

Pro Bono Practices and Opportunities in Taiwan

Excerpt from: A Survey of Pro Bono Practices and Opportunities in Selected Jurisdictions

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In the past decade, the Taiwanese legal community has recognized access to legal aid as a pressing concern. Legislative reform efforts have resulted in the passage of the 2004 Legal Aid Act, which seeks to provide legal assistance to the underprivileged. Although the *pro bono* culture in Taiwan is not yet pervasive, the Legal Aid Act, along with other regulations and trends, demonstrates an emerging *pro bono* culture that presents a variety of *pro bono* opportunities.

I. Legal Services and the Legal Profession in Taiwan

The Taiwanese legal framework is a civil law system with heavy German and Japanese influences, as well as significant Chinese elements brought over from the mainland by the Kuomintang (The Nationalist Party or KMT). More recently, the legal system has also begun to adopt some Anglo-American practices.¹ Over the last two decades, the Taiwanese legal profession has undergone a profound transformation. Between 1986 and 1996, the number of attorneys admitted to private practice has roughly doubled.² Lawyers have come to the forefront of efforts to spur judicial reform and deepen democratization. One place where Taiwanese attorneys are certainly projecting a positive image is in the area of legal aid.³ To this end, Taiwan's government established the Judicial Reform Committee in the fall of 1994, and the Judicial Reform Foundation ("JRF") was formed by a group of lawyers, professors and social activists in that same year with goals of achieving (i) the revision of laws, (ii) supervision and assessment of the judiciary, (iii) legal reform education initiatives, and (iv) more broadly a follow-up on individual legal issues.⁴ Since 2000, the JRF has also been endeavoring to promote legal aid.⁵

In 2003, the courts began to implement an adversarial system of criminal law modeled after Anglo-American systems. The new regime aims to better protect the rights of the accused and strengthen the judiciary.⁶

The Judicial Yuan, one of the five branches of the Taiwanese government, governs the judiciary and also serves as the Constitutional Court. The Judicial Yuan directly supervises the judicial administrative affairs of 12 institutes (including the Supreme Court). The objective of judicial administrative supervision is to establish a sound judicial system, promote its

¹ See Martindale-Hubbell International Law Digest, Taiwan Law Digest 1 (LexisNexis Martindale-Hubbell 2007).

² Jane Kaufman Winn, "The Role of Lawyers in Taiwan's Emerging Democracy," in *Raising the Bar: The Emerging Legal Profession of East Asia* (William Alford ed., Harvard University Press 2004), available at: http://www.law.washington.edu/Directory/docs/Winn/lawyers_taiwan.pdf.

³ See Brian Kennedy and Elizabeth Kuo, *Raising the Bar for Taiwan's Attorneys*, Taiwan Review Vol. 57 No. 7 (2007), available at: <http://taiwanreview.nat.gov.tw/ct.asp?xItem=24314&CtNode=128>.

⁴ See Judicial Reform Foundation, <http://www.jrf.org.tw/newjrf/english.htm>.

⁵ In 2000, the JRF finished drafting a bill on the Basic Law of Legal Aid (bill). In 2001, the bill was tabled before the Legislative Yuan (*i.e.*, Legislative Council). In 2002, the bill was discussed by the committee with the JRF persuading the Legislative Yuan for its passage. In 2003, an amendment to the bill for inclusion of legal aid was proposed. In 2004, the JRF promoted the establishment of the Legal Aid Foundation. See <http://www.jrf.org.tw/newjrf/Layer2/benefit.asp>.

⁶ See Brian Kennedy, *LA Law in Taiwan?*, Taiwan Review Vol. 52, No. 5 (2002), available at: <http://taiwanreview.nat.gov.tw/site/Tr/ct.asp?xItem=722&ctNode=119>.

performance, improve efficiency, and enhance the quality of trials, which does not interfere with the judicial independence.⁷

A. The Legal Profession

The legal profession in Taiwan is governed by the Taiwan Bar Association and various local bar associations, the most prominent of which is the Taipei Bar Association, which has a membership base of more than 3,000, or 70% of around 4,700 practicing attorneys in Taiwan as of September 2010.⁸ The bar associations have adopted self-regulating ethical rules that encourage attorneys to participate in legal aid work and accept *pro bono* assignments from the courts. Article 22 of the Attorney Regulation Act requires attorneys to “fulfill and complete all lawful court assignments” unless excused by good cause.⁹ In addition, Article 9 of the Code of Ethics of the Taipei Bar Association states that “attorneys shall participate in legal aid, services for the people, or engage in other public interest activities, so as to make legal services widely available.”¹⁰ Attorneys violating Article 22 of the Attorney Regulation Act, or seriously violating the code of ethics or the Articles of Incorporation of the Bar Association in which the attorneys are the members, may be subject to disciplinary action, which can be by way of warnings, reprimands, suspension of the right to practice law for a period not exceeding two years, or disbarment.¹¹

B. Legal Aid

Before the passage of the Legal Aid Act in 2004, disadvantaged litigants in need of legal services sought help from volunteer attorneys, charitable organizations and clinical programs at law schools. The lack of organization, financing, and government sponsorship meant that in reality the majority of disadvantaged litigants remained unrepresented. In 1999, both parties were represented by counsel in only 4.6% of all civil lawsuits. In criminal cases, only 12.5% of defendants were represented at the district court level, and less than a third at the appeals court level.¹² In response to the clear need for legal aid, three private groups — the Judicial Reform Foundation, the Taipei Bar Association and the Taiwan Association for Human Rights — began to draft the Legal Aid Act in the late 1990s.¹³ In January 2004, the Legislative Yuan promulgated the Legal Aid Act, which stipulates that the purpose of the enactment of this Act is “for protecting

⁷ The 12 institutes are: Supreme Court, Supreme Administrative Court, the Institute for Judicial Professionals of the Judicial Yuan, Commission on the Disciplinary Sanctions of Functionaries, Taiwan High Court, Taipei High Administrative Court, Taichung High Administrative Court, Kaohsiung Administrative High Court, Intellectual Property Court, Fuchien High Court Kinmen Branch Court, Fuchien Kinmen District Court, and Fuchien Lienchiang District Court. See Directory of the Judicial Branch, The Judicial Yuan of the Republic of China, <http://www.judicial.gov.tw/en>.

⁸ See Taipei Bar Association, available at: http://www.tba.org.tw/index/english_01.asp.

⁹ Attorney Regulation Act art. 22, available at: http://law.moj.gov.tw/eng/UserControl/print_en.html.

¹⁰ Code of Ethics of the Taipei Bar Association, art. 9, available at: <http://www.tba.org.tw/about.asp?id=67&class=39&classname=公會規章>

¹¹ Attorney Regulation Act art. 39, 44.

¹² Tsung-fu Chen, *The Rule of Law in Taiwan: Culture, Ideology, and Social Change*, in *Understanding China's Legal System: Essays in Honor of Jerome A. Cohen* (C. Stephen Hsu ed., 2003, New York, New York University Press).

¹³ *Who We Are*, Legal Aid Foundation, available at: http://www.laf.org.tw/laf2010/big5/a1_1.php.

the rights of the people, and for those who, due to the lack of financial resources or other reasons, are unable to obtain necessary legal assistance.”¹⁴

Article 5 of the Legal Aid Act stipulates for the establishment of the Legal Aid Foundation (LAF) for achieving the purposes of the Legal Aid Act. The LAF commenced operation in July 2004. By 2009, 21 branch offices had been opened throughout Taiwan to provide legal services. The LAF is funded by the Judicial Yuan.¹⁵ One year after its operation, the LAF undertook nearly 18,000 application cases. In 2008, the total number of general applications to the LAF was 40,723 cases, of which 17,698 cases were granted legal aid.¹⁶ In 2009, the LAF received 37,117 application cases, 24,022 of which have been granted full assistance, 539 of which have been granted partial assistance and 11,618 of which have been rejected. Nonetheless, legal aid has been granted in 67.89% of all the applications.¹⁷

The Legal Aid Act envisions legal aid to be broad in scope. Access to legal aid applies to two major categories of matters: (1) litigation, which includes civil, criminal, family, administrative and “to be classified” cases; and (2) non-litigation.¹⁸ Non-litigation matters encompass negotiations, settlements, and “any other services that the LAF has resolved to provide.”¹⁹ Recipients of legal aid may include foreigners. The majority of the foreign legal aid seekers are laborers.²⁰ In practice, the LAF will limit the scope of legal aid. Certain matters, including but not limited to, criminal litigation and special appeals, privately prosecuted criminal matters, arbitration, bankruptcy, small claims, and retrials, are excluded unless expressly approved by the director of the LAF branch office.²¹ For criminal matters, the customary procedure is for the Judicial Yuan to appoint public defenders or lawyers for certain indigent defendants.²²

By the end of 2009, a total of 2,296 attorneys had registered to provide legal services through the LAF.²³ As of September 2010, the LAF has not yet established an in-house lawyer system, so case examination and follow-up are conducted by project-based lawyers. There is no

¹⁴ Legal Aid Act art. 1, *available at*: <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=A0030157>.

¹⁵ *Supra* note 13. Article 4 of the Act places responsibility on the government for funding the LAF’s work. Article 6 of the Act provides for an endowment of TWD 10 billion.

¹⁶ *See* pp. 24 - 25 of Annual Report 2008 of Legal Aid Foundation of Taiwan (English version); *available at*: <http://www.laf.org.tw/laf2010/upload/20091123094354.pdf>.

¹⁷ *See* pp. 25 – 26, Annual Report 2009 of Legal Aid Foundation of Taiwan (Chinese version); *available at*: http://www.laf.org.tw/laf2010/big5/c3_1.php.

¹⁸ *See* p.27 of Annual Report 2009 of Legal Aid Foundation of Taiwan (Chinese version) *available at*: http://www.laf.org.tw/laf2010/big5/c3_1.php.

¹⁹ Article 2 of the Legal Aid Act states that “legal aid” includes (1) legal consultation, (2) mediation and reconciliation, (3) drafting of legal documents, (4) representation or advocacy in litigation or arbitration, (5) assistance in providing other necessary legal services and expenses, and (6) any other services that the LAF has resolved to provide.

²⁰ *See* p. 42 of Annual Report 2009 of Legal Aid Foundation of Taiwan (Chinese version) *available at*: http://www.laf.org.tw/laf2010/big5/c3_1.php.

²¹ *See Get Legal Help*, Legal Aid Foundation, *available at*: http://www.laf.org.tw/laf2010/english/a2_2_1.php. Legal aid also does not currently apply to corporations and organizations.

²² *See* The Judicial Yuan of the Republic of China, <http://www.judicial.gov.tw/en>.

²³ *See* p. 20, Annual Report 2009 of Legal Aid Foundation of Taiwan (Chinese version) *available at*: http://www.laf.org.tw/laf2010/big5/c3_1.php.

employment relationship between the volunteer lawyers and the LAF.²⁴ Every lawyer shall provide legal aid pursuant to the Legal Aid Act in the bar associations he or she joined. Exemption can be granted for legitimate reasons. A name list of all participating attorneys and a working schedule are kept by the national and local bar associations and made available to the LAF.²⁵ Under the Legal Aid Act, attorneys chosen to provide services may not decline doing so without providing a good reason.²⁶ In 2009, the five major types of civil cases that the LAF has taken are cases related to: general tortious claims, debts, dismissal compensation, salary payment and illegal dismissal.²⁷ The five major types of criminal cases that the LAF has taken are cases related to: manufacturing, trafficking and selling various grades of drugs, robbery, grievous bodily harm, murder and conspiracy.²⁸ The LAF provides assistance to applicants regardless of any special status that they may have, such as laborers, women, aboriginal people, people suffering from mental or physical disabilities, the elderly, children, adolescents and foreigners legally residing in Taiwan.²⁹

Outside of the scope of assistance of the LAF, criminal legal aid is administered by the Judicial Yuan. Under the Code of Criminal Procedure, if counsel has not been obtained in a case where the alleged offense carries a sentence of three years or more, the judiciary must appoint a public defender or lawyer to represent the defendant. In cases where the possible sentence is less than three years but a defendant is indigent and requests counsel, the court must also appoint counsel.³⁰

II. *Pro Bono Opportunities in Taiwan*

Attorneys interested in providing *pro bono* services can register with the LAF or local bar associations, which provide many avenues for both representing and counseling individuals in direct need of legal aid. The LAF takes on matters ranging from domestic violence cases to labor disputes. Lawyers who have registered with the court may also be appointed to represent indigent defendants in criminal cases. In addition, bar associations often take on specific types of representations. The Taipei Bar Association, for example, is committed to representing any defendant facing the death penalty who cannot afford defense counsel.³¹ Legal advice and consultations also take place on a regular basis. The Taipei Bar Association provides legal

²⁴ See *Business Features*, Legal Aid Foundation, available at: http://www.laf.org.tw/laf2010/english/a1_5.php.

²⁵ See Legal Aid Act, art. 25 available at: <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=A0030157>.

²⁶ See Legal Aid Act, art. 27: “Cases of serious violation will be referred to the Attorney Discipline Committee by the Foundation and be determined according to the Attorney Regulation Act” available at: <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=A0030157>.

²⁷ See p.28 of Annual Report 2009 of Legal Aid Foundation of Taiwan (Chinese version) available at: http://www.laf.org.tw/laf2010/big5/c3_1.php.

²⁸ See p.29 of Annual Report 2009 of Legal Aid Foundation of Taiwan (Chinese version) available at: http://www.laf.org.tw/laf2010/big5/c3_1.php.

²⁹ See *Get Legal Help*, Legal Aid Foundation available at: <http://www.laf.org.tw>.

³⁰ See, The Code of Criminal Procedure, art. 31, available at: <http://db.lawbank.com.tw/Eng/FLAW/FLAWDAT0201.asp>. (requiring the presiding judge to appoint a public defender or attorney where no defense attorney has been retained, and (1) “the minimum punishment for the charged offense is no less than three years imprisonment, or the accused is unable to make a complete statement due to unsound mind,” (2) the accused is indigent and has requested that a defense attorney be appointed, or (3) representation is otherwise considered necessary).

³¹ See Recruitment of Lawyers, Legal Aid Foundation, available at: http://www.laf.org.tw/laf2010/big5/c1_2.php

counseling services at a municipal government center during its office hours.³² National Taiwan University, National Taipei University, National Chengchi University, Fu Jen Catholic University, and Soochow University all staff legal clinics where legal counseling services are available.³³ However, to some extent, restrictions on the advertising of legal services may hinder the growing *pro bono* culture in Taiwan, since it is difficult to let potential clients know that individual legal services are available without cost.³⁴

In recent years, large international law firms have become involved with many *pro bono* activities, taking on cases through the LAF, providing advice to governmental and nonprofit organizations, helping to draft laws and regulations, and teaching at nonprofit institutions. Foreign lawyers who wish to represent *pro bono* clients should be aware of various limitations on their practice. Foreign lawyers must receive special approval from the Judicial Yuan and join the local bar association in order to practice in Taiwan, and may not engage in courtroom representation unless the court approves it.³⁵ Despite these apparent obstacles, foreign lawyers are unlikely to be denied approval by the Judicial Yuan.³⁶ However, language barriers may present a different problem, since under the Attorney Regulation Act, foreign attorneys providing legal services in Taiwan are “required to use Chinese (Mandarin dialect) language.”³⁷ At the same time, foreign lawyers are also uniquely positioned to provide *pro bono* services that involve foreign governments and organizations. Following Taiwan’s accession to the World Trade Organization (WTO), there has been a steady increase in the number of foreign attorneys in Taiwan,³⁸ which may bode well for future *pro bono* opportunities for foreign lawyers.

There are also opportunities for *pro bono* involvement with Non-Governmental Organizations (NGOs) working on legal reform and other issues. Attorneys may help draft laws and regulations, provide free legal advice to various organizations, or serve on the boards of nonprofit organizations.³⁹ The JRF and the Taiwan Association for Human Rights are two prominent organizations which have substantially contributed to the formulation of Legal Aid Act in 2004.

III. Conclusion

The Legal Aid Act, the Code of Ethics of the Taipei Bar Association and the generally increasing awareness of the need for legal aid are all promising signs that Taiwan is beginning to develop its own *pro bono* culture. There are meaningful opportunities for *pro bono* legal

³² See Taipei Bar Association, available at: <http://www.tba.org.tw/index.asp>

³³ See National Taiwan University, available at: <http://www.law.ntu.edu.tw/legalservice/page1.htm>; see also National Taipei University, http://www.ntpu.edu.tw/college/e1/about_04.php.

See Fu Jen Catholic University, <http://laws.fju.edu.tw/english/legal02.html>; see also National Chengchi University, College of Law, http://www.law.nccu.edu.tw/Engpages/EN_legal_Aid_Society.htm; see also Soochow University School of Law, http://www.scu.edu.tw/ENGLISH/law/students_organizations.htm.

³⁴ See Attorney Business Development Rules, art. 4, Taipei Bar Association (1996), available at: <http://www.tba.org.tw/about.asp?id=80&class=39&classname=公會規章> (prohibiting advertising through mass media such as radio broadcasting, television, film, newspaper, billboards and balloons).

³⁵ See Attorney Regulation Act, art. 47-1 to 47-7.

³⁶ Interview with Marianne Chao, Partner, Jones Day (Jan. 25, 2008).

³⁷ See Attorney Regulation Act, art. 47.

³⁸ See Martindale-Hubbell Law Digest: Taiwan 18, *supra* note 348.

³⁹ See, Interview with Marianne Chao, Partner, Jones Day (Jan. 25, 2008).

representation, counseling, and cooperative work with NGOs and the opportunities for foreign attorneys may be on the rise. As the legal profession in Taiwan steadily gains more recognition, it appears that *pro bono* work will continue to benefit from the profession's commitments and to strengthen the profession itself.