

National Report

Taiwan

Publicly-Funded Legal Aid System in Taiwan

1. Background

The publicly-funded legal aid regime in Taiwan commenced operation in July 2004. Before the Legal Aid Foundation opened its doors, free legal assistance was generally limited to legal consultation provided by county and city governments, courthouses, bar associations, university legal services centers, and limited pro bono services offered in specific areas of law. Except for Public Defenders appointed by the courts, legal representation in court and other proceedings subsidised by the public purse was piecemeal and not widespread.

Citizens, however, are given the right to access the court system under the Constitution. In 1998 a movement to push for a formal legal aid legislation began. With the joint efforts of the Judicial Reform Foundation, the Taipei Bar Association and the Taiwan Association for Human Rights, the first draft of the Legal Aid bill was finished and put before the Legislative Yuan. The matter was eventually handed over to the Judicial Yuan, which presented another draft to the Legislative Yuan in October 2001. After further lobbying, the *Legal Aid Act* was formally proclaimed in January 2004. The Legal Aid Foundation is now supervised by the Judicial Yuan, which budgets legal aid funding annually under the statute.

2. The current legal aid system in Taiwan

Free legal services are provided to the poor in a number of ways in Taiwan. The current legal aid system in Taiwan is multi-tracked. The free legal representation in court proceedings which the Foundation provides co-exists with the Public Defender system of the courts.

(1) Legal consultation

Except for remote villages and offshore islands, resources for free legal consultation are relatively adequate in Taiwan. County and city governments, bar associations, university legal services centres, and some legislators and non-governmental organizations provide free legal consultation services.

For this reason, the Foundation generally does not prioritise its legal consultation services. Legal consultation services are available face-to-face and through the telephone only in branch offices serving remote areas in Taiwan. Telephone advice is offered by other branch offices in a limited way to specific groups, namely foreign brides and NGOs representing for foreign workers. Advice and legal education are provided as part of the outreach projects conducted by branch offices. Four branch offices also conduct regular legal aid clinics at local governments.

(2) Compulsory defence in criminal cases

The Legal Aid Foundation accepts applications for assistance in criminal cases, including compulsory defence cases. The latter are accepted without assessment of means. Assistance in this area is an addition to public defenders services provided by the courts and pro bono representation provided by bar associations.

(3) Legal aid in civil proceedings

After the establishment of the Legal Aid Foundation, representation in civil proceedings is provided nationwide to the eligible low income population. In civil proceedings, third hearings in the Supreme Court now requires compulsory legal representation, and a financially eligible party can now request referral from the Supreme Court to apply for the Foundation's assistance.

(4) Administrative proceedings

The Legal Aid Foundation is the only provider of comprehensive assistance in proceedings against the government.

(5) Other sources of assistance

Specific groups such as labourers (blue collar workers), indigenous people, and victimized women receive some assistance in civil proceedings from other sources, including the Council of Labour Affairs, the Council of Indigenous People, and the Ministry of the Interior.

Legislation may also require that assistance be provided. For example, the *Prevention of Sexual Harassment Act* states that legal aid is to be provided to victims of sexual harassment. The legislation captures the essence of legal aid and represents a milestone in protecting the rights of victims of sexual harassment. The *Domestic Violence Prevention Act* and the *Crime Victim Protection Act* also provide similar legal aid mechanisms.

3. Organisation and Features of the Foundation's Services

Organisational Overview

(1) Decision-Making Bodies

The Foundation is directed by two part-time, unpaid decision-making bodies: the Board of Directors and the Board of Supervisors. The current Board of Directors consists of five government officials, four lawyers, two scholars, one representative of the indigenous people and one representative of disadvantaged groups. Professor Ku Den-Mei is the current Chairperson. There are five members on the Board of Supervisors, and three of them are non-government officials.

An independent auditor has been appointed and reports to the Board of Directors.

(2) Branch Offices

There are 20 branch offices in Taiwan, each lead by a Director (part-time and unpaid) and an Executive-Secretary who are committed local lawyers. Branch offices are set up near District Courts throughout Taiwan.

(3) Management Structure

The Foundation's Secretariat is led by the Secretary-General and consists of seven departments: Legal and Business Affairs, Public Promotion,

Administration, Human Resources, General Affairs, Financial Affairs and Information Technology. As at December 2006, there are 146 staff nationwide. Although funded and supervised by the Judicial Yuan, employees of the Foundation are not public servants.

(4) Specialist Committees

The Foundation has formed four unpaid Specialist Committees and has invited scholars and lawyers to be its members. These committees are the Legal Affairs, International Affairs, Research and Development Committees.

(5) Examining Committees 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. At December 2006, there are 1683 examining commissioners who are lawyers, judges, or public prosecutors. The Review Committee reviews appeals in a panel of three commissioners. There are 183 review commissioners at December 2006.

(6) Volunteers, trainee lawyers, and student interns.

At December 2006, there are 400 staff who undertake voluntary work and 239 trainee lawyers who assist in taking the minutes of application interviews. The Foundation also provides internships for students.

(7) Legal aid services providers

At February 2007, there are 2332 practising lawyers providing legal aid services to the Foundation. This is more than half of the total number of the approximately 4000 lawyers in Taiwan.

Features of the Foundation's Services: In Brief

(1) For eligible low income applicants, the legal aid services provided under the statute overcomes three main barriers to the court system: lawyers' fees, adjudication fees, and security payable in applications for injunctions. The amount of security payable is usually one-third of the amount of damages claimed.

(2) There are two main types of receivers of the Foundation's services:

- People with limited economic resources. Those seeking aid must be qualified low-income households, or they must be able to satisfy two conditions: that

the total income and assets of their household fall within the standards set by the Foundation, and that their cases are meritorious.

- The accused in criminal compulsory defence cases.
- (3) Foreigners: As long as their entry to Taiwan has been legal, they are eligible to apply for legal aid.
 - (4) The Foundation pays legal aid lawyers' fees. In principle, lawyers are paid on a case-by-case basis. Payment to lawyers may range from NT\$20,000 to NT\$30,000 per case. More complex cases or cases conducted in remote locations might see an increase to NT\$40,000 per case. The payments are approximately half to one third of the market prices.
 - (5) Guarantee certificates: where an injunction is necessary, a recipient of legal aid 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. In 2006, a total of 285 certificates were issued in lieu of NT\$142,750,925 of security.
 - (6) Recipients of legal aid are generally not required to refund any fees or expenses incurred by the Foundation. However, if a recipient is awarded more than NT\$500,000 as a result of the Foundation's assistance, he or she is then required to pay back part of the assistance given. If compensation recovered is more than NT\$1,000,000, the recipient is expected to pay back all of the assistance given by the Foundation.
 - (7) The Foundation assigns applications mainly to lawyers in private practice. Since its first anniversary, the Foundation began to employ staff attorneys to deal with projects concerning disadvantaged groups (such as the card debtors' project). Currently there are five staff attorneys who are employed by the Taipei branch office.
 - (8) The Foundation has the right to send offending legal aid lawyers to disciplinary actions.
 - (9) Method of examination: A three-member Examining Committee sits at each branch office, with lawyers, judges, or public prosecutors as its members. Each member interviews applicants face-to-face during appointments, and

then decide whether legal aid should be granted with the other two members in Committee. Applicants are examined on their financial situation and the merits of their cases.

(10) Efficiency:

- Video-conferencing facilities have been established at three offshore branch offices. Due to the shortage of local lawyers, these facilities are established in the Kinmen, Matsu, and Penghu branch offices, so that examinations or consultation can be conducted with the Kaohsiung and Taipei branch offices on routine days of the week. The Foundation is experimenting with holding business meetings between the Taipei and offshore branch offices using video-conferencing facilities.

- Computerised on-line operation systems. Co-operation with technology company Fuhbic Corporation (Taiwan) to develop a computerised operation system began during preparatory stages in May 2004. The operating software was developed in separate phases. The entire application process from the interview processes of eligibility and merit, internal logistical and financial support processes and appeals procedures are now computerised. The next stages of development include performance measurement and complaints handling and analysis systems.

(11) Convenience for applicants:

- Services in evenings during weekdays
Due to limited staff and examining commissioners at branch offices, the service hours of each branch office are generally limited to normal office hours on weekdays. However, since the Foundation asks applicants to make their applications in person, some branch offices have extended their service hours to serve those who are unable to visit during regular office hours. For instance, the Taipei branch office, which covers a larger area and has a relatively sufficient number of examining commissioners, has extended service hours until 9:00 pm each Tuesday and Friday. The Hsinchu branch office also opens for service on Wednesday evenings.

- Immediate examination and prompt notification. To minimize the mental stress for applicants, the Foundation has adopted an immediate examination system, and requires its staff to notify applicants as soon as possible once examining commissioners have made their decisions. In all branch offices

except for Taichung and Hualien branch offices, at least one of the three examination commissioners interviews and advises applicants face-to-face, and commissioners usually make the decision to grant or deny aid on the day of application (except for applications requiring supplementary documents). Under this immediate examination system, applicants are informed within two days whether or not aid has been granted.

- Due to the limited number of examination commissioners and legal aid lawyers, not all branch offices conduct daily examination sessions. However, each branch office endeavours to complete examinations within a week.

(12) Quality of services

Between January and June 2005, the Foundation conducted a survey of applicants' appraisal of the Foundation's services. The survey forms were collected after interviews and upon posting Notices of assessment outcomes. The results of the survey showed that applicants' satisfaction with the administrative personnel of the Foundation was 97.7%, while the satisfaction with legal aid lawyers was 88.6%. Since then, a new regulation governing the evaluation of legal aid lawyers' performance was drafted at the request of the Judicial Yuan and passed by the Board of Directors, and is expected to be piloted in the near future.

4. Business Activities

- (1) Publicly-funded legal aid in Taiwan is available in the three general categories of law: civil, criminal, and administrative law. There are specific exceptions under each category for which aid is not available. For example, small claims are not within the scope of services provided by the Foundation. Services include legal consultation, drafting legal documents, and representation in mediation, settlement and in court proceedings.
- (2) In 2006, the total number of applications approved (excluding legal consultation) was 14,995. The approval rate was around 68%, slightly lower than the rate of 70% in 2005. The total number of applications concluded as legal consultation was 9,836. Legal aid was granted mainly in the following types of matters, in the order of prominence:

- Civil law (59.17%): divorce, compensation for tortuous acts, maintenance orders, debts, parenting orders.
 - Criminal law (38.91%): battery, fraud, drug related offences, robbery, manslaughter
 - Administrative law (1.91%): contravention of rules governing the relationship of citizens between Taiwan and mainland China, taxation laws, construction laws, immigration laws, pension laws.
- (3) Where legal aid was granted, 79.63% of the applications approved were assigned to lawyers who acted as representatives in court proceedings. This is a slight increase from 78.55% in the previous analysis, showing that representation in court proceedings is the main type of assistance sought by applicants. Another 17.22% of the applications approved were for the drafting of legal documents, and only 0.03% required assistance in mediation or settlement.
- (4) The latest analysis of the composition of the Foundation's applicants show that the majority of recipients in 2006 was similar to those of the previous year, that is, mainly the unemployed (42.01%) and blue-collar labourers (18.28%). The percentage of recipients who were under mental or physical disabilities also remained similar at 11.39%. The number of indigenous and foreign applicants who received aid or legal consultation increased slightly, the percentage being 5.25% and 4.95% respectively.
- (5) In 2006, the Review Committee received a total of 1169 appeals, which was a significant increase from 433 in the previous year. Like the results in the previous analysis, around 67% of the original decisions were upheld.
- (6) A total of 6649 matters closed in 2006¹. Among these matters, 53.69% were civil cases, 45.03% were criminal cases and 1.28% were administrative cases.
- (7) In 2006, the total income of the Foundation was NT\$422,960,091. Approximately 95% of it came from government departments. The total expenditure was NT\$439,893,475 (including capital), and approximately 60% of it was spent in providing legal aid services. Divided by a total

¹ According to Judicial Yuan's report "Overview of Judicial Business Activities in 2006", local courts received 3,155,966 new matters and closed 3,143,617 matters respectively. Of the matters closed, 1,657,609 were civil matters and 343,635 were criminal matters.

population of 22,876,527 people in Taiwan, each tax-payer bears around NT\$19 per legal aid case. During the year, a legal aid case cost the Foundation an average of NT\$5,313, and NT\$15,682 in lawyers remuneration.

5. Challenges facing the Foundation

(1) Responding to the needs of disadvantaged groups.

One of the Foundation's missions is to advance the legal rights of the disadvantaged groups. However, since the Foundation's establishment in July 2004, this goal has been constrained due to the lack of human resources. Currently, eleven different projects have been initiated to take care of the various issues affecting the rights of the disadvantaged population in Taiwan. An example is the project to represent the accused who have been sentenced to death penalty.

(2) Responding to judicial trends and practices: expand services to provide representation in family mediation conferences; and to assist the mentally disabled during investigation by the prosecution. The main service of the Foundation is to represent eligible low income applicants in litigation. Yet, this is only one way to resolve disputes. Since 1st April 2007, District Courts in Taiwan began to pilot family mediation conferences in proceedings that compel the parties to attend mediations. The Foundation is contributing to this by arranging seminars to train legal aid lawyers in the relevant skills. Further, since the recent amendments to section 31 of the Criminal Code Procedures, the Foundation has begun to grant aid to represent the mentally disabled at the prosecutors' investigation stage without assessment of means.

(3) Contribute to improving the inadequacies of the criminal justice system: initiate legal assistance to suspects during 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 lawyers. To represent applicants at police stations, lawyers have to be on call 24 hours a day. Similarly, under Taiwan's criminal justice system, when prosecutors apply to take defendants into custody, lawyers need to be available for the defendants. A pilot program to provide assistance in serious criminal charges where compulsory defence is required is anticipated to commence near September, 2007.