

NATIONAL REPORT ON LEGAL AID SERVICES IN MALAYSIA
INTERNATIONAL LEGAL AID FORUM
TAIPEI, TAIWAN
31 OCTOBER – 2 NOVEMBER 2009

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 Family Law matters
- Migrant and refugees matters
- Labour and employment matters
- Consumer claims
- Probate and Letter of Administration
- Accident matters
- Money-lending matters
- Hire-purchase matters
- Criminal matters

However, the 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
- Criminal matters
- Public Interest Litigation matters
- Housing and tenancy matters
- Labour and employment matters
- Domestic violence cases
- Immigration cases such as passport and identity card problems

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 26,441 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

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