



# **Criminal Defense and Citizen Participation in Criminal Trials in Taiwan**



Ellen A. Lee  
Staff Attorney and Director,  
Northern Legal Aid Staff Attorneys Center,  
Legal Aid Foundation, Taiwan



# Citizen Judges Act: Implementation & Scope

Passed the third reading on  
July 22, 2022

Passing

Promulgated by the President on August  
12.

Only Article 17-20 and 33 were in  
effect from the date of promulgation.

The first phase was  
implemented on January 1, 2023

Implementation

【 Scope 】

Article 5, Paragraph 1, Subparagraph 2  
Where the accused has intentionally  
committed an offense that caused death.

The second phase is to be  
implemented on January 1, 2026

Implementation

【 Scope 】

Article 5, Paragraph 1, Subparagraph 1  
Where the accused has committed an offense  
punishable with a minimum punishment of  
imprisonment for not less than ten years.



# Citizen Judges Act: Applicable Cases (§5)



## Including

Cases where the accused has intentionally committed an offense that caused death.

Offenses with a minimum punishment of imprisonment for not less than ten years.

## Except for

Juvenile criminal cases

Cases involving the Narcotics Hazard Prevention Act

## Criteria

### Principle

As cited in the indictment

### Exception

The prosecutor determined the case as not applicable, but the court ruled to alter the applicable laws



# Citizen Judges Act

1



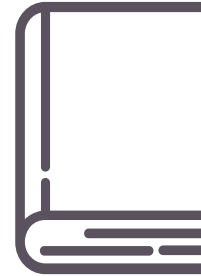
The presiding judge **shall appoint a public defender or a lawyer** to defend the accused if no defense attorney has been retained by the accused.

2



Citizen judges participate in trials, and discuss with professional judges for the finding of **facts**, the application of the **law** and the **sentencing**.

3



Practices adopted include:

- Not submitting dossier and evidence in parallel,
- Discovery of evidence and preparatory proceedings by exchange of pleadings,
- Evidence to be presented by the parties.

4



Procedures added and amended include:

- The appointment of citizen judges,
- Evidence ruling,
- Preclusion effect,
- Opening statement.

**The LAF's  
Policies and  
Measures in  
Response to the  
Citizen  
Participation  
Systems**







# Training for lawyers

- Staff lawyers and legal aid lawyers participated in mock trials before the implementation of the citizen participation systems.
- The LAF collaborated with the Taiwan Bar Association, local bar associations, Taiwan Criminal Defense Attorney Association, etc., to organize in-person and online training sessions for lawyers.
- The LAF is planning to collaborate with NGOs to publish case-handling handbooks for lawyers.



# Adjusting remuneration for legal aid lawyers

- Remuneration for each case is increased to NT\$30,000 to NT\$75,000 based on the lawyer's handling of the case.
- Assigning two to three lawyers to handle the same case.





# Lawyer recruitment

- Estimate the number of defense lawyers required based on past court caseloads.
- Seek the willingness of all legal aid lawyers.
- Each LAF branch office compiles a list of lawyers who take relevant cases.





**Current States  
After the Official  
Implementation of  
the Citizen  
Judges Act**






# Lawyer appointment by the LAF

From Jan to Au 2023

All courts across the nation received **53 cases** involving citizen judges, including cases of multiple defendants.

The LAF appointed lawyers for **41 defendants**

Defendant	6	23	12
Legal Aid Lawyers	 1 lawyer	 2 lawyers	 3 lawyers

Certain branch offices have encountered **difficulties with assigning cases.**



## Difficulties in assigning cases

- Most senior criminal lawyers and lawyers who participated in mock trials are unwilling to take in cases.
- The time and communication costs involved are significantly higher than in regular criminal cases, and the compensation provided by the LAF is not commensurate with the actual efforts.
- The core of the litigation process has shifted from static document preparation to dynamic courtroom proceedings, and only a minority of lawyers have received training for this transition.
- The actual operations in practice are unclear. Some lawyers are adopting a wait-and-see approach.
- Intensive trials are difficult for small law firms to handle.





**Opinions of  
lawyers who take  
citizen judges'  
cases were  
collected through  
a survey  
conducted  
by the LAF**





# Regarding Court schedules:

- Court schedules lack flexibility, and no advance notice is provided
- There is no adequate time allocated for defense lawyers to prepare and process information.  
For example, the requested results of a mental evaluation were only provided almost immediately before the trial date (and after the preparation procedures had ended).
- Citizen judges' cases are subject to intensive hearings and back-to-back court sessions, but other judges do not agree to adjust hearing dates.
- The defendant expressed a willingness to mediate, but the court did not arrange for mediation before the trial date.







# Regarding investigation evidence

- Lawyers do not possess **public authority**, and the current system lacks provisions related to **investigative authority**. Additionally, when the defendant is in custody, defense lawyers often face difficulties in conducting independent evidence investigations, leading to an imbalance in the tools available to the prosecutor and the defender.  
For instance, third parties may refuse to provide information, witnesses may decline interviews, or independent assessments complying with the Code of Criminal Procedure may not be performed.
- During the **evidence collection stage**, defense lawyers requested the court's permission to obtain evidence but were denied by the court, citing a lack of necessity. This prevented the lawyers from accessing evidence and, in turn, affected litigation strategies and the presentation of evidence.
- Defense lawyers waited for more than two weeks before the prosecutor provided the requested evidence, which significantly reduced the time available for preparing and processing the litigation documents.





## Regarding legal aid remuneration

- Legal aid remuneration for cases involving citizen judges does not account for the opportunity cost incurred during the period when lawyers cannot take other cases.
- The remuneration does not adequately compensate for the significant amount of time and effort required by lawyers to handle such cases.
- The remuneration does not reflect the mental stress experienced by lawyers handling these types of cases.





# Other Factors

- The criteria used by the court to decide whether to include citizen judges in the trial process are unclear.
- Judges still exhibit a strong inclination towards their authority and may not welcome objections from defenders.
- Judges continue to question witnesses about criminal facts during the sentencing investigation phase.
- The procedures for determining the offense and sentence are not clearly separated.



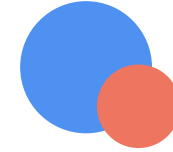


The background image shows a modern building with a grey stone facade. At the top, the Japanese characters '最高法院' (Supreme Court) are visible. A large, bold text overlay is centered on the image. In the foreground, there are some green trees and a black lamppost with three white globe lights. A small sign with the number '6' is visible on the building's wall.

# **Difficulties... & ...Challenges**



# LAF's Action Plans



- Collaborate with the Bar Association to organize practical workshops.
- Collaborate with the Bar Association and NGOs to publish handbooks on handling citizen judges' cases for criminal defense lawyers.
- Invite experienced lawyers to form an advisory committee.
- Adjust remuneration standards.
- Prioritize assigning trained lawyers to handle cases during the investigation process.
- Hold regular symposiums for legal aid lawyers.





**Thank you  
for the attention**