

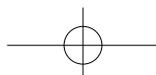
2005 International Forum on Legal Aid Conference Proceedings

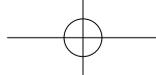
~Legal Aid Fundamentals and Future Developments

October 15-17, 2005
Taipei, Taiwan



Published by the Legal Aid Foundation





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Publisher: Tung-ming Tsai
Chief Editor: Chi-jen Kuo
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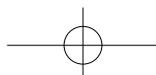
Published by Legal Aid Foundation, Taiwan
5F, No. 189, Sec. 2, Jin-shan S. Rd., Taipei, Taiwan 10644
Tel: +886-2-2322-5255 Fax: +886-2-2322-4088
Website: www.laf.org.tw

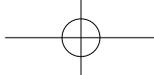
Printed by Jielong Design Printing Co., Ltd

First Published in December 2006
Price: NTD300
ISBN-13:978-986-81658-2-3
ISBN-10:986-81658-2-2

Related publication by Legal Aid Foundation

**Bring Justice to you~a Record of the Development of Legal Aid
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ISBN 986816580-6





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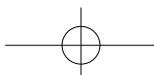


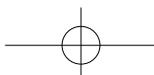
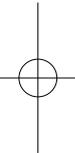
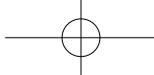
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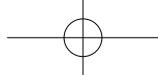
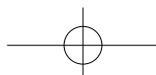
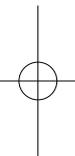
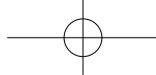
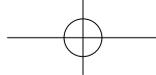


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FOREWORD

The responsibility of states to provide legal aid as a means of ensuring equal access to justice has become an international norm. After decades of relying on attorneys to provide pro bono legal assistance to the poor, Taiwan established its legal aid system in 2004 with the promulgation of the Legal Aid Act and the establishment of the Legal Aid Foundation (LAF). As a publicly funded non-governmental organization, the Foundation expanded quickly and within one year there were nineteen branch offices nationwide serving Taiwan's 23 million people.

Since our beginnings, we at the Legal Aid Foundation have firmly believed that international exchanges and dialogues are vital to the development of a sound legal aid system. As a young organization, we are especially eager to learn from the experiences of other countries so that we may improve our relatively new system in Taiwan. We are also driven by the conviction that legal aid work can play an important role in the advocacy of human rights, furtherance of the rule of law and support for social justice, and that international cooperation on such issues will facilitate the attainment of these goals.

Thus, we decided to host the 2005 International Forum on Legal Aid in Taipei this past October 15th through 17th in order to bring together legal aid practitioners and researchers from around the world. The conference theme of "Legal Aid Fundamentals and Future Developments" drew attention to both the basic elements of a workable legal aid system and the challenges facing legal aid in the 21st century. Transnational migration and the growth of pluralistic societies, the spread of international law and human rights norms, and technological advances in communication all present new challenges and opportunities to the practice of legal aid. In this context, delegates shared their countries' unique experiences and together examined the fundamentals of legal aid – organization, needs assessment, access, quality and the role of lawyers.

This book is a record of the Forum's papers, speeches and discussions. We hope it is a useful reference for our colleagues in legal aid as we all strive to create and improve systems and services so that access to justice is truly realized. We note now our sincere gratitude to all of the speakers and participants who contributed their words and wisdom at the Forum.

Tun-Ming Tsai

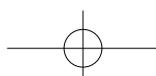
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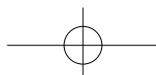
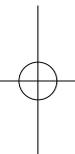
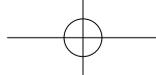
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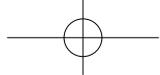
About the 2005 International Forum on Legal Aid

The 2005 International Forum on Legal Aid was held in Taipei, Taiwan on October 15-17, 2005. Hosted by the Legal Aid Foundation (LAF), the conference brought together over 260 attendees from Taiwan and abroad, including delegates from Australia, Cambodia, Costa Rica, the Czech Republic, Germany, Hong Kong, Indonesia, Japan, South Korea, Malaysia, Philippines, South Africa, Thailand, the United Kingdom, the United States and Vietnam. For three days, participants engaged in lively discussions on important topics in legal aid and forged meaningful bonds for future cooperation and exchange.

Taiwan's Chief Justice and President of the Judicial Yuan, Yueh-sheng Weng, explained in his opening remarks the significance of the Forum: "Today's host, the Legal Aid Foundation, has been in operation for only over a year and still needs to improve many of its systems and practices. This International Forum on Legal Aid is an ideal platform for learning about advanced systems and good practices in legal aid. Moreover, if this Forum becomes a regular medium for international dialogue and cooperation, then the goal of realizing access to justice could be furthered." In line with these expectations, the design of the Forum's agenda featured four main elements: a forward-looking vision, an exploration of the elements of a workable legal aid system, an introduction of legal aid in Taiwan, and the goal of furthering international exchange.

The keynote speech on "Global Trends in Legal Aid" provided a fitting context for the Forum's discussions on the basic elements of a workable legal aid system. Alison Hannah, Director of Legal Action Group, a London-based advocacy and research organization, identified several important challenges and opportunities facing legal aid systems around the world. One significant development is the fact that governments around the world are increasingly assuming the responsibility of funding and even administering legal aid. This was an encouraging trend for conference participants from countries that rely on NGOs to provide legal assistance to the poor but are lobbying for greater financial support from the state. In countries with a longer history of legal aid, the question of how to define and implement quality standards is garnering growing attention as policymakers and practitioners realize that the mere provision of legal services is not sufficient to truly assist those in need. There is a growing consensus that quality must be a centerpiece of any effective legal aid system, Hannah pointed out. Another trend across the board was the increasing use of technology to provide innovative services as a means of both expanding access in rural areas and saving costs during times of budgetary constraint.

The Forum's subsequent panels investigated four major components of legal aid: "Organization," "Need Assessment and Access," "Quality" and "Role of Lawyers." The first panel looked at how to structure and manage a legal aid system to ensure its effectiveness and maintain its independence. Speaking on this topic was Mike Jeacock, Executive Director of England's Legal Services Commission (LSC), one of the largest and most well-funded legal aid bodies in the world. Drawing from his managerial expertise, Jeacock explained how the LSC uses its annual budget of over 2 billion British pounds to serve 2 million people each year in England and Wales. Yet even with a budget of such magnitude, the LSC has had to devise cost-cutting measures so that resources are directed to those most in need.



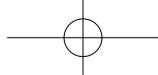
2005 International Forum on Legal Aid

The question of how to identify need and provide relevant and meaningful services is the centerpiece of any legal aid organization, and this topic was the focus of the second panel, "Need Assessment and Access." Julie Bishop, Director of the National Association of Community Legal Centres, shared Australia's experience with providing services through community organizations to a wide range of clients, including immigrants, laborers, mental health patients, victims of domestic violence and even environmental activists. In contrast to the state's legal aid structure, community legal centres can closely identify with the needs of the local community and thus are able to deal with clients' problems in a more holistic manner. In her presentation, Bishop narrated many inspirational examples of how this approach to addressing need has been able to attain meaningful and tangible results for poor and disadvantaged groups throughout Australia.

Next, the panel on "The Quality Agenda" highlighted a concern on the minds of many legal aid practitioners: how to define, measure and ensure the quality of the services one provides? Helaine Barnett, President of the United States' Legal Services Corporation (LSC), asserted that "a basic component of quality is whether our work is making a difference in the lives of individual clients." Quality is sometimes difficult to measure in quantitative terms, and more in-depth qualitative means of measuring case outcomes are needed. The American LSC is undertaking a series of steps to implement quality standards in the programs it funds throughout the nation. In short, as Barnett stated, "access to a lawyer is not, in and of itself, access to justice." This belief was echoed by many other participants throughout the conference, reflecting the urgency of quality issues on people's minds.

In the fourth panel on "The Role of Lawyers," Attorney Futoshi Toyama explained how recent reforms in Japan will change the role of lawyers in the nation's legal aid system. In the past, legal services were provided through the bar associations; starting in 2006, the national government will assume responsibility of providing legal aid through the Japan Legal Services Center (JLSC). This new system will expand the scope of legal aid by employing staff attorneys to work in areas that the private bar associations are unable to serve. Speaking from his position on the Central Board of the JLSC, Toyama expressed concerns over whether the government's new role in legal aid could affect the autonomy of legal aid practitioners. Aside from issues of independence, another concern shared by many conference participants was the question of how to keep lawyers inspired and enthusiastic about their work.

These four basic elements of legal aid were further explored in the four sessions of Country Reports, which provided a fascinating look at a wide variety of legal aid systems and the unique issues that each country faces. Dunstan Mlambo, Chairman of South Africa's Legal Aid Board, explained how the practice of legal aid in his country is affected by the history of apartheid. Germany's legal expenses insurance system was presented by Matthias Kilian of Germany's Cologne University, who pointed out that this alternative model of legal services risks excluding lower-income classes. Representing Legal Aid of Cambodia, Ouk Vandeth was a personal example of how lawyers in post-war Cambodia are providing legal aid as part of a larger struggle to secure human rights in their country. In all, the variety of perspectives in each country report was enlightening to conference participants and stimulated lively discussions.

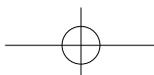
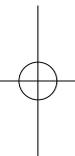
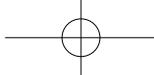


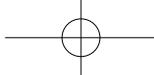
Taiwan's legal aid experience was introduced to conference participants at several points in the agenda. The opening ceremony of the Forum began with a documentary film on the history of judicial reform in Taiwan. The next day, Jerry Cheng, Secretary General of the Legal Aid Foundation, gave a speech on the development of legal aid in Taiwan and its future prospects. In the past, legal aid was provided by non-governmental organizations and bar associations. Starting in 1998, several prominent human rights groups along with the bar association lobbied for a comprehensive, nationwide legal aid system. This goal was attained in 2004 with the establishment of the LAF, which grew into 19 offices within only a year.

Conference participants later had the opportunity to visit LAF's Taipei Branch Office, where many were impressed by the speedy processing of applications and the use of audio-visual equipment to interview legal aid applicants in Taiwan's outlying islands of Kinmen and Matsu. They also networked with Taiwanese NGOs during the "NGO Symposium," which examined the relationship between NGOs and legal aid organizations, as well as the role of legal education and policy reforms in legal aid work. Taiwanese NGO representatives discussed their relationship with the LAF, while international participants shared many insights on the role of grassroots organizations in their home countries.

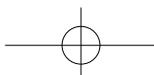
On the final day of the conference, Forum speakers were invited to the Presidential Office for a visit with Taiwan President Chen Shui-bian, which demonstrated the government's commitment to legal aid. President Chen was elected to office on a platform promising judicial reform and advancement of human rights, and Taiwan's Legal Aid Act was promulgated in January 2004 during his first term. During the visit, President Chen affirmed his view on the state's role in legal aid: "It has been my firm belief that protection of human rights forms the core and foundation of a constitutional democracy and that the government exists to enhance and protect our people's rights. It is the responsibility and obligation of a democratic government to establish, support, and promote a legal aid system."

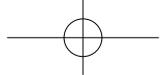
In the Forum's concluding Roundtable session, conference participants reflected on the discussions of the past three days and expressed their common views in the "Joint Statement of the 2005 International Forum on Legal Aid." The Joint Statement outlined fundamental principles, current trends and common goals in the legal aid field. With regard to objectives for the future, conference participants expressed their commitment to promoting international exchange and their interest in regular international legal aid conferences and frameworks for further cooperation. The Statement was unanimously passed by a round of applause and then signed by participants in a grand finale, bringing the Forum to a successful close.





KEYNOTE SPEECHES





KEYNOTE I: Global Trends in Legal Aid



By Alison Hannah
Director, Legal Action Group
England

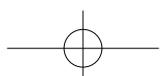
Looking at different countries' legal aid systems is a fascinating exercise. Every system is different and unique - even in the UK, there are three distinct and independent schemes. Each one has developed it to suit its own particular legal, social, political and economic circumstances, and has its own concerns and tensions.

The meaning of 'legal aid' itself can mean different things in different countries. For this paper, the definition used is that given in the *New International Directory of Legal Aid* (by Peter Soar, 2001, commissioned by the International Bar Association and published by Kluwer Law International): 'the provision of legal advice or assistance to anyone in a particular jurisdiction who is deemed to be unable to afford it in a situation in which it is in the public interest to provide such advice or assistance from state resources'.

From the mass of information available, some common themes emerge which suggest trends for the future. They include:

1. Making a reality of 'rights': for example, where there is a formal commitment to equal treatment under the law for people who cannot afford lawyers but it has not previously been reflected in practice.
2. Increasing state involvement in the provision and administration of legal aid, through strategic planning and managing delivery of services
3. Researching the need for legal and advice services
4. Developing quality standards for legal aid services
5. Financial limits for legal aid provision that constrain the range and extent of services available
6. Investing in development of new methods of delivery of services to complement the traditional face-to-face service.

This is not a comprehensive list. There are many other areas of legal aid where common themes may be identified, but a brief overview of these six will form the basis of this paper.





1) Making a reality of 'rights' -The need for an effective legal aid system in protecting human rights and a fair trial

There is an international awareness that access to justice is a fundamental human right in relation to criminal law. People should not be prevented from obtaining justice – especially where their life or liberty is threatened – by lack of the means to pay for a lawyer to represent them.

A number of countries have constitutions which apparently guarantee access to justice for people who cannot afford to pay for their own lawyer, particularly in criminal cases. However, this constitutional right is not always enforceable in practice, for a number of reasons, such as a shortage of lawyers or lack of public funds to pay them. There is a growing movement, (for example, in Russia and Brazil) to identify these inadequacies and then develop the means to make the constitutional guarantees a reality,

In Europe, there are 45 signatories to the Convention for the Protection of Human Rights and Fundamental Freedoms (The European Convention). These include eight states from the former Soviet Union block which joined the European Union (EU) in 2004.

Article 6 of the Convention sets out the right to a fair hearing, including the right for a defendant in criminal proceedings, 'if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require'. Unlike criminal proceedings, there is no express right to legal aid for civil cases, although the European Court has ruled that, depending on the complexity of the case and capacity of the person to represent themselves, there may be a right to legal aid in some circumstances.

The way in which (or whether) the signatories meet this standard has been very different. The countries from the former Soviet Union block had a system of mandatory appointment of a defense lawyer in some circumstances – but the appointed lawyer might not be a criminal practitioner, and the service provided could be ineffective and inadequate.

For those recently joining the European Union, or hoping to do so, there has recently been much change in legislation and legal aid delivery to meet the higher (though not uniform) level of legal aid provision that exists in Western Europe. Romania, the Czech Republic and Bulgaria have recently passed measures to extend the right to legal aid for defendants in criminal proceedings. In these and other East European countries the right to legal aid in civil and administrative cases has been extended too.

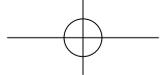
While the new or aspiring members of the EU are improving their systems because of pressure from the EU, they are examples of countries seeking to make a practical reality of a commitment to provide a fair hearing.

2) Increasing state involvement in the provision, administration and delivery arrangements for legal aid services

A number of countries have had – or have – legal aid systems which are run by the legal profession. This seems to be less common, as governments increasingly fund and establish a legal aid system, then continue to develop strategic plans for its delivery.

For many countries with established legal aid systems, the state decides the main principles on which they operate, though it often delegates arrangements for operational management to a separate body.

Many European countries fall into this category and England is perhaps a good example



of the degree to which legal aid plays a part in government policy on access to justice. The current legal aid system came into effect with the Access to justice Act 1999, which established (and funds) the Legal Services Commission (LSC), a non-department public body, to run the legal aid system on the basis of principles set out in the Act. The government's strategy, drawn up by the Department of Constitutional Affairs, includes proposals for developing the legal aid system, and the LSC's corporate plan sets out ways in which this will be achieved.

Similar arrangements exist in:

- Finland (where legal aid is governed by a Legal Aid Act and administered through state legal aid offices)
- Ireland (where an independent body, the Legal Aid Board administers the scheme)
- The Netherlands (where the 1994 Legal Aid Act introduced Legal Aid Boards to manage the system)
- New Zealand (where the legal aid system is run by the Legal Services Agency, whose Board is appointed by the Minister of Justice.)
- South Africa (where an independent Legal Aid Board administers the system)

Federal systems have their own variations on this theme. The federal government may share responsibility with the states and independent legal aid bodies – Australia is an example here. However, in Canada the national government contributes to the funding of legal aid but the provinces and territories operate their own legal aid plans. In the USA responsibility for legal aid is shared between many organisations, with no uniform provision.

Looking to the future, though at the moment there is no legal aid reform immediately planned for Turkey, it is a country which may well change towards greater government intervention, particularly if it is to become an EU member. It has a limited legal aid system which has been operating for criminal defendants since 1992. While funded by the government, the service is run by the local Bar Associations through a number of legal aid bureaus. There is no uniform service, there are problems of poor pay and quality and a lack of consistency and accountability. There is consequently a demand for the government to develop a legal aid policy, rather than leave it up to the Bar Associations.

3) Researching the need for advice and legal services- a move towards evidence-based policy

There is increasing interest in researching the need for legal advice and assistance. In England, Professor Hazel Genn at University College, London, carried out some ground-breaking research (in *Paths to Justice*, published in 1999 by Hart Publishing Co). This showed that far from us having a 'compensation culture' and looking to litigation to resolve problems, one in twenty people surveyed had some sort of legal problem but took no steps to resolve it, mainly because they did not think anything could be done, or did not know how to get help. A further 35% tried to solve the problem themselves, without seeking help. The research also showed that having one sort of problem - for example, an employment problem - was likely to lead to a cluster of other problems (with money, consumer or



property).

Professor Genn's methodology has been further developed since 1999. A further research project, *Causes of Action: Civil law and Social Justice* (Legal Services Commission 2004) found that in one in five 'justiceable' problems (for which a legal solution is appropriate), no action is taken. This research is increasingly used to inform government thinking about the future of legal aid, which in turn affects the LSC plans.

England is by no means alone in trying to find out more about the situations where advice is needed and the sort of advice and help best suited to people in these situations.

In Australia the 2004 Commonwealth of Australia Senate Inquiry into legal aid discussed the lack of information about the nature and amount of unmet need. In Canada, the federal government funded a major research project a few years ago, to examine unmet need for criminal legal aid and some civil legal aid issues. In criminal cases, it showed that surprising numbers of defendants were unrepresented and had difficulty getting access to legal aid services. As a result, from 2003 – 6, increased funding is being given to territories to increase criminal legal aid spending to meet this need. And in New Zealand, the Legal Services Agency has researched unmet legal needs, and also used this information to make decisions about the design, delivery and funding of services.

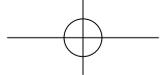
4) The development of quality standards and systems

Looking for ways to ensure that public funding for legal aid results in high quality services by lawyers, has emerged as a clear trend over recent years. Many countries have devised their own systems for this, and there are a number of interesting initiatives.

Taking the UK to start with, England and Scotland have both been examining ways to ensure high standards of advice for clients. England has perhaps the most complex – and intrusive – system for this, developed over the last 10 years. There are a number of strands to this:

- Solicitors can only do legal aid work if they have a contract with the LSC for this. Contracts are awarded in a specific category of law (for example, crime or family law) and will only be given to firms which satisfy certain conditions.
- The conditions include having a supervisor with sufficient experience and volume in the category of law to meet the LSC requirement.
- The firm, or other supplier of legal aid services, must have obtained the 'Quality mark' to a specialist standard. The standard mainly relates to management proxies, i.e. there are quality assurance systems in place which will should ensure good case and business management
- Suppliers with a contract will be periodically audited to ensure the LSC conditions are met with regard to costing work done (cost compliance audits). Firms which perform badly at audit will lose their contract.

As the audits in particular have proved very unpopular with the legal profession, they are currently being replaced with peer reviews, where independent practitioners, paid for by the LSC, examine files to assess whether the work done (and charged for) was of the appropriate standard. This system for assessing quality is probably more cumbersome – and expensive – than other legal aid authorities impose. It imposes considerably higher



requirements on legal aid practitioners than their privately paid colleagues, and significantly more than the professional body (which imposes an ongoing training requirement as part of continuing professional development on all lawyers).

In Scotland, the system is less onerous – solicitors doing civil legal aid work must register with the Legal Aid Board (LAB), certify compliance with a number of administrative practice requirements and are subject to a peer review of a random sample of legal aid files.

In Northern Ireland, the method of quality assurance has not yet been determined, although is under discussion, as is also the case in the Netherlands. In New Zealand, individual practitioners must show they have a certain amount of training and experience (in terms of numbers of cases/court appearances) before they can take on legal aid cases in a particular category. Without this they must work under supervision of a more experienced practitioner.

South Africa has developed a rather different approach to quality. Training plays an important role, and there are individual quality measures with which case files must comply. Monitoring is done by individual quality reviews (independently verified by the Justice Centres regional office); peer reviews and a system of feedback survey forms from clients on services received – and complaints boxes at Justice Centres for clients to give in written complaints. This client focus aims to enable a better understanding of client need and services received.

In the USA the Legal Services Corporation is a major funder of civil legal services for poor Americans. It has recently become engaged in discussions on the definition and measurement of quality, with a view to developing quality criteria. It already exercises some control by imposing caseload limits.

5) Financial Constraints on legal aid provision

This is an issue for many countries, some of which have capped (limited) legal aid budgets. However much is spent on legal aid services, it is often insufficient to meet demand, let alone need, and the requirement to control costs often limits the range, nature and extent of services provided. This is usually done in two ways - eligibility and scope.

Firstly, legal aid is restricted to people who are less able to pay privately for lawyers, through means testing. Most countries have a means tests to assess financial eligibility for legal aid (though not necessarily in criminal cases).

In addition, most countries also have one or more non-financial tests - for example, through a merits or reasonable test for the case concerned, to decide whether an individual case is deserving of legal aid funding.

Some countries also limit legal aid to a category of clients (for example, people with mental incapacity, disability or minors).

In relation to means testing, there is no one standard measure of eligibility and a wide range of financial eligibility exists. At one extreme, in the Netherlands it is estimated that some 48% of the population are eligible for legal aid, while in Colombia a client must be penniless and in Japan civil legal aid is also only granted to 'indigent' people. In some countries a contribution may be payable, depending on means, particularly for civil legal aid. Occasionally (as in New Zealand) there is a fixed contribution, though this is unusual.



There are often costs recovery rules, so a non-legally aided losing party will have to pay the legal aid costs, or a rule that the legal aid fund will recover its money from a certain amount of financial compensation won by the client.

Scope is also used as a rationing mechanism. Some categories of the law will be outside the scope of legal aid in any event (as personal injury cases now are in England). Legal aid is always available for some categories of criminal cases, though there may be limits as to the seriousness of the case for which legal aid may be granted. Clients may be means tested, or ordered to pay costs. Family cases are not always eligible for legal aid, and there are often limits on the availability of legal aid for civil cases.

In England, where the legal aid budget is capped, the amount available for civil legal aid is determined by the amount spent on criminal legal aid. This need to squeeze spending on legal aid has led the LSC to target resources on those most in need, and look at different ways of dispute resolution. As the judicial process is expensive, there are moves to discourage litigation except as a last resort.

Consequently, there is much interest in alternative dispute resolution processes to divert clients from court-based procedures which are seen as disproportionately expensive. This is the case for other countries too, including the USA, Canada, and Australia, where there is also a focus on ADR and stringent means and merits tests apply to limit legal aid expenditure to the very poorest.

Collaborative law projects in Canada, the US and now in England, look for ways to negotiate solutions for family problems rather than go down the adversarial litigation route.

In Sweden and Germany there is a high incidence of legal expenses insurance, either as a stand-alone policy or as an add-on to household or other insurance. The legal aid system is designed to complement this and legal aid is not available for matters which are covered through legal expenses insurance. In England, conditional fee agreements (with after the event insurance) have now become a controversial aspect of funding civil cases.

Pressure on costs is partly responsible for the final trend:

6) Developing new methods of delivering advice and legal services

Research in the UK and elsewhere has indicated that there is more need for advice and legal services than the current supply of advisers and lawyers can meet. In England there are areas of the country where there are 'advice deserts' and people are not able to find a local legal aid lawyer who is a specialist in the appropriate category of law.

The combination of pressure on costs and the recognition that there is more need for advice than supply, has caused many legal aid authorities to look at new ways to inform and advise people of their rights. In Western countries, that have long established legal aid systems, such as the UK, Canada, New Zealand and Australia, there has been a move away from the idea of universal provision towards a controlled, targeted expenditure of legal aid for those seen as most in need.

England's experience is typical of this trend away from the traditional face to face model of a lawyer- client relationship. It has given contracts to the voluntary sector (non-governmental organisations) where they have the necessary expertise, rather than



moment there is no best model for legal aid, and each country will have to continue its providing legal services through salaried staff (for criminal defense services) rather than private practice. The LSC has set up a national telephone service (CLS Direct) which provides free specialist advice about benefits, debt and education as well as advice on other issues. A website provides information about local advice and legal services and enables people to self-assess their eligibility for legal aid as well as obtain information on various subjects. Educating people about their legal rights and giving them more information is sometimes presented as a way to prevent problems arising or escalating to the point where legal services may be needed. The opposite case can also be made - that it may increase demand for legal services if people become more aware of their rights. The LSC is now examining ways to improve co-ordination of the many different funders and providers of legal and advice services through new centres and networks.

Other countries are also looking at new ways to meet the demand for advice and legal services. In Australia, local legal aid commissions provide free telephone information and referral services and community legal education materials. A new national guide to family law (*Untying the Knots - Your guide to family law*, 2005, National Legal Aid) aims to provide information about the law and the services available to assist with family problems. In Canada a number of provinces and territories have devised new forms of service delivery to maximise resources – including telephone and computer based legal information services and increased public legal education services.

The New Zealand Legal Services Agency funds legal information and education and produces an electronic database of legal information through its website www.lsa.govt.nz. It also produces teaching and education resources on issues such as domestic violence, immigration law, legal aid and accident compensation .

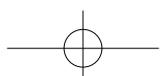
Finland has expanded its telephone legal advice service, provided by public legal aid attorneys based on regional legal aid offices, some of which also provide referral services to other organisations.

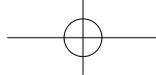
In the USA, the Legal Services Corporation has a grants programme which funds projects which provide access to legal services through new technology and the internet, for self-help information so clients can better represent themselves, for example. On-line chat rooms can help clients discuss their case, or obtain assistance.

Conclusion

Identifying trends in legal aid development to some extent depends on which group of countries is included. There are differences between those countries with a long-established legal aid system and those which are introducing and developing them. Countries which are setting up and developing new systems are working to improve human rights and make access to justice a reality. The first two trends (making rights a reality and increasing state involvement in this) apply most to these countries.

There is a trend for countries with long established systems to move away from the traditional model of lawyers as the sole providers of information, advice and assistance in a court-based model, towards new ways of assisting people to solve legal problems. They are particularly concerned over issues of quality, cost control and developing new ways to meet the need for advice and legal services.





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There is an interesting question as to where the two movements will meet. At the moment there is no best model for legal aid, and each country will have to continue its search for the system which fits its own circumstances best.

However, one other significant development over the last ten years or so, is an increasing interest in sharing information between different countries. There are more international conferences and opportunities to share experience through publication of website reports which are publicly available. This gives us the best opportunity so far for countries to exchange information and ideas, and work out ways to deliver legal aid services which provide best value for funders as well as accessible, appropriate and high quality services for clients.



KEYNOTE II: Legal Aid in Taiwan and Future Prospects



By Jerry Cheng
Former Secretary-General,
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Translator: Chi-chan Lin

I. The legal aid system prior to legislation

A. Overview

Prior to the enactment of the Legal Aid Act in 2004, there basically was not a comprehensive legal aid system. According to the government, other than public defenders' services in criminal compulsory defense cases, legal aid was nothing more than legal consultation. Rarely did the government provide legal representation or defense during court proceedings. The system of public defenders established previously mostly existed only in form.

B. Governmental departments

Legal aid services provided by county level governments were limited to consultation only.

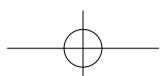
The Council of Labor Affairs subsidized the legal fees incurred in proceedings between employers and employees caused by factory closures. The Council of Indigenous People partially subsidized the legal fees for citizens of indigenous background. The Ministry of the Interior provided assistance to local governments and subsidized Attorneys' and magistrates' fees for cases related to sexual assaults. The Ministry of National Defense contracted external Attorneys to provide legal consultation for military personnel and their family members.

Legal aid given by the methods above was very limited and not widespread.

C. Non-governmental organizations:

However, attempts for change were made by non-governmental organizations, such as:

- In 1973, the Taipei Legal Aid Center was established. It attempted to employ a full-time Attorney dedicated to providing trial services for the poor. The center ceased operations due to financial reasons.
- University Legal Services Associations: The Legal Services Association of the National Taiwan University has been operating since 1979. Most law departments in other universities also have legal services associations that offer legal consultation services. However, court representation was unavailable.
- Individual pro bono attorneys who offered their services in the fields of women, labor, indigenous people, environmental protection and criminal injustice. However, due to restricted resources, services were limited.
- Local Bar Associations offered legal consultation services. The Taipei Bar Association provided free representation for defendants subject to death penalties on the ground





of human rights. It also offered some court representation services.

- Also, the Prevention of Sexual Harassment Act states that legal aid is to be provided to victims of sexual harassment. The legislation has enshrined the essence of legal aid and went a long way in protecting the rights of victims of sexual harassment. Both of the later enacted Domestic Violence Prevention Act and the Crime Victim Protection Act have the legal aid mechanism mentioned above. However, a comprehensive legal aid legislation was still outstanding.

II.Movement to Legislate

A.Difficulties Faced by the People

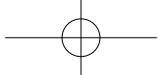
Before the enactment of the Legal aid Act, the more vulnerable sectors of the population often faced three major obstacles when they became involved in legal disputes. These obstacles prevented them from obtaining justice.

- Attorneys' fees: attorneys' charges were usually unaffordable by the general population.
- Adjudication fees: in Taiwan, the adjudication fees in civil lawsuits were usually 1 or 1.5% of the amount of damages claimed. These were sometimes unaffordable by the general public. (The legal aid system was introduced later, and the adjudication fees increased by 10%. There are now other adjustments.)
- Security in proceedings for injunction: in Taiwan, to secure the rights of the winning plaintiffs, it is necessary to sequester the defendants' assets. Contemporary examples show that the securities payable in these proceedings are usually one-third of the amount of damages claimed. This was also generally unaffordable by the general public.

B.The movement to legislate began in 1998

In order to overcome the three obstacles mentioned above and secure the rights to litigation and equality for the people in accordance with the constitution, the Judicial Reform Foundation, the Taipei Bar Association, and the Taiwan Association for Human Rights, represented by attorney Joseph Lin and myself, convened a promotion group which involved attorneys and scholars, and held meetings regularly each month to research and evaluate the legal aid systems in other countries. With the enthusiastic participation and research of the above people, the draft of the community version of the Legal Aid Act was finalized within 2 years and was put before the Legislative Yuan by Senator Chiu. The Ministry of Justice also convened its own drafting committee (of which I am also a member) pursuant to the conclusion reached at the National Judicial Reform Conference, and finalized its draft after 25 meetings. On the basis that the operation of legal aid relates to the affairs of the Judicial Yuan, the matter was transferred to the Judicial Yuan and it was asked to begin its draft. The Judicial Yuan took over on July 1, 2000 and commenced its drafting committee. The draft was finalized after 10 meetings and was presented to the Legislative Yuan in August 2001.

From July 14, 2003, the Judicial Reform Foundation, the Taipei Bar Association and the Taipei Society formed an alliance lead by Professor Hai-Yuan Chu and the Chairman of the Organizing Committee, Chuan-Yueh Chen, to reform three laws, including the Legal Aid Act, and to pursue equal access to the courts, quality adjudication and an efficient



judicial system. Members of the alliance lobbied their cause in the Legislative Yuan, sought and received unanimous support from legislators. When the Directorate General of Budget, Accounting and Statistics questioned legal aid funding, the alliance turned to the President Chen Shui-Bian and Premier Yu Shyi-Kun. The alliance raised its agenda and sought legal aid funding. In response, the alliance received strong support from President Chen and the President of the Executive Yuan, and also the promise that the Executive Yuan will contribute NT50,000,000 dollars each year in addition to the Judicial Yuan's budget.

III. The Post-2004 Legislation System

Taiwan's current legal aid system is multi-tracked and un-unified:

A. On legal consultation

In Taiwan, resources for legal consultation are comparatively sufficient, except for perhaps the offshore islands and remote villages. Local county level governments, local bar associations, legal services associations in universities, some of the legislators, some non-governmental organizations, are all bodies that provide legal consultation services.

For this reason, and in order to better integrate resources and manage funds more effectively, the Legal Aid Foundation generally does not provide legal consultation services, except on offshore islands and in remote areas.

B. Criminal compulsory defense cases

The public defender system for compulsory defense of criminal cases will continue. Local bar associations will still have the responsibilities to enforce the compulsory defense system. The Legal Aid Foundation will also provide assistance for compulsory defense. We hope our assistance will lighten the public defenders' burden, and improve the quality of defense and secure defendants' rights.

C. Legal aid in civil proceedings

Because of the establishment of the Legal Aid Foundation, assistance in civil proceedings are now provided nationwide. Furthermore, specific population groups such as labor, indigenous people, and victimized women can also receive assistance in civil proceedings from the Council of Labor Affairs, the Council of Indigenous People, and the Ministry of the Interior. The number of cases in which assistance was given, however, was below 200.

In addition, third hearings in civil proceedings in the Supreme Court now require compulsory legal representation. This means that a financially eligible party can now seek assistance at the Supreme Court. The Supreme Court will notify the Foundation, and ask the applicant to apply for legal aid at the Foundation.

D. Administrative proceedings

Basically, only the Legal Aid Foundation provides comprehensive assistance in this kind of proceedings against the government.

IV. Legal aid system at the Foundation

The establishment of the Legal Aid Foundation became the first nationwide and centralized Legal aid institution that provides comprehensive legal aid work in Taiwan. The



establishment has finally secured the people's right to fair litigation and equality. Therefore, an introduction of the operating framework of should be in order, so delegates from other nations can fully understand the current operation status of Legal Aid Foundation:

1. **Comprehensive and widespread legal aid:** Areas of services include civil, criminal and administrative proceedings.
2. **Multi-faceted legal aid:** Consultation, drafting legal document, representation for mediation and settlements, representations or defenses for proceedings.
3. **Dual track system:** Co-existence of legal aid and public defenders systems.
4. **Recipients of aid and eligibility:** there are two main types of receivers of the Foundation's services:
 - The financially eligible: for people with limited economic resources. Those seeking aid must satisfy two conditions: they must be financially eligible, and their income and assets fall within the standards set by the Foundation. (See Appendix A). The other is to provide reasons for the case.
 - Compulsory defense cases: For compulsory cases, financial factor shall not be taken into account. However, cases shall still be audited for reasons.
5. **Foreigners:** As long as they entered the country legally, they are eligible to apply for legal aid.
6. **The Foundation bears the attorneys' pay:** In principle, attorneys are paid by cases. They are paid by compensation in extraordinary cases. No commission shall be taken. The usual payments from the Foundation to attorneys range from NT 20,000 to 30,000 dollars per case. More complex cases or cases in remote locations might see an increase to NT 40,000 dollars per case. The payments are about half to one third of market prices. (See Appendix B)
7. **Guarantee certificates:** if an injunction is necessary for the recipients of legal aid, he or she can apply to the Foundation for a guarantee certificate. If granted, the receiver will not have to pay the security required for an order for injunction.
8. **Adjudication fees and other necessary expenses:** the Foundation bears the adjudication fees and other necessary expenses for the recipients of legal aid.
9. **Recipients of legal aid generally are not required to refund any fees or expenses incurred by the Foundation.** However, if a recipient is awarded more than NT 500,000 dollars as a result of the Foundation's assistance, then he or she is required to pay back part of the assistance given. If the damages recovered is more than NT 1,000,000 dollars, then the recipient is expected to pay back all of the assistance given by the Foundation.
10. **The Foundation assigns applications mainly to attorneys in private practice:** Ever since its establishment on July 1, 2004, the Foundation has assigned all legal aid cases to practicing attorneys outside the Foundation. After its first anniversary, the Foundation will begin to assign cases to a small number of staff attorneys.
11. **The Foundation has the right to send attorneys for disciplinary actions.**
12. **Method of examination:** there is a three-member Examining Committee at each branch office, its members being attorneys, Judges or public prosecutors.



After a face-to-face interview with the applicant, the chairing commissioner holds a meeting with the other two commissioners to decide whether to grant legal aid. Applicants are being examined for their financial conditions and the merits of their cases.

13. The Foundation is publicly-funded but operated by civilians: The funding of the Foundation is provided by the Judicial Yuan, but managed independently by the Foundation.

14. Independence: the Foundation's Board of Directors consists of five members of the government and eight civilian members, of which four are attorneys.

V. Legal Aid Foundation - Organization

A. The governing authority of the Legal Aid Foundation is the Judicial Yuan.

The Judicial Yuan provides the Foundation with funding and supervises the Foundation's operations.

B. The Foundation is directed by two unpaid decision-making bodies: the Board of Directors and the Board of Supervisors.

The thirteen-member Board of Directors consists of five government officials, four attorneys, a representative of the indigenous people and three scholars. The Chairman is Professor Tung-Ming Tsai. There are five Supervisors on the Board of Supervisors, and the former Judge Sen-Yan Sun is currently the Chairman.

C. There are 19 branch offices in Taiwan.

The Foundation established branch offices during the year in three stages, and there are now 19 branch offices in Taiwan. Essentially, branch offices have been set up near District Courts around Taiwan. The branch offices are lead by Directors and Executive Secretaries who are enthusiastic local attorneys.

D. Administrative Structure

The Foundation's Secretariat is led by the Secretary-General, and consists of three Departments and two Offices: the Legal and Business Affairs Department, the Public Promotion Department, the Administration Department, the Office of Financial Affairs and the Office of Information Technology. There are 23 staff at the Secretariat, and 118 nationwide.

E. Unpaid specialist committees

The Foundation formed three specialist committees and invited scholars and attorneys to become members. These committees are the Legal Affairs, Research and Development Committees.

F. The Examining Committee and the Review Committee.

The decision to approve or refuse an application is made by three examining commissioners of the branch office sitting in Examining Committee. Currently there are 1313 examining commissioners, who are attorneys, judges or public prosecutors. The Review Committee reviews the appeals submitted by dissatisfied applicants in a panel of three commissioners. Currently there are about 134 review commissioners.

G. Volunteers, trainee attorneys and student interns.

Currently, there are 387 staff who undertake unpaid voluntary work and 199 trainee



attorneys who assist in recording the results of application interviews. The Foundation also provides opportunities of internships for students.

H. Legal aid services providers.

Currently there are 2316 practising attorneys providing legal aid services in Taiwan.

VI. Legal Aid Foundation – Business Activities

A. More than 10000 applications were made, reflecting the high demand for legal aid services.

The Foundation has received about 17889 applications since July 1, 2004. After examination, about 7640 cases were assigned to attorneys, and about 4272 applications were for legal consultation. They add up to more than 11,000 applications in which legal aid was granted (see Table 1).

B. The approval rate of 61.5% demonstrates that it is easy to gain assistance:

The Foundation approved 7,640 applications and refused 4,773 cases. Excluding cases for legal consultation, the average approval rate was approximately 61.5%, which means that more than 60% of the applicants have been aided by the Foundation. This illustrates that it is not difficult to receive the Foundation's services (see Table 2).

C. In its first year, the Foundation issued 161 guarantee certificates in lieu of more than NT 70 million dollars of security:

To date, the Foundation has issued 161 guarantee certificates under section 65 of the Legal Aid Act, saving eligible applicants from paying a total of NT 76,529,498 dollars in security in proceedings for injunction, the average security guaranteed per certificate being NT 475,338 dollars. The total amount secured by the guarantee certificates was as high as NT 298,615,786 dollars (see Table 3), representing an average of NT 1,854,756 dollars per certificate. These are very significant figures.

Through acquiring a guarantee certificate from the Foundation, an eligible applicant in financial difficulty will have the ability to file an injunction prior to initiating court actions against debtors. Due to the establishment of a system of issuing guarantee certificates, financially disadvantaged applicants are protected from not being compensated when they win their lawsuits. Applicants also may use the system to encourage defendants to settle. However, according to Table 3, some of the Foundation's branch offices had not issued any certificates; and except for the Taipei and Hualien branch offices, other branch offices had a very low utilization rate. In the coming year, each branch office should issue guarantee certificates without hesitation for claims having favorable prospects of recovering damages. In this way, the purpose of designing the system will be better fulfilled.

D. The majority of the applications are made by labor and the unemployed, amounting to about 70% of the total applicants:

As shown in the Table of Applicants' Occupations, about 70% of the applicants were the unemployed (47.93%) and labor (21.45%) (see Table 4). In the approved cases, 50.18% of them were applied by unemployed applicants, followed by physical laborers at 23.31%. This illustrates that a majority of the legal aid applications made and approved by the Foundation are applied by unemployment applicants or physical laborers (see

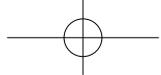


Table 5)

The ratio of the approved cases in different occupations ranges from 51% (civil servants and teachers) to 66.93% (labor). The approval rate for labor (66.93%) is about 5% higher than the average approval rate of 61.5%. According to this data analysis, the aided cases which have been applied by labor (physical laborers) seem to pass means and merits assessments (please refer to attached table 6 for detail).

E.Litigation representation and advocacy were the main legal aid services sought. They amount to 79% of the total aided cases and only 2% were assistance in mediation or settlement.

In the approved cases, 50% of them were assigned to attorneys who acted as litigation or advocacy representatives. Only 1.47% of the cases requested assistance in mediation or settlement, and the remaining cases were for legal consultation and the drafting of legal documents (see Table 6 for detail). Excluding legal consultation, the number of cases assigned to attorneys to act as litigation or advocacy representatives were 78.55%. This shows that litigation representation is the main type of legal aid sought by applicants (see Table 7).

Only 1.47% of all the aided cases were for mediation or settlement (175 cases). If the number of cases for legal consultation were deducted, it was only 2.29%, a very low ratio. However, Table 8 for the ratio of "the results of civil cases closed" shows that the successful mediation and settlement cases totaled 22.15% of all closed civil cases. This shows that assigning cases to legal aid attorneys still had the effect of facilitating mediation or settlement.

F.The number of applications terminated or revoked was 3.09% of the approved cases (including full and partial aid).

The number of cases which was approved but subsequently revoked (30 cases) or terminated (207 cases) was merely 1.4% of the total number of applications (see Table 9). However, on the basis of the total number of full and partial aid cases (7,640 cases in total, excluding applications for legal consultation), the number of cases revoked was about 0.39% and the number of cases terminated was 2.7% (see Tables 10 and 11).

G.Most applicants learned about legal aid from the mass media, and 40% of the applicants became aware of legal aid from the referral or advice of other organizations or groups.

As shown in Table 12, 58.14% of the applicants learned the message of legal aid from the mass media and family and friends; but 41.85% of the applicants have also been referred or advised by community organizations and the courts (13.36%); by attorneys (10.74%); by social welfare groups (9.87%) and by governmental agencies (7.88%). This illustrates that the Foundation has made significant impact through its publicity work in the mass media. Also, through the horizontal co-operation and communication that the Foundation has made with governmental agencies and community organizations, the majority of the applicants have been able to learn about legal aid through the referral or advice from community organizations.

H.16.72% of the cases refused submitted for review

According to the ratio for "the number of refused cases submitted for review" against "the total number of cases refused" (see Table 13) for each branch office, 16.72% of



the cases refused have been reviewed. However, a comparison of each branch office's figures shows considerable differences among branch offices. For instance, the Hsinchu branch office had the lowest review rate of 7.07%, but the ratio is as high as 26.48% at the Taichung branch office. Further analysis is required to dissect the reasons why the review ratio was not high.

I. Amongst the decisions reviewed, 13.9% of the original decisions were revoked

According to Table 14, the ratios of the "review outcome of the refused cases" against "the number of refused cases submitted for review" for each branch office showed that review commissioners upheld most of the original decisions, which was about 84.46% of the total decisions reviewed. This illustrates that the majority of the original decisions were respected by review commissioners.

J. Analysis of cases closed:

- **In civil cases, 74.95% of applicants have received substantial assistance from the Foundation. 75.5% of the applicants in litigation cases closed received good results.**

Amongst the civil cases closed, the Foundation provided assistance in the drafting of legal documents in 400 cases, which is 30.37% of the total number of cases closed. Adding cases in which damages were fully recovered (22.43%) or partially recovered (6.69%) and cases closed by successful mediation or settlement (30.37%), 74.95% of the applicants received good results. In terms of the outcome of court proceedings, 558 cases were closed by court judgments, and among them 58.2% (325/558) won the court action, 17.3% (97/558) partially won, and only 24.5% of them were lost. In other words, about 70% of the applicants received good results with the help of the Foundation (see Table 15).

- **In criminal cases, more than half of the applicants benefited from the assistance provided by the Foundation**

Amongst the criminal cases closed, 25.98% were assistance in drafting, and 2.78% were closed by successful mediation or settlement with the assistance provided by the Foundation. Analyzing from litigation results, 704 cases were closed by court judgment (386 favorable and 318 unfavorable cases), in which more than 50% (386/704) of the cases were favorably closed. In other words, in addition to assistance in drafting, mediation and settlement, more than half of the applicants obtained results that were more favorable than original convictions with the assistance of the Foundation (see Table 16).

- **The Foundation's services in administrative cases were mostly drafting services.**

Of the administrative cases closed, 72.09% sought help in the drafting of legal documents, and 2.33% cases were closed after successful mediation assisted by attorneys. Although only 9 litigation cases were closed, 4 of them fully or partially recovered the damages sought (representing a success rate of 44%, but it is the nature of administrative cases to have a higher refusal rate in the administrative court than in the civil and criminal courts). This illustrates that legal aid cases have been obtaining good results with the help of the Foundation (see Table 17).



VII. Legal Aid Foundation -- Publicity

The Legal Aid Foundation is a new organization not yet widely known to the public. The Foundation has therefore been emphasizing its publicity efforts, the purpose being to promote its existence to disadvantaged people.

- 19 press conferences: the Foundation worked with recipients of legal aid and held 19 press conferences in its first year of operation.
- 8 symposiums: in-depth studies of labor, women, aboriginals and foreign workers' issues were carried out at 8 symposiums held by the Foundation.
- TV commercials: good publicity effects were achieved by airing the Foundation's four TV commercials during the free intervals reserved for public services.
- The Foundation's official websites.
- The Foundation's bi-monthly magazines.
- Actively participate in media interviews.

VIII. Legal Aid Foundation – Financial Affairs

A. The Foundation's expenditure between 1 July 2004 and 30 June 2005 was NT 217,978,649 dollars. If capital expenditure of NT 28,748,294 dollars is added, the Foundation's total expenditure is NT 246,726,943 dollars (this was calculated on the cash basis and does not include depreciation and amortization of NT 3,124,242 dollars).

- i. The cost of legal aid was NT 151,584,501 dollars or 69.54% of the budget (including NT 139,984,941 dollars in attorney's fees, NT 10,859,500 dollars in the transportation expenses of examining and reviewing commissioners and adjudication and other necessary expenses in NT 740,060 dollars). Under the Foundation's regulations, attorneys are paid at a lower rate than attorneys in private practice. To control the quality and progress of legal aid cases, the Foundation pays 80% of the remuneration upon assignment and the balance at conclusion.
- ii. Personnel costs: NT 44,609,888 dollars or 20.46% of the budget. This covers personnel wages, overtime pay, performance and year-end bonus, insurance premium, pension and the transportation expenses of the Board's Directors, Supervisors and members of specialist committees.
- iii. c). Administration costs: NT 21,784,260 dollars or 10.00% of the budget. This includes publicity, water/electricity, postage, travel, office items, printing and other general administration costs.
- iv. d). The Foundation began formal operation in July 2004, and its software and hardware facilities were set up between July 2004 and June 2005. The total cost of the assets purchased was NT 28,748,294 dollars. The rate of depreciation of the assets is expected to be between 3 and 15 years and the depreciated value rather than the total costs of new assets are recorded.

B. On average, each taxpayer bears NT 10.8 dollars per legal aid case.

The actual expense of the Foundation in the first year is NT\$246,726,943. Divided by the population of in 2,273,819 Taiwan, each citizen pays NT\$10.8.

C. The cost of each application is NT 4,319 dollars.

The total remuneration for examining and reviewing commissioners was NT10,859,500



dollars. If the personnel cost of NT 44,609,888 dollars and administration cost of NT 21,784,260 dollars are added, the total expenditure was NT 77,253,648 dollars. Divided by 17,889, aided cases, the average cost of examining and administering a case was NT 4,319 dollars.

D. The average remuneration for attorney is NT 18,323 dollars per case.

Based on the total amount of remuneration for attorneys at NT\$139,984,941 in 7,640 legal aid cases, the average remuneration paid in each legal aid case is NT18,323 dollars. With an average cost of NT 4,319 dollars per aided case, the total cost of each case is NT 22,642 dollars.

IX. Legal Aid Foundation -- Quality of services

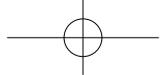
In order to understand the applicants' appraisal of the Foundation and to improve the quality of our services, from January 2005, the Foundation began to survey applicants for feedbacks on the quality of the services they received. Branch offices' staff have been handing out two surveys to applicants: the "Applicants' Opinion of the Foundation" questionnaire and the "Legal Aid Recipients' Opinion of their Attorneys and the Foundation" questionnaire. The two surveys cover a number of issues including the service attitudes of all personnel, examining personnel and legal aid attorneys.

After an application is made, we request the applicants to anonymously complete the "Applicants' Opinion of the Foundation" form and to place them in the questionnaire box before leaving. Between January and June 2005, a total of 4,573 questionnaires have been distributed and 3,150 collected. The validity ratios of male, female and cross-gender are 43.9%, 55.5% and 0.6% respectively, and the missing value is 2.8%.

The "Legal Aid Recipients' Opinion of their Attorneys and the Foundation" forms are enclosed in the Notices of examination results sent to applicants by post. Upon completion, applicants return them to the Foundation in the postage-prepaid envelopes. Between January and June 2005, a total of 4,279 questionnaires have been distributed and 566 collected.

The results of the two surveys are as follows:

- "Applicants' Opinion of the Foundation" questionnaire
 - i.** The applicants' satisfaction with the administrative personnel of the Foundation: 97.7% (see Table 18).
 - ii.** Satisfaction of applicants with service attitude of examining personnel: 96.14% (see Table 19).
- Questionnaires of "Legal Aid Recipients' Opinion of their Attorneys and the Foundation" questionnaire:
 - i.** Notification within 7 days of application: 85.1% (see Table 20).
 - ii.** Cases that do not need re-submitting documents: 66% (see Table 21).
 - iii.** Satisfaction with the legal aid attorneys of the Foundation: 88.6% (see Table 22).
 - iv.** Satisfaction with professional performance of legal aid attorneys: 89.1% (see Table 23)



The Spirit of the Foundation: Approachability, Convenience, Flexibility and Efficiency

The mission of the Foundation is to help the underprivileged members of the public advocate their rights, to establish a fair society, and to realize the spirit of “justice for the people” so that people’s constitutional rights to litigation and equality may be truly realized. As a publicly founded but privately operated organization, the Foundation has been established with government resources but is managed with the boundless vitality of the civic sector. With our limited resources, we hope to offer the best services to indigent persons. We are guided by a service philosophy to be “approachable, convenient, flexible and efficient”, as shown in the following services.

A. Serving a cup of tea to each applicant

When the public apply for legal aid at the Foundation’s branch offices, staff will always offer a cup of tea or water to help the applicants feel at ease and respected.

B. Foundation staff may fill out legal aid applications for clients

According to the Legal Aid Act, staff may fill out application forms for illiterate applicants. With the computerization of the Foundation’s operations, all applications are now input by staff and printed out for applicants to sign, so applicants no longer need to fill out any forms.

C. Appointment system at branch offices

Most applications at the Foundation’s branch offices are arranged by appointments, so applicants and examining commissioners meet as per the scheduled time. In this way, applicants’ time spent on waiting in line is effectively reduced and the examination schedule can be effectively arranged to ensure that applicants have half an hour to one full hour for examination queries and consultation during their application.

To make applications convenient for the client, cases can be approved at any branch office and then transferred to the relevant branch office where the jurisdictional court is located and assigned a local attorney.

In order to offer convenient services, the Foundation does not limit applications to those situated in the same jurisdictional area as the branch office, nor must the applicant apply in the area where his/her household is registered. In other words, applicants may file their applications at any convenient branch office. After an application is accepted at a branch office, it is transferred to the appropriate branch office where the jurisdictional court is. This makes the application process more convenient for clients and helps reduce their travel time.

D. Documentation is not absolutely required

According to Foundation rules, applicants who come to the Foundation to apply for legal aid need to bring relevant documentation with them, such as registration data for the entire household, income and asset schedules of all household members, and documents relevant to the case. However, based on our conviction that we should offer convenient services to the public, the Foundation hopes that under the condition that the Foundation can assess an applicant’s financial eligibility and case merit, preparation of documentation can be reduced to a minimum. Nevertheless, the Foundation is funded by the Government, and the relevant government agencies make specific demands for documentation. As is the case, currently the Foundation still asks applicants to fully



prepare their documents for application. Sometimes this causes inconvenience to the applicant, but the Foundation will try to improve this in the future.

E.Video-conferencing system for offshore branch offices

At present, the Foundation has already established video-conferencing systems in our Kinmen, Matsu and Penghu branch offices. Now, the people in Kinmen, Matsu and Penghu areas may apply for legal aid at their domestic branch offices and have interviews or consultation with examining members on routine days in the week. The results of this mode of operation will serve as important reference when we evaluate the possibility of establishing other long-distance services in other areas in the future.

The video-conferencing system can also be used to communicate between the Foundation's headquarters and branch offices, or between branch offices. For cases that require face-to-face coordination, the video-conferencing system can be used to accomplish the task without spending time on transportation for the sake of convening all concerned persons from around the country. This could considerably improve the Foundation's efficiency and reduce operational costs. Currently, the Foundation is in our initial stage of experimenting with the video-conference system to conduct working meetings between the Taipei branch and offshore branch offices. In one instance, the Secretary-General gave a speech through the video-conferencing system to community elders at the opening ceremony of an offshore branch.

Establishment of the Foundation's video-conferencing system is still in its infant stage. Subsequent development will continue in the coming years. By then, the Foundation will be able to offer the public more convenient and rapid services.

F.Services in evenings and during weekdays

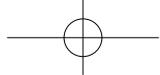
Due to limited staff and examining commissioners at each branch office, the service hours of each branch office are generally limited to normal offices hours on weekdays. However, since the Foundation asks applicants to come to the Foundation in person to file their applications, some branch offices have extended their service hours in order to serve those who could not come in during regular office hours. For instance, since the Taipei branch office covers a larger area and has a relatively sufficient number of examining commissioners, it has extended service hours until 9:00 pm on each Tuesday and Friday, and offers service on Saturday mornings. Hsinchu branch also offers evening service on Wednesday nights. The purpose is to offer the public convenient access to the Foundation so that more people in need can be served.

G.Establishment of a national legal aid phone number

In January 2005, the Foundation established a VOIP (voice-over-internet-protocol) telephone system for the headquarters and all branch offices so that the public can reach all offices through a single phone number. This system also helps distribute amongst all branch offices the workload of responding to telephone inquires. Along with this system, we also created a "national legal aid telephone line" (02-6632-8282, which sounds like "measuring good and evil, [we] help you help you").

G.Establishment of 19 branch offices nationwide within one year

Under the Judicial Yuan's instructions, the Foundation should, within three years, establish branch offices in all cities and counties in which there are district courts. However, after commencing operations, we discovered the urgent needs of the people



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and decided to establish branch offices as soon as possible to facilitate people's access to legal aid. With hard work, the Foundation established 19 branch offices within one year. The 19 branch offices were founded on the following dates:

July 1 2004: Taipei, Taichung, Tainan, Kaohsiung and Hualien

January 10 2005: Ilan, Taoyuan, Hsinchu, Changhwa, and Taitung

June 30 2005: Miaoli, Nantou, Yunlin, Chiayi, Pingtung, Keelung, Kinmen, Mazu and Penghu

H.Immediate examination and prompt notification

To minimize the mental stress on applicants worrying about their legal disputes, the Foundation from the very beginning adopted an immediate examination system and require staff to notify applicants as soon as possible after examining commissioners make their decisions on cases.

Other than the Taichung and Hualien branch offices which employ an indirect examination method, the Foundation has adopted a direct examination system in all other 17 branch offices. That is, at least one of the three examination commissioners interviews the applicant face-to-face and provides legal advice. In other words, we conduct simultaneous consultation and examination, in effect resulting in immediate examination. In the Taipei and Kaohsiung branch offices, where direct examination is adopted, immediately after one examining commissioner interviews applicants, he/she and two other commissioners will discuss the cases. Except for those cases requiring supplementary documents, the commissioners can usually make the decision to grant or deny aid on the same day of application. Under this immediate examination system, applicants find out within two days whether or not aid has been granted.

Due to the limited number of examination commissioners and legal aid attorneys, not all branch offices conduct daily examination sessions. However, each branch office tries to complete examinations within one week (which is still considered direct examination).

I.Computerized operating systems

During the preparatory stage of the Foundation, we were aware of the trend and need for computerization of operations. Hence in May 2004 we began co-operating with Fuhbic Corporation (Taiwan) to develop the first version of our operating software. With urgent need and under tight time constraints, we launched our online computer system within two months on July 1 2004, the day the Foundation was inaugurated. Currently we are preparing the second version of our operating computer system. Our work is scheduled in two phases: the first phase (expected completion by April 2006) will computerize the entire application process, including the interview and review processes for case eligibility and merit, along with back-office logistical and financial support processes. In June 2006 the Foundation will continue with the second phase, which will include appeals procedures, human resource evaluation, performance measurement and referral systems. The total cost is approximately 8.32 million NT dollars.

J.Flexibility - timely amendment of regulations

Since the Legal Aid Act has been implemented for only one year, a sound system is not quite complete. Systems for operations, finance, accounting, personnel and general administration all need to be established. The establishment of these systems cannot be accomplished by groundless imagination. Therefore, the Foundation requires all



staff to actively report any impractical, defective or unregulated aspects of the system so that we can correct and apply our rules in a flexible manner. Only then can we remain efficient in our operations and attentive to the needs of the public.

Future Prospects of the Foundation

In the first year of the Foundation's operations, the emphasis was on increasing our publicity and caseload so that people in need are aware of our services and will utilize them. However, we are also aware that improvement of quality and expansion of our services are important goals for the future. Hence, on March 5 and March 6, 2005, we held a 2005 Planning Conference to discuss this year's goals with members of our specialist committees and the Directors and Executive Secretaries of all 10 branch offices already established by then. Prior to the conference, we also held an internal pre-meeting to discuss our goals for the year 2005. Before submitting the 2006 budget to the Judicial Yuan, the Foundation also held three internal meetings since April on the goals and budget for next year. Suggestions were also made in our Research or Development Committees.

The goals and future prospects of the Foundation are:

A. Provision of a wider range of services

- 1. Expanded services (to remote locations):** Since various kinds of legal consultation resources are available in most places, the Foundation does not provide pure legal consultation (the exceptions are the Hualien, Taitung, Penghu, Kinmen and Mazu branch offices). However, legal resources are insufficient in remote areas and offshore islands, where it is difficult to find attorneys. People there do not know who to turn to when they have legal problems. Because of this, the Foundation will continue our expanded service in which branch offices of the Foundation, working on their own or together with local organizations or college legal services centers, invite attorneys to provide legal service in remote areas and offshore islands, thereby shortening the gap in access to legal sources between urban and rural areas.
- 2. Initiate legal aid to inmates in prisons and defendants in custody:** The Foundation requests applicants or their representatives to be interviewed by examining commissions. However, there are many inmates in prisons and defendants in custody who cannot appoint representatives to make applications on their behalf. Also, many branch offices have expressed the need to provide legal aid to defendants in custody. At the very beginning of establishment, the Foundation had studied the necessity of providing legal aid to prison inmates and defendants in custody, and had discussed the possibility of providing legal aid through video-conferencing systems with the Ministry of Justice. We will continue to work with the Ministry of Justice to ensure the right to counsel for prison inmates and defendants in custody.
- 3. Study and expand non-litigious services to disadvantaged groups:** The work of the Foundation – such as litigation representation, the drafting of legal documents, settlement and mediation – is designed to help people who have legal disputes and face imminent court proceedings or are already in court. However, these are not the only services that attorneys can provide. For example, attorneys can also help people who have trouble with the legal or administrative procedures



in their applications for government subsidies or welfare. However, since people with such needs are often poor, they are reluctant to seek the assistance of attorneys. In order to service these needs, the Foundation intends to start services in non-contentious matters, such as applications for government welfare benefits, as described above

- 4. Initiate the practice of attorney representation at the first police investigation:** Each year, there are around 80,000 to 90,000 arrests made by the police in Taiwan, where there are only around 4,000 attorneys. To represent applicants at police stations, attorneys have to be on call 24 hours a day. At the beginning of our operation, we did not provide this service as other operations were not yet complete and such a service would be a heavy workload for both our staff and attorneys. However, as our regular operations become more mature, we should initiate services to build a comprehensive legal aid environment for the public. We expect to establish the relevant systems as soon as possible.
- 5. Provide defense counsel when public prosecutors apply to take defendants into custody:** When public prosecutors apply to take defendants into custody, attorneys need to be available for the defendants. When this happens, we can then say that public prosecutors and defendants are on equal footings in terms of their weapons. This is the same as the practice of attorney representation at the first police investigation. Both are legal aid of an emergent nature. In the future, the Foundation will determine whether it is necessary to offer such a service depending on the number of participating attorneys, the workload of our staff and the demand for this service.
- 6. Expand services to include Alternative Dispute Resolution (ADR):** The main service of the Foundation is to represent people in litigation. Yet, this is only one of the measures to resolve disputes. As it takes time and money to litigate, people consider it a last recourse in resolving disputes. Therefore, there are few disputes that result in court actions. In recent years, many countries have been dedicated to developing Alternative Dispute Resolution mechanisms such as settlement, mediation and arbitration etc. However, the systems of settlement and mediation in Taiwan are unsound and fail to produce their expected effect. We believe disputes are more likely to be resolved if an attorney is involved at the beginning of the dispute. It is necessary to expand our services to include ADR in order to reduce the litigation caseload, and we will continue to strive for this.

B. Review and Improvement of our internal systems

- 1. Improving the quality of examination and legal aid services:** When the Foundation was founded, our goal was to attain a certain number of cases in order to widely publicize our services. In the coming year, while maintaining a standard caseload, the Foundation will pay more attention to the quality of both our examination procedures and legal aid services, and even the quality of our staff's services. With quality controls in mind, we will hold a series of professional training workshops for our staff, examining commissioners and legal aid attorneys. We will monitor performance in all aspects to ensure that we provide the best service to the public.



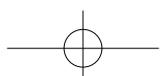
- 2. Employing staff attorneys:** The Foundation currently assigns cases to private practicing attorneys in law firms. Although some of our staff are attorneys, they are charged with administrative and management duties. The problem with this is that the Foundation must rely on reporting from the legal aid attorneys or legal aid recipients to monitor the progress of each case we assign. In accordance with Section 3, Paragraph 24 of the Legal Aid Act, the Foundation may employ staff attorneys who accept cases with the help of other staff. This would help our staff better understand the practice of law and the problems that arise in cases. Furthermore, the sustained contact with applicants in real need will help raise staff morale.
- 3. Establishing video-conferencing system :**At the Penghu, Kinmen and Mazu branch offices where there are few examining commissioners and few or no local attorneys, examination is conducted via video-conferencing with the Kaohsiung and Taipei branch offices, as previously explained. In addition, the Foundation plans on applying video-conferencing in other ways. For example, in addition to our offshore branch offices, the video-conference system can be used to aid prison inmates or defendants in custody. The Foundation is now coordinating with the Ministry of Justice to expand video-conferencing to prisons so that inmates also have the opportunity to apply for legal aid. Also, the Foundation intends to start video-conferencing meetings with branch offices in central and southern parts of Taiwan to save time and cost of travel. This can also increase the number of meetings to improve better communication and exchange between the Foundation headquarters and branch offices.
- 4. Establishing an appeal system:** People who utilize our services can express their complaints or concerns regarding the outcome of an examination, our staff, examining commissioners or legal aid attorneys through our appeals system. Once an applicant files an appeal, Foundation staff will contact him or her directly. However, our appeal system is not complete. We are now working hard on developing the standard operating procedures for our appeals system so that all feedback will help us reform our system and assess our performance. The appeals system will enable us to provide satisfactory service and will motivate us to continue to reform.
- 5. Strengthening the review of the financial eligibility criteria:** The “Financial Eligibility Criteria for Legal Aid Recipients” is the key to granting legal aid. However, whether or not an applicant meets this criteria is closely related to a precise definition of the poverty line in Taiwan. The Foundation intends to invite representatives from social welfare groups, scholars and experts to form a task force to conduct a comprehensive review of our financial eligibility criteria so that the criteria will more closely reflect reality.
- 6. Striking a balance between careful examination and convenience for applicants:** We have made significant breakthroughs and progress in our examination of cases. We started with a blank A4 paper to be filled in by examining commissioners and now use a Financial Eligibility Enquiry Form of 3 to 4 pages and the 1-page Case Summary Form which examining commissioners have to



fill out in detail. This shows that Foundation has become increasingly careful and thorough in the examination of cases. However, we also understand that a careful examination does not necessarily mean that an applicant must have complete documentation when filing an application. Hence, we will continue to strive toward a reasonable balance between thoroughness in procedure and convenience to the people.

C.Promotion of a sound legal system

- 1. Implementing legal education:** Due to the huge differences in the availability of legal resources in urban and rural areas, there is also a great difference in the degree of people's awareness and understanding of their rights and duties. In addition, we are unable to determine whether people have the correct understanding of their rights and duties. Thus, promoting legal education is a part of legal aid in a broad sense and we take it to be our responsibility. In addition to the aforementioned services in remote locations as a method of delivering our services, we also intend to expand co-operation with related associations or governmental institutes, to give legal education to social workers, and to publicize legal concepts as an intermediate and long-term plan for legal education.
- 2. Promoting systemic reform:** In the process of providing legal aid, we have discovered that oftentimes a client's case cannot be resolved because of unreasonable or incomplete aspects in society's systems, or even an absence of relevant systemic provisions. The Foundation believes that, in addition to legal aid, our work should include establishing or reforming existing systems. Therefore, upon discovery of unreasonable aspects in the system, we immediately inform related social welfare groups and provide them with attorneys to work together for reform. Also, when social welfare groups inform us of unsound systems or make a request for legal expertise, the Foundation is delighted to provide them with attorneys who have undertaken similar cases or are interested in co-operating on the issues at hand. In other words, in addition to providing legal aid, the Foundation aims to be a platform for exchange between social welfare groups and legal professionals for the betterment and reform of our society.
- 3. Strengthening global participation:** This year (2005), the Foundation will hold the first International Forum on Legal Aid in Taiwan from October 15 through 17, inviting 25 groups from 18 countries to share their legal aid experiences. Currently, many countries have legal aid systems, each with different experiences and results. In addition to holding regular international conferences, the Foundation will also send staff abroad to learn about the development of legal aid in other countries so that we may learn from their experiences and improve our own legal aid system.





**Appendix A:
Financial Eligibility Criteria For Granting Legal Aid**

		Taipei City	Kaoshiung City	Other areas in Taiwan or other places	Financial Eligibility Criteria
2 people in the household or single household	Disposable monthly income	Under NTD28,000	Under NTD 23,000	Under NTD22,000	Article 3, Clause 1
	Disposable assets	Below NTD500,000			
3 people in the household	Disposable monthly income	Under NTD38,000	Under NTD33,000	Under NTD32,000	Article 3, Clause 2
	Disposable assets	Household total below NTD500,000			
4 people in the household	Disposable monthly income	Under NTD48,000	Under NTD43,000	Under NTD 42,000	Article 3, Clause 2
	Disposable assets	Household total below NTD600,000			
Notes	<p>1.The standard for household total income refers to the standard for the area in which the applicant lives.</p> <p>2.In situations not listed above, the monthly disposable income for the household increases by NTD10,000 for each additional family member.</p> <p>3.Disposable assets: this does not include residential or private agricultural land having a declared present market value below NTD4,000,000.</p>				

Appendix B: Standards for Calculation and Payment of Legal Fees

Types of Assistance	Extend of Assistance	Units	Monetary equivalent (ND\$)	Notes	
Legal Consulting	3 hours	1.5	1500	The same rate applies to assistance during the first interview at police stations.	
Drafting Legal Documents	1 document	2-5	2000-5000		
Litigation representation	First and second hearing of civil matters.	Temporary sequestration or compulsory execution procedures	15-20	15000-20000	Drafting rates apply where only drafting is required.
		Summary litigation procedures	15-20	15000-20000	
		Usual litigation procedures	20-30	20000-30000	
	Criminal matters	Investigation procedures (including litigation representation)	15-20	15000-20000	
		Application to review prosecutor's decisions.	15-30	15000-30000	1. The fee for drafting and filing an application is 15 units. 2. Once court procedures begin, fees are payable from 20-30 units.
		Representation at the first hearing.	20-30	20000-30000	1. Excluding self-represented litigants or representation. 2. The same applies to adolescent protection matters and gangster rehabilitation matters.
		Representation at the second hearing.	15-25	15000-25000	Excluding self-represented litigants or litigation representation.
		Plea bargaining procedures	2-10	2000-10000	
		Applications to re-open judgments.	15-20		
		Plea bargaining procedures	2-10	2000-10000	
		Applications to re-open judgments.	15-20	15000-20000	
		Third hearing of criminal or civil trials.	15-20	15000-20000	
	Re-trial (criminal and civil)	15-30	15000-30000	1. The fee for drafting and filing an application is 15 units. 2. Once court procedures begin, fees already paid will be deducted.	
	Fees may be increased if the matter settled during litigation.		1	1000	Civil matters only
	Admini-strative support	Petition or other pre-petition procedures.	15-20	15000-20000	
First hearing of administrative litigation.		20-30	20000-30000		
Second hearing of administrative litigation.		15-20	15000-20000		
Application for Chief Justice's explanation.		15-30	15000-30000		
Mediation		2-10	2000-10000		



**Table 1: Statistics On All Applications
(July 1, 2004 – June 30, 2005)**

Code	Category	Statistics
A	Total number of applications	17889
B	Total number of full legal aid grants	7521
C	Total number of partial legal aid grants	119
D	Total number of cases refused	4773
E	Total number of cases requiring supplementary documents	140
F	Total number of legal consultation cases	4272
G	Total number of cases withdrawn	749
H	Total number of cases in the process of review.	22
I	Total number of cases terminated	207
J	Total number of cases revoked	30
K	Total number of cases not being examined	56
L	Approval ratio	61.5%

Branch Office	A	B	C	D	E	F	G	H	I	J	K	L
Taipei	7487	4021	77	2386	64	765	290	17	112	14	15	63.2%
Kaohsiung	2864	1241	5	439	46	1095	83	4	10	5	4	73.6%
Tainan	1862	610	6	671	21	227	32	1	9	1	0	47.9%
Taichung	1767	561	8	593	0	588	32	0	51	3	10	49.0%
Hualien	1302	244	7	177	1	791	44	0	6	2	14	58.6%
Taoyuan	689	310	10	171	2	45	172	0	6	3	2	65.2%
Hsinchu	627	133	2	99	3	357	38	0	6	0	0	57.7%
Yilan	512	194	1	79	0	191	29	0	0	0	6	71.2%
Changhua	503	154	2	129	3	199	29	0	5	2	0	54.7%
Taitung	276	53	1	29	0	14	0	0	2	0	5	65.1%
Total	17889	7521	119	4773	140	4272	749	22	207	30	56	61.5%

Note: The "approval ratio" refers to the share of the number of the cases approved for legal aid (both full and partial grants of aid) in the aggregate number of cases approved (both full and partial grants of aid) and refused. The data does not include the number of cases for legal consultation, refusals, cases requiring supplementation, withdrawals, review, termination and revocation.

Table 2: Ratio of Cases Approved for Legal Aid

Category	Total number of cases approved for aid	Total number of cases refused for aid	Approval ratio
Total number of applications	7640	4773	61.5%

Table 3: Statistics on the Amount of Security Guaranteed and Secured by the Certificates Issued by the Foundation

Code	Category	Statistics
A	Total number of cases	161
B	Total amount of security guaranteed	76,529,498
C	Total amount secured	298,615,786
D	Average security amount guaranteed by each certificate	475,338
E	Average amount secured by each certificate	1,854,756

Unit: NT\$

Branch Office	A	B	C	D	E
Taipei	102	67,928,192	244,095,386	665,962	2,393,092
Taoyuan	1	150,000	450,000	150,000	450,000
Hsinchu	3	480,000	4,801,304	160,000	1,600,434
Taichung	4	1,048,907	7,841,719	262,226	1,960,429
Changhua	1	700,000	6,755,815	700,000	6,755,815
Tainan	7	2,789,999	11,380,000	398,571	1,625,714
Kaohsiung	11	2,192,000	17,177,079	199,273	1,561,553
Taitung	0	0	0	0	0
Hualien	32	1,240,400	6,114,482.5	38,762.5	191,077.6
Yilan	0	0	0	0	0
Total	161	76,529,498	298,615,786	475,338	1,854,756

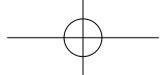
Unit: NT\$

**Table 4 : Applicants' Occupations**

Category	Total	Ratio
Unemployment	3834	50.18%
Labor (physical)	1781	23.31%
Freelancers	571	7.47%
Housekeeping	389	5.09%
Business	245	3.21%
Labor (non-physical)	244	3.19%
Students	217	2.84%
Farmers	80	1.05%
Teachers	68	0.89%
Civil servants	44	0.58%
Military personnel	31	0.41%
Others	136	1.78%

Table 5: Approval Rate of the Applications Made By Applicants in Different Occupations

Category	Number of approved cases	Number of refused cases	Approval rate
Labor (physical)	1781	880	66.93%
Freelancers	571	386	59.67%
Unemployment	3834	2605	59.54%
Labor (non-physical)	244	188	56.48%
Business	217	190	53.32%
Military personnel	31	23	57.41%
Civil servants and teachers	85	81	51.20%



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Table 6: Ratio of the Categories of Approved Cases (Including Legal Consultation)

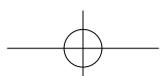
Category	Total	Ratio
Litigation representation or advocacy	6001	50.38%
Legal consultation	4272	35.86%
Drafting of legal documents	1464	12.29%
Mediation or settlement	175	1.47%
Total	11912	100%

Table 7: Ratio of the Categories of Approved Cases (Excluding Legal Consultation)

Category	Total	Ratio
Litigation representation or advocacy	6001	78.55%
Drafting of legal documents	1464	19.16%
Mediation or settlement	175	2.29%
Total approved cases	7640	100%

Table 8: Ratio of the Results of Civil Cases Closed

Case results	Total	Ratio
Drafting of legal documents	440	30.37%
Damages fully recovered	325	22.43%
Success of mediation or settlement	321	22.15%
Totally defeated	136	9.39%
Others	101	6.97%
Partially recovering and partially defeated	97	6.69%
Failure of mediation or settlement	29	2.00%
Total	1449	100%



**Table 9: Statistics of Applications**

Category	Number of cases	Ratio
Full aid	7521	42.0%
Refusal	4773	26.7%
Legal consultation	4272	23.9%
Revocation	749	4.2%
Termination	207	1.2%
Applications requiring supplementation	104	0.8%
Partial aid	119	0.7%
In the process of examination	56	0.3%
Revocation	30	0.2%
Review	22	0.1%
Total number of applications	17889	100%

Table 10: Ratio of Revoked Cases to Approved Cases

Category	Number of revoked cases	Number of approved cases	Ratio
Total	30	7640	0.39%

Table 11: Ratio of Terminated Cases to Approved Cases

Category	Number of terminated cases	Number of approved cases	Ratio
Total	207	7640	2.64%



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Table 12: Ratio of Message Channels

Message channel	Ratio
Mass media	24.63%
Publicity	19.07%
Relatives and friends	14.44%
Court referral or advice	13.36%
Advise from lawyers	10.74%
Referral or advice from social welfare groups	9.87%
Referral or advice from the Government agencies	7.88%

Table 12: Ratio of Message Channels

Branch Office	Number of refused cases	Number of the refused cases applied for review	Ratio of reviewed cases out of refused cases
Taipei	2386	350	14.67%
Taoyuan	171	31	18.13%
Hsinchu	99	7	7.07%
Taichung	593	157	26.48%
Changhua	129	31	24.03%
Tainan	671	96	14.31%
Kaohsiung	439	94	21.41%
Yilan	79	10	12.66%
Hualien	177	16	9.04%
Taitung	29	6	20.69%
Total	4773	798	16.72%



Table 14: Ratio of the Review Outcome of the Refused Cases Against the number of Refused Cases Submitted for Review for Each Branch Office.

Category	Total	Ratio
The number of the refused cases submitted for review	798	100%
The number of cases reviewed cases that to be decided with revoking the original decision and changing to full aid	107	13.41%
The number of reviewed decision to be decided with revoking original decision and changing to partial aid	4	0.50%
The number of refused cases to be decided with remaining the original decision.	674	84.46%
Note: There is an "other" item which is not listed in above table.		

Table 15: Ratio of the Results of the Civil Cases Closed

Case results	Total	Ratio
Drafting of legal documents	440	30.37%
Full recovery of damages claimed	325	22.43%
Successful mediation or settlement	321	22.15%
Failure to recover any damages claimed	136	9.39%
Others	101	6.97%
Partial recovery of damages claimed	97	6.69%
Failed mediation or settlement	29	2.00%
Total	1449	100%



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Table 16: Ratio of the Results of the Criminal Cases Closed

Case result	Total	Ratio
Benefited aid recipients	386	37.01%
No help to aid recipients	318	30.49%
Drafting of legal documents	271	25.98%
Others	35	3.36%
Successful mediation or settlement	29	2.78%
Failed mediation or settlement	4	0.38%
Total	1043	100%

Note: If the aid recipient is the party to file the suit, the so-called “benefiting aid recipients” refers to the benefit that the aid recipient acquires as the result of the defendant being prosecuted or sentenced. However, if the aid recipient is the defendant or criminal suspect, the benefit he or she acquires means to get no prosecution result or get a lighter verdict than original conviction (prosecution). As to the “no help to the aid recipients” means the other way around.

Table 17: Ratio of the Results of the Administrative Cases Closed

Case results	Total	Ratio
Drafting of legal documents	31	72.09%
Unsuccessful	5	11.63%
Successful	2	4.65%
Partially successful	2	4.65%
Others	2	4.65%
Successful mediation or settlement	1	2.33%
Failed of mediation or settlement	0	0.00%
Total	43	100%



Table 18: Applicants' Satisfaction With the Foundation's Administrative Personnel

Selection	Number of Times	Effective percentage
Very dissatisfied	8	0.25%
Dissatisfied	17	0.54%
Moderate	46	1.47%
Satisfied	924	29.45%
Very satisfied	2143	68.29%
Total	3138	100%

Table 19: Applicants' Satisfaction with the Service Attitude of Examining Personnel

Selection	Number of Times	Effective percentage
Very dissatisfied	15	0.48%
Dissatisfied	24	0.77%
Moderate	81	2.61%
Satisfied	978	31.51%
Very satisfied	2006	63.63%
Total	3104	100%

Table 20: Notification Within 7 Days of Application

Selection	Number of Times	Effective percentage
Over one month	15	2.7%
16-30 days	14	2.5%
8-15 days	54	9.7%
3-7 days	234	42.1%
1-2 days	239	43.0%
Total	556	100%

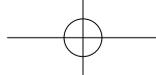


Table 21: Cases That Do Not Need Supplementation

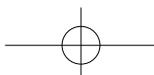
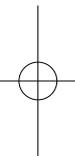
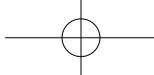
Selection	Number of Times	Effective percentage
Over three times	8	1.5%
Twice	28	5.3%
Once	144	27.2%
Not needed	350	66.0%
Total	530	100%

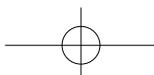
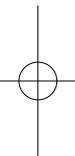
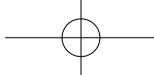
Table 22: Satisfaction with the Legal Aid Attorneys of the Foundation

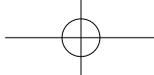
Selection	Number of Times	Effective percentage
Very dissatisfied	7	1.6%
Dissatisfied	18	4.0%
Acceptable	26	5.8%
Satisfied	13	25.3%
Very satisfied	283	63.3%
Total	447	100%

Table 23: Satisfaction with Professional Performance of Legal Aid Attorneys

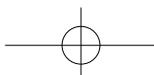
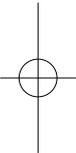
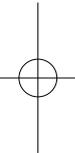
Selection	Number of Times	Effective percentage
Not sure	17	3.8%
Very unprofessional	3	0.7%
Unprofessional	8	1.8%
Moderate	21	4.7%
Professional	163	36.2%
Very professional	238	52.9%
Total	450	100%

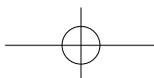
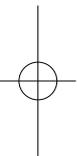
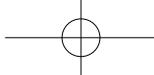


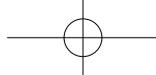




PANEL TOPICS







PANEL I: Organization



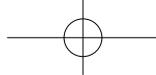
Moderator
K.C. Fan
Secretary General, Judicial Yuan
Taiwan



Presenter
Mike Jeacock
Executive Director, Legal Services Commission
England



Discussant
Matthias Kilian
Senior Research Fellow, Cologne University
Germany



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Presentation

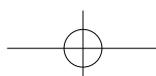
Organization

Mike Jeacock
Executive Director, Service Delivery, Legal Services
Commission
England and Wales



MIKE JEACOCK
EXECUTIVE DIRECTOR

LEGAL SERVICES
COMMISSION





OUR FOUNDATIONS



- Established under the Access to Justice Act, 1999
- Executive, non-departmental body
- Reporting to the Department for Constitutional Affairs (DCA)
- Aims and objectives agreed with the DCA
- DCA agrees its aims and objectives with the Treasury, based on the Government's priorities

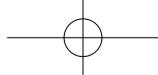


OUR ROLE



- LSC helps 2 million people a year
- Legal Aid has vital role to play in ensuring people can protect their rights
- Commissioning face to face advice from solicitors and advice agencies
- Widening access to help and advice via internet and telephone
- Helping the most vulnerable and disadvantaged in society
- Tackling social exclusion





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OUR VISION FOR THE FUTURE

legal services
COMMISSION

We want to be:

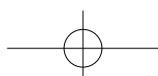
- Resolutely focused on our clients
- Delivering innovative, high quality, high value legal advice and services through top quality suppliers
- An organisation inspired by strong, visible leaders, where people are proud to work



WHAT WE DO

legal services
COMMISSION

- Fund legal and advice services in England and Wales
- Through the **Community Legal Service (CLS)** we help people exercise their civil rights, resolve disputes, challenge public authorities or go to court if necessary.
- The **Criminal Defence Service (CDS)** ensures that people under police investigation or facing criminal charges have access to legal advice and a fair trial.
- Regional Offices identify where there is urgent need for help and advice
- Commission legal services to meet the needs identified





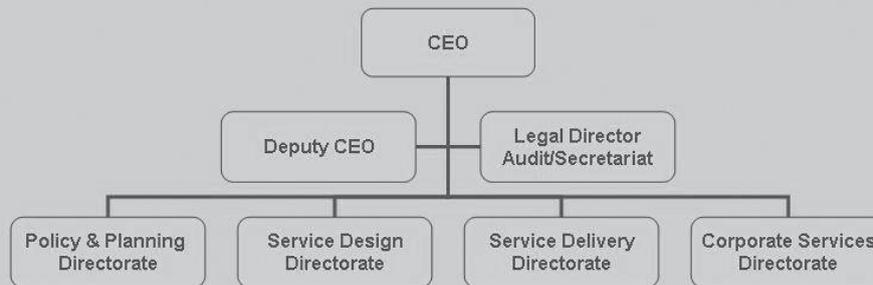
OUR ORGANISATION

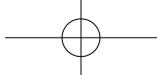


- Head office in London
- 11 Regional offices in England and Wales
- Approximately 1,800 employees
- Led by Executive Team



OUR STRUCTURE





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OUR NON-EXECUTIVE COMMISSIONERS

legal services
COMMISSION

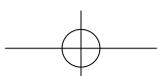
- Appointed by the Secretary of State for Constitutional Affairs
- Responsible for overall strategic direction
- Also responsible for ensuring compliance with statutory and administrative requirements
- Experience and knowledge of the provision of legal services



WHAT MOTIVATES US?

legal services
COMMISSION

- Improving people's lives and prospects
- Service and outcomes more important than bureaucracy
- Clients and customers





WHAT ARE THE CONTINUING CHALLENGES?

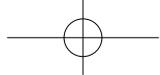
- Prioritising within a limited budget
- Demonstrating the positive socio-economic impact of our work
- Driving forward organisational change to deliver our vision
- Simplifying our business processes
- Making the best use of technology
- Continuing to develop our social activist role



AND ABOVE ALL...



Keeping our eye firmly on the client!



Organization: Legal Services Commission England and Wales

You may be asking yourself, why's an ex-banker talking about legal issues? As we go through this presentation, you'll begin to understand the size of our organization and the fact that we administer a 2.1 billion pound legal budget across England and Wales. My objectives are operational: to be a manager of change and to make sure we're making best use of our budget.

We have access to Ministers, whom we speak to on a daily basis. We have three ministers, including the Lord Chancellor, and they're enormously committed to issues of social exclusion and access to justice. I'd like to read from a speech that our Minister for Legal Aid, Bridget Prentice, gave to the Legal Aid Practitioners' Group conference last week. It highlights how much that commitment is in the forefront of their minds. She says:

"If we did not have legal aid, we would have to invent it, because vulnerable people should not be denied access to justice due to their inability to pay for it; because people who are accused of a crime are entitled to a defense and a fair hearing; and, because, legal aid - more fundamentally - helps people enforce their rights, and ensures those with power over their lives are held accountable for their actions.

These are very important principles. Legal aid helps create the kind of society in which we want to live - a fair, decent and safe society. These principles of fairness apply across the board - fair to taxpayers, fair to the vulnerable people, fair to defendants and fair to the practitioners. That is where we want to be, and the reform program that we've highlighted in our presentation is designed to do that.

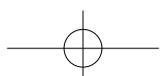
Why do we need to reform? Our country has changed dramatically. In many ways our society today is almost unrecognizable from the one in 1949 when legal aid was introduced. But publicly funded legal advice and representation hasn't caught up with the pace of change. The system has grown organically, rather than in a planned, systematic way. Reform is long overdue - legal aid doesn't always provide a fair deal.

Above all it is not fair to the vulnerable people. There has been a disproportionate growth in criminal legal aid -- up 37% in real terms since 1997 -- yet can we assert that it has produced a proportionate impact in the prospect of vulnerable defendants? Civil legal advice - advice which helps us tackle poverty and social exclusion - is in danger of losing out."

Our Foundations

The Legal Services Commission was established under the Access to Justice Act in 1999. The Lord Chancellor drives our access to justice act through the system.

We are a non departmental body, and we may be asked, how do we maintain our independence? The truth of the matter is, we sue the government on regular occasions. That is not overwhelmingly popular with them, but that is part of what we do. And if you ever want to see independence, you should come to one of our Commission meetings, where the Commissioners argue fiercely on behalf of their independence and in fact encourage us to do that.





We have a direct reporting line to the Lord Chancellor, whose department is now called the Department for Constitutional Affairs (DCA). Our aims and objectives are agreed with the DCA and are published in a corporate plan that outlines our objectives up to 2008.

This plan is actually put before Parliament and agreed by Parliament, and thus is fully entrenched in what the government wants to achieve. The DCA in turn negotiates our budget and objectives with the Treasury. Like all other agencies, such as the national health and education program, we seek to retain the budget that will enable us to do the things we want to do over the coming years.

Our Role

We believe legal aid has a very vital role to play in protecting people and their rights, and we help 2 million people per year. What's changing for us is commissioning face-to-face advice from solicitors and advice agencies.

We're looking at how we can use the public defender service and different methods of delivery. A research program on the public defender service is due to be published by the end of the year. I think it's fair to say that the services is being measured against the private sector, and the cost issue is a big issue that we need to understand.

In terms of commissioning face-to-face suppliers, we also have an increasing amount of bureaucracy. The LSC is no different, and we do create lots of papers. We have a pilot project called the Preferred Suppliers, in which we're trying to unbundle the bureaucracy and devolve more powers back to our suppliers, who are solicitors and non profit agencies with whom we have contracts.

Regarding quality, one of our tenets is, "Access to poor advice is not access to justice." As part of our program of change, we are in the early stages of moving to a system of peer review, which seems to be more popular with our suppliers.

Regarding widening access to help and advice via internet and telephone, we're keen on developing the telephone as a means of accessing advice. We currently have 40,000 telephone calls per month into Community Legal Service (CLS) Direct, and we're confident that will grow over the next 12 months to 500,000 calls per annum. The plan is that clients will call us over the phone, we will deal with the advice if we can, and if not we'd then pass them on to a legal provider or a preferred supplier by booking their diary to make sure the service take place – that would be utopia. The challenge is to make the best use of e-business, both for the Commission and for our suppliers. Our experience with some of the lawyers and solicitors is that they don't take too kindly to the use of e-business. For those of you who may have visited a practitioner in England and Wales, there are lots of files and not much use of IT technology. So we have some challenges on that.

Our goal is to help the most vulnerable and disadvantaged in society. Our program next year is about community legal advice centres, which means we will take the centres to where the issues and socially excluded actually are, instead of getting clients to come and visit the suppliers. Hopefully that will become what we call a holistic service that will be able to deal with multiple problems. Hazel Gent, one of our researchers, produced a book last year called Causes of Action, which highlights the problems that exist. Our clients may have more than one problem, ranging from housing, to debt to mental health problems. What we're trying to achieve through the advice centres is that clients only have to go to



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one place for help. We're trying to identify where throughout England and Wales we can set these centres, and I think the earliest one will be set up in April next year.

Our Vision for the Future

What's our vision for the future? Our vision is to be resolutely focused on our clients and to deliver innovative, high quality, high value legal advice and services through top quality suppliers. Our internal vision is to be an organisation inspired by strong, visible leaders, where people are proud to work.

Having worked in financial services in a bank, it's very motivating not to have to look at the bottom line of a profit sheet and to hear some of the cases that our staff deal with on a day to day basis, where they're really making a difference in people's lives. I've met a number of different people who've openly said to me, if it weren't for legal aid, they wouldn't be alive today. So it's extremely motivating, and our staff motivate us on a day to day basis in terms of what they do. They do not see an application for legal aid – they see a real person at the end of it. And that's the whole ethos of our customer service drive to make sure that we do offer customer service, not simply service the customer.

We have a clear vision, with a clear list of priorities and targets. If you go into any staff office, our members of staff will have clearly identified what their priorities are for the organization and the part that they can play in it. We work very hard to drive those priorities down to staff levels in terms of what we expect from them in their performance.

What We Do

We fund legal and advice services in England and Wales.

Through the Community Legal Service (CLS), we help people exercise their civil rights, resolve disputes, challenge public authorities or go to court if necessary.

We also do a lot of needs identification. One of the later slides will tell you about our regional presence, and each of the regions have regional planning and partnership managers, whose job is to go out and seek the need, then contact suppliers (solicitors or non-profit agencies) to see how we can actually resolve the problems. It's okay if we resolve a housing problem, but if the real issue is with the local agency or local public body, then we would quite happily take them to court to make sure we resolve the illness rather than the symptom.

The Criminal Defence Service (CDS) ensures that every person under police investigation or facing criminal charges has access to legal advice and a fair trial. For me, operationally, this means that I have to manage a duty solicitor scheme that makes sure there's coverage across England and Wales, 24 hours a day, 7 days a week, 365 days a year. My target is 100% coverage, which requires a very high level of operational control over that particular program, and to date we're meeting that target of 100% coverage.

As I've already mentioned, we have Regional Offices identify where there is urgent need for help and advice. We have regional legal services committees that are made up lawyers and local individuals who have influence in the region to help us identify that need. We then commission the legal services to meet the needs identified.



Our Organization

Our head office is in London. We have 11 regional offices in England and Wales and approximately 1800 employees. Within Service Delivery, I have 1500 of those employees, which is approximately 80% of the workforce, and I have 60% of the budget. Our employees are led by an executive team, which the next slide explains.

Our Structure

This is our structure. We have a chief executive, and then we have various directors. The Policy and Planning department is the brain trust that does the thinking on the policy and planning, and they are very much involved with the law societies and with the DCA as we put bills through Parliament. Service Design then takes those great ideas and turns them into products that they hope I can deliver in Service Delivery. Currently they're looking at the Preferred Supplier project – how we can actually roll that out through competitive tendering and all the other various policies and procedures. Then they pass it to me to deliver through Service Delivery – through the regional offices, the public defenders' service and the Very High Cost Cases Unit.

How much of the budget we spend on very high cost cases is a big issue for us. Currently 1% of the cases consumes 49% of our budget, which is a significant amount of money. We are bringing that under a different contracting regime in an attempt to manage that more carefully. You may have seen some recent cases that have been highlighted – the Paddington rail crash case being one example.

Our Non-Executive Commissioners

We have a body of commissioners with whom the executive team works. They are appointed by the Secretary of State, and they are responsible for overall strategic direction and compliance with statutory and administrative requirements. The group is comprised of individuals with vast experience in legal services – from barristers to criminal law practitioners to voluntary agencies. Our Chairman is Michael Bichard, who was a permanent Secretary and has been involved in many reviews on behalf of the government. They are extremely challenging, and they make sure we maintain our independence.

We currently have an administration budget of 93 million pounds, which covers the running of the Commission. That budget is under pressure, and hence we are committed to looking at new ways of delivering services.

What Motivates Us?

What motivates the Commission and the people in it?

Improving people's lives and prospects: we make sure that our staff gets regular feedback on the differences made to people. At a recent staff conference that was attended by 700 of our staff, we brought clients to the conference and they explained to them the difference their work makes. That is something that increasingly motivates our people, and in a recent staff survey was given as the prime evidence of why people wanted to work in the Legal Services Commission.

We're focused more on service and outcomes, which are more important than bureaucracy. We do have enormous challenges with the bureaucracy.



And our clients and customers motivate us.

As I said, one of the Commission's assets is our staff. The second great asset that we have is our excellent suppliers. They get much criticism, but I firmly believe that our suppliers really do work very hard on behalf of the clients and get unfair comments pushed on them through some of the newspapers. Legal aid is something that's mentioned in our newspapers every day.

What Are the Continuing Challenges?

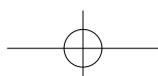
Prioritising within a limited budget: 2.1 billion sounds like a lot of money, but new Acts coming from other agencies do have a dramatic impact on our budget, to the extent that we are now going to have a "legal aid impact test" for any other act that comes through. The Home Office is a good example – when they put more police on the streets, that has a direct effect on our budget. Thus, we're now actually going to say to those agencies, can they now pay us the difference in the budget? Whether that proves to be successful remains to be seen; it's a very early initiative.

We're also driving forward organisational change to ensure we're in the best possible position to deliver our vision. E-business is one change, including use of internet and telephone services. We're quite keen to use video conferencing, which we've started to use with the police. We're using video conferencing in police stations, crown courts and in prisons where they have the facility, instead of taking the prisoner from the prison to the court.

We have big issues with our prison population in terms of access to legal advice. One Citizens Advice Bureau run by a voluntary agency has an interesting initiative that we're funding at the moment. In a prison in Liverpool, the agency is relying on prisoners to act as our advice agents in the prisons. When the inmates come out of prison, they will become advice workers at the agency. This is quite an interesting development for us.

We're keen to simplify our business process by making the best use of technology and continuing to develop our social activist role.

And above all, we're keeping our eye firmly on the client. That continues to be the primary focus as we move the business forward. Thank you very much.





Discussion

Matthias Kilian
Senior Research Fellow, Cologne University
Germany

Most countries looked with envy to England and Wales at their extremely developed legal aid systems, headed by a highly professional Legal Services Commission and its Research Centre. What I would like to do in the next 10 minutes or so as the Discussant is to analyse the organization of the different legal aid systems found worldwide, and to highlight their obvious advantages and disadvantages.

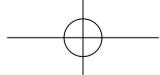
A model well known to most of you is what I would like to call the “board model”, in which legal aid is provided on a national and community level, and administered through a body which is often quite independent from the government but funded by the public purse. We have just heard a lot about such a system from Mike. England and Wales seem to have adopted the most developed of such system through its Legal Services Commission. Most common law jurisdictions have similar systems, for example Finland, the Netherlands and Japan.

Another model that can be found is where legal aid is in the hands of the legal profession, which is either self or government funded, for example Turkey, and to some extent Singapore, Malaysia, the Philippines and Hong Kong. In Turkey, the government provides an annual fund from which the local bar sets up regional legal aid bureaus. There is no government interference as to how the services are provided. The government simply spends money and leaves everything else to the legal profession.

The third model is what can be described as the “court-adjunct” model. Examples are Germany, the Czech Republic, Belgium and Austria. In Germany, all legal aid matters are handled by the courts, and no centralized legal aid body exists. In this system there is not even a specialized department within the court that is in charge of legal aid matters. They are handled by Judges and clerks who hear and eventually decide the case. It is a very lean structure and lacks legal aid specialists.

I would now like to briefly address the advantages and the disadvantages of the different systems I’ve identified, and to bring forward the problems for further discussion. They are: scope and flexibility, professionalism and quality, priorities, gate-keeping, providers, infrastructure and access.

Scope and flexibility - adjunct systems tend to focus on court proceedings. While these are funded generously, they are less available at the pre-trial stage. A good example of this problem is Germany where there is no prioritization in the area of civil legal aid, and very limited for criminal legal aid, as far as court proceedings are concerned. However for most civil disputes settled out of court, the court-adjunct models worldwide are less sophisticated in providing legal services at the pre-trial stage, such as legal advice services, duty lawyer services, telephone information, community legal education and alternative dispute resolution. As the court-adjunct model is by its name adjunct, it very effectively supports what it is adjunct to but very poorly in matters that does not relate to court proceedings. Legal advice services, telephone information, community legal education and ADR services often require an infrastructure and location that courts and to some extent Law Societies can offer and for which personnel is trained for.



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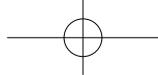
The board model is not adjunct to the traditional delivery forms, and through its functions policy-makers can often leave the beaten paths and take new approaches to legal aid. It does not simply fund the procedures contained in court-centered procedures, but is able to develop alternative and innovative forms of dispute resolution by taking a more holistic approach to the problem. This obvious advantage to some extent passes the problem that Boards tend to be regarded or even worse act as monopoly providers of legal aid, and they leave little room for additional providers, either because no funding is allocated or the existence of a more or less self-regulating Board is a welcome excuse for others not to become involved in free legal services.

Closely linked to this aspect is the observation that board models seem to be more needs focused while adjunct models tend to be purely demand driven. Adjunct models offer unlimited funding often in a single delivery method, for example, court proceedings. Adjunct systems tend to focus on individual legal aid while board systems take a more advanced approach by providing or aiming at structural legal aid.

Professionalism and quality - adjunct models leave little room for the emergence of specialists. Those dealing with legal aid matters, be they lawyers who organize legal aid work on behalf of the Law Society or Judges who assess legal aid applications, usually do so on top of their normal legal work. Either they have opportunities to build up routine or they are selected and trained for that kind of work. I can highlight this observation with an example from Germany where judges decide legal aid applications, and the commonly heard complaint is that they apply the means test too leniently resulting in too many applicants are granted legal aid without being required to pay contributions. Judges simply do not have the training, time and routine to identify the loopholes of the means test, resulting in a waste of resources that would and should be spend more effectively on other forms of legal aid. Another aspect of professionalism is that board models seem to be more interested in the results of their spending - they very carefully evaluate the effects of its work with the help of empirical research. A good example is the Legal Services Commission's Research Centre that is well-staffed that does extensive empirical research on all aspects of legal aid. Adjunct models tend to regard legal aid as something to be done but nothing to deserve continuous analysis, evaluation and improvement. Thus from an organizational point of view, adjunct models are more reactive while board models are proactive.

Priorities – board models are more expensive and because of its visibility for the public, it triggers more demand than other models do. There is a tendency to its defining priorities. The board sets up rules on the cases that it intends to fund and those that it does not. There are cases to be settled in court while others are not regardless of their merits. Such an approach indeed raises fundamental questions as to whether there should be distinctions between good cases and bad cases.

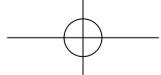
Gate-keeping – both the Law Society based and court-adjunct models do as board models do. As I said earlier, the lack of priorities may not necessarily be a bad thing. However I'm talking about the means and merits tests and both need to be applied carefully in order to be effective. The means test in particular is a highly technical matter and most countries require considerable knowledge and experience to carry it out effectively. Experiences show that in an adjunct model which usually lack specialists,



means tests are often applied very leniently, as thorough investigations require substantial resources to be directed away from the court's or the Law Society's main areas of work.

Providers – one concept is that every lawyer is free to take on legal aid work. The basic idea behind this concept is that every citizen should be able to instruct the lawyer of his/her own choice and not a lawyer selected by someone else, for example by a Judge or a legal aid board. Systems that select lawyers are those that have been awarded with a contract or franchise because they have agreed to follow certain quality conduct or standards can do legal aid work. This system very much focuses on quality when it comes to the selection of service providers. The alternative is to regard the principle of the free choice of counsel as of the paramount importance in the lawyer-client relationship, which is a relationship based on trust and confidence, and to leave the eventual lack of quality to be rectified by the professional liability of the lawyer and to its indemnity insurance.

Infrastructure and access – independent board models struggle with infrastructure and access to a greater extent than adjunct models which can rely on its existing infrastructure. The court-adjunct model has access point for example in county court; and the Law Society adjunct model at each local bar with its own infrastructure. Board models tend to have fewer facilities because they have to fund them from their budgets. This can result in problems of accessibility, particularly in thinly populated regions where it is not worthwhile to provide legal aid infrastructure. The necessity of a dedicated infrastructure also highlights another problem of board models: a higher percentage of their spending goes into overheads, administration, infrastructure etc. Thus it has to be considered to what extent do the obvious advantages of board systems outweigh the additional costs.



Question & Answer

Arturo Fournier (Inter-American Bar Association, Costa Rica):

I heard this morning that in England, people are more or less afraid of trying to solve cases through legal aid or go to court. That's surprising for me, because according to Costa Rican statistics, one out of four Costa Ricans is a party to a lawsuit. We have too many lawsuits, and everybody resorts to court procedures in my country, so I want to make a comparison and ask for an explanation of why this happens in England. And my second question is, why do you work only in England and Wales and not in the whole of UK?

Mike Jeacock:

The second one is easy, because it is a different law system in Scotland, and they have their own Legal Services Board.

The first one relates to our experiences. Our research shows that people don't litigate. They go to a solicitor where they may only be able to resolve one of their issues. What we are trying to establish through the community legal centres is the concept of a "one-stop-shop", where we can give all the advice clients need. There is a reluctance to do so. I think the growth in telephone services is helping us in that area, and we certainly see what we describe as the socially excluded using that service, and also through the internet. Clear evidence of that is highlighted in our research, and that's one of the reasons why we are changing our methods of delivery and trying to make sure that access is available through many different ways.

Jerry Cheng (Legal Aid Foundation, Taiwan):

I would like to ask Mr. Mike Jeacock 5 questions: 1) Why is the LSC a non-governmental organization? 2) England operates a "judicare" system, which is most costly. Have you considered moving toward the "staff attorney" model? 3) Do you face criticism for over-expenditure? If so, how do you deal with it? 4) Could you explain in more detail your services at police stations? 5) You mentioned in your report that the cost of ignoring legal problems would be 2.2 billion to 4 billion pounds. How do you estimate this cost?

Jeacock:

As far as budget is concerned, we do manage to spend our 2.1 billion pounds.

We were set up as a non-departmental government body basically for independence, and it was felt that that was one of the ways in which we could secure that. It is also very much at the forefront of our thinking, and the Commission would very much like to be protective about that. I think most of our suppliers would suggest that it is the best way for us to maintain our independence.

Setting up the Public Defenders Service certainly is more costly. We are trying to determine whether we could make it less costly, and we are at the end of the research program. The service has delivered very high competence solicitors and the reports that are we getting back are very positive, but we have more work to do if we were going to extend the employed service. We are under pressure from family law suppliers to come into the employed service in practices where they are not deemed to be profitable. And certain family law suppliers make representations to meet fairly regularly about whether they can become employed services.



Some of our staff in regional offices are responsible for co-ordinating the access of solicitors at police stations. If somebody is arrested by the police and taken to a police station, he/she will ring a central service who will allocate a solicitor, and the time set for the solicitor to arrive is within 45 minutes. That is proving to be more difficult in more remote areas, but we have 100 percent coverage in the last 12 months in getting duty solicitors wherever they are required.

Joseph Lin (Taipei Branch, Legal Aid Foundation, Taiwan):

With 1,800 staff, what specific measures does the LSC take to help them maintain their passion, efficiency, and enthusiasm for their work?

Jeacock:

We invest considerable amount of money in our staff, and I've said in the outset that we consider our staff to be one of our greatest assets. We do annual staff surveys with them to make sure that we are in tune with what they are thinking. We adopt a policy of catching them doing things right rather than catching them doing things wrong, and we try to reward our staff on that basis. When I first joined two or three years ago, we were heavily paper-based, and we turned the paper around and try to say that in each application is actually a real person. And by moving through the process as quickly as possible, we can actually help people.

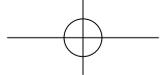
We also regularly visit clients who benefit from our services. As some of you may know, legal aid is reported in a mixed way by the press. They highlight the cases where we grant legal aid to clients who they don't think should get legal aid, and we make great account of getting cases to people which demonstrates how effective it can be. The most up-to-date example is a member of our own staff's brother who had mental health problems, and she did a presentation with him showing how we helped him to return to normal life. And I can assure you that there wasn't a dry eye in the house. We spend a lot of time on these because we think it is very important to our people that they understand what difference they are making to people's lives.

Lin:

As the source of the LSC's funding, the English government is in a position to oversee and evaluate your work, and I understand the government has recently released a report assessing the legal aid system. In your interactions with the government, how do you maintain your independence?

Jeacock:

The issue of independence is a daily challenge. To be fair, I think that we are maintaining it. We sue the government on occasions, and we also work very hard at making sure that the corporate objective reflects what the Department of Constitutional Affairs wants us to achieve. It can be a very tense relationship on occasions, but mainly it is a very fruitful relationship, particularly as we are trying to ring fences to the civil legal aid budget. This year we are looking to grant 650,000 acts of assistance. And given our budgetary issues, it would have been very easy for the ministers to say "we can cut back in that area", but they



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clearly didn't. They've encouraged us to ring fence to the civil legal aid budget, because it is under enormous pressures from the criminal area, which is the area that we are looking to control. Any scope changes or budgetary costs are likely to go into that area and not the civil legal aid services.

We have daily access to the ministers, and we take them to regional offices and visit our suppliers. Last week Bridget Prentice¹ visited the Public Defender's Service and met a group of barristers who commented on what they would like in terms of remunerations. Our big issue at the moment with the bar agencies is how much we remunerate them. So it is a tense relationship, but we are managing to keep our independence at the moment.

Martin Rozumek (Organization for Aid to Refugees, Czech Republic):

I would like to ask, how do you assess that people really need legal aid and they that cannot afford to hire an attorney at law?

Jeacock:

We have very structured means and merits tests, and we have good connections through to work compensation agencies that may be paying benefits to individuals. We have through the internet a self-evaluation so if people aren't sure whether they are able to benefit, they can go to our website and do a self-assessment to ensure that they are entitled to it. Merit of the cases is particularly relevant as we examine the very high cost cases.

A case that has recently been in the public agenda is whether we should fund the vaccine MMR². We funded it to 15 million pounds. There was no clinical evidence to suggest that the vaccine created issues, so we've had to pull out of that. We're constantly reviewing our merits tests. But there are a means and a merit test, which are well established, and can be accessed by both the clients and suppliers.

Wilhelm Joseph (Maryland Legal Aid Bureau, United States):

Mike, you said that 1 percent of the cases consume 49 percent of the resources. I have two questions. Question one, what are some of the explanations you use to justify this allocation as being effective, rational, and fair? Number two, could you provide examples of those cases within the one percent, particularly civil cases?

Jeacock:

We're clearly focused on the one percent of the cases that consume the 49 percent of the budget, and that's why we set up the Very High Cost Cases Unit and the Criminal Case Unit to bring those cases under contract. In the recent case that I was talking to you about, our bill was 8 million pound. It fell at the first hurdle, and we asked to reclaim that. We're working very hard in bringing contracts in that try to reduce the costs. Possible cases include the Paddington rail crash³, the vaccine cases, and some high profile murder cases, and they all bail in the high judiciary. We now have specialist teams that are responsible for relationship management both with the suppliers and the Commission in making sure that

1. Bridget Prentice, Member of Parliament, was appointed as Parliamentary Under-Secretary of State at the Department for Constitutional Affairs on 9 May 2005.

2. Measles, Mumps, and Rubella (MMR).

3. On 5 October 1999, 31 people were killed when two trains collided at Ladbrooke Grove, just outside Paddington station, in London.

Source: http://news.bbc.co.uk/2/hi/uk_news/465475.stm



those cases are managed better. The hope is that the judiciary in England and Wales has caught up on this, and has started to drive from the top. We have to make sure that these cases are run properly, so case management is a real big issue. What we're pursuing in our relationship with the Magistrate's courts is that we're trying to make sure that the proper processes are dealt with. That includes not just the high cost cases, but any case that go through the Magistrate courts or the Crown courts. Continually, solicitors are kept waiting while time-tables are kept to, which is a high cost to us. We recognize that the core of these issues may be about how we organize ourselves in court services and in the Magistrate's courts. A lot of work that is going on is sponsored by the judiciary, which is of great help to us.

Yi-Chien Chen (Legal Aid Foundation, Taiwan):

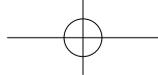
Mr. Jeacock, you mentioned that LSC has a program which was launched in a prison, you worked with inmates and I was impressed. It seems that it could be an empowering process for the inmates. What is your opinion on that issue? Dr. Kilian compared the different models, and it seems that the more you're centralized, the less lawyers will be involved in helping legal aid clients. What models could engage more lawyers to participate in this profession?

Matthias Kilian:

I think the observation is correct. For example in the model in England and Wales, highly specialized lawyers do legal aid work, and as far as I understand, there are law firms that only specialize in legal aid work, which can create problems when their contracts are not renewed.

I think the question of whether legal aid work should be done by lawyers in private practice, by staff lawyers, or by lawyers who have a contract with the Legal Aid Board, is difficult to answer. I think it to some extent depends on the country in question. For example in Taiwan, I have observed that you are densely populated, therefore a staff model probably can work because a continuous influx of cases can be guaranteed and it is justified to have somebody on your payroll. In places like Yorkshire, England, or rural areas in Germany or Montana in the United States, it would probably be difficult to justify having somebody who would sit there five days a week and wait for cases to come in, therefore the cheaper or more cost effective model is to have somebody in private practice who follows a set of standards and acts according to a quality agenda.

One thing that maybe seen as an ethical or a philosophical problem is that the contracting approach is very market-oriented. You select the best providers, have a business relationship with them and they provide good services, but it takes away a bit the responsibilities of the legal profession on the whole. In Germany for example, or in countries where there are more lawyers involved in legal aid work, they are paid at reduced rates so that everybody is contributing to access to justice in a way. While the centralized models to some extent take a more market-based approach, which is probably justified from a financial point of view, but the approach releases the legal profession as a whole to contribute to access to justice. That is an observation that I would make. It probably doesn't answer your question, but as you said it's very difficult to answer such a question.



Jeacock:

We are asking our regional offices to be more innovative in the way they approach particular issues. Prisoner population is a big issue for us, and the Citizens' Advice Bureau asked us whether they have a contract to give advice in the Stafford Prison in Liverpool, which is one of our biggest prisons. Everybody thought that it would be challenging, but we did agree to a contract, and now we have prisoners who have been there for two or three years acting as advice agents. Some of the big issues when they first go into prison are issues at home, such as debt, the home, and contact with their families. In many ways, as evidenced by some of the research, prisoners go out and re-offend because these issues were not dealt with. An interesting aspect is that prisoners trust these advice people within the prison, and because some of them have been around prison services for a few years, they know the system so they can help.

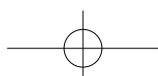
There are other important initiatives that we are looking at, one is in the provision of community care of mental health, very similar to the prison situation. And again, in the northwest of England, they're mapping advice workers one on one with people with mental health problems, and the evidence so far suggests that this is a big help to them rather than having to go back into an institution. The big issue for us is that we have a new Mental Health Act going through in the next 12 months, which we think would at least travel the amount of the services that we require under legal aid. Some of that would be interesting challenges to us, because a lot of the cases need evidence from physicians, and that costs a lot of money in terms of reports, and we're trying to work our way through that.

The other big initiative we are trying to work on is witnesses in courts. We're running a pilot in South Hampton to create an area within court services where they could be placed. Because many of the witnesses could be children, and the process could be difficult to give advice, we're trying to make sure that due process is attended to. We're very much focused on the client to make sure that they have the best opportunities that can be afforded through the processes.

Julie Bishop (National Association of Community Legal Centres, Australia):

I have a question for each of the panel members. First of all, it's not so much about the organization of legal aid as what we were reminded of as the heart of legal aid by the video at the beginning of today, and that is the issue of justice. I noticed that Matthias said in both of your speeches today about the issue in Germany is the free choice of lawyers and that's at the heart of it. I imagine what you mean by that is that it is a bit like finding a doctor - the public doesn't want to be assigned a doctor, they want to choose a doctor. However, as we know what happens with doctors is that people go to the nearest doctors, it's not a free choice. But, in some sense, you have the average citizen who has some means of judging what the service of the doctor is like. So my question to you is, is the decision to allow free choice of lawyers to citizens probably about the lack of comprehensive legal aid services in Germany, or is it more just an ideological point that you need free choice? I question whether or not the average person who has no contact with the law has any means to freely choose, or whether they, just end up with any odd person and they wouldn't have a clue whether they were any good or not.

My second question is in the area of justice as well. The vaccines case in which you





stopped legal aid brings up the issue of the merits test, and the debate in Australia about the merits test is: are we running a case and judging a case prior to its getting to the court, whereas surely the purpose of going to the court is to have the evidence fully examined, and justice done at the court and not in the legal aid office beforehand?

Kilian:

I agree with you that to some extent this idea of free choice is an ideal, and quite often it is difficult to make it work in real life, because a lot of legal aid clients are one shot players. If they are repeat players there is some convincing argument that they should be able return to a lawyer they have used before and not to be forced to go to someone else they have never seen and just been told to go to, but I agree that a lot of them are one shot players.

I think that in general, this is a trend that we have at least in the European Union. For example, there is a European directive on legal expenses insurance where we would have the same problem. You can expect for example, that an insurer has told the insured to see a lawyer with whom the insurance company has a contract with because of quality standards or because of cost reasons or whatever reasons, and there is a European directive on legal expenses insurance, which explicitly requires insurance companies to provide free counsel, so they're not allowed to tell their insured to see a specific lawyer.

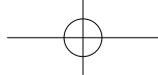
It is also a general trend that we have here at the European Union that at least when we talk about deregulation in general. This is an important cornerstone of the deregulation concept that we see at the moment in Europe. There should be an informed consent of the citizens, so that you shouldn't over-regulate and you should try to provide as much information as possible so that the final choice should rest with the consumer. I think this is part of our broader agenda, and I think that we could very well argue whether or not it works in every single case, which I would doubt, but I think it is a general trend that we see at least within the European Union.

Jeacock:

You've highlighted an issue which is a huge debate for the Commission. We have a limited budget, and that means we have to make decisions. One of the things that we do have access to is some of the best legal minds that are available, so we can consult with them as to whether we can take cases forward. But there aren't many days go by when we don't get issues raised in terms of the merits of cases. I think it's an issue that will continue to be with us. We do get a lot of cases, and unfortunately we're not able to fund them all, so we try to make sure that we fund cases which we think we have a fair chance of getting results for. In essence I agree with you that the issue is difficult, and our staff find it very difficult too.

Kilian:

Can you let us know what the overhead is for the Legal Services Commission? How much money goes into legal services and how much goes into administration.



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Jeacock:

We have 2.1 billion pounds to spend on legal aid. Administration is currently 92 million pounds, but we have reduced that by 3 million. That would be one of the pressure points for us in the following years as the Treasury and the DCA look to reform how we approach legal aid. We are looking to develop methods of delivery with that in mind, and we look to do things that are more cost effective. Not surprisingly, telephone service is much more cost-effective to us, and I think we are being encouraged to do that.

On the agenda for us for the next couple of months is the prospect of setting up what we call a family help line, which is specifically for clients with family problems. The current estimate is that we will take 2 million phone calls per year. We have to find a method of delivering that service in a way that is cost effective and gives value for money. We're no different from other government agencies in being able to do that, but the budgets are under pressure, certainly the administration budgets. We think that if we can reduce the amount of bureaucracies and enable people to deliver in business channels, that would significantly help us in doing that. So, it is an ongoing challenge. I'm sure that the Chancellor will come back shortly and say can we do it any cheaper.

Cheng:

I would like to ask Mr. Jeacock, how do you publicize your services to poorer people in remote areas and ensure that they receive quality aid?

Jeacock:

We call them advice deserts, or the popular press calls them advice deserts. We monitor those very carefully. One thing that we should bear in mind is that the population in these remote areas is remarkably resilient and innovative in how they go about doing things, because there's no legal aid, and there's not usually a doctor, a bank or that sort of organization. We do outreach programs where we ask our suppliers to go and visit these areas and we have clinics and surgeries. One of the great things I will be remembered for in the Commission I suspect is that I would like an advice bus that visits various locations to give out those services. They do have access to telephones, and our telephone service is well worth the effort to enhance. Within Britain, we have what we call the National Health Service Direct, which is a triage service so if you ring up with a particular problem, they would try to talk your way through it before you are pushed onto a doctor. We think that's where CLS Direct can be in the future, and we try to do as much advice and information as we possibly can and then hopefully pass the client on to a Preferred Supplier. It is a challenge for us, but we have internet services as well, and we get over 70,000 hits a month at the moment. We haven't really publicized the CLS Direct, and we're still getting 40,000 calls. That's why we are confident that we will get half a million phone calls per year within the next 12 months. We hope to publish in the next 3 to 4 months where our CLS Telephone Direct Service is going. We are trying to work in an innovative way in which we can deliver those services.

I think what we have to do is going into the communities and say "how best can we help you"? And that is what we are focused on at the moment. From a previous life in banking where we had to offer mortgage advice to clients in remote islands off the coasts



to Scotland, we used video-conferencing facilities in our branch offices or in the community centres. I'd be quite interested in thinking that it is something we may do in the future, making sure that clients do have access to quality advice. But it is something we get challenged on a regular basis.

Fournier:

I'm going to ask you the same question regarding the students. How do you control the quality of their advice through the telephone? Do they have to identify themselves or do you have an automatized system of telephone control or something like that?

Jeacock:

Yes, we do. We operate through advice agencies with people who have legally practiced, and we make sure that they are legally qualified. The other thing that we are keen to do is awarding training grants to our suppliers. We're spending a lot of money now in training grants on people coming out of college to put them into practice. We do control the advice, and we regulate and listen to the phone calls to make sure that the advice that is given is correct, and we do seek feedback from all clients who used the telephone service to make sure that we have spent in that service properly. Again, it is a high quality standard.

Junius Ho (Duty Lawyer Service Council, Hong Kong⁴):

I have a question for Mike. Earlier this morning, I mentioned the conditional fee arrangements (CFA). Just out of my curiosity, what sort of correlation and implications have been brought up in UK's legal aid system after its introduction in 1996? This is something of great value to a country like SAR where we're also discussing and considering introducing the CFA.

Jeacock:

The issue has been a significant challenge to us and is under review from pressures from various agencies. I think I would be better able to answer that when that research is complete. It is a challenge for us in the conditional fee area, and it's something we are keen to develop or take on, but it's got its challenges for us.

Ho:

Do you think it is viable for the government to take up this concept when it seems that the global trend tends to accept that the user-pay concept is a right and is becoming a norm nowadays? Whoever uses this service should pay for it, even though people in the less fortunate class may not have the money to fund the service, but at the end of the day when there's fruit of the litigation, that fruit has to be shared out and put back in the community fund, and that is what we have done and is now doing in Hong Kong, the SAR. We are tightly controlling it and carefully monitoring the use of this fund for the conditional fee and the contingency fee arrangements. Do you think that this should be better done by the government rather than leave it to private practitioners?

4. Hong Kong Special Administrative Region (SAR).



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Jeacock:

I think you've encapsulated the whole debate that has taken place. It is a challenge for us in the sense that this government is committed to make sure that legal advice is available to everybody regardless of their means, and their commitment continues to be evidenced by the budget we put out. But I think it is a very topical debate at this moment in time, and rather than giving you a second guess answer, I think we should wait for the research to be completed, and that is eagerly awaited for by many people.

Jin-Yung Lin (Yulin Branch, Legal Aid Foundation, Taiwan):

I personally believe that quality of service requires real action, and not mere rhetoric. I would like to ask Mr. Jeacock, how does the LSC define quality, and how does it oversee and ensure quality?

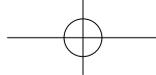
Jeacock:

The easy answer to that is that we have very tight measurements. We measure all our processes, and we managed to change the time needed from 8 weeks from two years ago down to 5 days. We measure our staff through "mystery shopping" in telephone calls to make sure that we're offering customer service. We measure in terms of how quickly we answer complaints, which is 3 to 5 days. These are closely monitored and are targeted for each of our regional offices. We implement and award through a staff reward scheme, which is given at staff conferences, and we measure it very closely. Every month each regional office gets a regional report on how they are doing, and if they have issues we go and help them address those issues. We also take it as an opportunity to promulgate best practices.

Our staff are very interested in making sure that they meet those targets. In the last couple of years, they helped us improve customer services measurably. We now have a customer service rating of 90 percent where our target was 85 percent. It's keenly contested amongst the regions on the delivery of customer services. And they're rightly proud of those achievements when you measure them against other government agencies. We think we have the best. We were talking to our Minister about that last week, and she indicated that we indeed have the best customer service.

We think we have much more work to do on suppliers and we want to interact much better with them. We have a lot of management information about our suppliers which we share through our Account Managers. As we move to Preferred Suppliers, we are going into relationship management, which is much less about auditing and much more about helping the suppliers in developing the businesses, which will enable us to take legal aid forward for hopefully the next 50 years.

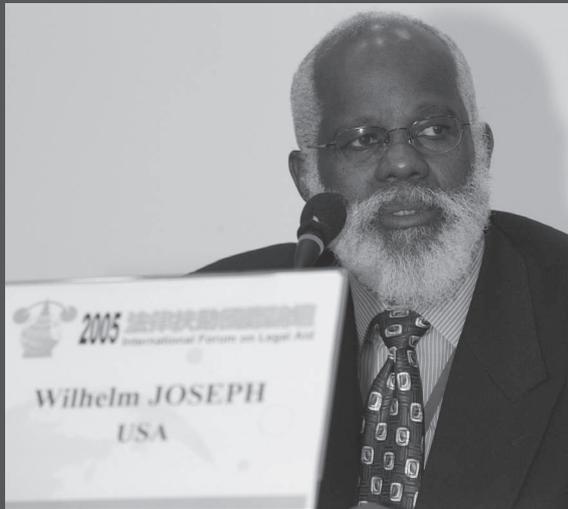
There are lots of areas in which we are looking to develop customer service. When I first joined the organization, it was about moving bits of paper. Now we see those bits of paper as people, and that helped us develop customer services. We think that it is very important to turn something around in 3 to 4 days and not in another 8 weeks, and clients get better services in 3 to 4 days rather than in 8 weeks. Some of the cases we do range from domestic violence to child abuse, and we focus on making sure that they understand the difference good customer service can make towards our business. We are a business



because we operate 2.1 billion pounds, and our staff recognized that through staff surveys. They keep reminding us of the things we do and how we can do things better. We operate a ministry of silly practices within our operational area where our staff tell us the silly things that we ask them to do, and then we take those things away to make sure that we can be more efficient. You would be surprised how many silly practices we have within our operational process. Some of them are historic which we have been operating for 5 to 10 years, and nobody has challenged them. We take those silly practices out of our systems and that is supposed to give back better customer service.



Panel II: Need Assessment and Access



Moderator
Wilhelm Joseph
Executive Director, Maryland Legal Aid Bureau
United States



Presenter
Julie Bishop
Director, National Association of Community Legal Centres
Australia



Discussant
Dunstan Mlambo
Chairperson, Legal Aid Board
South Africa



Presentation

Need Assessment and Access

By Julie Bishop
Director, National Association of Community Legal Centres
Australia

COMMUNITY LEGAL CENTRES – AN INTRODUCTION

“Community, Compassion, Justice”

The National Association of Community Legal Centres (NACLC) serves a network of around 200 free and (mostly) neighbourhood-based community legal centres (CLCs) located throughout Australia in urban, regional and remote locations. This means that we have daily contact with a wider range of people, service providers and organisations than any other part of the legal system.

Community legal centres (CLCs) play a vital and unique role in the national ‘mixed model’ of legal aid service delivery in Australia. There are around 200 community legal centres scattered across Australia in rural, remote and urban locations. Each community legal centre is an independent community-based organisation providing equitable and accessible legal services.

While centres work in partnership with each other and with the legal aid commissions in Australia they are separate entities and are not legal aid offices. The first community legal centre was established in Fitzroy, Melbourne in 1972.

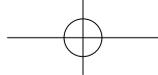
Of the 200 community legal centres, 17% receive no funding at all. The other 83% of centres receive funding from multiple sources. One of the funding sources for 130 centres is Community Legal Services Programme. This programme administers a combined fund of \$36,000,000 provided by the commonwealth government and the state governments of Queensland, New South Wales, Victoria, South Australia, Western Australia and a small amount from Tasmania.

CLCs operate not only in partnership with their local community, but also in partnership with many private practitioners and legal aid lawyers who volunteer their time, expertise and energy to the work of the centres. In 2004, over 3500 people volunteered at community legal centres across Australia.

Centres are staffed by a combination of paid employees and volunteers. The number of staff per centre and the mix of staff vary according to the needs of the community that the centre serves and the amount of funding available. The staff at a centre may be made up of the following roles: principal solicitor, junior solicitor, educator, social worker, community development worker, an administrator and a centre manager. It should be noted that many centres have less than 3 paid staff.

In the last 10 years, the 130 centres funded through the Community Legal Services Programme have provided services to more than 2 million people throughout Australia in urban, regional and remote areas, and provided over 3.3 million instances of legal advice, information and case assistance.

In the single year of 2004-05, the 130 centres provided services to 180,000 people. These centres alone recorded approximately 340,000 individual service interactions, including:



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- 201,000 instances of giving legal advice;
- 108,000 instances of providing legal information;
- 28,000 cases finalised;
- 1800 community legal education activities; and
- 620 law reform and legal policy activities.

Community legal centres provide an invaluable first point of contact for people who have little or no knowledge or experience of the legal system. While they have an open-door policy, providing basic advice and referrals to all who come, they particularly serve the growing numbers of people who cannot afford private legal assistance and who do not qualify for legal aid.

However, community legal centres are much more than 'gap fillers'. In over 30 years of operation, they have developed specialised expertise and a unique mode of service delivery that is particularly well suited to meeting the complex legal needs of the diverse communities that form Australian society.

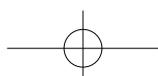
While providing legal services to individuals, CLCs also work beyond the individual. Community legal centres initiate community development, community legal education and law reform projects that are preventative in outcome and that strengthen the community.

The staffing mix, the provision of community legal education and the undertaking of law reform and legal policy projects as core activities of community legal centres illustrates the distinctive mode of service delivery at community legal centres. It also underpins the effectiveness of CLCs.

The multi-disciplined approach to service delivery has been a feature of CLCs since their inception. (The first paid staff member at a CLC in NSW was a social worker.)

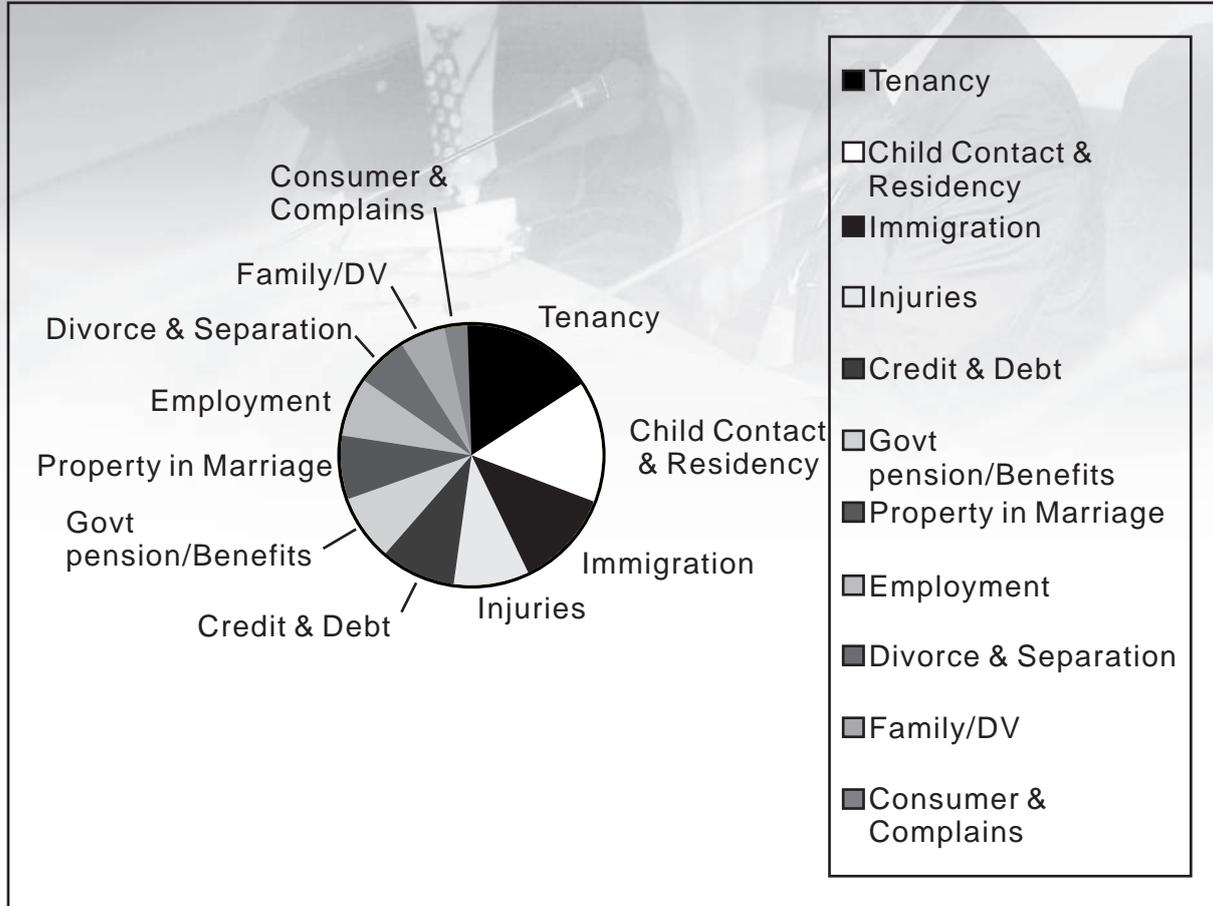
This approach grew out of understanding that to effectively address the legal problems of disadvantaged clients Centres would also have to be cognoscente of and assist with the underlying problems created by poverty and/or other causes of the client's disadvantage.

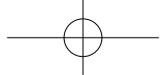
While community legal centres provide legal assistance in most areas of law, nationally, they most commonly provide assistance in the fields of family law, housing, credit and debt, social security, immigration, employment, neighbourhood disputes, motor vehicle matters and other civil law issues. (Much of the criminal law work undertaken by centres relates to domestic violence.) Community legal centres have expertise in areas of law that is in short supply elsewhere within the legal sector.





**Top 10 Problem Types
where the most activity occurred in 2004-2005**





NEED ASSESSMENT & ACCESS

At the heart of community legal centres and what directs their activities is the determination to ensure the availability of accessible and free legal services. It is also to meet legal need in areas not being addressed elsewhere within the legal services system. The style of service delivery, the variety of activity, the centre's location, the structure of the organization, its planning mechanisms, the multi-disciplined approach, are all part of this endeavour.

While each CLC is diverse in terms of its precise aims and character, all CLCs share a common commitment to:

- being accessible to their clients – in terms of affordability, location, opening hours, language and atmosphere;
- adopting a multi-disciplined approach in their service provision, and providing an integrated range of services;
- emphasising a preventative approach, including through placing a high priority on community legal education;
- involving clients and community groups in defining and resolving their legal problems;
- transferring skills on an individual and group level, and building the capacity of the communities in which they work to effectively address their legal needs;
- tackling the structural causes of legal needs and problems, rather than simply treating the symptoms;
- giving community members the opportunity to participate in the management of the centres, and implementing a variety of mechanisms to ensure they are accountable to their communities.

As such, community legal centres are of their communities and responsive to their communities. "Communities" may be geographic communities as for generalist CLCs (e.g. Darwin Community Legal Centre) or communities of interest as for specialist CLCs that may target a group (e.g. children and youth legal centres) or a particular area of law (e.g. Disability Discrimination Legal Centres).

CLCs are able to offer appropriate, effective and creative solutions based on their experience within their community and their understanding of it. It is this community relationship that distinguishes community legal centres from other legal services. It is this community relationship that assists centres in their attempts to make their services known, to make them accessible and to ensure that they are targeted effectively to those in need.

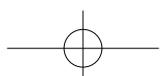
Who are the clients of community legal centres?

The clients of community legal centres are those who are facing injustice, whose legal problem is not profitable, and whose life circumstances are affected by their legal problem. To a large extent they are the disadvantaged and marginalised members of the community.

Client Profile in 2004-2005

Of 180,000 clients nationally:

- 62% were women
- 72.4% were between 18-49 yrs
- 82.5% had a low income and were in part-time work
- 62% were sole-parent of families with dependent children





- 4% identified as indigenous, about twice the occurrence in the general population
 - 8% were living with disability
 - 28% from a culturally & linguistically diverse background, as opposed to around 17% in population
 - 4% had low proficiency in English, a better marker of disadvantage
- (This profile is based on data collected by the 130 centres that receive Community Legal Service Program funding. It is recognised that there is under-reporting of some demographics for a number of reasons.)

How do CLCs determine need?

By working within the community, by being part of the community, through collaboration with other community organizations, by examining centre data and emerging trends within the centre, CLCs determine what the local need is and how best to meet it within their limited resources.

Centres have a detailed knowledge of local need and emerging trends. This knowledge results from the CLC's links to the community sector but particularly through collaboration on projects with a diverse range of community organizations.

Most Centres actively engage in planning and targeting of their services. Centres' funding is limited. Over 30 Centres are purely voluntary organizations. There is an imperative to use all resources to the maximum benefit. In planning sessions, CLCs examine the data collected at Centres on clients and their problems. They review which projects worked best. They combine this with anecdotal evidence from other organizations. The services are then designed so that the Centre can be responsive to local and or specialist community needs.

One of the strengths of community legal centres is their capacity to identify emerging and un-met need in the manner described and to subsequently target appropriate services within the limitation of their scarce resources.

The main issue for Centres in relation to legal need is not working out what it is, but rather, meeting the need. Centres always have projects on hold, new service ideas in development, staff that they require but cannot appoint, because they lack the funds to extend their services to those whose need they are aware of, but, whose need cannot be met at present.

This point was highlighted recently by the Australian Council of Social Services (ACOSS), in its Australian Community Sector Survey 2005 which indicated that for all community sector organizations:

- Demand for services has outstripped growth in expenditure (8.9%) and income (6.8%).
But that specifically for CLCs:
- Legal services turned people away 1.6 times for every ten times someone was assisted.

What are the barriers to access legal services?

- Awareness that there may be a solution to the problem experienced;
- Knowledge of an available and affordable service;



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- Cultural appropriateness of the service (including 'aboriginal friendly');
- Availability of interpreters;
- Physical access to the service; and particularly in Australia,
- Distance.

These are the major barriers that CLCs attempt to overcome in the provision of appropriate and effective legal services to their communities.

What is done to overcome the barriers?

- Awareness that there may be a solution to the problem experienced;
- Knowledge of an available and affordable service;

Centres attempt to increase awareness of their services and knowledge of legal issues and potential solutions to those legal problems through work with other community organizations and links with the local and/or specialist community. CLCs consciously undertake community development projects to improve understanding and awareness of available services. Community legal education projects are specifically designed to increase knowledge of the law and the potential for preventing or resolving legal problems.

The multi-disciplined approach that is used by Centres has resulted from the need to comprehensively address the problem of the client as well as providing additional entrance points to the legal services.

Centres are often co-located with other community organizations so that together they are able to address more than just the legal issue that presents initially. Similarly, as discussed in the introduction, centres employ staff other than lawyers so that they are able to provide services likely to be required by their clients, such as financial counselling.

Community legal centres, particularly specialist Centres, also provide legal assistance to other community based service providers including financial and rural counsellors, migrant resource centres, and women's services to identify, refer and assist clients with legal problems.

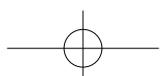
- Cultural appropriateness of the service (including 'aboriginal friendly');
- Availability of interpreters;

There are often structural barriers to clients from other cultures being able to access legal services. These barriers are broader than proficiency in English although this clearly creates its own barrier. The specific cultural barrier determines how the CLC will address it. Two examples follow.

1. 'Aboriginal Friendly' organizations.

Numerous reports into the effective provision of services to Aboriginal people have sited that Aboriginal clients rarely use a service where there are no signs that the organisation is 'Aboriginal friendly'. Aboriginal clients make this judgement based on what they have been told about the organization, whether Aboriginal staff work there, whether it is an Aboriginal-run organization, or simply whether there are any signs that the organization is aware of Aboriginal issues by the displaying of posters in the window, for instance.

Within the legal aid sector in Australia there are specialist Aboriginal Legal Services. These organizations are independent and separate from legal aid commissions. Like CLCs, the Aboriginal Legal Services are under-resourced and unable to meet the demand for their services. In addition, managing potential conflict-of-interest results in the need for other legal service organizations to provide services to Aboriginal people.





Community legal centres have responded to the requirement to be 'Aboriginal friendly' in a number of ways, although this is an area that nationally requires more attention by centres. Employment of more indigenous staff is a priority.

Some of the ways that centres attempt to provide appropriate services to Aboriginal clients is through: undertaking projects in partnership with Aboriginal communities; providing outreach services in partnership with community members; increasing cultural understanding by staff; and involving Aboriginal people in the design of the service.

2. Culturally and Linguistically Diverse people

Around a quarter of community legal centre clients come from Culturally and Linguistically Diverse backgrounds. Proficiency in English is just one of the potential barriers to an effective service for this section of the community.

In relation to proficiency in English, Centres continually report difficulty in obtaining interpreters. The failure of a centre to use a professional interpreter immediately compromises the service provided to a client with poor English skills. Yet Centres are often forced to use family members due to limitations on the availability of interpreters from the free service and lack of Centre resources to pay for interpreters.

Other issues that impact on effective service delivery to people from different cultures are the location of the service, background understanding of the cultural differences, trust that the centre is able to engender in the community, and sensitivity to the requirements of that culture.

About 20% of staff at centres are from different cultural backgrounds and speak languages other than English. While these staff members perform a variety of roles within centres, some CLCs specifically employ staff with the cultural backgrounds of the communities that they serve to better address the needs of those communities.

- Physical access to the service; and particularly in Australia,
- Distance.

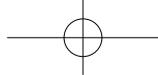
Australia is a country that is sparsely populated with long distances between regional centres. Many CLCs are located in remote locations, yet physical access to a centre and the distance to travel to attend a centre is one of the biggest barriers to access to legal services in Australia.

There is little or no public transport between some towns. Some clients have to be away from home for 3 days just to seek legal assistance. One centre, Pilbara, in Western Australia, services an area bigger than Taiwan.

Distance and isolation in themselves create some of the problems that Centres are addressing for clients in regional and remote Australia.

Centres have therefore developed a number of strategies for dealing with the problem of distance. Even so, it remains a significant barrier. The strategies devised in an attempt to deal with this by centres are:

- Location of centres in regional and remote areas;
- The establishment of part-time branch offices in other locations;
- Provision of outreach services on regular but periodic intervals, such as once a fortnight at a health centre;
- Collaboration with other community organizations located in separate locations within the same region;



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- Collaboration with other legal service providers such as legal aid or private solicitors located in separate locations within the same region; and
- The provision of assistance using telephone, email and videoconferences.

CONCLUSION

The greatest obstacle to meeting legal need and the provision of appropriate legal services for both the legal aid commissions and community legal centres in Australia at this point in time is the political environment. There is poor public understanding of the importance of the availability of free and affordable legal services and so little support for its provision. In general, many do not understand that access to legal services is required to ensure that all are equal before the law, and that the law treats all equally.

The importance of achieving this equality cannot be over-stated. Without it, the bonds that tie us together, both as individuals and as groups connected to the larger community, begin to weaken. With it, we can maintain and strengthen an inclusive and democratic nation that works for all.

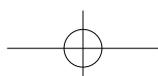
It is critically important that the law and justice system operates fairly and well given that it permeates almost every aspect of individual and collective life.

The major operational assumption of our democracy – the checks and balances embodied in the separation of the powers of parliament, executive and judiciary – mostly goes unremarked and unchallenged in Australia. In recent years, however, debates around issues such as native title and asylum seekers, border protection and territorial law, and detention with or without trial, have highlighted the importance of this basic principle within Australian society.

Similarly there have been difficult public debates over criminal sentencing regimes and mandatory detention in the immigration jurisdiction. They have provided a powerful reminder of the high stakes involved for any democracy in the handling of these issues. They have also been a reminder of the balancing act that is central to the system of justice.

This, together with the current environment of fear and the harsh security legislation introduced since 2001, create a situation where law and order are mistaken for a system of justice.

Within this context both the legal aid commissions and community legal centres in Australia struggle to meet the demand for free and affordable legal services. We struggle to secure the funds to assist in this task and we struggle to find the public support necessary to ensure that there is a political commitment to this fundamental democratic project.





Discussion

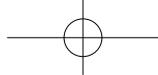
**By Dunstan Mlambo
Chairperson, Legal Aid Board
South Africa**

I've looked at Julie's paper, and I will discuss features of NGOs doing community work, and also discuss two features that appear unique to them.

A universal feature is that they invariably are the first point of contact of poor communities regarding legal solutions to their problems. The other feature is that they provide an avenue for the enforcement of the rule of law in the country. They encourage people not to resort to self-help, but to seek solutions through law. The last feature relates to insufficient funding. That is the plight of NGOs worldwide. The unique feature of the community legal centres in Australia is that they adopt a holistic approach to problem-solving. I think this is reflected in the professional capacity found in the centres, such as social workers, financial advisors and counselors. The other unique thing relates to aboriginal issues that impact on the work of community legal centres.

Let me share with you how the needs assessment issue impact on the work of NGOs in South Africa. The first thing that you might all know is that legal NGOs in South Africa provided a very viable avenue for communities to take cases against governments. Most of the seminal, ground-breaking cases in South Africa disseminated from NGOs and resources from community based centres. South African NGOs are in two camps. The first camp is the specialist type. I have in mind the Gay and Lesbian Coalition, which is an NGO that looks at gay and lesbian issues. Because of the specialist nature of the work they do, they are able to resource funds to advance cases for gays and lesbians to the Constitutional Court in South Africa. We have NGOs that specialize in the AIDS and HIV arena. They were successful in introducing and fighting litigation up to the Constitutional Court and forcing the government to provide anti-viral medicine to people living with AIDS. We have NGOs specializing in issues relating to women. I have in mind the Women's Legal Centre based in Cape Town. This Centre has become known for advancing the cause of women, particularly those who have lived in abusive relationships all their lives, some of them ended up murdering their husbands. This NGO has been successful in going to the highest court of the land to ensure that the courts have an understanding of the lives of these women that drives them to do what they do. And the last NGO that I want to mention is the Rural Legal Trust. It operates in rural and farm areas, particularly in communities threatened by famine. It has been very successful in ensuring that the communities under threat are protected by the law.

However, I can assure you that the work of NGOs and their success in courts could not have been possible without the community based offices. We call them Community Advice Offices. These advice offices differ from how the Australians do it. In South Africa, they are predominantly run by paralegals. It saddens me to tell you that the life and independence of the paralegals is somewhat under threat in South Africa right now because of the attitudes that are prevailing. These paralegals have no university qualification, but they are the back bones of the Community Advice Offices. They have developed expertise in certain areas, and I think this comes out of the need in their communities. The greatest need arises from consumer protection relating to the activities of the loan sharks, hire



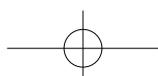
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purchase agreements, refunds for defective and damaged goods and insurance scams. These advice offices have also developed expertise in the social security benefits arena. In South Africa, we have what we call the "Employment Insurance Fund". Many people whose partners (husbands predominantly) lose their work or sometimes die at work, and their partners and families are unable to access this fund because they are illiterate and are unaware that they are entitled to this fund.

One of the greatest ways in which they identify the sources of the need and quantify them is that they have developed capacity to hold community workshops in churches and community halls where they inform and educate people of their rights. I think this is a very innovative way in which the South African Community Advice Offices have addressed the needs area. However, in terms of access, they have also been very innovative and accessible. The NGOs I mentioned earlier don't have offices in residential areas. It is these advice offices that are accessible to people who need them and make the link with the NGOs and legal firms that do their work.

I'd like to share two anomalies that have come up. The first anomaly is that funding is decreasing, and that is affecting the community based advice offices instead of affecting the larger city-based NGOs. It is sad, because it is now cutting off the links that these poor communities have with the people who can take their matters to court. The other saddening issue is that the national based funding has not been replicated by local based funding, because they are just not interested in local entities.

I will conclude by saying that access to these advice offices is under serious threat if the issue of their funding is not addressed. A much bigger issue that is under threat is the rule of law in any democratic country if people have no access to legal solution of their issues, and they have to resort to self-help. We have heard a number of those situations in South Africa.





Question & Answer

Wilhelm Joseph:

I have one question for the two panelists. You see, there are too many cases, not enough money; too much information, not enough time. Now, in both of your presentations, you talked about the enormous challenge of people who need your services. How do you decide who gets your services? Are there methods of prioritization or case acceptance procedures that say, "Yes, you have a meritorious situation here, but I can't help you because I have to help this other one"?

Julie Bishop:

That is at the heart of what we try to do. Every person who comes to the Centre or rings up gets an initial service. What happens in that initial service is an assessment, which is not a means test, but people will work out: a) if they have the capacity to handle it themselves; b) whether the matter is an area in which the Center has expertise; and c) whether or not there's any capacity within the Center to deal with it. Everyone is given an advice, but the matter may or may not turn into what we call a case, which is something a lot more than a simple advice. It does not necessarily involve representation and going to court. The examples that I gave you show that they can also just involve writing a letter on the client's behalf, ringing up someone and talking through.

The Management Committee which is derived of community members makes strategic decisions. There is a list of priorities, and the staff or volunteers would know automatically whether it is the type of matter we can handle. If not, it is referred on. If it comes into areas that the Centre can service, it is taken to the Management Committee, which meets each month or each three months to decide where to take the matter. As I said, we use volunteers, so if it's a matter that a Centre normally may not handle, but is a matter that we call "in the public interest" in which there is something slightly unusual that the Centre might want to take forward, or a case that would lead to a greater change like a change of policy or a change of regulation, then the Centre will try to get in pro bono support. We work very closely with private practitioners, and we often call in pro bono support even though we have staff lawyers. Sometimes Centres will go beyond their means by bringing in this extra help by pro bono.

Dunstan Mlambo:

From what I know about how the NGO network is operating in South Africa, every time anyone comes in, the only consideration is whether they can do what the client needs or not. If they can do it, no one is turned away, and they do it. If they can't do it, they are part of a very strong network with other NGOs and other service providers. If it's an area where they don't have expertise or can't do anything about, they know where to refer that client. Where it requires a legal solution, they have networks and links to very well known NGOs such as the Legal Resources Center, and they also have arrangements with law firms so that every time they hit a problem which they can't solve, they either have telephonic access to find out how they can solve the problem, or the Legal Resources Center staff or lawyers visit the advice office on a periodic basis, sometimes once a week. If they decide to take on the case, the client doesn't have to go to town for consultations or whatever. They have developed very strong procedures in following-up on all cases disseminating from the Centre. No one is turned away, and I come from that experience myself.



Bishop:

All community legal centres do a planning process and have all their priorities set at the beginning of each year for the areas they'll target. There is a major tension in all legal centres, which again is to do with funding. Our principal solicitors who may have 15 to 20 years of experience are paid at the rate of a first year graduate in the private profession. At this point in time, we have major recruitment problems, because who wants to work and know that they already are at the top of the rate from their first day? As I have said, we are multi-funded and we are constantly in search of funding. Traditionally, the minute we find a new source of funding, it is usually used to fund a new project or a new area of work. At the moment, we're trying to convince Centres that it's in fact more important to pay their staff more than try to address a new need. But because people in there are in there for reasons other than "prosperity," shall we say, they'll often service a new client need rather than buy new office equipment or pay more salaries.

Stephen Lin (Central Queensland Community Legal Centre, Australia):

Basically some clients are turned away because of the conflicts of interest rules. Obviously, we have to apply that rule if the other party has approached us, we would have to turn the current one away.

Mike Jeacock (Legal Services Commission, England):

I have two questions. We are about to start on community legal advice centres, and in parallel to build up community legal advice networks. Do the presenters have any experience of that being successful? We've recently run something in the family law area with some success and we're keen to move it into the community legal aid networks.

The second question is for Wilhelm: we've just set up a community court based on the Red Hope Project in New York, what you think the future of that may or may not be?

Bishop:

Another way that we spread our dollar amongst community legal centres is that we collaborate with each other on local, state and national levels through our networks. We have networks of interest areas and expertise: we have a family law network, a human rights network, and a disabilities network etc. I'll give a domestic violence story as an example. One of the reasons why it was so successful was that the client came from Western Australia, ended up in Victoria (two parts of the country), but via that network, the Centres were able to share information. As you know Australia has a complicated legal system with a state jurisdiction and a national jurisdiction. Domestic violence is particularly difficult because it is state jurisdiction, but family law is national jurisdiction. So the client who has moved around the country is quite tricky, but via our networks, the Centres were able to work out how best to deal with that client's issues.

We also collaborate with other community groups very actively. We attend meetings, discuss and work out community projects together. That's another way in which we address need through those network meetings. For instance, we had an influx of Sudanese clients and there were problems in gaining interpreters for them. So it would be through the community legal links and say, you can't possibly use someone from that community to be the interpreter because there are all sorts of sensitivities that will be a problem, and



there's also the issue of confidentiality. You would need to get your interpreters for these Sudanese clients from the Northern Territory for instance where there's another Sudanese community. That's the way in which we manage to spread those things around.

Jeacock:

Under the family practitioner one, they go in with one problem, and if they are unable to resolve it, they formalize and make contact with the next person that can help them.

Joseph:

Mike, without knowing the particulars of the Red Hope Project, I feel comfortable saying to you that a community based resolution center has a good promise, because the logical reason for doing this is about breaking down the estrangedness and alienation that exist within regular courts and judicial systems. When people have to leave his/her neighborhood and go to a very different neighborhood, and confront all the awe and pomp and circumstances, it does not contribute to a comfortable feeling for resolving disputes. I think that's why we are working towards community courts and community dispute resolution centers, etc. The whole idea is to perform this important function at a location where people feel comfortable and not alienated. I'd say that I think that it's a good promise to keep to your goals and objectives.

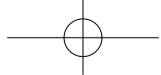
Arturo Fournier (Inter-American Bar Association, Costa Rica):

I think your speech has been very enlightening, especially for cases in Costa Rica. I have realized, listening to you, that in my country we have given a wide variety of attention to judicial cases but not solving the problem. With the way we function in my country, I think we are giving access to the judiciary and not access to justice. So, I think we will need to broaden our activities, for example with domestic violence, we have a law that forces the aggressor to leave the house and not to come within 200 meters of the house. That causes psychological problems to the rest of the people in the house. There are other examples like that. So it's very important in the community network.

Another question, I've been worried listening to everybody is that aid is given to legal aliens, and not to any aliens or immigrant that could be in the country. I think I understood from what I've listened that you give aid even to people who are not legal aliens because that happens a lot in my country,. For example there is a very poor country to our north, Nicaragua, where many workers in our country come from. They are widely abused and if we don't give aid to illegal aliens, injustice will prevail.

Bishop:

As you are aware, our government has a policy that's very unsympathetic to what they call illegal immigrants, we call them asylum seekers. Legal centres are some of the few organizations that provide legal aid support to these people. There used to be immigration community centres that were able to do that, but the terms of funding now prevents them from assisting anyone without a regularized visa. There aren't a lot of people who are able to help asylum seekers, but that is a major area of work for the community legal centres in each state. The centres are scattered throughout Australia, and ironically, or coincidentally,



we happen to have community legal centres near the immigration detention centres, which is not intentional because the centres were located prior to the building of the detention centres. In terms of accessibility, we attempt to go to where people are rather than having them come to us. We have centres within proximity to a number of these communities, as I put the centres in the desert and in various places that no one wants to get out of.

Kang Hyun Lee (Korea Legal Aid Corporation, South Korea):

The KLAC doesn't have a volunteer system, so I think Australia's CLC volunteer system is very useful for the KLAC. I would like to ask Julie, how do the CLCs use the volunteer system? Do they just listen to the client and give them advice? Or do they do paper work or anything else? Secondly, what is the background of the volunteers? Do they need any certifications? Or, should the lawyers? Thirdly, right now, the KLAC does not have enough space or room to afford future volunteers, so how can you connect clients to volunteers? Should volunteers work in the CLC office or any place? Thank you.

Bishop:

The volunteers do work in the centre, and they have many backgrounds. We have volunteer social workers, volunteer educators, volunteers who just do paperwork, volunteers who might do the accounts, the book keeping, the financials, but the majority of our volunteers are lawyers. We are careful about how we work with volunteers, and of course having volunteers has resource implications as well. Someone doesn't just walk through the door and say, "Hi, I'm a lawyer, I'm available next Monday." And we don't say, "We'll give you a chair, come on in." We have an induction process.

Not every one of the centres has volunteers. There are Centres in the middle of the desert having trouble getting lawyers, let alone a volunteer, but the Centres which are able to get volunteers usually have someone whose role is to supervise the volunteers. That means first of all, there is a training process that happens at the Centre in which they talk about the client community, the way we work, how to address cultural sensitivities, how to deal with someone who needs an interpreter, how to show respect and how to listen carefully to the client. Sometimes we do turn a volunteer away. A story I heard of the other day: there was a client at the front desk, and there was a volunteer listening to them. The client had poor English skills, the client was still standing there, and the volunteer turns around and screams to someone behind, "can you understand anything they're saying?" You know, that's exactly the sort of thing we don't want to happen, and clearly the volunteer was asked not to come back because it was such disrespect. That's a key part of what we are trying to offer these people who are in poor and marginalized circumstances. We want to provide them with a sense of dignity, and we don't want to continue to degrade them. Much of our work is to do with how to behave and how to work within the centre.

In community legal centres, every single advice is written down and put on the form, and most of our advice sessions are held during the night. We do have day time sessions, but clearly another accessibility issue is that we open our centres at times around work so people can come outside of work hours. Most legal centres will have night time sessions, and night time sessions are those sessions where we regularly use volunteers.

In the day, the principal solicitor will go through what's written and they will check the



advice. Occasionally, the client needs to be called back in if further work needs to be done, but usually not.

When volunteers first come, they usually work alongside a staff member. We have a long training and induction process, but once people are inducted and stay for a length of time, they are great assets and are worth the investment. A lot of our volunteers are people who have been law students, and who may have done a “clinical” subject at a university. They enjoyed it and they come back. There are people who may not be “clinical” students, but perhaps a lot of them studied the law because they want to make a difference to society and to do justice, but they get into law firms and discover that they spend most of their time helping people to buy houses or sell properties or clients who have commercial disputes, and they are dissatisfied. Legal centres offer them a chance to use their skills in another way so that they can earn the money they need privately and do their justice. Pro Bono work is a completely different story, but that’s another question.

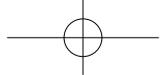
David Pred (University of Essex, England):

I have two questions for the distinguished Justice. First of all, you mentioned that the future of paralegals is currently threatened in South Africa, and I was wondering if you could tell us briefly what roles paralegals have played in South Africa, and why they are under threat right now. Secondly, I have a legal question for you. In Cambodia, in order to keep its doors open in the face of repeated funding crisis, a major legal aid organization that is not represented here today has been forced to diversify its funding base and seek new donors. Of course, different donors have different agendas and like to support different things. This had led to the situation where this organization has been forced to change its core mission, which was to represent the poor, criminally accused and also civil cases to the point where they now have to represent victims of crime and serious human rights violations. I’m wondering if you feel that it is a conflict of interest for one organization to be representing both the accused and victims—opposing the prosecutor on one hand, and on the side of the prosecutor on the other hand. Thank you.

Mlambo:

I will answer the second one first because I think there’s a short answer to it. What the Legal Aid Board does in South Africa is that, particularly in the criminal law area, it provides assistance to both the perpetrators and in certain instances to the victims. The way we do it is that we use a mixed model system. We use a justice center staff who is paid to attend to perpetrators’ cases. Where there are victims who require our assistance, we either refer them to the corporation partners who specialize in that area and have an agreement with us, or if we don’t have a corporation partner in that area, we simply say no to adjudicate. That way, we avoid the conflict of interest that may arise. That is one way that we’ve dealt with it, and it has been very successful.

As far as paralegals are concerned, I think every important case that affects communities in South Africa that you may have read about are sourced by paralegals. Those are the people who build the case and do the leg work, including the consultation, the statements and everything. They are under threat because they were perceived to have been relevant up to 1993 or 1994, but since then, black professionals in particular have moved away



from doing community based work. They now want to do government work and lucrative work. They are the people who understood what paralegals did.

This has led paralegals to agitate for audience rights in court and to do consultations and charge fees, but it is a catch-22 situation because the people they represent can't afford to pay the fees. To be able to charge fees, they have to venture into areas where they are not qualified. What we've done as the Legal Aid Board is to, for example, enter into agreements with them where we offer them resources in terms of office space, cars, telephones and everything for them to be able to continue their work. We also employ them as full-time staff as a first point of contact for the Legal Aid Board. I hope that I've answered your questions.

Uli Sihombing (Jakarta Legal Aid Institute, Indonesia):

I have a question for Mr. Mlambo also on paralegal work, as I have similar experience in Indonesia on paralegal work. Can paralegals represent clients before the court? How to control the paralegals giving quality service of legal aid? Thank you.

Mlambo:

As I mentioned earlier, paralegals don't have any right of audience in any court in South Africa, but in those areas of expertise where they are active, they are able to represent clients in government departments or enter into correspondence with those relevant bodies to solve problems.

In South Africa, there is an umbrella body that is examining paralegals' interests. It has set up minimum qualification and experience levels which paralegals have to comply with. Whatever advice paralegals give out wouldn't lead to serious repercussions, because if a matter requires legal intervention, it is referred to lawyers or the relevant people. In areas where paralegals are active, they are very active. In South Africa, they are very well developed. Some of them run newspaper columns in which they advice consumers.

Martin Rozumek (Organization for Aid to Refugees, Czech Republic):

I would like to ask Julie: what role does mediation play if you have a case of two party disputes?.

Bishop:

Some Centres do have qualified mediators and run mediation services. It's a broad area. For the government, they are trying to push everything to mediation because that's the cheapest solution. But our experience particularly in family law matters is that mediation only works where the parties were probably going to be able to solve it themselves. Mediation, particularly in the area of family violence or some sort of abuse, is completely inappropriate because one of the parties is threatened by the presence of the other party. So while there are Centres that use mediators, they target the use of it for those matters that are appropriate. However, one of the ways we justify our existence is that we go to court as the last resort. We don't have the money to go to court, so usually, we get another community worker or someone else to advocate on behalf of our clients. It may not be a strict mediation done with a mediator, but we will regularly attempt to resolve a dispute before it gets to court, and that's just part of our general practice.



Junius Ho (Duty Lawyer Service Council, Hong Kong):

Just an interesting question for Julie. You mentioned that if cases inevitably go to court where community legal centres don't have the funding, centres cling on to pro bono practitioners to do the work. Now, pro bono as I understand it means that lawyers do the work for free, but I would imagine the rule that costs follow the event is the basic principle that applies to all cases so that if cases are eventually won, the costs will follow. How would that part of the cost be taken care of? Unlike in the Legal Aid Commissions, where lawyers are publicly funded and their pay and any return of the fund are taken care of by the institution, how would pro bono lawyers deal with this issue?

Bishop:

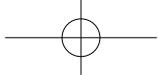
Just one thing to clarify: we don't always use pro bono, and many staff members do go to court and represent clients. We have a staff member who won a High Court case two weeks ago. Clearly, we have pro bono representation at the High Court, however staff solicitors also went the whole way along. I was using pro bono in the sense that it is often our method of taking on extra cases outside the limits we have.

The issue of costs is an interesting question. It changes from state to state. Centres are able to claim costs in some states, and cannot in other states. This is determined by the Law Society within the state. One of the ways community legal centre staff are accepted in the Law Society is by giving certain undertakings: that we wouldn't make a profit and we wouldn't do a whole lot of things, and in return we are issued with reduced priced practicing certificates, but this is not for all states. In some states, they agree not to claim costs. In those states where costs are claimed and a pro bono lawyer is involved, the costs usually go directly to the legal centre. For instance, in one brilliant case against a bank, it was discovered that the bank has been overcharging clients by a few cents each time. The legal centre managed to get back over four million dollars in costs, and the pro bono lawyers left that with the Centre. The Centre has clearly done a lot of work with it.

Therefore costs are negotiated with pro bono solicitors, and it is always clarified during the early stages. Most Centres sign a standard letter with pro bono lawyers, which is not a contract, because often we do a matter together with a pro bono lawyer, where the lawyer will do only one small section of it and the Centre does the other part. This is what we call "unbundled". There are a number of areas where we "unbundled" matters and hand them out in different ways. As we have such a complicated method of doing it, we have a whole lot of standard letters, such as standard copyrights and standard costs. Costs is an issue and we attempt to address it upfront. We always ask pro bono lawyers to give it to the Centre where the Centre is allowed, but disbursements always go to the firm, including any costs about document preparation, filing or any of those straight out costs.

Joseph:

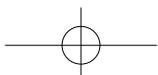
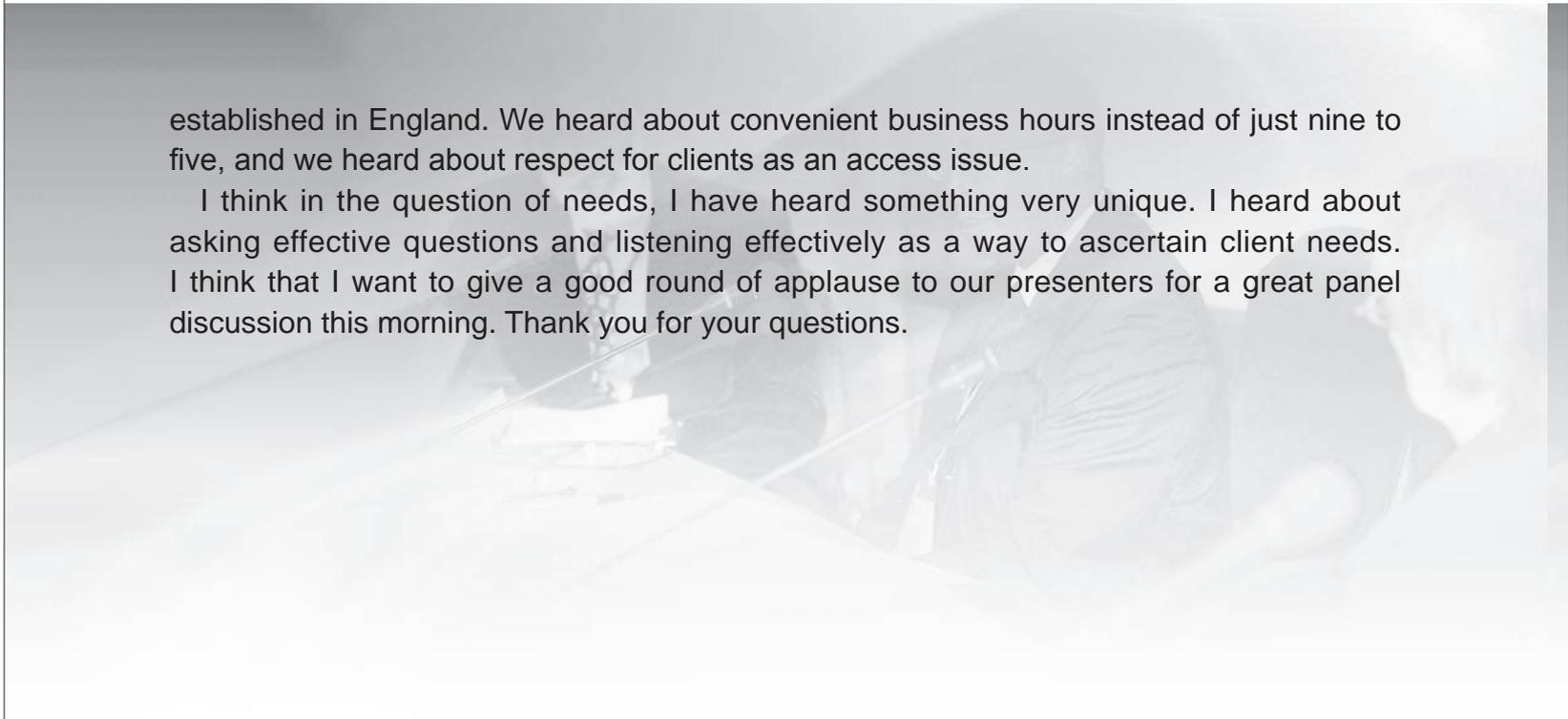
In addition to hearing about access and need assessment, we were educated by a wide range of important issues. I think that on access, we heard things like "it's important to have co-operation with other providers," and "you must have staff that is sensitive to the culture and the unique features of your clients". We heard that both in South Africa and Australia, being community based is important, like the new community court that is



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established in England. We heard about convenient business hours instead of just nine to five, and we heard about respect for clients as an access issue.

I think in the question of needs, I have heard something very unique. I heard about asking effective questions and listening effectively as a way to ascertain client needs. I think that I want to give a good round of applause to our presenters for a great panel discussion this morning. Thank you for your questions.

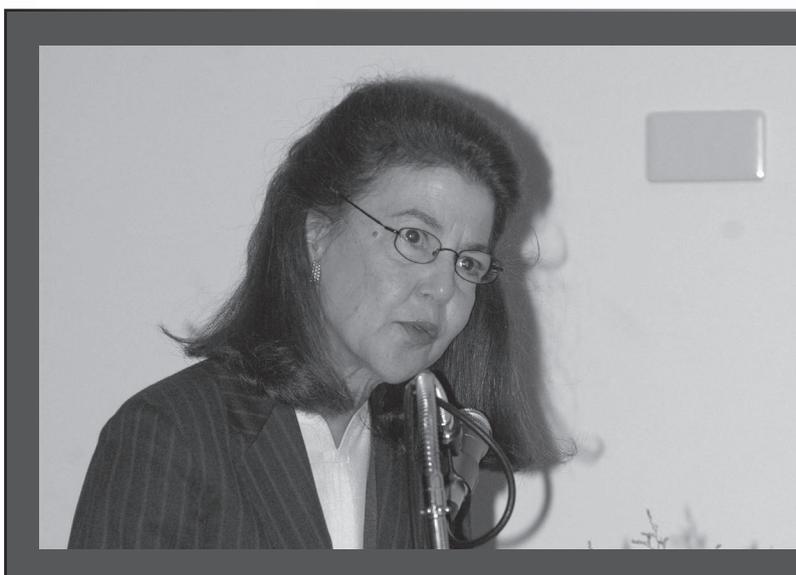




Panel III: The Quality Agenda



Moderator
Alison Hannah
Director, Legal Action Group
England



Presenter
Helaine Barnett
President, Legal Services Corporation
United States



Discussant
Bruce Lasky
Consultant, Open Society Justice Initiative
Cambodia



Presentation

The Quality Agenda

**By Helaine Barnett
President, Legal Services Corporation
United States**

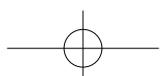
Thank you for that kind introduction. It is a great privilege for me to be here with leaders from so many different countries, who all work for the cause for equal access to justice. I am honored to be here as a representative for the Legal Services Corporation. I know that for all of us, our day-to-day responsibilities make it difficult to have many opportunities like this one. It is truly exceptional to be able to meet with colleagues from across the globe and to gain a greater understanding of the legal aid systems in other countries, and to discuss our shared ideals and goals for improving access to justice for the citizens of all our countries.

As this is the panel discussion on the "Quality Agenda," that will be the focus of my remarks. But in order for a fuller understanding of the discussion, it may be helpful to provide you some background on the system of civil legal assistance in the United States. I will start with a very brief history of civil legal assistance in the United States and the role of the Legal Services Corporation, the organization of which I am President. I will then discuss the initiatives LSC is taking to ensure high quality legal assistance, and through the discussion cover some of the specific questions about quality that I have been asked to address, such as the means for ensuring quality of legal services, mechanisms for monitoring and evaluating legal services work, the impact of low salaries, and the differences between the various delivery models of civil legal assistance.

History and Background

Although the concept of equal justice for all is one of the central principles of the United States Constitution, with the legal origins tracing back to the Magna Carta, the history of organized civil legal assistance in the United States is more recent. The first organized efforts to provide legal aid were in New York City in 1876, when the German Immigrants Society was formed to address the exploitation of German immigrant workers. The organization was the predecessor to the Legal Aid Society of New York City, the oldest non-profit provider of legal services to the poor in the U.S., and where I spent my 37-year career in legal services before assuming my present position as President of LSC in January of 2004.

Civil legal assistance in the United States was provided by small, local programs until the 1960's, when there was a movement to have a national program. As part of President Lyndon Johnson's War on Poverty, small amounts of federal government funding was provided to local legal services programs to provide assistance to the poor. It quickly became apparent that these small amounts of funding were inadequate for the much greater scale of the civil legal needs of the poor. Eventually, there was a movement to create an independent, non-profit corporation that would receive federal government funding appropriated each year by the United States Congress. The corporation would then fund local organizations throughout the country that provide civil legal assistance to





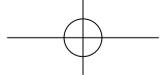
the poor. Legislation to create this entity, the Legal Services Corporation, was signed by President Richard Nixon in July of 1974.

There have been many ups and downs in LSC's 30-year history. More than once, LSC has faced political opposition and attempts to eliminate federally funded civil legal assistance to the poor. While the Sixth Amendment to the United States Constitution and Supreme Court precedent provide a right to counsel in criminal cases, to date a right to counsel for the poor in civil cases has not been established. This makes the United States an anomaly among the industrialized nations of the world. As you may know, European countries such as the United Kingdom, France, Germany and Switzerland, as well as Canada, Australia and New Zealand have provided, as of right, some form of legal representation to the poor in civil matters for decades, and in some cases for over a hundred years.

LSC has been able to survive the challenges and still functions as the national organization that distributes federal funding to local grant recipients, 140 in all, operating in all 50 states, the District of Columbia, and the U.S. territories. The current level of funding is about \$330 million, supporting about 3600 full time lawyers and 10,000 total staff. Although LSC currently enjoys broad bi-partisan support in Congress, this is a very challenging time for programs such as LSC due to the federal budget deficits. In fact, LSC's funding level of \$330 million is about half the amount of the funding in 1980 when adjusted for inflation. Due to constrained resources, lawyers at LSC programs often have to turn away potential clients. In fact, we recently completed a study where we asked all LSC funded programs to collect data for a two-month period on the number of eligible individuals they were unable to serve or were unable to serve fully. Our grantees reported that for that two-month period, they turned down as many potential clients as they were able to represent. If we were to project that number over a year, it would suggest that there are more than a million cases that potential clients brought to our grantees that they were not able to handle.

LSC is the single largest funder for civil legal assistance in the United States but there are other sources of funding, such as state and local government funding, private funding sources, and Interest on Lawyer Trust Accounts, that support LSC-funded programs and non-LSC funded programs. All of these sources combined provide nearly \$1 billion for civil legal assistance to the poor.

The resources for civil legal assistance must try to meet a staggering need. For assistance through LSC programs, a potential client must meet eligibility requirements set by the federal government. An individual receiving assistance through an LSC program can earn no more than 125% of the income that the federal government sets as the official poverty level. For example, a family of four is at the poverty level if the household income is under \$19,307. To be eligible for LSC assistance, the family's income must be lower than 125% of the poverty level, or \$24,188. It may surprise you to know that according to the most recent U.S. Census, there are more than 43 million Americans, from a population of almost 300 million, eligible for LSC assistance. In August, the Census Bureau reported that in 2004 12.7% of Americans are now living in poverty. As a result of the great need and insufficient resources, most studies indicate that about 80% of the civil legal needs of the poor in the United States are unmet.



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The civil legal problems faced by the poor concern essential human needs. Lawyers in LSC programs represent their clients to protect them from abusive relationships, ensure habitable housing, provide access to necessary health care, obtain disability benefits, and address child support and custody issues. Even with LSC and other service providers, too many poor Americans have to face proceedings where crucial decisions affecting their lives are made without the assistance of counsel.

Focus on Quality

Clearly, obtaining adequate resources has always been a key issue for providers of civil legal assistance in the United States, and a big part of the job of serving as LSC's President. But I have also decided that the primary emphasis of my presidency and a personal priority will be the quality of the legal services provided by LSC organizations. It is not enough for a low-income person to have access to a lawyer if that access does not result in high quality service. Access to a lawyer is not, in and of itself, access to justice. Ensuring quality is also a statutory duty of LSC. The statute that created LSC requires it to ensure that the programs it funds maintain the highest quality and meet professional standards. Our challenge is to determine how to actually define quality, how to measure quality, and what LSC's role as a funder is in helping to promote and inspire LSC funded programs to provide the highest quality legal services possible.

By focusing on quality, I do not imply that the representation provided by lawyers and other advocates in legal services programs have not been or are not now of high quality. Indeed, in my experience, the legal representation provided by the civil legal services community has been and is of very high quality by any professional standard, even given the very scarce resources with which most, if not all, programs operate. But with the persistent scarcity of resources, and growing caseloads, emphasizing quality is important to ensure that quality does not suffer in the effort to provide some assistance to as many clients as possible.

Defining Quality

A basic component of quality is whether our work is making a difference in the lives of individual clients. Are we providing representation in the types of cases that reflect the most critical needs of our client population? Are we achieving the desired outcomes in cases, qualitative results rather than just numbers of cases closed? Are we taking steps to adequately address the needs of special populations of clients, such as those with limited English proficiency and migrant workers? In other words, are we integrated into the community so that we are aware of the changing needs of our clients, and are we responsive to those needs and changes in the services we provide?

Focusing on quality also means ensuring that legal services programs are well-functioning organizations. Do programs have effective leadership and competent and motivated staff? Is there diversity in the workplace? Do programs support continuing training and participate in critical self-evaluation, as well as develop state and local resources to support their mission? Do programs make effective use of technology? The aim of LSC is to emphasize these goals and foster discussion within the legal services community about how LSC and programs working together can further improve the services programs provide.



As part of the LSC quality agenda, I am holding a series of conversations on quality with national, and now international, leaders in legal services. When I began discussions with my colleagues about a focus on quality, and the related question of how to measure it, it became clear that “quality” is difficult to define. From my discussion with legal services leaders, we have been able to identify a number of indicators of a high quality legal services program. The high quality programs are:

- Goal oriented, what they are trying to accomplish has been clearly established, and all staff are aware of the goals
- Active, not passive
- Attentive to training
- Involved with the community, and responsive to changing community
- Working with other organizations with similar commitments at the local and state level
- Using good systems and structures
- Emphasizing results and what is accomplished for clients
- Innovative, and always trying new approaches
- Regularly evaluates what it is doing

Measuring Quality

The next important step is determining how to measure quality in LSC programs. The primary way LSC carries out this responsibility is by evaluating the programs it funds against established standards. It is necessary to have standards that have been agreed upon by the provider community. LSC is currently completing, with significant input from its grantees, a revision of its Performance Criteria, which have not been revised since their adoption in 1993. The Criteria draw significantly on the American Bar Association Standards for Providers of Civil Legal Services to the Poor, which are also undergoing revision since they were last revised in 1986.

Measuring quality has been built into the manner in which LSC awards grants to its grantee organizations. LSC uses the Performance Criteria to guide LSC’s assessment of program performance generally and in the competition process. Since 1996, LSC has had a competitive award system, rather than presumptive funding. Applications for LSC grants are built around the Criteria and Standards, with each application question referencing specific sections of the Criteria and Standards. Through careful consideration of all the application components, LSC makes grants to those providers that are best suited to provide high quality services. LSC ensures quality through the process of grant making, and through regular visits to LSC programs to ensure that quality standards and other requirements of LSC regulations are being met. The visits include reviews of program procedures and operations and interviews with staff, Board, members of the judiciary, and members of the client community designed to assess the program and to provide helpful feedback.

In order for these efforts to be effective, the Criteria and Standards must be up-to-date. Much in the legal services practice has changed within the last two decades. The client needs have changed, delivery strategies have changed, and new technologies have had a tremendous impact. In general there are fewer programs covering larger service areas, and there have been reductions in funding. There have also been significant demographic



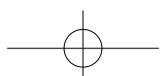
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and other changes in the client population. As a result, LSC is near completion of revising and updating its Performance Criteria to account for the developments in legal services in the ensuing years and I am serving on the ABA Task Force that is currently working on revising the Standards.

In addition to assessing LSC programs, the Criteria are intended to serve as a useful framework for internal reviews by programs, self-evaluations, and external peer reviews by LSC and other experts. The criteria also take into account the reality that LSC programs do not have sufficient resources to provide comprehensive services that fully meet all of the major civil legal needs of low income people in an entire service area. The criteria focus particularly on results and outcomes. The criteria also embody a dynamic vision of LSC program work, related to the specific needs, resources, and situations in a particular community.

There are four broad performance areas: 1) Effectiveness in identifying and targeting resources on the most pressing civil legal needs of low-income people in the service area. This means that the program undertakes periodic comprehensive assessment and ongoing consideration of legal needs, sets goals and objectives, develops strategies and allocate resources, implements them, and regularly analyzes and evaluates its effectiveness and make any necessary adjustments. 2) Effectiveness in engaging and serving the low-income population throughout the service area. This includes conducting its work with dignity and sensitivity to clients, engaging with the low-income population, and being accessible to and effectively utilized by the low-income population. 3) Effectiveness of legal representation and other program activities intended to benefit the low-income population in its service area. This includes providing legal representation, effectively integrating private attorneys in its work, providing other program services, such as community legal education, assistance for self-help activities, participating in alternative dispute resolution and other approaches using available technologies, and engaging in other activities on behalf of the eligible client population, such as communicating with the judiciary, the bar, government agencies and academic centers. Finally, the fourth performance area is effectiveness of governance, leadership and administration. This includes effective oversight by the program's board, effective leadership in the program, effective overall administration, including financial and human resources administration, good internal communication and general resource development and maintenance. All of these performance areas are used in LSC's evaluations of its programs to ensure that they provide quality legal services.

Our proposed revised draft concludes by stating "The Criteria contemplate an assessment process that takes full account of the different situations in each program and community. They make no effort to predetermine which needs or types of cases are most important, what kinds or levels of service should be provided, or how specific cases should be pursued. Such categorical and quantitative absolutes are not possible or helpful, given the enormous variety in circumstances from community to community across the country. Similarly, there is no strict checklist of specific processes, systems or factors, the presence or absence of which define whether or not a program is "good." These Criteria, however,





collectively reflect LSC's sense of current best practices that promote delivery of high quality legal services."

Quality Initiatives

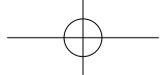
In addition to measuring quality through its statutory duties, there are a number of other steps that LSC, as a funder of civil legal assistance can take to improve the quality of services provided by its grantee organizations. As a start, simply focusing on quality and raising it as an issue can encourage programs to better define their missions and goals. It can also promote the programs to do more evaluations built around its goals and priorities. LSC also encourages innovations and best practices to encourage quality. Programs are encouraged to share their best practices, which LSC disseminates broadly through its website and its magazine.

In addition, LSC is taking a number of specific initiatives designed to improve quality through the most important ingredient in building and maintaining high quality programs, the dedicated people who work in legal services. Achieving our goals of high quality services will be impossible unless we recruit and retain talented lawyers to public service. One of the biggest barriers is the burden of law school debt on lawyers wanting to pursue careers in public service.

Recognizing the severity of the problem, the American Bar Association appointed a Commission on Loan Repayment and Forgiveness which produced a final report in 2003. The Report documents the rapidly increasing cost of a legal education. For example, 87% of American law students now borrow to pay for law school, and many graduate with over \$80,000 of debt. The median starting salary in legal services programs is only about \$37,000. For most programs, law school debt has a serious impact on their ability to recruit and retain qualified staff attorneys.

One exciting development is LSC's new pilot Loan Repayment Assistance Program, which we are about to launch. Congress has permitted LSC to use up to \$1 million for a pilot Loan Repayment Assistance Program (LRAP). The pilot is designed to obtain the data to determine whether an LSC LRAP would help our grantee organizations recruit and retain qualified attorney staff. The pilot will begin this year and continue for three years, funding permitting. LSC has already selected a number of Participating Grantee Programs that provide a representative sample of grantees reflecting diversity in size, geography, and rural versus urban. Participating Attorneys from these programs meeting the eligibility requirements will receive up to \$5000 a year for a total of three years. The program will be aimed at new law school graduates and attorneys with up to three years of experience. Through the pilot, we hope to gather the data demonstrating that loan repayment assistance enhances recruitment and retention of highly qualified attorneys to work in legal services, so that we can advocate for continuing funding for the program.

Assuring high quality in legal services programs requires not only helping to make sure that there are enough talented lawyers entering the field, but also developing future leaders. To best serve our clients, we also must have diverse leaders and staff. LSC has made and will continue to make leadership development and diversity a priority. We are working with partner organizations in the legal services community to identify necessary leadership skills and to provide training to enhance these skills. We have also finalized the development of a pilot mentoring program as part of leadership development so that future leaders can benefit from the advice of those with more experience and develop the relationships that will provide guidance and support throughout their careers. Through the pilot, we will develop and evaluate different mentoring and leadership development models that individual LSC programs can replicate in furtherance of providing quality legal



services. The pilot program will bring together protégés who have at least five years of experience with senior leaders in legal services. Through a combination of individual and group mentoring, as well as specific training programs on professional development, program supervision, communication, building community partnerships, among others, the pilot will help develop the skills necessary for the future leaders in the legal services community. We believe that it will also foster recognition and commitment among LSC programs that the programs and their clients will benefit from the nurturing and cultivation of a diverse corps of future leaders in the community.

Finally, one of our continuing means of improving services is the effective use of technology. Part of LSC's annual budget is devoted to awarding grants to certain LSC programs for technological innovations in delivering civil legal assistance. Technology can improve intake, advice and referral systems and can expand the number of clients receiving some level of assistance. Computerized, web-based self-help programs can provide consistent, quality information and assistance to a large number of persons who might otherwise not get any assistance. It can also make it easier for attorneys to represent clients from great distances through teleconferencing, and can expand training opportunities.

Delivery Models

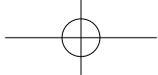
The last point I've been asked to address is the effect of different delivery models on quality of services. I am not aware of formal research evaluating the differences in quality between the different models, though there are some basic advantages and disadvantages to the models. LSC funded organizations follow the staff attorney model, which is the predominant model among legal services organizations. It has the advantage that it generally attracts individuals who are committed to legal services work, and encourages building expertise. Having more experienced lawyers allows for training of newer attorneys, and closer supervision.

What is becoming more common due to reduced resources is limited representation. The legal services program provides limited representation such as intake, advice, referral and brief services, as part of a comprehensive and integrated delivery system for the service area, such as a state. It attempts to maximize resources to ensure that there is some service for all low-income persons in the area.

In the Judicare model, all private attorneys in a service area are invited to engage in legal services representation on a case-by-case basis. The attorneys are compensated at an hourly rate that is well below market rates. In some models, clients may choose freely among attorneys who participate; in others, the legal services program screens for eligibility and place the case with a rotating panel of attorneys. This allows for representation throughout a large, typically rural and sparsely populated area. The disadvantage is that there is less control over the quality of the private attorney's legal work.

Conclusion

In the end, the importance of ensuring quality in civil legal services is the larger mission of helping the least advantaged in our societies. It is the importance and value of giving a voice to those not able to represent themselves and whose pressing concerns are not always foremost in the minds of the policymakers and the public. In order to foster respect for the law, there must be a commitment to ensure that no particular segment of society is excluded from access to justice and that the ability to resolve pressing civil legal problems is not based on financial status. How we respond to the needs of the most vulnerable among us—at their time of greatest need—is clearly an indicator of a civilized society. One



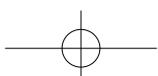
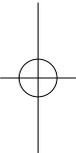
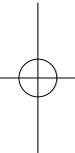
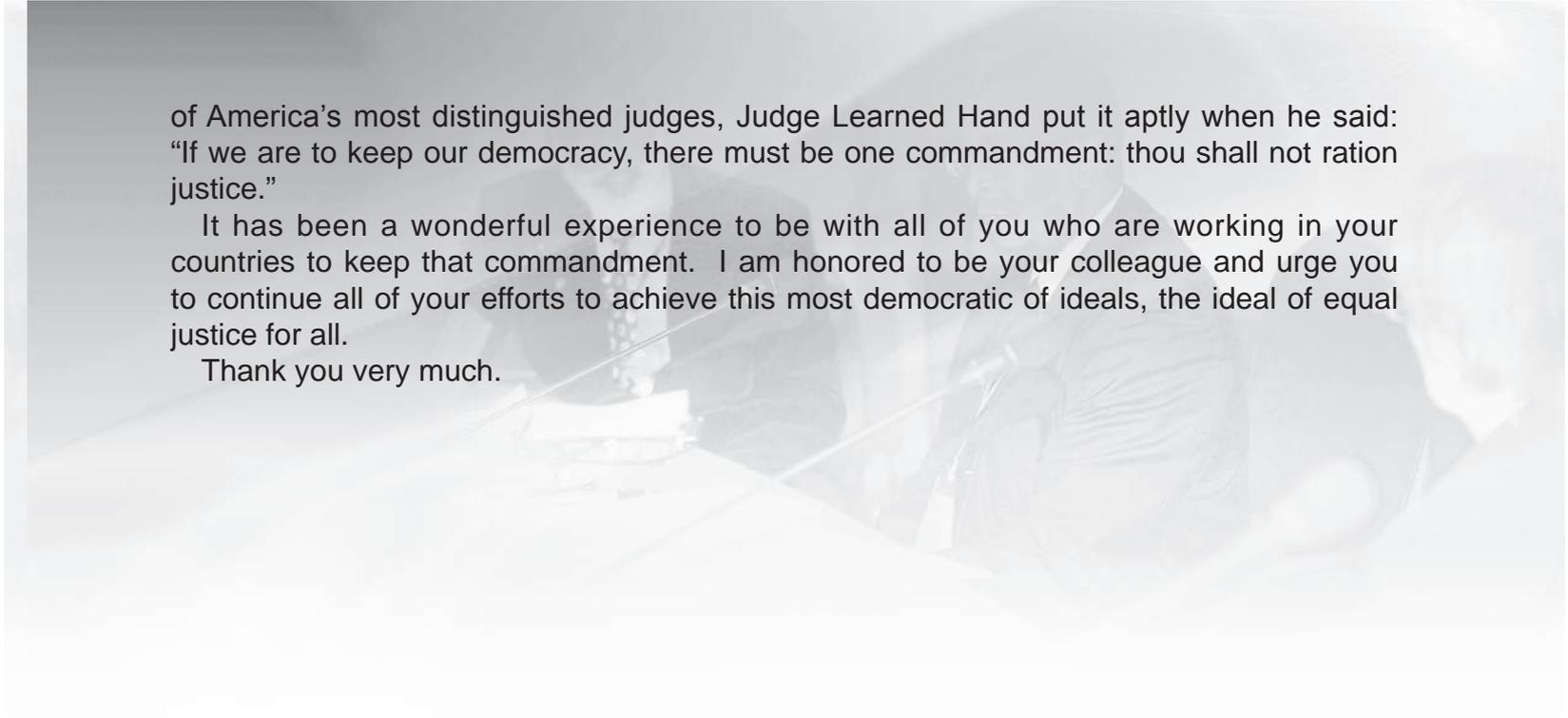
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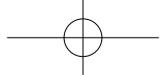


of America's most distinguished judges, Judge Learned Hand put it aptly when he said: "If we are to keep our democracy, there must be one commandment: thou shall not ration justice."

It has been a wonderful experience to be with all of you who are working in your countries to keep that commandment. I am honored to be your colleague and urge you to continue all of your efforts to achieve this most democratic of ideals, the ideal of equal justice for all.

Thank you very much.





Discussion

By Bruce Lasky
Consultant, Open Society Justice Initiative
Cambodia

I teach law students practical legal skills and about being better, “socially interested” attorneys. On the first day of class, I say to my students, “If you need brain surgery, what kind of doctor do you go to?” They look at me and say, “I go to a brain doctor.” And I say, “Why don’t you go to a foot doctor?” Then they say, “Because I won’t let a foot doctor operate on my brain.” And I say to them, “What do you think of attorneys? What do you think of an attorney trained in one area of law practicing in another area of law?” And they often say, “Oh well, that they can do.” And we often spend the next term explaining to students why that is usually not the case, and how important it is to make sure that attorneys are trained in the area that they are working in to provide quality legal services. With that said, it is unfortunate that in many areas of the world, sometimes you need foot doctors to perform brain surgery, because there are no brain surgeons to do it. After having travelled around and met with many legal services providers and working in countries in transition, I have become more aware of this.

The organization I work for, the Open Society Justice Initiative, focuses a large part of its work on helping to develop legal aid systems that ensure quality legal services. In doing this, one of the areas we focus on is helping to set up, where applicable, public defender model systems for criminal legal aid. In doing this, we have helped set up public defender systems in Lithuania and Mongolia, and we have worked on criminal justice reforms around the world. Throughout this process, we have noticed that when you are looking at the issue of quality, there is always the problem of quality versus quantity; money versus ability versus resources. When we are working in countries that don’t have all these resources, particularly in Cambodia and in countries like Laos and Vietnam, you realize that you cannot provide the kind of quality services that is possible in countries like Britain, which has a budget of 2 billion pounds per year.

Thus, we often look to alternative legal aid systems. Our colleague, the Honorable Justice from South Africa, has brought up the issue of paralegal programs as alternative systems for legal aid. We recognize that, with those systems, a person is not necessarily going to get a lawyer, either because there are no lawyers in the area or because the person cannot afford a lawyer. However, we still have to try to ensure quality. We do that through training programs in traditional village areas that use traditional mechanisms of justice. For example, in Cambodia we train monks who handle legal issues and help them understand that when handling legal issues, they don’t need to revert to traditional methods of assessing fairness – where powerful people win or where there is a family dispute, the man wins (i.e. the woman who is beaten by her husband should go back to the husband because it is a woman’s duty). This is what we try to teach to providers of alternative systems of justice for quality purposes.

Another difficult and fascinating issue when measuring quality is the objective measure of quality and the subjective measure of quality. Oftentimes people will say, “I didn’t get quality legal services, because I lost,” even though they weren’t going to win no matter how much money there was. And in South Africa, oftentimes a client will not want a black



attorney, even though the client is black, because in people's minds white attorneys are perceived as better quality attorneys, regardless of the actuality of it. I was told at lunch today that in Britain, oftentimes black clients prefer black attorneys. As a Jewish attorney working in the Southern parts of the United States, people liked the fact that I was Jewish because there is a perception that Jewish people were better attorneys. In saying that, when you look at quality measures you have to understand that oftentimes quality is what the client believes he or she is getting. Being aware of this phenomenon is very important because you can give the best defense to a client, but if the client doesn't understand that, your job is going to be more difficult and your delivery of quality is going to be more difficult.

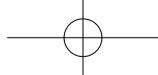
When I was about 26 years old, I represented a client in a first degree rape case facing possible life imprisonment. When I first met with the client, I was highly stressed and did not have a lot of time. I sat down with the client, who was angry and talking at me, and I said, "Look, I've got 30 minutes, I can talk or you can talk. You choose how you want to spend your time. But if I talk, I believe you will get better services." And he continued to talk because right there, we created a relationship in which he was not going to trust me. Throughout the rest of the representation and all the way to trial, he didn't trust me and I had the most difficult time. Even though he was eventually found not guilty of the rape case, it wasn't until the very last day that he turned to me and told me that when he finally saw me in court working for him and arguing for him, he trusted me. If I had just spent maybe 30 more minutes on the first day to listen to him, we could have avoided all the difficulties we had. That was a lesson that I have carried since then.

One of the issues of quality is good lawyers. I've visited the Alternative Law Group in the Philippines and seen their idea of holistic lawyering – the idea of treating your client equally, listening to your client and working with your client on not just the legal issues. Yesterday we discussed professionalism – and what is professionalism? Many lawyers out there say, "I am professional if I tell my client for 30 minutes what they are going to do, and I go to trial and I win." That is not professionalism; lawyers have to do more than that. Lawyers have to be proactive. Lawyers are social workers, whether you like it or not. To be better attorneys, you must take this holistic view.

In order to ensure quality legal services, one must implement training standards that train lawyers to be more than lawyers and to understand how to work with clients. With that, you need the support of leadership. In organizations, you need people who will listen to lawyers to work with them, help them and provide training. Leaders should not say, "Ok, you've got your law degree, you're done, go and work". We need to provide lawyers with not only lawyering skills, but also training in counselling skills, listening skills and advocacy skills. We need leaders to do that, but this is a controversial issue.

In my experience, I see some pretty lazy legal aid attorneys in both criminal and civil legal aid, as well as lazy private attorneys. You need leaders who say, "If you are not going to be in this job, you're out." You need donors who are going to say to organizations that they are funding, "We are not going to fund attorneys who are not going to work." The client deserves quality. In addition, you need to train lawyers in the area of technology.

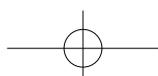
As one of the things we do in training lawyers to guarantee quality, we focus on legal aid clinics. We believe that to have good lawyers, you start with the law students. In



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universities, we build programs that teach students practical legal skills, how to be ethical attorneys and how to work with clients. We know that when law students go through legal clinic programs where they work with marginalized, poor communities, they choose to do legal aid after they graduate because they've been taught how to do it while they were getting their education. This has been proven, especially in many countries in this region,

In my introduction I gave the example of the foot doctor. I actually once met a nurse who was working in Nepal, and she told me that she performs in the area of brain surgery because there was no one else out there. I took that to heart. I also take to heart the idea that when I was 26 years old, handling a first degree murder case by myself and representing someone charged with life imprisonment, I was the only hope this person had. I was against the judge, who was a former prosecutor, against the chief assistant prosecutor, who used to work with the judge, and against the division chief, who worked right under the chief assistant prosecutor. I was all this person had. He was found not guilty of first degree murder. And years later, I think about the mistakes I made and the things I did right. Could I have done a better job? Yes, we all can. But I did my job, I felt good about what I was doing, I tried and I worked hard, and I had a system that supported me, even though it could have been better. It always can be, and that's what we should always strive for. Thank you for listening to me.





Question and Answer

Alison Hannah:

Now we have some more words to add to our themes about quality. We've heard from Helaine about leadership, mentoring, and being active. Listening, respect and training also keep coming up as issues that everybody mentions. Bruce also discussed the question of being proportionate--is the system of quality proportionate to the need? In those countries that might only have 3 lawyers covering hundreds of miles, they may think that quality is a little step too far from what they need to be focusing on. With all those various words and thoughts in mind, I'd like to open the floor to questions.

Chito Gascon (Lawyers League for Liberty, Philippines):

I'd like to raise some questions about the programs that LSC is doing to promote quality. You mentioned providing subsidies to new lawyers who are in debt and encouraging your providers with incentives to measure quality. Rather than working with legal aid providers in developing their own quality measures, are there any measures at the federal or national level? Have there been efforts for example, in establishing training institutes that service several providers that exchange best practices, or setting up grants of awards for the best quality performing legal aid providers? Are the incentives for your legal aid providers based on the proposals they submit to you?

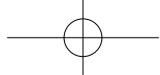
Helaine Barnett (Legal Services Corporation, United States):

We do a number of things. We do program visits where we request a lot of documentation ahead of time. We spend a considerable amount of time at the program interviewing many different components of the system, and then provide preliminary findings and a final written report with recommended actions to the program. Sometimes that requires us to return to the programs. We can impose special grant conditions. We can provide technical assistance in particular issues such as intake. We issue program letters to programs on how to best represent persons of limited English proficiency. We are looking into possible regional training programs as well as using the internet and the website types of training programs. We also encourage our programs, and we have a special website for best practices and we think that it is a role that we can do more with because many of our programs have wonderful practices in particular areas that we want to be able to share with the entire community, so they can gain from that. So, there is more that we can do, and we hope to do more in this area as well.

On the national level, we have established Performance Criteria through working groups which comprise of experts in the field. We also work with the American Bar Association on their nationally based standards in providing legal assistance to the poor.

Gascon:

How about the notion of continuing legal education? Often, when you are on the front line, you are dealing with problems on a daily basis. Of course you get the expertise, but sometimes you need to hone your skills and knowledge further with legal developments in the jurisdiction and the latest developments in law schools. Is there a system in which that kind of resource is brought to these legal aid practitioners?



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Barnett:

Continuing legal education is done on a state by state basis. Some of it is mandatory, and different states have requirements for lawyers to continue their practice by having to participate in a certain set of mandatory training materials and training programs. Some include professional ethics, some include the substance of skills and many legal services providers are qualified providers themselves and provide that training for their staff.

Hannah:

In the UK, we have a system where all lawyers have to undergo continuing professional development. A practicing lawyer has to complete a certain number of training hours each year to make sure that they do keep up to date with the latest developments. And I was just wondering if people, with a show of hands, could say whether in their own countries if there is such an on-going professional commitment. Not so many, glad to see that there are quite a few, so obviously I think that this is an area that people might want to take back to see whether that would be a useful contribution.

Wilhelm Joseph (Maryland Legal Aid Bureau, United States):

There is a tension between powers and the involvement of the Federal government in developing national policies over the states. United State's Constitution has spelt out specific powers for the Federal government, and all other powers not specifically spelt out by the Constitution or passed by Federal law are left to the states. So what you find is that it's convenient for some people to say, "so the state should do this." When it is not so convenient, they say, "let the Federal government do this," and such is the tension. Law practice is not a national thing, and every state has its own law that governs its law practices. During the early days of the LSC, there used to be a national training apparatus at LSC Headquarters and there were regional offices and they supported national centers around the country to do research in specific areas like juvenile rights, elderly, housing, economic development, and women in law. However, their politics changed. Funding for all of those has been abolished by Congress, saying, "don't fund these organizations, they are national. So there's this tension where they don't want the Federal government to be involved in national initiatives and it is left to us in states to do that. For example, in the state of Maryland, LSC's funding to us in 1996 was about 40%. It's now down to 20%. So we focus more on what the states can do to serve our citizens, and I think that is a good thing. By the way, I like your idea of incentives, because incentive programs are the best, and I think we should get incentive programs reward next year from LSC.

Dunstan Mlambo (Legal Aid Board, South Africa):

I think the fact is that very few people who choose to do legal aid work are passionate about it. The majority of people who come to do legal aid work are the people who are still entering the profession, who can't get articles or employment elsewhere, are the people who can't cut it in practice, and legal aid work is an easy way to make money. I would like to hear, particularly from those systems that use judicare, how they ensure that the people they brief are not only interested in showing their faces in court and making sure that they get money, but are result oriented?



Hannah:

As an ex-legal aid lawyer, I completely disagree with you about the assessment of the situation in our country. In fact, in the UK, we have almost the opposite problem. People specialize in legal aid when they are quite young, they stay in and retire from legal aid, and there have been a few comments in the conference about the difficulties in recruiting legal aid lawyers. I'm not sure if it's that universal, but Mike would probably want to add to that.

Mike Jeacock (Legal Services Commission, England):

In the context of England, and certainly in Wales, one of the main issues that we work with our legal aid providers on is quality. We have staff who go out and audit the providers against our quality standards, significantly the supervisory standards, as we take the supervisory responsibility very seriously. Where providers fail to meet those standards, we will take their contracts away, which can mean significant loss of income. There are occasions where we do that, in conjunction with the Law Society, which is very supportive.

Our biggest challenge now is to get young lawyers to come into the profession. We are trying to incentivise them through training grants. One of the emerging issues for us now is the ability of the not-for-profit agencies and solicitors to run a business. From our experience of auditing where we have found good practice, good supervision and good quality, there is often a good practice manager who runs the organization as a business. That would sustain us in developing legal aid in the future.

Once again, I find that in England and Wales, the quality agenda without doubt is the biggest thing in the central plan for us, and as Alison and I have said on more than one occasion, "we believe that access to poor advice is not access to justice." The biggest area that we have worked in over the last couple of years has been the Asylum and Immigration Unit where we have seen some abuses of the contract, and we've worked very hard with all those agencies to remove poor suppliers. Because we feel, certainly, the asylum seekers are the most vulnerable. So for the Judge's perspective, we are at the other end of the spectrum.

Barnett:

I normally don't like to disagree with the Judge, however with the staff attorney model, I would say that the vast majority of our attorneys are passionately committed to the work. I, for one, am a lifer, my entire professional career has been a legal aid lawyer. I was 37 years as a legal aid lawyer in New York City, heading the Civil Division of the Legal Aid Society of New York for the last 10, until I was appointed as the President of LSC. From my experience in my own program, and from going around the country visiting our programs, legal aid lawyers aren't there for the salary. They are there because they are committed to the concept of providing the best quality they can to the underprivileged, and to the most vulnerable in our society. I would just like to at least state on the record from my perspective with regards to legal services attorneys in the United States that they are passionately committed to their work.

Jeacock:

As a life-long corporate banker, perhaps more cynical and looked to the bottom line,



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one of things that I personally find very motivating is meeting legal aid lawyers. I am never short of being extremely surprised and motivated by their dedication and the extra steps that they take to make sure that the holistic approach that Bruce alluded to takes place, and sorting people's lives out. I had the pleasure of attending a conference on domestic violence which relates to battered wives in particular, and one lady told me that but for legal aid, she would have honestly be dead now. That is down to the duty and the care of our legal aid lawyers portray.

Arturo Fournier (Inter-American Bar Association, Costa Rica):

Continued education is optional in my country and is provided by the National Bar Association. There is no possibility of being lazy in legal aid in my country because all legal aid services are so full of cases that people have to work even out of hours. They have so many cases that it is absolutely impossible to be lazy in providing legal aid, especially those working in court. I don't know how they perform in court, but I know that they are very passionate, really believe in what they are doing and the services that they are providing.

Julie Bishop (National Association of Community Legal Centres, Australia):

I think that one of the key things that's coming out here is that although legal aid lawyers probably get less money than the private profession, they still get a lot more than our lawyers would get in Australia. I don't want to say that legal aid lawyers are lazy, far from it, but what we do notice is the wages, particularly in the community sector where what we can pay is so low that it's very hard to get anyone at all. Often, when you get someone, you have to put a lot of work into making them acceptable, and I think that's particularly so in remote locations where community legal centres would decide that it's better to have someone rather than no one and try to resource it, and then we get problems of what to do with them when after the training they're still no good. I think that it is a very real issue, and I don't know if it's about laziness or lack of alternatives, and that is something we grapple with in Australia in spite of a number of systems that are in place.

In terms of the quality systems that you outlined in the United States, we have all those measures in Australia where people are audited, reviewed and fill out forms. But what we've found in the community sector is that it's not effective, and the reason is that lawyers don't do it for the money, they do it because they want to. What has been the most effective in our case are the peer review systems that we've set up ourselves. My organization provides professional indemnity insurance for our lawyers; as people can't practice without their insurance, we have a peer review system linked in with that insurance. Nevertheless centres are very much engaged in developing the standards and the criteria of the peer review, and it's the other centres that check on it. We found that the peer system developed by lawyers or the centres themselves has been the most effective method of ensuring quality rather than systems that have been put on by the funders because of the whole nature of the relationship between the funder and the service providers.

I-Ching Kuo (Legal Aid Foundation Taipei Branch, Taiwan):

Taiwan's Legal Aid Foundation was only recently founded last year, and in fact Taiwan's lawyers are not that familiar with the idea of legal aid. Honestly, I think some lawyers in



Taiwan accept legal aid cases out of self-interest. I would like to ask the three speakers, what should we do to change their minds and to ensure their passion for legal aid?

Lasky:

It's a great question. It relates to the idea of how you create better lawyers, and there are many ways. I don't believe that paying money is the way to make a lawyer more interested in helping poor people. Again, I agree that sometimes lawyers are underpaid, and if they are paid more they would be able to work harder. But the big issue is, how do you work on somebody's character, somebody's personality, to make them care about people and donate part of their legal practice to doing this? I think that is a question that has been out there for a long time.

One of the things that I discussed during my presentation is that we focus on what we call "clinical legal education" where we teach law students. Currently in Cambodia we're working on a legal studies curriculum for high school students to get them interested in law. By the time the students get to university law schools, we develop educational programs which they can take as part of their curriculum. The programs teach law and practical skills and have students work to help poor people on legal services issues. It provides them with practical skills, which most of the law students lack. One of the biggest complaints of judges, law firms, organizations and others is that law students graduate from law school and they don't have practical legal skills. These types of programs help with that, so they have practical legal skills. In addition, you expose them to an educational process to poor people, showing them that they have problems and that the students can learn from these people. We believe that these programs clearly work to make law students, when they graduate, to become lawyers who will be more interested in helping poor people as opposed to just doing it because they needed a little bit of money or just doing it for charity.

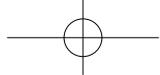
Hannah:

There's only one thing that I would say to that, and it's one of the questions that we were all sent out before the conference. Well, the question was, does the rate of pay affect the quality of legal aid work? I think that it's a complex relationship because money doesn't make somebody a good lawyer or an enthusiastic lawyer, but lack of money will prevent people taking up this sort of work because everybody has to make a living. So, I think there is a relationship between the rate of pay and the quality of services. Although it seems generally the case that legal aid lawyers are paid less, paying them more wouldn't necessarily make them enthusiastic, but I think it would make more people attracted to this sort of work, and you would widen the pool of availability.

Joseph:

I've spent 30 years of my life in legal aid, and I have been the Director of three major programs in New York City, Mississippi, and Maryland. We employ human beings. In any human endeavor, human beings range from the honest, hardworking and focused, to the dishonest and unfocused. Whether it is the police department, politicians, judges, or whoever you are.

The key, then, becomes: how do you ensure that most of the folk you engage are within



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the scope of what you want and eliminate the others? When dishonest people slip through the system, do you have systems, standards or practices in place to weed them out and fire them?

The day I left for this conference, my staff asked me to approve the firing of a lawyer who left private practice to work for us six months ago. He didn't pass our six months test, and I said, "let him go."

We don't tolerate incompetence. If you consistently commit even minor malpractices – miss deadlines, fail to return client calls – then we fire you. When we hire you, somebody or myself was designated to interview you personally. When you are interviewed by a particular leader in a particular office, we want to know about your dedication, your demonstrated sensitivity to poor people, your professionalism and competence. If you pass that test and you're inside, we review your work. We have people who review your work very often: the quality of your written communication, whether you respond to the complaints, etc.

Money is indeed a factor. People who are coming out of law schools want to do this kind of work. I believe that a duty lawyer and a staff attorney is a better model, and I find that more often than not, those private lawyers are given a chance to get in, and how do I get rid of them? Because they are just unaccustomed to being managed, reviewed, and standards set for them, so I don't know about the question of being lazy, but the question of the standards that are different, and I think sometimes, in the due process, I can weed them out.

Someone who has been in practice for 15 years came to me two weeks ago, but I wasn't sure if this person was ready for legal aid, because he seemed confused. I took a chance: "No job for you." That's when you exercise quality control.

Joseph Lin (Legal Aid Foundation Taipei Branch, Taiwan):

Is part of the reason the difference between market rates and the remuneration paid to legal aid attorneys? I understand that in the United States, your attorneys receive remuneration that is closer to market rates.

Before Taiwan had a formal legal aid system, there were also a considerable number of attorneys who did pro bono work. Since they were volunteers, naturally they were passionate about their work. However, since the establishment of the legal aid system, a large number of attorneys – about two-fifths of the entire attorney population – have become involved in legal aid. I think most of them are sincere in their efforts, but inevitably there are always some who are not so professional or hard working, since their remuneration is only one-third to one-half of market rates. I would like to ask the three speakers something that Mr. Joseph and Mr. Lasky mentioned: how do you let unfit attorneys leave the system? What are some specific measures in this process of elimination?

My other question is about rewards, which are very important and are not necessarily monetary. How do you encourage attorneys – whether they are contract attorneys or staff attorneys – when they receive a salary or remuneration that is less than market rates? Thank you.



Barnett:

When you mention the gap, I assume you meant the gap in salary between legal aid lawyers and lawyers in private practice? It ranges, from large firms, the gap is huge; while in certain areas of the country, private practitioners may struggle to make a living, it's very uneven. When you talk about incentives other than money, recognition—it's very important to recognize a job well-done, and it's very important to recognize somebody who has gone above and beyond. Giving out awards, public testaments, you know what. I know that it sounds a little trite, but I think that it's very very important to recognize those professionals who go above and beyond what's require of their job and make a meaningful difference to the lives of their client and find some way to give public recognition for that.

Lasky:

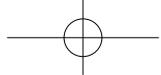
One concrete example and suggestion is similar to this: you may not have money or organization to pay for salaries, but one thing that I find very effective is trainings. If you can go and find out where there are specific, not just fun - what we call in English - junky conferences, where you just go off and don't pay any attention, but actually go and they meet colleagues like we do in here, it really invigorates them. There is international funding for conferences and what you're saying to the employee is, "I value you, I see how good you are, I want to make sure that you're staying with us and your abilities are being brought out, and we are sending you as an ambassador to this conference, because of what you've done.

Jeacock:

Just on the incentives, I totally agree with what Bruce says, and our legal aid practitioners have annual conferences where they have awards for the "Legal Aid Lawyer of the Year" and the "Young Lawyer of the Year". We have a secret weapon, Sherry Blair, who is Tony Blair's wife and a big supporter of legal aid, to come along and do the presentations, so we're almost guaranteed the high profile. The conferences are extremely well-attended, and they're-voted for by their own legal aid practitioners, very prestigious and very high profile. I do think that there are things that you can do to make people more motivated.

Jark Pui Lee (Legal Aid Services Council, Hong Kong):

I think I would tend to agree with you that quality does have a relationship with how much the lawyer gets, and I agree that it could be social service, and it might be compassion and conviction to help the poor. That is very noble. However, in reality we have to recognize that a lawyer still has to pay his rents and all that. In Hong Kong, recently within the profession, there has been a discussion with the government that maybe the fees are too low so that there are fewer lawyers come in to do criminal legal aid, so I think that is a matter of concern, and this doesn't happen in Hong Kong alone. I remember I attended a Legal Aid Conference in June, and there was one country where the supply of legal aid lawyers were low because the terms of pay are not attractive. In any case, I don't see why a legal aid lawyer should get less than a lawyer who is doing commercial work or non legal aid work. I think that there has to be a minimum to start with, and if he could do better, then of course we would have higher quality legal aid work.



Martin Rozumek (Organization for Aid to Refugees, Czech Republic):

I have just short remarks on incentives. What we use in the Czech Republic is that we give our legal aid providers or practitioners freedom. I think it is very important that they are free to select cases, and we don't tell them where to go or what to do. It's their cases, we supervise them but only rarely do we give instructions, and this is very attractive especially for young people. I think they like the work when they compare with the work in a bank or in a private firm. They really appreciate the freedom that we give them.

Somchai Homlaor (The Lawyers Council of Thailand, Thailand):

We don't have the full-time lawyer providing legal aid services. Most of the lawyers work on pro bono basis, and I think that social recognition and publicity is very important for them. But with the lawyers provided by the court, I think they still lack measures to control quality. Most of them are very junior lawyers. The court now requests the Law Society to provide the training at least for the court's lawyers.

Joseph:

I think there are several indirect ways of ensuring quality. As the Director of my program, I interact intimately with the Bar Association's leadership and with judges, and I encourage my managers to do the same. I encourage all the staff at the local level to be involved with organizations. The word will get out and this creates an environment of pressure that makes sure that if you fall down on a job, so to speak, a judge or someone will pass the word on and we will deal with it.

Legal aid doesn't pay the best salaries, but if I can attract the most distinguished people and lawyers to come to town and hold a training session so that my staff have the opportunity to interact with them, then this is a type of intangible compensation. But you're right, there's a minimum. People have to pay their rents. I find that young attorneys, after two or three years out of law school, begin to think about starting a family and family obligations. That is a critical point where they decide, "Can I continue with a legal aid salary?" That is where they encounter the biggest pressure to move on to something else, because money becomes a real factor despite of their dedication and everything else.

Pliny Chen (Legal Aid Foundation, Taiwan):

In order to fully develop a legal aid system, we cannot merely rely on attorneys' passion and dedication. I've noticed from the country reports that England has a system of contracting with law firms or barristers and allowing market mechanisms determine the amount of remuneration paid to attorneys. Could the speaker from England explain in more detail how this system works? Furthermore, could this system of contracting violate anti-trust laws?

Hannah:

Just before we answer that question, I think it is time for the Judge, after hearing all cases and arguments, to comment on whether solicitors are lazy?

**Mlambo:**

Bruce mentioned lazy attorneys; I didn't. I referred to his example. I mentioned other factors, and I think that the issue of the quality of the services we provide is a serious issue. I suspect that I may have been misunderstood somewhat, because my comment about lawyers marking briefs for the sake of marking briefs is directed more towards judicare lawyers, and I think my concerns are shared by this house because one has very little control over the quality of those lawyers when they are not under your employment. I share the comments that Wilhelm is making. I chair the Legal Aid Board. We employ people, and we have a better opportunity of weeding out the bad ones, and we have a very good handle of the quality of the work they do, so I just wanted to clarify that. I was inviting comments from those systems that use judicare to say what quality measures they employ to make sure that people they give work out to provide work of the best quality. Because I am a judge, I see them in front of me, they don't do any research sometimes, sometimes they haven't gone through their appeal records, and these are facts, and it doesn't help us to hide behind them. We want to help those people out there to expose them to justice.

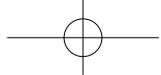
Helaine mentioned that one of her criteria focuses on results and outcomes, and I was interested in finding out what she meant by those. I know that in South Africa, because the prosecution service decide the cases to prosecute, and they have a high withdrawal rate, but then they reflect their convictions statistics in their reports, and one would think that they would be doing very well. But in assessing our own people, we hardly look at that conviction because that's a skewed way of assessing performance. I'm just interested in finding out what Helaine meant by that, thank you very much.

Barnett:

My comments did not apply to the criminal side, so I was assessing what we achieve for clients on the civil side, so I'm afraid that that doesn't answer your question.

Lasky:

I think I need to use a little bit of clarification when I use the term "lazy," and I don't shy away from the term. I'm a legal aid attorney, I'm proud to be one. In my country, people don't like to say that they are lawyers. They're embarrassed. "I'm a lawyer, I'm sorry." I've always said that I was a lawyer, and I am always proud to say that I am a legal aid attorney, and I think that the legal aid attorneys are some of the hardest working attorneys there are. With that said, it's been my experience as a Public Defender in the United States, not so much in civil legal aid, that I've personally known people with government jobs that don't work very hard, and I add, it is a bureaucracy, and sometimes it is very difficult for their employers to go through the paperwork and fire them. Wilhelm, I applaud you that you can do this, you see someone after six months who is not capable of getting to your standards, and you're able to dismiss them. I think that's great, and I am encouraging people to be more like Wilhelm to have leadership when you do identify persons that are either not capable or not willing to raise to a certain level. I will go through the paperwork. I will take the problems that go along with it. I will get rid of this person, because there are other persons who are committed to do this. Unfortunately, I have come across in many countries that I have gone through, seeing certain legal aid attorneys that don't rise to that



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level, and I've seen Executive Directors not doing what Wilhelm and other directors are doing. I think that they need to be doing that to raise up the quality, because we know how important quality is.

Hannah:

We are getting quite close to time, but the gentlemen who asked the last question I think in a way deserves the last answer, because I think it is a serious question about which of the models provides the best quality. There clearly are arguments for and against both sides. Salaried lawyers may take the easy way out, because it's a salaried job which may have long term security. Judicare may not have that. But the question that I was asked was about contracts, and I don't like to do this because this looks like favoritism, but it seems like we are the only country that seems to have these contracts, then I think Mike perhaps could spend a couple of minutes to explain what happens if a solicitor has a contract and when they are not satisfactory, both very quickly, how that's found out and what then happens.

Jeacock:

The same contracts are available to a large and a small supplier, we don't differentiate. We have what we call a "Specialist Quality Mark", and they have to go through some rigorous process to ensure that they comply with that, but the suppliers like the fact that they have a contract and that they are of Specialist Quality Mark. That in some ways allows them to secure funding from public bodies, because local authorities often match our funding to these particular lawyers or not-for-profit agencies on the back of a Specialist Quality Mark. We extend that into what we call a "General Quality Mark". We even have a quality control on information points where you could get advice, and we visit libraries, schools and agencies to make sure that they meet those quality guidelines.

How do we ensure that these guidelines are met? Well, we have Account Managers and Relationship Managers whose prime focus is to talk to the suppliers. We have very good management information on the suppliers, not the least when an average case goes out, bills or applications being turned around or for various reasons, we will go out and discuss those with them. If we are satisfied following audit that they have not met those standards, we will issue a contract notice against them, and give them six months to improve. If that improvement is not demonstrated when we go back in six months' time, we take the contract away. They have the right to appeal to an independent contract review body. We have members from the Law Society, a representative of the Legal Services Commission and an independent person, and together they decide whether the contract is taken away. Obviously, it can mean a great deal of loss of income, so people take it very seriously. It is bureaucratic, and we're trying to shorten those processes. As we look forward to what we call the Preferred Supplier, by 2007 we will only have contracts with Preferred Suppliers both from the legal fraternity and from the not-for-profit agencies, and we are also bringing those two contracts together. The sanction that you were asking about is that we take the contracts away, and I can assure you that we take them away from big firms as we do from small firms, because big is not always beautiful, in these terms. We give a lot of training to our suppliers on how they can make sure that they are matching the contract specification,



and a lot of our time is spent with young lawyers and new people into the process and getting them to understand what their contract is.

We believe that access to a poor supplier is not access to justice. We're softening that somewhat now with the relationship management, but that's really on the back of their ability to meet the contract specification. Because we want to sustain contract practices in the future, and that means looking at the suppliers as businesses and helping them to make sure that they have the business acumen to take the business forward. We've started some very intensive courses with the Citizens' Advice Bureau, working with them on how we could best do that. But, I would say that they are at the central plank of what we do, and it is what we talk about most in the Commission both in our policies and in practical applications as we go forward.

Yi-Chien Chen (Legal Aid Foundation, Taiwan):

I teach Gender and Law at university to both law students and non-law students, and my difficulty is in showing them that a foot is not just a foot: a foot could belong to a single mother, an aboriginal or anybody. So I guess my question is, it is very difficult to make a legal aid lawyer or law students or future lawyers see that clients have different faces, and you have also mentioned that perspective in your presentation, so I guess a quick question is, equal justice for all, but people are so different and have their differences. Is there any mechanism or scheme, how could we as legal aid providers, have access to quality agenda but from the recipients' point of view, thank you.

Lasky:

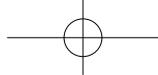
In the Philippines, they do it in some of their programs. They take students, non-law and law students, and we do the same thing in Cambodia—we do immersion programs. We put them in villages for two weeks, spend a summer working with villagers, not on law stuff, building houses. I mean, that's just an example, and instead of just explaining that, you know, single mother's foot is different, explaining that things to them, show them the single mother's foot. Don't tell them, show them, and expose them to it. That's just one example from an educational perspective.

Yi-Chien Chen (Legal Aid Foundation, Taiwan):

I guess my question is, how can we develop a scheme in legal aid to make the providers sensitive to the gender, race, class and age? Because in reality, I think right now, the legal systems as a whole, as you see, the Judge also mentioned that question, you see Caucasian lawyers, or male lawyers, there is still a reality there, and when we started this since last year, how can you at the beginning, I do think that this is a crucial time, because obviously we see the recipients or the people or applicants, they come to us, and they are very different from what the legal system can see, and I think that this a very crucial point to start with that.

Lasky:

I think within legal aid offices, gender mainstreaming workshops are an absolute necessity. I've seen male lawyers go out and give lectures on sexual battering, and they

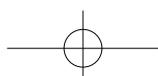


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make jokes. I see that, and I am mortified, and it goes on. If you are starting a new system here, you have a chance now to learn from a lot of lessons where people have done it wrong, and again, this is not, like I said before, this is not just training to be a lawyer, but within the idea of professionalism, it's holistic, and it's exposures to these issues, bring in people, have these workshops. There are all those resources out there, and you are definitely in the right direction.

Barnett:

I think the questions have been very provocative, very insightful, and very helpful. I'd just like to respond in one way and explain for a moment that LSC performance criteria, which is the way we measure, have been informed and developed by significant input from the providers. It is not a funder setting forth the criteria, we have had a significant input and still would have a significant input from the providers so that there is a complete buy-in and agreement because you can't have set standards by the funder if everybody doesn't agree that that is the appropriate standards to apply. And of course, we also expect them to be used by peer reviewers. One final comment on outcomes because perhaps I was a little too abrupt in saying that we didn't comment on the criminal side. Outcome measures may serve as an evaluation of program looking at the individual results that we achieve for our clients, and we can do a much better job in telling good stories, and we want to encourage our programs to tell those good stories about the meaningful differences that we make to an individual client's life, and also, how we affect the client community to improve opportunities for low income people. Thank you.





Panel IV: The Role of Lawyers



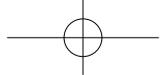
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Presentation

The Role of the Japan Federation of Bar Associations in the Development

of the Legal Aid System

**By Tokiko Kamei and Futoshi Toyama
Japan Federation of Bar Associations
Japan**

I. Organization of the Japan Federation of Bar Associations and the Japanese Lawyer System

The Japan Federation of Bar Associations (“JFBA”) was established based on the Lawyers Law enacted in 1949, and consists of lawyers, legal profession corporations and 52 bar associations located in all parts of the country. There are 21,208 lawyers (including 2,648 female lawyers accounting for about 12.5% of the total number) on April 1, 2005.

In Japan, in principle nobody except for lawyers can represent a party before a court, or can handle legal matters for payment. To become a lawyer, a person needs to pass the same national bar examination as that sat by judges and public prosecutors and become a member of the JFBA and a local bar association, after studying at the Judicial Research and Training Institute for one and a half years.

The Lawyers Law provides that the mission of lawyers is to “protect fundamental human rights and ensure social justice.” That is, lawyers must not only serve the interests of clients; they must also endeavor to protect human rights and ensure social justice through their duties. For that purpose, JFBA should not submit to any authority and should be free and independent. It is therefore not subject to the supervision of any government agency. JFBA is financed only by the dues paid by its members and is not supported by the government or any other group or organization. Only bar associations have the right to take disciplinary action with respect to individual lawyers.

To fulfill its mission, JFBA has been proactive not only in the operation of the legal aid system which supports the rule of law, but also in a number of other areas, for example, in seeking relief and improvement based on complaints received from citizens who have been the victims of human rights violations, in lobbying to contribute its opinions at the time of legislative amendment, in activities to relieve consumers from damages and in activities to protect the environment from pollution. It has also conducted a judicial reform campaign to make the judiciary open to the public.

II. Statutory Basis for Legal Aid

The Constitution of Japan guarantees the right of access to the courts based on Article 32 and the right of the accused to have the assistance of competent counsel based on Article 37. Based on this provision, there is a system under which, when the accused cannot appoint a counsel because of the lack of funds or other reasons, a court appoints a counsel(s).

With respect to civil legal aid, JFBA played a leading role in establishing the Japan Legal Aid Association (“JLAA”) in 1952, which is a non-governmental, nonprofit organization that provides assistance with lawyer’s fees. Since JLAA was created at the initiative of bar associations, JFBA, bar associations and lawyers around the country have provided



financial and operational aid to JLAA so that citizen's rights of access to the court should be realized.

With respect to the internal regulations of JFBA, Article 88 of the Articles of Association of the Japan Federation of Bar Associations provides that "a bar association shall provide legal consultation and aid for lawsuit at the request of an indigent client". Article 33 of the Basic Rule on the Duties of Practicing Attorneys also provides that "An attorney shall endeavor to protect a client's right to trial by instructing the client, depending on the cause, of the Legal Aid System, the Litigation Aid System and other systems which are designed to protect indigent people." The Civil Legal Aid Law introduced in 2000 provides that JFBA, local bar associations and lawyers shall endeavor to provide the support required for the sound development of civil legal aid.

III. JFBA's Activities to Increase Access to the Court

1. Activities to create a public defense system for pre-trial stage

In Japan, the court-appointed defense counsel system does not apply to the suspect before indictment. As a consequence, almost all suspects are interrogated at a police station without the support of legal counsel. This has been considered a major factor in human rights infringements. Starting in 1990, local bar associations introduced a duty attorney system to provide suspects with the support of a lawyer to protect their human rights. The system is modeled on the duty attorney system in the United Kingdom. Under the system, if the suspects or their relatives request, a bar association will dispatch a lawyer who will have an initial meeting with the suspect at the police station free of charge. JFBA has actively supported this system, and the duty attorney system is currently conducted by all local bar associations around the country.

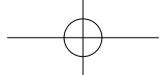
In addition, with respect to the activities of the defense counsel between the initial meeting and indictment, JLAA has initiated the criminal suspect defense aid system. In 1995, JFBA established a duty attorney fund to underpin the duty attorney system and the criminal suspect defense aid system. Every Japanese lawyer contributes a special membership fee of 50,400 yen per year to the fund. JLAA also renders services to ensure that a lawyer is in attendance when a minor is facing judgment before a family court in a juvenile case. JFBA provides financial assistance for this system from the duty attorney fund.

2. Campaign for legislation on civil legal aid

For many years following the establishment of JLAA, the government subsidy for civil legal aid remained low. This placed limits on the extent to which the operation could be expanded. In response, JFBA launched a campaign which called for an increase in the government subsidy and the enactment of a basic law to ensure an increase.

JFBA studied the legal aid systems in Europe and in the United States, and examined a draft law. In 1993, JFBA resolved that it would push for the passing of a legal aid law. It established a head office to promote legal aid system reform, and developed a draft legal aid law and pushed for it to be passed.

As a result, the Ministry of Justice established a legal aid system study team in 1994. The study team compiled a report three years later, after its investigations and research. The report was the first official report on



legal aid in Japan which pointed out the duty of the government and the need for the enactment of a basic law with respect to the establishment of a legal aid system. In 2000 the Civil Legal Aid Law was passed based on the report.

Under the Civil Legal Aid Law, JLAA was designated in 2000 by the Minister of Justice as the sole body providing civil legal aid in Japan. With the passing of this basic law, the government's subsidy increased rapidly. Lawyers all over the country co-operated to expand this service.

3. Measures for regional shortages of lawyers and the activities of Legal Counseling Centers

There are 203 areas governed by District Courts and Family Courts around the country. These areas include many cities, towns and villages that have no lawyer or only one lawyer. Therefore, when a legal problem arises, people and companies either have nobody they can consult with, or they have to go into the inconveniences of traveling to distant locations for consultation.

JFBA resolved at its regular general meeting held in 1996 to seek to improve this situation. It subsequently established a series of Legal Counseling Centers in co-operation with bar associations and local governments in various parts of the country. In addition, JFBA decided to set up many law offices (the so called "Himawari fund law offices") in local areas lacking in lawyers with support of the Federation and a local bar association.

JFBA established a fund to provide financial support for areas with few lawyers, and collects a special membership fee of 18,000 yen per year from its members. The fund provides Himawari fund legal offices with financial assistance to offset the expenses required to open them and provide an income subsidy for staff. There are 50 Himawari fund legal offices nationwide as of July 2005, and the number is expected to increase in the future.

IV. Campaign for Judicial Reform and the Passing of the Comprehensive Legal Services Law

1. Activities for judicial reform

JFBA made seven declarations on judicial reform following its first declaration in 1990. JFBA has carried out a campaign to radically reform the bureaucratic legal services so that citizens can participate and so that they are familiar and open to the public. In 1999, the Japanese government established the Justice System Reform Council to examine judicial system reform. The council published an opinion paper in June 2001. Thereafter, Headquarters for justice system reform were set up within the cabinet to implement the above opinion paper, and various legislation was subsequently enacted on the following points:

i. Introduction of the semi-jury system

From 2009, a new system will be introduced to promote public participation in judiciary. Under the system, the general public will join in judgments with the judges, including in sentencing in criminal trials for certain grave offenses.

ii. Increasing the number of lawyers and the establishment of a law school

The number of people who pass the national bar examination will increase from



1000 in 2000 to 1500 in 2005, and to 3000 in 2010. A new system for the education of the legal profession was introduced with the establishment of a law school in 2004.

iii. Improvement in the public defense system

Traditionally, the court-appointed defense counsel system applies only after indictment, but applies prior to indictment in certain cases. Starting in the fall of 2006, the court-appointed defense counsel system will apply to serious cases even before indictment, and the scope of application will be significantly expanded from 2009.

iv. Improvement of access to courts

There are plans to establish a system to improve access to courts based on the Comprehensive Legal Services Law, which is described below.

2. Enactment of the Comprehensive Legal Services Law and establishment of the Japan Legal Services Center

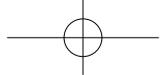
The Comprehensive Legal Services Law which was presented to the Diet in 2004 was passed on May 26, 2004. The Japan Legal Services Center, which is a non-profit, non-governmental and special corporation (hereinafter referred to as the "JLSC") will be established in April 2006 to quickly and properly conduct the business provided in the above law. The purpose of the Comprehensive Legal Services Law, which is described in the Article 1, is (i) to better facilitate the use of courts and other systems for the resolution of legal disputes, and (ii) to make it easier to receive the services of attorneys, judicial scriveners and other legal professionals and specialists. As the basic principles of the Law, it is provided that the implementation of Comprehensive Legal Services and the establishment of systems shall aim at creating a society in which the provision of information and services necessary to resolve legal disputes, irrespective of whether they are criminal cases or civil affairs, can be received nationwide.

The president of the JFBA issued a statement on the day of the enactment of the Law, and while praising the passing of this very significant piece of legislation, called on the government to provide a sufficient budget and to ensure the autonomy and independence of a lawyer's activities. In the statement, the JFBA also expressed its resolution that lawyers and bar associations will be actively involved in the establishment and administration of the JLSC and will endeavor to ensure that the new organization is truly helpful to citizens.

3. Relationship between the national government and JLSC

The Comprehensive Legal Services Law clearly provides that the national government shall be responsible for developing and implementing overall measures for the implementation of the Comprehensive Legal Services, and that the necessary operating expenses and administrative expenses shall be covered by funds from the national government. This represents a major advance, since local bar associations traditionally bore most of the costs required for the local offices and staff of JLAA under the Civil Legal Aid Law, which provides that the national government may subsidize only part of the operating costs.

The president of the JLSC will be appointed by the Minister of Justice. The president will appoint up to four executive directors and the heads of local offices. Any person



who has served as a judge or public prosecutor within the previous two years may not be appointed as president.

The Minister of Justice will set out mid-term objectives for the services which the JLSC should provide for a period of not less than three years and not more than five years. JLSC will then draw up a mid-term plan based on the mid-term objectives, and operate on the basis of the mid-term plan. The national government will not be directly involved in the conduct of the business. The Evaluation Committee to be established within the Ministry of Justice evaluates the business ex post facto.

4. Ensuring the autonomy and independence of JLSC

JFBA has consistently drawn attention to the importance of ensuring the autonomy and independence of JLSC and a lawyer's activities in providing comprehensive legal services. The Comprehensive Legal Services Law includes the following articles:

JLSC is a corporation established utilizing the framework of the Independent Administrative Agency Law. The Comprehensive Legal Services Law thus includes Article 48, a provision on the autonomy of the organization, which provides that full consideration should be given to the autonomy of JLSC in the performance of its services.

In addition, the Comprehensive Legal Services Law includes Article 12, a provision for the autonomy and independence of lawyers' services, which stipulates that consideration shall always be given to the characteristics of the duties of attorneys and related legal professionals and specialists. Article 32 of the Law provides that lawyers shall act independently even when rendering their services for JLSC. The national government and JLSC are therefore not allowed to be involved in the services rendered by lawyers under the Law.

JLSC shall set up the independent reviewing committee consisting of 9 members among which 2 members to be appointed by the recommendation of JFBA. When JLSC enact or modify the standard rules on performance of lawyers who handle legal aid cases, and when JLSC would like to terminate the contract with a lawyer who handles legal aid cases, the president of JLSC may not make its decision independently but shall do so based on the resolution of the reviewing committee.

As noted above, the autonomy and independence of the activities of JLSC and lawyers is assured under the Law. JFBA has decided to actively co-operate in the conduct of the business of JLSC to ensure the proper application of the above provisions

5. Services of JLSC

JLSC has opened local offices in 50 places around the country where a district court is located. JLSC plans to establish a system to make it easier for members of the public to receive legal services all over the country, opening more local offices in other areas if required. JLSC will commence its services from October 2006 after a six-month preparatory period. When providing services, JLSC will partially introduce a staff lawyer system in stead of the current judicare system under which a case is assigned to general practicing lawyers individually.

The services to be carried out by JLSC can be broadly divided into five, as follows.

i. Provision of legal information

JLSC plans to set up networks with related organizations using IT technology



to enable people to obtain useful information anytime and anywhere for the resolution of legal disputes. As examples of IT technologies, JLSC plans to provide information not only through a website but also via phone to anywhere around the country.

ii. Civil legal aid

With respect to civil legal aid, JLSC plans to take over services currently provided by JLAA without change. JLAA will be dissolved after the transfer of its services to JLSC.

iii. Public-funded defense counsel for criminal cases

Traditionally, the courts have appointed defense counsels for criminal cases following indictment. Starting October 2006, publicly-funded defense counsel may be appointed for serious cases even before indictment. JLSC will replace the function of the court and nominate candidate counsels and render administrative operations such as the payment of fees. It is expected that the new system will initially apply to about 7000 cases. However, the number of applicable cases will increase rapidly from 2009, and about 100,000 cases subject to a statutory penalty of at least one year of imprisonment beginning from the stage of arrest, will be assigned to publicly-funded defense counsel.

iv. Measures for areas with few lawyers

Law offices are concentrated in urban areas. As mentioned above, there are still areas with one court and no lawyers or only one lawyer. In response, JFBA has established the Himawari fund law offices. JLSC plans to establish new local offices in areas which still lack lawyers even after many Himawari fund law offices have been developed, and will dispatch lawyers employed by JLSC to these areas.

v. Aid to crime victims

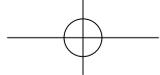
JLSC plans to provide information on an aid system for victims of crime and its activities and to introduce lawyers who are well experienced in this problem.

V. Specific Actions Taken by Bar Associations etc to Improve Access to Legal Services

1. State of preparedness of JFBA, bar associations and each area

To provide comprehensive legal services all over the country, JLSC needs to inherit from JLAA the expertise in performing the services, given that JLAA has provided legal aid services in various parts of the country for more than a half century. This will demand efforts from JFBA and local bar associations which have traditionally co-operated with JLAA in the provision of legal aid.

In 2004, JFBA established The Central Board on Japan Legal Services Center of Japan (hereinafter referred to as "the Central Board"), appointing the president of JFBA the general manager, and started to prepare for the establishment of JLSC. Among other issues, the Central Board considered the organization of JLSC, preparations being made in local areas, the best approach to providing information and services for the publicly-funded defense counsel system for criminal cases, and the retention and training of staff lawyers, and has proceeded with specific preparations in consultation with the Ministry of Justice. Local bar associations have also co-operated in the establishment and commencement of services at the local offices of JLSC, by



establishing a task force and deciding appropriate comprehensive legal services in light of local circumstances.

It is important to liaise with not only bar associations but also with the national government, local governments and related organizations in preparing for the nationwide establishment of the JLSC. In November 2004, the Ministry of Justice established local preparation committees for JLSC in 50 locations around the nation with a district court. The preparation committees seek to establish networks with local organizations that reflect local circumstances to facilitate the provision of services. This network includes representatives of the local bar association, the branch office of JLAA, judicial scrivener association, court, public prosecutor's office, regional legal affairs bureau and the local government. A lawyer is appointed to chair the preparation committee in each area. The chairman is expected to be appointed as the head of the local office of JLSC in each area after the establishment of JLSC.

2. Examination of the provision of services not provided in the Comprehensive Legal Services Law

The Comprehensive Legal Services Law provides for the services that to be carried out by JLSC. The services do not necessarily include all the services currently provided by JLAA. Specifically, there is a possibility that services not supported by the national government's subsidy and those that have been supported by donations from private sectors and subsidies from bar associations may not be continued. These services include legal aid to refugees, aid to foreigners without visa status, criminal cases to which a court-appointed defense counsel is not assigned and attendance by a lawyer in a juvenile case. Based on the principles of the Comprehensive Legal Services Law, JFBA has looked at providing these services by outsourcing them, to avoid any regression in services provided following the establishment of JLSC.

3. Securing staff lawyers

Beginning 2006, publicly-funded defense counsel will be assigned in serious cases from the stage of arrest. In 2009, the scope of cases for which court-appointed defense counsel will be assigned will be expanded greatly. To prepare, it is necessary to secure staff lawyers to provide legal services in areas where there is no lawyer. JFBA has drawn up a plan to employ at least about 60 staff lawyers in 2006 and about 300 staff lawyers in 2009, with a focus on younger lawyers.

When employing staff lawyers, it is assumed that JLSC will not employ them when they have just graduation from a law school, but ordinary law offices will retain them initially and provide them with training in practical legal services for one to one and a half years. Thereafter, they will become staff lawyers of JLSC. JFBA has requested law offices around the country to co-operate in training staff lawyers, and in providing a significant number of lawyers to co-operate in the development of the staff of JLSC.

VI. Future challenges and the responsibility of lawyers

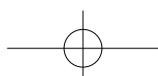
The scope of the services to be rendered by JLSC as provided in the Comprehensive Legal Services Law is not necessarily sufficient. An increase in the number of cases and in the number of people eligible for civil legal aid, and the expansion of the scope of services such as aid to victims of crime remain as issues that need to be addressed.

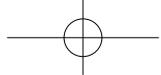


Sufficient financial measures are required for JLSC to provide members of the public with the services they need. There needs to be a sharp rise in the legal aid budget, which is small compared with that of other countries. In addition, it is necessary to ensure the independence and autonomy of defense activities in the administration of JLSC, as provided in the Comprehensive Legal Services Law.

Most of the details of the comprehensive legal service system have been left to the design and operation of systems in the future. Therefore, lawyers and bar associations, which are responsible for providing legal aid, have important roles to play. JFBA, together with bar associations, have resolved to be actively involved in the establishment and administration of JLSC and devote efforts to make the new organization truly helpful to citizens.

We seek to ensure that the services based on the Comprehensive Legal Services Law, as well as the law school system and the semi-jury system already established, will properly emerge as one of the pillars supporting the basic principles of this judicial reform, which is to “develop a judicial system based on the principles of the individual and the sovereignty of the people under the Constitution of Japan.”





Discussion

**By Persida V. Rueda-Acosta
Chief Public Attorney, Department of Justice
Philippines**

In the operation of an effective legal aid system in Japan, the JFBA has certainly made its mark, with the key law in establishing the Japan Legal Aid Association (JLAA) in 1952. The JFBA being an ardent supporter of JLAA for half a century is no mean feat. But the JLAA has of course proven itself to be worthy of support. The dedication of its lawyers and staff is matched by their patience and competence. This is not an empty compliment, as it is based on my personal knowledge. I had the opportunity to observe the lawyers and staff of JLAA and JFBA at work in 2001 and the whole month of September 2003, when I went to Tokyo as a senior fellow of the Nipon Foundation Asian Public Intellectual Fellowship. The JLAA was my host institution then. The JLAA, through the kindness and hospitality of its co-ordinators, Mr Keita Abe and Mr Toyama, has established the spirit of cooperation in propagating the advocacy of access to justice through legal aid in the neighbouring Asian countries, such as Cambodia, Vietnam, Thailand and others. Now this advocacy has brought us all together here in Taiwan, and this Forum is another learning experience for me as the Chief Public Attorney of the Republic of the Philippines. I owe many ideas to advocate to my counterparts in Japan, the United States and many foreign countries. As JLAA winds up in its mission, the JFBA is actively involved in preparing to set up the Japan Legal Services Centre (JLSC) to tread on the same path traveled by the JLAA. The old man say: the beaten path is the safest. However, without the JFBA's trying to be safe, it is actually coming out of the confines of its comfort zone. It is embracing more responsibilities and welcoming more challenges and sacrifices.

Regarding safeguarding human rights, we have learned from Attorney Toyama that in Japan, court-appointed defense counsel are not available before indictment. As a consequence, almost all suspects are interrogated at police stations without the support of legal counsel. It has been considered a major factor in human rights infringement. As a human rights advocate, this worries me. Thus I look forward to the realization of Attorney Toyama's statement that beginning in 2006, publicly funded defense counsel will be assigned for serious cases from the stage of police investigations. Evidently, the lawyers of the JLSC are in for the important assignment in securing arrested person's rights against compelled confessions and admissions. In the Philippines, our Constitution provides procedural safeguards to secure the rights of citizens against self-incrimination during the stage of investigation. Thus a person under the investigation of the Commission of Defense has the right to remain silent, the right to counsel, and against the use of violence, force, threat, intimidation or any other means which the free will. Any confessions obtained in violation of these rights are inadmissible in any proceedings. The Public Attorney's Office helps in safe-guarding these Constitutional rights by giving legal assistance during interrogation and investigation conducted by the police.

During the infancy of the PAO, establishing contacts with ally institutions, had helped me and helped us in fulfilling our mandate. Since my appointment in February 2001 as the nationwide head of the Public Attorney's office, I have by now intensified our network with certain institutions, especially the print and the broadcast media, radio and television,

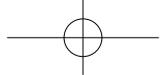


which had greatly helped me in the dissemination of the legal aid information of the office. I, myself, modesty aside, am very proactive in leading my men in the Public Attorney's Office. I handle national cases with issues about national security and even sovereignty. The spiritual and the psychic world are more important than big money. Not all lawyers are after money.

The dissemination of the information of the JLAA, aided by the Nippon Broadcasting system and published by the print media is very effective. Even through telephone and fax machines, the JLAA has been helping people around the clock. Although there are not many lawyers, they are able to cope with their work.

Now about independence. Attorney Toyama emphasized that the Comprehensive Legal Services Law preserves the autonomy of the JLSC. This is what the PAO needs. – a new law which expressly provides for the independence of the PAO, and autonomy from the Ministry of Justice in the exercise of PAO's functions. However, even now without the law, we do our best in remaining true to our mandate, the rule of law, equity and justice. The threats and pressures that have come our way while we grapple the feathers of the powerful and mighty while we fight for the justice and freedom of our indigent clients. We are trying to prove to the whole world that Public Defenders, even though on low salaries, can give the best legal aid services to the poor.

Attorney Toyama, I will end my comments with this query: the JLSC will operate a court-appointed defense counsel system funded by the government, will it give legal services to the poor? As an advocate of the free legal aid system, I could not help but ask that question. Legal aid services for the poor must be given freely for the sake of accessibility to justice through the rule of law. However, the services won't be given by the JLSC for free to poor people, although they are about 5% of the population of Japan. Attorney Toyama, please enlighten me.



Question and Answer

Ken H.C. Chiu:

Thank you, Persida, for a very sincere discussion of the differences between the Philippines and Japan. Many years ago, when the Taipei Bar Association visited the Japan Bar Association, many were surprised by the long lines of people waiting outside the Bar's office. We were told that the Japanese Bar provided legal aid, which was unheard of in most other countries.

In his presentation, Mr. Toyama mentioned there is a special historical background behind the passion of Japanese lawyers. Perhaps he could elaborate on this later.

When we were preparing for this conference, the organizing committee also discussed various aspects of lawyers' role in legal aid. Is legal aid the lawyer's duty? The bar's duty? To what extent should the bar participate in legal aid so that society can fully realize legal aid as a human right? How can lawyers and society at large reach a consensus on the role of the bar and other related organizations?

Uli Sihombing (Jakarta Legal Aid Institute, Indonesia):

It's not easy to make the four or five bar associations in Indonesia provide free legal assistance to the poor. I saw from the presentation of Mr. Toyama that it is very clearly the obligation of lawyers in Japan to provide free legal assistance to the poor. Are there violations of this obligation? Are there any mechanisms to punish the lawyers for violating that obligation?

Futoshi Toyama:

Actually, in Japan there is no clear obligation to provide free legal services to the poor, but in some local bar associations there is an obligation to do pro bono work. "Pro bono" work in the Japanese context includes not only free legal practices but also bar activities involving human rights, lobbying, etc. For example, in the Tokyo Bar Association, which I belong to, we have the obligation to regularly provide legal aid services or court appointed counsel for criminals, or the bar activities I mentioned. That's the obligation in the Tokyo Bar Association, but overall in Japan there is no clear obligation.

Jark Pui Lee (Legal Aid Services Council, Hong Kong):

At the last session, we talked about the quality of legal aid services, and I personally feel that independence is a very important quality for legal aid services. Now, the speaker mentioned that there was some concern about independence, and I hope he can elaborate on it.

Secondly, it's interesting that the future center of Japan will be under the Ministry of Justice, and I understand that the same applies in the Philippines. My understanding is that the Ministry of Justice will deal with the prosecution side, whereas legal aid will probably handle the defense side. Maybe we can have some discussion on this?

Toyama:

I have to apologize that I am not in the proper position to answer that specific question on independence, which probably all Japanese lawyers are concerned about but nobody knows the answer to. As I mentioned in the presentation, there will be a lot of government



control of the center. However, if we maintain a high quality of service and keep the overall enthusiasm of lawyers in legal aid activities, then legal aid services will be popular among the people nationwide. I believe this might support the independence of the center.

Mike Jeacock (Legal Services Commission, England):

I was intrigued by Japan's plan to have lawyers run the regional offices?

Toyama:

Under the new scheme, starting next year, there will be lots of local offices which consist of lawyer staff and non-lawyer staff.

Jeacock:

So will a lawyer be the head of the whole office? (Toyama: Yes.) So my next question is, why?

Toyama:

Well, that's very difficult to answer. Probably because the government has no experience in the field of legal aid activities and would like to borrow from the bar's 50-year experience.

Jeacock:

I'm just very interested because out of our 11 regional offices, we have one lawyer who runs a regional office. Our experience is perhaps the other way around -- that non-lawyers tend to run them better. I would be interested in sharing some experience with you after a year.

David Pred (University of Essex, England):

I would like to ask Ms. Acosta to comment on an issue that has greatly troubled us working with the Cambodian Defenders' Project. Legal aid lawyers -- particularly human rights lawyers -- have a duty to the client and society at large. The interests of both usually coincide because the provision of legal aid generally contributes to human rights and the rule of law. However, sometimes situations arise in which the interest of the client is in conflict with the mission of the organization to promote human rights, justice and the rule of law.

I'll give you an example from our work at CDP where we have accused persons who have been tortured into forced confessions and obviously, as a human rights organization, we want to combat torture and impunity. Therefore, we want the client to file a civil complaint against the police, but due to the lack of independence in the Cambodian judiciary, there is a great risk that the accused will be convicted because of the pressure that the police will put on the judge. So, obviously the client doesn't want to file a civil complaint. We face this time and time again with torture cases and related situations with representing trafficking victims who want settlement and don't want to push for prosecution of traffickers. So, what is a human rights organization to do in such an instance?



Acosta:

The Public Attorney's Office has joined the Coalition Against Torture, which was organized by the British Embassy and other organizations under the United Nations. The police officers in our country are warned, in the event that they will commit abuses, that our office is serious in filing cases against police officers. So, although we cannot eradicate these abuses, at least we are able to minimize the incidence of torture. We have the Commission of Human Rights, which is initiating cases against police officers who are committing torture. I think that in any country, there should be a Commission of Human Rights separate from the Office of the Public Defenders who would be entrusted to deal with the cases of abuse.

With respect to the question awhile ago regarding autonomy, we have an identity crisis in the Philippines because our office is also under the Department of Justice. The Department of Justice is also the superior of the National Prosecution Service. The Public Attorney's Office has been fighting for autonomy since 1998, but the draft bills were not given any attention by the legislators. The bill is now pending in the Appropriations Committee of the legislative body.

Although we now have extra provisions regarding autonomy, in practice, as lawyers we do our best to fulfill our duties to our clients in the interest of justice and truth. We are lawyers, and we are bound by oath. Nevertheless, sometimes in matters of administrative supervision -- for example for budgetary purposes -- the Secretariat of the Ministry of Justice has a hand regarding our lawyers. Still, all lawyers, when they defend cases, are exercising their duty within the mandate of the office -- to protect the rights and the interest of the accused and not to protect the enemies or the pressure any superior.

Toyama:

As a matter of lawyer's ethics, I think that in terms of the purposes of the matter, the clients' instructions prevail. Of course we would like to empower them, or to persuade them to file a lawsuit, but after those efforts, we are subject to the instructions of clients.

Jerry Cheng (Legal Aid Foundation, Taiwan):

In your report, you mentioned that assistance at police stations began in 1990. My understanding is that the supply of lawyers in Japan is not very sufficient. Under this condition, how can this service operate?

You also noted that the 2000 Civil Legal Aid Law was replaced by the Comprehensive Legal Services Law in 2004. In the legislation, there doesn't seem to be any mechanism to ensure independence. Your president is appointed by the Minister of Justice, and the executive directors are appointed by the president. We see that this system has problems with independence and could become another government bureaucracy in the future. We are a little worried, and wonder what are your thoughts?

Toyama:

I will start with the second question. I personally have to admit that the independence of the new center is insufficient. There has been a struggle between the government and the bar about the independence of the new center, however, all of us are settled in the realities



of this new organization. We have to carefully watch the performance of the new center, in terms of its independence for a couple of years.

Your first question is how to handle the increasing number of cases with the small number of lawyers. That's why we introduced the salaried lawyer system. Currently, we employ the judicare system, but we cannot handle the increasing number of cases with the current arrangements. But the issue is how to secure good staff lawyers. The bar association is now recruiting experienced lawyers who are willing to educate young lawyers to become legal aid lawyers by hiring them for one or two years. If young lawyers just graduated from law school go to the legal aid center, that's not good for the client as they have no experience. So that is what the bar is now doing to recruit good staff lawyers.

In terms of criminal defense after indictment, the court-appointed counsel system currently applies. Before indictment, there is no public system to provide counsel to the accused. However, the bar association started the duty counsel system 15 or 20 years ago. This scheme is fully operated and funded by the bar association right now, but starting next year, a portion of the funding will be provided by the new center, but around half of them will still remain in the current system of the bar.

Cheng:

Are the Bar's services in police stations limited to 30-minute interviews or telephone consultations, or are there additional protections of suspects' rights in police stations? Do attorneys accompany suspects throughout the entire process, or for only 30 minutes?

Toyama:

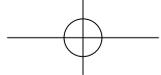
We don't limit the service to the initial interview. We provide service on the spot at the police station, and if clients request continuous support of the counsel, we will also provide legal services before indictment.

Ta Thi Minh Ly (National Legal Aid Agency, Vietnam):

I am very surprised by the decision of the Japan Legal Aid Association. In Vietnam, the legal profession helps public defenders only because of the shortage of private lawyers. I think that if the JLAA has more than 52 years of experience fighting for your poor people, and as you said in your presentation, it is not overloaded with too many cases, I am very surprised as to why you are changing that? You only work about 7000 cases, and I think that's a very small amount. While many people ask the government to take responsibility for legal aid lawyers, I'm not sure if it is right or wrong, but I think that the independence of the lawyer is always very important in legal aid, because in many cases the interests of the client are against the public. At that time, I think that the private lawyer is better than the government lawyer.

Gilda Guillermo (Alternative Law Research and Development Center, Philippines):

I read in Mr. Toyama's report that the provision of services under the Comprehensive Legal Services Law is more restrictive now for the services that are to be carried out by JLSC than those currently provided by JLAA. I am specifically concerned about legal aid services to foreign refugees with legal alien status. Since many Filipinos in Japan



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are entertainers, I do believe there is a big problem when legal aid services have to be provided to foreigners. If these services are no longer to be provided by JLSC, where can they access these services? Also, what is the role of lawyers as to establishing a system of operation or structure that will provide for working with other legal aid groups? I would like Madame Acosta to comment on this as well.

Toyama:

This is the main concern being heavily discussed among bar members. I personally am one of the lawyers who are helping the Philippine people in Japan, and we are very concerned about the abolishment of such program in the future. Now we are requesting the bar to employ a new system to accommodate the current services.

Wilhelm Joseph (Maryland Legal Aid Bureau, United States):

Mr Toyama, you speak about the low level of litigation in Japan, which is very much different from the United States because everybody is suing everybody all the time. Could you elaborate on the reasons that contribute to this phenomenon, and in doing so, could you share with us how a poor person settles disputes dealing with landlord-tenant, domestic relations including things like child custody, domestic violence and child support, complaints by consumers about inadequate or dangerous or insufficient goods and services provided in exchange for their money, disputes around inadequate or unlawful actions taken by government officials regarding government providing income support. How are these things resolved or do these things become disputes?

Toyama:

Well, I'm not an academic in the field of studying social factors, so I don't know the reason. One legislative reason is, under the current Japanese system, a divorce can be made out of court agreements, so that's why most divorces are made out of court agreements without the involvement of a lawyer or a judge. But I don't know why the overall number of the civil suits is so small.

Vandeth Ouk (Legal Aid of Cambodia, Cambodia):

I am surprised about the legal aid cases in Japan. We have many crimes in our country. Usually, in one hour, there is one crime, so criminal cases has to be more than 85 percent. We don't have enough legal aid to conduct cases and private lawyers reject cases because we have no money to pay them. The bar association has the same problem as our organization. The government also has no money and is responsible for legal aid. So I would like to ask you, how and in what way can we improve the rule of law in the legal aid field, thank you.

Toyama:

This is a very difficult question to answer. But, luckily in Japan, there is a low number of legal cases and a low ratio of legal aid amongst the small number of lawsuits. That's why we can provide legal aid in almost every case. But I'm very aware that in Cambodia, the situation is totally different. One possible solution is to raise public awareness, including attracting government attention to our activities.



Frank Tsao (Taiwan):

What is the background of the government taking over legal aid in Japan? Why will this legal aid organization be controlled by the government and what will be the changes?

Toyama:

Well, this is also a very difficult question to answer. The bar had supported legal aid activities in Japan for more than 50 years, but its financial ability is very limited and we cannot afford to further increase and expand legal aid activities. That's why we have to change the system and invite government to fund more.

Tsao:

Will there be any change to the services or the organization?

Toyama:

Well, I'm not sure, but we will try to provide better services while keeping independence. That's the bar's challenge.

Joseph Lin (Legal Aid Foundation Taipei Branch, Taiwan):

Independence is very important, yet the leader of the board is appointed by the Justice Ministry, and the other four members are appointed by this Ministry-appointed leader. While the board is undoubtedly very important, who will be responsible for the actual administration? Will that person be an attorney?

You mentioned in your report that in the year 2006, you will have 64 staff attorneys, and that by 2009 you will have 300 staff attorneys. Aside from assigning them to serve in remote areas, what other plans do you have for these staff attorneys? And especially important is how do you attract experienced attorneys?

Toyama:

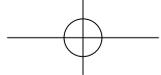
For the first question, the new law does not mention the position of a Secretary-General, only the position of the President and the four directors. But perhaps one of the directors should in fact act as the Secretary-General, but I'm not sure who that is going to be. The bar is strongly requesting the government to choose the Secretary-General from members of the bar. So, we hope so.

The second question is on how to attract good lawyers to be our staff lawyers. This is also a very tough question for us, but we recognize the importance of recruiting good lawyers, otherwise the overall reputation to the new system will be damaged, the independence of the new center could also be damaged, and that is the crucial point amongst all the difficulties that we are facing.

I don't think there is a definite solution on how to recruit good lawyers, but we are making efforts, including using volunteer lawyers who are willing to educate young lawyers; and we are also persuading some experienced lawyers to take the managing position of each local office.

Keita Abe (Japan Legal Aid Association, Japan):

In relation to the first question, among the four directors of the JLSC, the JFBA



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has recommended 2 lawyers to the expected President of JLSC. The JFBA has also recommended a legal aid lawyer as the Secretary-General to the expected President.

Mei-Nu Yu (International Federation of Women Lawyers, Taiwan):

In the past, when legal aid was provided by the bar, lawyers provided their services out of a sense of duty and a passion to help people. They would help cases that they deemed meaningful. However, with the passage of legislation to establish the JLSC in 2006, the people now have the right to request an attorney, and everyone who meets the stipulated criteria are entitled to legal aid. This will result in the significant increase in caseload. How will these changes affect legal aid lawyers? Would lawyers be able to sustain their sense of duty and passion? If not, how do you find good, experienced lawyers to work in legal aid?

My second question is for the Chief Public Attorney of the Philippines. Are the services of the Public Attorney's Office limited to criminal cases, or are all types of cases eligible for legal aid, including civil cases such as marriage cases?

Toyama:

Again, it is a very tough question, thank you. I believe there is no definite solution to keep lawyers passionate after the expansion of caseload, but I believe that the passion among the legal professional community and efforts among bar members will support the expansion of the services with good quality. We bar members have common experience and enthusiasm among our members, and we have to make every effort to convey this enthusiasm to the younger generations. That would work, I believe.

Acosta:

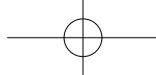
The Public Attorney's Office also caters to the legal needs of the indigents. We have very broad functions, but we cannot assist corporate cases because of the presumption that corporations have money. So you can imagine how we are overburdened, but our lawyers in legal aid services are high in spirits because I suppose they can feel my spirits in serving the poor. The 'follow-the-leader' rule always applies anywhere, even to a country. If the country's President has some heart to protect human rights and the rule of law, it will go down the line. The country will be very solid in establishing an effective justice system, thank you.

I-Ching Kuo (Legal Aid Foundation Taipei Branch, Taiwan):

I would like to ask Mr. Toyama, how will the staff attorneys of the JLSC serve in remote areas? Will they set up offices there? If so, will they work with the Himawari Fund Office established by the Japanese Bar Association, or would the two organizations work separately from each other?

Toyama:

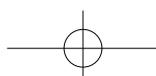
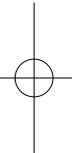
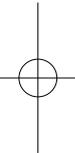
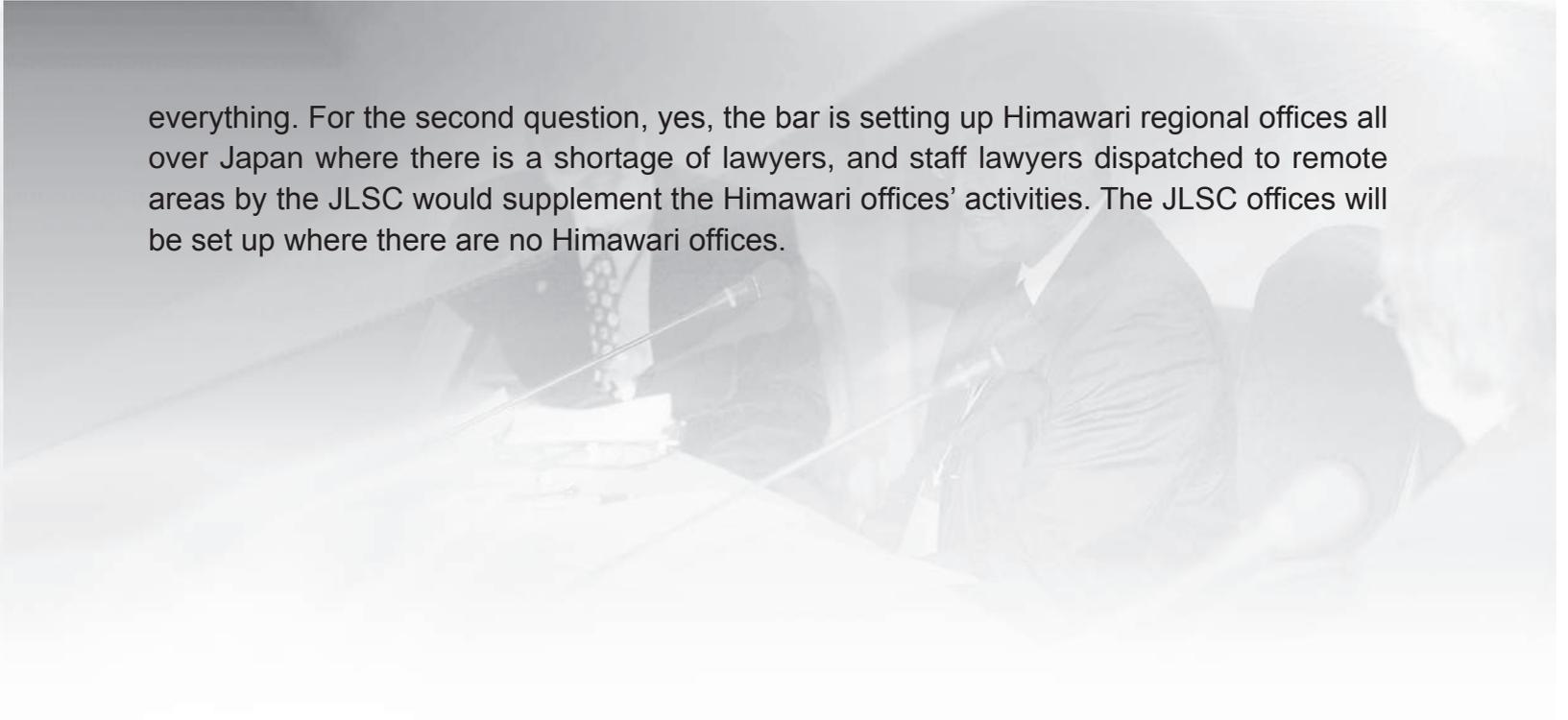
You studied the Japanese situation very well. For the first question, the lawyer dispatched to remote areas provides every kind of services, since he/she might be the only lawyer in the region. He has to provide criminal services, civil services, family services,

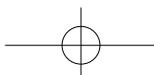
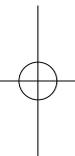


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everything. For the second question, yes, the bar is setting up Himawari regional offices all over Japan where there is a shortage of lawyers, and staff lawyers dispatched to remote areas by the JLSC would supplement the Himawari offices' activities. The JLSC offices will be set up where there are no Himawari offices.



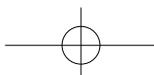
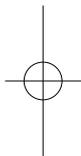
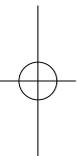
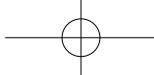


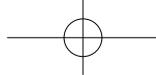


COUNTRY REPORTS

Editor's Note:

Some country reports were written according to the Forum's suggested outline (see Appendix 2).





COUNTRY REPORTS I

Presentations

Australia

Cambodia

Costa Rica

Czech Republic

Finland

Germany

Korea

Country Report Discussion Moderator

Jerry Cheng

Former Secretary General, Legal Aid Foundation

Taiwan



Country Report: Australia



A Synopsis of Legal Aid Services Delivered in Australia
By Stephen Lin¹
Principal Solicitor, Migration Agent
Central Queensland Community Legal Centre Inc.
Australia

Disclaimer: Despite the author's experience as a contracted duty lawyer in Western Australia and clinic legal advisor in the Cairns Office of Legal Aid Queensland, and 4 years experience in community legal services, he does not profess to know the full functions of the complex mechanisms of legal aid services delivered in Australia. For the same reason, he is biased towards the operation of Community Legal Centres as a unique class of crucial players in free legal services sector, especially those he has worked with.

I. Introduction

1. Defining Legal Aid, and Determining the Scope of Legal Aid

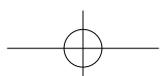
In Australia legal aid services are delivered by a range of different providers. Not all aid services in Australia are free. Legal aid services include legal information and advice, minor assistance (eg drafting a legal letter), duty lawyer services, legal representation for ongoing casework, primary dispute resolution services, and community legal education. Legal aid service providers are also involved in law reform work such as making submissions to parliamentary inquiries.

There are four main providers of legal aid services in Australia, these are the Legal Aid Commissions (LACs hereafter) in each State and Territory (the Directors of which form National Legal Aid), the Community Legal Centres (CLCs hereafter), represented by a peak body, the National Association of Community Legal Centres, indigenous legal service providers including the Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Units, and the private profession undertaking legal representation for people in receipt of a grant of legal assistance from a Legal Aid Commission. "Pro bono" legal services are also provided by members of the private profession.

2. The Goal of Legal Aid Services in Australia

The providers mentioned work co-operatively together including through the Australian Legal Assistance Forum (ALAF), a body comprised of National Legal Aid, The LawCouncil of Australia representing Australian lawyers and their State and Territory representative bodies, representatives of the Aboriginal and Torres Strait Islander Legal Services and the National Association of Community Legal Centres.

1.Acknowledgement: The Author acknowledges the assistance provided by Louise Smith, National Legal Aid (Australia).





3. Objects of Australian Legal Assistance Forum (ALAF)

- To promote co-operation between service providers in the interests of clients to ensure that the legal needs of those clients are met with the best and most effective services available to address these individual needs.
- To regularly disseminate information and promote communication amongst the service providers on issues of mutual concern to enhance the ability of those providers to address client needs.
- To inform governments and other organisations on the needs of those clients and on issues relevant to the practical delivery of legal assistance and representation services.
- To assist governments and other organisations in the development of policies to enhance access to justice for all Australians.

4. Contact Details

NLA presently provides the secretariat for ALAF. Further information and contact details for the Secretariat and all constituents of ALAF can be found about ALAF on the NLA website at www.nla.aust.net.au

II. Historical Perspectives

1. The Commonwealth of Australia

In 1901, the colonies of Australia established a federation called the Commonwealth of Australia. It is not a centralized government, instead, a representative democracy operated under 3 tiers of governments, ie Federal, State and Local.

Today, the Commonwealth consists of 6 States and 2 Territories, namely New South Wales, Queensland, Victoria, South Australia, Tasmania, Western Australia, and the Australian Capital Territory and Northern Territory.

Under the Commonwealth Constitution, the Federal Parliament can legislate on family, taxation, defense, telecommunication, social security, veteran affairs, corporation and securities, migration, international trade, foreign affairs and international relations etc. State parliaments legislate on property, criminal, small business, etc.

2. Organization -- Legal Aid Commissions

Each Legal Aid Commission is established under State or Territory legislation and is statutorily charged to provide "legal aid" or "legal assistance". Commissions are funded by the Commonwealth and State or Territory Governments for this purpose.

Receipt of a limited amount of funding by each Commission for the purposes of providing legal aid or assistance is contingent upon that Commission entering into a funding agreement/s with the Commonwealth and the respective State or Territory Government. The current agreements with the Commonwealth are for a four-year period and are due to expire at the end of 2008.

Since 1997 the Commonwealth has described itself as the "purchaser" of services which are to be "provided" by Commissions. The respective funding agreements require:

- i. A range of "outputs" (ie services) to be provided by Commissions. Each "output" has an allocated quantitative target and unit price identified against it.
- ii. Commissions to apply Guidelines ("the guidelines") to applications for grants for financial assistance.



The guidelines generally require Commissions:

- (a) to ascertain that each application received for a grant of assistance for legal representation falls within the guideline relevant to the matter type for which assistance is sought, and
- (b) to apply a means test to the application, and
- (c) to apply a merit test to that application, and
- (d) to grant legal aid in accordance with the prescribed Commonwealth "priorities" which are contained in Schedule 2 of the agreements. If a Commission does not have sufficient funds to satisfy demand, then aid may be refused on the basis of competing priorities.

For further information on Legal Aid in Australia, refer to the National Legal Aid website www.nla.aust.net.au

III. The Combined Service in Partnerships

Legal Aid Commissions in Australia are part of the government. There is a Legal Aid service in each of the six states and territories in the Commonwealth Australia. It is a state-based system although the commonwealth provides funding for legal aid services for commonwealth matters in the states and territories.

Free legal services in Australia are complemented by Community Legal Centres or Services, Indigenous Legal Service and some specialist advocacy service such as Domestic Violence Support Centres, and pro bono legal assistance provided by private firms. These service providers are community based.

1. Financial Affairs

Commonwealth and state & territory government fund legal aid services in Australia. Monies recovered and interest on trust accounts also provides an additional source of funds.

Legal Aid Commissions are deemed by the Australian Tax Office to be public benevolent institutions, which means that they have a type of charitable status so that they receive some tax exemptions, and gifts to them are tax deductible.

Whilst information, advice, duty lawyer services and community legal education services are often free, most recipients of a grant of legal aid for primary dispute resolution or legal representation will be required to pay some contribution towards the cost of their case. The amount will depend on the case and their ability to pay. For example, if the recipient of the grant owns a house then it is possible that they would be required to execute a statutory charge as a condition of the grant of aid. If the house is ever sold, then the costs of providing legal assistance may be recovered in part or in full. It works like an interest-free loan.

Fees for people who demonstrate that they are legally assisted, usually by the provision of a certificate, will often be waived.

Indigenous Legal Services is managed by the Office of Indigenous Policy Coordination. Its website is www.oipc.ogv.au.

The Commonwealth Community Legal Services Program is administered by the Legal Aid Branch of the Family Law and Legal Assistance Division. It is established for the development of consistent national policy and the co-ordination of program improvement initiatives across the community legal services sector. State Legal



Aid Commissions and the South Australian Attorney-General's Department play an important role in the administration of the Commonwealth Community Legal Services Program. Oversight of the day-to-day operation of community legal services and monitoring of service delivery is the responsibility of Commissions and the SA Attorney-General's Department. Community legal services in the Northern Territory and the ACT are directly administered by the Commonwealth.

Funding to centres is subject to service agreements at state and commonwealth level, though accountability regimes are inconsistent. Centres commonly receive funding from more than one source, including sources that are not necessarily identified as community legal service program monies. These other sources may have a foundation in advocacy, community education or crisis intervention.

Community legal centres obtain funding from a range of sources. One of the primary sources is the Commonwealth Attorney-General's Commonwealth Community Legal Services Programme (the CLSP), which 'purchases general and specialised legal services from a variety of organizations on behalf of the most needy members of the Australian community.'²

Recent History of funding to LACs:

Prior to 1997 the Commonwealth funded Commissions on the basis of its then policy that it was responsible for assisting "Commonwealth persons". These were people for whom the Commonwealth had special responsibility such as indigenous people, social security recipients etc. Funding was on the basis of a specified level of overall government funding with an annual inflator. In 1996 the Attorney-General announced that from 1997-1998 the Commonwealth would cease to provide assistance on that basis and would instead provide funding for matters arising under Commonwealth laws. This involved the cessation of Commonwealth support for matters arising under State and Territory laws, even where the applicant in those matters was a "Commonwealth person". On the basis of this changed policy the Commonwealth reduced its funding to Commissions by \$33.16 million per annum from 1997/1998. A table showing funding history of Commissions follows:

2.From the Commonwealth Attorney General's Department Website <http://www.law.gov.au/>

2005 International Forum on Legal Aid

LAC	CW etc	State etc	Spec T etc	Self Gen Income	Total income	Total Expend
\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
total 93-94	117,569	63,901	21,157	45,533	248,160	237,994
total 94-95	118,007	66,768	22,449	41,994	249,218	250,527
total 95-96	122,973	75,263	23,333	40,644	262,213	279,768
total 96-97	128,621	73,565	22,957	39,480	264,623	256,591
total 97-98	108,510	81,242	24,822	29,350	243,924	239,786
total 98-99	109,231	86,204	26,939	21,674	244,048	241,648
total 99-00	103,694	103,831	29,022	31,789	268,336	257,239
total 00-01	110,548	110,974	33,969	23,049	278,540	267,775
total 01-02	117,644	130,493	33,451	21,374	302,962	296,909
total 02-03	123,345	143,509	42,081	17,497	326,432	324,617
total 03-04	128,484	147,850	43,058	18,365	337,757	350,748

A breakdown of these figures by State and Territory can be found on the NLA website at <http://www.nla.aust.net.au/>.

Please note that the figures include special "once off" payments of funds for particular expensive cases that have cropped up in individual States and Territories over the period.

Please note that '02-'03 & '03-'04 figures are budgeted figures, not actuals.



BUDGETED Legal Aid Commission INCOME 2004-2005

	CW Input Grants (\$' 000)	State Input Grants (\$' 000)	Spec. Trust & Statutory Interest (\$' 000)	Self Generated Income (\$' 000)	Total Income (\$' 000)	Total
NSW	43296	67346	18226	4311	133179	132267
VIC	28790	35260	15000	6826	87341	91021
QLD	30868	22127	16009	4587	73591	74821
SA	12244	10831	1800	1893	26768	27278
WA	13721	16293	737	1588	32339	32339
TAS	4862	3370	75	175	8482	8212
ACT	3494	2909	850	360	7613	8082
NT	3299	2575	0	601	6475	6609
Total	140574	160711	52697	21806	375788	380629

Number of Applications nationally 2004 YTD May '05

Grants	Received	Approved	Pending	Refused	Withdrawn
Total	166,958	140,709	2,896	22,060	1,129

Lawyers

Legal Aid Services are provided by both legal aid salaried staff and private practitioners in receipt of grants of legal assistance that are administered by Legal Aid Commissions. There are no national figures for the total number of lawyers doing legal aid work. However, the data below shows the national breakdown of representations (ie legal aid work for which a Legal Aid Commission has provided a grant of legal assistance) done in-house and privately.

Legal Aid funded Representations in 2004 :

In house: 64,030 Private : 76,661 Grand Total Applications: 140,691

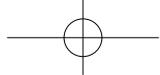
As well as providing legal representation, Legal Aid Commission lawyers also give legal information and advice, provide primary dispute resolution services where an application for legal assistance has been granted, do community legal education and perform duty lawyer services at courts across the country.

2. Co-operation & Supply

ALAF provides a national Forum for the legal service providers to get together to work co-operatively on legal aid issues and to make recommendations on those issues as appropriate. At local levels there are many models of co-operation between the principal legal service providers for the purpose of filling as many gaps as possible. One of many examples is the work done by Community Legal Centres in the area of Immigration Legal Advice, as the Legal Aid Commissions are restricted by the Commonwealth legal aid guidelines in the work they can do in the area of immigration.

Comparison of Rates

There is a significant gap between the fees charged by the private profession and the



rates that legal aid is able to pay. This gap has widened over the years. According to the Law Council of Australia, Legal Aid rates are now around less than 50-60% of statutory scales. The impact of this is availability of services rather than quality. Another concern is that less experienced lawyers are often assigned the legal aid work within private firms because of the level of remuneration.

3. The Scope and Types of Legal Aid Services

Traditionally, legal aid service providers have undertaken a mix of work, including providing information, advice and referral, casework, community legal education, law reform and social action and community development.

LACs: Grants of aid in representation- types of matters

- Litigation – Yes, all commissions- for representation services a grant of legal assistance must first be made.
- Civil Law – Some states.
- Criminal – All states.
- Non-litigious – Yes; information, advice, community legal education and submissions related to law reform.
- Environmental – Limited Legal Aid, but CLCs are funded to provide advice but not litigation on Environmental matters. There are nine (9) Environmental Defenders Offices in Australia providing specialist legal service through a Community Legal Centre structure.
- Constitutional – Not impossible.
- Administrative – Some; more CLC involved.
- Assistance at 1st police interviews – Usually NO; but advice may be given about their rights before the interview; would not be present because of concerns about compellability as potential witness in proceedings
- Foreign Citizens – Yes, including detention centers.
- Human Rights – Although there are commonwealth guidelines which limit grants of legal assistance (as distinct from other legal aid services) such that representation in migration matters is very limited; and for equal opportunity and or discrimination cases the guidelines require a "strong prospect of substantial benefit being gained by the applicant for assistance and also by the public or a section of the public in relation to the matter.

IV. Tests and Procedures of Assessment

1. Tests

Test and Procedures of Assessment Requirements for Legal Aid

Legal Aid Commission Services are provided free of charge. The following services are generally provided free of charge and without means testing:

- Legal information and referral services – the provision of initial legal information and referrals to appropriate services. Information and referral will be provided face-to-face and by telephone. If appropriate, written information may be sent to people or accessed by them via each commission's website.
- Advice and minor assistance – some commissions operate telephone services which extend beyond the provision of information and referral services to the provision of legal advice. Face-to-face legal advice is also offered. Most commissions also provide



assistance in addition to advice, for example, help in drafting a letter or completing a form.

- Duty lawyer – duty lawyers are available at many magistrates' and children's courts to provide advice and to assist clients with restraint orders, to seek remands, apply for bail and/or present pleas in mitigation.

Commissions provide a range of services which are not limited to those listed above.

Grants of aid

Commissions can grant aid for legal representation for lawyers to undertake ongoing matters for clients. If a grant of aid is made it will be referred to either a private practitioner or a lawyer from the commission's in-house practice. Grants of legal aid for representation in an ongoing matter are not available to everyone. Aid will be granted if:

- the matter is of a type the commission is able to take on in accordance with Commonwealth and/or state government guidelines;
- the applicant passes a means test, based on the applicant's income and assets and those of any financially associated person; and
- the matter is assessed as having merit.

What matters are grants of legal aid available for?

Information, referral, advice and minor assistance as referred to above are generally available for all kinds of legal matters and do not involve a grant of legal aid. Legal matters for which grants of aid for representation can be made by commissions vary in accordance with the guidelines applicable, and the funding available in each jurisdiction. Grants of aid for representation are more likely to be available for family and criminal law matters than for civil law matters. Note that aid may also be granted, when it would not otherwise be, if the applicant has special circumstances which include language or literacy problems, intellectual, psychiatric or physical disabilities, lives in a remote location or if, in relation to family law matters, there is a likelihood of domestic violence.

Applications are subject to means and merits testing. Grants of aid for primary dispute resolution (PDR) are also available. Grants for PDR will usually be made before any grant of aid to commence proceedings except if PDR is not appropriate in the circumstances of the applicant's case.

The merits test

Matters that fall within the guidelines for grants of legal assistance are also likely to be subject to a merits test. The test to be applied in Commonwealth matters has three elements:

- the chances of the proposed legal proceedings being more likely than not to succeed; and
- the 'ordinarily prudent self-funding litigant' would risk his or her own funds in undertaking the proceedings proposed; and
- the costs involved in providing legal assistance are warranted by the likely benefit to the applicant, or to the community.

Every commission has its own test that it applies to matters arising under state law. These tests are similar in principle to the Commonwealth test. Note, however, that in



limited circumstances certain types of applicants or certain types of matters may not be required to pass a merits test.

The means test

Every commission applies a means test. In limited circumstances and depending on the jurisdiction, certain applicants and types of matters will not be subject to a means test. The means test will assess both the income and assets of the applicant. The income and assets of any person financially associated with the applicant will also be assessed (for example: a spouse, parent or trust providing financial support to the applicant). In assessing income, the commissions may allow for certain deductions, such as deductions for rent, dependants and child-care costs. Similarly, some assets may be fully or partially exempted from the commission's assets assessment, such as the full or partial value of the applicant's house, car, or tools of trade.

Contributions

Even where a grant of legal aid is available, the client may have to pay a contribution towards the costs of legal services. This may be a small amount or up to the total cost of the matter if the applicant has the capacity to pay it by reason, for example, of recovery of money.

Level of means test

Due to the complexity of the means test and variations amongst jurisdictions, for example, in the cost of living, it is not possible to identify a generally applicable cut-off point for grants of legal aid for representation.

Assessment of Applications

- Who – by the Legal Aid Commissions' "Grants" or "Assignments" Section, the staffing of which varies considerably depending on the size of the Commission. Each Section has a manager with extensive legal experience.
- How – by Electronic Means Test Calculators; and if eligible on means consideration and decision 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.
- Personal Application – Applicants must sign off on their application. Applicant's signature is required.

Examining the main practice areas and Applying the tests

Family law

Applications are subject to means and merits testing. Grants of aid for primary dispute resolution (PDR) are also available. Grants for PDR will usually be made before any grant of aid to commence proceedings except if PDR is not appropriate in the circumstances of the applicant's case.

Criminal law

Applications are subject to means and merits testing.

Aid will usually be available for trial if the applicant has a reasonable prospect of acquittal, and conviction would be likely to have a significant detrimental effect on the applicant's livelihood or employment, actual or prospective; or the applicant has a disability or disadvantage which would prevent self-representation; or conviction would be likely to result in a term of imprisonment, including a suspended term, being imposed.



Aid will usually be available for a guilty plea if, because of complexity or other aggravating circumstance, the commission determines that the matter should not be dealt with by a duty lawyer service.

Aid may be available from some commissions in other circumstances, for example, minor traffic matters where large fines or issues of civil liability might attach. Reference should be made to individual commissions.

Civil law

Grants of aid are not as readily available as they are for family or criminal law matters. Applications will be subject to means and merits testing.

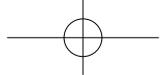
Grant of aid will not be made for commercial or investment transactions, conveyancing, preparation of wills or probate, association or building disputes and defamation proceedings. Aid is also unlikely to be granted for neighbourhood and motor vehicle damage matters. Matter types where grants of aid may be available but are more likely to be limited include:

- Migration cases – grants of aid will be provided only if the matter raises an area of unsettled law, or if the proceedings seek to challenge the lawfulness of detention, not including a challenge to a decision about a visa or deportation order. Further legal assistance for migration matters may be available under the Immigration Advice and Application Assistance Scheme (IAAAS).
- Employment cases – grants of aid are not readily available for employment cases although a matter arising under a Commonwealth Act is a Commonwealth priority (and thus aid may be more readily available) if it relates to:
 - a decision affecting the receipt or amount of a Commonwealth employees' compensation, or a Commonwealth pension, benefit or allowance;
 - a decision or action by a Commonwealth authority in relation to a person that has a real prospect of affecting a person's capacity to continue in his or her usual occupation;
 - discrimination.
- Others – for matters involving environmental law, mental health, consumer protection, tenancy and housing, reference should be had to individual commissions as the policies vary considerably. (Note that community legal centres may be able to assist with such matters.)

Legal aid commissions are more likely to be able to assist with regard to the following civil matter types:

- Veteran's law – grants of aid are available for war veterans and their dependants in relation to appeals from decisions of the Veterans' Review Board about war-caused disability pension entitlement or assessment claims. Applicants are not means tested.
- Social security and other Commonwealth benefits appeals. These include appeals to, and representation at, the AAT in certain circumstances. (Note also that some community legal centres operate welfare rights advocacy services.)
- Equal opportunity and discrimination cases. (Note also that some community legal centres operate disability discrimination services.)

It is sometimes possible to obtain grants of aid for disbursements only. A firm willing to act pro bono – without payment of fees – may find that a grant of aid is available for



this limited purpose.

Legal assistance Providers in Australia are also engaging themselves in law reform and legal education. These can reduce the need for legal aid and achieve social harmony. Other ways to reduce the need for legal aid service include community engagement, clinical education programs, specific campaigns, and online legal resources. Mediation and Community Legal Centres have helped to ease the demand and resolve some disputes without going to the court. Community legal centres have assisted many self-represented litigants in the court or at tribunals.

Effects of discovering ineligibility

The grant would usually be terminated. Depending on the circumstances, recovery of the amount spent may be sought. If fraud is involved it will be referred to the police.

2. Equitable Access

There are Guidelines to address issues for those with special circumstances at all Commissions, eg, the Commonwealth has written Legal Aid Priorities which sets out the Commonwealth Law Matters that Litigation Services may be provided for by Commissions under a grant of legal assistance. These include reference to "special circumstance" which are any of the following - language or literacy problem, the applicant has an intellectual, psychiatric, or physical disability, it is difficult for the applicant to obtain legal assistance because the applicant lives in a remote location.

There are administrative review processes if one is denied legal aid. Firstly, they can apply for internal review and written reasons for the refusal, later, an external review is available if clients are still not pleased with the refusal of legal assistance and the reasons provided by Legal Aid.

Community legal centers may fill the gaps and take on some of the casework that Legal Aid Commissions cannot.

V. Governance of Legal Aid Services

1. Independence and Accountability to the Community

Each Legal Aid Commission in a state or territory operates under the provisions of the Legal Aid Act in that particular jurisdiction. Commissions are independent statutory bodies, although as mentioned above, the assistance that can be provided by Commissions is tied to funding requirements, eg the Commonwealth legal aid guidelines.

A Board constituted by representatives of stakeholders of about 10 members establishes the Commission's broad policies and strategic plans. The daily management of the Commission is overseen by the Chief Executive Officer.

Community legal centres rely on having community representation on their boards of management and in their volunteer base to ensure accountability to the community.

Community-based legal aid service providers approach accountability to the community in consistent ways – primarily through locally elected management structures. Through this model, the community practices self-determination in respect of the legal aid services it receives. Australia has the additional element of a volunteer advice services to maintain accountability to the community, through their clients and their volunteers. In some region, free legal services operate solely with volunteers.



2. Flexibility & Responsiveness

National Association of Community Legal Centres has identified five principles for a community-based legal aid provider including:

- Autonomy;
- Diversity;
- Equity;
- Flexibility; and
- Innovation.³

The NACLCC has summarized that “community legal centres are much more than ‘gap fillers’. In over 30 years of operation, they have developed specialised expertise and a unique mode of service delivery that is particularly well suited to meeting the complex legal needs of the diverse communities that form Australian society.”

VI. Publicizing Legal Aid Services

There is some reluctance around advertising because of concerns that Legal Aid Commissions will not be able to meet the demand that may result if services were advertised. Careful targeting is used instead. For example, one study revealed that many people go to the court as a first port of call. Legal Aid Commissions are trying to make sure that those who go first to the court are then directed to duty lawyer services which can generally provide information, advice and minor assistance and will be able to ascertain if the person is likely to be eligible for a grant of legal assistance.

Our community based legal services are free already, do we still need marketing and promotional strategies?

A new type of service still needs promotion and publicity. Legal information should be distributed regularly through a network of social service providers, online publication, social campaign, etc.

Speaking from my personal experience as Principal Solicitor and a Chinese radio producer, I tend to rely on public radio stations to publicize events, and disseminate legal information in other languages, thanks to our Multiculturalism and Cultural Diversity policies. For our Community Legal Education programs (CLEs), I will motivate local councils' Multicultural Officers to promote each seminar or information sessions delivered by us.

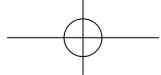
Our immigration advice is a new area we've embarked upon. I am still probably the only free migration agent within an area of about 600km along the Great Barrier Reef and 200km into inland region. Quite many inquirers later travel overseas and yet still hope to get instant advice. Can we deliver it? We can only if we rely on state-wide toll free telephone advice, website publication, email intake and advice, etc.

Embracing new communication technologies is the only way to deliver a timely, low cost or complete free legal service. For example, video conferencing facility is a good tool to reach out to our remote, rural and regional areas (RRRs).

Other ways to publicize our free legal service include partnerships with other social service agencies so as to build up a referral network.

We also learn to work closely with publicly-funded agencies and politicians. Our local federal parliamentarian's office is regularly referring clients to us and they have prepared a

3.National Association of Community legal Centres, A Fabric for the Future - Fashioned for the Figure or Forcing it to Fit?, 1998.



nice referral slip profiling and highlighting our free legal service. We are even lucky enough to have the Member of Parliament to raise the funding issues in the Parliament. Why? She used to work at our Centre before she went into politics. We have maintained the working relationship.

Maintaining a high profile in social campaigns, such as anti-racism, anti-discrimination, equal opportunities for Aboriginal people, will always help. I also regularly send articles to the local newspaper. When they appear in the press, we normally have an influx of enquiries.

My colleague working in family law area probably prefers a lower profile as we are already very busy in that practice area, which probably coincides with Legal Aid Commissions' position.

VII. Quality Assurance & Outcome Measurement

Legal Aid Commissions are able to call for files and conduct file audits, the larger Commissions have "panels" of practitioners to whom the Commissions will direct legal aid work. In addition, the Law Society or Legal Service Commission of each state and Territory handles complaints against practitioners.

Australian community legal centres are required to abide by a range of program management and measurement tools, including:

- The tightening of service agreements;
- The introduction of database arrangements (CLSIS); and
- The implementation of a performance and outcomes measurement regime (SSPI).

Some common ways to enhance service capacity and ensure high quality of service include accreditation, professional development, conferencing and specialization, file audit, professional standard, peer cross check, file review, etc. legal aid services can also contract and retain specialists.

VIII. Unmet Demand & Legal Needs

As veterans in delivering legal aid services, we all know from our daily experience that there are unmet demands and needs. Busy practitioners hope they have time to do in-depth studies or social mapping to identify future trends and directions legal aid services should head to.

The NACLCLC noted this challenge that "the time has come to ask others who share a concern and a responsibility for our system of law and justice – the various arms of government at both federal and state levels, the different parts of the legal profession, peak bodies and service providers in related disciplines and sectors, and other interested community groups – to join with us in a new partnership to build a fairer and more effective system that can deliver justice for all."

IX. Conclusion: A Model of Combined Services in Partnerships

The legal aid commissions, community legal centres, Aboriginal legal service, private practitioners performing legal aid and pro bono work and the like, all share the landscape of Australia's free legal service sector.

To meet demands, all players are looking for more efficient ways of fostering partnerships to deliver appropriate services to the people in need. One way to enhance the



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efficiency of our service is to share our experience with our colleagues and clients.

We can also benefit from closer partnerships between different jurisdictions, comparative studies on different service models, and solidarity within the free legal service sector.

Within the restraints of funding and other resources, free legal services will heavily rely on technologies such as internet, telephone, data transmission, video conferencing, etc.

A Forum like this one will help us to share our knowledge, strengthen our communication, and address the challenges we are all facing together.

We praise the Legal Aid Foundation for showing the initiatives in organizing this Forum, and we look forward to more co-operation in the future between us all.



Country Report: Cambodia



By Ouk Vandeth
Director, Legal Aid of Cambodia
Cambodia

Cambodia had been in civil wars for a very long time from 1970 to 1993. It went through four political regimes, namely the Royalist Regime, Khmer Republic, Democratic Kampuchea (Khmer Rough Regime) and the so called State of Cambodia installed by the Vietnamese Communists. I would like to just emphasize what happened in the Khmer Rough regime and afterwards.

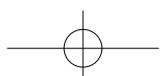
Under the Khmer Rough regime, many people including most legal practitioners and law enforcement officers were killed and nearly all legal documents were completely destroyed. This regime had neither courts, law enforcement officers, lawyers nor legal aid services to protect the people's interests. After the Khmer Rough had been ousted, a new Khmer Rough which was under Communist Vietnam came to replace. In this regime there were courts, judges, prosecutors and legal defenders⁴ in Cambodia but the existence of the judicial system was just to serve the political interest of the powerful elites, thus leaving the legal defenders inadequate professionals for protection of the people's rights.

Since 1993 Cambodia has established a democratic government where the state recognizes and protects the rights of the citizens. These rights are guaranteed by the Constitution of the country. In the meantime the state is also responsible for providing legal assistance to those who are in conflict with the law and victims of offences.⁵ However, the state lacks commitment to fulfilling such obligations because the state does not have enough money for legal aid services. Responding to those needs, legal aid organizations were founded in order to provide legal assistance free of charge to the poor and vulnerable persons, who were strongly abused by authorities, rich and powerful people.

Legal aid organizations are able to operate because of financial and managerial support from donor countries and international organizations that love peace and justice. There are no clear figures on how much money legal aid organizations spend in Cambodia because

4. Legal defenders represent criminal cases but they could not defend civil cases. Legal defenders in Cambodia were not licensed lawyers.

5. According to the Second paragraph, Article 31 of the Constitution of the Kingdom of Cambodia states that "every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status." In this paragraph, it is clear that the government has to guarantee equality before the law, same rights, same enjoyment and same obligations. In order to assure equality before the law, the poor shall have a lawyer to defend him/her when the rich has a lawyer. In this situation, the poor cannot afford to pay for lawyer; therefore, the government has to be responsible for legal aid provision. In the meantime, according to Article 76 of the law on criminal procedure, it states that "At this first appearance and after recording the identity and informing her/his accused act, if the accused tells the judge that he/she chooses a lawyer or requests that a lawyer shall be automatically appointed by the government for his or her defense, then the investigating judge shall suspend the interrogation and call the counsel shortly in order to interrogate the accused in the presence of the counsel." So it is clear that it is the government responsibility to automatically appoint a lawyer for an accused when he or she says he/she needs a lawyer and cannot afford to pay the lawyer fee.





each organization always seeks funding support individually from separate or same donors. Every year Legal Aid of Cambodia (LAC) represents approximately 2,500 to 2,800 cases, whereas the Cambodian Defender Project represents 750 cases, the Cambodian Women Crisis Center represents 1200 cases and the Cambodian Bar Association represents 270 cases.

In Cambodia there are only 315 lawyers for a population of more than 13 million. However, there are only 249 lawyers who are practicing law.

The legal system in Cambodia sets legal aid outside the government's responsibility, so legal aid is an independent institution (community oriented system) and this institution works to serve the poor throughout Cambodia as much it can. The legal aid system is set under the Cambodian law and the Code of Ethics of the Cambodian Bar Association. The laws determine the free provision of legal representation and legal advice to the poor and in this case the legal aid organizations hire practicing lawyers to implement their legal aid activities. The roles of the lawyers in any legal aid organization are to provide legal representation to criminal cases, civil cases and administrative cases.

In criminal cases, we try to help the suspects when they are detained in police custody but initially could not participate in the earlier proceedings. However, after repeated reminders and explanations from our professional staff members, our lawyers are allowed to help the suspects starting with their detention in police custody.

Beyond the provisions of legal services, the legal aid organizations also provide legal education to law enforcement officers and people in general through organizing workshops and mentoring and mass media.

There are different conditions for different organizations in determining poor clients by focusing on monthly incomes, members in the family and all the family's assets. For example, in Legal Aid of Cambodia, according to the written Case Intake Policy, we determine eligible clients to be those who have disposable income of less than \$100 USD per month; and disposable assets valued at less than \$5,000 USD. However, the case intake policy of some legal aid organizations in Cambodia encourages legal representation to women and children as much as possible.

As I told you earlier, the potential clients who seek legal representation have to follow the strict conditions as prescribed in the case intake policy. If later on we find out that the clients lied or provided false information concerning their financial position, we discontinue representing the clients and inform them immediately so they can seek legal assistance elsewhere.

In the legal aid system in Cambodia, there are no legal defenders (there used to be) to defend criminal cases, so according to the law only lawyers can practice law in the courts.⁶ We have legal aid lawyers and private lawyers. Communications between legal aid lawyers and private lawyers happen in two ways. First, when potential clients do not qualify under the organization's case intake policy, the organizations have to refer the clients to private lawyers. Second, when potential clients come to private lawyers and they cannot afford to pay them, then they will tell the clients to come to legal aid organizations. In legal principle, all lawyers shall devote some proportion of contribution to representing the poor as much as possible when they know that clients are unable to pay for the services.

6. In 1995 there were only legal defenders to represent criminal cases. After the establishment of the Cambodian Bar Association in 1997, only licensed lawyers (Attorneys at Law) could practice law in the courts. Therefore, the legal defenders were no longer authorized to defend criminal cases in the courts.



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Due to the fact that the courts are corrupt and nondependent, private lawyers lose their ethical value and transparency; sometimes it is said that private lawyers are flowers to beautify the judicial system. Therefore, legal aid lawyers are very popular amongst the poor.

In order to guarantee quality and popularity, lawyers of legal aid organizations shall:

1. Fulfill the assigned task competently and avoid corruption
2. Fulfill the task carefully with high responsibility so as to protect the best interest of the poor
3. Be brave enough to protest and advocate for the interest of the nation in general
4. Be ready to be equipped with new strategies and modern techniques.

In conclusion, as presented above, the state has not yet fulfilled her obligation to guarantee equal protection before the law. Therefore, legal aid organizations have to bear this heavy burden. In the meantime, the legal aid organizations in Cambodia are trying to persuade the Cambodian government to set a small budget line to contribute to the legal aid program, and persuade the international community to provide more support to the legal aid system.

Addendum:

- 1.** Under LAC's Case Intake Policy, we determine eligible clients to be those who have disposable income of less than \$100 USD per month; and disposable assets valued at less than \$5,000 USD.

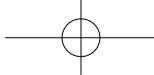
For the purpose of this definition, disposable income is defined as: "The average monthly income of the applicant's household, whether legally sanctioned or not, including the value of any goods or services rendered in kind, during the period of 12 months immediately preceding the date of application, after deducting there from an amount equal to \$60USD per month (city) or \$35USD per month (rural) for each household member."

For the purpose of this definition, disposable assets is defined as: "The total net assets of all members of the applicant's household, including: all cash, savings, investments and movable and immovable property, but excluding: 3 motorcycles per household, the house where the household members live in, the land which the household members live on and 5 hectares of farming land, the subject-matter of the proceedings, jewelry less than \$200 USD per adult household member and business goods less than \$500 USD."

- 2.** LAC was founded by a group of legal defenders and lawyers in 1995 with a grant from Novib, which throughout has been LAC's major funder.

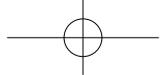
LAC is a Cambodian human rights based legal NGO that provides legal assistances to the poor. It has eight offices throughout Cambodia from which most of the country's 24 provinces are covered. LAC has a total of 63 Cambodian employees including 22 lawyers and 2 foreign consultants. Additionally, LAC has a Supervisory Board consisting of local and international members.

With increasing demand for legal representation in different fields of laws and specializations, in 1997 LAC established the Juvenile Unit to provide training to legal enforcement officers, legal practitioners and other concerned NGO staff members



on the International Convention on the Rights of the Child (CRC) so that they can implement the law in the best interests of the child. In 1999 LAC established other three units: namely, the Land Law Unit, Juvenile Litigation Project and Labour Unit to help solve land disputes, provide legal representation to child offenders-child victims and work to improve labour conditions in Cambodia respectively. All units are funded by different donors.

- 3.** In total LAC handles approximately 2,500 to 2,800 cases per year. According to our plan we determine 60% of the total cases are criminal and 40% are civil. In 2004 LAC represented 2,534 cases, of which 1613 were criminal and 921 were civil cases.



Country Report: Costa Rica



By Arturo Fournier F.
Attorney at Law – Notary Public
President, International Law and Foreign
Affairs, Costa Rican Bar Association
Costa Rica

Costa Rica was born as an independent Republic in 1821, and ever since then, due to its history, emphasis has been on social solidarity. After a peculiar civil war fought during 1948, a new Constitution was enacted in 1949, thereby laying the foundations of the new Second Republic and establishing the Legal grounds for a State of Welfare. Up to today, Costa Rica has lived a lasting and well based Democracy, for more than a hundred years, with just two short interruptions in 1919 and 1948.

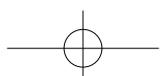
During the seventh decade of the 20th Century, a group of Left Wing Lawyers who had experience with practicing legal aid in the University as a condition to graduate, started the goal of granting Legal Aid to the population, especially to those in a condition of poverty.

This effort was rapidly copied by many others, including social organizations and even by the State, thus turning Legal Aid into a need and considering it an essential part of the functioning of the Rule of Law, for a population of four million people.

Nowadays it is common to think that every citizen is entitled to equal rights and equal opportunities to access Justice, in such a condition that there is no limitation on the origin or social or economic condition of the person requesting Legal Aid.

First of all, it must be explained that Legal Aid in Costa Rica has varying degrees and kinds of experiences because it is rendered by different Institutions, both Public and private:

- The most important and widespread of the services is the Public Defense provided by the Judiciary, later referred to in this paper as: P.D., which are appointed by Court on a permanent basis.
- National Trusteeship for Childhood, a governmental institution, in charge of protecting the legal rights and the social condition of children, later referred to in this paper as: PANI.
- Center for Justice and International Law (CEJIL), deals mainly with the protection of Human Rights in the American Continent and presents cases before the Inter American Human Rights Court. But as far as Costa Rica is concerned, only one active case is being pursued at this moment, while another case is being settled in an amicable way, so we won't refer to their experience.
- Defender of the inhabitants (OMBUDSMAN), later referred as: OMB. Attached to or depending on Congress, which in our country has only one chamber and is named the Legislative Assembly. It was created by Lay N°7319, published in the Official Gazette on the 10th of December 1992, and is intended to defend EVERY person in the country, regardless of one's legal status of residence or country of origin. It also must promote, spread and





popularize the legal rights of the inhabitants, and be aware that public offices work according to the Constitution's moral and Justice grounds, International covenants and treaties, Laws and general principles of Law.

I. Basic Data

1. Legal Aid's annual budget:

P.D. = ₡5.657.103,537 colones (equivalent to US\$1,168,823).

PANI = no information is available, because legal aid is mixed with all the rest of their activities, such as rescue, emergencies, etc.

2. Number of applications for legal aid in the past year

P.D. = 74.153

PANI = no information available.

3. Number of legal aid grants in the past year:

P.D. = None, because services are completely free.

PANI = None, because services are completely free.

4. Number of lawyers who have provided legal aid services in Costa Rica:

P.D. = 219

Defense	Total	Penal	Agrarian	Misdemeanor	Traffic accidents	Family	Alimony	Execution of Judgement	Disciplinary	Juvenile Crime
219	74153	48997	904	1278	195	447	10454	3435	1401	7042
Average	338,6	314,08333	150,66667				454,52174	312,2727		370,63158
# Counselors	219	156	6	1			23	11	3	19
		48997	904	1278	195	447	10454	3435	1401	7042

II. Organization

1. Is the legal aid system in your country a government-orientated system or a community-orientated system?

P.D. = The main service is government-orientated, through the Judicial Power, but at the service for the community.

PANI = Child-orientated.

2. Is legal aid in your country provided through a centralized or a regional system?

P.D. = The direction of the service is centralized, but it operates on a regional system, in 37 offices throughout the country.

PANI = In 9 regions with 41 offices all around the country. Also, they have 42 shelters around the country in order to provide housing and food to more than 600 abandoned children, but they live in very poor and overcrowded conditions.

In 2004, 28.640 reports were received regarding child abuse, negligence or abandonment. During the first semester of 2005, 29.383 telephone consultations were provided.

1. If the legal aid system in your country is government-orientated, how does it maintain its independence?

P.D. = It has been established by Law that they depend on the Court for budgetary purposes, but not for obedience; thus they are independent in their criteria. However,



independence is a permanent issue, especially in very sensitive cases.

PANI = Hardly, because usually it is politically oriented or restricted, according to the policies of the Executive Power.

III. Financial Affairs

1. What are the sources of funding for legal aid in your country?

P.D. = 6% of the Gross National Budget.

PANI = 7% of the past year's budget, plus impost and contributions paid by other institutions, and a percentage of traffic tickets. This percentage of the national budget is destined for the normal functioning of each Institution, not only for Legal Aid.

2. Does the legal aid system in your country adopt a charitable or a rebate model? Are the recipients of legal aid required to pay statutory charges at the conclusion of court proceedings?

P.D. = It is mainly a sort of charity, because it is intended to be used by people with no financial resources. However, according to Art. 152 of the Organic Law of the Judicial Power, if it comes to the knowledge of the P.D. that the person had sufficient economic means to pay for a private defender, then that person would be invited either to pay for the fees and costs of his/her defense, or to appoint a private defense. If this happens at the end of the Trial, a procedure will be started to recover the Legal Fees and Trial expenses.

PANI = No recipient is charged for services, regardless of his/her economic condition; but at the end of court proceedings, the infringer is usually condemned by the Judge to pay.

3. Does legal aid in your country include the provision of adjudication fees/filing fees and security for costs?

P.D. = If and when the defended resigns the Legal Aid from its counsel, as above stated. To prevent the situation that costs would be an obstruction to access to Justice, Law was reformed in the past to eliminate most of the proceeding costs. There are no filing fees except for some minor tax stamps for certificates, and security for costs does not exist any more. Fees are not required by Law in order to make judicial decisions rely on Justice, and not on the economic capacity to pay for costs and fees..

Also, a provision has to be made against the Law infringer in every ruling, in every Sentence at the end of the procedure, to pay for the fees and costs, which will then be deposited to the order of the Public Defense Institution for the acquisition of new assets.

4. If so, does providing assistance in paying these costs increase the burden on the government's budget?

P.D. = Yes it does, because according to the Constitution, the Judicial Power has for all its activities a fixed 6% of the National Budget.

PANI = the same.

It is also important to quote that some services, which are given on a free basis as part of Legal Aid, do incur a high cost. For example, technical or expertise opinions, medical tests or assistance, psychological counsel, etc.



IV. Models of Operation (Supply Models)

1. Are the legal aid services in your country provided by salaried lawyers, or by contracted lawyers, or by lawyers or law firms in other ways?

P.D., PANI = salaried lawyers.

V. The Scope and Types of Legal Aid Services

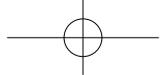
1. Does legal aid in your country include services in the following matters:

- litigation and legal consulting;
P.D., PANI = yes
- civil law or criminal law matters;
P.D. = criminal, agrarian, misdemeanor, traffic accidents (all of which need to have a Judicial setting), family, execution of judgment in criminal cases, disciplinary and Juvenile criminality.
PANI = yes for criminal, family, labour, and in very few and chosen civil cases.
- non-litigious matters (i.e. assistance in applying for social welfare, insurance or annuity; providing community legal education and initiating law reform);
P.D. = no
PANI = yes
- environmental law and constitutional law matters;
P.D. = not in constitutional matters, and environmental matters only if it has criminal consequences.
PANI = no
- administrative law and national compensation matters;
P.D., PANI = no
- assistance during the first police interviews at police stations;
It is not yet required by any Law provision in our country that this interview has to be assisted.
- accepting applications made by foreign citizens;
P.D., PANI = no difference or discrimination is made against them, regardless of their immigration status in the country.
- any special rules for applications involving the protection of human rights.
P.D. = No, only if it has criminal consequences; thus this Legal Aid is provided only by NGOs.
PANI = Only in those cases in which human rights deal directly with children, such as protection of their lives or physical integrity, and the right to have a family.

VI. Tests and Procedures of Assessment

1. Please elaborate on the requirements for legal aid, including the financial eligibility criteria and other tests; the documentation required in making an application; the procedures for making an application; and the efficiency and methods of assessing applications.

P.D. = There are no special requirements, mainly in Criminal matters. Only in Alimony cases is the client required to fill a form or a petition to obtain Legal Aid.



PANI = No special requirements, except evidence that the child is under legal age. Efficiency is thus guaranteed because acceptance of the case and eligibility for legal aid is immediate and prompt.

2. Who has the responsibility of assessing applications for legal aid?

P.D. = The Judge or the Prosecutor, whenever they interview a person, has to advise them on the possibility of receiving Legal Aid. If the person accepts, then the P.D. is immediately informed of the petition and appoints counsel immediately.

PANI = The head of the Legal Department or social assistants.

3. What are their qualifications and how are they appointed to assess applications?

P.D. = In Criminal cases, there are no qualifications required. Since everybody is entitled to be a beneficiary of the service, members of the public defense are forced to accept every petition, and thus there is no need to assess applications. Only in certain cases, when and if it is made evident that the person is wealthy, he/she will be invited to appoint a private counsel; if it is not so evident and there is a doubt, an investigation has to be conducted in Public Registries to find out his/her assets and income.

PANI = The same answer, because the only qualification to be analyzed is that the beneficiary is under legal age = 18.

4. Is the prospect of success a consideration for deciding applications?

P.D., PANI = No, because it is a public service and a legal and human right.

5. Is there a requirement that an application must be made by the applicant personally?

P.D. = Yes; unless the person is in prison and wants his defender to be changed, it can be required and applied in writing. Or, in some cases another person acts on his/her behalf, with a Power of Attorney.

PANI = No; applications can be made by any person who happens to know the case of the minor in need of protection. Applications can be made even by other Institutions regarding children, such as Hospitals, child shelters and others.

6. Are there any special arrangements, including for making and assessing applications, for particular disadvantaged groups such as women, children, aboriginal people and labour?

P.D. = No; there are equal rights for everybody. The main criteria is their social and economic background.

PANI = Of course: children.

7. What are the effects of discovering ineligibility after legal aid is granted? Is legal aid terminated or cancelled for these applications?

P.D. = It has been answered before. Legal aid can not be terminated automatically, because that would imply a violation of an essential human right. However, the person would be invited to appoint a private counsel. If private counsel is not appointed, the public counsel must continue the case until the end and ask the Judge to provide a provision for collection of fees and costs. Then, this judgment would be presented before a Civil Judge for the collection of the amount due and for seizing the defended goods and assets.



PANI = No effects, because every child in despair is always eligible.

8. Please elaborate on the relationship between legal aid providers and private practitioners and between legal aid providers and public defenders.

P.D. = The work they do is the same, but they can not be present at the same time to give their counsel to the same person. If a private practitioner comes in, automatically and by disposition of the Law, the public defender has to quit the case.

Public defenders work for the branch of the Judiciary in charge of public defense. Thus they are direct employees of the Judicial Power and subject to all the labour regulations.

PANI = Same answer, with the exception that the child may be represented at the same time by a public or private counsel.

9. Do lawyers have an obligation to provide legal aid? If they do, what are the arrangements for meeting that obligation?

Not in general terms. Though it should be noted that when a Lawyer has already agreed to defend a case and give his counsel to a defendant, then he/she cannot resign and leave the case unless another Lawyer has been appointed, or unless the case entails very special legal provisions.

10. Please compare legal aid providers' fees with market rates – does the rate of pay affect the quality of services?

Every fee for legal services is regulated and controlled by a fare established as a consent agreement between the Ministry of Justice and the Lawyers Bar Association (the only one for the whole country and of compulsory integration). The agreement is enacted as a National Decree as a regulation having the effect of law.

11. What are the ways of making the availability of legal aid services known to those needing them?

This is one of the main challenges because parts of the population, especially those in certain geographical areas or socioeconomic groups, do not know of legal aid services. But in every Court room and in many public premises there is written information available to the public, such as posters on the walls, information by the media, etc.

12. What are the ways of ensuring the quality of legal aid services?

Quality is monitored by cross controls made by the Legal Aid organization, supported by Judges, prosecutors, reports from the defenders, supervision visits, the internal service comptroller, Ombudsman control activities, and mainly reports from public users of the service.

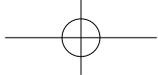
13. Has your country initiated law reforms or legal education with a view to reduce the need for legal aid?

No. On the contrary, there is a widespread effort to enlarge the services to include other branches of the Law, such as Labour Law.

VII. Future Developments

The future develop of legal aid in Costa Rica depends mainly on the budget available for this kind of social service, which does not hold a prominent place on the political agenda.

We have enacted many protective laws. The population is demanding a broadening of services to include other areas of the legal practice, such as Labour Law, Juvenile Criminal Law and others. However, there are not enough financial means to hire enough lawyers



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and to cover all judicial costs in those cases.

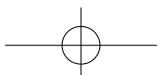
In our country, it is also very important to protect immigrants fleeing violence or poverty and seeking shelter in a peaceful country. Some may simply be seeking advice and help with the very complicated procedure of obtaining Legal Residence (green card).

Also, many Lawyers are willing to work and practice in this field, but there are no means of financing their income.

Granting legal aid is by no means giving the lowest kind of advice, neither providing the worst Lawyers to the poorest people. Rather, our goal should be to give and guarantee the best advice and the best Lawyers to anyone in need of legal aid or orientation, because that would be a guarantee that Justice will prevail whatsoever.

The biggest challenge, I imagine, is similar to what many of you face in your countries: how to sustain the system of legal aid, and how to help most of the people who lack enough income to pay for good Legal advice? How to convince governments and politicians that investing in such an activity is a good thing for the country?

Taiwan's experience, with slightly one year of practice, demonstrates the urgent need for legal aid amongst the population of any and every country in the world. Thus it is very important to unite efforts all over the world, to ensure rule of law, justice and world peace through good and qualified legal practice and aid.





Country Report: Czech Republic



Free Legal Aid in the Czech Republic
By Martin Rozumek and Nataša Chmelíčková
Organization for Aid to Refugees
Czech Republic

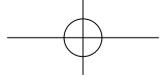
There are plenty of situations in our life in which we need legal advice. In the case of professional legal advice we must also take into account the costs. However, low-income individuals can turn to organizations that provide legal consultancy free of charge.

The legal order of the Czech Republic generally regulates situations in which legal aid is necessary. The basic regulation can be found at the constitutional level. The Charter of Fundamental Rights and Freedoms in chapter five contains the right to judicial and other legal protection. It means the right to fair trial, the right that all parties are equal in the proceedings, the right to effective access to justice, the right to turn to a court for a review of the legality of decisions etc. The conditions and detailed provisions of these rights are set by special acts (e.g. Criminal Code, Civil Proceedings Code, Administrative Code).

Current legal regulation of legal aid

The right to legal aid is confirmed in article 37 of the Charter. This article in its paragraph 2 states that "everybody has the right to legal assistance in proceedings held before courts, other authorities of the State, or public administration authorities from the beginning of such proceedings." Looking more precisely at this provision it can be derived that legal aid can be claimed only in the proceedings and only before certain authorities. However, commentary on the Charter alleges that the enumeration in paragraph 2 is wrong. It recommends to interpret the second paragraph more extensively in the sense that everybody has the right to legal assistance 1) before courts and arbitrators 2) before administrative authorities and whatever other state authorities and 3) before municipal bodies.

Fundamental principles concerning legal aid are listed in the Charter and specified in special acts. Everybody is entitled to claim legal aid, even a foreigner in accordance with article 42 par.2 of the Charter. Next principle contained in art.37 par.3 states that all parties are equal in the proceedings. To fulfil this rule it is essential that all parties have also the same right to access legal aid. This principle is violated e.g. in case that only one of the involved parties has the possibility to access legal advisory and the second one due to the lack of finance has no chance to hire legal representation.



The conditions and detailed provisions of providing legal aid are set by special acts. Nevertheless the regulation of legal aid is very insufficient.

Serious deficiencies in the legislative regulation of access to justice are periodically criticized by NGOs and by the annual reports on human rights issued by the Czech government. Czech legislation lacks a uniform law on access to justice and provision of free legal aid. Rules on legal aid are scattered within various laws regulating different types of legal procedure. These laws include, for example:

- The Charter on Fundamental Rights and Freedoms, which guarantees every person the right to legal aid in proceedings before courts, state authorities or public administration authorities from the outset.”
- The Civil Procedure Code, which links provision of free legal aid with exemption from the obligation to pay court fees. Upon fulfilling the conditions for exemption of court fees, a party in a civil proceeding is appointed a representative (either an attorney or another natural person) if such representation is necessary for the protection of their legal interests.
- The Criminal Procedure Code, which regulates the provision of free legal defense to defendants and victims of crime who can “prove that [they] do not have sufficient means to cover the expenses of their defense [representation].”
- The Code on Administrative Justice Procedure, which governs the provision of legal aid to plaintiffs who have been exempted from the obligation to pay court fees. If these plaintiffs prove that they do not have sufficient financial means, an attorney is appointed to them for the protection of their rights. The provision of legal aid is further conditioned by the requirement that the plaintiff’s petition is not manifestly frivolous.¹¹
- The Law on the Constitutional Court. The Constitutional Court may grant legal aid if the request is justified by the personal and financial means of the applicant, especially if she does not have sufficient means to pay the costs of representation. In Constitutional Court proceedings the representation of applicants by an attorney is obligatory.

None of these laws (except, to a degree, the Criminal Procedure Code) set out detailed conditions and procedures for the provision of free legal aid. In particular, the legislation lacks objective criteria for evaluating the social and financial situation of persons requesting legal aid, and practice varies from court to court and even from case to case. Moreover, in civil and administrative proceedings, no criteria have been established for determining when it is necessary to appoint a representative for the protection a party’s interests. Also, the law does not contain any criteria on when the appointed representative to a case must be an attorney, and when it may be another person. (http://www.pili.org/2005r/dmdocuments/CzechUpdate_Bukovska.pdf)

Czech Bar Association

The Czech Bar Association is a self-administrative professional organisation with national competence and its registered office is in Prague. Only an attorney can become member of the association and only a member can practise law. The association registers 7393 working members in 2005. Three quarters of them refused to represent ex officio. Only 28 % agreed to represent ex officio in 2005. The reason is that rendering of legal aid is not regulated by a comprehensive act.



Aside from the Czech Bar Association, there is also a broad network of subjects who provide legal and social consultancy, e.g. various non-state counselling centres or special municipal centres. Indigents also often use consultancy provided by NGOs, because they are specialized in particular area e.g. in refugees, foreigners and can ensure the comprehensive care. They usually dispose of lawyers, social workers or psychologists. NGOs provide legal and social aid free of charge. The Organization for Aid to Refugees (OPU) is a non-governmental, non-profit organization that has been aiding the refugees and other foreigners in the Czech Republic since 1992. We provide mainly legal and social counselling in the OPU headquarters as well as during the regular visitations to refugee camps and detention centres. OPU provides consultancy in matters concerning the social situation of refugees and immigrants in the Czech Republic. Legal counselling targets asylum seekers with strong asylum cases, immigrants with legal permits and foreigners in detention in the Czech Republic. During 2004, OPU lawyers provided a total of 1546 asylum seekers and 174 immigrants with legal assistance. Our social workers provided help to 1612 asylum seekers.

A non-governmental organization conducted in 2004 a questionnaire research amongst other NGOs that offer legal aid. The questionnaire was answered by 24 organizations. Those organizations provided legal aid to 12,000 clients in 2003. Five of those organizations provided legal representation as well. The legal representation was offered to 290 clients in 2003.

Organization for Aid to Refugees

Organization for Aid to Refugees (OPU) provides legal aid as well as legal representation. OPU, founded in 1991, is one of the non-governmental and non-profit organizations providing refugees and immigrants in the Czech Republic with the legal, social and psychological assistance. Our professionals are available to help these persons every working day in the OPU office in our regular office hours. In addition to this we regularly visit asylum centers and special detention centers for aliens in the Czech Republic where we help asylum-seekers to solve their problems and complications. Our services are well known among our beneficiaries. We also publish a number of handbooks every year and promote our services on different websites and public events.

OPU has always paid special attention to vulnerable groups of refugees, such as children, refugee women in specific situations, persons suffering from illness and the handicapped. Besides the activities mentioned above we also organize educational programs for university students, the purpose of which is to develop and train future professionals in the field of legal and social help to refugees and migrants. OPU employs 12 full time workers. A total of 6 of them are in-house lawyers with university diploma from Czech law faculties. The annual OPU budget is around 250,000 EUR. One half of it goes to legal aid activities. OPU alone provided with legal assistance a total of 1,720 foreigners in 2004.

The legal help of OPU can be specified by its duration - long-term and short-term assistance. The short-term assistance includes one-time legal counseling, especially on questions related to the asylum procedure, answering individual questions, or in some cases the writing of different sorts of petitions. Long-term counseling is provided to



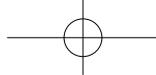
so-called strong cases and includes complex care and representation during the course of the asylum procedure. Our aim is to cover those clients, who have strong reasons to be granted asylum, e.g. those to which the definition of a refugee according to the Convention related to the Status of Refugees applies or those who have a right to receive asylum according to the Czech asylum law. At the beginning of this type of counseling it is necessary to get acquainted with the case and make a legal evaluation, all on the basis of an individual interview between the lawyer and the client. The next step is the preparation for the interview in the asylum procedure, if it had not taken place. A part of the asylum procedure is to gain relevant information, especially about the country of origin. At the time being, the most difficult case work exists in detention centers for illegal immigrants including asylum seekers and the support to victims of sexual and gender based violence (SGBV).

Legal counseling provided by OPU is free of charge and always aims at achieving durable solutions to the problems of refugees. OPU also liaise with international law firms in Prague in order to ask them to provide legal representation pro bono in particularly difficult cases. At the time being, White and Case is doing this work for OPU's clients.

Our most important partners supporting the OPU legal work are UNHCR, the Ministry of Interior and the law firm Linklaters. However, the relationship between OPU and the Czech Ministry of Interior can be described as a working relationship. We often stand together with our clients against the Ministry of Interior if we believe that the case was not handled properly by the Czech authorities. Non-legal work of OPU is supported by other ministries and/or the European Commission. In our internal financial management, we always aim at achieving balance between the support received from the Czech Government, the municipalities, the European Union funds and private donations. Our main challenge is to increase the support from the private citizens and corporations. As far as the cooperation with other NGOs is concerned, the refugee assisting organizations created an umbrella Consortium organization. The Consortium represents the NGOs in lobbying efforts and implements larger projects on behalf of the member organizations. OPU is also a member organization of the European Council for Refugees and Exiles (ECRE, www.ecre.org) based in London. An OPU representative is the ECRE national focal point on advocacy and lobbying as well as the ECRE national focal point of legal affairs related to refugees and asylum seekers.

The need for comprehensive legal aid regulation

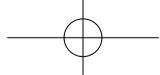
Coming back to general description of the free legal aid system in the Czech Republic, I believe that there is a strong need for comprehensive regulation of legal aid because the current legal aid is fragmented, insufficient, doesn't function properly and isn't uniformly exercised. According to current regulations the client gets the legal aid in the stage of procedure only. The aid is necessary heretofore and it could solve the matter whenever even without a legal process. The clients don't always receive legal aid because there are no uniform criteria that govern who can or cannot receive legal aid. The state's system that would evaluate the quality of activity isn't developed either. This quality of activity is paid by a considerable amount of money. In the system exercised by the Czech Bar Association, the lawyer doesn't have the opportunity to investigate whether the client is really poor



and really needs the help. There is problem with the quality of offered aid as well. Clients complain about the quality in some cases.

The situation could be solved by a new act. The act should unite, improve and clearly set where poor clients can seek help, what claims they can and cannot have, and should guarantee the quality of offered services. The creators of a new act can inspire themselves with the models exercised abroad or create a new one. The big unknown is a matter of financing.

The need for comprehensive regulations of offered legal aid in the Czech Republic has been discussed for several years. Comprehensive regulations have arisen in many states already (Hungary, Slovenia, Lithuania). The space for the adoption of a new legal regulation was opened in the time when the directive that regulates the offered legal aid in the cross-border processes was implemented (Act No. 629/2004 of Collection, Act on indemnity of legal aid in cross-border processes in the frame of European Union). Regrettably the space for similar regulations for the citizens of the Czech Republic in the domestic processes hasn't been found yet.



Country Report: Finland

Legal Aid in Finland

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Finland

I. OVERVIEW – MAIN FEATURES OF THE SYSTEM

1. The organisation and providers of legal aid

In Finland legal aid is governed by the Legal Aid Act, the Law on the State Legal Aid Offices and three Government decrees; one on legal aid, one on legal aid fee criteria and one on the State Legal Aid Offices.⁷ Legal aid is administered by State Legal Aid Offices and by decisions of the courts. The funding of legal aid comes from the budget via the Ministry of Justice.

Legal aid is provided by Public Legal Aid Attorneys and by private lawyers. Private lawyers are advocates or other private lawyers.⁸ Public Legal Aid Attorney is a lawyer working at a state legal aid office. The activities of Public Legal Aid Attorneys are supervised in the same manner as those of advocates. The recipient of legal aid has a choice in any court case. In matters that are not to be brought before a court (outside litigation cases) legal aid is given only by Public Legal Aid Attorneys.

The State Legal Aid offices have two tasks: to provide legal aid and grant it. With population of about 5.2 million and area about 340,000 sq km, Finland has 66 Legal Aid Offices. They are located mainly in municipalities with a district court. The Legal Aid Offices have 16 branch offices and 112 branch clinics where clients are seen as required. Offices are quite small; they have from 4-26 salaried employees. The offices employ a total of 480 staff, half of whom are lawyers (=Public Legal Aid Attorneys) and the other half administrative staff.

Finland is divided into six legal aid districts, each with a legal aid head. One regional director of office is appointed a Director of District for a maximum of 5 years. The Director of District has administrative duties, including performance discussions, proposals for the use of branch offices and clinics and recommending the appointment of legal aid attorneys. The Director of District is also responsible for regional development within the district.

The Ministry of Justice is vested with the overall management and supervision of Legal Aid Offices. Nevertheless, when providing legal aid, Public Legal Aid Attorneys are independent and only under supervision of the Finnish Bar Association.

2. Coverage of legal aid⁹

2.1 The sort of legal matter

Legal aid is given in any sort of legal matter, for example:

- divorce, distribution of matrimonial property, maintenance, marriage settlement
- testament, estate inventory, distribution of a decedent's estate
- assistance to debtors, creditors and guarantors
- collection of wage arrears, termination of employment, notice

7. See <http://www.finlex.fi/en/laki/kaannokset/2002/en20020257.pdf> (for Legal Aid Act), <http://www.finlex.fi/en/laki/kaannokset/2002/en20020388.pdf> (for Decree on Legal Aid) and <http://www.finlex.fi/en/laki/kaannokset/2002/en20020389.pdf> (for Decree on Legal Aid Fee Criteria).

8. Advocates are lawyers who are members of the Finnish Bar Association and whose activities are supervised by the Bar Association and the Chancellor of Justice. Other private lawyers can be employed, for example, at a legal counselling office. Their work is not subject to monitoring according to the Act on Lawyers.

9. See also: <http://www.om.fi/esitteet/18259.htm>



- collection of rent arrears, notice, eviction
- deed of sale, annulment of sale, price reduction
- assistance to suspected offenders and to victims of crime, restraining order
- appeals relating e.g. to welfare, taking into care and social insurance payments

Legal aid is not given, if the person has legal expenses insurance (LEI) that covers the matter in question. Such insurance coverage may be included e.g. in a household insurance policy, a labour union policy or a farming policy.

However, legal aid can be granted so as to cover the deductible of legal expenses insurance, provided that the applicant's income and assets are such that he or she would qualify for legal aid free of charge.

Legal aid is not given to companies or corporations. A private person pursuing a business may be given legal aid for a court case pertaining to the business; for other matters pertaining to a business, legal aid can be given only for special reasons.

2.2 Litigation and non-litigation cases

The nature and importance of the matter have an effect on what services are covered by legal aid in any given case. If an application for legal aid is rejected, the legal aid office will provide appeal instructions to the applicant. A rejected application can be submitted to the court for a hearing.

Court cases

In court cases, everyone normally needs the assistance of a legally qualified attorney, for instance for purposes of bringing an action or appearing for the defense in the trial of someone charged with an offence. However, no attorney's appointments are given in clear cases, such as undisputed divorces or simple criminal cases sanctioned with a fine. Even for such cases, the legal aid offices offer advice and consultation.

The client has a choice of attorneys, between a public legal aid attorney working at the state legal aid office, an advocate and another private lawyer.

If legal aid is granted to a person, the state pays the fee of the attorney in full or in part, depending on the available means of the recipient of legal aid. The work of the attorney can be compensated for a maximum of one hundred hours. However, in special cases the court may grant a dispensation from this limit. In addition, the court charges and other similar payments are waived for a recipient of legal aid.

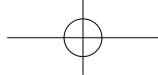
The state will not compensate the opposing party for any legal costs in the event that the recipient of legal aid loses the case.

Other matters

Legal aid can be given also in matters that are not to be brought before a court. There may be a need for assistance e.g. in the drawing up of a document, such as an estate inventory or an agreed distribution of matrimonial property.

In certain legal problems, all that is needed is a lawyer's advice. In these matters, legal aid is given by public legal aid attorneys. The recipient of legal aid cannot choose a private lawyer.

In matters not to be brought before a court, legal aid can be given, free of charge or against a deductible, for at most one hundred hours per matter. In addition, the document charges and the possible costs of interpretation and translation are waived for a recipient of legal aid.



Legal aid is always applied for from a state legal aid office. The application can be filed with any of the legal aid offices, regardless of where the applicant lives. In most cases, the client's first contact is with the attorney of choice, who then draws up the application for legal aid.

The applicant must present evidence of his or her financial circumstances and of the matter for which legal aid is being sought. The income and expenses of the applicant, as well as his or her assets and liabilities, are to be accounted for by way of receipts or other documentation. The necessary information can usually be found in bank account statements, wage sheets, tax receipts or e.g. from a social welfare decision.¹⁰

The legal aid office has the right to contact the authorities and insurance companies so as to check the information that the applicant has provided on his or her financial circumstances. Also banks are under the obligation to give the legal aid office the assistance it needs, if there is reason to doubt the reliability of the information by the applicant. If bank information will be requested, the applicant must be notified in advance of the request.

3.Means-testing

Legal aid is granted on the basis of the applicant's income, expenditures, wealth and maintenance liability. The legal aid office calculates the applicants monthly available means, as follows:

Income consists of wages, pension and per diems, as well as child allowances, maintenance support and capital income. Also the income of the spouse, domestic partner or registered partner of the applicant are taken into account, unless that person is the opposing party in the case at hand.

Taxes shall be deducted from the gross monthly income. Deductions shall likewise be made for housing costs, day-care charges, maintenance support payments and the scheduled payments in enforcement or debt adjustment proceedings. However, the deduction of such sums shall only be made if their total amount exceeds EUR 250. In addition, a deduction of EUR 250 shall be made for each child under the age of majority, 18 years.

In addition to income, also the wealth of the applicant affects the granting of legal aid. Any assets shall be taken into account at their tax value. Liabilities are deducted from assets. A permanent home and a car that is necessary to the work of the applicant are, however, omitted from the calculation.

4.Cost of legal aid

The expenses to be collected from the recipient of legal aid consist of the deductible and the legal aid charge.

¹⁰The application can be filed in writing or orally. The application form can also be posted or faxed to the legal aid office. The required documentation must be annexed to the application.



Deductible

The recipient of legal aid is to pay a percentage of the fee of the attorney (basic deductible). The percentage depends on the monthly available means of the applicant as follows:

Single person

Available means up to	Deductible
EUR 650	0 %
EUR 850	20 %
EUR 1,000	30 %
EUR 1,200	40 %
EUR 1,300	55 %
EUR 1,400	75 %

When the monthly available means exceed EUR 1,400, legal aid will not be granted.

Spouses together

Available means up to	Deductible
EUR 1,100	0 %
EUR 1,300	20 %
EUR 1,600	30 %
EUR 2,000	40 %
EUR 2,200	55 %
EUR 2,400	75 %

When the monthly available means exceed EUR 2,400, legal aid will not be granted.

The bank deposits and other easily liquidated assets of the recipient of legal aid increase his or her liability, if these exceed EUR 5,000 (supplementary deductible). In addition, any easily liquidated assets received e.g. as an inheritance or in the distribution of matrimonial property are taken into account in the same manner.

The amount of the deductible is determined once the matter has been settled. An advance towards the deductible may be collected.

The recipient of legal aid must inform the legal aid office of changes in his or her income, expenditures or wealth. If the financial circumstances of the recipient of legal aid change, the legal aid office may amend the legal aid decision in a corresponding manner. When the decision is amended, a decision is also made whether the amendment is to apply retroactively.

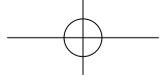
Legal aid charge

The legal aid charge amounts to EUR 35. It is collected from all applicants whose income, after deductions, is at least EUR 500. Hence, it is possible that someone will be required to pay the legal aid charge even if he or she is granted legal aid without a deductible.

5. Public defender for the suspect of a criminal offence

Under certain circumstances, the suspect of a criminal offence has the right to a public defender, at state expense, for purposes of the pre-trial investigation and the trial.¹¹ A public defender will be appointed on request to persons suspected of aggravated offences and to persons who are arrested or detained because of the offence. In addition, the court may on its own motion appoint a public defender to a person who is under 18 years old or incapable of seeing to his or her own defense.

11. See <http://www.finlex.fi/en/laki/kaannokset/1997/en19970689.pdf> (for Criminal Procedure Act)



In these cases, the public defender will be appointed regardless of the financial circumstances of the person. The fee of the defender will be paid by the state. However, if the person is convicted of the offence, he or she must compensate the state for the defender's fee, unless his or her means qualify him or her for legal aid. The amount of the compensation is determined in accordance with the rules on legal aid.

The appointment as public defender can be given to a public legal aid attorney, an advocate or another lawyer. In most cases, the appointment is given to the person suggested by the suspect of the offence.

Attorney or support person for a victim of crime

If a person becomes a victim of domestic violence or a sexual offence, the court may appoint an attorney or a support person for the victim for purposes of the pre-trial investigation and the trial. If the victim wishes to make claims in the trial, the court will appoint an attorney. If the victim has no claims, a support person may be appointed.

The attorney and the support person may be appointed regardless of the income of the victim. Their fees and other expenses are paid by the state.

II. DEVELOPMENT TRENDS

1. The reform of public legal aid

In Finland the legislation on public legal aid was enacted in 1973. The 1973 law provided municipalities with the possibility of beginning to provide municipal residents with public legal aid as voluntary work subsidised by the state. The provision of public legal aid did not become a statutory obligation for municipalities until an amendment enacted in 1988. The state assumed the responsibility for municipal legal aid offices as of 1998.

In June 2002 a reform of public legal aid was introduced. The 2002 reform introduced important changes to the previous system. Instead of two different systems - general legal aid and trial free of charge - one uniform system was introduced, which equally departs from the possibility of obtaining legal counsel in all legal matters. An important legal policy aim of the reform was to enlarge access to public legal aid. The proportion of the population eligible expanded from 45 % to 75 %. Currently Finnish eligibility for legal aid appears to be generous; public legal aid covers also so called "middle-income group". These are persons, who gained access to public legal aid due to the law reform in 2002, when the level of available means required to qualify for public legal aid was raised, extending thereby access to legal aid to a new category of clients. This aim was in the preparatory documents expressed as an intention to transform public legal aid from a right for people with limited means toward a civil right. In addition to extending access to public legal aid to a larger part of the population, the reform also included many other important changes, aimed at developing the system for legal aid.

The Act has a fairly extensive coverage; in 2004 there was somewhat more than 70 000 instances where clients had the fees for solving their legal problems covered by public means, either through legal-aid offices or through private legal attorneys.

The implementation of the legal aid reform that entered into force in June 2002 is being followed up. The follow-up research project is conducted by the Research Institute of Legal Policy. The study is based on statistical data, questionnaires addressed to public and private legal-aid attorneys, judges, as well as interviews specially with customers of legal aid and also with representatives of insurance companies that issue legal insurances. The purpose of the study is to follow up and evaluate the extent to which



the practical effects of the reform of legal aid in 2002 conform to the aims set for it. The research project was launched at the beginning of 2003 and will continue until the end of 2005.¹²

A summary is here presented of the most important findings obtained up till now, along with a preliminary discussion about possible explanations to the development trend.

2. Number and characteristics of the cases in legal aid offices

During the past years, legal aid offices have annually received somewhat more than 50 000 cases.

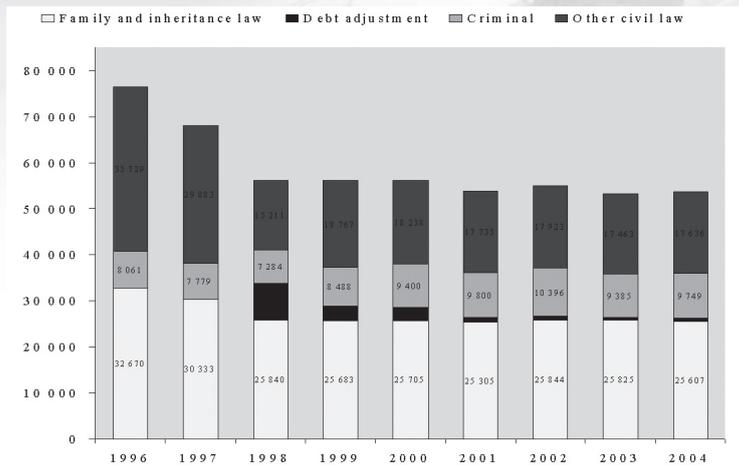
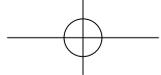


Figure 1. Incoming cases in Legal Aid Offices, 1996-2004

The reform of legal aid in 2002 does not appear to have affected the overall number of cases. In 2004 the number of cases remained approximately the same (53 430 in 2004) as before the reform (53 828 in 2001). Consequently, the expected increase in the number of cases has not occurred, at least not as an immediate effect. Neither has the reform of legal aid, until now, had any major effect on the regional distribution of cases.

Among the cases handled by public legal aid offices, the biggest group pertains to family and inheritance matters. In 2004 just less than half the cases handled by public legal aid offices concerned family and inheritance matters. The share of these cases has been greater in the early 21st century than in the early 1990s, when they accounted for 41 per cent of all cases. During the past years, roughly every sixth case handled by legal-aid offices involved criminal offences. The share of criminal cases handled by legal-aid offices has almost doubled during the past 10 years. The share of so-called other conventional civil cases is of approximately the same proportion as the criminal cases that legal-aid offices handle. This group covers matters concerning real estates, debts, rents, employment contracts and torts. There has been a clear decrease in the share of this group of matters handled by legal-aid offices, compared to the early 1990s, when they made up about one fourth of all cases. Since 1999, cases concerning pensions and social matters have been accounted for as a specific statistical group. The share of these cases out of all cases handled by public legal-aid offices has during the past years settled at some 4 per cent. The share of cases concerning debt adjustment handled by legal-aid offices in 2004 accounted for merely about 1 per cent, whereas they for example in 1993-1995 represented some 12-17 per cent. The change in the number of

12. See the interim report of the study: Marjukka Litmala & Kari Alasaari. 2004. Follow-up study on the reform of public legal aid act (2002), part I. Publication no 211. National Research Institute of Legal Policy.



these cases reflect general economic fluctuations, debt problems and factors relating to the legislation concerning debt adjustment and economic and debt counselling. The group 'other cases' includes, among others, matters pertaining to execution and debt collection, as well as other administrative matters. The share of this group of cases has during past years been just above 10 per cent.

All in all, available statistical data since the law reform in 2002, up till the end of 2004, does not reveal any major changes in the characteristics of cases in public legal-aid offices. The fact that persons in the middle-income bracket now have access to public legal aid does not appear to have brought along any new groups of cases, neither has it altered the characteristics of the cases.

3.Characteristics of clients in legal aid offices

Almost two out to three clients in legal-aid offices are granted public legal aid totally free of charge. About one third of the clients paid part of the costs for the legal aid. A significant trend during the past decade is that the share of clients, who paid part of the fees for the legal services, has increased from just below one tenth to about one third. Correspondingly, the share of clients who obtain legal aid totally free of charge has decreased from four fifths to just short of two thirds.

It is interesting to note that in regard to payments, there has been a clear change in the structure of the clientele since the law reform in 2002. The share of clients who pay part of the costs for legal aid has increased, whereas the share of those who obtain legal aid free of charge has decreased.

A closer look at how clients in public legal-aid offices are placed on a reimbursement scale makes the above observation even more interesting. Among clients in legal-aid offices in 2004, the share of the so-called middle-income group was in all 14 per cent. These are persons, who gained access to public legal aid due to the law reform in 2002, when the level of available means required to qualify for public legal aid was raised, extending thereby access to legal aid to a new category of clients.

The extent to which clients pay for the services of the public legal-aid offices is fairly evenly distributed throughout the country. Looked at in a regional perspective, the share of middle-income clients is the same throughout the country. There is, though, a slight exception in the Eastern Finland legal-aid district, where the share of clients with a middle-income was smaller than the national average.

Public legal aid free of charge is most common in cases involving pensions, as well as social and criminal matters. Family issues and inheritance, again, are in general areas where clients who pay part of the fees are most represented. People in the middle-income bracket, who became covered by legal aid through the reform in 2002, are more often concerned precisely with matters involving the family and inheritance, above all with matrimonial matters. This group of middle-income clients has been in least need of public legal aid in matters involving pensions, social, criminal and rental issues.

The aim of the reform to extend access to legal aid also to persons with a middle-income appears, at least in part, to have materialised. On the other hand, it would appear that this extension has occurred at the cost of those who receive legal aid free of charge. In principle, this cannot be seen as a desirable state of affairs.

It is fairly difficult to distinguish the reasons for this trend without further investigation



and analysis of the structure of the clientele and practices in legal-aid offices. One possible explanation might be that legal-aid offices have refrained from dealing with matters of less significance. It might be the case that the extension of legal aid, without a corresponding increase in resources, has had the effect that matters of less importance have been excluded from the services. On the other hand, the explanation might be even simpler than that. It can be assumed that even though the scope of potential clients has been enlarged through the reform, there is, nevertheless, a filtering process with the effect that approximately the same number of clients gain access to legal-aid services as before. Behind these suppositions emerges some kind of theory of self-regulation; with the same resources, the volume of work remains fairly constant, despite extra pressures. In this context it should, among others, be noted that with the reform the task to decide about legal aid was transferred from the courts to the legal-aid offices. This resulted in an increased workload, especially for the secretaries. All in all, further analysis is required to be able to draw more precise conclusions about the changes that have occurred in the structure of the legal-aid clientele. Only then will it be possible to draw valid conclusions concerning the question, whether this development might be due to an underutilisation of resources, shortage of funding, or perhaps a combination of both, when looked at in a regional perspective.

4. Measures taken in matters handled by legal aid offices

A major part of the actions taken by legal-aid offices has been to give advice or to draw up documents. Together they cover more than half the actions taken by legal-aid offices.

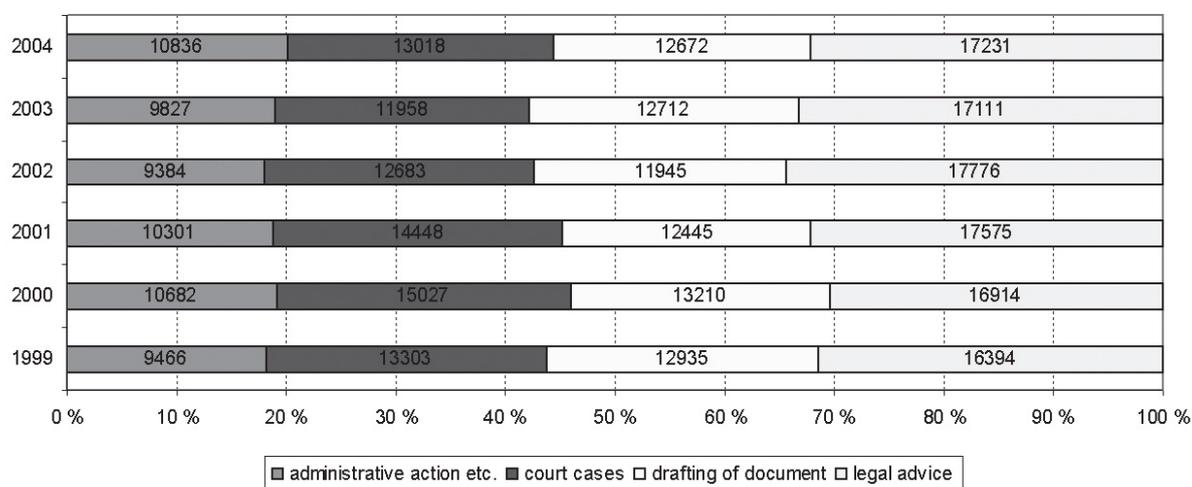
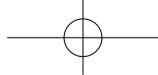


Figure 2. Measures taken

The share of advice is about one third, whereas drawing up documents and other associated measures account for about one fourth of all actions taken. Out of all matters handled by legal-aid offices, roughly every fifth end up in a general court. Cases that go to administrative courts or some special court account for 2 per cent of all the measures taken by legal-aid offices. Also contacts with different administrative bodies represent 2 per cent of all cases. The measures mentioned above count for somewhat more than 80 per cent of all the actions taken by legal-aid offices. Almost one fifth of the actions taken by legal-aid offices concern other matters than those mentioned above.



Up till now, the reform of legal aid in 2002 does not appear to have had any significant effect on the distribution of tasks in legal-aid offices. Actions taken for those who became new clients with the extension of legal aid through the 2002 reform, that is, persons in a middle-income bracket, has mostly involved drawing up documents and other associated measures. This is natural, considering the above mentioned over-representation of middle-income people for example in matters concerning marriage, usually relating to divorce and the distribution of matrimonial property. This is also the case with matters relating to inheritance.

Legal aid services free of charge are most common in cases brought before administrative or special courts, or in matters handled by administrative authorities. Clients in the middle-income bracket are clearly underrepresented in these groups of measures. Since the law reform there has been a slight change in the distribution of measures taken by legal-aid offices. The share of cases handled by general courts has decreased whereas there has been an increase in matters pertaining to advice and drawing up documents. Some assumptions advanced with the introduction of the reform, that the extension of the coverage of legal aid to new groups of clients would increase the number of court cases, do not appear to have materialised.

This slight change in the distribution of different measures can probably be explained by analysing the matters that are typical for the middle-income group. In matters involving family and inheritance legislation, the most frequent measures involve drawing up documents and giving advice, whereas such issues less frequently end up as court cases. Generally, these are also matters that are not covered by legal insurances that, according to the Finnish legislation, are primary in relation to public legal aid.

5. Efficiency, management and development of human resources in legal aid offices¹³

5.1 Operational efficiency

Table 1. Operational outlays and targets

EFFICIENCY

OUTLAYS
(1000 €)

Legal Aid Offices	2002	2003	2004	Comp. to year 2003	Target 2004	Change % target
Revenue						
Services subject to a charge	3 208	3 565	3 918	10 %	3 145	25 %
Costs	21 778	22 261	22 685	2 %	22 691	0 %
Total net outlays	18 570	18 696	18 767	0 %	19 546	-4 %
Main operational targets						
Cost-effectiveness (outlays/completed case unit)	86	84	79	-6 %	82	-4 %
Productivity (completed case unit/person working year)	467	483	514	6 %	528	-3 %

13. Source: Ministry of Justice, Department of Judicial Administration.



5.2 Management and development of human resources

Table 2. Human resources 2002-2004

	Realization 2002		Realization 2003		Realization 2004	
		%		%		%
Staffing level and structure						
Person-years worked (incl. employees and trainees from higher education)	465,39		446,92		461,42	
Numbers of staff	491		490		480	
Women	369	75 %	370	76 %	363	76 %
Men	122	25 %	120	24 %	117	24 %
Officials in permanent position	421	86 %	431	88 %	431	90 %
Officials in temporary position	70	19 %	59	16 %	49	13 %
Mean age	46,4	38 %	47,0	39 %	47,7	41 %
Proportion of over-45s	61,7	13 %	63,7	13 %	67,5	14 %
Wellness at work						
Job-leaving %	2,8		2,1		2,1	
Entry %	12,7		11,8		8,6	
Disability pension %	0,9		0,4		0,6	
Absences for illness, working days/pyw	8,44		9,49		9,06	

6. Legal aid provided by private attorneys

Private attorneys are paid a fee and expenses from public funds when they serve as a public defender or attorney of the injured party appointed under the Criminal Procedure Act, or when they serve as an attorney appointed under the Act on Public Legal Aid. In 2004, the fees and expenses paid to private attorneys amounted to EUR 28.9 million, an increase of 6 per cent on the preceding year. This cost increase is mainly a result of the 8-per-cent fee hike that took effect on 1 June 2004 (from EUR 84 per hour to EUR 91 per hour). In addition, the number of criminal cases in the District Courts has increased by 7 per cent year-on-year.

Private attorneys were appointed for 33,117 recipients of legal aid, an increase of 6 per cent on 2003. The average costs per recipient were EUR 873, no change from the preceding year.

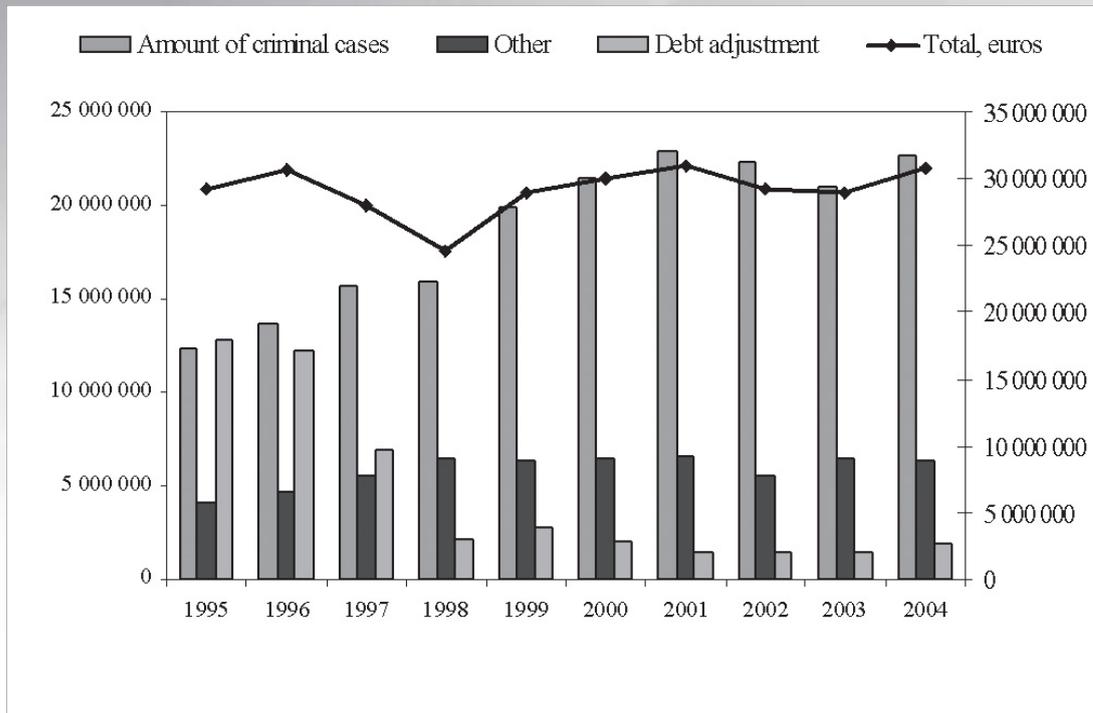


Figure 3. Costs paid to private attorneys and arising from debt adjustment cases, 1995-2004

In 2004, some EUR 1.8 million was paid in fees to administrators under the Act on the Adjustment of the Debts of Private Individuals, an increase of 23 per cent on the preceding year. Criminal defendants acquitted by the courts were paid a total of EUR 1.7 million in compensation for legal costs; the corresponding number in 2003 had been EUR 1.2 million.

7. How public and private attorneys view the reform of public legal aid

In the follow-up study on the 2002 reform of the Public Legal Aid Act, questionnaires were addressed to public and private attorneys, who had handled public legal aid-matters, investigating the experiences of these central actors of the reform and its effects. The themes covered, among others, the image of legal aid, access to legal aid, the actors' views about the quantitative development of cases and clients, economic factors involved, as well as questions involving the primary status of legal insurances in relation to public legal aid.

Both public and private attorneys generally held a positive opinion about the image of public legal aid. They considered that there was a fairly favourable attitude toward legal aid among the public, and equally so among private law firms and the judiciary. They also considered that the reform in 2002 had had a positive effect on the image of public legal aid. Both public and private attorneys believed that the views about public legal aid are most positive among the judiciary.

Concerning the availability of legal aid, private attorneys were of the opinion that there are too many lawyers handling citizens' legal problems on a full-time basis, particularly in the private sector. For their part, public legal-aid attorneys generally considered the number of lawyers to be sufficient, although to some extent too few particularly in public legal aid.

In view of the discussion concerning the risk of costs involved in trials, private attorneys

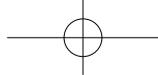


made an interesting observation. They told that they quite often advise public legal-aid clients to refrain from pursuing a case because of the cost risks involved. Also, more than half the private attorneys told that they sometimes refrain from taking a legal-aid commission because the fees are so low.

The attorneys generally considered that the reform of legal aid has not to any considerable degree affected the number of clients for public legal aid or the nature of the cases. Thereby, their opinions reflected the general trend. Attorneys both in public legal aid and in the private sector had observed that the number of clients who pay part of the costs had increased, as a result of the reform. Almost half the public legal aid attorneys considered that the share of matters handled outside litigation had remained as before, whereas roughly an equal number considered that there had been an increase in such matters after the reform. A major part of the public legal-aid attorneys considered that the reform had not had any effects on the number of civil cases handled by courts. Every second also considered that the number of criminal cases had remained at the same level. Every fifth attorney considered that the number of applications and civil disputes had increased, whereas every third considered this to be the case in criminal cases.

Attorneys handling public legal-aid cases considered it to be a good solution that the legal expenses insurance is primary in relation to public legal aid. However, attorneys in the private sector had not observed any significant change in the insurance-based fees since the reform.

Through the questionnaires these central agents were also asked to voice critical views about the 2002 reform of public legal aid and its effects. The structured questionnaire did not reveal any significant knowledge of the agents' critical attitudes or criticism of the 2002 reform. Notwithstanding, criticism was voiced. Some criticism that was brought forth in open questions, concerned the public legal-aid system as such, not specifically the factual effects of the 2002 reform. Public legal-aid attorneys mainly criticised the stress involved in the work, mentioning that it had increased since the reform. The workload had increased because they had been assigned the task to decide on public legal aid as well as the task to appoint private attorneys. A shortage of resources and the level of remuneration were other points of criticism. Private attorneys mainly criticised the fees for handling public legal-aid cases as being too low, the dual role of public legal-aid offices as administrative bodies handling at the same time customers cases as public attorneys, as well as the monopoly that public legal-aid offices hold in handling matters outside litigation. They generally considered it desirable that they should not be excluded from handling matters outside litigation. To reduce the bureaucracy associated with the legal-aid system was one central wish expressed in the questionnaire addressed to public and private attorneys. As one way of developing the system, many of them favoured the idea that decisions about public legal aid, or at least the appointment of attorneys should be given back to courts. Without doubt, the assignment of attorneys and investigating clients' available means catered for much work. On the other hand, one has to keep in mind that the legal-aid system has been reformed twice within a span of only a few years, and the changes have been quite significant. Changes and new tasks or routines may in themselves give the impression



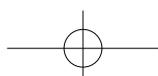
of increasing bureaucracy. It is natural that it takes time to adapt to these changes and to establish new routines. Some of the attorneys expressed the wish that the system should not be changed for some time, to allow the system and practices to consolidate. All in all there is reason to consider means through which to reduce excessive bureaucracy.

8. Views of insurance companies on the effects of the reform

To meet the needs of the follow-up study on the public legal-aid reform, an interview-based study was made with central agents in insurance companies that issue legal expenses insurances.

The number of cases involving legal expenses insurances has increased somewhat since the 2002 reform of legal aid. Notwithstanding, the interviewed representatives considered this as part of normal fluctuations or a normal increase in the stock of insurances. Neither did they consider that the reform has had any effect on the time-span for handling applications for legal aid, nor on the tariffs for legal expenses insurances. Possible pressures to increasing the tariffs are due to a normal pressure to raise tariffs rather than being an effect of the reform, according to the interviewed.

All in all, the reform of public legal aid did not appear to have brought along any major benefits for insurance companies. It can, however, be seen as an advantage that there was an increased awareness about legal expenses insurances and discussions about them in connection with the law reform. Neither have there been any major problems associated with the reform. The interviewed representatives of insurance companies were generally of the view that, if there had been some worst-case scenarios before the reform, they have not materialised. It was seen that the most important effect of the reform of public legal aid is that - at least up till now - it has not caused any significant changes in the practices of insurance companies that issue legal expenses insurances. A major observation that can be made is that, making legal expenses insurances primary in relation to public legal aid, does in fact correspond to an earlier established practice.





Country Report: Germany



Prozesskostenhilfe, Beratungshilfe, Pflichtverteidigung –
 Germany's Legal Aid System
 By Dr. Matthias Kilian
 Cologne University
 Germany

I. INTRODUCTION

1. Overview

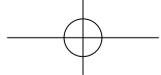
Germany's Legal Aid System is, from a comparative perspective, unique for a number of reasons: It is a pure *judicare* model that lacks any centralized structure that oversees its operation. Services are provided exclusively by lawyers in private practice, with the government limiting its role to being a funder. Legal Aid in Germany is purely demand-driven with no prioritisation; it is strongly focused on representation in court and offers only limited out of court services. Expenditure is, compared to other countries, relatively modest but must be seen before the background that Germany is the largest market for legal expenses insurance (LEI) in the world with more than 40 per cent of the population covered by stand-alone LEI. The existence of a well-developed LEI market alleviates the need for legal aid in areas of law in which the risk of getting involved in a legal dispute is insured by a commercial insurer.

2. The Relevant Body Of Law

The relevant body of law for legal aid is the Code of Civil Procedure (*Zivilprozessordnung*) and the Law On Legal Aid For Advice and Representation (*Beratungshilfegesetz*). The two laws apply to all non-criminal cases and regulate the requirements (means and, if applicable, merits) and procedure for a legal aid grant in civil matters. While the rules on legal aid in the Code of Civil Procedure directly apply only to civil cases, they also determine legal aid for proceedings in labour, employment, social security, tax law cases and for judicial review by way of reference in other codes of procedure

Note: Hereinafter all reference to the German Code of Civil Procedure (*Zivilprozeßordnung*) will be cited as ZPO, and reference to the Legal Advice Act (*Beratungshilfegesetz*) will be cited as BerHG; in each case followed by the relevant section (in German: §)

The first book, second chapter of the ZPO, §§ 114 – 127a, contains the rules governing legal aid for court proceedings ("*Prozesskostenhilfe*"). These provisions apply directly only to court proceedings before the civil branch of the courts of general jurisdiction (the so-called "*ordentlichen Gerichte*", the "*Amtsgerichte*" ("district courts"), the "*Landgerichte*" ("high courts"), the "*Oberlandesgerichte*" ("courts of appeal") and the "*Bundesgerichtshof*" ("supreme court"). These courts have sectoral jurisdiction over such matters as contract law, tort law, property law, insolvency law, family law, inheritance law etc.



The second pillar of the German legal aid system is legal aid for advice and representation, the so-called *Beratungshilfe*. The legal framework for *Beratungshilfe* is laid down in the *BerHG*. *BerHG* § 3 states that advice and representation is provided by the legal profession, although advice in simple matters can also be given by the county courts (*Amtsgerichte*). *BerHG* § 1 includes a means test, which refers for details to the provisions for legal aid for court proceedings in the *ZPO* (*BerHG* § 1 II). *Beratungshilfe* pays for advice and, if necessary, for out of court representation, in civil law (excluding labour law), administrative law and constitutional law matters. For penal law matters, funding is restricted to advice (*BerHG* § 2 II). The ratio of legal aid for advice and legal aid for representation changed since the introduction of *Beratungshilfe* in 1981. In the 1990s – the last data available –, the advice:representation ratio has been approx. 1:3. Thirdly, there is what would elsewhere be characterized as legal aid for criminal cases. It differs from the above described principles as neither means nor merits determine whether a defender (*Pflichtverteidiger*) is appointed (for details, see below). The Code Of Criminal Procedure (*Strafprozessordnung*) only defines when the court needs to appoint a defender if the defendant has not done so herself. The defender – a lawyer in private practice – is paid directly by the court according to cost rules prescribed by law (see below). The court will meet the costs if the defendant is acquitted, but recoup its expenditure if the defendant is not.

II. BASIC DATA

a) What is Legal Aid's annual budget in your country?

aa) Overview

There is no national legal aid budget in Germany. All 16 federal states that make up the Federal Republic Of Germany fund legal aid through the budgets of the departments in charge of their different court systems. In general, in each of the 16 federal states there are five court systems (courts of general jurisdiction and four specialized court systems: tax, administrative, social security and employment), each with a legal aid budget. Additionally, legal aid schemes in all federal states exist for non-forensic legal advice. Finally, there are (very small) budgets for proceedings before the Supreme Courts for each of the five court systems (“*Bundesgerichtshof*”, “*Bundesarbeitsgericht*”, “*Bundessozialgericht*”, “*Bundesverwaltungsgericht*”, “*Bundesfinanzhof*”), the Constitutional Court (“*Bundesverfassungsgericht*”) and the Federal Court For Patents (“*Bundespatentgericht*”). This feature of the German legal system results in approx. 100 legal aid budgets of different size, all of which make up the national expenditure on legal aid. For reasons explained below, the data provided in this report focuses on the legal aid budgets of the courts of general jurisdiction in civil matters and of the legal aid scheme for legal advice. There is no centralized body (e.g. a “Federal Legal Aid Board”) that would oversee the net expenditure.

There are three main areas of spending on legal aid in Germany which will be dealt with below: Civil Legal Aid For Court Proceedings, Criminal Legal Aid For Court Proceedings and Legal Aid For Advice And Representation.

bb) Civil Legal Aid For Court Proceedings (“*Prozesskostenhilfe*”)

The development of the expenditure for legal aid has shown some rather extreme ups and downs in the past 25 years. The expenditure grew from 93,19 million EUR



in 1981 to 188,94 million EUR in 1986 (+103%). As a result of cost-cutting measures implemented in 1986, it then remained on that level for the next five years (1986-1991), eventually decreasing to 177,16 million EUR in 1991 (-6%). Between 1992 and 1996, the expenditure in most of the federal states for which data is available increased sharply by 50 up to 70 %. In 1995, another reform of the legal aid rules led to a new approach of calculating income and deductions that came into full effect from 1996 onwards. As a result, in the federal states forming the pre-1990 FRG there has only been a moderate increase in expenditure in the 1997 - 2002 time-bracket (5 – 20 %) with some states (e.g. Bremen and Hamburg) even reporting a decrease in expenditure. Since 2002, legal aid budgets have increased dramatically again, with increases of 20 – 30 per cent in most states over a two-year period (2002-2004) growing faster than within the five year period before this time-bracket (1997-2002). This growth has been solely demand-driven as the rules governing legal aid remained unchanged until mid-2004 (see above).

As there is no consolidated data available for all 16 states, the overall expenditure for civil legal aid in the year 2004 can only be an educated guess, taking the available empirical data as a starting point of a calculation. The most likely figure - before contributions - is approx. 424 million EUR (comparative figure for 2000: 303 million EUR). As only 12 of the 16 federal states have reported their exact civil legal aid budgets, this estimate contains a number of assumptions: Three of the 16 states have a combined civil/criminal legal aid budgets (Niedersachsen, Hessen and Sachsen-Anhalt). It has been assumed that 17 per cent of the budget goes into criminal legal aid. Telling from experience in some of the states that break down their numbers, the percentage could be, however, as low as 11 per cent and as high as 22 per cent. A median of 17 per cent has been chosen as the deduction from the overall budgets of these three states that is needed to arrive at the most likely figure for civil legal aid.

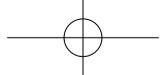
The sum of 424 million EUR is not the net expenditure. It does not include monies paid by assisted parties as contributions (in approx. 80 per cent of all grants, no contribution is required). As contributions paid do not go back into the legal aid budget, but into the budget for the court system (like general court fees), it is not known what percentage of expenditure is re-paid through contributions. Most states asked believe that between 15 and 20% of the expenditure is re-paid. Assuming that this estimate is correct, this would result in a net expenditure of 344 - 357 million EUR (comparative data for 2000: 258 – 275 EUR).

cc) Criminal Legal Aid For Court Proceedings (“Beiordnung”)

It is extremely difficult to gather data about criminal legal aid for court proceedings as some of the German states do not differentiate in their budget between legal aid court proceedings and criminal aid as it does not make any difference from a budgetary point of view. Those states that keep a separate statistic spend another 16 – 22% of their expenditure for non-criminal court-proceedings on criminal legal aid. It can also be derived from those statistics that the expenditure for criminal aid legal has grown slightly faster in the past few years than legal aid for non-criminal proceedings.

dd) Legal Aid For Court Proceedings (non-civil/non-criminal)

Compared to the spending in the courts of general jurisdiction - which deal with all civil and criminal law matters -, the expenditure for legal aid in the four specialized court systems is insignificant. The ratio over the past 15 years has been between 94:6 and 92:8 (courts of general jurisdiction (civil/criminal) : specialized court systems), although most recently there seems to be a shift because of a growing number of disputes in



employment law and social security law matters (one federal state reported a ratio of 85:15 for 2004).

ee) Legal Aid For Advice And Representation (“Beratungshilfe”)

The budgets for legal aid for advice and representation (Beratungshilfe) continue to grow much faster than those for legal aid for court proceedings. However, they still remain a rather small portion of the total expenditure for legal aid. In a combined budget for civil legal aid and legal aid for advice and representation, the latter statistically amounts to approx. 10 per cent of the budget for civil legal aid.

The numbers given include Beratungshilfe for all areas of law where it is available, not only for civil matters. There are no specific Beratungshilfe-schemes for each of the different court systems, resulting in a single budget for Beratungshilfe in all 16 member states. As again there is no consolidated data available for all 16 states, the overall expenditure for legal aid for advice and representation in the year 2004 can only be another educated guess. The most likely figure is approx. 42 million EUR, confirming the assumption that the overall legal aid budget for legal advice and representation is approx 1/10 of the overall civil legal aid budget.

It follows from the above numbers that the net expenditure for legal advice and representation has grown over the years from 6,45 million EUR in 1985 to 10.7 million EUR in 1990. Even though the five ex GDR states joined the FRG in 1990, resulting in an increase of the total population of 25%, the expenditure for Beratungshilfe fell between 1990 and 1994 to 10.5 million EUR. Since then the expenditure has “gone through the ceiling”, growing within five years from 10,5 million EUR in 1994 to 23,55 million EUR in 1999 (+125 per cent.) and to 42 million EUR in 2004. This is an increase of more than 90 per cent over the past five years and over a 10 year period (1995 – 2004) an increase of more than 320 per cent.

ff) Overall expenditure

It can be assumed that the expenditure for civil legal aid and legal aid for advice and representation in 2004 were 345 – 358 million EUR and 42 million EUR, the overall expenditure for criminal legal aid was between 80 and 100 million EUR, while legal aid for proceedings before courts for administrative, tax, employment and social security law added another 30 to 40 million EUR to the bill.

Therefore, the overall legal aid expenditure in Germany in 2004 can be estimated at approx. 514 million EUR. Broken down on the number of lawyers (132.000), this means a statistical income of 3.894 EUR from legal aid for every single lawyer. Broken down on the number of citizens (82,532 million), the per capita spending on legal aid was 6,23 EUR, compared to 4,30 EUR in 1999.

The sharp increase in the expenditure on legal aid in the past few years has neither been driven by a change of the legal aid rules nor by an increase in lawyers’ fees. The only explanation for the increase is a growing demand for legal aid as more people qualify for legal aid in times of mass unemployment and a decreasing coverage of the population by legal expenses insurance. With the recent increase of court fees and lawyers’ fees coming into full effect in 2005, an even more dramatic increase must be expected for the fiscal year 2005. Within a 12 month period, expenditure is likely to increase by another 15 to 20 percent.



b) How many applications and grants for legal aid have been made in the past year?

There is no data available on the number of applications or grants as far as court proceedings are concerned. Such applications and grants are an integral part of the proceedings and are dealt with by the judge assigned to the case. Because of that fact, there is no centralized structure to which applications have to be made or where certificates are issued, and consequently, no statistics exist. The only available data is the number of court proceedings in total, some of them financed by legal aid. In 2003, before the courts of general jurisdiction 2.501.424 proceedings in civil matters were issued (incl. 573.690 family law cases) and 897.949 criminal law cases prosecuted. If broken down with the approx. expenditure (for 2004), this statistically results in a legal aid spending of 140 EUR per civil case and 100 EUR per criminal case. Conventional wisdom is that approx. 50 per cent of all family law cases are covered by legal aid.

In contrast, an annual statistic is kept on the number of applications for legal aid for non-forensic advice and representation. In 2003, 566.556 applications were submitted, of which all but 16.553 were granted (97,08 per cent).

c) How many lawyers have provided legal aid services in your country?

Every lawyer is entitled to take on legal aid cases as there is no system of legal aid franchising or contracting. Consequently, there is no data available how many of Germany's 130.000 lawyers have actually done legal aid work.

d) What is the population of your country?

Germany has a population of 82.4 million.

III. ORGANIZATION

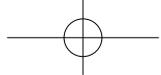
a) Is the legal aid system in your country a government-orientated system or a community-orientated system?

Neither. Unlike in many other countries, in Germany legal aid is not administered by a special governmental office or a non-governmental organisation. Before legal aid was first codified on a federal level, this issue was considered and lawmakers came to the conclusion that legal aid was so closely interwoven with court proceedings that it seemed only logical to entrust the administration of legal aid to the courts. The courts are independent from federal, state or local government.

b) Is legal aid in your country provided through a centralized or a regional system?

Legal aid is provided through the different court systems which are organized on state level and financed by the federal states. There are more than 500 districts courts which in most cases are the first point of call for those seeking legal aid. Each court has a counter which is available for general information and applications.

As the administration of justice – this includes legal aid - is a responsibility of the 16 federal states and not the federal government, no centralized system exists on federal level. In the 16 federal states, the administration of legal aid is entrusted to the state court systems and not to a state legal aid board or foundation. The federal states provide the money required to meet the cost of all legal aid grants to the courts through the department that oversees the operation of the court system in question.



Within the courts, no dedicated office for legal aid matters exists. Applications are handled by the judges and their clerks in addition to their usual workload, including the means and merits test if required.

c) If the legal aid system in your country is government-orientated, how does it maintain its independence?

As legal aid in Germany is court adjunct, the independence of the system is guaranteed through the independence of judges who deal with legal aid applications. Judges in Germany are appointed for life, not elected, totally independent and not bound by any supervision.

IV. FINANCIAL AFFAIRS

a) What are the sources of funding for legal aid in your country?

Legal aid is almost exclusively funded by the 16 federal states through the budgets for the various court systems the federal states operate. The federal government funds legal aid for court proceedings before the Supreme Court of each of the five court systems plus the Constitutional Court and the Federal Patent Court.

b) Are the recipients of legal aid required to pay statutory charges at the conclusion of court proceedings?

No. However, one element of the means test (see below) is to assess whether or not the applicant has to pay contributions (see below).

Additionally, the cost-shifting principles are unaffected by a grant for legal aid. As Germany operates a system of two-way cost-shifting (ZPO § 91), a party supported by legal aid who loses her claim is liable for his opponents' costs. In the event of a loss, only the court fees and the fees of the assisted party's lawyer are covered by the legal aid grant. The cost-risk is therefore significant, although somewhat eased by the fact that court cannot, as a matter of law, grant legal aid if there is no reasonable prospect of a successful outcome of the litigation.

c) Does legal aid in your country include the provision of adjudication fees/filing fees and security for costs?

If legal aid for court proceedings (other than criminal) is granted, the court order has two main consequences: No court fees have to be paid in the course of the proceedings (ZPO § 123 I Nr.1) and the lawyer assigned to the client cannot demand any payment from his client (ZPO § 123 I Nr.3) as all payments to her will be made out of state funds (the rationale is to prevent the lawyer from entering into any agreement according to which the client has to pay an additional fee to him).

d) If so, does providing assistance in paying these costs increase the burden on the government's budget?

To a limited extent.

If legal aid is granted and the case is eventually lost (despite the assessments of its merits prior to the grant), the applicant has to meet the opponent's court fees and lawyer's fees. The public purse has to meet the applicants court fees and lawyer's fees.

If the case is won, there is no loss for the public purse unless the opponent has obtained a legal aid grant as well: Because of the cost-shifting rules that apply in Germany, the losing opponent has to reimburse the applicants court fees and lawyer's fees.



V. MODELS OF OPERATION (Supply Models)

a) Are the legal aid services in your country provided by salaried lawyers, or by contracted lawyers, or by lawyers or law firms in other ways?

There is no "legal aid franchising" or "contracting" in Germany. Every lawyer can accept legal aid cases. However, it can be derived from the structure of the legal profession that for two highly specialised groups of lawyers legal aid for court proceedings is an important source of income: Because of their complexity, family law cases are usually handled by lawyers who concentrate on family law work and have a specialist accreditation. As 80% of all civil legal aid cases are family matters, the importance of legal aid for that group of lawyers is well above average. Likewise, only a small percentage of lawyers do criminal work where legal aid is of above-average importance.

VI. THE SCOPE AND TYPES OF LEGAL AID SERVICES

a) Does legal aid in your country include services in the following matters:

- litigation and legal consulting: yes (consulting only to some extent)
- civil law or criminal law matters: yes
- non-litigious matters (i.e. assistance in applying for social welfare, insurance or annuity; providing community legal education and initiating law reform): to some extent for civil, employment, administrative, constitutional, social security and criminal law.
- environmental law and constitutional law matters: yes
- administrative law and national compensation matters: yes
- assistance during the first police interviews at police stations: no
- accepting applications made by foreign citizens: yes (required under EU law for EU citizens)
- any special rules for applications involving the protection of human rights: yes (covered by constitutional law).

VII. TESTS AND PROCEDURES OF ASSESSMENT

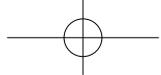
a) The requirements for legal aid

aa) Overview

The provisions in the Code of Civil Procedure (ZPO), regulating legal aid for court proceedings for all court systems except criminal legal aid, include a merits (ZPO § 114) and means test (ZPO §§ 114-115), details about how to apply for legal aid and how it is granted (ZPO §§ 117-119). Further sections include details about the assignment of a lawyer to the applicant (ZPO § 121), cost-shifting rules (ZPO §§ 122-123), withdrawal of legal aid (ZPO § 124) and cost rules in the event of a success of the assisted party in the court proceedings (ZPO § 125-126). By way of reference, the means test provisions also apply to an application for a legal aid grant for advice and representation (Beratungshilfe). For criminal legal aid, there is no means and merits test.

bb) Means Test

The individual applying for legal aid either for court proceedings (Prozeßkostenhilfe) or for advice and representation (Beratungshilfe) must show that she would be unable



to pay her own lawyer's fees because of her personal and economic situation. For criminal legal aid, no means test applies as the court assigns a lawyer to a per se-client depending on the crime and the possible sentence in question and not on his means. Thus, the lack of means does not automatically result in the assignment of a lawyer whose costs are met by the state, while a wealthy defendant may be assigned a lawyer as well.

In those circumstances where it applies, the means assessment follows a rather complicated pattern:

(1) Assets

As a starting point, according to ZPO § 115 III the applicant can be required to fund his litigation by using "available assets" if this is "reasonable". ZPO § 115 III, however does not mention what assets are exempt from that requirement. The applicant has to collect debts owed to him by third-parties, use personal savings and has to make use of his litigation insurance, if available. Property owned needs not to be sold if it can be regarded as an adequate accommodation for the applicant and his family.

(2) Income

ZPO § 115 I 1 states as the general rule that the applicant has to use her income before qualifying for legal aid. ZPO § 115 I 2 defines "income" as all income with a monetary value, but does not give examples or provides for an exhaustive list. The definition of income is therefore a matter of case law. The income is calculated on a monthly basis and may include salaries, income from professional work, pensions, annuities, income from savings, the monetary value of free lodging, social welfare benefits, gratifications, non-repayable loans etc. "Income" means net income.

(3) Deductions

From this "income", a couple of deductions have to be made (ZPO § 115 2 Nr.1): Taxes, social security contributions, reasonable insurance premiums, work-related spendings, trade union membership fees, costs for lodging, instalments for credits, maintenance payments for children and/or former wife/husband. In addition to these individual deductions, lump sums for the applicant, his/her wife/husband and for each child can be deducted. These lump sums are calculated as a percentage of the support citizens qualifying for social welfare benefits under the Social Welfare Act receive. The lump sum stands for the „general costs of living“ as a calculation of these costs on an individual basis would be far too complicated. The deductions are adjusted annually.

(4) The threshold: Relevant Income

After calculating income and deductions, the resulting sum ("the relevant income") shows if the applicant qualifies for legal aid. The "relevant income" in no way reflects the available income, but is merely a figure that allows to draw a dividing line between those that qualify for legal and those that do not. Thus, the terminology "income" that is used is somewhat misleading.

The current threshold below which the applicant qualifies for legal aid is 15 EUR. With a "relevant income" of more than 15 EUR, no legal aid for advice and representation is granted. Similarly, with a "relevant income" of less than 15 EUR the



applicant qualifies for legal aid for court proceedings without any contributions, while a relevant income above the threshold requires contributions by the applicant (see below).

cc) Contributions

If the applicant qualifies for legal aid for advice and representation, she has to make a contribution of 10 EUR payable to the lawyer who gives the advice (BerHG § 8 I). The contribution can be waived by the lawyer. Quite a few lawyers waive the fees because of the extremely low amount.

In the case of legal aid for court proceedings, the applicant has to make monthly contributions according to a sliding scale (ZPO § 115 I 4) - which range from 15 EUR to 300 EUR - if the relevant income is above the threshold of 15 EUR relevant income. The contributions are payable to the court.

dd) Example

John Doe has a net income of 1.920 EUR. He is married with two underage children, his wife does not have an income. From his net income he can make the following deductions: 360,- EUR each for himself and his wife, 253,- EUR for every child that is maintained, 180,- EUR as a lump sum for work-related spendings and 500,- EUR for lodging. Because of these deductions, his "relevant income" is only 14 EUR while his net income is 1.920,- EUR. With a relevant income of just 14,- EUR, he does not need to make contributions.

b) Who has the responsibility of assessing applications for legal aid? What are their qualifications and how are they appointed to assess applications?

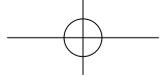
aa) Legal Aid For Non-Criminal Court Proceedings

According to ZPO § 117 I, the indigent has to apply for legal aid for court proceedings (civil legal aid - "Prozeßkostenhilfe") at the court which has jurisdiction over the claim she intends to bring. The applicant has to outline the intended litigation in order to allow a merits assessment. The application has to include copies of documents proving the means of the applicant.

Usually, the indigent does not apply for legal aid herself and, if approved, then consults a lawyer assigned to her. More often the indigent consults a lawyer first who will check if the client is covered by a litigation insurance and, if not, qualifies for legal aid. The lawyer will then draft the writ which is connected with an application for legal aid. In the writ it will be stated that the proceedings are only issued under the condition that legal aid will be granted. The judge (the same who will ultimately decide the case) will assess the application and, depending on the information given, grant or deny legal aid in a formal decision of the court.

bb) Legal Aid For Advice and Representation

For legal aid for advice and representation ("Beratungshilfe") one has to apply to the local county court regardless whether or not the court has jurisdiction over the matter in question (BerHG § 4 I). The applicant has to describe her legal problem and give details of her means (BerHG § 4 II). If the court does not give advice in its own responsibility, it will issue a certificate which entitles the applicant to consult a lawyer of her choice (BerHG § 6 I). It is, however, possible to consult a lawyer without having applied for a



certificate before (BerHG § 7). According to Professional Rule 16 (§ 16 Berufsordnung), the lawyer has to remind the client that she can obtain a legal aid grant if it is evident that her means fulfil the requirements of the BerHG. An application can be filed (usually by the lawyer) after the consultation, with the lawyer assuming the risk of the application being turned down. Approx. 65% of all applications fall into that category. Approx. 3% of all applications are turned down because they do not meet the statutory requirements.

cc) Legal Aid For Criminal Court Proceedings

For criminal legal aid, no formal application procedure exists. If for procedural reasons a defendant needs to be defended, the judge hearing the case will assign a lawyer to the case, taking into consideration suggestions made – if any – by the defendant.

c) Is the prospect of success a consideration for deciding applications? (“Merits Test”)

aa) Legal Aid For Non-Criminal Court Proceedings

To qualify for legal aid for court proceedings (other than criminal legal aid), the applicant needs to pass a merits test. In addition to the economic prerequisite described above, the applicant must meet a second requirement that the litigation she wishes to undertake (or his defense if an action has been filed against him) bears a reasonable chance of success and is not frivolous or reckless. An action will be regarded as brought frivolously if a party of means in the same factual situation would not have brought an action at all or would have sued for only a portion of the relief sought by the applicant. For that purpose, the applicant has to establish the plausibility of the case by submitting the necessary facts. ZPO § 118 I requires the court to hear the applicant's opponent before making a decision, unless, for some particular reason, it would serve no purpose to hear her views. If a decision cannot be made on that basis, the court may require the filing of relevant documents or hear the testimony of witnesses, ZPO § 118 II 3 makes it clear that these means of proof are to be employed only when the court cannot make its decision on the basis of the parties own statements. Unlike before the 1980 reform, preliminary hearings with the parties can only be scheduled if a settlement is likely.

bb) Legal Aid For Advice and Representation

For legal aid for advice and representation (“Beratungshilfe”), no such merits test needs to be passed as the advice is usually sought to establish the merits of a case. However, the applicant has to show that his wish to consult a lawyer is not reckless (BerHG § 1 I Nr.3).

cc) Legal Aid For Criminal Court Proceedings

For legal aid for criminal court proceedings, there is no merits test whatsoever. The assignment of a lawyer depends on the crime in question and the possible sentence

d) Is there a requirement that an application must be made by the applicant personally?

The application can be made by the applicant in person or by a representative, typically a lawyer. In most cases, the application is filed by a lawyer. For example, out of 10 applications for legal aid for legal advice, 6 are filed by a lawyer on behalf of her client.

e) Are there any special arrangements, including for making and assessing applications, for particular disadvantaged groups such as women, children, aboriginal people and labour?



No. It is not regarded as a problem. However, while in general lawyers have a monopoly to provide legal services, in the interest of certain groups that otherwise may be disadvantaged, non-lawyers such as trade unions are allowed to advise on legal issues. Additionally, a planned reform of the Act On Legal Advice (RBerG – Rechtsberatungsgesetz) will add further exemptions for other interest groups such as organizations for asylum seekers, women's interest groups etc. (see below ad 8). They will, however, not be able to offer paid legal services and receive legal aid money.

f) What are the effects of discovering ineligibility after legal aid is granted? Is legal aid terminated or cancelled for these applications?

The assessment made at the time of the grant is binding for the duration of the proceeding which is covered by the grant. There is no continuous re-assessment of the applicant's means throughout the proceedings. Legal aid can only be cancelled (ZPO § 124 I) if the applicant has given false information, if at the time of the court's decision the requirements for a grant were not met or if the applicant has not met his obligation to pay contributions for three months in a row.

g) Please elaborate on the relationship between legal aid providers and private practitioners and between legal aid providers and public defenders.

This problem does not exist in Germany as legal aid is only provided by lawyers in private practice. There are no non-lawyer legal aid providers or public defenders.

h) Do lawyers have an obligation to provide legal aid? If they do, what are the arrangements for meeting that obligation?

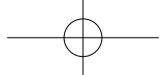
The Legal Profession Act (Bundesrechtsanwaltsordnung), § 48 I (for Prozeßkostenhilfe – legal aid for non-criminal court proceedings), § 49 I (for Pflichtverteidigung – legal aid for criminal court proceedings) and § 49a (for Beratungshilfe – legal aid for advice and representation), requires the lawyer to accept any assignment to a party supported by legal aid. Thus, the provision limits the lawyer's freedom to contract. However, in almost all cases the lawyer will apply for legal aid on behalf of the client and ask the court explicitly to be assigned to the client and will not be forced into a contractual relationship. If the lawyer refuses to take on a legal aid case, he can be disciplined by the bar. However, the reporter is not aware of any such cases decided by the Lawyer's Court (Anwaltsgericht), the disciplinary body of the legal profession.

i) Please compare legal aid providers' fees with market rates – does the rate of pay affect the quality of services?

aa) Overview

Although lawyer and indigent client enter into a contract, ZPO § 122 I Nr.3 and BerHG § 8 II forbid the lawyer to receive any remuneration directly from his client (in legal aid for criminal court proceedings, no contractual ties between lawyer and defendant exist, however). Instead, the lawyer is paid a statutory fee from state funds. The provisions of the ZPO and the BerHG, however, do not deal with this remuneration of the lawyer. Instead, remuneration in legal aid cases is regulated in the Rechtsanwaltsvergütungsgesetz, the Federal Lawyers' Fees Act.

To understand the remuneration for legal aid work, it is useful to have a look at the general principles of lawyers' remuneration in Germany: In principle, lawyer and client



are free to negotiate any fee as long as the fee is reasonable (RVG § 4 I) and not contingent on the outcome of the services rendered (BRAO § 49b II). The widespread belief that Germany operates a binding scale of lawyers' fees is a misunderstanding. The scale of fees is binding for party-party costs when it comes to cost-shifting. For court proceedings, the lawyer may also not agree to render services for less than the statutory fees. As a matter of fact and not because they are bound by the scale of fees, many lawyers charge according to the scale of fees as they find it difficult to convince their clients to pay more than the losing opponent will have to pay as party/party costs.

bb) Legal Aid For Non-Criminal Court Proceedings

The scale of fees is also important in the legal aid for non-criminal court proceedings context: As the lawyer is not allowed to receive contractual payments from his legal aid client, the scale of fees defines the statutory fees a lawyer is paid for legal aid work. The calculation of fees according to the RVG is rather complicated. For certain stages of the court proceeding a „fee“ is earned by the lawyer (for pre-trial work, for pleading in court, for a settlement etc.). For an average proceeding in a civil case, the lawyer will earn two or three fees. What sum is earned from a fee depends on the monetary value of the claim, not on the time invested by the lawyer. For a monetary value of more than 1.500 EUR, the fee the legal aid lawyer is paid from state funds is discounted compared to the normal fee paid for the same value in a cost-shifting situation.

In the light of the absolute statutory prohibition of conditional and contingent fees under German law, a rather striking feature of the legal aid system is that the lawyer will earn the non-discounted normal fees if she wins the case for her client. As the two-way cost-shifting system is not affected by the legal aid provisions, the opponent remains liable for the normal costs if the party supported by legal aid wins the case. For the lawyer, this results in a conditional top-up fee if she wins a legal aid case. However, it has to be noted that in family law proceedings which make up the bulk of legal aid cases, most often - because of the absence of a winner and loser - no cost-shifting is ordered, but each party remains liable for her own costs.

cc) Legal Aid For Advice and Representation

Remuneration for advice and representation is much more straightforward: According to the RVG, the lawyer receives 30 EUR for giving an oral or written advice and for representation she receives 70 EUR (excl. VAT). In addition, the lawyer may charge the client an additional 10 EUR to be paid directly to her by the client. If representation of the client leads to an out-of court settlement, the lawyer is paid an additional 125 EUR. These sums are considerably lower than the fee the lawyer can charge in non-legal aid cases. For advice, the lawyer normally can charge up to 190 EUR instead of 30 EUR, depending on the value of matter of interest. For representation in non-legal aid cases, the fee is not capped and can amount to thousands of EUR, again depending on the value of matter of interest. As the payment for advice and representation in legal aid cases does hardly cover the production costs even of High Street law firms, Beratungshilfe is regarded as a kind of de-facto pro bono work of the legal profession.

dd) Legal Aid For Criminal Court Proceedings

Statutory fees for criminal work are fixed, i.e. there is no sliding scale. Each fee is discounted with a certain percentage (20 – 60 per cent) if the work in question is done



by a court-assigned lawyer on a legal aid basis. Fees are paid to the lawyer by the state, but the state will recoup fees from the defendant at a later stage if she is not acquitted.

j) What are the ways of making the availability of legal aid services known to those needing them?

With the lack of a centralized governing body, no marketing for legal aid is undertaken. The Departments of Justice in the 16 federal states usually provide leaflets and information about legal aid on their general website. Likewise, most regional bars and local bar associations inform about legal aid with the help of leaflets distributed at their offices. Generally speaking, the awareness of the public regarding legal aid is somewhat limited.

k) What are the ways of ensuring the quality of legal aid services?

There are no specific quality controls in place. As only lawyers are allowed to provide legal aid work, the idea is that a minimum quality standard is guaranteed as lawyers have to pass two state exams before being admitted. Once admitted, every lawyer is allowed to take on legal aid work and applicants are given a free choice of counsel regardless of their experience, specialization, continuing legal education or overall quality. The federal states do not select legal aid providers through tendering and contracting, limit the free choice of counsel to lawyers with a certain experience level or ban lawyers that do not meet defined standards.

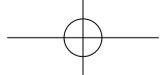
VIII. LEGAL AID IN CONTEXT

a) Access To Justice

It has to be taken into account that the significance of legal aid depends on how the legal system as a whole guarantees access to justice. Legal aid is just one of a number of ways which can pave the way to the courthouse door for the citizen. Others are legal expenses insurance policies, speculative funding of lawyer's fees, state-run legal advice bureaux or legal clinics, the lack of monopoly rights of audience for lawyers and finally, scales of fees which limit the remuneration of the lawyer. An additional aspect that influences the attractiveness of legal aid is the system of cost-shifting. Thus, the importance of legal aid in Germany can only be understood taking a whole range of such determining factors into consideration.

b) Legal expenses insurance

Germany is the largest market for litigation insurance policies world-wide. In 2001, roughly 25 million policies were issued for a population of 82 million citizens. The coverage is extremely high as policies often cover more than one person (typically a family). The reason for the attractiveness of litigation insurance policies is twofold: For the insured, a litigation insurance, unlike legal aid, covers the opponent's costs in the event of a negative outcome of the court proceedings. The insurer, on the other hand, can offer insurance premiums at relatively low cost as her risk is easily calculable: The insurer pays the lawyer fees according to the scale of fees in the RVG (which are also relevant for cost-shifting). Therefore, an insurance company always knows in advance if, for example, a sum (x) is at stake, the maximum amount it has to pay is (y). This certainty has a considerable impact on the calculation of the insurance premium. The widespread use of insurance policies guarantees a very good risk-pooling for the insurer,



resulting in low premiums for stand-alone insurance products. The average premium for a stand-alone policy in Germany is less than 100 EUR p.a.

With a net income of the insurers of more than 2.5 billion EUR p.a., the German population has spent almost 8 times as much money of their own income on litigation insurances than the 16 federal states have spent on legal aid. These numbers show that legal aid is of much less importance in Germany than in many other countries because of the highly developed insurance market. For all areas of law which are covered by litigation insurances, legal aid is of insignificant importance. The main area which has traditionally been not insurable was family law and therefore, it cannot be a surprise that almost 80% of legal aid is spent on family law cases. The remaining sum for all other civil law cases is surprisingly low compared to U.K. standards. This is easily understandable if one takes into consideration that tort law, especially road traffic accident cases, are covered by the average litigation insurance policy and are seldom funded by legal aid. In the year 2000, Germany's second largest insurer ARAG for the first time offered an add-on to its stand-alone litigation insurance policy which covers family law (with some restrictions). Until now, this new product has not made significant inroads into the market and consequently has not eased the pressure for the federal states to fund family law cases with legal aid in the future. It is conventional wisdom that at the moment roughly 50% of all family law cases are funded by legal aid. If an insurance would become more attractive, there would be a significant cost-saving potential if the risk of financing such cases can be shifted from legal aid funds to insurance policies.

c) Speculative funding

Speculative lawyer's fees are another theoretical approach to guarantee access to justice for the indigent as they allow risk-shifting from the client to the lawyer. However, they work differently compared to traditional legal aid and litigation insurance as they only assume the risk of the party's own lawyers' costs (and sometimes the court fees). They do not cover the opponent's costs in the event of a loss. In countries operating a two-way cost-shifting system, an additional safe-guard in the form of an after-the-event cost insurance is needed that assumes the risk of an unsuccessful result of the litigation. While most European jurisdictions allow speculative funding (and prohibit US-style contingency fees), Germany prohibits any form of output-based remuneration. Unlike most other jurisdictions, Germany does not distinguish between a contingent fee, a conditional fee and a success fee: BRAO § 49b II declares any contract void under which either remuneration as such or the amount payable to the lawyer depends on the outcome of the matter or is a portion of an awarded claim. However, most of the expenditure for legal aid in Germany is for family law and criminal law. For these areas of law speculative fees are forbidden in most countries even if speculative funding is allowed in general. Most tort litigation - for which speculative fees are of great importance in other countries - is covered by litigation insurance policies in Germany. This eases the pressure to lift the ban on speculative fees as, from the government's point of view, such a move would not lead to huge cost-savings for the state legal aid budgets.

d) Legal Service Programmes

Lawyers in Germany enjoy monopoly rights not only for representation in court, but also for all out of court work (some minor exceptions exist for incidental legal services).



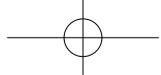
The rationale of the monopoly rights is threefold: To guarantee a high quality standard for the consumer, a high level of protection for the client which is only possible if the legal adviser is bound by professional rules addressing issues like conflicts of interest, professional secret and independence. Thirdly, the rights shall guarantee, to a certain extent, the existence of the free profession and the officers of the court the profession provides for the legal system. These often criticized monopoly rights, enshrined in the Rechtsberatungsgesetz (RBerG), prevent not only commercial legal advice by non-lawyers, but also voluntary and altruistic legal services of non-lawyers. Consequently, neither non-commercial organizations nor fully-trained individuals which are not admitted to the bar nor self-help groups nor legal clinics can provide legal services in Germany. RBerG Art.1 § 3 Nr.9 is an exemption clause for state-run consumer advice bureaux which may give legal advice to consumers for matters of consumer law. Even the answering of individual legal questions by the media is not allowed, with the provisions of the RBerG being strictly enforced by the public prosecutor offices and the Bar associations.

XI. CURRENT DEVELOPMENTS

a) Alternative Providers of Legal Services

Following the publication of a green paper in September 2004, the German Department of Justice in late April 2005 published a white paper containing proposals for a reform of the regulation of legal services. With the aim of tabling a bill later in the year and the law coming into force in late 2006/early 2007, the white paper suggests the abolition of the Law On Legal Advice ("Rechtsberatungsgesetz - RBerG") that has regulated the legal services market in Germany since 1935 and its replacement by a more liberal Legal Services Act ("Rechtsdienstleistungsgesetz - RDG"). The white paper takes a number of recent decisions of Germany's Constitutional Court ("Bundesverfassungsgericht") that have challenged the constitutionality of the comprehensive monopoly rights for lawyers as the starting point of a reform that aims at opening up the legal services market.

One of the goals of the upcoming reform is to satisfy legal needs currently unmet in a market monopolized by lawyers. The white paper explicitly blames lawyers for not offering sufficient expertise in areas of law which often affect the underprivileged – asylum seekers, refugees, unemployed, debtors, disabled etc. One of the main reasons why very few lawyers specialize in these areas of law is that very little money can be earned because of the German fee system which is based on ad valorem fees. Additionally, barriers to access to justice not only exist because of a lack of interested lawyers, but also because underprivileged clients often are reluctant to consult a lawyer. Experience shows that they are much more at ease when they contact a familiar organization already well-known to them or others. It is hoped that the current lack of readily available legal services will be a problem of the past once pro bono organizations can offer free legal services. The new opportunities for associations to provide ancillary legal services for members will have a similar impact. The organization benefiting the most from the new law will be ADAC, Germany's largest automobile association. With more than 15 million members, it has been in conflict with the RBerG regularly in the past as it had tried to provide legal advice to its members. Other associations likely to



benefit from the liberalized law are associations of stockholders or investors

While the upcoming reform will undoubtedly improve access to legal services, its impact on the current legal aid system will be insignificant. More than 90 per cent of the German legal aid budget goes into legal aid for court proceedings. As the reform only covers non-forensic legal services, it will not take away pressure from the public purse. The expenditure for “legal aid for legal advice”, which is the area covered by the reform, in 2004 was approx. 42 million EUR or just 0,50 EUR per capita. As one of the reasons for the reform is that in areas which are insufficiently covered by lawyers - despite the availability of “legal aid for legal advice” – new providers should have the opportunity to enter the market, the aim of the reform is to widen access rather than to shift (state-financed) work from lawyers to (free) non-lawyers.

b) Increase in Expenditure

A recent reform of the cost rules, including the above-described scales of fee, has had a major impact on lawyers doing legal aid work and on access to justice in general. On July 1, 2004, reformed cost rules for court fees and for party/party costs came into force in Germany after a decade-long discussion about the need for a reform (these cost rules cover, in a rather complex system, all court systems and all types of work provided by lawyers). Fees for lawyers doing legal aid work are paid (in most cases with a discount) according to these scales of fees (see above sec. 7 i). Consequently, the reform has resulted in a modest increase of income for lawyers doing legal aid work. Depending on who is doing the maths (the government, lawyers or insurers), the overall increase is said to be between 14 and 29 per cent (as lawyers are quite keen to point out, the increase has been the first since 1994 and it has not off-set the increase in the overall costs of living in the same period). In some areas of law, for example criminal law and employment law, the increase under certain circumstances can be as high as 40 per cent.

Legal aid budgets will need to be increased considerably over the coming years because of the increased court and lawyers' fees that need to be paid in cases brought under a legal aid grant. As legal aid in Germany is strictly demand-driven, the federal states are forced to provide more funds for the legal aid budgets as there is no option to cut back eligibility unless the federal laws (i.e. the codes of procedure) governing legal aid will be changed. Currently, there is no discussion about the need for cut-backs on government level. In general, there seems to be little awareness or preparation on the state level for the massive increase on costs that will be felt for the first time at the end of the fiscal year 2005. With the costs for legal aid directly linked to the general court fees and lawyer fees and with those fees increasing by two digit numbers, the additional burden for the public purse will be substantial.



Country Report: Korea



Legal Aid in Korea: with a focus given to KLAC-
By Kang-Hyun, Lee
Director of Legal Aid Division
Korea Legal Aid Corporation

I. Legal Aid System

The Korean legal aid system is a social welfare system in the legal field to promote and protect fundamental human rights by providing various supporting services, including free legal consultation, affordable lawyers' or public-service advocates' services for civil and criminal litigation, and other legal assistance, to those who can not effectively be protected by the current legal system due to their financial difficulties or ignorance of the law.

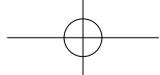
II. Introduction

1. Objects of Establishment

The foundational objects of the Korea Legal Aid Corporation, which was established as a non-profit organization in September 1st, 1987, are to safeguard fundamental human rights and to improve the legal and social welfare system in Korea by providing the above legal aid services. The Corporation is also engaged in the investigation and research on the legal aid system, campaigns to promote law-abiding spirits, and other miscellaneous projects to achieve its objects.

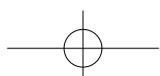
2. History

- 1972. 6. 14. The Korea Legal Aid Association established.
(Non-Profit Corporation)
- 1986. 12. 23. Promulgation of the Legal Aid Act. (Statute #3862)
- 1987. 9. 1. The Korea Legal Aid Corporation (the "KLAC") established (Headquarters, 11 chapters, 36 branches). The KLAC succeeded the rights and duties of the Korea Legal Aid Association.
- 1992. 9. 24. Convention of an international lecture meeting on the 5th anniversary of its establishment
Topic: How to Improve Legal Aid System
Participating Nations: Korea, U.S.A, Germany, Philippines
- 1993. 5. 1. Commencement of legal consultation through the automated response system (ARS)
- 1996. 4. 1. Commencement of legal consultation through an exclusive hotline [#132] in the Seoul area
- 1996. 6. 1. Commencement of free legal aid services for criminal cases
(Litigation and juvenile cases)



2005 International Forum on Legal Aid

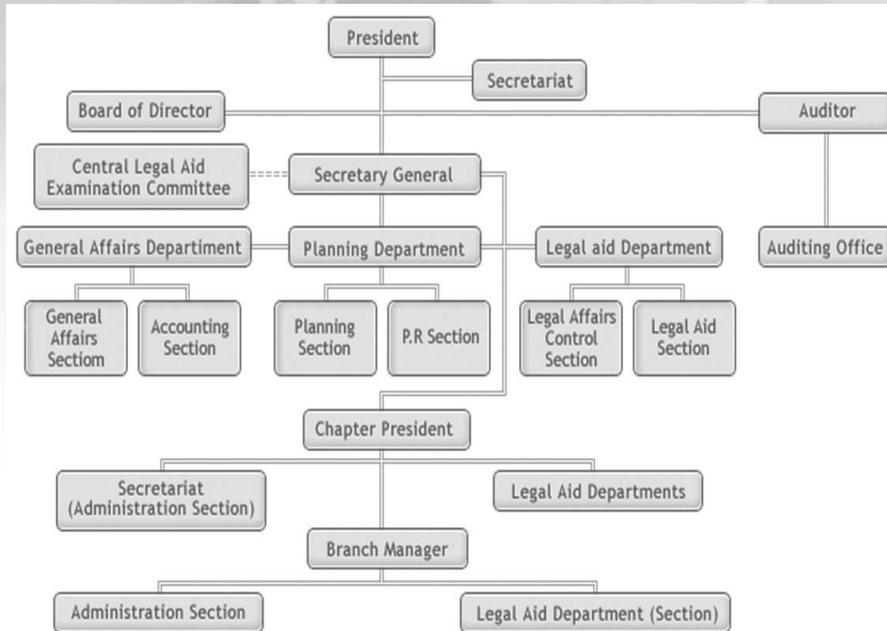
- 1996. 7. 1. Commencement of free legal aid services for farmers/fishermen
- 1997. 5. 1. [#132] Expanded ARS legal consultation area-Daejeon, Daegu, Busan, Gwangju
- 1997. 9. 5. Convention of a seminar on its 10th anniversary
Topic: How to Prepare Legal Aid System for 21st Century
Speaker: Prof. Song, Sanghyun(Seoul National University) and 3 others
- 1997.10. 1. Commencement of free legal aid services for people with low-income.
Introduction of the legal aid system in elementary, middle, high school textbooks
- 1999. 2. 1. Commencement of free legal aid services for tobacco retailers
- 2000. 1. 1. Expanded eligibility for covered clients in civil and family cases (From people whose avg. monthly income is \1,300,000 or less to small business owners and low-income workers earning \1,500,000 or less)
Expanded eligibility for covered clients in criminal cases (same as in Civil and Family Cases)
- 2000. 4. 1. Commencement of parallel civil legal aid services in cases where criminal complaints are submitted to prosecutors
- 2000. 5. 1. Expanded eligibility for legal aid in criminal cases
(for people detained before indicted)
- 2000. 6. 1. Commencement of free legal aid services through the Internet homepage
- 2000. 7. 1. Expanded eligibility for covered cases (Administrative and constitutional litigation)
- 2000. 9.22. Expansion of the area where the [#132] ARS service is available (nationwide)
- 2001. 1. 1. Reduction in costs and fees for a lawsuit. (50% reduction in lawyers' fees to strengthen the legal aid system for citizens)
- 2001. 4. 1. Legal consultation with residents of 44 cities and counties in Korea
- 2002. 4. 1. Commencement of free legal aid services for fatherless families
- 2002. 8.15. Expanded legal aid services for a party to a case where the court made a decision to grant litigation-aid services pursuant to the Korean Civil Procedure Act
Expanded legal aid services for parties to all kinds of administrative litigation
- 2002. 9. 1. Ansan branch opened (Headquarters, 13 chapters, 41 branches)
- 2003. 1. 1. Expanded free legal aid services for the victims of domestic violence, sexual assaults, and prostitution.
Eligible clients: Female victims of domestic violence, sexual assaults, and prostitution (including foreigners residing in Korea)
Eligible cases: Civil & Family cases, Criminal cases
- 2003. 3. 1. Goyang branch opened (Headquarters, 13 chapters, 42 branches)
- 2003. 6.16. Legal consultation with prisoners and other detainees
- 2003. 6.19. Expanded free legal aid services for motherless families
- 2004. 1. 1. Expanded the eligibility for free legal aid services (low-income workers, small business owners, foreigners residing in Korea whose average monthly incomes are \1,500,000 or less Korean citizen and foreign residing in Korea whose avg. monthly incomes are \1,700,000 or less)
- 2004. 2. 1. Raising five branches in Seoul to the status of chapters





3. Organization and Structure

The headquarters of the KLAC is located in Seoul and there are 18 chapters and 37 branches of the KLAC, located in cities, districts, and counties where courts and D.A.'s offices are located.



<Main Duties & Services of Our Departments>

Departments		Main Duty & Services	
Headquarters	General Affairs	Documentation, Personnel, Events, Facility Mgt.	
	Accounting	Execution of budgets, Balancing, Payroll, Fund operation, Supply	
	Planning	Organization, Budgeting and Supervising, Inspection, Analyzing, Proposal, Matters relating to the BOD, MIS dept. operation	
	Public Relations	Public Relations, Publication, Survey, Law-abiding operation, Homepage Management	
	Legal Affairs Control	Placement of member lawyers & public-service advocates, Ruling Mgt. Training, Book Mgt. Inspection and Research on legal aid system	
	Legal Aid	Preparing statistics relating to the legal aid system, Approval of legal aid, Reimbursement of litigation expenses, Legal info on the Internet, [#132] ARS services	
	Auditing	Internal audit, External audit, Inspection, Participating Various auctions	
Seoul Central Chapter	Secretariat	Administration	1. Subjects corresponding to those of general affairs dept, planning, auditing of the headquarters 2. Preserving and recording of concluded cases 3. Reimbursing and collecting lawyers' fees 4. Other duties not belonging to the Legal Aid Department of this Chapter
	Legal Aid	Section 1	1. Legal advice (in-person, phone, mail, tour, Internet) 2. Taking applications for legal aid 3. Taking, inspecting and carrying out other applications 4. Other duties not belonging to other Sections of this Department
		Section 2	1. Allocating, inspecting, and handling cases, 2. Executing lawsuits and other related matters 3. Preparing statistics

		Section 3	1. Legal advice (in-person, phone) 2. Taking, inspecting, and executing legal aid applications 3. Executing lawsuits and other related matters 4. Other matters relating to the operation of this Chapter
Other Chapter	Secretariat	Admin.	Subjects corresponding to admin. of secretariat of Seoul central chapter
	Legal Aid		Subjects corresponding to legal aid dept of Seoul central chapter
Branches	Administration		Subjects corresponding to admin. of secretariat of Seoul central chapter
	Legal Aid (section)		Subjects corresponding to legal aid dept of Seoul central chapter

4. Achievements

Since its establishment on Sep. 1, 1987, the KLAC has provided free legal aid services in 24,418,920 cases, including 362,906 civil or family cases. In addition, the KLAC has been offering free legal aid services in 58,709 criminal cases since June 1, 1996.

Results of the Legal Aid

(Unit: Case)

Classification Year	Civil/Family Cases				Criminal Cases
	Total	Aid before a Lawsuit	Lawsuit related Aid	Litigated Amount (million won)	
1987~1994	141,546	99,867	41,679	57,840	
1995	14,165	5,958	8,207	19,160	
1996	15,824	5,366	10,458	22,630	654
1997	17,184	4,900	12,284	24,370	1,954
1998	19,971	4,369	15,602	33,180	2,716
1999	20,921	3,301	17,620	26,190	3,752
2000	25,664	2,745	22,919	32,460	9,442
2001	29,884	1,698	28,186	38,370	11,880
2002	33,310	1,256	32,054	44,410	11,606
2003	44,437	999	43,438	63,980	16,705
2004	49,339	743	48,596	72,910	20,153
Total	412,245	131,202	281,043	435,500	78,862

Results of Legal Consultation

b (Unit: Case)

Class Yr	Total	In-person advice	ARS advice	Internet advice
1987~1994	2,477,473	2,035,163	327,964	114,346
1995	683,334	365,142	231,256	86,936
1996	1,082,152	489,205	442,113	150,834
1997	1,161,231	594,777	338,620	227,834
1998	1,590,768	804,535	379,226	407,007
1999	1,599,724	822,864	364,058	412,802
2000	1,894,228	840,283	391,745	662,200
2001	3,283,801	894,006	405,702	1,984,093
2002	4,710,666	899,285	252,803	3,558,578
2003	5,935,543	1,001,370	251,500	4,682,673
2004	5,478,029	996,255	201,537	4,280,237
Total	29,896,949	9,742,885	3,586,524	16,567,540



III. Main Duties & Services

1. Legal Consultation

Free legal consultation concerning general legal affairs including civil, family, criminal and administrative cases is available to the public in Korea. People who desire to discuss their legal issues may request the KLAC to advise or assist them through personal visits, phone calls, letters or the Internet, etc.

*Personal visits & phone calls

- Legal consultation may be conducted at KLAC offices nationwide.
- Weekdays : 9 A.M. ~ 6 P.M.
- Saturdays : 9 A.M. ~ 1 P.M.
- Sundays : 10 A.M. ~ 3 P.M.
- Telephone : Just Dial [132] from anywhere in Korea

*Internet legal consultation

- KLAC Homepage URL <http://klac.or.kr>
- Public service advocates are available to answer your legal inquiries on the KLAC homepage

*KLAC' activities through its homepage

- Legal data center
 - Examples of legal consultation (2,033 cases): Answers to legal issues which frequently arise in everyday life may be found.
 - Legal forms (1,887): Easy access to applications and form documents for instant completion.
 - Everyone can easily search the database, which contains a total of 5,300 legal cases, documents, etc.

*[132] ARS & FAX legal consultation

- Sample answers to frequent legal issues are offered.
- ARS – Just Dial [132] from anywhere in Korea
- FAX – (02) 596-1321

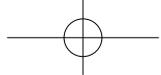
2. Legal Aid

-Civil/Family Cases-

The KLAC provides legal aid services in most civil and family cases, except for cases where the Republic of Korea is a defendant.

Eligible Clients

- Farmers / fishermen
- People whose average monthly income is two million won (₩2,000,000) or less.
- Government employees (Grade VI or lower)
- Soldiers (Captain or lower)
- Recipients of the national merit reward
- Consumers injured or damaged by goods or services
- People who cannot assert their rights on account of their poverty or ignorance of the law (low-income individuals, juvenile head of household, people with disabilities, etc.)
- Foreigners residing in Korea whose avg. monthly income is ₩2,000,000 or less
- A party to a case where the court made a decision to grant litigation-aid services pursuant to the Korean Civil Procedure Act



- Tobacco retailers whose average monthly revenues are ₩2,000,000 or less
- Female victims of domestic violence, sexual assaults, and prostitution including foreign females residing in Korea

Legal Aid Procedures

A person who wants to receive legal aid services should submit to a KLAC office a copy of his/her resident registry, documents proving his/her eligibility for such services and other necessary documents concerning the case together with an application form. Once a legal aid application is received, the investigation of facts is commenced. After the investigation is finished, the KLAC tries to mediate between the parties by explaining their legal problem(s) and offering solution(s) to the problem(s). In the event that the parties are unable to reach an amicable settlement in spite of these efforts, the KLAC determines whether it will offer legal aid services, after carefully examining the eligibility of the client, case itself, and possibility of winning the case and executing the court's order. If it determines to provide legal aid services, a staff lawyer or a public-service advocate will carry out the lawsuit.

Meanwhile, when a legal aid application is rejected, the client who has objection against such rejection may file a petition with the Central Legal Aid Examination Committee, and the Committee will review the petition to determine whether to accept or reject the application.

Costs of Lawsuit

No charge is imposed in a case resolved as a result of legal consultation or settlement. However, once a lawsuit is commenced, costs incurred by the KLAC, such as stamp taxes and attorney's fees, have to be reimbursed by the client at the completion of relevant legal aid services. Such reimbursed costs and fees would be used for the provision of legal aid services in the future.

A party who won the case can generally recover costs and fees to be reimbursed from the losing party. Additionally, in some cases, such costs and fees may be paid in installments or even exempted, according to the specific situation of the client.

The reimbursement of costs and fees is exempted in a case where (i) the client is unsuccessful (ii) the client is able to get less than 500 million won or (iii) reimbursement is deemed to be improper or impossible. In some case, a portion of such reimbursement may be exempted, according to the specific situation of the client.

-Criminal Cases-

Lawyers and public service advocates at the KLAC also offer legal aid services and represent clients in criminal cases. Examples of criminal cases are as follows:

1. Detention cases
2. Litigated cases
3. Cases transferred to the Juvenile Department

Eligible Clients

- Farmers / fishermen
- People whose average monthly income is two million won (₩2,000,000) or less
- Government employees (Grade VI or lower)
- Recipients of the national merit reward
- People who cannot assert their rights on account of their poverty or ignorance of the law (low-income individuals, juvenile head of household, people with disabilities, etc.)



- Suspects or defendants in criminal cases for whom courts appointed the staff attorneys or public service advocates at the KLAC
- Tobacco retailers whose avg. monthly revenues are less than ₩2,000,000
- Female victims of domestic violence, sexual assaults, and prostitution including foreign females residing in Korea
- Foreigners residing in Korea whose avg. monthly incomes are ₩2,000,000 or less

Legal Aid Procedures

A person who wants to receive legal aid services in a criminal case may visit the KLAC in person and apply. Then the KLAC would determine whether to offer legal aid services, after examining the details of the case. If the KLAC determines to offer such services, a staff lawyer or a public service advocate will be appointed as counsel for the defendant. If the application for legal aid is rejected, the applicant can submit a petition to the President of the KLAC within 7 days from such rejection. The petition may be filed only once. The President will review the petition to determine whether to accept or reject the application.

Costs of lawsuit

In criminal case, no cost or fee is imposed on the client, but a client is required to pay bail money or guarantee insurance fees for bail.

-Administrative & Constitutional Litigation-

Administrative Decision Cases

The KLAC handles administrative decision cases by the Prime Minister's Administrative Decision Committee and local Administrative Decision Committees.

Administrative Litigation Cases

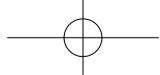
The KLAC handles all administrative litigation cases.

Constitutional Litigation Cases

Any person whose fundamental rights guaranteed by the Constitution have been infringed by an action or inaction of the Government (except for court decisions), may ask the KLAC to file a constitutional complaint with the Constitutional Court on his/her behalf. In addition, if a motion for adjudication on the constitutionality of a law is rejected by a court, the person who made the motion may ask the KLAC to file a constitutional complaint with the Constitutional Court on his/her behalf.

Eligible Clients

- Farmers / fishermen
- People whose average income monthly income is two million won (₩2,000,000) or less
- Government employees (Grade VI or lower)
- Recipients of the national merit reward
- People who cannot assert their rights on account of their poverty or ignorance of the law (low-income individuals, juvenile head of household, people with disabilities, etc.)
- Suspects or defendants in criminal for whom courts appointed staff attorneys or public-service advocates at the KLAC
- Tobacco retailers whose avg. monthly revenues are less than ₩2,000,000
- Plaintiffs/petitioners for whom the Constitutional Court appoints staff lawyers or public-service advocates at the KLAC (constitutional litigation cases only)



Legal Aid Procedures & Costs of Lawsuits

A person who wants to apply for legal aid services concerning administrative and constitutional litigation cases should take the same steps as explained in connection with civil and family cases. In addition, regulations relating to legal costs and fees in civil and family cases are also applicable to administrative and constitutional litigation cases.

3. Free Legal Aid Services

Free legal aid services are offered to farmers, fishermen, ranchers, low-income individuals, tobacco retailers, female victims of domestic violence/sexual assault/prostitution, based on the fund donated by the National Agricultural Cooperative Federation(the NACF)/the National Federation of Fisheries Cooperatives(the NFFC), the Chohung Bank, the KT&G(formally known as Korea Tobacco & Ginseng Corporation, and the Ministry of Gender Equality(the MGE), each of which has executed an agreement with the KLAC.

Donators	Eligible Clients	Commencement Date
NACF	Farmers/Ranchers	1996. 7. 1.
NFFC	Fishermen	1996. 7. 1
Chohung Bank	People with minimum income, young heads of household, disabled persons, fatherless/motherless families, lessees paying the minimal rent provided in the Lease Protection Act whose avg. monthly income is \2,000,000 or less	1997. 10. 1.
KT & G	Tobacco retailers	1999. 2. 1.
MGE	Female victims of domestic violence, sexual assaults, and prostitution including foreign females residing in Korea	2003. 1. 1.

4. Other Services

(1) Law-abiding Campaigns

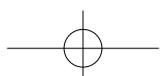
To inspire law-abiding spirits, the KLAC is using the mass media such as television, radio, and others, to publish various materials, to offer legal consultation, and to educate the public by providing lectures on the legal system.

(2) Trips to prisons and other detention facilities

For those who are remote from legal assistance because they are confined in prison or other detention facilities, the KLAC' staff lawyers and public-service advocates make trips twice a month to offer legal consultation.

(3) Trips to city and county courts

For farmers/fishermen who reside in rural areas, the KLAC staff lawyers and public-service advocates make trips twice a month to offer legal consultation. In addition, upon clients' requests, they make trips to other places far from Seoul or other big cities.





IV. Budget

1.Revenues

(Unit: Thousand Won)

Items		2004 Budget	2003 Budget
Governmental Subsidies		18,658,120 (72.1%)	16,614,917 (71.2%)
Revenue	Reimbursement of Lawsuit costs	3,168,171 (12.3%)	2,332,124 (10%)
	Reimbursement of Lawyer's fee	2,842,874 (11%)	2,959,438 (12.7%)
	Court appointed Lawyer's fees	364,339 (1.4%)	308,792 (1.3%)
Other Gains	Special Transfer	200,000 (0.8%)	446,000 (1.9%)
	Interest	33,479 (0.1%)	38,138 (0.2%)
	Recovery of Lawsuit costs	554,354 (2.1%)	535,000 (2.3%)
	Miscellaneous	57,507 (0.2%)	85,000 (0.4%)
Total Revenue		25,878,844 (100%)	23,319,409 (100%)

* Numbers in () are percentages to the total amount.

2.Expenses

(Unit: Thousand Won)

Items	2004 Budget	2003 Budget
Payroll	17,793,134	15,954,497
Basic Expenses	1,944,779	1,787,511
Business Expenses	6,129,931	5,566,401
Other Expenses	11,000	11,000
Total	25,878,844	23,319,409

V. Future Missions

1.Expansion of the Scope of Legal Aid Services and Their Beneficiaries

As the national economy and income grow, the KLAC plans to expand the scope of eligible cases, areas and beneficiaries.

2.Enhancement of the Quality of Services

The KLAC will provide the public with necessary and useful legal services, and improve the quality of its services by recruiting competent professionals who can deal with various kinds of cases.

3.Efforts to Reduce the Number of Legal Disputes

By constantly using mass media and other methods to publish materials, to conduct legal consultation and educate people (lectures), the KLAC will try to reduce the number of legal disputes.

4.Research on the Legal Aid System

The KLAC will research and develop the current legal aid system, which the public may benefit from and will contribute to the establishment of a "welfare society".

*Network – the KLAC office addresses & phone numbers

Office	Address	Phone # for Consultation	Phone # for Administrative Matters
Headquarters	#1703-10, Seocho-dong, Seocho-gu, Seoul. (Zip Code 137-884)		02-532-0132
Seoul Central Chapter	#1703-10, Seocho-dong, Seocho-gu, Seoul. (Zip Code 137-884)	132 No Area Code	02-3482-0871
Legal Aid Sec. 2	c/o Seoul District Prosecutors' Office, #1724,	02-536-5577	02-530-4675
Seoul District of the KLAC	Seocho-dong, Seocho-gu, Seoul. (Zip Code 137-741)		
Eastern Seoul Chapter	Suite 402, Jeil Bldg., #216-2, Jayang-dong, Gwangjin-gu, Seoul. (Zip Code 143-190)	02-453-5888	02-457-4403
Southern Seoul Chapter	c/o Nambu Branch of the Seoul District Prosecutors' Office, #313-1, Sinjeong-dong, Yangcheon-gu, Seoul. (Zip Code 150-095)	02-2648-5966	02-2646-6117
Northern Seoul Chapter	Suite 503, Dongshin Bldg., 661-8, Gongneung 1-dong, Nowon-gu, Seoul. (Zip Code 139-241)	02-972-1765	02-978-4240
Western Seoul Chapter	c/o Seobu Branch of the Seoul District Prosecutors' Office, #105-1, Gongdeok-dong, Mapo-gu, Seoul. (Zip Code 121-020)	02-713-6009	02-713-6039
Uijeongbu Chapter	3rd Fl. Sekwang Bldg., #362-18, Ganeung-dong, Uijeongbu-si, Gyeonggi-do (Zip Code 480-101)	031-874-0100	031-820-4676
Goyang Branch	c/o Goyang Branch of the Uijeongbu District Prosecutors' Office, #885, Janghang-dong, Ilsan-gu, Goyang-si, Gyeonggi-do. (Zip Code 411-837)	031-902-5132	031-902-5132
Incheon Chapter	c/o Incheon District Prosecutors' Office, #278-1, Hakik-dong, Nam-gu, Incheon. (Zip Code 402-040)	032-874-3370	032-874-3374
Bucheon Branch	c/o Bucheon Branch of the Incheon District Prosecutors' Office, #445-2, Sang-dong, Wonmi-gu, Bucheon-si, Gyeonggi-do (Zip Code 421-030)	032-325-4500	032-325-5322
Suwon Chapter	1st Fl. Misong Bldg., #90-14, Woncheon-dong, Paldal-gu, Suwon-si, Gyeonggi-do (Zip Code 440-380)	031-213-1331	031-210-4674
Seongnam Branch	Suite 303, Shinsaeng Bldg., #94-3, Dandae 1-dong, Sujeong-gu Seongnam-si, Gyeonggi-do (Zip Code 461-140)	031-748-3509	031-749-1566
Yeoju Branch	3rd Fl. Dongbu Bldg., #72-8, Hongmoon-ri, Yeoju-eup, Yeoju-gun, Gyeonggi-do (Zip Code 469-800)	031-883-7630	031-884-7640
Pyeongtaek Branch	c/o Pyeongtaek Branch of the Suwon District Prosecutors' Office, #245-1, Dongsak-dong, Pyeongtaek-si, Gyeonggi-do (Zip Code 450-140)	031-656-9144	031-656-9144
Ansan Branch	c/o Ansan Branch of the Suwon District Prosecutors' Office, #711, Gojan-dong, Ansan-si, Gyeonggi-do (Zip Code 425-020)	031-482-2767	031-482-2768
Chuncheon Chapter	1st Fl. Hwanam Bldg., 709-10 Hyoja-dong, Chuncheon-si, Gangwon-do. (Zip Code 200-090)	033-251-8301	033-255-2421
Gangneung Branch	3rd Fl., 898-4 Gyo 1-dong, Gangneung-si, Gangwon-do. (Zip Code 210-923)	033-645-3163	033-645-3163
Wonju Branch	c/o Wonju Branch of the Chuncheon District Prosecutors' Office, #1008, Hakseong 1-dong, Wonju-si, Gangwon-do. (Zip Code 220-031)	033-748-0763	033-748-0763
Sokcho Branch	2nd Fl. Dongmeung Bldg., # 280-2 Dongmeung-dong, Sokcho-si, Gangwon-do. (Zip Code 217-809)	033-636-8511	033-636-8511



Yeongwol Branch	c/o Yeongwol Branch of the Chuncheon District Prosecutors' Office, #877-1, Youngheung-ri, Yeongwol-eup, Yeongwol-gun, Gangwon-do. (Zip Code 230-800)	033-373-1910	033-373-1910
Daejeon Chapter	c/o Daejeon District Prosecutors' Office, #1390 Dunsan-dong, Seo-gu, Daejeon. (Zip Code 302-120)	132 No Area code	042-472-9062
Hongseong Branch	3rd Fl. #288-2, Ogwan-ri, Hongseong-eup, Hongseong-gun, Chungcheongnam-do. (Zip Code 350-807)	041-634-4476	041-634-4476
Gongju Branch	2nd Fl. #226-1, Banjuk-dong, Gongju-si, Chungcheongnam-do. (Zip Code 314-100)	041-857-6132	041-857-6132
Nonsan Branch	c/o Nonsan Branch of the Daejeon District Prosecutors' Office, #46-1, Daeheung-ri, Ganggyeong-eup Nonsan-gun, Chungcheongnam-do. (Zip Code 320-900)	041-745-4478	041-745-4478
Seosan Branch	c/o Seosan Branch of the Daejeon District Prosecutors' Office, #804-8, Dongmun-dong, Seosan-si, Chungcheongnam-do. (Zip Code 356-010)	041-667-4054	041-667-4054
Cheonan Branch	3rd Fl. Seoul Bldg., #473-7, Sinbu-dong, Cheonan-si, Chungcheongnam-do. (Zip Code 330-943)	041-563-6174	041-563-6174
Cheongju Chapter	2nd Fl., #82-1, Sugok-dong, Cheongju-si, Chungcheongbuk-do. (Zip Code 361-201)	043-284-7777	043-299-4676
Choongju Branch	9th Fl., #700, Keumneung-dong, Chungju-si, Chungcheongbuk-do. (Zip Code 380-060)	043-854-0402	043-854-0402
Jecheon Branch	3rd Fl. #68-19, Jungangno 2-ga, Jecheon-si, Chungcheongbuk-do. (Zip Code 390-030)	043-646-5011	043-646-5011
Yeongdong Branch	2nd Fl. #678-11, Gyesan-ri, Yeongdong-eup, Yeongdong-gun, Chungcheongbuk-do. (Zip Code 370-800)	043-744-9600	043-744-9600
Daegu Chapter	c/o Daegu District Prosecutors' Office, #458-2, Beomeo 2-dong, Suseong-gu, Daegu. (Zip Code 706-012)	132 No Area Code	053-740-3676
Andong Branch	c/o Andong Branch of the Daegu District Prosecutors' Office, #235-2, Jeongha-dong, Andong-si, Gyeongsangbuk-do. (Zip Code 760-400)	054-856-2595	054-820-4677
Gyeongju Branch	c/o Gyeongju Branch of the Daegu District Prosecutors' Office, #203-1, Dongbu-dong, Gyeongju-si, Gyeongsangbuk-do. (Zip Code 780-040)	054-741-6111	054-775-5553
Gimcheon Branch	c/o Gimcheon Branch of the Daegu District Prosecutors' Office, #1222, Samlak-dong, Gimcheon-si, Gyeongsangbuk-do. (Zip Code 740-090)	054-433-1780	054-433-1780
Sangju Branch	c/o Sangju Branch of the Daegu District Prosecutors' Office, #652-2, Mansan-dong, Sangju-si, Gyeongsangbuk-do. (Zip Code 742-260)	054-535-3277	054-535-3277
Uiseong Branch	c/o Uiseong Branch of the Daegu District Prosecutors' Office, #748, Joongni-ri, Uiseong-eup, Uiseong-gun, Gyeongsangbuk-do. (Zip Code 769-800)	054-832-5502	054-833-5402
Yeongduk Branch	c/o Yeongdeok Branch of the Daegu District Prosecutors' Office, #311, Namseok-ri Yeongdeok-eup, Yeongdeok-gun, Gyeongsangbuk-do. (Zip Code 766-800)	054-734-1745	054-734-1746
Pohang Branch	c/o Pohang Branch of the Daegu District Prosecutors' Office, #768, Yangdeok-dong, Buk-gu, Pohang-si, Gyeongsangbuk-do. (Zip Code 791-270)	054-251-6111	054-250-4676

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Busan Chapter	c/o Busan District Prosecutors' Office, #1501, Geoje-dong, Yeonje-gu, Busan (Zip Code 602-072)	132 No Area Code	051-505-1643
Eastern Busan Branch	c/o Dongbu Branch of the Busan District Prosecutors' Office, #1133, Jaesong-dong, Haeundae-gu, Busan. (Zip Code 612-050)	051-781-0710	051-783-0316
Ulsan Chapter	c/o Ulsan District Prosecutors' Office, #635-3, Ok-dong, Nam-gu, Ulsan. (Zip Code 680-080)	052-257-4676	052-228-4676
Changwon Chapter	c/o Changwon District Prosecutors' Office, #1, Sapa-dong, Changwon-si, Gyeongsangnam-do. (Zip Code 641-070)	055-266-3381	055-239-4676
Jinju Branch	2nd Fl. #296-100, Sangdae-dong, Jinju-si, Gyeongsangnam-do. (Zip Code 660-320)	055-755-6922	055-760-4676
Tongyeong Branch	c/o Tongyeong Branch of the Changwon District Prosecutors' Office, #859, Dongdal-ri, Yongnam-myeon, Tongyeong-si, Gyeongsangnam-do. (Zip Code 650-830)	055-649-1830	055-640-4675
Milyang Branch	c/o Milyang Branch of the Changwon District Prosecutors' Office, #428, Naeyi-dong, Milyang-si, Gyeongsangnam-do. (Zip Code 627-803)	055-356-5131	055-350-4674
Geochang Branch	c/o Geochang Branch of the Changwon District Prosecutors' Office, #1-11, Sangrim-ri, Geochang-eup, Geochang-gun, Gyeongsangnam-do. (Zip Code 670-800)	055-942-8436	055-949-4674
Gwangju Chapter	c/o Gwangju District Prosecutors' Office, #342-1, Jisan-2-dong, dong-gu, Gwangju (Zip-Code 501-707)	132 No Area Code	062-224-7806
Mokpo Branch	c/o Mokpo Branch of the Gwangju District Prosecutors' Office, #818, Yeonghae-dong, Mokpo-si, Jeollanam-do. (Zip Code 530-380)	061-277-2002	061-277-2025
Jangheung Branch	c/o Jangheung Branch of the Gwangju District Prosecutors' Office, #88, Namdong-ri, Jangheung-eup, Jangheung-gun, Jeollanam-do. (Zip Code 529-800)	061-863-8856	061-863-1522
Sooncheon Branch	c/o Suncheon Branch of the Gwangju District Prosecutors' Office, #419, Maegok-dong, Suncheon-si, Jeollanam-do. (Zip Code 540-070)	061-752-6539	061-755-6539
Haenam Branch	c/o Haenam Branch of the Gwangju District Prosecutors' Office, #390, Gugyo-ri, Haenam-eup, Haenam-gun, Jeollanam-do. (Zip Code 536-800)	061-536-9945	061-536-9954
Jeonju Chapter	Suite 403, Dongseong Bldg. #1407-1, Deokjin-dong 1-ga, Jeonju-si, Jeollabuk-do. (Zip Code 560-190)	063-251-4034	063-259-4676
Goosan Branch	c/o Gunsan Branch of the Jeonju District Prosecutors' Office, #880, Jochon-dong, Gunsan-si, Jeollabuk-do. (Zip Code 573-706)	063-452-6696	063-452-6696
Jeongeup Branch	c/o Jeongeup Branch of the Jeonju District Prosecutors' Office, #609-7, Suseong-dong, Jeongeup-si, Jeollabuk-do. (Zip Code 580-010)	063-533-9644	063-533-9644
Namwon Branch	2nd Fl. #10-4, Hajeong-dong, Namwon-si, Jeollabuk-do. (Zip Code 590-010)	063-626-5789	063-626-5789
Jeju Chapter	c/o Jeju District Prosecutors' Office, #950-1, Ido 2-dong, Jeju-si. (Zip Code 690-022)	064-753-9954	064-753-9955



Country Report Discussion I

Junius Ho (Duty Lawyer Service Council, Hong Kong):

I have a question for Dr. Matthias Kilian. I have heard that one of the major reasons for the success of legal aid in Germany comes from the strong backup from the insurance industry. You also mentioned that the premium is approximately US\$120 per lawyer. Is that premium singly allocated for legal aid services, or is the premium generally payable for all legal services?

Matthias Kilian (University of Cologne, Germany):

The legal expenses insurance in Germany is a modular system where you can build your own legal expenses insurance and decide which area you want to have covered by your insurance. The more you have covered the more expensive the premium gets, although there are certain standard packages. I was referring to the standard packages for private legal expenses insurance that would cover your needs that typically arise from your private life and from being employed by someone. The cost varies with your coverage. It is not limited to legal aid work, and it has nothing to do with legal aid at all.

There are two areas where legal expenses insurance is not available or is just starting to become available, which are family law and criminal law. There is one insurance company that now offers insurance for family law. Criminal law insurance is not available for obvious reasons. Thus, these two areas of law are particularly important. These are the two areas of legal aid which are important because we don't have legal expenses insurance in these areas. Eighty percent of legal aid in Germany is in family law because there is no legal expenses insurance for family law.

Jerry Cheng (Legal Aid Foundation, Taiwan):

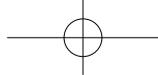
Dr. Kilian's report noted that 40% of the population in Germany is covered by legal expenses insurance. Are these people in the middle and upper classes? Does this mean that lower income classes do not have access to legal insurance?

Kilian:

First of all, I would say that the German society is not as divided as other countries, which would have extremely poor people and extremely rich people and the middle class. The distinction between the different groups of society may not be as sharp as in other countries, and probably also on the need for legal aid from that perspective.

However, it is true that legal expenses insurance is most widely used by what we would call the middle class people. I would say a very small group of under-privileged people to quite a sizable extent have legal expenses insurance like the very rich have.

It's not as widely used among the lower class and the upper class people as by the middle class, but you can't say that poor people don't have legal expenses insurance. Usually, what happens is that people have a portfolio of 6 or 7 different insurances to cover the typical risks like illness, life, accidents, car, household contents and legal expenses. For the poor people, if they have to limit their budget, the first insurance to go is usually the legal expenses insurance. While they recognize the need for legal expenses insurance, the insurance usually goes first if they don't have enough money. But nevertheless quite a few are still covered with legal expenses insurance.



2005 International Forum on Legal Aid

Joseph Lin (Legal Aid Foundation, Taiwan):

My first question is for the representative from Korea. Is there a 5-year plan to expand the scope of legal aid in Korea?

The second question is for the representative from Cambodia. As a non-governmental organization with limited financial resources, how did your legal aid organization begin operations? Throughout this process, how did you persist in your efforts?

Ouk Vandeth (Legal Aid of Cambodia, Cambodia):

As I told you before about our financial problem, we cannot run legal aid over the entire country, so we are thinking about where the target is. We classify the minority and people who live far away from the city, and then we collect the poorest of the country. We have 24 provinces but we set up legal aid in only 7 provinces, as legal aid cannot bring everything to the country yet.

Justice Mlambo (Legal Aid Board, South Africa):

I have two questions, one for Costa Rica. I'm interested in the two-year legal community service that was mentioned. Is it compulsory and is it entered into at university or after graduation?

For Germany, I'm interested in finding out whether the quality of the service provided by judicare lawyers is an issue; and if so, what quality measures are there to monitor the performance level of those lawyers? Thank you.

Arturo Fournier (Inter-American Bar Association, Costa Rica):

Yes, it is compulsory during the last two years of law school. Students cannot graduate if they haven't given their services to the community. Students can do the service at different universities and in different areas of law - criminal, family or labor, both in the public as well the private sectors.

Kilian:

The quality issue is an interesting question. There is no quality control at all. Every lawyer in Germany can provide legal aid work. The basic idea is that once you're qualified as a lawyer, you are well-trained, and you are supposed to provide a good service. I think the reason why we don't have quality control is the belief in Germany that if you have very strict quality control, for example through contracting and franchising legal aid work, you limit the free choice of counsel for citizens. In Germany, for legal aid work and also for legal expenses insurance, the free choice of counsel is of paramount importance. Every citizen should have the right to select whichever lawyer he has trust and confidence in, and the government will fund whatever lawyer the client selects. That I think is the reason why we don't have a very effective quality control, because once you start to implement quality control measures, you are trading off the free choice of counsel in a way.

Fournier:

For students we have quality control by teachers of the different subjects which they



are practicing in. It is part of their studies and qualifications to gain their course and their grade. In Public Defense, as lawyers are employees of the judiciary system, they have to be controlled and qualified. Sometimes people prefer Public Defense lawyers than private lawyers because they are very good and very well skilled, and if they don't have good qualification their contracts cannot be renewed. So quality control is a very important issue in our country.

Jark Pui Lee (Legal Aid Services Council, Hong Kong):

I'd like to ask Dr. Fournier from Costa Rica two questions. The first one is, how would the question of legal liability be settled where students might not have given the best information or advice or taken the best action in regards to their clients?

The second question is, you mentioned that in the delivery of legal aid services, lawyers are sometimes subject to the pressure of the government or the judiciary. I understand that there are situations where the Executive arm of the government would not be happy with legal aid interfering. But on the other hand I don't quite understand how the Judicial branch may have exerted pressure over legal aid. Could you elaborate on that? Thank you.

Fournier:

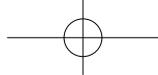
Yes, regarding the first question, the liability: every student is practicing under the direction of the Chief of the local office of the community service, and the student is also controlled and his/her cases are reviewed by a teacher who is teaching the subject that he/she is practicing in. Students are usually well guided by experienced lawyers next to them and everything they do are reviewed. When students have to go to court, they sometimes go along with their teachers. So usually there are no liability cases. It might happen, but I haven't heard of a case in which problems like that arise.

The other question has to do more with lawyers working for the Executive branch of the government, for example, in defending women in the women's institute or in the childhood trusteeship institution. In those situations, if the case being attended to is very sensitive or has produced a scandal in society, sometimes it could produce a pressure exercised by the Executive branch.

Sometimes public defenders have denounced the higher levels of the Judiciary for approaching them in some cases, for example, regarding drug dealings or corruption and things like those. It has not been very frequent - even though we have had very strong corruption cases in our country and of course we are in the way of drug smuggling coming from other areas - but sometimes it has happened. Even judges have complained of unlawful pressure upon them.

Kang-Hyun Lee (Korea Legal Aid Corporation, Korea):

I'm not sure if the plan is a 5-year plan or not. The key issue these days is independence from the government, and that is the key issue. The Ministry of Justice said the KLAC should be independent from the government for three years, so the KLAC has to expand the fund and also legal aid services. The KLAC has the plan to provide legal aid services for victims of crimes or for small merchants, and the government will provide the subsidy. That is KLAC's next plan.



Uli Sihombing (Jakarta Legal Aid Institute, Indonesia):

I'm interested in Costa Rica's experiences in providing legal aid to the poor. You have so many lawyers in Costa Rica, and I wanted to know whether the lawyer has obligations to provide free legal assistance to the poor? If there is an obligation on lawyers to provide free legal assistance to the poor, how do you control the obligation?

Fournier:

No, there is no obligation, but the national bar association has a list of lawyers with different specialties which offers the service. But nobody is obliged, and nobody is forced to provide services.

Stephen Lin (Central Queensland Community Legal Centre, Australia):

The Legal Aid Commissions can only pay at discounted rates for private practitioners to engage in legal aid cases, but that does not necessarily mean legal aid services would be poorer than private practice. Because of the volume of cases, we have accumulated experience and expertise, and we are bound by professional practice rules, paid or not paid, we have to deliver the same competent and quality advice, otherwise we may be disbarred. So that is the answer on practitioners.

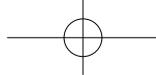
In relation to the video-conferencing facilities you mentioned, because Queensland and Australia is a vast area, and I can only speak from my experience of working in Queensland. In my Center, we have 3 staff, including one administrator, so there are two lawyers. We cover an area of 600 km along the coast and probably can reach into 800 km inland. That's a vast area for the three of us to cover, and we have to rely on e-mail or toll-free number to accept inquiries, and video-conferencing facilities provide us with the resource to reach out into the remote regional towns. That's probably not the best way to deliver high quality legal aid services, but that's the way we cope with it at this stage.

In relation to court fees, I know that it is very difficult to have an uniform answer. In the family law area, if you come from a low income family and you may be a holder of a federal government low income family household card, you can apply to be exempted from paying court fees, but it may be different for cases in different practice areas and different states.

Julie Bishop (National Association of Community Legal Centres, Australia):

Could I just add to that briefly in relation to video-conferencing. The vastness of the country and distances between towns is an enormous issue for us in service delivery, and most Legal Aid Commissions do have video-conferencing facilities now.

In relation to solicitors' trust fund, legal aid has access to money from these trust funds. In some jurisdictions, a large proportion of legal aid fund comes from interest on trust fund accounts. It's just one of the ways of funding the system.



COUNTRY REPORTS II

Presentations

Hong Kong (JP Lee)

Hong Kong (Jenius Ho)

Indonesia

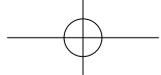
Japan

Country Report Discussion Moderator

Chih-Kuang Wu

Associate Professor, School of Law, Fi Jen Catholic University

Taiwan



Area Report: Hong Kong¹⁴



Legal Aid in Hong Kong
By Mr J P Lee, JP, OBE
Chairman of Legal Aid Services Council
Hong Kong

INTRODUCTION

History of Hong Kong

Under the Ching Dynasty in China, Hong Kong Island was ceded to Britain in 1841, followed by the cession of Kowloon Peninsula in 1860. By a convention signed in 1898, the New Territories was leased to Britain for 99 years. Since then Hong Kong was under British rule, adopting the common law system.

In 1984, the Chinese and British governments signed the Joint Declaration that China would resume sovereignty over Hong Kong with effect from 1 July 1997, and that its legal system and the rule of law would remain unchanged for 50 years. In 1990, The National People's Congress of China adopted the Basic Law which took effect on 1 July 1997. Article 8 of the Basic Law provides that "The laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law should be maintained, except for any that contravene this Law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region."

At as mid-2005, the estimated population of Hong Kong was about 6.9 million.

Publicly Funded Legal Aid

Before 1960s there was no legislation for legal aid. The only legal remedy for poor people lay in "pauper's petitions", whereby a judge would appoint a lawyer for a poor defendant. However, this recourse was available only for those charged with capital offences in criminal cases (extended to all Supreme Court trials in 1962), or for those with property worth less than US\$64 in civil cases. However, the uncertainty of receiving any fee left lawyers unmotivated, making it an unsatisfactory system.

In 1966 the Legal Aid Ordinance for civil proceedings was passed, and came into effect in January 1967, when a sub-department was created within the Judiciary. In 1970, the Legal Aid Department (LAD) was established within the Administration, which provided legal aid services according to the provisions of the Ordinance in civil cases and the Legal Aid in Criminal Cases Rules in criminal cases. As such, this part of legal aid is government - oriented as it is both funded and operated by the government.

The Duty Lawyer Service was first established in 1978 when the legal profession proposed to implement a pilot scheme in three Magistrates' Courts providing legal assistance to defendants charged with any one of six offences where there was no victim. This was subsequently extended to cover nine scheduled offences in 1981, and to all

¹⁴. Hong Kong Special Administrative Region, People's Republic of China



adult and juvenile Magistrates' Courts in 1983. With the enactment of the Bill of Rights Ordinance in 1991, the scheme expanded to offer representation to defendants in the Magistrates' Courts where the interest of justice required.

In response to demand for independence in legal aid, the Legal Aid Services Council (LASC) was established in 1996 under the Legal Aid Services Council Ordinance to supervise the provision of legal aid services by LAD and to advise the Chief Executive of the Hong Kong Special Administrative Region (HKSAR) on legal aid policy.

There are in addition other statutory bodies or administrative arrangements providing legal assistance in various ways. They are the Consumer Council, the Equal Opportunities Commission and Building Management Resource Centres of the Home Affairs Department.

Pro-bono services by the Legal Profession

The legal profession in Hong Kong consists of barristers and solicitors, and they provide pro-bono services to members of the public.

The Hong Kong Bar Association established the Free Legal Service Scheme in June 2000 to provide free legal aid service to needy litigants who could not afford the cost of litigation but for one reason or another would not qualify for legal aid. It is managed by a Management Committee chaired ex-officio by the Chairman of the Bar Association. The Advisory Board oversees generally the operation of the scheme to review and to formulate policy issues and advises the Management Committee. Barristers who volunteer to help are placed on a panel which comprises barristers with a range of experience and specialization, offering their services for 3 days or 20 hours each year (website of the Hong Kong Bar Association : <http://www.hkba.org/>).

The Law Society of Hong Kong organizes the Law Week each year. During that period, arrangement is made for members of the public to consult attending solicitors without payment on any issue they choose to ask. In addition, it provides legal advice through its Community Relations Committee which arranges speakers to schools, institutions, specific social groups and the general public on an ad-hoc basis (website of the Law Society of Hong Kong : <http://www.hklawsoc.org.hk/>).

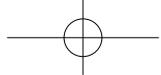
PUBLICLY-FUNDED SERVICES

Government Policy

The policy objective of the government is to ensure that no one with reasonable grounds is prevented from access to court for lack of means.

Policy on legal aid is the responsibility of the Chief Secretary for Administration who is assisted by the Director of Administration. The Director formulates and reviews policy and works closely with the Legal Aid Department, the Legal Aid Services Council and the Legislative Council (LegCo).

LegCo has an active role to play in legal aid policy because changes in policy involve amendment to legislation and appropriation of public funds. In addition, the powers and functions of LegCo are to raise questions on the work of the Administration and to debate any issues concerning public interest, including legal aid. It sets up a standing Panel on Administration of Justice and Legal Services which is responsible for monitoring and examining policy matters and draft legislative proposals relating to the administration of justice and legal services, including the effectiveness of their implementation by relevant officials and departments, consistent with maintaining the independence of the Judiciary and the rule of law.



Consumer Council

(website : http://www.consumer.org.hk/website/ws_en/)

The Consumer Council is a statutory body for protecting and promoting the interests of consumers of goods and services and purchasers of immovable property. In 1994, the Consumer Legal Action Fund with a government grant of US\$1.3 million was established to give greater consumer access to legal remedies and to provide legal assistance to consumers with meritorious cases. Funding of the Council in 2004-05 totals US\$8.3 million, excluding the Consumer Legal Action Fund.

Equal Opportunities Commission

(website : http://www.eoc.org.hk/CE/home_ce.htm)

The Equal Opportunities Commission (EOC) is an independent statutory body established in 1996 to oversee the implementation of the Sex Discrimination Ordinance, the Disability Discrimination Ordinance and the Family Status Discrimination Ordinance. Its functions include handling complaints, encouraging conciliation, providing assistance to aggrieved persons, and undertaking public education, research and training programmes to promote equal opportunities in the community. EOC aims to resolve disputes between parties through voluntary conciliation. If conciliation is not successful, a complainant may apply to EOC for legal assistance to file a civil suit in the District Court. Funding for the Commission in 2004-05 totals US\$9.9 million.

Building Management Resource Centres

In 1998 the Home Affairs Department established Building Management Resource Centres to enhance the quality of building management. The Centres provide information, services and advice to building owners, residents, owners' corporations, mutual aid committees and management bodies to assist them in improving the standard of management, safety and maintenance of their buildings. Members of the Law Society actively participate in the initiative by providing legal advice to members of the public.

Duty Lawyer Service (website : <http://www.dutylawyer.org.hk/>)

The Duty Lawyer Service is subvented by the government but independently administered by the legal profession. The Hong Kong Bar Association and the Law Society of Hong Kong each nominate four members to sit on the council of the Service, which manages and administers its operation, in addition to three invited lay members. The Service operates the Duty Lawyer Scheme which provides legal representation in criminal cases tried in the magistracies, and free legal advice to members of the public, both by volunteer lawyers at advice centres located in nine out of eighteen government District Offices, and through taped legal information accessible via telephone. Funding of the Service for 2004-05 is US\$12.4 million.

Legal Aid Department (LAD) (website : <http://www.info.gov.hk/lad/>)

General Operation

LAD provides legal representation in both civil and criminal cases heard in the District Court and above. Its scope is limited to litigation and does not cover non-litigious matters nor interviews at police stations prior to laying of criminal charges. Any person, regardless of whether or not he is a Hong Kong resident, may apply for legal aid. In general it will be granted if the applicant is able to satisfy the statutory criteria on financial eligibility (the means test) and has a reasonable claim or defense (the merits test). However, legal aid



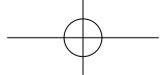
will be granted for criminal trials as long as the legal aid applicant passes the means test, irrespective of whether he pleads guilty or not guilty to the charges.

Any person who will have a case to be or being tried in a Hong Kong court may apply for legal aid. He may make the application himself or through another person. It is policy that an infant (an unmarried person below 18) can apply for legal aid, and only his own resources are considered in the means test. An applicant is required to supply documents relating to his case and documents showing his financial status (for example, bank book, salary slips, rent receipts, mortgage repayment schedule, salaries tax assessment, documentary proof of Comprehensive Social Security Assistance, etc.). No application fee is needed except for application under the Supplementary Legal Aid Scheme (US\$128 per application). For criminal cases, applicants who have been remanded in custody can apply through the Correctional Services Department. In most cases, an officer of LAD will visit the applicant in prison and assist with the application.

When a legal aid application is received, it will be considered by qualified in-house lawyers. Where legal aid is granted, DLA may act for the aided person through in-house lawyers or assign the case to lawyers in private practice. About 70% of the case are assigned to lawyers in private practice while in-house staff handle about 30% of cases. The respective proportion for civil cases is 66% and 34%, and for criminal cases 78% and 22%. The Director maintains separate panels of counsel and solicitors who are willing to investigate, report and give opinion upon applications for legal aid and to act for aided persons, as required under the Legal Aid Ordinance. Participation is entirely on a voluntary basis. As at 31 December 2004, 3,549 (2,140 civil and 1,409 criminal) solicitors and 1,237 (653 civil and 584 criminal) counsel were on the legal aid panel. Generally, assignment fees paid by LAD are more or less in line with market rates in respect of civil cases. For criminal cases, it is according to a scale of fee set out in Legal Aid in Criminal Cases Rules. Recently, both the Bar Association and the Law Society have made submissions to the Administration to request a comprehensive review of the Legal Aid in Criminal Cases Rules so that assigned lawyers may be remunerated according to work actually and reasonably done.

If a person has applied for and been refused legal aid repeatedly, and it appears to DLA that his conduct has amounted to an abuse, DLA may order that no consideration be given to future application by that person in respect of certain matter(s) for a period not longer than 3 years.

In consultation with the Legal Aid Services Council, LAD adopts a number of policies and procedures that are relevant to quality assurance, for example the application of experience and expertise criteria in the assignment of cases, the publication of guidelines and a system of evaluating assigned lawyers' performance. At the same time the Bar Association and the Law Society will be responsible for taking disciplinary action against their members for breaching the respective professional codes of conduct. In addition, the Office of the Ombudsman is an independent statutory authority to redress grievances arising from maladministration in the public sector through independent and impartial investigations to improve the standard of public administration. As LAD is a government department, Ombudsman has a role to contribute to the quality of legal aid services, e.g. redressing administrative flaws.



2005 International Forum on Legal Aid

DLA must discharge legal aid if there is no longer any merit in continuing the proceedings, or if it is unreasonable for the aided person to continue to receive legal aid. The Director can also discharge legal aid for one or more of the following reasons such as if

- the financial circumstances of the aided person change to the extent that his or her financial resources exceed the financial eligibility limit
- the aided person requires the proceedings to be conducted or continued unreasonably
- the aided person fails to give his counsel or solicitor the assistance necessary or desirable for the proper conduct of the case.

DLA can also revoke legal aid for one or more of the following reasons, such as if the aided person

- fails to make a full and true disclosure of his or her financial resources
- fails to provide information or attend an interview as required by the Director
- fails to report change in financial circumstances
- has made a false statement or representation in furnishing information.

Upon discharge of legal aid, the person receiving legal aid shall cease to enjoy the benefits and protection accorded to an aided person. Upon revocation of legal aid, the person receiving legal aid shall be treated as never having received legal aid and shall be liable for all costs incurred or payable by the Director on his behalf.

Before legal aid is discharged or revoked, the aided person may be given an opportunity to make representation. Upon discharge or revocation of legal aid, the aided person will be informed of the reasons and made aware of their right of appeal. An applicant who has been refused legal aid may appeal against the refusal or apply for legal aid from the court. Detailed arrangements are set out in paragraphs 46 to 49 below.

LAD participates in various publicity and community programmes to enhance public awareness and understanding of legal aid services. These includes visits to non-governmental organizations and District Councils, talks to local community groups. A series of pamphlets and flowcharts are published to increase the aided clients' understanding of their rights and responsibilities.

With a view to enhancing legal aid coverage and to assess the cost-effectiveness and implication of providing legal aid to mediation, a pilot scheme on legal aid for mediation in matrimonial cases was launched by LAD in March 2005. Legally aided persons in matrimonial cases will be advised by solicitors assigned by LAD of the availability of mediation, which can be initiated before or after the commencement of proceedings. If an aided person is willing to attempt mediation to resolve any issue in dispute with the other party, he will be referred to the Mediation Co-ordinator's Office of the Judiciary which will assess whether the case is suitable for mediation. If a case is found suitable for mediation, a mediator will be selected from a list of accredited mediators to assist the parties concerned and LAD will pay for the mediator's fees for both the legally aided person and the other party. The pilot scheme will last for one year, and is estimated to cover about 120 cases. An evaluation of the effectiveness of this pilot scheme will be conducted in 2007-08.



An organization chart of LAD is shown in Figure 1. The department comprises the following three main divisions

- a) Application and Processing Division – which is responsible for processing of civil legal aid applications and monitoring of assigned-out civil cases;
- b) Litigation Division – which is responsible for processing of criminal legal aid applications and conduct of in-house civil litigation; and
- c) Policy and Administration Division – which is responsible for providing support to the other two Divisions in respect of training and development, information technology, public relations, finance and general administration.

In 2004-05 departmental funding totals US\$97.9 million, and costs recovered and legal aid contribution total US\$25.7 million. LAD's funding for both the civil and criminal legal aid schemes of the Ordinary Legal Aid Scheme (OLAS) for the financial year 2003-04 is about US\$85 million out of which US\$29.9 million is departmental expenses, and US\$55.1 million is for legal aid costs including solicitors costs, counsel fees, doctors fees and experts fees and other disbursements (including filing fees and security for costs, but not adjudication fees which are not required under Hong Kong's legal system. Filing fees are payable by LAD and the aided person only if judgment is in favour of the aided person, while LAD is seldom required to furnish security for costs). Out of US\$55.1 million, US\$43.4 million is for civil cases and US\$11.7 million is for criminal cases.

LAD operates the following two schemes

- a) Ordinary Legal Aid Scheme (OLAS), applicable to both civil cases and criminal cases, and
- b) Supplementary Legal Aid Scheme (SLAS), a self-financing scheme only applicable to certain types of civil cases.

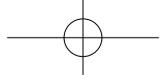
Statistics in respect of applications and certificates granted for 2003 and 2004 under OLAS and SLAS are as follows

		2003	2004
Civil cases under the Ordinary Legal Aid Scheme	no. of application	21,749	17,729
	no. of certificate	10,773	9,012
Criminal cases under the Ordinary Legal Aid Scheme	no. of application	4,411	4,477
	no. of certificate	2,803	3,033
Civil cases under the Supplementary Legal Aid Scheme	no. of application	106	120
	no. of certificate	79	85

Ordinary Legal Aid Scheme (OLAS)

OLAS makes provision for granting legal aid in civil or criminal actions to persons of limited means. The current financial eligibility limit for the means test is about US\$20,000. However, for cases involving the Hong Kong Bill of Rights Ordinance, the Director of Legal Aid (DLA) has discretion to waive it.

OLAS covers virtually all types of civil proceedings in the District Court, Court of First Instance, Court of Appeal and the Court of Final Appeal. The exceptions are prescribed in Schedule 2 Part II of the Legal Aid Ordinance, such as defamation, election petitions not relating to a breach of the Hong Kong Bill of Rights Ordinance, Small Claims Tribunal cases, proceedings under the Labour Tribunal Ordinance in the Labour Tribunal, money claims in derivatives of securities and currency futures, disputes between limited



companies or their shareholders regarding respective rights of the company and the shareholders and disputes over partnership.

In a successful case where money or property is recovered or preserved on behalf of the aided person, he is required to reimburse DLA the portion of the legal costs that are not recouped from the opposite party under the proceedings. In other words, he is liable to reimburse DLA his out-of-pocket expenses to the extent of the amount of damages or value of property recovered or preserved plus the amount of contribution paid or payable by the aided person.

In an unsuccessful case the aided person's cost liability is limited to the contribution paid or payable as determined by the means test irrespective of the costs of the proceedings.

Supplementary Legal Aid Scheme (SLAS)

With a loan of US\$128,200 from the Lotteries Fund, SLAS was first introduced in 1984. It is available for personal injury, professional and medical negligence cases, and is provided for persons whose financial resources exceeded the financial eligibility limit under OLAS but within the substantially higher financial eligibility limit of US\$55,500. Applicants are also subject to the means and merits tests.

In a successful case, the legally aided person is required to reimburse DLA the portion of the legal costs that are not covered by the opposite party plus a contribution from the damages awarded to the SLAS Fund. The percentage deduction is either 6% or 12% of the damages awarded depending upon whether the case was settled prior to delivery of a brief to counsel to attend trial. Such deduction or contribution is then ploughed back into the scheme to assist future litigants.

In an unsuccessful case the legally aided person's costs liability is limited to an application fee of US\$128 plus an interim contribution of US\$4,940 irrespective of the costs of the proceedings.

By the early 1990s, SLAS became self-financing. As of December 2004, the SLAS Fund had a healthy balance of about US\$12 million. Its sustainability relies heavily on two factors

- a) astute assessment of the merit of a case, and
- b) recoverability of awards from the opposite party,

as otherwise the fund might run the risk of being depleted. The former factor demands a greater probability of winning the case, and the latter would tend to attract cases where additional safeguards against non-recovery of damages are in place, e.g. Motor Insurances Bureau and Employees Compensation Assistance Fund. Further, the bulk of the cases funded by the scheme are personal injury cases which used to have a very high success rate with high compensation. The Legal Aid Services Council (LASC) has been exploring the possibility of broadening the scope of SLAS.



Its performance in 2003 and 2004 are as follows –

	2003	2004
number of successful litigations	156	123
total number of litigations	174	133
(a) / (b)	89.7%	92.5%
total registration fee, contribution and legal costs recovered by SLAS Fund	US\$4.00 million	US\$2.72 million
total legal costs incurred by SLAS Fund	US\$3.03 million	US\$2.03 million
(d) / (e)	132%	134%

With changing social and economic conditions, the financial eligibility limits for the two schemes have been adjusted in the past years in line with general consumer price movements, and to encompass a broader section of the population.

Judiciary

(website : <http://www.judiciary.gov.hk/en/index/index.htm>)

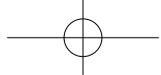
The Basic Law provides for the setting up of the Court of Final Appeal in Hong Kong, in contrast to the previous situation where the Privy Council in Britain would be the seat of final appeal. In order to draw on the expertise and experience of other common law jurisdictions, the Hong Kong Court of Final Appeal Ordinance provides that an appeal to the Court of Final Appeal shall be heard and determined by five judges, of which one may be from another common law jurisdiction.

The Judiciary has a role to play in hearing appeals against DLA's decision to refuse, discharge or revoke legal aid, and in granting legal aid.

In civil cases adjudicated in the District Court, Court of First Instance or the Court of Appeal, an applicant who has been refused legal aid or an aided person whose legal aid has been discharged or revoked and is aggrieved by DLA's decision can appeal to the Registrar of the High Court. The decision of the Registrar is final.

For criminal cases which are tried in the District Court, High Court or the Court of Appeal, appeal is not available in respect of DLA's refusal to grant legal aid on means or merits. In the interest of justice, legal representation will be provided by LAD to an accused for committal proceedings and for trials at the District Court and the Court of First Instance provided he passes the means test. This is irrespective of whether he pleads guilty or not guilty to the charge(s) or the nature of his defense. A convicted person may apply to DLA for legal aid to appeal against conviction and/or sentence, and the merits test is applicable. However, there is a statutory requirement to grant legal aid in cases involving a charge of murder, treason or piracy with violence regardless of the merits of the criminal appeal. If legal aid is refused on means in such cases, a judge may grant legal aid, and/or exemption from the means test and from payment of contribution, with or without an application from the accused. For refusal on merits in other criminal cases, a judge may grant legal aid to the accused provided he passes the means test with or without an application from the accused.

For refusal of legal aid in respect of an appeal to the Court of Final Appeal, the appellant can apply to a Committee of Review chaired by the Registrar of the High Court and comprising a barrister and a solicitor appointed by their respective professional bodies for review. This is available to all civil cases irrespective of whether legal aid is refused on



means or merits, but is available to criminal cases if legal aid is refused on merits only (see paragraphs 61 to 64).

The Resource Centre for Unrepresented Litigants provides assistance on procedural matters to unrepresented litigants who are parties to or about to commence civil proceedings in the High Court or the District Court except those relating to matrimonial, lands, employees' compensation and probate matters. It has its own website and provides facilities such as information on court procedures, taking of oaths and statutory declarations.

Legal Aid Services Council (LASC)

(website : <http://www.info.gov.hk/lasc/>)

In 1996 the Legal Aid Services Council (LASC) was established under the Legal Aid Services Council Ordinance to oversee the administration of legal aid services provided by LAD and to advise the Chief Executive of the Hong Kong Special Administrative Region (HKSAR) on legal aid policy. It seeks to enhance the independence of legal aid, and invites public participation.

The Council is chaired by a non-official and comprises eight non-official members with two barristers nominated by the Hong Kong Bar Association and two solicitors nominated by the Law Society of Hong Kong, and the remaining four being non-lawyer members. DLA is the ex-officio member, and all members are appointed by the Chief Executive, HKSAR. Its funding in 2004-05 totals US\$0.63 million, and this does not include the expenses for operating the scheme under Section 26A of the Legal Aid Ordinance (see paragraphs 61 to 64 below).

According to the Ordinance, LASC may

- a) formulate policies governing the provision of services by the Legal Aid Department and give advice on the policy direction of the Department;
- b) review the work of the Department from time to time and make such arrangements as are expedient and proper to ensure the efficient and economical discharge of the functions and provision of legal aid services by the Department;
- c) keep under review the services provided by the Department and the plans for development of the Department; and
- d) consider and advise on the estimates of expenditure of the Department.

However, the Council shall not have the power to direct LAD on staff matters and the handling of individual cases.

Since its establishment in 1996, the Council has systematically reviewed departmental policies and procedures, and studied issues relating to legal aid. These include the Legal Aid Policy Reviews 1997 and 2003, the operational policies and procedures of LAD such as case assignment to private lawyers, application processing procedures, procedures on appeals against LAD's refusal to grant legal aid and the pilot scheme to extend legal aid to cover mediation. LASC has reviewed overseas practices and studied the feasibility and desirability of the establishment of an independent legal aid authority.

To enhance independence of LAD's legal aid service, LASC decided that certain types of cases had to be assigned to lawyers in private practice. These are judicial reviews, cases involving the government or a public agency as a defendant party, or where an apparent challenge on human rights arises, or where an issue is raised about the Basic Law.



To enhance public participation, LASC set up three interest groups covering respectively three areas of work, namely scope of legal aid, processing of legal aid applications, and the assignment system and monitoring of assigned-out cases. Membership is open to legal aid panel lawyers, stakeholders and members of the public. The interest groups can make proposals on different aspects of legal aid for consideration by LASC. For example, the Interest Group on the Scope of Legal Aid is currently studying the possibility of providing legal aid to

- a) additional types of cases under SLAS according to the principle of recoverability; and
- b) flat owners to enforce the Building Management Ordinance and deed of mutual covenant on maintenance and repair of buildings;
- c) the parole scheme;
- d) unrepresented litigants where masters or judges refer the case to DLA to waive the financial eligibility limits.

The Council also established a Working Party on the Institution of Legal Aid to document the principles and rationale of legal aid from the social, economic and legal perspectives. A report is expected to be ready by 2006.

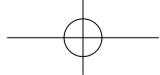
Council has made sustained efforts to enhance public awareness of legal aid, including publishing a quarterly newsletter, and meeting District Council members and non-government organizations on social issue, labour interests and human rights. Contact is maintained with the mass media.

During the 1997 Legal Aid Policy Review, the government accepted LASC's recommendation to revamp the biennial financial limits review cycle, so that general price movements were reviewed annually and other cost factors once every two years. This proposal was implemented in 2000 and has the effect of better maintaining the monetary value of the financial limits.

LASC's advice to the Administration in the Legal Aid Policy Reviews has also resulted in the adoption of the 35-percentile household expenditure in 2000 as the allowance deductible for legal aid applicants. Prior to that, Comprehensive Social Security Assistance rates were adopted as the allowance deductible. As a result of the revision, there has been significant increases in the absolute level of the deductible allowance ranging from some 60% to 140%, depending on the size of the household to which a particular applicant belongs. This is a substantial enhancement to Hong Kong's legal aid system in that a greater proportion of the population meets the financial eligibility for legal aid.

LASC proposed to the Director of Administration to consider amending the Legal Aid Services Council Ordinance (LASCO) firstly to enable Council to function fully as a body corporate within the meaning of the Companies Ordinance, secondly to enhance Council's role in overseeing the administration of legal aid services provided by LAD, and thirdly to strengthen the independent operation of Council. In June 2005, the LegCo approved the following amendments to give :

- a) power for Council to enter into contracts on its own, including leases,
- b) power for Council to appoint its own staff, and
- c) power for the Chief Executive of HKSAR to extend time for the submission of Council's annual report.



2005 International Forum on Legal Aid

One of Council's deliberations resulted in the introduction of a scheme in early 2002, by which financial assistance is provided to a legal aid applicant who passes the means test of LAD to obtain a certificate by counsel to seek a review of the refusal of legal aid for his appeal to the Court of Final Appeal. A legal aid appellant can appeal to a Committee of Review against DLA's decision to refuse legal aid in respect of an appeal to the Court of Final Appeal. Section 26A of the Legal Aid Ordinance (LAO) provides that the review shall be initiated by notice to the Registrar of the High Court accompanied by a certificate by counsel stating that the person aggrieved has a reasonable prospect of success in the CFA appeal and the grounds for that opinion. The Registrar of the High Court would convene a Review Committee to hear the appeal by the legal aid applicant (referred to as "the appellant").

There was a need to provide assistance to the appellant as the certificate requirement might deny an impecunious appellant's access to the Review Committee. The Council is responsible for running the assistance scheme to provide the means to obtain the counsel's certificate. If the counsel certificate states that the appellant has a reasonable chance of success, LAD will review its decision not to grant legal aid before the appeal is put to the Review Committee.

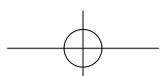
The cases handled by the scheme during the past two years are tabulated below

	2003/04	2004/05	Total
No. of applications	95	85	180
No. of applications approved	86	77	163
No. of certificates by counsel stating that there is reasonable prospect of success	10	14	24
No. of cases where legal aid was granted upon review by DLA	7	6	13
No. of cases where legal aid was granted upon Review Committee's directive	0	2	2

Expenditure in respect of the applications for 2004-05 is US\$0.26 million, and this is not charged to the budget of LASC.

LASC has a role to play in the introduction of mediation to legal aid. Following the recommendation for mediation in the Final Report of the Chief Justice's Working Party on Civil Justice Reform, Council studied the scope, approach and evaluation indicators for such a scheme, and provided its views to the Director of Administration who was considering implementing a pilot project for this purpose. LASC's main recommendations were that the project should be confined to matrimonial cases in the first instance and that mediation should be voluntary for the applicant. Most of LASC's recommendations were accepted, and LAD started a pilot scheme in March 2005. LASC will monitor the implementation of the scheme which will come up for review by 2007-08.

Since its establishment in 1996, LASC has been conscious of the need to keep legal aid services cost effective, to identify possible improvements in monitoring progress of legal aid cases, and improve the quality of legal aid services. To this end, LASC commissioned a study on practices in certain common law jurisdictions in early 2005.





- The study is in the nature of a literature review, with particular reference to
- a) the application of information technology to cost control and monitoring of case progress;
 - b) the prevalence of using prescribed hourly rates for services rendered by assigned lawyers;
 - c) the use of benchmarks on case load in assignment and monitoring in any type of legal aid work;
 - d) the legal or administrative sanction providing for legal aid panel listing;
 - e) the extent legal aid work is contracted, and the cost effectiveness, as well as the quality of service of the contracting system in contrast with the existing assignment system; and
 - f) methods to ensure that the quality of legal aid services is maintained at a level or standard such that legal aid applicants receive a service appropriate to their cases and is of high quality, timely, professional, independent and ethical.

The Council is considering the consultancy report.

FUTURE

Civil Justice Reform

In February 2000, the Chief Justice appointed a Working Party on Civil Justice Reform to review the civil rules and procedures of the High Court and to recommend changes thereto with a view to ensuring and improving access to justice at reasonable cost and speed. Having consulted the community through the publication of the Interim Report and Consultation Paper in November 2001, the Working published its Final Report in March 2004, recommending extensive changes to civil justice practices with impact on civil legal aid.

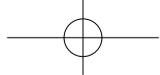
For example, the Working Party recommends that a system for multi-party litigation should in principle be introduced. Meanwhile, schemes implemented in comparable jurisdictions should be studied by a working group with a view to recommending a suitable model for Hong Kong.

Common Law versus Chinese Law

The Basic Law serves as the constitution for the HKSAR, but Hong Kong's common law system is preserved through Article 8 of the Basic Law.

Article 158 of the Basic Law provides that the power of interpretation of the Basic Law shall be vested in the Standing Committee of the National People's Congress (NPCSC). The NPCSC shall consult its Basic Law Committee of the HKSAR before giving an interpretation of the Basic Law. The HKSAR courts are, in turn, authorized to interpret all provisions in the Basic Law in adjudicating cases. However, the Court of Final Appeal must submit a judicial reference to the NPCSC for interpretation of the relevant Basic Law provisions if the three criteria prescribed by Article 158(3) are satisfied, and the courts shall follow such interpretation when applying the relevant provisions. The three criteria are

- a) the provision concerns affairs which are the responsibility of the Central People's Government or the relationship between the Central Authorities and the HKSAR ("an excluded provision");



- b) the court needs to interpret the provision and such interpretation will affect the judgment in the case; and
- c) the court's final judgment is not appealable.

In 1999 the Court of Final Appeal made a judgment on the right of abode of certain Chinese nationals born in China Mainland with parental link in Hong Kong. The Administration sought an interpretation of certain provisions of the Basic Law from the NPCSC, which consequently overturned the Court's decision. In 2004 in the face of demand for universal suffrage in the election of the Chief Executive, HKSAR in 2007, and the Legislative Council (LegCo) in 2008 as stated in the Basic Law, the NPCSC declared that the Basic Law should be interpreted such that there should be no drastic change to the electoral arrangements. In 2005 on the term of office of the Chief Executive succeeding Mr Tung Chee Hwa who resigned from the post before finishing his term until 2007, the Administration again sought an interpretation of the Basic Law from the NPCSC which interpreted the relevant provisions on 27 April 2005.

In a LegCo debate in May this year, the Secretary for Justice said that the NPCSC's power of interpretation extended to every provision in the Basic Law, and was not dependent on there being any request for interpretation made by courts.

The foregoing suggests the possible exercise of NPCSC's overriding power, and even in situations where the Court of Final Appeal does not refer the matter to the NPCSC for interpretation. It is anticipated that Hong Kong's common law system and China's law system will continue to interact in diverse fashions through the interpretation of the Basic Law.

Study by the Department of Justice on the Demand for and Supply of Legal and Related Services in Hong Kong

The Department has undertaken research to provide accurate information on the existing legal needs in the community, and how the established legal services including court services, are meeting those needs. This would greatly assist the government and other stakeholders to make informed future policy decisions on the provision of legal and related services.

A consultative committee comprising representatives from the legal services sector and other professional, academic and community bodies interested in the issue of access to justice was established under the chairmanship of the Solicitor General to assist the government in overseeing the research.

The government has engaged a consultant to conduct a research study in order to

- a) review any pre-existing socio-legal research which has been carried out in Hong Kong in relation to the supply of and demand for legal and related services;
- b) identify the extent of the demand for legal services in Hong Kong; to also identify any gaps in the current provision of legal services, including, but not limited to, both the kinds of substantive issues for which, as well as the geographical locations in which, legal services are unavailable or inadequate; and to also identify the causative factors and circumstances surrounding unrepresented litigants;
- c) provide useful information to facilitate more focused investment of resources in this area, including the provision of court services, legal aid, private practitioner services and pro-bono services, to better meet the real legal service needs of the community;



- d) provide useful information on the demand for and supply of law related services, such as those provided by, for example, the police and social workers;
 - e) provide useful information on what means are currently available to citizens (including the types of general legal information and advice) to assist them to resolve their disputes without resorting to the courts or otherwise taking legal action;
 - f) provide useful information on citizens' level of awareness and knowledge of their legal rights, as this will facilitate planning and development of public education campaigns and programmes for community legal service centres; and
 - g) provide useful information to assist with the promotion of the rule of law in Hong Kong.
- The study commenced in July 2004 and is expected to complete by June 2006.

Law Reform Commission's Study of Conditional Fee

Currently the legal profession is remunerated according to work actually undertaken. In some jurisdictions, lawyers undertaking civil litigation are allowed to charge a fee in addition to their standard fee if the outcome of the case is successful, and a reduced fee (or no fee at all) if the case is lost. This, known as "conditional fee", is not currently permitted by statute and within the common law framework in Hong Kong.

LASC first discussed conditional fees in 1999 and considered that conditional fee should not be introduced at that time and that the Council be consulted on any initiative relating to conditional fee arrangement.

The Law Society of Hong Kong is currently studying the issue of conditional fees.

The Law Reform Commission, an official body, is considering whether conditional fee arrangements would be feasible and should be permitted in Hong Kong for civil cases and, if so, to what extent (including for what types of cases and the features and limitations of any such arrangements). A sub-committee was formed in July 2003 to consider this subject. On 14 September 2005, the sub-committee released a consultation paper on conditional fees. The consultation period ends on 15 November.

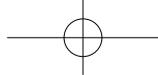
Future of an Independent Legal Aid Authority

According to the Legal Aid Services Council Ordinance, LASC is required to advise the Chief Executive, HKSAR on the feasibility and desirability of the establishment of an independent legal aid authority. LASC commissioned a consultancy study in October 1997 and submitted its recommendations to the Chief Executive of HKSAR in September 1998. In gist LASC recommended that

- a) in the long term, legal aid services should be as independent as possible;
- b) ultimately all forms of legal aid services should be delivered by one single institution; and
- c) to achieve these objectives, a phased approach is desirable.

Specifically, LASC recommended that -

- a) An independent statutory Legal Aid Authority (LAA) should be established to advise the government on legal aid policies and be accountable for the delivery of legal aid services currently under LAD.
- b) The operation of LAA should be financed from public revenue and current funding arrangements, with no ceiling on LAD's expenditure on legal services should continue.



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In 1999, the Administration indicated that it was unable to accept LASC's recommendation for the following reasons

a) *Funding Accountability*

To meet policy objective, funding for legal aid was non-cash limited, i.e. supplementary provision might be sought if the approved provision in the Estimates was inadequate to cover the legal aid costs arising from eligible legal aid applications. The Administration could not undertake to provide unlimited funding support for an entity fully separate from and independent of the government.

b) *Need for an Independent Authority*

LASC suggested that it was impossible to remove the perception that LAD, being a government department, might be susceptible to pressure from the government in performing its functions. The Administration noted that such perception was neither widely nor deeply held. Concern about the LAD's independence was confined essentially to certain types of cases that presented a particular challenge to the government. There were safeguards in the system to protect the independence of legal aid administration. Moreover, funding by the LAD of numerous cases against the government both before and after the reunification, bore ample testimony to the Administration's continued commitment to the independent administration of legal aid, free from political interference.

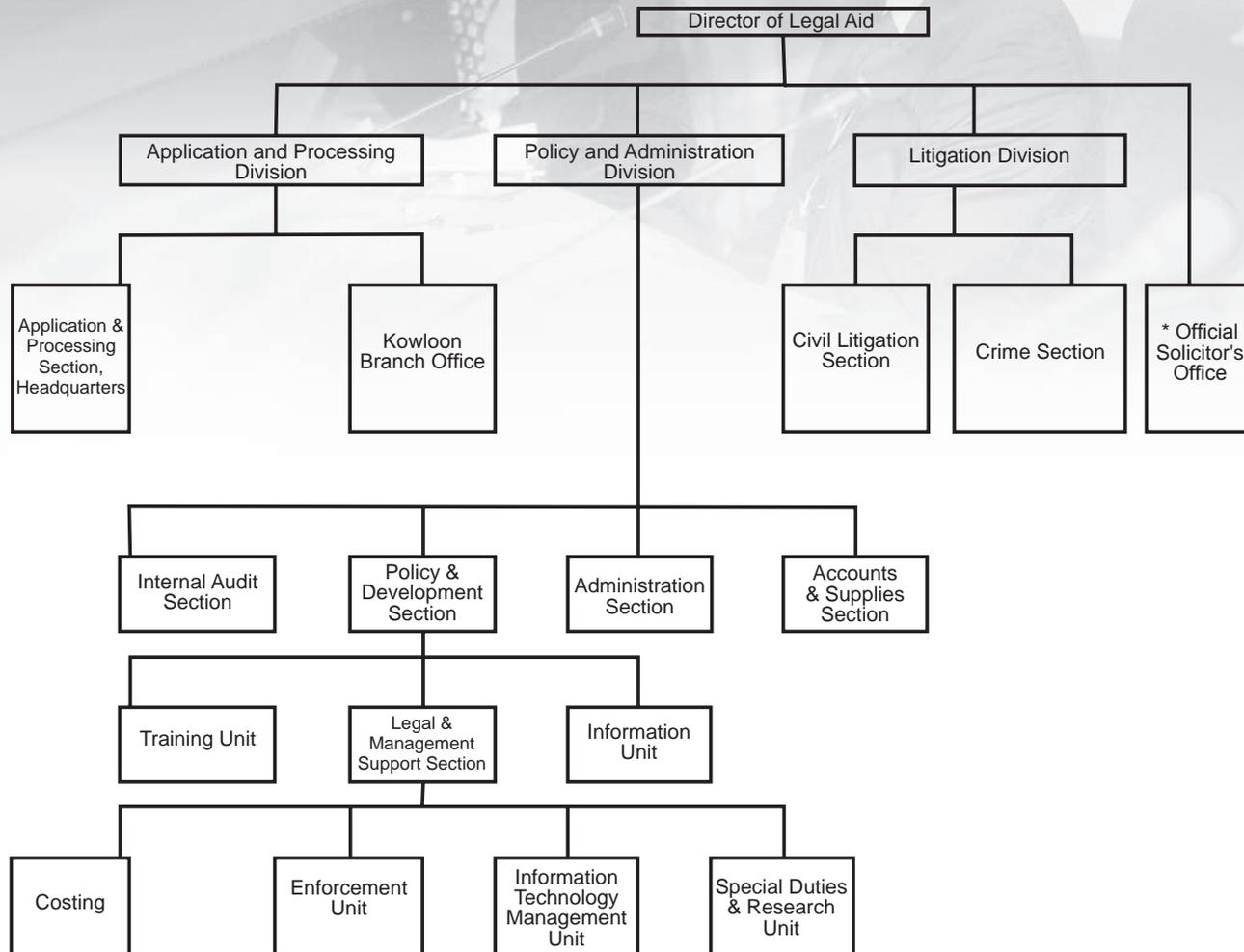
c) *Staff Morale and Service Delivery*

LASC's recommendations involved the disestablishment of the LAD, which was a difficult exercise at the best of times since it affected staff morale and the smooth operation of the department. It would be even more difficult in the prevailing climate with high unemployment and a civil service that was undergoing fairly fundamental reforms.



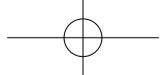
LASC will continue to review the need for an independent legal aid authority and re-activate the issue at an opportune time.

Figure 1. Organization Chart of LAD



Note

*The Official Solicitor's Office is a separate office under the Director of Legal Aid in his capacity as Official solicitor under the Official Solicitor Ordinance 1991.



Area Report: Hong Kong¹⁵



Remarks by Junius Ho
Chairman, Duty Lawyer Service Council

It gives me great pleasure to take part in your International Forum on Legal Aid and as Chairman of the Duty Lawyer Service of Hong Kong, I have much pleasure to speak to you about our Duty Lawyer Service which provides legal aid in all the lower courts of Hong Kong.

The Duty Lawyer Service is fully subvented by the Hong Kong SAR Government but independently managed and administered jointly by the Bar Association and Law Society through the Council of the Duty Lawyer Service. Its day to day operation is run by a full time lawyer employed as administrator.

The membership of the Council consists of four barristers nominated by the Bar Association and four solicitors nominated by the Law Society and three lay members. The Chairmanship of the Duty Lawyer Service Council is rotated annually between the nominees of the Bar Association and the Law Society. I have the honour to serve as the Chairman for the current year.

The Duty Lawyer Service was incorporated in 1993 and took over the operation of the former Law Society's Legal Advice and Duty Lawyer Schemes which was established in 1978.

We provide three main services the Duty lawyer Scheme, the Free Legal Advice Scheme and the Tel-Law Scheme.

The annual subvention of the Service in 1979/1980 was only \$2.647M with only 14 staff. The current annual subvention is \$91.951M with a total of 83 staff.

The Duty Lawyer Service is designed to serve members of the public where the volume is high but the legal cost per case is low which is quite different from the higher court legal aid cases which is provided and administered by the Legal Aid Department of the HKSAR Government.

The Duty Lawyer Scheme

Our Duty Lawyer Scheme provides legal representation by qualified lawyers in private practice to eligible defendants appearing in all Magistrates Courts, Juvenile Courts and Coroners Courts.

When we formally commenced operation in January 1979, we only provided members of the public (without means testing) with free legal advice service and limited legal representation in the magistrates' court at three of the then eight magistrates courts in Hong Kong and offered legal representation to defendants charged with one of the six

15. Hong Kong Special Administrative Region, People's Republic of China



scheduled offences. Three more offences were added into the schedule making a total of nine offences in 1981. The scheduled offences were all victimless offences i.e. defendants can be convicted on evidence from the Police against that of the defendants alone.

In 1983 the limited legal representation service was expanded to all adult and juvenile courts in Hong Kong.

All criminal cases in Hong Kong have to be brought to the Magistrates' Courts before they are transferred to the District Court and High Court. All such cases whether new or remanded would be dealt with in the Magistrates' Courts until such time as the Department of Justice applies for them to be transferred. However, 90% of them are disposed of in the Magistrates Courts without having to be transferred to the District Court or the Court of First Instance of the High Court.

Following the enactment of the Bill of Rights Ordinance in 1991, our representation service was expanded to defendants charged with most of the offences in magistrates' courts as contained in the Scheme's Standard List of Offence. At present, we cover some 295 statutory and common law offences and represent up to about 72% of the criminal charge cases in the magistrates' courts.

Defendants are subject to means testing set at HK\$116,880 gross annual income (about US\$15,000) as well as payment of handling charge of HK\$400 (about US\$51), but can be waived at the Administrator's discretion in cases of genuine hardship. There is no means testing required for cases in the first hearing as it is our aim to provide the widest possible coverage of service to defendants who are from the grass roots class with limited means.

The Legal Advice Scheme

Our second major service is the Free Legal Advice Scheme which was set up in 1978 to provide preliminary legal advice to members of the public who have genuine legal problems and to suggest any possible solution within the framework of the law.

The advice sessions are staffed by volunteer lawyers who perform this community service free of charge. They are either private practitioners or full time employed lawyers.

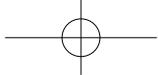
This free Legal Advice Scheme is not meant to take over or replace the service of a lawyer actually handling the matter. Any in depth advice for any given case is not within the intention of this Scheme and is also beyond the scope of the service. The Scheme will not offer representation to the clients. There is no means testing and the service is absolutely free of charge.

Initially, the Free Legal Advice Scheme had Advice Centre in two city District Offices of the HKSAR Government. At present, there are Advice Centres in all nine city District Offices of the HKSAR throughout the territory.

Most of the advice sought is civil in nature and can be quite complex even though the amount involved is relatively small. Advice can only be of a general nature, or by way of referral to the Legal Aid Department.

Tel-Law Scheme

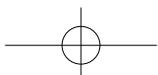
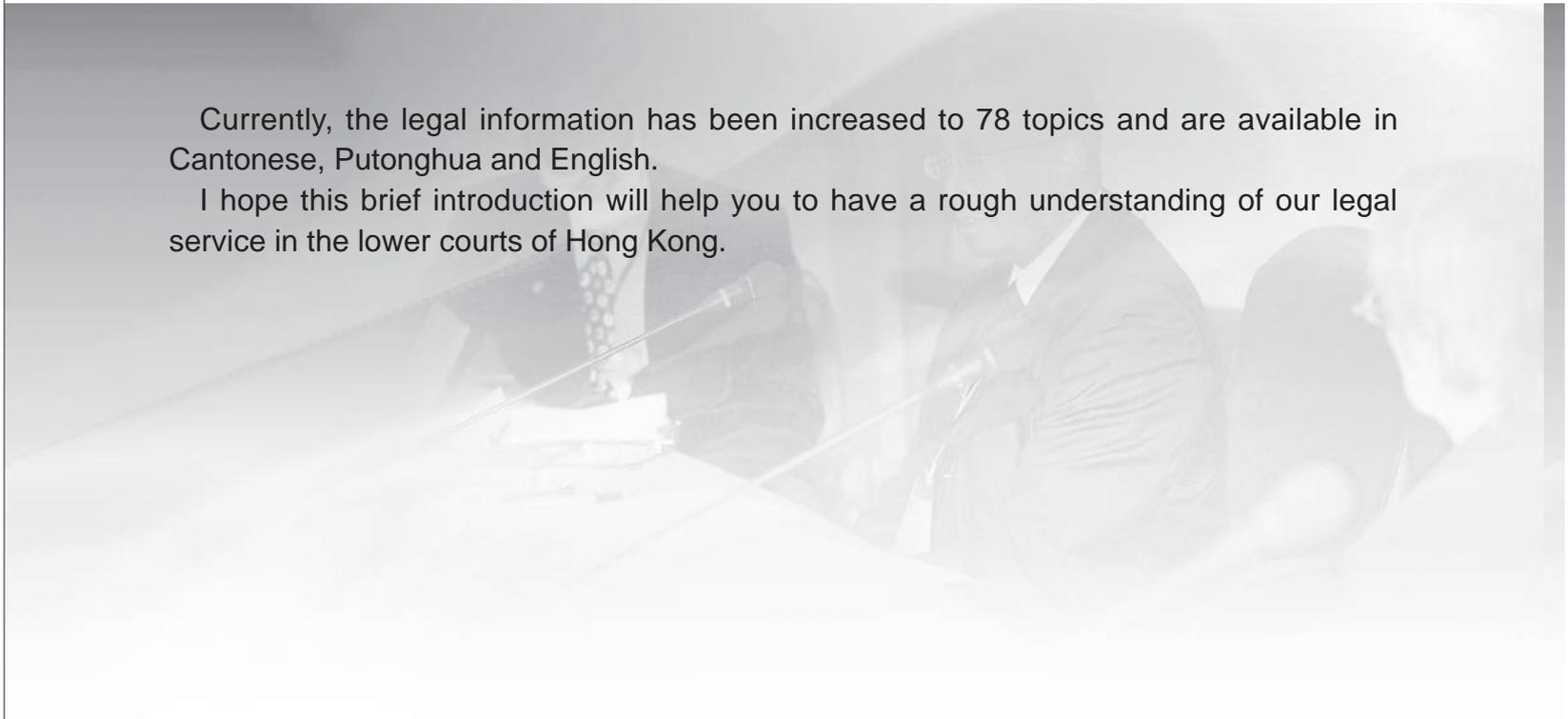
The third major service provided by us is the Tel-Law Scheme which came into operation in 1984. It provided members of the public with taped legal information through telephone. Initially the legal information included 26 topics and was bilingual (Cantonese and English). In 1995, the Tel-Law system was fully computerized and became a 24 hours automatic answering service.



2005 International Forum on Legal Aid

Currently, the legal information has been increased to 78 topics and are available in Cantonese, Putonghua and English.

I hope this brief introduction will help you to have a rough understanding of our legal service in the lower courts of Hong Kong.





Country Report: Indonesia



The Development Of Legal Aid In Indonesia
By Uli Parulian Sihombing
Director of The Jakarta Legal Aid Institute

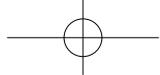
A brief history of legal aid in Indonesia

According to James Gordley and Mauro Cappelletti (1975), it had been recorded that legal aid originated from the generous actions by a group of ecclesiastical elite to their followers. The concept of legal aid was to build a relationship pattern between clients and their patron in which it was the patrons' interest to protect their clients. In other words, legal aid had been interpreted only as a charity but not as a right. In the next passage, legal aid is no longer a charitable action but becomes a right, and nowadays has even become a social movement. This condition is happening not only in developed countries but also in developing countries.

From a conceptual point of view, legal aid has been moving from individual legal aid to structural legal aid. The terminology of legal aid is also changing from "legal assistance" to "legal aid." The term "legal aid" has always been related to poor people who are unable to pay an advocate to defend them in court. Meanwhile, "legal assistance" is a public service by the advocates to poor and wealthy people. In the context of the Legal Aid Institute, the exact term is "legal aid" because the work of the Legal Aid Institute is always connected to the poor people who are poor in economy and poor in their understanding of the legal system.

During the Dutch colonization era, the term "legal aid" was already accepted in section 250 of HIR (Het Herziene Inlands Reglement). According to section 250 HIR, an advocate was requested to give legal aid if there was any requisition from a defendant who faced the death penalty. This section did not put any obligation on the advocate to give legal aid to them. Also, section 250 HIR is for those who have Dutch or European citizenship. This section was full of racial discrimination.

After the colonization era, some positive legal acts began to introduce the term and the meaning of "legal aid," such as Act number 8/1981, the criminal procedure act (Kitab Undang-Undang Hukum Acara Pidana / KUHP). It outlines legal aid in section 54 to section 56. Another act was act number 4/2004, which about The Main Authority of Judges (Pokok-Pokok Kekuasaan Kehakiman), especially in section 37 to section 39. In section 37 of act number 4/1999, it explained that everybody who connected with any legal case had a right to obtain legal aid. Meanwhile, section 38 of Act number 4/1999 explained that defendants in criminal cases had a right to contact and seek assistance from an advocate since their arrest. Act number 4/1999, especially in section 39, clarifies the advocate's obligation to provide legal aid in the respect of law and justice.



Basically, there is no difference between the legal aid service outlined in Act Number 18/1981 and Act Number 4/1999. Act Number 4/2004, however, focused on the role of the advocate to provide legal aid. Act number 4/2004 and KUHAP does not explain the role of the state in supporting the right to legal aid as well as act number 18/2003. The 1945 constitution stresses the right to legal aid: article 28 D section 1 the second amendment of the 1945 constitution states that everyone has the right to be recognized, protected, guaranteed and equal before the law. According to article 17 of Human Rights Act number 39/1999, everyone has the right to justice without any discrimination when filing a civil lawsuit or criminal report, and in civil, administrative and criminal cases. This must be in the manner of a fair, independent and free judiciary. Article 18 section 1 act number 39/1999 states that anyone under investigation for a criminal case has the right to legal aid from the moment he or she is under investigation till the final verdict. However, in Indonesia, we do not have a legal aid act that explains the role and responsibilities of the state, the role of civil society organizations in supporting legal aid, and the criteria for assessing who should benefit from legal aid. The poor, therefore, have difficulties in accessing justice.

In term of its concept, legal aid in Indonesia is emerging in relation to the social and political situations of the country. There are the following legal aid concepts: conventional or traditional legal aid, constitutional legal aid and structural legal aid. Conventional or traditional legal aid is legal service to poor individuals. The character of conventional or traditional legal aid is passive and takes a legal-formal approach. Passive means waiting for the client, and legal-formal means seeing the problem only in terms of its legal aspects. This conventional or traditional legal aid was criticized by the constitutional thinkers, thus giving birth to constitutional legal aid. Constitutional legal aid is based on the rule of law; it respects the supremacy of law and human rights. The rule of law is a support system of constitutional legal aid, as follows: 1. Making poor people aware of their legal rights; 2. Enforcing and developing human rights values as key elements of the rule of law.

Constitutional legal aid is more progressive than traditional or conventional legal aid. Constitutional legal aid is not only for poor people individually, but also for poor people collectively. In defending the poor's rights, constitutional legal aid does not merely employ a litigious approach but also uses a mediation and political approach. It should be understood that constitutional legal aid was born during a political situation in Indonesia in which a new regime came to rule. The new order regime forced the poor people into the worst situation of human rights in Indonesia.

The development of constitutional legal aid was criticized by social scientists. Social scientists saw that constitutional legal aid could not solve the main problem of the poor people in Indonesia. The constitutional legal aid concept was how the middle class in Indonesia viewed social problems. After the constitutional legal aid concept, the structural legal aid concept was born. The structural legal aid concept has a relation to structural poverty. Sometimes social scientists referred to structural poverty as "intentional poverty" because poor people were marginalized from participation in every state/government policy-making process, and legalized to be poor in economy and access to information.

The structural legal aid concept was born as consequence of our understanding of the law as a product of social processes that hold a specific relation to existing infrastructures of societies. Law is obviously a super-structure that is always changing and



is a result of interaction amongst existing infrastructures of societies. Both litigious and non-litigious legal aid activities, therefore, are connected to these programs and change these relations in social life into more equal relations. According to structural legal aid, we have to handle not only individual cases but also collective cases. The structural legal aid concept is more popular than others in Indonesia; many Non-Governmental Organizations (NGOs) employ the structural legal aid method of advocacy.

The Jakarta Legal Aid Institute (so-called LBH Jakarta)

LBH Jakarta is a NGO involved in providing legal aid to the poor, to those ignorant of legal matters and to the oppressed. The administration of legal aid is directed toward creating a more democratic government, a sound civil society and a legal system that enables better public access in order to influence and help determine public decisions related to the people's interest, particularly decisions concerning resource allocation. LBH Jakarta was brought into existence as a response to the present situation where the legal and justice system of the country seem unpromising and tarnished, and where the rights of innumerable individuals in society are overlooked, violated and treated arbitrarily.

LBH was established as a realization of the ideals of Mr. Adnan Buyung Nasution (a practicing lawyer), expressed during the 3rd Congress of The Indonesian Association Of Lawyers held in Jakarta in 1969. LBH Jakarta was set up by The Bar Association. LBH Jakarta has transformed into a highly respected human rights organization.

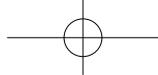
The statute of LBH Jakarta stipulates the organization's purpose and objectives as follows:

- Provide legal aid to the poor without any discrimination on grounds of race, sex, ethnicity, belief, religion, political, social or cultural background;
- Encourage, develop, and instill the understanding of the values of the rule of law, human dignity and human rights in general, as well enhance society's understanding of legal issues related to government officials and ordinary citizens, in order to ensure that individuals are aware of their rights and responsibilities as legal subjects;
- Develop and reform the legal system, including the monitoring of its implementation.

Apart from achieving LBH Jakarta's objectives, the organization is also committed to several mission statements:

- Cultivate and disseminate the values of a democratic legal state that upholds social justice for all layers of society in Indonesian on the Pancasila state ideology and the 1945 constitution;
- Incite and develop a sense of independence amongst the poor and destitute to empower them with the ability to formulate, express, fight and defend their individual rights, as well as conflicts between their rights and interests;
- Encourage the growth of supporting institutions that are committed to heightening the level of effectiveness in implementing the rights of the poor and unfortunate;
- Create a conducive atmosphere that allows and supports efforts aimed at rejuvenating a legal system that is more perceptive to the needs of the poor and destitute.

In running its daily activities, LBH Jakarta provides legal aid in the form of legal consultations, defense of selected cases, ensuring the completion of cases through court decisions, and even settlements outside of the court system.



2005 International Forum on Legal Aid

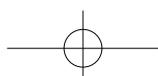
Efforts to serve the entire community residing in Jakarta and surrounding areas are severely limited due to the scarcity of funds, human resources, and other supporting facilities. Due to these limitations, compounded by the fact that LBH Jakarta's operational areas are urban areas, our work mainly emphasizes the industrialization process and the effect of economic globalization, as listed below:

- Cases on labor and informal sector;
- Cases on settlement areas and/or land disputes;
- Cases on the marginalization of poor urban residents;
- Cases on environmental pollution and destruction;
- Criminal cases and violation of civil and political rights;
- Other civil cases.

In order to prioritize the handling of cases, LBH Jakarta has set several criteria in accepting its clients:

- Earn a maximum income of Rp 500.000, - (five hundred thousand rupiahs or fifty dollars);
- Limited financial means in terms of personal ownership of assets as well as other family members' assets (movable or unmovable assets);
- Number of family members financed;
- The legal standing of the potential client, meaning that the case has substantial legal basis and is in a position that is believed to be unjust;
- The merit of the case involved, meaning that it has substantial value to justify its defense and has a structural dimension.

LBH Jakarta also has other programs, such as annual human rights education and paralegal education programs for the poor and for law school students in order to promote more awareness of human rights. Providing legal aid service to the poor is an ongoing process. We at LBH Jakarta always learn from experience and knowledge so that we can improve the legal aid service.





Country Report: Japan



Legal Aid in Japan in a Period of Reform -From Legal Aid to Comprehensive Legal Services-

Tetsuji Morita Keita Abe
Japan Legal Aid Association

Introduction

Legal aid in Japan has entered a period of wholesale reform. In 2004, the government enacted the Comprehensive Legal Services Law based on the fundamental principle of building a society in which people have access to legal services, irrespective of whether the cases are civil or criminal, all over the country. Based on the Law, the Japan Legal Services Center (referred to below as "JLSC"), which is a new organization providing comprehensive legal services including civil and criminal legal aid, information on laws, assistance to victims of crime and legal services in areas with few lawyers, will be established in April 2006. JLSC will begin offering services starting in October 2006.

This system will replace the former one in which the Japan Legal Aid Association (referred to below as "JLAA"), a private organization that provides legal services using government subsidies and human, logistical and financial support from the Japan Federation of Bar Associations (referred to below as "JFBA") and local bar associations. Under the new system, legal services will be provided at the responsibility and cost of the national government. The staff lawyer system will also be introduced, employing lawyers in certain areas.

With increasingly stronger government, the issue remains as to how to ensure the autonomy and independence of the JLSC, as well as of lawyers and their work. Another issue concerns the method of providing the services to meet the needs of regional areas.

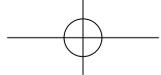
In this paper, we provide an overview of legal aid reform in Japan while looking at the history of the JLAA, which has provided legal aid for more than a half century, as well as the issues it currently faces.

1. Organization and History of the Japan Legal Aid Association

(1) Establishment of the Japan Legal Aid Association

In its earliest form, legal aid activities took the form of consultation activities provided by religious organizations and local governments after the end of the nineteenth century. However, these activities did not extend beyond charitable work carried out in limited areas, and no organized activities were performed before the mid-twentieth century.

JLAA was established in 1952 as a nonprofit, nongovernmental public-service corporation providing civil legal aid services. For criminal cases, a court-operated system was established under which a criminal defendant who was unable to appoint a defense



counsel after indictment, because of a lack of funds for example, would be assigned a court-appointed defense counsel.

JFBA took a leading role in establishing JLAA. Initially, JFBA did not request a government subsidy and instead contributed foundation funds itself, endeavoring to provide services using membership fees and donations. This approach reflected the difficulty of getting subsidies from a Japanese government that was itself at that time struggling. But it was also a reflection of JFBA's concern that, if a government subsidy were received, then the government could also become involved in the administration of JLAA.

(2) Provision of a government subsidy and advance payment system

JLAA suffered a financial crisis immediately after its establishment and in 1958 began accepting a government subsidy to cover its operating expenses (lawyer's fees and advance payment for expenses). The Minister of Justice set out guidelines that stipulated the purpose and conditions for use of the subsidy. The guidelines clearly stated that civil legal aid is in principle a system for the advance payment and reimbursement of lawyer's fees. Subsequently, with an increase in the subsidy, the Minister revised the guidelines to ensure the proper and comprehensive control of advance payments, and produced stricter requirements for exemptions from the payment of expenses and the administration of reimbursements. JLAA thereafter had to rely on reimbursements by the aid recipients to cover most of its operating expenses because the government subsidy only covered some of the expenses. It was necessary to ensure that reimbursements were received. In the Japanese civil legal aid system, services suffered from the inconsistency that the system was designed for low income groups yet recipients were required to pay back the entire amount of advance payments.

A rapid increase in the number of traffic accidents in Japan accompanying the advent of the motorized society became a major issue starting around 1960. In response, the government subsidy was increased by a factor of five in just one year, rising to 50 million yen in 1964. With this as a turning point, the number of legal aid cases increased and substantial legal aid was provided to the lawsuits in two areas associated with rapid economic growth: pollution and cases involving the side effects of drugs. Beginning in the 1970s, however, the spread of automobile casualty insurance brought a reduction in cases involving traffic accidents. As a result, the government subsidy was not increased for more than 20 years. Given inflation, that meant that the subsidy was effectively reduced. The results of legal aid remained unfavorable for a long period from 1970 to the 1980s.

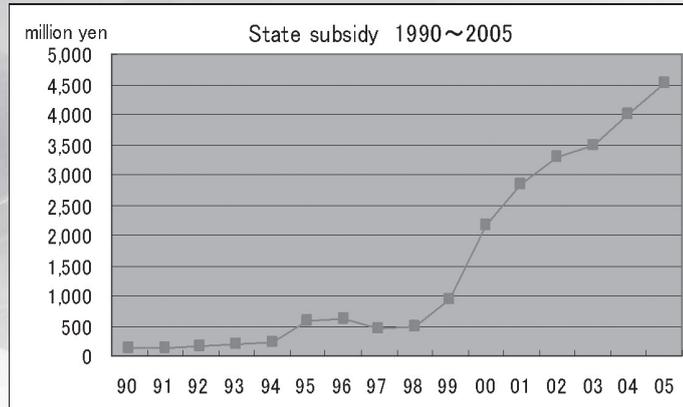
(3) Administration centered on bar associations

The government subsidy was simply designed to provide some of the funds needed for advance payments. As a result, JLAA continued to suffer from a chronic shortage of funds. For instance, the subsidy was not meant to cover administrative expenses, so JLAA had to rely entirely on the facilities, equipment and staff of local bar associations. In reality, its organization appeared to be the administrative organ of bar associations.

This set of circumstances motivated lawyers around the country to cooperate in performing the services of JLAA. In turn, JLAA was thus able to provide its services independently of the government, even while receiving a subsidy from the Ministry of



Justice. Still, if lawyers were deeply involved in the provision of legal aid, the fairness of the services was open to question. In addition, the number of lawyers in different parts of the country, the financial situation of bar associations and the approach to legal aid greatly impacted the provision and results of legal aid under this system. The nationwide system was somewhat lacking in uniformity.



(4) Introduction of the Civil Legal Aid Law and an increase in the government subsidy

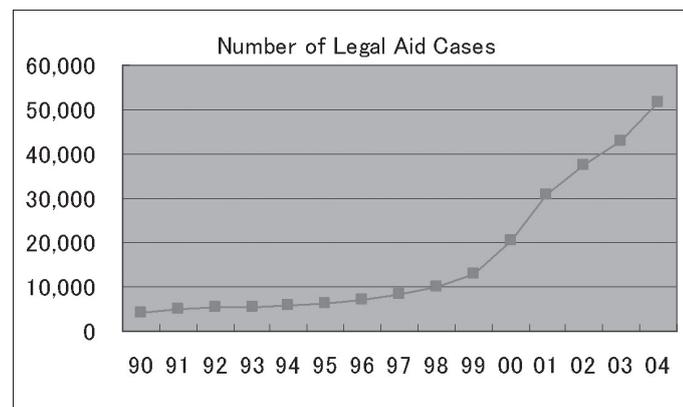
As already noted, JLAA began receiving a government subsidy in 1958. For more than a quarter of a century, however, the subsidy remained quite low, at significantly below 100 million yen.

At the end of the 1990s, while the Civil Legal Aid Law was being drafted, the government subsidy began to rise sharply. The primary factor was progress in discussions amongst the Ministry of Justice, JFBA and the JLAA that were aimed at deciding on the duties of the government and on a basic law to establish a civil legal aid system. As a result, the Civil Legal Aid Law was passed in 2000, and for the first time clearly imposed on the government a duty to expand legal aid. The Law provided a basis for the provision of the subsidy. The initial budget for 1999, the year preceding the enactment of the Law, allowed a subsidy of only about 600 million yen. But this more than tripled in 2000, when the Law was passed, to 2.1 billion yen.

The background of this the improvement in civil legal aid was the judicial system reform that had been initiated by the government. In fact, the government was striving to improve access to justice as one of the pillars of judicial reform. The budget for legal aid has continued to rise every year, despite the difficult fiscal circumstances facing the nation. Of course, one cause for this rapid rise lies in the fact that prior to the introduction of the Civil Legal Aid Law, the subsidy was clearly too low.

With an increase in the government subsidy, the number of legal aid cases also rose. After hovering between 2000 and 3000 cases per year for more than 20 years, the

number began to gradually rise in 1990, topping 10,000 cases in 1998, and increasing rapidly since then. The number posted a year-on-year increase of 21.9% in 2002 to 37,690 cases, rose 14.1% to 42,997 cases in 2003, and then 19.7% to 51,463 cases in 2004. The number for 2004 was 5.1 times as high as it was in fiscal year 1998.





(5) Performance of services other than those subsidized by the government

For many years, the legal aid service subsidized by the government was limited to attorneys for civil and family legal procedures and did not cover legal consultations, legal aid for criminal cases and legal aid for anything other than legal procedures. However, legal procedures as well as cases requiring legal solutions will change with the times.

Therefore, in response to a directive by the Supreme Court, in 1973 JLAA started providing aid services to juvenile protection cases. It also started free legal consultation services in 1974 with a subsidy from the Nippon Foundation.

In 1983, JLAA commenced legal aid for refugees at the request of the Office of the United Nations High Commissioner for Refugees (UNHCR). In 1990, at the request of the JFBA, it began providing defense aid to criminal suspects, which is aid for criminal cases prior to indictment. Recently, with a subsidy from the Nippon Foundation in 2002, JLAA has also started providing legal aid to victims of crime. JLAA has independently provided legal aid to foreigners without visa status, persons with intellectual disabilities, elderly persons and victims of child abuse in certain areas. JLAA provides these services with subsidies and

donations from related organizations and aid groups. However, there is no government subsidy for these services, and JLAA faces serious financial difficulties in providing them. Consequently, activities in these areas are far from being sufficient.

(6) Organization and financial situation

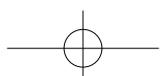
JLAA is designated as a public entity under the Civil Legal Aid Law by the Minister of Justice. According to the Law, the Ministry of Justice supervises JLAA by approving its budget, services plan and the appointment of officers, among other things, as the competent authority of JLAA.

The headquarters of JLAA is located in the bar association's building in Tokyo, and most of the branches of the JLAA are located in local bar association offices in places with a district court. There are 50 branches.

The officers of JLAA include a president, vice president, executive director, director, councilor and auditor. The board of directors consists of a president, vice president, executive director and directors. The president, two vice presidents and executive director are all lawyers. The board of directors consists of 13 lawyers and 14 non-lawyers who are persons recommended by the judicial scrivener association, the mediation association, the certified public accountant association, consumer groups and economic groups, scholars and other experts.

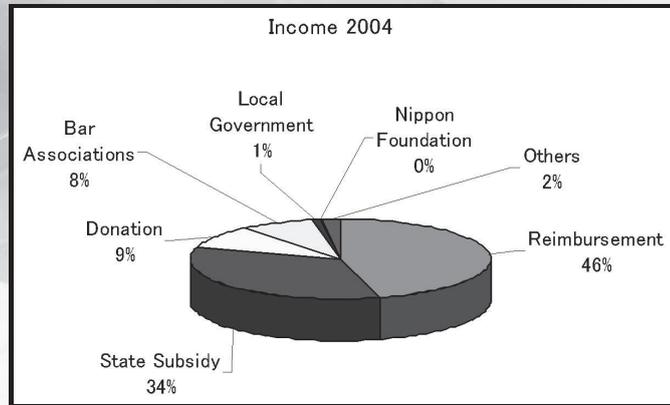
In 2004, JLAA generated an income of 11.77 billion yen. A breakdown shows that reimbursements from clients for legal aid accounted for 46% of the total income, the government subsidy accounted for 34%, donations 9% and the subsidy from JFBA and bar associations 8%.

Income 2004		
	amount	ratio
Reimbursement	5,389,480,688	45.8%
State Subsidy	3,990,899,000	33.9%
Donation	1,108,712,127	9.4%
Bar Associations	927,956,778	7.9%
Local Government	81,984,300	0.7%
Nippon Foundation	55,747,490	0.5%
Others	218,956,421	1.9%
Total	11,773,736,804	100.0%





Looking at expenditures, the amount outlaid on civil legal aid was higher than any other operating expense, followed by expenses in defense aid for criminal suspects and expenses involved in attending cases involving minors. Administrative expenses account for a relatively small percentage of total operating expenses, because the rent of offices and personnel expenses at local branches of JLAA are borne by bar associations, and are not recognized as administrative expenses of JLAA.



		Expenditure	ratio
state funded civil legal aid	Legal Aid	7,982,706,887	84.0%
	Legal Counseling	438,451,200	4.6%
	investigation	44,522,050	0.5%
	sub total	8,465,680,137	89.1%
non state funded services	Aid to criminal suspect	590,484,699	6.2%
	Aid to juveniles cases	335,105,280	3.5%
	others	106,883,103	1.1%
	sub total	1,032,473,082	10.9%
total		9,498,153,219	100.0%

	expenditure	ratio
operative expense	9,498,153,219	85.1%
administrative expense	1,542,809,476	13.8%
others	124,557,958	1.1%
total	11,165,520,653	100.0%

2. Legal Aid in Japan Today

(1) Civil Legal Aid

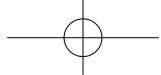
(i) Applied cases and groups

Civil legal aid services are provided for civil, family and administrative cases and legal procedures for lawsuits and the like. Civil legal aid may be provided for mediation in cases that are expected to be solved without going before the courts. It may also be provided to cases in which the other party is the national government or a local government. However, civil legal aid may not be provided for the assistance of a lawyer in administrative procedures for the receipt of social benefits, applications for entry into a public house, work-related accidents, applications for recognition as a refugee, or for applications for treatment or discharge from a hospital for mentally disabled persons. Civil legal aid may also not be provided to assist foreigners without lawful visa status.

Consequently, civil legal aid services in Japan consist of traditional court-oriented services: namely, aid for legal consultation, the preparation of documents to be submitted to a court and representation in a court with respect to the above cases.

Looking at the requirements for receiving legal aid, the system is designed to provide aid to people in the lowest 20% income bracket. The criteria for financial eligibility are based on the number of family members living together and the net income of an applicant and his or her spouse.

In addition to this means test, consideration is also given to the likelihood that the provision of legal aid would result in a beneficial outcome, such as success or



favorable settlement. This also constitutes a requirement for receiving civil legal aid. Whether or not civil legal aid should be provided is decided by a screening committee consisting of two or more people. The committee is established at each branch.

(ii) Civil legal aid types and methods

The judicare system under which individual cases are passed to ordinary practicing lawyers is used as the method of providing legal aid. A lawyer or judicial scrivener may accept aid cases. There is no system under which the JLAA approves that a person may accept cases, nor are there any certain requirements. A list of lawyers and judicial scriveners who can accept cases is submitted by bar associations and judicial scrivener associations.

An application for legal aid may be submitted to 50 branches around the country or the offices of lawyers and judicial scriveners who are registered as cooperating in applications for legal consultation with JLAA. The registered lawyers and judicial scriveners include 6249 lawyers, or about 30% of the total 21,205 lawyers in Japan, and 3913 judicial scriveners, or about 46% of the 8467 judicial scriveners approved as having the power of attorney at summary courts by the Minister of Justice. In fact, 6751 lawyers, or 31.8% of all lawyers in Japan, handled legal aid cases in 2004. The average number of legal aid cases handled by a lawyer was 7.1.

Whenever an application is submitted, an applicant's financial resources will be checked quickly, and a legal consultation of up to 30 minutes will be given free of charge. The lawyer or judicial scrivener involved will receive 5250 yen per case from JLAA after notifying via fax its branch of the provision of legal consultation.

Based on the initial legal consultation, a case that requires aid by a lawyer or a judicial scrivener will be sent to the screening committee of a branch. The screening committee will consider the financial resources and the prospect of success of the applicant, and decide whether or not aid should be provided, the method of aid and the funds to be spent. When it comes to the amount of expenditure, a base amount per case is decided according to a certain procedure, the classification of the case and the amount involved in any financial claim. The base amount is set at a level that is far below the amounts required by privately appointed lawyers.

(iii) Cost borne by the aid recipient

In principle, legal aid in Japan denotes the advance payment of lawyer's fees or, in other words, an interest-free legal loan. It is a unique system. If a welfare recipient, an elderly person or an ill person does not obtain any economic benefit as a result of a case, then that person can be exempt from having to pay reimbursement, although the exemption is applied in very limited cases.

The base amount for advance payment is about 150,000 yen per case on average. A person receiving aid is required to pay reimbursement of 5000 yen to 10,000 yen every month beginning in the month after the decision to grant aid was made. There are cases in which reimbursement may be delayed while a case is pending, depending on the economic circumstances.

(iv) Results of aid and details of those receiving aid

Personal bankruptcies account for about two-thirds of instances of aid involving an attorney acting on behalf of the aid recipient in court. This is followed by family cases,



accounting for 14% of cases, and monetary cases, accounting for 6%.

Given the prolonged period of recession in Japan, it has been pointed out that more than two million people face debt problems. The number of cases of personal bankruptcy being heard before district courts has consistently topped 200,000 annually. A bankrupt person may apply for legal proceedings for personal bankruptcy on his or her own. However, there are many cases requiring the use of a lawyer to make a petition to a court, because (i) there are no other public relief procedures, (ii) only a lawyer can prevent a creditor from making harsh demands, (iii) there is a possibility that the total amount of debt will increase sharply in a short period because of very high interest rates, and (iv) it is difficult for a bankrupt person on his or her own to determine the total amount of borrowings. In fact, at least 97% of the petitions to the Tokyo District Court were made through attorneys. Cases involving the assistance of the JLAA indicate that many people were forced to borrow money because of divorce, unemployment, sickness and disability. Many need help to rebuild their lives.

(2) Services other than those subsidized by the government

(i) Defense aid for criminal suspects

Japan employs a system in which, when a criminal defendant is unable to appoint a defense counsel in the stage of public trial after indictment, the court appoints defense counsel. However, there is no system under which aid is provided for defense activities in the stage of interrogation, prior to indictment. This interrogation stage can last as long as 23 days. JLAA introduced in 1990 services to meet the request by JFBA to provide a subsidy for the cost of a defense counsel for suspects arrested by the police. This service is financed by a fund established with contributions from a JFBA special membership fee of about 50,000 yen received from each lawyer in Japan, as well as donations to JLAA and other sources of funding.

As a result, the caseload has continuously increased, and aid was provided to 7043 cases in 2004. Under the Comprehensive Legal Services Law, beginning in 2006 court-appointed defense counsel will be assigned to cases that could result in the death penalty, indefinite-term imprisonment or imprisonment of one year or more.

(ii) Aid for attendance to juvenile cases

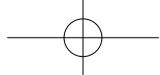
This service is to provide aid to enable a lawyer to attend to a juvenile facing family court for an alleged crime. As in aid for criminal cases, JFBA funds are used for this service.

(iii) Legal aid for victims of crime

Legal aid is provided for the victims of crime. The details of the aid include the provision of legal consultation, criminal complaint and criminal procedures and aid for negotiations for compromise. This was started in 2001 as a service subsidized by the Nippon Foundation.

(iv) Legal aid for refugees

Legal aid for refugees began in 1983 when Japan ratified the Convention Relating to the Status of Refugee. This service provides a lawyer's aid to people applying for recognition as refugees and is subsidized by the Office of United Nations High Commissioner for Refugees (UNHCR).



Aid was provided in 36 cases in 2004. The aid included legal consultations at an immigration bureau, legal assistance in filing an application for recognition as a refugee and assistance in legal action.

(v) Aid for the acquisition of Japanese nationality by Japanese left behind in China and Sakhalin during the closing days of World War II

The purpose of this service is to provide aid to Japanese left behind in China during the closing days of World War II. This service enables them to enter the family register so they may restart their lives after their return to Japan. It was started with a subsidy from the Nippon Foundation and since 1995 has been partly subsidized by the Ministry of Health, Labor and Welfare.

3.Challenges of Legal Aid under the Comprehensive Legal Services Law

(1) Introduction of the Comprehensive Legal Services Law

The Comprehensive Legal Services Law was passed in May 2004. To perform the services as provided in the Law, JLSC, a non-profit, nongovernmental and special corporation, will be established in April 2006.

The purpose of the Law, as provided in Article 1, is to make it easy to use the courts and systems to resolve legal disputes and to make it easier to receive the services of lawyers, judicial scriveners and other legal specialists and experts. Article 2 of the Law stipulates that the basic principle in provision of comprehensive legal services and the establishment of systems for comprehensive legal services is to build a society in which the information and services needed to resolve legal disputes under laws is available nationwide for both civil and criminal cases.

The president and auditors of the JLSC will be appointed by the Minister of Justice. The president will appoint four directors. JLSC will open local offices in 50 new locations around the country with district courts, and will start to provide services such as information on laws, civil legal aid services, the appointment of a court-appointed defense counsel for suspects and defendants, legal services in areas with few lawyers, and information to victims of crime. When performing the services, JLSC will introduce the staff lawyer system for certain areas instead of the past *judicare* system that assigned cases to ordinary practicing lawyers individually.

Civil legal aid will be provided by JLSC starting in October 2006 and consequently the JLAA is scheduled to be dissolved after a certain time.

The Comprehensive Legal Services Law is groundbreaking in that it provides for comprehensive legal services irrespective of whether the case is civil and criminal, and clarifies the government's duties in the performance of the services. Specific matters about the organization and performance of the services were still being discussed amongst the Ministry of Justice, JFBA and JLAA as of August 2005, and the details have yet to be decided.

(2) Problems with the civil legal aid services

Regarding the improvement of civil legal aid, the plan for systemic judicial reform – which was adopted by the Cabinet in 2002 and became the backdrop of the Comprehensive Legal Services Law – provides that “The civil legal aid system shall be further improved after examining comprehensively and systematically the scope of eligible cases and persons, how costs should be borne by users, and the appropriate form for the main body



of administration, as well as the measures that need to be implemented by the deadline for the establishment of the headquarters” (Ministry of Justice headquarters).

Here, problems with not only the civil legal aid system but also with the provision of comprehensive legal services by JLSC are summarized. However, although the Comprehensive Legal Services Law replaced the civil legal aid framework of the 2000 Civil Legal Aid Law, no changes or improvements were made with the exception that the budget was increased. We can point to the following two concerns with civil legal aid services.

(i) Costs borne by clients

The first point concerns the issue of the cost taken on by clients. The Japanese legal aid system is simply a system under which eligibility is limited to low-income earners who are required to pay back the entire amount of aid received, effectively making the aid an interest-free loan. People without an income who are considering divorce because of domestic violence and people who are forced to file for personal bankruptcy because of illness or unemployment may be exempt from reimbursement. However, if they know they have to bear a total cost of advance payment of 150,000 yen to 200,000 yen, then they would hesitate to use the legal aid service.

Many countries in the West provide legal aid to middle-income earners, and have introduced an ability-to-pay system. In Japan, during the time that many cases were traffic or injury claims that were likely to result in monetary compensation, the inconsistency of the advance payment and reimbursement system was unlikely to become a major issue. However, in recent years, with the rapid increase in the number of divorces and bankruptcies in which no monetary payment is received, it is unlikely that clients without any income at the time of application for aid can pay reimbursement because it is expected that they will continue to have no income after the case is resolved. Thus it is necessary to revise the practice of requiring reimbursement of the whole amount in principle.

(ii) Eligibility

The second point concerns the issue of restrictions on the people and the cases eligible for legal aid. It is necessary to be flexible in expanding the scope of eligibility for legal aid in order to address the varying problems that arise with the changes in the times. Civil legal aid in its current form can normally be provided only for legal procedures and, if specially required, for cases involving mediation. However, the provision of legal information as well as legal aid for mediation should become the object of civil legal aid in the future. In the event of administrative cases, legal aid is not provided for administrative procedures such as the administrative appeals and filings that are required before bringing a lawsuit. However, legal aid should be provided to administrative cases in which an attorney is required before a dispute.

The scope of eligibility for legal aid is currently limited to people belonging to the lowest 20% income bracket, but should be expanded to include middle-income earners. Lawyer's fees are very substantial for the general public and may prevent middle-income earners from accessing the courts. Under the current system, in serious cases such as non-payment of wages, work-related accidents, and divorce requiring legal relief, legal aid cannot be provided to foreigners who have overstayed their visa. However, there are



many cases that do require relief from a humanitarian point of view. The imposition of restrictions only based on whether visa status is held or not needs to be reconsidered.

A further problem with legal aid is how to protect the interests of not only the economically weak but also the socially disadvantaged, such as elderly people, mentally disabled people, victims of crime and victims of domestic violence, child abuse and human trafficking.

The JLAA has independently dealt with cases not subsidized by the government by raising its own funds. However, the Comprehensive Legal Services Law does not provide for these services and therefore there is a possibility that they will not be available under JLSC. JFBA is currently studying a scheme under which JLSC will use funds provided by aid groups to provide legal aid on an outsourcing basis to cases not subsidized by the government but which JLAA has handled in the past. In the future, it will be necessary to develop a public system of legal services that respond to diverse legal needs.

4. Issues with the Organization and Administration of JLSC

An organization that makes it possible to identify regional needs and provide flexible services is needed from the viewpoint of users of those services. The legal services planned include not only criminal defense activities that may require confrontation with the state, but also civil cases confronting the measures of administrative agencies. JLSC, in order to be trusted by both the public and the service providers, needs to become a fair, neutral and transparent organization independent of the national government and of service providers, and needs to secure a high level of autonomy and independence in its activities. In addition, a system that fully reflects the opinions of service providers and related organizations is needed in order to effectively provide legal aid in each area.

JLAA has provided services for more than a half century thanks to the extensive support and cooperation from practicing lawyers around the country. It should be noted, however, that the cooperation of lawyers in the performance of services was obtained in the past because the lawyers considered it a part of the activities of their bar associations. A significant number have expressed concern about these latest proposed reforms because the establishment of JLSC under the control of the government may mean that the organization and defense activities will lose independence. JLSC will employ staff lawyers for some services. Yet there will be substantial difficulties in obtaining even greater cooperation from practicing lawyers to provide legal services for civil and criminal cases, the number of which are expected to rise in the future.

JLAA will transfer its civil legal aid to JLSC in October 2006, and is then scheduled to be dissolved in 2007. JLAA, although it is to be dissolved as an organization, continues its commitment to improving legal aid in Japan by transferring to the JLSC its philosophy on improving access to justice, and offering the experience and expertise it has accumulated in the course of providing legal aid for more than half a century.



Country Report Discussion II

Chi-Kuang Wu (Fu Jen Catholic University, Taiwan):

This second session of country reports is like an "Asia forum." All the speakers are from Asian countries and share many similarities: two speakers are from the Hong Kong Special Administrative Region, one is from Indonesia, and one is from Japan. We can see that in Hong Kong and Japan, the state is the provider of legal aid. On the other hand, Indonesia relies on the efforts of the NGO sector, which is similar to the situation that Taiwan was in, just a few years ago. Earlier I encouraged our friend from Indonesia to persist in their good work, as I believe that with more experience, their future development looks promising. Are there any questions from the floor?

Joseph Lin (Legal Aid Foundation, Taiwan):

I have a question for the speaker from Japan. Your country passed the Comprehensive Legal Services Law in 2004 and will soon establish a "Japan Legal Services Center." How will you ensure that this organization funded by the government will be able to maintain its independence and not become bureaucratic?

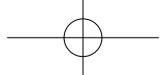
My next question is for Chairman Lee from Hong Kong's Legal Aid Services Council. I understand that Hong Kong began a family law mediation project this year around March or April. Could you share with us the progress of this project?

Jark Pui Lee (Legal Aid Services Council, Hong Kong):

The mediation scheme started in March. It is a trial invented as an experiment to test the responses. It is confined mainly to matrimonial cases, as more than 30 percent of the legal aid cases are related to matrimonial issues. If these issues could be settled out of court without reference to the Legal Aid Department's litigation machinery, then the cost saving would be obvious. It is also proposed by people who support mediation that maybe the conclusion or settlement by mediation can be more long-lasting than a court settlement. This is the review of the proponents.

Under the scheme, a native person can apply for legal aid as usual to the Legal Aid Department, and he/she will be advised that he can choose matrimonial mediation or proceed with the normal litigation channel. If he/she chooses mediation, and if the other side to the dispute also agrees to mediation, then the matter would be referred to the Mediation Coordinator's office in the Judiciary to assess whether the case is suitable for mediation. If it is considered to be appropriate, an accredited mediator would be provided to deal with the matter. The pilot scheme will last for one year, and is estimated to cover 120 cases. An evaluation will probably take place by 2007. By that time, we will be able to know whether or not people would welcome mediation as a means of resolving matrimonial disputes.

As far as I know, there have not been too many applicants for mediation since the inception of the pilot scheme. Maybe it is not too widely known. Or maybe, as it has been suggested by some that when it comes to matters relating to emotions, that is when it involves children, there is no point to mediate. Some even suggest that people would normally talk to each other but when they come to the Legal Aid Department, they don't want to talk any further. So there are diverse views on this issue.



Tetsuji Morita (Japan Legal Aid Association, Japan):

The question about legal aid's independence from the government is the most difficult question to answer for me now, because the legal aid system in Japan is in a period of reform. Originally legal aid depended on the Bar Association, as lawyers are very afraid that the government might interfere with the independence of the Bar or the activity of the lawyers. When the government gives money to an organization, it always wants to keep the organisation under control, for example through personnel or some kind of law or legal restrictions. This is very troublesome for lawyers, as we need liberty from the government, and it is one of the most important points for lawyers. The Japan Legal Aid Association has been very neutral from the government. But now that we have established the new law, as far as I understand, the organization is partly transferred to the government. So the question is very delicate, even for me, now in the middle of a period of changes. I'm sure that all lawyers in Japan are struggling with this issue and are trying to keep the independence from the government. But at this point I cannot explain further than this.

Dunstan Mlambo (Legal Aid Board, South Africa):

I have two questions for our Hong Kong colleagues. The first one relates to the Supplementary Legal Aid Scheme, which is said to be self-financing. I would like know how you raise the funds, and whether it is a sustainable system.

I'm intrigued by the fact that the legal aid scheme in Hong Kong is largely government funded but run by the profession. My second question is whether the fact that 70 percent of the work is assigned to private practitioners while 30 percent of the work is done by salaried lawyers, has ever created tension between members of the profession and people who run the scheme?

Lee:

On the Supplementary Legal Aid Scheme: the Scheme was introduced in 1984, and we started with a loan of about 128,000 US dollars from the lottery fund. The Scheme is for applicants from the middle or average class. The way it operates is that if the legal aid case is won, the plaintiff has to share damages awarded with the Scheme. As time goes by, the fund accumulated, and by now we have about 17 million Hong Kong dollars, which is equivalent to nearly 2 million US dollars.

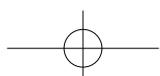
I think the first reason why the Scheme has been successful is the prudent way that the Legal Aid Department has been managing the Scheme. It tries to make sure that the cases it handles have a high probability of success. Thus the assessment of the merits of the case has become very stringent, I would think. Secondly, the Department also looks at whether it could get the damages back even if it wins the cases. As a result, the cases it handled very often tended to be situations in which the other party has been insured, and the insurance company pays back the damages. Thirdly, many of the cases relate to personal injuries, and according to experience, it looks as though the courts look at these cases quite seriously so the plaintiff would normally have a good chance of getting compensation. I would think that the reason why it is viable is because, firstly, we have a very rigid assessment of the probability of success; and secondly, you believe that there is a high probability of recovering damages. In a sense, by having these two parameters, the scope of service to the subject, so to speak, has to be narrowed.

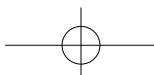
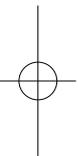
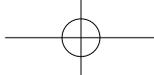


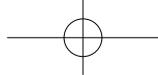
On the question of the share of work between staff lawyers in the Legal Aid Department and by the profession: in Hong Kong, any practicing solicitor or barrister may join the legal aid lawyer's panel, and he will be entitled to perform legal aid work provided by the Legal Aid Department. Administratively, the Department does set certain standards for lawyers, for example, it expects lawyers to have 3 years of experience in the relevant field before he may be considered to be assigned a job. I think that the profession is anxious to take on legal aid cases as a means of broadening the scope of their activities. If I remember right, the general situation is that about 70 percent of the legal aid cases are assigned to lawyers in private practice with in-house staff handling about 30 percent. The respective proportion for civil cases is 66 percent and 34 percent, for criminal cases it is 78 percent and 22 percent. Unlike certain territories where the government seems to be trying to do more, we tend to prefer the private sector to do more. In Hong Kong, we try to be to have a small government, and the government's interest is to keep the department from growing unnecessarily.

The other thing is of course, since the Legal Aid Services Council was set up in 1996, we think that it is one means of enhancing the independence of legal aid. There are ten members on the Board of the Legal Aid Services Council, including: the Director of Legal Aid who is an ex officio member; five laypersons like me; two members nominated by the Law Society, Mr. Ho being one; and two members nominated by the Bar Association. These names are put forward to the government, and it would be very unusual if the government should turn down the nominations put forth by these two professional bodies. In a sense, that maintains a degree of independence in the deliberations of the Council.

Assigning cases to the private sector can also help to keep the Department from being looked as if it is trying to collude with another government department which might be in dispute with a citizen. Since a private lawyer is bound by his/her professional conduct and is fared up by his/her profession body, the Council has suggested, and the Department has agreed, that in certain situations cases have to be assigned to outside lawyers and staff lawyers should not handle it. Examples include cases relating to human rights or the Basic Law (the mini constitution for Hong Kong) where the government, a semi-government or a public agency is the Defendant; or in matters for judicial review. These cases have to be handled by outside lawyers. I think that is one way of keeping the system and the operation of legal aid being independent.







COUNTRY REPORTS III

Presentations

India

Malaysia

Philippines (Guillermo)

Philippines (Acosta)

Country Report Discussion Moderator

Perside V. Rueda-Acosta

Chief Public Attorney, Department of Justice

Philippines



Country Report: India



By Mehmoed Pracha
President, Organisation for Promotion of
Legal Awareness
India

1. Basic Data

- What is Legal Aid's annual budget in your country?
The National Legal Services Authority (NALSA) receives its budget from the Government. Until last year, the budget was 50,000,000 Indian Rupees. From this year, it has been doubled to 100,000,000 Rupees.
- What is the population of your country?
According to the year 2001 Census, the population of India is 1,028,737,000 persons.

2. Organization

- Is the legal aid system in your country a government-orientated system or a community-orientated system?
The legal aid system is government-oriented by way of a central Act, "The Legal Services Authority Act, 1987".
- Is legal aid in your country provided through a centralized or a regional system?
It is a four-tier system: The Central Authority, The State Authority, the District Authority and the Taluk Authority (Taluks are Administrative blocks under Districts).
- If the legal aid system in your country is government-orientated, how does it maintain its independence?

The National Legal Services Authority is an autonomous body formed by an Act of Parliament. The Authority at all levels is headed by the highest ranking judge of that level.

The Central Authority has the Chief Justice of India as its Patron-in-Chief, and a serving or retired Judge of the Supreme Court is nominated as the Executive Chairman in consultation with the Chief Justice of India, and all its members are also nominated likewise.

The State Authority has the Chief Justice of the respective High Court as the Patron-in-Chief with a serving or retired Judge to be Executive Chairman in consultation with the Chief Justice of the High Court, and other members are also nominated likewise.

The District Authority has the District Judge as its Chairman, and other members are nominated in consultation with the Chief Justice of the High Court.

The Taluk Legal Service Committee has the Senior Civil Judge as the ex-officio Chairman and members are nominated in consultation with the Chief Justice of the High Court.



3. Financial Affairs

- What are the sources of funding for legal aid in your country?

The Legal Services Authorities Act, 1987, is an Act of Parliament of India which outlines the establishment of legal aid services in India. Sections 14, 15, 16 and 17 of the Act stipulates the funding sources for these activities:

Section 14. Grants by the Central Government. – The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Central Authority, by way of grants, such sums of money as the Central Government may think fit for being utilized for the purposes of this Act.

Section 15. National Legal Aid Fund. – (1) The Central Authority shall establish a fund to be called the National Legal Aid Fund and there shall be credited thereto –

- (a) all sums or money given as grants by the Central Government under Section 14;
- (b) any grants or donations that may be made to the Central Authority by any other person for the purposes of this Act;
- (c) any amount received by the Central Authority under the orders of any court or from any other source.

Section 16. State Legal Aid Fund. – (1) A State Authority shall establish a fund to be called the State Legal Aid Fund and there shall be credited thereto –

- (a) all sums of money paid to it or any grants made by the Central Authority for the purposes of this Act;
- (b) any grants or donations that may be made to the State Authority by the State Government or by any person for the purposes of this Act;
- (c) any other amount received by the State Authority under the orders of any court or from any other source.

Section 17. District Legal Aid Fund. – (1) Every District Authority shall establish a fund to be called the District Legal Aid Fund and there shall be credited thereto –

- (a) all sums of money paid or any grants made by the State Authority to the District Authority for the purposes of this Act;
 - (b) any grants or donations that may be made to the District Authority by any person, with the prior approval of the State Authority, for the purposes of this Act;
 - (c) any other amount received by the District Authority under the orders of any court or from any other source.
- (d)

- Does the legal aid system in your country adopt a charitable or a rebate model? Are the recipients of legal aid required to pay statutory charges at the conclusion of court proceedings?

In India, the legal aid system is entirely charitable and recipients of legal aid are not required to pay any charges at the conclusion of court proceedings or at any other time.

- Does legal aid in your country include the provision of adjudication fees/filing fees and security for costs? If so, does providing assistance in paying these costs increase the burden on the government's budget?

India's legal aid system does include provision of the aforementioned costs, and this does put pressure on the budget.



4. Models of Operation (Supply Models)

- Are the legal aid services in your country provided by salaried lawyers, or by contracted lawyers, or by lawyers or law firms in other ways?

Lawyers who are on the Legal Aid panel for a particular court are assigned cases and are paid case-wise.

5. The Scope and Types of Legal Aid Services

Legal aid in India includes services in the following matters:

- litigation and legal consulting;
- civil law or criminal law matters;
- non-litigious matters (i.e. assistance in applying for social welfare, insurance or annuity; providing community legal education and initiating law reform);
- environmental law and constitutional law matters;
- administrative law and national compensation matters;
- assistance during the first police interviews at police stations;

6. Tests and Procedures of Assessment

- Please elaborate on the requirements for legal aid, including the financial eligibility criteria and other tests; the documentation required in making an application; the procedures for making an application; and the efficiency and methods of assessing applications.

The Legal Services Authorities Act, 1987 prescribes these criteria:

12. Criteria for giving Legal Services. – Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is –

- (a) a member of a Scheduled Caste or Scheduled Tribe;
- (b) a victim of trafficking in human beings or beggars as referred to in Article 23 of the Constitution;
- (c) a woman or child;
- (d) a mentally ill or otherwise disabled person;
- (e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- (f) an industrial workman; or
- (g) in custody, including custody in a protective home within the meaning of clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956); or in a juvenile home within the meaning of clause (j) of Section 2 of the Juvenile Justice Act, 1986 (53 of 1986); or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of the Mental Health Act, 1987 (14 of 1987); or
- (h) in respect of annual income less than Rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than Rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court. (This amount has now been extended to Rupees fifty thousand)

13. Entitlement to Legal Services. – (1) Persons who satisfy all or any of the criteria specified in Section 12 shall be entitled to receive legal services provide that the concerned Authority is satisfied that such person has a prima-facie case to prosecute or to defend.



(2) An affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason to disbelieve such affidavit.

- Who has the responsibility of assessing applications for legal aid? What are their qualifications and how are they appointed to assess applications?

The respective National, State, District and Taluk Authorities have the responsibility to assess the applications for legal aid. The Central Government in consultation with the Chief Justice of India nominates members to the Central Authority, and these members have to be either (a) an eminent person in the field of law; or (b) a person of repute who is specially interested in the implementation of the Legal Services Schemes; or (c) an eminent social worker who is engaged in the upliftment of the weaker sections of the people, including Scheduled Castes, Scheduled Tribes, women, children, rural and urban labour.

- Is the prospect of success a consideration for deciding applications?

The only criteria is that the concerned authority should be satisfied that the person applying should have a prima-facie case to prosecute or defend.

- Is there a requirement that an application must be made by the applicant personally?

Yes, applications must be made in person.

7. Are there any special arrangements, including for making and assessing applications, for particular disadvantaged groups such as women, children, aboriginal people and labour?

Yes, there are special cells within NALSA which work to cater to these disadvantaged groups.

8. Please elaborate on the relationship between legal aid providers and private practitioners and between legal aid providers and public defenders.

A private practitioner can also be a Legal Aid Lawyer. However, a public defender is a government servant and cannot be a Legal Aid Lawyer.

9. Do lawyers have an obligation to provide legal aid? If they do, what are the arrangements for meeting that obligation?

No, lawyers have no obligation to provide legal aid.

10. Please compare legal aid providers' fees with market rates – does the rate of pay affect the quality of services?

There is a big difference between the fees of legal aid providers and market rates, and it does affect the quality of service to some extent.

11. What are the ways of making the availability of legal aid services known to those needing them?

Methods include advertisements in the mass media (print and electronic media), pamphlets, door-to-door campaigning by legal volunteers, and other mass awareness campaigns like street plays, corner meetings etc. Counselling centers are also opened across the country.



12. What are the ways of ensuring the quality of legal aid services?

Proper interviews and screening is done before selecting lawyers to the panel of Legal Aid, and proper monitoring is done by the Authority. The litigant can also apply for change of the Lawyer provided earlier.

13. Has your country initiated law reforms or legal education with a view to reduce the need for legal aid?

On 6th of March 2005, while launching the National Legal Literacy Mission, the Prime Minister Dr. Manmohan Singh said, "Economic growth has to be accompanied by equity and social justice. The deprived and disadvantaged, minorities and backward sections of the society must be at the heart of all government policies". This Mission is aimed at improving access to justice by promoting legal literacy, making people aware of their legal rights and the availability of free legal aid to the deprived, disadvantaged and women. This Mission has identified beneficiaries who will be immediately addressed, including children, minority communities, victims of militancy, victims of disaster and disease, child and bonded labour, landless farming community, Dalits and tribal communities, especially in the North East, farmers hit by droughts and floods, trafficked girls and the poorest of the poor.

A door-to-door campaign across the country is being launched to educate people of their rights and duties under the Constitution. In this campaign, paralegals shall be trained and deployed as community advocates. The Mission will improve the performance of welfare schemes by educating affected communities or groups about their rights under the projects and related laws and helping them to successfully assert those rights.

On 27th of April, a campaign was launched to advocate for the right to safe drinking water, since safe drinking water within a 1.6 km radius is a constitutional right of every citizen of India.

On 1st of May, a scheme on "Crime against labour cells" was launched in all districts of the country. It will be headed by district judges and will be comprised of social workers, legal aid workers, legal aid lawyers, etc.

Another system of reducing litigation and promoting an effective and early justice system which has been very successful in India is "Lok Adalat," which literally means "People's Court." This is a forum where disputes/cases pending in courts of law or are in pre-litigation stages are settled/compromised amicably. The Lok Adalat has been given statutory status under The Legal Services Authorities Act of 1987. Under the said Act, the award made by a Lok Adalat is deemed to be the decree of a civil court and is final and binding on all parties, and no appeal lies before any court against the award. The cases that may be referred to Lok Adalats are any matters/disputes pending before any court, or any dispute which has not been brought before any court and is likely to be filed before the court, provided that any matter relating to any offence not compoundable under the law shall not be settled in a Lok Adalat.



Country Report: Malaysia



Legal Aid in Malaysia
Abdul Rahman Abdullah
Malaysian Bar Council

Introduction

There are two parallel systems of Legal Aid in Malaysia. One is fully funded and run by the Government, and the other is run by the members of the Bar.

The Government Legal Aid

The Government has its own Legal Aid Biro (the Biro). There is an office in each state capital. The office is manned by a legally qualified person with supporting staff, all of whom are government servants. The Biro has its own means test to see if an applicant qualifies for legal aid. It has two category of people who can qualify for legal aid:

- (a) Either single or a couple having disposable income not exceeding RM\$3,000 (USD\$750) per year. For this category the services are free
- (b) Either single or a couple having disposable income not exceeding RM\$12,000 (USD\$3,000) per year. For this category of people a fee of RM\$300 (USD\$75) is imposed.

In general the Biro handles divorce cases, maintenance cases, distribution of estate matters and Hire Purchase cases.

Under the law, any document filed in court through the Biro is exempt from filing fees.

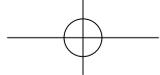
Any practising lawyer can register with the Biro as a volunteer lawyer. If the Biro passes on a case to a volunteer lawyer, then the volunteer lawyer is paid for the services rendered. There is a scale fees for the services rendered.

The Malaysian Bar Council Legal Aid Scheme

The Malaysia Bar Council has established a National Legal Aid Centre to provide legal representation to those who cannot afford to engage counsel to defend their rights. The Legal Aid Scheme is set up under section 42 (1) (h) of the Legal Profession Act 1976, which reads:

“ to make provision for or assist in the0 promotion of a scheme whereby impecunious persons may be represented by advocates and solicitors.”

The Per Capita Income of Malaysians is RM\$11,160 (USD\$2,790) and about 8% of the population live below poverty line. Since the word “impecunious” is not defined in terms of dollars and cents, the Bar Council has its own criteria to determine who is eligible to be legally aided.



The National Legal Aid Centre

The National Legal Aid Centre is a National body consisting of the various chairmen of each state Legal Aid Centre (LAC) together with nominated members by the Bar Council. The National Legal Aid Centre is the Policy making body. Since the country is divided into various states, each state has its own LAC. Currently there are 12 LACs serving a population of about 20 million people.

Finance

Each member of the Bar has to make a yearly compulsory contribution of RM\$100 (USD\$ 27) towards a Legal Aid Fund. There are currently approximately 10,500 members in the Malaysia Bar. Currently about RM\$1.5 million (USD\$ 375,000) is collected by way of contribution. The contributions are kept in a separate "Legal Aid Fund" and managed by the Bar Council. No contribution or grant is made by the Government.

The total budget for all the LACs comes to about RM\$900,000 a year (USD\$225,000). However, it has been projected that in a matter of 5 years the expenses will exceed the contributions.

Each LAC has its own budget. The smallest budget is RM\$20,000 (USD\$5,000) whereas the highest can reach RM\$500,000 (USD\$125,000) per year. Some of the LACs are housed in court buildings, whereas others occupy rented buildings.

Set Up of LAC

Each LAC is managed by a Management Panel (MP) to look after its day-to-day administration. The MP consists of practising lawyers in that state. They are all voluntary and do not draw any allowance for the services rendered. The MP meets at least once a month. The LAC itself is run by salaried staff. The LAC is run by an Administrator with a supporting staff. In States with a bigger population, the LACs are staffed with a bigger number of staff and of course the reverse is the case in smaller states.

Procedure for obtaining Legal Aid

Every person who passes the "Means Test" will be entitled to legal aid, regardless of whether he is a citizen or not. The means test has a threshold which varies from state to state. Once a person passes the "Means Test," he is entitled to legal aid. The interview is conducted by a Chambering Student. A Chambering Student is one who is qualified for admission to the Malaysian Bar and is undergoing a pupillage period of 9 months under a practising member of the Bar who has no less than 7 years of continuous practice at the Bar.

A sample copy of the questionnaire to determine if a person is entitled to legal aid is attached herewith. As can be seen from the sample, if a single person's disposable income does not exceed RM\$500 (USD\$125) per month, he or she is entitled to legal aid. If the applicant is a couple, their disposable income should not exceed RM\$800 (USD\$200) per month. The sample is for an "urban poor." However, due to the increase in the cost of living, these figures will be revised from time to time. In rural areas, a disposable income not exceeding RM\$300 (USD\$75) per month for a single person and a disposable income not exceeding RM\$500 (USD\$125) per month for a couple will entitle them to legal aid.



Volunteer lawyers

Once a Chamber student is admitted as an Advocate and Solicitor, his/her name is entered into the Rolls of Advocate and Solicitors which is kept in the Central Registry of the High Court. He or she can opt to take out a practising certificate to practice law. Only those with a practising certificate will be considered members of the Bar. The practicing certificate is renewable annually.

For Government lawyers, they need not be admitted as an Advocate and Solicitor before they can take up any appointment. Upon obtaining the relevant qualifications, they can join the Legal service and can be appointed as Magistrates, Deputy Public Prosecutors, and Federal Counsel.

Legal Aid

Once a person qualifies for legal aid, then the file is assigned to a volunteer lawyer. There is a ruling by the Bar Council that each lawyer handles at least one legal aid case in a year. Chambering students have to serve a compulsory 14 day period at the LAC. There is also a list of voluntary lawyers who are willing to give their services. More often than not, the files find their way to the volunteer lawyers.

Disbursements

Although Legal representation is free, the client has to pay for all the disbursements. There is no provision in the law for waiver of the filing fees. As such, depending on the nature of the case, a disbursement is collected from the client. Should any travelling claims be incurred, the client would have to bear it.

By contrast, filing fees are waived if it is from the Biro.

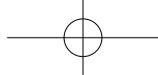
The Bar Council has lobbied the Government to waive the filing fees for cases filed through the LAC, but to date no decision has been made by the Government.

Types of cases

The LAC handles both criminal and civil litigation, but civil litigation mainly involves family matters. The LAC also deals with other civil cases involving Hire Purchase Transactions, Employment, Conveyancing, Tenancy, Debt Collection, Consumer Rights and others as seen in the sample copy of the questionnaire (see appendix). The LAC has also a Dock Brief Program. Chambering students are stationed at the Criminal Magistrate's court. If anyone accused wishes to plead guilty or wants to apply for bail, then the chambering student will assist the person. In this situation, no "means test" is required. Prison visits are also conducted by the LAC volunteer to determine if any prisoner requires legal aid.

Human Rights

The Bar Council has a Human Rights Committee to look after human rights. However, there is some overlap between the LAC and the Human Rights Committee. In some cases, both the LAC and the Committee work hand in hand. A case in point is the recent case in which some people were charged for deviation teaching of Islam. The LAC and the Committee both represented the accused to apply for bail as the accused were remanded without bail. The bail application was successful.



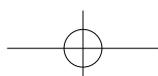
Public Awareness

The Penang LAC has come up with a unique way to reach the public. A van has been converted into a mobile clinic and is called "Mobilic." It is equipped with a desk, shelves and brochures to be distributed. It is operated by volunteer lawyers. It moves around the state to reach out to the people.

The Bar Council has printed out leaflets in various languages to be distributed to the public informing them of their basic rights.

Volunteer lawyers serving in NGOs

Apart from serving as volunteer lawyers in the LAC, some lawyers extend their services to other Non Governmental Organisations such as the Women's Action Group and the Association of the Blind.





Country Report: Philippines



The State of Legal Aid in the Philippines

By Gilda E. Guillermo
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Introduction

The issues and concerns of legal aid may be similar in most countries, though there are certain problems that may be found only in the Philippines and other developing countries. The sharing of knowledge and information about the matter will help in the improvement of legal aid programs even in different stages of their development.

There may be initial discussion and argumentation on the term “legal aid” itself, since some providers do not use the term because it is equated with charity or alms, without the active participation of the clients themselves. For the purposes of this paper, “legal aid”, or “legal assistance” or any similar terms are used here interchangeably, and is used loosely to mean any type of assistance to legal problems and issues.

The Philippines is a small developing country where the creation of laws and the administration of justice appear to be in an advanced stage, what with the enactment of new laws and the structures of an elaborate justice system. Yet, the presence of laws and structures do not always equate with its implementation and its smooth operation.

In much the same manner, legal aid in the country seems to be working efficiently, if it is all based on the structures and procedures present and discussed here. While this paper does not attempt to make an assessment of the actual implementation of legal aid, the agencies themselves acknowledge that what they do provide is not enough to answer the legal needs of those who come to them. The lack of readily available data on facts and figures that will support such an acknowledged feeling that present legal aid providers do not provide enough, does not discount the fact that studies have shown that such perception is true.

I. General State of the Country and of Legal Aid

The Philippines’ population is estimated to be in the 80+ millions, with about 70% of the population being considered poor, in the sense that the people’s basic needs of food, clothing and shelter are not being met according to universal standards.

Since the majority of the population’s main concern is still the realization of basic needs, the resolution of legal conflicts and the attainment of legal needs is not a priority, except if such is connected to the attainment of their basic needs.

Nevertheless, the fact of congestion of cases in the courts shows that a high number of Filipinos rely on the courts for resolution of their disputes and attainment of their justice needs.



From the data gathered, it would appear that the different institutions that provide legal aid are enough to meet the needs of the Filipino people. However, there are other considerations that have to be factored in.

A large number of lawyers practice their profession in the urban areas. A high portion of these lawyers concentrate in Metro Manila (the National Capital Region where the capital city, Manila, lies, with 17 other cities and municipalities). Other large cities in the three main islands of Luzon, Visayas and Mindanao, such as Dagupan City, Baguio City, Cebu City, Bacolod, Davao City and Cagayan de Oro City have their own law firms and single practitioners, with some of them coming from law firms from Metro Manila. This situation is to the disadvantage of smaller cities and municipalities, some of which do not even have a lawyer residing there.

Connected to this, farmers, workers and fisherfolk living in remote areas do not have the means to even reach the nearest city and be able to access the lawyers there. While there may be other organizations or offices that provide legal aid in the vicinity of these far-flung areas, the problem of distance and money gets in the way of accessing these offices.

More importantly, justice issues of the marginalized sectors are not confined to accessing legal aid, but more compelling problems of oppressive laws and structures that suppress their rights and hinder them from claiming their other rights.

II. Different Legal Aid Providers

A. Legal Aid by the Bar Association

All lawyers are required to be members of the Integrated Bar of the Philippines (IBP), which entity was created by law in 1974. There are other voluntary bar associations, such as the Philippine Bar Association (PBA) which has been in existence longer, that have their own legal aid clinics, separate from the IBP.

The IBP Guidelines define the purpose of legal aid, as such:

Section 1. **Public Service.** – Legal Aid is not a matter of charity.

It is a means for the correction of social imbalances that may and often do lead to injustice, for which reason it is a public responsibility of the Bar. The spirit of public service should, therefore, underlie all legal aid offices. The same should be so administered as to give maximum possible assistance to indigent and deserving members of the community in all cases, matters and situations in which legal aid may be necessary to forestall an injustice. (Guidelines Governing the Establishment and Operation of Legal Aid Offices in All Chapters of the Integrated Bar of the Philippines, Approved, May 31, 1974)

I. Annual Budget for Legal Aid

The data on the annual budget for legal aid was not readily available, as was the case for all of the legal aid providers discussed here.

There were 3,200 legal aid applications in 2004 at the IBP National Office; no data was available for the IBP Chapters.

Based on the report submitted by the IBP Chapters, an estimate of 350 legal aid lawyers render legal aid services, while there are about 10 legal aid lawyers at the National Office.



II. Organization

The IBP has a National Office (based in Pasig City, Metro Manila) and Chapter Offices, based in areas following the territorial jurisdictions or divisions of the country (regions, provinces, cities and municipalities).

There is a National Committee on Legal Aid and Chapter Legal Aid Committees, with the following specified roles:

“ARTICLE IV
(Section 8)

National Committee on Legal Aid

Section 8. **Functions.** – The National Committee on Legal Aid shall promote the establishment and efficient maintenance of Chapter Legal Aid Offices suited to provide free legal services to those unable to pay for such services; direct and supervise all Chapter Legal Aid Offices; maintain maximum levels of coordination and cooperation with other organizations having similar objectives; receive and solicit aid and assistance from any available and suitable source or sources, provided that the independent character of the Legal aid is not impaired; and, in general, but subject to the authority of the Board of Governors, do or cause to be done all things necessary and proper for the promotion of Legal Aid activities, projects and objectives.

ARTICLE V

(Sections 9 and 10)

Chapter Legal Aid Committees

Section 9. **Chapter Legal Aid Committees.** – The Legal Aid Office of each Chapter shall be administered by a Legal Aid Committee under the direction and control of the Chapter Board of Officers.

xxx

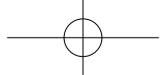
ARTICLE VI

(Sections 11 to 12)

Powers and Duties of Chapter Legal Aid Committees

Section 11. **Main powers and duties.** – Every Chapter Legal Aid Committee shall:

- (a) Appoint an Executive Director of Legal Aid whenever necessary or expedient xxx
- (b) Appoint additional Legal Aid personnel xxx
- (c) Authorize law students to work in the Chapter Legal Aid Office with the previous approval of the Board of Officers and under such conditions as it may prescribe;
- (d) Adopt its own budget, with the approval of the Chapter Board of Officers;
- (e) Solicit and receive aid and assistance from any legitimate source or sources xxx
- (f) Establish and administer a Chapter Legal Aid Fund;



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- (g) Make appropriations and disbursements;
- (h) Keep proper books of account and submit, properly audited, annual financial statements, to the Chapter Board of Officers and the President of the Integrated Bar of the Philippines;
- (i) Classify the Chapter members, preferably after consulting them, on the basis of the field of law in which they have specialized or they are more inclined to render free legal aid;
- (j) Prepare a list of Chapter members who volunteer to work in the Chapter Legal Aid Office or to render free legal aid;
- (k) xxx assign, or designate members of the Chapter to render services in the office of the Committee, or a fair and equitable rotation system, for counseling and consultation, as often and for such periods as may be necessary or expedient;
- (l) xxx assign specific legal aid cases or matters to carefully selected members of the Chapter, xxx
- (m) Pass upon every request for legal aid xxx
- (n) When the interest of justice and expediency demands it and the main part of the work involved in a given case or matter is to be done within the territorial jurisdiction of another Chapter, endorse and refer thereto said case or matter;
- (o) Keep itself informed on significant incidents and development in every case of legal aid, and take such steps as may be necessary and proper to expedite the final disposition thereof;
- (p) Submit to the Board of Officers and the National Committee on Legal Aid an annual report of its operations, stating its composition and administrative set-up, the number of cases handled and of consultations attended to as well as the nature and extent of the services rendered, the outcome and status of cases handled, the expenses required and those incurred in each case, all income derived, if any, in connection with said cases, the problems and difficulties encountered, special projects undertaken or to be undertaken, and particulars regarding the financial condition of the Committee, with such recommendations or suggestions as may be deemed fit and proper.

Section 12. **Other powers and duties.** – Every Chapter Legal Aid Committee shall have, also, such other powers and duties as are or may be necessary or proper for the attainment of its objectives xxx.” (Guidelines Governing the Establishment and Operation of Legal Aid Offices in All Chapters of the Integrated Bar of the Philippines)

III. Sources of Funds

The IBP receive subsidy from the Supreme Court, the highest court of the land, which also supervises and administers all judicial courts in the country. There are also donations or grants from private domestic and international organizations for particular projects.



All members of the IBP are required to pay annual (or lifetime) membership dues, which also goes to the administrative costs of running the whole IBP.

Qualified legal aid clients are given free legal assistance, docket fees and other court fees are shouldered by the clients. The lawyers are also given minimal amount for transportation expenses to attend court hearings.

Sections 25 to 26 of the IBP Guidelines refer to Contributions of Successful Litigants:

“Section 25. **Attorney’s fees to Chapter.** – In the event of a successful litigation, whatever attorney’s fees may have been awarded to the recipient of legal aid shall belong to the Chapter that rendered such aid.

Section 26. **Contributions to Legal Aid Fund.** – Regardless of whether or not attorney’s fees have been awarded, the Chapter Legal Aid Committees shall have discretion to require the recipient of legal aid, in whose favor decision has been rendered, to turn over a nominal or reasonable portion of his actual recovery, not exceeding five (5) per centum thereof, to the Executive Director of the Legal Aid Office of said Chapter, as contribution to the Legal Aid Fund thereof, for the operation and maintenance of said Bureau.” (Guidelines Governing the Establishment and Operation of Legal Aid Offices in All Chapters of the Integrated Bar of the Philippines)

IV. Models of Operation

Legal Aid lawyers, selected by referrals or recommendations based on educational qualification and of good moral character, are given monthly honoraria by the IBP taken from the Supreme Court subsidy. Legal aid lawyers do not work full time for the IBP and their rate is lower compared to private lawyers.

V. Scope and Types of Legal Aid Services

Any type of legal service is given as long as the request passes the guidelines, as discussed below. Clients who are not qualified for legal assistance (case handling) are given legal advice.

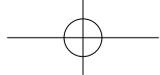
VI. Tests and Procedures of Assessment

The IBP Guidelines provide tests to determine client qualification, to wit:

“Section 19. **Combined Tests.** – The Chapter Legal Aid Committee shall pass upon request for legal aid by the combined application of the means test and the merit test, and the consideration of other factors adverted to in the following sections.

Section 20. **Means test.** – The means test aims at determining whether the applicant has no visible means of support or his income is otherwise insufficient to provide the financial resources necessary to engage competent private counsel owing to the demands for subsistence of his family, considering the number of his dependents and the conditions prevailing in the locality.

Section 21. **Merit test.** – The merit test seeks to ascertain whether or not the applicant’s cause of action or his defense is valid and chances of establishing the same appear reasonable.



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Section 22. **Other factors.** – The effect of the Legal Aid Service or of the failure to render the same upon the Rule of Law, the proper administration of justice, the public interest involved in given cases and the practice of law in the locality shall, likewise, be considered.

Section 23. **Private Practice.** – Care shall be taken that Legal Aid is not availed of to the detriment of the private practice of law, or taken advantage of by anyone for personal ends.

Section 24. **Denial.** – Legal aid may be denied to an applicant already receiving adequate legal assistance from any source other than the Integrated Bar.

With regards to the procedure of application, applicants are required to personally appear at the Legal Aid Office in order to fill out an application form. Paralegals will initially interview the applicants about their case and their financial capacities. The paralegals will then endorse them to the legal aid lawyers who prefer such cases.

The IBP Guidelines on Procedure are given below:

“Section 13. **Requests, where filed.** – All requests for legal aids shall be filed with the Chapter Legal Aid Committee.

Section 14. **Referral to Chapter Committee.** – Requests received by the National Office of the Integrated Bar shall be referred by the National Committee on Legal Aid to the corresponding Chapter Legal Aid Committee. Moreover, the Chapter President shall be advised of such referral.

Section 15. **Action on request.** – The Chapter Legal Aid Committee shall pass upon every request for legal aid, subject to review by the Chapter Board of Officers, provided, however, that, in urgent matters, requiring prompt or immediate action, the Executive Director or whoever performs his functions, may provisionally act on the request, subject to review by the Legal Aid Committee and, thereafter, by the Board of Officers.

Section 16. **Written application.** – The Executive Director or whoever discharges his duties shall see to it that every request for legal aid is set forth in an application – which shall adhere substantially to the form enclosed herewith xxx” (Guidelines Governing the Establishment and Operation of Legal Aid Offices in All Chapters of the Integrated Bar of the Philippines)

There are no special arrangements, including for making and assessing applications, for particular disadvantaged groups such as women, children, labor, farmers.

The Guidelines do not have a provision on the effects of discovering ineligibility after legal aid is granted. However, it can be assumed, from the other provisions that legal aid will be terminated.

The IBP Guidelines provide for ways on making known the availability of its legal aid offices:



“Section 3. **Notice of location.** – The specific address or location of said office shall be announced in a notice, which shall be published as extensively as may be possible.

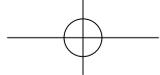
Section 4. **Officials to be notified.** – The following officials shall also be furnished copies of said notice, with the request that the same be given the widest possible publicity, namely:

- a. The Judges of all courts of justice, including such other judicial or quasi-judicial organs, if any, as may be performing their functions within the Province, City or are thereof to which the jurisdiction of the IBP extends;
- b. The Clerks of Court of said courts, the Deputy Clerks of Court of the Branches thereof, and the officers performing equivalent duties in said courts or organs, or in the division or branches thereof;
- c. The Provincial Governor and the chief executives of the cities, municipalities and other political subdivisions within the province or within said cities and/or municipalities;
- d. The Provincial Commander of the Constabulary [defunct], the Provincial Warder, the Chiefs of the City and/or Municipal Police Forces, as well as the heads of such other police, army and similar law-enforcing agencies, if any, as may be stationed in said province, cities, municipalities and/or other political subdivisions; and
- e. Schools, churches and such other institutions, organizations or persons as the Board of Officers of the Chapter or the Executive Director of its Legal Aid Office may deem fit.

Section 5. **Posting of notice.** – The aforementioned officers discharging the duties of Clerk of Court and/or Deputy Clerks of Court, or performing similar or equivalent functions, shall, moreover, be requested to post said notice in their respective offices.”
(Guidelines Governing the Establishment and Operation of Legal Aid Offices in All Chapters of the Integrated Bar of the Philippines)

The IBP Guidelines also provide for coordination and cooperation among all Chapter Legal Aid Offices and with other organizations providing legal aid:

Section 7. **Coordination and Cooperation.** – Maximum levels of coordination and cooperation shall be maintained at all times among all Chapter Legal Aid Offices, as well as with other organizations having similar objectives or performing analogous or allied functions – such as, inter alia, the Department of Social Welfare (DSW), the Citizens Legal Assistance Office (CLAO [now Public Attorney’s Office-PAO]), the Department of Agrarian Reform (DAR), the Women Lawyers Association of the Philippines (WLAP), and the U.P. Women Lawyers Circle (WILOCI) and particularly with courts of justice,



provincial fiscals, city fiscals and/or city attorneys, and other offices or offices discharging similar duties.” (Guidelines Governing the Establishment and Operation of Legal Aid Offices in All Chapters of the Integrated Bar of the Philippines)

With respect to monitoring and evaluation procedures for ensuring the quality of legal aid services, as discussed earlier, the National Committee on Legal Aid direct and supervise all Chapter Legal Aid Offices, with the latter required to submit annual reports of its operations (as quoted earlier).

B. Legal Aid by the Department of Justice

The Department of Justice is part of the executive branch which provides legal aid in two forms: 1) prosecutorial – through its prosecutors; and 2) legal assistance, usually the accused in criminal cases, but can also provide other legal assistance to other cases and other non-case handling work – through the Public Attorney’s Office (PAO) lawyers. The Administrative Code of 1987 has express provisions for the administrative set-up, general roles and functions of all administrative departments and agencies. For purposes of this paper, more specific rules, guidelines and circulars relating to legal aid and legal assistance specifically, are quoted here.

Both the prosecutors and PAO lawyers were requested to give information. However, the prosecutors confirm the information given by PAO regarding the guidelines on providing legal aid, with the main exception that prosecutors provide legal assistance to private complainants in criminal cases who do not have their own private counsel.

I. Annual Budget for Legal Aid

There is no available data for the budget of the prosecutors and PAO, the number of applications for legal aid in 2004 and the number of lawyers under the Department of Justice providing legal assistance.

II. Organization

The territorial jurisdiction, political subdivisions of regions, provinces, cities and municipalities also divide the work areas of prosecutors and PAO lawyers. There is a separate National Office for the prosecutors and the PAO

It is required under the law that all trial courts (Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Trial Courts in Cities, Municipal Circuit Trial Courts) should have their own prosecutors and PAO lawyers. However, not all posts in the country are all filled up. Vacancies usually are found in remote municipalities where prosecutors and PAO lawyers from nearby cities and municipalities take on double work for other courts other than their usual court for which they are assigned.

There are prosecutors and PAO lawyers who are assigned at the Appellate Courts (Court of Appeals and Supreme Court) levels.

III. Sources of Funds

The National government provides funds for all the departments, including the Department of Justice. Clients usually are made to pay docket fees and other court fees. There may be grants or donations for specific projects.

IV. Models of Operation

Prosecutors and PAO lawyers are appointed as civil servants, with specific areas of appointments made by the National Office. Generally, all government lawyers are paid lower than private lawyers in terms of salaries and other perks.



V. Scope and Types of Legal Aid Services

As discussed earlier, prosecutors provide legal assistance to private complainants in criminal cases. No specific guidelines were provided but there is a confirmation that the PAO guidelines (as they are both from the Department of Justice) apply to prosecutors as well, except for some provisions.

PAO provided copies of Department of Justice, Public Attorney’s Office Memorandum Circular No. 22 “Standard Office Procedures in Extending Legal Assistance to Juveniles in Conflict with the Law” [series of 2002, suppletory to Department of Justice, Public Attorney’s Office Memorandum Circular No. 18] and Memorandum Circular No. 18 “Amended Standard Office Procedures in Extending Legal Assistance” [series of 2002, amending and revising Memorandum Circular No. 5, Series of 1997]. These two documents provide for the rules for the provision of legal assistance given by PAO.

Memorandum Circular No. 22 provides for the Stages in the Rendition of Legal Assistance to Juveniles in Conflict with the Law:

“Section I. On Initial Contact

1. In the course of his regular visitation of police stations, jails and other detention centers or upon being informed of the apprehension of the juvenile in conflict with the law, the Public Attorney shall conduct an interview of the juvenile in conflict with the law, his parent, guardian or DSWD Social Worker with respect to the following: xxx
2. In case of violation on the part of the apprehending or detaining officer, the Public Attorney shall assist in the filing of the proper complaint or petition.

xxx

Section II. During Custodial Investigation

1. The Public Attorney shall at all times be present while the juvenile in conflict with the law is under investigation by the authorities and shall see to it that his rights are not violated.

xxx

Section III. During Preliminary Investigation

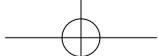
1. The Public Attorney shall provide legal assistance to the juvenile in conflict with the law during the preliminary investigation such as, but not limited to, the preparation of the counter-affidavit and other supporting documents. xxx

xxx

Section IV. Upon the Filing of the Complaint or Information

1. When he finds the complaint or information sufficient in form and substance, the Public Attorney shall immediately cause the assignment of the case to the proper Family Court Branch, otherwise he shall file a motion to quash or for a reinvestigation of the case.

xxx



5. If the juvenile cannot post bail, the Public Attorney shall immediately move for the commitment of the juvenile in conflict with the law to the care of the DSWD or to any accredited/recognized institution for the juvenile in conflict with the law.

Section V. Diversion

1. If the juvenile in conflict with the law is charged for an offense falling within the Rule on Summary Procedure, the Public Attorney shall inquire from the DSWD and the Court Social Welfare Officer of the status of the Intake and Case Study Reports. When both reports are ready, the Public Attorney shall request in writing the Diversion Committee, thru its Chairman, to schedule a conference, with notice to all parties, to determine whether the juvenile in conflict with the law shall be subjected to formal court proceedings or be diverted to a diversion program.

xxx

4. Should the committee decide that the juvenile in conflict with the law be diverted under a specific diversion program, and after the Court approves the same, the Public Attorney shall see to it that the juvenile in conflict with the law complies with the terms and conditions of the undertaking.”

Memorandum Circular No. 22 provides the detailed duties of the Public Attorney, in relation to juveniles in conflict with the law, during arraignment, pre-trial, trial, promulgation of judgment, service of sentence, discharge of the juvenile

On the other hand, Memorandum Circular No. 18 provides for the more general work of Public Attorneys Office, case handling and other none case handling duties:

“Section 1. Persons Qualified for Legal Assistance. – xxx the Public Attorney’s Office is mandated to represent, free of charge, indigent persons or the immediate members of their family, in all civil, administrative and criminal cases where, after due investigation, it is determined that the interest of justice will be served thereby.

xxx

Article V

Non-Judicial Services

Section 1. Coverage. – The following are classified as Non-Judicial Services:

1. Instant Services:
 - a. Legal counseling and documentation
 - b. Mediation and conciliation of disputes
 - c. Notarial services
2. Outreach Activities:
 - a. Assistance to persons undergoing police interrogation or inquest investigation and persons under detention
 - b. Jail visitations”



VI. Tests and Procedures of Assessment

Memorandum Circular No. 18 provides for the tests (must pass both the merit and indigency tests) and procedures in the application for legal aid:

“Sec. 2. Merit Test. – A case shall be considered meritorious if an assessment of the law and evidence on hand discloses that the legal services of the office will assist, or be in aid of or in the furtherance of justice, taking into consideration the interests of the party and those of society. In such cases, the PAO lawyer should agree to represent the party concerned. A contrario, a case is deemed unmeritorious if it appears that it has no chance of success, or is intended merely to harass or injure the opposite party or to work oppression or wrong. In such a situation the PAO lawyer must decline the case.

A PAO lawyer may represent an indigent client even if his cause of action is adverse to a public officer, government office, agency or instrumentality provided the case is meritorious. Caution should, however, be exercised that the office be not exposed to charges of harassment, unfairness or haste in the filing of suits.

In criminal cases, the accused enjoys the constitutional presumption of innocence until the contrary is proven, hence cases of defendants in criminal actions are considered meritorious.

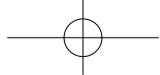
Sec. 3. Indigency Test. – Taking into consideration recent surveys on the amount needed by an average Filipino family to (a) buy its “food consumption basket” and (b) pay for its household and personal expenses, the following shall be considered indigent persons:

1. Those residing in Metro Manila whose family income does not exceed P14,000.00 a month;
2. Those residing in other cities whose family income does not exceed P13,000.00 a month; and
3. Those residing in all other places whose family income does not exceed P12,000.00 a month (As amended by MC No. 2, series of 1998 dated August 25, 1998)

The term “family income” as herein employed shall be understood to refer 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 family.

For purposes of this Section, ownership of land shall not per se constitute a ground for disqualification of an applicant for free legal assistance in view of the ruling in *Juan Enage vs. Victorio Ramos, et al.* xxx

PAO lawyers and personnel shall exercise extra care in ascertaining the financial condition of applicants in order to ensure that only those qualified shall be extended free legal assistance by requiring the applicant to submit any of the following proofs of indigency:



1. Latest Income Tax Return;
2. Certificate of Indigency from the DSWD having jurisdiction over the residence of the applicant; or
3. Certificate of Indigency from the Barangay Chairman having jurisdiction over the residence of the applicant (As amended by M.C. No. 12, series of 2001, dated April 23, 2001)

Sec. 4. Cases Which May be Provisionally Accepted. –

In the following instances, PAO lawyers may accept or handle cases provisionally pending verification of the applicant's indigency and an evaluation of the merit of his 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 applicant;
3. Where an appeal or petition for certiorari or prohibition has to be perfected or filed immediately;
4. Where the PAO lawyer 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 relieve him;
5. Where the PAO lawyer is designated on the spot as counsel de oficio for the purpose only of arraignment, pre-trial or the promulgation of the decision; and
6. Other similar urgent cases.

Sec. 5. Persons Qualified for Assistance Pursuant to MOAs and DOJ Directives. –

The following are qualified for legal assistance by virtue of agreements entered into with other government offices, directives from the Department of Justice, and special laws:

1. Department of Agrarian Reform lawyers against whom criminal and administrative complaint have been filed for acts committed in connection with the performance of their official duties (Directive of the Minister of Justice);
2. Farmer-beneficiaries of the Agrarian Reform Law, (a) in agrarian-related civil or criminal cases pending before the courts, and (b) in cases against fellow beneficiaries pending before the courts or the Department of Agrarian Reform Adjudication Board (DARAB) where one of the parties is already represented by a lawyer from the Department of Agrarian Reform (Memorandum of Agreement, dated May 8, 1991, between DAR and DOJ);
3. Indigent laborers in meritorious labor cases (Memorandum Order, dated May 19, 1988, of the Secretary of Justice);
4. Indigent aliens (2nd Indorsement, dated March 25, 1974, of the Undersecretary of Justice, the pertinent portion of which is hereunder quoted:



'xxx Nonetheless, considering its limited facilities and personnel, that office is directed to adopt the policy of giving preference to deserving citizens in extending its legal services,'

- 5. Qualified overseas contract workers in all cases within the original and exclusive jurisdiction of the Philippine Overseas Employment Administration (Memorandum of Agreement between PAO, DOLE, POEA, OWWA and some NGOs, dated April 2, 1993);
- 6. Barangay Health Workers xxx
- 7. The Department of Social Welfare and Development in the filing of petitions for the involuntary commitment of minors, as well as in the filing of petitions for the declaration that a child is abandoned or neglected xxx

xxx

Sec. 6. Persons Not Qualified for Legal Assistance. –

PAO lawyers are prohibited from assisting the following parties:

- 1. Juridical persons; except those juridical entities which are non-stock, non-profit organizations whose individual members will pass the indigency test of the office, provided their case involve land disputes and that they are not the lessor thereof. Xxx
- 2. Parties who do not pass the Merit and Indigency Tests, unless appointed as counsel de oficio in criminal cases only under existing laws, rules and regulations;
- 3. Parties represented by de parte counsel; and
- 4. Landlords of residential lands and buildings with respect to the filing of collection or unlawful detainer suits against their tenants

Sec. 7. Cases Not to be Handled. – PAO lawyers shall not handle cases where they would thereby be representing conflicting interests. Neither shall they handle the prosecution of criminal cases in court. As a matter of office policy, PAO lawyers should, likewise, refrain from undertaking the defense of persons accused of violating BP 22 [Bouncing Checks Law], unless they are appointed by the court as counsel de oficio under existing laws, rules and regulations.

ARTICLE III

JUDICIAL AND QUASI-JUDICIAL CASES

Section 1. Procedure in Accepting Cases. The following procedure shall be observed in the acceptance of judicial and quasi-judicial cases:

- 1. Interview. – Persons seeking legal assistance shall be interviewed by a lawyer or personnel assigned to interview clients to ascertain if he is qualified for legal assistance. In addition to the data called for in the Interview Sheet, the applicant shall be required to submit or exhibit a copy of his latest income tax returns, if available, and execute the Affidavit of Indigency printed at the back of the Interview Sheet.



2. Control Number. – If the applicant is found to be qualified for legal assistance, the case shall be assigned a control number. xxx

xxx

Section 3. Handling of Cases. – The following policies shall be observed in the handling of cases:

1. First Come-First Served. – Where both the complainant and the respondent apply for legal assistance and both are qualified, the first to seek assistance shall be given preference.
2. Conflict of Interests. – Where the PAO is precluded from accepting the case under the conflict of interests rule, the applicant shall be duly informed and advised to seek the services of a private counsel or legal aid organizations.

xxx

Sec. 4. Withdrawal of Representation. – A PAO lawyer may, in justifiable instances, withdraw representation of a client's cause upon approval of his superior and through a proper motion filed in Court.

Withdrawal may be warranted in the following situations:

1. In cases provisionally handled, where it is subsequently ascertained that the client is not qualified for PAO services;
2. Where the client's income or resources improve and he no longer qualifies for continued assistance;
3. When adequate proof is subsequently submitted showing that the client's allegation of indigency is false or incorrect;
4. When the client subsequently engages a de parte counsel or is provided with a de officio counsel;
5. When, despite proper advice from the PAO lawyer, the client cannot be restrained from doing things which the lawyer himself ought not to do, particularly with reference to their conduct towards courts, judicial officers, witnesses, and litigants (Canons of Professional Ethics), or the client insists in having control of the trial, theory of the case, or strategy in procedure, which would tend to result in incalculable harm to the interest of the client; and
6. When it becomes apparent that the representation of the client's cause will result in a representation of conflicting interests, as where the adverse party had previously engaged the services of the PAO, and the subject matter of the litigation is directly related to the services previously rendered to the adverse party."

There are no specific provisions on ways of making the availability of legal aid services known to those who need them. Generally, the courts will inform litigants, especially indigents, that legal assistance is available through the PAO lawyers assigned to their courts.

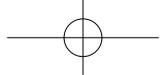
Memorandum Circular No. 18 provides monitoring and evaluation procedures for ensuring the quality of legal aid services:

**“ARTICLE VI****RECORDING AND REPORTING OF CASES AND SERVICES**

Section 1. Recording. – All requests for legal assistance, except limited services, counseling, documentation and outreach activities, shall have to be recorded, as follows:

1. The Interview Sheet (PAO Form No. 2) shall be filled up by the Interviewer and signed by the client. The accomplished Interview Sheet shall be attached to the case folder;
2. The control number assigned to the case shall appear in all the forms. Assignment of numbers shall be in the sequence of receipt of cases, regardless of classification, thus, there should be no separate control numbers for judicial and non-judicial cases.
3. Accepted applications shall be recorded in a logbook to be maintained at the District Office or Division. The logbook shall contain columns for the following data: name of client, date the application was received, PAO Control Number, name of lawyer to whom the case was assigned, nature of case or cause of action, cause of termination, and date of termination.
4. Transfer of cases duly approved by the District Public Attorney or Head of Unit shall be recorded in PAO Form No. 3. The contingency arises when there are changes of court assignments of lawyers or cases are re-raffled to other branches of the court, or other similar situations. The original shall be submitted to the District head for office file, the duplicate to the transferor and the third copy to the transferee.
5. PAO Form No. 4 (Case History) shall be attached to the case folder for recording of every development of the case such as the dates of hearings, the witnesses presented for direct or cross-examination, and documents marked as exhibits.
6. Custodial interrogation and Inquest Investigation Services shall be entered in PAO Form No. 5, which shall reflect the date, name of person assisted, offense charged, and place where the services were rendered.
7. Jail Visitation activities shall be recorded in PAO Form No. 6, which shall contain the following data: the person visited, detainees interviews and action taken on their problem, if any;
8. Documentation services shall be recorded in PAO Form No. 7 which shall contain the date, the name and address of the client and the kind of document prepared. Exempted from the use of this form are the lawyers who are Notaries Public with regard to Oaths Administered by them and which are to be registered in their notarial register.

Sec. 2. Reporting. – All lawyers are required to submit the following reports:



1. Monthly Reports. – Lawyers shall submit monthly, in triplicate, to the District or Division Head within the first three (3) days of the succeeding month, a statistical report of their judicial, quasi-judicial and non-judicial services, on Monitoring Form No. 01. The Unit Head shall immediately transmit the original of the reports, including his own, to the FSS, furnishing the Regional Head with a copy thereto. One copy shall be retained for the District Office file.
2. Year-end Reports. - A year-end inventory of pending judicial cases shall be submitted to the District or Division Head within the first ten (10) days of the succeeding year on PAO Form No. 8. The District or Division Head shall immediately submit the original of the reports, including his own, to the FSSD, furnishing the Regional Head a copy thereof. One copy shall be retained for the District Office File.

ARTICLE VII SANCTIONS

Section 1. – Disciplinary Measures. – Disciplinary action in accordance with the Civil Service Law shall be taken against lawyers who violate this Memorandum Circular particularly those who –

1. Handle cases of persons who are not qualified for legal services under the indigency test, or those who are not entitled to services specifically mentioned in Article II of this Memorandum Circular;
2. Handle cases outside of their court residency assignment without appropriate written authorization;
3. Fail to submit monthly and year-end reports on time;
4. Fail to transmit records of cases to the SAC Division within the time-frame prescribed herein;
5. Handle appealed cases in the Appellate Courts, if they are field lawyers;
6. Fail to perfect an appeal on time to the prejudice of the interest of the client; and
7. Any other violations in accordance with the Civil Service rules and regulations.

ARTICLE VII. RULE OF CONDUCT

Section 1. Rule of Conduct of PAO Lawyers. – PAO lawyers should primarily play the role of peacemakers. They must be guided by a high sense of fairness, integrity, absolute good faith and justice in the performance of their functions. Cases must be so evaluated that only the meritorious ones are entertained and only deserving persons are extended free legal assistance. The interest of justice is what the PAO seeks to serve.

In rendering legal services to the needy, the PAO lawyer must give the fullest measure of assistance within their capability and be truly



interested in the problem of the clients.

PAO lawyers must be always courteous in their language and demeanor toward clients and the general public. Our avowed policy should be “prompt service with a smile.”

No PAO lawyer shall take custody of cash or valuable of a client. If there are any fees to be paid, the client should be asked to be the one to pay for them. In amicable settlements, the PAO lawyer should also refrain from taking custody of any money or valuable which is the object or subject of settlement. The parties should be encouraged to entrust their valuables to competent authority such as the courts or their proper custodians.

Acceptance of ‘pasalubong’ or gifts from clients is punishable under RA 6713 and should, therefore, be strictly avoided.”

C. Legal Aid by Government Agencies

The acknowledged sentiment is that there are few lawyers working for the government because of lower pay compared to law firms and private corporations. Thus, even if there are government positions in the executive department for lawyers in most departments and agencies, most of these positions are not filled. These lawyer posts include the provision for legal aid for the indigents and marginalized sectors of the society.

Some other departments, commissions, and agencies that have government posts for lawyers, whose roles include the provision for legal aid or assistance and advocacy include the Commission on Human Rights (CHR), Department of Social Welfare and Development (DSWD), Department of Environment and Natural Resources (DENR), National Commission on Indigenous Peoples, Office of Muslim Affairs, National Commission on the Role of Filipino Women (NCRFW).

This paper will only focus on one department, the Department of Agrarian Reform (renamed recently as Department of Land Reform).

I. Annual Budget for Legal Aid

The Department has an annual budget given by the National Government, from which the funds for legal aid for farmers are taken. There is no readily available data on the actual budget, number of applications for legal aid and number of lawyers from DAR providing legal aid services all around the country.

II. Organization

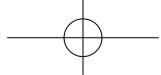
The Department has a Central Office, Regional Offices, Provincial Offices and City and Municipal Offices in accordance with the recognized territorial jurisdictions or political subdivisions. In these offices can be found lawyers, but most positions are not usually filled.

III. Sources of Funds

Most of the funds come from the National Government. There are donations and grants from outside sources for specific projects. Legal aid recipients are not made to pay court fees.

IV. Models of Operation

Legal aid lawyers are civil servants with recognized government positions. Again, government lawyers have significantly lower pay compared with private lawyers.



V. Scope and Types of Legal Aid Services

DAR provides farmers with legal advice and assistance on problems arising from the implementation of the Comprehensive Agrarian Reform Law and actual cases involving Agrarian Reform Implementation or Agrarian Disputes. Assistance can be in different forms, as expressed by DAR:

“The legal needs of farmers, however, are not limited to facing actual cases. They include proper orientation on their legal rights and knowledge on the laws and processes involve in all aspects of agrarian reform implementation as well as availability of options for just but faster and nonlitigious resolution of their cases. DAR believes that support to farmer-paralegals can be an effective mechanism to respond to the legal needs of farmers.” (DAR Memorandum Circular No. 15, Series of 2004, quoting Sec. 1, Rule VII, 2003 DAR Adjudication Board [DARAB] Rules of Procedure).

VI. Tests and Procedures of Assessment

All farmers (even those who have not been certified as farmer beneficiaries of agrarian reform) can go to the nearest DAR office from their homes, to inquire about their agrarian and agrarian-related cases.

There is no readily available written procedure for application, but the usual procedure is that a legal officer (not necessarily a lawyer), interviews the applicant and makes the assessment of merit of the case, if any, or provides immediate legal assistance, if required under the circumstances. These legal officers are part of the regular posts of the DAR offices.

At the barangay (smallest political unit, comparable to a community) level, there exists the Barangay Agrarian Reform Committees, which are made up of farmers residing within the barangays. DAR offices at the municipal levels usually have posters and leaflets on the rights of farmers, including where to go to and what to do in case of agrarian and agrarian-related problems.

DAR legal officers are required to submit reports on cases they handle and other kinds of assistance given to farmers.

Due to the few numbers of lawyers and legal officers who cannot meet the legal needs of farmers, DAR, pursuant to Republic Act No. 6657 (Comprehensive Agrarian Reform Law), recognize the role of farmer-paralegals. DAR Memorandum Circular No. 15, Series of 2004, provides:

“xxx

In view of the foregoing and pursuant to Sec. 49 of R.A. No. 6657, the following policy guidelines recognizing the vital role of farmer-paralegals and strengthening their role in the delivery of agrarian justice, as well as providing adequate fund therefor are hereby issued:

1. Reaffirmation of the right of farmer-paralegals to appear or represent their fellow farmers. The recognition of right of farmer-paralegals to appear or represent their fellow farmers in pushing for the resolution of legal issues as well as cases such as Agrarian



Law Implementation (ALI) cases under the Department of Agrarian Reform and agrarian disputes falling under the jurisdiction of the Department of Agrarian Reform Adjudication Board (DARAB) is hereby reaffirmed. All concerned DAR officials and employees are hereby strongly enjoined to implement this policy.

Setting up of farmer-paralegal desks I field officers. The DAR Municipal Office, DAR Provincial Office, and the DAR Regional Office shall set up farmer-paralegal desks that will support farmer paralegals in working for the resolution of their agrarian problems.

The farmer-paralegal desk shall be supported by the legal unit/division with necessary logistics such as space, materials, and communication facilities. It shall be the duty of the legal officer to conduct regular strategizing or legal clinics with the farmer paralegals. Any farmer requesting for legal assistance shall be informed of the presence and availability of farmer-paralegal manning the desk.

Aside from utilizing the desk for their respective Peoples' Organizations' (POs) legal and advocacy issues on agrarian reform, farmer paralegals may also assist any farmer with legal problems but without the financial resource to consult or hire private lawyers. The attending farmer-paralegal may provide legal options or conduct strategizing and tactics sessions with the farmers regardless of the presence or absence of the legal officer in the said unit or division. In this case, his/her principal role is to orient the concerned farmers with their rights and options available to them considering the particular problems raised. Accredited farmer-POs shall be allowed to use the desks subject to their consensual agreement.

3. Agrarian Justice Paralegal Support Fund. An Agrarian Justice Paralegal Support Fund is hereby created to assist the farmer paralegals in some of their operations. The fund shall be utilized for the following:
 - a. Logistics support for the operation of farmer paralegals desks in field offices;
 - b. Assistance in documentation and research of agrarian implementation issues and cases and other paralegal activities including strategizing and tactics session, handling of cases, and mobilization referred to farmer paralegal desks;
 - c. Assistance in documentation and research of agrarian implementation issues and cases and other paralegal activities including strategizing and tactics session, handling of cases, and mobilization being endorsed by the accredited farmer POs to the members of farmer paralegal desks; and



d. Other paralegal activities related to resolution of implementation issues and ALI and DARAB cases subject to the limitations provided above.

PROVIDED that the fund shall not in any way be utilized as legal fees for lawyers or as honoraria for any farmer-paralegal or for capacity-building or trainings which shall be the counterpart of the POs and civil society organizations. PROVIDED FURTHER that access to funds by farmer POs for paralegal activities shall be supported by a brief proposal and subject to a counterpart of at least five (5) percent of the total cost of proposal.

The Guidelines Drafting Committee is hereby directed to operationalize the creation of the Agrarian Justice Paralegal Support Fund and the accreditation process for the people's organizations with paralegal programs.

4. Active involvement in drafting of policy recommendations.

Considering the legal implication of DAR policies in agrarian implementation, farmer-paralegals coming from people's organizations shall be invited and consulted by the Provincial Agrarian Reform Coordinating Committees at the local level and the Guidelines and Drafting Committee at the DAR central office during the deliberations of policy recommendations pertaining to ALI and DARAB cases.

5. Paralegal Development Program. The Department shall continue to promote the development of paralegals among farmer organizations, through the continuation and strengthening of existing training programs and other similar endeavors.

D. Legal Aid by Private Law Firms, Law Partnerships and Private Practitioners

There is no legal requirement for private law firms, partnerships and single practitioners to provide legal aid to the poor and marginalized sectors of society. The courts can, however, appoint de officio, in open court or through a written order, certain lawyers to handle cases for specific individuals (usually without financial means to secure private counsel).

Other lawyers also provide free legal assistance to some clients, although there are no available data on budget, models of operation, number of assisted clients and kinds of legal assistance they provide.

E. Legal Aid by University/College-Based Legal Aid Offices

There are a few universities with Colleges of Law that have legal aid clinics, with law students as the legal aid providers. These clinics follow the guidelines provided in Rule 138-A (adopted from Supreme Court Resolution dated December 18, 1986) of the Revised Rules of Court in the Philippines, quoted below:

"SECTION 1. Conditions for student practice. – A law student who has successfully completed his 3rd year of the regular four-year prescribed law curriculum and is enrolled in a recognized law



school's clinical legal education program approved by the Supreme Court, may appear without compensation in any civil, criminal or administrative case before any trial court, tribunal, board or officer, to represent indigent clients accepted by the legal clinic of the law school.

SEC. 2. Appearance. – The appearance of the law student authorized by this rule, shall be under the direct supervision and control of a member of the Integrated Bar of the Philippines duly accredited by the law school. Any and all pleadings, motions, briefs, memoranda or other papers to be filed, must be signed by the supervising attorney for and in behalf of the legal clinic.

SEC. 3. Privileged communications. – The Rules safeguarding privileged communications between attorney and client shall apply to similar communications made to or received by the law student, acting for the legal clinic.

SEC. 4. Standards of conduct and supervision. – The law student shall comply with the standards of professional conduct governing members of the Bar. Failure of an attorney to provide adequate supervision of student practice may be a ground for disciplinary action (Circular No. 19, dated December 19, 1986).”

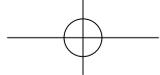
The Office of the Legal Aid (OLA), of the College of Law of the University of the Philippines, is one of the known legal aid clinics in the Philippines. OLA, headed by its Director, gets its funding from the university, and being a state university, it gets most of its funding from the National Government. There are also some private donations and grants for specific projects.

Requirements for accessing legal aid, such as being an indigent, forms and procedures, rate of pay of supervising lawyers (lower than that of private lawyers) follow that of other government agencies discussed earlier. Areas of coverage is within Metro Manila (the College is located in Quezon City, part of Metro Manila). Provision for legal aid mainly follows the college calendar, since law students mainly provide legal assistance, although supervising lawyers do their work whole year round.

Students are assigned their cases and days and times on which they stay at the clinic where they can interview prospective clients, recommend their acceptance or rejection, provide immediate legal assistance such as documentation and legal advise. They also attend hearings and draft pleadings and motions (checked by the supervising lawyers), as required by their cases.

F. Legal Aid by Non-Government Organizations

The Free Legal Assistance Group (FLAG), founded by the late Philippine Senator Jose W. Diokno in the 1970s, is one of the pioneer non-government organizations (NGOs) that provide legal assistance to marginalized sectors. Initially handling only cases of human rights (mostly civil and political rights) abuses, FLAG, through the years, have handled numerous cases and led in legal and policy advocacy, conducted paralegal and issue-based trainings and seminars, and honed law student paralegals and interns, both domestic and international. Currently, FLAG carries the abolition of the death penalty in the Philippines as one of its advocacies.



Legal aid providers from voluntary bar associations, trial lawyer associations, women lawyer associations, and other civic groups that provide legal aid among its services, are included in this classification, although there are no readily available data from these sources.

Through the growth of civil society in the 1980s-1990s, other groups, notably legal resource NGOs, were formed to respond to the needs for legal assistance and empowerment of the marginalized sectors. The Alternative Law Groups, (ALG) Inc. (now with membership of 17 organizations, of which Alternative Law Research and Development Center [Alterlaw] is a member), takes its roots from discussions between 13 organizations in May 1990, all working in alternative or developmental law and legal advocacy (Rationale of the Conference, "1st Alternative Law Conference, Lawyering for the Public Interest", 2000, Alternative Law Groups, Quezon City, Philippines). The ALG members provide legal assistance to a different marginalized sectors.

I. Annual Budget for Legal Aid

There are no readily available data for budget for legal aid given by non-government organizations, number of applications for legal aid made and number of lawyers providing legal aid services. NGOs, though concentrated mostly in Metro Manila, have branches all over the Philippines, or some are based in other cities and municipalities outside Metro Manila.

II. Organization

NGO lawyers work either alone or in teams, when providing legal assistance. The main difference of NGO lawyers from other legal aid providers is the orientation towards legal assistance and lawyering itself. To quote one of the ALG lawyers:

"ALG work proceeds from the basic tenets of developmental [or alternative] legal assistance. It departs from private practice and traditional legal aid by seeing clients as partners in development, and seeking to empower them to develop their own legal and political strategies. Social justice is an objective in resolving the problems of the poor and the marginalized.

xxx

Litigation within the framework of developmental legal assistance, is merely one of the tools or processes used in protecting the human rights of the poor and the marginalized groups and is seen more in the context of their eventual empowerment. On the other hand, litigation is also an advocacy tool – an opportunity to engage the State, in its performance of governance and obligations under international human rights instruments, to make case law on the meaning and effect of human rights. The articulation of causes of action and human rights of the poor particularly its normative content and corresponding State obligations, enforceability and 'justiciability'. Exposure to litigation is also an opportunity to enable the partner-beneficiaries to learn and understand the limitations of purely legal or litigation-oriented practices." (Litong, Glenda T., "Litigation as an Advocacy Tool in Alternative Lawyering", pp. 54-55, From the Grassroots: the Justice Reform Agenda of the Poor and Marginalized, 2004, Alternative Law Groups, Inc. (ALG), Quezon City, Philippines)



From this difference in orientation, as will be discussed below, alternative lawyers differ from other legal aid providers in terms of cases handled, procedure in case handling, treatment of clients, and other types of assistance provided to clients.

III. Sources of Funds

Most NGOs get their funding from foreign donors. Other sources of funds include membership dues, honoraria from trainings and seminars, and other sources of income, donations and grants.

Although legal assistance for case handling is free, clients are encouraged or required (if capable) to provide counterpart contributions such as payment of docket fees and other court fees, transportation costs, photocopying costs and other incidental expenses. The idea behind counterpart contributions is not only to share the costs, but also to involve the clients to have more at stake in their cases.

IV. Models of Operation

NGO lawyers, fewer in number than lawyers who enter the more traditional employment of law firms and corporations, are usually paid lower than their private lawyer counterparts. NGO lawyers go into employment with NGOs providing services to marginalized sectors that they are interested in. Hence, NGO lawyers usually become experts in certain legal arenas such as women and children issues, environment, farmers, fisherfolk, labor, migrant workers, people living with HIV/AIDS, etc.

V. Scope and Types of Legal Aid Services

As discussed above, litigation and case handling is just one of legal aid services provided by NGOs, which also include legal advice and documentation, among others. Moreover, since clients are considered as partners (and case handling is but one strategy to solve the community's problems), other services include participation in community strategizing, capacity-building trainings and legal awareness and literacy.

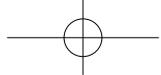
VI. Tests and Procedures of Assessment

The fact that litigation is just one strategy to pursue the rights of the clients, and the ultimate goal is to empower the marginalized sectors, NGOs require that cases to be accepted must have "social impact" or some other similar term that means that the case will affect a broader number of marginalized people, not just a private cause of action between two opposing litigants. Thus, cases that will require the courts to resolve new issues, that will require the pronouncement of jurisprudence and if possible, overturn unjust and oppressive laws or interpretation of laws, will be favorably considered.

However, there are other civil, criminal or administrative cases that may arise or be brought against the clients as a result of the original case from which their rights are being based on. Even if these cases are not with "social impact", they may be handled as part of the community's struggle to assert and claim their rights.

Since NGOs have their own mandates as to what members of marginalized groups they will provide services to, clients must know these mandates to seek assistance to the groups that will be able to work with them best.

ALG member organizations do not have organizing desks, so a major requirement is that the community or group must be organized, or is in the process of, or being organized by another group. This will ensure that the community or group will speak and decide as one and be able to stand alone once the service relationship between the client and the NGOs have been terminated.



Groups belonging to the network or those that have heard about the NGO will usually refer the applicant to the NGO. Either a paralegal or the lawyer will interview the applicant, who will then make a recommendation, based on their organization's criteria, if the case can be accepted. Forms or reports will be filled up or made for each applicant or case referred.

Some groups have posters or have radio shows, not primarily to advertise their services, but more so to recruit lawyers and volunteers and to use as advocacy tools for the rights awareness and promotion.

Monitoring and evaluation tools include the preparation of reports and case folders, after hearing meetings with clients, strategizing and evaluation meetings with clients to ensure that the clients know their options, are aware of the status of their case, and make decisions that will be best for them.

III. Special Laws to Reduce the Need for Legal Aid

The laws cited below were not per se created to reduce the need for legal aid but these were passed to settle disputes not in the courts (where lawyers are needed to appear and handle cases), but in other venues, where conciliation, mediation, arbitration and other voluntary and alternative modes of dispute resolution are resorted to.

A. Katarungang Pambarangay Law

Presidential Decree No. 1508 (Establishing a System of Amicably Settling Disputes), is the Katarungang Pambarangay Law, effective in 1978, and now forms part of the Local Government Code of 1991 (together with its Implementing Rules and Regulations). The law created a community-based (barangay level) system of settling disputes amicably.

The law provides for the cases that must pass the Katarungang Pambarangay, the exceptions, procedure, conciliation and mediation body and its powers, among others. The purpose of the law is to promote the speedy administration of justice, decongest court dockets and to preserve and develop Filipino culture and to strengthen the family as a basic social institution. The objective is to settle disputes, without the use of lawyers, and within the framework of conciliation and mediation.

B. Court-Mediation

By virtue of the Supreme Court en banc Resolution A.M. No. 01-10-5-SC-PHILJA, Philippine Mediation Center (PMC) Units were established in Metro Manila and certain other areas in the Philippines, where trial courts, during the pre-trial stage of cases, can refer cases to the PMC units for mediation conference. Cases that may be referred are as follows:

“xxx

- a. All civil cases, settlement of estates, and cases covered by the Rule on Summary Procedure except those which by law may not be compromised;
- b. Cases cognizable by the Lupong Tagapamayapa under the Katarungang Pambarangay Law;
- c. The civil aspect of B.P. 22 [Bouncing Checks Law] cases; and
- d. The civil aspect of quasi-offenses under Title 14 of the Revised Penal Code.” (Supreme Court Administrative Circular No. 20-2002, page 2).



C. Alternative Dispute Resolution Law

Republic Act No 9285 or the Alternative Dispute Resolution Law, passed in 2004, promotes the State policy of encouraging and actively promoting the use of Alternative Dispute Resolution (ADR) "as an important means to achieve speedy and impartial justice and declog court dockets. Section 6 of the Law provides for the exceptions to the application of this act:

"Sec. 6. Exceptions to the Application of this Act. – The provisions of this Act shall not apply to resolution or settlement of the following:

- a) labor disputes xxx
- b) the civil status of persons
- c) the validity of a marriage
- d) any ground for legal separation
- e) jurisdiction of courts
- f) future legitime
- g) criminal liability
- h) those which by law cannot be compromised."

Other than recognized forms of mediation and arbitration, Sec. 18 of R.A. 9285 provides generally:

"Sec. 18. Referral of Dispute to other ADR Forms. – The parties may agree to refer one or more or all issues arising in a dispute or during its pendency to other forms of ADR such as but not limited to (a) the evaluation of a 3rd person; (b) a mini-trial; (c) mediation-arbitration, or a combination thereof."

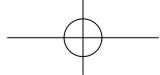
The law also provides, among others, for the creation of the Office for Alternative Dispute Resolution, an attached agency to the Department of Justice.

IV. Prospects for Improving Legal Aid

The provision of legal aid in the Philippines is being undertaken by a number of bodies, both by State and Non-State Actors. Although there are express provisions for coordination between legal aid providers among government offices, departments and agencies, there is room for improvement in implementation of such a system, and even the provision of legal aid within the agencies themselves.

While the formal processes and procedures in providing legal aid can indeed be improved so as to make it more widely available to the poor and marginalized, better monitored and evaluated to make it more timely and responsive, with ample budget to answer for all the legal needs of the people, this improvement should not be enough.

Improving the provision of legal aid is not to be taken as a singular endeavor, but as part and parcel of improving the whole access to justice, especially of the poor and the marginalized. The problems of access to justice do not merely relate to the issues relating to the courts and the judicial system, but more so, they relate substantively to oppressive laws and structures themselves that suppress the rights of the people.



V. Conclusion

The state of legal aid in the Philippines is both encouraging and disheartening. While theoretically, legal aid from the government should be available to those most in need, the reality is that it does not. Problems such as inadequate budget and lack of lawyers hamper the realization of justice of these sectors.

Overworked, overburdened, understaffed and underpaid legal aid lawyers cannot be expected to give the best legal assistance. Government agencies themselves complain about the inadequate budget being given to legal aid, and making do with the little amount cannot be a concrete foundation for a good legal aid program.

The growing number of NGOs that provide legal assistance to marginalized sectors (government agencies themselves refer cases to these NGOs since they cannot provide the needed services) itself shows that state-provided legal aid is not enough.

Still, the presence of written guidelines that seek to professionalize and systematize, and improve the provision of legal aid, must surely be seen as positive. There is an acknowledged realization of the importance of systems, processes and procedures in the provision of legal aid. Again, beyond this realization must be the will, capability and direct action of the State to generally improve the lives of its people, where their legal assistance needs, as all of its others needs, are met.

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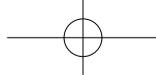
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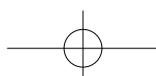
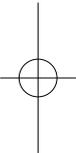
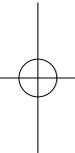
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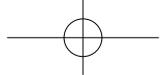


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Country Report: Philippines



THE PAO REPORT

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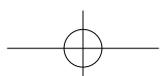
The acronym PAO stands for the Public Attorney's Office, an attached agency to the Department of Justice of the Republic of the Philippines, mandated to provide free legal assistance to indigent persons.

With an approved appropriation of P554,529,000.00 in the year 2004, the PAO was able to give legal aid grants to 5,323,584 qualified applicants. Last year the 1,048 public attorneys of the PAO were able to serve the poor among the 87 million people in the Philippines.

Free and competent legal services flow to Philippine communities

The free legal aid system of the Public Attorney's Office is government-oriented. It is also community-oriented in the sense that it has community-oriented outreach activities/services, which include the following:

- **KALAHI (Kapit-bisig Laban sa Kahirapan)** - meaning "Linking Arms Against Poverty," is Philippine President Gloria Macapagal-Arroyo's Anti-Poverty Reduction Strategy Program. It is a government project with a goal of immediately responding to the poverty-related needs and problems of the most depressed communities in urban Metro Manila. Under this program, the concerned departments/agencies of the government, through their officials and representatives, interact with the different communities/barangays in Metro Manila through the delivery of their respective services to a particular community at least twice a week.
- **Barangay Outreach** - The main thrust of this program is to provide a more accessible free legal representation to the indigent Filipinos. Public Attorneys are assigned on rotation basis, to serve a particular Barangay (Community) with the end in view of extending legal aid beyond the confines of their offices.
- **Jail Visitation** - PAO lawyers provide legal advice to prisoners without a lawyer while in jail. They also help in jail decongestion by ascertaining who among the prisoners are qualified for immediate release even if their case is still pending with the Court.
- **Media Linkage** - The PAO lawyers conduct information dissemination through media linkages, like radio and TV broadcast and print media, for the purpose of improving the legal literacy and awareness of the Filipinos.
- **Inquest / Night Court** - Legal assistance provided during custodial interrogation and inquest investigation conducted by police. PAO lawyers and staff are assigned to





specific police precincts to provide suspects access to counsel if they do not have a lawyer.

PAO's 16 regional and 258 district offices provide free legal aid services, which include the following:

1. Non-Adversarial Services - such as legal advice, mediation and counseling, and documentation (like preparation of affidavits, and other legal documents).
2. Services to Prevent or Minimize Litigation - Parties in disputes are brought together to the negotiation table to amicably settle their differences. Through this service the disputants are spared the expenses and inconveniences of litigations, and enable the parties to mutually respect each other's rights and obligation.
3. Services to protect rights before litigation - Inquest/Night court is conducted to provide assistance to suspects during police interrogation and inquest investigation.
4. Representation of cases of indigent litigants in criminal, civil and administrative proceedings - the advocacy of the indigent client is followed from the lowest court up to the appeals court.

Cases on appeal with the Court of Appeals and the Supreme Court are handled by the lawyers of the Special and Appealed Cases Division (SACD) at the Central Office, except for those within the jurisdiction of Regions 7 and 10, which have their respective Regional Special and Appealed Unit. Sensitive cases of national concern, however, are personally handled by the Chief Public Attorney, assisted by selected lawyers from the Central Office.

Though the salaries and expenses for personnel services are centralized, the expenses for maintenance and operation of regional and district offices are decentralized to facilitate the distribution of logistical support necessary in the delivery of free legal aid services to PAO's clients.

PAO Clients: Indigent with meritorious cases

Pertinent provisions of PAO Memorandum Circular No. 18, Series of 2002, relative to its clientele are quoted below:

"Article II

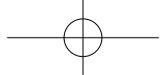
"Clientele

"Section 1. Persons Qualified for Legal Assistance. – Pursuant to Book IV, Title III, Chapter 5, Section 14 of the Administrative Code of 1987 in relation to Presidential Decree No. 1 and Republic Act No. 6035, the Public Attorney's Office is mandated to represent, free of charge, indigent persons or the immediate members of their family, in all civil, administrative and criminal cases where, after due investigation, it is determined that the interest of justice will be served thereby.

"In line with the foregoing, PAO lawyers should extend legal assistance to an applicant who is indigent and whose case is meritorious."

The following are considered indigent persons:

- 1) Those residing in Metro Manila whose family income does not exceed P14,000.00 a month;
- 2) Those residing in other cities whose family income does not exceed P13,000.00 a month; and
- 3) Those residing in all other places whose family income does not exceed P12,000.00 a month.



A case is considered meritorious “if an assessment of the law and evidence on hand discloses that the legal services of the office will assist, or be in aid of or in the furtherance of justice, taking into consideration the interests of the party and those of society.” (Article II, Sec. 2, PAO MC No. 18, Series of 2002)

Cases of defendants in criminal actions are also considered meritorious because “in criminal cases, the accused enjoys the constitutional presumption of innocence until the contrary is proven.” (Ibid.)

“Sec. 5. Persons Qualified for Assistance Pursuant to MOAs and DOJ Directives. – The following are qualified for legal assistance by virtue of agreements entered into with other government offices, directives from the Department of Justice, and special laws:

1. Department of Agrarian Reform lawyers against whom criminal and administrative complaints have been filed for acts committed in connection with the performance of their official duties (Directive of the Minister of Justice);
2. Farmer-beneficiaries of the Agrarian Reform Law, (a) in agrarian-related civil or criminal cases pending before the courts, and (b) in cases against fellow beneficiaries pending before the courts or the Department of Agrarian Reform Adjudication Board (DARAB) where one of the parties is already represented by a lawyer from the Department of Agrarian Reform (Memorandum of Agreement, dated May 8, 1991, between DAR and DOJ);
3. Indigent laborers in meritorious labor cases (Memorandum Order, dated May 19, 1988, of the Secretary of Justice);
4. Indigent aliens (2nd Indorsement, dated March 25, 1974 of the Undersecretary of Justice, the pertinent portion of which is hereunder quoted:
“xxx the undersigned finds well-taken the conclusion, and the reason therefore, reached by the Legal Research and Statistics Division of that Office to the effect that the services of that Office may be extended to indigent aliens. Nonetheless, considering its limited facilities and personnel, that office is directed to adopt the policy of giving preference to deserving citizens in extending its legal services;”
5. Qualified overseas contract workers in all cases within the original and exclusive jurisdiction of the Philippine Overseas Employment Administration (Memorandum of Agreement between PAO, DOLE, POEA, OWWA and some NGOs, dated April 2, 1993); and
6. Barangay Health Workers (Section 16, Rule II and Part 5, Rule VII of the Implementing Rules and Regulations of Republic Act No. 7883); and
7. The Department of Social Welfare and Development in the filing of petitions for the involuntary commitment of minors, as well as in the filing of petitions for the declaration that a child is abandoned or neglected (Directive of Minister of Justice Neptali Gonzales, dated February 10, 1987)” (Underscoring supplied)

Procedure in Accepting Cases

The following procedure shall be observed in the acceptance of judicial and quasi-judicial cases:

1. Interview – Persons seeking legal assistance shall be interviewed by a lawyer or personnel assigned to interview clients to ascertain if he is qualified for legal



assistance. In addition to the data called for in the Interview Sheet, the applicant shall be required to submit or exhibit a copy of his latest income tax returns, if available, and execute the Affidavit of Indigency printed at the back of the Interview Sheet.

2. Control Number – If the applicant is found to be qualified for legal assistance, the case shall be assigned a control number. The numbering shall be consecutive starting from January to December of every year. The control number shall indicate the Regional and District Office handling the case. In the Central Office the numbering shall be undertaken by the Division concerned, i.e. FSSD or SAC Division.

Example:

PAO Form No. 3 – Interview Sheet

Region : Dist. Office : Year : Month : Number

NCR : Pasay 1997: 08 : 898

3. Assignment of Case – After a case is given a control number, the same shall be assigned to a lawyer by the Regional Public Attorney or District Public Attorney or Division Chiefs as the case may be.

The applicant does not have to apply personally when it is physically impossible for him to do so. Illness and incarceration are two of the reasons which could prevent him from making the application in person. In these cases, and other similar instances, the application can be made in their behalf by their relatives or other people concerned about their welfare.

The lawyers or personnel assigned to interview clients to ascertain if they are qualified for legal assistance have the responsibility of assessing applications for legal aid.

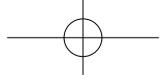
The lawyers have successfully passed the BAR Examinations, and the personnel, the Civil Service Examination. Based on their respective educational background, training, work experience and work-related performance, and also on the result of the selection and screening tests conducted by the PAO Selection and Promotions Board, they are appointed to assess applications for legal aid.

The prospect of success is a consideration for deciding applications. Article II, Sec. 2 of MC No. 18 states: “xxx if an assessment of the law and evidence on hand discloses that the legal services of the office will assist, or be in aid of or in furtherance of justice, taking into consideration the interest of the party and those of society. In such cases, the PAO lawyer should agree to represent the party concerned. A contrario, a case is deemed unmeritorious if it appears that it has no chance of success, or is intended merely to harass or injure the opposite party or to work oppression or wrong. In such situation the PAO lawyer must decline the case.” (Underscoring supplied)

Much care is given to the evaluation of applicants, thus much emphasis is also given to the above stated merit test and also to the indigency test already cited in this report.

Nonetheless, if it is discovered that an applicant has been accepted as a PAO client despite his ineligibility, the free legal aid services being granted to him are terminated. He shall then be referred to the Integrated Bar of the Philippines, or other appropriate agency that is willing to handle his case.

In case a PAO lawyer has accepted an applicant, despite knowing the latter’s ineligibility, the former shall be subjected to disciplinary measures. Article VII, Sec. 1 of PAO MC 18, states:



“Disciplinary action in accordance with the Civil Service Law shall be taken against lawyers who violate this Memorandum Circular particularly those who –

1. Handle cases of persons who are not qualified for legal services under the indigency test, or those who are not entitled to services specifically mentioned in Article II of this Memorandum Circular; Xxx”

When pressure is high and funds are low, to its mandate the PAO remains true

The PAO is specifically mandated by law to render free legal services to its indigent clients even if their cause of action is adverse to a public officer, government office, agency or instrumentality provided the case is meritorious (PAO MC No. 18, Series of 2002). PAO has maintained its independence by remaining true to its mandate in the midst of differences with pressure groups and even with the government, on issues concerning the interest of its clients to ensure that justice, equity and truth shall prevail.

The government is the sole source of funding for PAO's free legal aid services. The UNICEF, though, has been supportive of PAO. Since August 2000, it has been sponsoring PAO's "Child Legal Assistance" and "Child Diversion" seminars. The UNICEF also helped in printing the pamphlet containing PAO Memorandum Circular No. 22: "Standard Office Procedures in Extending Legal Assistance to Juveniles in Conflict with the Law" and Memorandum Circular No. 18: "Amended Standard Office Procedures in Extending Legal Assistance"

The PAO's free legal aid system could be considered a charitable model because it charges no fee at all in all its services. However, the services per se are not given for charity's sake. Availment of free legal aid services by indigent clients is rooted on rights acknowledged by Philippine laws. The Bill of Rights of the 1987 Philippine Constitution explicitly provides, among others, that: "Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty."

On the matter of adjudication fees/filing fees, Art. IV, Sec. 17 of PAO Memorandum Circular (MC) No. 18, Series of 2002, has this special provision for its clients, to wit:

“Sec. 7. Docket and Other Fees. – If the client did not litigate or appeal as a pauper in the lower court and he wants to appeal as a pauper in the Court of Appeals or the Supreme Court, a petition to be allowed to appeal as a pauper should be filed in the lower court. Once the petition is granted the same must be transmitted to the SAC Division together with the office record of the case. If the client does not appeal as a pauper litigant, the corresponding docketing and other legal fees in the form of money order payable to the Clerk of Court of the Court of Appeals or Supreme Court must be forwarded together with the office record of the case.

“Docketing fees for cases falling under the Rules on Summary Procedure (BP No. 129) must be remitted together with the case record as no extension of time may be granted by the court, unless the same had been paid at the time the motion is filed.

“Docketing fees in ordinary appeals to the Court of Appeals shall be paid to the Clerk of Court of the Regional Trial Court of origin.”



PAO lawyers' relevance in the Philippine legal profession

The Philippine Supreme Court has enacted an Arbitration and Mediation Program, for the purpose of declogging the dockets of the court, and to ensure that conflicts are settled out of court to lessen the need for legal aid.

The lawyers in the Philippines have an obligation to provide legal aid, in the following instances:

- 1) When a private or government lawyer is appointed by the court as counsel de oficio;
- 2) When a private lawyer is requested by the Integrated Bar of the Philippines, or any of its chapter to render free legal aid;
- 3) When a lawyer is employed at the Public Attorney's Office, whose mandate is to render free legal assistance to indigent clients;
- 4) When a lawyer is employed in a government office whose functions include the rendition of free legal assistance.

Government offices just give non-judicial services, except the National Prosecution Office, which acts as the lawyer of the complainants. In case of the former, when there is a need for their clients to be represented in a judicial or quasi-judicial bodies, they refer them to the Public Attorney's Office, which offers both judicial and non-judicial services.

Professionally, lawyers in the Philippines maintain their duty to observe candor and courtesy to their colleagues in the bar profession.

Filipino Lawyers are required by the Supreme Court to take up the Mandatory Continuing Legal Education (MCLE) classes. The PAO was accredited as MCLE provider in 2002. Last August 18 to 23, 2003, PAO gave its first offering of MCLE lectures to public attorneys. The PAO supports programs and projects that upgrade knowledge and sharpen the skills of its public attorneys for this would redound to the benefit of its indigent clients.

The interests of its clients are of paramount importance to the PAO. The documents that are submitted on their behalf are scrutinized to perfection. They are reviewed by the senior lawyers, and in case of pleadings on appealed cases, by the Division and Section Chiefs of the Special and Appealed Cases Division.

"The main thrust of the legal aid delivery program of the PAO is to enable impecunious sector of society to have access to counsel at the moment of need. In carrying out this mission PAO lawyers shall reach out beyond the confines of their offices and make access to counsel visible to those who truly need our legal service. Regional and District Heads, therefore, should institutionalize in their respective Regions and Districts, a dynamic inquest program plus a periodic visitation of jails as a regular activity." (Art. 5, Sec. 6, MC 18; Underscoring supplied)

The PAO has a Memorandum of Agreement with DZRV-Radio Veritas, and also with the Armed Forces Radio-DWDD. These MOAs have made it possible for radio listeners to avail of live and free legal advice from the public attorneys featured in DZRV's program Abogado ng Bayan (Public Attorney), and DWDD's Anghel ng Masa (Angel of the Masses). Guesting in radio and television programs, and interviews and features published in magazines and newspapers give high visibility to the PAO as an office and the services it offers. The tri-media have even recognized the PAO's contribution in public service through some of the awards it has received from media institutions. The tri-media have been a reliable and effective partner of the PAO in disseminating its services to the masses.

-End-



Country Report Discussion III

Bruce Lasky (Open Society Institute SE Asia Initiative, Cambodia)::

This question is for Mr. Abdullah from Malaysia. When the Malaysian legal aid system relies on the voluntary spirit of lawyers, how do you expect them to cover the investigation costs so that there is an equity of arms in these pro bono cases?

Abdul Rahman Abdullah (Malaysian Bar National Legal Centre, Malaysia):

As far as the evidence in police reports is concerned, the costs have to be born by the client themselves. We don't have any private investigators to do any of those things. Everything else is free.

Chito Gascon (Lawyers League for Liberty, Philippines):

My name is Chito Gascon and I'm a lawyer from the Philippines. With respect to India, could you please elaborate on how private practitioners are actually integrated or encouraged to provide legal aid by the new National Legal Services Authority?

With respect to Malaysia, you presented a comprehensive overview of the bar council's legal aid practice, but you also said that the government also has a legal aid system. Could you share with us what the government is doing in terms of legal aid?

With respect to the Philippines, I sense that there is a major gap in services for civil cases. The Public Attorney's Office has the mandate, but the reality is, the 1000 or so lawyers that you have are overly burdened with criminal cases. What is being done to deal with the gap in civil cases?

With respect to the alternative legal groups who are doing great work, the reality is there are only 17 such organizations scattered around the country. Is the need being met by some of the other systems? Is there discussion about how ensure that legal aid is really made available to those who need it?

Mehmood Pracha (Organization for Promotion of Legal Awareness, India):

At every level of court, there are legal aid authorities who choose a panel of lawyers for legal aid. Whenever a person approaches the legal aid authority, one of these lawyers is chosen and assigned to that case. He is then paid by the legal aid authority for remuneration. That's what I meant when I say that private practitioners are allowed.

In fact, only private practitioners are handling cases so that they have the independence of earning their own livelihood. Paying the lawyers is also a very important factor because everyone has to live.

Abdullah:

What happens in Malaysia is that there's actually an overlap in the services of the government legal aid center and the bar council's legal aid center. The government's legal aid normally takes on cases involving Sharia Law, which is especially for Muslims. The bar council's legal aid centers deal with civil law cases.

Gilda Guillermo (Alternative Law Research and Development Center, Philippines):

With respect to civil cases, I agree that there is a major gap, since the PAO usually focuses on criminal cases. Theoretically, they can act on civil cases, and that also holds true for the IBP. I don't know if IBP is doing anything positive about civil cases, since cases



such as eviction cases should be acted upon. I think civil cases are mostly dealt with by the IBP and private practitioners, however due to the means test, there are also limitations on the IBP acting on these cases.

Persida V. Rueda-Acosta (Public Attorney's Office, Philippines):

I want to clarify matters. Public attorneys are authorized to handle not only criminal cases, but also civil cases, labor cases, etc..

We have resident lawyers in every branch of court nationwide. One PAO lawyer can be assigned to at least 2 or 3 branches of court. We handle cases for the tenants, not for the landlord. We handle cases for the employees but not for the employers. Because our mandate is to give free legal assistance to the indigents, we can only serve the poor. We can handle civil cases subject to merit and indigence test. In criminal cases, every case is meritorious because of the constitutional presumption of innocence. With respect to civil cases, as long as the litigant is poor, we can handle the case.

Jerry Cheng (Legal Aid Foundation, Taiwan):

I have a few questions for the Chair regarding the work of the PAO. Your report mentioned that the PAO has a budget of 500 million, and that there are over 5 million people who are eligible to apply for assistance. Of these 5 million people, how many of those assisted were given legal advice? How many were provided with legal representation, and what was the proportion of civil and criminal cases? Furthermore, were there any cases that filed suit against the government for national compensation?

Lastly, are your 1,048 employees full-time staff attorneys? Do they only serve as defenders, or are they also part of the prosecutorial system?

Acosta:

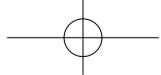
We have a budget of about 500 million pesos a year. With the 1,048 lawyers and 852 support staff, we have served 5 million indigent Filipino people in a year. That includes representations for trial or judicial proceedings and as well as services in non-judicial proceedings. We handle about 500,000 judicial cases a year. Some labor cases involve hundreds of employees. We count the data per client, but we also have statistical data per case.

We also appear before the prosecutor's offices and provide assistance during interrogation and investigations. I understand that in some countries, the accused are not allowed to have counsel during the time of arrest. However, now in the Philippines, thanks to human rights advocates, an accused can exercise his right to counsel.

With this workload, you see why most of our lawyers plan to stay in this office for only 3 to 5 years, and then they apply for positions in the judiciary or the national prosecution service, or establish his own law firm. Because in this office, this is a matter of sacrifice. I could work in a big law firm, but I prefer to serve the Filipino people – especially the poor because I was born to a very poor family.

Stephen Lin (Central Queensland Community Legal Centre, Australia):

I have heard that many legal aid services have trouble retaining lawyers. I also heard



2005 International Forum on Legal Aid

from you that you lost the lives of three of your legal aid lawyers. Are there any strategies to preserve the lives of legal aid lawyers? We are supposed to defend democracy: how can we preserve our own lives?

Acosta:

You're right. I have also received several death threats because of some sensational cases. Some of you know about the political problems in our country. Still, advocacy prevails over our fear of loss of life.

My two lady lawyers were ambushed in instances related to their work. Fortunately, one male lawyer survived the ambush and is still alive. We did our best to coordinate with the law enforcers to solve the case immediately. I asked my lawyers to inform me right away so that we can provide firearms to our lawyers and take other security measures.

Derwin Anifah (Indonesia Legal Aid and Human Rights Association, Indonesia):

This question is for Madame moderator. Regarding litigation against the government, how would you describe the difficulties?

Acosta:

We are trying to advocate speedy trials because most civil cases drag on for as long as ten to fifteen years. In criminal cases, some judges are trying their best to schedule cases as early or as frequently as possible.

I can say that not only in the Philippines but all over the world, it's difficult to access justice. That's why we are here in this forum now. We're trying to share ideas, visions, and systems that could be adapted in our own countries.

I experienced those difficulties when I was preparing to give a report before the Supreme Court regarding the suspension of executions in my country. You will receive some unsavory remarks from some sectors, you will suffer some suppression from some people in government. So it is very painful when you are fighting to save the life of an individual, and you want everyone to cooperate and to be nice with you. You can't expect the best from all people, but whenever I attend this type of conference I return to my country in high spirits for the ideal of providing justice to my fellow men.

Regarding the question on whether our lawyers are full time lawyers of the government: Yes, we are full time lawyers. We cannot handle any private cases and we cannot accept any fees for our services, except our salaries from the government.

Lasky:

Gilda, could you explain the idea of the client-centered lawyer in the Alternative Law Group? I understand you take a holistic rather than top-down approach in involving the clients in a partnership?

Guillermo:

Alternative Law Group (ALG) is a network of 17 member organizations. Of these 17 organizations, most are concentrated in metro Manila, each with their own expertise. So, we handle women's and children's issues, labor, fisher folk, people living with HIV/AIDS, and other people in marginalized sectors.

We consider our clients to be our partners. Thus, as partners, we discuss with them their legal problems and inform them of the options available, whether it be litigation or some other non-legal strategy. Then, it is the client and not the lawyer who decides what strategy to use. If the client chooses litigation, we also see how the case could have an impact on society.



Again, as partners, we empower our clients to know the law. We also train them as paralegals since there are very few lawyers in the far flung areas of the country. So, we train these paralegals to give immediate legal assistance when it is needed in their respective areas.

Anifah:

In India, is ethnic violence similar to religious violence? How is legal aid provided with impartiality?

Pracha:

In India, violence happens not only along religious lines but also along caste lines. That question of neutrality can be asked of any lawyer. The legal aid authority is an absolutely autonomous body that is only partly funded by the government. It is allowed to raise its own funds and it can accept donations. Lawyers are independent lawyers and are not under any pressures. Clients are free to choose from the panel of lawyers. If they are not satisfied with a lawyer's quality of work, that can also change lawyers. In all, this maintains the neutrality and quality of legal aid work.

Cheng:

May I continue with my previous question? What I meant was, 5 million cases a year is an amazing caseload when PAO has only 1,048 attorneys. Hence, I would like to know, how many are legal consultation cases, and how many are legal representation cases?

Moreover, a caseload of this magnitude is surely able to reflect many social problems or systemic problems in society. Have you proposed any reforms to address such problems?

Acosta:

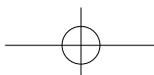
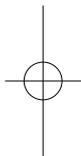
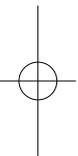
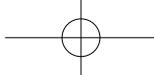
Everyday, not only Monday through Friday, there are long lines of clients asking for legal advice from our lawyers. While the lawyers are in trials or legal hearings, we have legal assistants and support staff who attend to clients' needs or give advice.

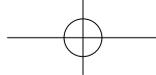
We now employ the case-client tracking system and we are aiming for full computerization. With our savings from the government budget we are able to buy less than 300 computers with printers. This is a big innovation in my office, because when I assumed the head of PAO, my lawyers did not have computer facilities. With all the judicial forms and administrative forms, we are trying our best to learn quick methods. Computers can make you efficient so that in a minute or 5 minutes, you are able to give assistance as our lawyers read the files of the clients or the accused.

I'm not barred from hiring lawyers who have recently been admitted to the bar. In fact, I prefer young lawyers because their minds are sharp, they are quick, they don't have hypertension, and they can work during the night, serving as many people as they can.

It's a matter a sacrifice: I myself did not have hypertension when I entered this office, but now I do. So, it is really a matter of sacrifice and a choice. We are like religious priests or nuns, really serving the poor.

I admire your country, Taiwan. You have all the resources. Despite the fact that this Legal Aid Foundation was founded only last year, you have the resources, wisdom and all the means to invite us here to share with you. I am praying that in my country, there will be some abrupt changes, and I am still very hopeful. Thank you for the inspiration that you are giving me this time.

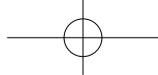




COUNTRY REPORTS IV

Presentations
South Africa
Thailand
United States
Vietnam

Country Report Discussion Moderator
Dunstan Mlambo
Chairperson, Legal Aid Board
South Africa



Country Report: South Africa



LEGAL AID BOARD



SOUTH AFRICA NATIONAL REPORT LEGAL AID IN SOUTH AFRICA

By Judge Dunstan Mlambo

Chairperson: Legal Aid Board – South Africa

18 September 2005

1. BACKGROUND TO LEGAL AID IN SA

2. LEGAL AID FUNDING IN SA

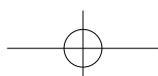
3. LEGAL AID DELIVERY IN SA

- 3.1 Delivery systems
- 3.2 Justice Centres
- 3.3 Judicare
- 3.4 Co-operation Partners
- 3.5 Impact litigation

4. LEGAL AID – CURRENT PROGRAMMES

- 4.1 National Coverage Plan
- 4.2 Client Focus
- 4.3 Accessibility Of Legal Aid
- 4.4 Quality Legal Services
- 4.5 Managing and measuring performance
- 4.6 Legal aid IT systems

5. CHALLENGES – CURRENT AND FUTURE





1. BACKGROUND TO LEGAL AID IN SOUTH AFRICA

This report will focus on the current funding of legal aid in SA, current delivery systems and delivery of legal aid as well as current programmes in legal aid in SA. It concludes by outlining the current and future challenges facing legal aid in SA.

2. LEGAL AID FUNDING IN SOUTH AFRICA

The Legal Aid Board (LAB) receives funding from the government annually in order to fulfill its constitutional mandate. This is determined in advance based on the Medium Term Expenditure Framework allocations to the LAB. Sound financial management has ensured ongoing support by government in the past few years. The budget allocations from government to the Legal Aid Board-SA are detailed in the Table 1 below. State funding does not impact on the independence of the LAB, which is governed by an independent Board of Directors. The allocation of this budget per delivery system is shown in Table 2 below.

Table 1: Legal Aid Board Funding

Year	Government Allocation to Legal Aid in SA Rands	Government Allocation to Legal Aid in US \$ (=R6.50)
2005/2006	R440,008,000	US\$ 67,693,538
2006/2007	R464,408,480	US\$ 71,447,458
2007/2008	R494,392,989	US\$ 76,060,460

This funding translates to a per capita spend of R9,8 or US\$1,5 per person on legal aid in South Africa in 2005/06.

Table 2: Legal aid Spend per delivery system 2005/06

Delivery System	Unaudited as at 31 March 2005		Budgeted to 31 March 2006	
	Rands	%	Rands	%
Justice Centres	R233million	66%	R334million	70%
Judicare	R63million	18%	R89million	18%
Co-operation Partners	R1,4million	16%	R59million	12%
Total Expenditure	R355million	100%	R485million	100%

3. LEGAL AID DELIVERY IN SOUTH AFRICA

3.1 Delivery Systems

The Legal Aid Board (SA) currently handles more than 300,000 legal matters per annum. The Legal Aid Board (SA) has adopted a mixed use system of delivery including

- 84% (services delivered) of delivery of legal aid through in-house salaried legal practitioners employed by the LAB(SA) in Justice Centres and
- 13% of delivery through outsourcing to private legal practitioners as well as
- 3% of delivery in co-operation with various NGOs and University based legal aid clinics.

This is detailed in Table 3 below. The budget allocation per delivery system is indicated in Table 2 above.

Table 3: Legal Aid Board (SA) legal serviced delivered 2004/05

Delivery System	New Matters 2004/05	% New Matters 2004/05
Justice Centres	258,185	84%
Judicare	40,238	13%
Co-operation Partners	8,231	3%
TOTAL	306,654	100%

3.2 Justice Centre Delivery (legal aid delivered by in-house salaried lawyers)

3.2.1 Infrastructure

The Legal Aid Board has completed its rollout of a national network of Justice Centres which serves the poor communities of South Africa. This currently includes 57 justice centres and 35 satellite offices as per the Table 4 below.

An ongoing programme of the LAB is to determine areas of need where additional offices need to be established in order to better serve our poor communities. This could also include the relocation of some of our justice centres.

Table 4: Legal Aid Board (SA) Justice Centres per province

No	Region	No of Justice Centres	% of Justice Centres per province	No of Satellite offices	% of satellite offices per province
1	Gauteng	8	13.7%	5	14.3%
2	Limpopo	5	8.6%	3	8.6%
3	North West	6	10.5%	0	0.0%
4	KwaZulu Natal	10	17.3%	4	11.4%
5	Mpumalanga	4	6.9%	4	11.4%
6	Eastern Cape	10	17.3%	10	28.6%
7	Free State	4	6.9%	2	5.7%
8	Western Cape	7	12.0%	5	14.3%
9	Northern Cape	3	5.1%	2	5.7%
	Total	57	100%	35	100%

3.2.2 Staffing

The LAB has a staff budget of 1,999 posts of which 1,563 posts (78%) were filled as at the end of the financial year (March 2005). 1441 of these budgeted posts (72%) are for legal staff. The staffing position as at the end of March 2005 is indicated in Table 5. The Legal Aid Board (SA) currently employs 1094 legal practitioners nationally. This includes Candidate Attorneys, admitted attorneys and advocates and Justice Centre Executives.



Table 5: Legal Aid Board (SA) Staffing per province

Provinces	Number of Justice Centres	Number of Legal Staff	Number of Non-legal Staff	Temporary Staff	Number of Total Staff	% Staff
Eastern Cape	10	155	45	5	203	13%
Free State	4	57	21	2	78	5%
Gauteng	8	268	61	0	331	21%
Limpopo	5	75	24	0	99	6%
North West	6	77	26	0	103	7%
KwaZulu Natal	10	199	54	2	255	16%
Mpumalanga	4	54	14	0	68	5%
Western Cape	7	170	31	2	203	13%
Northern Cape	3	37	9	0	46	3%
National Office		2	164	11	177	11%
Total Staff (Actual)	57	1094	447	22	1563	100%
Total Staff (Budget)		1441	558		1999	
% Recruited		76%	80%		78%	

3.2.3 Legal aid services delivered

84% of new legal aid matters handled by the Legal Aid Board(SA) are handled through its Justice Centres. Table 6 below reflects the delivery statistics for Justice Centres. The number of pending files at the close of each year poses an ongoing challenge in relation to the finalization of matters timeously to ensure that clients can access justice timeously.

Table 6: Legal services delivered through Justice Centres

Legal Matters	FY 2004/05	FY 2003/04
New matters	258,185	236,282
Finalised matters	40,238	46,613
Pending matters	155,472	98,885

The legal services delivered include both criminal and civil legal aid. 230,680 (81%) of new matters handled by Justice Centres are criminal matters and 27,505 (11%) of civil matters. Matters handled by Judicare and Co-operation Partners also include civil legal matters. This reflects an ongoing higher expenditure on criminal legal aid in SA.

3.2.4 Legal aid policy

All policy and procedures governing the delivery of legal aid services are incorporated into a Legal Aid Guide which is updated annually.

3.3 Judicare

In the 2004/05 financial year, 40,238 instructions were allocated to judicare practitioners, ie 13% of the total number of new matters of all the LAB delivery systems. In 2003/04, 15% new instructions were issued to judicare. This reflects the shift away from using judicare. However, judicare will remain an important part of the delivery system and it is expected that at least 10% by volume will be issued to judicare on an annual basis.

The Legal Aid Board (SA) has introduced a new system to accredit all judicare lawyers. This Accreditation System will require all legal practitioners/service providers to apply to Legal Aid Board if they wish to receive legal instructions. They will have to be



accredited before being allocated instructions and to be accredited they will have to meet various criteria. Work will be allocated on the basis of skills and expertise in accordance with a Black Economic Empowerment component which will give preference to previously disadvantaged groups. Judicare fees will be linked to the experience of legal practitioner. This Accreditation System will be managed electronically and is interfaced with a new financial and legal administration integrated software package that has been introduced by the Legal Aid Board (SA). The implementation of the new Accreditation System has begun and will be finalised in this year.

3.4 Co-operation Agreements

The LAB presently funds 6 co-operation partners. For the financial year 2004/05 co-operation partners handled 8,231 new matters, and have finalized 7,048 matters during this period. This reflects a decrease in matters handled by co-operation partners over the last financial period (2003/04), which was 17,244 new matters, primarily because a number of co-operation agreements were not renewed during this year because of the ability to service those areas by Justice Centres.

3.5 Impact Litigation

In the last few years, the LAB has dedicated special attention to precedent setting litigation and class actions that positively affect the lives of a large number of poor people through strategic interventions. LAB Impact Litigation cases include litigation against industrial organisations by communities with regard to health hazards caused by pollution and government agencies whose actions impact on a large numbers of people. In the 2004/05 financial year the Legal Aid Board handled 26 impact matters costing approximately R3million. Of these 11 were finalised in this period. A few of these matters were argued in the highest courts of the country, the Supreme Court of Appeal of SA and the Constitutional Court of SA.

4. LEGAL AID FOCUS AREAS

4.1 National Coverage Plan

In the past year the Legal Aid Board (SA) has finalised a National Coverage Plan which links its current resource distribution to that of the other justice cluster service providers nationally. The plan also links the Legal Aid Board distribution of resources to community demographic and socio-economic indicators, hence enabling a review of the gaps in service delivery as well as the equitability of service provision.

4.2 Client Focus

The client focus has resulted in an expansion and improvement of linkages to clients to better understand client need and to receive client feedback on services received by them. New measures introduced in this period include:

- Addressing gaps in legal aid services offered to clients by previous exclusion of policy;
- Initiating client feedback survey forms at all Justice Centres for clients to provide feedback on administration (front-desk) and legal services received; feedback received has been positive;
- Introduced complaint boxes at every Justice Centre for clients to submit written complaints about problems experienced by them in receiving legal aid services;
- Interaction with provincial and local stakeholders to receive feedback on client needs and services received by them;



- Training of all front-desk staff at Justice Centres in client relationship management, and
- The development of a client services charter which will detail the services that clients can expect from the Legal Aid Board.

4.3 Accessibility Of Legal Aid

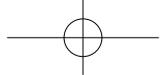
Various measures were introduced to improve accessibility of legal aid services. These include:

- Automatic Review Matters
 - o A programme was initiated to identify the reasons for the high number of matters sent from the lower courts to the high courts on automatic review
 - o Changes in policy were effected to reduce the number of automatic reviews and the number of unrepresented accused.
- Awaiting trial prisoner (ATP) programme
 - o The Legal Aid Board has a presence in all prisons. All Justice Centres have regular scheduled prison visits (monthly or 2/month) to inform the prison population in general about their rights and consult with awaiting trial prisoners.
 - o A special project was implemented to focus on ATPs who were in custody for greater than a year. The aim of the project was to identify all ATP's who have been awaiting trial for a period longer than 12 months and to introduce measures to fast track those cases.
 - o Justice Centre Executives were requested to give special attention to children awaiting trial. Dedicated professional assistants are made available in areas where the children awaiting trial numbers are high and where specific Juvenile courts have been implemented.
- Advice Office Project link
 - o This project links 8 of our Justice Centres to 40 advice offices around the Justice Centres (JC). Advice Offices operate at a community level and provide a link to communities which are not directly serviced by JCs. The co-operation between JCs and Advice Offices entails referrals, legal advice and training.
- Link to Police Stations
 - o A pilot project testing the link between JCs and Police Stations has been initiated. This is meant to address the gap in providing assistance to criminal accused at the point of arrest. The project is focused on having legal practitioners on standby after office hours so that they can be called out to police stations to provide legal assistance and advice as required. This project will be expanded in the new year.

4.4 Quality Legal Services

With the completion of the shift to JCs and the national roll-out of infrastructure the Legal Aid Board (SA) is now able to give greater attention to the quality of legal services provided. It has initiated various interventions to improve quality as well as to monitor quality of its legal services. The interventions intended to improve quality of legal services include:

- The provision of dedicated supervisory capacity for quality management at justice centres and in courts



- Individual quality measures which have to be signed-off by each legal professional for each file; These measures are monitored by the principle attorneys and/or Justice Centres Executives in each office as well as cross-checked by the regional office principle attorneys;
- Increasing the consultation and preparation time for each matter by legal practitioners;
- The introduction of a focused training programme for candidate attorneys to ensure compliance with admission requirements of the profession. This is monitored by monthly review of checklists.
- Increased training opportunities for all legal professionals.

The interventions to monitor the quality of legal services include:

- Individual quality reviews and targets which are independently verified by regional offices;
- Peer reviews between legal professionals utilised for development purposes;
- Formalised relationships with local JC legal justice stakeholders, resulting in increased feedback on JC delivery and quality of service, thus allowing for appropriate interventions;
- Implementation of a national judicial officer survey to obtain independent feedback on the quality of our service from magistrates and judges;
- The implementation of our client satisfaction surveys for all clients of the Legal Aid Board;
- The introduction of an independent review of services (to be implemented).

4.5 Managing and measuring Justice Centre performance

The Introduction of a Justice Centre performance monitor enables the Legal Aid Board (SA) to better monitor the overall performance of each of its justice centre on a quarterly basis. The JC Performance Measures includes an assessment of each JC's performance against pre-determined targets in the areas of legal services delivery, financial management, governance and human resource management. The Monitor is weighted in favour of the delivery of legal services so as to not distort assessment of delivery on the core function of the JC. The JC Performance Monitor enables management to timeously identify areas of under-performance so that appropriate interventions can be taken.

4.6 Legal Aid and Information Technology

The Ad Infinitum computer software system went live on 5 April 2004. It is an integrated finance and legal administration software package. It enables control, assessment and monitoring critical to the delivery mechanisms with the electronic capture of all data in each legal matter/file. Ad Infinitum will increase the effectiveness and cost efficiency of legal service delivery, allowing for real-time, on-line applications for legal aid. It will provide business intelligence critical to running the business.

A number of problems were experienced in the transition to the system. These problems have now been for the most part resolved and the system is now stable. Enhancements to the system are being implemented to ensure that the Legal Aid Board obtains the best possible value from its investment.

The Ad Infinitum System is also being extended to interface with a module on the accreditation system for judicare practitioners as well as a module on Human Resources Payroll and administration.



5. LAB CHALLENGES

5.1 Increasing client accessibility

- i. Prison link – there is an increasing need for LAB to have dedicated capacity at each of its Justice Centres to consult with clients at prisons and enable them to access legal representation.
- ii. SAPS link – There is increasing pressure for the LAB to have practitioners available to meet with detained persons at prisons. There is a pilot currently underway to test how this can work. However, the challenge is to find the capacity to roll this out to all police stations.
- iii. Accessing rural communities – The location of Justice Centres and satellite offices is related to criminal court coverage. However, access to JCs by many rural communities is difficult. Hence, there is an increasing need to be able to meet clients at rural areas, possibly by partnering with community advice offices.
- iv. Minor Offences increased coverage

LAB currently assists only those criminal accused who are facing a potential jail term of greater than 3 months. The impact of this is that first time minor offenders, without the means to afford legal representation, end up with jail terms, which has a major impact on their lives and future. If the qualification requirement of a prison term of greater than three months is revised to provide assistance to minor offenders with any potential jail term so that they can have a fair hearing and where possible be diverted from the prison system. The exclusions on some matters eg traffic offences will remain. This is only possible with increased resources.

5.2 Sustainability of legal services delivery

The demand for legal services is currently not matched to capacity, resulting in the LAB taking on more matters than it can effectively handle. Hence, the number of matters pending is growing at an unsustainable rate and will impact on the Legal Aid Board's ability to deliver effectively in the next few years.

5.3 Quality of legal services

Despite the many interventions made to improve quality, the inability of LAB practitioners to adequately consult and prepare for their matters is a huge stumbling block to them delivering a quality service. Hence, there is a need to increase the ratio of practitioners per court (similar to that provided for the National Prosecuting Authority) so that Legal Aid Board practitioners can adequately consult with clients and prepare for their cases. Quality has to be addressed on an ongoing basis to ensure that clients receive the best defense in their trials.

5.4 Recruitment and retention of legal staff

The recruitment of legal professionals at especially the more rural justice centres is low. The need for providing some incentive to attract legal staff to these areas has to be considered. The Legal Aid Board also finds that it loses staff to other justice cluster stakeholders, particularly the NPA, because they offer better salaries for certain categories of staff.

5.6 Supporting the paralegal sector

The paralegal sector is increasingly facing funding problems with many offices being forced to close. They however provide a valuable service in especially rural areas.

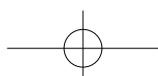


Increasingly the LAB is being looked at to provide this sector with support to ensure their sustainability. However, the LAB does not have the financial capacity to support this sector.

5.7 Civil legal aid

The Legal Aid Board draws its mandate from the Constitution and the Legal Aid Act. This has resulted in the Legal Aid Board being involved in both criminal and civil legal aid matters. It has done so by having a greater focus (81%) on criminal legal assistance and a parallel limited focus on civil legal assistance. The Legal Aid Board(SA) believes this has been a responsible response to a growing demand for civil legal assistance. This has been a matter of debate between the Parliamentary Committee, the Department, the Ministry and the Legal Aid Board.

It is also the interpretation of stakeholders in the justice sector, government, NGO and community stakeholders that the Legal Aid Board should provide assistance in civil legal matters and the limited civil capacity has been the main reason for criticism and anger directed at the Legal Aid Board by these stakeholders. The Legal Aid Board has continued to motivate the need for its continued and increasing involvement in civil legal aid. The Legal Aid Board is also of the view that an agency focused wholly on the defense of criminal accused cannot and does not enjoy the credibility and legitimacy of the community it serves. It has to be seen to be involved in the protection of general rights as envisaged in the Constitution thus building an understanding of rights and rule of law. This acceptance of the Legal Aid Board is critical to its reputation and impacts directly on its ability to deliver independent quality legal services. The Legal Aid Board also has to provide varied training to all its Candidate Attorneys which includes civil legal training or it will be in violation of the requirements of the legal profession. Since about 50% of the Legal Aid Board lawyers are CAs, any problems with this will affect the ability of the Legal Aid Board to continue rendering legal services.





Country Report: Thailand



Legal Aid in Thailand
Somchai Homlaor
 Chairman, Human Rights Committee
 The Lawyers Council of Thailand

I. Background

Thailand has a long history of providing legal assistance to the accused. Section 174 of the Criminal Procedural Code (CPC), enacted in 1934, specified that in cases involving serious offences punishable by imprisonment of ten years or upward or in offences committed by children, the court shall appoint a counsel to the accused if he/she requests.

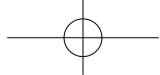
The rights of the suspect or accused have been dramatically improved after the promulgation of a new Constitution of the Kingdom in 1997, and after Thailand became a state party to the International Covenant on Civil and Political Rights (ICCPR). The CPC was recently amended to implement the provisions of the Constitution accordingly. At the stage of inquiry, officials shall not examine a child suspect without the presence of legal counsel. The same holds for suspects aged 18 years or older for offences punishable by imprisonment. At the stage of trial, the Court shall not try an accused child or an accused person over 18 years old charged with an offence punishable by death penalty without the accused having an advocate.

In case the suspect or accused has no lawyer, the Constitution requires the state to provide an advocate to them as prescribed in Section 242 of the Constitution:

“In a criminal case, the suspect or the accused has the right to receive an aid from the state by providing an advocate as provided by law. In the case when a person being kept in custody or detained cannot find an advocate, the state shall render assistance by providing an advocate without delay.”

The legal aid is provided to the people by the Court for the criminal cases, by the Office of Attorney General for civil cases if the litigant is poor and by the Lawyer Council of Thailand (LCT) for civil, criminal and administrative cases. Some non-governmental organizations (NGOs) have their own lawyers to help the people of their concern, such as indigenous persons, women, children, laborers or media persons. Many law schools also have law clinic to render legal services to the people.

The lawyers appointed by the Court work on a pro bono basis. In many cases, the remuneration provided is not sufficient even for the transportation expenses of the lawyers. NGOs may be able to provide better remuneration to the lawyers because they limit their legal services to their target group only; however, the budget of the NGOs still relies on support from foreign funders. The government has not yet formulated a policy to fund NGOs for legal aid even though the aid provided by NGOs is of better quality than the aid provided by government agencies.



2005 International Forum on Legal Aid

To improve the quality of legal aid to suspects and the accused in criminal cases, the government is considering the possibility of adopting the Public Defender system. However, the LCT does not believe that the Public Defender will provide better quality services than the volunteer lawyers of LCT. Many NGOs and lawyers are also concerned that the Public Defender will be under the control or influence of the government.

II. The Role of the Lawyers Council of Thailand

LCT was established by law as a lawyers' professional organization. Apart from its role to promote the lawyer profession and oversee lawyers' professional ethics, the LCT has the objective to provide legal assistance to the people and to promote and protect the rule of law, democracy and human rights. LCT plays a significant role in legal advocacy.

Under the policy set forth by LTC's National Committee, the Lawyers Council in each province is obligated to provide legal assistance to the poor in civil, criminal and administrative cases and to implement the policy of the organization.

LCT established a Legal Aid Department working under the supervision of the Legal Aid Committee, which is chaired by the President of LCT. The following offices were set up to provide legal aid to different categories of cases:

1. Office of Environment Committee provides legal aid to people in environmental cases. The Committee works in coordination with government agencies, NGOs and academics on environmental issues and environment law.

2. Office of Human Rights Committee provides legal aid to people in human rights cases. There are sub-committees working under the human right committee, such as the Sub-Committee on the Rights of Women, Children and Senior Citizens, the Sub-committee on Indigenous, Stateless and Migrant Workers, the Sub-committee on Labourer and Urban Poor and the Sub-committee on the Justice System.

In order to promote and protect human rights, LCT through its Committee on Human Rights works closely with the National Human Rights Commission. A memorandum of understanding was signed between LCT and the Commission to enhance this cooperation. In case the government fails to cure or remedy a victim of human rights violation, the Commission refers the case to LCT to provide legal assistance to the victim.

LCT also works with NGOs by not only providing legal aid to them in court cases, but also by joining their campaigns on human rights issues and legal advocacy. NGOs and academics play significant roles in introducing international human rights standards and laws to the lawyer community.

3. Office of the Consumer Protection Committee works with consumer protection groups. In 2004 alone, LCT provided legal advice and attended inquiry examination as legal counsel of suspects for 45,320 cases and provided lawyers for 3,354 court cases.

III. Challenges

1. Even though the law requires the government to provide free legal aid to the people in criminal and civil cases, the budget allocated to the legal aid scheme is minimal. The remuneration received by a lawyer appointed by the Court to defend an accused is the lowest in comparison to the remuneration received by volunteer lawyers of



the Office of Attorney General, LCT and NGOs. This is the reason why most of the lawyers appointed by the Court for the accused are young and inexperienced. They are the lawyers who want to accumulate litigation experience from the cases, which is not fair to their clients. The lawyers appointed by the Court handle most of the criminal cases of the poor who do not have enough money to hire a lawyer.

LCT's budget for legal aid is derived from government grants and funds collected from the issuance of licenses to lawyers. The volunteer lawyers from LCT also receive low pay. A lawyer receives lawyer fees of approximately 5,000–10,000 Baht per case (\$125–250) only, together with necessary expenses such as transportation, and a small per diem fee. However, most of the volunteer lawyers have their own law firm. They handle the cases referred to them by LCT on a pro bono basis.

The LCT has stated its position to the Ministry of Justice that LCT can provide qualified lawyers to the Court if the government supports the LCT with a larger budget. The LCT opposes the idea of establishing a Department of Public Defender under the Ministry of Justice as a means of providing legal aid to the poor in criminal cases, because the Public Defender Office may be under the control and influence of the administration.

2. Human rights and environmental cases are seeing an increased number of government agencies and officers or business organizations as defendants. LCT, in coordination with NGOs, files lawsuits against them. The government and lawmakers are threatening to cut or at least not increase the government's grants to LCT because they disapprove of the idea that LCT is using government funding to sue the government.
3. The rich may hire lawyers they trust to render legal services to them. The poor cannot choose the lawyer provided to them under the legal aid scheme, even if they find that the lawyer is not qualified. Access to legal services for the poor is limited. Some legal experts have suggested that Thailand should adopt the Contracting System.
4. Lawyers working under the legal aid scheme in many cases do not perform their duty in the best interest of their clients, because the clients are not the ones who pay the lawyers. Some lawyers believe that since they work free of charge, it is not necessary to provide high quality service.
5. Lawyers have not learned enough about how to work with other professionals, social workers, physicians, physiologists and NGOs. In modern society, other professionals increasingly play roles in the justice system.

Country Report: United States



THE WORK OF THE LEGAL SERVICES CORPORATION

Submitted by
Helaine M. Barnett
President
Legal Services Corporation
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Washington, DC
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Description of Legal Services Corporation

In 1974, the United States Congress established the Legal Services Corporation (LSC). In the Declaration of Purpose section of the LSC Act, Congress found that:

- (1) there is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievance;
- (2) there is a need to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel;
- (3) providing legal assistance to those who face an economic barrier to adequate legal counsel will serve best the ends of justice;
- (4) for many of our citizens, the availability of legal services reaffirmed faith in our government of laws;
- (5) to preserve its strength, the legal services program must be kept free from the influence of or use by it of political pressures; and
- (6) attorneys providing legal assistance must have full freedom to protect the best interests of their clients in keeping with the Code of Professional Responsibility, the Canons of Ethics and the high standards of the legal profession.

42 U.S.C. §2996.

Today, more than thirty years since its inception, and almost 130 years since the first legal aid program was begun in New York City, LSC has become the primary funder of civil legal services for poor Americans and a national leader in the American civil legal justice system. It enjoys strong bipartisan support in Congress and the support of the current administration, under President George W. Bush.

Under the LSC Act, LSC operates as a private, non-profit corporation although it was created and is entirely funded by Congress. LSC's mission is to promote equal access to the justice system and improve opportunities for low-income people throughout the United States and its territories by making grants to programs for the provision of high-quality civil legal assistance to those who would be otherwise unable to afford legal counsel. LSC does not provide legal services directly. Rather, it provides grants to independent local programs¹⁶ selected through a system of competition.

LSC is headed by an eleven-member Board of Directors nominated by the President of the United States and confirmed by the U.S. Senate. By law, the Board is bipartisan; no more than six members may be of the same political party. The current Chairman of LSC's

16. The terms "programs", "recipients", "grantees" are used interchangeably throughout this Paper to refer to programs which provide civil legal assistance to the eligible poor which are funded by LSC.



Board of Directors is Frank B. Strickland. The Board chooses the President; LSC's current President is Helaine M. Barnett. LSC's office is in Washington, DC and has approximately 100 staff.

The LSC Act describes who may be represented with LSC funds and the types of cases that may be undertaken by a grantee. Grantees' clients must be low-income¹⁷ and U.S. citizens or lawful aliens. LSC grantees may not handle criminal cases with LSC funds, nor may they accept fee-generating cases that private attorneys are willing to accept on a contingent fee basis. (See *Regulatory Oversight* section below.) Pursuant to the LSC Act, federal regulations adopted by LSC limit the types of cases that grantees may undertake and the categories of clients who grantees may represent.

LSC Grantees, Clients and Cases

In calendar year 2005, LSC distributed \$316.6 million (of its \$335.3 appropriation) in grant awards to 140 programs. These programs serve every county in the United States and its territories including American Samoa, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, Micronesia, and the District of Columbia. LSC's largest award to a grantee is \$15 million to Puerto Rico Legal Services; the smallest award is \$293,000 to U' Unai Legal Services Clinic in American Samoa.

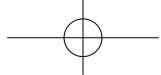
LSC grantees are independent entities which are governed by their own boards of directors. These boards of directors set program priorities, which determine the types of cases that grantees will handle, subject to restrictions set by Congress. Pursuant to federal regulations, a majority of each local board is appointed by local bar associations. One-third of each local board is composed of client-eligible representatives appointed by client groups. Each board hires an Executive Director, who is the chief operating officer responsible for the overall administration and supervision of the program staff and operations.

The clients helped by LSC grantees are as diverse as the nation, encompassing all races, ethnic groups, and ages. More than two-thirds of LSC's clients are women, many with children. Ten percent of LSC grantees' clients are senior citizens. Legal services clients include the working poor, former welfare recipients, veterans, Native Americans, migrant farm workers, immigrants, family farmers, people with disabilities, and victims of natural disasters. A growing number of clients do not speak English or speak English as a second language. Many clients were formerly of moderate means but became poor as a result of family tragedy, illness, or sudden unemployment. Federally funded legal services programs help thousands of Americans each year restore their economic independence through advocacy within the U.S. civil justice system, consistent with LSC's statutory mandate.

Most cases handled by LSC grantees are in the areas of family law, housing, income maintenance, and consumer.¹⁸ Last year, LSC programs closed more than 900,000 cases on behalf of low-income clients. The largest category is family law cases, many of which involve legal services to victims of domestic abuse. This legal work may include securing protective orders and obtaining orders regarding custody, visitation, marital separation and divorce. Other cases typically handled by legal services lawyers within these broad areas

17. Low income is defined as below 125% of the federal poverty guidelines, which are revised each year by the Office of Management and Budget and then published by the U.S. Department of Health and Human Services. Currently, a family of four can have a gross annual income of no more than \$24,188.

18. LSC collects information on cases that its grantees undertake through its Case Reporting System (CRS).



include cases dealing with evictions, access to affordable and safe housing, foreclosures, access to necessary health care, debt collection, protection of consumer rights, and claims for public benefits such as social security, unemployment compensation, disability insurance, food stamps and public assistance.

Most legal services cases are resolved rapidly and out of court. Often, legal advice, a referral, or a letter or phone call solves the legal problem. At other times, litigation may be necessary. Unfortunately, because of the high demand for services, grantees are often unable to provide representation to all clients involved in litigation. Many of these clients will receive only legal advice or brief service. Frequently, cases in litigation are resolved through negotiated settlements. Last year, less than 14 percent of grantees' cases closed were resolved by court or administrative agency decisions.

Direct representation is only part of the work of LSC's grantees. LSC also uses a "matters" reporting system to measure services provided to the low-income community and the productivity of LSC grantees. Matters are the kinds of assistance rendered by LSC grantees that fall short of the official definition of a case but nonetheless constitute help for clients seeking justice. Examples of "matters" include assistance through self-help clinics, community legal education sessions, staffing courthouse help desks, and maintaining statewide legal aid websites. LSC grantees handle over four million matters annually.

Legal services programs leverage federal funds by involving private attorneys in the delivery of legal services through volunteer pro bono work. LSC requires its grantees by regulation to devote an amount equal to at least 12½ percent of the grantees' LSC grant for the involvement of private attorneys in the delivery of legal services to eligible clients. Legal services programs involve private attorneys in the full range of services to clients including: direct representation of cases in the program's priority areas, community legal education, community economic development, and pro se assistance. Last year private attorneys were involved in closing more than 100,000 cases.

Private attorneys' involvement with LSC grantees has not only provided a valuable service to clients but also strengthened the partnership between LSC, its grantees and the private bar. Throughout the country, bar associations are major supporters of LSC grantees and are actively involved in efforts to increase grantee funding and improve the civil justice system for the poor.

Since its inception, LSC has recognized the unique needs of Native Americans and has provided special funding to programs serving Native Americans. In 2005, LSC awarded \$8.8 million to 27 such programs serving members of tribes living on or near reservations across America. In the early days of LSC's existence, because most tribes were desperately poor, Native American legal aid programs played a significant role in assisting nascent tribal governments with building their legal infrastructures, including the drafting of tribal codes, statutes, and constitutions. Seeking federal recognition for tribes was a high priority for legal aid programs during the 1960's and 1970's. Today, while a few programs are still involved in tribal recognition work, Native American grantees represent clients on a variety of legal issues unique to the client's status as a Native American such as Indian Child Welfare Act cases and cases involving an individual's status as a tribal member.

Recognizing the unique needs of the migrant farmworker client population, LSC has required states to develop special legal assistance projects for legal services to migrant



farmworkers. Funding for these projects is allocated from the total LSC funding for the state and is based on the state's migrant poverty population. In 2005, migrant projects received \$10.4 million in LSC funding. These projects represent migrant farmworkers on issues relating to their work as farmworkers such as, wage claims, health and safety issues, and migrant housing issues.

Grant Making and Grants Management

LSC's congressional appropriation requires that grants be awarded through a competition based system¹⁹. Applicants for LSC funding apply for funds to provide civil legal services to particular geographic areas, called "service areas." A service area may consist of a single state or territory, or several counties within a state. Competition for service areas occurs at least once every three years. Grant amounts are based on the poverty population within the service area. Grantees currently receive \$8.42 for every poor person in their service area. Pursuant to the LSC Act and regulations, LSC will not give any preference to current or previous grantees in the competitive grants process.

The purposes of the competitive grants system are to:

- (a) Encourage the effective and economical delivery of high quality legal services to eligible clients that is consistent with the LSC Performance Criteria and the American Bar Association Standards for Providers of Civil Legal Services to the Poor through an integrated system of legal services providers;
- (b) Provide opportunities for qualified attorneys and entities to compete for grants and contracts to deliver high quality legal services to eligible clients;
- (c) Encourage ongoing improvement in providing high quality legal services to eligible clients;
- (d) Preserve local control over resource allocation and program priorities; and
- (e) Minimize disruptions in the delivery of legal services to eligible clients within a service area during a transition to a new provider.

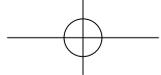
45 C.F.R. §1634.1.

LSC's Office of Program Performance developed the competitive grants system and the instrument through which grant applications are made (i.e., the Request for Proposals (RFP)) with a focus on providing high quality client-centered legal services. (See *LSC Quality Initiative* section below.)

The competitive grants process and the grants management process have evolved into useful tools for grantee capacity building, for identifying areas for further improvement, and for increasing coordination within the legal services delivery system. LSC looks to the competitive grant process to 1) collect information necessary to determine the capacities of individual legal services programs; 2) remain informed about the quality of legal services delivery throughout the country; 3) identify best practices that can be replicated by other grantees; and 4) communicate LSC's expectations regarding quality standards, practices, and outcomes for the low-income community.

Applications for the grant provide extensive information about the applicants' proposed delivery systems. LSC staff evaluate the grant applications based on the ABA Standards for the Providers of Civil Legal Services to the Poor and the LSC Performance Criteria and make funding recommendations to the LSC President who makes the final funding

19. Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub.L. 104-134, 110 Stat. 1321, § 503(a) (1) (1996), as reincorporated annually thereafter in LSC's appropriation.



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decision. LSC may also conduct an on-site evaluation of an applicant. LSC funding is awarded to those applicants demonstrating the best capacity to deliver high quality client-centered legal services consistent with quality standards, LSC regulations and policies, and applicable laws.

The LSC competitive grants process is fully automated. This automation allows LSC to more efficiently review and analyze information on legal needs, response strategies, administrative and management systems as well as to identify strengths and weaknesses in the delivery system. Information pertaining to the competitive grants process, including a copy of the RFP, is available at www.ain.lsc.gov.

After award of the grants, LSC provides "feedback letters" to grant recipients. Feedback letters address the potential strengths and weaknesses of the proposed delivery strategy based on a review of the grant application. The feedback letters are intended to improve program performance and to improve the quality of future grant applications.

LSC oversees the work of its grantees in a variety of ways. One method is through an on-site evaluation of the quality of a grantee's performance. Depending on the size of the grantee, these evaluations may be conducted by two to four members of the LSC staff and last from three to five days. On-site grantee quality evaluation visits are preceded by extensive document requests. Included in these requests are grantee policy manuals and legal writing samples. During the field visit, the evaluation team interviews grantee management staff, administrators, casehandlers, board members, community and social service agency staff, bar leaders, members of the private bar and judges. On-site program evaluations end with an exit interview where the reviewers present preliminary findings. Following the on-site visit, the grantee receives an extensive written assessment. It is not uncommon for the assessment to recommend steps the grantee should take to improve performance and to require follow-up reports from the grantee. LSC typically makes 12 to 15 program evaluation visits each year.

Besides these on-site grantee evaluations to review in depth the quality of the grantee's performance, LSC conducts other forms of on-site reviews. These on-site reviews may be to evaluate a specific concern LSC has about a grantee's performance, to gauge progress on a specific issue identified during a prior on-site evaluation, or to evaluate the effectiveness of the grantee's delivery system when the service area has been expanded. Further, to assist grantees improve performance, LSC provides on-site technical assistance. In recent years, grantees have most often requested technical assistance to improve ways clients access their services, such as the use of telephone intake and advice systems. LSC will conduct approximately 25 of these types of on-site evaluations or technical assistance visits during the year.

Another way LSC monitors the work of its grantees is through special grant conditions. Although grants are typically awarded for a three year term, they may be awarded for shorter terms where there are unresolved issues. All grants are subject to an annual renewal. At either the initial grant award stage or at the grant renewal stage, LSC may impose special grant conditions on a grantee that require the grantee to file progress reports on resolving issues, such as the integration of expanded services areas. Sometimes the grant conditions require the grantee to take corrective action to improve performance in a specific area. Special grant conditions most often require that the grantee file periodic reports during the grant year on the corrective action taken to date.



LSC will discuss these corrective action reports with the grantee. In addition to monitoring special grant conditions, LSC staff maintains close communications with all grantees during the year to help monitor the activities of its grantees and the quality of services provided.

From time to time, LSC issues Program Letters to its grantees to give guidance in a particular area. The most recent Program Letter provided guidance for LSC's grantees on the provision of legal services to individuals with Limited English Proficiency (LEP). An increasing number of grantees' clients throughout the country do not speak English well, if at all. In order to better serve eligible clients and comply with federal civil rights requirements, grantees need to expand their service strategies and procedures to include communities with limited English proficiency.

Regulatory Oversight

Besides overseeing the quality of grantees' work, LSC's Office of Compliance and Enforcement (OCE) is responsible for ensuring that congressionally-mandated restrictions and other regulations are adhered to by its grantees. LSC's responsibilities include reviewing compliance by grantees with the LSC Act and regulations.

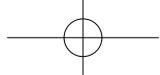
Restrictions, enacted by Congress in 1996, prohibit LSC grantees from, among other things, filing or litigating class action lawsuits, engaging in most types of lobbying, seeking or receiving attorneys' fees, litigating on behalf of prisoners, or representing undocumented aliens.²⁰ Furthermore, grantees may not conduct restricted work with their non-LSC funds. LSC has implemented these restrictions by regulation and monitors its grantees closely to ensure strict compliance. LSC will not hesitate to take strong and decisive action when grantees fail to comply with the law or LSC regulations. Sanctions have been and will be imposed where necessary and appropriate, up to and including termination of the program's LSC grant.

LSC's regulatory oversight also includes on-site grantee reviews to ensure that all congressional restrictions on LSC-funded programs are enforced. LSC selects programs for on-site review based on a number of criteria, including complaints of non-compliance, referrals from the Office of the Inspector General, or a significant change in client service activities. LSC has the authority to conduct random compliance reviews as well. LSC routinely provides technical assistance and onsite trainings and helps its grantees develop corrective action plans as a proactive measure to help address a potential compliance issue. Last year, LSC conducted 22 on-site compliance reviews as well as a number of special investigations. LSC also provides training on compliance and regulatory issues for new Executive Directors and provides training as well for the staff of grantees. Last year, LSC conducted seven such training sessions.

LSC is experimenting with a protocol for a visit to grantees conducted by both staff from OPP and staff from OCE and will evaluate its effectiveness by the end of this year.

In addition to being responsible for overseeing compliance, OCE responds to public complaints; approves major expenditures of funds by LSC grantees; conducts

20. Two lawsuits have challenged these restrictions: LASH et. al. v. LSC and Velazquez et. al. v. LSC, also cited as Dobbins et al v. LSC. The primary argument in these cases was that these restrictions violated the First Amendment rights of LSC grantees, their lawyers and their clients. With one exception regarding welfare reform litigation, the restrictions were upheld as facially constitutional so long as grantees have adequate alternative avenues for free speech. Most recently in the Dobbins case, the U.S. District Court for the Eastern District of New York, while upholding the constitutionality of the restrictions, struck down LSC's implementation of the private funds restriction. The Dobbins case is on appeal to the U.S. Court of Appeals for the Second Circuit.



accountability training; and provides follow-up to certain findings and recommendations contained in grantees' audited financial statements.

Finally, LSC requires that each grantee be audited annually by an Independent Public Accountant (IPA). The IPA reviews grantee compliance with LSC regulations and congressional restrictions. IPAs report any evidence of non-compliance to the Inspector General, who in turn refers the findings to LSC for follow-up and resolution.

Technology Initiative Grants Program

The effective utilization of new technologies has been one of LSC's key strategies to serve more clients efficiently in an era of diminishing financial resources. The Technology Initiative Grant program (TIG) was developed in response to the significant unmet need for civil legal services for low-income people and the availability of a new resource -- the communication and information capacities produced by the technological revolution.

Congressional funding for the TIG program began in 2000 and has provided LSC with a remarkable opportunity to explore new ways to serve eligible persons and to help build legal aid programs' capacities. TIG grants have supported projects to develop, test and replicate technologies that improve client access to quality legal assistance in the full range of legal services. LSC has partnered with state courts, bar associations, other legal services providers, and major U.S. technology companies in support of its TIG awards.

In funding TIG, Congress emphasized technological innovations that would improve services in the areas of pro se and client legal education. However, the program's impact has been even broader. Effective and efficient pro se and client legal education require a sound technological infrastructure, which is comprised of software, hardware, and personnel components. The infrastructure capacities required to markedly improve pro se and community education have the potential to directly and indirectly enhance the effectiveness and efficiency of programs' and states' entire legal services delivery systems.

Legal Information Website Grants. Given the capacities of the Internet, websites are among the most cost-effective ways to provide clients and those helping them -- legal services advocates, volunteer lawyers, the courts and social service providers -- with access to essential legal information and the ability to appropriately use that information. To ensure state justice communities have access to effective and efficient website capacities as economically as possible, TIG funded the development of two statewide website templates that states can adapt to meet their particular needs. Forty-eight states, DC, Guam, Puerto Rico, and the Virgin Islands are developing websites using these templates.

Early in the TIG program's existence, some in the legal services community expressed concern that many low-income clients would have difficulty using online resources because they cannot afford a home computer. But the increasing availability of publicly assessable Internet terminals at courthouses, shelters, and public libraries has lessened that concern. A recent study by the Bill & Melinda Gates Foundation reports that 95 percent of libraries offer public access to the Internet, and 14 million people use these library Internet terminals. Low-income families, the report stated, are especially likely to take advantage of library-based Web resources. LSC has invested roughly \$3 million in the last two years so that every state may have a comprehensive legal services website where individuals in need of legal assistance can access important legal materials.



Other TIG grants have supported the creation of sites specifically designed to assist self-represented litigants by offering downloadable self-help materials, referrals to legal and social services providers, and other useful links. Some state websites offer video and audio tours of local courthouses. In 2004, Montana Legal Services Association and Iowa Legal Aid were awarded a grant to pioneer a “virtual legal assistance” feature that allows clients to receive help navigating the pro se site through a real-time online discussion with a trained volunteer.

Grants to Improve Programs’ Effectiveness and Efficiency. TIG funding for increased connectivity, case management system upgrades, and intake tools has allowed many LSC grantees facing budget cuts to do more with less. New case management systems integrate data from grantees’ multiple offices, from newly merged programs, or from multiple grantees in a state, thereby enhancing the efficiency of operations from the intake process to case supervision.

In addition, the TIG program has supported a range of initiatives to help providers learn from and assist one another. Targeted online training has provided directors and staff with the technical expertise to implement new technology systems effectively. TIG has funded projects that allow grantee staff to collaborate by convening online meetings, where they can share resources and feedback on legal issues without leaving their offices. In Tennessee, LSC funded an online system that allows legal services lawyers to give case research assignments to law students, who get course credit while providing valuable assistance to understaffed legal aid offices. These relatively inexpensive projects enhance the services that LSC grantees are able to provide.

Projects Partnering with Courts. Legal aid programs have partnered with many state courts for TIG funded projects to create pro se forms and other legal education materials. In an effort to help self-represented litigants navigate their way through the court system, LSC is funding “document assembly” systems that allow users to log online and fill out court forms and pleadings by answering simple questions presented in a basic interview format. Each system will tailor its online court forms to be consistent with the state’s case law and jurisdictional rules. Some states, such as Idaho, are pioneering systems that will offer bilingual options, allowing users to fill out the forms in Spanish while printing forms to be filed in court in English.

Future Uses of Technology in the Delivery of Legal Services. The legal services community has just begun to tap the vast potential that the effective use of websites and related technologies offers to increase the quality and quantity of services. A range of technologies now in development or soon to be widely implemented will provide for substantial increases in the scope, volume, and quality of LSC grantees’ services. Among these, “LiveHelp” will allow clients to receive “chat” or telephone assistance in locating appropriate information or completing forms on the web. Incorporating multimedia formats – e.g., audio, video, text, and animation – into the web site templates will enable all groups, especially those with limited literacy or inexperience using computers and websites, to effectively capitalize on the resources available through web sites and related technologies.

Other technologies will enhance grantees’ operational effectiveness and efficiency. Using a special technology that provides a standard to allow different data sources to



communicate, LSC grantees will be able to establish systems through which they can refer clients to other programs without manually re-entering data. This special technology will also pave the way for grantees to work with courts on filing court documents electronically. The increasing quality and use of advocate web sites and other technologies enhance the abilities of legal services advocates to access necessary legal materials and data base systems, improve communications with fellow advocates, and increase outreach and services to clients in their communities. On-line training has the promise to cost-effectively provide high quality web-based training to advocates, managers and administrative staff members.

These technologies build on and extend the systems previously developed through TIG-supported initiatives. They, in turn, will provide the foundations for future TIG-initiatives that support the on-going development, adaptation and implementation of technologies that will enable LSC grantees to continuously increase the quality and quantity of the services they provide their client communities.

Adequacy of LSC Funding

Unfortunately, LSC's funding over the years has not kept up with the rate of inflation. LSC's current appropriation of \$330.8 million, in real dollars, is equivalent to less than half the federal legal aid investment in 1980. It would take an appropriation of more than \$683 million today to equal 1980 funding, adjusted for inflation. The most significant actual reduction in LSC funding came in 1996, when Congress reduced LSC's budget from \$400 million to \$278 million, requiring the layoff of more than 900 attorneys and the closure of some 300 legal aid offices nationwide.

With the decline in federal funding in the face of increasing demand for services, LSC encourages its grantees to leverage the federal dollars and seek additional sources of funding. Non-LSC funding sources include state and local governments, IOLTA (Interest on Lawyer Trust Accounts) programs, other federal sources, bar associations, charitable organizations, foundations, corporations and individual donors. Last year, funding for LSC programs from those non-LSC sources totaled \$350 million. However, LSC remains the largest single source of funding of its grantees.

Documenting the Justice Gap

Despite best efforts to seek additional sources of revenue, demand for services is much greater than grantees' resources. The last national survey on the legal needs of low and moderate income Americans was conducted by the American Bar Association (ABA) in 1994. That study found that about 80 percent of the civil legal needs of poor Americans were unmet. Various state studies have been conducted since then, all with somewhat different numbers, but all confirming the fact that the majority of the civil legal needs of the poor are unmet.

This year, LSC launched an initiative in conjunction with the ABA's Standing Committee on Legal Aid and Indigent Defendants (SCLAID) and the National Legal Aid and Defender Association (NLADA) to document what is referred to as "the justice gap." After a year-long study, LSC has just issued a report entitled "Documenting the Justice Gap—The Current Unmet Civil Legal Needs of Low-Income Americans." The report includes a multi-faceted



approach to collecting relevant data. It measures the number of persons LSC programs are unable to serve, analyses recent state legal needs studies, and compares the numbers of legal aid lawyers to lawyers available to the general public to provide a more complete picture of the unmet need for legal services.

It is clear from this research that at least 80 percent of the civil legal needs of low-income Americans are not being met. Moreover, 50 percent of the eligible people seeking assistance from LSC-funded programs in areas in which the programs provide service are being turned away for lack of program resources.

Although state and private support for legal assistance to the poor has increased in the last two decades, level (or declining after factoring in inflation) federal funding and an increased poverty population have served to increase the unmet demand. Assuming that state and private funding increases were to keep pace, it will take at least a five-fold funding increase to meet the documented need for legal assistance, and a doubling of LSC's current funding of the basic field grant just to serve those currently requesting help.

The analysis for the report was concluded in August 2005. Consequently, none of the data in the report reflects the vastly increased need for legal assistance that will result from the impact of Hurricane Katrina and Hurricane Rita by a greatly expanded client-eligible population, not only in the states where the hurricanes struck, but across the nation where evacuees have been relocated.

LSC Quality Initiative

The LSC Act requires LSC to ensure that the programs it funds are of the highest quality and meet professional standards. Quality is difficult to define. It necessarily encompasses many concepts. Quality includes a program's various capacities, the processes it follows, and the outcomes it achieves -- including both the results for individual clients and the extent it is successful in securing outcomes which "assist in improving opportunities for low-income persons," as the LSC Act provides. LSC's challenge is to determine how to best define quality, how to measure quality, and how to best ensure that its grantees provide—and their increasingly diverse clients receive—high quality legal services.

In the last 20 years there have been major changes in the delivery of legal services in the United States. LSC funded programs have undergone major realignment. In 1998 LSC, as the major federal funder of civil legal services, funded 262 programs. Many of these programs were quite small, serving only one or a very few counties. Through LSC's past encouragement of consolidations, LSC today funds 140 programs. During this period, delivery systems changed remarkably. Many of the changes in delivery mechanisms resulted from changes in technology. With technology, services can be provided more efficiently and new options for providing services have opened, such as telephone advice and counsel services, the delivery of services over the Internet, and video conferencing.

While LSC has always used some form of definition of quality to make funding decisions and to evaluate grantees' performance, in the summer of 2004 LSC began a major initiative engaging the legal services community in an effort to better define and measure quality legal services.

LSC has held a series of "Conversations on Quality" in which leaders in the legal services community provide guidance and input to the President of LSC as to how to



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define quality, how to measure quality, and what is the role of a funder to inspire and foster improved quality in the legal services provided by its grantees to eligible clients. These conversations are helping LSC frame a specific quality agenda to improve the quality of services to clients.

LSC Performance Criteria. A major focus of LSC's quality initiative is the reassessment of its Performance Criteria, which were written in 1993. The LSC Performance Criteria provide a framework upon which LSC grantees attempt to model their services. The Criteria call for: effectiveness in identifying and targeting a program's resources; effectiveness in engaging and serving the client community; effectiveness of legal representation and other program activities intended to benefit its clients; and effectiveness of administration and governance. LSC uses the Performance Criteria in every aspect of LSC's quality review work. As noted above, they are used for making funding decisions. LSC's Request for Proposals cites the relevant Criteria for each topic on which information is requested. The grant application evaluation guidelines that LSC reviewers use to rate grant applications are based on and cite to the Criteria with respect to each topic. Similarly, during LSC on-site reviews of grantee programs, LSC seeks to determine the extent to which the performance of a grantee meets, or is actively striving to meet, the Criteria.

LSC is currently working with a group of national leaders in the delivery of civil legal services to the poor to revise the Criteria to appropriately reflect today's legal services environment and to best achieve high quality, effective and client-centered representation. The goal is to consider how the Criteria are affected by, among other things, certain emerging realities in the low-income population, including the increase in clients with limited English proficiency, the effects of technology on the delivery of legal services, and the concepts of limited representation and discrete task or "unbundled" representation. LSC expects to complete this project by the fall of 2005.

ABA Standards for Providers of Civil Legal Services to the Poor. Included in the performance measures that LSC uses are the American Bar Association (ABA) Standards for Providers of Civil Legal Services to the Poor. The Standards are designed principally to guide organizations providing civil legal assistance to the poor, regardless of the organization's method of delivery or source of funds. Some of the Standards focus principally on the responsibilities of provider organizations, such as the Standards for internal systems and procedures, provider effectiveness, and governance. Others, such as the standards on representation functions, address the role of the practitioner who actually represents indigent clients. The ABA Standards are used much the same way as the LSC Performance Criteria are used.

The ABA Standards, adopted in the 1960's, were last revised in 1986. In December 2004 the ABA, through its Standing Committee on Legal Aid and Indigent Defenders, began an effort to update and revise the Standards. The LSC President was appointed to serve on the Task Force revising the ABA Standards and testified at the first public hearing on the Standards, identifying areas where the Standards need to be brought up to date and modified to reflect changes that have occurred in the last 20 years and reaffirming that



the client-centered principles on which the Standards were built – high quality, competent and effective representation, client participation, and responsiveness to client needs – are as important today as when the Standards were first written.

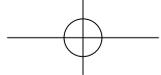
LSC's Leadership and Diversity Initiative Project. Another aspect of LSC's Quality Initiative is its work on leadership and diversity. As a part of this work, LSC has launched a national project on mentoring to help develop the next generation of diverse leaders in legal services programs. LSC believes that mentoring can be an important component in leadership development and can help develop a younger more diverse corps of leaders. Maintaining high quality in LSC programs now and in the future requires developing leadership skills in LSC program staff who have the potential to be future leaders in the legal services community. In order to better serve the clients of LSC's programs, LSC recognizes that the pool of potential future leaders must be diverse, well trained, and skillful. Participants in the project will benefit from collaborative learning through several mentoring events, including group training events, brainstorming opportunities, and one-on-one ongoing mentoring relationships with experienced legal services leaders.

LSC Resource Initiative. Another principal means by which LSC encourages high quality legal services is to serve as a clearinghouse to promote best practices and to facilitate the sharing of innovative ideas and strategies among its grantees. To accomplish this, LSC launched a unique library in cyberspace (<http://www.lri.lsc.gov>) where advocates can learn of the inventive work of other grantees.

The LSC Resource Library is divided into seven discrete sections: substantive practice areas, diversity, legal work management, pro se representation, technology, intake, and state delivery systems. The site includes project descriptions, training manuals, and tool kits. To avoid duplication, the website links to several other websites and existing sources of information. The website also includes announcements and conference opportunities available to the legal services community.

The site contains important suggestions for providers serving a growing population of clients with limited English proficiency, as well as strategies for the delivery of legal services in rural areas where geographic barriers pose challenges to advocates.

Outcomes Measurements. Quality may be enhanced by focusing on the outcomes achieved for clients by grantees. Outcome measurements not only serve as a self-evaluation method of an LSC grantees' effectiveness but also may be used by LSC and its grantees to make an even more compelling case to governmental and other funders. LSC has sponsored several conferences to engage practitioners from LSC-funded programs, who have designed and are implementing outcomes measurement efforts, in a discussion of ways to measure performance and outcomes in furtherance of LSC's focus on quality. Conference participants provided many helpful recommendations on ways to refine current practices, to gather useful information, and to train and assist programs in measuring the achievement of their articulated goals. Participants encouraged the collection of "good stories" as one way to disseminate information on successful results for clients. LSC will be developing future strategies for measuring outcomes based on the input it received at these conferences.



Other Special Projects

Loan Repayment Assistance Program Pilot Project. The burden of law school debt, which in the United States now averages around \$80,000 per law graduate, discourages many recent graduates from considering a career in legal services, where the starting salary nationally is around \$37,000 a year.

LSC's FY2005 appropriation contained a provision allowing LSC to spend up to \$1,000,000 for a law school student loan repayment pilot program in fiscal year 2005. In working toward the establishment of such a program, LSC created a Loan Repayment Assistance Program (LRAP) Task Force to determine how LSC could best help its grantees to recruit and retain attorneys who have substantial law school debt. The Task Force was comprised of individuals who have extensive experience with, and knowledge of, LRAP. The Task Force assisted in the design of an LRAP Pilot Program that will be beneficial to grantees in hiring and retaining attorneys with substantial law school debt. LSC announced the initiation of the Pilot Program on May 18, 2005.

State Justice Community Initiative. LSC has asked its grantees to engage in statewide planning and to help coordinate the delivery of legal services within each state. The purpose of this planning and coordination effort was to have each state re-evaluate its entire delivery system and identify where changes are needed, with the primary goal being an improved statewide legal services delivery system for clients.

In many parts of the country, the result of this initiative was that LSC grantees began working with other state stakeholders—such as, state and local bar associations, the judiciary, law schools, and non-LSC funded providers of legal services to the poor—in ways that they never had before. These cooperative efforts among stakeholders, when taken together, resulted in significant, positive changes for low-income clients throughout the country, including the development of additional resources for civil legal services, new and more efficient ways of providing legal information and advice, alternative ways to serve the rural poor, and more effective and economical structures to assure equal justice to a greater number of low-income people.

One of the more striking developments in building and strengthening state justice communities over the years has been the growing number of states with Access to Justice commissions or similar entities. These entities are formal statewide bodies dedicated to expanding and improving civil legal assistance in their states. They are typically composed of representatives of the bar, the judiciary, legal services providers—including LSC-funded providers—and other key stakeholders. The role of the Access to Justice Commissions is generally to bring together representatives of key institutions involved in improving and expanding access to civil justice for low-income people. These commissions seek to identify goals and objectives and the steps necessary to achieve them, and to oversee and coordinate the implementation of those activities. Currently nearly every state has some organized entity actively engaged in supporting, improving, and expanding access to justice.

Hurricane Katrina. In August 2005, Hurricane Katrina, an unprecedented natural disaster occurred along the Gulf Coast of the United States. Over one million people were evacuated from that geographic region, many of whom have lost their homes, their employment and all of their possessions. The entire city of New Orleans, Louisiana, was



evacuated as the city was almost completely flooded, with water as high as rooftops. Evacuees are now scattered all over the United States.

Immediately after the initial damage by the hurricane, LSC played a leadership role in initiating the coordination of disaster relief to its affected programs. A few programs lost entire physical office structures, office contents and all program and legal files. LSC is working at the national level to obtain additional one-time federal appropriations to support the rebuilding of these programs and to provide critical legal assistance to all those affected.

At the same time, LSC began the process of coordinating its disaster legal assistance work with other national partners, such as the American Bar Association and the National Legal Aid and Defender Association. In partnership, the national organizations developed a joint website that will serve as a single point of entry for individuals affected by the disaster, providing information about disaster assistance and where to obtain it, for legal advocates providing substantive law information, for volunteer attorneys and others who are seeking information about how to help with legal issues related to the disaster.

LSC programs around the country are working together to provide assistance to these newly displaced persons. The legal issues faced by the evacuees will be both immediate and long-standing. LSC programs will be responding to these developing legal needs for the foreseeable future.

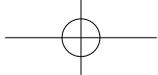
Other LSC Offices

To give a complete picture of LSC functions and staff, LSC also has an Office of Government Relations and Public Affairs (GRPA) and an Office of Legal Affairs (OLA). GRPA is responsible for overseeing LSC's annual congressional appropriations process and for managing LSC's communications and requests for information from Congress, the Executive Branch, the media, and the general public. The office coordinates the production of LSC's *Annual Report*, its annual budget request, and its *Fact Book*. GRPA also publishes a magazine entitled *Equal Justice* on matters of interest three or four times each year.

OLA serves as in-house counsel and chief legal advisor to LSC. As the General Counsel, OLA carries out traditional "lawyer" functions, including negotiating, drafting and reviewing legal instruments such as contracts, settlement agreements and releases. OLA represents LSC's interests in litigation, directly or through retention and oversight of outside counsel. The office is also responsible for interpreting statutory requirements and drafting regulations for public comment and for consideration by the LSC Board.

LSC has a Chief Administrative Officer who oversees and coordinates the work of the offices that manage financial services, human relations, information technology, and administrative services.

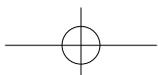
LSC also has an Office of Inspector General (OIG). It is not part of LSC management. The OIG's mission is to assist management in identifying ways to promote efficiency and effectiveness in the operations of LSC and its grantees and to prevent waste, fraud and abuse. In addition to the mission shared by all OIGs, Congress, beginning in the FY96 appropriation, directed that an additional tool for ensuring grantee compliance with legal requirements was to be annual grantee audits conducted by independent public accountants under guidance developed by the OIG.



Conclusion

Equal justice under law is an ideal cherished by Americans. With the creation of LSC over 30 years ago, the U.S government made a pledge to help ensure that all persons have access to America's civil justice system. In November of 2004, LSC commemorated three decades of promoting equal access to justice. It invited the executive directors of all 140 grantees to gather under one roof for the first time for a special 30th Anniversary Celebration in Washington, D.C. The directors were joined by hundreds of leaders from the broader equal justice community to mark the passage of the LSC Act by Congress in 1974. ABA President Robert Gray and the Chief Judge of the State of New York Judith Kaye were the keynote speakers of the event. Five LSC leaders spanning the decades recounted the highlights of the national legal services program dating back to the 1960s, when federally funded legal services operated out of the Office of Economic Opportunity (OEO). Senators Hillary Rodham Clinton (D-NY) and Pete Domenici (R-NM) sent video greetings that praised LSC for its long history of service. President George W. Bush extended his best wishes in writing, stating:

For three decades, LSC has helped fund legal assistance for low-income individuals in need. Through your programs, your organization has contributed to a fair and effective judicial system and advanced the ideals that make our country strong. I applaud your commitment to upholding the principles of opportunity and equal justice for all. Your efforts help make our country a more hopeful place.





Country Report: Vietnam



An Introduction To The Legal Aid System In Vietnam
By Ta Thi Minh Ly
Director, National Legal Aid Agency,
Ministry of Justice

1. In 2004, the budget for the legal aid system in Vietnam was about USD 1,700,000. More than 135,000 people were provided with legal aid services. 1%-2% of applications were refused because the applicants were not eligible for legal aid or their requests were not rational or were against social ethic.

The number of lawyers in the country is approximately 3,400. About 600 lawyers work as legal aid collaborators. The population of Vietnam is 82 million people.

2. The legal aid system in Vietnam was established in 1997 and is government-oriented.

The core actors are the National Legal Aid Agency (NLAA) under the Ministry of Justice, Provincial Legal Aid Centers (PLACs) under the Provincial Departments of Justice (64) and branches of the PLACs at the district and commune levels(909). Besides, some legal aid offices(6) under mass organizations such as women's union, farmers' union, veterans' union, youth's union, and trade's union...have been set up. So far, there have been 483 legal aid experts and 6,917 legal aid collaborators nationwide.

According to provisions of legal aid services, legal aid officers should only follow the law (deal with the case based on the laws and take responsibility before law for his/her advice, representation, petition or other activities related to the case).

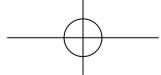
3. 70% of the legal aid budget comes from the state budget (central level and provincial levels...) while the rest comes from donors' support (Novib - Holand, Sida- Sweden, SDC- Swiss, SCS- Sewden, DIHR- Denmark, etc.).

The recipients of legal aid do not have to pay anything to legal aid institutions in both advice and representation cases. However, legal aid institutions do not pay court fees for clients. As a result, the state only has to pay salary to legal aid staff.

4. Legal advice can be provided by legal aid staff or collaborators. Some collaborators are lawyers, paralegals or social workers.

Legal representation in legal proceedings can be provided by collaborating lawyers, who are paid on a case by case basis from the State budget.

5. Legal aid can be provided in all legal matters (criminal, civil, labor, land, administrative, etc) except for cases relating to commercial and business laws. In addition to providing legal advice and representation, legal aid organizations also make petitions to competent agencies to protect the rights and legitimate interests of clients. Through specific cases, legal aid organizations make recommendations on resolving loopholes in the law for law reform or amendment.



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6. Legal aid can be provided to the following groups of people in Vietnam:
 - a. The poor:

Poor households are provided with "poor household certificates." People from these households bring with them these certificates when they come to PLACs for legal aid. The poverty line for average income of a household member in the period 2001-2005 was as follows:

 - Mountainous, rural, island areas: VND 80,000/month(VND 960/year);
 - Plain, rural areas: VND 100, 000/month(VND 1,200,000/year)
 - Urban areas: VND 150,000/ month (VND 1,800,000/year).

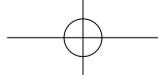
It will be changed in the period 2006-2010 by the Decision of Prime Minister N.176/2005/QD-TTg, as follows: Plain and rural areas: VND 200,000/month (VND240,000 /year) and urban areas: VND 260,000/month(VND 780,000/year).
 - b. Beneficiaries of preferential policy such as war invalids:

These people show certificates for enjoying preferential policy when applying for legal aid.
 - c. Ethnic minority people:

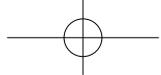
They show their ID cards, which prove that they are ethnic minority people.
 - d. Children:

Children can show their ID cards or birth certificates;
 - e. Women who are victims of domestic violence and trafficking;
 - f. Detainees and ex-convicts who have just returned from jails;
 - h. HIV/AIDs infected persons;
 - i. People who are exempted from court fees, such as: employees who are requesting salary, social insurance, compensation for workplace accidents and occupational health and safety and employees who are suing for unfair dismissal or contract breaches.
 - j. Foreigners who are citizens of the countries which have signed international agreements with Vietnam on legal aid.

Legal aid officers will examine whether the documents shown by legal aid clients are valid or not before giving legal assistance to them. Copies of these documents are then kept in case files.
7. There are no special arrangements in assessing applications of different groups except clients who are juveniles or are kept in custody; their representatives or relatives can come to the PLACs to apply for legal aid on behalf of them.
8. During the procedure of legal aid, if legal aid organizations discover a legal aid beneficiary is not eligible for legal aid, they would cancel the case and give address to the client, and prefer the client go to the lawyer's office for continuation. However, there have not been such cases in practice so far.
9. There are no public defenders in Vietnam. It is still in the draft Law on lawyers 2005-2006.
10. According to current regulations, lawyers do not have the obligation to provide legal aid. But according to regulations on lawyers' ethics, lawyer should take legal aid cases as their social duty and as decided by him/herself.



11. On average, lawyers who provide legal representation to legal aid clients receive USD 30/case from the State budget while the market rate is about USD 150/case.
12. Legal aid services are advertised through TV, radio, newspapers, leaflets, posters in criminal procedures agencies and lawyers' offices, mobile clinics, loudspeakers in every commune and village or through mass org's meetings.
13. The NLAA ensures the quality of legal aid services by paying regular and surprise monitoring visits to the PLACs and their branches. In these visits, the NLAA staff not only work with PLACs staff but also meet with legal aid clients and representatives of relevant agencies such as courts, procuracy and police to get feedback from them.
14. Vietnam has made great efforts in recent years to reform the legal system and implement a national action program on legal dissemination and education to raise legal awareness of people and reduce their need for legal assistance. The Ordinance on legal aid will be passed in 2005 and the Law on lawyers will be followed in 2006.



Country Report Discussion IV

Guilda Guillermo (Alternative Law Research and Development Center, Philippines):

Judge Mlambo, I saw in your report that the Legal Aid Board is also focused on impact litigation. In our experience in the Philippines, we have problems of the litigants being charged in harassment suits in these types of precedent-setting cases. Do you have the same problem? If not, do you have other problems relating to impact litigation?

And to Ms. Minh Ly, your report says that in accessing legal aid, you have poor household certificates and preferential policy certificates. If these certificates are unavailable to them, would you help them obtain these certificates? And if these certificates cannot be accessed, what would be the solution?

Dunstan Mlambo (Legal Aid Board, South Africa):

In South Africa, we do not have any problem of victimization -- either our clients or ourselves -- when we take on impact litigation cases. In fact, it's part of the legal landscape of South Africa to institute class action lawsuits because of the wide ranging effects of certain types of administrative actions. So we don't have any problems whatsoever.

Ta Thi Minh Ly (National Legal Aid Agency, Vietnam):

In Vietnam, we have criteria for assessing the poverty of households and people's committees in charge of reviewing and issuing households. With the "poor household certificate," one can apply for bank loans, come to the hospital when they are ill, or come to the legal aid office and ask for legal aid.

Those covered by the social preferential policy, such as invalids of war, have another kind of government certificate which looks like an ID for everybody. They can take that certificate to the bank, the hospital, or to school and enjoy a reduction of fees, etc. It is very available in Vietnam because we now have a strategy to reduce poverty in Vietnam.

Chito Gascon (Lawyers League for Liberty, Philippines):

My questions are to Helaine. I am a little concerned about what you described as the new restrictions that were introduced since the initial legislation created the LSC. When did these new restrictions come in place, and did these happen at once or were they incremental?

Second, I imagine that as the result of these restrictions -- although you did say that the bulk of the services will continue -- there would be a gap in services. In particular, you mentioned that some of your legal service suppliers are prohibited from using non-LSC funds to cover those cases that cannot be funded by the LSC. As a result, we are pushing some services out of the system. What has been the reaction of the legal aid community? Have there been talks about either raising equal protection issues or discriminatory issues as a result of these restrictions?

Mlambo:

Helaine, just before you answer, can I also add to that question? I see that there has been litigation to challenge the restrictions on undocumented aliens. Has there been litigation challenging the other restrictions on litigating on behalf of prisoners and litigating class action suits?



Helaine Barnett (Legal Services Corporation, United States):

Over its 31-year history, the Legal Services Corporation (LSC) has had its ups and downs politically, and in 1996 we were facing possible extinction. The restrictions were imposed by Congress all at that time. The resulting compromise was that we would concentrate on representing poor individuals in civil legal matters.

Today, we enjoy bi-partisan support in Congress, and we enjoy the support of the Administration of President Bush. To a large measure, I think the bi-partisan support comes from the fact that we concentrate on representing poor people in their most pressing civil legal problems.

As a result of the restrictions, some non-LSC funded providers were created to fill the void and act as companion providers to LSC programs. With regard to litigation, there has been one successful case regarding the restriction prohibiting welfare advocacy. The court ruled that in an individual case where you are questioning the decision regarding the provision of welfare benefits, you can of course advocate on the individual's behalf. There is currently pending litigation on the issue of whether our programs can set up companion programs to do restricted work. That is currently pending in the federal second circuit court in New York, where a federal district court judge in New York found that the restriction violated First Amendment rights. These have been the only legal challenges to the restrictions.

Mlambo:

I have a question for my fellow panelist, Somchai. He mentioned in his presentation that there is currently no legal aid legislation in Thailand. Are any steps being taken to prepare or advocate such legislation?

Somchai Homlaor (Law Society of Thailand, Thailand):

Since it is required by the Constitution that the government and the state provide legal aid assistance to the people, the Ministry of Justice is now studying the existing systems in different countries.

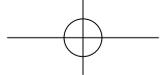
They are considering the public defender's system, or even what you call the contracting system learned from the UK and other countries. But the institutions concerned – the Ministry of Justice, the Lawyer Council of Thailand, and the courts – have not been able to agree on the best model for Thailand. That's why currently legal assistance for criminal cases is mostly provided by the court, with very little pay to appointed lawyers who tend to be very junior and inexperienced.

The Lawyer Council of Thailand mainly handles civil cases. We also handle human rights cases and environmental cases in coordination with the National Human Rights Commission and NGOs.

We provide lawyers to very few criminal cases, except to those related to human rights. For example, cases involving torture of the accused or cases in which the client is very poor.

Joseph Lin (Legal Aid Foundation, Taiwan):

I would like to ask Ms. Barnett of the United States two questions. First, the LSC



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provides funding to various organizations but does not directly partake in legal aid work, which is an interesting organizational model of legal aid in the United States that is different from many other countries. Are their particular historical reasons for this type of organization? Due to this kind of setup, could LSC staff lack the enthusiasm for service because they are not directly involved in legal aid work?

Secondly, some problems of the poor and disadvantaged need to be addressed through class action lawsuits or legal reform. Hence, when the U.S. Congress prohibits LSC programs from engaging in class action lawsuits or lobbying, does this negatively affect the overall impact of legal aid work?

Barnett:

Congress appropriates funding to LSC on an annual basis and we are the largest source of legal aid funding, but not the only source of funding today. With regard to class action lawsuits, I think most of our programs find that they are able to vigorously and aggressively represent their individual clients. Since 1996, there have been programs created that do handle class actions, and cases that need to file class actions can be referred to these programs.

Our programs have close to 10,000 staff, of which 3,700 are attorneys. They are vigorous advocates for the rights of the poor, and I don't think in anyway they do less effective work because of it.

Wilhelm Joseph (Maryland Legal Aid Bureau, United States):

As a grantee of the LSC, I might be in the position to discuss how those restrictions affect our work. I speak on behalf of myself, though I think I can represent the views of not only my program but also many of the grantees.

I think it is important to understand a little of the background here. Unfortunately, the concept of legal aid to the poor, paid by the federal government, is subject to the ups and downs and the movements of the political scenery in America. One particular party in power favors [legal aid] and another party does not. In fact, there was a group that wanted and continues to want federally funded legal aid for the poor to be eliminated.

Our position as the provider is that we will accept the money and do everything that we can do within the restrictions. However, we also try to establish alternative organizations that seek non-LSC funding to do all those things that are restricted. The challenge we face is that, with limited sources, how much money, time, etc. do we allocate to representing individuals, versus trying to address issues that are barriers to economic, social, and political progress?

For example, when Legal Services Corporation Act was first enacted in 1974, many of us lawyers who were doing civil rights work in the South were challenging the segregation of schools in the South. I was in Mississippi, and the Senators from the South were very powerful in Congress. The fullest limitation and the fullest restriction imposed on legal aid services is that you could not be involved in school desegregation cases. Also, throughout the South, we were challenging the tendency of political bodies to draw electoral lines that excluded black and other minority groups. That also became a restriction: using LSC money, we cannot be involved in challenging the redistributing lines. Those are some real challenges there.



I think our approach is very simple. We'll do what we're permitted to do, we'll set up these alternative organizations and there are movements to change all the restrictions. A movement that some of us are very much involved in is to establish in the U.S., either by statute or by case law, either at the federal level or in any state, the right to counsel in civil cases. In Maryland, a year and a half ago we got very close [to accomplishing that goal]. The highest court of seven members voted four to three against the concept. We are trying to get a better case before that forum, and hopefully we will get it in my lifetime.

Mike Jeacock (Legal Services Commission, England):

Dunstan, I was very interested in your comment about the reluctance of the police to have a solicitor or lawyer present at the arrest. In the UK we invest significant amounts of money on schemes to do that. What plans have you got to make sure that happens in your country? Because clearly, I think that that's where we're most effective.

Mlambo:

We are in a catch-22 situation. Our government is on record as being pro-conviction, but the problem is that their jails are very congested. That's where we come in. One primary reason for the congestion of South African jails is the periodic raids conducted by the police, where they arrest a mass number of people, but then the prosecution of those cases takes a very long time in the system. Now, we've gone to the government to say that we are the agency that can help in that regard, and therefore the police must be accessible to us.

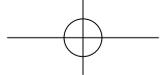
One way of trying to solve that problem is to hold what you call "case management floor meetings," where we've got ourselves, the police, correctional services, prosecutors, the major players in the criminal justice system, [all at the meeting]. And then, we are able to point fingers at each other to say, "most of the people are sitting in your police stations, and you don't want to give us access to them;" or "most of the people are sitting in the prisons, and you are not processing their applications." That's one way we are tackling our problem in South Africa.

Chi-Kuang Wu (Fu Jen Catholic University, Taiwan):

I have a question for Mr. Mlambo. South Africa has a very special historical background: apartheid. I think most lawyers in South Africa are white, whereas most clients of legal aid are black. Does this racial or ethnic difference between the need and the service create any difficult problems for legal aid in South Africa?

Mlambo:

I think that question raises a number of aspects. One aspect is that the indoctrination of black people in South Africa have led to black people believing that the only good service that they can get is from white people. We are fighting that. In terms of other areas, at the Legal Aid Board we have certain employment equity criteria that we apply in our employment decisions, but we also look at previous job experience. This way we are able to deal with the problem to demystify this myth that you can only get quality services when you go to white lawyers.



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Historically, legal aid in South Africa has existed for the convenience of the judges and as a training ground for the legal profession. When we took it out of their hands to try and create this bureaucracy, the perception remained. Under the old system, it was the most junior members of the bar representing people charged with the most serious offenses, and thus there was no effective representation. Whereas quality was not an issue in the past, it is now an important issue simply because legal aid no longer serves the interest of those people who benefited from it in the past.

David Pred (University of Essex, England):

I have a question for Mr. Homlaor. You mentioned torture cases. In Thailand, have you been able to send legal aid lawyers to suspects quickly upon arrests and in detention centers, and if so, has this led to the reduction in torture?

Homlaor:

Before an investigation inquiry, the police have to tell the suspect of his right to counsel. And if the suspect requests counsel, then the police have to stop the investigation and contact the Law Society to provide a lawyer. But for most of the cases, it is written [in the police report] that the suspect doesn't need a lawyer. So suspects have the right, but they don't access or they cannot exercise their rights. Maybe the police convinced them not to request counsel, or told them it was actually illegal. However, for juvenile or child suspects, the police cannot make inquiry without the presence of lawyer.

Joseph:

Because of the way that the states are structured in the United States, in some states more than 90 or 98 percent of the money they receive to do legal aid comes from the Legal Services Corporation. So, if they did not accept the money, there would be no services.

Secondly, I wanted to publicly say and share my applause to Helaine Barnett, whom I've worked with for many years, because she and her staff have already done a remarkable job in preserving that funding from Congress in spite of many attempts to eliminate it. She has done a very good job of preventing any new restrictions from being imposed, and she has done a remarkable job with her staff in working cooperatively and supportively with LSC-funded legal aid service providers.

Junius Ho (Duty Lawyer Service Council, Hong Kong):

Helaine, you mentioned that the Legal Services Corporation is subject to Congress' restrictions which prevent your Corporation from funding criminal litigation. Then my question is, who is responsible for the criminal cases?

Barnett:

As I indicated, I was limiting my remarks to civil cases. In the United States, the Sixth Amendment to the U.S. Constitution provides the right to counsel in court cases as well as to any poor person accused of a crime. So, we have a mandated system for criminal defense that is primarily funded on a state basis as a governmental responsibility.



Ho:

Do you have any budgetary statistics on how much the state is offering to this sort of Sixth Amendment protection?.

Barnett:

Unfortunately, I don't have any figures. I came only prepared to talk about civil cases. . Wilhelm, do you know?

Joseph:

I don't have precise figures, but you can bet, it's many many more millions than what is spent on civil legal aid because it's a right and because you have so many incarcerated persons. The United States incarcerates more people than any other country in the world in absolute numbers. It also has the highest percentage in incarceration, and most of those are poor, and all of them would have contacted us at some point in time. If the state prosecutes you, then the state must provide you with counsel. If a county [prosecutes], it must [provide counsel], and if the federal government [prosecutes], it must [provide counsel].

Counsel is widely provided. However, public defenders complain about the lack of adequate resources to do their job, to hire effective investigators to do the sophisticated tests that the people who have money can afford, to hire folks with good salaries and to retain them, and so on and so forth. I don't have the actual figures, but you can bet [the budget is] actually billions nationally.

Ho:

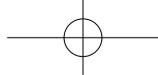
Thank you, Joseph. Just one more follow-up because we have heard reports from other countries. For example, Britain annually allocates 2.1 billion pounds for the operation of the legal aid regime as a whole, not only for the civil aspect but also for the criminal. , We know the pro rata situation by dividing the budget by the total population of the United Kingdom, and likewise for other countries. So it would be of great help for this forum if we have a complete figure on how much the United States is spending on the legal aid regime – even for the Sixth Amendment – so that we know the pro rata situation. If the figure is not available today, maybe some pointers could be offered to us later.

Barnett:

We can certainly try to provide that for you. The reason for the bifurcated system in the United States is because [the right to counsel] in criminal cases is a mandated right but is not in civil cases. The civil figure we have is close to one billion dollars. But, I'm sure that we have ways of getting the amount that is spent on indigent criminal defense.

Julie Bishop (National Association of Community Legal Centres, Australia):

I think the point we have been discussing regarding the restrictions in United States is very salient for all of us, because it is certainly an issue in Australia. The environmental defendants' offices have restrictions on litigation. The government is attempting to restrict the work of all NGOs by amending the charity law to prohibit anyone receiving charitable

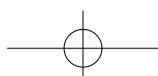


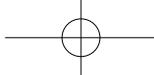
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status from doing any public advocacy. There are many more examples and I know of similar trends in many other countries. So as people who are interested in the democratic process and rule of law, I just wanted to comment that it's something for us all to keep in mind. And that it is isn't limited to the United States. It's spreading far and wide.

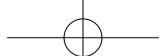
Mlambo:

We have what we call countries with "Rolls Royce legal aid systems," and we have some of them here, and we have countries that are still crawling. I want to issue a challenge here to the countries that have the means: is there a way in which they can help those other countries that are still struggling to set up their own systems? I'm talking from the African perspective, and we would really welcome help of whatever kind to make sure that this basic right becomes a reality. Thank you very much.





NGO Symposium



NGO Symposium

The NGO Symposium featured NGOs in Taiwan that have a working relationship with the Legal Aid Foundation. Three main topics were discussed:

- 1) What difficulties exist in NGOs' access to the justice system? How has this changed since the establishment of a legal aid system in Taiwan?*
- 2) How do NGOs and legal aid organizations cooperate with each other, and what are the future prospects of these relationships?*
- 3) How do NGOs and legal aid organizations work together to promote the legal education of disadvantaged persons and to advocate legislative and policy reform for disadvantaged persons?*

Moderator

Joseph Lin

**Director, Taipei Branch Office, Legal Aid Foundation
Taiwan**

NGO Representatives (Taiwan)

Wei-shyang Chen

President, Millet Foundation

Yi-Ting Hu

Executive General, Taipei City Association of Parents of Mentally Disabled Persons

Hsiao-Ling Huang

Secretary General, Taiwan Association for Victims of Occupational Injuries

Pin-li Hung

Director, Taipei County & City Single Parent Family Service

Ya-Li Hung

Director, The Garden of Hope Foundation

Yung-Cheng Kao

Executive Director, Judicial Reform Foundation

Ting-Fang Tien

Director, Awakening Foundation

Ming-Jen Wang

Deputy Executive Director, The Garden of Hope Foundation

San Wang

Deputy Managing Director The League of Welfare Organizations for the Disabled, R.O.C

Wei Wei

Director, Rerum Novarum Center

Hao-jen Wu

President, Taiwan Association for Human Rights



NGO Symposium Discussion

Joseph Lin (Legal Aid Foundation, Taiwan):

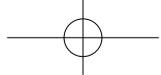
Today, we have the rare opportunity to discuss the relationship between NGOs and legal aid. We welcome representatives from NGOs or institutions closely related to NGOs from all over the world. First of all, I would like to explain the relationship between NGOs and legal aid in Taiwan. Taiwan's Legal Aid Act was initiated by the Judicial Reform Foundation, Taiwan Association for Human Rights, Taipei Bar Association, and other NGOs. Once the initial proposal was drafted, the Legal Aid Act ran into difficulties in the Legislative Yuan, and it was with the cooperation of many NGOs (involved with the rights of labor, women, aborigines, mentally or physically disabled persons, lawyers, etc.) that the act was able to garner the approval of the government. Many of the detailed rules—especially those regarding qualifications for legal aid—had been created through many collaborative discussions of various NGOs. Once the Legal Aid Foundation (LAF) was created, it invited representatives from NGOs to serve as the LAF's commission board members, monitoring the foundation and working out new policies together. Also, many of the cases that the LAF receives are also from the NGOs.

Today, we hope to discuss three topics. Our first topic is: ***What difficulties exist in NGOs' access to the justice system? How has this changed since the establishment of a legal aid system in Taiwan?***

Wei Wei (Rerum Novarum Center, Director, Taiwan):

The Rerum Novarum Center was created in 1971, serving the needs of regular labor workers, injured or victimized workers, aborigine workers, and migratory workers. In Taiwan, the labor force has always been legally vulnerable. Before the creation of the Legal Aid Act, only one-tenth of workers who were involved in labor disputes (usually over payment) sought help; most of the workers chose to give up, believing that the judicial system would not grant them adequate legal representation nor provide justice to them. Between the years 1983 and 2000, we secured a professional consultant (without legal background) to help these workers, taking on approximately 300 cases per year, most involving labor injuries and victimization. With the retirement of the professional consultant in 2000, we hired another person (this time with a legal background) to help; however, following several years of training, this person chose to leave the center. With the encouragement of civil NGOs, governmental agencies began to provide workers and aborigines with legal aid; but because of strict limitations, workers and aborigines were unable to receive much actual aid. For this reason, we are grateful to the Legal Aid Foundation for providing much-needed legal aid to workers and aborigines without imposing excessive limitations.

From July of 2004 to now, we have taken care of 45 cases related to aborigines, one of which was a collaboration with the LAF. In terms of labor injury and victimization, we have taken care of 38 cases; 12 of these cases involved law litigation, 8 of which were helped by the LAF. Out of the 45 cases related to migratory workers, the LAF helped with 5. With these collaborative efforts, we feel that the LAF was most useful in aiding laborers who are financially eligible for legal aid, allowing us to better serve workers. However, we have also noted several problems about the LAF: the quality of volunteer lawyers is often inconsistent, and while we appreciate any legal aid, we would also like to win our cases in



court. With our former legal consultant, we had a 90% success rate, but our success rate now is no longer as stable. At the same time, the lawyers reviewing the cases in the LAF must be more sensitive to the issues that the workers present, especially when reviewing cases that involve sexual harassment (many of the migratory workers' cases involve sexual harassment and/or violence), in order to prevent more damage to the workers. The LAF has been working on improving the quality of its services, and we are hopeful of its future progress.

Arturo Fournier (Inter-American Bar Association, Costa Rica):

In Costa Rica, there is a big trade union federation, which is one of the most important in the country, called Reum Novarum. They also have lawyers who help workers affiliated with them.

Bruce Lasky (Open Society Justice Initiative, Cambodia):

I work with the Open Society Justice Initiative, which is an international organisation in South East Asia. One of the things we do in helping NGOs access justice is that we have a fully-paid fellowship program where students can apply to study Masters degrees at the Central European University, with the condition that when they graduate, they have to return to their home countries and work with NGOs there for two years. We try to avoid what Wei Wei said about training the students and then they go off. We require that they go back, and we subsidize their salaries to do that. We don't have the program in Taiwan, but we do it in most of the South East Asian countries and we welcome your applications.

Alison Hannah (Legal Action Group, England):

In England, NGOs are very well funded, and some receive funding from the Legal Services Commission. These NGOs provide services that range from specialist to generalist. Specialist services include areas such as mental health, women's rights and disability issues. Generalist organizations include the Citizen's Advice Bureau, which has a national network of offices staffed with volunteers or paid employees. These Bureaus have an open door policy, so anyone can go to them as the first port-of-call for free advice on any issue. If they can't deal with the questions being asked, they refer people to more specialist organizations, which could be law firms. At the more specialist level, there are advice agencies which may employ solicitors having contracts with the Legal Services Commission. There are also 15 law centers where there are lawyers and non-lawyers working together, and the non-lawyers work on community education and campaigning.

Mike Jeacock (Legal Services Commission, England):

We currently spend 60-70 million pounds per year in funding contracts with non-profit agencies. We helped these NPAs with education programs. One area in which we helped over the last 12 months was on how to run a business, because NPAs need business disciplines to make sure that they are effective and use value. We audit NPAs and identify areas in which to help them improve.

Somchai Homlaor (Law Society of Thailand, Thailand):

The aim of the legal aid system is to strengthen civil society and democratic movement.



There are some barriers and obstacles stemming from lawyers' philosophies and thinking. Lawyers haven't worked well with NGOs. Lawyers think they know the best and that NGOs don't have knowledge of the law. In many cases, the objective of the NGOs in suing governments or businesses is not to win, but to raise questions to the public. We may even see our cases lose, but the public should learn that the law cannot be very protective of the disadvantaged. But this view is not accepted by lawyers, and they will only handle cases that they think they can win. So lawyers have to learn to work with other professionals and organisations.

Abdul Rahman Abdullah (Malaysian Bar National Legal Centre, Malaysia):

We work with NGOs. They sit together on our committees, especially women's organisations. There are 2 aspects to migration workers' cases:

For criminal cases, we go to prisons and interview illegal immigrants. In most cases they want to plead guilty because they want to go home. We mitigate on their behalf and get in touch with their embassies. After cases are over, they leave the country.

In civil law, these are mostly cases where employers don't pay employees, and we have won these cases.

Julie Bishop (National Association of Community Legal Centres, Australia):

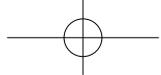
In addition to doing straight legal advice, one of the key charters of the community legal sector in Australia is to campaign on issues of justice. In order to do so, we have to join in coalition with many other organizations, depending on the issue. At the moment, we have a strong focus on human rights. Our organization has worked with other NGOs to prepare the shadow report to the UN on the Convention on the Rights of Children, on racial discrimination and on CEDAW. We are currently developing a coalition to develop the shadow report on the International Convention on Civil and Political Rights, and on Economic and Social Rights. There is an active coalition of NGOs running in conjunction with law centres at the moment to counter the worst excesses of the recent anti-terrorism laws. Because we are based in community, a lot of our work is advocacy, not straight legal advice. To be effective, we work in coalition with other NGOs, as well as being an NGO ourselves.

Martin Rozumek (Organization for Aid to Refugees, Czech Republic):

We are in the same situation of being dependent on grants and single projects. Its interesting to be here because Taiwan is one of the example countries for us; something like the Legal Aid Foundation or the Legal Aid Act is very important and I think that's what's missing in the Czech Republic.

Matthias Kilian (Cologne University, Germany):

There is one interesting development in Germany, a country which traditionally had pretty strict monopoly rights which favored lawyers that only lawyers could practice law and give legal advice. There is a white paper that suggests and will probably become a bill later next year that the monopoly rights will be liberalized so that NGOs can provide legal advice, provided that they have a lawyer who supervises the operations to guarantee



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quality. The lawyer is not supposed to be there all the time, but acts as a supervisor. Another thing that is being discussed, though not in the white paper, is that NGOs should be covered by professional indemnity insurance when they provide legal advice. I'm not sure what the outcome will be, but the feeling is that somebody who is providing legal advice – even if it is an NGO which does not ask for any fees – there should be some kind of protection for people who are advised by those organizations.

Wilhelm Joseph (Maryland Legal Aid Bureau, United States):

In the United States, most of the legal assistance in criminal cases for indigent defendants is provided by government and semi-government entities. On the civil side where I work, most of the work is provided by NGOs. We are funded from multiple sources. I am responsible for serving officially about 400,000 persons who have been certified as poor, but up to a million people are eligible for our services. I have a budget of 21 million dollars for the State of Maryland. Three million of that money comes from the Federal government. Seven million dollars comes from the State through the mechanisms IOLTA and filing fee surcharges, and this money is put into a central pool for legal aid services. We have a 7-million-dollar contract with the State to represent children who are alleged to have been abused or neglected by parents, guardians or foster homes. Several other million dollars come from private sources.

The major challenge we have on the civil side is the fact that in the U.S., there is no right to a lawyer in civil cases at the State or the Federal level, and the use of money from the Federal government is severely restricted. Since 1996, we are prohibited from representing prisoners, undocumented immigrants, helping abortion cases, cases involving resistance to military draft and challenging racial discrimination in school systems. We are also prohibited from seeking attorney's fees in litigation (in cases that we won), which used to provide substantial amount of funding to us.

Another challenge is that we are severely under-funded. In aggregate, about 800 million dollars is spent in the entire U.S. on civil legal aid, and there are about 35 million people who are officially recognized as poor. When compared to Britain, which spends 2.1 billion dollars, if we spend at the same rate, we should be spending at least 12 billion dollars. So one day we'll get there. For the future, we are organizations State by State, and nationally, a movement to establish the right to counsel in civil cases.)

Wei-shyang Chen (Millet Foundation and Legal Aid Foundation, Taiwan):

One problem I've noticed is that the Taiwanese court rarely acknowledges the traditions and customs of the aborigines. The judicial system now does not provide a litigation process that is appropriate for the Taiwanese aborigines, not to mention aborigine courtrooms, professional legal staff, even regular interpreters; this are simply some of the ways that the judicial system is unfair to the aborigine peoples.

A main issue lies with individual cases. Now that we have the LAF, we can transfer our cases to the LAF, but which of the lawyers has an accurate grasp of what the major aborigine legal issues are? The second main issue lies with the structure of the Taiwanese society. Taiwan has many laws that interfere with aborigine survival rights: laws regarding national parks, forestry, protection of endangered animals, etc. These laws tamper with



the aborigine traditional ways of life, even their right to survive. However, the current legal aid policies make it difficult for us to address these systematic problems; for instance, we cannot apply for legal aid as a village.

Ya-Li Hung (The Garden of Hope Foundation, Taiwan):

Originally, many women who have been victims of violence (domestic violence) and had no independent income were unable to afford the lawyer fees necessary for court litigation; however, with the establishment of the LAF, many civil cases have been settled. It is my opinion that legal aid is a good service.

Joseph Lin:

Actually, when we (LAF) collaborate with NGOs, we discover the need for an improvement in the legal aid lawyers—for instance, there is a need for an increase in the understanding of aborigine issues, women issues, labor issues, sexual harassment issues, among other issues. Before the establishment of the LAF, the government did provide some legal aid to women, workers, and aborigines, but this aid was not complete. For now, we have adopted a parallel policy—both the LAF and the government provide legal aid, independent of one another.

San Wang (The League of Welfare Organizations for the Disabled, R.O.C, Taiwan):

We have transferred a significant number of cases to the LAF. We hope that in the future: (1) Train the lawyers to understand every kind of handicap. The first line of service (courtroom, police station, within the community) needs more help in this regard. (2) Strengthen the amount of advertisement, community education, and support. Many of the minority groups in this society are insecure, and are afraid of the courtroom. (3) Help the minority groups in society. The NGO I work with wanted to create a support and recovery group for those with mental handicaps in the community, but after two years of protests from locals, we have yet to do so. We haven't had the courage to take our case to court. We need to soon, but the LAF only helps individuals, not groups. (4) We hope that more NGO members can be trained in legal knowledge.

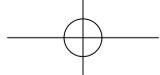
Joseph Lin:

Although Taiwan is not big, we recognize the importance in educating minority groups about the law. There are many places where we need to improve, and we definitely hope to improve within the boundaries of our ability.

Bishop:

Indigenous issues is a huge area of difficulty in Australia particularly in terms of access to justice and legal issues. There are also the "family violence prevention units" – there are three programs, all significantly under-funded and constantly reviewed for efficiency because there is an assumption that they are inefficient because the issues are so constant and endemic.

Recently every aboriginal legal service in Australia had to reapply for contract, and re-tender for 3 times the amount of work with the same amount of money. Because the need



is so great, the same organizations that had been reviewed and criticized in fact won the tenders, because no one else could deal with the issues so effectively with so little money.

Why is the issue so bad? And why do people continue to work in this area when it is so difficult? Aboriginal women are imprisoned at six times the rate, and they are the fastest growing prison population in Australia. Aboriginal men in some states represent 70% of the prison population even though overall they are only 4% of the country's population. We have major difficulties with aboriginal legal services because of issues of conflict of interests. There are many family or community legal problems which many other legal organizations try to address. There is such a variety of problems - because as everyone here knows, once you have disadvantage in poverty, you have a host of legal problems. Often they are problems of disadvantage, but they express themselves legally.

There are special services in the immigrants, workers, disability, mental health and domestic violence areas, and if there is time I could tell you tales of woe in each area.

Stephen Lin (Central Queensland Community Legal Centre, Australia):

Why are aboriginals not chosen as jurors? Due to cultural differences and economic disadvantage, aboriginals are at a disadvantage when it comes to participating in the judicial system (being selected as a juror), because they have no permanent addresses and can't be selected in the system that selects randomly according to the electoral role. So you will have a typical case of an aboriginal teenager being charged and everyone on the jury is white.

Regarding the native title concept, which is a cultural access to use the land to maintain the traditional lifestyle, that is hunting and eating traditional food. Many NGOs in Australia have lobbied to exempt aboriginals from environmental laws, for example eating turtle is illegal for ordinary residents, but aboriginals maintain can the culture of maintaining turtles.

Jeacock:

We are also encouraging solicitors and NPAs to sign contracts under community care. Rather than treating the symptoms of the problem, we are trying to deal with the underlying causes and integrating people back into their communities. Our mental health practices integrate people into community - it's looking to be quite effective so far, so there is so hope out there.

Ouk Vandeth (Legal Aid of Cambodia, Cambodia):

We continue to provide more and more advice. For example, in my country, if an indigenous mother dies during childbirth, the baby will be buried with the mother, even if the baby is still alive. This is because indigenous people obey rules from a long time ago. We have to explain to them that the law does not only apply to the ordinary people, but to all people of the country. We have an NGO that works with women, and they can transfer cases to our organisation. We provide legal advice first, and if we can't solve the problem, we can represent him in court where the problem may be solved.

Uli Sihombing (Jakarta Legal Aid Institute, Indonesia):

They discriminate people on color, race, and origin. Indigenous people cannot go to



school, access education, and cannot use their original language. On other hand, the bar association is less interested in indigenous issues. That is why we are NGOs campaigning for indigenous people and their rights. There are a lot of islands in Indonesia, and the judicial system is not good. We always use issues of economic, social and cultural rights to influence judicial officers when they evict indigenous people from their lands. The problem is that the judiciary system does not work well. The problem is not coming from the bar association.

Joseph Lin:

Now, let's move onto the second topic: *How do NGOs and legal aid organizations cooperate with each other, and what are the future prospects of these relationships?* We have already heard from some representatives that NGOs hope that these legal aid organizations can provide more legal knowledge to NGO workers, and that NGOs also hope to come and talk to our lawyers about the circumstances of the minority groups they help, in order to prevent further misunderstandings and problems.

Ya-Li Hung:

At the beginning, The Garden of Hope Foundation was also one of the civil groups involved in the creation of the LAF. The CEO of our foundation, Ms. Hwei Rong Chi, served as one of the board members of the LAF, helping with the development of the foundation. The Garden of Hope Foundation has had ten years' of experience, and we have shared our NPO management experience with the LAF. Our CEO also has had much experience working with the media, and has brought her expertise in these matters to the LAF as well. I myself am part of the LAF's development commission, so I also give suggestions to the LAF regarding its development and ability to address civic needs during meetings.

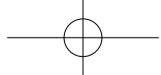
Taiwan's domestic violence law has made it necessary to establish family service centers in all district courts, providing applicants with adequate information about court litigation. We have assumed the responsibility for 7 of these service centers in Taiwan, with social workers providing the bulk of services; thus, we need more cooperation with the LAF. With regards to cooperation, the LAF and The Garden of Hope emphasize "mutuality," because social workers can help transfer people needing legal aid to the LAF, and the LAF can also transfer people who need more social or medical support to these social workers. Our cooperation is a healthy and constructive one.

Joseph Lin:

I would like to add, Taiwan's LAF Board includes 4 lawyers, 2 scholars, 1 NGO representative (from The Garden of Hope Foundation), 1 aborigine representative, and 5 governmental officials.

Yi-Ting Hu (Taipei City Association of Parents of Mentally Disabled Persons, Taiwan):

According to a survey report in 1995, there are recently 85 intellectually-disabled persons in prison in Taiwan. Many of these prisoners are serving lengthy sentences, some as long as 12 years; the crimes that they have been convicted of are relatively light, such as theft. Why are they serving such lengthy sentences? Many of the prisoners'



family members lack the legal knowledge necessary to understand the magnitude of their children's crimes; also, they are often ashamed of their children and are thus reluctant to help their children appeal. Without even familial support, the rights of these intellectually-disabled persons are easily breached; we do our best to give them legal aid, but because our organization is composed mostly of social workers, the amount of legal good we can do is severely limited. We lack the legal terms needed to communicate effectively with lawyers, and lawyers often lack the necessary understanding and patience when dealing with these clients and their family members. For instance, lawyers demand that the words (of the client) must be accurate, focused, and logical, but this is virtually impossible for someone who is intellectually disabled. When lawyers encounter our cases, then, they are often intimidated because we cannot adequately sum up any of the cases in an hour. We were frustrated. Later, as sexual harassment, domestic violence cases increased in the Taiwanese society, more attention was extended from women to the intellectually disabled, and lawyers began to take more notice of our difficulties. We have been in service for 15 years, and many of our parents are especially concerned with the rights of their children. Taiwan's legal system is sadly outdated, which is immensely unfair to the mentally or emotionally handicapped. We need more people in law to care for these people.

Over these past years, I do not know how many lawyers we have "abused"; now we only have one left. The best thing about the LAF, in my opinion, is that we no longer have to "abuse" other lawyers, because there are now lawyers who are willing to go through a structured channel to serve our needs. Our social workers are eager to help lawyers meet and understand these minority groups. However, in the future, there needs to be more mutual communication. One of our main difficulties, for example, is collecting evidence. What is evidence? Prosecutors often claim that records written by social workers are not evidence. So, in the future, there is much work to do. The LAF's work with the poverty-stricken population may eventually inspire a social movement. Social change needs the accumulation of many cases, and I'm sure NGOs are more than willing to help the LAF in this respect.

Joseph Lin:

Through much collaboration between NGOs and the LAF in the past year (mainly, through the transferring of cases), we have discovered that some cases need non-legal aid instead of legal aid, thus needing expertise that the LAF cannot provide. How should NGOs and legal aid organizations establish better ties?

Stephen Lin:

Regarding the question of evidence – in Australian law, sworn documents (a signed statement) can be used as evidence. A working diary by a professional service provider can also be tendered as evidence.

On the topic of domestic violence – an unreasonable means of financial control depriving the other party of reasonable livelihood and dignity is a form of domestic violence itself. We can fight on that issue. Also, there are special provisions in immigration law – if the sponsored spouse is married, his/her 2-year temporary residency has not expired and is experiencing domestic violence, then he/she can escape from the home and apply for



special category permanent residency under the domestic violence law. Otherwise he/she may have to ensure 2 years of domestic violence and may be killed.

NGO and CLCs (community legal centers)– they are one and one in entirety. They have to depend on each other. CLCs are NGOs with specialty, legal expertise, advocacy skills; and normally NGOs need special assistance in advocacy and campaigning. The management of CLCs depends on community participation – committee members come from the wide community and active NGO representatives. NGOs shape CLC into specialty areas and the services demanded by society. NGOs and CLCs really work as one entity.

Regarding the disability issue – I don't understand why the defense attorney has not brought up the "mental capacity" defense, because if the person is suffering from mental illness, that person should not be convicted and should be committed to mental rehabilitation facility, rather than jail.

Joseph Lin:

NGOs are very close to the people who need help, and Taiwan's LAF was established relatively late, so our need to collaborate with NGOs is very important. Australia will provide us with good guidance.

Persida V. Acosta (Public Attorney's Office, Philippines):

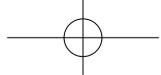
On January 8 of last year, members of religious organizations approached me and asked me to work hand in hand with NGOs. One parish priest helped me to locate witnesses and suspects who were charged in the same case. In this case there were 9 accused, 2 were going to be executed by lethal injection, and 7 were still at large. With the media's help, the Catholic Bishops of the Philippines, some NGOs, the pre-legal assistance group, ALTERLAW and LIBERTAS, we worked together to make public clamor for suspension of the execution. On January 26, I argued before the Supreme Court to stay the execution, which was scheduled for January 30. I appeared with before Supreme Court judges with an NGO known as the Volunteers Against Crime and Corruption, and many other groups including the Amnesty International Philippines, the Coalition Against Death Penalty (which was sponsored by the British Embassy), United Nations Development Program, and many others. So when I argued before the Supreme Court, I was very courageous. And we won – these 2 convicts were not executed. And in the following month, President Arroyo ordered the reprieve of all executions and up to now, there have been no executions. So you see, if the government welcomes the advocacy and good intentions of NGOs, it will really result in great results for the sake of human rights and protection of liberty.

Joseph Lin:

We thank the Filipino representative for their sharing of the execution reprieves. We would like to ask that Mr. Wu, President of the Taiwan Association for Human Rights, as well as Mr. Kao, Executive Director of the Judicial Reform Foundation, to respond, since Taiwan is also pushing for the elimination of the death penalty.

Hao-jen Wu (Taiwan Association for Human Rights, Taiwan):

When Chen Shui-bian won the presidential election in 2000, his platform included the



elimination of the death penalty. However, even now, Taiwan still has the death penalty. The government's position is that it will gradually decrease the amount of actual executions, but it holds to the claim that the people still support the death penalty. In truth, the death penalty issue has never been adequately debated in Taiwan. We have discovered that there is a decrease in the number of death sentences as well as actual executions, but the death penalty has yet to be completely banished. As long as the society appears to be politically unstable, there will always be supporters of the death penalty. So, the Judicial Reform Foundation, the Taiwan Association for Human Rights, and other important social groups have formed a "Taiwan Alliance to End the Death Penalty," hoping to force the government to banish the death penalty soon; otherwise, Taiwan's human rights standard will not be on par with that of the world.

Yung-Cheng Kao (Judicial Reform Foundation, Taiwan):

I think the people's opinion in Taiwan as well as many countries throughout the world does lean towards banishing the death penalty, but Taiwan's problem is that the death penalty issue has never been properly discussed at the governmental or at the intellectual levels. We have a rather interesting relationship with the LAF with regards to the death penalty. In other countries that have yet to rid the death penalty, perhaps it is natural for legal aid organizations to interfere with death sentence cases, but in Taiwan, according to the Legal Aid Act, one of the LAF's policies is that "the matter is not clearly unreasonable." From our perspective as a human rights organization, a sentence that strips a person of his life, no matter how reasonable, should be actively fought as long as there is the possibility of aid. But at the LAF, other than the Taipei branch, it is unlikely that aid will be provided if the case involves a death penalty. I hope that in the future, all death sentence cases, regardless of reason, the LAF can give aid, and that doing so will become part of the LAF's official policy.

The Judicial Reform Foundation initially also pushed for the creation of the LAF, but our relationship is rather interesting. While other NGOs seek collaboration with the LAF (and we did also before, sending many cases to the LAF), we now play the role of the "black crow," hoping to serve as the external watch and critic, while also learning more about how legal aid is given in other countries.

Ta Thi Minh Ly (National Legal Aid Agency, Vietnam):

In Vietnam, we choose NGO members to work with us (Legal Aid) as paralegals. After some years, they have experience and they can organize their own legal aid centers. Now we have five pilot centers from the youth union, women's union, trade union and veterans union. We are also trying to set one union up for disabled people, and have a legal aid center from that union. They do not have the experience and staff, but if we train them step by step and treat them as collaborators, they can develop the skills and organize themselves.

Kang Hyun Lee (Korea Legal Aid Corporation, Republic of Korea):

The victim does not need many documents for application, only statements from NGO staff, because they are the same things to say again in front of the legal aid staff. Right



now in my office there is a hotline for victims, especially for NGO office and women's care center. A new draft of the Legal Aid Act is being discussed in the Korean Judiciary Reform Council. In the draft, NGOs have power to designate KLAC staff lawyers for their cases. Also, the KLAC will pay fees of the cases.

Dunstan Mlambo (Legal Aid Board, South Africa):

We have recognized that the funding that used to go to NGOs have dried up in South Africa. There was an expectation that the Legal Aid Board could fund the NGOs, but we can't because we are under-funded ourselves. The government expects us to spend money on direct services delivery instead of funding others. We have found a solution - in some larger provinces where NGOs go into arrangements with funders who pay NGO workers' salaries, we give the NGOs access to our resources, such as office space, telephones and motor vehicles (they do a lot of fieldwork). This seems to be working very well in terms of alleviating the problems that NGOs face.

On a larger scale, under the Cooperation Agreement Scheme, NGOs can send tenders to the LAB to provide services in areas where we have no capacity or presence. But there are problems, such as accountability issues and performance level issues which we are busy ironing out.

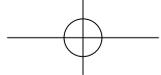
Wei Wei:

Just as the representative from South Africa pointed out, in the future the LAF can consider giving financial aid to NGOs that are already involved in legal aid work, aborigine villages, labor unions, etc. Taiwan's labor unions should do more legal aid involving workers, but its resources are not enough. If the LAF can provide these resources to the labor unions, then it can reduce the number of administrative employees or spend less time training lawyers, thus saving itself some time and money. After all, it is a little difficult to anticipate that lawyers can become experts in dealing with a specific population (such as laborers). As an example, when we transfer cases involving aborigines to the LAF, lawyers often have trouble understanding the aborigine applicants; while the applicant expects the lawyer to help, the lawyer think that the applicant should propose more questions, provide more evidence, even though the applicant does not know where to find such evidence. As a result, the social worker must spend a lot of time and effort on family interviews, etc. In short, we need a wider variety of ways to collaborate.

Also, evidence is hard to retrieve, especially in the cases of migratory workers. I would like to propose a challenge: in the future, can LAF provide relief to illegal immigrants? In America and other countries, such relief is provided on the claim that legal aid is a human right. Vietnam, Indonesia, Thailand's migratory workers are often tricked by the mediating corporations. If these companies are Taiwanese, than Taiwan can provide legal aid, but if we encounter foreign companies, then we are helpless. There are many representatives here today from Southeast Asia; perhaps we could have international cooperation to help these people?

Joseph Lin:

The last main topic I would like to discuss is: How do NGOs and legal aid organizations



work together to promote the legal education of disadvantaged persons and to advocate legislative and policy reform for disadvantaged persons? Similar to the aborigine issue raised earlier, helping migratory workers one by one is very important, but if we cannot solve policy problems, the cases we need to take care of will be endless.

Hao-jen Wu:

The Taiwan Association for Human Rights (TAHR) has been established for 20 years, making it one of the earliest human rights groups in Taiwan. In addition, the government has also viewed the TAHR as one of the most radical NGOs. The main figures in the LAF, such as Joseph Lin, all have much experience in society; our relationship with the LAF over the past year has therefore been very good.

I myself am a professor of law in a university. In the past, the government did not wish for the people to understand law, because citizens who understood law would have the sense to protect themselves and their own rights. Therefore, past legal education in Taiwan was restricted to only the ruling elite. As a result, regular Taiwanese citizens had little to no basic knowledge of the law, and didn't know how to use the law to protect their own rights. Because of the LAF and various NGOs common goal of protecting civic rights, taking care of individual cases has been a good educational opportunity. As we proceed with advocating for changes in law and policy, our ideal blueprint is that NGOs and LAF divide up into different roles, with NGOs discovering problems and serving as a watchdog, while the LAF performs the actual legal aid; together, these organizations can find the direction for change.

Joseph Lin:

In actuality, when we were not yet part of the LAF, we could approach the government directly through NGOs; now, we use the government's money to manage the LAF. But because we are now involved with legal aid, we have discovered many problems with legal aid, as well as with policy and education, so it is all very interesting.

Wei-shyang Chen:

I myself have two identities: a person providing legal aid, as well as a NGO person who cares for the welfare of the aborigines. Therefore, I participate actively in both the LAF and in my NGO. To aborigines in Taiwan, legal education is a tricky issue. After all, legal education can have both good and bad effects. Through legal education, we can decrease the amount of quarrels; at the same time, however, problems that previously did not have to be solved by law will now be dragged through the legal process by those who wish it.

Other than being a society with aborigines, Taiwan is also an immigrant society. However, Taiwan currently lacks the flexibility and variety to meet its own diversity. This includes the education of people involved in law; lawyers and other people trained in the legal system are not adequately prepared to adapt to any kind of diversity. Since Taiwan only has one legal system, who is responsible for pushing for the legal education of the aborigines? Gradually, a small number of aborigines have attained lawyer and judge positions, but the majority of these positions are still occupied by Han-descended Taiwanese who have no training about tradition aborigine customs. Many of Taiwan's laws



are interfering or stripping aborigines of their traditional rights; should we really support these laws then? When we do, should aborigines be involved as well? So, when we visit the villages, many of the oppressing problems surface. The central question we need to answer to is: How should we return the property and resources that we took from them? When the LAF and the Millet Foundation collaborate, entering villages to promote legal aid, we run into this problem. Another problem is that we have trouble getting aborigines to come over to us and receive legal education.

Lasky:

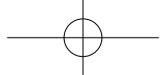
One of the things we do is promote critical legal education, using universities and their law students to provide legal services and legal education to communities. It's not just a legal internship, because there's a strong educational component involved. Students work with professors to apply legal theory to actual situations. In doing so, they learn and at the same time provide legal services and legal education. We try to target certain thematic areas to work on, one of them being the issue of disadvantaged persons and migrant workers. We send law students to communities; teach them law and how to aggressively teach the law interactively to these marginalized communities. In doing so, the students are learning and teaching and educating these disadvantaged persons, and at the same time are learning from these disadvantaged persons who have a lot to teach the students. In doing that, we believe the students will go on to become attorneys, and be better attorneys. When we look at sustainable legal aid systems, we need people who want to do legal aid. And we believe a lot of that starts at the university system. So by universities taking on this responsibility, and working with legal aid organizations and NGOs, it's been effective internationally for decades.

Gilda Guillermo (Alternative Law Research and Development Center, Philippines):

My group, ALTERLAW, engages different legal aid providers and NGOs in dealing with people living with HIV/AIDS. We have engaged them in consultation workshops in passing laws involving people living with HIV/AIDS and filing cases. And what we experience is that almost all of the different legal aid providers participate enthusiastically. They also provide comments and suggestions about advocating for the passage of these rules. Most lawyers in the country are not aware that an HIV/AIDS law was passed in 1998, and we help them to become aware of the law, and of the other issues and concerns of people living with HIV/AIDS. We also engage them in advocating related issues, especially on the right to confidentiality in accessing justice.

Chito Gascon (Lawyers League for Liberty, Philippines):

My organization has quite a rich experience in legal education. I want to confirm what Bruce has said – in the Philippines, clinical legal education has been an important component in providing legal aid. Many students of clinical legal education choose to continue to serve in legal aid organizations or the Public Attorney's Office after graduation and become lawyers. In a sense, we are building a network of service providers. I think the critical part about clinical education is demystifying the law – making the law accessible to ordinary citizens. The reality is, there will not be enough lawyers to provide every citizen



with knowledge of the law. So it's important that those who do have some knowledge of the law, multiply that info in a way that is accessible to specific critical public. Citizens don't need to know all aspects of the law, but it's important that they are aware of their rights. As Ms. Guillermo discussed, many of those who have HIV do not know that the law on HIV exists in the Philippines. So it's important that we engage not just law schools, but also elementary and secondary schools. We are now undertaking a program where we try to teach the law – essentially, rights – to children as young as 6 – 7 years old. So when they have a little bit of knowledge, they know what to do.

In relation to policy reform – I think there was something called the Citizens Charter in the UK. We are trying to promote the same idea in the Philippines. When a person has to enforce his or her rights, he doesn't need a lawyer but doesn't know where to go for his problem. It's important for rights groups to make government agencies more customer-friendly.

In relation to registering vehicles – 10 years ago, the only way to register your vehicle was to pay a fixer to register your vehicle for you. But there has been an effort to show a flowchart of vehicle registration – citizens were told what to do, and this also brings transparency and accountability to the process.

Using the media, including print, radio and the internet, is part of demystifying the law to citizens. This will really help our efforts at law reform and legal aid in the long term.

Jeacock:

We are also trying to identify the problems at home. We are getting solicitors to talk to people about how to protect their rights. We also court the media very hard. One thing that we're doing at the moment is negotiating with one of the very popular TV soap opera programs. The program wants to run legal aid as an issue, where one of the top characters will be arrested and we'll see how legal aid helps them through. We also do a lot of radio programs – both TV and radio programs for different communities. And we try to focus on youth. We're unashamed in what we try to do to promote legal aid. We do get some bad press, but for each bad story, there are 999 good stories. We try to make sure the good stories get out. We take any bit of promotion we can get, and we work hard on radios and TVs. And we do know that lots of people watch the soap operas.

Joseph Lin:

From the experiences shared by various countries, we can see that legal aid and legal education are closely intertwined. Next, we would like to welcome Ms. Tien, Director of a Taiwanese organization that has been especially attentive to women's issues, the Awakening Foundation.

Ting-Fang Tien (Awakening Foundation, Taiwan):

The Awakening Foundation has been established for 22 years. We are more of an advocacy group, relatively uninvolved with actual legal aid. We care about governmental policies related to women, law, aborigines, migratory workers, immigrants, and the media. Before the creation of the LAF, we were also involved in a lot of discussion over legal aid. Our anticipation is that firstly, that the minority groups be educated. For instance,



foreign spouses or migratory workers need to understand Taiwan's laws in order to protect themselves; with the limitation of human resources, we have many lawyers in the LAF to help with this need.

Secondly, the Awakening Foundation has been observing the law for a long time, such as international law, migratory law, family law, and civil law. Through discussions of how to renovate these laws, we hope to push for the alteration of the laws in order to lessen the burden on legal aid in the long term. We believe that we need more legal opinion with regards to this matter, and hope that the LAF will help us as we continue our discussions. Perhaps in the future, we can apply for funding from the LAF to study these issues, and we welcome lawyers to enter our discussions.

Thirdly, non-litigious legal aid is also badly in need. For instance, sexual harassment in the workplace can be reported to the Ministry of Labor Affairs, but the process is lengthy, involving much time spent between the NGO worker and the victim (and sometimes a lawyer). We hope that the LAF can help us in this regard as well.

Next, we would like to talk about the LAF's evaluation standards for its "matter is not clearly unreasonable" policy. On many sensitive issues, mainstream law and actual cases often form a chasm of misunderstanding. In the future, we can consider how we can adjust to lessen this chasm.

Just now, a friend suggested that perhaps NGOs can also seek legal aid, and I agree that this is necessary. For many applicants for legal aid, the process is lengthy and tiring, and without NGOs help applicants frequently give up. Hopefully, this will change.

Mehmood Pracha (Organization for Promotion of Legal Awareness):

I think the role of NGOs has been very instrumental and pivotal in forcing the government to set up an agency called the National Agency for Legal Aid (in India). Before the National Agency for Legal Aid came into function, the provision of free legal aid, making people aware of their rights, duties and what protections they have under the law, were totally and absolutely done by the NGOs in India. I think the very fact that there is very serious talk of maintaining the neutrality of government legal aid agencies points to the fact there is something missing that needs to be done. That is not the case with NGOs as they are more independent. That is one of their biggest advantages, and they can play more neutrally with more freedom than government agencies. I would like to point out again that in India, even though a legal aid agency takes the help of NGO under an Act of Parliament (the Rule of NGOs) and they are provided with funding by the government, and there is specific law applying to them to shoulder the burden of the National Legal Aid Agency. I also have a NGO like that (which we founded as law students back in early 90s) and I am proud to see that the aims and objectives of the NALSA matched to a large extent the aims and objectives of our organization.

Stephen Lin:

With regards to laws of the aborigines in Australia, we emphasize restorative justice, allowing the perpetrator and the victim to understand each other through communication. We hope that through this communication, future disputes can be avoided. Australia also encourages aborigines to participate in economic development; for instance, aborigines and the federal government have been developing the renowned Alice Springs, both

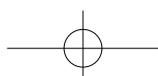


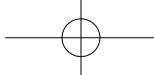
2005 International Forum on Legal Aid

improving the economy and preserving cultural heritage at the same time.

About training in legal skills, community legal centers provide paralegal training (on the level of legal assistance), increasing the community's ability to fend for itself legally in future disputes with governmental agencies and others.

We are also concerned with the training of volunteers. For example, we have a immigration center, where trained volunteers who provide free civil representation courses; once students complete the course, they must promise to provide a certain amount of immigration service. I would also like to talk about the Media Policy that the English representative mentioned. We are living in an immigration society, and as we have both legal and bilingual knowledge, many view us to be the natural leaders in our communities. Many come to us looking for help. I work in Rockhampton, which is rather remote, starting my own Mandarin TV channel and Mandarin online monthly; once the community begins looking to you for guidance, you should not dodge the responsibility. Community legal centers also have this responsibility of leadership, and we should do our best to shoulder it.





APPENDICES



2005 International Forum on Legal Aid

APPENDIX I: Conference Agenda

2005 International Forum on Legal Aid Legal Aid Fundamentals and Future Developments October 15 – 17, 2005 Taipei, Taiwan

AGENDA

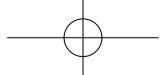
Main Venue: Howard International House

Saturday, October 15	
9:30– 10:00	Opening Ceremony Film Screening: How Many Grams? A documentary by Chao-Ti Ho on the development of legal aid in Taiwan Remarks: Tun-Ming Tsai, Chairman, Legal Aid Foundation, Taiwan John C. Chen, Chairman, Organizing Committee, International Forum on Legal Aid, Taiwan Guest Speaker: Yueh-sheng Weng, Chief Justice and President of the Judicial Yuan, Taiwan
10:00 – 10:30	Keynote Speech I: Global Trends in Legal Aid Speaker: Alison Hannah, Director, Legal Action Group, England
10:45 – 12:05	Country Reports I Moderator: Jerry Cheng, Secretary General, Legal Aid Foundation, Taiwan Reports: Australia: Stephen Lin, Principal Solicitor, Central Queensland Community Legal Centre Cambodia: Vandeth Ouk, Director, Legal Aid of Cambodia Costa Rica: Arturo Fournier, Former President, Costa Rican Branch, Inter-American Bar Association Czech Republic: Martin Rozumek, Executive Director, Organization for Aid to Refugees Finland: Marjukka Litmala, Director of General Unit, National Research Institute of Legal Policy Germany: Matthias Kilian, Senior Research Fellow, Cologne University Korea: Kang-Hyun Lee, Director of Legal Aid Division, Korea Legal Aid Corporation
13:30 – 14:20	Country Reports II Moderator: Chih-kuang Wu, Associate Professor, School of Law, Fu Jen Catholic University, Taiwan Reports: Hong Kong ²¹ : J.P. Lee, Chairman, Legal Aid Services Council Hong Kong: Junius Ho, Chairperson, Duty Lawyer Service Council Indonesia: Uli Sihombing, Director, The Indonesian Legal Aid Foundation Jakarta Legal Aid Institute Japan: Tetsuji Morita, Chief Attorney for International Affairs, Japan Legal Aid Association
14:35 – 15:55	Panel I: Organization Moderator: K.C. Fan, Secretary General, Judicial Yuan (Taiwan) Paper Presenter: Mike Jeacock, Executive Director, Legal Services Commission, England Discussant: Matthias Kilian, Senior Research Fellow, Cologne University, Germany
16:30 – 18:30	NGO Symposium Moderator: Joseph Lin, Director of Taipei Branch Office, Legal Aid Foundation, Taiwan Participants: International participants and Taiwanese NGO representatives

21. Hong Kong Special Administrative Region, People's Republic of China

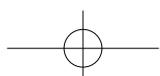


Sunday, October 16	
8:45 – 9:30	<p>Keynote II: Legal Aid in Taiwan and Future Prospects Film Screening: Introduction to the Legal Aid Foundation of Taiwan Speaker: Jerry Cheng, Secretary General, Legal Aid Foundation, Taiwan,</p>
9:30 – 10:20	<p>Country Reports III Moderator: Persida V. Rueda-Acosta, Chief Public Attorney, Department of Justice, Philippines Reports: India: Mehmood Pracha, Director, Organization for Promotion of Legal Awareness Malaysia: Abdul Rahman Abdullah, Member, Malaysian Bar National Legal Centre Philippines: Gilda Guillermo, Acting Executive Director, Alternative Law Research and Development Center Philippines: Persida V. Rueda-Acosta, Chief Public Attorney, Department of Justice</p>
10:35 – 12:00	<p>Panel II: Need Assessment and Access Moderator: Wilhelm Joseph, Executive Director, Maryland Legal Aid Bureau, United States Paper Presenter: Julie Bishop, Director, National Association of Community Legal Centres, Australia Discussant: Dunstan Mlambo, Chairperson, Legal Aid Board, South Africa</p>
12:30 – 14:00	<p>Roundtable Preliminary Discussion Moderator: John C. Chen, Chairman, Organizing Committee, International Forum on Legal Aid</p>
14: 00 – 14:45	<p>Tour of the Taipei Branch Office, Legal Aid Foundation</p>



2005 International Forum on Legal Aid

Monday, October 17	
10:00	Visit with President Chen Shui-bian Venue: Office of the President, Republic of China (Taiwan)
11:30 – 12:20	Country Reports IV Moderator: Dunstan Mlambo, Chairperson, Legal Aid Board (South Africa) Reports: South Africa: Dunstan Mlambo, Chairperson, Legal Aid Board Thailand: Somchai Homlaor, Chairperson of Human Rights Committee, Law Society of Thailand United States: Helaine Barnett, President, Legal Services Corporation Vietnam: Ta Thi Minh Ly, Director, National Legal Aid Agency
13:40 – 15:00	Panel III: The Quality Agenda Moderator: Alison Hannah, Director, Legal Action Group, England Paper Presenter: Helaine Barnett, President, Legal Services Corporation, United States Discussant: Bruce Lasky, Consultant, Open Society Institute SE Asia Initiative, Cambodia
15:15 – 16:35	Panel IV: The Role of Lawyers Moderator: Ken H.C. Chiu, Managing Partner, Kew & Lord, Taiwan Paper Presenter: Futoshi Toyama, Member of Central Board, Justice Support Center of Japan, Japan Federation of Bar Associations, Japan Discussant: Persida V. Rueda-Acosta, Chief Public Attorney, Department of Justice, Philippines
16:50 – 17:35	Roundtable Meeting Moderator: John C. Chen, Chairman, Organizing Committee, International Forum on Legal Aid, Taiwan Panelists: Julie Bishop, Director, National Association of Community Legal Centres, Australia Arturo Fournier, Former President, Costa Rican Branch, Inter-American Bar Association Wilhelm Joseph, Executive Director, Maryland Legal Aid Bureau, United States Futoshi Toyama, Member of Central Board, Justice Support Center of Japan, Japan
17:35 – 18:00	Closing Ceremony Signing of the Joint Statement





APPENDIX 2: Outline of Country Reports

1. Basic Data

- What is Legal Aid's annual budget in your country?
- How many applications for legal aid have been made in the past year?
- How many legal aid grants have been made in the past year?
- How many lawyers have provided legal aid services in your country?
- What is the population of your country?

2. Organization

- Is the legal aid system in your country a government-orientated system or a community-orientated system?
- Is legal aid in your country provided through a centralized or a regional system?
- If the legal aid system in your country is government-orientated, how does it maintain its independence?

3. Financial Affairs

- What are the sources of funding for legal aid in your country?
- Does the legal aid system in your country adopt a charitable or a rebate model? Are the recipients of legal aid required to pay statutory charges at the conclusion of court proceedings?
- Does legal aid in your country include the provision of adjudication fees/filing fees and security for costs?
- If so, does providing assistance in paying these costs increase the burden on the government's budget?

4. Models of Operation (Supply Models)

- Are the legal aid services in your country provided by salaried lawyers, or by contracted lawyers, or by lawyers or law firms in other ways?

5. The Scope and Types of Legal Aid Services

Does legal aid in your country include services in the following matters:

- litigation and legal consulting;
- civil law or criminal law matters;
- non-litigious matters (i.e. assistance in applying for social welfare, insurance or annuity; providing community legal education and initiating law reform);
- environmental law and constitutional law matters;
- administrative law and national compensation matters;
- assistance during the first police interviews at police stations;
- accepting applications made by foreign citizens;
- any special rules for applications involving the protection of human rights.

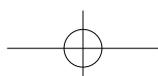
6. Tests and Procedures of Assessment

- Please elaborate on the requirements for legal aid, including the financial eligibility criteria and other tests; the documentation required in making an application; the procedures for making an application; and the efficiency and methods of assessing applications.
- Who has the responsibility of assessing applications for legal aid? What are their qualifications and how are they appointed to assess applications?
- Is the prospect of success a consideration for deciding applications?
- Is there a requirement that an application must be made by the applicant personally?



2005 International Forum on Legal Aid

7. Are there any special arrangements, including for making and assessing applications, for particular disadvantaged groups such as women, children, aboriginal people and labour?
8. What are the effects of discovering ineligibility after legal aid is granted? Is legal aid terminated or cancelled for these applications?
9. Please elaborate on the relationship between legal aid providers and private practitioners and between legal aid providers and public defenders.
10. Do lawyers have an obligation to provide legal aid? If they do, what are the arrangements for meeting that obligation?
11. Please compare legal aid providers' fees with market rates – does the rate of pay affect the quality of services?
12. What are the ways of making the availability of legal aid services known to those needing them?
13. What are the ways of ensuring the quality of legal aid services?
14. Has your country initiated law reforms or legal education with a view to reduce the need for legal aid?





APPENDIX 3: Joint Statement

2005 International Forum on Legal Aid October 15-17, 2005 Taipei, Taiwan JOINT STATEMENT

The “2005 International Forum on Legal Aid” was held from the 15th to the 17th of October 2005 in Taipei, Taiwan and organized by the Taiwan Legal Aid Foundation, convening representatives of legal aid organizations and related experts from Australia, Cambodia, Costa Rica, the Czech Republic, Germany, Hong Kong, India, Indonesia, Japan, Republic of Korea, Malaysia, Philippines, South Africa, Taiwan, Thailand, the United Kingdom, the United States and Vietnam. Throughout three days of meetings, we, the conference delegates, compared legal aid systems, shared experiences and discussed the fundamentals and future developments of legal aid.

Access to justice is a universal human right, as reflected in the Universal Declaration of Human Rights and many international and regional human rights instruments, as well as the United Nations 1990 Basic Principles on the Role of Lawyers. Based on this firm conviction, we believe that access to lawyers and legal services should be guaranteed and made available to all, especially to the poor and other disadvantaged persons, when necessary to achieve a just and fair result. Therefore, we agree on the following conclusions.

I. Organization

- A. All societies should strive to establish effective legal aid systems; governments, professional legal organizations and non-governmental organizations have a critical role to play in this process.
- B. Governments should ensure that such systems are provided with sufficient resources.
- C. Legal aid institutions should be independent in structure, operation and in delivery of services.

II. Need Assessment and Access

- A. Legal aid as well as relevant information on legal aid should be readily accessible to the poor and other disadvantaged persons.
- B. Legal aid systems and services should flexibly respond to the needs of the individual and the changing conditions of society.
- C. Legal aid should be provided in a timely and efficient manner.

III. Quality

- A. Legal aid services should be professional and effective.
- B. Persons providing legal aid should be respectful, approachable and proactive.
- C. Systems should be established and implemented to ensure the provision of high-quality services which promote the rule of law.

IV. Role of Lawyers

- A. Lawyers should be encouraged to participate in legal aid work.
- B. When providing legal aid, lawyers should act professionally and without fear or favor.
- C. Professional associations of lawyers should fully support legal aid.

V. International Cooperation

- A. We will promote international exchange of legal aid experience and information.
- B. Another international legal aid conference should be held in two years.
- C. We will study ways of establishing a framework for international co-operation in legal aid.

SIGNATORIES (as of 2005/10/17):

Name	Organization (if applicable)
Tun-Ming Tsai	Legal Aid Foundation (Taiwan)
John C. Chen	Judicial Reform Foundation (Taiwan)
Somchai Homlaor	Human Rights Committee, Lawyers Council of Thailand
Julie Bishop	National Association of Community Legal Centres (Australia)
Martin Rozumek	Organization for Aid to Refugees (Czech Republic)
J. P. Lee	Legal Aid Services Council (Hong Kong)
Alison Hannah	Legal Action Group (England)
Wilhelm Joseph	Legal Aid Bureau-Maryland (USA)
Ta Thi Minh Ly	Legal Aid Agency (Vietnam)
Stephen Lin	Cathay Culture (Australia)
Gilda E. Guillermo	Alternative Law Research & Development Center (Philippines)
Kang-hyun Lee	Korea Legal Aid Corporation
Abdul Rahman Abudllah	Malaysian Bar NLAC
Ouk Vandeth	Legal Aid of Cambodia
Bruce Lasky	Open Society Institute (Cambodia)
Persida V. Rueda-Acosta	Public Attorney's Office, Department of Justice, Philippines
Junius Ho	Duty Lawyer Service Program (Hong Kong)
Mike Jeacock	Legal Services Commission (England)
Dunstan Mlambo	Legal Aid Board (South Africa)
Chito Gascon	Lawyers' League for Liberty (Philippines)
Tetsuji Morita	Japan Legal Aid Association
Futoshi Toyama	
Arturo Fournier	Costa Rica
Keita Abe	Japan Legal Aid Association
Uli Parulian	LBH Jakarta (Indonesia)
Hiroko Sakamoto	Japan Legal Aid Association
Derwin Anifah	PBHI (Indonesia)
Erwin Erfe	PAIL (Philippines)
David Pred	Bridges Across Borders (Cambodia)
Jerry Cheng	Legal Aid Foundation (Taiwan)



Name	Organization (if applicable)
Jun-ming Tsai	Legal Aid Foundation, Taiwan
John C. W. S. Han/son	Judicial Reform Foundation Human Rights Committee, Lawyers Council of Thailand.
Julie Bishop Martin Ruzmek	National Association of Community Legal centres Australia. DPU (Czech Rep.)
J. P. Lee Aison Hannah	Legal Aid Services Council Legal Action Group
Wilhelm Joseph Micaela	Legal Aid Bureau-Maryland Legal Aid Agency Vietnam
KEO Gilda S. Furr	Caldwell ^{ALB} Culture Programs ALTERLAW, Philippines
ol 17 in M.A.	KLAC, Korea Malaysian Bar (NLAC)
Duk VANBETH	LEGAL AID OF CAMBODIA (CAMBODIA)
Bruce a last	Open Society Institute
Pereida V. Pineda 何君堯	PAO-DOJ 香港當值律師計劃 PHILS
Joaquín	Exec Sect. Del LSC London.

Name	Organization (if applicable)
DYNSTAN MILAMAD	LAB (SA)
CHITO SASCOR	LIBERTAS (PHIL)
森田 哲治	JLAA
外山 太士	
Signature	Costa Rica
阿部 圭太	Japan Legal Aid Association
Signature	LBH Jakarta
坂本 浩子	JLAA
Signature DERWIN	PBHI
Erwin P. Eje	PAIL
Signature	Bridges Across Borders
簡文 龍	L.A.F. (Taiwan)





APPENDIX 4:Text of Speech by President Chen Shui-bian

The speakers of the 2005 International Forum on Legal Aid met with President Chen Shui-bian on October 17, 2005. The President gave the following speech at the reception:

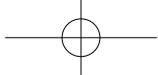
Chairman of the Legal Aid Foundation (LAF) of Taiwan Tsai Tun-ming; Chairman of the Organizing Committee of the International Forum on Legal Aid John Chen; LAF Secretary General Jerry Cheng; Director of LAF's Taipei Branch Office Joseph Lin; President of the Legal Services Corporation Helaine Barnett; Distinguished Guests from Home and Abroad; Ladies and Gentlemen: Good Morning!

First of all, on behalf of the government and the 23 million people of Taiwan, I would like to extend my warmest welcome to our distinguished guests today. Some of you have traveled from afar to participate in the 2005 "International Forum on Legal Aid." All of you are professionals devoted to legal aid services, and this forum has offered you opportunities to exchange your opinions and experiences in providing legal aid services. I believe that your discussions during this forum will make great contributions to the developments of legal aid services in countries where you come from.

In my inaugural speech in 2000, I pledged to commit government efforts to making Taiwan a "nation of human rights." I am well aware that ensuring people's equal access to the civil justice system is one of the most important and practical ways to realize human rights; therefore, after I became the president, I set judicial reform and the legislation of the Legal Aid Act as two of the priority goals of my administration. Through the tremendous efforts by the private Judicial Reform Foundation, the Taiwan Association for Human Rights, the Taipei Bar Association, and Judicial Yuan President Weng Yueh-sheng, Taiwan's Legal Aid Act was successfully passed by the Legislature and promulgated on January 7 last year. On July 1 last year, the government-funded Legal Aid Foundation (LAF) was also established. Within a year, LAF has set up 19 branch offices nationwide and handled 17,889 cases. The foundation has offered lawyer representation for 7,640 cases and legal counsel for other thousands of cases, providing legal assistance to more than 11,000 cases altogether since it began operations. Although Taiwan's legal aid system has been established for only a year, many have recognized LAF's remarkable achievements. LAF's successful operations also demonstrate the transformation of the Taiwan society into one that is law-abiding, committed to deepening democracy, and respects human rights.

It has been my firm belief that protection of human rights forms the core and foundation of a constitutional democracy and that the government exists to enhance and protect our people's rights. The Universal Declaration of Human Rights proclaims: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." The establishment of a legal aid system will help realize the universal value of human equality. It is the responsibility and obligation of a democratic government to establish, support, and promote a legal aid system. I am delighted to see that our country's legal aid system has been established during my term in office and is now up and running.

With the support from various sectors in our society, our country's legal aid system is now one-year old. There is still plenty of room for improvement in this system, and we will continue working for the betterment of this system based on our belief in democracy and determination to uphold justice. Taiwan's legal community has

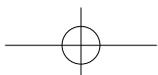


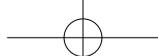
2005 International Forum on Legal Aid

been earnestly expecting a successful judicial reform and the realization of justice. The implementation of the legal aid system, in a way, has met the legal community's expectation, shown progress in Taiwan's judicial reform, and brought Taiwan to connect with the world trend to pursue justice. With the legal aid system, Taiwan can have a fairer society, where the law equally protects the rich and the poor.

In closing, I would like to welcome once again our distinguished guests' participation in the "International Forum on Legal Aid." I believe that this forum, which will be routinely held in different countries in the future, will offer a great international platform for legal professionals to exchange experiences and opinions. I also hope that interested countries can study the possibility of establishing an international legal aid institution so as to achieve universal equality through providing legal aid to disadvantaged people all over the world. I would like to wish the forum great success and our distinguished guests health and happiness and a pleasant trip to Taiwan. Thank you!

Source: 17 October 2005 news release from the Office of the President, Republic of China (Taiwan).





APPENDIX 5: Forum Organizing Committee

2005 International Forum on Legal Aid Organizing Committee

John C. Chen, Chairman

Founder and Senior Partner, Formosa Transnational Attorneys At Law
President, Judicial Reform Foundation
Director, Taiwan Bar Association

Sue Wang

Executive-Director, Alliance to End the Death Penalty

Zhi-Guang Wu

Associate Professor of Law, Fu-Jen Catholic University

Hou-Jen Wu

Assistant Professor of Law, Fu-Jen Catholic University
President, Taiwan Association for Human Rights

J.K. Lin

Director, Taiwan International Patent and Law Office

Ken H.C. Chiu

Managing Partner, Kew & Lord

Bo Tedards

Consultant, Taipei Bar Association

Yi-Chien Chen

Assistant Professor, Graduate Institute for Gender Studies, Shih-Hsin University

Jerry Cheng

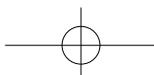
Former Secretary-General, Legal Aid Foundation

Joseph Lin

Director, Taipei Branch Office, Legal Aid Foundation



APPENDIX 6:
Conference Photos





APPENDIX 6: Conference Photos

Day 1

Opening Ceremony



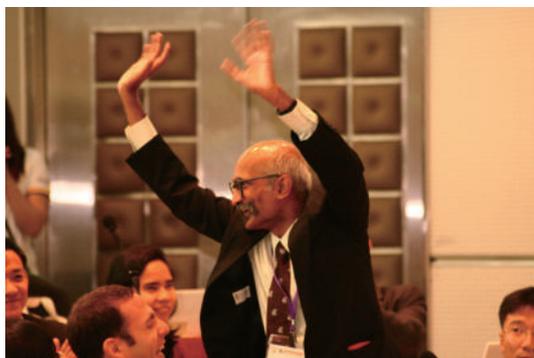
Chief Justice Yueh-sheng Weng at the opening ceremony.



Over 24 delegates from 17 countries attend the IFLA 2005.



Opening Remarks from the Chairman of the Legal Aid Foundation, Mr. Tun-Ming Tsai.



A warming welcome had given to every delegates in IFLA 2005.



Delegation joined the meeting after the arrival.



Day 1

Keynote Speech I & Country Report I & II



Alison Hannah, the director of Legal Action Group in UK, present the Global Trends in Legal Aid.



Martin Rozumek, the Executive Director of Organization for Aid to Refugees of Czech Republic.



Arturo Fournier, the former president of Inter-American Bar Association in Costa Rican Branch.



J.P. Lee, the Chairman of Legal Aid services Council in Hong Kong.



Stephen Lin, the principal solicitor of Central Queensland Community Legal Centre.



Day 1

Panel Discussion I



Mike Jeacock, the paper presenter of Panel Discussion.



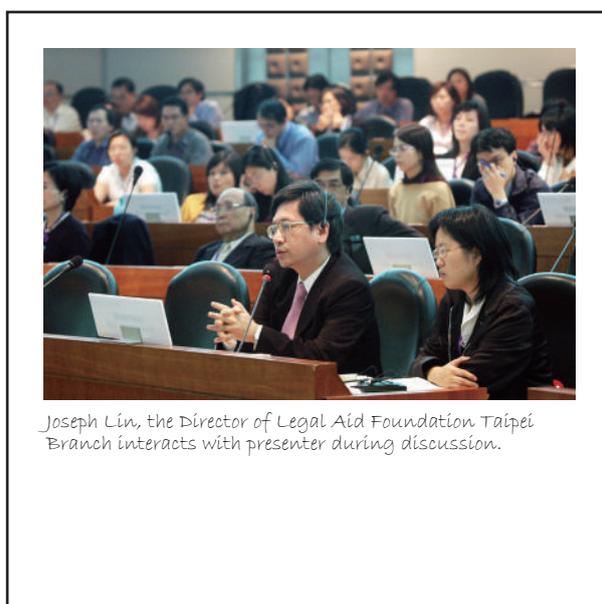
Matthias Kilian, the Discussant for Panel Discussion.



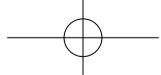
The Panel Discussion I is focusing on Organization in Legal Aid.



K. C. Fan, the Secretary General of Judicial Yuan Taiwan moderates the Panel Discussion.



Joseph Lin, the Director of Legal Aid Foundation Taipei Branch interacts with presenter during discussion.



Day 1

NGO Symposium



The NGO Symposium were taken place at the Grand Hotel in Chinese Dining Room.



Joseph Lin, the Moderator of the NGO Symposium.



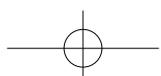
Wilhelm Joseph (Left) and Dunstan Mlambo (Right) presents their views during NGO Symposium.



Ya-lin Huang, (Right) one the representative from NGO in Taiwan.



Attorney Yung-cheng Kao (Left), the representative from Judicial Reform Foundation.





Day 1

Welcome Banquet



Welcome Banquet in Grand Hotel, Taiwan.



Folk Dance were presented during the opening of Banquet.



Guest Speaker
Hou-jen Wu,
the President
of Taiwan
Association for
Human Rights.



Delegations took group pictures during welcome banquet.



Many young and vigorous volunteers joined IFLA 2005.



Jerry Chen, the Secretary-General for Legal Aid Foundation.



Persida V. Rueda-Acosta, the chief public Attorney of Department of Justice in Philippines.



Speakers from India, Philippines and Indonesia joined the Discussion time after country report.



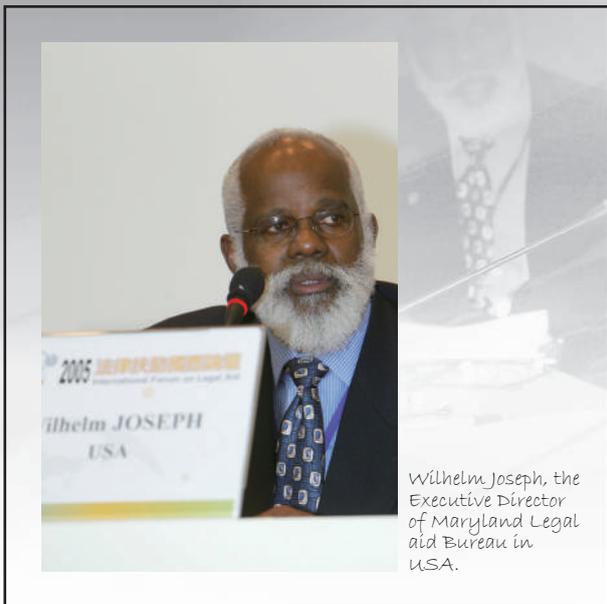
Mehmood Pracha, the President of Organisation for Promotion of Legal Awareness in India.



Gilda Guillermo, the Acting Executive Director of Alternative Law Research and Development Center in Philippines.

Day 2

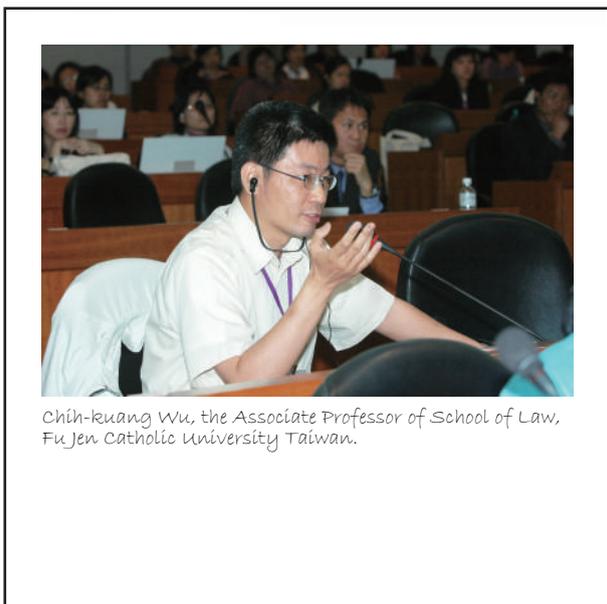
Keynote Speech II & Country Report III



Wilhelm Joseph, the Executive Director of Maryland Legal aid Bureau in USA.



Julie Bishop, the director of National Association of Community Legal Centres in Australia.



Chih-kuang Wu, the Associate Professor of School of Law, Fu Jen Catholic University Taiwan.



Dunstan Mlambo, the Chairperson of Legal Aid Board in South Africa.



Judge Dunstan Mlambo discussed about the Need Assessment and Access in Legal Aid.

Day 2

Panel discussion II



All speakers joined the round table pre-meeting to discussion about the joint Statement.



John C. Chen (Center), the Chairman of Organizing Committee of IFLA 2005.



The round table pre-meeting took place at the Legal Aid Foundation.



Bo Tedards, the consultant of Taipei Bar Association, is also the member of IFLA organizing Committee.



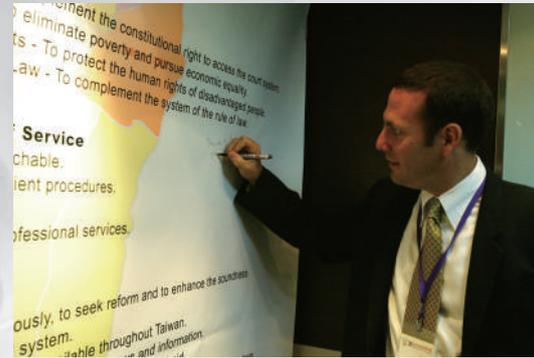
Speakers from Hong Kong, J.P. Lee (Left) and Jenius Ho (Right), shared opinions during pre-meeting.

Day 2

Round Table Pre-Meeting



IFLA speakers took time to document every moment in Taiwan trip.



Bruce Lasky, the consultant of Open society Institute Se Asia Initiative in Cambodia.



Delegation took group picture in front of Legal Aid Foundation.



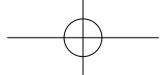
Justice Dunstan Mlambo (South Africa) with two student volunteers at the Legal Aid Foundation.



Delegation visited Taipei Branch to experience the procedure of applying legal aid in Taiwan.

Day 2

Visiting the Legal Aid Foundation



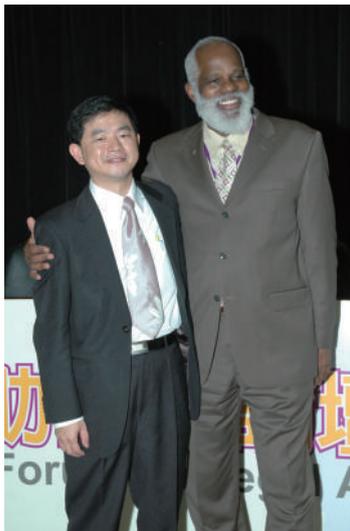
2005 International Forum on Legal Aid



Tea Breaks



Tea Breaks



Tea Breaks

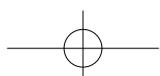


Tea Breaks



Tea Breaks

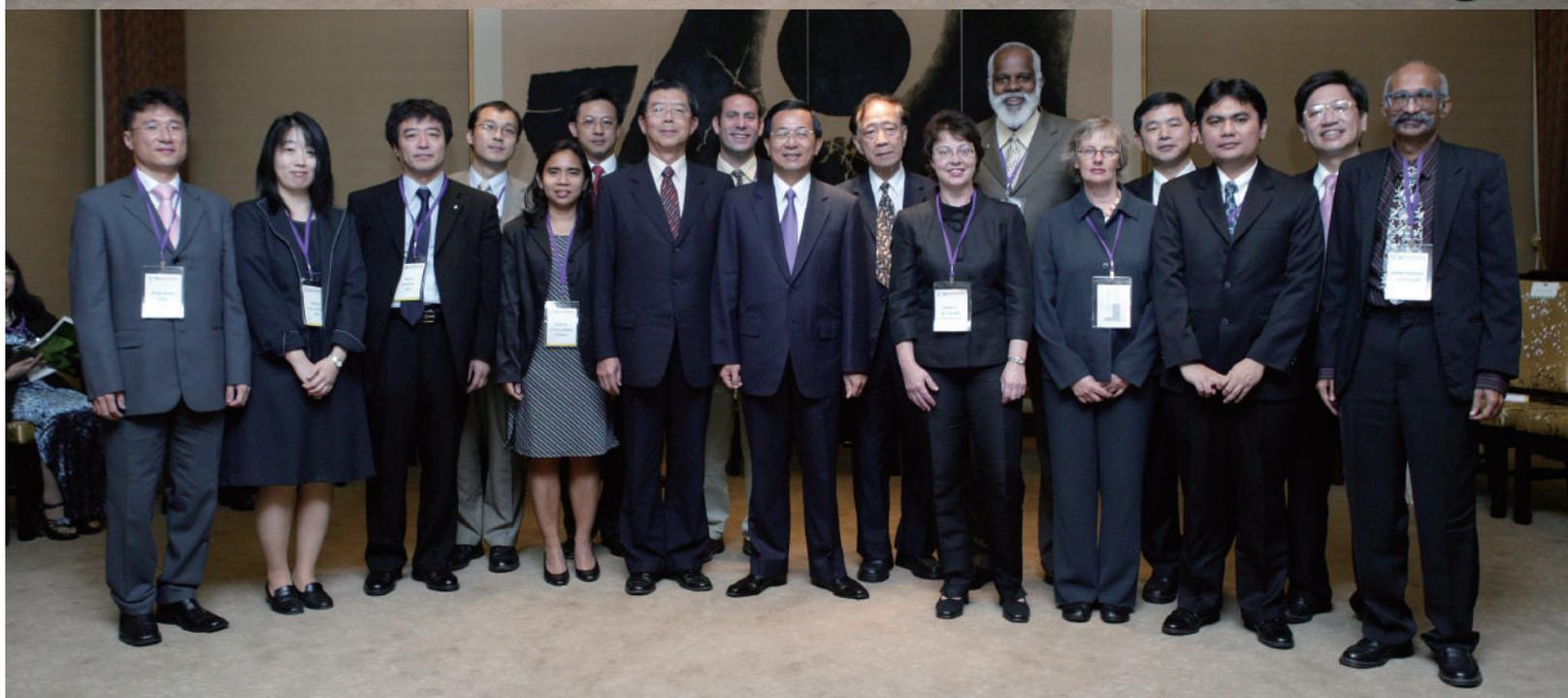
Day 2 In the Tea Breaks



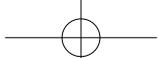


Day 3

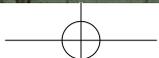
Visit to the President



Speakers and Representatives for IFLA 2005 visit President Chen Shui-bian in 2nd day of conference.



Speakers and Representatives for FLA 2005 visit President Chen Shui-bian in 2nd day of conference.





Day 3

Country Report VI



Ta Thi Minh Ly, the Director of National Legal Aid Agency in Vietnam.



Dunstan Mlambo, the Chairperson of Legal Aid Board in South Africa.



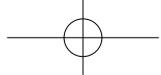
4 representatives joined the country report discussion.



Somchai Homlaor, the Chairperson of Human Rights Committee, of Law Society of Thailand.



All speakers were provided with simultaneously translation during the conference.



Day 3

Panel discussion III & VI



Helaine Barnett, the President of Legal Services Corporation in USA.



Alison Hannah (center) moderates the Panel discussion about Quality Agenda.



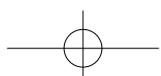
Ken H.C. Chiu, the Managing Partner of Kew & Lord Taiwan.



The Panel discussion IV was about the Role of Lawyers in Legal aid.



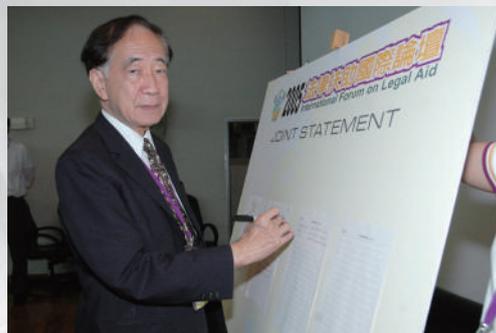
Futoshi Toyama, the member of Central Board of Justice Support Centre of Japan.





Day 3

Roundtable & Joint Statement Signature



Tun-ming Tsai, the Chairperson of Legal Aid Foundation signed in the Joint Statement.



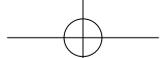
Delegates wait for signing the Forum Joint Statement



The IFLA representative applause For agreement of Joint statement.



The Joint Statement of International Forum on Legal Aid.



Conference speakers convene for a group photo after signing the Joint Statement during the closing ceremony.