Maryland Legal Aid decided that, first and foremost, the legal services it provided would be those that advanced the basic human rights of its clients. This "human rights approach" was inspired in large part by Law Professor Martha F. Davis' December 2007 article in the Clearinghouse Review: Journal of Law and Poverty, entitled, "Human Rights in the Trenches: Using International Human Rights Law in "Everyday" Legal Aid Cases".[33] Maryland Legal Aid attorneys recognize that not all of the rights their clients seek to enforce are recognized under U.S. law (such as the right to health care or the right to housing). Nonetheless, framing such pleas in the language of international rights both adds substantive avenues for judicial remedies and provides important context for the parties and the judiciary alike. Thus, just as federal and state courts are becoming more willing to consider international law in U.S. cases, Maryland Legal Aid advocates are taking up the call, indeed, duty as properly trained advocates, to add that strategy to their broad arsenal of advocacy strategies.

(b) How good is the foreign workers brokerage system in your country? Is the system one of the important structural reasons for the legal problems of foreign workers/spouses, undocumented foreigners, refugees, victims of human trafficking or other non-nationals in your country? If so, does your organization participate in campaigns to reform the brokerage system?

The formal foreign worker brokerage system in the U.S. is primarily one that relies upon guest workers (i.e. foreign-nationals who are admitted to the U.S. on temporary, non-immigrant visas) or undocumented workers (foreign nationals who work in the U.S. although they lack legal permission to reside in the U.S.). Many of the one-hundred thousand (100,000) guest worker visas which are issued each year are tied to the U.S.-employer, meaning that such foreign nationals lose their lawful immigration status if they choose to abandon their employment for any reason.[34] Of particular concern to U.S. legal aid advocates, are the American "H-2" visa programs, which allow U.S. employers to import unskilled, temporary foreign-labor for labor contracts of up to eleven months each year.[35] Under the H-2A program, agricultural employers (i.e. farms seeking field laborers) may import an unlimited number of foreign workers to work in agriculture each year, provided employers pass minimal standards of proof that U.S. workers are unwilling to perform the job. The corollary H-2B program allows U.S. employers to import a total of 66,000 foreign temporary workers each year to perform temporary, unskilled labor of a non-agricultural nature (such as landscaping, hotel housekeeping, and

[33] Professor Davis' article is available to online Clearinghouse REVIEW subscribers at http: www.povertylaw.org clearinghouse-review/issues/2007 2007 nov dec davis.
[34] *See* Caron's "Portable Justice" article, *id.* at page 550.
[35] *Id.*

seafood processing).[36] Employers who participate in the H-2 programs primarily recruit foreign nationals from developing countries, such as Mexico, Jamaica and (until recently Haiti) where prospective employees are so desperate for work that they are willing to endure a multitude of injustices despite often earning far below the U.S. minimum wage.

Despite the fact that all H-2 visa holders are lawful immigrants, as discussed above, only H-2A workers and H-2B workers (in the forestry industry) are eligible for LSC-funded legal aid. Even then, advocates may only assist them with issues relating to enforcing their work contracts. This combination of desperate foreign-national employees, whose immigration status (and often times, housing) is tied to their employer, their bosses who are extremely powerful and "landed" domestic nationals, and limited access to legal services advocates creates the perfect recipe for worker abuse. Indeed, a recent report by the esteemed Southern Poverty Law Center's Immigrant Justice Project called the American guest worker system one that is, "close to slavery".[37]

Most recently, in the spring of 2008, Maryland Legal Aid (along with a number of other federally and non-federally-funded programs) participated (using non-LSC-funds) in a "notice-and-comment" process whereby guest worker advocates submitted wide-sweeping recommendations on how to strengthen workers rights under the H-2 program. Such input was directed to the U.S. Department of Labor, one of the primary federal agencies that oversee the American foreign labor brokerage system. The effects that legal services advocates' recommendations for improvement will have remain to be seen, largely because there has been a change in presidential administration. Unfortunately, although the Obama administration promises to better protect workers rights, it's U.S. Department of Labor but has been slow to act thus far.[38]

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[36] *Id.*

[37] See the Southern Poverty Law Center's 2007 report entitled, "Close to Slavery: Guestworker Programs in the U.S.", which is available at www.splcenter.org.

[38] For recommendations on steps that the Obama administration's Department of Labor should take to increase worker protections, see the December 2008 Farmworker Justice report, entitled "Litany of Abuses: More Not Fewer Labor Protections Needed in the H-2A Guestworker Program", available at www.farmworkerjustice.org.

Supplementary Information (I)

(2) In determining whether an accommodation would impose an undue hardship on the operation of a legal services program, factors to be considered include, but are not limited to, the overall size of the legal services program with respect to number of employees, number and type of facilities, and size of budget, and the nature and costs of the accommodation needed.

(3) A legal services program may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is a need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(f) A legal services program may not use employment tests or criteria that discriminate against handicapped persons, and shall insure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(g) A legal services program may not conduct a pre-employment medical examination or make a pre-employment inquiry as to whether an applicant is a handicapped person or as to the nature or severity of a handicap except under the circumstances described in 45 CFR 84.14(a) through (d)(2). The Corporation shall have access to relevant information obtained in accordance with this section to permit investigations of alleged violations of this part.

(h) A legal services program shall post in prominent places in each of its offices a notice stating that the legal services program does not discriminate on the basis of handicap.

(i) Any recruitment materials published or used by a legal services program shall include a statement that the legal services program does not discriminate on the basis of handicap.

§ 1624.7 Self-evaluation.

(a) By January 1, 1980, a legal services program shall evaluate, with the assistance of interested persons including handicapped persons or organizations representing handicapped persons, its current facilities, policies and practices and the effects thereof to determine the extent to which they may or may not comply with the requirements of this part and the cost of structural or other changes that would be necessary to make each of its facilities accessible to handicapped persons.

(b) The results of the self-evaluation, including steps the legal services program plans to take to correct any deficiencies revealed and the timetable for completing such steps, shall be made available for review by the Corporation and interested members of the public.

§ 1624.8 Enforcement.

The procedures described in part 1618 of these regulations shall apply to any alleged violation of this part by a legal services program.

PART 1625 [RESERVED]

PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

Sec.

1626.1 Purpose.
1626.2 Definitions.
1626.3 Prohibition.
1626.4 Applicability.
1626.5 Alien status and eligibility.
1626.6 Verification of citizenship.
1626.7 Verification of eligible alien status.
1626.8 Emergencies.
1626.9 Change in circumstances.
1626.10 Special eligibility questions.
1626.11 H–2 agricultural workers.
1626.12 Recipient policies, procedures and recordkeeping.
APPENDIX TO PART 1626—ALIEN ELIGIBILITY FOR REPRESENTATION BY LSC PROGRAMS

AUTHORITY: Pub. L. 104–208, 110 Stat. 1321; Pub. L. 104–134, 110 Stat. 3009.

SOURCE: 62 FR 19414, Apr. 21, 1997, unless otherwise noted.

§ 1626.1 Purpose.

This part is designed to ensure that recipients provide legal assistance only to citizens of the United States and eligible aliens. It is also designed to assist recipients in determining the eligibility and immigration status of persons who seek legal assistance.

§ 1626.2 Definitions.

(a) *Citizen* includes persons described or defined as citizens or nationals of the United States in 8 U.S.C. 1101(a)(22) and Title III of the Immigration and Nationality Act (INA), Chapter 1 (8 U.S.C. 1401 *et seq.*) (citizens by birth) and Chapter 2 (8 U.S.C. 1421 *et seq.*)

(citizens by naturalization) or antecedent citizen statutes.

(b) *Eligible alien* means a person who is not a citizen but who meets the requirements of § 1626.5.

(c) *Ineligible alien* means a person who is not a citizen and who does not meet the requirements of § 1626.5.

(d) *Rejected* refers to an application for adjustment of status that has been denied by the Immigration and Naturalization Service (INS) and is not subject to further administrative appeal.

(e) To provide legal assistance *on behalf of* an ineligible alien is to render legal assistance to an eligible client which benefits an ineligible alien and does not affect a specific legal right or interest of the eligible client.

(f) *Battered or subjected to extreme cruelty* includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence.

(g) *Legal assistance directly related to the prevention of, or obtaining relief from, the battery or cruelty* means any legal assistance that will assist victims of abuse in their escape from the abusive situation, ameliorate the current effects of the abuse, or protect against future abuse.

(h) *United States*, for purposes of this part, has the same meaning given that term in 8 U.S.C. 1101(a)(38) of the INA.

[62 FR 19414, Apr. 21, 1997, as amended at 62 FR 45757, Aug. 29, 1997]

§ 1626.3 Prohibition.

Except as provided in § 1626.4, recipients may not provide legal assistance for or on behalf of an ineligible alien. For purposes of this part, legal assistance does not include normal intake and referral services.

§ 1626.4 Applicability.

(a) Except for § 1626.12, the requirements of this part do not apply to the use of non-LSC funds by a recipient to provide legal assistance to an alien:

(1) Who has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty; or

(2) Whose child has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien (without the active participation of the alien in the battery or extreme cruelty), or by a member of the spouse's or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty; provided that the legal assistance is directly related to the prevention of, or obtaining relief from, the battery or cruelty.

(b) Recipients are not required by § 1626.12 to maintain records regarding the immigration status of clients represented pursuant to paragraph (a) of this section.

§ 1626.5 Alien status and eligibility.

Subject to all other eligibility requirements and restrictions of the LSC Act and regulations and other applicable law, a recipient may provide legal assistance to an alien who is present in the United States and who is within one of the following categories:

(a) An alien lawfully admitted for permanent residence as an immigrant as defined by section 1101(a)(20) of the INA (8 U.S.C. 1101(a)(20));

(b) An alien who is either married to a United States citizen or is a parent or an unmarried child under the age of 21 of such a citizen and who has filed an application for adjustment of status to permanent resident under the INA, and such application has not been rejected;

(c) An alien who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8

U.S.C. 1157) (relating to refugee admissions) or who has been granted asylum by the Attorney General under section 208 of the INA (8 U.S.C. 1158).

(d) An alien who is lawfully present in the United States as a result of being granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7), as in effect on March 31, 1980) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic natural calamity;

(e) An alien who is lawfully present in the United States as a result of the Attorney General's withholding of deportation pursuant to section 243(h) of the INA (8 U.S.C. 1253(h)); or

(f) An alien who meets the requirements of § 1626.10 or 1626.11.

§ 1626.6 Verification of citizenship.

(a) A recipient shall require all applicants for legal assistance who claim to be citizens to attest in writing in a standard form provided by the Corporation that they are citizens, unless the only service provided for a citizen is brief advice and consultation by telephone which does not include continuous representation.

(b) When a recipient has reason to doubt that an applicant is a citizen, the recipient shall require verification of citizenship. A recipient shall not consider factors such as a person's accent, limited English-speaking ability, appearance, race or national origin as a reason to doubt that the person is a citizen.

(1) If verification is required, a recipient may accept originals, certified copies, or photocopies that appear to be complete, correct and authentic of any of the following documents as evidence of citizenship:

(i) United States passport;

(ii) Birth certificate;

(iii) Naturalization certificate;

(iv) United States Citizenship Identification Card (INS Form I–197 or I–197); or

(v) Baptismal certificate showing place of birth within the United States and date of baptism within two months after birth.

(2) A recipient may also accept any other authoritative document such as a document issued by INS, by a court or by another governmental agency, that provides evidence of citizenship.

(3) If a person is unable to produce any of the above documents, the person may submit a notarized statement signed by a third party, who shall not be an employee of the recipient and who can produce proof of that party's own United States citizenship, that the person seeking legal assistance is a United States citizen.

§ 1626.7 Verification of eligible alien status.

(a) An alien seeking representation shall submit appropriate documents to verify eligibility, unless the only service provided for an eligible alien is brief advice and consultation by telephone which does not include continuous representation of a client.

(1) As proof of eligibility, a recipient may accept originals, certified copies, or photocopies that appear to be complete, correct and authentic, of any of the documents found in the appendix to this part.

(2) A recipient may also accept any other authoritative document issued by the INS, by a court or by another governmental agency, that provides evidence of alien status.

(b) A recipient shall upon request furnish each person seeking legal assistance with a list of the documents in the appendix to this part.

§ 1626.8 Emergencies.

In an emergency, legal services may be provided prior to compliance with §§ 1626.6 and § 1626.7 if:

(a) An applicant cannot feasibly come to the recipient's office or otherwise transmit written documentation to the recipient before commencement of the representation required by the emergency, and the applicant provides oral information to establish eligibility which the recipient records, and the applicant submits the necessary documentation as soon as possible; or

(b) An applicant is able to come to the recipient's office but cannot produce the required documentation before commencement of the representation, and the applicant signs a statement of eligibility and submits the

necessary documentation as soon as possible; and

(c) The recipient informs clients accepted under paragraph (a) or (b) of this section that only limited emergency legal assistance may be provided without satisfactory documentation and that, if the client fails to produce timely and satisfactory written documentation, the recipient will be required to discontinue representation consistent with the recipient's professional responsibilities.

§ 1626.9 Change in circumstances.

If, to the knowledge of the recipient, a client who was an eligible alien becomes ineligible through a change in circumstances, continued representation is prohibited by this part and a recipient must discontinue representation consistent with applicable rules of professional responsibility.

§ 1626.10 Special eligibility questions.

(a) This part is not applicable to recipients providing services in the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, or the Republic of the Marshall Islands.

(b) All Canadian-born American Indians at least 50% Indian by blood are eligible to receive legal assistance provided they are otherwise eligible under the Act.

(c) Members of the Texas Band of Kickapoo are eligible to receive legal assistance provided they are otherwise eligible under the Act.

(d) An alien who qualified as a special agricultural worker and whose status is adjusted to that of temporary resident alien under the provisions of the Immigration Reform and Control Act (''IRCA'') is considered a permanent resident alien for all purposes except immigration under the provisions of section 302 of 100 Stat. 3422, 8 U.S.C. 1160(g). Since the status of these aliens is that of permanent resident alien under section 1101(a)(20) of Title 8, these workers may be provided legal assistance. These workers are ineligible for legal assistance in order to obtain the adjustment of status of temporary resident under IRCA, but are eligible for legal assistance after the application for adjustment of status to that of temporary resident has been filed, and the application has not been rejected.

(e) A recipient may provide legal assistance to indigent foreign nationals who seek assistance pursuant to the Hague Convention on the Civil Aspects of International Child abduction and the Federal implementing statute, the International Child Abduction Remedies Act, 42 U.S.C. 11607(b), provided that they are otherwise financially eligible.

[62 FR 19414, Apr. 21, 1997; 62 FR 22895, Apr. 28, 1997]

§ 1626.11 H–2 agricultural workers.

(a) Nonimmigrant agricultural workers admitted under the provisions of 8 U.S.C. 1101(a)(15)(h)(ii), commonly called H–2 workers, may be provided legal assistance regarding the matters specified in paragraph (b) of this section.

(b) The following matters which arise under the provisions of the worker's specific employment contract may be the subject of legal assistance by an LSC-funded program:

(1) Wages;

(2) Housing;

(3) Transportation; and

(4) Other employment rights as provided in the worker's specific contract under which the nonimmigrant worker was admitted.

§ 1626.12 Recipient policies, procedures and recordkeeping.

Each recipient shall adopt written policies and procedures to guide its staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part.

[62 FR 19414, Apr. 21, 1997; 62 FR 22895, Apr. 28, 1997]

APPENDIX TO PART 1626—ALIEN ELIGIBILITY FOR REPRESENTATION BY LSC PROGRAMS

ALIEN ELIGIBILITY FOR REPRESENTATION BY LSC PROGRAMS

Alien category	Immigration Act (INA)	LSC regs; 45 CFR § 1626	Examples of acceptable documents
LAWFUL PERMANENT RESIDENT.	INA § 101(a)(20); 8 USC § 1101(a)(20).	§ 1626.5(a)	I–551 or I–151 *or* I–181 (Memorandum of Creation of Record of Lawful Permanent Residence), with approval stamp; *or* passport bearing immigrant visa or stamp indicating admission for lawful permanent residence; *or* order granting registry, suspension of deportation, cancellation of removal, or adjustment of status from the INS, an immigration judge, the BIA, or a federal court; *or* I–327 Reentry Permit; *or* I–94 with stamp indicating admission for lawful permanent residence; *or* any verification from INS or other authoritative document.
ALIEN WHO IS —married to U.S. citizen, or. —parent of U.S. citizen, or— unmarried child under 21 of U.S. citizen *and* —has filed an application for adjustment of status to permanent residency.	INA §§ 208, 210, 244 (replaced by INA § 240A(b) for aliens in proceedings initiated on or after 4/1/97), 245, 245A, 249; 8 USC §§ 1158, 1160, 1254 (replaced by 1229b(b) for aliens in proceedings initiated on or after 4/1/97), 1255, 1255a, 1259.	§ 1626.5(b)	Proof of relationship to U.S. citizen* *and proof of filing*:** I–485 (application for adjustment of status based on family-based visa, registry, or various special adjustment laws) *or* I–256A or EOIR–40 (application for suspension of deportation) *or* EOIR–42 (application for cancellation of removal) *or* I–817 (application for Family Unity) *or* I–881 (application for NACARA suspension or special rule cancellation and adjustment) *or* OF–230 (application at consulate for visa) *or* I–129F (Petition for Alien Fiancé(e) (for spouses and children of USCs applying for K-status) *or* I–130 (family-based immigrant visa petition) *or* I–360 (self-petition for widow(er) or abused spouse or child) *or* I–539 indicating application for V status *or* I–589 (application for asylum) *or* I–698 (application to adjust from temporary to permanent residence) *or* I–730 (refugee/asylee relative petition) *or* any verification from INS or other authoritative document. *Proof of relationship may include: copy of marriage certificate accompanied by proof of spouse's U.S. citizenship; copy of birth certificate, religious archival document such as baptismal certificate, adoption decree or other documents demonstrating parentage of a U.S. citizen; copy of birth certificate, baptismal certificate, adoption decree, or other documents demonstrating alien is a child under age 21, accompanied by proof parent is a U.S. citizen; or in lieu of the above, a copy of INS Form I–130 (visa petition) or I–360 (self-petition) containing information demonstrating alien is related to such a U.S. citizen, accompanied by proof of filing.

ALIEN ELIGIBILITY FOR REPRESENTATION BY LSC PROGRAMS—Continued

Alien category	Immigration Act (INA)	LSC regs; 45 CFR §1626	Examples of acceptable documents
			**Proof of filing may include a fee receipt or cancelled check showing that the application was filed with the INS or the immigration court; a filing stamp showing that the application was filed; or a copy of the application accompanied by a declaration or attestation signed by the immigrant, or the immigrant's attorney or legal representative for the application, that such form was filed. Proof of filing is also established by: a letter or Form I–797 from INS or the immigration court acknowledging receipt of or approval of one of the above-listed forms; *or* Form I–94 (arrival/departure record) or I–512 (advance parole) indicating entry to pursue an above-listed application; *or* I–688B or I–766 (employment authorization document) coded 8 CFR §274a.12(c)(9) (applicant for adjustment), (c)(10) (applicant for suspension or cancellation, (c)(16) (applicant for registry), (c)(21) (S-visa principal or dependent), (c)(20) or (22) (legalization applicant), (c)(24) (LIFE Act legalization applicant), (a)(9) (K-status), (a)(13)(Family Unity), (a)(14) (LIFE Act Family Unity), (a)(15) (V-status), (a)(16) or (c)(25) (T-status) or (c)(8) (asylum applicant).
REFUGEE	INA §207, 8 USC §1157.	§1626.5(c)	I–94 or passport stamped ''refugee'' or ''§207'' *or* I–688B or I–766 coded 8 CFR §274a.12(a)(3)(refugee) or §274a.12(a)(4)(paroled as refugee) *or* I–571 refugee travel document *or* any verification from INS or other authoritative document.
ASYLEE	INA §208, 8 USC §1158.	§1626.5(c)	I–94 or passport stamped ''asylee'' or ''§208'' *or* an order granting asylum from INS, immigrantion judge, BIA, or federal court *or* I–571 refugee travel document *or* I–688B coded 8 CFR §274a.12(a)(5)(asylee) *or* any verification from INS or other authoritative document.
GRANTED WITHHOLDING OR DEFERRAL OF DEPORTATION OR REMOVAL.	INA §241(b)(3) or former INA §243(h), 8 USC §1251(b)(3) or former 8 USC §1253(H).	§1626.5(e)	I–94 stamped ''§243(h)'' or ''241(b)(3)'' or an order granting withholding or deferral of deportation or removal from INS, immigration judge, BIA, or federal court *Also acceptable* I–688B coded 8 CFR §274a.12(a)(10)(granted withholding of deportation or removal) *or* any verification from INS or other authoritative document.
CONDITIONAL ENTRANT	INA §203(a)(7), 8 USC §1153(a)(7).	§1626.5(d)	I–94 or passport stamped ''conditional entrant'' *or* any verification from INS or other authoritative document.
H–2A AGRICULTURAL WORKER.	INA §101 (a)(15)(H)(ii); 8 USC §1101 (a)(15)(ii).	§1626,11	I–94 or passport stamped ''H–2'' *or* any verification from INS or other authoritative document.

ALIEN ELIGIBILITY FOR REPRESENTATION BY LSC PROGRAMS—Continued

Alien category	Immigration Act (INA)	LSC regs; 45 CFR §1626	Examples of acceptable documents
SPECIAL AGRICULTURAL WORKER TEMPORARY RESIDENT.	INA §210 8 USC §1160.	§1626.10(d)	I–688, 688A, 688B, or 766 indicating issuance under §210 (or under 8 CFR §274a. 12(a)(2), with other evidence indicating eligibility under INA §210) *or* any verification from INS or other authoritative document.

[68 FR 55540, Sept. 26, 2003]

PART 1627—SUBGRANTS AND MEMBERSHIP FEES OR DUES

Sec.
1627.1 Purpose.
1627.2 Definitions.
1627.3 Requirements for all subgrants.
1627.4 Membership fees or dues.
1627.5 Contributions.
1627.6 Transfers to other recipients.
1627.7 Tax sheltered annuities, retirement accounts and pensions.
1627.8 Recipient policies, procedures and recordkeeping.

AUTHORITY: 42 U.S.C. 2996e(b)(1), 2996f(a), and 2996g(e); Pub. L. 104–208, 110 Stat 3009; Pub. L. 104–134, 110 Stat 1321.

SOURCE: 48 FR 54209, Nov. 30, 1983, unless otherwise noted.

§ 1627.1 Purpose.

In order to promote accountability for Corporation funds and the observance of the provisions of the Legal Services Corporation Act and the Corporation's regulations adopted pursuant thereto, it is necessary to set out the rules under which Corporation funds may be transferred by recipients to other organizations (including other recipients).

§ 1627.2 Definitions.

(a) *Recipient* as used in this part means any recipient as defined in section 1002(6) of the Act *and* any grantee or contractor receiving funds from the Corporation under section 1006(a)(1)(B) or 1006(a)(3) of the Act.

(b)(1) *Subrecipient* shall mean any entity that accepts Corporation funds from a recipient under a grant contract, or agreement to conduct certain activities specified by or supported by the recipient related to the recipient's programmatic activities. Such activities would normally include those that might otherwise be expected to be conducted directly by the recipient itself, such as representation of eligible clients, or which provide direct support to a recipient's legal assistance activities or such activities as client involvement, training or state support activities. Such activities would not normally include those that are covered by a fee-for-service arrangement, such as those provided by a private law firm or attorney representing a recipient's clients on a contract or judicare basis, except that any such arrangement involving more than $25,000 shall be included. Subrecipient activities would normally also not include the provision of goods or services by vendors or consultants in the normal course of business if such goods or services would not be expected to be provided directly by the recipient itself, such as auditing or business machine purchase and/or maintenance. A single entity could be a subrecipient with respect to some activities it conducts for a recipient while not being a subrecipient with respect to other activities it conducts for a recipient.

(2) *Subgrant* shall mean any transfer of Corporation funds from a recipient which qualifies the organization receiving such funds as a subrecipient under the definition set forth in paragraph (b)(1) of this section.

(c) *Membership fees or dues* as used in this part means payments to an organization on behalf of a program or individual to be a member thereof, or to acquire voting or participatory rights therein.

[48 FR 54209, Nov. 30, 1983, as amended at 61 FR 45754, Aug. 29, 1996; 62 FR 19418, Apr. 21, 1997]

Supplementary Information (II)

Maryland Legal Aid Bureau, Inc. - May 2007 Policy

***As a recipient of federal funding from the United States' Legal Services Corporation (LSC), the Maryland Legal Aid Bureau is subject to the following federal requirements regarding the**

SCOPE OF PERMISSIBLE REPRESENTATION ASSISTANCE TO CITIZENS AND NON-CITIZENS.

References: 42 CFR Part 1626 (effective May 21, 1997); P.L. No. 106-386 (Trafficking Victims Protection Act of 2000); P.L. 103-322 (Violence Against Women Act Reauthorization)

1. Definitions:

A. ***Battery or extreme cruelty*** has the meaning given to it under Subtitle G of the Violence Against Women Act ("VAWA") of 1994, which includes but is not limited to any act or threatened act of violence which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced detention or prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence.

Allegations of abuse or neglect which are the basis for a Child in Need of Assistance ("CINA") petition fall within the definition of "battery or extreme cruelty" for purposes of this policy.

B. ***Ineligible alien*** is a person who is not a U.S. citizen, does not meet the requirements of 42 CFR § 1626.5 and does not fall within the categories of persons set forth in Section 3.

C. ***Trafficking*** has the meaning given to it in the Trafficking Victims Protection Act of 2000 ("TVPA"), which includes (i) inducing a person, by force, fraud, or coercion, to perform a commercial sex act, or in which the person induced to perform such an act has not attained the age of 18; or (2) the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

2. Prohibition:

It is impermissible for any individual, while engaged in legal services activities funded by the Legal Aid Bureau, Inc. (Legal Aid), to provide legal assistance for or on behalf of an ineligible alien, except as expressly provided herein.

3. Persons who may be served by the Legal Aid Bureau:

A. Referrals for any person, without regard to immigration status

i. Legal Aid staff may provide referrals to any person seeking information or assistance, without obtaining the citizenship or immigration status of the person.

B. U.S. Citizens

i. Legal Aid staff may serve a U.S. citizen if the individual is otherwise eligible for services and the assistance meets all applicable Legal Aid policies.

ii. All prospective clients who seek legal services beyond intake and referral and who are citizens of the United States shall complete a declaration of citizenship in accordance with the rules set forth in Section 4 (Documentation).

iii. Verification of citizenship beyond that required in Section 4 shall not be sought from prospective clients unless the staff member has reason to reason to doubt that the person is not a United States citizen. Race, color, appearance, occupation and/or ability to speak English may not be considered in evaluating whether there is reason to doubt U.S. citizenship.

Staff members who have knowledge of particular facts that call citizenship into doubt shall, after consultation with a supervising attorney, request further verification. For example, if a client has stated that he or she comes to Legal Aid for help with denial of public benefits based on the client's immigration status, the staff member should ask for verification of that status.

(a) If further verification of U.S. citizenship is required pursuant to this sub-section, originals, certified copies or photocopies that appear to be complete, correct and authentic of any of the following documents may be accepted as evidence of citizenship:

(i) United States passport;
(ii) Birth certificate;
(iii) Naturalization certificate;
(iv) United States Citizenship Identification Card (INS Form 1-197 or 1-197);
(v) Baptismal certificate showing place of birth within the United States and date of baptism within two months after birth; or
(vi) Any other authoritative document such as a document issued by INS, by a court or by another government agency, that provides evidence of citizenship.

(b) If a person is unable to produce any of the above documents, the person may submit a notarized statement signed by a third party, who shall not be an employee of Legal Aid and who can produce proof of that party's own United States citizenship, that the person seeking legal assistance is a United States citizen.

C. "Documented" Non-citizens

i. Legal Aid staff may represent individuals who are not United States citizens who demonstrate their eligibility for legal services as provided in 42 CFR §1626.5.

ii. Included as part of this policy is the Appendix to 42 CFR Part 1626 showing which categories of aliens are eligible for services and which documents are acceptable to

verify eligibility.

iii. Certified copies or photocopies of documents that appear to be complete, correct and authentic may be accepted to verify eligibility under this sub-section. A copy of an application to the INS for replacement of a document, if it adequately describes the document, is acceptable.

D. Victims of Abuse or Trafficking

i. **Victims of Abuse:** Legal Aid may provide assistance without regard to immigration status to:

(a) Persons who have been battered or subjected to extreme cruelty;
(b) A person whose child has been battered or subjected to extreme cruelty.

ii. **Victims of Sexual Assault or Trafficking:** Legal Aid may provide assistance without regard to immigration status to:

(a) children or adults who are victims of sexual assault or trafficking in the United States or
(b) a person who qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (qualifies for a "U" visa).

iii. **No documentation required:** If an applicant for services is not a citizen and is a victim of abuse, sexual assault or trafficking, s/he shall not be asked anything further about his or her immigration status, unless necessary for purposes of representation, and no records shall be maintained of the immigration status of a client eligible under this section, unless necessary for purposes of representation.

iv. **Change in Circumstances**: If a client who was eligible for Legal Aid services under any of the foregoing provisions becomes ineligible through a change in circumstances, such as denial of certification for an adult seeking an HHS certification letter, staff must discontinue representation, in a manner consistent with the Maryland Lawyers' Rules of Professional Conduct.

E. Scope of Permissible Services for Victims of Abuse:

i. Any legal assistance that is directly related to the prevention of, or obtaining relief from, the battery or cruelty or the crimes such as those listed in section 101(a)(U)(ii) of the Immigration and Nationality Act[1], including escaping from the abuse or

[1] Those crimes are: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to

victimization, ameliorating the current effects of the abuse or victimization or protecting against future abuse or victimization.

ii. Examples of legal assistance that would be considered "directly related" as that term is used in E(i) above include: seeking a civil protection order, divorce, custody, wage claims or termination of parental rights. Actions to secure housing, income assistance or medical assistance for the abused person to free him or her from dependence on the abuser or exploiter is permitted but actions to challenge unrelated evictions or termination of public assistance would not be considered related to prevention of the abuse.

iii. Assistance with seeking suspension of deportation, self-petitioning for immigrant status on behalf of the abused or victimized person or child.

F. Scope of Permissible Services for Victims of Trafficking:

iv. With respect to any child or adult victim of trafficking in the United States or who qualifies for immigration relief under section 101(a)(15)(U) of the Immigration and Nationality Act (qualifies for a "U" visa), assistance with **any** legal issue within Legal Aid's case acceptance guidelines and practices, **even if** unrelated to trafficking[2];

v. Representation to obtain a certification letter under the TVPA, a "U" visa, interim relief application; a "T" visa; a self-petition for change in immigration status or assistance in obtaining proof to support applications for the foregoing visas;

vi. With respect to victims of trafficking who are under the age of 18, representation can be conducted without an HHS letter of eligibility or certification (since children do not need to receive certification letters from HHS) and can be conducted to obtain an eligibility letter to enable the child to obtain certain public benefits;

vii. With respect to family members of victims of trafficking, Legal Aid may provide representation to a spouse and/or children of an adult victim (age 21 or older); to a spouse, children, unmarried siblings under the age of 18 and parents of a child victim (under the age of 21) with an application for a derivative T nonimmigrant visa or with legal issues unrelated to trafficking, after satisfying the requirements set forth in Section 4 (Documentation).

4. <u>Documentation:</u>

A. General Rules:

i. <u>Telephone intake resulting in brief advice or consultation only:</u> Prospective clients whose initial intake and screening does not occur in person and whose legal problems can be resolved through brief advice or consultation shall be asked to orally declare their

commit any of the above mentioned crimes or any similar activity in violation of Federal, State, or local criminal law.
[2] LSC Program Letter 05-2

citizenship and/or eligible alien status.

ii. Telephone intake requiring emergency assistance: Prospective clients who contact Legal Aid by telephone may also receive emergency assistance pursuant to Legal Aid procedures beyond brief advice or consultation to respond effectively to the emergency circumstances, but they may not receive any subsequent, non-emergent legal assistance unless they submit a written declaration of citizenship or documentation of eligibility as required under Section 3.

iii. In-person intake: Prospective clients who contact Legal Aid in person shall sign a written citizenship form or provide documentation of eligibility as required under Section 3.

iv. In-person intake requiring emergency assistance: Prospective clients who are physically present in the office, are not citizens and who cannot produce required documentation of eligibility may receive emergency assistance pursuant to Legal Aid policies so long as the prospective client signs a written statement that identifies the person's immigration category as one that permits Legal Aid representation and the documents that will be produced to verify such status. Legal Aid may not provide assistance beyond that necessary to address the emergent circumstances unless the individual submits a written declaration of citizenship or documentation of eligibility for service, consistent with the Maryland Lawyers' Rules of Professional Conduct.

B. Rules regarding victims of trafficking:

i. In the case of a child victim of trafficking, the case file must contain documentation of how the case-handler determined that the child met the definition of a child victim of trafficking. If the child has obtained an eligibility letter, the case-handler should include a copy of the child's eligibility letter or, if photocopying is not possible, a notation that the case-handler has reviewed the eligibility letter.

ii. In the case of an adult victim of trafficking, the case file must contain a copy of the certification document or, if photocopying is not possible, a notation that the case-handler has confirmed the victim's certification status by calling the HHS trafficking verification line.[3]

iii. For family members of victims, the case file must contain acceptable documentation that the individual has been issued a derivative T nonimmigrant visa. A copy of the document or a note that such documentation has been reviewed if copying is not possible must be in the case file. Acceptable documentation includes:

a. I-94 coded T-2, T-#, T-4, T-5;
b. Form I-797 Notice of Action indicating approval of T-2, T-3, T-4, T-5 status;
c. employment authorization document coded ©(25); or
d. any other document indicating a grant of T nonimmigrant status.

[3] At the time this regulation was adopted, the telephone number for the verification line is (202) 401-5510 or (866) 401-5510.

5. Recordkeeping

A. In cases where a client is required to provide verification of citizenship or eligible alien status, the case handler shall keep in the client file copies of all documents given to them to establish eligibility, except where copying of those documents is impossible or illegal. In situations where copying of documents is not possible, the case handler must consult with the Executive Director or his or her designee to determine what constitutes adequate documentation. Designee, for purposes of this policy, includes the Deputy Executive Director, Director of Advocacy, a Chief Attorney or an Acting Chief Attorney

B. The immigration status of an applicant for services or a client shall not be disclosed to any person not employed by Legal Aid in any manner that permits the identification of the person without first obtaining the person's express written consent.

C. The Bureau will not maintain immigration records for applicants who are rejected or referred to other sources of assistance.

D. If a prospective client is ineligible due to immigration status, the reason for rejection or closure shall be designated 'Ineligble" only, without reference to immigration status. If no verification of citizenship or alien status is required because the person is a victim of abuse or trafficking, the fact that verification is not required shall be marked on the Client Intake Form under Spcode 1, "Kennedy Amend. Exc", until further notice.

6. Effective Date: This policy is adopted retroactive to January 5, 2006.

Approved by Board of Directors: March _____, 2007

Panel Discussion I

The Rights of Non-nationals and Legal Aid
"The Era of Coexistence - How the Legal Aid Foundation of Taiwan Assists Non-nationals"

Mr. Hao-Jen Wu
Associate Professor, Department of Law,
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1.0 Foreword: Two cases

Good afternoon, ladies and gentlemen, and friends who have traveled great distance to join us today. I am Wu Hao-Jen, a Member of the Legal Aid Foundation's International Affairs Committee, and a Moderator and Speaker in one of discussion groups for the Workshop on "The Rights of Non-nationals and Legal Aid".

Before beginning the discussion on how to help non-nationals obtain comprehensive legal aid, I would like to share with you two cases that I have worked on in the past. The first case involved a Taiwan passport holder in Japan who received help from the Japan Legal Support Center. The second case concerned Thai laborers in Taiwan who were given legal support from our legal aid provider when they were prosecuted after protesting against oppression from their employer.

1.1 The Case of Tashi Tsering

This incident occurred on April 26, 2008. Mr. Tashi Tsering, an exiled Tibetan holding Taiwanese passport, was furious at China's massive killing and brutal oppression of protesting citizens at Lhasa, the capital of Tibet, in March 2008. On April 26, 2008, he was brought into arrest by the police under the offence of "aggravated obstruction of business", an offence mostly used against gangsters, after shouting "free Tibet!" during the Nagano leg of the Beijing Olympic torch relay in Japan. On April 28, 2008, after 48 hours in custody, an interrogation was conducted by a Prosecutor who suspected Tashi's connection with terrorists, and incommunicable detention was ordered to be extended. Tashi was detained for 20 more days, the longest period allowed under Japanese law. Then Tashi was charged and the case was brought before the Nagano Regional Court, where a summary conviction was made. He was allowed release upon paying a fine of ¥500,000.

When the case was put under the spotlight, Japanese society strongly criticized the police and prosecution authorities for succumbing to the pressure from China by giving Tashi unfair treatment. As the leader of the Chinese Communist Party Hu Jingto was to visit Japan in mid-May, it was

the belief of many that the Japanese government had given a special order to its law enforcement officers not to release Tashi anytime before Hu's departure from Japan.

At that time, I was invited by the Taipei Economic and Cultural Representative Office in Japan to give a series of lectures on Taiwan in Waseda University. The representative office also kindly offered me the position as their cultural counselor. So when Tashi was put under custody, I was probably the first person to know about it in Taiwan's diplomatic system. As it was a criminal case of a highly political nature involving a Taiwanese citizen, it was the Office's responsibility to intervene. I reported to Representative Koh Se-kai, who had been an exile for thirty years during Taiwan's martial law period and understood the urgency attached to Tashi's case. He immediately instructed members of the Office to help Tashi. But what followed was nothing that I had expected.

According to the Japanese law, a suspect under incommunicable detention has the right to hire and meet with a lawyer, and if the suspect was a foreigner, the Embassy of the suspect's country may also visit. So the representative office's priority was to send officers to meet with Tashi and assist him engage a lawyer. However, the officer sent to visit Tashi, who once was a police officer, said threateningly to Tashi that hiring a lawyer is costly in Japan and the representative office would not pay for him. He even suggested that Tashi should confess and plead guilty in exchange for a lighter penalty. When he reported this to us, believing he had done the right thing, I was enraged. Not only did he fail to do what he was supposed to, he had no understanding of how the legal system operated in Japan. He should have informed Tashi that free legal aid services, which aim to help local citizens and non-nationals alike, were available in Japan. It would not cost Tashi or the representative office a penny to apply.

Another challenge soon presented itself when the Japanese lawyers employed by the representative office refused to be involved in Tashi's case, expressing their intention to steer clear of a case which might offend the Chinese government. Giving up any hope on the bureaucrats, I resorted to my personal contacts after gaining permission from Representative Koh. I turned to Ms. Maiko Tagusari, a lawyer from the Japan Federation of Bar Associations, for help. She immediately contacted another lawyer at the Japan Legal Support Center at Nagano, Mr. Syuji Yoneyama, who promised to defend Tashi without hesitation. He then hurried to meet with Tashi at the police station.

The next day, Yoneyama rang and asked me to find an interpreter for Tashi because Tashi did not speak Japanese, and the police officers did not understand Tashi's English. Yoneyama said he needed a Taiwanese person for the job. The interpreter that the police hired was a Chinese, and Yoneyama feared that unfairness may arise in the process. After analyzing the situation, Yoneyama believed that in Tashi's case, in addition to the suspected pressure from China, Tashi's situation may also be a result of the tightened security reinforced due to the coming G8 Summit at Lake Toya, Hokkaido to be held in July. He believed that Tashi would be found guilty, summarily convicted and can be released subject to payment of a fine. He advised us to have the fine (maximum ¥500,000) ready so that Tashi could be released at the end of the court hearing. I promised Yoneyama gladly. Everything went the way Yoneyama had predicted. However, the representative office later proved to be an embarrassment because neither did they help Tashi find a Taiwanese interpreter, nor did they fulfill their promise to help Tashi prepare the fine. I was later informed of the reason, which was that the representative office feared that Tashi might refuse to repay the fine afterwards. In the end, Yoneyama had to look for a Taiwanese interpreter on his own, and Tashi's fine was paid with the money collected by several Japanese civil groups that supported Tashi.

1.2 The case of Thai laborer's protest against oppression

The second case took place on Aug. 21, 2005. Hundreds of Thai laborers working on the Kaohsiung MRT construction attacked and destroyed their dormitory and offices located at Kaohsiung Kangshan Management Center, after an alleged long-term "unfair and unjust" treatment by the recruitment agency, Huapan Manpower Consultant and Management Co.. Four men said to be the leaders of the commotion were indicted by the Kaohsiung District Prosecutors on charges of offenses against public safety (arson), disrupting public service (stoning fire trucks that entered the site) and larceny (the company claimed that millions of dollars were lost after the riot).

It was a widely reported story and many can still recall the case. However, as a result of long-term discrimination and prejudice that Taiwanese society held against Southeastern foreign laborers, most local media used the word "riot" – a term bearing negative connotation - to describe the incident. Considering the gravity of the case, Minister of the Council of Labor Affairs Chen Chu ordered the Deputy Minister Lai Jin-lin to conduct a thorough investigation with several experts, and I was one of them. The place where the Thai laborers lived under the supervision of the company reminded me of a brutal Nazi concentration camp. In the company's handbook of management policy, I found a variety of rules that violated human rights. All these led me to believe that the event was more of a protest against oppression than a riot. Immediately, the urgency of these conditions convinced me to put aside writings published by the officials and reveal my own findings through the Coolloud Collective, in the hope that society – especially the Prosecutors and Judges – would not be misled by the media's premature judgment. I remember that I said, not a single person would be able to live in that place for one day, not any Taiwanese person. If the need arise, I am willing to testify in a court as a witness at anytime.

The laborers' protest against slavery caused by globalization was brought before the Courts, and the people who stood up in time to help the 4 Thai defendants were the lawyers and staff from the Kaohsiung Branch Office of the Legal Aid Foundation. With the help from the Foundation, the 4 defendants were found not guilty in both the first and second hearings of the trial (only one laborer

was found guilty for larceny and was sentenced to 6 months in jail but could be commuted with a fine.)

The Legal Aid Foundation has been involved in almost all of the foreign laborer court cases. In addition to the Thai laborer protest against oppression, there were cases of the foreign laborers exploitation by the Formosa Corp. (Yunlin Branch Office, 2006), the Indonesian caretakers exploitation by the Chi-ji Group (nationwide, 2008), the sexual assault case of eight Vietnamese caretakers by a foreign manpower agency administrator in Tainan (Taipei Branch Office, 2008). These cases serve to be significant reminders for Taiwanese society in which the human rights of non-nationals have been neglected for a long time (please refer below for more details of these cases).

The above are two very typical cases. One of them brings out the human rights issues of international political dissidents (and the repression conducted in the name of anti-terrorism by countries adopting appeasement policies); and the other highlights the human trafficking problems caused by labor mobility cross-borders (and the misconception of non-nationals=disgraced races=criminals resulted from the integration of capitalism and the media. Such misconception offers governments that are eager to control its people a fast track to conviction).

It is predicted that such violations of human rights of non-nationals will reoccur in the future. To clear any doubt, neglecting the human rights of foreigners will inevitably lead to serious damage to the human rights of all citizens eventually. The division of “local citizens” and “non-nationals” is a ticking bomb of discrimination threatening to shake up the entire society. After all, the politically and the socially disadvantaged are outcasts whether or not they are present domestically or abroad, and we may all become one of the outcasts someday, voluntarily or involuntarily. The legal aid system provides an important brake to such borderless violation of human rights. The system is an important and indispensible mechanism. It is the aim of these group discussions to find better approaches to enrich and reinforce this mechanism. I hope that with my introduction, we will be fortunate enough to share all of your invaluable experiences and opinions soon.

2.0 Legal Aid for non-nationals in Taiwan: practice and challenges

2.1 Efforts and Achievements:

2.1.1 Loosening the criteria for applying for legal aid:

Under Article 15 of the Legal Aid Act, the Legal Aid Foundation (“LAF”) shall grant aid to those “legally living in Taiwan”. The key idea is that legal aid services ought to be provided to non-nationals. However, after the Act has been in effect for several years, LAF has found that those who are in Taiwan illegally, who face problems of language barriers and cultural gaps, having low

educational levels and those under financial disadvantage, are in even more urgent need of legal aid. In order to improve the availability of services to more non-nationals, LAF has made policy decisions to extend services to the following people:

(1) Non-nationals who entered Taiwan legally may apply for legal aid, even though subsequently they do not live here. For instance, parents of migrant workers stay in Taiwan to deal with the funerals of their children. They can apply for legal aid services in which LAF will assist them to claim their rights.
(2) Non-nationals who were legally living in Taiwan but became illegal migrants due to infringement of their rights. For example, migrant workers ill-treated by their employers and have ran away, are entitled to legal aid.
(3) Non-nationals who are identified as victims of human trafficking by the police and Prosecutors, or suspected to be victims of human trafficking, may apply for legal aid.
(4) Refugees, stateless persons, and other non-nationals will be granted aid if LAF Examining Committees consider that they are in need of legal aid.

2.1.2 Simplifying application procedures and potential applicants

For non-nationals who approach LAF without interpreters, LAF assigns one to help them overcome the language barrier when they apply for legal aid.

Although LAF requests applications to be made by the applicant personally, some may not be able to comply with this (for example caretakers who do not have regular time off), and have to apply by way of “papers only”. This year LAF has accepted serious human trafficking cases which involve thousands of victims who are caretakers. They have difficulty not only in accessing legal aid information, they are unable to leave their employers freely. LAF cooperates with the government by collecting the personal information of these Indonesian caretakers registered in the Council of Labor Affairs or from the police and prosecutors, and mail LAF application information and documentation in Indonesian version to them. LAF also works with some organizations to provide legal advice in Indonesian by telephone, and encourages them to apply for legal aid by providing clear information through these actions.

LAF also cooperates with organisations that assist non-nationals. LAF send lawyers to these facilities to conduct interviews assess their applications. For example, an Examining Commission can visit shelters in which victims of human trafficking are placed to accept their applications.

2.1.3 Strengthen assistance to non-nationals in shelters

It is very difficult for non-nationals who have been placed in shelters to access lawyers, due to the lack of financial resources and the restrictions on their liberty. This area has been an area

of desertion in terms of legal resources. Since 2009, LAF has taken the initiative to link with the National Immigration Agency and shelters, and send lawyers to visit them each month to provide legal advice and accept application for legal aid. By providing free legal assistance, those placed in shelters will be informed of the progress of their court cases. Lawyers will petition the court to permit them return to their home countries to avoid inappropriate long term detention. Those who have not been charged with criminal offences also have access to assistance from lawyers when they need it.

2.1.4 Participation in advocacy and law reforms

In order to help non-nationals with their problems, LAF has been doing more than providing services in individual cases. LAF has also been active in advocating for their rights and engaging in law reforms. LAF held press conferences with non-profit-organizations to alert the public to the problems of exploitation on migrant workers. Joining the parades held by related organizations is another way to participate in advocacy. LAF believed that the absence of a Human Trafficking Prevention legislation was one the fundamental problems. Without such a legislation, there was be no regulatory framework to protect the victims, to impose special responsibility on government agencies, or to punish the crime of human trafficking. From September 2007, LAF lawyers participated in drafting the civilian version of the legislation, for the government to propose the official version. In January, 2009, the Human Trafficking Prevention Act was finally proclaimed.

2.1.6 Actively building cooperation network with domestic and international organizations

LAF believes that the provision of legal aid to non-nationals couldn't be done on its own, and the participation of other organizations is crucial. LAF has worked with organizations that care about the rights of non-nationals rights. Take human trafficking cases as an example, LAF has cooperated with community organizations for the referral of cases. LAF has invited government agencies (including the National Immigration Agency, shelters, police, prosecutors and the Council of Labor Affairs) and NGOs to meetings in which LAF identified the victims' legal needs and set up a regular assistance patterns. LAF has also engaged in international cooperation. Since March 2009, Oxfam Quebec, the Ministry of Labor, War Invalids and Social Affairs, and LAF have conducted an international project "Sending Vietnamese Migrant Workers Overseas Under Contract". By studying the Vietnam labors' movement through large-scale interviews and quantitative questionnaires, LAF aims to understand the risks of Vietnamese migrant workers and to propose improvement plans for governments on both sides.

2.2 Challenges and responses

2.2.1 Lack of interpreter resources

Competent interpreters play a very important role in the provision of legal aid services to non-nationals. At present, the resources of interpreters in Taiwan is still insufficient in terms of both quantity and quality. The government does not keep a complete database of interpreters and translators, creating difficulties for lawyers conducting cases. As a solution, LAF compiles its own list of interpreters and translators for its lawyers. However, the lack of interpreters and the uncertainty as to their competence remain a problem in Taiwan.

2.2.2 Difficulty of disadvantaged non-nationals to access information on legal aid

Non-nationals from financially disadvantaged backgrounds, especially migrant caretakers, have difficulty in accessing information on legal aid because of the language barrier and the restrictions of their work environment. LAF now prints leaflets in multiple languages for distribution by NGOs that assist migrant workers and foreign spouses. LAF also broadcasts commercials on foreign language radios to provide information on legal aid to non-nationals living in Taiwan.

2.2.3 The judiciary and the general public lack knowledge of problems facing non-nationals:

Judges and prosecutors in Taiwan do not have sound understanding of the problems facing non-nationals. These issues include: migrant workers are regulated by the systems in their home countries and most of them have incurred debts for working in Taiwan; some conscienceless brokers in Taiwan will increase charges by making up service items; and the ways in which human smugglers deceive non-nationals. Consequently, many these criminals did not receive proper punishment for their crimes. LAF has held many training seminars inviting prosecutors and judges to attend. However, members of the judiciary do not participate in non-official training courses very often, and more efforts are required to improve their understanding of these issues.

2.2.4 The number of lawyers specialized in the field is insufficient

Most non-nationals who are in a position of disadvantage cannot afford to retain the services of a lawyer. For this reason, the lawyer's lack of understanding of the issues facing non-nationals is unfortunately the norm in Taiwan. To improve legal aid lawyers' understanding of the relevant judicial practices and the problems facing non-nationals, LAF has, either by its own initiative or through cooperation with Bar Associations, held training programs for legal aid lawyers. LAF aims to educate more lawyers to specialize in this area, to increase the resources to conduct these cases.

2.2.5 Unreasonable broker system needs to be reformed:

For twenty years since 1989, the Taiwan government introduced foreign labor force which is "supplement, not replacement" through broker system, to fulfill the labor needs of constructing public infrastructure. Foreign labor policies are still based on the mindset to control migrant workers. Although the government has regulated what the brokers may charge in service fees by

prescribing official standards, brokers increase charges by contriving extra service items or through other improper means. Therefore brokers have frequently exploited migrant workers or treated them illegally by taking advantage of the deficiency in the broker system. Migrant workers frequently work in the minimum acceptable conditions, which is the reason for many migrant workers to run away. However, under the restrictions of the broker system, migrant workers do not have the choice to change their employers freely. Their only options are to endure abominable work conditions until the expiry of their employment contracts, or to run away.

Although brokers have the right to manage migrant workers, the central consideration of the brokers is the profits they make, rather than the improvement of work conditions for migrant workers. The migrant labor policy in Taiwan is to fill the gap in labor force by bringing in temporary supplement labor, and the market is heavily regulated by the government. These cause migrant workers to become highly dependent on brokers, who are in the position to make profits out of the situation. As migrant workers are also unable to stay in Taiwan on a long-term basis, the broker system is indeed one of the structural causes of exploitation.

3.0 Review and prospect for the future

It is apparent from the foregoing that, one of the difficulties in assisting non-nationals can be attributed to the deficiency or inadequacy in the legal system. For example, inappropriate labor brokerage system, the lack of refugee laws, and the range of non-nationals covered by legal aid is not sufficiently in the existing Legal Aid Act. Therefore, the Legal Aid Foundation, an entity established by the government but run by civilians, sometimes has to make its own judgment in the absence of regulations by taking into consideration international human rights law. For now, although LAF is working hard in widening the range of services, subvention justice of this kind cannot avoid giving a perception of “rule of man”. It is not easy to obtain cooperation from stakeholders, including the National Immigration Agency, Foreign Affairs Police, Labor agencies, courts and domestic employers, not to mention creating a culture of respect for the human rights of non-nationals in Taiwan’s society.

The Legislative authority in Taiwan has not been assisting non-nationals in all aspects, the central reason probably lies in the historical background that Taiwan has been turned down by the international community for a very long time. Although LAF has mobilized great community power, systems still remain incomplete. LAF has lobbied government and legislative authorities to make laws such as the Refugee Act and the Migrant Labor Act as soon as possible. The only success so far is the passage of the Human Trafficking Prevention Act. From this perspective, if LAF is to achieve its philosophy and mission, it cannot avoid defining itself as a social movement organization. This is why the government ought to give more respect and consideration for the legal aid system, even though LAF has already received credit from non-profit organizations and non-government organisations domestically and from abroad.

Lastly, LAF has made much effort in assisting victims of human trafficking, including victims of sexual and labor exploitation. In the past year, LAF has dedicated much effort in this issue. LAF has attempted to assist in all possible ways. These include taking part in the drafting and passing the Human Trafficking Prevention Act, establishing referral systems with victims shelters, proactively accept significant cases, organize training seminars for lawyers, building working network with government authorities (such as the Council of Labor Affairs and the National Immigration Agency) and non-governmental organisations, and also participating in the research project “Sending Vietnamese Migrant Workers Overseas Under Contract”.

Workshop I
The Rights of Non-nationals and Legal Aid

Group Discussions (A) : Conference Room
Group Discussions (B) : R.103
Group Discussions (C) : R.101

I.

(1) How and what are the ways in which the scope of legal aid services for non-nationals can be expanded?

(2) How and what are the ways in which the categories of eligible clients can be expanded (eg, clients who unlawfully enter or stay; stateless clients)?

(3) Are non-nationals subject to the same legal aid procedures as local applicants?

II.

(1) What are the difficulties involved in providing legal aid to non-nationals (eg, shelter placement; the availability of interpreters; indifference of the authorities or their unfamiliarity with the relevant laws; the possibility of deportation; difficulties in changing employers; the possibility of losing the job; difficulty in accessing legal aid resources)?

(2) How and in what ways can legal aid organisations or legal services providers respond?

III.

(1) How and what are the ways of overcoming the unreasonableness or deficiencies in the laws or government decrees concerning non-nationals (eg, restrictions in choosing employers ; unreasonable brokerage systems; unreasonable placement or deportation systems; lack of appropriate human trafficking prevention laws etc)?

(2) How and in what ways can legal aid organisations or legal services providers advise or assist?

IV.

How and what are the ways in which legal aid organisations and legal services providers can establish and promote cross-border cooperation and also cooperation between government authorities and NGOs within the country, so as to provide effective assistance to non-nationals?

Group Discussion List

Group Discussions (A) Conference Room

Moderator : Mr. Joseph Lin—Director of Taipei Branch, Legal Aid Foundation

Discussants :

- Ms. Suzan Cox (QC) —Director of Northern Territory Legal Aid Commission, Australia
- Ms. Liisa Vehmas—The Manager of Legal Aid in Helsinki / The Head of the Helsinki Legal Aid Office / The Ministry of Justice
- Ms. Hung-Ying Wang—Director of Human Trafficking, Taiwan Women's Rescue Foundation
- Ms. Li-Chuan Liuhuang—Assistant Professor and Executive of Kainan University International Labour and Development Research Center
- Ms. Cheng-Fen Chen—Head Prosecutor of Banciao District Prosecutors Office

Group Discussions (B) R.103

Moderator : Mr. Ping-Cheng Lo—Director of Hsinchu Branch, Legal Aid Foundation

Discussants :

- Ms. Daniela Dwyer—Staff Attorney, Florida Legal Services, Inc., Lake Worth, Florida, U.S.A.
- Mr. Arief Patramijaya—Chairman, Board of Agency, The Indonesia Legal Aid Foundation
- Ms. Yu-Ling Ko—Executive, The Pearl S. Buck Foundation, Taipei Taiwan
- Ms. Ying-Yu Chen—Researcher, Taiwan Women's Rescue Foundation
- Mr. Chun-Hui Chang—Head Prosecutor, Taoyuan District Prosecutors Office

Group Discussions (C) R.101

Moderator : Sandy Yeh—Associate Professor, Department of Foreign Affairs Police, Central Police University

Discussants :

- Mr. Wilhelm H. Joseph, Jr.—Executive Director, Legal Aid Bureau, Inc., Baltimore, Maryland, U.S.A.
- Mr. Hao-Jen Wu—Associate Professor, Department of Law, Fu Jen Catholic University
- Mr. Jung-Lung Chang—Director, Taiwan Association for Victims of Occupational Injuries
- Mr. Van-Hung Nguyen—Priest, Vietnamese Migrant Workers and Brides Office

Conclusion of Panel Discussion I: The Rights of Non-Nationals and Legal Aid

Moderator :
Mr. Wei-Shyang Chen (Deputy Secretary-General of LAF)
Reporters
Ms. Sandy Yeh(Associate Professor of Department of Foreign Affairs Police, Central Police University)
Mr. Joseph Lin (Director of LAF Taipei Branch)
Mr. Ping-Cheng Lo (Director of LAF Hsinchu Branch)

Mr. Wei-Shyang Chen(Deputy Secretary-General of LAF):

I'd like to introduce the three people who will give us their reports. The first is Mr. Joseph (Yung-song) Lin, Director of LAF Taipei Branch; the second is Ms. Sandy (Yu-Lan) Yeh, Associate Professor of Department of Foreign Affairs Police of Central Police University, who's always been concerned about issues of alien rights; the third is Mr. Ping-Cheng Lo, Director of LAF Hsinchu Branch and an authority on criminal litigation in Taiwan. Now Professor Yeh is sharing her perspectives with us. Thank you.

Ms.Sandy Yeh (Associate Professor of Department of Foreign Affairs Police, Central Police University):

To begin with, a major issue brought up in our panel discussion is the language problems for foreigners in Taiwan to apply for legal aid. Many participants talk about the lack of interpreters not only in the police department or during the prosecutors' investigation but also at court, hence it is imperative to accelerate the training and supply of interpreters. Also, Associate Professor Hao-Jen Wu mentions that there is no actual legal source for applying legal aid to aliens, and they can only resort to LAF Examining Committee's broadening relevant interpretation. We hope that in the future the police would advise the aliens of their rights before arresting them, "You have the right to remain silent. If you cannot afford an attorney, we can request LAF to appoint a legal aid attorney to you", which is an ideal we share. Father Peter Nguyen talks about the situation of foreigners in custody. In Taiwan, many illegal foreign workers have been held in long-term custody. They are not criminal defendants but their personal freedom is restricted and some are even handcuffed. It is an issue needed to be taken seriously. Executive Secretary Fu-mei Lin of LAF Pingtung Branch says that in a legal aid case with some Indonesian fishing workers who had been detained for a very long time, they could not find anyone, not even the Indonesian Economic and Trade Office to Taipei, willing to bail them out. It is not only a ruthless consumption of their time of life but also a waste of the government's administrative resource, which is also an issue needing resolution.

We also discuss about what LAF can do and how to make a breakthrough. Director Jung-Lung Chang of Taiwan Association for Victims of Occupational Injuries advises that LAF should provide not only assistance to individual cases but also public education so that we may know about the effect of law and the reason why people break the law. Mr. Wilhelm Joseph thinks that the difficulties met with by aliens in Taiwan or the barriers for LAF to breakthrough are universal. He proposes a large-scale cross-national or cross-regional cooperation in addition to introducing the international norm in Taiwan to form a domestic law and that LAF should unite more NGOs and religious groups to become a core group that advocates alien human rights. Miss Yeh from Taiwan Association for Human Rights hopes that LAF would be lenient toward the aliens' identity qualification when granting legal aid and that LAF should make policies via actively discover problems from different cases to become a key policy-advocator in Taiwan. Chairman Paul Chan of Legal Aid Services Council in Hong Kong suggests cross-national cooperation among NGO s or legal aid groups in assisting these alien workers. Though the major problem comes from collusion between labor agencies, government authorities, officials and representatives in certain laborer-exporting countries, Chairman Chan believes that it is something we must confront. He advises us to fortify the fourth power, i.e. the supervision of public media, besides a more vigorous NGO to trigger mainstream opinions and enable LAF to be most effective with limited resources.

Mr. Wei-Shyang Chen(Deputy Secretary-General of LAF):

Thanks to Professor Sandy (Yu-Lan) Yeh for sharing with us her report, which reminds us that LAF should provide not only aid to individual cases but also policy advocacy and public education. Next Director Lin will make the report.

Mr. Joseph Lin (Director of LAF Taipei Branch)

Our panel discussion can be summarized as follows: 1. In the aspect of "expanding legal aid coverage", it is important to amend the law first. The current regulations apply only to people living legally in Taiwan, and it is difficult to provide legal aid to illegal immigrants. It's LAF's responsibility to promote the amendment, though it won't be an easy job due to public ideology, which can be changed only through public education to accentuate the aliens' contribution to Taiwan, eliminate discrimination and encourage equal treatment. 2. Of the various problems encountered during legal aid process, the lack of interpreters is most talked about. In the past we relied on the students from overseas to interpret, and the interrogation often had to wait until 7pm when their class was over. It is proposed that we cooperate with the Center of Foreign Spouse Service because most alien spouses have stayed in Taiwan for a while and speak both languages. Still, the alien spouses lack certain knowledge about the judiciary system in Taiwan, therefore we wonder if LAF can offer the necessary training, and it would be better if the trainees include foreign students or even those who study law.

3. One of the major reasons causing the infringement upon alien human rights is that foreigners neither know the laws and regulations in Taiwan nor understand what rights and obligations they have regarding to their work. How to help the foreigners with access to those useful multilingual pamphlets published by the Council of Labor Affairs but taken by the agencies instead of being distributed to those foreign workers? Actually it is already a bit too late to offer them those pamphlets after they have arrived in Taiwan. Is it possible for them to acquire necessary understandings before leaving their own country, and will those laborer-exporting countries be willing to cooperate? Could the governments of Indonesia and Vietnam provide the information about legal aid and working conditions, etc.? Can we help the foreigners to know about Taiwan through the Council of Labor Affairs or Taiwan's representative offices abroad? Although most laborer agencies are blamed, some of them are good and need to earn their money, and it is not easy to work with them. Is there a way to basically improve or change this kind of country-to-country, government-to-government labor-export system? With the enactment of Human Trafficking Prevention Act in Taiwan this year, it is necessary to enforce education upon a lot of people, including attorneys, judges, prosecutors, labor authorities and especially inspectors for foreign workers, officials of the Immigration Agency and Training Institute for Judges, etc.

4. In the aspect of "cooperation", is it possible for us to further cooperate with Indonesia and Vietnam? For instance, since the Ministry of Foreign Affairs has an annual foreign aid project, could the Ministry be persuaded to appropriate some fund for assisting those countries with the establishment of legal aid system? Furthermore, will there be a closer cooperative mechanism established to protect alien rights after this kind of international conference?

Finally, my conclusion is that legal aid does not mean to be provided case by case. When the law or policy related with alien human rights is incomplete, the legal aid system is obligated to help make it better. The representatives from Australia also say that if they find problems during legal aid process, they will reflect it to the governmental authority and parliament. I think it is a very important idea. Some representatives propose that LAF, being the organization that deals with most cases concerning alien residents, should sort and analyze these cases and provide them to the authorities for reference. It is mentioned that the alien residents' social contributions in contrast with the unreasonable treatment they have received should be publicized in order to change the public ideology. While it is hard to change the relevant law, it would be important to offer proper education of law and equality. The enactment of Human Trafficking Prevention Act would not be enough if this part is not improved.

Mr. Wei-Shyang Chen(Deputy Secretary-General of LAF):

Next it is Attorney Lo to report.

Mr. Ping-Cheng Lo(Director of LAF Hsinchu Branch):

Firstly, a question raised during our panel discussion is, “Should the human rights and legal aid to ‘the aliens’ be the same as those to ‘the native’? Should they acquire an equal position? Can our conception move further forward?” In Taiwan, most issues of alien human rights are seen in labor exploitation and marital violence. While they leave their own country and come to Taiwan, making contributions to marriage, work and society, they are relatively the disadvantaged of the disadvantaged in comparison with the native. It is not enough just to demand equality in legal aid for them. The aliens ought to receive more protection. Under this premise, will “illegal/legal immigration” or “illegal/legal residency” be a qualification for receiving legal aid when we expand legal aid to the foreigners? Or, as it is in Taiwan, will being a victim of human trafficking be the premise for receiving legal aid? We think that it is too conservative, and legal aid should be based on the need of those aliens in a disadvantageous situation instead of on their immigratory or residential status. If we think those aliens are disadvantaged by law and need our assistance, we should provide legal aid to them.

Secondly, there is a serious problem with the arrangement of illegal immigrants or illegal residents. In a case mentioned by Prosecutor Chun-hui Chang, an alien was sentenced to 3 months for a criminal case but was imprisoned for 1 year, which is a serious infringement on the personal freedom of him. It is in fact a case qualified for application for legal aid with claiming for state compensation and will probably improve the extensive detainment of foreigners. Moreover, their family in their own country is not informed of their detainment in Taiwan, which is also an infringement on human right. While it is not hard for them to make outward communications, it still needs our consideration to assist them.

In addition, we reach a conclusion similar to that of the first panel, which is: how can the aliens make access and use legal aid? How will this interface be established? It is a very important issue. Besides through languages and interpretation, how to make these aliens know that they, too, can seek for legal aid? If the interface cannot be established, all other parts will be useless. We have brainstormed many ways to establish the interface, including distributing by us or enforcing the agencies a “multilingual human right card” to those foreign spouses and workers arriving in Taiwan via legal immigration. The card will be easy to be carried with them and bear information about relief methods in case of legal problems occur, especially the information of LAF. The agencies will be punished if they do not distribute this card. The American representatives also propose a good idea, i.e. they would promote relevant information in Mexican communities. Is it possible for LAF in Taiwan to promote in those labor-exporting countries?

In conclusion, our panel shares an expectation for the legal aid and alien human rights to move in a reasonable and just direction. Taiwan has already accomplished part of it, but there is still room for improvement. It is our belief that we can do better through this international forum.

Mr. Wei-Shyang Chen (Deputy Secretary-General of LAF):

A consensus seems to have been reached by all three panels. In truth the infringement on alien human rights often comes from discrimination, which cannot be resolved via aid to individual cases but the amendment of relevant systems that involve public ideology and education. Though it is most ideal that the entire LAF be dedicated to the work, the Foundation is limited in many ways. It would be a great challenge to make a reasonable arrangement with limited resources. Do the three panel conductors wish to make more comments?

Mr. Ping-Cheng Lo (Director of LAF Hsinchu Branch):

Regarding to international cooperation, the uniqueness of Taiwan’s international status is talked about. If it is difficult to establish a country-to-country cooperative relationship, will it be possible for NGOs to cooperate? I believe that the labor-exporting countries like Vietnam and Indonesia must also be greatly concerned about their people, therefore can a platform like this be established? The first panel seems to have mentioned the development of an international legal aid association that, though not easy, might accomplish more effective resource integration in the aspect of legal aid to foreigners.

Mr. Sandy Yeh (Associate Professor of Department of Foreign Affairs Police, Central Police University):

During our panel discussion, the representatives from Southeast Asian countries indicate that countries including Indonesia and Thailand are rather indifferent when their people are treated unjustly. They express frankly that perhaps it would be simpler if cooperation is made between them and us because the degree of freedom in their countries may differ from ours. Hence cross-national cooperation may be an emphasis for LAF in the future. Also, the education on human rights ought to be provided not only to the labor-exporting countries but the governmental authorities in Taiwan.

Mr. Joseph Lin (Director of LAF Taipei Branch)

The law enforcement officials, attorneys and general public in Taiwan do not actually understand much about the basics of alien human rights. I think LAF is responsible for promoting the endeavor and cooperation between countries or regions.

Panel Discussion Π

Criminal Justice, Human Rights and Legal Aid

- **Moderator : Mr. Wen-Ting Hsieh**

  Secretary-General of the Judicial Yuan, R.O.C. (Taiwan)

- **Speakers :**

  1.Ms. Kellie Krake

  Attorney, Office of Training and Development, Office of the Wisconsin State Public Defender, U.S.A.

  2.Mr. Hugh Barrett

  Executive Director, Commissioning, Legal Services Commission, U.K.

  3.Mr. Ping-Cheng Lo

  Director of Hsinchu Branch, Legal Aid Foundation (Taiwan)

Panel Discussion II : Moderator, Mr. Wen-Ting Hsieh (second right) , and speakers

Mr. Wen-Ting Hsieh, Secretary-General of the Judicial Yuan, R.O.C. (Taiwan)

Ms. Kellie Krake, Attorney, Office of Training and Development, Office of the Wisconsin State Public Defender, U.S.A.

Mr. Hugh Barrett,Executive Director, Commissioning, Legal Services Commission, U.K

Mr. Ping-Cheng Lo, Director of Hsinchu Branch, Legal Aid Foundation (Taiwan)

Panel Discussion II

Criminal Justice, Human Rights and Legal Aid
The Wisconsin State Public Defender Organization

Contributor : Ms. Kelli Thompson
Deputy State Public Defender, Wisconsin State Public Defender's Office,
U.S.A.

Speaker : Ms. Kellie Krake
Attorney, Office of Training and Development, Office of the Wisconsin State Public Defender,
U.S.A.

The United States Constitution and the Wisconsin Constitution guarantee the right to be represented by counsel when an individual is accused of a crime. This right is a cornerstone of the adversarial system of justice used in the United States. The United States Supreme Court and the Wisconsin Supreme Court applied that right to individuals who cannot afford to hire an attorney by requiring that the government provide counsel to represent that individual.

Federal (National) Level

When an individual is accused of a federal crime (meaning a statute enacted by the United States Congress), the federal defender system appoints counsel. The Federal Public Defender system follows one of two models.

The first model, the Federal Public Defender, is a federal agency established in 1964 by Congress. This model operates under the Judicial Branch of the federal government, specifically administered by the Administrative Office of the United States Courts. Federal Defenders are appointed to a 4-year term by the Court of Appeals of the circuit in which the office is located. The Congress placed this appointment authority in the Court of Appeals rather than the District Court in order to insulate, as best as possible, the Federal Public Defender from the involvement of the court before which the Defender principally practices. The Federal Defender in turn hires lawyers and support staff and manages the office for each individual judicial district in their circuit. The Federal Defender may appoint cases to staff or panel attorneys. Panel attorneys are private attorneys who agree to take appointments and be paid by the government. These panel attorneys are not government employees.

The second model is that of the community defender office. The community defender offices are federally funded non-profit corporations that receive federal grant money to staff the offices. This model may also appoint cases to staff or panel attorneys.

Although both types of defender offices are supported by public funding, they do not take direction from the government as to the operation of the offices. They hire full-time staff lawyers who represent indigent clients charged with crimes against the United States Government (the United States Criminal Code). The United States Attorneys General are the prosecutors of these alleged crimes.

State Level: In General

When an individual is accused of a state crime (i.e. a statute enacted by a state legislature), different jurisdictions use different models to provide public defender counsel. One model is a state-wide public defender office, in which the office is an agency of state government and the employees are state employees. Another model is a county public defender office, in which the office is an agency of county government (a subunit of state government) and the employees are county employees. A third model is a not-for-profit agency, often referred to as Defender Service, Defender Office or a Legal Aid Society, that is paid to provide legal services. Another model is to use a panel of private attorneys who are compensated for their appointed work on an hourly basis or by the case.

In Wisconsin, the delivery system is the Wisconsin State Public Defender's Office (SPD), a state-wide public defender office.

State Level : Wisconsin

History:

The SPD is a law office created by the Wisconsin Legislature to provide legal services in Trial (original jurisdiction) and Appellate Courts to individuals charged with state crimes. The SPD also provides legal services to juveniles charged with delinquent acts and individuals in certain civil cases. The SPD is a state agency: it receives its funding from the state legislature and is subject to various state laws, rules, procedures and regulations regarding personnel, contracting, and other administrative functions. The SPD is an Executive Branch, independent agency because an oversight board comprising nine non-partisan members hires the agency head. This Board provides independence from the political appointment process and direct appointment by the Governor used in most other executive branch agencies.

The SPD is considered a "mixed model" delivery service because some cases are appointed to staff attorneys who are employees of the SPD law office and some cases are appointed to private attorneys who are not employees of the SPD.

Until 1977, Wisconsin used a different model. Between 1965 and 1977, Wisconsin divided the Trial Court and Appellate Court appointment responsibilities between the Wisconsin Supreme Court for appellate cases, and individual County Court systems for trial or original court jurisdiction cases. Wisconsin comprises 72 counties. A county is a local unit of government in which the citizens of each county elect a district attorney as the chief law enforcement officer. This county district attorney enforces the criminal laws enacted by the Wisconsin State Legislature. Under the county-based appointment system, the judge or his/her designee handled the administrative aspects of appointment of counsel: determination of financial need, approval of investigative and expert services needed to defend the case; oversight and review of the attorney's bill and payment of that bill. In 1977, the Wisconsin Legislature transferred the appellate case appointment and oversight responsibilities from the Judicial Branch to the Executive Branch by creating the SPD and expanding those responsibilities to include trial cases.

Organizational Structure of the SPD:

To carry out these new and expanded responsibilities, the Wisconsin Legislature established the Public Defender Board. This Board comprises nine non-partisan members who are selected by the Governor and confirmed by the State Senate to staggered three-year terms. This Board hires the State Public Defender. In turn, the State Public Defender supervises the operation, activities, policies and procedures of the SPD.

The SPD comprises four divisions: Trial, Assigned Counsel, Appellate, and Administrative. In addition, the SPD maintains an Office of Legal Counsel, an Office of Training and Development and a Chief Information Officer. The agency's budget is just over 78 million dollars a year and is budgeted for two years at a time. The SPD has approximately 550 employees deployed in 38 field offices and provides defense services in every Wisconsin county.

The Trial Division has 36 local offices that provide legal services in the 72 counties of Wisconsin. The Division provides legal representation at the trial level to indigent persons in adult criminal, civil commitment (including sexually violent persons' commitment), probation or parole revocation, contempt of court and termination of parental rights cases. In addition, our trial offices also represent juveniles who are subject to delinquency, commitment, paternity, children in need of protection and termination of parental rights proceedings.

The Assigned Counsel Division (ACD), located in the central administration office in Madison, provides support services to certified private attorneys appointed to SPD cases. The ACD certifies private attorneys for trial level representation, provides trainings for private attorneys, processes investigator and expert requests for private bar attorneys in SPD cases and administers all SPD private bar attorney payments. The ACD shares responsibility with the Trial and Appellate Divisions for monitoring private attorney performance. Currently, approximately 1200 private bar attorneys affiliate with the SPD to provide defense services in conflict and surplus cases.

The Appellate Division has two offices that provide post-conviction or post-judgment legal representation to indigent persons at the trial and appellate levels for all Wisconsin counties. This Division certifies private bar attorneys for eligibility to receive appellate level SPD appointments, assigns the conflict or surplus cases to those attorneys, monitors performance and provides litigation assistance in private bar Supreme Court cases. The Division also reviews requests for counsel outside the direct appeal process and acts upon complaints about attorneys from clients or the courts.

The Administrative Division is responsible for providing staff support services in areas such as budget preparation, fiscal analysis, purchasing, payroll and personnel.

Specifics of the SPD:

The SPD provided legal services to approximately 142,900 indigent clients in the fiscal year that ended June 30, 2009. SPD staff attorneys represent approximately 58 percent of those clients. Approximately 38 percent are assigned to certified private bar attorneys on a rotational basis at an hourly rate of pay, and 5 percent (misdemeanors only) are assigned to certified private bar attorneys via fixed fee contracts (the percentages do not total 100 percent due to rounding).

In most circumstances, individuals are provided representation when they are charged with a crime. In some circumstances, especially in more serious cases, such as a homicide or sexual assault, an individual will be provided counsel prior to formal charging.

The Wisconsin Public Defender's Office is also available by pager (or phone) outside of normal business hours. The availability of attorneys outside of normal business hours is intended for situations when an individual who is the suspect in a crime or actually charged with a crime is in need of assistance. Such situations could be for requests for counsel, interrogations or line-ups. Our goal is to promote access to counsel whenever possible. Results in a study showed that 23 percent of the early representation cases avoided felony charges, 20 percent avoided misdemeanor charges, 10 percent resulted in less serious charges and 12 percent resulted in no charges filed.

Representation of Juveniles

In Wisconsin, all juveniles are considered eligible for public defender representation. If the parents are found to not be indigent, then the court can require recoupment from the parents. In Wisconsin Statutes Sec. 938.23(6), counsel is defined as "an attorney acting as an adversary counsel who shall advance and protect the legal rights of the party (in these cases, the juvenile) represented and who may not act as guardian ad litem for any party in the same proceeding". An attorney cannot advance arguments or positions contrary to their client's wishes. This is true even if the attorney feels the juvenile's best interests are not furthered by the juvenile's position.

Counsel for the juvenile must observe the ethical requirements of the Professional Responsibility Code, which includes:

- As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system.
- As negotiator, a lawyer seeks a result advantageous to the client but consistent with the requirements of honest dealings with others.
- As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications.

Representation in Mental Commitments

In Wisconsin, the appointment of adversary counsel is required for all persons subject to civil commitment petitions and all are considered eligible for public defender representation. However, the State Public Defender does not provide representation in proceedings to have a person declared incompetent, unless the guardianship proceeding is coupled with a petition for protective placement or protective services.

In Wisconsin Statutes, "mental illness" for purposes of involuntary commitment, means a substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life, but does not include alcoholism.

Commitment cases include cases in which a petition has been filed against an adult under the Mental Health Act. Reexamination hearings (including hearings to modify or cancel a commitment order), recommitments and changes in placement brought after the original case is closed, are counted as separate commitment cases. Cases involving children as subjects of commitment proceedings are classified as "other juvenile cases".

Use of Legal Professionals: Client Service Specialists

The Office of the State Public Defender currently has authorized 12.75 full-time equivalent Client Services Specialist (CSS) positions. A CSS is a professional who has a social work background with specialized knowledge and skill in assisting SPD clients. The major responsibilities of a CSS are gathering pertinent information about individual clients; investigating placement, treatment, and educational opportunities and preparing a written recommendation for use at sentencing or revocation hearings. SPD attorneys rely heavily upon CSS staff to prepare coherent sentencing plans that offer reasonable alternatives to long prison sentences.

At a sentencing hearing, both the prosecutor and defense attorney typically present sentencing recommendations. The prosecutor's office assists the victim, if he or she wishes to participate, in having a voice at the sentencing hearing. A report by a CSS is usually the most effective tool available to defense counsel to balance the factual assertions and recommendations made by the state.

Often a CSS is requested to assist in these cases to investigate and develop an alternative to incarceration, which can both promote the successful reintegration of the client into the community and save considerable costs for imprisonment that would otherwise be ordered. The daily cost to incarcerate an individual in a state institution is $81.22 ($29,647 per year). Significant cost savings can be achieved by developing and implementing appropriate alternatives to incarceration.

The SPD Appellate Division also relies extensively on sentencing specialists in direct appeal cases in which the trial attorney inadequately developed or presented recommendations for sentencing to the trial court, or presented inaccurate information at sentencing. In these cases, the CSS reviews the court transcript, analyzes the sentencing recommendations and develops more appropriate sentencing alternatives for consideration by the Circuit Court and the Court of Appeals.

In many cases, particularly non-violent, first offense felony cases, the attorney will advocate for probation instead of a prison sentence. Because the client has more at stake and because the court has more sentencing alternatives, there is a greater need for CSS assistance in truth-in-sentencing cases in which the client's exposure to incarceration and extended supervision are typically greater than they would otherwise have been.

The sentencing proceeding is now the client's primary opportunity to present mitigating factors and dispositional alternatives to the sentencing authority (there is a newly created and limited right for inmates to seek a judicial sentence modification, but only after serving a minimum of 75% of the original term of imprisonment). The assistance of a CSS presents pertinent information to the court.

Advantages of the Wisconsin SPD Model

There are many advantages to the Wisconsin SPD model, a state-wide, Executive Branch, public defender agency.

A state-wide public defender model ensures consistency and uniformity in applying the financial qualification to individuals charged, regardless of the county in which they are charged. In Wisconsin, criminal statutes are enacted at the state legislative level and apply to acts within Wisconsin. However, state crimes are prosecuted at the county level by locally-elected district attorneys. Without a state-wide financial eligibility application, two persons with similar financial circumstances who allegedly commit similar crimes in two different counties could have different financial eligibility standards applied, potentially resulting in appointment in one case and no appointment in another.

Also, a state-wide public defender model permits the agency to employ a rigorous selection process for our staff hiring. That plus annual performance review and day-to-day supervision give us the consistent high quality service from staff. Managers and leaders of the agency have direct, supervisory control over staff. This monitoring includes reviewing and evaluating the quality of legal representation provided by an attorney and other professionals and establishing and enforcing performance measures. The management of the SPD has the ability to intercede in an individual case if a staff attorney is not providing competent representation.

Additionally, a state-wide, Executive Branch model prevents judicial control or interference in legal representation because the requests for funding (for expert witnesses, for example) are directed to the SPD division heads for approval, not to the judge who presides over the case. Also, the rotational system of appointment of private attorneys used by the SPD quells any perception that judges appoint attorneys who the judges like, regardless of qualification. The appointed attorneys are shielded from worries about angering the judge who appoints them to cases. The appointed attorneys are free to pursue zealous and uncompromised representation of their clients.

Also, a state-wide, Executive Branch, public defender model permits the agency to provide information on criminal justice issues to legislators, the governor's office, the courts, the media, the public and other interested parties.

AWARDS:

Mastery Level of the Wisconsin Forward Award:

The Wisconsin State Public Defender's Office received the Mastery Level of the Wisconsin Forward Award (WFA). WFA is an organizational performance assessment and improvement program that collaborates with Wisconsin organizations including state agencies, to solve the issues of competitive performance, operational excellence and sustainability, leading to improved economic performance, creating jobs and improving the quality of life in Wisconsin. It applies the national Baldridge Criteria for Performance Excellence to the leadership and operations of an organization to assess that organization's structure and foundation. The Criteria for Performance Excellence provides organizations with an integrated, results-oriented framework for implementing and assessing processes for managing all operations.

American Bar Association Dorsey Award:

The American Bar Association's Government and Public Sector Lawyers Division honored

State Public Defender Nicholas L. Chiarkas with the 2009 Dorsey Award. The Dorsey Award, a prestigious national honor that recognizes an outstanding public defender or legal aid lawyer, was presented to SPD Chiarkas for his 21 years of dedication to providing an effective indigent defense system in Wisconsin.

ONGOING INITIATIVES and ISSUES AT THE SPD

The State Public Defender's mission to promote justice throughout Wisconsin by providing high-quality and compassionate legal services, protecting individual rights, and advocating as a criminal justice partner for effective defender services and a fair and rational criminal justice system. In order to achieve this mission, the agency collaborates as a team to focus on the individual cases and clients. Teams include the attorney as well as the support staff, investigators, client service specialists and other staff personnel. All members are considered important to reach the best outcome for a client. As an independent state agency, the SPD has the delicate balance of maintaining itself as a law firm as well a branch of state government. The SPD is funded from the revenue generated by taxes and because of a fluctuating economy and differing priorities, the agency must work tirelessly to provide high quality services at an efficient cost. Leadership of the agency continuously re-examines the strategies to fulfill the mission to respond and adapt to changes in the political and economic environment.

Continued Advocacy against the Death Penalty

Under current law, no state crime in Wisconsin is punishable by death. Wisconsin is one of fifteen states that do not impose the death penalty. Wisconsin abolished the death penalty in 1853; however, almost every legislative session contains renewed proposals to re-enact the death penalty. The SPD vigilantly and consistently advocates against reinstating the death penalty. The Public Defender Board unanimously passed a resolution opposing any reinstatement of the death penalty in Wisconsin. Accordingly, the Wisconsin State Public Defender's Office continues to oppose the death penalty.

Continued Advocacy for Raising the Eligibility Standards for SPD Legal Services

The financial eligibility standards to qualify for appointment of counsel are linked to the now-obsolete federal standards. These eligibility standards have remained stagnant since 1987. Consequently, many individuals who are indigent do not financially qualify for SPD appointment of counsel. In the 2009-2011 State Budget Bill, the Wisconsin Legislature voted to increase the eligibility standards to 115 percent of the Federal Poverty Guidelines (FPG). The Governor vetoed this provision. Currently, 47 legislators are co-sponsoring legislation to increase these standards to

115% of the FPG. The Governor's Racial Disparity Oversight Commission unanimously passed a resolution on August 19, 2009 in support of this legislation. The SPD has worked with various legislators during at least the last four legislative sessions to increase the eligibility standards.

Continued Advocacy for Raising the Private Bar Compensation Rate

The Wisconsin Legislature created the SPD in 1977 and set reimbursement rate at $45/hour for in-court work, $35/hour for out-of-court work and $25/hour for travel time. Current levels are $40/hour for in-court and out-of-court work and $25/hour for travel time. However, this SPD rate does not cover the typical attorney's office overhead; the national law office hourly overhead rate was reported to be $64/hour. The low rate makes it difficult to find lawyers to take SPD appointments. The SPD's 2009-2011 budget request included a proposal to restructure the private bar, thereby addressing both cost and quality issues. This item was not included in the Governor's 2009-2011 budget proposal. Each SPD budget request for the last decade has included a request to address the private bar reimbursement rate.

Continued Advocacy for Eradicating Racial Disparity in the Criminal Justice System

Wisconsin leads the nation in disproportionate minority contact by law enforcement personnel. The relative ratio of African-American to Caucasian for new prison sentences is 444:22. In Wisconsin's prisons, nearly half of inmates are African-American, yet African-Americans represent just 6 percent of Wisconsin's population.

The SPD Board adopted a resolution in 2008 to direct the SPD's efforts to eradicate racial disparity and address the concern within the criminal justice system. In response, the SPD created a Racial Disparity Team in 2008 and identified the following five areas to focus our efforts to end racial disparity: litigation strategies, data-gathering, self-evaluation, talking points and partnerships. The 2009 SPD Annual Conference will focus on racial disparity, bringing in speakers both state and nationwide to share and discuss ways in which we, as individual advocates and as criminal justice system partners, can help end racial disparity.

Innovative Approaches to Addressing Veterans' Legal Issues:

Recognizing that veterans face a number of issues including and exacerbated by post-traumatic stress and alcohol and other drug use problems, the SPD developed the Wisconsin Veterans Intervention Program. The Wisconsin Veterans Intervention Program (WI-VIP) is a justice system-oriented, multi-faceted approach comprising veterans' Treatment Courts; veterans' civil legal clinic; institutional treatment programming and justice system training. A key characteristic of veterans' Treatment Courts are the mentors that would work with the client-veteran both in and outside of

court. The first veterans' Treatment Court is scheduled to start on September 17, 2009. In the Fall 2009, a holistic civil legal clinic designed to assist veterans is scheduled to open at the Frank J. Remington Center at the University of Wisconsin Law School. This clinic would address a range of civil-related issues such as loss of job and family matters, and will utilize the talents of law school students. The institutional treatment programming component of WI-VIP is focused on veterans who have been through the criminal justice system and find themselves confined in a correctional institution or on probation/parole. On June 29-30, 2009, the SPD and approximately 160 criminal justice system stakeholders including judges, prosecutors, defense attorneys, DOC staff and law enforcement officers participated in a training focused on best practices in addressing and treating veterans with post-traumatic stress disorder, substance abuse problems, reckless behaviors, and traumatic brain injuries.

Holistic, Client-Centered Representation:

Treatment Oriented Courts:

Treatment Courts reduce substance abuse, crime and recidivism and improve the efficiency of justice systems by providing community corrections alternatives to defendants. The types of Treatment Courts operating in Wisconsin are mental-health, drug, intoxicated driving, teen and veterans' courts. SPD staff serve on state and national associations of Treatment-Court professionals. Currently, the SPD is involved in the oversight committees for the various Treatment Courts operating in more than 20 Wisconsin counties.

Drug Treatment Courts

Treatment Courts typically conduct frequent review hearings to oversee treatment for drug abuse, alcohol abuse, or mental disorders. Treatment Courts may also focus on specific groups (such as veterans or children) that may have needs substantially different from those of other groups. The courts offer participants the opportunity to obtain a lesser sentence or dismissal of charges upon successful completion of the treatment program. The Treatment-Court model "calls for collaboration among various components of the criminal justice and substance abuse treatment systems to combine the coercive power of the court with effective and scientifically based treatment practices".

Generally, these courts are operated by a team comprising representatives of several agencies. For example, a Treatment Court team often includes a judge, prosecutor, probation agent, social worker, public defender, and law enforcement officer.

Quality Performance Measures:

In order to provide the highest quality representation for SPD clients, the office created a quality indicators work group, which worked to identify barriers to high quality attorney-client communication and ways to reduce barriers. The Wisconsin SPD defines high quality attorney-client communication as client-centered, timely, effective, confidential, honest and ongoing. High quality attorney-client communication meets the needs of both counsel and client, creates a positive attorney-client relationship and maximizes the opportunity to achieve a positive outcome in the resolution of the case. A client-centered approach to attorney-client communication includes the following:

- Identifying problems from a client's perspective;
- Actively involving the client in the process of exploring potential solutions;
- Encouraging the client to make those decisions which are likely to have a substantial legal or non-legal impact;
- Providing advice that addresses the client's goals and objectives;
- Acknowledging the client's feelings, listening to the client's concerns and recognizing the importance of both; and
- Conveying a desire to help.

Effective communication clearly and accurately furnishes all relevant information to the listener, who in turn understands the information being communicated.

Investment in the Future of the Agency through Leadership Training

Since 2000, the SPD has offered a year-long Leadership Development Program designed to involve staff and managers in agency-wide issues. The program uses classroom presentations, mentors and a participant-developed project to introduce the intersection of law-office and state-agency management concepts and provide opportunities for real-life application of these concepts. In 2009, the SPD developed the Leadership Academy, a two-day intensive program designed for new managers and staff interested in management and leadership. The program focuses on the personal and professional development of leadership skills, including collaborative approaches to issue-identification and creative solutions. The program uses case studies and small group exercises to apply ideas.

Panel Discussion II

Criminal Justice, Human Rights and Legal Aid

Mr. Hugh Barrett
Executive Director, Commissioning, Legal Services Commission, U.K.

Thank you for inviting me here today to speak to you all on day two of this conference. I'm Hugh Barrett, an Executive Director at the Legal Services Commission (I'll call it the LSC from now on). We are responsible for administering legal aid in England and Wales. Scotland and Northern Ireland within the UK administer their own legal aid schemes.

During the next 20 minutes, I'm going to talk briefly about who we are, what we do, and give you some context. Then I'd like to take you on a walk through of our criminal justice system, from arrest to trial and the important role of legal aid within that.

But first I would like to tell you a little about myself. My background is a little varied. I have a degree in Physics. I have worked here – telecoms and here, Mars, I became a civil servant and have worked with these guys (Fire Service). I now work here at the LSC. Yes, legal aid is different. While the Fire Service spend their time getting people out of buildings, legal aid work sometimes achieves the opposite, by preventing people from being put into buildings like this (prison).

But all of my roles have had a common purpose. I have been responsible for commissioning – for the purchase of high quality, value for money services that deliver the right outcomes for clients.

At the LSC I oversee the commissioning strategy that determines how we spend $3.2 billion US dollars (USD) of public money on legal aid.

As well as quality and value for public money I want to achieve 2 key things, I want to:

- Maximise the number of people we help within our budget; and
- Ensure that what we do is sustainable in the long-term.

The LSC is responsible for ensuring that people, who would otherwise be unable to afford help, get help with their legal problems. The LSC does not deliver the advice itself. Rather, we contract with over 4,000 organisations, made up of solicitors, barristers, not-for-profit organisations and charities. Together these firms and individual lawyers – (we sometimes call them our providers) deliver high quality, publicly funded advice and representation, to people with legal problems in England and Wales.

England has two types of practicing lawyers: solicitors and barristers. Solicitors generally handle case work outside of the court trial, and barristers will plead cases in court. Solicitors will instruct the barrister on how the client wishes to proceed in court. However, there is some overlap. Solicitors may appear as legal counsel in the courts and are called Solicitor Advocates.

Legal aid enables people to safeguard their rights and address their problems. Our work is therefore essential to the fair, effective and efficient operation of the civil and criminal justice systems. It is critical in helping to provide access to justice and to ensuring a fair defence with professional representation.

2009 is a milestone for both of our organisations. We've both been celebrating birthdays. For the Legal Aid Foundation of Taiwan it marks 5 years of legal aid. For my LSC, this year marks 60 years of legal aid.

The legal aid system in England and Wales has changed over the years to become an intergral part of our welfare state, a cornerstone of our society. To celebrate this milestone, we have held exhibitions in Parliament and in towns and cities across England and Wales. And there have been lots of discussions on radio, TV and in the newspapers about the value of legal aid in a fair society.

But none of us can afford to be too nostalgic about the past. Events of the last two years have presented us with a new challenge that unites all of our countries.

The global financial crisis has presented profound challenges for legal aid organisations around the world. It is encouraging to know that 2009 is also the year of the Ox. The Ox symbolizes fortitude and hard work. At the LSC we are working hard to ensure that we maintain and increase access to justice during the economic downturn. For the individuals and families who are struggling to stay financially afloat, receiving this free legal advice and support at such a critical time can be the lifeline they need.

I want to give you some financial context. Legal aid in England and Wales helps over 2 million people out of a total of approximately 61million each year. I've already mentioned that we spend $3.2 billion US Dollars per year on both civil and criminal legal aid. We spend $1.4 billion USD on civil legal aid and $1.8 billion USD on criminal legal aid.

Research shows that the spending per capita in England and Wales is $63 USD per head of population. This is compared to countries such as France ($5) and Germany ($7). Even countries with similar legal traditions spend less - the Republic of Ireland is around $13 and Northern of Ireland is around $53. We may spend more, but legal aid supports more cases in England and Wales both in criminal and civil matters than in these countries. Research also shows we have high income ceilings on eligibility, and that our schemes cover a wider range of law than any other comparable country.

As this session is focussed on the criminal law, I would like to take some time to describe how the criminal justice system works in England and Wales.

If the criminal justice system in England and Wales can be summarised in a phrase it would be 'Innocent until proven guilty'. This principle is the bedrock of our criminal justice system.

The system is an adversarial one. There is a need for the prosecution to prove its case and defence lawyers play a vital role by taking nothing at face value, questioning every step of the way. If a legal aid client contests allegations, the defence lawyer will piece together their client's story, challenge expert evidence and analyse the prosecution witness statements.

Nothing symbolises the English system more than the 'jury trial'. The English trial has captivated the interest of people all around the globe and the image of the Old Bailey in London, which you can see here is perhaps its most recognisable symbol.

Yet while the Old Bailey is an icon of justice and the scene of many a dramatic trial, there is an even more important venue for criminal defence in England and Wales. It is not within the hallowed courtrooms up and down the country. Rather, it is in the unadorned setting of the local police station interview room. This is where the process of criminal defence starts. Arguably, this is the first day of trial.

Everyone in England and Wales can get free advice and assistance from a legal representative if they are questioned by the police, whether they have been arrested or not, whatever their income or savings. This is a universally available service. If cases proceed to court there is a means-tested approach but at the police station everyone qualifies for free help. They have the right to consult a legal representative in private and only in very limited circumstances can this right be restricted or advice can be delayed.

If an individual is arrested and taken to a police station he or she will be told their rights and asked if they want a solicitor to represent them. It is up to the individual to decide whether or not they do. Roughly 50% of people do ask for representation. Police station representation costs the LSC $319 million USD a year.

There is one important point I would like to highlight. If the suspect is under the age of 17 or has a mental health vulnerability, then at least an appropriate adult must be present during the interview. This could be a parent or family member, social worker or mental health professional. Both juveniles and those with mental health problems are entitled to free legal aid at the police station regardless of the nature of the allegation.

Should a person choose to have a publicly-funded solicitor they can choose any of the solicitors with whom the LSC holds a legal aid contract to come and represent them at the police station. If they

have no preference, we will provide them with a “duty solicitor”. The duty solicitor scheme is run by the LSC and is operated on a rota system - this means that 24 hours a day, 365 days a year anywhere in England and Wales a duty solicitor is available for any client that requests it.

All requests for representation at police stations are routed to the Defence Solicitor Call Centre (DSCC). If the offence is a less serious offence e.g. non-imprisonable offences or drink driving offences, advice will only be offered to the client over the telephone. For all other cases the call centre will contact the solicitor and arrange for them to make contact with the client.

In the majority of these cases a legal representative will attend the police station, take instructions from the client and sit in on the police interview.

At the police station the solicitor will meet in private with the client and conduct an initial interview. The purpose of this interview will be to:

- Ascertain the client’s immediate needs.
- Take background details.
- Tell the client the information you have from the police.
- Take the client’s account of the relevant circumstances.
- Give advice on the legal position of the client.
- Prepare the client for interview.

There are a wide range of likely outcomes from the police station phase including:

- no further action taken;
- cautions (no further action);
- conditional cautions which require compliance with certain conditions; and
- charging with a criminal offence.

Once a person has been charged they must appear before a Magistrates' Court. The police decide whether to release the person on bail or whether they should be taken to court in custody. In England and Wales a person is innocent until proven guilty in a court and so should not be kept in custody before trial unless there are good reasons for doing so.

Magistrates’ Courts (the lowest level court) will hear cases of a less serious nature. More serious cases, including murder, manslaughter, rape and robbery will be heard by a Judge and Jury in the Crown Court. For cases dealt with at the Magistrates’ Court the defendant will be required to enter a plea. If they plead guilty or if they are later found to be guilty, the Magistrates can impose a sentence of up to six months imprisonment or a fine of up to $8,304 USD. If the defendant is found not guilty, they are free to go - provided there are no other cases against them outstanding.

For those who are age 10 or older but under the age of 18, we operate a Youth Court system. The Youth Court deals with a far wider range of offences than the adult Magistrates’ Court is able to. However, for the most serious cases the Youth Court can commit an offence to the Crown Court for trial if it is satisfied the offence is a “grave crime” and if convicted the offender should be sentenced to an extended period of detention. “Grave crime” in this context means an offence that in the case of an adult carries 14 years or more imprisonment, or an offence of sexual assualt. The Crown Court can impose a period of detention on any offender aged 10-17 years old.

The Youth Court has no power to impose a sentence of detention on an offender aged 10 or 11, and may not impose a setence of detention on an offender aged 12-14 unless they are categorised as a ‘persistent offender’. Custodial sentences, called Detention and Training Orders for young offenders may not be for less than 3 months and cannot be for longer than 24 months. The reason for having a minimum of 3 months as the starting point for a period of Detention is to reinforce the message that Detention should be used as a last resort, after measures such as a Supervision Order, a Community Rehabilitation Order, Community Punishment Order, Action Plan Order, Attendance Centre Order, Referal Order, Reparation Order or fine have been exhausted, or in circumstances where the offence was so serious, only a period of Detention for more than 3 months is appropriate.

Children under the age of 10 in England and Wales are deemed to be not criminally responsible and criminal behaviour by a child younger than 10 is usually dealt with under social care or child protection avenues.

The courts, local government and charities work together to give community service or fines to juveniles, making Detention a remedy of last resort and diverting them out of the justice system. The same can apply to mentally disabled persons - they will go through the system but a custodial outcome is not always the most appropriate and they are diverted to health and social services or given community related penalties.

The Commission funds 650,000 cases at the Magistrates Court each year. Access to legal aid in the Magistrates’ Court is means-tested. Means testing underpins the Government's commitment to the principle that those that can afford to pay for their defence should do so. It also ensures that best use is made of taxpayers' money and that limited resources can be used to help those most in need. Our net expenditure in Magistrates’ Courts is $488 million USD. In January 2010, we are intoducing a means testing system in the Crown Courts.

I know that you were keen that I commented a little on how bail works in the UK. Bail can be initially granted by the police, but after a first appearance at the Magistrates’ Court, it is dealt with by the courts. Where bail is granted, the person is released from custody until the next date when they attend court or the police station. If bail is refused, this will be because the police or the court

believes that, if released on bail the person will abscond (not turn up to court), commit further offences, interfere with witnesses or otherwise interfere with the criminal justice process. Bail can be issued with or without conditions (such as to live at a particular address, to report at the police station at a regular time each week, not to go to certain locations).

If a defendant does not stick to their bail conditions, or fails to attend court on the set date, they are in breach of bail. They are likely to be arrested and may have their bail withdrawn. They may be remanded in custody and might not get bail in the future. Failing to appear at court as required is a criminal offence and they can also be prosecuted for this offence.

The Crown Court cases are heard before a Judge and Jury of 12 people. In these cases clients are assisted by both a solicitor and a barrister. In some cases a senior barrister – what we call a Queen's Counsel – is also appointed. We spend $1.2 billion USD of our legal aid fund on Crown Court defence. This reflects the longer duration of the trials and greater number of personnel involved.

The Crown Court has the power to sentance someone to life imprisonment. This is the maximum sanction it can deploy. While the UK did have a death penalty, this was abolished in 1965 for murder. It remained for treason and piracy until 1998 but was never used. The last person executed in Britain was in 1964.

I'd like to summarise what we spend on criminal legal aid across the different parts of the justice system.

In the police station we spend $319 million USD on 870,000 cases.

In the Magistrates Court we spend $394 million USD on 650,000 cases.

In the Crown Court, we spend $1.2 billion USD on 312,000 cases. Of cases in the Crown Court, 49% of the expenditure goes on only 1% of cases. These are called Very High Cost Cases which are generally trials lasting over 40 days.

Of course in any system, even with legal aid for the defence, things can go wrong and a miscarriage of justice can occur. In all appeal cases, legal aid will continue to fund the client. Innocent until proven gulity is more than just a neat phrase. It defines the soul of our justice system, the spirit of our community.

In a criminal case, it is simply not enough to be able to establish even a high probability of guilt. Unless we are sure of guilt the dreadful possibility remains that someone may find themselves in prison when they should not be there at all.

I'd like to tell you about a man named Sean Hodgson, he was convicted in 1982 for murder. He was sentenced to life imprisonment for that murder. For many long years he continued to protest his innocence. A legal aid lawyer took on his cause. In today's world DNA has transformed criminal justice. In 2009 it is possible to prove, scientifically, that Sean Hodgson was not guilty of the murder. The inescapable truth is that Sean Hodgson spent 27 years in prison for a murder that he did not commit. In our community, and in any civilised community, that is abhorrent.

But justice was ultimately served and in March this year he walked out of court, in the company of his legal aid lawyer, and became a free man.

It was an honuor to meet him earlier this year. It served as a powerful reminder to me that legal aid is a vital component of a civilsed society. It ensures that people who need help – get help. The LSC continues to fund hundreds of thousands of cases every year.

Legal aid strives to ensure that there are no more Sean Hodgsons.

Thank you for your time.

Panel Discussion II

Criminal Justice, Human Rights, and Legal Aid
Compulsory Defense in the Criminal Legal Aid System in Taiwan

Mr. Ping-Cheng Lo
Director of Hsinchu Branch, Legal Aid Foundation of Taiwan

I. Preface

One of the indicators of a country's protection of human rights in the criminal justice system usually lies in whether a defendant receives substantial and effective defense. Without access to legal representation from an experienced defender, a lengthy list of human rights would not mean very much. However, for defendants who are disadvantaged and have no means of retaining defense counsel, the question of how to provide them with timely and effective assistance, will depend on the strictness of criminal law-making policies on the scope of criminal compulsory defense, and also on the level of legal aid resources available.

In the five years between July 2004 and August 2009 after the legal aid system in Taiwan was put into operation, the Legal Aid Foundation has processed 75,804 applications for criminal legal aid. 36,604 were granted legal aid (either fully or partially), accounting for 64.78% of the total applications received. Of the total applications received, 27,589 were classified as compulsory defense cases, accounting for 36.4% of the total applications received. Of the total applications for legal aid in compulsory defence cases, 21,183 applications, that is, 76.78%, was approved. This percentage is a figure much higher than the 64.78% approval rate in applications for legal aid in non-compulsory defense matters. Although there is an average of about 4,000 compulsory defense cases approved every year, the Judicial Yuan is very keen to see the number increased, relieving the workload imposed on the courts' public defenders. As a result, the questions of how to integrate the resources for criminal compulsory defense cases and whether it is necessary to extend the scope of compulsory defense cases, are becoming imperative and unavoidable for the provision of legally aided criminal compulsory defense cases in Taiwan.

II. Current system of legal aid in criminal compulsory defense cases:

A.The trend of extending the scope of statutory compulsory defense:

1.Extension of applicable cases in the 2003 Amendment

(a)The criminal procedures contained in the Code of Criminal Procedure was revised in 2003, replacing the "inquisitorial system" in Taiwan with a "refined adversary system". Article 31 of the Code specified that compulsory defense was only applicable to felony cases (where the minimum punishment is no less than 3 years imprisonment, or where a high court has jurisdiction in the first instance). This was manifestly insufficient in protecting the rights of disadvantaged defendants. The reason is that "in addition to formal equality, a defendant should be represented by defense counsel to ensure the substantive rights of the defendant are protected, to oversee and facilitate the fulfillment of the due process of law."[1] Article 31 was amended to include defendants who are financially disadvantaged (low-income households) or mentally challenged (unable to make a complete statement due to unsound mind) in the scope of compulsory defense.

(b) The 2003 Amendment also established a two-tracked system of appointing defense counsel, which gives a presiding judge the option to appoint a lawyer to represent the defendant as an alternative to appointing a public defender.

2.Extension of compulsory defense to cases under investigation in the 2006 Amendment:

Compulsory defense was only applicable to criminal cases in trial proceedings. In the 2006 Amendment, a new paragraph 5 was added to Article 31 of the Code of Criminal Procedure, specifying that a Prosecutor shall appoint a lawyer for a mentally challenged defendant under investigation. Although the extension of compulsory defense to cases under investigation is only open to a defendant who is mentally challenged, while other defendants who are charged with felony or those who are financially disadvantaged remain excluded, the Amendment still serves as a hallmark of the efforts dedicated to extending the protection of human rights to cases under investigation.

In response to the above change, for defendants referred by the Prosecutor, the Legal Aid Foundation now relies on Article 14 of the Legal Aid Act, and Section 2(2) of the "Policy for Assessment of Merit in Compulsory Defense Cases" to approve applications without assessment of merit. Therefore, for defendants who are "mentally challenged", their applications will not be means-tested and will not be refused on the ground of merit.

B.Diverse sources of defenders for compulsory defense cases:

1.The consensus reached in the 1999 National Legal Reform Conference:

(a) The concept of a legal aid system was discussed in the 1999 National Legal Reform Conference, and the consensus reached was to establish a system where financially eligible defendants are provided access to pro bono representation. The plan was for the Taiwan Bar Association to construct a pro bono defense system and for the Judicial Yuan to establish a legal aid juridical person. These are the preconditions for the plan to eventually phase out public defenders. The Judicial Yuan discontinued recruiting new public defenders in June 2004, and to date there are about 50 public defenders in the nation. As the trend is to widen the scope of compulsory defense cases while the number of public defenders is diminishing, it has became increasingly challenging for public defenders to handle the large number of compulsory defense cases.

1.Diversification or unification?

(a) The current compulsory defense mechanism is operated through three channels: public defenders under the courts, the pro bono lawyer defense system organized by the Taiwan Bar Association and the legal aid system provided by the Legal Aid Foundation. However, the pro bono lawyers of the pro bono defense system organized by the Taiwan Bar Association and the legal aid lawyers of the Legal Aid Foundation are largely the same people. At the same time, the case intake by regional Bar Associations has been decreasing as extra expenses had to be budgeted for appointing pro bono lawyers. Consequently, most cases have fallen to the domains of responsibility of public defenders and the legal aid lawyers of the Legal Aid Foundation.

(b) As mentioned above, the judicial authorities will eventually abolish the public defender system. Conceivably, by then all criminal compulsory defense cases will be transferred to the legal aid system. Such unification will require the integration of the resources available for criminal defense and organizational reform within the Legal Aid Foundation in response to the new demands brought by new changes.

C.Overview of the scope of legal aid in criminal compulsory defense cases:

1.Restrictions on statutory categories:

(a) Cases in courts of third instance are excluded from compulsory defense:

According to Article 388 of the Code of Criminal Procedure, compulsory defense regulated in Article 31 does not apply to cases on third instance. No defendant is allowed to appeal a case to a court of third instance unless the reason for appeal is violation of law or order. Generally, criminal defendants are heavily reliant on lawyers with expertise in conducting proceedings in courts of third instance. However, the fact that the current law completely excludes cases in courts of third instance from compulsory defense has aroused much criticism. It is my belief that the scope of compulsory defense should be widened to include cases in courts of third instance.

1 Citation from "Reasons for Promulgating the 2003 Code of Criminal Procedure".

(b) Retrials and extraordinary appeals are excluded from legal aid:

Authorized by Article 17 of the Legal Aid Act[2], the Legal Aid Foundation drafted the "Policies on the Scope of Legal Aid", which excludes legal aid from being granted in several types of criminal cases, amongst them "retrials and extraordinary appeals" (Article 3, Paragraph 1(4)). However, it is my belief that some exceptions are appropriate depending on the seriousness of the case (for instance, a finalized case of capital punishment).

(c) Legal aid in convicted death penalty cases:

From October 13, 2006, the Legal Aid Foundation held 6 seminars on "Death Convicts Rescue Counsel" in a number of locations including Taipei. Lawyer who were interested in abolishing the death penalty and legal aid lawyers who were defending capital punishment cases were invited to participate and exchange their litigation strategies and experiences. The Foundation took the opportunity to recruit more lawyers to conduct these cases. So far, the Foundation has granted legal aid to a few dozen convicted death penalty cases that are on extraordinary appeals and retrials.

2.Loosening of restrictions on non-statutory categories – allowing the presence of lawyers during first interrogations by police and prosecutors:

(a) As mentioned above, compulsory defense during investigation is only allowed for defendants who are mentally challenged, while defendants who are on charges of felony and those who are financially disadvantaged are excluded. However, the fact that the above Policy has regulated that "defense during first interrogation by the police and prosecutors in non-compulsory defense cases shall not be granted legal assistance", has effectively extended the scope of compulsory defense for cases still under investigation.

(b) On September 17, 2007, a project to allow lawyers to be present during the first interrogation by police and prosecutors was launched by the Legal Aid Foundation. From October 27, 2007, the program was expanded to provide legal assistance at night hours and on holidays. So far, 50 police stations out of the 158 in Taiwan are participating in this project. In addition to offering legal aid to suspects who are mentally challenged, the project extends to suspects who are financially eligible (a declaration is required to be signed to prove eligibility) and are on charges of felony with a minimum sentence of 3 years imprisonment. The implementation of the project is a giant step forward in the development of defense representation for cases under investigation in Taiwan. While a compulsory defense system for all defendants under investigation (or prior to trial) is not yet the law in Taiwan, the project serves as a hallmark, pioneered to provide individuals under detention with timely legal representation. I believe that, before the law requires compulsory defense for all individuals under detention, the Legal Aid Foundation can take a step further to offer assistance to all individuals under detention without requiring charges of felony as a criterion in order to protect the personal liberty of the defendant, which is a fundamental right in the criminal justice system.

(c) Review of the past and outlook for the future:

Since the commencement of this project in September 17, 2007, the total number of applications received by the Foundation is 1,139. Even though every effort has been made in publicizing the service, on average less than 2 applications are received each day. This result is discouraging particularly in the circumstance where the number of participating police stations has increased from 15 to 50 on January 1, 2009.

Upon reflection, the reasons for obtaining a result which is far less than expected, may include:

(1) The attitude of the police:
Generally, the police believe that this service impedes the conduct of investigations, and under this conservative attitude they do not appreciate the presence of lawyers. They neglect to inform the suspects of the availability of this service, or they attempt to induce eligible suspects into believing that the presence of lawyers is not necessary in their cases.

(2) Irritation caused by means-testing:
This project requires the suspects to be financially eligible. The Foundation has adopted a "simplified means-assessment", in which the suspects may sign a declaration instead of being fully questioned as to their financial situation. However, this method has not been an effective solution, as on the one hand some police doubt the procedure, while on the other hand some suspects have misgivings over the consequences of signing the required declarations.

(3) Controversy over whether the alleged incident constitutes a crime that requires compulsory defense under the law:
This service is available only in compulsory defense cases. At the very early stages of investigation, it is not always clear whether the alleged actions of the suspect constitute crimes that are classified as compulsory defense cases. The police and legal aid lawyers sometimes disagree over whether the crime which the suspect should be charged with is one that requires compulsory defense.

2 It is regulated in the said Policies that "the Foundation is given the power to determine the scope of the type and the representation or defense of legal aid services on the basis of its budget and the areas of law".

(4) The willingness of legal aid lawyers to accept cases is low:

An analysis of the 2-year pilot shows that on average, each lawyer spends around 4-6 hours on a case, and is remunerated with NT$4,400 per case. Long working hours on low pay affects lawyers' willingness to take up cases, and there are occasions when no one has indicated their availability to assist.

On the basis of the foregoing, the meeting of the Board of Directors on August 28, 2009 resolved that "due to the urgent nature of these cases, Article 21 of the Legal Aid Act applies to exempt the applicants from means assessment". However, the question of whether this exemption extends to cases in which compulsory defense is not required, remains to be considered. I believe that in this project, the exemption of means-testing solves only part of the problem. The project should cover non-compulsory defense cases. Remuneration for legal aid lawyers should be adjusted to a reasonable level to meet the increase in demand after the program is expanded.

3.Controversies in assessing applications for compulsory defense:

(a) Although Article 14 of the Legal Aid Act, corresponding to Article 31 of the Code of Criminal Procedure, extends to compulsory defense of defendants who are charged with felony, or are financially disadvantaged (low-income households) or are mentally challenged (unable to make a complete statement due to unsound mind) without assessment of means, Article 16 of the Act requires applications to be assessed for merit (ie, whether a case clearly lacks reason), resulting in almost 25% of the applications for compulsory defense were refused by the Foundation.

(b) In an attempt to bring fairness to the assessment of merit, the Legal Aid Foundation has drafted a "Policy for Assessment of Merit in Compulsory Defense Cases" to define and set a consistent standard. It is stated in the Policy that individuals who are (1) sentenced to capital punishment; or (2) mentally challenged or mentally dysfunctional; or (3) under 18 years of age at the time of committing the alleged crimes, shall not be refused legal aid on the ground of merit.

(c) Requiring means-testing in applications for compulsory defense would conflict with the protection of human rights in criminal proceedings. It has been considered that there should be two channels of access to defense lawyers, one being appointment by the court and the other is through application for legal aid by the defendant.[3] The requirement to assess merit in determining applications for compulsory defense should also be removed. Under the current rules, assessment of means or merit are not required for compulsory defense where a public defender is assigned by the court or when a pro bono lawyer defends the case. Whereas in other criminal cases, applications for legal aid must be assessed for merit, owning to the limited legal resources. However, as the purpose of compulsory defense is to ensure procedural rights of the defendant are protected, merit assessment should not be required. Before the law is amended, rules should be narrowly interpreted with the purpose of limiting the requirement to assess merit in applications for compulsory defense.

3 See pages 45 and 46, Issue 25, 2009, Legal Aid Magazine, On the Integration of Resources for Criminal Defense -Future Revolution by Judge Wu Ciou-hong.

III. Conclusion: Possible reforms for criminal compulsory defense:

A.Expansion of the applicable scope of compulsory defense:

1. Laws should be amended to give compulsory defense to defendants charged with felony or who are financially disadvantaged while under criminal investigations.

2. Laws should also be amended to give compulsory defense to defendants under detention, irrespective of the serious of the crimes being charged.

3. The scope of assistance provided to suspects during the first interrogation by the police and prosecutors should be expanded, and make legal aid available to suspects of crimes which do not require compulsory defense.

B.The setting up of in-house defense attorney offices (or centers) in all branch offices of the Legal Aid Foundation:

1. There are staff attorneys in the legal aid system in Taiwan, yet we have not seen staff attorneys specializing in criminal defense within the system. The increase in the applications for criminal legal aid, and the demand for specialization within the system, will give rise to the need to establish a scheme in Taiwan similar in nature to the Public Defenders Service (PDS) adopted in the United Kingdom, the United States of America, and New Zealand[4].

2. A staff defense attorney system should be set up in all branch offices of the Legal Aid Foundation to gradually replace the public defender system under the courts. The pro bono lawyer defense system organized by the Taiwan Bar Association should also be removed. In the future, defendants in criminal compulsory defense cases should be assigned with defense counsel, either upon the defendants' or the courts' request to the Legal Aid Foundation, which

4 See pages 19 to 23, Issue 24, 2009, Legal Aid Magazine, On the Public Defense Systems in Legal Aid Organizations in England, the United States of America and Australia.

will determine whether a staff defense attorney or a legal aid lawyer should be assigned. The adoption of this mechanism will facilitate not only the effective integration of criminal defense resources, but also ensure the quality of representation offered by the legal aid system[5].

5 According to the analysis in the above article, the PDS systems adopted in the United Kingdom, the United States of America and New Zealand are more financially efficient than the judicare system, and have received positive feedback for the quality of their services.

Workshop II
Criminal Justice, Human Rights and Legal Aid

Group Discussions (A) : Conference Room
Group Discussions (B) : R.103
Group Discussions (C) : R.101

I.

What are the respective advantages and disadvantages of providing criminal defense services through (1) public defenders employed by legal aid; (2) private practitioners; or (3) a mixture of both?

II.

How and what are the ways of expanding the scope and types of criminal legal aid services (eg, representation during criminal investigations; whether to expand the scope of legal aid in compulsory defense cases, retrials and extraordinary appeals; legal aid in applications for suspension of detention etc)?

III.

For suspects being interrogated by the police (and if applicable, prosecutors) for the first time, how and in what ways can legal aid be provided to avoid inappropriate or untruthful interrogation (eg, a scheme to allow lawyers to be present during the first interrogation)?

IV.

How and what are the ways in which legal aid organisations and legal services providers can strive to establish effective legal representation (eg, the right to see a lawyer in private for a defendant in detention or for a suspect during the first interrogation by the police and if applicable, the prosecutor; the right of a lawyer to investigate evidence during pre-trial investigations)?

Group Discussion List

Group Discussions (A) Conference Room

Moderator : Mr. Joseph Lin—Director of Taipei Branch, Legal Aid Foundation

Discussants :

- Mr. Hugh Barrett—Executive Director, Commissioning, Legal Services Commission, U.K.
- Mr. Ravindran Nekoo—Deputy Chairperson, National Legal Aid Sub-Committee Bar Council Malaysia
- Mr. Feng-Zheng Lin—Executive Director, Judicial Reform Foundation
- Mr. Yu-Shun Lin—Associate Professor, Department of Criminal Investigation, Central Police University

Group Discussions (B) R.103

Moderator : Wellington L. Koo—Senior Partner, Formosa Transnational, Attorneys at Law

Discussants :

- Mr. Albert W. Currie—Chief Researcher, Research and Statistics Division, Department of Justice, Canada
- Ms. Ta Thi Minh Ly—General Director of the National Legal Aid Agency, MoJ
- Mr. Ping-Cheng Lo—Director of Hsinchu Branch, Legal Aid Foundation
- Mr. Jung-Chih Kao—Staff Attorney, Legal Aid Foundation Banciao Branch
- Mr. Mau-Sheng Lee—Professor , College of Law, National Taiwan University

Group Discussions (C) R.101

Moderator : Mr. Hao-Jen Wu—Associate Professor, Department of Law, Fu Jen Catholic University

Discussants :

- Ms. Kellie Krake—Attorney, Office of Training and Development, Office of the Wisconsin State Public Defender, U.S.A.
- Ms. Persida V. Rueda-Acosta—Chief Public Attorney, Public Attorney’s Office, Department of Justice
- Mr. Bi-Tung Tsai—Director of Chiayi Branch Office, Legal Aid Foundation
- Mr. I-Hsin Sun—Deputy Secretary General, Parents' Association for Persons with Intellectual Disabilities, Taiwan

Conclusion of Panel Discussion II

Criminal Justice, Human Rights and Legal Aid

Moderator :
Mr. Wen-Ting Hsieh (Secretary-General of the Judicial Yuan)
Reporters
Mr. Joseph Lin (Director of LAF Taipei Branch)
Mr. Wellington L. Koo, (Senior Partner, Formosa Transnational, Attorneys at Law)
Mr. Hao-Jen Wu, (Associate Professor of Department of Law, Fu Jen Catholic University

Mr. Wen-Ting Hsieh (Secretary-General of the Judicial Yuan)

Let's go directly to the reports to save time. First I'd like to introduce the three guests who will give us their reports: the first is Attorney Wellington L. Koo, President of Taiwan Bar Association; the second is Director Joseph (Yung-song) Lin of LAF Taipei Branch; the third is Hao-Jen Wu, Associate Professor of Department of Law, Fu Jen Catholic University. The first to report will be Director Yung-song Lin.

Mr. Yung-song Lin. (Director of LAF Taipei Branch)

One of the outlines of our panel discussion is: what form of defense service for criminal cases should be adopted? British representative Mr. Hugh Barrett indicates that in England 90% of the criminal defense counsels are private, only 10% are full-time, and the percentage of public defenders is expected to be elevated to 20% in the future. Is it necessary for Taiwan to have full-time attorneys for criminal cases? No conclusion is reached in our discussion, but it would be an issue worthy to be taken into consideration. Also, is it necessary to expand the types and scope of service in order to help more people in need of criminal defense? As far as Taiwan is concerned, can compulsory defense be applied during investigation? Or is it better not to use the term "compulsory defense" so often? Can the system be comprehensively applied? As cross examination happens in the first trial, will there be any difficulty if without comprehensive legal aid? I myself have mentioned that, in fact in Taiwan there is no compulsory defense in the third trial. Although LAF has been helping, this part of service can be expanded.

We have spent more time on the third outline, i.e. the system of First Interrogation Accompanied by Legal Aid Attorney. Taiwan followed this British system and started to apply it two years ago. But it turns out that while LAF wants very much to promote it, the police do not seem to quite support it. Mr. Hug Barrett says that the system in UK was initiated during the 80s when many

deposition forgery practices occurred. In the end the system is accepted because the presence of attorneys can protect the police from being blamed for illegal acquisition of deposition. Though the time of development of a legal system differs in different countries, similar misdeeds happen wherever people live. Before when a British board director of legal aid service visited Taiwan, he also shared with us that in the beginning the British police had not been very supportive of this system.

How to gain the police's heartfelt support instead of empty support by words of mouth in Taiwan? A conclusion is made with the help of our chairperson: it is proposed that the Judicial Reform Foundation making a petition for the presence of attorneys to become a system of the Code of Criminal Procedures. For the present in the absence of a relevant stipulation, the police may say, "Is there a law for it?" "Do I have to do it this way?" "Must we contact an attorney?" Despite that attorneys are already scheduled by LAF, the applications are few. Can it be resolved via law amendment? As our chairperson says, if there is a law but the police do not observe, people can even sue the police. According to British representative Mr. Hugh Barrett, there are about 4500 suits against the police or governmental officials every year in UK, which is not at all unusual for them. But for us, it would be like what the CEO of the Judicial Reform Foundation says, "So what if people sue the police? If the judiciary system is not as good, what can we do?"

What lies behind this issue is how to improve the process interrogation, which is the initial stage of criminal cases, so that no more time might be wasted on further investigating the content of the cases. Legal aid is most effective if it has the initial function of prevention, but has it been realized? In Taiwan, we think that both audio and video recordings are necessary during the interrogation, but what will happen if no recordings are made? The Supreme Court would say, "it wouldn't matter." It means that the credibility of evidence is not affected even without audio and video recordings. Ms. Suzan Cox, the representative from Australia, points out that audio and video recordings are required in Australia. According to her explanation, the evidence cannot apply or will be faulty otherwise. I really hope that amendment will be made to make the criminal interrogation process better in Taiwan.

Mr. Ravindran Nekoo shares with us his precious thoughts. He says that the legal aid system and criminal litigation system vary in every country. Regarding to the legal aid organization in Malaysia, the bar association contributes more while the government's budget is relatively low and insufficient to afford systematic legal aid service. They try their best to help the criminal defendants but often encounter many difficulties in reality. Because the manpower of the bar association does not meet the demand of the public, some people cannot but plead guilty or defend themselves on their own. Still the endeavor of the organization can be understood, and it is very touching to see them drive out to promote and offer legal consultation, etc. They also promise that they will work

hard to promote legal aid and criminal defense system. The above said is the major part of our panel discussion. Thank you.

Mr. Wen-Ting Hsieh (Secretary-General of the Judicial Yuan)

Thanks to Director Yung-song Lin. Next reporter is attorney Wellington L. Koo, please.

Attorney Wellington L. Koo (President of Taiwan Bar Association)

Our first issue concern with the explanation that whether the criminal defense should be provided by the full-time attorneys of LAF or the commissioned attorneys from outside or perhaps a mixture. We try to consider it from several angles. Firstly we need to decide which way is better in its cost benefit; secondly we need to consider whose quality control of service will be better; thirdly we'll consider if the hiring of full-time attorneys would cause a crowding-out effect to the business of other attorneys when a competition exists in between.

Considering the cost benefit of it, hiring full-time attorneys will cost less, but it is hard to decide how many attorneys to hire and how the magnitude will be. Personally I think there will be difficulty to completely adopt full-time attorney system. As for the quality control, is it more difficult to control the quality of external attorneys? Could full-time attorneys become slack once they enter LAF? Will full-time attorneys be criticized like those public defenders of the court in Taiwan? Mr. Ab Currie from Canada says that a mixed system is applied in Canada, where 4 of the 13 provinces adopt full-time system, another 3 the commission system, and the other 6 the mixed system. There are several advantages of the mixed system, which would be better in the aspect of cost benefit because it is more flexible when the number of full-time attorneys can be decided according to the budget and resources.

Judging from the angle of management and dispatch, full-time attorneys can deal with certain specific cases, e.g. cases more complicated, while the external attorneys might not want to accept because of the low payment. Or they can deal with emergent cases. For example, if the first interrogation happens in a remote area or where there are not sufficient attorneys, will there be enough external attorneys to back up? Also, full-time attorneys can take charge of cases with indicator significance or policy significance, e.g. cases involving with death penalty because LAF advocates the abolishment of death penalty. For cases concerned with significant issues, full-time attorneys can also offer overall cooperation, which is also a very flexible arrangement.

However, the budget and resources of legal aid are limited, and it is a great challenge to make proper appropriation of them. It concerns with the second issue of our discussion: when considering the scope and types of expanding legal aid to criminal cases, the scope will be expanded to the stage of investigation in process, but how many types of cases will be expanded to for attorneys to

represent or defend? Does it also include the third trial or will the Code of Criminal Procedures be amended to apply the compulsory defense system? The representatives from UK and Wisconsin of USA mention that if compulsory defense will be applied to juvenile criminal cases. Will it be applied to the decision of detention review? It needs to be defined by the Code of Criminal Procedures, and then we can talk about expanding the scope of legal aid. Because when the compulsory defense system is applied, will there be no need for financial eligibility examination? If not, will the limited resources of LAF be able to cope with it?

The third issue concerns with whether the application of financial eligibility examination is needed when we follow the British system to provide the company of attorneys for the first interrogation. In Taiwan, the applicant is required to sign an affidavit if without financial eligibility examination, though the affidavit now seems to be no longer required. Since it is not stipulated by law that financial eligibility examination can be waived, will an amendment be needed for this part? Besides, if the number of cases grows to a certain degree, will there be a corresponding number of attorneys and cooperation status? This might contradict with the above mentioned proposal that full-time attorneys have the priority. Is it necessary to have a full-time attorney for each LAF branch or for the joint service of several branches? In addition, it might also be taken into consideration to establish a call center where the full-time attorneys can offer consultation by phone without actually being present at the site of the first interrogation.

The fourth issue is about how to offer a substantially effective defense, which I think will need a judiciary milieu calling for the endeavor of not only LAF but the entire bar association, Judicial Yuan and Ministry of Justice to help establish. Regarding this part, LAF can start to push in two directions: 1. LAF can act as the campaign group. Because the Foundation has always been participating in the criminal defense of individual cases, can an analysis be made on individual cases about how the criminal defense is not effectively realized? 2. As the legal aid attorneys are appointed by LAF to defend, they can promote rightful legal procedures from the point of public benefit, or speak aloud to protest against the improper doings toward criminal defense issues under unrightful legal procedures. These are things that can be done by legal aid attorneys.

Mr. Wen-Ting Hsieh (Secretary-General of the Judicial Yuan)

Thank you, Attorney koo. Now Professor Wu will share us his report.

Mr. Hao-Jen Wu, (Associate Professor of Department of Law, Fu Jen Catholic University)

Before making our panel report, I enquired Ms. Kelli Krate from USA and Ms. Persida V. Rueda-Acosta from the Philippines about their opinions on these four discussion outlines with the purpose to understand their way of thinking, and I was deeply moved by them. For example, I

asked Ms. Kelli Krate about the issue of racial discrimination, which was obviously not resolved in the report. She also talked about the abolishment of death penalty. I asked her how to convince the public of her point. She replied that LAF should be particular about choosing a method to inform the public of the truth. She explained by citing an instance: two theories are concerned with the elimination of racial discrimination or the abolishment of death penalty. The first proposes using education or other methods to diminish or eliminate discrimination instead of cracking down on crimes by killing. But she found that the other theory of economy seems more effective in convincing people, e.g. the social cost of killing a murderer is higher than making the murderer contribute by doing social service. She thinks the public can accept this economic theory more readily. I also asked Ms. Kelli Krate that I heard the British representative Mr. Hugh Barrett saying that the spirit of English and American law is “innocent until proven guilty”. But all the alien travelers entering USA or UK are forced to make their fingerprint files. Wouldn’t it be a kind of “guilty until proven innocent”? She agreed, but she said that this issue needs to be considered from the aspects of maximal efficiency and public security. She also said that is why not only the Americans but everyone present today are responsible to control and supervise the government, which moves me very much.

Moreover, Ms. Persida V. Rueda-Acosta shared us the way of operation of PAO, the public defender office of the Philippines as well as words that really cheered us up. For example, in 2008 they provided legal aid to a total of 420000 criminal cases, and 70000 of the 90000 finalized cases were recovered, which accounted for 70%. It is quite a remarkable outcome, which indicates that their attorneys demonstrate a high level of professionalism. I also asked him, “As we understood, quite a few human rights attorneys or NGO staff had been assassinated. What kind of response did your legal aid office have or what did they do for that?” He told me that even their own organization was a target of assassination, and so they could almost do nothing about it. However they would go on protesting and supporting human rights. He mentioned a case in the Philippines: The wife of a media worker committed suicide, and the man was deemed her murderer suspect. By their law the attorney could not visit a murderer, but the legal aid attorney still went to see him. The minister of justice, boss of PAO, blamed them for being crazy and was very dissatisfied with them. But Ms. Persida V. Rueda-Acosta thought it is an issue of human rights and had nothing to do with being crazy. Finally the issue was left to be resolved by their State President, who decided that the minister should leave his post and the person in charge of the public defender office should stay.

Now back to the four outlines of discussion. Director Pichung Tsai of LAF Chiayi Branch points out that the marring of public defender system in Taiwan is due to the fact that in the past many public defenders were transferred from unqualified judges. Although the system is no longer the same as it was, it is still hard to convince the public or governmental officials that the free service of public defenders or LAF attorneys can be better than a paid service. It that is the case, we should not

expand our service at will without considering the view of those in-market attorneys because after all the LAF attorneys come from the market. Deputy Secretary-General of Parents' Association for Persons with Intellectual Disabilities I-Hsin Sun indicates that legislation in Taiwan has improved a lot, e.g. the Legal Aid Act and the Code of Criminal Procedures have been very helpful to the disabled persons. But he also mentions a case about a driver who was shot and his car stolen on the freeway in 2006. A man with intellectual disability was arrested by the police, but he could not express himself completely during the interrogation. Two other intellectually disabled persons were also arrested at the same time and totally unaccompanied by any attorney during the three-day interrogation.

Some important questions are raised by Miss Li, a public defender from Kaohsiung Branch Court of Taiwan High Court. While she points out that actually public defenders are professional and enthusiastic, she also has certain doubts concerning with the public's lack of trust in them and that people might regard them as civil service officials and therefore could be affected by their identity. She also agrees with Director Pichung Tsai of LAF Chiayi Branch that it's hard to convince people that free defense can be better than the paid one. Furthermore, ever since the launch of the program of First Interrogation Accompanied by Legal Aid Attorney, the public defenders cannot be present at the firs interrogation, and by the time they receive a case, it is already an indicted case. When enquired about the case in their country, Ms. Kelli Krate indicates that in Wisconsin the public defenders are also members of civil service, which is indeed a disadvantage because they are often regarded as part of the system or "a fake lawyer". However, after 30 years effort, they are finally accepted and trusted by the public. Therefore there is no other way to overcome this conception except by substantial accomplishment and winning people's trust by establishing creditability with an independent and detached stance.

An instance mentioned by Ms. Kelli Krate makes me admire very much. She says that whereas they are often misunderstood by the public, they are most supported by the court judges, prosecutors or police, who would tell the public that the public defenders are in fact very outstanding. Ms. Kelli Krate mentions that every policeman has the phone number of public defenders and can reach them at any time of the day. The police would actively ask for the presence of attorneys during interrogations especially during the first one because American police generally believe that the attorneys' presence actually helps the police greatly, which is a very important concept.

It is the same in the Philippines, where as indicated by Ms. Persida V. Rueda-Acosta the public defender office has been established for 37 years but it was until 2007 that they are allowed to be independent. Although namely they belong to the Ministry of Justice, they are quite independent and autonomic with separate budget. That is why, as mentioned above, the State President would support the public defenders when conflicts happen, which demonstrates their status and significance in

the President's mind. Among the instances mentioned by her, in 2004 the State President wanted to execute 200 people at the same time. When the PAO protested to the Supreme Court and demanded for postponement, the Supreme Court agreed to postpone some of the cases and death penalty was abolished in two years. They deem legal aid as the engine of reformation, and their efforts have been rewarded. Ms. Persida V. Rueda-Acosta also mentions that when the ex-President of the Philippines was indicted, two of his cases were found not guilty and one guilty, but the PAO still asked for amnesty from the then incumbent President. As we can see, in the mind of these foreign representatives the difference between political parties is not the issue and criminal human rights is their highest criterion.

Finally, Ms. Persida V. Rueda-Acosta talks about the troubles met with by foreigners during interrogation. In the Philippines all aliens are qualified for legal aid, and the foreign embassies would actively report to their own countries. There are about 100 cases involving aliens each year, and the PAO receives a lot of help from many foreign countries. For example, they were supported by the State Department of USA with the five-day international conference recently, which has a great effect over them. I'm finished with my report. Thank you.

Mr. Wen-Ting Hsieh (Secretary-General of the Judicial Yuan)

Thank you, Professor Wu. Now please spare me just one more minute. Regarding criminal human rights and legal aid, we have a consensus and emphasis on gaining resources, and like the way they do in Malaysia, all major resources must be used on human rights protection, which is the most imperative task. The two ends of all criminal litigations, i.e. the first interrogation and the appeal for the third trial, are in fact the most important but also parts that we feel most helpless about and most need improvement. As far as the first interrogation is concerned, a consensus achieved by all panel discussions is that amendment by the government is necessary. Both representatives from USA and UK say that their police think the presence of attorneys during interrogation is good for the police. How can we make the police in Taiwan share the same conception? As for the appeal for the third trial, for the present the Judicial Yuan is reviewing the Code of Criminal Procedures. As mentioned by Director Yung-song Lin and Attorney Wellington L. Koo, the parts of juvenile crime, appealing for the third trial and detention are all included in the planned amendment. We wish to amend Articles 388 and 375, which means to stipulate that appealing for the third trial or petition for appeal will have to have appointed attorneys. It is also considered that compulsory defense will be applied to defendants who the prosecutors try to apply for detainment or who are juveniles under a certain age. We will collaborate with the Executive Yuan in amendment after reaching a consensus with the Ministry of Justice.

Panel Discussion III

Poverty, Debt and Legal Aid

- **Moderator : Mr. Chi-Jen Kuo**

  Secretary-General, Legal Aid Foundation (Taiwan)

- **Speakers :**

  1.Mr. Paul Chan
  Chairman, Legal Aid Services Council, Hong Kong

  2.Ms. Saya Oyama
  Associate Professor, Kinjo Gakuin University, Japan

  3.Mr. Joseph Lin
  Director of Taipei Branch, Legal Aid Foundation (Taiwan)

Panel Discussion III : Moderator, Mr. Chi-Jen Kuo (second right) , and speakers

Mr. Chi-Jen Kuo, Secretary-General, Legal Aid Foundation (Taiwan)

Mr. Paul Chan,Chairman, Legal Aid Services Council, Hong Kong

Ms. Saya Oyama, Associate Professor, Kinjo Gakuin University, Japan

Mr. Joseph Lin, Director of Taipei Branch, Legal Aid Foundation (Taiwan)

Panel Discussion III

Poverty, Debt and Legal Aid

Mr. Paul Chan
Chairman, Legal Aid Services Council, Hong Kong

At the World Summit for Social Development held in March 1995 in Copenhagen, poverty was defined as the "lack of income and productive resources sufficient to ensure sustainable livelihoods."

According to the statement adopted by the Committee on Economics, Social and Cultural Rights of the United Nation in 2001, poverty is defined as "the lack of basic capabilities to live in dignity". This definition somehow encompasses a wide range of features relating to poverty, such as hunger, poor education, discrimination, vulnerability and social exclusion.

From the regional perspective, the European Commission defines the proportion of individuals living in households where equivalised income is below the threshold of 60% of the national equivalised median income as living in poverty.

In the Hong Kong scenario, our Government has not adopted any official poverty line for the territory. The fact that Hong Kong is a generally affluent community and that a broad range of social services and support are available means that identifying and addressing the specific needs of the disadvantaged groups are more important than trying to single out those who are poor only in the income sense.

Whatever the definitions and classifications, it is worth noting that tackling poverty, including the provision of related social assistance, is very much a national responsibility.

Despite the lack of an official poverty line, those who are in need of assistance in Hong Kong have access to extensive social and welfare services provided by the Government. Broadly speaking, the Hong Kong Government adopts a pragmatic approach by providing:

Welfare Services

People who cannot meet their basic needs, thus regarded as "the poor", have access to the Comprehensive Social Security Assistance Scheme which forms the mainstay of Hong Kong's welfare system. The Comprehensive Social Security Assistance Scheme is non-contributory but means tested. The scheme provides cash assistance to people suffering from financial hardship to enable them to meet basic needs. However, applicants must satisfy the stipulated residence requirements. Presently, the scheme's yearly expenditure is about $18.6 billion, which is 43 times

that of legal aid expenditure in Hong Kong. In addition, the government also provides other support services targeting at those in need, including children, women, elderly and people with disabilities.

Health Services

Recipients of Comprehensive Social Security Assistance are waived from payment of their expenses for services rendered by the health authorities. To better assist the vulnerable groups in the community, i.e. the low income group, chronically ill patients and elderly patients who have little income or assets but who are not welfare recipients, the government has implemented an enhanced medical fee waiver mechanism to ease their financial burden.

Education Services

The Hong Kong Government provides twelve years of free and universal education as well as various forms of assistance and services to help students and youths who need support.

Employment Assistance

The Labour Department provides a comprehensive range of free employment services to help job-seekers secure employment. Some services are targeted at certain vulnerable groups, e.g. the middle-aged and people with disabilities.

Of the above, the Comprehensive Social Security Assistance Scheme provides direct financial assistance to bring the income of needy individuals and families up to a prescribed level to meet their basic needs. The applicant however must pass the income and assets tests to receive assistance. If the applicant is living with any other family members, the application has to be made on a household basis. The total income and assets of all family members in the same household are taken into account in determining the family's eligibility for assistance.

As to the relationship between low-income groups and access to legal aid, it should be noted that in Hong Kong legal aid is granted to residents or non-residents who satisfied the means test and the merits test, irrespective of their social background. What is more, applicants who are recipients of Comprehensive Social Security Assistance are generally deemed to be eligible for legal aid unless there are reasonable grounds to suspect otherwise. In other words, those on welfare are normally not required to undergo the means test before granted legal aid.

How then is the means test conducted? Hong Kong adopts a "financial capacity" approach in assessing the financial eligibility of legal aid applicants. This simply means aggregating a person's yearly disposable income and disposable capital in determining his eligibility. A person whose financial capacity does not exceed the limit will be eligible for legal aid.

A person's disposable income is the income that person may reasonably expect to receive during the period of computation. It is calculated by his yearly income minus a number of statutory

deductible items such as maintenance payments, payment of salary tax and the general expenditure of a household in maintaining an acceptable standard of living.

A person's disposable capital consists of all assets of a capital nature, such as bank savings, valuables and property other than the applicant's main dwelling. In the context of criminal legal aid however, the Director of Legal Aid has the discretion to waive the financial eligibility limit if it is in the interest of justice to grant legal aid.

The government's policy is to review the financial eligibility limits annually to take account of movements in the Consumer Price Index, and biennially to take account of changes in private litigation costs. The purpose of the reviews is to preserve the real value of the financial eligibility limits to ensure that legal aid is available to the targeted group in society. As the reviews are conducted regularly; global economic recession or financial turmoil as is currently experienced will not alter the frequency of such reviews.

To ensure that a person's legal right is protected, an applicant who has been refused legal aid, and is aggrieved by such decision, can appeal to the court to bring the legal aid refusal to review.

As to whether Hong Kong's legal aid schemes will provide assistance for filing appeals against social welfare decisions of an administrative authority, the answer is affirmative provided that the application passes the means and the merits tests. In Hong Kong, the use of judicial review by an individual against an administrative decision in areas such as education, social welfare, conservation, civil and political rights etc is regarded as providing an essential foundation for good governance under the rule of law. Very often, judicial reviews in Hong Kong are backed by legal aid.

Legal aid is a cornerstone of the rule of law. In Hong Kong, some 70% of households are eligible for legal aid under the various legal aid schemes. In response to calls from the community, the Legal Aid Services Council, a statutory body set up to supervise the provision of legal aid services in Hong Kong, is actively investigating into the feasibility of further expanding the scope of coverage of legal aid, particularly for the middle class. The low income group and the disadvantaged in Hong Kong are already adequately covered. Our focus at the moment is to provide wider coverage for those of better income but yet unable to afford litigation in private.

In Hong Kong, debt and legal aid do not have a causal relationship. Legal aid can assist little in helping an individual to clear his or her debt.

Managing one's finances is very much a personal matter for both the poor and the rich. In this regard, debt clearance is more an issue for individuals themselves than the legal aid authority in Hong Kong.

Hong Kong is one of the most vibrant international financial centres in the world. It operates a sound regulatory regime on a par with international standards. The operation and activities of licensed money lenders in the territory are governed by the Money Lenders Ordinance. Under this Ordinance, anyone wishing to carry on business as a money lender must apply to the government for a licence. The government's policy is to further reinforce Hong Kong's position by making continuous improvements to the regulatory system of its financial institutions. Insofar as money lending is concerned, the credit/lending system in Hong Kong is working well. If consider necessary, our financial authority, rather than the legal aid authority, will investigate into the deficiency and make improvements.

Hong Kong's Legal Aid Ordinance and Regulations do not have provisions to assist an individual in debt clearance and/or in filing an application for personal bankruptcy procedures, which process is relatively straightforward. It should be noted that being in debt will not affect a person's eligibility for legal aid, except that in calculating his or her disposable income, debt is not a deductible.

Panel Discussion III

Poverty, Debt and Legal Aid

Ms. Saya Oyama
Associate Professor, Kinjo Gakuin University, Japan

Preface

As an introduction to the issues of "Poverty, Debt, and Legal Aid in Japan", I would first like to show you some snapshots from everyday life in Japan. This photo was taken from a train station I use for shopping. I am living in a city called "Nagoya" which is located in mid-Japan and has a population of about 2 million. When we use public transportation, like subways and non-subway trains, we find a wide variety of colorful advertisements, ranging from those for new magazines, holiday plans, English conversation schools, and so on. Glance over these ads, and you can tell what business is popular, becoming big, or making profits on the market. Recently, I often find this kind of advertisements. What do you think this advertisement is for? Would you guess what this is for? The answer is that this is an advertisement of lawyers seeking debt-ridden clients. I can read here "SAIMUSEIRI = Debt Work-Out" and "Please contact us if you are in trouble with debts". Here is another one. This is the similar advertisement by not a law firm but a legal scrivener, and this again targets debtors.

The most appealing medium for ads in my country is the ground-based television. This is an informational TV program for housewives broadcasted in daytime on weekdays. And this is one of the inserted commercial messages. This young female TV idle says, "What's wrong? You look a little down. Troubled with debts? Why not consult with a lawyer". Sponsors of this kind of advertisements are major law firms with large numbers of legal specialists and clerical workers. Each of such a law firm could be spending tens of millions of yen or several hundreds of thousands US dollars per month for public relations, which is on par with big companies. These advertisements tell us the fact that debt work-out is now a profitable business for lawyers and legal scriveners in Japan.

The Japan Legal Support Center, or JLSC established in 2006 with 100% funding by Japanese government now has approximately 100 in-house lawyers working full time, and also has contracts with about 50% of all the lawyers and 25% of all the legal scriveners in Japan. In 2008, JLSC commenced 85,000 cases of civil legal aid. Among them, 3 out of every 4 cases were reported to be cases of over-indebtedness involving need for personal bankruptcy. However, this figure represents only a fraction of the number of over-indebtedness cases out there in the society of Japan.

According to the government's estimation, there are approximately two million domestic debtors, and only about 20% of them reach for help by these experts including JLSC.

In Taiwan, I understand with great respect that the Consumer Debt Clearance Regulation was enacted in 2007, which gave debtors in Taiwan legal ways out of despair. Consequently, however, I have heard that 90% of applicants for this legal relief rushes to the Legal Aid Foundation. That must be a great burden on Esq. Liu, and members and staff of the Foundation. As I understand, this is because very few lawyers except those who are with the Foundation, and very few other experts, are involved in the issues of debtors.

What makes such a difference between Taiwan and Japan, between the two countries located within East Asia?

I am a sociologist. Sociology focuses on the substance and mechanism of communication amongst people who build up each institution and/or organization. Now, let's figure out a puzzle behind the everyday scene surrounding debtors in Japan, with some hints taken from the sociological perspective.

1. Behind the scene

The rush of advertisement by legal professionals for debt-ridden citizens began in 2006. Let me now look at what happened in that year. There are two events to be noted, which forced Japanese consumer finance market to veer widely.

One of the two events was that, in 2006, Japanese Supreme Court ruled that money-lenders had been charging excessive interest rates in the past and that they are liable to repay the over-charged interests. This Supreme Court ruling opened the door for borrowers to file complaints against money-lenders and claim the overpaid interest. The number of people who had dealt with money-lenders is 20 million, which means 1 out of every 6 people living in Japan has dealt with a money-lender in some way. The Supreme Court ruling made money-lenders potentially liable for returning a large portion of their enormous profit they had gained in the past to their over 8 million customers, i.e. borrowers or ex-borrowers.

Another event in 2006 was the amendment of the Money Lenders' Law which set a ceiling of 20 percent per annum on the interest rates charged by money-lenders, and required lenders to ensure that the borrower's outstanding debt remains below one-third of his or her annual income. In other words, a lender cannot lend money to the borrower if the new loan will make the borrower's total outstanding loan exceed one third of his/her annual income. The amendment was a bold change in the regulation of both the price and sales volume of consumer loans as financial commodities. Accordingly, money-lenders are forced to rebuild their business by tightening lending conditions. The rate of successfully-entered loan contracts out of all loan applications have dropped from 42% to 26%, in the past two years.

Now I would like to briefly add two facts that would contribute to your understanding of Japanese local context.

Firstly, loan business is, in principle, restricted to banks here in Taiwan. But in Japan, non-bank money-lenders whose main business are unsecured, non-guaranteed loans, have been leading the domestic consumer finance market. Over 2 million out of fourteen million borrowers from these money-lenders were in bad or difficult situation. This means over-indebtedness could not be resolved without regulating money-lenders.

Secondly, prior to 2006, the official limit on interest rates had already been 20 percent, but there existed a so-called "grey zone" interest of up to 29.2 percent, which was the de-facto interest rate limit. On condition of voluntary informed consent by borrowers, the lenders used to be allowed to charge interest up to 29.2%. The court's ruling I've mentioned earlier acknowledged that the gray zone interest beyond 20% per annum was not optional but something borrowers had to live with.

Before 2006, the main players of the advertisement rush for debtors were money-lenders earning enormous profit. Then, eventually, the two events changed the whole scene. Many money-lenders were forced to give their seats of advertisements to lawyers who file complaints claiming repayment of overpaid interest of over 10 trillion yen in total.

2. History

Some people, some of you may feel doubtful about the possible outcome of these changes. Some people may say, "Let the free market work, then both lenders and borrowers will be happy with the price of loan. How could the Supreme Court and the National Diet make their decisions that would cause shrinkage of the consumer financing market? " "Doesn't shrinkage of the market result in barring out some consumers? Do the decisions result in depriving borrowing opportunities from the poor, i.e. those people we are focusing on in this discussion?" "Don't you think that they could end up with borrowing money from illegal loan sharks and being victimized?"

To remove such doubts, two factors are required: sympathy and conviction. To be more concrete, one factor is sympathy of the society to the despair of those average citizens who used to lead happy lives, but have lost all their hopes and self-esteem because they've lost prospective for repayment. Another factor is the conviction that "over-indebtedness is not attributable to individual persons, but it can be avoided and prevented through the efforts by society."

I am a sociologist, and sociologists sometimes use the term "moral entrepreneurs". Moral entrepreneurs are people who define problems in society, propose their solutions, and persuade policy makers and the general public. Then, when and where do those entrepreneurs appear? The answer depends on where in the society those people with enthusiasm and know-how are residing.

For example, for problems concerning over-indebtedness, in the Republic of Korea, judges of the Supreme Court are the moral entrepreneurs; and here in Taiwan, members of the Legal Aid Foundation are the moral entrepreneurs. So, how about in Japan? The moral entrepreneurs emerged from the close-knit nation-wide coalition of private expert groups of lawyers and legal scriveners as well as citizens' groups of debtors themselves in the late 1970's.

Back in those days, over-indebtedness used to be considered as attributable only to individual persons. Around that point in time, a young lawyer in his thirties practicing law in the western part of Japan had an opportunity to interview many debtors with his colleagues and to listen to their stories in detail. Through the interviews, the lawyers realized the gravity of the problems caused by over-indebtedness; and the loss of all hopes for the future was what they observed. Then, they reached a conviction that this issue must not be left unsolved. Debtors were gathered, and news reporters were invited. The lawyers persuaded the debtors to speak out before the reporters. At this first meeting, major players were the debtors. They shared their own stories relating to their debts with the audience. They were surprised not only by finding out that they were not alone, but also by the fact that their stories inspired the audience and promoted the enthusiasm among them. This marked the very first step in the history of debtors' self-help organizations in Japan.

On the other hand, while promoting establishment of self-help organizations of debtors, the lawyers began to form a national organization of experts together with their colleagues, legal scriveners and academics.

To date, this organization of experts has grown to have 700 members and 16 affiliated organizations specialized in different fields ranging from international exchange to suicide prevention. Debtors' self-help organizations have also grown nationally; there are about 80 self-help organizations and groups including sub-organizations across the country.

Let me now look at what this moral entrepreneur has done before 2006. They brought a great many debtors' cases to courts around the country one after another to make judges change their perception about debtors and lenders. The moral entrepreneur took a role-sharing strategy where people under the entrepreneur divided themselves into two. Debtors, on one team stood at the forefront of the movement and spoke about themselves in public at meetings and to the media. Legal professionals on the other hand, explained to the public and to authorities that over-indebtedness was attributable to the inadequacy of the Money Lenders' Law and that the law had to be amended. The 2006 court ruling I mentioned earlier was a fruit of such tightly coordinated efforts by all the players.

The 2006 court ruling imposed a major challenge to the national government and Diet, because the ruling was an explicit message that problems concerning consumer indebtedness could not be left unsolved and, for that reason, the law had to be amended. The moral entrepreneur then took

the next step; appealing to local assemblies and the public. In 2005, the Japanese Trade Union Confederation (Rengo), with roughly six million members, decided to join the team. With the strong support by Rengo, 3.6 million people signed the petition calling for ban on the grey zone interest. They also led more than 90 percent of prefectural assemblies and more than 60 percent of municipal assemblies to pass motions favouring reductions in the maximum interest rate.

And please look at this picture. One hundred and twenty-five years ago, poor peasants suffering over-indebtedness assembled at the Muku Shrine and paraded 150km to the central government complex in their attempt to bring their petition for relief to the government. Unfortunately, they were cracked down by the government, and their attempt failed. Seven people were sentenced to death as a result. Professionals and debtors overlapped their movement with the attempt by the peasants in old days, and decided to relay the petition from the Muku Shrine to the National Diet Building. Some dressed in costumes of 125 years ago, and others in matching yellow T-shirts. Their sincere yet somehow humorous attempt inspired people's enthusiasm to amend the law. Under the growing pressure from the public opinion, in December, 2006, the Diet decided to amend the law.

3. Challenges we're faced with

I think we have figured out the puzzle behind the everyday scene surrounding debtors in Japan, so, in conclusion, I would like to present three remaining challenges we're faced with.

Firstly, the advertisement rush by lawyers is only a temporary phenomenon. Under the amended law to ban gray zone interest, sooner or later, all of the overcharged interest from the past will be disgorged to the bottom from the lenders. Most lawyers who are deeply soaked in the advertisement rush competition are newcomers to the field. This means that the majority of them do not know anything about people's 40-year grass-root efforts through rough passages. They don't know all the tears of fear, tears of anger, and tears of joy. Sooner or later, the market of the overpaid interest will be used up, and we never know how many of them will remain with the debtors. With this perception in our minds, we need to develop and improve infrastructure for debtors so that debtors can clear their debts without too much difficulty and without intervention by legal professionals.

The second point is the responsibility of the banks. Debtors' self-help groups insist that banks share responsibility in solving problems concerning over-indebtedness, because major money-lenders are affiliated with banks. These money-lenders do not refund the overcharged interest voluntarily, unless borrowers claim for refund through lawyers. Money-lenders are spending only one quarter of their allowance reserve for refunding consumers. In addition, as banks find consumer finance profitable, they began to lend money directly to consumers. We need to keep our eyes open to prevent banks from lending money to their customers irresponsibly.

Thirdly, the population of so-called “working poor” is growing. These are the people who find their lives difficult even after their debts have been cleared. We have found one challenge after another, i.e. issues of poverty behind over-indebtedness. The moral entrepreneur expands the scope of their work to tackle poverty, by working together with single-parent families, handicapped people, temporally workers and so on. Their projects cover from improvement of accessibility to welfare benefits, to reform of labor and social security systems.

The Japan Legal Support Center does not commit itself to these social movements officially as an institution. However, as far as I know, some of their full-time staff lawyers are personally engaged in theses social movements with much enthusiasm.

The keys to the successful resolution of poverty as well as over-indebtedness, are sympathy and conviction. It is very essential in fighting poverty to communicate the hardship suffered by people in trouble to the public. For this, it is very important to have actual people with faces and names share their experiences with the public. It is a mission of the moral entrepreneurs to support and foster those courageous people who can speak out their experiences.

4. Supplementary Information

Japan Legal Support Center is a part of the consumer debt clearance system in Japan.

Unlike Cresala Taikyo, Japan, it does not commit itself to the social movement tackling with over-indebtedness officially as an institution. However, some of their full-time lawyers are personally engaged in this movement.

JLSC provides information and services that will help legal problems relating to over-indebtedness all over the county. People can call or e-mail JLSC (only in Japanese). In 2008, JLSC received about 280,000 inquiries for all legal problems.

In 2008, JLSC commenced 85, 000(85, 238 accurately) cases of civil legal aid. Among them, 3 out of every 4 cases (63,609) were cases of over-indebtedness, which breaks down into "personal bankruptcy" (43,579) and "others"(20,030).

I would like to pick up two out of some difficulties in consumer debt clearance cases. They are related to growing poverty. One is that there are the people who find their lives difficult even after their debts have been cleared. Some of them need welfare benefit. Users of civil legal aid have to pay the expenses of making legal documents or legal representation fee. It is pointed out that JLSC must grant a delay for such people.

Another is that legal scriveners feel it more difficult to use legal aid than lawyers. They hope the improvement of accessibility.

Panel Discussion III

Poverty, Debt and Legal Aid

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Poverty, Debt and Legal Aid in Taiwan

Part One. Introduction

I. Debt Issues in Taiwan and Legal Aid

Even in a country with well-developed economy, there are always people with debt problems due to poverty, inadequate social welfare schemes and other factors. However, the legal mechanism for resolving debts and the system of legal aid services provided for debtors may vary in different countries, and it is worth sharing the relevant legal institutions and empirical achievements with one another.

Many think that the occurrence of debts is a personal matter of individual debtors. In fact, other than individual poverty, unemployment, failure in investment or business, paying for relatives or friends and excessive consumption, it may be concerned with governmental policies, e.g. tax policy, urban planning, land policy, economic policy, social security and social welfare policy, etc. Therefore it is unfair and hard to impute the problems to debtors or their families and demand them to take the whole responsibility. On the other hand, when the debts are too much for debtors to handle and there isn’t any reasonable mechanism for them to solve the problem, suicidal tragedies happen or debtors may take the risk of committing crimes of robbery or drug trafficking. In less serious cases, debts without proper resolution are often the cause of debtors’ overwork, physical or mental illness, domestic violence and divorce, which adds to various social burdens. If the government can provide relevant legal mechanism to reasonably solve their debt problems, not only the problems and burdens of society will by reduced but the debtors will be able to return to the normal economic community and contribute to social productivity. Considering that the occurrence of debts is related to governmental policies and that their resolution can reduce social problems and burdens while increasing social productivity, the government is responsible for establishing a reasonable legal institution to solve the debtors’ problems and reviewing those unfair policies which result in the occurrence of debts.

In recent years, the debt problems of credit card and cash card users in Taiwan have become

more and more serious. News is often heard that some debtor's entire family has committed suicide or run away to avoid debt collectors hired by the banks. In the past, there was no law regulating the petition for bankruptcy or restructuring, and the problems of credit card debts could not be solved through legal procedures. In 2006, at the request of NGOs and credit card debtors and based on the belief in fair justice and elimination of poverty, LAF made criticizes the unreasonableness of the existing negotiation mechanism, and dedicated itself to helping debtors negotiating with banks. In 2007, LAF joined the NGOs to form an alliance advocating the enactment of Consumers Debt Clearance Regulations ("CDCA") and thereby the establishment of a mechanism for debt restructuring and clearance. After the enactment of the CDCA and 9 months before it is effective, LAF actively initiated a promotion to debtors as well as trainings to legal aid attorneys for them to understand its content, and to provided a hotline to debtors for reservation for legal consultation and legal aid application. After the CDCA came into effect on April 11, 2008, while the legal aid attorneys appointed by LAF branch offices have provided numerous debtors with legal consultation and assisted them with negotiation, restructuring and clearance, both the judges and attorneys need to learn and find out the best application of the regulations. To the different interpretations made by different judges, the LAF team for the CDCA Program would analyze and provide responding strategies to attorneys while presenting the collection of the unreasonable and inconsistent interpretations made by judges to judiciary authorities as reference for improvement. Following are descriptions of relevant credit card debt issues in Taiwan and the different stages of participation of LAF.

II. Poverty and Legal Aid in Taiwan

The legal aid system was established in 2004 in Taiwan. At that time the priority understanding about legal aid focused on consolidating people's litigation right and equality right. The so-called protecting the rights of the disadvantaged also emphasized on the aid to litigation. LAF has indeed provided legal aid to some disadvantaged people's litigations since the Foundation's establishment, but the disadvantaged are not necessarily involved in litigation, and their problems may not always be solved by litigation or conventional law suit. LAF has limited knowledge about poverty issues, and provides little legal aid to people with poverty problems.

Both the major political parties in Taiwan are right-wing parties that emphasize on democracy and liberty but ignore social justice and equality. The tax rate in Taiwan is not high, and so the social welfare system and security system are relatively defective.

The Social Assistance Law in Taiwan provides subsidies to low-income households. However, as described below, only perhaps 1% of the disadvantaged can receive the subsidies, while the other poor majority will be trapped in the cycle of poverty. As the social insurance and social security systems are not sound enough, people may be trapped in poverty if they themselves or their family suffer from serious accident or illness, long-term unemployment or business failure.

Besides the aforesaid debt problems, the poor in Taiwan may also have trouble with medical care, children's education, employment, subsidies and loaning with legitimate rates. All these issues are handled by social workers without any assistance from legal workers, who know very little about these issues. In the past, LAF did provide assistance with debt problems and application by few poor people for administrative relief to low-income households but never legal aid to the poor with other problems.

If LAF believes that the major task for legal aid is to assist the poor with relevant legal issues (not limited to conventional law suits), in the future the Foundation must work closely with social workers to provide aid to the poor with disputes concerning various subsidy application and administrative relief. When both the central and local governments fail to provide a comprehensive system or administrative measures to meet the poor people's demands, LAF will also provide legal aid to them in application for administrative relief and petition for Constitution interpretation. When necessary, LAF should assist with statute amendment or enactment to protect the poor.

Part Two. Debt Issues and Legal Aid in Taiwan

One. Deterioration of Debt Issues in Taiwan and Its Causes

I. Data Related to Credit Card Debts in Taiwan

(I) Card Issuance in Taiwan

1. Credit Card: The number of circulated cards exceeded 10,000,000 in 1997 and 40,000,000 in 2004. The total credit amount was NT$491,000,000,000 in 1997 and NT$1,421,000,000,000 in 2005, an indication of amazing credit card business growth.

2. Cash Card: In 1999 the Cosmos Bank first started to issue cash cards. The number of cash cards issued in 2005 was 3,810,000 and the loan amount totaled NT$299,700,000,000, another sign of rapid business growth.

II. Overdue Credit Card and Cash Card Payment in Taiwan

The seriousness of credit card debt problems started to show in the latter half of 2005. By February 2006, the sum of revolving credit balance and cash card loan was NT$764,900,000,000. A total of 520,000 card owners had overdue payments, the average amount of their debts was NT$300,000, and 160,000 of them owed more than NT$300,000. The amount of overdue debts increased rapidly, the reasons included revolving credit rate and liquidated damages, etc.

III. Bank-Related Causes of Deterioration of Card Debt Problems

(I) Surplus of Banks

In 1991, the government lifted the ban on the establishment of new banks. By 2005, there were

7690 banking institutions including their branches, and the average number of banking institutions per 10,000 people in Taiwan was 2.7 times of that in Japan, which was a sign of too many banks.

(II) Surplus of Bank Funds

When businessmen shift their focus to China, the percentage of Taiwan's banks loan to enterprises drops as a result. In 2000, during the financial storm in Taiwan, investment in the private sectors became stagnant and the demand for fund was low, hence the banks also shifted their emphasis from "enterprise's loan" to "personal consumer's loan".

(III) Improper Promotion by Banks

To promote their credit card and cash card business, the banks place massive improper advertisements on TV and newspapers. Stalls at railway stations or MRT stations where crowds meet handle fast application and issuance of cards without credit checking even repeatedly to those who are already loaded with debts. To inflate their credit loan, the banks would hire marketing staff or collaborate with sales agencies and even forms collusion with the outsiders, making debt problems even worse.

(IV) The banks encourage credit card consumption through various favorable terms, making card users overlook the high revolving interest rate, liquidated damages and handling fees, etc.

Most credit card holders regard their cards as a tool for payment instead of borrowing and therefore pay little attention to the high revolving interest rate, liquidated damages and handling fees. In the meantime, the banks encourage mass consumption via annual charge exemption, bonus points and other favors in addition to the lure of a minimum payment requirement. When holders turn their cards into a borrowing tool because of excessive consumption, the banks are compensated for their loss caused by the aforesaid favors from the high interest, damages and handling fees earned later. The interest rate of banks' credit cards and cash cards is almost 20% and revolving or compound by nature. With the addition of liquidated damages, handling fees and other charges, the actual annual interest rate can be as high as 82%, which is a grave burden for card holders who are not fully informed of the truth about the rates by the obligated banks.

(V) Debt collection agencies are hired by banks to press debtors with illegitimate methods.

Most banks commission agencies to collect credit card and cash card debts. The agencies would make dozens or even hundreds of phone calls to debtors each day, and make them unable to work by threatening, insulting or abusing them. The collectors might call the families, employers or friends of debtors, causing pressure on the debtors. The collectors would even send people to debtors' residence and cause pressure and disturbance to their family.

IV. Debtors-Related Causes of Deterioration of Card Debt Problems

Since the CDCA was passed by the Legislative Yuan in June 2007 after the third reading of the draft Bill, LAF has held many introduction meetings for debtors around the country and asked the participants to complete a survey. The findings of the 1300 surveys collected are listed as follows, which explain their reasons for getting into debt:

(I) Income insufficient to cover the expenditure. (41.9%)
(II) Unemployment (30.3%)
(III) Business failure due to unsuccessful fund procurement (27.2%)
(IV) Excessive consumption (24.7%)
(V) Helping the family to pay off their debts (23.3%)
(VI) Huge medical expense for the debtors or their family (16.7%)
(VII) House purchasing (14.6%)
(VIII) Being fraud victims (12.7%)
(IX) Debt transferred by being guarantors for others (12.3%)
(X) Being victims of private rotating savings embezzlement (10.9%)

These data indicate that the reasons for debtors' deteriorating debt problems are insufficient income (e.g. living beyond one's income, unemployment and business failure, etc.), huge expenditure (e.g. medical expense, house purchasing, helping others with paying off debts, indebted by guaranteeing for others, being victimized by fraud or rotating savings embezzlement, etc.) and excessive consumption. Debtors are often smeared by banks through media reports that they owe money because of excessive consumption, which does not conform with the facts. Excessive consumption is the cause of debts for a minority of debtors, and the major causes are insufficient income and huge expenditure.

V. Society-Related Causes of Deterioration of Card Debt Problems

(I) Economic Recession and High Unemployment Rate

Affected by economic recession and industry emigration, the unemployment rate and unemployed persons increase day by day. The unemployed people try to survive on loans and their debt problems become worse.

1. The unemployment rate broke 5% in December 2008 and continued to rise to near 6% by May 2009.

2. The number of unemployed persons increases with the unemployment rate.

Month	Unemployment Rate (%)	Persons Unemployed (by Thousand)
Average in 2005	4.13	428
Average in 2006	3.91	411
Average in 2007	3.91	419
2008/7	4.06	442
2008/8	4.14	452
2008/9	4.27	464
2008/10	4.37	476
2008/11	4.64	507
2008/12	5.03	549
2009/1	5.31	578
2009/2	5.75	624
2009/3	5.81	630
2009/4	5.76	625
2009/5	5.82	633
2009/6	5.94	647
2009/7	6.07	663
2009/8	6.13	672

(II) Poverty Line Set too Low and Insufficient Social Welfare

According to Taiwan's Social Assistance Law, the poor who are confirmed by the government as low-income households can receive subsidies. But local governments do not pay much attention to this operation, whose budgets are very low. As a result, about only 1% of the low-income households can have subsidies while the majority has none. When they have problems in life, using credit cards or cash cards may temporarily solve their problems but more unsolvable debt problems will follow. For those subsidized low-income households, the limited amount they receive is not enough when emergencies happen, and loans are needed and debts ensue. The following are the number of confirmed low-income households, persons, and rate.

Year (Month)	Low-Income Households			
	No. of Households by Year(Month)'s End	Percentage of Total Households (%)	No. of Persons by Year(Month)'s End	Percentage of Total Persons (%)
1999	58,310	0.89	136,691	0.62
2000	66,467	0.99	156,134	0.70
2001	67,191	0.99	162,699	0.73
2002	70,417	1.02	171,200	0.76
2003	76,406	1.08	187,875	0.83
2004	82,783	1.15	204,216	0.90
2005	84,823	1.16	211,292	0.93
2006	89,900	1.22	218,166	0.95
2007	90,682	1.21	220,990	0.96
Jan.-Sept. 2007	89,097	1.19	216,312	0.94
Jan.-Sept. 2008	90,846	1.19	218,180	0.95

Two. Administrative and Judiciary Institutions Are Both Unable to Solve Debt Problems

I. The authorities' belated actions do not help.

(I) The authorities' belated actions do not help.

The Financial Supervisory Committee ignored and did not try to regulate the banks' improper promotion of credit cards and cash cards, high interest rates and hiring debt collection agencies which adopted illegitimate practices until debt problems became serious in the latter half of 2005.

It was until the latter half of 2005 when the debt problems became a grave social issue and were extensively reported by media that the Financial Supervisory Committee issued administrative orders to restrain the banks, but had limited effect over the already deteriorated problems:

1. Improper collecting acts are prohibited.
2. Improper advertisements are banned and all other ads should contain warnings.
3. When issuing cards the banks should examine the applicants' financial sources and paying capability and stipulate that an unsecured debt may not exceed the applicants' average monthly income by 22 times (in Japan it may not exceed one third of the applicants' annual income).
4. The banks should inform the debtors of the interest rate and all related charges. Adoption of compound interest is forbidden.

(II) The general debt negotiation mechanism proposed by the Bankers Association of ROC in 2006 did not take the debtors' paying capability into consideration and therefore did not truly solve the problems.

From December 15, 2005 to the end of 2006, the Bankers Association set up a debt negotiation mechanism for credit cards, cash cards and credit loan on the instruction of the Financial Supervisory Committee. However, the mechanism did not take the repayment capability of debtors into consideration, and so the debtors might not be able to pay even if the negotiation succeeded. Consequently the debts problems were not truly solved.

II. The court' opinion in Taiwan being conservative, the application of Bankruptcy Law was limited to the juridical person and all bankruptcy petitions by natural persons were dismissed.

When ROC took over Taiwan from Japan in 1945, the government continued to adopt the bankruptcy law from mainland China which provided for settlement before bankruptcy and bankruptcy procedures, which in theory are applicable to both natural and juridical persons. However, the practical opinions of the court again and again dismissed natural persons' bankruptcy petitions by assuming that debtors' assets could not cover bankruptcy procedure fees. Among the two or three hundred bankruptcy cases processed by the court per year, only a few dozen were approved and almost all were petitioned by juridical persons. In 2006, the Taipei District Court even dismissed a bankruptcy petition on the basis of the existence of debt negotiation mechanism.

Before the enactment of the CDCA on April 11, 2008, there was no restructuring system for natural persons to solve their debt problems, and their bankruptcy petitions were always dismissed by the court. Having no way to get them out of trouble, the desperate debtors created a lot of social problems. While the juridical persons could petition for bankruptcy according to the Bankruptcy Law or for restructuring according to Corporation Law when they had difficulties to pay off debts, it was obviously unfair that natural persons could not appeal to any mechanism to solve their debts.

Three. Credit Card Debts Cause Serious Social Problems in Taiwan

I. Since the first issuance of cash cards by banks in Taiwan in 1999, coupled by the overstretched issuance of credit cards, the problems with card debts became more and more serious and reached culmination by 2005 and 2006, resulting in grave troubles in society. Similar reports could be seen on media almost every day.

(I) Though paying back every month, debtors found that their debts grew more and more because of the high interest rate and liquidated damages. Some debtors killed themselves by burning charcoal, and some and their entire family committed suicide for fear that their children might be trapped in debts.

(II) Debtors dared not stay at home at night to face collectors. Some even took their children away and became homeless people, creating difficulties for their children to study. For this matter, the Ministry of Education later relaxed the regulations and allowed children to enter a school outside their designated zone.

(III) Some debtors would not marry even when pregnant because they were afraid that the debt collectors might disturb the work or life of their spouses.

(IV) Desperate debtors took the risk to make money via fraud, drug trafficking and even robbery.

II. Most Suicidal People Have Debt Troubles

(I) The number of suicidal mortality in 2008 is 4,128, ranking 9th of all causes of death. The crude suicidal mortality rate (number of deaths/mid-year population) in 2008 is 17.9 per 100,000 people, ranking 9th of all causes of death. If calculated according to the world's standard population structure of 2000 (with the factor of aging population included), the standardized mortality rate is 15.2 per 100,000 people in 2007, with a slight increase of 3.5% from that of 2006. Of all causes of death, the percentage of suicidal mortality in 2008 is 2.9%, with an increase of 0.1% from that of 2007. The following are the number of suicidal mortality and percentage of suicide among all causes of death from 1987 to 2008.

Year	Suicidal mortality	Percentage of Mortality
1987	1851	1.9%
1988	1790	1.8%
1989	1573	1.5%
1990	1359	1.3%
1991	1465	1.4%
1992	1381	1.3%
1993	1301	1.2%
1994	1351	1.3%
1995	1618	1.4%
1996	1847	1.5%
1997	2172	1.8%
1998	2177	1.8%
1999	2281	1.8%
2000	2471	2.0%
2001	2781	2.2%
2002	3050	2.4%
2003	3193	2.5%
2004	3467	2.6%
2005	4281	3.1%
2006	4404	3.3%
2007	3930	2.8%
2008	4128	2.9%

(II) The causes of suicide are many, and economical factor like unemployment or debts is a major one. When the unemployment rate rises or debt problems deteriorate, suicide rate also rises, which is discussed by many relevant essays and theses in the world. In the two years of 2005

and 2006 when debt problems were most serious in Taiwan, 4000 people committed suicide, and the mortality rates were 3.1% and 3.3% separately, which were the most of the past years.

Four. In 2006, at the request of NGOs and moved by the stories of the debtors, LAF started to assist debtors in negotiation with the banks and understood the aforesaid debt problems and their causes.

I. Before 2006, LAF followed the rules and in principle did not provide legal aid in bankruptcy cases.

Before the enactment of the CDCA in 2007, although there was an effective Bankruptcy Law, the court deemed that it applied only to juridical persons and natural persons could not petition for bankruptcy. Hence when LAF was established in 2004, in principle the Foundation did not provide legal aid to bankruptcy cases according to the Implementation Measures and Scope of Legal Aid Act. At that time LAF neither realized the importance of a bankruptcy or restructuring system to the disadvantaged debtors nor understood that the desperate debtors were exactly the major subjects of civil legal aid. It was in early 2006 when LAF was requested by the NGOs to provide legal aid to debtors, and when LAF realized that debt cases were the majority of civil legal aid cases during a study trip to the United Kingdom in October 2006 that debt cases gradually became a major type of legal aid provided by LAF.

II. In 2006, at the request of NGOs and moved by the stories of debtors, LAF started to assist debtors in negotiation with the banks.

When first founded, LAF was busy with establishing branch offices and the legal aid scheme in general, therefore had limited understanding about debt issues and a biased view under the influence of the media. It was the request from the NGOs and the case stories from the NGOs that moved LAF, and stirred LAF to the understanding of the relevant issues and the provision of legal aid.\

(I) Story of a Debtor : Father of a Premature Baby

In early 2006, Mr. Si-kai Jian, Convener of the Pan-Purple Coalition, called me and asked me to find attorneys to help credit card debtors. I had thought that most debtors were people who led a luxurious, squandering life and bought LV bags and therefore were not supposed to be the subject of LAF service. But as I asked my associates at LAF to invite the legal aid attorneys by fax, more than 90 of them expressed their willingness. I rang Mr. Jian back and asked him to contact the attorneys on the list. I thought I have done my job, but then Mr. Jian requested LAF to help the debtors. I hesitated and wondered if they really were the disadvantaged people who needed LAF's assistance. However, the experience of serving the disadvantaged in society for years told me that only through actual contact with cases that I could understand this issue. Therefore I asked Mr. Jian to invite some debtors to LAF for exchange of opinions.

Four debtors came to LAF and related their stories. They explained why they got into debt, how they tried to pay off but the money they owed simply grew more, and how the debt collection agencies were commissioned by the banks to press them. When they finished their stories, I realized how my understanding about credit card debtors was affected by the mainstream media, whose reports were so much different from the reality in society. Now years later I still remember that one of them was a taxi driver in his forties who spent lots of money on his premature baby. Originally he was a private chauffeur but was dismissed because he spent too much time going to the hospital. Then he became a cab driver but could not make enough money because of SARS and the economic recession. He borrowed several hundred thousand of dollars from the bank, and the loan became several million dollars in a few years due to the revolving interest rate. The more he paid, the more he owed, while the debt collectors haunted him with harassment and abuse all the time. Just a few days before coming to LAF he had intended to kill himself by burning charcoal but had stopped when he thought of his adorable young child. He said he truly wanted to pay off his debt to set a good example for his child and pled the bank for a second chance. When I saw that forty-something-year-old man confessing in tears, I was shaken in my heart.

I use credit cards often but never for borrowing money, and credit cards are just my tool for payment. At first I did not understand why debtors did not try to live within their income but resorted to loan on cards. On hearing their stories, I suddenly realized that people like me who use credit cards as tools for payment could not understand the pain of those who use cards as borrowing tools. Does this also imply a kind of gap, caused by the differences in social strata?

(II) Story of a Debtor : Sister Who Is Pregnant but Cannot Marry

The stories of credit card debtors made us decide to cooperate with the Pan-Purple Coalition. During the process of assisting them in negotiation with the banks, we heard more about their sad stories. One debtor said that her younger brother was born with a genetic disease. At that time the system of national health insurance was not yet established, and his medical expense exceeded one million NT dollars per year. Their parents sold their house but still could not afford to pay and had to borrow from others and take on many jobs. When she started to work, she also borrowed several hundred thousand dollars from the bank to pay her brother's medical expense and her family's living cost. Her loan increased to several million dollars from 1990s to 2006. To keep her credit, she worked multiple jobs to make money and was never late for payment. In 2005, she had a boy friend and became pregnant, but she dared not marry lest her boy friend should have been involved in her debts. When she was informed by the hospital that she might not be able to work due to her health conditions, she tried to negotiate with the major lending bank but was told that she needed no negotiation because she had paid regularly. When she could not continue working, she tried to negotiate with the bank but was told that she was not qualified because she did not have a job. The collection agencies hired by each bank would call her about 20 times a day, and she had to answer

over 200 calls from the dozen of banks who had loaned her money. Sometimes the collectors made phone calls to her employer and she was nearly dismissed. They even went to her home and collected money from her senile grandmother.

III. LAF expected that through assisting 300 debtors in negotiation with the banks the Foundation might understand the causes of their debts and if the banks' negotiation mechanism was reasonable, or if a reasonable mechanism might be established to thoroughly solve all debtors' problems.

In 2006, after contacting the NGOs and debtors, LAF understood that debtors were indeed the disadvantaged who needed legal aid. Then the Foundation rallied near 100 enthusiastic legal aid attorneys and 3 staff attorneys to process the applications from around 500 debtors. With the exception of those who were refused after assessment, those who completed the negotiation by themselves and those who lost contact with the Foundation, a total of 300 debtors had finally received legal aid from the Foundation to proceed with collective negotiation with the banks. Knowing that there were several hundred thousand debtors with payment problems, why did the Foundation decide to help only 300 of them? In fact it was expected that, through the process of helping those 300 debtors, the Foundation might understand the cause of their debts and whether the general negotiation mechanism proposed by the banks in 2006 was reasonable and feasible. If possible, the Foundation hopes to propose a reasonable mechanism for the authorities to ask the Bankers Association to make amendment accordingly and thoroughly solve the problems of all debtors. The Foundation understood that it was meaningless for the attorneys to represent debtors in negotiating with the banks if the mechanism was not reasonable. LAF also believed that if the disadvantaged people lacked a reasonable legal mechanism for resolving their problems, it would be the task of LAF to help establishing or modifying the system because the subject of legal aid service is not limited to serving individual cases.

IV. A Card Debt Project Team was formed by LAF to research into the issue, actions were taken to comment on the faults in Bankers Association's negotiation mechanism, and the civilian version of the negotiation mechanism was proposed.

(I) A Card Debt Project Team was formed by LAF.

LAF attorneys, staff attorneys and external attorneys together formed a Card Debt Project Team to communicate closely with debtors and the NGOs in order to fully understand the real problems and condition of debtors. While researching into the unreasonable regulations of the Bankers Association's general debt negotiation mechanism, a civilian version of negotiation mechanism was proposed. A research was also made by the Project Team to compare the advantages and disadvantages to debtors of the Judicial Yuan's draft the CDCA and the restructuring draft proposed by some members of the Legislative Yuan.

(II) Criticisms were made by LAF on the Bankers Association's general debt negotiation mechanism.

1. Following the instruction of the Financial Supervisory Committee, the Bankers Association established a debt negotiation mechanism for credit cards, cash cards and credit loans from December 15, 2005 to the end of 2006. The Committee claimed that the number of applicants totaled 270,000, among which 222,000 succeeded in negotiation.

2. As a matter of fact the mechanism had limited effect and the following faults.

(1) The banks did not allow debtors to be represented by attorneys and thus created an inequality in the respective positions of both parties. Without the attorney's assistance, debtors could not know if the calculation of banks' interest rate, liquidated damages and handling fee was legitimate. If the banks did not provide the relevant information, debtors had no way of understanding how the indemnity amount was offset. It was also hard for debtors to know whether the standard form contract for negotiation drafted by the banks was reasonable or not.

(2) At that time there wasn't an effective restructuring and clearance system, and the banks were willing only to lower their interest rate instead of offering discount of the principal. Without an alternative system of restructuring and clearance, debtors could not but agree to the negotiation terms offered by the banks.

(3) The banks asked only for fast debt collection without considering debtors' income or paying capability, and so debtors might find it hard to fulfill their agreement afterwards even if they had agreed reluctantly. According to the banks' terms, 48% debtors of the 300 cases processed by LAF were required to pay back more than their monthly income, and 70% of them had to pay back an amount 3/4 higher than their income.

(4) Because of the high interest rate, liquidated damages and handling fee in addition to the pressure from collectors, debtors could not but agree to the banks' negotiation terms even though they knew there would be difficulty in fulfilling them.

(5) Debtors' paying capability might differ at different times of the year, for example, the tuition fees of their children might vary for each school semester. But at that time the banks' negotiation terms were set by computer software and had to be consistent throughout the year. Hence they refused to offer different repayment terms for different periods of the year.

(6) The terms offered by banks were deemed accepted by debtors if they did not object within a certain time, therefore the number of successful negotiations was inflated.

(7) In total, 250,000 debtors did not petition for negotiation, 50,000 failed in negotiation, and a large number of the 220,000 successful in negotiation had difficulties in fulfilling their agreement.

(III) "10 Schemes of Civilian Version of Negotiation Mechanism" was proposed by LAF.

1. The banks should provide information to confirm the amount of debt.

   The banks should provide debtors with information about their debt structure, including the principal, interest, handling fee, liquidated damages, the amount paid and others.

2. For whatever items, no more payment would be made if the annual simple interest rate exceeds 20%.

   It is in breach of the Civil Code if the banks calculated their interest at the compound interest rate. Therefore no matter what the items are, they all should all be calculated at an annual simple rate of 20%. As a result, the s invalid, while the payment on the excess interest need not continue and should be deducted from the amount owed.

3. The maximum monthly repayment amount should be determined according to debtors' income.

   (1) The maximum pay off amount should be in proportion to debtors' work income. The higher their income is, the higher their pay off amount becomes according to a progressive ratio.

   (2) A minimum basic living cost should be reserved for debtors and it should not be less than NT$11,000.

   (3) The following items may be deducted from debtors' income:

   a. Regular medical expenses for debtors or their family who has serious illness or injury
   b. An amount equivalent to their tax deduction if debtors have dependents
   c. Other items necessary to be deducted

4. The interest rate should be 3.88% or none.

   (1) Principle: calculated according to the annual simple rate of 3.88% for the loan principal

   (2) Exceptions to be exempted from interest payment:

   a. Mid- or low-income household
   b. Debtors or their family with serious illness or injury
   c. Debtors with total amount owed that needs to be paid off in more than 80 installments

5. Liability-free after 10 years

   For debtors who owe a total that needs to be paid off over 120 installments, the excessive part needs not to be paid.

6. Principal discount

   Debtors who meet the following conditions should be favored with principal discount

   (1) Mid- or low-income household
   (2) Debtors or their family with serious illness or injury
   (3) Debtors who have lost their working capability or has low working capability

7. Negotiation principles for debtors without income

   (1) Debtors who have no income but have relatives willing to pay for them should present an income agreement.
   (2) Debtors who have no income for the time being might have a year's grace time if they present a certificate or proof.

8. Principle for flexible adjustment

   If the income of debtors varies, they should honestly inform the banks and modify their payment per installment according to the ratio stipulated by Article 2 of this negotiation mechanism.

9. Stop counting the interest

   The debt collecting action should stop from the day of negotiation petition by debtors, and the interest counting should also stop.

10. Applicable subjects

    This negotiation mechanism applies to subjects who –

    (1) had already been late for payment for 30 days prior to the negotiation.
    (2) are normal households with a debt ratio higher than 25 times.

(IV) LAF took actions to voice for debtors.

1. During the first half of 2006, members of LAF Card Debt Project Team accepted 17 interviews by TVBS, ETTV, Police Radio Station, and Cheng Sheng Broadcasting Corporation, etc. on credit card debt issues to explain the serious faults of the general negotiation terms proposed by the Bankers Association and the major reason for LAF's presentation of "10 Schemes of Civilian Version of Negotiation Mechanism".

2. On March 27, 2006, LAF Card Debt Project Team and CEO Jian of the Pan-Purple Coalition paid a visit to the Financial Supervisory Committee and explained about the banks' improper methods of debt collection, the unreasonable general negotiation terms proposed by the Bankers Association, and presented the "10 Schemes of Civilian Version of Negotiation Mechanism".

3. On April 12, 2006, LAF Card Debt Project Team held a press conference to expose the facts about the negotiation data presented by the Financial Supervisory Committee.

4. During the first half of 2006, members of LAF Card Debt Project Team were invited to attend the many hearings at the Legislative Yuan to explain about the banks' improper methods of debt collection, the unreasonable general negotiation terms proposed by the Bankers Association, and presented the "10 Schemes of Civilian Version of Negotiation Mechanism". The Team also pointed out that the authorities, i.e. the Financial Supervisory Committee and the Banking Bureau, were partial to the banks and allowed them to oppress debtors. A successful negotiation might be defaulted and meaningless if the debt negotiation mechanism did not take into consideration the debtors' capacity to repay, and the data of successful negotiations were false and deceptive.

V. Although the media reported on LAF's action, the Bankers Association's unreasonable negotiation mechanism still could not be changed.

(I) LAF's research and action attracted the attention and reports by the media.

LAF initiated researches into debt issues and the negotiation mechanism, held press conferences, attended hearings at the Legislative Yuan, visited the authorities, criticized on the unreasonable negotiation mechanism proposed by the Bankers Association and presented the "10 Schemes of Civilian Version of Negotiation Mechanism". These actions attracted the attention and reporting by the media and produced the effect of speaking for debtors.

(II) Veiled by the data of 220,000 successful negotiations presented by the Financial Supervisory Committee, the reports by media and public attention diminished greatly in the second half of 2006.

Because of the aforesaid measures taken by the Financial Supervisory Committee in the second half of 2005 and the massive media reports on incidents of debtors' suicide during the first half of 2006, the collection agencies commissioned by the banks did restrain a little in their methods. The negotiation mechanism proposed by the Bankers Association in 2006 temporarily freed those debtors who succeeded in negotiation from being pressured by debt collection, and the media's reports on debtors' suicide was much less frequent in the second half of 2006, plus that the Financial Supervisory Committee repeatedly propagandized the 220,000 successful negotiation cases. All of these led the public and Legislative Yuan to believe that the debt problems had been solved and was less concerned with this issue.

(III) The Financial Supervisory Committee agreed to help only the 300 cases represented by LAF but rejected the Foundation's proposal to amend the unreasonable terms of the negotiation mechanism, and the Committee even asked the Judicial Yuan to dissuade LAF from participating in "social movement".

At the press conference, hearings and during visits to the Committee, LAF repeatedly stressed that the negotiation mechanism proposed by the Bankers Association did not taken the debtors' capacity to repay into consideration, which was apparently unreasonable. LAF also presented the "10 Schemes of Civilian Version of Negotiation Mechanism" and demanded the Association to make amendment. But the officials of the Financial Supervisory Committee arrogantly indicated that most debtors had succeeded in their negotiations with the banks and the Committee refused to amend the mechanism. They only agreed to assist in negotiation with the banks concerned if the 300 cases represented by LAF had difficulties. Later when the Committee found out that LAF, who often criticized in the Legislative Yuan and other occasions, was not an NGO but an NPO established with the budget of the Judicial Yuan, the Committee turned to the Judicial Yuan and through it advised that LAF should offer services only to individual cases only instead of engaging in the "social movement" which is beyond LAF's "proper duties".

VI. Yielding to reality, LAF Card Debt Project Team confined service only to assisting the 300 negotiation cases in the second half of 2006.

(I) LAF made the painful decision to assist only the 300 cases while waiting for the right moment to seek resolutions to the overall debt problems.

LAF Card Debt Project Team did not agree with the view of the Judicial Yuan or the Financial Supervisory Committee that LAF should only engage in providing services to individual cases and that LAF's advice for improving the negotiation mechanism was an act of "social movement" or "beyond the Foundation's proper duties". On the contrary, LAF thought that establishing or improving the laws and mechanisms for resolving the problems of the disadvantaged was the most effective and most economical way of providing legal aid. Also, intervention from the Judicial Yuan and the Financial Supervisory Committee in LAF's business have seriously infringed the independence of LAF. However, considering that the public and the Legislative Yuan's concerns with this issue have already diminished in the latter half of 2006, LAF was incapable of dealing with the Financial Supervisory Committee or the Bankers Association and painfully decided to deal with these 300 cases first. Some LAF staff questioned, "Don't we care about the hundred thousand debtors besides these 300 cases?" We could only wait for the right moment to seek for resolutions to the overall debt problems.

(II) What LAF Learned from the Experience of Assisting These 300 Cases:

1. When LAF staff attorney assisted the debtors in the 300 cases in applying for debt negotiation, all banks refused to allow the attorneys to represent debtors. In addition to writing and visiting the Financial Supervisory Committee, demanding the Committee to correct the banks, LAF immediately sent a letter to the banks stating that their refusal was in breach of the Attorney Regulation Act and Legal Aid Act. In the end the banks agreed to allow LAF to represent the debtors in the 300 cases.

2. The general debt negotiation mechanism proposed by the Bankers Association was a standard form of terms, and debtors could not make negotiations except expressing their agreement or disagreement to accept. Also, as the mechanism did not take into consideration the debtors' capacity to repay, debtors could only accept reluctantly, hoping to gain a lower interest rate and temporary relief from collectors' pressure, while it in fact went beyond their repayment capability. LAF Card Debt Project Team attempted for several times through the Banking Bureau to negotiate with the major banks in relation to the following matters:

   (1) In the first negotiation, the Project Team requested the major banks to consider individual debtor's paying capability and specific conditions and stop debt collection during the negotiation period.

   (2) In the second negotiation with the major banks, the following matters were covered:

   A. The banks might examine individual cases and consider whether a flexible adjustment was possible for cases requiring more than 120 installments.
   B. The banks might consider whether it was possible to slightly extend the number of installments for cases requiring more than 240 installments but with insignificant difference.
   C. The banks give individual considerations for special cases.
   D. The banks consider whether it is possible to accept the debtors' proposals to pay different amounts at different stages.

   (3) In the third negotiation with the major banks, the following matter was covered:

   Discussion over the possible alternative ways of payment is made when the terms of both parties are at odds with each other. The representatives from the banks agreed to further evaluate some of the cases, and LAF staff attorneys continued to coordinate this matter after the negotiation meeting.

3. In addition to the negotiations on matters of principle between LAF Card Debt Project Team and the major banks through the Banking Bureau, the staff attorneys responsible for the cases had to coordinate and communicate with every debtor and persons in charge of their cases from the banks. By the end of 2006, 186 cases succeeded in negotiation, the process and outcome of which obviously were favored with certain "special privileges" when compared with many other debtors. When these 300 negotiation cases were completed, LAF has not forgotten how to establish a reasonable overall mechanism for resolving debt problems.

Five. Alliance was formed to promote the passage of consumer debt restructuring and clearance law in the first half of 2007.

I. Drafts Bills on Consumer Debt Restructuring and Clearance

(I) The Judicial Yuan's Draft Bills of the CDCA

1. When credit card debts became a serious social problem, the Judicial Yuan decided in February 2006 to propose an independent legislation of THE CDCA besides amendments to the Bankruptcy Law. A research team was formed by Civil Department of the Judicial Yuan discussed at nonscheduled meetings and completed the entire draft on April 11, 2006.

2. In June 2006, the Judicial Yuan sent the CDCA draft to the Executive Yuan and started negotiation. On September 19, the Judicial Yuan and the Executive Yuan presented a joint proposal of the draft and submitted it to the Legislative Yuan for deliberation on December 21, 2006. Different opinions and amendment by the Executive Yuan were listed in this joint version.

(II) Draft of Restructuring or Clearance Law Proposed by Members of the Legislative Yuan:

The frequent news reports about debtors' suicides since the second half of 2005 caused great public concern, therefore besides the Judicial Yuan's CDCA Draft, quite a few members of the Legislative Yuan also proposes different draft versions, e.g. the Pan-Purple Coalition's version of Draft of Civil Restructuring Law, Legislator Ci-chang Cai's Special Chapter of Restructuring Procedure for Natural Persons in the amendment to the Bankruptcy Law, Legislators Gen-de Chen and Jhih-huei's Draft of Personal Debt Restructuring Law and Kuomintang's version of Debt Clearance Law.

II. LAF held discussion meetings about relevant laws in the first half of 2006 and paid visits to members of the Legislative Yuan.

(I) In the first half of 2006, LAF held two conference about the civil restructuring law, to which 27 participants including attorneys, scholars and actuaries were invited. Discussions about the

aforesaid drafts were made in addition to presentations of a comparison table and 23 concrete proposals.

(II) During the first half of 2006, LAF visited two legislators to exchange opinions about the restructuring law and held press conferences for the visits.

III. No progress was made by the Legislative Yuan in the second half of 2006 regarding the restructuring or clearance law.

In the latter half of 2006, the Financial Supervisory Committee and Bankers Association repeatedly claimed that 220,000 of the 270,000 debtors had succeeded in negotiation and so there was no need to establish a restructuring or clearance system. They also tried to smear the image of debtors via media by describing debtors as luxurious, squandering and irresponsible, and indicated that the system would create grave moral crisis in society. Affected by their opinions, the legislators made no progress in deliberating the restructuring or clearance legislation.

IV. Background of LAF's Active Promotion for Restructuring or Clearance Legislation during the First Half of 2007

(I) Through assisting with 300 debt negotiation cases in 2006, LAF had a clear understanding about the seriousness of debt problems in society and the unreasonable terms of the banks' negotiation mechanism. According to this mechanism, the debtors' problems could not be thoroughly solved even with the assistance from LAF in negotiation with the banks.

(II) LAF found that with the exception of few legislators, in the second half of 2006, most members of the Legislative Yuan no longer had the enthusiasm for the legislation of debt restructuring or clearance and no progress was made in their examination. Furthermore, the second half of 2007 happened to be the time for election at the Legislative Yuan, and legislators would be too busy in election to care about this kind of law. In 2008 a new term of legislators would begin, the previous bills would not continue and each draft would have to be deliberated all over again, and it seemed that the legislation of restructuring or clearance would not be completed in the foreseeable future. Though the CDCA Draft was completed by the Judicial Yuan under social pressure and expectation, it was not of priority among other cases. Facing the strong objection from the Executive Yuan and the banks, it was impossible for the Judicial Yuan to actively lobby for it at the Legislative Yuan. As caring for the disadvantaged had always been the major task of LAF, the Foundation joined the NGOs without hesitation and established an alliance to promote the legislation of restructuring and clearance law and gave support to the Judicial Yuan and those few legislators who were concerned with debtors.

V. In January 2007, LAF joined NGOs to establish "Debt-Restructuring and Bankruptcy Law Promotion Alliance".

In January 2007, LAF rallied all the social groups who cared about the disadvantaged, including Taipei Bar Association, Judicial Reform Foundation, Taiwan Association for Human Rights, Taiwan Labor Front and other labor groups, National Alliance of Taiwan Women's Association, The Garden of Hope Foundation and other women's groups, League of Welfare Organizations for the Disabled, Parents' Association for Persons with Intellectual Disability and other groups of the disabled, Consumers' Foundation, Millet Foundation and other indigenous groups, etc., to form the "Debt-Restructuring and Bankruptcy Law Promotion Alliance". With the CEO of the Judicial Reform Foundation as the convener, the Alliance would dedicated itself to promoting the legislation of debtors' restructuring and clearance law, hoping to complete the three reading procedure of the Judicial Yuan's CDCA before June 2007. I remember that after the press conference for the establishment of the Alliance on January 16, 2007, a financial reporter called me. He said that the Alliance's appeal was reasonable, but as the banks were very powerful, it would be almost impossible to have the CDCA passed in the session before June. He asked about my opinion, but actually I could not be sure, either. I told him that people like us who were engaged in social reform always sought for the possibility out of the impossible, for a hope out of difficulties, and could only did our best for it.

VI. Alliance's Lobbying at the Parliament

(I) Press conferences were held.

(II) Public hearings were held about the restructuring and clearance law.

(III) Visits were made to the Judicial Yuan, party groups of the Legislative Yuan and legislators who made proposals.

(IV) The self-help association formed by the Alliance and debtors made petitions to the Executive Yuan and Legislative Yuan.

(V) A march for "The Poor Stand up for Warmth" was held by the self-help association formed by the Alliance and debtors.

(VI) Alliance members met the legislators, representatives from the Judicial Yuan and Bankers Association to negotiate for relevant regulations.

(VII) Representatives of Japan's National Association of Strategies for Credit Card Debt Problems, including Mr. Tatsuya Kimura and other attorneys, judiciary scriveners, scholars and reporters, etc., contacted the Alliance and came to Taiwan just before the completion of the CDCA's three readings procedure and shared their rich experience for over 30 years. Their enthusiasm was

so admirable, and some members still participated in the march on June 2nd even when they were sick. We asked Attorney Tatsuya Kimura why he could keep on caring about such a difficult issue for 30 years. He replied humbly that he simply would not give up, and this simple but meaningful reply encouraged us a lot.

VII. The Arduous Process of THE CDCA's Completion of Three Readings

(I) On April 4, 2007, the Judiciary and Organic Laws and Statutes Committee of Legislative Yuan completed the first reading of the CDCA Draft jointly proposed by the Judicial Yuan and Executive Yuan, and the Executive Yuan's different opinions were all discarded.

(II) However after the completion of the first reading, the banking industry strongly objected via the Executive Yuan, the ruling party and the media. Through the communication between the Alliance and Legislator Jhong-syong Syu who cared most about the CDCA, a consensus was reached that when the ideal version could not be acquired, concession must be made for the CDCA to be passed. Through Legislator Syu's repeated mediation, the several concessions made for the Judicial Yuan's version which had already completed the first reading, together with the mediation by the vice premier and deputy secretary-general of the Executive Yuan, a agreement was eventually achieved by representatives from the Judicial Yuan, legislators, the banks and political parties. Originally it was scheduled as top priority to be completed with the second and third reading on June 5, but just on the day before, members of the Alliance were worried because they heard that the key ruling party whip refused to sign and so the schedule could not be arranged before the end of this session in 10 days. On the following day, it was confirmed that the ruling party whip would not sign, and so the Alliance and Legislator Syu held a joint press conference to criticize the ruling party for not caring about the disadvantaged and allowing the banks to bully debtors by blocking the negotiated bill. As I saw at the press conference Legislator Syu and the Alliance members spoke with tears in their eyes and heard the NGO representatives expressing that they planned to protest against the ruling party the next day, I could imagine that hundreds of thousand of more people would suffer and probably kill themselves if the approval of this bill was postponed until a few more years later. I couldn't accept that a single person could be so powerful as beyond control to object to such an important bill. I tried with all might through various connections with the President's Office, Executive Yuan and headquarters of the ruling party and requested to meet this party whip. I believed that God would have mercy for the disadvantaged debtors and hate to see them committing suicide or causing family broken. On the next day, I finally met that party whip and convinced him of re-negotiation with those legislators who were concerned with this matter. Then a miracle happened and the CDCA was completed with the procedure of three reading on June 8.

VIII. Major Concessions Made for the Approval of THE CDCA

(I) With the exception of those who had obvious difficulties in fulfillment by the cause not attributable to themselves, debtors who had settled negotiations with the banks in 2006 could not petition for restructuring or clearance.

(II) Two clauses of the Judicial Yuan's the CDCA Draft were concerned with special provisions of debtors' residence loan, the first being about the negotiation between debtors and creditors and the second about debtors could set their own provisions according to the CDCA, and the latter was deleted from the CDCA version complete with three reading procedure.

(III) According to the Judicial Yuan's draft, the "percentage" of paying off should be recorded, and the ultimate time limit for paying off should be no more than 4 years and might be extended to 6 years under special circumstances. the CDCA version complete with three readings procedure changed the term "percentage" into "amount" and "4 years and 6 years" into "6 years and 8 years".

(IV) According to the Judicial Yuan's draft, a pre-negotiation should be conducted prior to application for restructuring or clearance. When the negotiation failed to start before 20 days after the next day of debtors' application or failed to stand before 30 days after the next day of initiation of negotiation, debtors could petition directly to the court for restructuring or clearance. The CDCA version complete with three readings procedure changed the aforesaid term "20 days and 30 days" into "30 days and 90 days".

(V) The Judicial Yuan's draft did not stipulated when the CDCA should be enforced after promulgation, while the CDCA version complete with three readings procedure stipulated that it should be enforced 9 months after promulgation.

Six. From the second half of 2007 to March 2008, LAF held The CDCA presentations and made preparation for the legal aid service to debtors.

Preparation prior to the enforcement of the CDCA: the CDCA was completed with three readings procedure and passed by the Legislative Yuan on June 8, 2007, and was promulgated by State President on July 11, 2007. According to Article 158 of the CDCA, it would come into effect 9 months after promulgation, i.e. on April 11, 2008. During the 9 months after its promulgation, LAF made the following preparations to help more debtors understand the CDCA and to consolidate the purpose of this legislation:

I. Educational Trainings for Attorneys

The CDCA is very different from the original Bankruptcy Law, and no individual persons can petition for bankruptcy according to the latter. In Taiwan almost none of the attorneys had

experience in bankruptcy petition for individuals, therefore it was important to provide educational trainings for attorneys. As soon as the CDCA was passed, LAF invited the judges and scholars who had participated in its drafting to give training courses at different LAF branches.

II. LAF held presentations to promote the CDCA to debtors and collected their questions and relevant information.

Without promotion and publicity, many laws meant to help cannot be utilized by the people. Promotion is needed especially to the disadvantaged who lack the capability to access information. LAF actively tried to promote the CDCA via various channels like the media, advertisement, internet and other minority communication lest certain debtors should still be unaware of the enforcement of the CDCA and commit suicide or take risks. To acquaint debtors with the existence of the CDCA and its basic content so that they might make petitions when it became effective, LAF held presentations at different branches between October and December 2007. Trained attorneys also offered a brief legal consultation after presentations to understand debtors' questions and concern. Surveys were made to collect debtors' relevant information, e.g. their reasons for getting into debt, facts about their negotiations with the banks in 2006, their paying methods and difficulties, and the banks' improper ways of debt collection, etc.

III. LAF paid a visit to Japan's National Association of Strategies for Credit Card Debt Problems and Legal Support Center to learn from their experience in helping debtors with debt problems.

When the CDCA was about to completed the legal procedure of three readings in June, Attorney Tatsuya Kimura and other representatives of Japan's National Association of Strategies for Credit Card Debt Problems came to Taiwan to offer their support. Later when the CDCA was passed by the Legislative Yuan, LAF also paid a visit to them in October 2007 to understand how they assist debtors in negotiation. They ardently shared their thirty years' experience with LAF, for example, how they help debtors to tell the struggling stories and gradually affect those probably biased judges or attorneys. LAF also visited Japan's Legal Support Center, and was inspired greatly by their legal information telephone center.

IV. Reservation hotline was announced and local centers for card debt consultation were established to provide legal consultation and convenient accesses to application for legal aid.

As an adequate consultation for individual cases could not be made at the brief presentation, it would be important for debtors to have a one-on-one legal consultation with attorneys but the LAF branch offices had limited space for too many debtors. Hence through cooperation with local administrative institutions and social groups, LAF branches set up more than 100 consultation centers in addition to telephone centers around the country. A reservation hotline was announced on February 25, 2008, and one-on-one legal consultation was offered from March 3. During the consultation, application for legal aid for negotiation, restructuring or clearance could be made simultaneously if debtors qualified for LAF's examination criteria. Since the service was provided, 6000 reservations for legal consultation per month could be processed by all branches.

V. Points for attention by the CDCA consultation attorneys, members of Examination Committee and legal aid attorneys were specified and educational trainings were held.

Considering that the CDCA was a new law, besides providing educational trainings, LAF also rallied staff attorneys and internal administrative attorneys to form a special team for researching on points for attention by the CDCA consultation attorneys who needed to know how to provide opinions, members of Examination Committee who needed to know about the criteria, and legal aid attorneys who needed to know how to fight for optimal benefits for debtors. Currently more than 1000 attorneys had joined in the work as consultation attorneys, members of Examination Committee and legal aid attorneys.

VI. A platform for communication with the Judicial Yuan and Bankers Association was established to offer proposals and advices but with limited effect, hence more efforts were required.

Being the competent authority, the Judicial Yuan was responsible for drawing up the CDCA's enforcement rules and points for attention. LAF collected debtors' questions and opinions from seminars and presentations and presented them to the Judicial Yuan for reference. While some of the collected opinions were referred, certain key factors were not accepted by the Judicial Yuan. For example, according to Article 64 of the CDCA, the court the court could decide the approval criteria if the court deemed the restructuring plan as fair, and Article 151 stipulated the criteria for debtors with difficulties in fulfillment by the cause not attributable to themselves. Both these articles have significant effects upon the rights and interest of debtors. LAF advised that the aforementioned criteria should be included in the enforcement rules or points for attention. If it was suspected that the trial might be intervened by administration, LAF also advised the Judicial Yuan to hold judges meeting before the enforcement to discuss the aforesaid criteria and achieve a consensus. Thus difference in court opinions could be avoided, standard could be established for the banks and debtors to observe, number of successful negotiations would be increased, and the court's burdens would be diminished. However on April 11, 2008 when the CDCA came into effect, both proposals by LAF were not accepted by the Judicial Yuan. Also, according to Article 151, debtors should negotiate with major creditor banks prior to petition for restructuring or clearance. But it was not clear what procedures of negotiation mechanism were established by the Bankers Association according to this stipulation or if there was different from the version of 2006. When LAF tried to negotiate for the mechanism with the Bankers Association through Legislator Jhong-syong Syu, the representatives of Bankers Association expressed that they would consider the repayment capability

of debtors and that debtors could negotiate at a branch of the major creditor banks, but they made no specific explication about the criteria for negotiation terms.

(VI) An academic conference on personal restructuring and clearance was held by LAF to discuss relevant statutes of different countries and offer reference for judges' interpretation of the CDCA.

Learning from the experience of Japanese attorneys, LAF and Taiwan Law Journal held the Academic Conference on the CDCA on December 22, 2007, to explore relevant statutes regarding personal restructuring and bankruptcy in USA, Germany, France, Japan and Taiwan so that reference could be provided for judges' interpretation of the CDCA and understanding about the function of laws of different countries.

VIII. Stories of debtors were published by LAF, and surveys on debtors were made to explain the causes of their debts and situations.

According to the experience of Japanese attorneys, inviting debtors to relate their true stories through mass media could most effectively correct the public misunderstanding about them and change the court judges' bias against them. However, like those with multiple debts in early Japan, most debtors in Taiwan would simply woe and blame themselves, avoid the media and suffer from extreme pressure from society. In addition to inviting several debtors to explain in person at the press conference, LAF published in March 2008 a book "Trapped in Debts" based on the survey and interview of 15 debtors. The survey findings about the causes of debts, the paying off experience of debtors, the negotiations in 2006 and methods of debt collection by the agencies were also included in this book. Copies of this book were sent to judges and sold to the public in hopes of correcting their bias caused by the misleading of mainstream media or social class difference.

IX. Amending LAF's Relevant Regulations for the Convenience of Debtors' Application

Since LAF's establishment, the coverage of the Foundation's operation in principle had excluded personal bankruptcy cases. After the enactment of the CDCA, LAF puts emphasis on personal debt negotiation, restructuring and clearance cases and initiates a special program for them. When examining the financial eligibility for general legal aid cases, the applicants' debts in principle are not deducted from their disposable income, while for the debtors' convenience in application for aid to personal debt negation, restructuring and clearance cases, it is specially stipulated that their monthly payment or planed payment for debts may be deducted from monthly disposable income.

Seven. Since the enforcement of the CDCA in April, LAF has been dedicated to providing legal consultation and legal aid to assist debtors in negotiation, restructuring and clearance.

I. The Function and Role of Attorneys after the CDCA Came into Effect

(I) The reason and cause for attorneys to have an important function and role after the CDCA came into effect:

During the process of debt negotiation in 2006, which was before the enforcement of the CDCA, the banks always refuse to let attorneys to represent debtors. After the CDCA came into effect, the banks openly express their refusal via various media and their teller machines to let agencies of attorneys to represent debtors. As the competent authority of the CDCA, the Judicial Yuan has not corrected the banks for their violation against Article 15 of the CDCA that it may apply mutatis mutandis to the stipulation of Civil Litigation Act, and even expresses openly via media or in private that the petition for restructuring or clearance is a simple non-litigation procedure. As long as the forms designed by the Judicial Yuan are honestly completed, the court will naturally make a legitimate verdict and so an attorney is not necessarily required. If debtors want to commission an attorney, it not only adds burdens to them but also wastes the Judicial Yuan's effort in specially designing a series of forms that can in fact be completed by debtors themselves. Officials of the Judicial Yuan also points out that it is impossible for legal aid attorneys to represent all debtors in petition for restructuring or clearance, and the Judicial Yuan will start training litigation assistants to help debtors. But based on the following reasons, I do not think that the banks' and Judicial Yuan's points of view are legitimate or legitimate, and that the function and role of attorneys are rather important with the enforcement of the CDCA.

1. Uncertain legal concepts are concerned with the CDCA and need attorney's assistance from debtors' stance with the judges to establish legitimate and practical consensuses and legal precedents.
2. Compared with the relevant law of Japan, the CDCA is relatively indefinite and less advantageous to debtors.
3. Stipulations advantageous to debtors are deleted or modified by the banks during legislative process.
4. Without definite explanations in advance by the Judicial Yuan or justice meeting, the interpretations of each court judge are liable to differ.
5. The court judges do not necessarily understand debtors' situation and the illegitimate terms of the banks.
6. The court judges may make illegitimate rules that are disadvantageous to debtors in order to ease the judges' own burden.
7. The Judicial Yuan expresses that the CDCA do not necessarily need attorneys' representation.

The Judicial Yuan ignores the fact that most debt-related cases are represented by attorneys in advanced countries, and that the CDCA is a litigable non-litigation procedure. As the Bankers

Association already pronounced their “Operation Guidelines for members of ROC Bankers Association in Processing the Restructuring and Clearance Procedures of the CDCA”, creditor banks would inevitably have their own opinions on debtors’ terms. Thus attorneys will be especially required for representing debtors to explain or contradict. It needs observation to make sure whether debtors might be misled by the Judicial Yuan and decide not to commission attorneys or the court judges might be affected by the Judicial Yuan and be hostile or ignorant to attorneys who represent debtors. Because of this, attorneys should be more active to fight for debtors’ legitimate rights and prove the necessity and value of attorneys’ representing debtors.

8.The Judicial Yuan lowers attorneys’ remuneration without mutual agreement.

The LAF attorneys’ remuneration for the CDCA cases has been twice modified to observe the Judicial Yuan’s opinion and decided through considering the attorneys’ work loads for stages of negotiation, restructuring and clearance and that the remuneration for legal aid attorneys is half or one third of the market fee. However, while LAF has neither violated the law nor acted improperly, the Judicial Yuan partially sets the remuneration rate and deprived the right and duty of LAF board. It not only inadequately lowers the attorneys’ remuneration but also breaks the fair balance between the CDCA cases and other types of cases. Because of this, some legal aid attorneys refuse to assist with the CDCA cases, resulting in legal aid attorneys’ deficiency. While many debtors need the assistance from attorneys in overcoming their problems lest they should commit suicide or take other risks, it is hoped that more attorneys would join the CDCA legal aid attorneys’ team.

9.Before the court has a clear and just interpretation about the CDCA cases, it is not easy for the banks to agree to concede to clearance terms.

10.The banks refuse attorneys’ representation in negotiation, and demand debtors on using the petition form with traps concealed within designed by the banks.

The banks express openly via press conferences and other public occasions as well as via their teller machines that they refuse to let attorneys to represent debtors in negotiation. The space for representatives’ information is missed in the negotiation petition form designed by the banks, and the banks would directly contact debtors by skipping the attorneys. In addition, there are many illegitimate terms and traps found in the banks’ form, e.g. debtors are required to give up their negotiation for residence loan. If debtors do not use the banks’ petition form, their application forms will be returned by the banks. During negotiation both parties are supposed to be in equal positions, but in reality it is lopsided. Under these circumstances, debtors depend even more on attorneys’ assistance to clearly understand the banks’ relevant documents and for legal advices during negotiation.

(II) The functions and role attorneys are supposed to have after enforcement of the CDCA.

1. How attorneys should convince the court judges to deem a restructuring plan as fair and just:
   (1) Whether a restructuring plan is fair and just is an uncertain legal concept that requires the attorneys’ effort in creating practical consensuses or legal precedents.
   (2) As the court’s opinion on a restructuring plan’s fairness is not clear and there are no massive petitions for bankruptcy like what happened in Japan, it is hard for creditors meeting to agree to restructuring plans. Therefore it is more important for attorneys to try to convince the judges of the plan’s fairness.
   (3) In Taiwan’s the CDCA, there is no stipulation about the calculation of minimum paying off amount for personal restructuring with salaries, hence it is even more important for attorneys to convince the judges of the fairness of a restructuring plan.

2. How attorneys should convince the court judges to make a liability-free rule for clearance cases

3. Regarding to cases with successful negotiations in 2006, how attorneys should explain for debtors that they have difficulty in fulfillment by the cause not attributable to themselves

4. How attorneys should assist debtors in raising objections or making appeals against the total amount of debts

5. How attorneys should assist debtors who have petitioned for restructuring in negotiation with the banks on the special clauses for residence loan in order to retain their own residences.

6. How attorneys negotiate for debtors with the banks before petitioning for restructuring or clearance

II. Since the enforcement of the CDCA, LAF has been dedicated to providing legal consultation and legal aid to debtors.

The CDCA came into effect on April 11, 2008, and LAF established a reservation hotline for debtors on February 25 of the same year. Legal consultation for debt problems was launched in early March together with further application for legal aid. The monthly applications by debtors, cases approved and total of legal consultations provided between March 2008 and September 2009 are shown as follows:

	Applications	Cases Approved	Legal Consultations
2008/03	2306	1276	539
2008/04	4376	2474	898

2008/05	3623	1879	856
2008/06	2958	1403	654
2008/07	3042	1246	842
2008/08	2139	804	626
2008/09	1331	505	410
2008/10	1219	385	464
2008/11	923	302	352
2008/12	1250	256	756
2009/01	689	142	432
2009/02	956	236	525
2009/03	1093	267	649
2009/04	1029	248	611
2009/05	909	192	563
2009/06	768	132	529
2009/07	763	146	506
2009/08	597	114	390
2009/09	665	132	463
TOTAL	30636	12139	11165
Average in 2008/Month	2316	1053	639
Average in 2009/Month	829	178	518

According to the above data, the average applications per month in 2008 are 2316 cases and 829 in 2009, with the latter equivalent to 35% of the former. The average number of approved cases per month is 1053 in 2008 and 178 in 2009, and the latter is 16.9% of the former. The average number of legal consultations per month is 639 in 2008 and 518 in 2009, which are relatively close in both. The number of approved general cases is 17,698 in 2008, while the debt-related is 10,537, 37.3% of the former, which is huge and a great challenge for LAF. However, it is worth exploring the reason for the approved debt-related cases per month in 2009 accounting for only 16.9%. As described later, the banks' refusal to let attorneys to represent debtors in negotiation, and the court's delay and conservative attitude toward processing restructuring and clearance cases are both possible reasons for the drop of case amount. How LAF should change its strategy and effectively assist more debtors with their problems is the next significant challenge for LAF.

III. After the enforcement of the CDCA, LAF established a special team to provide legal opinions and sample statements to legal aid attorneys for reference.

Although LAF had held multiple trainings about the CDCA for legal aid attorneys before the enforcement of the CDCA, it is still a new law and, without precedent examples, legal aid attorneys have to fumble and find the way to process specific cases. Hence with the purpose to assist legal aid attorneys with cases, a special team is formed to compile questions raised by attorneys, provide them with legal advices and even written statement samples of various circumstances for their reference.

IV. Some time after the enforcement of the CDCA, the special team of LAF made analysis on each court rules for legal aid attorneys to refer to, and the team identified those illegitimate, inadequate or contradictory verdicts and reported to the judiciary authority for improvement.

After the CDCA was enforced for a certain period, the special team of LAF collected various court verdicts, including dismissed procedure rulings, approved and disapproved verdicts for restructuring plans. The team deliberated and made analyses on these verdicts, and provided them to legal aid attorneys for reference. For those illegitimate, inadequate or contradictory rulings, the team also reflected to the Judicial Yuan for resolution.

V. A survey was made by LAF via the commissioned agency on debtors' reflection and opinions about negotiations with the banks and relevant court rules, and the findings wee discussed in a meeting attended by judges, scholars and attorneys.

Besides referring to the information reported back by legal aid attorneys on cases closed, LAF commissioned an agency to conduct a survey by phone in September 2009 on debtors about relevant details and opinions in order to understand the process of banks' pre-negotiations and different court rules. Then on October 2, one and a half year after the enforcement of the CDCA, enthusiastic judges, scholars and attorneys were invited to a conference to discuss about the survey findings.

Eight. Empirical Study and Analysis about the Banks' Pre-Negotiation and Court Rulings for Restructuring or Clearance Plans One and a Half Year after the Enforcement of the CDCA

I. Introduction

It has been a year and half since the CDCA came into effect on April 11th, 2008. Many debtors have applied for negotiation of debt with banks or petitioned the court for restructuring or debt clearance. Whether these cases are following the spirit of the regulations and releasing debtors' problems should be subject to examination. The goal is to solve debtor's problems more efficiently and to construct a better society of justice.

According to the CDCA, debtors should apply for negotiation with the bank before petitioning for restructuring or debt clearance with the court. However, the bank is not the neutral third party. Are there any illegal practices or deliberate operations from the bank during the negotiation process? What is the percentage of sustained negotiation? Is the ratio of repayment to debt reasonable? Are debtors really capable of repaying the debtor and would not fall into debt again? All these questions are worth observing and analyzing.

There are other things worth a discussion. For example, how long does it take for debtors to petition for restructuring or debt clearance? If the petition is dismissed due to mistakes happened in the petition procedure, does the rejection comply with rules and spirit of the Act? What is the opinion of the court concerning whether the debtor's restructuring plan is fair? According to the court, what are the conditions for debtors to be exempted from debt? How does the court define the term "obligation which debtors are unable to perform due to uncontrollable events which debtors are not responsible to" in Article 151? Do different courts and judges have consistent opinions about the above proceedings or substantial issues?

The CDCA has been enforced for a year and half. As cases of petition for restructuring and debt clearance decreases, the number of applications for negotiation with banks remains high. With the economic downturn and increasing unemployment rate, what accounts for the above occurrences? Is it possible that debtors prefer to negotiation because banks offer reasonable plans considering the repaying ability of debtors? Or, is it possible that debtors have lost their confidence in the court because it takes a long time for the court to process petitions and the court often dismisses cases based on inappropriate proceedings? Furthermore, are the standards for approving restructuring and debt clearance petitions conservative and inconsistent? We should consider all the above questions.

The exact implementation of the CDCA can not only solve debtors' problems, avoiding many family and social problems, but also represent the value of justice. Therefore, the following issues worth everyone's effort: how to improve the mechanism for negotiation; how to build consensus between judges on those uncertain legal concepts; how to increase the efficiency of restructuring and debt clearance cases; how to make judges and judicial associate officers realize the spirit of this Act and the situation of debtors.

II. Reflections on the Negotiation between Banks and Debtors

(I) Numbers of Negotiation Application and Approval

1. Statistics for negotiation with financial institutions according to the CDCA, Article 151

Month	Number of Applications
April of 2008 (started from April, 11th)	1362
May of 2008	5450
June of 2008	3804
July of 2008	4221
August of 2008	3937
September of 2008	3866
October of 2008	4189
November of 2008	3900
December of 2008	4446
January of 2009	3372
February of 2009	3374
March of 2009	4506
April of 2009	4291
May of 2009	3395
June of 2009	4089
2008 average cases / per month	3908.3
2009 average cases / per month	3837.8
average cases / per month	3880.1
Total	58202

2. Statistics for approvals of negotiation cases from court according to the CDCA, Article 152

Month	Approval
April of 2008 (started from April, 11th)	-
May of 2008	-
June of 2008	-
July of 2008	3877
August of 2008	2473
September of 2008	2524
October of 2008	2908
November of 2008	2477
December of 2008	2880
January of 2009	2696
February of 2009	3623
March of 2009	2668
April of 2009	2602
May of 2009	3754
June of 2009	2982
2008 average cases / per month	2856.5
2009 average cases / per month	3054.2
average cases / per month	2955.3
Total	35464

3. Statistical analysis of negotiation applications and approvals

(1) Negotiation cases did not decrease after one year of implementation.

(1) Negotiation cases did not decrease after one year of implementation.

Compared with the average amount of cases per month in 2008 which was 3908, the average amount of cases per month in the first six months in 2009 was 3837. There is little difference between the two figures. Negotiation cases did not decrease over time after implementation. It is thus evident that debt problems are still severe.

(2) The success rate of applications approved is as high as 70 percent.

In 2008, the average cases per month were 3905 with 2856 being approved by the court and the success rate is 73%. In 2009, the average cases per month were 3837 with 3045 being approved by the court and the success rate is 79.5%. In the reply to the Legislator Jhung-hsiung Syu on September 11, 2009, Banking Bureau, Financial Supervisory Commission pointed out that until July 31, 2009, the sustained pre-negotiation cases and amount were 41,799 and NT$65,800,000,000 while the not sustained cases and amount were 12,355 and NT$15,300,000,000. The sustained rate is up to 77%.

(II) Analysis of Clearance Plan of the Sustained Negotiation Cases

1. Analysis of sustained cases reported by LAF until the end of 2008

The cases reported by LAF until December 17, 2008 were 153 with 90 cases with complete document to be analyzed. Following are the repayment plans of these 90 cases.

(1) Interest rate in repayment plan

a. Statistics: There were 38.89% of debtors repaying with 0 interest rate, 54.44% of debtors repaying with an interest rate below 5%, 6.67% of debtors repaying with an interest rate between 5% and 10%.

b. Analysis: Individual Restructuring Act in Japan is divided into small-scale individual restructuring and income individual restructuring. Plans of mall-scale individual restructuring should be subject to debtors' council with the total repayment no lower than the minimum repayment: If the debt is 5 million Japanese Yen, then the minimum repayment will be 1 million Yen. If the debt is between 5 million Yen and 15 million Yen, then the minimum repayment will be 20% of total amount. If the debt is between 15 million Yen and 30 million Yen, then the minimum repayment will be 3 million Yen. If the debt is between 30 million Yen and 50 million Yen, then the minimum repayment will be 10% of total amount. To put it simply, the minimum repayment is about 10% to 20% of total debt amount. The CDCA drafted by our Judicial Yuan imitated the related regulations in Japan. In the draft of the CDCA Article 53, it is stipulated that debtors' restructuring plan need to have "repayment percentage". In other words, debtors

can have a discount on their debts. However, under the protest of banks, "repayment percentage" in Article 53 was changed into "repayment amount." Restructuring was a debt clearance procedure designed for those debtors who cannot pay in accordance with the contract, in hope to help debtors start a new life. If debtors are asked to pay the principal with interest which almost equals to the original debt, then the restructuring system becomes meaningless. Our debt clearance system requires debtors to first negotiate with banks. And if the required repayment with interest in the pre-negotiation plan equals to the original debt, then this system of pre-negotiation plan may become obstacles for debtors to access to restructuring or debt clearance. Furthermore, pre-negotiation in Taiwan is evidently unfair because it makes vulnerable debtors exposed to powerful banks without a neutral third party engaging. Among the mentioned sustained cases, there are 60% of cases needing to pay the total debt with interest and the interest can be up to 6.67%, higher than the statutory interest rate of 5%. Our restructuring system is surely different that of Japan.

(2) Installment Payments

a. Statistics: Among the above 90 cases, there are 14.44% with 72 installments, 18.89% with 72 to 100 installments, 55.56% with 100 to 180 installments and 11.11% with more than 180 installments.

b. Analysis: Restructuring period in Japan is 3 years and can be extended to 5 years, enabling debtors to get rid of debt earlier and have a new life. The CDCA Draft by Judicial Yuan stipulates in Article 53 the ultimate repayment period to be 4 years and can be extended to 6 years with particular excuses. At the request of banks, it was extended to 6 years with special extension to 8 years. Among the mentioned cases, there are 85% of cases have installment period longer than 6 years, 70% cases 8 years to 15 years, and 11.11% cases more than 15 years. It is evident that the installments period is much longer than the 3-year restructuring period in Japan.

(3) Whether repayment rules set by negotiations are unaffordable to debtors

a. Statistics: Among the mentioned 90 cases, compared the amount of each installment with debtors' monthly income (deducting basic expense), we can see whether repayment rules set by negotiations are unaffordable to debtors. The result is that as high as 80% have each installment payment higher than the difference of debtors' income and expense. Whether debtors can afford the negotiated repayment rules is thus questionable.

b. Analysis: according to the CDCA Article 151, debtors should negotiate with the biggest creditor (financial institutions). But the Article does not set rules for repayment plan and there is no neutral third party who can conduct the negotiation. Often, individual debtor

in face with powerful financial institution can only accept the actually unaffordable repayment plan, undermining future performing of obligations. National Joint Debt Negotiation Commission of Bankers Association of Taiwan have issued “Guidelines for financial institution on executing pre-negotiation of the CDCA” on February 14, 2008. In Chapter IV, it regulates that “A. Debt without security: (a) The minimum repayment amount per month should be more or at least equal to that of debtor’s monthly disposable income after deducting monthly minimum expenses.” (b) Installments and interest rates should be based on the minimum repayment per month. B. Debt with security: the original contract should be followed.” According to this guideline, the minimum repayment per month for debtors without security should be higher than that of debtor’s monthly disposable income after deducting monthly minimum expenses. In other words, debtors are asked to pay what they cannot afford. The repayment plan does not take debtors’ repaying ability into consideration. No wonder 80% of the 90 previous sustained cases have repayment plan exceeding debtors’ ability.

(II) In September of 2009, LAF commissioned Global Views Survey Research Center to interview by telephone 1303 applicants and recipients for legal consultation or legal aid between March 3, 2008 and April 30, 2009. Among them, 821 people were granted legal aid, 361 people with legal consultation and 121 people rejected. The findings and analysis are as follows.

1. Whether debtors are capable of repaying according to the sustained negotiation plan

(1) Statistics: 32% of debtors could pay on time, 46.6% struggled to pay on time, and 21.3% could not pay on time.

(2) Analysis: As mentioned, according to guidelines for negotiations, the minimum repayment amount per month for debt without security should be more or at least equal to that of debtor’s monthly disposable income after deducting monthly minimum expenses. If the payment is higher than the balance, it obviously exceeds debtors ‘repaying ability. Even if the debtor borrows money from others or work overtime, the situation cannot be prolonged. It is easy for debtors to fall short. If the payment is equal to the balance, then under conditions where debtor or debtors’ family suffers from an accident, illness, unexpected expense or reduction in salary, it is also easy for debtors to fall short. Statistics from Banking Bureau shows that as high as 40,000 debtors have sustained negotiation and the successful rate is 77%. But the previously mentioned debtors who struggled or couldn’t repay on time were 67.9%. This is obviously contradictory to the spirit of the CDCA, exploiting debtors. Financial institutions had no intention to really resolve debtors’ problems. In order to ease burden on judges and judicial associate officers, the court considered all cases proper and sustained them according to the CDCA Article 152.

However, as the authority of the Act, Judicial Yuan was ignorant to the harsh rules of negotiation plan and debtors being unable to perform obligations, discarding the spirit of the Act.

2. Among the mentioned cases, why 67.9% of debtors fell short to repay but their cases were sustained at the first place

(1) Statistics: 56.8% of debtors were limited to the conditions offered by banks. 18.1% of debtors wanted to work hard and discharge as soon as possible. 15.2% of debtors underwent uncontrollable events. 9.7 % of debtors don’t want to face compulsory enforcement or affect their jobs. 2.5% of debtors had no confidence in the insolvency system. 1.5% of debtors had other sources to repay, and 0.5% just followed the court’s advice.

(2) Analysis: The reasons why debtors would agree conditions beyond their ability could be objective or subjective. Objectively speaking, 56.8% of debtors were limited to the conditions offered by banks. It is thus evident that requirements from financial institutions are often unreasonable. On the other hand, individual debtor faced with powerful financial institutions is often powerless and cannot but take the unreasonable conditions. Besides, 9.7% of debtors didn’t want to face compulsory enforcement or affect their jobs. Debtors wanted to avoid being forced to pay or have salary compulsory salary reduction. Therefore, they accepted the negotiation conditions. In addition to that, 0.5% of debtors just followed the court’s advice. Why did the court ignore the basic spirit of the Act to allow debtors to repay what within their ability and “advised” debtors to take what exceeds their ability? This is unbelievable. Subjectively speaking, 18.1% of debtors wanted to work hard and discharge as soon as possible. It is clear that some debtors wanted to work hard and get rid of debt earlier so they accepted conditions that exceeded their ability. Under this circumstance, debtors often fell ill because of exhaustion. Even if debtors do not lose their health due to over fatigue, making debtors work excessively is not the intention of the Act. Besides, 15.2% of debtors underwent uncontrollable events. Some debtors fell short due to income decrease or expense increase after negotiation, and in some cases debtors simply accepted conditions that exceeded their ability or without any flexibility. Once themselves or their family members encounter income decrease or expense increase, they would probably default. 2.5% of debtors had no confidence in the insolvency system. In other words, debtors lacked confidence in the court to fairly solve their debt problems according to the Act. So the only thing they could do was to take unreasonable conditions. There is room to improve for the courts and Judicial Yuan in charge of restructuring and debt clearance and as the authority of the CDCA.

3. Among the sustained cases, the default rate and the reasons

(1) Statistics: 2% of debtors had discharged. 75.6% of debtors were still in the repayment process. 22.4% of debtors have bleached. Those who defaulted said it was because of "income decrease due to unemployment or reduction in salary" (53.9%) "unable to sustain a living after repayment" (23.8%); "debtors or family members fell ill, had accidents or more expenses "(19.1%); some experienced "increase of children or parenting fees" (14.7%); some debtors' "monthly repayment was higher than income" (11.3%), and some had "increase of other expenses" (9.9%).

(2) Analysis: As mentioned, although the debtors with sustained negotiations were up to 40,000 people with a 77% successful rate according to Bankers Association in Taiwan, there were 22.4% of defaults. Behind the flattering figures, debt negotiation system surely deserves a reflection. Those debtors who had defaulted had existing reasons during the negotiation process or something happened after negotiations. For example, some debtors were "unable to sustain a living after repayment" (23.8%) and some debtors' "monthly repayment was higher than income" (11.3%). These conditions existed when negotiating. The Act let debtors face powerful financial system alone. There should be amendment to have a neutral third party to conduct negotiation. The court should reject when financial institutions ask more than debtors' ability. Also, the court should correct when financial institution prevent debtors from having an agent ad litem. Besides, there were things happening after the negotiation. For instance, some debtors had "income decrease due to unemployment or reduction in salary" (53.9%); some "debtors or family members fell ill, had accidents or more expenses "(19.1%); some had "increase of children or parenting fees" (14.7%); some debtors' "monthly repayment is higher than income" (11.3%), and some witnessed "increase of other expenses" (9.9%). These mostly happened after negotiation. But if debtors had been granted some flexibility in repayment such as some petty cash or amendment for accidents, then the occurrence of defaults should decrease.

III. Reflections on Courts' Handling Restructuring and Debt Clearance Cases

(I) Statistics and Analysis of Debtors Petitioning for Restructuring and Clearance

1. Statistics for newly accepted restructuring and clearance cases in court

(1) Statistics

Month	Restructuring	Clearance
April 2008 (started from April 11th)	1073	96
May of 2008	2370	170
June of 2008	2473	121
July of 2008	3104	152
August of 2008	2160	144
September of 2008	1961	136
October of 2008	1884	131
November of 2008	1436	123
December of 2008	1535	160
January of 2009	868	108
February of 2009	890	117
March of 2009	860	102
April of 2009	702	117
May of 2009	602	117
June of 2009	578	155
Average cases per month in 2008	1999.6	137.0
Average cases per month in 2009	750.0	119.3
Average cases per month	1499.7	129.9
Total	22496	1949

(2) Analysis

a. In 2008, the monthly average restructuring cases were about 2000 while in 2009 it became 750, being only 37.5% of the original figure. In 2009, we were still facing economic downturn with unemployment rate increasingly high and debt problems more and more serious. Why was there a sharp decline in restructuring cases in courts? In 2008, the average debt clearance cases were about 137 per month while in 2009 it was 119.3, having no serious difference. In 2008, the average clearance cases were 6.8% of restructuring cases. In 2009, the average clearance cases were 15.9% of restructuring cases. Compared with Japan's situation where bankruptcy cases were 6 to 10 times more than restructuring cases, clearance cases were obviously less. Was it because that the word clearance was stigmatized by financial institutions and the media? Or did debtors in Taiwan insist on keeping the virtue to pay off debt?

b. In 2003, Japan, there were 24,553 restructuring cases and 251,800 bankruptcy cases. With 127,750,000 populations, all cases accounted for 0.21% of total population and in 2006 the figure was 0.15%. In the U.S., the application cases from 2003 to 2006 accounted for 0.2% to 0.68% of total applications. In Hong Kong, the application cases from 2003 to 2006 accounted for 0.14% to 0.36% of total applications. Whereas in Taiwan, calculation by the average cases per month in 2008 would be 25,639 cases per year, accounting for 0.11% of total populations. Calculation by the average cases

per month in 2009 would be 10,431 cases per year, accounting for 0.45% of total populations. Compared with the above mentioned countries, our figures were evidently smaller. While debt has become a serious problem with sluggish economy and high unemployment rate, why were there lesser restructuring and clearance cases in the court?

2. Telephone interview and analysis of debtors who have not filed petition for restructuring or clearance

(1) Telephone interview and analysis of debtors who have filed petition for negotiation, restructuring, clearance or have not filed any petition

According to the previously mentioned report by Global Views Research Survey Center, among 1303 debtors (including debtors who had applied for legal consultation at LAF, who had petitioned for legal aid at the court but rejected and who were granted with legal aid by LAF), 62.5% of debtors petitioned for negotiation, 26.5% for restructuring, 3.8% for clearance and 22.5% did not petition any. Those who did not petition for any assistance said that they "had no money to handle it" (48.2%) and "had no one to ask for help" (13.7%). Accordingly, LAF should reflect on whether they should lower the criteria for financial eligibility for application. Besides, some debtors "had no confidence in THE CDCA" (11.1%) or that "banks refused to negotiate" (4.1%). The court and banks should reflect on whether they should improve their services.

(2) For debtors who did not negotiate, failed to negotiate or defaulted after negotiation, the telephone survey and analysis on their petitions for restructuring, clearance or did no petition

60.1% petitioned for restructuring to court, 8.8% for clearance, and 31.1% did not petition for any. The reasons why they did not apply for any were: "feeling they would be rejected" (22.7%), "too many required documents" (12%), "court process time being too long" (7.5%). All the above reasons were related to court. So the court should make improvement in how to deduct unnecessary document, how to accelerate the handling of restructuring or clearance cases and how to reduce unnecessary procedure rejection. Loosening the liability-free conditions for restructuring and clearance would be consistent with the spirit of the Act.

(II) Telephone Survey and Analysis on Time Needed for Processing Restructuring or Clearance Cases by Court

Of debtors who have cases in process: 45% had taken more than one year, and 31.5% half to a year. In other words, 76.5% had taken more than 6 months to be processed. Besides, Debtors who had cases closed: 26.9% took more than a year to close the case, and 35.5% took 6 months to a year. That meant as many as 62.4% of cases took more than 6 months to process. In addition, whether debtors thought court was efficient in handling the cases: "very efficient" (6.8%), "somewhat efficient" (22.9%), "a bit inefficient" (28.7), and "very inefficient" 23.1%. That showed 51.8% of debtors thought the court handling was inefficient while only 29.7% thought efficient. If the court was inefficient, the intention of debtors petitioning for restructuring or clearance would decrease. This might lead to debtors to agree with banks on conditions exceeding their ability in negotiation or being unconfident in the Act and petitioning for neither negotiation nor restructuring or clearance. As authority, Judicial Yuan should reflect on that and have a better strategy to win debtors' trust. Only then can they really solve debt problems and realize the idea that justice is for the people.

(III) Telephone Survey and Analysis of Debtors Who Had been Demanded by Court Illegally to Re-negotiate when Petitioning for Restructuring or Clearance

The findings from Global Views Research Survey Center (GVRSC) showed that 19.5% of debtors were asked by court to re-negotiate with banks when petitioning for restructuring, and 15.4% when petitioning for clearance. However, according to the CDCA, the court or judicial associate official has no right to ask debtors to re-negotiate with banks. Usually, banks would not want to re-negotiate either. This would just prolong the time of restructuring or clearance, imposing more burden on debtors because they have to pay more interest or penalty. In addition, 68% of debtors in sustained cases could only struggle or could not repay on time. Meanwhile, the court cases of restructuring and clearance were decreasing. If the court keeps asking those failing to negotiate to try again and even if banks are willing to re-negotiate, it will simply result in more debtors who can only struggle or cannot to repay on time. Eventually, more debtors will lose faith in the court, resulting in even lesser cases of restructuring or clearance.

(IV) Telephone Survey and Analysis of Results of Restructuring or Clearance Cases by Court

1. Restructuring cases

According to the findings from GVRSC, 46.7% of restructuring cases were in process, 19.6% were approved while 26.2% were dismissed by court. Accordingly, only 20% were accepted. No wonder that debtors did not trust the Act or the court.

2. Clearance cases

As mentioned, there were not many petitions for clearance. According to the findings from GVRSC, there were 62.6% of clearance cases still in process. 14.2% are approved and granted with free liability while 15.7% were dismissed by court and the debtors still needed to repay. Obviously, the pace of clearance was too slow and the success rate of clearance was also too low.

(V) Reasons Why the Court Dismissed Restructuring or Clearance Cases and Analysis

1. Telephone survey and analysis on reasons why the court dismissed restructuring cases

According to the findings from GVRSC, among the above 26.2% of dismissed restructuring cases, the reasons were: “having no sustainable reasons not to repay” (32.3%), “could afford to pay monthly repayment” (12%). These two dismissals were related to the Act Article 151 whether the debtors “are unable to fulfill by the cause not attributable to themselves”. The dismissal rate being so high, we should consider if the court’s interpretation of this Article was too strict. The other three dismissal reasons were: “the court would not agree with the restructuring plan” (22.8%), “having exceeded the time to complement the required documents” (22.7%) and “not having conducted pre-negotiation with banks” (9.5%). All three reasons were statutory reasons to dismiss. But since all cases are unique, we should consider if the court was reasonable. For example, was the court fair to restructuring cases? Was the court too strict without really understanding the situation of debtors? Was the court’s requirement for documents necessary and was there sufficient time for debtors to collect them? Also, the court favored banks more instead of debtors in defining whether debtors had pre-negotiated with banks. All these are questionable.

2. The reasons why the court dismissed restructuring or clearance cases and analysis

According to the research by LAF on the dismissed cases between April 11, 2008 and June 30, 2008, questionable rulings can be divided into different types as following:

(1) Transfer of jurisdiction

a. Types: LAF searched for 296 cases of transfer of jurisdiction on the website of Judicial Yuan and discovered that some rulings were “Applicants who petition at the court of current residence should apply at the court of household registry because applicants may change their jobs or rent other places to live.”

b. Analysis: According to Article 5 of the CDCA, “restructuring and clearance cases belong to the jurisdiction of the court of applicant’s residence.” As the current residence and household registry residence of applicants can be different, the article aims at saving applicant’s time and cost. But the previous cases obviously contradict regulation in Article 5. Some rulings were changed after appeal. Judicial Yuan should pay more attention to those judges who make situations more difficult for debtors and ask them to improve.

(2) Rulings on whether obligation which debtors are unable to perform by the cause not attributable to themselves:

According to Article 151 of the CDCA, if debtors had negotiated with banks in 2006, they should not petition for restructuring or clearance. But it is beyond this restriction for debtors are unable to perform their obligations by the cause not attributable to themselves. The following rulings dismissed debtors’ petition for restructuring or clearance because the court decided those debtors had major difficulties in fulfilling their negotiations not by the cause not attributable to themselves. These cases should be subject to further examination.

a. Type

(a) Debtors’ income being less than negotiated amount

Most rulings on this were that it was “by the cause not attributable to debtors themselves”, but still a few court rulings were given because the court thought that “debtors were aware of the fact that their income was insufficient to fulfill required payment during negotiation, but they still accepted and finally led to default. It was obvious that there was the cause attributable to themselves.”

(b) Debtors being unable to afford negotiated amount of repayment after deducting basic living expenses

Some rulings accepted it as “by the cause not attributable to debtors themselves”, while some dismissed the case because: “During negotiation in 2006, debtors obviously knew that there was no way to make both ends meet but still accepted the negotiation. It was obvious that debtors had major difficulties to fulfill their agreement not “by the cause not attributable to themselves”.

(c) Debtors suddenly defaulted after repaying many installments.

Some rulings were: “After agreeing on the negotiation and paying many installments, debtors suddenly default. It is obvious that their honesty is questionable and there should not be any cause not attributable to themselves.”

(d) After negotiation in 2006, there wee no significant changes in debtors’ income and expenses.

Some rulings were: “there are no significant changes in debtors’ income and expenses between negotiation in 2006 and the default. There should not be any cause not attributable to themselves.”

(e) Debtors underwent compulsory enforcement after negotiation in 2006.

Some rulings were: “after negotiation in 2006, if debtors were compulsory

enforced by other creditors, for example, their fixed salaries were deducted by one third every month, and then unable to repay on agreed terms of negotiation. This should not be any cause not attributable to themselves."

(f) Other private debts

After negotiation in 2006, if debtors should repay other private debts, they often could not provide enough proofs for themselves, and so most courts did not consider those private debts "necessary monthly expense after negotiation."

(g) There was immobile property under debtors' name.

Some court thought that if selling their immovable property could reduce debtors' debt, they should not claim that they were unable to repay while retaining their immovable property.

b. Analysis

(a) Regarding the above types from A to D, the judges obviously did not understand debtors' background and situation by considering "the cause not attributable to debtors themselves" would only happen after negotiation. They ignored the fact that "the cause not attributable to debtors themselves" already existed during the 2006 negotiation. At that time, debtors had no other systems like restructuring or clearance. In order to avoid being forced to repay by debt collection agencies hired by financial institutions, and also to avoid accumulating more and more interest and liquated damages, they could not but accept the terms beyond their capability. These debtors actively stood out and negotiated. Compared with those who did not negotiate in 2006 or did not agree on the negotiation, these debtors cannot be deprived of the rights to petition for restructuring or clearance. The CDCA Draft proposed by the Judicial Yuan had no restriction on this. The current article was forced to be added at the banks' demand and therefore illegitimate. Therefore, the judge should realize the mentioned situation and interpret this article in a more tolerant way.

(b) The previous (e) type was a typical example of "cause not attributable to debtors themselves" happening after negotiation and stipulated by Article 44 of the CDCA, while the judges still dismissed those cases. The judicial authority should improve the education and trainings for judges about the CDCA.

(c) It is very common for debtors to borrow money from relatives and friends in Taiwan. As to the problems in type (f) to provide proofs, private loans may not

use remittance or check. Therefore, the court should be more flexible with this for example substituting these with calling witness or requiring for affidavit.

(d) As to type (g) with real estate, the special Article 54 and Article 55 of the CDCA Draft have stipulations on residence loan. But the final version just keeps Article 54, stipulating that "debtors can negotiate with residence loan creditors for special terms for the restructuring plan." Accordingly, if the immovable properties of debtors are residences and not particularly expensive or spacious, then they should be protected by the Article. The judge should not demand debtors to sell their immovable properties otherwise they cannot claim their inability to pay off their debts.

(e) In the above cases, judges in different courts often have different opinions. LAF had suggested before the enforcement of the CDCA that consensuses should be achieved for those indefinite interpretations at the judges meeting convened by the Judicial Yuan to avoid contradictory rulings. But the Judicial Yuan did not pay heed to it, and now contradictions in rulings have already been produced, resulting in people's lack of confidence in court and the Act. It is reported that this year there has been two judicial meetings at Judicial Yuan, reaching many consensuses. But the results are not yet on the Internet or published. Therefore, it is suggested that Judicial Yuan release the results as soon as possible in order to help judges, attorneys, debtors and creditors to follow or anticipate.

(3) Rulings deciding debtors' being unable to pay or possibility of debtors' inability to pay

According to Article 3 of the CDCA, "debtors who are unable to pay or have the possibility of being unable to pay can follow the restructuring or clearance procedure stipulated by this Article to settle their debts." Whether the following rulings were reasonable is worth deliberation.

a. Type

(a) Debtors have assets greater than their debts.

Some court rulings deemed that debtors had more assets than their debtors therefore they were not unable to pay or did not have the possibility of being unable to pay. But the courts did not take debtors' repaying ability into consideration.

(b) Debtors currently still followed the negotiated agreement.

Some rulings considered that debtors were still following the agreement so there should not be any possibility of their being unable to repay.

b. Analysis: Whether debtors were unable to pay or have possibility of being unable to pay, the courts should consider their repaying ability while the mentioned two situations did not do so. Even though debtors had more assets than debt, their assets might be their own residence only. If they had no income or limited income, they might still be unable to pay. Debtors who are still fulfilling the agreement negotiation probably because they had been borrowing from their relatives or friends in order to pay for the negotiation and in fact they were unable to pay off.

(4) Overdue fees

According to Article 6 of the CDCA, debtors should pay NT$1000 on petitioning for restructuring or clearance in addition to the prepaid fee required by the court. If it is overdue, the court can dismiss the case. According to Article 7, if debtors cannot pay the fee, they can explain their situation and petition for being temporarily exempted from payment. The following cases were dismissed because debtors did not pay the fee, which was questionable.

a. Type

(a) Debtors petitioned for restructuring but were unable to afford the several thousand postal fees or inspection fees, and so their cases were dismissed by the court.

(b) Debtors petitioned for clearance but were not able to afford the several thousand postal fees or inspection fees and did not petition for temporary exemption from payment, and so their cases were dismissed by the court.

b. Analysis

(a) According to Article 7 of the CDCA, only clearance but not restructuring petitioners can request temporary exemption from payment. The reason was that if debtors can repay by installments, they should be able to pay the fees. But in fact, the prepaid fees required by the court can be several thousand or as high as several tens of thousands, which was too much for debtors to pay within a short time, especially when many debtors in Taiwan are supposed to petition for clearance but actually petitioned for restructuring instead. After being dismissed by court due to overdue payment, according to Article 65, their cases cannot be relegated back to clearance either. Therefore, the judicial authority should reflect on whether the fees are too high and the time to pay too short. They should also establish a system for petitioners to pay in installments.

(b) The CDCA is a new Act, which is not easy for many debtors to fully understand relevant stipulations. When requiring for the fees, perhaps the court can also explain to debtors that they can petition for temporary exemption by explaining their financial ineligibility? For future amendment, it should be amended that debtors can be exempted from the payment when petitioning for clearance, and that the fees should be due for the financial conglomerates that have the priority for being repaid.

(5) Overdue documents

The following cases were dismissed because debtors did not hand in documents in time. This is also a questionable ruling.

a. Type

(a) The court demanded debtors to hand in many documents in a short time. If they are overdue, the court would dismiss the case immediately.

(b) The debtor handed in the documents, but the court considered them insufficient to prove and deemed them as not complemented and so dismissed the case.

(c) The court dismissed the case because it thought that the debtor's claimed dependents could actually self-support themselves.

(d) The court dismissed the case because it thought that the negotiation made in 2006 lacked the signatures of negotiators which were not later complemented.

b. Analysis

(a) Court judges had different opinions on what document is required, and debtors or their representatives could made preparation in advance. The judicial authority should hold judge meetings to achieve a consensus on which documents are required.

(b) Some judges allowed too short a time for debtors to submit the documents or prepayment. The judicial authority should decide an appropriate period of time for different circumstances.

(c) If the court considered the documents as insufficient, they should request debtors to explain or to complement the required document instead of regarding it as overdue and dismissing the case. If the court thought the debtors' claimed dependents as able to self-support themselves, it should ask debtors to explain or exclude the supporting cost from necessary expenses when ruling whether debtors are unable to pay or not. The court should not simply regard it as overdue and reject it. Besides, the cost for dependents support is hard to be proved; the court should be more lenient in deciding the fact. Regarding the proof of ways of paying for the cost for

dependents support, it might be presenting the affidavit or attendance to the court in addition to proof of remittance or withdrawal of money.

(d) In 2006, if debtors and financial institutions agreed on a negotiation, the institution usually would not sign on the written agreement. If the court demanded debtors to provide a written agreement signed by both parties, it would be very difficult for debtors to complement the required signatures. The court could simply send a letter to the financial institutions for confirmation instead of dismissing the case for overdue documents.

(6) No prior negotiation had been made.

According to Article 151 of the CDCA and Article 42 of its Enforcement Rules, debtors should negotiate with the primary financial institution creditor in advance before petitioning for restructuring or clearance. If the negotiation was sustained in 2006, they did not need further negotiation. But if it was not sustained, then according to Article 42 of the Enforcement Rules, negotiation would not be considered by the court to have been conducted. The following questionable cases were dismissed because the court ruled that debtors had not negotiated in advance.

a. Type

(a) Some courts ruled that though some successful negotiations in 2006 did not include financial institution other than banks, nor did they include guarantors and creditors with security, which did not conform to the institutions stipulated by the CDCA for pre-negotiation. Thus, the courts dismissed debtors petitioning for restructuring or clearance even though their cases had succeeded in negotiation in 2006.

(b) When pre-negotiating with the primary financial institution creditors, if debtors did not provide documents requested by Bankers Association in Taiwan, they would usually be rejected. If creditors did not start a negotiation in 30 days, then according to Article 153 of THE CDCA, debtors could petition for restructuring or clearance. But usually the court would dismiss the case due to the lack of a negotiation. Even the debtor had submitted the documents requested by Bankers Association in Taiwan but perhaps a little different in format, the banks would refuse to negotiate, and then the court would dismiss their petitions.

b. Analysis

(a) Situations in the aforesaid type (a) have been changed after appeals by debtors. The court now accepts debtors with sustained negotiation in 2006 even though not all creditors were included.

(b) As required by Article 153, Paragraph 1 of the CDCA, debtors only need to express their intention to negotiate with major financial institution creditors without providing any documents. Furthermore, two parties in a negotiation should be on the same level. Bankers Association in Taiwan has no right to unilaterally request debtors to provide documents or reject to negotiate. Moreover, the court has accepted opinions from Bankers Association in Taiwan, thinking that negotiation is not sustained without debtors providing documents required by Bankers Association in Taiwan, and so dismissed restructuring or clearance cases. On the other hand, even if debtors need to provide those documents in order to assist with the negotiation, based on the principle of equality and the principles of disclosure of information, creditors should provide documents about the actual amount of debt, the past repayments, the interest, liquidated damages and fees. As financial institutions are powerful with the advantages of information and legal resources, debtors should consult with attorneys or have access to other help. However during the pre-negotiation, debtors have no idea of the amount of debt and how it is calculated. When asking the banks to provide related data, the banks just refuse to help. Even though debtors have an attorney, the banks would reject the involvement of the attorney and ignore the lawyer during the entire negotiation process. The court has neither rejected the aforesaid illegitimate negotiation based on the principle of equality nor considered the fact that the banks might refuse to negotiate so debtors can petition for restructuring or clearance directly. As competent authority of the CDCA, the Judicial Yuan has turned a blind eye to the previous situation and tacitly agreed on rulings that favored banks in order to save the judges' own trouble.

(VI) Analysis and Reflection on reasons for the court's approval or dismissal of restructuring cases

After the court's approval of debtors' petitioning for restructuring, a restructuring plan should be proposed for the court to hold the creditors meeting to decide on whether to accept or not. The court can also directly turn to Article 64 of the CDCA to decide whether the plan is fair and make the final ruling. Usually the court would not hold the creditors meeting and it is not easy to have 50 percent creditors agreeing on the plan. Therefore, whether the court considers the plan fair and approves it or not will be the key to the success of a restructuring plan. However, by Article 64, except for the situations in Article 63 or Article 64, Paragraph 2, the court can approve it as long as the plan is fair. But there is no further stipulation to define the fairness of a plan.

In order to understand and analyze the information of the court rulings on restructuring plan, LAF has researched on the "debt clearance cases in local courts between June 1, 2008 and February 28, 2009", based on the list provided by Judicial Yuan to Legislator Jhung-hsiung Syu in April 2009. the

explanation and analyses are as follows:

1. Analyses on approved restructuring plans

(1) Only 42.7% of plans were accepted. The success rate is obviously too low.

From June 2008 to February 2009, there were 3,452 restructuring cases approved by the court but only 79 restructuring plans of them were accepted at a rate of 2.29%. Judging from the cases closed with the ruling to start restructuring, the accepted plans were 79 while the rejected were 52. The approval rate of restructuring plans was 60%. In addition, according to the survey by GVRSC, except for the 46.7% of cases still in process, the restructuring plans of 19.6% of all the restructuring petition cases were accepted while 26.2% were rejected (including the dismissed restructuring petitions and plans not accepted). Accordingly, only 42.7% of restructuring plans were accepted out of the dismissed restructuring petitions and rejected plans.【19.6%÷(19.6%＋26.2%)＝42.7%】No matter it was 60% or 42.7%, the court's approval rate of restructuring plans was obviously too low. The judicial authority should find out the reasons and try to improve.

(2) It was obviously against the stipulations of the CDCA when 70% of the approved restructuring plans had a repayment period as long as 8 years.

a. Statistics: Among the above mentioned 79 approved plans, 45 had information about repayment period, and 68.89% of which had an 8-year repayment period, 2.22% had a 7-year repayment period, 24.44% had a 6-year repayment period, and 4.44% less than 6 years.

b. Analysis: The restructuring period in Japan is 3 years and can be extended to 5 years. The CDCA Draft of Judicial Yuan stipulates in Article 53 the ultimate repayment period to be 4 years and can be extended to 6 years for particular reasons. Under the continuous pressure from the banks, it was extended to 6 years and 8 years for plans with special reasons. With 70% of the above restructuring plans having an 8-year repayment period, it is obvious that exceptions have already become normal rules.

(3) Compare with the restructuring system in Japan, almost 70% of plans had the repayment percentage higher than 50% of the repayment, which was relatively too high.

a. Statistics: 26.67% of the restructuring plans had to repay more than 90%, 42.22% of the plans had to repay from 50% to 90%, 26.67% of the plans had to repay from 20% to 50%, and 4.44% of the plans had to repay less than 20%.

b. Analysis

(a) There are two types of personal restructuring plans in Japan, the small-scale personal restructuring plan and that for persons with salary incomes. The small-scale personal restructuring should be subject to creditors' meeting to decide, and the total repayment is lower than the minimum repayment. If the debt total is 5 million Japanese Yen, the minimum repayment will be 1 million Yen. If the debt amount is between 5 million Yen and 15 million Yen, the minimum repayment will be 20% of total amount. If the debt is between 15 million Yen and 30 million Yen, the minimum repayment will be 3 million Yen. If the debt is between 30 million Yen and 50 million Yen, the minimum repayment will be 10% of the total. The restructuring plan for persons with salary incomes does not need to go through creditors' meeting, but the total amount of repayment should based on the disposable income. There are three steps to calculate: The first is based on debtors' gross income in 2 years before proposing the plan. After deducting the income tax, residence tax and social security fees, the figure should be divided by two to get an average yearly income. The second plan deducts the basic expense of debtors and their dependents to get the debtors' disposable income. The third plan will multiply the disposable income by 2 to get the base for disposable income, which is therefore the minimum repayment amount.

(b) On the other hand, the CDCA in Taiwan does not regulate the minimum repayment amount. Article 64 just stipulates that it should be considered fair by the court without a standard for being fair. The approved repayment percentage was from 14.42% to 100% with a significant difference in between. There have been decades since Japan had bankruptcy system, and its personal restructuring system only started in 2001. The banks in Japan were willing to accept a restructuring plan with a minimum of 20% of repayment since they usually got no compensation under the bankruptcy system. In Taiwan, restructuring and clearance system were enforced at the same time, but it was not easy for banks to accept restructuring plan with a discount on repayment. The judges also believed that debts must be paid off. Therefore almost 70% approved restructuring plans had repayment percent as high as 50%. There were even 26.67% of plans with 90% of total repayment. Compared with that in Japan, our restructuring system helps debtors only in a limited way.

(4) Almost half of the approved restructuring plans had a monthly repayment higher than the balance between debtors' income and expense. It obviously violates the spirit of the CDCA.

a. Statistics: Of the 25 cases with relevant information, 48% had the approved restructuring plans with a monthly repayment higher than the balance between debtors' income and expense, 44% had the repayment equal to the balance, and 8% lower.

b. Analysis: If the plan is to repay with all the balance between debtors' income and expense, the debtors would surely be considered as most sincere. But in fact, this kind of plans were liable to be hard to fulfill in the future because there are many situations for their expense to increase in the following 6 or 8 years such as price fluctuation, medical expense, education fees, increase of dependents or increase of the cost of supporting them. In the mean time, there are also possibilities for their income to decrease such as pay cut, decrease in overtime pay, business downturn…But the court had approved as many as 48% of plan with a monthly repayment higher than the balance between debtors' income and expense without considering debtors' ability to repay. It obviously contradicts Article 64 of the CDCA and the spirit of restructuring system that is meant to offer an opportunity to debtors. Beside, 44% of the approved plans had the monthly repayment equal to the balance between debtors' income and expense. Although it had taken debtors' repaying ability into consideration, debtors still had to struggle to repay without a room to breathe and were liable to default in case of accidents.

2. Related analysis on the rejected restructuring cases

(1) "From 06/01/2008 to 02/28/2009, Based on the information between June 1, 2008 and February 28, 2009 provide by Judicial Yuan to Legislator Jhung-hsiung Syu in April of 2009, the reasons and analyses on the rejected restructuring plans are as follows.

a. Statistics: Among the 22 plans which the court considered as unfair, 7 were due to the debtor's extravagance and 5 cases were because that the debtors were in the prime of life and so were supposed to be able to find a better job.

b. Analysis: Debtor's extravagance was the cause of debt and was not related to the fairness of the future restructuring plan.

(a) As stipulated by the CDCA's Article 64, Paragraph 1, as long as the restructuring plan is fair, the court may approve the case but no further definition of "fairness" is provided by the Act. However, according to the literary meaning of the Article, whether the plan is fair or not should be based on Article 53 concerned with debtor's repaying ability, total repayment amount, repayment percentage, repayment for each installment, and the cause of debtors' debt was not included. According to Article 134 and 142, debtors petitioning for clearance are normally unable to be liability free. But if debtors continue to repay and each ordinary creditor receive repayment as much as 20% of the amount of debt, debtors can be liability free. If extravagance resulted in debtors' debts but the restructuring plan has repayment percentage higher than 20%, it would contradict Article 134 and Article 142 of the CDCA if the court disapproves the plan.

(b) Even if debtors were in the prime of life, it is uncertain whether they could find a better job or not, and it had nothing to do with the fairness of the plan. So the court could not disapprove the case on the basis of factors uncertain and irrelevant to fairness.

(2) According to the survey by GVRSC, the reasons and analyses for court to disapprove restructuring plans are as follows.

a. Statistics: 32.1% of plans with debtors "having family members to help to repay", 24.2% with debtors "having too high living costs", 14.1% with debtors "able to find a better job", and 4.2% "displaying reckless spending."

b. Analysis

(a) Debtors having family member to help with repayment

To begin with, regarding the argument of the 32.1% of plans with debtors "having family member to help with repayment", in fact family members were not obliged to help and it is also questionable whether they could help for a long time. It is obvious unreasonable for the court to reject the plan on the basis of this reason.

(b) Have too high living expenses

Secondly, regarding the 24.2% rejected plans because of high estimated living expenses, it was a legitimate reason worth further analysis on whether it is too strict with individual plans.

(c) Debtors being able to find a job or a better job

The analysis is the same as (b).

(d) Debtors displaying reckless spending

The analysis is the same as (b).

(3) According to the survey by GVRSC, about 70% of the rejected plans exceeded debtors' ability to repay

Among the rejected plans, according to the survey by GVRSC, 70.7% of the debtors had monthly repayment exceeding the balance between their income and expense. In other words, even if the debtor gave every penny of the balance to the banks according to the restructuring plan, the court still considered it unfair, which obviously contradicted the spirit of the CDCA. Representatives from Civil Department of the Judicial Yuan expressed in the Attorneys' Training Course held by LAF that if debtors could repay with

all their monthly balance, the case should be considered fair and no further argument over the amount of debt would be needed. But there was obviously significant difference between the Judicial Yuan's speculation and the practices of courts.

(VII) Reflection and analysis on the satisfaction rate of debtors of the restructuring and clearance cases

According to the survey by GVRSC, 7.2% of debtors considered the court "reasonable", 23.7% "somewhat reasonable", 16.2% "a bit unreasonable", 19.3% "very unreasonable", and 33.5% refused to reply. In other words, only 30.9% of debtors considered the court reasonable, which was less than one third of all. The court should thoroughly improve the efficiency of the system to win debtors' trust and solve debtors' problems.

IV. Conclusion

(I) After 15 months of enforcement of the CDCA, the average petitions for clearance per month were 129.9, 8.6% of the 1499.7 restructuring petitions. Petitions for pre-negotiation were 3880.1, 2.5 times of the restructuring petitions.

(II) Compared with 2007, the pre-negotiation cases did not decrease while restructuring cases reduced to 37.5%.

(III) As the total of pre-negotiation cases remaining the same, the restructuring and clearance cases rapidly dropped. The main reasons were the slow court process that often lasted over a year, the high dismissal percentage, the low liability-free percentage of court-approved restructuring or clearance plans, and debtors losing confidence in the court and the restructuring or clearance system.

(IV) The success rate of pre-negotiation cases is as high as 70%, but 67.9% of debtors with successful negotiation could not or could just struggle to repay. Over 60% of the successful negotiations have conditions demanding interest, over 60% had to pay over 8 years and even 11% over 15 years.

(V) The dismissed petitions were far more than the approved ones. The reasons were incompletion of document, overdue fees, lack of negotiation, having no possibility of being unable to pay, difficulty in fulfillment not by the cause not attributable to debtors themselves, and relegation of cases. But some of these reasons obviously contradicted the CDCA, some were partial toward the banks' illegitimate excuses for debtors, and some did not understand the real situations of debtors or the negotiations in 2006.

(VI) Among the restructuring cases with court rulings to start, 60% of their plans were approved, 70% needed to pay over 8 years, about 70% needed to repay half of their total debts, and about

50% of the plans had each installment amount higher than debtors' balance. It was clearly beyond debtors' ability to repay and contradicted the spirit of the CDCA.

(VII) The Judicial Yuan should hold judges meetings to achieve a consensus on judges' different interpretations contradictory to the CDCA. And the results should be put online or published for everyone to refer to.

(VIII) As the regulations and spirit of the CDCA are different from that of general civil codes, the Judicial Yuan should enhance training for judges and judicial associate officials in charge, making them understand the CDCA and actual situations of debtors.

(IX) If there is further amendment on the CDCA in the future, it should be stipulated that pre-negotiations must be conducted by a neutral third party, and that creditors must provide information about debt amount and debt calculation. Besides, whether the restructuring plan is fair or not should be put into clear calculation or definition. Furthermore, for clearance plans there should be stipulations on circumstances for free liability.

(X) LAF should lower the criteria for debtors to apply for legal aid and enhance efficiency of legal aid attorneys' representation for procedures of negotiation, restructuring and clearance. The Judicial Yuan should correct the banks illegitimate refusal to allow attorneys' representing debtors, and the competent authorities should enforce a ban on any illegal act from agencies.

Part Two. Poverty Issues and Legal Aid in Taiwan

As mentioned in the introduction, LAF has provided a lot legal aid to conventional civil and criminal litigations but conducted no research or action about understanding the causes of poverty, the problems faced by the poor, the loopholes in legal system concerning with the poor, and how to provide legal aid to individual cases or the system. Except for providing assistance to some low-income households with application for administrative relief, it was until 2006 that LAF initiated the aforesaid program for legal aid to debt-related cases and the assistance in amendment program on Social Assistance Law in 2007. In the future, it is worth considering and planning for how LAF will provide legal aid to the poor.

One. Legal Aid to Assist Rejected application by Low-Income Households with Administrative Relief Petition

The scope of LAF's legal aid covers criminal cases, civil cases, family cases and administrative case, with the administrative cases constituting a very low proportion. For example, of the all aided cases in 2008, criminal cases constitute 46.5%, civil cases 26.3%, family cases 22.7%, and administrative cases only 1.3%. As described above, the Social Assistance Law stipulates that low-

income households can apply for a diversity of subsidies. But it is overlooked by governments of different levels and hence the relevant budgets are very low. When the poor apply for the qualification of low-income households, they are often refused by various reasons. The refused can apply for legal aid with appeal and administrative litigation, but the applications have been few in the past years, as listed in the follows:

Year	Aided Cases	Aids with Advantageous Result	Aids with Disadvantageous Result	Aids with Unclear Result
2004	8	0	8	0
2005	25	15	6	4
2006	16	8	4	4
2007	28	16	10	2
2008	14	12	2	0
2009	8	8	0	0

The above data shows that there aren't many legal aided cases of assisting low-income households with administrative relief for their refused applications. The reasons for it are many, for instance, the low-income household applicants or the social workers who help them do not know that this type of legal aid is provide by LAF, the low-income household applicants have to wait for application again the following year because they do not have a keen awareness of their rights and are afraid to be blamed by the authority, and appealing for administrative relief is ineffective because the Social Assistance Law and related administrative regulations are not legitimate, etc. It is imperative that LAF establishes a special team to keep close contact with low-income household applicants and social workers besides make researches on Social Assistance Law and its related administrative regulations as well as effective strategies for effective administrative relief. If necessary, the team should assist with the amendment of Social Assistance Law and related administrative regulations or petition for the Constitution interpretation.

Two. A draft of Social Assistance Law Amendment was proposed by Social Welfare Alliance through the assistance from LAF in 2007, but was only partly approved in the end.

In 2006, members of the Social Welfare Alliance found that lots of the previously qualified low-income households were denied in 2005 and had trouble in making a living, and the Alliance asked LAF to give them assistance. As a special team was formed by LAF to assist individual cases with application for administrative relief, the team also discovered many illegitimate points of the Social Assistance Law and many relevant administrative regulations needing amendment. In 2007, the Alliance established a law amendment team and required the assistance from LAF. The amendment draft was completed in nearly a year, and though it was completed with the three readings procedures and passed by the Legislative Yuan, only a little part of the Alliance' proposals were accepted with many problems remaining unsolved as follows.

I. Major Illegitimate Points of Social Assistance Law and Relevant Administrative Regulations

(I) The budgets decided by governments of different levels are low and the examination of low-income household qualification is strict.

(II) The qualification examination process has become mostly written and superficial, and the examiners are not professional social workers.

(III) Most local governments stipulate that people cannot apply for low-income qualification until they have been registered as local households and actually living there for a certain period, which apparently violates the Social Assistance Law.

(IV) For the immovable properties without economical effect that may not be included in family assets, the category scope is too narrow.

(V) When calculating the size of a household, the Social Assistance Law takes only the formality of identity relationship into consideration. As a result, the applicants cannot pass the examination because the income and assets of those who in fact are not their dependents are also included in the count.

II. Key points of Social Welfare Alliance' draft of Social Assistance Law

(I) When the central government determines the budget for social assistance, the local governments' scope of expenditure should be designated, and the secondary reserve fund may be executed if the budget is not enough.

(II) The reply to applicants who do not accept the result of low-income qualification examination should be based on the investigation made by professional social workers.

(III) An amendment is made by adding that there must not be any regulation stipulating the applicants' time limit of household registration.

(IV) The category scope of immovable properties not to be included in the family assets should be broadened.

(V) The household size count should be limited to those who are actual supporters of the applicants. Only the part of income of applicants' supporters actually obtained by applicants can by included in the total household income, and only the assets of those actually living with applicants can be included in the household assets.

(VI) To those who are capable but fail to fulfill their obligation to support the applicants, the government may have the subrogation right after providing care to the applicants.

III. Key Points of Amended Social Assistance Law in 2007

(I) When the central government determines the budget for social assistance, the local governments' scope of expenditure should be designated, but there is no stipulation that the secondary reserve fund may be executed.

(II) The category scope of unmovable assets not to be included in the family assets is partly broadened while some other part of the category is not.

(III) Instead of adopting the complete proposal for "only those are actually supporters of the applicants can be included in the count of total household size", the amendment only makes an exceptional stipulation that "those who have not fulfill their obligation of supporting due to other special conditions and cause the applicants' life trapped in difficulty can be deemed as proper not to be included in the population count after the visit and evaluation by the competent authority of the city or county", which means that they cannot be included in size count only after passing multiple restrictions.

(IV) No amendment are made concerning with points (II) and (III) mentioned in the previous part II.

Three. For other poverty issues, LAF should initiate a special program to research into them and propose aid strategies.

I. LAF should initiate a special team to research into issues concerning with the poor.

Both the social welfare system and social security system in Taiwan are not sound enough. The second generation of the poor, people unemployed for a long time, people having failed in investment, and people themselves or their family suffering from serious accidents or illness all may fall into poverty. Poor people's housing, medical expense, children education, work problems, subsidies and the possibility of small loans at a legitimate rate are all issues worth researching and analyzing by a special team of LAF.

II. LAF should initiate a special team to propose aid strategies for poverty issues.

Regarding the above poverty issues there are certain relevant legal systems, but the systems may not be legitimate or comprehensive. LAF should consider determining various aid strategies, e.g. strategies for administrative relief petition, Constitution interpretation petition or assistance with law amendment. Some of the above-mentioned poverty issues do not have relevant legal systems to resort to, and LAF should also determine aid strategies for administrative relief petition, Constitution interpretation petition or assistance with law amendment.

Workshop III
Poverty, Debt and Legal Aid

Group Discussions (A) : Conference Room
Group Discussions (B) : R.103
Group Discussions (C) : R.101

I.

(1) What are the laws regulating personal debt clearance problems in your country? What are the deficiencies in these laws and regulations (eg, the availability of reasonable debt negotiation mechanisms and debt restructuring and personal bankruptcy procedures).
(2) How and in what ways can legal aid organisations or legal services providers strive to establish reasonable debt clearance mechanisms and procedures?

II.

How and in what ways can legal aid organisations or legal services providers assist in debt negotiations, debt restructuring or personal bankruptcy procedures? What are the difficulties involved in providing these services?

III.

What is the attitude of the courts, legal practitioners, the media and the general public towards personal debt problems and the applicable debt clearance mechanisms and procedures? How and in what ways can legal aid organisations respond to and influence it?

IV.

(1) What are the laws and the legal framework in which the social welfare system operates in your country?
(2) What services are available from legal aid organisations and legal services providers?
(3) Are there any unreasonableness or deficiencies in the social welfare system in your country?

V.

How and in what ways can legal aid organisations or legal services providers strive to improve the laws and regulations concerning social welfare?

Group Discussion List

Group Discussions (A) Conference Room

Moderator : Mr. Wei-Shyang Chen—Deputy Secretary General of Legal Aid Foundation

Discussants :

- Mr. Futoshi Toyama—Expert Advisor, Civil Legal Aid Division, Japan Legal Support Center
- Mr. Herman J. Schilperoort—Head of Staff, Staff Department, National Legal Aid Board Netherlands
- Mr. Joseph Lin—Director of Taipei Branch, Legal Aid Foundation
- Ms. Chyong-Jia Lin—Legal Aid Lawyer, Legal Aid Foundation Taichung Branch
- Ms. Shiue-Hui Chen—Director, Parliamentary Office

Group Discussions (B) R.103

Moderator : Mr. Ping-Cheng Lo—Director of Hsinchu Branch, Legal Aid Foundation

Discussants :

- Ms. Saya Oyama—Associate Professor, Kinjo Gakuin University, Japan
- Ms. Fen-Fen Chen—Executive Secretary, Legal Aid Foundation Shilin Branch
- Mr. Wan-I Lin—Professor, Department of Social Work, National Taiwan University
- Mr. Yen-Wen Lin—President of Court of Law, Taiwan Taichung District Court

Group Discussions (C) R.101

Moderator : Mr. Hao-Jen Wu—Associate Professor, Department of Law, Fu Jen Catholic University

Discussants :

- Mr. Paul Chan—Chairman, Legal Aid Services Council of Hong Kong
- Mr. Chi-Jen Kuo—Secretary-General, Legal Aid Foundation
- Mr. Hsi-Sheng Shih—Lawyer, Wei Yuan Law Offices
- Mr. Ming-Cheng Kuo—Associate Dean, College of Law, National Chengchi University
- Mr. Jin-Long Wang—Justice, Taiwan High Court Tainan Branch Court

Conclusion of Panel Discussion III
Poverty, Debt and Legal Aid

Moderator:
Mr. Chi-jen Kuo (Secretary-General of LAF)

Reporters
Mr. Hao-Jen Wu, (Associate Professor of Department of Law, Fu Jen Catholic University)
Mr. Wei-Shyang Chen (Deputy Secretary-General of LAF)
Mr. Ping-Cheng Lo (Director of LAF Hsinchu Branch)

Mr. Chi-jen Kuo (Secretary-General of LAF)

As much as I could feel, our discussion room was filled with enthusiasm and rage. If the issue of poverty cannot be so emphasized as that of global warming, or if it is the protesting public instead of attorneys demonstrate in street, the situation might become too grave to be resolved by the removal of certain officials and riots may happen. When so many poor people have been pressed to killed themselves, should the government be responsible? Professor Ming-Cheng Kuo stressed that with so many suicides happening, why no government would come out to apologize for it? Is there no one to be responsible? When American representative Ms. Kelli Krate reported this morning, the audience felt her enthusiasm and became particularly emoted. Now we'll start this summary, and Associate Professor Hao-Jen Wu is reporting.

Mr. Hao-Jen Wu, (Associate Professor of Department of Law, Fu Jen Catholic University):

The topic of our panel discussion is an issue rather basic and technical because poverty is not equal to debt and there is a source cause for its happening. For example, the cause of poverty brought by globalization is a source; this kind of poverty is not caused by the partial difference in society, not the classic poverty but the new poverty caused by regional difference. There's also the poverty that is the despair of life and loss of hope. The third kind of poverty is caused by natural disasters. The first to be affected by the drastic changes of environment would always be people of the first kind of classic poverty and the second kind of new poverty. People of new poverty are liable to fall into the classic poverty, and people of both kinds of poverty have difficulty to recover from natural or manmade disasters. It is especially deeply understood after Typhoon Morakot hit Taiwan.

The discussion of our panel is was ardent on the stage but less in the audience seat because the conversation between Attorney Fen-fen Chen and Court President Yen-Wen Li was very exciting, but now I'll report it briefly in order. Professor Saya Oyama from Japan mentions that Japanese society has gradually changed its attitude toward people of new poverty, e.g. credit card debtors and those living on debts. A major reason is that, when the Debt Clearance Law was enacted in 2006, the Japanese government clearly announced that it was the government's responsibility to solve the problem of multiple debts. Therefore the central and local governments have executed many policies because they realize that it is not the responsibility of individuals who make bad financial arrangement and live a squandering life under capitalism but the responsibility of the government.

What Attorney Fen-fen Chen says is the specific part of this issue. We are confused when exploring the causes of poverty, but we need specific legal knowledge and know-how to solve the problem. The conflict we are met with is that while we know about the source and that the problem ought to be solved, legal persons often have a blind spot for the understanding of this issue. Hence we need people like Professor Oyama who has a sociology background or Professor Wan- I Lin with a social work background to explore from multiple angles such as sociology, social work or economics. Attorney Fen-fen Chen actually supplements and extends Attorney Yung-song Lin's report in besides presenting many concrete issues. For example, the confirmation of debt amount required by the procedures is often ignored by many debtors and creditors, and even implied by the court to be skipped in order to start clearance soon. As mentioned by Director Yung-song Lin, with the court judges take effect for cause and omit the negotiation procedures, basically it is the bank to control of the matters.

Professor Wan-I Lin clearly explains to us most petty citizens gets the loan because it is too easy for them to apply for credit cards and cash cards while poor people cannot borrow from the regular bank system. Why do people use their bank credit cards or borrow form juice dealers? Because they won't be humiliated when they borrow money. But of course in the end they have to pay a lot because they would be humiliated or even lose their lives when collectors come. Who would need small loans? Are they the unemployed, taxi drivers, people suffering accidents, gamblers, drunkards, drug-addicted person or those who crave for luxurious brands? As a matter of fact, of all the credit card debtors, the percentage of people who squander for luxury is low. As for most of debtors, they are not qualified for our social welfare system because there are too many conditions for being identified as the poor and the authorities see only their assets instead of debts when examining their eligibility.

Justice Yen-wen Li finds it is a serious understanding for us to blame the court, and I am convinced because in most cases LAF, attorneys and judges do not differ much in viewpoints and

we all intend to help the debtors. After all, it has been only one year since the enactment of the Consumer Debt Clearance Act, discussion and communication would still be needed to avoid emotional fight. Furthermore, for the judges, attorneys or even creditors to produce a better restructuring program under the existing incomplete statutes, it's in effect to distribute with very limited resources. Obviously the judges and attorneys view differently about the way of distribution. For instance, as Attorney Fen-fen Chen stresses, the creditors and litigants may tell the truth to their attorneys but not necessarily to the judges for fear that the judges' conviction might be affected, and so the attorneys will always speak for their clients.

We talk about that the judges would not think the litigants should be acquitted if they lie at the court. Professor Saya Oyama shares his experience with us about the three stages for many debtors to borrow money: the first is to borrow from people or juice dealers who are liable to lend to them because debtors dare not or cannot borrow from their family or friends; the second is they get the loan from a very friendly party; the third is the creditors turn hostile before pressing to collect the debts and threaten the debtors. When the debtors finally enter they court procedures, the judges think they are lying. Professor Oyama suggests the judges trying to understand at which stage the debtors are lying about. Do they lie when they start to borrow money? Do they lie when they just get the loan or when they are threatened?

Attorney Izawa from Japan particularly indicates that in fact it took 10 to 15 years for Japanese to change their attitude toward debtors. The purpose of acquitting individual debtors is to solve more social problems. He says that while one to two million Americans file for bankruptcy each year, people in Taiwan might worry too much about it, and it may as well to allow people to file for bankruptcy.

Mr. Wei-Shyang Chen (Deputy Secretary-General of LAF)

First I'll make a brief report based on the four outlines of our panel discussion. The description by the representative from Holland enlightens us that the debt management mechanism in Holland is entirely different from that in Taiwan. Basically they don't work through legal aid but the service of their city government. When debtors come for assistance, the social worker will help contact the creditors, the banks included. He will also help the debtors with calculating data of debts and then find the creditors to negotiate. If the negotiation fails, he will help the debtors to file for clearance to the court. In principle the debtors can complete their debt clearance within three years and resume their normal life. When they file for clearance, the court will appoint a trustee to assist them with follow-up procedures. If I hear correctly, the trustee has to be registered at their legal aid office and paid by the government annually. It is a system quite different from those in Taiwan and Japan. The

representative from Holland also mentions that in effect there are many people with debt problems in their country, and many difficulties have been encountered when they try to help the debtors. Firstly, the success rate is only 10% when the social workers negotiate with the banks, and 90% of the cases would turn to the court for resolution. He hopes that the success rate can be elevated. Also, most debtors do not trust the social workers and prefer to resort to the court. Finally, some debtors might have repeated debt problems. All these are worthy references for us.

Attorney Futoshi Toyama from Japan says that debtors' suicide rate in their country is very high, and pressing the doorbell of debtors early in the morning and other improper ways of debt collection also happen a lot. However, their experiences show that it takes time for certain ideology to change. Therefore he urges us to understand that everything, including the attitude of the public and court judges, needs time to change. One thing we need to learn from Japan is that, once the debtors file for clearance, the creditors can contact them only through attorneys instead of direct contact. Thus the debtors can live and work normally and will not lose their normal functions of life if pressed by collectors. Somehow they still find certain difficulties. For example, fewer legal resources can be found in remote areas, and the debtors living in the rural area lack understanding about law and are afraid to seek for help from attorneys. He especially mentions that, besides caring and assisting the debtors with debt clearance, they are more concerned if the debtors might have difficulty in restore their live when the bankruptcy filing procedures are approved because crimes may happen or they would borrow money again after bankrupted. The above mentioned experiences in Holland and Japan are all something we need to learn from.

We also talk about that the issue above poverty and debt is the change of attitude. In Taiwan and even in Japan, the people keep a conventional conception that one must pay off his debts. Director Shiue-hui Chen mentions that the premise of paying off one's debts should be that the banks make only the part of money they are supposed to earn. During our discussion many proposals are made, including referring to the experiences in Japan and South Korea and integrating them into a complete theory in addition to sharing these information with everyone via other channels. However, the representative from Holland reminds us that, besides the change of attitude, we ought to review if the banks' operation is reasonable. The cause of debts is not unilateral, and the entire system needs to be examined, too.

Regarding the issue on education, we talk about the training for court judges, practical training for attorneys and even the on-the-job training for public service officials, etc. Because there are too much to be discussed, in the end our emphasis stay on social welfare. We think that the present problem is not the budget, which may not be much but still enough, but the uneven distribution that results in more resources being distributed to certain less disadvantaged people. Therefore we also discuss about how to improve it via legislation.

Mr. Ping-Cheng Lo (Director of LAF Hsinchu Branch)

During our panel discussion, Professor Ming-Cheng Kuo makes a sad and fierce accusation. He points out that all the tragedies of credit card debts are basically caused by the foursome accomplice structure of banks (consortia), mobsters, the court and media. He thinks the enactment of the Consumer Debt Clearance Act in Taiwan leads in a wrong direction, which will be further explained later by me. But Professor is not at all pessimistic but quite optimistic. He thinks it is worth the efforts to resolve or relieve the issue of poverty through legislation. As the general culture is concerned, I believe that discrimination against poverty exists in the culture of Taiwan and all other countries. It can be imagined how great the resistance might be trying to resolve a cultural issue via legislation. There is a saying in Taiwanese "so poor as a ghost", meaning a poor man is like a ghost who's avoided by all. Our culture also believes that it is perfectly justified to pay off the debt, and so the general public cannot accept that the debtors can be acquitted and people attribute all the responsibilities to the poor debtors. Under the circumstances, using social resources to solve the poor men's plight will definitely be judged differently by the culture and society. The same effect is also reflected on the law enforcers such as judges and attorneys. If people of law enforcement do not have proper understanding and attitude, they would not have sufficient empathy. That is why our host points out in the introduction that education is the fundamental issue. In Taiwan, as the education system does not teach the students to know, understand and even settle the issue of poverty, no basic lessons are offered, not to mention any professional training.

Justice Jin-long Wang surprises us by saying that after the enactment of the Consumer Debt Clearance Act only a three-hour relevant class is offered for the judges' training, which is not enough even for basic concept introduction. Justice Wang also points out a contrast incomprehensible to us. In Taiwan, there are those judicial affairs officials who may be regarded as assistants to the judges. The total training time of the judicial affairs officials is about one third of that of the judges, but they receive 18 hours' training on the Consumer Debt Clearance Act. That is to say, the judges take less time for professional judicial training but have the most power to decide. Under the circumstances, some judges might think that they don't need to learn too much and it's all right to leave these matters to the judicial affairs officials. This conservative or retreating attitude might be related to the past legal education the judges received. Because what they learned in the past was the Bankruptcy Law, which is very outdated, no ideal outcome can be expected if they judge cases of a new type on the basis of an old law.

Attorney Hsi-Sheng Shih shares his experience with us. Of the 15 clearance cases processed by

him, only 3 are approved for restructuring, clearance or acquittal, 7 are rejected, and the others are forced to carry on negotiation with the banks. According to Attorney Shih, just like the 3 “highs” with a man with bad health, which are high blood pressure, high blood lipid and high blood glucose, there are 3 reasons for the low percentage of approval for restructuring or clearance: 1. High uncertainty – no one can be certain when and how the court would decide. Moreover, the stipulations of law are relatively complicated but the judges lack sufficient training and have to try and learn at the same time. Because the law is new, the judges feel like to reject it and therefore have insufficient learning and understanding. 2. High qualification – as mentioned before, the qualification for approval for restructuring or clearance is too high. 3. High profile – the banks are too condescending to communicate with the attorneys. Deputy Secretary-General Wei-Shyang Chen talks about that in Japan the banks are allowed only to contact the attorneys instead of the debtors after the attorneys’ being commissioned. But in Taiwan the banks do not wish to see the attorneys involved. Why do the banks keep such a high profile? If as Professor Ming-Cheng Kuo says the banks are part of the accomplice structure, people in Taiwan seem to ask too little from the banks and be tolerant toward them too much.

Chairman Paul Chan of Legal Aid Services Council in Hong Kong shares with us their experience. There isn’t a poverty criterion by law in Hong Kong, but the conservative estimation counts about 700,000 persons, i.e. 10% of the population fall below the criterion. If judged with a broader criterion, the estimation would be 1.2 million poor people, i.e. one sixth of the population. How can they help the poor? Chairman Chan indicates a very good aspect for us to start, i.e. it cannot rely on legal persons only but the improvement of the education in the frond end as well as the law in the back, and so patience is required in dealing with these matters. While in Taiwan the bankruptcy procedures are handled according to the Consumer Debt Clearance Act, in Hong Kong it resorts to the general bankruptcy law. In effect Professor Kuo agrees more to the application of the bankruptcy law than a separate law. Although in Hong Kong the debtors also file for bankruptcy to the court, the investigation and processing of relevant affairs are managed by the Official Receiver’s Office of the administrative department. Generally it takes only half a year to one year to process a case, and the approval percentage is as high as 99%. As the cases are handled by the Office, the court judges almost never meet the litigants but handle the paperwork of procedure examination only. According to Chairman Chan, the court has plenty of guts in processing the debt cases. As long as no fraud is involved, usually most benign bankruptcy cases can be approved and the debtors will have a chance to restart again. Under the circumstances, the banks would not keep their profile too high. For fearing that they might suffer from loss after the debtors’ bankruptcy, the banks are more willing to negotiate. The banks are often more careful with the preliminary credit investigation and examination of the loan, and so a positive cycle is formed. He also mentions that in the credit database of the banks, the consumers committee makes comparison and publication of the banks’ interest rates in order to have a fundamental resolution of these debt issues. Of course he also thinks that education is very important.

Finally Justice Wang responds by indicating that the Consumer Debt Clearance Act was passed as a special due to certain considerations of time and space factors, but in fact our Bankruptcy Law will be renamed Debt Clearance Law in the future. This law was already finalized at the end of 2008, but Justice Wang is worried that by experience the legislation is liable to be left aside. The lack of effectiveness is often caused by inactive legislation, and it might be a way to solve the issue via an integrated research of the Bankruptcy Law.

National (Regional) Reports I

Taiwan, Australia, United Kingdom., Finland,

Hong Kong (SAR), Indonesia, Japan

Moderator : Mr. Wilhelm H. Joseph, Jr.

Executive Director Legal Aid Bureau, Inc.

Baltimore, Maryland, U.S.A.

National Report

Taiwan

Speaker : Mr. Wei-Shyang Chen
Deputy Secretary-General of Legal Aid Foundation (Taiwan)

2009 International Forum on Legal Aid
National Report
Taiwan

Mr. Wei-Shyang Chen
Deputy Secretary-General of Legal Aid Foundation of Taiwan

1.0 Foreword

July 2004 marked the most significant moment in the history of the development of legal aid in Taiwan. Before then there was no single organisation that provided a comprehensive range of legal aid services to the disadvantaged in Taiwan. Some organizations in the public and private sectors provided legal services as part of their business, most of which were limited to verbal legal consultation.

Following democratization and the establishment of the rule of law, the demand for judicial resources in Taiwan increased. In 1998, the Judicial Reform Foundation, the Taipei Bar Association, and the Taiwan Association for Human Rights jointly campaigned for the passage of the Legal Aid Act. With the support of the Judicial Yuan, the Legislative Yuan passed the Act which was proclaimed in January 2004. In July, under its mandate, the Judicial Yuan sponsored and established the Legal Aid Foundation ("LAF") and five of its branch offices. The Legal Aid Foundation began to accept legal aid applications, turning over a new page for a new era in a fairer society.

The following paragraphs will introduce the organizational structure of the Legal Aid Foundation, its supervising authority, the eligibility criteria and services, financial affairs, assessment procedures and the assignment of cases to legal aid lawyers. This report will conclude with the challenges which the Foundation is facing and the Foundation's plans of responses.

1.1 Introduction of the Legal Aid Foundation

1.1.1 Organizational Structure

LAF is a statutory entity established by the Judicial Yuan according to the Legal Aid Act. The Judicial Yuan annually budgets funding towards the operational expenses of the Foundation. The highest decision-making body of the Foundation is the Board of Directors under which a secretariat, 21 branch offices and 4 specialist committees have been established. Under the authorization of the Board of Directors, the secretariat directs staff members in carrying out the business of the Foundation and guides branch offices in conducting their business operations. The branch offices process the individual legal aid applications. In doing so they establish Examining Committees which are responsible for assessing the eligibility of legal aid applicants. Review Committees are set up by the Board of Directors to be responsible for reviewing submissions made by applicants who disagree with Examining Committees' decisions to refuse their applications. As of September 30, 2009, a total of 235 employees (including the head office and branch offices) are employed by the Foundation and its branch offices.

1.1.2 Board of Directors

The Board of Directors is the highest decision-making body of the Foundation. Thirteen Directors are appointed by the President of the Judicial Yuan to serve a term of 3 years, and receive no remuneration. Directors include 2 representatives from the Judicial Yuan, 1 representative from the Ministry of Justice, the Ministry of Interior and the Ministry of National Defense respectively, 4 attorneys recommended by the national Bar Association and local Bar Associations as persons who actively participate in legal aid work; 2 academics or experts having specialist knowledge in law or in related disciplines; 1 representative of disadvantaged groups and the aboriginal people. Official representatives comprise less than half of the Board members. The 13 Directors nominate from amongst themselves a Chairperson to represent the Foundation. Up until now, the Chairpersons have been scholars from the non-governmental sectors.

1.1.3 Secretary-General / Deputy Secretary-General

A full-time Secretary-General and a Deputy Secretary-General having specialist knowledge in law manages the affairs of the Foundation under the orders of the Chairperson. Six Departments including Legal Research & Legal Affairs, Business Management, Public Promotion and International Affairs, Administration & Management, Accounting and the Secretariat have been set up under adequate authorization from the Secretary-General and the Deputy Secretary-General.

1.1.4 Branch Offices

The Foundation establishes Branch Offices which are located according to the jurisdiction of the District Courts. Authorized by the Board of Directors, branch offices directly deal with applications for legal aid and the assessment, payment, refund and contributions to the legal fees and costs involved in conducting legal aid cases. Each Branch Office is directed by a reputable local lawyer who is committed to legal aid and appointed by the Board of Directors. The daily business of the Branch Office is managed by an Executive-Secretary, who in principle must be a qualified lawyer.

1.1.5 Examining Committee

Each Branch Office establishes an Examining Committee where Commissioners serve a term of 3 years and receive no remuneration. Commissioners nominated by Branch Office Directors are chosen from among judges, public prosecutors, judge advocates, attorneys, or academics and experts having specialist knowledge in law, and appointed by the Foundation. As of 2008, there are 1,715 examining commissioners. The Examining Committee is responsible for resolving the following issues:

(1) the granting, refusal, cancellation and termination of an application for legal aid;
(2) the payment (including pre-payment), reduction or cancellation of legal fees and necessary expenses;
(3) the determination of the amount of legal fees and necessary expenses that the applicant should share or be responsible for;
(4) the mediation of any disputes between recipients of legal aid and their providers and the terms of reconciliation

1.1.6 Review Committee

For applicants who disagree with the outcome of assessment, may apply to have such outcome reviewed. LAF has established Review Committees for this purpose. Chosen from among senior judges, public prosecutors, judge advocates, attorneys, experts and academics who specialize in law, members of the Reviewing Committee Serve a term of three years without remuneration. By the end of 2008, there were 197 commissioners in total.

2.0 Sources of Funding

The funding for LAF's operations include subsidies budgeted by the government, interest generated by endowment and donations from local governments and non-governmental organisations. The subsidies from the government constitute the bulk of LAF's funding. The

total funding has been increasing each year from NT$460,000,000 in 2006 to NT$470,000,000 in 2007, NT$690,000,000 in 2008 and about NT$858,000,000 in 2009. For a population of about 23000,000, each person in Taiwan receives approximately NT$37, which still is a fair difference from the amount received per capita in countries with more advanced legal aid schemes. Although funding has been increasing, and in particular interest generated by endowment has exceeded NT$50,000,000 in 2009, income from local governments and non-governmental organisations is modest compared with the amounts budgeted and subsidized by the government.

3.0 Supervising Authority

The Judicial Yuan is the authority supervising the work of the Legal Aid Foundation, and has set up a Supervisory and Management Committee for this purpose. The Committee comprises of 9 members, all of them are appointed from the officials of the Judicial Yuan except for 2 external members. The legal profession and NGOs hold different views about a structure where the majority of the members are government officials. Concerning the scope of supervision, the Judicial Yuan oversees most of the financial and business affairs of the Foundation, except for individual legal aid cases and matters relating to human resources. There are problems as to whether there is an overlap in the division of responsibilities between the Committee and the Foundation's Board of Directors, and also questions as to what the reasonable boundary of supervision is.

4.0 Services Provided by the Foundation

4.1 Service Items

As defined in Article 2 of the Legal Aid Act, legal aid includes:

(1) legal consulting;
(2) negotiation and settlement;
(3) the drafting of legal documents;
(4) representation or advocacy in litigation or arbitration;
(5) assistance in providing other necessary legal services and expenses; and
(6) any other services that the Foundation has resolved to provide.

4.2 The Scope of Legal Aid

LAF provides assistance to applicants regardless of any special status they may have, such as labour, women, aboriginal people, people suffering from mental or physical disability, elder, children, adolescents and foreigners legally residing in Taiwan.

4.3 Legal Aid Cases

The Foundation provides legal aid services in civil, criminal and administrative cases. However, depending on the level of resources, the Foundation may adjust the availability of its services. Currently, the Foundation does not assist the following criminal law matters: representation during trial (for publicly-prosecuted crimes); filing criminal charges in court; representation in re-trials and extraordinary appeals; representation in matters arising from investment activities and matters concerning trademarks. In civil law matters: arbitration; election; small claims procedures; re-trials; civil matters arising from investment and cases concerning trademarks and patents.

5.0 Eligibility Criteria

An applicant who is legally residing in Taiwan may apply for legal aid if their income falls below the statutory standard and the legal problem is not clearly unreasonable. When approved, LAF assigns cases to legal aid lawyers and pays their fees. The courts will defer the obligation to pay adjudication fees. If a claim has highly favorable prospects of success and it is necessary to apply for an injunction over the defendant's property, LAF may issue a guarantee certificate to be filed in court instead of paying the security for the order..

Legal aid is granted if the following criteria are met:

(1) the matter is not clearly unreasonable.
(2) indigent persons – their disposable income and capital must be below the prescribed level (please refer to Table 1).
(3) compulsory defense cases do not require assessment of financial circumstances.

Means-testing is no longer required for suspects who are mentally disabled and for defendants who are charged with crimes subject to imprisonment of not less than 3 years when they are arrested and requested assistance of a lawyer during their first interrogations by the police or prosecutors.

From 2009, LAF has expanded legal consultation services to accommodate walk-in services. Although all applicants must go through simplified questioning of their financial resources, they will be given at least initial advice whether or not they meet the Foundation's financial standard.

【Table 1】Financial Eligibility Criteria

		Taipei City	Kaoshiung City	Other Areas
Single Household or 2 people in the household	Monthly disposable income	Under NT$28,000	Under NT$23,000	Under NT$22,000
	Disposable assets	Under NT$500,000		

3 people in the household	Monthly disposable income	Under NT $38,000	Under NT$33,000	Under NT $32,000
	Disposable assets	Household total under NT$500,000		
4 people in the household	Monthly disposable income	Under NT$48,000	Under NT$43,000	Under NT$42,000
	Disposable assets	Under NT$600,000		
Notes	1. The standard for household total income refers to the standard for the area in which the applicant lives. 2. In situations not listed above, the monthly disposable income for the household increases by NT$10,000 for each additional family member. 3. Disposable assets: this does not include residential or private agricultural land having declared present market value under NT$4,000,000.			

The above standards are inconsistent with the criteria adopted by social welfare services. The standards are more generous than the low-income households in some circumstances while more stringent in others. On the whole, the respective percentage of the population who meet each of the standards is quite similar. In 2009, the total number of low-income households comprises about 1.05% of the population, while the percentage of the population eligible for legal aid may be less than 2%, and this requires more efforts to be made for improvement. In addition, the above standards are not regulated to adjust to and reflect the changes in the Consumer Price Index, and may therefore be out of accord with reality.

If an applicant's income or assets are higher than the standards prescribed in Table 1, but by no more than 20%, the Foundation has discretion to grant partial assistance where the recipient of aid will contribute 1/3 to 1/2 towards the legal fees and costs of the case, while the Foundation will pay the balance.

6.0 The appointment of legal aid lawyers and fees

6.1 Appointment of lawyers:

Lawyers are appointed to take up cases within 2 days of the decision to grant legal aid. LAF employs a small number of staff attorneys (as of September 2009, there are 9 staff attorneys), while the majority of the cases handled by legal aid lawyers in private practice. Services are provided in legal consultation, mediation and negotiation for settlement, drafting legal documents, representation and arbitration.

6.2 Legal aid fees:

Legal aid fees are paid according to a scale of fees prescribed for different types of services. In

principle, fixed fees are paid for legal aid cases (generally legal fees are charged at fixed rates rather than hourly rates in Taiwan). Generally speaking, legal aid fees are only 1/3 or 1/2 of the market rates. Once the legal aid lawyer has accepted a case and interviewed the recipient of legal aid, he/she may claim 80% of the total fees payable, and claim the balance at the conclusion of the case. If the case is complex or if variations have been made to the grant, the amount of fees payable may be increased or reduced after being assessed by the Examining Committee.

7.0 Participation of Private Practitioners

7.1 Legal Aid Lawyers

Apart from a handful of staff attorneys, the majority of legal aid work is carried out by private practitioners, who provide legal consultation, mediation and negotiation, the drafting of legal documents, and representation in litigation or arbitration. Under the Legal Aid Act, lawyers are obliged to participate in legal aid work. There are about 5,500 practicing lawyers in Taiwan, and as of 2008, lawyers who have indicated willingness to do legal aid work have reached 2,986. So far, it has not been necessary for LAF to take any action to compel lawyers to provide legal aid.

7.2 Examining Committees

Each Branch Office establishes Examining Committees, comprising of members including judges, prosecutors, military judges, lawyers or other experts and scholars in the legal field, nominated by the Director of the Branch Office. As the number of scholars and judges is small, most of the members are lawyers.

7.3 Review Committee

As described in 7.2 above, since the number of scholars and senior judges are small, most of the members of the Review Committee are also senior lawyers.

8.0 Quality Controls

LAF considers the specialization of legal aid lawyers as the main guidance in assigning cases. However, as private practitioners generally lack the experience to handle problems concerning the disadvantaged, and few organisations provide these trainings, LAF has coordinated seminars which provided professional and practical training on these issues for legal aid lawyers. Furthermore, in order to obtain better understanding of the quality of legal aid services, LAF has also established complaints handling and quality evaluation procedures.

8.1 Professional Practical Training Courses for Lawyers on Defending the Death Penalty

Since 2006, LAF has been increasing legal aid for defending the accused who are subject to the death penalty. However, as capital punishment cases are more complex than other types of criminal cases, requiring highly professional skills and academic scholarship to provide competent defense, LAF has invited scholars and lawyers experienced in the area to share their professional skills and defense tactics in training seminars.

8.2 Training Course on "Practical Matters Concerning Family Law Issues"

In family law, multiple claims are frequently litigated in one proceeding. For example, domestic violence cases may accompany claims for criminal compensation; divorce lawsuits may accompany applications for protection orders. Among them, divorce lawsuits usually deal with custody, maintenance, damages and the division of assets. Personal trauma aside, what legal services should legal aid lawyers provide to meet the litigants' needs? Without appropriate training, it is impossible to represent them competently. Accordingly, LAF had invited scholars and lawyers specialising in negotiating family law matters to share their experiences.

8.3 Seminars on Practical Techniques for Interrogation Accompanied by Legal Aid Attorney at Police Stations

In September 2007, LAF commenced a pilot program to provide duty lawyers' services to suspects during their first interviews at police stations and prosecutors' offices. This was a milestone in the history of human rights protection in Taiwan. To provide training for lawyers who participated in this pilot, LAF invited a senior criminal law solicitor, Mr Anthony Edwards, from London to deliver lectures on the skills of a duty lawyer, and to share over 10 years of experience in this field.

8.4 Trainings and symposiums on the Card Debt Clearance Act

The current financial crises in Taiwan left many debtors insolvent. There were no debt clearance mechanisms to deal with debts. Coupled with violence in debt collection practises, this created numerous serious social problems. LAF collaborated and campaigned with community groups, and the Legislative Yuan finally passed the Card Debt Clearance Act in June 8, 2007, which became effective on April 11, 2008. At the same time, LAF also coordinated a project to assist debtors and held training seminars for legal aid lawyers.

8.5 Handling of complaints

Except for a few novel cases which are handled by staff attorneys, legal aid cases are mostly assigned to private practitioners. In order to gain deeper understanding of legal aid lawyers' quality of work, and to resolve the complains of legal aid recipients and associated persons, LAF has formulated a complaints handling procedure, where legal aid lawyers, LAF staff members, assessment and review commissioners can all be complained against. In addition, judges or prosecutors of legally aided matters could also complain against legal aid lawyers about their performance.

In 2007, LAF handled a total of 228 complaints and 230 complaints in 2008. The complaints were mostly against the services of staff members and the quality of legal aid lawyers' conduct of their cases. For complaints against lawyers, if the conduct complained of is affirmed after investigation, then depending on its seriousness, LAF may issue warnings, reduce or stop assigning cases. In serious cases, LAF may also refer complaints to the Bar Association's Disciplinary Board.

8.6 Evaluation of the quality of legal work

To ensure that every recipient of legal aid obtains quality legal assistance, LAF formed a scheme in December 2006 to evaluate the quality of work done by legal aid lawyers. The scheme was implemented in December 2007. The scheme involved the collection of questionnaires from three sources:

(1) results of telephone survey of legal aid recipients in 2005 and 2006. A total of 3,228 valid questionnaires were completed;
(2) survey of social workers who accompanied legal aid recipients during consultations with lawyers or in court hearings. They were asked to evaluate legal aid lawyers' performance. A total of 47 valid questionnaires were collected;
(3) the Judicial Yuan provided 478 questionnaires completed by Judges on legal aid lawyers' handling of their legal aid cases.

Questionnaires from the three sources were collected and analyzed to focus on the work of about 80 lawyers, the performance of whom were rated among the top and bottom ranges of the grading scale. Files in nearly 400 legal aid cases were selected and checked by staff members who then interviewed recipients of legal aid, and carried out the second round of the same selection process. The results were forwarded for investigation, and those who shown problems were offered the opportunity to provide written explanations, which were accepted as reference for the final grading decision.

This evaluation process is expected to be completed in April, 2009. LAF will announce the names of lawyers who provided outstanding services. For those rated with poor performance,

depending on the degree of concern, LAF may issue warnings, reduce or stop the assignment of cases, discharge them from association with legal aid, or refer the matter to the relevant Bar Association's Disciplinary Board for its consideration. LAF has deployed a team of staff members, 21 investigators and 9 committee members to conduct this evaluation process. It is a demanding scheme, both in terms of scale and cost. A new round of evaluation is scheduled to commence in November, 2009.

9.0 The Legal Aid Foundation's business statistics from 2008 and 2009:

In 2008, the total number of applications received was 64,661. Among them 40,723 were general legal aid applications and 23,938 were applications for debt clearance. The total number of applications approved (including partial grants) was 28,601 (17,698 general legal aid applications and 10,903 debt clearance applications). There were also 601 applications for assistance at the police stations.

In 2009, the total number of applications received is 58,362 (50,572 are general legal aid applications, and 7,790 are applications for debt clearance). The total number of applications approved, including partial grants, is 19,396 (17,747 are general legal aid applications, and 1,649 are applications for debt clearance). Please refer to the table below for the relevant figures:

Statistics on Total Applications								
Year	Total Cases		Granted with Legal Aid		Granted with Partial Aid		Legal Consultation	
	No. of Cases	Percentage	No. of Cases	Percentage	No. of Cases	Percentage	No. of Cases	Percentage
2009 (Jan- Sep)	58362	100%	18998	32.55%	398	0.7%	22005	37.70%
2008 (Annual Report)	64661	100%	28150	43.53%	451	0.7%	11458	17.72%

In terms of categories, the figures until September 2009 and in 2008 are as follows:

Volume and Percentage of Civil, Family, Criminal or Administrative Law Cases By Sep. 2009					
Categories		Applications		Legal Aid Cases (Excluding legal consultation)	
		No. of Cases	Percentage	No. of Cases	Percentage
Litigation	Civil	18621	31.91%	5646	29.11%
	Criminal	19619	33.62%	8028	41.39%
	Administrative	953	1.63%	140	0.72%
	Family	9796	16.78%	3562	18.37%
Non-litigation		1583	2.71%	371	1.91%
Debt Clearance		7790	13.35%	1649	8.50%
Total		58362	100%	19396	100%

Volume and Percentage of Civil, Family, Criminal and Administrative Law Cases in 2008					
Category		No. of Applications		Legal Aid Cases (Excluding legal consultation)	
		No. of Cases	Percentage	No. of Cases	Percentage
Litigation	Civil	12049	18.53%	4000	13.99%
	Criminal	18657	28.69%	9247	32.33%
	Administrative	728	1.12%	160	0.56%
	Family	8500	13.07%	3914	13.68%
	Unrecorded	45	0.07%	0	0.00%
Non-litigation		1117	1.72%	377	1.32%
Debt Clearance		23938	36.80%	10903	38.12%
Total		65034	100.00%	28601	100.00%

Note:

1. The choices for categories were multiple, so the total number of cases is higher than the initial total number (64661 applications).
2. The category "Family" became independent from the category "Civil" in 2007, so an evident difference in total cases appeared in 2008.

10.0 Significant, novel cases:

10.1 The Case of RCA Pollution and Occupational Injury: 529 plaintiffs claiming upwards of NT2,400,000,000 dollars in damages for occupational injuries.

The RCA Corporation ("RCA") is a manufacturer of television and integrated circuits. In 1994, RCA was exposed for causing suspected public toxic pollution by directly disposing unprocessed toxic waste and organic solvent at its plant site, thus causing permanent damage to the soil and water sources on the site. Ex-employees one after another were diagnosed with cancers in liver, lung, large intestine, stomach, bone, nasopharynx, lymphatic, breast and other occupational tumors. At leas 1,059 people were proved victims of cancer, 216 died of cancer and 102 affected various tumors. Ex-employees decided to file lawsuits against RCA and its controlling company and claim compensation. The LAF Taipei Branch Office formed a team of attorneys and recruited experts and academics from different fields, as well as representatives of labor and environmental groups. The litigation is still in progress.

10.2 The Case of CPDC Pollution : residents who lived with toxic wastes for over 60 years

The China Petrochemical Development Corporation Plant ("CPDC") in Anshun, Tainan, was established in 1942 by the Japanese company Kanegafuchi Soda to produce sodium hydroxide, hydrochloric acid, and liquid chlorine. It was temporarily shut down in 1982 due to financial problems. It then merged with CPDC in 1983, and was finally privatized on June 20, 1994. Between 1940s and 1980s, a time when environmental protection awareness was poor and the ideal of sustainable development in soil and underground water conservation unexplored, there was no statutes or managerial system pertaining to environmental protection. As a result, various by-products and harmful industrial wastes were produced by the CPDC plant in Anshun. Due to long-term accumulation and biological chain formation, the soil, the underground water body, and the surface water body in and around the plant was seriously polluted. Neighboring residents were found to have excessive dioxin in their blood. On 11 July, 2005, the government proposed a five-year program of NTD1.3 billion compensation to local residents. However, due to the large number of residents , the compensation for each was minimal. After the NTD1.3 billion compensation was claimed in five years, the physical damage to residents still exist and the environmental recovery still unclear. The government, however, had no plans for further compensation. LAF has appointed two staff attorneys to work on the matter. So far 85 plaintiffs are being represented, and the claim for damages was filed in June, 2008.

10.3 The Case of Losheng Sanitorium : infringement on human rights spanning 70 years

The Lo-Sheng Sanatorium established by the Department of Health of the Executive Yuan is a relic of the tragedy of Japanese colonialism and eugenicism. The Japanese government treated patients with Hansen's Disease (i.e., leprosy) with measures such as compulsory quarantine, imprisonment, sterilization and abortion. When the Lo-Sheng Sanatorium was taken over by the National Government in 1945, the compulsory quarantine policy was carried on illegally until 12 February, 1949, when the Provincial Government of Taiwan enacted the "Prevention Regulations Against Leprosy in Taiwan Province", and enforced compulsory hospitalization on the patients. Patients suffering from leprosy received many instances of inhumane treatments, such as compulsory sterilization, medical experimentation, and improper quarantine. Not only were patients deprived of the possibility of development in life, their human rights were severely abused.

Staff attorneys of the Taipei branch office teamed up with other pro bono lawyers to represent leprosy patients in court proceedings, claiming State compensation for infringements of human rights by compulsory quarantine and sterilization. The team also handled administrative actions arising from compulsory removal of these patients out of the sanatorium.

LAF also cooperated and campaigned with other social welfare groups and in 2008 a legislation was passed to provide for compensation and the protection of leprosy patients' human rights. This legislation restores the reputation of these patients, and eliminates the general public's discrimination and prejudice against them. It also gives patients who have been quarantined for life proper medical care and appropriate compensation for long-aggrieved human rights.

10.4 Legal Aid for non-nationals Foreigners in Taiwan :

Of all the legal aid cases till Sep. 2009, 2,000 cases were applied by non-nationals foreign residents, 6.91% of the total.

The Number and Ratio of Recipients Who Are Foreign Nationals		
Year	No. of Recipients Who Are Foreign Nationals	% of Total Grants
2009（up to September）	2000	3.96%
2008	2105	5.30%

In terms of nationality, the top 10 nationalities of applicants whose applications were approved by LAF from January 2008 to September 2009 are as follows:

Applications, Approvals and Nationalities				
Order	Nationality	Total Applications	Grants	Ratio
1	Vietnam	1290	915	31.43%
2	China	1004	521	24.46%
3	Indonesia	992	817	24.17%
4	Philippines	175	108	4.26%
5	Thailand	167	111	4.06%
6	Cambodia	74	53	1.80%
7	Myanma	56	35	1.36%
8	Malaysia	55	29	1.34%
9	United States	22	9	0.54%
10	Japan	15	7	0.37%
	Others	255	132	6.21%
		4105	2737	100.00%

11.0 Participation in reforms: expanding the functions of legal aid

11.1 Project to campaign for the passage of Consumer Debt Clearance Act

Taiwan's "double-card crisis" in 2006 sprang from the periods economic downturns when many people turned to mass-issued credit cards and cash cards which charged high interest rates, and began to rely on them on a long term basis to meet their financial needs. They became entangled in debt cycles due to their inability to repay, and caused serious social problems by their criminal actions and suicidal acts. In the same year, LAF assisted more than 300 card debtors who succeeded in reaching agreements in their negotiations with the major banks.

In January 2007, LAF and the Judicial Reform Foundation formed an "Debt-Restructuring and Bankruptcy Law Promotion Alliance" to advocate for the passage of the Consumer Debt Clearance Act. As a result of the joint efforts of the executive and legislative authorities and community organisations, the Consumer Debt Clearance Act was proclaimed by the President on July 11, 2007, and became effective on April 2008. Up till the end of 2008, LAF received 23,938 applications, and approved 10,903 of them. However, neither the judiciary nor the private profession was familiar with the new law, and the judges' interpretations of the principles and policies behind the law were by no means congruent. The time taken for judgments to finalize and the low rates of approval rattled public confidence in the new law, and the number of applications, whether made with the assistance of LAF or directly in the courts, significantly reduced. If LAF continues to receive new applications at the same rate, it is estimated that the total number of approved will not exceed 3,000 in 2009.

11.2 Pilot program: duty lawyers services at police stations and prosecutors' offices

LAF commenced a pilot program in September 2007 to provide duty lawyers services for suspects during their first interviews at police stations and prosecutors offices. At first services were available only during normal office hours, but the program has now expanded to a 24-hour, seven-day scheme since October 17, 2008. In the beginning only 15 police stations out of 150 participated, and the number of applications was few, as the police generally do not appreciate the involvement of lawyers in their investigations. Although the number of participating police stations has been increased to 50, the number of application has not grown, reflecting an unsupportive attitude on the part of the police. This still is an area where much improvement

11.3 Cooperation with the Alliance to End the Death Penalty

The abolishment of capital punishment has been a global judicial trend and future direction in Taiwan government policy. Although it is not possible to legislate for its abolishment at the moment, the President has announced that the death-penalty will not be executed, resulting in the non-execution of many death-penalty cases. Many accused and their families having exhausted their resources could not afford legal counsel to pursue the re-trial of their cases.

11.4 Assistance for victims of human trafficking

Human trafficking is one of the top three transnational organized crimes, along with the smuggling of drug and weapons. Human traffickers easily deploy tactics such as fraud, intimidation, violence, and imprisonment to control the victims, committing them to forced labor, sexual exploitation, and organs removal for extortionate profits. Taiwan is classified as a source, destination and transition country for victims of human trafficking, which is a serious problem.

Due to the seriousness of the crime of human trafficking, LAF has loosened its assessment criteria and has granted legal aid to victims in court actions to pursue criminal and civil compensation, to obtain lawful residence in Taiwan, or to return home in safety. As of October 23, 2008, LAF has aided 66 victims of human trafficking. Currently, one of the most significant cases involves a human resources syndicate which exploited migrant caretakers by means of illegal debt bondage. Up to several thousand caretakers have been victimized, among them over 300 victims are being assisted by lawyers appointed by LAF in claiming criminal and civil compensations from the broker.

12.0 Growth and Challenges

12.1 Expanding the scope of legal aid

Other than legal consultation services, less than 2% of the population in Taiwan is eligible for all other types of legal aid services, as previously mentioned. Therefore, some of the greatest challenges for LAF now include widening the scope of cases that do not require means assessment, raising the financial standards and also widening the scope of eligibility for granting partial aid. These tasks are particularly difficult when the economy is undergoing recession and the government is tightening the public purse. If the budget for legal aid cannot be increased, then boosting the level of services by adjusting the types of services and the methods of delivery, may be possible alternatives.

12.2 Innovative methods of delivery using technology

As new technologies continue to appear on the horizon, legal aid organisations should be able to take advantage and respond by initiating new methods of service delivery to meet the diverse needs of the public. On this point, LAF has embarked on planning the relevant strategies to provide legal advice through telephone, and to provide information or advice via the internet.

12.3 Review of the assessment procedures

There are two types of assessment procedures. For general legal aid applications, an applicant or

his/her representative is initially interviewed by an assessment commissioner, and the application is then jointly decided by a panel of three commissioners (which included the first commissioner). If the decision is to grant legal aid, the matter is assigned to a lawyer who was not a member of the assessment panel. For card debt clearance applications, the applicant or representative is interviewed by a lawyer for initial advice, and once a panel of three lawyers decides that aid should be granted, the case is assigned to the lawyer who gave the initial advice. Regardless of the type of legal problem, it is the policy to decide an application on the same day that it was made, unless this is not possible under time arrangements or if the applicant has been requested to supply further documentation. The Foundation's efficiency in processing applications has received positive feedback from the general public. Generally speaking, NGOs find the assignment criteria too strict, while the judiciary finds it too relaxed. LAF has begun to review the relevant comments, to take into account both fairness and efficiency in assigning cases to lawyers.

12.4 Improving the quality of legal aid services

Although complaints and evaluation procedures are in place, both are mechanisms to resolve problems after they have occurred. The evaluation scheme focuses more on whether legal aid lawyers have breached applicable rules, rather than on the quality of services they provided in individual cases. On the basis of the current evaluation procedures, LAF has been developing further quality measures which, in addition to adopting a new scheme of contracting with private practitioners in the future, should enable LAF to better assure the public of the quality of the services provided.

12.5 Review of the case assignment procedures

The branch offices are responsible for the assignment of cases. In principle, branch offices respect the applicant's choices of lawyers. However, as most applicants do not have preferences, branch offices assign cases according to the specialization, preferences (eg, court representation, drafting legal documents) and monthly quota of each legal aid lawyer. Branch offices also consider the quality of previous work, complaints or disciplinary history of the lawyer, and assign cases fairly. However, as the assignment standards have not been streamlined between branch offices, there are inevitably criticisms over the fairness and appropriateness of assignment. Accordingly, LAF has built the assignment procedures into its business software. The assignment of cases becomes computerized through programmed instructions, and is done manually only in exceptional cases.

In addition, LAF is also investigating the possibility of adopting a contract model, where contracts are signed with quality legal aid lawyers who will be assigned with a given number of cases within the contract period. This will help establish a public interest lawyers system, and at the same time improve the quality of services.

12.6 Continue to conduct novel cases

In addition to accepting legal aid applications, LAF will continue its focus on the protection of human rights, paying special attention to individual disadvantaged groups, and coordinate various projects to defend these rights.

13.0 Conclusion

As the publicly-funded legal aid scheme in Taiwan is comparatively new, there are much in the system that need to be improved. The experiences of the participants of this Forum and the legal aid schemes in their countries are important fuel for LAF's progress and improvement. By hosting this Forum, it is a goal that interactions between the participating legal aid organisations continues, and the experiences of the advanced legal aid schemes motivates and guides Taiwan's progress in the future.

National Report

Australia

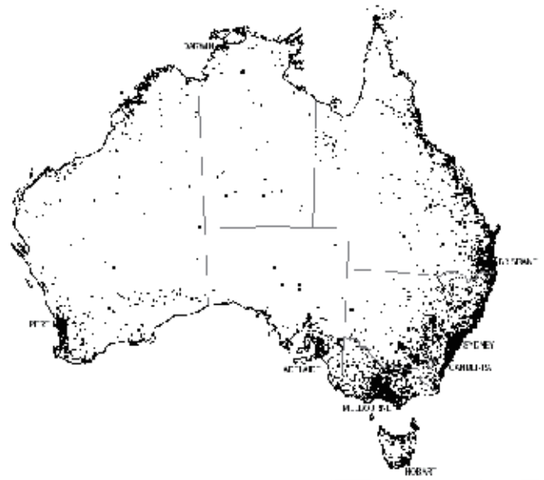
Speaker : Ms. Suzan Cox (QC)
Director of Northern Territory, Legal Aid Commission, Australia

2009 International Forum on Legal Aid
National Report
Australia

Ms. Suzan Cox QC
Director, Legal Aid Commission of the Northern Territory

Australia is divided into 8 States and Territories. It is a Federation, there is both an Australian Government and a Government of each of the States and Territories which make laws in relation to different areas of activity, although there can be overlaps in jurisdiction.

Australia has small population of 21 million people. Most of Australia's population is concentrated in two widely separated coastal regions. In both coastal regions the population is concentrated in urban centres, particularly the State and Territory capital cities. Half the area of the continent contains only 0.3% of the population, and the most densely populated 1% of the continent contains 84% of the population. It is this 0.3% of the population which is located in regional and remote Australia which faces difficulties in access to legal information advice and assistance. A large proportion of this group are Indigenous Australians whose demographics include low levels of English and literacy. This presents challenges to all services, including Legal Aid.



1. Providers of Legal Aid

(a) The main providers of legal aid services in Australia

There are 4 main legal aid service providers in Australia being Legal Aid Commissions, Community Legal Centres, Aboriginal and Torres Strait Islander legal service providers, and the private profession, represented by the Law Council of Australia.

Legal Aid Commissions

Legal Aid Commissions provide assistance to as many people as possible with their legal problems. They do this through a mix of legal information, advice, minor assistance, dispute resolution, and representation provided from head offices in capital city locations and regional offices in various metropolitan and rural locations.

Community Legal Centres

The Community Legal Centres primarily provide advice and/or information and referral, community legal education, law reform and limited case work services. Many Community Legal Centres offer after hours free advice sessions which are staffed by volunteers from the private profession and from Legal Aid Commissions.

Aboriginal and Torres Strait Islander Legal Services

ATSILS are funded by the Commonwealth Government to provide grants of legal assistance or legal aid and legal services, including representation, to Aborigines and Torres Strait Islanders. Indigenous people are able to approach LACs for assistance should they wish. In some jurisdictions Legal Aid Commissions also regularly represent indigenous people where a situation of conflict exists and the Aboriginal and Torres Strait Islander Legal Services are unable to assist as a result of that conflict.

Private profession

Members of the private profession will represent people on a grant of legal aid. They also volunteer at Community Legal Centres and do occasional free legal work.

I am the Director of the NT Legal Aid Commission of the Northern Territory. Together the Directors of the Legal Aid Commissions are known as National Legal Aid and I attend this conference representing them.

I am giving this presentation on behalf of the Directors of National Legal Aid..

(b) Does your organisation consolidate legal aid resources in your country, by carrying out legal aid work authorised by other government agencies

The Directors of each Legal Aid Commission in each state and Territory of Australia meet regularly as a body comprising National Legal Aid at which they coordinate policy issues relevant to their service delivery.

A Forum called the Australian Legal Assistance Forum enables legal service providers to meet on a regular basis to discuss legal aid issues. More information about ALAF is available on the National Legal Aid website.

2. Organisation

(a) How does your organisation organise its human resources?

(b) Is the legal aid scheme in your country funded by the government or the private sector? Is the scheme organised on a centralised level or regional level? If the legal aid scheme in your country is organised by Government, how does it maintain independence from the government?

(a) Although the Legal Aid Commissions are essentially independent bodies they generally organise their human resources in the same way as Government organises its employees.
(b) Legal aid is funded by Government.

Each state and Territory has a Legal Aid Commission.

Legal aid Commissions in Australia are made by legislation of the States and Territories, and established as independent statutory organisations. I refer you to the case of Cox v Vanstone mentioned in my presentation as an example of the independence of Legal Aid Commissions.

The Community Legal Centres and the Aboriginal and Torres Strait Islander Legal Services are community based organisations.

3. Financial Affairs

(a) What are the sources of legal aid funding in your country

Legal Aid is funded by both Federal and State/Territory Governments.

Some Commissions also gain a significant amount of funding from statutory interest on solicitor's trust accounts.

A limited amount of funding is self-generated by recovery of legal costs.

(b) Does the legal aid scheme in your country adopt a charitable model or a rebate model? Are recipients of legal aid required to repay legal aid costs at the conclusion of court proceedings?

Generally those not in custody are required to make a contribution to the costs of the case when aid is granted. The amount will vary depending on their financial circumstances. In some matters costs will be repayed at the conclusion of court proceedings, either in part or in full.

(c) Are court fees/filing fees and security for costs covered by legal aid?

Court/filing fees may be waived on the completion of forms establishing a persons financial circumstances. Sometimes fees are waived on the basis of a certificate from a Legal Aid Commission that the person is receiving legal aid.

Legal Aid does not cover security for costs.

(d) if provided, does this assistance increase the burden on the government's budget?

N/A

4. Supervision

(a) Is the operation of your organisation supervised by another authority?

No.

(b) How does it supervise your organisation?

N/A

(c) What are the difficulties involved in dealing with the organisations supervising authority?

N/A

5. Procedures and Criteria for granting legal aid

(a) Please briefly describe your organisation's criteria for granting legal aid.

Legal information, advice and minor assistance, community legal education and duty lawyer services are generally provided free of charge and without means testing.

Grants of legal aid for case work including for dispute resolution and representation, are subject to funding guidelines about the sorts of cases that should be funded, the applicant passing means and merits tests, and there being available funds, as demand exceeds supply in some places.

(b) Are applicants means-tested? If so, please describe the financial eligibility criteria, any documentation required for applying, the procedures of the application, and assessment, and the time-frame for decision making. Are there situations where means testing is not required?

Applicants are means tested for grants of aid for dispute resolution and casework. The means test has both an income and assets component. People who receive full Government benefits (provided by the Commonwealth) because they are unemployed will pass the income test. The assets test takes account of a range of assets, allowing for equity in a home and motor vehicle up to a certain value which varies across the country in accordance with property values.

The application is usually made electronically. In some places it is normal for the application to be decided within 1 day, although it may be up to 5 depending on location and the system used. It is possible for the Legal Aid Commission to link electronically with Centrelink (the office which provides Government benefits) with the client's permission and a Customer Reference Number, and this populates the legal aid application form with all the financial data that Centrelink has about them.

(c) If applicants are means tested, has consideration been given to raise the financial eligibility criteria, thus increasing the number of people eligible for legal aid?

Unfortunately the current funding climate has meant that financial eligibility criteria have had to be decreased in some places because there is not enough funding to approve the applications received which would otherwise meet means and merits tests.

(d) Who assesses legal aid applications? How are these personnel recruited?

Legal aid applications are assessed by Grants Officers, who sit in the Grants/Assignments sections of the Legal Aid Commissions, which vary considerably depending on the size of the Commission. Each Section has a manager with extensive legal experience.

Personnel are recruited in line with respective State and Territory requirements, and the skills sought are commensurate with the level of responsibility the particular grants officer is to have.

Legal aid grants systems in each State and Territory have an electronic means test calculator, if eligible on means consideration and decision is made by the Grants or Assignments section.

Applicants who have been refused a grant of legal assistance are able to apply for a review of the decision to refuse aid.

(e) For court cases, is the prospect of success a consideration for deciding applications?

Yes.

(f) Is there a requirement that an application must be made by the applicant personally?

Yes - signature/witnessing of the content of the application is required, although the form can be completed by someone else, usually the solicitor assisting the client.

6. Models of Service Delivery

(a) How are legal aid cases assigned to lawyers? Are legal aid services provided by salaried lawyers, contracted lawyers, or by lawyers or law firms in other ways?

It is a mixed service delivery model in Australia – salaried lawyers and private lawyers in receipt of a grant of legal aid.

Some Legal Aid Commissions, particularly in the larger jurisdictions, operate panels of practitioners, essentially lists of those firms/lawyers prepared to do legal aid work. The firm/ solicitor must apply to the Commission and be approved to be on the panel.

7. Legal aid fees

(a) Please compare the fees paid to legal aid lawyers with fees charged by private practitioners

Reports commissioned over the years[1], including in recent times, have confirmed the disparity between legal aid rates and private legal fees, and that the low hourly rates and issues with the number of hours allocated under the stage of matter payment structure, are causing firms to disengage from legal aid. This has ramifications which are particularly adverse for people in regional and remote areas.

1 (i) Study of the Participation of Private Legal Practitioners in the Provision of Legal Aid Services in Australia – December 2006. TNS Social Research Consultants, commissioned by the Commonwealth Government, Attorney -General's Department.
(ii) Legal Aid Remuneration - October 2007. TNS Social Research Consultants commissioned by the Commonwealth Government, Attorney -General's Department.
(iii) Erosion of Legal Representation in the Australian Legal System. A research project undertaken by the Law Council of Australia in conjunction with the Australian Institute of Judicial Administration, National Legal Aid, and the Aboriginal and Torres Strait Islander Legal Services, February 2004.
(iv) Report on the change in the economics of legal practice, FMRC Legal Pty Ltd for Law Council Australia

Currently, legal aid hourly rates for family law work vary between $120 and $155 depending on State/Territory. A private practitioner with a full fee paying client could expect to get 1.5 to 3 times this much.

8. Legal Aid for Specific Communities

(a) Does your organisation tailor and provide legal aid services to specific communities (for example, aboriginal people, foreign workers, plaintiffs in environmental litigation)

Yes. This will depend on needs of the community and location of the office.For example in the NT we have specialise programs for culturally and linguistically diverse communities, including migrant and emerging communities and Indigenous communities.

9. Scope and types of Services

(a) Is legal aid available for the following matters:

(i) Litigation in civil law, criminal law, administrative law and claims for national compensation?

Yes, subject to tests referred to above including the availability of funds, legal aid is available for civil law, criminal law, administrative law, and claims for compensation.

(ii) Alternative dispute resolution?

Yes, in family law matters. In some other matters and locations also depending on the schemes operating in relation to the issue.

(b) Does legal aid provide the following services?

(i) Face to face or telephone legal consultation? What are the procedures of providing these services? Are applicants for legal consultation means-tested? How are applicant's finance assessed?

Yes, face to face and telephone advice are provided. Generally these services are free of charge.

(ii) Assistance during interviews at police stations?

Advice is often given at police stations around procedure etc, but lawyers do not sit in during interviews, as they are then compellable as witnesses in the event that an admission or confession is made in their presence.

(c) Is legal aid available for foreign nationals?

Legal aid is available to anyone within jurisdictions who has a legal aid problem which is covered by what legal aid does.

10. Innovative Legal Aid Initiatives

(a) What are the unique features of the legal aid practices in your country?

(i) Legally assisted family dispute resolution. This is provided upon a grant of legal assistance unless there are circumstances indicating that it is not appropriate for the particular case. Further information can be found in the report of the Australian Attorney-General's Department "Family dispute resolution services in legal aid commissions - Evaluation Report"[2].

(ii) Required to provide comprehensive legal services within a budget which is fixed.

(b) What are your organisation's innovative legal aid initiatives in recent years?

(i) As for (i) above.

(ii) Electronic grants and case management processes.

(iii) Recruitment strategies in co-operation with other legal aid service providers to attract and retain practitioners in regional, rural and remote locations.

11. Access to Legal Aid

(a) How does your organisation provide potential legal aid applicants with knowledge of the availability of legal aid services?

Publications, telephone books, word of mouth.
Advertising only when there is sufficient funding, so as to avoid increased unmet demand.

(b) How are legal aid services provided to applicants who live in areas that lack legal resources?

Outreach, telephone, video conferencing.

(c) Does your organisation arrange outreach programs for legal aid lawyers? What is the performance of these programs?

2 Attorney-General's Department, KPMG, December 2008.

Yes. There are many such different programs, depending on the location, community, legal need etc. Typically these programs are more expensive, as the costs of travel can be significant. Each program is evaluated.

12. Legal Aid Lawyers

(a) What are the sources of recruiting legal aid lawyers?

Universities, the private profession.
Advertising in accordance with local Government requirements.

(b) Compared with lawyers in private practice, are legal aid lawyers as highly regarded by the police, prosecution and the courts. Do they provide facilities to make legal aid lawyers' work more convenient?

Yes. Legal aid lawyers are highly valued for the depth of their legal experience and expertise.

In some locations facilities are provided.

In some locations, such a ‘bush courts’ in remote communities all court officers face the challenge of working without some basic facilities such as appropriate court rooms and client interview space.

13. Quality Assurance

(a) How does your organisation ensure the quality of the legal aid lawyer's work?

Ongoing professional development, training and peer mentoring.

In-house lawyers participate in performance reviews.

Private practitioners in receipt of grants of aid are required to participate in audit processes, as a condition of being on panels.

Training is provided by Legal Aid Commissions for in-house and private practitioners doing legal aid work, and also offered to lawyers with other legal aid service providers.

14. Participation in Reforms

(a) Does your organisation participate in campaigns for social reforms or law reforms, with a view to reduce legal disputes?

Yes. National Legal Aid, ie all the Legal Aid Commissions regularly proposes and makes

submissions in relation to law reforms. Individual Legal Aid Commissions also make proposals and submissions to State and Territory based reforms.

15. Challenges

(a) What are the difficulties and challenges facing your organisation in promoting legal aid services?

Lack of funding, and concern that the Solicitors Trust Funds will be further adversely affected by the Global Financial Crisis

End.

National Report

United Kingdom

Speaker : Mr. Hugh Barrett
Executive Director for Commissioning,
Legal Services Commission, U. K.

2009 International Forum on Legal Aid
National Report for England and Wales

Mr. Hugh Barrett
Executive Director for Commissioning, Legal Services Commission, U. K.

1. Providers of Legal Aid

Who are the providers of legal aid services in your country?

Civil legal aid services are delivered face-to-face and via the telephone and Internet by legal firms (2,253) but also organisations or agencies that are not typical legal firms, such as charities (350). Criminal legal advice services are delivered through solicitors (deal with legal proceedings apart from advocacy) at the police station and lower level (Magistrate's) courts. We also fund barristers (only instructed by a solicitor and has advocacy rights) and some solicitors (who have advocacy rights) in the higher court (Crown and Appeal Courts). Although most providers are in private practice, we also employ a small Public Defender Service to provide criminal defence services directly to the public.

Does your organisation consolidate legal aid resources in your country, by carrying out legal aid work authorized by other government agencies?

Legal aid resources are authorised only by the Legal Services Commission ("LSC"), however we do aim to coordinate the services we fund with other services provided by central government, local government and the voluntary/charity sector.

2. Organisation

How does your organisation organise its human resources?

The Legal Services Commission is an organisation of approximately 1600 employees currently located across 15 offices in England and Wales. The LSC is divided into three directorates, Commissioning, Business Support and Corporate Services, each of which is managed by an Executive Director. The Executive Directors, report to our Chief Executive, Carolyn Regan. The LSC has a Senior Management team of 17 who all report to the three Executive Directors.

- Is the legal aid scheme in your country funded by the government or the private sector? Is the scheme organised on a centralized or regional level? If the legal aid scheme in your country is organised by the government, how does it maintain independence from the government?

The Government funds the legal aid scheme in England and Wales through the LSC, which is sponsored by the government department, the Ministry of Justice (MoJ). The LSC is responsible for legal aid across England and Wales but the majority of decisions about the scheme are made centrally in London.

The Minister is accountable to Parliament for the LSC's activities and performance. Ministers set priorities for legal aid, in accordance with wider Government policy objectives, and are also responsible for determining the resources to be made available to fund legal aid and the LSC. The LSC has the primary statutory duty to maintain and develop the operation of the two schemes and will contribute to the effective development of the overall legal aid strategy and policy for which Ministers are ultimately responsible. Ministers should determine (in general rather than individual terms) who will receive legal aid and in what areas of law it is available, and the LSC will determine how it can be delivered.

3. Financial Affairs

What are the sources of legal aid funding in your country?

The LSC's sponsoring department the Ministry of Justice funds legal aid. The Ministry of Justice is funded by the government.

- Does the legal aid scheme in your country adopt a charitable model or a rebate model? Are recipients of legal aid required to repay legal aid costs at the conclusion of court proceedings?

In most cases recipients of legal aid do not have to repay their costs. However in criminal cases some clients who are convicted can be ordered to repay their legal aid costs but only where this is reasonable in relation to their earnings. In civil cases clients who successfully recover or preserve property with the help of legal aid will have to repay their legal aid costs out of the property recovered, unless those costs have already been repaid by the other party to the proceedings.

- Are court fees/filing fees and security for costs covered by legal aid?
- Yes.
- If provided, does this assistance increase the burden on the government's budget?
- Yes.

4. Supervision

- Does another authority supervise the operation of your organisation?
- How does it supervise your organisation?
- What are the difficulties involved in dealing with the organisations supervising authority?

The MoJ sponsors the LSC and it therefore monitors the LSC's performance against financial budgets and strategic objectives. Strategic control is maintained through a Framework Document, which sets out the legislative, policy, procedural and resources framework in which the LSC will operate.

The key issues in this relationship are around roles and responsibilities, defining the boundaries in the relationship and duplication of work between the two organisations.

The National Audit Office (NAO) scrutinises public spending on behalf of Parliament. It is totally independent of Government. The NAO undertakes an annual audit of the LSC accounts and occasionally, the NAO investigates a certain area of LSC work. The LSC is also held to account by the government and may appear before parliamentary committees that are investigating areas of legal aid work.

5. Procedures and Criteria for Granting Legal Aid

Different rules apply to civil and criminal cases. Below highlights the process for granting legal aid in criminal cases (600,000 cases per annum) in the Magistrates Court (we will be introducing it into the Crown Court in 2010, in 124,000 cases per annum) and an example of how civil legal aid is granted.

Criminal Legal Aid in the Magistrates Court

(a) Please briefly describe your organisation's criteria for granting legal aid

- Legal aid is granted to defendants who have been charged with a criminal offence.

- Applications must meet both an "Interests of Justice" criteria and the financial eligibility criteria.
- The Interests of Justice criteria include:
  - The risk of a custodial sentence.
  - The risk of loss of livelihood.
  - The risk of serious damage to reputation.
  - A substantial question of law may be involved.
  - The defendant is unable to understand the court proceedings or present their own case.
  - Witnesses need to be traced or interviewed.
  - The proceedings may involve expert cross-examination of a prosecution witness.
  - It is in the interests of another person that the defendant is represented.

(b) Are applicants means-tested? If so, please describe the financial eligibility criteria, any documentation required for applying, the procedures of application and assessment, and the timeframe for decision-making. Are there situations were means testing is not required?

Yes applicants are means-tested and the means test in the Magistrates' court establishes whether an applicant is financially eligible for legal aid.

How the means test works:

- It only considers income and expenses - capital is not included.
- Passported applicants are those individuals who are in receipt of certain qualifying benefits which exempt them from the means test. These applicants will still need to pass the Interests of Justice test to qualify for legal aid.
- The means test assesses the applicant's "household" income and any income from a partner is combined.
- Income is weighted to give allowances for any dependants and children.
- Applicants with a weighted income below $20,000 USD p.a. will be granted funding.
- Applicants with a weighted income above $36,450 USD p.a. will be refused funding.
- Applicants whose weighted income falls between the two thresholds will undergo a disposable income test which takes into account their disposable income after deducting actual income tax, national insurance contributions, housing, childcare, and maintenance costs and the annual living allowance which covers general living expenses such as food, power and fuel. If the resultant income is less than £6,500 USD per annum, the applicant will be granted funding.
- An applicant can apply for a Hardship Reviews if they can show they are genuinely unable to fund their own representation.

(c) If applicants are means-tested, has consideration been given to raise the financial eligibility criteria, thus increasing the number of people eligible for legal aid?

The thresholds are increased every year in line with increase made to welfare benefits (generally increased by Retail Price Index). However, we did not increase the threshold last year.

The availability of a hardship review means that additional items of expenditure can be allowed in cases where the applicant is genuinely unable to pay for their own legal costs.

(d) Who assess legal aid applications? How are these personnel recruited?

- Her Majesty's Court Service (HMCS) staff applies the test once they receive a correctly completed application form.
- Staff are recruited by HMCS through their normal recruitment procedures.

(e) For court cases, is the prospect of success a consideration for deciding applications?

In criminal cases the case must meet the Interests of Justice test (detailed above).

(f) Is there a requirement that an application must be made by the applicant personally?

Yes, the applicant must complete and sign an application form.

Civil legal aid

(a) Please briefly describe your organisation's criteria for granting legal aid

There is the Standard Criteria which applies to all applications for legal aid which include:

- The proceedings must relate to the laws of England and Wales.
- Any application in relation to proceedings excluded from scope by the Access to Justice Act 1999 will be refused.
- The application must be submitted on behalf of a client who is an individual.
- The application must be submitted by an appropriate supplier, who is contracted with the Commission to provide legal services.
- The application must comply with the Funding Code Procedures.
- The client must satisfy the financial eligibility criteria.

The criteria include:

- Legal aid will not be granted if the prospects of success in the case are poor.

- Legal aid will not be granted if there is an alternative method of dispute resolution available and which has not been attempted (in Family cases, this would include consideration of the availability of mediation).
- Legal Aid will not be granted if there is an alternative source of funding available to the client.

Applications for legal aid are also subject to costs-benefit tests:

Quantifiable Claims – If the case simply relates to a proven claim for money or damages, a strict cost-benefit ratio applies, which is linked to the likely prospects of success.

Unquantifiable claims – if the case is not simply in relation to a money claim, then legal aid will be granted if it can be shown that the likely costs of pursuing the case are proportionate to the benefit to be obtained.

(b) Are applicants means-tested? If so, please describe the financial eligibility criteria, any documentation required for applying, the procedures of application and assessment, and the timeframe for decision-making. Are there situations were means testing is not required?

Yes, most applications are means-tested. Exceptions to this rule are Special Children Act proceedings (Care, Supervision, Emergency Protection and Secure Accommodation orders) where the child subject to the proceedings, the parents of that child or anyone with parental responsibility of that child qualifies for funding without a means test.

Non-means tested funding is also available for "deprivation of liberty" in Mental health and child abduction (recovery of a child bought to England and Wales) cases.

How the means test works

The means test considers both income and capital.

Income

- Passported applicants are those individuals who are in receipt of certain qualifying benefits which exempt them from the means test.
- The means test assesses the applicant's "household" income and any income from a partner is aggregated.
- If the client's Gross Income (before any deductions are made) is over £$4400 USD per month, the client does not qualify for legal aid (see Domestic Violence waiver below).
- If the client's Gross Income is below $4,400 per month we carry out a Disposable Income test which takes into account allowable deductions such as actual income tax, national insurance contributions, housing, childcare, and maintenance costs and the annual living allowance which covers general living expenses such as food, power and fuel. In addition, Dependants Allowances are made for any children or partner.
- If the client's Disposable Income is over $1200 USD per month, again the client does not qualify for legal aid (see Domestic Violence waiver).
- If the client's Disposable Income is between $515 USD and $1,200 USD, the client qualifies for legal aid, but will have a monthly contribution to pay towards their legal costs. The contribution payable is on a sliding scale, depending on where, between those 2 figures, their disposable income falls.
- If the client's Disposable Income is less than $515 USD per month, the client qualifies for legal aid without a contribution to pay.

Capital

- -The Capital assessment includes all capital of whatever source – savings, investments, shares, equity in property – subject to certain disregards.
- -If the client has capital of more than $13,000 USD, the client does not qualify for legal aid (See Domestic Violence waiver).
- -If the client has capital of between $4,800 USD and $13,000 USD, they qualify for legal aid, but must make a one-off capital contribution of the amount over $4,800. If the client's capital is less than $4,800 USD, the client qualifies with no contribution.

Domestic Violence Waiver

If the client is the victim of Domestic Violence, the Commission waives the financial limits, which means that even if the client's circumstances would ordinarily have disqualified them for legal aid, an offer of funding will still be made – however, the client will still be liable to pay a contribution towards their legal costs.

(c) If applicants are means-tested, has consideration been given to raise the financial eligibility criteria, thus increasing the number of people eligible for legal aid?

We would like to extend eligibility to cover as many people as we can but this is seldom possible because of the high cost of the scheme and the financial pressures on legal aid as for all other areas of government spending.

(d) Who assess legal aid applications? How are these personnel recruited?

Applications are considered by caseworkers employed by the Legal Services Commission, who

are recruited using normal recruitment procedures. Once employed they are given comprehensive training, and regular quality control of their work is carried out as are consistency exercises to promote consistency of decision making across regions.

(e) For court cases, is the prospect of success a consideration for deciding applications?

Yes, with certain exceptions, legal aid will not be granted if the prospects of success in the case are considered to be poor (less than 50%). One example of an exception to that rule would be in Public Law Family cases (e.g. Care proceedings issued by the local authority to remove a child from his/her family home) legal aid will be granted to the parents, even if prospects appear poor.

(f) Is there a requirement that an application must be made by the applicant personally?

Yes, the application must be made on behalf of a client who is an individual. Applications for civil legal aid, including the means assessment are signed and dated by the applicant.

There can, however, be situations where the applicant is not able to act in their own right (for example a young child or someone under a disability) and a "Litigation Friend" will provide instructions in relation to the litigation to the acting solicitor, on their behalf, but the applicant will still be the person named on any Legal Aid certificate.

6. Models of Service Delivery

• How are legal aid cases assigned to lawyers?

In general the LSC does not assign cases to lawyers. Clients approach lawyers directly and the lawyer can provide advice services directly and if appropriate will assist the client if making any further legal aid application.

• Are legal aid services provided by salaried lawyers, contracted lawyers or by lawyers or law firms in other ways?

Almost all legal aid is provided by law firms and other agencies in private practice that are operating under contract from the LSC. Only law firms with contracts can provide services, but they can instruct other lawyers to assist where necessary, such as barristers providing specialist advocacy services. The LSC also directly employs a small Public Defender Service, which provides criminal services directly to the public.

7. Legal Aid fees

• Please compare the fees paid to legal aid lawyers with fees charged by private practitioners.

• Legal aid fees are paid at rates which are usually significantly lower than the rates usually charged to private clients. There is usually no shortage of lawyers prepared to act in legal aid cases. In civil cases where costs are recovered from the other party, the legal aid lawyer is entitled to retain the costs recovered which will usually be at higher rates than legal aid rates.

8. Legal Aid for specific communities

• Does your organisation tailor and provide legal aid services to specific communities (for example, foreign workers, plaintiffs in environmental litigation)

Yes – our civil legal aid scheme requires the LSC to assess need at the local level and ensure that contracts are met to meet that need.

9. Scope and Types of Services

(a) Is legal aid available for the following matters:

i. Litigation in civil law, criminal law, administrative law and claims for national compensation

Yes.

ii. Alternative dispute resolution?

Yes. The civil scheme covers mediation and all other forms of ADR. The LSC has a range of contracts with family mediators. The statutory framework for legal aid encourages disputes to be resolved outside court where possible.

(b) Does legal aid provide the following services?

i. Face to face or telephone legal consultation?

We provide the following services (and volumes in financial year 2008/2009):

Face-to-face (crime): 1,524,439
Telephone (crime): 134,141
Face-to-face (civil): 981, 243
Telephone (civil): 336, 798

ii. What are the procedures of providing these services?

Face–to-face through legal firms such as those mentioned under 1a. In criminal legal aid, a client arriving at the police station is entitled to free legal advice. The lawyer in this case can either

be one that they already know, or a "duty" solicitor (a solicitor on a rota that is assigned to a case). All requests for publicly-funded representation at police stations, whether a duty or own solicitor, must be routed via the Defence Solicitor Call Centre (DSCC). The call centre is open 24 hours a day, 365 days a year. If the offence is a less serious offence, e.g. non-imprisonable offences or drink driving offences, advice will be offered to the client over the telephone.

In Civil legal aid, a client will access face-to-face advice by choosing a local high street solicitor or advice agency and making an appointment. For advice over the telephone, a client calls the Community Legal Advice Telephone Helpline where an operator will assess their needs and transfer them to a contracted legal firm who will continue their case over the telephone. The telephone only offers advice in 6 categories of civil law.

iii. Are the applicant's means tested? Yes.

iv. How are applicant's finances assessed? See Question 5.

v. Assistance during interviews at police stations? Yes.

(c) Is legal aid available for foreign nationals?

Yes, provided the case concerns UK law and is taking place in this jurisdiction.

10. Innovative Legal Aid Initiatives

(a) What are the unique features of the legal aid practices in your country?

We are proud of our scheme, which is one of the most comprehensive legal aid schemes in the world. Established in 1949 we are now celebrating the 60th anniversary of the founding of the scheme. The hallmark of our scheme compared to most other systems around the world is that instead of only covering representation in court, we aim to cover the full range of client needs including early legal advice and help at the police station in criminal investigations.

Community Legal Advice is a free government-funded confidential advice service paid for by Legal Aid that provides legal advice and information in England and Wales via the Telephone, Web and digital TV and Leaflets.

The service can also provide a three way translation service in 170 languages. For British Sign Language (BSL) users we are piloting a service where they can watch information videos and get legal advice via web cam.

Community Legal Advice Centres and networks (CLACs and CLANs) combine the LSC's funding and knowledge with that of Local Government and other funders to jointly buy services.

They will provide access to face-to-face legal advice from basic legal advice to representation. The advice is in the following categories of law:

- Community care
- Debt
- Employment
- Housing
- Welfare benefits.

Criminal Defence Service Direct is a telephone helpline that provides advice direct to members of the public suspected of more minor criminal offences and detained by the police

(b) What are your organisations innovative legal aid initiatives in recent years?

See above for innovative legal aid initiatives.

11. Access to Legal Aid

(a) How does your organisation provide potential legal aid applicants with knowledge of the availability of legal aid services?

Our Community Legal Advice service provides a series of free leaflets that outline legal rights in 31 key areas of law. The Community Legal Advice website is also a source of information for clients who wish to know more about what legal aid services are available and whether they are eligible for legal aid.

(b) How are legal aid services provided to applicants who live in areas that lack legal resources?

If an area is identified as an area of need, we take steps to provide potential clients in those areas with access to the advice they need. This may be through letting additional cases to lawyers firms to cover the additional work, to allowing firms to undertake outreach services. These areas are identified through local knowledge and through monitoring the level of demand. In some categories of law, we have our Telephone Advice Service, which can provide applicants access to legal advice.

(c) Does your organisation arrange outreach programs for legal aid lawyers? What is the performance of these programs?

Our providers do undertake outreach services but we currently don't have a mechanism to report on the performance of these programs.

12. Legal Aid Lawyers

(a) What are the sources of recruiting legal aid lawyers?

The Legal Services Commission runs a scheme to encourage new trainee solicitors to work in legal aid. Since the Scheme started in 2002 the LSC training Contract Grant has supported 700 legal aid solicitors. Each grant represents a commitment to support a student/trainee and a solicitor organisation for up to four years. The LSC attends careers events and law fairs in universities across England and Wales to raise the profile of working in legal aid as an attractive career choice and the Training Contract Grant Scheme.

(b) Compared with lawyers in private practice, are legal aid lawyers as highly regarded by the police, prosecution and the courts? Do they provide facilities to make legal aid lawyers work more convenient?

In England and Wales, all legal aid lawyers are in private practice. Criminal defence is predominately provided through legal aid. There a very few firms that offer just private criminal legal aid work. Good working relationships with the police, prosecution and the courts exist and these have improved in recent years as defence solicitors have engaged in the implementation of various new initiatives. Other agencies have recognised that by working with defence lawyers they can create more efficient and effective systems and that services can be improved. Both the police and courts see the importance of private interview facilities for lawyers and take the view that justice is served more effectively and expeditiously when a lawyer is present.

13. Quality Assurance

(a) How does your organisation ensure the quality of legal aid lawyers' work?

The LSC uses a range of quality tools to monitor different aspects of provider quality.

The LSC developed a quality accreditation called the Specialist Quality Mark (SQM). Lawyers' firms apply for the SQM in a particular category of law, which has encouraged specialisation within legal aid, ensuring that when firms take on cases, the work is at least managed and checked by people with the experience and expertise necessary to achieve a high standard of advice.

The Specialist Quality Mark (SQM) is an organisational standard, designed to ensure legal advice providers are well run and provide good client care. The SQM is owned by the LSC. It comprises a set of standards designed to ensure that a service is well run and has its own quality assurance mechanisms that assure the quality of information or advice the service providers. Currently all legal aid providers are required to hold and maintain the SQM.

All legal aid supervisors are required to meet specific supervisor standards that incorporate the relevant accreditation scheme, where one exists. In certain categories of law where there has been evidence of poor service we require all practitioners to be accredited, for example in immigration.

We have developed a system of independent peer review, where lawyers who have already proved themselves to be of a good standard review the files of other lawyers. Peer Review is a direct, independent assessment of quality of advice and legal work. It is a retrospective assessment, looking at closed cases. Peer Reviewers assess a random sample of case files using a standard criteria and ratings system to determine the quality of advice and legal work provided to clients in a particular category of law.

Contract management audits are used to ensure providers deliver the services specified within their contract. Intervention is triggered when performance indicators show a provider performance falls below the requirements of the contract. The contract manager will discuss performance with the provider and help plan for improvement, and ultimately (where performance does not improve) applying contract sanctions.

Quality Profiles form part of the current supplier management process, as one of a range of tools to assess the quality of advice provided by a supplier. Quality Profiles work by using a series of category specific indicators that are drawn from case information that suppliers report to us at the conclusion of every case.

14. Participation in Reforms

• Does your organisation participate in campaigns for social reforms or law reforms with a view to reduce legal disputes?

The LSC involves itself in responding to consultations by other government departments. As a general rule, we respond to anything that has an element of legal services, i.e. that may affect our providers, clients or quality of work etc. The other type of consultations, which the LSC usually would respond to, is when we think there might be an impact and/or pressure on the legal aid fund. Sometimes, if the agenda is quite important but no direct link to the LSC, we might also respond to a consultation. In addition, there are also consultations that would impact on the LSC as an employer or how we can contract with providers. The LSC is very keen to make sure that we are involved in and take the initiative to work with other government departments to raise our reputation, to be proactive in getting involved when there might be an impact on us, and to contribute to the wider justice system.

15. Challenges

• What are the difficulties and challenges facing your organisation in promoting legal services?

A reduction in funding and increases in eligibility (due in part to the current recession) means we have to be as efficient and effective as possible in promoting legal services.

National Report

Finland

Speaker : Ms. Liisa Vehmas
The Manager of Legal Aid in Helsinki
The Head of the Helsinki Legal Aid Office
The Ministry of Justice, Finland

2009 International Forum on Legal Aid
National Report
Finland

Ms. Liisa Vehmas
The Manager of Legal Aid in Helsinki
The Head of the Helsinki Legal Aid Office
The Ministry of Justice, Finland

1. Providers of Legal Aid

(a) Who are the providers of legal aid services in your country?

In Finland the providers of legal aid are the Ministry of Justice through Legal Aid Offices, private attorneys and the private profession.

Legal Aid Offices are similar to private law offices, and over 80% of the public legal attorneys at the most are also members of the Finish Bar Association.

In Finland, citizens in legal aid court cases can choose the public legal aid attorneys or private advocates, so in court cases we have two legal aid systems.

The private profession gives consultation service, for example, in consumer protection cases, and to complainants in criminal cases. These services are free.

(b) Does your organisation consolidate legal aid resources in your country, by carrying out legal aid work authorized by other government agencies?

In Finland the Ministry of Justice has organized legal aid, and the State budget includes an appropriation which includes the budget for Legal Aid Offices and fees that are paid to private attorneys. It is not necessary to consolidate the system.

2. Organization

(a) How does your organisation organize its human resources?

In Finland all public legal aid attorneys and public legal aid secretaries are civil servants. All together there are about 400 people.

(b) Is the legal aid scheme in your country funded by the government or the private sector? Is the scheme organized on a centralized level or regional level? If the legal aid scheme in your country is organized by the government, how does it maintain independence from the government?

Legal aid is a State based system and all funding comes from the State budget.

The State budget includes budgets for Legal Aid Offices and also fees that are paid to private attorneys. The scheme is organized on a centralized level. The Ministry of Justice is, at the general level, responsible for the work of the Legal Aid Offices, but the Ministry of Justice cannot examine the substance of the legal aid services provided in individual cases. If a citizen is not satisfied with the service of his or her attorney, the Finnish Bar Association shall look into the matter.

3. Financial Affairs

(a) What are the sources of legal aid funding in your country?

The State budget for example for year 2009 is 59,37 milj.Euro.

Management by results in Legal Aid Offices is 25million Euro, and the fees per case by court decision is 34, 37million Euros.

(b) Does the legal aid scheme in your country adopt a charitable model or a rebate model? Are recipients of legal aid required to repay legal aid costs at the conclusion of court proceedings?

Legal Aid Offices calculate the applicant's monthly available means. Legal aid is granted on the basis of the applicant's income, assets and expenses. The Legal Aid Office has the right to check the applicant's information from the banks. After calculation it is decided how much an applicant will pay, whether he or she will pay a part or pays nothing. Legal Aid Offices also grants when a citizen has chosen a private attorney for his or her court case.

(c) Are court fees/filing fees and security for costs covered by legal aid?

Court cases are covered by legal aid and as I have said in court cases a citizen can choose a public legal aid attorney or a private attorney. There are two applicable government decrees: the Decree on Legal Aid and the Decree on Fee Criteria.

(d) If provided, does this assistance increase the burden on the government's budget?

Of course, but it has no meaning in the state governed by the rule of law.

4. Supervision

(a) Is the operation of your organisation supervised by another authority?

As I said public legal aid attorneys are supervised by the Finnish Bar Association and by the Chancellor of Justice.

(b) How does it supervise your organisation?

If a citizen is not satisfied with the service of his or her attorney, the Disciplinary Board of the Finnish Bar Association will look into the matter. The Finnish Bar Association can also check out the whole office. This kind of check has been made in Legal Aid Office of the city of Helsinki.

(c) What are the difficulties involved in dealing with the organization's supervising authority?

There are no difficulties.

5. Procedures and Criteria for Granting Legal Aid

(a) Please briefly describe your organization's criteria for granting legal aid.

Legal aid is always applied from any State Legal Aid Office. The application can be filed with any of the Legal Aid Offices, regardless of where the applicant lives. The applicant must present evidence of his or her financial circumstances and the matter for which legal aid is being sought. The necessary documents required for the legal aid application are documents that any person can find from their home, such as bank statements and salary certificates. Legal aid is not granted, if a person has legal expenses insurance that covers the matter in question. Legal aid is given only to private persons, not to companies or corporations. In Finland legal aid can be granted to anyone regardless of nationality. Everybody has the right to communicate in his or her own language, and the State will pay the fee of interpreters in Legal Aid Offices and the Court of Justice. Legal aid is granted on the basis of the income and expenses of the applicant. If the available means of a

single person are under 700 euros a month, he or she pays nothing, but if it is over 1500 Euros per month legal aid cannot be granted. Spouse's income are added together and if their available means are under 1200 euros they pay nothing, but if income passes 2600 Euros a month legal aid is not granted to them. Each child under the age of 18 years attracts a deduction of 250 euros from the monthly income. As told, Legal Aid Offices have the right to contact the authorities and insurance companies and even banks to check the information, this is however not usual.

(b) Are applicants means-tested? If so, please describe the financial eligibility criteria, any documentation required for applying, the procedures of application and assessment, and the timeframe for decision-making. Are there situations where means-testing is not required?

Decision-making takes some hours, but not more than a day if the documents which are needed are available.

In criminal cases where a client is in jail or if the applicant's only income is social support, means-testing is not required.

(c) If applicants are means-tested, has consideration been given to raise the financial eligibility criteria, thus increasing the number of people eligible for legal aid?

In Finland, even now over 70% of the population is entitled to receive legal aid, and there is no meaning to raise the financial eligibility criteria.

(d) Who assess legal aid applications? How are these personnel recruited?

In Legal Aid Offices, public legal aid secretaries assess applications. There is continuous training in the skills of assessing legal aid matters. If a legal aid application is rejected, the Legal Aid Office will provide appeal instructions to the applicant. A rejected application can be submitted to the Court for hearing. Then the Court assesses the legal aid application and can decide to grant it. The Legal Aid Office is however the first gate to legal aid.

(e) For court cases, is the prospect of success a consideration for deciding applications?

Yes.

(f) Is there a requirement that an application must be made by the applicant personally?

Yes, signature for the content of the application is required. In Finland most applications come in by fax and also from private law firms.

6. Models of Service Delivery

(a) How are legal aid cases assigned to lawyers? Are legal aid services provided by salaried lawyers, contracted lawyers, or by lawyers or law firms in other ways?

In court cases a citizen can choose the public legal aid attorney or a private advocate. However, the person assisting does not necessarily have to be an advocate, he or she can be a lawyer, but in either case the person has to be an attorney in law. So citizens have choices regarding their attorneys.

7. Legal Aid Fees

(a) Please compare the fees paid to legal aid lawyers with fees charged by private practitioners.

The legal aid hourly rate is all the same - 122 Euros inclusive of tax. A private advocate with a full fee paying client could expect to be paid 1.5 to 3 times this much, and in Family Law cases about 1.5 times higher than the legal aid fee.

8. Legal Aid for Specific Communities

(a) Does your organisation tailor and provide legal aid services to specific communities (for example, aboriginal people, foreign workers, plaintiffs in environmental litigation)

No, it is the same for all.

9. Scope and Types of Services

(a) Is legal aid available for the following matters:

(i) Litigation in civil law, criminal law, administrative law and claims for national compensation?
Yes.

(ii) Alternative dispute resolution?
Yes.

(b) Does legal aid provide the following services?

(i) Face-to-face or telephone legal consultation? What are the procedures of providing these services? Are applicants for legal consultation means-tested? How are applicants' finance assessed?
Yes, these are provided by Legal Aid Offices. We ask only the name of the applicant, to ensure that the same Office does not give this service to the opposing party. This service is free of charge.

(ii) Assistance during interviews at police stations?
Yes

(c) Is legal aid available for foreign nationals?

Of course. Last year in the Legal Aid Office of Helsinki, people from over 90 countries were served in over 70 languages.

10. Innovative Legal Aid Initiatives

(a) What are the unique features of the legal aid practices in your country?

When an applicant is granted legal aid, he or she has access to all services, there are no limitations imposed, except for the limit on the time that can be spent on cases. No more than 80 hours can be spent in non-court matters, the same applies to court matters, but the Court can grant more hours if it considers necessary.

(b) What are your organization's innovative legal aid initiatives in the recent years?

Perhaps the signpost information made by secretaries is one of them. They give rapid answers to clients as to whether their problems are legal, or whether the client can get help from elsewhere.
We also send to clients by mobile phones a reminder a day before the appointment time.
From the beginning of next year we will implement an electronic grant system.

11. Access to Legal Aid

(a) How does your organisation provide potential legal aid applicants with knowledge of the availability of legal aid services?

We do this by producing publications and advertising in telephone books, and by word of mouth. We also appear as guest in many different events. All students from the ninth grade receive a "legal packet".

We explain in schools about when one needs legal aid and how to apply for legal aid. We also give examples of live cases, this ensures that people tell about our visit and about legal aid in their homes.

(b) How are legal aid services provided to applicants who live in areas that lack legal resources?

We have no lack of legal resources in Finland. We have 51 Legal Aid Offices, 30 branch offices and over 100 branch clinics to ensure that all who needs it will have access to legal aid services.

(c) Does your organisation arrange outreach programs for legal aid lawyers? What is the performance of these programs?

No.

12. Legal Aid Lawyers

(a) What are the sources of recruiting legal aid lawyers?
The Courts, the private profession, private law firms and the Prosecution.

(b) Compared with lawyers in private practice, are legal aid lawyers as highly regarded by the police, prosecution and the courts? Do they provide facilities to make legal aid lawyers' work more convenient?
Yes. In some locations facilities are provided.

13. Quality Assurance

(a) How does your organization ensure the quality of legal aid lawyers' work?
All public legal aid attorneys are supervised by The Finnish Bar Association and the Chancellor of Justice. The Ministry of Justice is also reflecting on its own system to ensure the quality of legal aid services.

14. Participation in Reforms

(a) Does your organization participate in campaigns for social reforms or law reforms, with a view to reduce legal disputes?
The Law Committee tries to hear public legal aid attorneys' opinion before passing laws which concern the clients of public legal aid. This means that very many times in a year public legal aid attorneys are involved in the preparation of laws in the Ministry of Justice.

15. Challenges

(a) What are the difficulties and challenges facing your organisation in promoting legal aid services?
The numbers of public legal attorneys are few while the numbers of cases conducted by each public attorney are too many. Perhaps the salary of public legal aid attorneys is also a challenge. But the legal aid system in Finland is very good.

National Report

Hong Kong (SAR)

Speaker : Mr. Paul Chan

Chairman, Legal Aid Services Council, Hong Kong

2009 International Forum on Legal Aid
National (Regional) Report
Legal Aid in Hong Kong

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Hong Kong's publicly funded legal aid services are provided through the Legal Aid Department of the Hong Kong Government. Supervising the provision of such service is a matter for the Legal Aid Services Council which is a statutory body independent of the Government.

The Legal Aid Department provides legal aid to any person in Hong Kong, resident or non-resident, who satisfies the criteria for legal aid, namely the means test and the merits test. Eligible applicants receive legal aid through the provision of the service of a solicitor and, if necessary, a barrister in court proceedings to ensure that a person who has reasonable grounds for pursuing or defending a legal action is not prevented from doing so because of a lack of means.

The Legal Aid Department is organized into three divisions. They are: the Application and Processing Division, the Litigation Division and the Policy and Administration Division.

The Application and Processing Division determines applications for civil legal aid. When legal aid is granted, the case is assigned to lawyers in private practice or to in-house lawyers if the case is one concerning personal injury including employees' compensation claims or divorce and ancillary matters.

The Litigation Division determines applications for criminal legal aid and deals with the resulting litigation that has been granted legal aid.

The Policy and Administration Division supports the operation of the whole Department in areas such as human resources management, staff training, accounting and information technology management etc.

The majority of legal aid counsel working in the Department are deployed to the Application and Processing Division to screen legal aid applications. Legal representation is mostly provided by lawyers in private practice. There are about 7,300 practicing lawyers in Hong Kong and nearly 40% of them are on the legal aid panel for assignment. Legal aid panel solicitors and barristers are assigned cases having regard to their experience and expertise and complexity of a particular case.

The Legal Aid Department is committed to be a provider of quality legal aid services. For cases tried in courts, applications for legal aid are usually processed within 8 to 10 working days of the application. For criminal appeal cases, applications are processed within 2 to 3 months. In respect of civil legal aid, the standard processing time is within 3 months of the application. Applications for legal aid have to be submitted in person.

Legal Aid Schemes

Legal representation in litigation in criminal law, civil law, administrative law and claims for compensation is available in Hong Kong. Legal aid for civil proceedings is further distributed under two schemes. There is firstly the Ordinary Legal Aid Scheme which is available to persons whose financial resources do not exceed HK$175,800 (US$22,540-).

The other scheme is the Supplementary Legal Aid Scheme which is available to persons whose financial resources are in excess of the amount prescribed for the Ordinary Legal Aid Scheme but do not exceed HK$488,400 (US$62,610-). Applicants under this category are generally referred to as the lower middle class in Hong Kong.

There is another form of legal assistance operating in Hong Kong. It is the Free Legal Advice Scheme which provides face-to-face legal advice to members of the public without means testing, in areas such as matrimonial, employment, landlord and tenant, loans, bankruptcy and contract matters etc. However, assistance during interviews at police stations is not available. The Free Legal Advice Scheme is subvened by the Government but independently administered by the legal profession of Hong Kong. Members of the public can make appointments to see volunteer lawyers through referral agencies spread over 150 offices. Referrals by such large number of agencies ensure that this service is brought to the attention of our potential legal aid applicants.

Financial Eligibility Limits

To qualify for legal aid, applicants must pass both the means and merits tests. However, applicants who are on welfare are generally deemed eligible for legal aid unless there are reasonable grounds to suspect otherwise.

The means test determines whether an applicant's financial resources exceed the financial eligibility limit. Legal aid can be refused if the applicants' financial resources exceed the limit. The merits test evaluates whether the applicant has reasonable grounds for bringing or defending his case and a reasonable prospect of success in the proceedings.

In Hong Kong, we adopt a "financial capacity" approach, which aggregates a person's financial resources and disposable capital in determining the means of legal aid applicants. Financial resources are taken as an applicant's monthly disposable income multiplied by 12, plus his or her disposable capital. Disposable income is calculated as the net monthly income after allowable deductions have been made. The deductions include, amongst others, rent, rates and statutory personal allowances for living expenses of the applicant and his or her dependents.

Disposal capital consists of all assets of a capital nature, such as cash, bank savings, jewelry, antiques, stocks and shares and property. Some assets are, however, excluded from the calculation, e.g. the property in which the applicant lives, household furniture, clothing and the tools and implements of the applicant's trade.

An applicant charged with murder, treason or piracy with violence can apply to a judge for exemption from the means test and from legal aid contribution.

Means assessment is conducted by staff of the Legal Aid Department who are civil servants recruited openly. An applicant who has been refused legal aid can appeal to the Registrar of the High Court (in respect of civil cases) or a judge (in respect of criminal cases) against such refusal.

Financial eligibility limits are reviewed annually to take into account of changes in the Consumer Price Index, and on a biennial basis to take into account of changes in private litigation costs.

Legal Aid Funding and Expenditure

Legal aid in Hong Kong is fully financed by public funds. Funding for civil and criminal legal aid comes from appropriations in the Government budget. In respect of the Supplementary Legal Aid Scheme which is a self-financing scheme, funding comes from the application fees and contribution paid by the aided person when the case is won.

A unique feature of legal aid in Hong Kong is that it is non-cash limited. In other words, there is no pre-determined funding cap for legal aid. Supplementary funding can be sought in the event

expenses exceed the original estimate. Subject to the approval of the Director of Legal Aid on the ground of reasonableness, there is no limit on the expenditure for any particular case which has been granted legal aid.

Contribution by Applicants

There is a generally held but mistaken belief that legal aid is free. The truth of the matter is that an aided person who litigates at public expense is required to contribute towards the costs and expenses incurred by the Legal Aid Department in respect of which legal aid is granted.

An aided person is required to pay a contribution out of his financial resources upon acceptance of an offer of legal aid, except when his financial resources are less than HK$20,000 (US$2,564-). The amount of contribution varies from 5% to 25% of the applicant's financial resources. The final sum required to be paid however is determined by reference to the costs of the proceedings for which legal aid is offered but will not exceed the full amount of the contribution.

At the close of the case, if the contribution paid and the costs recovered from the opponent are less than the costs and expenses incurred by the Legal Aid Department, the aided person will be asked to pay the balance up to the full amount of the contribution. If, however, the contribution paid has already exceeded the actual legal costs, the balance will be refunded to the aided person. In other words, the costs to be borne by an aided person will not exceed the contribution payable even though the actual legal costs are higher if the case is lost.

If an aided person is successful in recovering or preserving any money or property in the legally aided proceedings (e.g. the matrimonial home in a divorce case, employees' compensation and damages in personal injury cases), he will be required to repay to the Director of Legal Aid the costs and expenses incurred in the proceedings out of the money or property recovered or preserved. The sum required to be paid will be reduced by the contribution that he has already paid and any costs which may be recovered from the opposite party.

Filing Fee and Security for Costs

As for other administrative expenses, it is the practice of Hong Kong courts that if the case is legally aided, the courts will not require the payment of court fee, filing fee or taxing fee when filing the court papers. However, these fees are regarded as disbursements in the proceedings which can be recovered from the opposite party and pay back to the court if costs are rewarded to the aided person.

On security for costs, if the aided person in the proceedings is obliged to furnish security for costs, the Legal Aid Department may provide such security on behalf of the aided person. But in reality, it is very rare for the opposite party in the proceedings to apply for security for costs against a legally aided person in the courts of Hong Kong.

Assignment and Legal Aid Fees

Proceedings for which legal aid is granted will be handled either by the Legal Aid Department's in-house litigation lawyers or by assigned solicitors and barristers in private practice. Legal aid fees paid to assigned lawyers in private practice are generally at market rate which guarantees the quality of service to be on a par with privately funded litigations.

The Director of Legal Aid maintains panels of barristers and solicitors who are willing to undertake legal aid work. Except where the case is assigned in-house, the aided person can nominate a lawyer on the legal aid panel to represent him or her. If the Director considers the selected lawyer to be unsuitable, he or she will discuss the matter with the aided person. In any event, the aided person's right to choose lawyer is always respected.

Quality Assurance

Cases which are assigned to private lawyers are monitored by the Legal Aid Department to ensure that the aided persons' interests are best served and that public funds are employed in a cost effective manner.

The Legal Aid Department adopts a number of measures that contribute to quality assurance, e.g. the application of experience and expertise criteria in the assignment of cases. There is also the system to evaluate the assigned lawyers' performance. Questionnaires on customer feedback are issued to the aided persons at various stages of the proceeding to facilitate effective monitoring by the Department's management staff. Complaints on legal aid lawyers will be investigated. If situation warrants, the lawyer will be invited to improve service or be suspended from further assignment. Through such a "report back" system quality of service is maintained and improved.

Lawyers on the legal aid panel are all provided with a Manual for Legal Aid Practitioners which contains guidelines for the handling of both civil and criminal cases. The letter of assignment also draws the assigned lawyer's attention to those guidelines. The Legal Aid Department's approach in monitoring case progress also enables an effective check on the performance of assigned lawyers. The system of "bringing up" cases at stages when certain events are expected to have taken place helps reveal whether the assigned lawyer is managing the case in a timely and efficient manner.

Supervising Legal Aid Services

The Legal Aid Services Council in Hong Kong is an independent statutory body set up to supervise the provision of legal aid services provided by the Legal Aid Department.

A cornerstone of the rule of law is legal aid. It safeguards the value of everyone being equal before the law and facilitates those of limited means in their pursuit of justice. The Legal Aid Services Council's first and foremost objective is to ensure the independent and impartial delivery of legal aid services, that legitimate interest of legal aid applicants are recognized and respected. In discharging this responsibility, the Council may:

- review the work of the Legal Aid Department and make such arrangements as are expedient and proper to ensure the effective discharge of the Department's functions and responsibilities.
- formulate policies governing the provision of legal aid services.
- advise on policy of the government concerning publicly-funded legal aid.

The Legal Aid Services Council is a body corporate that acts through its meetings. The Council consists of the following members:

(a) a Chairman who is not a public officer and who is not a barrister or solicitor and who is not connected in any other way directly with the practice of law.
(b) 2 barristers and 2 solicitors, each holding a practicing certificate.
(c) 4 persons who, in the opinion of the Administration are not connected in any way with the practice of law.
(d) the Director of Legal Aid, being an ex-officio member.

The Council's operations are separated from the Government, although it is funded by the Government. Members of the Council come from different professions. It is through their expertise in the different fields that they contribute their views on legal aid policy that best suit the needs of the community. As Council members are not government employees (except for the Director of Legal Aid), they are in the best position to ensure that legal aid is provided free from government interference.

The Council holds regular meetings to address specific legal aid topics in depth. Since its establishment in 1996, the Council has reviewed departmental policies and procedures, and studied issues relating to legal aid. This includes the Legal Aid Department's recent initiative in extending legal aid to cover mediation in legally-aided matrimonial cases. And with the implementation of the Civil Justice Reform in April this year, legally aided persons involving in civil proceedings will now be given funding support for mediation as an alternative means of resolving the disputes. The Government is still exploring ways for the wider use of alternative dispute resolution as a means to reducing legal disputes.

It is through these supervisory and advisory functions that the Legal Aid Services Council ensures the provision of high quality, efficient and effective legal aid services in Hong Kong.

National Report

Indonesia

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Chairman, Board of Agency, The Indonesia Legal Aid Foundation, Indonesia

1. Providers of Legal Aid

(a) Who are the providers of legal aid services in your country?

In practice, the civil society, especially the Legal Aid Institute (LBH) provides legal aid services in Indonesia.

(b) Does your organisation consolidate legal aid resources in your country, by carrying out legal aid work authorized by other government agencies?

The Indonesia Legal Aid Foundation (YLBHI) has 15 branch offices over 15 provinces in Indonesia. We have consolidated legal aid resources only in 1 province, namely the Province of South Sumatera. Besides that, the Provinces of West Sumatera and North Sumatra provide partial funding for legal aid programmes. In addition the Province of DKI Jakarta provides financial support for building our offices. See www.ylbhi.or.id

2. Organization

(a) How does your organisation organize its human resources?

The Board of Trustees is partially supportive and provides funding, in addition to funding provided by the provincial governments mentioned above. We also receive donations from the

public to provide legal aid work. We recruit staff and paralegals regularly and provide them with legal aid education and training.

(b) Is the legal aid scheme in your country funded by the government or the private sector? Is the scheme organized on a centralized level or regional level? If the legal aid scheme in your country is organized by the government, how does it maintain independence from the government?

Until now we do not have an Legal Aid Act. Therefore, there is no funding for legal aid work based on state obligation. The Supreme Court provides limited resources for only persons who could be sentenced to more than five years in prison. Therefore recently only the 4 provinces mentioned above have supported legal aid work. We do not face significant problems in terms of independence during our work. We also take legal action against government agencies.

3. Financial Affairs

(a) What are the sources of legal aid funding in your country?

Each Legal Aid Institute has their own funding resources, mainly from their foundation, funding agencies and public donation.

(b) Does the legal aid scheme in your country adopt a charitable model or a rebate model? Are recipients of legal aid required to repay legal aid costs at the conclusion of court proceedings?

In practice, the legal aid scheme in Indonesia adopts a charitable model. Recently, 4 new laws have been enacted, namely the Law regarding Judicial Power, the Law on General Court (amended Law 2/1986), the Law on Administrative Court (amended Law 5/1986) and the Law on Religion Court (amended Law 7/1989). These laws contain the right of everyone to apply for legal aid and the state's obligation to provide legal aid services for people. However, mechanism and procedures should have been in place first in an Legal Aid Act, which have not been enacted yet.

(c) Are court fees/filing fees and security for costs covered by legal aid?

The court has provided limited funding of approximately Rp 500.000 (USD 52.3) per case for legal aid services. In comparison the Province of South Sumatera provides Rp 80.000.000 (USD 8,369) per case.

(d) If provided, does this assistance increase the burden on the government's budget?

Interestingly legal aid funding in practice has been allocated not for the poor, but for high ranking officers that proceed in criminal cases including corruption cases. For instance, the

Ministry of Finance enacted Ministry Regulation to provide legal aid budget for their officers. Therefore, the budget has been misallocated for many years until now.

4. Supervision

(a) Is the operation of your organisation supervised by another authority?

Our organization's legal entity is by way of a Foundation, established since 1970. The Board of Directors is supervised by the Board of Trustees and the Monitoring Board. Every year we publish our report including financial report in national newspaper. If fundings come from a funding agency or aprovincial government, we are also supervised by those institutions. In addition, in practice we are supervised by the public and our clients.

(b) How does it supervise your organisation?

Regularly there are meetings between the Foundation and the Legal Aid Institute with our constituents, especially the poor.

(c) What are the difficulties involved in dealing with the organization's supervising authority?

We promote a paradigm and concept namely "the structural legal aid". This concept has been developing since 1980s. In short, the concept obliges all public lawyers not only representing their clients before the court but also take policy advocacy to change social and political system and structure that makes people still poor (see i.e http://www.hurights.or.jp/asia-pacific/no_38/02.htm). Therefore, not all authority or person that supervise our program understand this concept.

5. Procedures and Criteria for Granting Legal Aid

(a) Please briefly describe your organization's criteria for granting legal aid.

There are two criteria for being our client: firstly, the poor and the marginalized. Secondly, as we have limited resources, our criteria is based on the structural legal aid concept: the case should have impact on changing policies and the number of victims is massive, ie, more than 10 people.

(b) Are applicants means-tested? If so, please describe the financial eligibility criteria, any documentation required for applying, the procedures of application and assessment, and the timeframe for decision-making. Are there situations where means-testing is not required?

We are not implementing means-testing rigidly. However, every person should provide document to show they are really poor, for instance letters from local authority and/or electricity bills. Each Legal Aid Institute will decide which case should be aided, especially if they require

assistance in litigation processes.

(c) If applicants are means-tested, has consideration been given to raise the financial eligibility criteria, thus increasing the number of people eligible for legal aid?

Ideally, it should be a main consideration to raise financial eligibility and increase the number of people eligible for legal aid.

(d) Who assess legal aid applications? How are these personnel recruited?

In the Legal Aid Institute, every application is assessed by the Director or senior public lawyers who have been working for more than 5 years in the office. They are recruited by the selection processes of the Legal Aid Institute.

(e) For court cases, is the prospect of success a consideration for deciding applications?

No. Because of the "legal aid structure" concept, we are not considering the prospect of success. Moreover, we often use the court session as a medium for increasing public awareness and criticize decision makers.

(f) Is there a requirement that an application must be made by the applicant personally?

Yes.

6. Models of Service Delivery

(a) How are legal aid cases assigned to lawyers? Are legal aid services provided by salaried lawyers, contracted lawyers, or by lawyers or law firms in other ways?

The Directors and senior public lawyers are assigning to their lawyers of Legal Aid Institute.

7. Legal Aid Fees

(a) Please compare the fees paid to legal aid lawyers with fees charged by private practitioners.

There are no fees for legal aid lawyers. However the Legal Aid Institute or the foundation provide monthly salary of approximately Rp 1.000.000 to Rp 3.000.000 (USD 104.6 to 303), comparing with private lawyer's fees charged approximately Rp 15.000.000 (USD 1569.04) to hundreds billion rupiahs per case depends on their "popularity".

8. Legal Aid for Specific Communities

(a) Does your organisation tailor and provide legal aid services to specific communities (for example, aboriginal people, foreign workers, plaintiffs in environmental litigation)

Yes. Basically our clients are indigenous people, workers, peasants, urban poor community, human rights and environmental disaster victims.

9. Scope and Types of Services

(a) Is legal aid available for the following matters:

(i) Litigation in civil law, criminal law, administrative law and claims for national compensation?
(ii) Alternative dispute resolution?
Yes

(b) Does legal aid provide the following services?

(i) Face-to-face or telephone legal consultation? What are the procedures of providing these services? Are applicants for legal consultation means-tested? How are applicants' finance assessed?
Yes. There are no particular procedures for providing telephone legal consultation. Basically everyone could consult by telephone. However, usually we will suggest them to consult in the office.
(ii) Assistance during interviews at police stations?
Yes.

(c) Is legal aid available for foreign nationals?

Yes. We have experience to provide legal aid for asylum seekers from Iraq and Afghanistan.

10. Innovative Legal Aid Initiatives

(a) What are the unique features of the legal aid practices in your country?

Legal aid have been implemented since 1970 without adequate support from the State and regulation by a Legal Aid Act,

(b) What are your organization's innovative legal aid initiatives in the recent years?

We are developing and using SMS (short message service) as a gateway to provide information regarding law and legal aid. Therefore every person could receive the information through their cellular phone. People should register first, type in "hukum" (law) and send to 7475 (operator). They also could select the type of information they wish to receive, for instance labour law, financial, family law and property law.

11. Access to Legal Aid

(a) How does your organisation provide potential legal aid applicants with knowledge of the availability of legal aid services?

By website, leaflet and media campaign.

(b) How are legal aid services provided to applicants who live in areas that lack legal resources?

One of our programmes is legal aid training for the community, students and local leaders as well as training for paralegals who live in remotes areas. Nevertheless, there are no services and in practice it is very difficult for individuals to obtain legal resources in this area especially in village and remote areas.

(c) Does your organisation arrange outreach programs for legal aid lawyers? What is the performance of these programs?

We provide 3 main programmes: (1) special education for profession of lawyers (PKPA) in cooperation with the Indonesia Bar Association; (1) advocacy skills training for legal aid lawyers – supported by Indonesia-Australia Legal Development Facility, Ausaid; (3) Karya Latihan Bantuan Hukum (Legal Aid Training for Student and Fresh Graduate).

12. Legal Aid Lawyers

(a) What are the sources of recruiting legal aid lawyers?

Basically, all legal aid lawyers who work for the Legal Aid Institute are recruited from the Karya Latihan Bantuan Hukum (Legal Aid Training for Students and Fresh Graduate).

(b) Compared with lawyers in private practice, are legal aid lawyers as highly regarded by the police, prosecution and the courts? Do they provide facilities to make legal aid lawyers' work more convenient?

It can be said that public legal aid lawyers of the LBH are highly regarded by the media. In general, there are no facilities provided by the police, prosecution and the courts in order to make our work more convenient.

13. Quality Assurance

(a) How does your organization ensure the quality of legal aid lawyers' work?

Comparing with other legal aid providers, legal aid lawyers of the LBH can be said to have achieved good quality and trust from people.

14. Participation in Reforms

(a) Does your organization participate in campaigns for social reforms or law reforms, with a view to reduce legal disputes?

Yes, including judicial review on laws before the Constitutional Court.

15. Challenges

(a) What are the difficulties and challenges facing your organisation in promoting legal aid services?

(1) Until now, Indonesia does not have an Legal Aid Act. Therefore the right to legal aid in Indonesia is not a legal right, and there is no obligation for the state to allocate budget for the poor. (2) Many law offices are using the term "legal aid" to manipulate people who are seeking justice. Indeed they are not legal aid lawyers but private lawyers. (3) Million of Indonesia people are poor and Indonesia is also a big country. As a consequence, we need more people who work as legal aid lawyers as well as paralegals. (4) There is no significant contribution from the Indonesia Bar Association in order to promote legal aid services. Recently, the Indonesia Bar Association has splited into two organizations, namely the Perhimpunan Advokat Indonesia (Peradi) and the Kongres Advokat Indonesia (KAI). (5) Not all police, prosecutor and the court support the idea of legal aid, as it will give more work for them including the problem of judicial corruption.

Panel Discussions

Panel Discussion I: The Rights of Non-nationals and Legal Aid

1. Scope of Services:

(a) Does your organisation provide legal aid services for foreign workers, foreign spouses and other non-nationals in your country?

Yes.

(b) Is legal aid available for undocumented foreigners, refugees and victims of human trafficking in your country?

Yes.

(c) In providing legal aid, does your organisation distinguish between the lawfulness of foreigners' presence in your country?

No.

2. Application Procedures:

(a) Are application procedures the same for local applicants and non-nationals, including foreign workers/spouses, undocumented foreigners, refugees, victims of human trafficking and other non-nationals?

In practice, each Legal Aid Institute will decide whether they will accept the case or not.

(b) If your organisation provides legal aid for refugees, what are the criteria for identifying an applicant as refugee? Is your organisation responsible for making the identification, or is this done by another agency?

In practice we consult the UNHCR in Indonesia.

(c) What are the challenges facing legal aid lawyers in providing services to foreign workers/ spouses, undocumented foreigners, refugees, victims of human trafficking and other non-nationals? What are the ways of overcoming them? Does your organisation provide any assistance?

The main challenge is budget and limited number of legal aid lawyers who work for our organization.

(d) When non-nationals are placed in shelters that restrict their liberty under the relevant laws, are they informed of the progress of their court cases? While they are in these shelters, are they able to exercise their right of appeal? How do legal aid lawyers provide assistance on this point?

Based on our laws, there are no different procedures or mechanisms between Indonesian citizens and non-nationals.

3. Understanding Issues Facing Non-nationals

(a) Do lawyers and the judiciary in your country have sound understanding of the legal issues and barriers to the judicial process facing foreign workers/spouses, undocumented foreigners, refugees, victims of human trafficking and other non-nationals?

In general yes. Our organization is also a member of the Asia Pacific Refugee Rights Network (APPRN). See i.e. http://sites.google.com/site/apcrr2008/background

(b) How does your organisation improve their understanding of these issues?

The Legal Aid Institute Jakarta and the UNHCR office in Jakarta regularly organize advocacy trainings especially focus on international human rights standards and norms.

(c) How does your organisation help them become more ethnically sensitive and improve their awareness towards multi-culturalism?

We usually involve local community during advocacy.

4. International Cooperation:

(a) In providing legal aid for foreign workers/spouses, undocumented foreigners, refugees, victims of human trafficking and other non-nationals, does your organisation engage in international co-operation with governmental agencies or NGOs from other countries?

Yes, for instance the Asia Pacific Refugee Rights Network (APPRN)

5. Marketing Activities:

(a) Does your organisation inform non-nationals of the availability of legal aid for foreign workers/ spouses, undocumented foreigners, refugees, victims of human trafficking and other non-nationals? What are the methods and channels of marketing (eg, work with NGOs)? How does your organisation overcome any language barriers?

We have not developed marketing activities yet.

6. Advocacy:

(a) Does your organisation participate in the advocacy and reform of international human rights laws?

Yes. For instance, promotion and advocacy of the Optional Protocol on International Covenant on Economic, Social and Cultural Rights.

National Report

Japan

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1. Organization

1.1. Provider of Legal Aid

The provider of legal aid in Japan is the Japan Legal Support Center (the “JLSC”, and its nickname is “Hou Terrace”), which was established in 2006 pursuant to the Comprehensive Legal Support Act. It is under the supervision of the Ministry of Justice and provides civil and criminal legal aid. In addition, it provides three types of services: legal information services, support for crime victims and services for the areas which are lacking in legal resources.

Civil legal aid in Japan had been provided for more than fifty years by a civil organization, called the Japan Legal Aid Association, which was set up under the initiative of the Japan Federation of Bar Associations, and it also received subsidy from the government. By establishing JLSC in 2006, the government had taken responsibility to operate civil legal aid. Since the organizational base for civil legal aid had been well-prepared, it has became more popular and the number of legal aid cases has increased by 10% or more compared to the previous years for a couple of years.

On the other hand, criminal legal aid had been provided by the court, which was limited to services during the post-indictment stage. In 2006, JLSC replaced the court and became responsible for the provision of criminal legal aid, the scope of which had been expanded gradually up to pre-indictment stage.

1.2. Organization

1.2.1. Human Resources

JLSC has a head quarter in Tokyo, 50 district offices, 11 district branch offices, 6 sub-branch offices and 26 local law offices across the country. The total number of secretariats is around 800.

Legal services for legal aid cases are delivered by contracted attorneys (around 12,000 for civil legal aid and, around 15,000 for criminal legal aid), contracted judicial scriveners (around 4,500), and staff attorneys (around 150).

The government paid 100% of JLSC's capital and accounts for almost all of JLSC's income. So far contribution from the civil sector is rather small.

1.2.2. Business Plan of Legal Aid

The business plan of legal aid is prepared by the head quarter to ensure that the quality of the services is the same across the country. In order to secure a certain level of autonomy from the government, JLSC takes a form of an Incorporated Administrative Agency. When the Minister of Justice decides the mid-term business target and the mid-term business plan for JLSC, he shall hear views of the Evaluation Commission (blue-ribbon panel appointed by the Minister of Justice for evaluating the performance of JLSC) and the Supreme Court.

1.3. Finance

As discussed before, financial resources for legal aid are mainly governmental fund. However, since civil legal aid in Japan employed a loan system, under which the cost paid by JLSC for a grantee must be reimbursed as a general rule, those reimbursed money accounts for 65% of the annual income for civil legal aid.

1.4. Supervision

JLSC is a public corporation under the jurisdiction of the Ministry of Justice and it is almost equivalent to the form of an Incorporated Administrative Agency. An Incorporated Administrative Agency is a public corporation established by the government, and the law secures its autonomous management for the purpose of running a highly public business effectively, transparently and with higher quality. Involvement of the Minister concerned is limited to the items prescribed by the law. Application of the fund from the government is not tied. As for JLSC, although the Minister of Justice has the power to appoint its president, draw up its mid-term business target, evaluate its performance, approve its Statement of Operation Procedures which prescribes basic framework of its operation, he shall take the view of the Supreme Court beforehand so that he could execute this power more fairly. There are no noticeable problems on supervision of the Ministry of Justice so far.

2. Legal Aid Services and Application Procedures

2.1. Scope and Types of Services

JLSC provides Information Services in addition to civil legal aid. The Information Services are available for anyone who wants to obtain information on legal systems and organizations which offer legal services, regardless of their income, by phone or face-to-face.

The civil legal aid system is designed to provide legal aid to people in financial difficulties throughout Japan for litigation and settlement out of court in civil, family and administrative cases. It is also available for Alternative Dispute Resolution as long as the use of ADR is effective as a means of reconciliation before going to court.

Civil legal aid services consist of free legal consultation, an interest-free loan for legal fees paid to attorneys or judicial scriveners for the legal representation or preparation of documents to be submitted to the court.

As a general rule, applicants are required to apply for the services by themselves. However, in case the applicants cannot for some reasonable ground make an application by themselves, they may make an application through their agent.

2.2. Procedures and Criteria for Granting Legal Aid

2.2.1. Legal Consultation Aid

Under the civil legal aid program face-to-face legal consultation is available by advance reservation. Applicants usually wait for one or two weeks before having a consultation. In order to receive the free consultation services, there are requirements to be fulfilled. Firstly, this is limited to those with income and savings below a certain level. Secondly, the use of the system needs to be suitable for the purpose of civil legal aid. Whether the application meets these requirements or not is checked verbally at the time of reserving the consultation.

The criteria for financial eligibility are based on the number of family members living together and the after-tax income and savings of an applicant and his or her spouse. Housing costs are considered as necessary expenses and added to the amount of the criteria. For example, if the applicant is a single person, his monthly income must be under ¥182,000 (about US$1,960) to be qualified and if he or she pays the rent, the amount of income criteria will be raised accordingly up to ¥41,000 (about US$441). If an applicant lives with his or her spouse and two kids, the after-tax income of the couple needs to be less than ¥299,000 (about US$3215) and the monthly housing cost up to ¥71,000 (about $763) is added to the amount of the criteria. In case an applicant lives in a big city such as Tokyo and Osaka, the income criteria is increased by 10%. Even when the income

or savings go over the criteria, proper consideration will be given to the expenses of medical care, education, and so on.

2.2.2. Representation and Documentation Aid

The civil legal aid program also provides an interest-free loan for legal fees. Applicants who wish to obtain loans are required to submit documents proving their income, residence certificate and so on. The Examining Commissioner, who are familiar with the civil legal aid program and appointed by the Director of the District Office, assesses each application and decides whether a legal loan should be provided or not and how much money to be paid, taking into consideration the merit of the case, which means the prospect of success or favorable settlement. It usually takes two or three weeks until an application goes under review by the Examining Commissioner.

At present, 90% of legal aid cases are handled by contracted lawyers and the other 10% are handled by staff attorneys. The fee table for legal aid lawyers is stipulated in the Statement of Operation Procedures and the base amount is set at a level that is far below the amounts charged by private practitioners.

JLSC advances the costs of legal procedures, and recipients of legal aid are required to reimburse the cost without interest. Not only remunerations and costs paid to attorneys or judicial scriveners, but also court fees and security deposits for an injunctive order are covered if necessary on the condition that they are repaid by recipients. Usually recipients of legal aid repay by installments ¥5,000 to ¥10,000 per month. There are cases in which payment may be graced until the case is concluded, depending on the recipients' financial situation. When a case results in an economic benefit, clients are required to pay out the remaining balance by lump sum payment. On the other hand, it is possible for a client to apply for an exemption from repayment obligation if he or she has difficulty in repaying because of lack of funds even after the conclusion of the case.

2.2.3. Aid for Foreign Nationals

The civil legal aid program is open for foreign nationals living in Japan and they are able to receive a free interpreter service for legal consultation if necessary. However, these services are available only for foreigners residing in Japan legally and they are required to show their alien registration card. As for undocumented foreigners, they are able to apply for refugee status or visa status in addition to civil legal procedures under the legal aid services entrusted to the JLSC by the Japan Federation of Bar Associations.

2.3. Criminal Legal Aid

In most criminal cases except for lesser ones, suspects who cannot afford a private attorney are eligible for a court-appointed attorney. The public defender system is available for foreign nationals as long as they meet the financial requirements. A court appoints attorneys for the eligible defendant but it is JLSC that makes payments to the attorneys for their activities. The budget of this program is independent of other services of the JLSC and increase in expenditure of this program does not affect the budgets for other programs.

3. Other issues

3.1. For promoting access to justice

3.1.1. Services for areas lacking in legal resources

One of the mission of JLSC is to eradicate areas where people have difficulty in accessing legal services because there are no lawyers nearby. To that end JLSC set up law offices (26 offices as of 31 March 2009) in such areas, stationed staff attorneys there, and provide legal services including legal aid to the local people. In addition, since lawyers who provide legal services to people with low income are lacking in larger cities as well, JLSC opens law offices in 41 cities and arranges staff attorneys who are to handle legal aid cases exclusively.

3.1.2. Home visit consultation

JLSC operates consultation program for people who have difficulty in physically coming to its office such as elderly or handicapped people, under which a lawyer visits their home or welfare facility. From April to August of 2009, 243 home visit consultation services were provided.

3.1.3. Dissemination of information about legal aid to the public

JLSC operates a call center providing legal information in response to more than 400,000 inquiries a year and introduces civil legal aid to around 20% of those inquiries to promote its use. In addition we put detailed explanation about civil legal aid on our website and furnish counseling counters of the related organizations such as courts and city offices with our leaflet.

3.2. Recruiting legal aid lawyers

JLSC holds a seminar especially for new lawyers in co-orporation with bar associations. Although the courts do not provide any privileges to a legal aid lawyer in Japan, JLSC makes efforts to recruit well-motivated lawyers by appealing to them the significance of the legal aid program.

3.3. Assuring quality of legal aid services

On concluding a 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. Through this process, the quality of services provided by legal aid lawyers is generally maintained.

3.4. Challenges

Challenges JLSC facing currently are as follows.

In terms of finance, we have to secure sufficient income in order to provide legal aid to more cases in response to increasing need. To that end, it is necessary both to increase budget from the government and strengthen collection of money granted, which is not an easy task either.

Secondly, the challenge is to recruit lawyers who provide high quality services with a lower legal fee. To that end, it is necessary to have lawyers understand the significance of the legal aid program which is to secure access to justice for people regardless of their financial ability.

Thirdly we need to disseminate information about the legal aid program and rationalize and speed up the application procedure so that people could use it more easily. According to the survey conducted recently by JLSC, only 8% of Japanese people are aware of the legal aid program. It is necessary to raise the awareness for promoting use of the program.

National (Regional) Reports I

Discussion

Moderator : Mr. Wilhelm H. Joseph, Jr.
Executive Director Legal Aid Bureau, Inc.
Baltimore, Maryland, U.S.A.

National (Regional) Reports I : Discussion

Mr. Wilhelm H Joseph, Jr. (Executive Director, Legal Aid Bureau, Inc., Baltimore, Maryland, U.S.A)

Before we get questions from you lawyers, I have one question: Since all speakers, including our keynote speaker this morning, all agree that securing adequate government resources is a major challenge and a major priority for all of us, my question is, what are the factors that seem to encourage or discourage strong government funding for civil Legal Aid?

Mr. Paul Chan(Chairman of Legal Aid Services Council, Hong Kong) :

Under the ordinary Legal Aid scheme, the coverage of the Hong Kong populations is about fifty percent, so about fifty percent of the population can pass the means test and eligible for Legal Aid. On the supplemental Legal Aid scheme that I mentioned, catches another twenty percent of our population. So with that, about seventy percent of our population are eligible for Legal Aid. But for the supplemental scheme, because it is self-financing, the Legal Aid department must be able to recover from the damages received by the plaintiff in certain amount. Naturally, there is a limit as to the scope of those services, so the scope of those services at the moment are personal injuries, employment compensation—these kinds of things. Why do I mention this? Because going back to the question, “Where is the money?” “What is the budgetary constrains?” As I said, we don’t impose a cap on each particular Legal Aid case, and the process is for the government to give a budget every year, and if it is insufficient, the Legal Aid department can go to our government or the parliament to fight for additional money. I guess the control is very much on the scope legal aid available. At the moment, the debate, for example, is whether we should extend the Legal Aid to community level, so that more Legal advices can be rendered to our citizens—even to undocumented workers. For the government, for the Legal Aid providers and other agencies, there are questions about where resources will come from and what the concepts of community are if we are to extend the services, and how to recover from the public purse.

Mr. Hugh Barrett (Executive Director, Commissioning, Legal Services Commission, U.K.) :

I think in order to get increased funding from government, there are two key factors that we have to put forward. The first is that, the funding area has to be seen as politically popular. Second, it has to have a sound economic case. For example, we might get increased funding to help us with our housing work. It’s very popular with Ministers that we can say, or governments can say, that we are helping people who have been threatened with repossession of their houses, because, politically, in current economy, many people in England can see themselves possibly being in that situation.

The second, I need to do more research on this, but it is an economic case. If we can prevent somebody losing their homes, this would be saving state money, because they would not become homeless, and their children will not have their education disrupted, families are more able to stay together, and, potentially, there would be fewer health problems caused by homelessness. So there is a good economic case for spending some Legal Aid money on preventing people losing their homes. Those two factors together, in my experience, are how we could be successful persuading the government of the UK to spend more on civil Legal Aid.

Mr. Futoshi Toyama (Expert Advisor, Civil Legal Aid Division, Japan Legal Support Center, Japan) :

OK, I completely agree with the opinions expressed. In Japan, the current national policy is to reduce poverty, and address the increase in the difference between higher-income people and lower-income people. So, as I mentioned, the majority of the Legal Aid cases in Japan, address those problems, and thus help and serve the national policy of reducing poverty. This type of persuasion is very good for increasing the budget, I believe.

Mr. Wei-Shyang Chen (Deputy Secretary General of Legal Aid Foundation) :

The problems we’ve encountered in Taiwan are in fact already mentioned by some participants. The case is particular in Taiwan because our supervisor basically belongs to the judicial trial system while in other countries it mostly belongs to the administration system. As a result, we almost take no consideration of the part of social welfare. As I mentioned in my previous report, starting from this year, we’d report to the parliament, where some legislators commented that more budgets should be provided to LAF. Therefore we do have received comments from different fields. Presently how do we arrange our service under the existing budget? There are two directions: the first is concerned with the partial-aided cases for which the applicants can share the cost so that we are able to lower some expenses; the second is that we learn from the mechanisms of UK and other countries by expanding our legal consultation service. However in our experience, more legal consultation service would bring more cases, which is a problem we have met with.

Mr. Wilhelm H Joseph, Jr. (Executive Director, Legal Aid Bureau, Inc., Baltimore, Maryland, U.S.A) :

If anyone feels that he or she has something to say and did not get enough time to say it, now we have five minutes to do so. Who goes first?

Ms. Liisa Vehmans (The Manager of Legal Aid in Helsinki, The Head of the Helsinki Legal Aid Office, The Ministry of Justice, Finland) :

I must say that I heard that it is hard for Legal Aid in Hong Kong. We have one hundred hours per person in Finland and we have also up to a million interpreters in my office visiting next year, sixty-nine different nationals' interpreters. Sorry, I feel that it was sixty-nine nationalities in my office and only three interpreters.

Mr. Paul Chen(Chairman of Legal Aid Services Council, Hong Kong) :

Currently in Hong Kong, the legal aid service is delivered by a government department, the Legal Aid Department. So the community, particularly some of the people in the legal profession argues that, because the Legal Aid department is the part of the government, it is not independent enough. So they want the Legal Aid Department to become an independent department. It is quite a debate in Hong Kong, because on one hand in the past we have seen, even within the government department, people want to sue the government, want to sue the administration. Legal Aid is still available and there are so many cases. They are successful at suing the government. And the best question is whether Legal Aid needs to be an independent party in order to achieve independent perception. Because for some of the civil servants in the Legal Aid department, they don't have to compromise; since they are civil servants, their position is so secure that you can't fire them. They can be independent and can resist any pressure from outside or even from our counselors. And this may be something for people to think about.

National (Regional) Reports II

Republic of Korea, Malaysia, The Netherlands, The Philippines, Thailand, United States, Vietnam

♦Moderator : Mr. Albert W. Currie

Chief Researcher, Research and Statistics Division,
Department of Justice, Canada

National Report

Republic of Korea

Speaker : Mr. Jai-Hyung Park
Attorney at Law, Haemaru Lawfirm Member, Minbyun International
Solidarity Committee of Minbyun, Republic of Korea

2009 International Forum on Legal Aid
National Report
Republic of Korea

Mr. Jai-Hyung Park
Attorney at Law, Haemaru Lawfirm
Member, Minbyun International Solidarity Committee of Minbyun

1. Providers of Legal Aid

The legal aid system in the Republic of Korea is mainly carried out by the Korea Legal Aid Corporation, a public organization, and several private organizations such as the Korea Legal Aid Center for Family Relations, the Seoul Bar Association and consumer groups. MINBYUN – Lawyers for a Democratic Society, a private group comprised of lawyers, also actively provides legal aid. Meanwhile, the assigned counsel defender program for criminal cases and civil litigation assistance program are also part of the legal aid system, as the court assigns counsel for criminal defense or civil litigation.

Minbyun, which I am part of, is a private organization which usually provides legal aid to important cases pertaining to human rights and social justice, whereas the Korea Legal Aid Corporation is a public institution which provides legal aid such as legal counseling, or representation in court for individuals who cannot afford to hire a lawyer.

While Minbyun maintains a cooperative relationship with the National Human Rights Committee of Korea (NHRCK) in certain situations, Minbyun does not often collaborate with other public organizations or government bodies.

2. Organization

Minbyun is comprised of lawyers who joined Minbyun at their own will. Minbyun does not receive any financial subsidy from the government, and is sustained solely by membership fees.

In comparison, the main source of revenue for the Korea Legal Aid Corporation, a public organization, is government subsidy, in addition to other sources such as reimbursement of litigation costs, revenue from interest and contributions from Nonghyup Bank, Suhyup Bank, Chukhyup Bank and Shinhan Bank.

3. Financial Affairs

While the Korea Legal Aid Corporation, a public organization, is mainly financed with government subsidies, Minbyun is financed with membership fees paid by member attorneys.

Minbyun does not receive any form of reparation from the recipients of legal aid, and all costs of litigation and legal aid is financed by Minbyun.

4. Supervision

Minbyun is a completely private organization and is not monitored or supervised by any government institutions.

5. Procedures and Criteria for granting Legal Aid

In deciding whether Minbyun should provide legal aid in a certain case, Minbyun evaluates whether legal aid for that particular case is compatible with Minbyun's purpose of establishment - "protection of human rights and social justice", especially whether it is appropriate for Minbyun and not another organization to provide legal aid in the case.

In principle Minbyun does not investigate the financial background of the potential legal aid recipient in the decision-making process.

When either a member of Minbyun or person concerned in the case requests legal aid, the decision whether to participate in the case is made after discussion and deliberation by the Legal Aid Evaluation Committee

Full-time employees of Minbyun are hired through an open recruit. However most of the work relevant to legal aid is provided by members of Minbyun who are lawyers who joined the organization by their free will, not the employees. Members of Minbyun do not solely commit to Minbyun-related work, but are independent lawyers who concurrently work for Minbyun.

6. Models of Service Delivery

Minbyun's legal aid service is supplied by members who volunteered for the job. Minbyun lawyers do not receive any remuneration from Minbyun, and are all lawyers who separately practice law in law firms or an independent office.

7. Legal Aid Fees

Members of Minbyun do not receive remuneration for their legal aid services. Usually an attorney at law in a case receives litigation fees ranging from several million won to tens of millions won, depending on the case.

8. Legal Aid For Specific Community

Minbyun provides legal aid to specific communities such as the forced evictees, migrant workers, labor unions and more.

9. Scope and Types of Services

Minbyun provides legal aid in criminal, civil, administrative cases and lawsuits against government, and alternative dispute resolution.

Minbyun provides legal counseling either face-to-face or over the phone. Consultation with the full-time employees and lawyers of Minbyun is available over the phone at all times, and if need be depending on the case, a member lawyer or full-time Minbyun lawyer may be connected for consultation over the phone or face to face. No financial inquiry is made during the legal consultation.

Minbyun also assists those in the midst of police investigation at the police station, and Minbyun's service is also available for foreigners.

10. Innovative Legal Aid Initiative

Minbyun's legal aid is a completely privately run organization of lawyers. Minbyun is not subject to any governmental subsidies and governmental supervision.

One of more recent characteristics of Minbyun's activities is that many are activities in response to anti-human rights practices by the current Lee Myung Bak administration.

For instance, Minbyun represents the majority of citizens who participated in the recent candlelight vigil against U.S. beef imports and were prosecuted, as well as teachers who were discharged for opposing the government's educational policies.

11. Access to Legal Aid

Most Minbyun lawyers usually conduct action for human rights and social justice separately from Minbyun. During their independent activity, the member suggests Minbyun's legal aid when he/she believes Minbyun's particular legal aid is necessary. It is common for members of Minbyun

to encounter potential legal aid recipients during their independent legal activity.

It is true that residents of small cities or suburbs have little opportunity to receive legal aid. Nonetheless, it is possible for legal counselors to visit and have a face-to-face meeting with them, if judged necessary after consultation over the phone.

12. Legal Aid Lawyers

Minbyun lawyers are not hired by Minbyun, but are merely members. Those who agree with Minbyun's objectives and wish to join may apply for membership. With Membership Committee's recommendation and with Executive Committee's permission, the applicant may become a member.

Because Minbyun's lawyers are independent lawyers who practice law while concurrently participating in Minbyun's activities, they are not full time legal aid lawyers.

13. Quality Assurance

All Minbyun lawyers are part of a specialized committee, such as International Solidarity Committee, Labor Committee, Public Welfare and Economy Committee, Media Committee, Women's Rights Committee and others within Minbyun. Through regular committee meetings and activities, Minbyun lawyers gain experience and expertise in their field of activity.

14. Participation in Reforms

If judged necessary for the protection of human rights and social justice, Minbyun also participates actively in social reform movements and action for law revisions.

15. Challenge

Since the onset of the conservative Lee administration in 2008, the human rights situation in Korea has backtracked. This in turn magnified Minbyun's role in society. Yet due to limited number of members, Minbyun does not have all the human capital it needs to perform its ever-increasing duties.

National Report

Malaysia

Speaker : Mr. Ravindran Nekoo

Deputy Chairperson, National Legal Aid Sub-Committee Bar Council Malaysia, Malaysia

2009 International Forum on Legal Aid
National Report of MALAYSIA

Mr. Ravindran Nekoo
Deputy Chairperson, National Legal Aid Sub-Committee Bar Council Malaysia, Malaysia

General Information

Population	27 million (estimated as of September 2009)
Number of lawyers/ attorneys-at-law	12,883 (as of September 2009)
Number of judges	349 excluding Chairman of Industrial Courts of Malaysia (as of September 2009)
Number of prosecutors	365 (as of 2007)
Number of court cases	2.2 million civil and criminal cases in sessions and Magistrate courts across the country, including 848,025 pending cases from previous years (estimated as of June 2008)

Legal Aid Services in Malaysia

There are three legal aid schemes in Malaysia:

1. Legal Aid Bureau (Biro Bantuan Guaman)

- Set up by the government in 1970 pursuant to the Legal Aid Act 1971.
- Administered by Legal Affairs Division of the Prime Minister's Department.
- Head office located in Federal Government Administrative Centre, Putrajaya, Malaysia.
- Website: www.bbg.gov.my

2. Legal Aid Centres

- Set up under the Bar Council Malaysia's Legal Aid Scheme.
- Pursuant to the Legal Profession Act (LPA) 1976, sec 42(1)(h) which says "The purpose of the Malaysian Bar shall be – to make provision for or assist in the promotion of a scheme whereby impecunious persons may be represented by advocates and solicitors".
- First centre was set up in the state of Penang as Legal Advisory Centre in 1980.
- First official Legal Aid Centre set up in Kuala Lumpur in 1982.
- In 1983, the Malaysian Bar gave substance to the LPA 1976 sec 42(1)(h) by passing a resolution to set up its Legal Aid Scheme whereby every practising lawyer is required to contribute RM100 per year towards the scheme.
- Head office is located in the Bar Council, Kuala Lumpur.
- Website: http://www.legalaidkl.org/

3. Court-assigned Counsel

- Set up by the British in Malaya way back during the pre-World War II era.
- Under the purview of the Chief Justice of Malaysia.
- Only offers representation to those accused who have no means to defend themselves in capital offence cases.
- Head office located in the Palace of Justice, Federal Government Administrative Centre, Putrajaya, Malaysia.

The Legal Aid Schemes and their Programs

The main activities of both the Legal Aid Bureau and the Legal Aid Centres are to provide legal assistance to the impecunious. In addition to that, the Legal Aid Centres are also involved in public interest litigation and human rights work.

Further details are as follows:

1. Legal Aid Bureau offers representations at various courts in Malaysia and also conducts promotional programmes such as legal aid clinics, meet-the-customer days, roadshows and seminars on legal literacy.

2. Legal Aid Centres, beside their main activities of offering free legal advices at the centres and offering free legal representation, also conduct the following programs:
   (a) Dock brief offers free legal services such as mitigation of sentences, bail applications and remand matters to those accused at lower courts.
   (b) Prison visits offer legal advice to prison inmates and conduct necessary follow-ups from Legal Aid Centres.
   (c) Tie-up with NGOs especially women's centres offer legal advice especially on family law matters.
   (d) Legal awareness program offer such activities as giving talks on legal rights and distributing pamphlets in schools, public places, villages and juvenile homes.
   (e) Skills development programs offer trainings to legal aid lawyers on Family Law, Human Rights, Syariah Law and Criminal Law, among others.

3. Court-assigned Counsel's main task is only to offer legal representation to those accused who have no means to defend themselves in capital offence cases at the High Court and Federal Court.

The Structure of the Legal Aid Schemes

1. Legal Aid Bureau has offices throughout Malaysia. The Minister at the Prime Minister's Department appoints, from amongst members of the Judicial and Legal Service, a person to be or to act as a Director-General of Legal Aid. The Director-General of Legal Aid shall prepare and maintain panels of solicitors willing to investigate, report and give an opinion upon applications for the grant of legal aid, to act for persons receiving legal aid or to give legal advice under the provisions of this Act. There may be separate panels for different purposes and for different courts.

2. Legal Aid Centre has one or two offices in each state in Peninsular Malaysia. Legal Aid Centres are managed by the Bar Council through the National Legal Aid Committee. Each Centre is headed by a Chairperson assisted by the management panel. The Centre is staffed either by the office administrator, executive officers or office clerks. Lawyers volunteer to give free legal advice or represent the cases. Staff also offer advice to the public who walk-in to the Centres.

3. Court-assigned Counsel is available to those accused of capital offences at the High Court up to the Federal Court.

The Legal Aid Schemes Models of Service Delivery

1. Legal Aid Bureau's administration staff and legal professionals are civil servants, thus, they receive salaries from the government.

2. Legal Aid Centres' salaries to officers and staff come from the Bar Council's Legal Aid Fund. Volunteer lawyers do not receive any salary and carry out their task pro bono Legal

aid clients must pay administrative fees to Legal Aid Centres once the Centres open up a file for their cases. The clients also pay for the volunteer lawyer's travel expenses to the court to represent them. Legal advices and representation are given for free.

3. Court-assigned Counsel receive fees which are paid by the court based on the practice direction of the Chief Justice of Malaysia.

Budget for Legal Aid Services

1. The budget for Legal Aid Bureau comes from the national government.

2. The budget for Legal Aid Centres comes from the Legal Aid Fund. Members of the Malaysian Bar have to contribute a compulsory fee of RM100 each per year to this fund which amounts to roughly RM1.3 million a year.

3. The budget for the Court-assigned Counsel Scheme comes from the national government.

Criteria for Granting Legal Aid Services

1. Legal Aid Bureau's potential clients must satisfy the "means test".

Legal Aid Bureau's means test

There are two main categories an applicant may fall into. Failing which, the applicant could apply to the Director of Legal Aid Bureau for a special exemption.

(a) First category - Free legal aid
Applicants whose yearly income does not exceed RM25,000 (ie, RM2,084 per month)

(b) Second category - Subsidised legal aid
Applicants whose yearly income is more than RM25,000 but does not exceed RM30,000 (ie, between RM2,084 and RM2,500 per month)

(c) Special exemption
Applicants who do not qualify for the first or second category can apply for a special exemption to obtain legal aid with approval from the Minister in charge of Legal Affairs Division. This application is made through the Director of the Legal Aid Bureau.

2. Legal Aid Centres' potential clients must satisfy the "means test".

Legal Aid Centres means test

(a) Legal aid applicant does not have an income (after deduction of monthly expenses) exceeding RM650 (for single person) and RM900 (for married couple).

(b) Applicant does not own any property as listed below worth more than:

(i) House	RM45,000
(ii) Car	RM10,000
(iii) Motorcycle	RM4,500
(iv) Savings	RM5,000

(c) If the prospective client does not qualify under the means test, the State Legal Aid Centre would decide whether to take up the case based on merits. Clients also include those represented in public litigation cases.

Types of Cases Handled

1. Legal Aid Bureau handles the following cases:

- Family Law matters
- Syariah(Islamic) Family Law matters
- Probate and Letter of Administration
- Accident matters
- Hire-purchase matters
- Criminal matters*

*Legal Aid Bureau would only represent clients in criminal cases where the client pleads guilty to his or her charge. The exceptions to this are in small criminal offences and child criminal cases.

2. Legal Aid Centres handle the following cases:

- Family Law matters
- Syariah Family Law matters
- Migrant and refugees matters
- Labour and employment matters
- Criminal matters
- Public Interest Litigation matters
- Housing and tenancy matters
- Domestic violence cases
- Immigration cases such as passport and identity card problems

3. The Legal Aid Centres do NOT handle the following cases:

- Motor accident
- Debt collection
- Probate or Letter of Administration
- Defamation
- Conveyancing
- Drugs or any offence that carries a death or life sentence as the government already has a scheme to cover these offences.

Total Recipients of Legal Aid Assistance

1. Legal Aid Bureau has attended to 31,090 clients (as of May 2008). The Bureau handled 10,839 cases from January to May 2009 [statistics from www.bbg.gov.my].

2. Legal Aid Centres offered services to about 26,527 clients in the year 2008. The total covered those who received free legal advice and free court representation. The total did not include the number of people including students who attended organised talks and those who received pamphlets from the Centres during the Centres' outreach activities to schools, villages, juvenile homes and other public places. It is also important to note that the Legal Aid Centres accept all members of the public as clients, including the aboriginal people (Orang Asli), migrant workers, refugees and those involved in public interest issues.

3. Court-assigned Counsel Scheme's statistics are not available.

Challenges to the Legal Aid System and Access to Justice in Malaysia

1. Legal Aid Bureau does not handle criminal cases, and in some instances, civil cases, where the accused claims trial. These cases are then referred to the Legal Aid Centres of the Bar Council.

2. Legal Aid Centres are totally funded by practising lawyers who pay RM100 each as an annual legal aid subscription. This works out to about RM1.3 million annually. The total population of Malaysia is about 27 million people. The Legal Aid Centres have a perennial problem of lack of funds to serve the impecunious. The current Legal Aid Scheme provides access to justice to the impecunious in its entirety, including criminal and civil cases that claim trials. In addition, the Bar Council Legal Aid Centres depend on volunteer lawyers. This largely means that volunteer lawyers devote their additional time to the cause of legal aid. While this is good, generally access to justice must not depend on voluntarism. There must be a concerted effort to ensure that every person who wants to get access to justice is given legal representation.

3. Currently, the Bar Council's Legal Aid Centres undertake legal representation, law awareness programs and also public interest litigation cases. This means that the Legal Aid Centres are stretched in its financial and human resources. If the government can take over the provision of legal aid to the impecunious then the Bar Council's Legal Aid Centres can focus more in providing legal awareness and doing public interest litigation. There is a need for a government-funded legal aid scheme that is broader in its coverage and scope of representation.

Notes:

Information are obtained from:

- Legal Aid Bureau's website www.bbg.gov.my
- The Chief Registrar Office, Federal Court of Malaysia's website http://portal.kehakiman.gov.my/
- The office of the Attorney General Chamber's website www.agc.gov.my

Prepared by:

National Legal Aid Committee
Bar Council
30 September 2009
/adi

National Report

The Netherlands

Speaker : Mr. Herman J. Schilperoort
Head of Staff, Staff Department, National Legal Aid Board Netherlands,
Netherlands

2009 International Forum on Legal Aid
National Report Legal Aid in the Netherlands

Mr. Herman J. Schilperoort
Head of Staff, Staff Department, National Legal Aid Board Netherlands, Netherlands
Susanne Peters, Lia Combrink and Peter van den Biggelaar

Outline

The Dutch Legal Aid system provides legal aid to people of limited means. Anyone in need of professional legal aid but unable to (fully) bear the costs, is entitled to call upon the provisions as set down in the Legal Aid Act. Given their resources, approximately 40% of the Dutch population (16.4 million people) would, according to the latest estimates, qualify for subsidized legal aid if circumstances so require. The legal aid itself is mainly financed by the state (the Legal Aid Fund) and just for a minor part by an income-related contribution of the individual client.

A body called the Legal Aid Board (‘Raad voor Rechtsbijstand’) is entrusted with all matters concerning administration, supervision and expenditure as well as with the actual implementation of the Legal Aid System. The Legal Aid Board consists of five regional offices and one central office.1 Legal advice and, if necessary, help by a professional lawyer are made available by two parties: the so-called Legal Services Counters act as what is commonly known as the ‘front office’[1], and private lawyers and mediators provide subsidized legal aid in more complicated or time-consuming matters. At present, the Legal Services Counters annually provide easily accessible, free legal

1 In December 2008 the five regional Boards were merged into one national Legal Aid Board with five regional offices and one central office.

services to over half a million clients. The Counters are meant as a first step to receive legal aid and, if necessary, referral to a lawyer or mediator.

Private lawyers and mediators who operate under the terms of the legal aid system need to be registered with the Legal Aid Board and comply with quality standards which are established by an agreement between the Board, the Dutch Bar Association and the Ministry of Justice.[2] In order to be allowed to assist a client in a particular case, a registered lawyer makes an application to the Legal Aid Board on behalf of his client. It is an application for a so-called certificate, i.e. a statement by the Board that the client in question is entitled to legal aid. In 2008, the Legal Aid Register included the names of approximately 7,100 lawyers who dealt with a total of over 420,000 cases.

1. The Legal Aid Act and the structure of the Dutch legal aid system

Under the European Convention on Human Rights and the Constitution of the Netherlands, each citizen of the Netherlands has the right to access courts, apply for legal advice and representation and, if means do not suffice, receive legal aid, which is financed by the government.[3] Since 1994 legal aid has been regulated under the Legal Aid Act. This Act replaced the prior statutory system that dealt with the supply of legal aid and dates back as far as 1956. Residing under the competence of the Ministry of Justice, the Legal Aid Board is charged with the organisation and administration of legal aid. This includes matching the availability of legal experts with the demand of legal aid, as well as the supervision and quality control of the actual services provided. Annually, a Monitor is published that reports on the previous year's situation.

The Legal Aid Board also advises both the Ministry of Justice and the Parliament on matters concerning the supply and demand of legal aid. Being financed by the Ministry of Justice, the Legal Aid Board accounts to this ministry for its budgetary allocations. The government contributions on legal aid are increasing each year (see Table 1).[4]

Table 1: Dutch population, eligibility for legal aid and expenditure on legal aid

	1994	1998	2002	2006	2007
Total Dutch population	15,300,000	15,650,000	16,105,000	16,334,000	16,358,000
Total expenditure on legal aid in Euro	184,000,000	195,000,000	315,000,000	398,000,000	420,000,000
Expenditure per capita in Euro	12	12	20	24	26

The Dutch legal aid system is basically a two-fold model, in that it encompasses two lines that provide legal aid. The Legal Services Counters provide front services, i.e. primary legal advice in the first line. Legal matters are being clarified to clients and information and advice given. If necessary, clients will be referred to a private lawyer or a mediator, who acts as the secondary line of legal aid. Clients can also apply for help from a subsidized lawyer directly. Private lawyers and mediators are paid by the Legal Aid Board to provide their services to clients of limited means. To some extent, trade unions and consumer organisations also provide legal aid. The number of legal aid insurances is rising too. In 2000, 14% of the households had a legal aid insurance policy. By 2006 this percentage had doubled to 28%.

The costs of legal aid are partly covered by a contribution from the client himself. This personal contribution, though generally covering only a small part of the actual expenses, is meant to encourage clients to carefully weigh the pros and cons of taking a matter to court, and hence discouraging frivolous cases so as to remain in better control of the costs of the legal aid system at large.

In case of relatively simple legal problems, private lawyers are allowed to charge a standard three-hours service fee, of which the client contributes only € 13.50 (see Table 2). At present, only a rough appraisal is made of the hours that the lawyer is about to spend on the case. Whether or not a client is entitled to three-hour legal aid, depends on his monthly income.

Table 2: Client's income and contribution towards (max.) three-hour legal aid, from 01-01-2009

Monthly income: married/single with child (ren)	Client's contribution to legal aid; max. 3 hours	Monthly income: single
0 - € 2,325	€ 13.50	0 - € 1,653

If a problem is expected to take more than three hours, clients are entitled to legal aid only, if they have been granted a so-called legal aid certificate. In order to obtain this, a (Board-registered) lawyer needs to make an application to the Legal Aid Board on behalf of his client. The Board assesses each application both in terms of the client's means and of the merits and significance of the problem.

2 The quality standard for mediators is also based upon an agreement with the Courts and the Dutch Mediation Insttitue.

3 Constitution of the Netherlands Art. 17: 'No one may be prevented against his will from being heard by the courts to which he is entitled to apply under the law'. Art. 18 '(1) Everyone may be legally represented in legal and administrative proceedings. (2) Terms concerning the supply of legal aid to persons of limited means shall be laid down by Act of Parliament.'

4 In 2008, the parliament has decided to cut the costs of legal aid with €50 million a year to prevent them from becoming even higher. At the end of this paper the planned cost reduction will be discussed in more detail.

Since April 2005 it is also possible to apply for a mediation certificate. This allows the client to call in help from an independent mediator, so as to settle an issue between himself and an another party. The client's contribution towards the costs of mediation is generally less than that of regular legal aid. In 2008 the contribution for mediation is set at a maximum of € 94.

In April 2006 the system legal aid system was reformed. From then on, the eligibility for legal aid was based on the annual income and assets. The Legal Aid Board checks the applicant's income with the tax authorities. Thanks to online connections with the tax offices, the Legal Aid Board is able to rapidly obtain information concerning the applicant's income and other available financial resources.

It is on the basis of this tax information and on the nature of the legal problem as outlined by the lawyer, that the Board decides whether or not legal aid will be granted. If legal aid is granted, a certificate is issued which allows the lawyer in question to deal with the case. The certificate also specifies the client's contribution, which is based on the information concerning his income and other financial means. In 2009 the contributions to be made by clients varied from € 98 to € 732 per case (see Table 3). Individuals whose income exceeds € 33,600 (partner income included) or € 23,800 (single) are not entitled to legal aid.

Table 3: Income and client's contribution, from 01-01-2009

Taxable annual income: married/single with child(ren)	Client's contribution	Taxable annual income: single
0 - 23,400	98	0 - 16,800
23,400 - 24,200	154	16,800 - 17,300
24,200 - 25,500	265	17,300 - 18,200
25,500 - 28,300	466	18,200 - 20,000
28,300 - 33,600	732	20,000 - 23,800

Eligibility for legal aid, however, is not only subject to the level of income but to the availability of other financial resources (such as savings) too. The applicant's capital must not exceed € 20,315 (with a supplementary allowance of € 2.715 per child under 18 in his care).

Table 4: Maximum capital for eligibility for legal aid in 2008

Maximum capital*	Supplementary allowance per child under 18
€ 20,315	€ 2,715

* Applicants of 65 or above are allowed a maximum capital of € 26,892

Sometimes clients are exempted from individual contributions. This applies to all cases where people have been deprived of their freedom. Exemption from any contribution also holds for clients in criminal cases whose income is in the lowest category.

Assessment of the applicant's income level (and hence his potential eligibility for legal aid) is based on his income two years prior to the application date. This is the so-called reference year. The reason to use this year's income data, is that these data are the latest that are available from the tax authorities. Moreover, these data have generally been found correct and therefore final. So, for a certificate to be granted in 2009, the applicant's income in 2007 is leading.

Requests can be made for adaptation of the reference year, if the applicant's income in the year of application has decreased substantially compared to that in the reference year. This holds if the applicant's reference year income would not make him eligible for legal aid, whereas his present income would. Moreover, his income (or other financial resources) needs to have decreased by at least 15% since the reference year.[5]

If a client is in need of a second certificate within six months, his contribution will be reduced by 50% (this reduction applies to a maximum of four certificates within six months).

2. Legal Services Counters: facts and figures

As outlined above, the Counters act as front offices that provide primary legal aid. They offer general information concerning rules and regulations as well as legal procedures. They give advice in simple legal matters and refer clients to private lawyers or mediators, if their problems turn out to be more complicated or time-consuming. All information services are free of charge and are provided on the spot or as part of a consultation hour (max. 60 minutes). Clients can turn to the Counters with problems that concern civil, administrative, criminal as well as immigration law.

The initial contact at the Counters is meant to clarify the nature of the problems and helps staff members to find out.

- whether the problem is actually a legal problem and, if so,
- whether the problem is within the scope of the legal services provided by the Counters (not all legal problems – e.g. those between businesses – are dealt with by the Counters).
- what kind of help is most suitable for the client.

5 In 2008, 9,165 requests for reference year adaptation were made. This amounts to 2.2% of the total of legal aid certificates granted.

At this stage, clients are also informed on the chances of success, the time that is needed and the costs of a subsequent procedure. On the basis of this information, clients can weigh the case and decide whether or not to proceed with it. If the case requires in-depth help by a professional and if the client so chooses, he can consult a private lawyer, a Bar member, or a mediator who may act on his behalf. From then on, the client is held to pay an (income-related) contribution towards the costs.

The focus, by the Counters, on primary legal aid is meant to serve two major goals. First, the help provided is readily available and free of charge. That is why the Service Counters are generally regarded as easily accessible and fairly unceremonious. Secondly, they have an important screening function, in that they tackle disputes and legal problems at an early stage and thereby help to avoid escalation and minimize costs, both for the individual in question and for society at large.

Between 2003 and 2006 a major reform took place in the Dutch legal aid system. Legal Services Counters were set up to take over the primary (informative) function of the former Legal Aid and Advice Centres[6]; the secondary function (extended consultation and actual subsidized aid) was to be dealt with by private lawyers only. This operation was necessary in order to keep the focus on primary legal aid and achieve more transparency of the legal aid system as a whole.

A total of 30 Legal Services Counters has been established. They have been evenly set up geographically, so that every Dutch citizen is within easy reach of a Legal Services Counter, at an approximately one hour journey by public transport. In general, each Legal Services Counter is staffed with at least six legal advisers. Some Counters, particularly those in major cities, employ more staff. Since the services of the current Counters do not include extensive legal aid and representation in court, paralegals can be employed too. The Dutch bachelor education system recently started a law course to train students for this purpose.

The sites of the Counters have been designed to look as inviting to visitors as possible. Actually, they look more like a shop than an office. Inside is an open space with a waiting area and three desks. The back of the shop is equipped with a call centre and rooms for private consultation. There is also a shelf containing all kinds of brochures with information about legal issues.

The Counter's receptionist welcomes the clients in the open waiting area and helps them to find their way to the various sources of legal information. In the waiting area, computer terminals are available with references to documentation on a large variety of legal matters. The legal advisers

6 The former Legal Aid and Advice Centres used to provide both informative services ánd subsidized legal aid. In the course of time, however, this multiple nature of the Centres caused an increasing loss of insight into the actual proceedings at the Centres. It was therefore considered necessary to maintain a strict distinction between informative services on the one hand and subsidized legal aid on the other.

at the Counters work in turns, both in the call centre (inquiries both by telephone and e-mail), at the counter and in the consultation rooms. The call centres of all the Counters are interconnected in order to spread the workload evenly and nationwide. Sophisticated computer software, specifically designed for the Legal Services Counters, is at the staff's disposal and helps them to correctly and quickly answer any client's question. In due course, several features of the software will also become available for client consultation at the computer terminals in the waiting areas. Customer surveys have shown that, in general, clients rate the services by the Counters as 'good' or even 'very good'.

Below, figures can be found concerning the nature of the client contacts at the Legal Services Counters. In 2008 the Counters attended to 644,653 contacts. The majority of services are provided by telephone (see Table 5). Because the Legal Services Counters are a fairly new facility, the figures of 2007 and 2008 do not easily compare to those of the previous years.

Table 5: Nature of client contacts of Legal Services Counters (2007 and 2008)

	Total number 2007	Percentages 2007	Total number 2008	Percentages 2008
Telephone	348,000	58	376,000	58
Counter	131,000	22	149,000	23
Consultation hour	97,000	16	87,000	13
E-mail + website	23,000	4	33,000	5
Total	599,000*	100	645,000	100

* Some figures have been rounded up. That is why the total does not exactly equal the sum of the separate figures.

The Legal Services Counters provide several kinds of services. The majority (see Table 6) deals with providing information and answering questions (82%). The Counters also refer clients to the consultation hours, or to lawyers or mediators. (Up to 2007, mediation was accounted for manually. That is why they have not been included in Table 6 but in a separate table; see Table 7 below).

Table 6: Services provided by Legal Services Counters (2007 and 2008)

	Total number 2007	Percentages 2007	Total number 2008	Percentages 2008
Supplying information and answering questions	545,000	83	602,000	82
Internal referral to consultation hour	72,000	11	78,000	11
Referral to lawyer	39,000	6	37,000	5

Mediation*	-	-	13,000	2
Total	656,000**	100	730,000	100

* 2008 was the first year in which the referrals to mediations were registered electronically. This number does not represent the actual referrals to mediation, but the number of times mediation was seriously taken into account as an option by the client. The actual number of successfully completed referrals is represented in Table 7.

** Which is more than 599,000, because a client can obtain more than 1 service.

Referrals to lawyers are made electronically, with the help of software that was specifically designed for this purpose. The software helps the Counter's staff to evenly distribute referrals among the lawyers to whom clients can be referred. The following criteria are used to make a selection. First the availability of a lawyer on a certain time and date, second whether a lawyer is specialized in the case involved, third the matching of the client's and lawyers' zip codes and last the number of referrals a lawyer already has obtained within a certain period of time.

The software find a lawyer in the client's neighbourhood and with the appropriate specialisation.

As soon as the referral is made, the lawyer receives an electronic message with information regarding the client and his problem, and with the preliminary advice (if any) that the client received from the Legal Services Counter. The client, on the other hand, is informed by the Counter on the terms and procedures of the legal aid system.

Table 7 shows how often referrals to mediation were made in earlier years.

Table 7: Successfully completed referrals to mediation (2005 - 2008)

	Total number of referrals
2005	166
2006	1,413
2007	2,137
2008	2,419

Table 8 shows how client inquiries are distributed across the various fields of law. The majority of inquiries concern employment (19%), contract/consumer (23%) and family issues (16%).

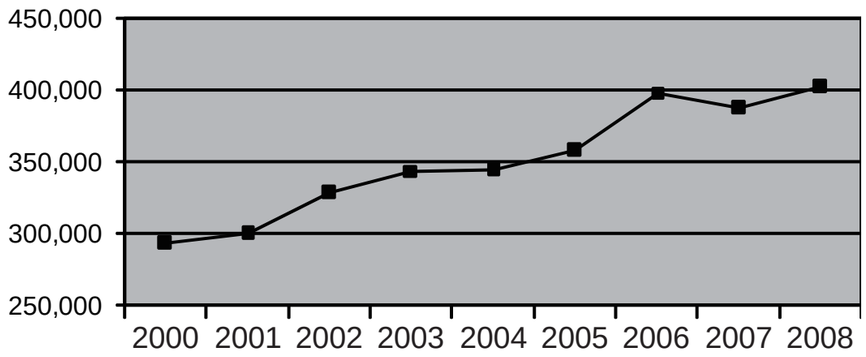
Table 8: Fields of law (2007)

	Percentages 2006	Percentages 2007
Contract / consumer	20	23
Labour / employment	20	19
Family	14	16
Social security	9	9
Housing	8	8
Criminal	4	4
Immigration	4	4
Administrative	2	2
Other civil cases	19	15

3. Certificates: facts and figures

In 2008 as many as 422,530 legal aid certificates were issued. Since 2000 the number of certificates has raised by 44%.[7] In addition to regular legal aid certificates – 401,712 in 2008 – 15,294 'minor aid' certificates (i.e. for max. three-hour legal aid) have been issued as well as 5,524 mediation certificates. The number of mediation certificates is growing, although still marginal. Figure 1 shows the development, since 2000, of the numbers of regular legal aid certificates issued.

Figure 1: Regular legal aid certificates issued from 2000 - 2008



Below, figures can be found as regards the fields of law that legal aid certificates are concerned with. Table 9 shows a rise of certificates in all fields except that of asylum.

Table 9: Regular legal aid certificates, according to field of law and index (n=407,236)

Jaar	Civil legal aid	Index	Criminal legal aid	Index	Asylum	Index
2000	149,279	100	94,769	100	49,032	100

7 In 2006 the number of certificates shows a more than average upward trend. This is probably due to the implementation of new procedures concerning the issue of certificates. Procedures to obtain a certificate have been simplified and terms slightly adapted. The number of certificates issued in 2007 and 2008 matches the upward trend since 2000.

2001	146,865	98	102,187	108	50,430	103
2002	159,069	107	116,684	123	52,455	107
2003	181,130	121	129,416	137	32,927	67
2004	184,673	124	136,060	144	22,984	47
2005	197,233	132	139,001	147	21,174	43
2006	223,429	150	153,050	161	21,389	44
2007	218,852	147	152,644	161	15,963	33
2008	230,003	154	158,057	167	19,176	39

For every certificate issued, the Legal Aid Boards keep account of the (major) field of law that the certificate is concerned with. Table 10 shows that most certificates concern criminal (39%) and family-related cases (24%).

Table 10: Fields of law represented in legal aid certificates (2007 + 2008)

	Percentage 2007	Percentages 2008
Criminal	40	39
Family	23	24
Social security	10	10
Contract/consumer	7	8
Immigration	6	6
Asylum	4	5
Labour/employment	4	4
Housing	2	3
Administrative	2	2
Other civil cases	2	1
Total	100	100

Number of legal aid applicants

Compared to 2000, last year (2008) showed an increase by 28% of the number of applicants that were granted at least one certificate per year.

From 2000 to 2008 the average number of certificates rose from 1.33 to 1.51 per applicant. Apart from a substantial rise in 2002, the number has remained fairly even over the last few years, with a slight increase in 2008.

In 2000 and 2001 the percentage of ‘single certificate’ clients (i.e. clients with one certificate per year) was slightly higher (78% and 77% respectively) than the following years. In 2008 the percentage amounted to 72%. These figures give evidence that the number of ‘multiple’ certificate clients (more than one certificate per year) is growing.

Scope of Legal Aid System within Dutch population and client profile

Thanks to online connections with the tax authorities, it has become possible – more accurately so than in the past – to assess the scope of the Legal Aid System and gain a better insight into the socio-economic characteristics of those who apply for legal aid. Estimates are that approximately 40% of the Dutch population would, on the basis of their financial resources, qualify for subsidized legal aid.

Holders of a legal aid certificate are predominantly male and between 20 and 45 years of age; certificate holders of under 15 or over 60 are fairly infrequent. A considerable portion of all certificate holders is without a job. Youngsters/students, employed and retired workers are found to be fairly underrepresented, whereas recipients of social benefit and other non-working persons are overrepresented. Certificate holders are also found to be more often divorced and less often married (married persons without children, in particular, are underrepresented), whereas holders living in single-parent families are overrepresented. Furthermore, certificate holders are more often non-western immigrants and live mainly in cities of over 250,000 residents and less often in cities under 50,000 residents.

4. Private lawyers and mediators: facts and figures

Legal aid in the Netherlands is usually provided by private lawyers/law firms who provide legal advice and represent clients in cases that deal with the major fields of law: criminal, family, labour/employment, housing, social security, consumer, administrative, asylum and immigration. Private lawyers obtain legal aid cases in two ways: either one of the Legal Services Counters refers a client to a lawyer, or a client contacts a registered lawyer on his own accord.

To be entitled to accept legal aid cases, private lawyers need to be registered with the Legal Aid Board and comply with a set of quality standards. The Board’s major requirement is submission to a three-year audit by the Dutch Bar Association that checks if the law firm works according to the Bar’s standards of decent office practice. The audits are carried out by experienced lawyers who have received special audit training. If the auditor passes a negative judgement, a re-audit will be carried out a few months later. Should the re-audit still indicate serious deficiencies, the law firm in question is no longer allowed to provide subsidized legal aid.

For some fields of law – criminal, mental health, asylum and immigration law – additional terms apply. These are mainly of an educational nature: the lawyer must both have adequate expertise and sufficient experience in that particular field.

As soon as a case is closed, the lawyer bills the Legal Aid Board for the services provided. The Board, however, does not pay an hourly rate but a fixed fee for different types of services. These

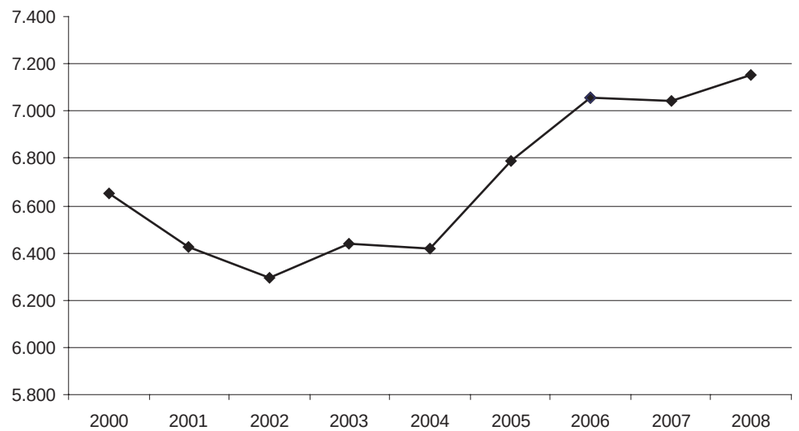
fees are based on extensive analyses of legal aid cases from the past. Broadly speaking, the fees in 2008 correspond to an hourly rate of approximately € 107 (see also Table 11 for the fees paid since 2000). In 1994 the hourly rate was € 26. Over the last decade, fees have been raised substantially, because lawyers operating under the legal aid system were relatively underpaid. The last few years fees have been raised following a general index.

Table 11: Hourly rate of lawyers in the legal aid system (2000 - 2008)

Date	Hourly rate	Index hourly rate
2000-01-01 until 2000-06-30	€ 70	100
2000-07-01 until 2001-06-30	€ 73	104
2001-07-01 until 2002-06-30	€ 76	108
2002-07-01 until 2003-06-30	€ 87	125
2003-07-01 until 2003-12-31	€ 90	129
2004-01-01 until 2004-06-30	€ 94	134
2004-07-01 until 2004-12-31	€ 95	136
2005-01-01 until 2005-06-30	€ 99	141
2005-07-01 until 2006-05-15	€ 99	142
2006-05-15 until 2006-06-30	€ 99	142
2006-07-01 until 2007-06-30	€ 101	144
2007-07-01 until 2008-06-30	€ 103	147
Since 2008-07-01	€ 107	153

In 2008 as many as 7,154 lawyers provided legal aid in at least one case. This number is slightly higher than in 2007.

Figure 2: Number of legal aid lawyers (2000 - 2008)



In 2007, 45% of all lawyers registered with the Bar, work within the legal aid system. Contrary

to the number of legal aid lawyers, the number of mediators has increased – by 15% – compared to 2006. In 2007, 374 mediators applied for a mediation certificate. Of these, 49% is a registered legal aid lawyer too.

Since 2002 the number of female legal aid lawyers has increased both absolutely and proportionally, and continuously too. In 2008 their number amounted to 45% of all legal aid lawyers. Compared to the percentages of female members of the Bar (40%), female lawyers are slightly overrepresented in the legal aid system.

Up to 2008, the number of certificates issued has increased, and so has the number of lawyers in the legal aid system. The latter, however, has risen less fast. As a result, from 2000 to 2008 the average number of certificates per lawyer has risen by 34%, from 44 to 59 certificates per year.

The number of certificates issued in 2008 has increased compared to 2007, as well as the number of lawyers. In 2007, the number of certificates per lawyer has increased slightly too, i.e. by 2%.

Figures also indicate that the vast majority of legal aid lawyers (almost 90%)) remains active within the system for years.

5. Recent cost-reducing proposals in legal aid

The governmental contributions on legal aid are increasing each year. For this reason, the government has decided to reduce the annual costs of legal aid with €50 million.

In 2008, the Ministry of Justice started an ‘interactive project’ in collaboration with many parties involved in legal aid, such as the Legal Aid Board, Legal Services Counters, lawyers, the Council for the Judiciary, insurance companies, mediators, consumer organisations, and scientists. This interactive project has come up with several propositions for improvement of the Legal Aid System that, at the same time, will cut the costs of the system.

It was, among other things, examined whether it would be possible for insurance coverage to play a (minor) role in the system. In first instance, this idea was presented to the parliament; however, this proposal was met with too much resistance. Too many citizens would be negatively affected by this proposal.

One of the most important (and most cost-cutting) propositions that will be implemented is the idea that governmental organizations should resolve conflicts in a proactive way. If members of these organizations would contact citizens at an early stage, problems that otherwise might lead to lawsuits could be solved through simple communication. In addition, this change in culture of public authorities will not only help to decrease the number of certificates and limit the costs of the legal

aid system, but it will also limit the costs for citizens, the judiciary, and the public organizations themselves. At the same time, it will also increase the satisfaction of clients, the work-satisfaction of professionals, and the quality of decisions and procedures.

Another important proposal to reduce the costs, is to further stimulate alternative ways of dispute resolution. An overall change will be to simplify regulation in order to avoid court and legal procedures. When criteria are clear, people won't need legal professionals to define their rights. For instance alimony criteria in divorce cases and exit fees in labour cases.

Country reports should address the following issues. We understand that some of the questions may not be applicable in certain situations.

1. Providers of Legal Aid

(a) Who are the providers of legal aid services in your country?

The Dutch legal aid system is basically a two-fold model in that it encompasses two 'lines' that provide legal aid. The Legal Services Counters, being the first line, provide front services, i.e. primary legal advice. Legal matters are being clarified to clients and information and advice given. If necessary, clients will be referred to a private lawyer or a mediator, who acts as the secondary line of legal aid. Clients can also apply for help from a subsidized lawyer directly. Private lawyers and mediators are paid by the Legal Aid Board to provide their services to clients of limited means. Generally they are paid a fixed fee, although exceptions can be made for more extensive cases. To some extent, trade unions and consumer organizations provide legal aid too.

(b) Does your organisation consolidate legal aid resources in your country, by carrying out legal aid work authorized by other government agencies?

No

2. Organization

(a) What are the sources of legal aid funding in your country?

(b) Is the legal aid scheme in your country funded by the government or the private sector? Is the scheme organized on a centralized level or regional level?
If the legal aid scheme in your country is organized by the government, how does it maintain independence from the government?

Under the European Convention on Human Rights and the Constitution of the Netherlands, each citizen of the Netherlands has the right to access courts, apply for legal advice and representation and, if means do not suffice, receive state-financed legal aid.

Since 1994 legal aid has been regulated under the Legal Aid Act. This Act replaced the prior statutory system that dealt with the supply of legal aid and dates back as far as 1956. Residing under the competence of the Ministry of Justice, the Legal Aid Board is charged with the organization and administration of legal aid. This includes matching the availability of legal experts with the demand of legal aid, as well as the supervision and quality control of the actual services provided. Annually, a Monitor is published that reports on the previous year's situation.

The Legal Aid Board also advises the Ministry of Justice on matters concerning the supply and demand of legal aid. Being financed by the Ministry of Justice, the Legal Aid Board accounts to this Ministry for its budgetary allocations.

3. Financial Affairs

(a) What are the sources of legal aid funding in your country?

Legal Aid is paid from the national budget of the Ministry of Justice. It is an open end payment model, which means that everybody is entitled to receive legal aid.

(b) Does the legal aid scheme in your country adopt a charitable model or a rebate model? Are recipients of legal aid required to repay legal aid costs at the conclusion of court proceedings?

The costs of legal aid are partly covered by a fee from the client himself. This personal fee, though generally covering only a small part of the actual expenses, is meant to encourage clients to carefully weigh the pros and cons of taking a matter to court, and hence discouraging frivolous cases so as to remain in better control of the costs of the legal aid system at large.

In some cases a party who obtained legal aid has to pay the lawyer himself. This is when the result of the procedure substantially improves his financial situation.

(c) Are court fees/filing fees and security for costs covered by legal aid?

(d) If provided, does this assistance increase the burden on the government's budget?

Court fees/filing fees are paid by the parties themselves.

4. Supervision

(a) Is the operation of your organisation supervised by another authority?

(b) How does it supervise your organisation?

Residing under the competence of the Ministry of Justice, the Legal Aid Board is charged with the organisation and administration of legal aid. This includes matching the availability of legal experts with the demand of legal aid, as well as the supervision and quality control of the actual services provided. Annually, a Monitor is published that reports on the previous year's situation.

(c) What are the difficulties involved in dealing with the organization's supervising authority?

The legal board financially depends on the resources from the Ministry of Justice.

Public expenditure on legal aid is increasing each year. In order to stop this trend, the government has ordered a cost reduction of € 50 million euro's per year.

In 2008 the Ministry of Justice initiated an 'interactive project', bringing together a large number of parties who were in one way or the other concerned with legal aid. Besides the Legal Aid Board, the Legal Services Counters and the Council for the Judiciary, insurance companies and consumer organizations were invited to take part, as well as private lawyers, mediators and scientists. The project parties have proposed several options the goal of which is to improve the Legal Aid System and cut its costs simultaneously.

5. Procedures and Criteria for Granting Legal Aid

(a) Please briefly describe your organization's criteria for granting legal aid.

(b) Are applicants means-tested? If so, please describe the financial eligibility criteria, any documentation required for applying, the procedures of application and assessment, and the timeframe for decision-making. Are there situations where means-testing is not required?

It is on the basis of this tax information and on the nature of the legal problem as outlined by the lawyer, that the Board decides whether or not legal aid will be granted. If legal aid is granted, a certificate is issued which allows the lawyer in question to deal with the case. The certificate also specifies the client's fee, which is based on the information concerning his income and other financial means. In 2009 the fees to be paid by clients varied from € 98 to € 732 per case (see Table3). Individuals whose income exceeds € 33,600 (partner income included) or € 23,800 (single) are not entitled to legal aid. Sometimes clients are exempted from individual fees. This applies to all cases where people have been deprived of their freedom.

Assessment of the applicant's income level (and hence his potential eligibility for legal aid) is based on his income two years prior to the application date. That is the so-called reference year (t-2). The reason to use that year's income data, is that those data are the latest that are available from the tax authorities. Moreover, those data have generally been found correct and therefore final. So, for a certificate to be granted in 2009, the applicant's income in 2007 is leading.

Requests can be made for adaptation of the reference year, if the applicant's income in the year of application has decreased substantially compared to that in the reference year. This holds if the applicant's reference-year income would not make him eligible for legal aid, whereas his present income would. If an applicant wishes to be eligible for a lower fee, his income needs to have decreased by at least 15% since the reference year[1].

Eligibility for legal aid, however, is not only subject to the level of income but to the availability of other financial means (such as savings) too. The applicant's capital must not exceed € 20,014 (with a supplementary allowance of € 2.674 per child under 18 in his care).

(c) If applicants are means-tested, has consideration been given to raise the financial eligibility criteria, thus increasing the number of people eligible for legal aid?

Thanks to online connections with the tax authorities, it has become possible – more accurately so than in the past – to assess the scope of the Legal Aid System and gain a better insight into the socio-economic characteristics of those who apply for legal aid. Estimates are that approximately 40% of the Dutch population would, on the basis of their financial means, qualify for legal aid.

Public expenditure on legal aid is increasing each year. In order to stop this trend, the government has ordered a cost reduction of €50 million per year. Despite this ordered cost reduction there have not been any plans to substantially change the eligibility criteria. Only minor changes are proposed in the amount people should pay as own contribution for legal aid.

(d) Who assess legal aid applications? How are these personnel recruited?

Employees of the Legal Aid Board assess legal aid applications. These employees, usually with a legal background are instructed within the organization how to fulfill their tasks.

(e) For court cases, is the prospect of success a consideration for deciding applications?

1 In 2008, 9,165 requests for reference year adaptation were made. This amounts to 2.2% of the total of legal aid certificates granted.

Yes, the case must have some chance to be completed successfully. If a case is prospectless, a certificate will not be provided.

(f) Is there a requirement that an application must be made by the applicant personally?

The lawyer makes the application on behalf of his client.

6. Models of Service Delivery

(a) How are legal aid cases assigned to lawyers?

As a rule a client chooses his own lawyers. In case of criminal law cases and other situations in which people have been deprived of their freedom against their will, a lawyer is assigned by the Legal Aid Board.

When a person approaches a Legal Aid Counter with his problem it can be decided that it is appropriate to refer this client to a lawyer. Referrals from the Legal Aid Counters to lawyers are made electronically, with the help of software that was specifically designed for this purpose. The software helps the Counter's staff to evenly distribute referrals among the lawyers that have been registered for referral. As stated before, selection of a lawyer is based on criteria concerning: (1)his availability on particular dates and times; (2)expertise in the law field of the case at hand; (3)accessibility for the client in terms of travel distance and (4)the number of referrals obtained within a set period of time.

Are legal aid services provided by salaried lawyers, contracted lawyers, or by lawyers or law firms in other ways?

Payment of lawyers and mediators

Legal aid is provided by private lawyers and mediators. They operate under the terms of the legal aid system and need to be registered with the Legal Aid Board and comply with quality standards that have collectively been set down by the Board, the Dutch Bar Association and the Ministry of Justice. As soon as a case is closed, the lawyer bills the Legal Aid Board for the services provided. The Board, however, does not pay an hourly rate but a fixed fee for different types of services. These fees are based on extensive analyses of legal aid cases from the past and are supposed to correspond with the average time spent on a specific kind of case by a lawyer. Broadly speaking, the fees in 2008 correspond to an hourly rate of approximately € 110 (see also Table 12 for the fees paid since 2000). This means that a lawyer is paid 10 times € 110 for legal aid in divorce proceedings. In 1994 the hourly rate was € 26. Over the last decade, fees have been raised substantially, because lawyers operating under the legal aid system were relatively underpaid. The last few years, fees have been raised following the current price index.

7. Legal Aid Fees

(a) Please compare the fees paid to legal aid lawyers with fees charged by private practitioners.

The fees of private lawyers are free. A quick scan of the site on which fees can be published shows that fees are between €70 and as high as €400. Not all lawyers have published their fees on this site yet, although this is encouraged by the Lawyers Board. The fixed fees that are paid by the Legal Aid Board correspond to an hourly rate of approximately € 110.

8. Legal Aid for Specific Communities

(a) Does your organisation tailor and provide legal aid services to specific communities (for example, aboriginal people, foreign workers, plaintiffs in environmental litigation)

There are special rules for plaintiffs in environmental litigation.

9. Scope and Types of Services

(a) Is legal aid available for the following matters:

(i) Litigation in civil law, criminal law, administrative law and claims for national compensation?

Yes

(ii) Alternative dispute resolution?

Yes

(b) Does legal aid provide the following services?

(i) Face-to-face or telephone legal consultation?

Yes

What are the procedures of providing these services? Are applicants for legal consultation means-tested? How are applicants' finance assessed?

The clients are following the general rules. In case of relatively simple legal problems, private lawyers are allowed to charge a standard three-hour legal advice fee, of which the client contributes € 39 or € 72, depending on his income (see Table 2). At present, only a rough appraisal is made of the number of hours that the lawyer is likely to spend on the case. Whether or not a client is entitled to three-hour legal advice, depends on his taxable annual

income two years prior to the year of application (t-2). It is that income that is the most recent and reliable income information that the tax authorities have access to. A Board-registered lawyer submits an application to the Legal Aid Board on behalf of his client.

(ii) Assistance during interviews at police stations?

Recently the Supreme Court has decided that each person is entitled to talk to a lawyer before being investigated at police stations. Jurisprudence proscribes that young persons (<18) are entitled to be assisted during interviews.

(c) Is legal aid available for foreign nationals?

Yes, special asylum lawyers are available.

10. Innovative Legal Aid Initiatives

(a) What are the unique features of the legal aid practices in your country?

The two-fold model.
The open end financing system.
Fixed fees.
Legal aid for mediation.
High quality standard for lawyers and mediators providing legal aid.

(b) What are your organization's innovative legal aid initiatives in the recent years?

1. Introduction of mediation in 2004.
2. Establishment of 30 Legal Aid Counters beginning in 2005
3. In April 2006 the legal aid system was reformed. From then on, the eligibility for legal aid was based on both the client's annual income and his assets. The Legal Aid Board verifies the client's personal data with those in the municipal population register and checks the applicant's income with the tax authorities. Thanks to online connections with the tax offices, the Legal Aid Board is able to rapidly obtain information concerning the applicant's income and other available financial means.
4. In addition to the Counters, from 2007 there is also available an interactive online application called Rechtwijzer ("Roadmap to Justice"; see www.rechtwijzer.nl). This, too, is an easy way to obtain legal information. It helps users to find their way towards solving a conflict. The application, developed by the Legal Aid Board in close cooperation with the University of Tilburg, consists of a 'dispute roadmap' that, on the basis of a number of choices, guides users step by step along all the legal aspects of the conflict at hand. The software covers the fields of housing, labour, family, consumer and administrative law.

11. Access to Legal Aid

(a) How does your organisation provide potential legal aid applicants with knowledge of the availability of legal aid services?

Lawyers, mediators and the Legal Aid Counters are expected to inform their clients about the possibilities and conditions to obtain legal aid.
The Legal Aid Board has a website: www.rvr.org . As mentioned there is also 'the Roadmap to Justice'; see www.rechtwijzer.nl .
To inform stakeholders about the legal aid system, annually, a Monitor is published that reports on the previous year's situation.

(b) How are legal aid services provided to applicants who live in areas that lack legal resources?

The distance in the Netherlands, being a small country should not be a problem.
The 30 Legal Aid Counters focus on electronic means to provide legal aid. They also run a call-center.

(c) Does your organisation arrange outreach programs for legal aid lawyers?
What is the performance of these programs?

Newly contracted lawyers and mediators are invited for an introduction session to inform them about the standard procedures to apply for legal aid. The Legal Aid Board regularly provides each lawyer with electronic newsletters, especially when there has been some changes in legislation or procedures concerning legal aid.

12. Legal Aid Lawyers

(a) What are the sources of recruiting legal aid lawyers?

Legal aid lawyers are recruited from lawyers in the Dutch Bar Association. Each new lawyer receives a letter in which he is informed about the possibilities of registration at the Legal Aid Board. These lawyers subscribe voluntarily.

(b) Compared with lawyers in private practice, are legal aid lawyers as highly regarded by the police, prosecution and the courts? Do they provide facilities to make legal aid lawyers' work more convenient?

Legal aid lawyers are as highly regarded as private lawyers within the court system. Some private lawyers look down on legal aid lawyers, because of the kinds of clients and the kinds of cases.

13. Quality Assurance

(a) How does your organization ensure the quality of legal aid lawyers' work?

To be entitled to accept legal aid cases, private lawyers need to be registered with the Legal Aid Board and comply with a set of quality standards. The Board's major requirement is submission to a three-year audit by the Dutch Bar Association that checks if the law firm works according to the Bar's standards of decent office practice. The audits are carried out by experienced lawyers who have received special audit training. If the auditor gave a negative judgement, a re-audit will be carried out a few months later. Should the re-audit still indicate serious deficiencies, the law firm in question is no longer allowed to provide legal aid. Lawyers that hold the quality mark of the Dutch Foundation Viadicte are also entitled to accept legal aid cases. They are under the obligation to participate in Viadicte's peer review system.

For some fields of law – criminal, mental health, asylum and immigration law, additional terms apply. These are mainly concerned with specific training: the lawyer must both have adequate expertise and sufficient experience in that particular field.

With the help of client surveys the satisfaction rates are established amongst clients of Legal Aid Counters and legal aid lawyers.No special facilities are provided.

14. Participation in Reforms

(a) Does your organization participate in campaigns for social reforms or law reforms, with a view to reduce legal disputes?

Yes. In 2008 the Ministry of Justice initiated an 'interactive project', bringing together a large number of parties who were in one way or the other concerned with legal aid. Beside the Legal Aid Board, the Legal Services Counters and the Council for the Judiciary, insurance companies and consumer organizations were invited to take part, as well as private lawyers, mediators and scientists. The project parties have proposed several options the goal of which is to improve the Legal Aid System and cut its costs simultaneously. No special facilities are provided.

15. Challenges

(a) What are the difficulties and challenges facing your organisation in promoting legal aid services?

1. The system is in balance. It's a challenge to continue this situation and to keep the quality of the legal aid provided on a high standard.
2. Promoting the use of ADR and encouraging Dutch citizens to solve their own problems (websites of Legal Aid Council and Roadmap to Justice).
3. Reducing the use of legal aid.

National Report

The Philippines

Speaker : Ms. Persida V. Rueda-Acosta
Chief Public Attorney, Public Attorney's Office, Department of Justice, Philippines

2009 International Forum on Legal Aid
National Report
Legal Aid in the Philippines

Ms. Persida V. Rueda-Acosta
Chief Public Attorney, Public Attorney's Office, Department of Justice, Philippines

March 23, 2007 is an auspicious date for the Public Attorney's Office (PAO), the Philippine government's principal legal aid office. This marked the end of the three-decade long quest for independence of the PAO.

On this day, Her Excellency President Gloria Macapagal-Arroyo signed the PAO bill which became Republic Act No. 9406, titled "An Act Reorganizing And Strengthening the Public Attorney's Office (PAO), Amending For The Purpose Pertinent Provisions of Executive Order No. 292, Otherwise Known As The "Administrative Code of 1897", As Amended, Granting Special Allowance To PAO Officials and Lawyers, And Providing Funds Therefore." The signing of its Implementing Rules and Regulations subsequently followed on July 14, 2009.

SEC. 2 of the PAO Law states:

"Xxx Xxx Xxx

"The PAO shall be an independent and autonomous office, but attached to the Department of Justice xxx for purposes of policy and program coordination."

Among the highlights of the PAO Law are the following, to wit: (1) The Chief Public Attorney, Deputy Chief Public Attorneys and Regional Public Attorneys shall not be removed or suspended, except for cause provided by law; (2) The clients of the PAO are exempted from payment of

docket and other fees incidental to instituting an action in court and other quasi-judicial bodies; (3) The PAO is exempted from payment of charges on postage stamps and mail matters; (4) Public Attorney's positions at the ratio of one public attorney to an organized court sala; (5) PAO lawyers have general authority to administer oaths in connection with the performance of duty. No need to apply before the courts for authority as notary public; (6) The Chief Public Attorney, the Deputy Chief Public Attorneys, the Regional Public Attorneys, the Provincial, City and Municipal District Public Attorneys, other PAO lawyers and officials who have direct supervision over PAO lawyers shall be granted special allowances not exceeding 100% of the basic salary of PAO officials and lawyers.

With the PAO's new status in the light of the recently signed RA 9406, the 1,048 public attorneys and 800 support staff have a renewed vigor in carrying out the PAO's mandate.

FOR THE POOR AND "OTHER PEOPLE"

In giving free legal services, the PAO applies two important criteria: firstly, the client must be indigent; and secondly, the case must be meritorious.

Taking into consideration the PAO Memorandum Circular No. 18, s. 2002, as amended, and subject to such further amendments by the Chief Public Attorney, the following shall be considered indigent persons:

(1) Those without income;
(2) Those residing in Metro Manila whose family income does not exceed P 14,000.00 a month;
(3) Those residing in other cities whose family income does not exceed P 13,000.00 a month;
(4) Those residing in all other places whose family income do not exceed P 12,000.00 a month.

The following are proofs of indigency:

(1) Latest Income Tax Return;
(2) Certificate of Indigency from the Department of Social Welfare and Development (DSWD) having jurisdiction over the residence of the applicant together with an Affidavit of Indigency executed by the applicant; or
(3) Certificate of Indigency from the Barangay Chairman having jurisdiction over the residence of the applicant.

The term "family income" refers to the gross income of the litigant and that of his or her spouse, but shall not include the income of the other members of the litigant's family (Rule 1, Section 2(b), Implementing Rules and Regulations of R.A. 9406).

Ownership of land shall not per se constitute a ground for disqualification of an applicant for free legal assistance (Rule 6, Section 23, Implementing Rules and Regulations of R.A. 9406).

A case shall be considered meritorious if an evaluation of the law and evidence on hand discloses that the legal services of the office will assist, or be in aid of, or in furtherance of justice, taking into consideration the interests of the party and those of society. In such cases, the PAO shall represent the party concerned. A contrario, a case is deemed unmeritorious if it appears, from an evaluation of the law and evidence on hand that it has no chance of success, or is intended merely to harass or injure the opposite party, or to cause oppression or wrong. In which case, the PAO must decline to accept said case.

Provided, however, that in criminal cases the accused enjoys the constitutional presumption of innocence until the contrary is proven, hence, cases of defendants in criminal actions shall be deemed meritorious.

Provided, further, that the PAO may represent an indigent client even if the cause of action is adverse to a public officer, government office, agency, or instrumentality, as long as the case is meritorious. Caution, should, however, be exercised so that the office will not be exposed to charges of harassment, unfairness or haste in the filing of suits. (Rule VI, Section 25, Implementing Rules and Regulations of R.A. 9406)

Although the PAO's mandate is to render legal assistance to indigent clients, it can also provide provisional assistance even to non-indigents.

Under the following instances, Public Attorneys may provisionally accept or handle cases pending verification of the applicant's indigency and evaluation of the merit of his/her case:

1. Where a warrant for the arrest of the applicant has been issued;
2. Where a pleading has to be filed immediately to avoid adverse effects to the client;
3. Where an appeal or petition for certiorari or prohibition has to be perfected or filed immediately;
4. Where the Public Attorney is appointed by the court as counsel de oficio 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 respectfully request the court to release him;
5. Where the Public Attorney is designated on the spot as counsel de oficio for the purpose only of arraignment, pre-trial or the promulgation of the decision;
6. Where a Public Attorney is called upon by proper government authorities to render assistance to other persons who are in need of legal services subject to existing laws, rules

and regulations; and

7. Other similar urgent cases.

In 2002, the Sandiganbayan, the Philippine Court which tries graft and corruption cases, ordered the PAO to extend provisional assistance to former President Joseph Estrada when he decided not to avail anymore of the services of his private lawyers. The former president was the highest-ranking Filipino official to be prosecuted under RA 7080 (An Act Defining and Penalizing the Crime of Plunder) as amended by RA 7659.

The nine (9) court-appointed PAO lawyers which included this humble public servant as one of the lead counsels, rendered free legal representation to the former President Estrada from February to May 2002.

The Republic Act 9406 has widened the coverage of the PAO's clientele, through Section 3 of this new law. Section 3 of the PAO Law provides that "in the exigency of the service, the PAO may be called upon by proper government authorities to render such service to other persons, subject to existing laws, rules and regulations." (Emphasis supplied) The word "service" in the same provision refers to free legal representation, assistance and counseling in criminal, civil, labor, administrative and other quasi-judicial cases. The word "service" refers also to the PAO's other legal aid services like documentation (except commercial documents), mediation and conciliation, jail visitation, inquest/night court duties, and administration of oaths.

Illustrative cases for Section 3 of the PAO Law are two cases in the Philippines which the PAO has the honor to be a part of, to wit: (1) the cases of the victims of the M/V Princess of the Stars maritime tragedy and (2) the case of Filipino news anchor and radio commentator, Mr. Ted Failon.

On April 16, 2009 at around 5:00 a.m., I received a call from DZMM radio station and from a broadcaster/employee of the AFP-DWDD, a government radio station, to render legal assistance to Mr. Failon, to his driver and house helpers by administering their oaths in their affidavits at Camp Karingal, Quezon City.

This was in connection with the suicide case of Ms Trina Etong, the late wife of Mr. Failon, who together with five other people, were charged with obstruction of justice but was subsequently dismissed when the National Bureau of Investigation (NBI) concluded that indeed, Ms Etong committed suicide. This was the position of the Public Attorney's Office even from the very first time we met Mr. Failon at Camp Karingal and after perusing the documents relevant to his case.

Our decision to heed the call for provisional legal assistance in this particular case was well within the ambit of the law, specifically Section 3 of the Republic Act No. 9406 or the PAO Law. And the act of the public attorney who administered the oaths of Mr. Failon and his driver when they were under custodial interrogation, including the free legal assistance extended to Ms. Kaye Etong, Mr. Failon's daughter, could be considered as part and parcel of the PAO's other services classified as immediate, temporary, provisional and limited legal assistance.

Every month, our public attorneys assigned in the different district and regional offices of the PAO nationwide, submit their periodic reports on the regular and limited services they render.

Section 3 of the PAO Law has also made it possible for us to help in bringing to courts and administrative bodies the owners of the Philippine vessel M/V Princess of the Stars who have evaded for years their accountabilities for miserably failing in transporting both their passengers and cargoes to their respective places of destination.

Because of this provision, the Department of Justice (DOJ) was able to issue me an authority to handle the cases of all the victims of the M/V Princess of the Stars which sunk on June 21, 2008. For the victims of this maritime tragedy, we have done away with the PAO indigency test, this being a mass disaster.

Section 3 of RA 9406 is not a mere provision of law. It is a felt reality in the lives of the victims and their relatives who are fighting for justice. Sixty-eight (68) civil cases have already been filed against the owners and management of the Sulpicio Lines, Inc. (SLI) in Manila and fifty (50) in Cebu City. Administrative and criminal cases have also been filed against the said respondents at the Maritime Industry Authority (MARINA) and the DOJ.

THE PAO'S FINANCIAL AFFAIRS

In 2008, the Office had an approved appropriation of Php 767,397,000.00. However, a total amount of Php 751,280,245.00 only was released by the Philippine Government through the Department of Budget and Management (DBM), which included the payment of Terminal Leaves and Retirement Gratuities of 89 retired/resigned employees amounting to Php 13,281,343.97.

The budget allocation for the PAO every fiscal year goes largely to salaries and overhead expenses. Nonetheless, out of our budget austerity measures, in 2008, we were able to procure 125 computers, 5 monitors, and 153 printers to augment our existing 474 computers and 569 printers. Likewise, in the same year, we were able to purchase 25 copiers to supplement the 204 that we already have.

Being a free legal aid office, we do not charge any amount to our clients.

Section 6 of RA 9406 provides that the "clients of the PAO shall be exempt from payment of docket and other fees incidental to instituting an action in court and other quasi-judicial bodies, as an original proceeding or on appeal.

"The costs of the suit, attorney's fees and contingent fees imposed upon the adversary of the PAO clients after a successful litigation shall be deposited in the National Treasury as trust fund and shall be disbursed for special allowances of authorized officials and lawyers of the PAO."

GOVERNMENT-FUNDED BUT INDEPENDENT

The PAO is funded by the government but it has remained true to its mandate and has proven its independence through the years.

The brief narration below of some of the challenges faced squarely by the Public Attorneys and this Speaker (as the PAO's Chief Public Attorney) can exemplify the independence we fought for during our pre-PAO Law years and vigilantly maintained up to this very day.

The National Prosecution Service (NPS) and the PAO both belong to the same mother department, the Department of Justice. But because of its newly acquired independence and autonomy, the PAO has now the status of being an attached agency of the DOJ. By the very nature of their jobs, the prosecutors and the public attorneys found and still find themselves at opposite camps during court battles. Their circumstances during the pre-PAO Law years caused some very awkward situations for both the prosecutors and the public attorneys.

A study headed by the Supreme Court in the Philippines observes that this situation invariably raises the question of independence of the PAO. However, it correctly notes that the "functional relationship of the NPS and the PAO has remained at professional level. So even if the prosecutors and the PAO lawyers are seen together, they do not discuss cases outside work premises".[1] It concludes that "in a sense, professional integrity permeates them respectively".[2]

Nonetheless, my position has always been for the PAO to be independent and autonomous in the exercise of its functions. Thus, I persistently lobbied for the approval of the PAO bill then at the House of Representatives and Senate of the Philippines for five (5) months, from November 2006 up to the first three (3) weeks of March 2007.

The cases of former President Estrada and that of death convicts Roberto Lara and Roderick Licayan made up the crucible where the independence, integrity, courage and competence of public attorneys were tested during our pre-PAO Law years.

In 2002, when former President Joseph Estrada dismissed his lawyers, nine (9) public attorneys, including this humble public servant as one of the lead counsels, were ordered by the Sandiganbayan to be among his court appointed lawyers. The group's worthy opponents were the government prosecutors from the DOJ.

1 2003 Assessment of the Public Attorney's Office, (Philippine Supreme Court: 2004), p. 12.
2 Ibid.

To the PAO lawyers' appointment many have reacted harshly. "Espiya" (spy), mockingly they called the public attorneys. There were insinuations that we, the court appointed lawyers were not serious in defending the former chief executive, instead we were actually spying for the prosecution.

As the trial progressed, though, we were able to prove our worth as officers of the court. This Speaker argued before the court that former President Estrada had the right to be treated by a doctor of his own choice and in a hospital that he trusted. This somehow helped in clearing the air of mistrust and misgivings.

Our group was able to prove our independence when we presented government doctors as expert witnesses who gave credence to the defense team's contention. Later however, the court-appointed PAO lawyers had to file a Motion to Withdraw as counsels of the former President because the presence of private counsels among the court-appointed lawyers had already freed us from the duties of handling a client, who was not an indigent.

On former death convicts Lara and Licayan, while this Speaker was pursuing her modest yet unrelenting efforts for the deferment of their executions, the DOJ gave a different view on the predicament of these former death row inmates. One senior official of the DOJ said "the executions can no longer be deferred considering that the Supreme Court already did an automatic review of the case."[3]

Her Excellency President Gloria Macapagal-Arroyo was also firm in carrying out the death penalty on Lara and Licayan and other convicted kidnappers and drug lords. However, her Excellency never swayed the public attorneys from their conviction nor exerted pressure on them. Through the President's former spokesman, Hon. Ignacio Bunye, the Macapagal-Arroyo administration said that "it is expected that the Public Attorney's Office will seek leniency for the death convicts. That is the job of the PAO to review thoroughly the cases of the convicts it has handled before, so its action is expected."[4]

The Macapagal-Arroyo administration respected the ruling of the Supreme Court when the latter decided to reopen the case and had it returned to the Regional Trial Court, the original court that tried the case.

The case of Lara and Licayan is important to the PAO because after the oral arguments were delivered by this public servant before the Philippine Supreme Court, proving the innocence of the then death convicts, the subsequent retrial of this case served as the floodgate for presidential reprieves, pardon of qualified and sickly 70-year-old and above inmates. It also served as the precursor of the abolition of the death penalty in our country on June 24, 2006.

3 http://www.santegidio.org/pdm/news2004/14_01_04b.htm
4 Ibid.

HEADWAYS ON INFORMATION DISSEMINATION & JAIL VISITATION

One of the Guide Questions for our Report for this year's ILAF, is, "What are your organization's innovative legal aid initiatives in the recent years?" I would say that having a free legal aid column could be one of the PAO's answers to this.

In my Introduction for my book entitled, "Legal Eagle's Counsel: Solutions to Everyday Legal Problems," I wrote: This may not be the most ingenuous means of answering their problems but this legal eagle is happy to have found a medium which could enable her to continuously serve the people who are in need of legal advice even as she roosts and rest in her nest after a hard day's work."

In the same vein, we write our free legal advice columns.

Some of the legal concerns of Filipinos (and even nationals of foreign countries) are sent to us by traditional mail and e-mail, or conveyed to us by some of the popular and respected newspapers in our country. We answer their legal queries, and the ones that are coursed through Philippine newspapers, we reply to them through our free legal advice columns like "Dear PAO" which is published in the Manila Times, a respected icon in Philippine journalism and publishing industry. Likewise, we have free legal advice columns in two (2) Philippine tabloids.

Maintaining these columns is part of the PAO's information dissemination program. We also make ourselves available to invitations for guesting as resource persons in radio programs and television shows. We believe that the tri-media are the PAO's vital and effective bridge to people who are embroiled in legal problems whom we cannot counsel personally because of some physical and geographical barriers. We deliver our legal advice on air with the hope that along with the information that we share with the listeners/viewers we also make them feel that they are not alone in their legal battles because we, their public defenders and counsels are just here to fight for their rights.

We have broadened our reach to the public further by making our legal opinions available in the print media. From 2008 up to August 28, 2009 we were able to publish a total of 395 column articles through the three (3) daily newspapers which I already mentioned.

The intensified jail visitation program of the PAO could also be considered as an innovative legal aid initiative.

Among the clients of the PAO are inmates who are serving their sentence in Philippine jails or are confined in detention centers. For them, we have intensified our jail visitation program. Its's cope has become wider. For our free legal services, we have included medical, dental, and optical services at no cost. We now call it the **PAO's free legal and medical jail visitation/decongestion program.**

Our outreach program for inmates started on April 12, 2007. The PAO Legal and Medical teams

were able to visit 18 jails and give legal assistance to 4,065 inmates in 2007. Three thousand one hundred and one of them were released that same year. Also in 2007, 5,413 ailing inmates were given free medical/dental assistance and 2,339 inmates became recipients of free reading glasses.

In 2008, we covered 50 jails and gave legal advice to 7,285 inmates. In the 50 jails that we visited, 11,781 inmates were released. Also during the said visits, 7,940 ailing inmates were given free medical/dental assistance and 1,415 inmates became recipients of free reading glasses.

With the advent of the PAO Law, our Office has served an increasing number of clients and winning a good number of their cases, especially for the inmates.

In 2007, we were able to assist 4,382,611 clients and handled 599,076 cases. In 2008, we were able to assist 4,839,988 clients and handled 666,676 cases. Our efforts also helped in causing the release of 86,593 inmates in 2007 and 81,966 inmates in 2008.

For this, the whole workforce of the PAO has been recognized by the Office of the President through the Presidential Management Staff (PMS). A Commendation was given to the Public Attorney's Office last year by the PMS. It commended "the PAO's endeavors in doing its duty to provide legal assistance to indigents. It also acknowledged "the PAO's efforts in the delivery of justice to the poor and powerless," which "contribute greatly to the government's mission of upholding human rights."

Remarks like these inspire us but we don't rest on our past laurels. We know that in order to maintain our good stature in public service, we have to continuously do our mandate with the same values that have made the PAO an Office that is worthy of the people's trust.

MANY ARE TREADING (NOW) ON "THE ROAD LESS TRAVELED"

Legal aid could be considered as a road less traveled. But many are treading on the path leading to the PAO nowadays. This could be due to the new PAO Law which addresses among others, our concern on fast turn-over of lawyers because of heavy workload.

Section 7 of RA 9406 provides: "There shall be a corresponding number of public attorney's positions at the ratio of one (1) public attorney to an organized sala and the corresponding administrative and support staff."

With the approval of the PAO's IRR there has also been an approval by the DBM of the funding needed for the additional plantilla positions for lawyers and staff that is provided by the PAO Law.

Section 7 is the answer to the unfair advantage in the number of prosecutors over public attorneys which is due to the provision of P.D. No.1275, which states that "whenever there is an

increase in the number of court salas, there shall be a corresponding increase in the number of assistant provincial/city fiscal positions at the ratio of two fiscals to a sala."

It is also worthy to mention that aside from handling criminal and civil cases, public attorneys are likewise mandated to handle: (1)preliminary investigation of cases before the Office of the Public Prosecutor; (2)labor cases before the National Labor Relations Commission (NLRC); (3)administrative cases before administrative bodies like the Department of Agrarian Reform Adjudication Board (DARAB), Professional Regulations Commission (PRC), Commission on Elections (COMELEC), Bureau of Customs, etc.

Yet, the PAO managed to handle a total of 666,676 cases involving about 4,839,988 clients for the year 2008. These figures show that every public attorney handles an average of 636 cases and rendered assistance to an average of 4,614 clients for 2008.

While the practice of law is not a money making venture,[5] when I lobbied for a strengthened PAO, I also advocated for the raise in the salary and allowances of public attorneys. One Filipino lawyer rightly noted that "although the practice of law is a profession and not a business, lawyers, like anybody else, have a life to live and the right to live decently in a way commensurate with the position of a professional in the community."[6]

Now pursuant to RA 9406 and its Implementing Rules and Regulations, the ranks of incumbent public attorneys were upgraded to the ranks that are equivalent to their respective counterparts at the National Prosecution Service. Salary and representation and transportation allowance (RATA) differentials accruing to the said qualified public attorneys were released by the Department of Budget and Management.

Three (3) years before the approval of the PAO bill, a study about the PAO was led by the Philippine Supreme Court. In it, the authors said that "the ability of an organization to motivate its staff rests not only on monetary terms."[7] In consonance thereto, they noted that "apparently, in the PAO the psychic rewards of helping the poor are very strong… The PAO has also harped on its social responsibility to create a bond of idealism among its people."[8]

Even as the workforce of the PAO savors the blessings of RA 9406, the hearts of both the public attorneys and their support staff remain in the right place…. in genuine public service which requires sacrifices without counting the cost.

-End-

5 Canlas vs. CA, 164 SCRA 160
6 Atty. Leon L. Asa, "Attorney's Fees and Lawyers," The Lawyers Review, February 28, 2002, p. 8.
7 Supra, Note 1, p. 13
8 Ibid., p. 14

National Report

Thailand

Speaker : Mr. Somchai Homlaor
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2009 International Forum on Legal Aid
National Report
Thailand

Mr. Somchai Homlaor
Secretary General, Human Rights and Development Foundation, Thailand

Thailand's obligations to the International Covenant on Civil and Political Rights (ICCPR), Convention on the Rights of the Child (CRC), the 1997 and 2007 Constitutions of the Kingdom of Thailand and the Criminal Procedure Code, amended in light of the aforementioned international obligations, guarantee a number of rights enjoyed by the alleged offenders or accused and to ensure that their right to fair trial is upheld. It could be said that, according to the law, the alleged offenders or accused in Thailand are entitled to the rights in compliance with international standards including the right to receive legal aid from the state. However, the government of Thailand has failed to comply with the law and its obligations under the said human rights treaties.

Rights to Access to Legal Services

In criminal cases, the a person enjoys rights before and after being prosecuted in relation to the consultation of a lawyer, as follows;

Prior to prosecution, the alleged offender has the right to

- Meet and consult with the legal counsel privately and promptly after the arrest and throughout the inquiry level
- Have the legal counsel present during the interrogation by the inquiry official

- Have the legal counsel submit evidences to the inquiry official to prove his/her innocence and to argue against the charges
- If the alleged offender is a minor, a legal counsel or any person of his/her confidence has to always be present during the interrogation. Should he or she does not have a legal counsel, the state shall provide for one, otherwise the interrogation is unlawful.

Unfortunately, at this stage of enquiry, the accused has not yet been entitled to the right to receive legal aid from the state.

After the accused is prosecuted, the accused has the right to;

- Appoint a legal counsel to defend himself/herself, and should he/she be not able to find a legal counsel, he/she may ask for the Court to provide him/her one
- In capital punishment case, it is required that the accused must has a legal counsel, otherwise the trial shall be considered unlawful. Should the accused find no legal counsel, the Court shall provide him/her one
- In case where the accused is under 18 years old, it is required that the accused has a legal counsel, otherwise the trial shall be considered unlawful. Should the accused find no legal counsel, the Court shall provide him/her one.

Thailand has enjoyed good national income in the past years and is considered as a "Middle Income Country". As a result, Thailand should be able to improve and expand its legal aid services. But Thailand's legal aid system is still one of the most backward, even when compared to other countries in Asia.

Legal Aid Provided by the Court

Legal aid in Thailand is a required service according to the Criminal Procedure Code (CPC) which has became effective since 1935. Basically, the Court is supposed to procure an advocate for an accused if the accused has no lawyer and asks for such help. The legal aid system only requires the Court to provide the accused a legal counsel, only after the public attorney has submitted the complaint to the Court. In other instance, certain trials of severe crimes require that the accused must have a legal representative to ensure fair trial, for example criminal cases warranting death penalty and the case of juvenile delinquent. For the lawyer provided by the Court, the accused has never known before who will be his/her defend lawyer. The Court will assign in rotation the lawyers from the list of the volunteer lawyers registered with each Court to defend the accused. Most of the volunteer lawyers are new lawyers and wish to gain their professional experiences from the cases assigned to them by the Court, at the risk of the accused. Even though the government has increased

the lawyer fee for the volunteer lawyer, but the fee is still much lower than the market rate. The Court will not provide lawyers to the party to the civil or administrative Court cases.

Apart from legal aid provided for the accused in criminal case at the trial level, Thailand has failed to establish a legal aid system when a people is arrested and charged, the one who is put in custody and subject to inquiry, except when the accused are under 18 year old. In such case the Lawyers' Council of Thailand (LCT) shall provide a legal counsel to the child as per the MOU made with the Royal Thai Police and with sponsorship from the Ministry of Justice.

In addition, there is no public legal aid for those affected by environmental problems, consumers and human rights cases resulted from an unlawful act or omission of the state officials or state agencies in performance their duties.

The Office of Attorney General (OAG) has initiated a legal aid program to fill the gaps including giving advice and legal aid for the poor in the legal dispute between the people, the budget earmarked for the OAG to carry out this work is around 7 million dollars a year. The legal aid of OAG is not cover legal action initiated by the people who sues the state agencies or officials, i.e. the administrative cases, or criminal cases in which the officials are accused of committing an offence against the people, or to provide for individuals who are adversary parties to the state. Civil society organizations thus have to fill up the gaps.

Legal Aid Provided by the Civil Society Organizations

The Lawyers' Council of Thailand (LCT), similar to the bar association, is authorized to arrange the examination and to license attorneys as well as supervise compliance of the code of ethics and etiquette of attorneys in Thailand. According to the act to establish LCT, it is mandated to provide legal aid to people who are poor and encounter injustice in civil, criminal, administrative and constitution cases. The services are delivered through its 80 chapters throughout the country. One of the major problem of LCT is shortage of funds. Only 3 millions dollars are set aside for this legal aid services, a half of which comes from the public budget and another half from the attorney license fees and public donation. Therefore, LCT board members in each chapter have to work very hard to deliver the legal services to the poor and those encounter injustice without much support from elsewhere.

Apart from help in legal cases, LCT's public services also includes educating public about laws and human rights, giving legal advice, providing attorneys for individuals or civil society organizations which file the litigations for public interest including human rights, environmental and consumer cases, or strategic litigations. As for the help for the accused in criminal cases, much

of the work is still delivered by attorneys provided for by the Court, but for the accused or injured persons in grave human rights abuse cases, LCT always provide them qualified legal counsels and attorneys.

Civil society organizations or non-governmental organizations (NGOs) and interest groups include organizations working on the rights of the child, women, consumers, workers and those working for migrant workers, stateless, labor union and Muslim ethnic population in the Southern border provinces also provide legal assistance to the group of people of their concern.

NGOs are located in various cities throughout the country and help to defend the rights of their target groups effectively. Law Schools in most of the state and private universities offer small legal service programs for the people including giving advice to them before and during the trial and disseminating information on human rights and laws to the public.

Human Rights and Development Foundation (HRDF) provide legal assistance to the migrant workers, asylum seekers, displaced person and the victims of the labor trafficking. It has 4 offices national wide working in co-ordination with other NGOs and network of lawyers. The Muslim lawyers have to work amidst intense armed conflicts in the South. Many of the legal services provided by these civil society organizations have been made possible by cooperation with LCT.

It should be noted that LCT and civil society organizations are engaged in delivering legal services extensively including helping individuals working to protect human rights, the environment and other public interest. The activities of on legal aid of NGOs even become part of the campaign for change of domestic laws in light of the international obligations. Their litigations have impacted the empowerment of the human rights and democracy movement, advocacy to strengthen the legal and justice standards and the improvement of laws. The case filed by the Foundation for Consumers Protection against Electricity Generating Authority of Thailand (EGAT) and Petroleum Authority of Thailand (PTT) accusing them of carrying out the privatization with no transparency and against the laws. The litigations have led to the halt of EGAT's privatization and improvement of the relevant laws and regulations to ensure more transparency and people participation in the decision making process. Another case in point is the Habeas Corpus cases filed by the lawyers in the network of the HRDF and Muslim lawyers. The cases stem from the fact that the military authorities put in custody hundreds of suspects of insurgency in the Southern border provinces in the "training camps" claiming that they voluntarily participated in occupational skill training schemes. As the result of the legal action, the Courts ordered the release of all detainees. All these legal aid works of the NGOs do not get any support from the state at all. Worse, they are viewed by state authorities and officials as providing legal aid services to the persons who act against the interest of the state or even to provide the support to the enemy of the state. Therefore, the organizations have to rely mainly on donation from public and funds from foreign funding agencies.

Legal Aid Bill

The Constitution provides that people are entitled to legal aid from the state and consequently an effort has been made by the Ministry of Justice to revamp its public legal aid services to make them most accessible and delivered with good quality. Therefore, a law on legal aid is being drafted for the establishment of a fund to provide for public legal aid. The funds shall derive from budgets approved by the Parliament, court fees, fines and donations. Nevertheless, the draft Legal Aid Bill has still failed to garner acceptance from various parties. The LCT argues that, according to the Bill, the Fund's management will not be independent since most of its board members are representatives from state agencies including the Royal Thai Police, OAG, MOJ, etc. with the President of Supreme Court as the Chairperson. As a result, the operation of the Fund shall be subject to the bureaucratic structure and may be dominated by the government. We hope that in not too far future Thailand shall have a bid legal aid law which provide fund and good quality of legal aid services to the people.

Challenges in public legal aid if the Legal Aid Bill becomes effective:

How to ensure that the criminal proceedings prior to the prosecution will be carried out fairly and effectively? Statistically, about 25% of cases prosecuted by the public prosecutor are acquitted by the Court, after years of trial, due to insufficient evidence to hold the defendants liable, or that the defendants are in fact innocent. A number of these poorly prosecuted cases are stacking up at the Court level making the trial process redundant due to this work overload. The situation does not just give rise to the infringement of the alleged offenders' rights, but also incur unnecessary legal service burden as well.

How can we push the Legal Aid Bill forward? The Law shall ensure fair justice process in which the accused have the rights to defend themselves fully with help from skilled and trustable attorneys, make the legal services accessible by all people, without discrimination, in all communities whose human rights and environmental rights have been affected, etc. It should help them to defend their rights by suing relevant state agencies and officials. The Fund should be made available for giving legal help in human rights cases for the stateless persons, refugees, asylum seekers and migrant workers as well.

How can we ensure that legal aid services delivered by a variety of civil society organizations including LCT, NGOs working on children and women, Muslim lawyers, NGOs working on migrant workers, stateless persons, internally displaced persons,, political refugees including, to continue their legal aid sustainably and to receive more support from the state?

How can we decentralize the legal aid services to local administrative bodies which have been growing stronger and becoming better funded? At least, they can help to settle some dispute,

providing legal education and basic legal counseling.

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National Report

United States

Speaker : Mr. Wilhelm H. Joseph, Jr.

Executive Director Legal Aid Bureau, Inc.

Baltimore, Maryland, U.S.A.

2009 International Forum on Legal Aid
National Report
U.S.A.

Summary of Legal Services in Civil Matters
to Low Income Persons in the United States of America

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Introduction

In the United States, eligible low-income persons and groups receive legal assistance in civil matters primarily though a loose network of several hundred non-profit organizations that operate within the fifty states and the District of Columbia. Funding for this work comes from a variety of public and private sources including the federally funded Legal Services Corporation (LSC), different state and local governments, philanthropic organization, bar organizations, private lawyers and other individuals.

The Legal Services Corporation is the largest single source of funding (See Chart #1) for civil legal services in the U.S. LSC was created by the United States Congress in 1974, but in major U.S. cities like Baltimore, Cleveland and New York there were private legal aid societies helping low-income persons since the latter part of the 19th century. For example, Maryland's Legal Aid Bureau was organized in the 1890s and was formally incorporated in 1911.

CHART #1

Funding For Free Legal Services In U.S. (2008)[1]	
Legal Services Corporation Funding	$354,647,367
Other Services	526,322,522
	$880,969,889

Overall Structure and Organization

Under current U.S., law a legal services organization that receives any amount of financial support from LSC must abide by provisions of the federal statute and regulations promulgated by LSC. Also, the federal and LSC provisions apply to the use of funds that legal services providers receive from any other sources. The new Obama administration has recommended to the U.S. Congress that many of the regulations, including the prohibition on the use of non-LSC funds be removed. At this writing, the appropriate legislation is making its way through the U.S. Congress.

In general, the non-profit legal services organizations that provide legal services to low-income persons are governed by boards of directors, usually composed of lawyers and the low-income people. These boards hire executive directors who, in turn, build appropriate staffs and infrastructures according to the amount of funds they have available.

Financial Affairs

Except for certain designated clients, legal services for low-income persons in the U.S. is primarily a charitable benefit that is provided free of charge. Most filing fees and court costs associated with legal proceedings on behalf of low-income clients are waived by the courts in each local jurisdiction. Every legal aid organization engages in fundraising to support its activities. The 2009 Maryland Legal Aid budget is in excess of U.S. $23 million (see Chart #2) of which only $4 million comes from LSC. In Maryland, the Equal Justice Council whose membership is derived primarily from the larger law firms throughout the state is a body that strictly raises funds for Maryland Legal Aid and advocates for and supports the interests and initiatives of the organization as becomes necessary and appropriate.

CHART #2

Funding For Maryland Legal Aid (2009)	
Legal Services Corporation (federal)	$3,955,600
Children Advocacy Project	7,200,000
Maryland Legal Services Corporation	8,508,600
State, Local Governments and Courts	1,800,800
Private (Lawyers, Foundations)	1,300,000
Other	35,000
	$22,800,000

1 Source: LSC FACT BOOK 2008.

Service Delivery Models and Criteria for Granting Legal Aid

Organizations that receive LSC funds must establish particular financial eligibility guidelines that are revised annually according to changes in the overall economic picture (See Chart #3 for the current LSC financial eligibility guidelines). No local legal aid organization has the capacity to assist all the persons who may be eligible and who seek their assistance. Therefore, these organizations also establish priorities and case acceptance guidelines that work similarly to the triage system of the emergency room of a hospital; only the most critical cases and certain contractual clients can be assisted. Under certain contracts, the U.S. federal government provides funding for legal service organization to help persons 60 years and older regardless of their income.

CHART #3

Legal Services Corporation 2009 Poverty Guidelines	
Size of Household	Income Limit
1 person	$13,538
2 people	18,213
3 people	22,888
4 people	27,563
5 people	32,238
6 people	36,913
7 people	41,588
8 people	46,263
For each additional member of the Household in excess of 8, add	4,675

In Maryland and other states, social services agencies and the courts identify children who are at risk of being abused or neglected and the state, through contracts with private attorneys and Legal Aid, provides legal representation of such children in various court proceedings that seek to determine outcomes that are in the children’ s best interest. People who seek assistance from legal aid organizations are often referred by courts, social service agencies or other charitable organizations. Some find out about the availability of assistance by word of mouth from other individuals in the community.

The probability of successfully achieving the outcome that the client wants is one of the factors considered in the decision to accept a case for representation. Recipients of LSC funds can provide legal assistance only to lawful permanent residents and other designated categories of persons. Undocumented persons residing in the U.S., except victims of domestic violence, are not eligible for services provided by LSC funded legal aid organizations. Non-nationals in the U.S. who are without documentation may receive legal assistance from religious and other non-federally-supported organizations.

In the U.S., most of the legal services organizations are staffed with full or part-time attorneys. These lawyers receive salaries that are substantially lower than their counterparts of similar experience in the private sector. Not surprisingly, many lawyers join a legal services organization because they have a strong commitment and passion for helping vulnerable and economically disadvantaged people. However, their length of service is usually limited to less than five years due to the difficulty of being able to repay their educational loans and afford their regular living expenses, especially when they desire to start a family.

According to LSC, the average salary for a starting legal services attorney in 2008 was $43,661. On the other hand, it is general knowledge that the starting salaries for private lawyers in major law firms can range from U.S. $120,000 to U.S. $160,000.

Scope and Types of Services

Most legal aid organizations in the U.S. including Maryland Legal Aid, provide legal services through a mix of approaches including advice, information, brief service (a letter or telephone call, for example) or full representation. There is an increasing reliance on Alternative Dispute Resolution approaches to address certain disputes, particularly with regard to family and other domestic disputes.

In general, applicants for services can communicate by mail, telephone, or in person depending on the nature of their matter and their ability to be mobile. When necessary, interpreting services are available to legal aid personnel who are providing assistance to non-English speaking clients. These services are also provided by the courts.

When a legal aid organization like Maryland Legal Aid accepts a case for representation, such an organization is usually prepared to handle the case through all necessary stages of legal proceedings, including trials and appeals at the highest level.

Innovative Legal Aid Initiatives

The amount of financial resources invested by government and private sources to support

the provision of legal services to low-income persons are woefully inadequate. As a result, legal services offices, bar associations and other organizations employ a variety of approaches to ensure that these clients receive some assistance with their civil legal needs. In every state, private lawyers provide services to this population pro bono (i.e. without cost). In some states, like Maryland, private lawyers are required annually to report the number of hours they have provided free of charge to low-income persons. The aggregated total time that private lawyers donate in this way is significant, but not nearly enough to make up the difference between the level of need and the amount of services that are actually provided by legal services organizations. A recent (2009) update of LSC's publication, "Documenting the Justice Gap in America" reports that "state legal needs studies conducted from 2006 to 2009 generally indicate that less than one in five low-income persons get the legal assistance they need."

Law schools are another source of legal assistance to low income persons. Several law schools have created clinics, which serve a dual purpose. They engage law students (under the supervision of licensed lawyers and law professors) to provide direct services to low-income clients. At the same time, this activity enables the students to develop and improve their skills as legal practitioners.

Another development in the U.S. is that many people, particularly those who are more educated, are choosing to represent themselves in court proceedings. This is described as a "pro se" or "self-help" approach. Recently, Maryland Legal Aid entered into a contract with the state's judicial system to develop a pilot project to assist "pro se" clients in a court of general jurisdiction. It is expected that the lawyers and legal assistants who staff this project will provide information, forms and guidance to litigants in landlord-tenant, small claims and domestic matters.

People in need of legal assistance find out about the services provided by legal service organizations through different sources. Word of mouth is a primary source of this information. Also, many courts and social services agencies refer people to legal aid offices. In addition, legal aid offices participate in outreach efforts to make sure that isolated clients, such as non-English or institutionalized individuals receive relevant information. These outreach efforts are conducted in person or sometimes through radio, television or print media outlets. An increasing number of persons in rural communities rely on computers and the internet to obtain helpful information.

Legal Aid Lawyers

This author often refers to legal aid workers as "a special breed." These workers have clients that are not popular and who have limited resources to help themselves. These workers often work in environments and physical facilities that are not optimal. Further, the compensation and other support they receive is often less than adequate. Yet under these circumstances, they are expected to perform their duties at the highest level of excellence and output.

For the most part, legal aid lawyers are highly respected in the U.S. These lawyers have been involved in numerous significant and landmark cases and legislative developments throughout the country. Several noteworthy U.S. Supreme Court cases have been litigated by legal services lawyers, many of whom are among the most outstanding graduates from a broad cross-section of educational institution in the U.S. This year, the top graduate from a local state law school (who actually was credited with achieving the highest results ever) joined Maryland Legal Aid.

All staff at legal aid offices are trained and supervised to ensure that the quality of their work is consistent with established standards adopted by the American Bar Association and other entities. The staff of legal aid offices also undergo regular evaluation and receive feedback and guidance to encourage their development and improvement.

Challenge

Legal Aid organizations in the U.S. face many challenges. Universally, too many people with a need for legal assistance (80%) are unable to obtain such help. As a consequence, several initiatives have been launched to improve this situation. There is hope that the new U.S. Congress and President will provide increased resources for legal aid assistance and that they would also lift the previously imposed barriers that prohibited legal services lawyers from fully representing their clients. There is another major initiative underway to establish in the U.S. a right to counsel for low-income persons in civil cases. This “Civil Gideon” movement is active in all states and the American Bar Association has endorsed the principle.

Conclusion

This summary attempts to respond to most of the questions set forth in the guidelines for preparing the specific country reports.

Fortunately, in recent weeks, several comprehensive reports pertaining to legal services have been published in the U.S. Certain links are provided here for the benefit of anyone who wants to obtain more detailed information about civil legal services to low-income persons in the United States.

For such detailed information please go to: www.clasp.org and locate “Civil Legal Aid in the United States, An Update for 2009,” and www.lsc.gov and locate “Documenting the Justice Gap in America,” and the “Legal Services Corporation, Fact Book 2008”.

National Report

Vietnam

Speaker : Ms. Ta Thi Minh Ly

General Director of the National Legal Aid Agency, MoJ, Vietnam

2009 International Forum on Legal Aid
National Report
Vietnam

Ms. Ta Thi Minh Ly
General Director of the National Legal Aid Agency, MoJ, Vietnam

1. Providers of legal aid

Before 1997, in Vietnam legal aid was mainly provided by Provincial Bar Associations to the accused in capital cases, the accused who are juveniles or have mental or physical defects. The appointment of defence counsels to represent these groups of people in court proceedings was at the request of the investigation bodies, procuracy or courts in the event that the accused or their lawful representatives did not invite defence counsels.

In September 1997, the legal aid system was officially established by the Prime Minister. At the central level, the National Legal Aid Agency (NLAA) was set up within the Ministry of Justice while the Provincial Legal Aid Centers (PLACs) were established within the Provincial Departments of Justice at the provincial level. So far, PLACs have been set up in all provinces of Vietnam (63 provinces). A number of PLACs have their branches at the district level.

The NLAA and PLACs provided legal aid services through their legal aid officers and collaborators. The legal aid clients included the poor, ethnic minority people and beneficiaries of preferential social policy and some other groups. Legal aid forms include legal advice, legal representation, petition making and mediation. For legal representation cases, the PLACs had to hire private lawyers on a case by case basis.

In 2006, the National Assembly of Vietnam adopted the Law on Legal Aid. According to this Law, the legal aid officials working in the PLACs have the right to represent legal aid clients in courts and have the same rights and obligations in judicial proceedings as private lawyers. This is very important to ensure that the demand of people for defense counsels is met, since the number of private lawyers is very small[1] compared to the population of 86 million people in Vietnam. According to this Law, legal aid clients have the right to choose legal aid providers from state legal aid organisations or lawyers' offices.

According to the Law on Legal Aid 2006, legal aid providers in Vietnam include:

Legal aid officials

Legal aid officials are working as permanent staff members in the Provincial Legal Aid Centers (PLACs) and appointed by the Chairperson of the Provincial People's Committees (provincial authorities). To be appointed as legal aid officials, one must have a law degree, 2 years' experiences of working in the legal field and pass legal aid training program held by the NLAA.

Legal aid officials are entitled to provide legal aid in all forms (legal advice, legal representation, etc). Currently, there are about 200 legal aid officials in Vietnam.

Legal aid collaborators

Legal aid collaborators are persons who work as collaborators of the PLACs to provide legal aid. They may be private lawyers, legal advisers or persons who have law degrees or persons who have other degrees and are working in sectors relating to rights and interests of citizens.

Collaborators who are not lawyers only have the right to provide legal advice. They are paid on a case by case basis by the PLACs.

There are now more than 8000 legal aid collaborators nation-wide.

Lawyers

There are 5,200 practising lawyers, who are members of provincial bar associations in Vietnam. The lawyers can provide legal aid as collaborators of the PLACs or their professional organisations can register to provide legal aid directly to the poor and other disadvantaged groups. They also provide legal aid according to their own regulations. The registration is made at the Provincial Departments of Justice where the lawyers' offices register their operation. This Department has the duty to provide training support to organisations that have registered to provide legal aid.

1 T here are about 4,600 private lawyers by October 2008.

Currently, more than 800 lawyers are working as legal aid collaborators.

Legal advisers

Legal advisers working in the legal consultancy centers under mass organisations can provide legal aid in the form of legal advice if the centers have registered to provide legal aid with the Provincial Departments of Justice. They can choose to provide legal aid to certain groups of legal aid clients and scope of activities appropriate for their capacity. These legal advisers are often invited to join the training courses on legal aid skills organised by the NLAA and PLACs.

So far, most of legal aid cases in Vietnam have been provided by the PLACs through their staff and collaborators. Legal consultancy centers under social organisations are still very weak.

2. Organisation

The National Legal Aid Agency under the Ministry of Justice has the function to carry out state management on legal aid in Vietnam. According to the Law on Legal Aid 2006 and Decree No. 07/2007 of the Government, its specific tasks include:

- Drafting legal normative documents on legal aid
- Guiding the organisation and operation of legal aid organisations
- Providing professional training for legal aid providers
- Inspecting and checking legal aid activities
- Monitoring the quality of legal aid services
- Managing the Legal Aid Fund of Vietnam
- Synthesizing statistics of legal aid cases resolved nation-wide
- Carrying out international cooperation on legal aid.

After the Law on Legal Aid 2006 took into force on 1 January 2007, the NLAA stopped providing legal aid directly to legally aided persons.

The organisational structure of the NLAA is as follows:

- Director
- 03 Vice Directors
- 02 branches in Thai Nguyen province and Ho Chi Minh City
- Division on Professional Management
- Division on Monitoring the Quality of Legal Aid
- Division on International Cooperation
- Division on Training
- Division on Information and Research
- Division on Accounting

- Legal Aid Fund
- Office
- Legal Aid Offices for Women
- Legal Aid Club for Juveniles
- A Council on cooperation in providing legal aid in legal proceedings
- A team running the Website “Legal aid in Vietnam”(www.nlaa.gov.vn)
- A Management Board on the legal aid project supported by Sida, Novib, SDC and SCS
- Legal library for the public
- Groups researching the possibility to set up legal aid offices for children, ethnic minority people and people infected by HIV.

There is a PLAC under the Provincial Department of Justice in every province (63 PLACs/63 provinces). The establishment of the PLACs and the appointment of the Directors of the PLACs are decided by the Chairperson of the Provincial People’s Committees. The budget for the operation of the PLACs is provided by Provincial People’s Committees. The PLACs provide legal aid through their legal aid officials and collaborators. In addition, the staff of the PLACs also include other members such as accountants, administrative officers, etc.

Main activities of the PLACs are as follows:

- Advertising legal aid services on mass media or by other means
- Surveying legal aid needs of target groups
- Receiving legal aid clients and providing legal aid services at the office
- Organising legal aid mobile clinics to rural and remote areas
- Distributing legal leaflets, legal talks to the communities
- Organising training courses on legal aid skills and updated law for legal aid officials and collaborators
- Cooperating with state agencies, judicial agencies and mass organisations in providing legal aid to people

According to the Law on Legal Aid, the PLACs may set up Branches at the district level (one branch one or more districts). There are more than 100 Branches of the PLACs nation-wide. Branches also have legal aid officials and collaborators to provide legal aid services.

There have been no problems so far for the NLAA and PLACs in maintaining independence from the Government since the Government has not influenced the work of these organisations. In cases against state agencies, the PLACs use collaborating private lawyers to deal with the cases.

3. Financial affairs

In 2007, the budget for the whole legal aid system is USD 4 million, including USD 1.9 million from the central and local governments (except for in-kind contribution) and USD 2.1 million from the international donors.

In 2008, the Prime Minister decided to establish the Legal Aid Fund of Vietnam to mobilise contributions of agencies, organisations, enterprises and individuals in Vietnam and abroad to the development of legal aid services. The Fund will provide funding to support legal aid activities in poor provinces. The supported activities may include training courses, legal aid mobile clinics, legal aid clubs, etc. Currently, the budget of the Fund is very limited (USD 150.000 – 200.000 per year). Budget for the Fund in 2009 is USD 250.000.

The budget for the legal aid system in 2008 is about USD 4.6 USD.

According to the Law on Legal Aid 2006, legal aid services are totally free of charge for legal aid clients.

4. Supervision

The NLAA works under the supervision of the Minister of Justice. Its annual work plan, budget and report must be submitted to the Minister for approval.

The NLAA has the function to supervise the organisation and operation of the PLACs and other legal aid organisations nation-wide. The PLACs have to provide monthly reports to the NLAA. The NLAA staff pays regular monitoring visits to the PLACs in provinces. The NLAA also organises teams to assess the quality of legal aid cases resolved by the PLACs and guides the PLACs to assess the quality of legal aid cases by themselves.

5. Procedures and criteria for granting legal aid

According to the Law on Legal Aid 2006, the following groups are eligible for legal aid:

- People from poor households
- People with meritorious services to the Revolution
- Helpless single elderly people
- Helpless disabled people[2]
- Helpless children
- Ethnic minority people living in areas with especially difficult socio-economic conditions.

2 According to Decision No 170/QD-TTg of the Prime Minister dated 8 July 2005, poor households have the average income per capita less than VND 200,000/person/month in rural areas and VND 260,000/person/month in urban areas.

Criminal Procedure Code 2003 provides that investigation bodies, procuracy or courts must require Provincial Bar Associations to assign lawyers' offices to send defence counsels, or request the Vietnam Fatherland Front Committees or members of the Front to send defence counsels free of charge for the accused, if the accused or their lawful representatives do not invite their own defence counsels in the following cases:

- The accused in capital cases
- The accused are juveniles
- The accused who have physical or mental defects

Besides, Civil Procedure Code 2004 requires parties in civil cases to provide evidence to prove their claims. This new provision gives a burden to people who have low level of education to claim their legitimate rights and interests. It is the obligation of the State to provide legal aid to them.

Apart from the above mentioned groups, within the framework of the project "Support to the Legal Aid System in Vietnam, 2005-2009" co-funded by the Swedish Agency for International Development (Sida), the Swiss Agency for Development and Cooperation (SDC), Oxfam Novib and Save the Children Sweden (SCS), the following groups are also provided with free legal aid services:

- Juveniles
- Trafficked women
- Victims of domestic violence
- People living with HIV/AIDS
- Ex-prisoners integrating into society

Poverty line will be periodically raised by the Government and therefore the number of people eligible for legal aid will change in the years to come.

Legal aid providers can make decisions to provide legal aid to the applicants if they provide enough supporting documents. According to the Law on Legal Aid, the legal aid clients can personally make their applications or do so through their legal representatives.

For court cases, the prospect of success is not a criterion for legal aid organisations to refuse the cases. However, the legal aid provider can give advice to legal aid clients on whether or not they should pursue the cases.

6. Models of service delivery

Most of legal advice cases are resolved by legal aid officials while about 90% of court cases are resolved by private lawyers who are collaborators of the PLACs. Legal aid clients have the right to choose legal aid providers according to the Law on Legal Aid 2006.

In the event that clients do not choose lawyers, directors of the PLACs will assign legal aid officials or collaborating lawyers to them based on the expertise of legal aid providers and their availability. Written decisions on assigning lawyers will be issued and sent to law enforcement agencies for their information.

The PLACs also assign a staff member to monitor the case if it is conducted by collaborating lawyers to ensure the quality of the case and improve the capacity of the staff.

7. Legal aid fees

Currently, on average collaborating lawyers get USD 25 per court case. Legal aid officials get 10% of what a collaborating lawyer gets in the same case. The fee of USD 25 per case given to lawyers is about 5 to 10 times lower than the market price depending on the specific situations in provinces.

The NLAA has to work with bar associations to encourage lawyers to provide legal aid without fees or with reduced fees.

8.Legal aid for specific communities

Apart from the groups mentioned in Section 5, the NLAA and PLACs is studying how to provide legal aid services for Vietnamese migrant workers, poor consumers who are victims of bad consumer goods, people affected by environmental pollution and people living near the poverty line.

The NLAA is also working with the authorities in the northwest provinces and the provinces with poor districts to strengthen legal aid activities in these areas.

9. Scope and types of services

The Law on Legal Aid provides that free legal aid is provided in all areas of law, except for business and commercial laws, for people eligible for legal aid.

In fact, most of legal aid cases resolved so far are related to land, criminal, civil, family and administrative laws.

According to this Law, legal aid may be provided in forms of legal advice, legal representation in or beyond court proceedings and mediation, etc.

According to the statistics of the NLAA, less than 10% of legal aid cases are court cases. The other cases have been resolved in forms of legal advice, mediation, etc.

According to the Law, legal aid applicants have the obligation to prove their legal aid eligibility. However, in practice, legal aid providers can provide legal advice in simple cases. In these cases, legal advice can also be provided through telephone.

Legal aid services can be provided to foreigners according to the mutual judicial assistance agreements between Vietnam and other countries. So far, the agreement to provide legal aid to citizens of state parties has been put in the mutual judicial assistance between Vietnam and Russia, China and France. Citizens of these countries will be provided with legal aid in the same conditions for Vietnamese citizens.

10. Innovative legal aid initiatives

The NLAA assisted the Minister of Justice to develop a Joint Circular on Providing Legal Aid in Court Proceedings between the Ministry of Justice, Ministry of Public Security, Supreme Court, Supreme Procuracy, Ministry of Defence and Ministry of Finance, which was promulgated in 2007. According to this Circular, law enforcement agencies (police, procurators, courts) have the obligation to inform the accused or the arrested persons of their right to legal aid and the contact information of the PLACs.

Since a large part of the population lives in the rural and remote areas and have difficulties in accessing legal aid organisations, the NLAA guided the PLACs in organising 2-3 legal aid mobile clinics each month to these areas to provide legal aid to local people. In these mobile clinics, the PLACs also provide people with legal leaflets and legal talks about legal issues relating to lives of people. So far, about 50% of legal aid cases have been received in legal aid mobile clinics.

The NLAA guided the PLACs in using loudspeakers in communes and villages to inform people about legal aid services. By this way, many people have known about legal aid services.

Currently, the NLAA is assisting the Minister of Justice to develop a Strategy on Development of Legal Aid Services in Vietnam towards 2030. This Strategy will help the Government to better use the resources of different actors in the society for legal aid service delivery in the future.

11. Access to legal aid

The NLAA and PLACs communicate legal aid services to the public through central and local TVs, radios, newspapers, leaflets, putting posters about legal aid in the offices of law enforcement agencies, detention centers and prisons. In addition, the PLACs also translate leaflets about legal aid services into ethnic minority languages and record the contents of these leaflets in cassettes so that ethnic minority people can understand.

Legal aid clubs have been set up in a large number of communes for local people to discuss their legal problems. The core members of the clubs, who have legal knowledge at a certain level, answer simple problems and refer complicated ones to the PLACs or their branches at the district level.

Legal aid officials and collaborators frequently participate in legal aid mobile clinics to rural and remote areas. Legal aid providers are provided with daily allowance in these trips. Before the trips, the PLACs often cooperate with local mass organisations to survey legal aid needs of people and inform people about the trips.

12. Legal aid lawyers

According to the Law on Legal Aid 2006, in order to be recruited in the PLACs and become legal aid officials (or salaried legal aid lawyers working permanently in the PLACs), one needs to have a bachelor of law degree, 02 years' experiences of working in the legal sector and a certificate of completing compulsory legal aid training course.

Private lawyers can work for the PLACs in legal aid cases as legal aid collaborators.

The reality in Vietnam shows that in legal aid cases, legal aid lawyers (legal aid officials and collaborating lawyers) are given more respect and support by law enforcement agencies (police, procuracy and courts). The cooperation between legal aid lawyers and law enforcement agencies have been further enhanced after the Joint Circular on Providing Legal Aid in Court Proceedings was promulgated in 2007.

13. Quality assurance

A code of standards for quality of legal aid services has been issued by the Minister of Justice to review the quality of legal aid cases. The NLAA will use these standards to monitor the quality of legal aid services provided by different legal aid organisations. In addition, procedures of reviewing legal aid cases and grading system for quality of legal aid cases will be developed to ensure that the application of the quality standards is proper. The results of reviewing quality of legal aid cases will help the NLAA and PLACs to timely improve the quality of legal aid services.

The NLAA also provides guidelines for the PLACs to assess the quality of legal aid cases resolved by its staff members and collaborators. Legal aid providers also have to assess the legal aid cases resolved by themselves. Apart from reviewing the files of cases, the assessors also need to collect feedbacks from legal aid clients, law enforcement agencies and other relevant agencies about the quality of legal aid cases resolved by legal aid staff and collaborators.

14. Participation in reforms

The NLAA encourages legal aid providers from the PLACs to find and report loopholes in the law discovered in specific legal aid cases to the NLAA. The NLAA then reviews the proposals and makes official petitions to change certain laws to competent agencies such as the National Assembly or its Standing Committee, the Government and ministries. Each year, the NLAA makes about 5 to 7 such petitions.

The NLAA also organises workshops with the participation of representatives of competent agencies to raise the problems relating to the law and policies that need to be resolved.

In addition, the NLAA is also proposing reforms in the legal framework, administration and procedures of legal aid.

15. Challenges

Human resources

The number of lawyers and legal aid officials in Vietnam is quite small compared to the population of Vietnam (there are about 5,300 lawyers and 200 legal aid officials while the population is about 86 million people). There has not been regulations to oblige lawyers to resolve a certain number of legal aid cases each year. Though the number of legal aid collaborators is large (more than 8,000 people), many of them cannot spend much time in legal aid cases. The number of legal advisers from legal advice centers under mass organisations is also very few.

Since most of law graduates tend to work in big cities like Hanoi or Ho Chi Minh City, it is normally very difficult for the PLACs to recruit enough qualified staff members. Recently, some experienced legal aid officers have come to work for private sectors with higher salary. In addition, in many PLACs, their staff members are frequently moved to other divisions within the Provincial Departments of Justice.

Access of people to legal aid services

The awareness of people about legal aid services has been considerably improved compared to 10 years ago when the legal aid system was first established. However, so far about 40% of the target groups' population has not been aware of the existence of legal aid services and their right to legal aid. For many poor people in mountainous or remote areas, even though they know about legal aid services, they still cannot access legal aid organisations since they do not have enough money and time to travel. Though the PLACs organise many legal aid mobile clinics, each commune has a maximum of 1 mobile clinic per year.

Capacity of legal aid providers

Most of legal aid officials are still becoming more familiar with representing legal aid clients in court proceedings. They only have the right to provide legal representation since the Law on Legal Aid took into force in 2007. In the last years, legal aid training courses for legal aid staff only provided few hours for legal representation skills and the trainees did not have chance to practice. The training courses have not been frequent enough to update legal aid officers with necessary knowledge and skills.

In addition, most of legal aid providers have not been trained enough with skills to work with particular groups of legal aid clients such as children, women victims of domestic violence or trafficking, ethnic minority people, children, people living with HIV/AIDS, ex-convicts integrating into society, etc. Therefore, it is very difficult for them to provide sensitive services for these clients.

There has not been an effective mechanism to monitor the quality of legal aid cases. The code of standards for quality of legal aid cases is still being developed. In additions, so far, most of the PLACs have not had enough personnel to properly check the quality of legal aid cases.

Financial resources

Although the Government and local authorities have paid great attention to developing legal aid services, the legal aid budget in Vietnam is still very small compared to other developed countries and legal aid needs of the population. The recent financial difficulties in Vietnam make it more difficult for the Government to increase budget for the legal aid system. With the limited budget, it is difficult for legal aid organisations to advertise legal aid services, invite private lawyers for representation cases and expand their legal aid activities to the grassroots level.

National (Regional) Reports II

Discussion

Moderator : Mr. Albert W. Currie
Chief Researcher, Research and Statistics Division,
Department of Justice, Canada

National (Regional) Reports II : Discussion

Mr. Albert W. Currie (Chief Researcher, Research and Statistics Division, Department of Justice, Canada) :

We still have a few minutes left, are there any question for the presenters?

Mr. Bo Tedards

Hi everyone, I'm Bo. There are lots of interesting points in each presentation, but I think one very large point which is very interesting is that, we have those ranges of types of systems but also levels of development of systems among panels; we have some people very established system, and Thailand which is just now starting to legislate a new Legal Aid system. So my question is how can we assist people who are establishing new system in these countries? For those who are about to do this, how can we help them establish good systems? Malaysian legislators are also considering a Legal Aid system very soon.

Mr. Albert W. Currie (Chief Researcher, Research and Statistics Division, Department of Justice, Canada)

We can get good answers to that from the points of view of both the developed, older Legal Aid organizations and the new ones.

Mr. Wilhelm H Joseph, Jr. (Executive Director, Legal Aid Bureau, Inc., Baltimore, Maryland, U.S.A) :

I think usually the biggest challenge of these is challenges of resources, and the question becomes "Where can we get it from?" If you go to the national operating budget, you are immediately competing with health, hunger, education, public safety and so on; it is very difficult to persuade government in any country without a long history of commitment to viewing and giving the access to Legal Aid system to support the general project. So, I think the key is to try to identify parts of money that can be given immediately that can be the very effective. One example in the U.S. is, whenever you are filing a case on the civil side—and we have millions of people filing everyday—we attach a filing fee surcharge: five dollars, ten dollars. In fact right now we can raise the stakes, to ask for maybe up to forty-five dollars in some cases. That money can be dedicated and used for we need. In some states, every traffic ticket has a surcharge, every parking ticket has a surcharge, and part of money that can go towards civil legal aid. I think that is one of the biggest opportunities for funding.

Mr. Herman J. Schilperoort (Head of Staff, Staff Department, National Legal Aid Board Netherlands, Netherlands)

I can tell that almost thirty years ago, our Legal Aid was all volunteers. We did it ourselves. We operated at a loss, and we operated the road show by ourselves. It was only thirty years ago. So you have to struggle; you have to find friends in the politics who understand the importance of the Legal Aid, because you have to solve your own problems within your own countries. We can provide our knowledge and support, but I don't think that country can provide money; sometimes they give you some money, a small budget, to develop things, but they can't pay for other countries' legal aid. So you have to struggle; you have to fight for political support and that's important.

Mr. Wilhelm H Joseph, Jr. (Executive Director, Legal Aid Bureau, Inc., Baltimore, Maryland, U.S.A) :

For the past year or two, we in Maryland have been exchanging information with the Legal Aid Foundation here in Taiwan. Sometimes with Legal Aid procedures, sometimes with salary skills, contract with employees, and in other similar cases we do that, too.

Ms. Persida V. Rueda-Acosta (Chief Public Attorney, Public Attorney's Office, Department of Justice, Philippines)

I think, in order to develop a new law and policy, and for more funding for Legal Aid providers in the country, the Legal Aid providers should have a strong tie with the legislators—a strong partnership. So like in the Philippines, we have one or two hundred legislators and a number of senators, so we are able to develop a strong tie of partnership and cooperation with them. Since 2001, when I was appointed the chief, I have been advocating for a new law for more funding. I think an individual can stop the poverty but not injustice. Probably in the law of the most developed countries in the world, they have been providing millions of dollars to combat terrorism, but not to provide more funds to provide justice. So if we are able to convince them that there is a need—because there is no justice in the justice system, and there are no Legal Aid providers—and if we give more funds to Legal Aid providers, we can solve the problem. You know, if people are not protected by the system, they take arms against the government. But if they have arms, say guardians like us to advocate for more Legal aid lawyers, they can make a peaceful request of the government.

Mr. Albert W. Currie (Chief Researcher, Research and Statistics Division, Department of Justice, Canada) :

I think, one more quick comment.

Mr. Somchai Homlaor (Secretary General, Human Rights and Development Foundation, Thailand.)

In Thailand, actually, the Legal Fund has been doing this for fifteen years already. Because of

the Fund, we have a law that is being considered by the parliament. So as a member of the Legal Aid Fund committee, I think that I may ask the Ministry of Justice to organize a workshop, and I think that some of us may be projected to participate in this project, to let the government know that the independent fund is more efficient. Another concern is that, if this fund has been set up and the Legal Aid law has been enacted, how can we make sure that the Legal Aid is still delivered by civil society in Thailand? How can we ensure that the lawyers, civil society, and other NGOs, including my organization, can continue to provide support for the state.

Mr. Albert W. Currie (Chief Researcher, Research and Statistics Division, Department of Justice, Canada) :

Thank you for joining us today.

Appendices

Appendix I

2009 International Forum on Legal Aid

Saturday, 31 October, 2009

Time	Activity
08:50 – 09:20	Registration
09:20 – 10:10	**Opening Ceremony** **Film Screening** **Remarks:** Den-Mei Ku, Chairperson, Legal Aid Foundation (Taiwan) K. C. Fan, Chairman, Organizing Committee, 2009 International Forum on Legal Aid (Taiwan) **Guest Speakers:** In-Jaw Lai, Chief Justice and President of the Judicial Yuan, R.O.C. (Taiwan) Vincent C. Siew, Vice President of the Republic of China (Taiwan)
10:10 – 10:50	**Keynote Speech:** Getting Ahead of the Curve: Challenges and Opportunities of Recessions for Legal Aid **Speaker:** Mr. Albert W. Currie, Chief Researcher, Research and Statistics Division, Department of Justice, Canada
10:50 – 11:10	Tea Break
11:10 – 12:30	**National (Regional) Reports I** **Moderator:** Mr. Wilhelm H. Joseph, Jr., Executive Director, Legal Aid Bureau, Inc., Baltimore, Maryland, U.S.A. **Speakers:** Taiwan, Australia, United Kingdom, Finland, Hong Kong, Indonesia, Japan
12:30 – 14:00	Lunch
14:00 – 15:10	**Panel Discussion I: The Rights of Non-nationals and Legal Aid Moderator:** Mr. Wei-Shyang Chen, Deputy Secretary General of Legal Aid Foundation (Taiwan) **Speakers:** 1. Ms. Suzan Cox (QC), Director of Northern Territory Legal Aid Commission, Australia 2. Ms. Daniela Dwyer, Staff Attorney, Florida Legal Services, Inc., Lake Worth, Florida, U.S.A. 3. Mr. Hao-Jen Wu, Associate Professor, Department of Law, Fu Jen Catholic University, Taiwan

15:10 – 15:30	Tea Break
15:30 – 17:00	**Workshop I : Group Discussions (3 groups)**
17:00 – 17:10	Return to the Conference Room
17:10 – 17:40	**Workshop I : Conclusion**
18:30 – 21:00	**Welcome Banquet**

2009 International Forum on Legal Aid

Sunday, 1 November, 2009

Time	Activity
08:50 – 09:20	Registration
09:20 – 10:10	**Panel Discussion II: Criminal Justice, Human Rights and Legal Aid** **Moderator:** Mr. Wen-Ting Hsieh, Secretary-General of the Judicial Yuan, R.O.C. (Taiwan) **Speakers:** 1. Ms. Kelli Thompson, Deputy State Public Defender, Wisconsin State Public Defender's Office, U.S.A. 2. Mr. Hugh Barrett, Executive Director, Commissioning, Legal Services Commission, U.K. 3. Mr. Ping-Cheng Lo, Director of Hsinchu Branch, Legal Aid Foundation (Taiwan)
10:10 – 10:25	Tea Break
10:25 – 11:50	**Workshop II: Group Discussions (3 groups)**
12:00 – 12:30	**Workshop II: Conclusion**
12:30 – 13:30	Lunch
13:30 – 14:40	**Panel Discussion III: Poverty, Debt and Legal Aid** **Moderator:** Mr. Chi-Jen Kuo, Secretary-General, Legal Aid Foundation (Taiwan) **Speakers:** 1. Mr. Paul Chan, Chairman of Legal Aid Services Council, Hong Kong 2. Ms. Saya Oyama, Associate Professor, Kinjo Gakuin University, Japan 3. Mr. Joseph Lin, Director of Taipei Branch, Legal Aid Foundation (Taiwan)
14:40 – 14:55	Tea Break
14:55 – 16:20	**Workshop III: Group Discussions (3 groups)**
16:30 – 17:00	**Workshop III: Conclusion**
17:10 – 18:30	**Roundtable Meeting (invited speakers & delegates only)** **Moderator:** K. C. Fan, Chairman, Organizing Committee, 2009 International Forum on Legal Aid (Taiwan)
19:00 – 21:00	The Night of LAF

2009 International Forum on Legal Aid

Monday, 2 November, 2009

Time	Activity
08:30 – 09:00	Registration
09:00 – 10:20	**National (Regional) Reports II** **Moderator:** Mr. Albert W. Currie, Chief Researcher, Research and Statistics Division, Department of Justice, Canada **Speakers:** Republic of Korea, Malaysia, The Netherlands, The Philippines, Thailand, United States., Vietnam
10:20 – 10:40	Tea Break
10:40 – 12:05	**Closing Ceremony** **Moderator:** K. C. Fan, Chairman, Organizing Committee, 2009 International Forum on Legal Aid (Taiwan)
18:00 – 18:40	**Meeting with His Excellency President Ma Ying-jeou (invited speakers & delegates only)**
19:30 – 21:30	**Farewell Banquet**

Appendix II

Topic outlines -- Country (or Regional) report

Country reports should address the following issues. We understand that some of the questions may not be applicable in certain situations.

1. Providers of Legal Aid

(a) Who are the providers of legal aid services in your country?
(b) Does your organisation consolidate legal aid resources in your country, by carrying out legal aid work authorized by other government agencies?

2. Organization

(a) How does your organisation organize its human resources?
(b) Is the legal aid scheme in your country funded by the government or the private sector? Is the scheme organized on a centralized level or regional level? If the legal aid scheme in your country is organized by the government, how does it maintain independence from the government?

3. Financial Affairs

(a) What are the sources of legal aid funding in your country?
(b) Does the legal aid scheme in your country adopt a charitable model or a rebate model? Are recipients of legal aid required to repay legal aid costs at the conclusion of court proceedings?
(c) Are court fees/filing fees and security for costs covered by legal aid?
(d) If provided, does this assistance increase the burden on the government's budget?

4. Supervision

(a) Is the operation of your organisation supervised by another authority?
(b) How does it supervise your organisation?
(c) What are the difficulties involved in dealing with the organization's supervising authority?

5. Procedures and Criteria for Granting Legal Aid

(a) Please briefly describe your organization's criteria for granting legal aid.
(b) Are applicants means-tested? If so, please describe the financial eligibility criteria, any documentation required for applying, the procedures of application and assessment, and the timeframe for decision-making. Are there situations where means-testing is not required?
(c) If applicants are means-tested, has consideration been given to raise the financial eligibility criteria, thus increasing the number of people eligible for legal aid?

(d) Who assess legal aid applications? How are these personnel recruited?
(e) For court cases, is the prospect of success a consideration for deciding applications?
(f) Is there a requirement that an application must be made by the applicant personally?

6. Models of Service Delivery

(a) How are legal aid cases assigned to lawyers? Are legal aid services provided by salaried lawyers, contracted lawyers, or by lawyers or law firms in other ways?

7. Legal Aid Fees

(a) Please compare the fees paid to legal aid lawyers with fees charged by private practitioners.

8. Legal Aid for Specific Communities

(a) Does your organisation tailor and provide legal aid services to specific communities (for example, aboriginal people, foreign workers, plaintiffs in environmental litigation)

9. Scope and Types of Services

(a) Is legal aid available for the following matters:
  (i) Litigation in civil law, criminal law, administrative law and claims for national compensation?
  (ii) Alternative dispute resolution?
(b) Does legal aid provide the following services?
  (i) Face-to-face or telephone legal consultation? What are the procedures of providing these services? Are applicants for legal consultation means-tested? How are applicants' finance assessed?
  (ii) Assistance during interviews at police stations?
(c) Is legal aid available for foreign nationals?

10. Innovative Legal Aid Initiatives

(a) What are the unique features of the legal aid practices in your country?
(b) What are your organization's innovative legal aid initiatives in the recent years?

11. Access to Legal Aid

(a) How does your organisation provide potential legal aid applicants with knowledge of the availability of legal aid services?
(b) How are legal aid services provided to applicants who live in areas that lack legal resources?
(c) Does your organisation arrange outreach programs for legal aid lawyers? What is the performance of these programs?

12. Legal Aid Lawyers

(a) What are the sources of recruiting legal aid lawyers?
(b) Compared with lawyers in private practice, are legal aid lawyers as highly regarded by the police, prosecution and the courts? Do they provide facilities to make legal aid lawyers' work more convenient?

13. Quality Assurance

(a) How does your organization ensure the quality of legal aid lawyers' work?

14. Participation in Reforms

(a) Does your organization participate in campaigns for social reforms or law reforms, with a view to reduce legal disputes?

15. Challenges

(a) What are the difficulties and challenges facing your organisation in promoting legal aid services?

Appendix III

2009 International Forum on Legal Aid
OVERVIEW

Introduction

From a historical perspective, economic downturns are unpredictable and unavoidable, and they affect all levels of society, especially the most vulnerable. Legal aid services are naturally unable to avoid these impacts. In a time of recession, the need for legal aid is even greater; at the same time, there is much more pressure on funding for legal aid, whether from governments or civil society. In order to respond, legal aid systems should face these concerns with a positive attitude and prepare for them as early as possible, in order to transform crises into opportunities for renewal and innovation. In this way they will become sustainable institutions. Even in an environment of limited resources and growing demand, we should uphold the basic spirit and values of legal aid. Therefore, the participants of this forum agree on this overview of the three themes of our forum:

The Rights of Non-nationals and Legal Aid

To protect the human rights of non-nationals, legal aid organizations or legal services providers should devote themselves to:

1. Providing the same access to legal aid services to non-nationals as that provided to nationals, out of a desire to protect human rights and promote application of the rule of law. Legal aid to non-nationals should not be restricted by laws or policies;, thus where such restrictions exist, legal aid organizations or legal services providers should advocate legislative changes or broader interpretation of such laws.

2. Constructing a legal aid system that is easy for non-nationals to access, including the production of multilingual legal guides, as well as the establishment of mechanisms for non-government organization, courts, prosecutors, and government departments to provide referral and early information about legal aid resources.

3. Establishing interpreter resources of sufficient quantity and high quality, bringing together and making use of the interpreter resources of government agencies and non-governmental organizations, as well as actively cooperating with NGOs to cultivate professional interpretation skills in foreign spouses, expatriates, and other suitable individuals.

4. Encouraging non-nationals to form their own associations and providing legal or paralegal training to enable them to assist their compatriots.

5. Providing lawyers, police officials, prosecutors, judges, and other law enforcement personnel with professional training in order to raise their awareness of the human rights of non-nationals, and increasing the professional expertise of these groups in assisting non-nationals.

6. Recognizing that inappropriate broker systems are one of the reasons for the exploitation of migrant labor, working together via international cooperation to review and reform such broker systems, in both sending and receiving countries.

7. Bringing together related domestic NGOs, actively providing advice to government authorities, and pressing for reforms of unreasonable or deficient government decrees and administrative measures regulating non-nationals.

8. Actively establishing and promoting international exchanges formed around multinational alliances among legal aid services providers throughout the world; using the force of the international community to press for reforms in order to ameliorate the difficulties facing non-nationals.

9. Bringing together the power of the media, civil society, NGOs, and lawyers' groups, actively educating government and the broader general public, explaining the contributions of non-nationals, spreading the concept of equal rights and access to justice for non-nationals, and promoting access to legal aid for non-nationals.

Criminal Human Rights and Legal Aid

In order to ensure rights in criminal cases, legal aid organizations or legal aid workers should devote themselves to:

1. Providing defense services in criminal cases and continuously supervising legal services providers to ensure delivery of high quality legal services, regardless of the specific model of legal aid employed.

2. Actively enlarging the scope of legal aid for suspects in criminal proceedings, including ensuring the right to full defense in all stages of criminal proceedings.

3. Providing legal consultation or defense services from an attorney before and during questioning by the police or a prosecutor, in order to avoid inappropriate interrogations.

4. Mobilizing additional resources for legal aid, not only adequate funding, but also greater participation by private attorneys.

Poverty, Debt, and Legal Aid

In order to ameliorate poverty and over-indebtedness, legal aid organizations or legal services providers should devote themselves to:

1. Advocating for the recognition as a human right the access to counsel in civil matters that involve the protection of basic needs, such as housing, health, food, and livelihood.

2. Addressing issues of personal debt and debt clearance by actively bringing together groups to push forward the establishment or reform of the debt clearance system in order to make it more efficient and effective. Unless other effective mechanisms are in place, legal aid organizations or legal services providers involved in legal aid should provide aid for legal procedures related to debt clearance.

3. Actively promoting the correct understanding of debt issues and the debt clearance system by courts, attorneys, media, and the wider society—especially ordinary consumers who may become victims of these issues—for example through publicizing actual cases and other advocacy activities.

4. When, in the process of carrying out legal aid work, systematic issues are discovered, actively reporting them and advising responsible government authorities of needed reforms.

5. Positively assisting the impoverished in applying for social welfare resources or other relief mechanisms.

6. Working together with related groups, actively promoting the reform of unreasonable or unsound social welfare and financial systems, in order to prevent problems of poverty and over-indebtedness from emerging.

Conclusion

In conclusion, we invite all legal aid organizations and legal services providers to make every endeavor to put the ideals contained in this Overview into practice. At the same time, we urge governments that have yet to establish publicly-funded legal aid schemes to hasten their pace in bringing into effect the ideals contained in this Overview.

Appendix IV

President Ma Meets Foreign Representatives and Scholars Attending 2009 International Forum on Legal Aid

2009/11/02

President Ma Ying-jeou met on the afternoon of November 2 at the Presidential Office with foreign representatives, along with experts and scholars, who have traveled to Taiwan to attend the 2009 International Forum on Legal Aid. The president, on behalf of the government and people of the ROC (Taiwan), extended a warm welcome to them on their visit here.

The president noted that participants at the forum discussed and exchanged experiences on three major topics – the rights of non-nationals and legal aid; criminal justice, human rights, and legal aid; and poverty, debt, and legal aid. In addition, concrete directions for future work with regards to these topics were outlined in an effort to provide more efficient and quality legal services to underprivileged groups, which will help to enhance the protection of human rights, he said.

The president said that the ROC (Taiwan) established a legal aid system in 1973. In the year prior, Yao Chia-wen, a local lawyer, sponsored by the Asia Foundation to go to the University of California in Berkeley and carry out dedicated research in the area of legal aid. Upon his return to Taiwan, Yao and a number of lawyers established the Taipei Legal Aid Center. Former Control Yuan member Frank J. N. Liao, also a lawyer, was invited to serve as the director of the organization. This marked the formal creation of a private legal aid body here, the president explained. In 1998, the Taipei Bar Association, the Judicial Reform Foundation, and the Taiwan Association for Human Rights formed a task force to promote the drafting of the Legal Aid Act. In 2002, the Legislative Yuan finally passed the legislation and on July 1, 2004, the Legal Aid Foundation was formally established. This creation of this organization marked an important milestone in the history of legal aid here, the president said.

President Ma said that he issued a statement regarding human rights during his campaign for president, which noted that every person should receive a dignified trial and should have the right to speak his or her native language in court. The president remarked that he personally has been involved in or been the subject of criminal litigation. As a result, he said he puts great emphasis on the protection of human rights and legal aid in the process of questioning by prosecutors.

The president furthermore said that he is promoting a system in which people are questioned by prosecutors the same way they are in a court of law, with a computer screen placed in front of the suspect so that the latter can see a record of the proceedings. After over a year of work, the

Justice Ministry has decided to acquire over 200 computers for this purpose. In the future, suspects (defendants) will be able to clearly see a record of their interactions with judges and prosecutors. Upon verifying the record, suspects (defendants) will have a chance either to sign their names to it, or to refuse. This will be of great assistance in assuring the accuracy of records, he said.

The president commended the work of the Legal Aid Foundation, saying that it has played an important role in assisting the public with regards to issues involving credit card debt. President Ma said that on May 14 in his capacity as president he signed instruments of ratification for the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. At the same time, the content of these covenants was made a part of domestic law. In addition, he said, he asked the Justice Ministry to carry out a thorough review of domestic laws within two years and amend any laws that run counter to the content of the two covenants. This will boost the standard of human rights protection for the people of Taiwan and will put the ROC among the leading nations of the world in protection of human rights, he said.

The president expressed his hopes that Taiwan's legal services community will be able to maintain close contact with legal aid agencies in countries throughout the world, jointly working to provide legal aid services to the underprivileged. This will help to uphold justice and ensure that human rights are protected, he said.

Appendix V

2009 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 Attorneys-At-Law
- Mr. John C. Chen
  Attorney; Consultant of Taiwan Bar Association; Former Chairman of Judicial Reform Foundation
- Ms. Man-Li Chen
  Former President, National Union of Taiwan Women Association
- Ms. Yi-Chien Chen
  Associate Professor, Graduate Institute for Gender Studies, Shih-Hsin University
- Mr. Jerry Cheng
  Attorney at Law, Fa Chia Law Firm, Former Secretary-General of Legal Aid Foundation, Taiwan
- Mr. Ken H.C. Chiu
  Managing Partner, Kew & Lord
- Mr. Rnei-ming Huang
  Attorney at Law, Baker & Mckenzie Taipei Office
- Mr. Van-Hung Nguyen
  Priest, Vietnamese Migrant Workers and Brides Office
- Mr. Bo Tedards
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