

2014 International Forum on Legal Aid

VENUE: Howard Civil Service International House (No. 30, Sec.3, Shin-Sheng South Road, Taipei, TAIWAN)

National (or Regional) Report Outline

1. Please provide the following country¹ information:

Country	Legal Aid Organization Name	Date of Establishment	Poverty Line & Percentage of Population in Poverty	Total No. of Practicing Lawyers & Legal Aid Lawyers (including in-house and private practice)
Malaysia	Legal Aid Department (LAD)	1970	USD8.50 per day (2012* share of households below the national poverty line 1.7% (2012)*	15,754
	National Legal Aid Committee (LAC)	1983		Out of this there are 1300 lawyers under the Legal Aid Centres supervised by the Malaysian Bar (LAC) and 1566 lawyers under the National Aid Foundation (NLAf). Under the Legal Aid Department(LAD), which is a Government established and funded legal aid scheme there are 82 in house counsels.
	National Legal Aid Foundation (NLAf)	2011		
	Court Assigned Counsel Scheme	1946		
Population	GDP	Total No. of Applications Received in the Past Year	Total No. of Applications Approved in the Past Year	Total No. of Applications Refused in the Past Year
30 million	USD 312.44 Billion	No information	Refer to 3(b)	No information

*www.worldbank.org/en/country/malaysia

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

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

There are three (3) providers of legal aid services in Malaysia namely.

- (i) *The Legal Aid Department (LAD) is a Government established and funded legal aid scheme. It's primary objective is to provide legal aid and advisory service to the indigent on legal issues commonly associated with them. The type of matters covered by LAD is rather limited and does not provide the adequate coverage on all*

¹In this Outline, all references to "country" shall include "region".

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frontiers. At the beginning, the LAD was placed under the Attorney - General's Chambers and following the setting up of the Ministry of Law in 1985 it was placed under the Ministry until May 1995. It now comes under the wings of the Legal Affairs Division of the Prime Minister's Department.

- (ii) *The Malaysian Bar operates a dual legal aid scheme. The first being the establishment of a legal aid centre in every state dealing with a wide array of legal issues. These Legal Aid Centre's are supervised by the National Legal Aid Committee of the Malaysian Bar (LAC). The Malaysian Bar was established under the Advocates & Solicitors' Ordinance 1947 (subsequently replaced by the Legal Profession Act 1976).*

The second is the National Legal Aid Foundation (NLAFF) scheme administered by the Legal Aid Centers. The NLAFF is an independent body, granted Government funding that will fund the provision of criminal legal aid, enhance services for lawyers to represent those needing legal representation, determine the guidelines for the administration of the national legal aid scheme, and to initiate and carry out educational programmes designed to promote understanding amongst the members of the public and their rights and duties under the laws of Malaysia. The aim of NLAFF is to provide access to justice to all Malaysians.

- (iii) *The Malaysian courts also assigns counsels who are registered with them to Malaysians as well as Non-Malaysians who are facing Capital Punishment at no costs.*

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

Not applicable to the Legal Aid Department.

The Legal Aid Centers are self-regulatory as all the chairpersons of the individual centers, sit on the National Legal Aid Committee, thus ensuring independence. There are currently two co-chairpersons appointed by the President of the Malaysian Bar.

As for the NLAFF, their policies are made by the National Legal Aid Committee subject to approval from the Board as listed in 3.ii below.

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

- (a) Organizational structure.

i. ***Legal Aid Department***

- *Director General*
- *Deputy Director General (Civil)*
- *Deputy Director General (Syariah)*
- *Director of Research and Policy*

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- *Director of Panel of Solicitors (Civil)*
- *Director of Mediation (Civil)*
- *Director of Litigation and Advice (Civil)*
- *Senior Assistant Director*
- *Director of Litigation and Advice (Syariah)*
- *Director of Mediation (Syariah)*
- *14 Directors from each state in Malaysia*
- *8 Assistant Directors*

ii. ***National Legal Aid Committee (LAC):***

- *2 Co- Chairpersons*
- *3 Deputy Co-Chairpersons*
- *12 Members (Chairperson of the Legal Aid Centre of each state within Peninsular Malaysia)*

iii. ***National Legal Aid Foundation (NLAf):***

- *Attorney General (Chairman)*
- *President of the Malaysian Bar (Vice Chairman)*
- *Secretary General of the Treasury*
- *Director General of Legal Affairs Division*
- *Director General of Social Welfare Division*
- *Director General of Legal Aid Department*
- *President of the Sabah Law Association*
- *President of the Advocates Association of Sarawak*
- *A Dean of a Faculty of Law nominated by the Patron; and*
- *Two representatives from non-governmental organizations nominated by the Patron.*

iv. ***Court assigned counsel scheme***

comes under the purview of the Chief Registrar of the Federal Court

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

NLAf (Purely criminal cases involving Malaysian Citizens)

	ARREST	REMAND	MITIGATION/BAIL	HEARING	TOTAL
APR 2012 - DEC 2012	2394	37,495	8267	1061	49217
JAN 2013 - DEC 2013	3583	73,095	12,537	2329	91544
TOTAL	5977	110,590	20,804	3390	140,761

**Criminal cases aided under the National Legal Aid Foundation*

Legal Aid Centre matters

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LACs	Number of clients (2013)
Johor	17
Kedah	73
Kelantan	560
Kuala Lumpur	15,751
Malacca	152
Negeri Sembilan	274
Pahang:	501
Penang	1,792
Perak	348
Selangor	1078
Terengganu	276
TOTAL	20,822

**Work carried out comprised of matters pertaining:*

Criminal offences (very minimal upon the introduction of the NLAf)

Public Interest cases – urgent arrest team

Housing/tenancy issues

Labor/ employment

Family law matters

Syariah cases

Domestic violence

Migrant/refugees issues

Immigration issues (passport, overstaying, illegal entry)

Legal Aid Department (LAD) 2013

<i>Shariah, Civil and Criminal Cases</i>	-	15,905
<i>Mediation</i>	-	36,956

<i>Total</i>	-	52,861
		=====

Court assigned counsels scheme

Criminal cases involving Capital Punishment.

- (c) What is the number and percentage of cases conducted by in-house/staff attorneys

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and legal aid lawyers in private practice?

- i. All work carried out by the Legal Aid Department is carried out by in-house counsel.*
- ii. All work carried out by the dual scheme (LAC & NLAf) and the court assigned counsels is done by lawyers in private practice.*

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

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

(i) Legal Aid Department obtains funding from the Government.

(ii) Bar Council Legal Aid Centers funding is based on monies collected from subscription fees paid by members (lawyers) of the Malaysian Bar.

(iii) NLAf funds are derived from a fixed amount of money given to the Foundation on an annual basis by the Government.

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

NLAf government funding started in 2012. It is just 2 years old. We hope that it does not happen

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

Lack of statistical data.

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

No assistance is given in terms of costs under the Legal Aid Centers scheme or the National Legal Aid Foundation scheme. However under the Legal Aid Department scheme court costs are waived by virtue of the Legal Aid Act.

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

We have just started an audit scheme whereby a team of lawyers are sent to the courts to observe lawyers carrying out NLAf work. This team comprises of some trainers, as well as trainees and is currently at its trial stages at the nation's capital. The system will be implemented nationwide once the proper mechanisms are

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worked out.

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

Carried out via the Bar Council Legal Aid Centres in each state in West Malaysia and Legal Aid Department in each state in Malaysia

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

The majority of cases are carried out by lawyers in Private Practice.

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

Generally all NLAFF lawyers will have to undergo a 3 part training organized by trainers from the NLAFF Steering Committee. This steering committee comprises of members of the National Legal Aid Committee. Senior practitioners are exempt from the 3rd part of the training that explains and teaches the trial process to trainees.

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

Under the NLAFF scheme there are several procedures in place for a lawyer to carry out cases. The first being the lawyers have to be registered as a NLAFF lawyer. This is followed by the lawyers signing letters of undertaking when they want to do NLAFF work. Such undertaking is prevalent at each stage of the superior courts in Malaysia. A general letter of undertaking states that he/she will not ask, demand or accept payment from clients. In addition in the event they wish to conduct criminal trial in the Magistrate and Sessions Court or handle Criminal appeals they will have to sign a letter of undertaking stating the following.

For criminal trial at Magistrate and Sessions Courts

That they have;

- (a) *Attended all the three parts of the NLAFF training or attended the Part I and II of the training AND*
- (b) *Handled a minimum of three (3) Criminal trials.*

For criminal Appeal at the High Court

That they have;

- (a) *Attended Part I and Part II of the NLAFF training AND*
- (b) *Have been in legal practice for a minimum of three (3) years AND*

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- (c) *Have attended Part III of the NLA training OR have handled a minimum of three (3) Criminal trials in the Magistrate or Sessions Court.*

For Criminal Appeals at Court of Appeal

That they have;

- (a) *Attended Part I & Part II of the NLA training*
- (b) *Have been in legal practice of a minimum of five (5) years AND*
- (c) *Handled a minimum of five (5) criminal trials in Magistrate and/or Sessions Court and/or High Court AND*
- (d) *Handled two (2) criminal appeals in the High Court*
- (d) How do the salaries and fees paid to legal aid lawyers compare with the general market rate?

Significantly lower.

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

Refer to question 3(b)

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

For Legal Aid Department & LAC scheme

Clients will be subject to a means test to access income, to decide if they qualify

NLA Scheme

For arrest, remand, bail, mitigation - all Malaysians (irrespective of their financial means) will be provided free legal assistance.

For all Trial and Appeals - all Malaysians whose income does not exceed RM36, 000.00 per annum will be entitled to receive legal aid (without having to make any payment).

Court assigned counsel scheme

For Capital Punishment cases the courts will assign counsel to all Malaysian as well as Non Malaysian at no cost.

9. In order to satisfy demand:

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

None. However, the Legal Aid Centers do work closely with local and international non-governmental organizations to cater and assist disadvantaged groups.

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

None.

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

Refer to question 5

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

Yes. Through TV commercials and radio, legal aid clinics set up in remote and rural locations and through the distribution of brochures and pamphlets in their indigenous language.

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

The Legal Aid Centers do not carry out mediation programme, however there is Malaysian Mediation Centre formed by the Bar Council which advocates the use of Mediation as a form of alternative dispute resolution. The Legal Aid Centers also creates law awareness by educating the public through seminar, talks and distribution of brochures and pamphlets on various matters such as employment law, family matters etc.

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

None.

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

Currently Legal Aid provided under the NLA Scheme is only for Malaysian citizens; however we are continuously lobbying to convince the government to expand the NLA Scheme to the migrant workers as well.

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

None.

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

Article 8 (1) of the Federal Constitution of Malaysia declares “All are equal before the law and are entitled to equal protection of the law” From this declaration it can be safely assumed that Legal Aid or access to justice is a fundamental human right in Malaysia.

Further Article 5(3) of the Federal Constitution states that “when a person is arrested he shall be informed as soon as may be of the grounds of his arrest and he shall be allowed to consult and be defended by a legal practitioner of his choice”. To give meaning to Article 8(i) and Article 5(3) of the Federal Constitution, NLAFF was established by the Malaysian Government and funded by the Government to provide legal assistance and advice in relation to criminal matters to all Malaysians (irrespective of their financial means) at the police station, the remand hearing and when they are charged in court. In so far as hearing is concerned, a means test will be applied and only those who pass the means test will qualify to receive legal assistance.

This scheme requires the police and all other enforcement agencies to inform NLAFF of every arrest, remand and charge.

The lawyers who do work for NLAFF will be trained and paid by NLAFF.

The Bar Council Legal Aid Centers (LAC) work closely with NLAFF to assist it in its delivery of services which means that any Malaysian who requires legal assistance from NLAFF need to contact the nearest LAC.

In order to ensure smooth delivery of its services the head of each state prosecution unit meets up with the district police chiefs and all other enforcement agency chiefs together with the representatives from every state Legal Aid Centres every quarterly to review the efficiency of the services provided under the NLAFF scheme.

In addition for all capital punishment cases, the court will assign counsel to all Malaysians and non- Malaysians at no cost.