

Specialized Legal Assistance for Indigenous Peoples in Taiwan



財團法人法律扶助基金會
原住民族法律服務中心

Legal Center of Indigenous Peoples, Legal Aid Foundation

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Introduction



▲ **Constitutional Protection of Indigenous Peoples' Rights:**

- ⚙ Article 10 Paragraph 11 & 12 of the Amendment of the Constitution (2000.4.25)

- ⚙ The Indigenous Peoples Basic Law(2005.2.5)

▲ **Report on National Conference on Judicial Reform released by the Presidential Office in September 2017**

establish effective mechanism to protect judicial rights of indigenous peoples, enhance judicial professional's awareness and sensitivity on cultural conflicts and legal knowledge on indigenous peoples

▲ **LAF as the frontliner of legal assistance**

LAF should help realize the Indigenous Peoples' judicial rights and advocate for the indigenous peoples' basic rights



LAF's Implementation of Legal Assistance for the Indigenous Peoples

Specific Policies and Outcomes

Specific Policies for Realizing Legal Aid for Indigenous Peoples

- Established **Interrogation Attorney Accompaniment for Indigenous Peoples Program**.
- Implementing **CIP (Council of Indigenous Peoples)-commissioned Program**.
- Established **LAF Legal Center of Indigenous Peoples (2018)** and the **Western Taiwan Office (2020)**:
 - ✓ Intake of the Indigenous Peoples' applications for legal aid
 - ✓ Special cases of the indigenous peoples handled by staff attorneys
 - ✓ Community services: "Mobile Legal Aid", on-site legal advice, community legal education and promotion
 - ✓ Training for attorneys: lectures, "Indigenous Communities as Classrooms" (immersive experience camps), academic seminars





LAF's Assistance - Number of Legal Aid Grants

The Foundation has assisted a total of **90,826** cases for people with indigenous peoples identity from 2004 to 2022; number of cases assisted by the Foundation has been on a steady increase over the past five years.

Year(s)	Number of Legal Aid Grants to Indigenous Peoples
2004-2017	38,483
2018	9,667
2019	10,900
2020	11,478
2021	9,613
2022	10,685
Total	90,826

LAF's Assistance - Interrogation Attorney Accompaniment for Indigenous Peoples Program

Since administering the Interrogation Attorney Accompaniment for Indigenous Peoples Program on July 15, 2012, the Foundation has assisted **13,743** cases as of 2022, of which **12,984** cases had lawyers dispatched to be present at the interrogation, there saw a near 90 percent dispatch success rate. Among the cases, applicants in up to **142,939** cases withdrew their application or declared there was no need for application, a number much higher than that of those needed assistance.



Interrogation Attorney Accompaniment for Indigenous Peoples Program

Number of Cases

Year	Cases where lawyer should be dispatched (a+b)			Number of cases with no lawyers dispatched due to withdrawal and other reasons		Number of cases disqualified
	Number of cases with lawyers dispatched (a)	Number of cases unable to dispatch lawyers (b)	Success dispatch rate 【a/(a+b)】	Application withdrawn after it was submitted	Applicant declared there was no need to apply	
101	178	16	91.75%	32	0	5
102	1,256	50	96.17%	384	2,328	6
103	1,069	83	92.80%	39	6,103	1
104	1,235	125	90.81%	14	12,198	0
105	1,071	149	87.79%	15	15,757	3
106	1,269	99	92.76%	64	16,736	6
107	1,242	80	93.95%	39	19,000	2
108	1,293	43	96.78%	19	18,356	0
109	1,453	70	95.40%	20	18,232	2
110	1,365	23	98.34%	30	16,353	0
111	1,553	21	98.67%	52	17,876	0
Total	12,984	759	94.48%	708	142,939	25



LAF's Assistance - Types of Cases

- As of 2022, the Foundation assisted **90,826** cases, of which the types of cases assisted are should in the table below. Criminal cases, with 55.3%, is the largest source of cases assisted, and civil cases, 29.51%, is the second largest source.
- The other sources of cases include family cases (13.09%) and administrative cases (1.59%).

Types	Number of cases	Percentage(%)
Criminal	50,231	55.30 %
Civil	26,799	29.51 %
Family	11,886	13.09 %
Administrative	1,443	1.59 %
Others	467	0.51 %
Total	90,826	100.00 %

Indigenous Peoples' Rights to Prior Consultation and Informed Consent - Problems Encountered

- Promulgated in Article 21 of The Indigenous Peoples Basic Law in 2005
- Referenced Article 32 of the UN Declaration on the Rights of Indigenous Peoples
 - obtaining the free, prior and informed consent of the indigenous peoples concerned (FPIC Principle)
- Reasons to why it was not implemented in early stages :
 - The traditional territory of indigenous peoples was not yet demarcated
 - ✓ Two-phase land investigation on the traditional territory of indigenous peoples
 - The competent agency was not authorized to formulate relevant regulations and orders
 - ✓ The 2015 Amendments of the Basic Law authorized the formulation of such regulations, which were then stipulated in the same year
- Controversies arose after the implementation of regulations and orders





Indigenous Peoples' Rights to Prior Consultation and Informed Consent — Case Studies



Asia Cement Corporation Case

Whether the counterparty implemented the procedure to consult indigenous peoples and obtain their consents?



Zhiben Photovoltaic Development Case

How did the counterparty implement the procedure to consult indigenous peoples and obtain their consents?

Handled by **staff attorneys at the LAF Legal Center of Indigenous Peoples** and external legal aid attorneys



Breakthroughs and Unresolved Challenges

- **Breakthroughs**

1. “Indigenous Peoples”, “indigenous communities” and “individuals of Indigenous Peoples” can all become plaintiffs to file a lawsuit.
2. Article 21 of the Indigenous Peoples Basic Law can be a specific implementable regulation.
3. The procedure to consult indigenous peoples and obtain their consents should be initiated during the planning stage.
4. The existing provisions on the procedure to consult and obtain consents in the regulations actually violate the ROC Constitution, the Indigenous Peoples Basic Law, and international conventions. For example: allowing the local authorities to convene a community meeting on behalf of indigenous peoples; the requirement of household registration for the voters; the voting mechanism by household representatives; attendance and voting by proxy.

- **Unresolved challenges**

1. The acts and stance on statutory interpretation from the administrative agencies favor developers.
2. The existing provisions on the procedure to consult and obtain consents can not effectively protect indigenous peoples’ autonomy and self-determination.
3. Internal rifts among indigenous communities and ethnic groups are difficult to repair.





Tamazuan Community's Fight
Against Mining Case



Protest Against Charoen Pokphand Group
Co.'s Chicken Farm



Dahdah Community's Anti-
geothermal Exploration

- Conclusion -

“Where there is a need, there is the LAF.”

Shihfong Hydroelectric Power Case



Wanli Hydroelectric Power Case



Protest Against Garbage Incineration
by Taiwan Cement

