

法整備支援に関するプロジェクト研究

「途上国のリーガル・エンパワーメント」

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序 文

国際協力機構（Japan International Cooperation Agency: JICA）は、1996年に開始した「ベトナム社会主義共和国法整備支援プロジェクト」を皮切りに、法整備支援分野における技術協力を本格化し、その後、インドネシア、ウズベキスタン、カンボジア、中国、ネパール、東ティモール、モンゴル、ラオスなどの支援ニーズにも応えてきています。

JICAの法整備支援は、（ア）具体的な法案の起草の支援や、起草された草案の立法化の促進の支援などの「ルールの整備支援」、（イ）法を執行・運用する機関や法を適用して紛争を解決する機関の機能の改善に向けた支援などの「法運用組織の機能強化支援」、（ウ）人々の法・司法制度へのアクセスの向上に対する支援などの「リーガル・エンパワーメント支援」を3つの柱としつつ、これらすべての支援の基盤となる要素として、（エ）これらに従事する法曹、法務・司法関係機関職員等の「人材育成支援」を重視してきています。支援の開始以降、（ア）「ルールの整備支援」、（イ）「法運用組織の機能強化支援」、（エ）「人材育成支援」については、多くの支援実績を積んできていますが、（ウ）「リーガル・エンパワーメント支援」については、これまで必ずしも支援実績が多くなく、JICAの法整備支援において、今後どのようにリーガル・エンパワーメントの視点を位置づけていくかが課題となっていました。

このような背景から、2011年11月30日から2011年12月2日にかけて、JICAの法整備支援における協力機関の一つであり、日本国内及び途上国における司法アクセスの改善に向けた様々な活動に取り組んでいる日本弁護士連合会と共催で、「アジアにおける司法アクセス」をテーマとする国際会議を開催しました。本プロジェクト研究は、国際会議を通じて収集した情報及び、その後、他ドナーの活動等、追加情報収集・分析した結果等から、途上国のリーガル・エンパワーメントの現状や課題を把握するとともに、今までのJICAのリーガル・エンパワーメント支援と本分野における国際的な潮流を踏まえ、今後の支援の留意点を検討することを目的として取りまとめたものです。

本プロジェクト研究報告書が、法整備支援におけるリーガル・エンパワーメントの視点の重要性への理解を広めるために、また今後の法整備支援のより一層の改善及び関係者間で議論を深めるための一助となれば幸いです。本プロジェクト研究の実施及び取りまとめにあたっては、国際会議の共催機関である日本弁護士連合会をはじめとして、数多くの方々に多大なご協力ならびに貴重なご意見をいただきました。本プロジェクト研究にご尽力いただきました関係者の皆様に厚く御礼申し上げます。

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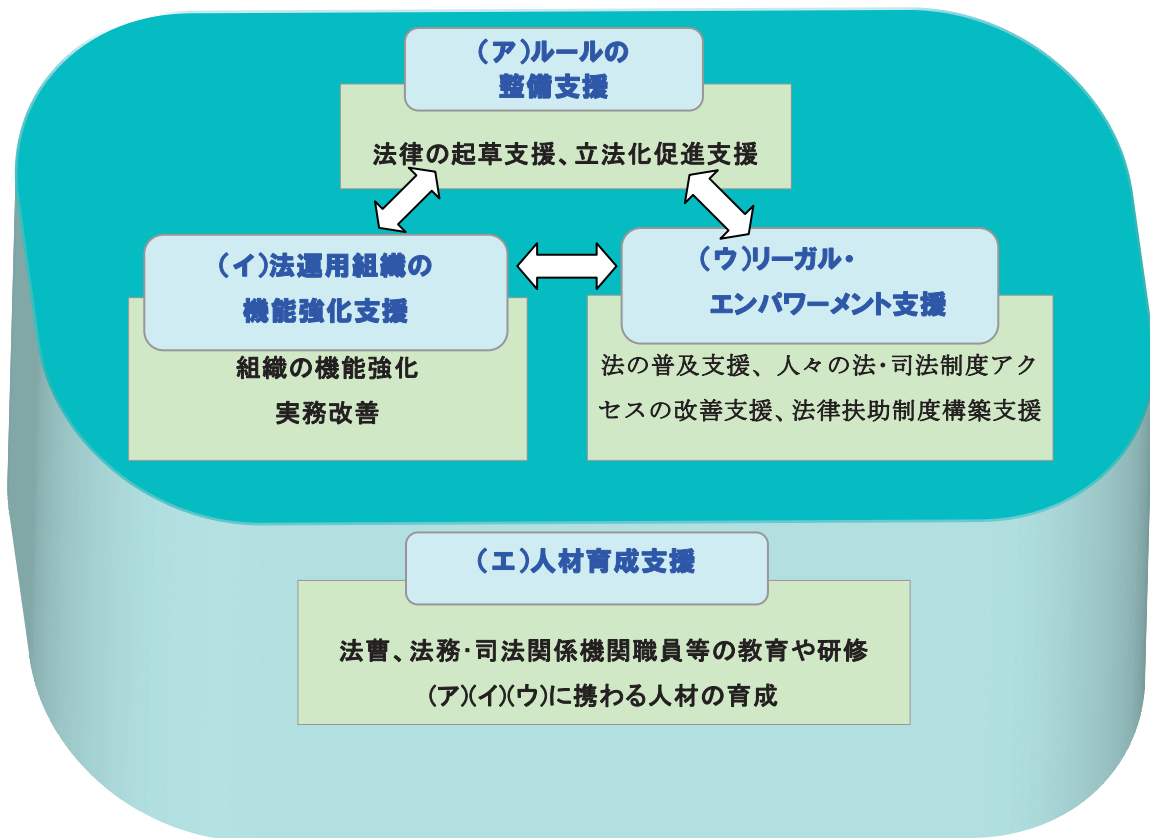
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序 章

1 本プロジェクト研究の背景・目的

JICA の法整備支援は、(ア) 具体的な法案の起草の支援や、起草された草案の立法化の促進の支援などの「ルールの整備支援」、(イ) 法を執行・運用する機関や法を適用して紛争を解決する機関の機能の改善に向けた支援などの「法運用組織の機能強化支援」、(ウ) 人々の法・司法制度へのアクセスの向上に対する支援などの「リーガル・エンパワーメント支援」を3つの柱としつつ、これらすべての支援の基盤となる要素として、(エ) これらに従事する法曹、法務・司法関係機関職員等の「人材育成支援」を重視している。

図1 法整備支援の領域



しかし、JICA は (ア) (イ) (エ) に対する支援については多くの実績を積んできているが、(ウ) については支援実績が必ずしも多いとはいえない。したがって、今後どのような支援が有効か、留意点は何かを検討する必要がある。また、(ア) についても、支援により起草・改正した法律が当該国の社会に定着し、正しく運用され、その成果が国民に広く裨益するものとなるための道筋について、さらに検討を行う必要がある。

このような背景から、今般、JICA の法整備支援における協力機関の一つであり、日本国内及び途上国における司法アクセスの改善に向けた様々な活動に取り組んでいる日本弁護士連合会と共催で、2011年11月30日から2011年12月2日にかけて、「アジアにおける司法アクセス」をテ

ーマとする国際会議（以下、「本国際会議」という）を開催した。

本プロジェクト研究報告書は、本国際会議を通じて収集した情報及び、その後、他ドナーの活動等、追加情報収集・分析した結果等から、途上国のリーガル・エンパワーメントの現状・課題・取組みを把握するとともに、今までの JICA のリーガル・エンパワーメント支援と本分野における国際的な潮流を踏まえ、今後の支援の留意点を検討することを目的とするものである。

なお、本報告書における記述は、本国際会議実施時点での状況に基づき執筆しているものである。

2 本報告書の構成

本プロジェクト研究報告書は、4章から構成される。まず第1章「リーガル・エンパワーメントの概況」では、第2章、第3章の議論の前提として、本報告書におけるリーガル・エンパワーメントの概念や目的を明らかにする。次に、第2章「各国のリーガル・エンパワーメントの現状・課題・取組み」では、本国際会議を通じて収集した参加各国の情報・知見のうち、各国に共通する重要なトピックを取り上げ、有益な対応策について例示している。第3章「リーガル・エンパワーメント支援に対するアプローチ」では、今までの JICA のリーガル・エンパワーメント支援の事例を振り返るとともに、国連開発計画（UNDP）、世界銀行によるリーガル・エンパワーメント支援の潮流について把握し、最後に第4章では、JICA による法整備支援とリーガル・エンパワーメントの視点に立った留意点を検討する。

第1章 リーガル・エンパワーメントの概況

本章では、第2章以降の議論の前提として、リーガル・エンパワーメントの概念及びその目的を明らかにする。

1-1 リーガル・エンパワーメントの概念

「リーガル・エンパワーメント」は比較的新しい用語であり、画一的な定義はないものの、一般的には、(a) 司法制度、紛争解決制度へのアクセス向上、(b) その他法的サービス全般へのアクセスの向上及び利用促進、(c) 法律情報の普及・教育を含む概念である。なお、JICAの法整備支援においても、これまでリーガル・エンパワーメント支援(3つの柱の(ウ))としてはこれらの内容を想定してきた。

(a) 司法制度へのアクセス向上は、リーガル・エンパワーメントの最も典型的なものといってもよく、貧困層が適切に司法手続を利用できるようにするための裁判費用、弁護士費用等を立替える制度(償還が免除される場合もある)である法律扶助(リーガルエイド)制度構築及び拡充、一般市民が司法制度を利用しやすくするための、訴額が少額な場合の簡易な訴訟手続や消費者集合訴訟などの訴訟手続の設計、また、訴訟手続きに比べ手続のルールがシンプルであり、複雑な法制度に関する専門知識がなくても利用しやすい調停などの裁判外紛争解決手続(Alternative Dispute Resolution; ADR)の整備などが挙げられる。

(b) その他の法的サービス全般へのアクセスの向上及び利用促進には、弁護士会の機能強化を通じた法的サービスの拡充や弁護士のプロボノ活動(公益活動)¹の促進、無料法律相談の仕組み作り、また、登記・登録、許認可申請などの行政サービスの充実やそれらに関する不服申立手続へのアクセス向上などが含まれる。

(c) は上記各種制度及びサービスへのアクセス方法や、基本的な法律や権利に関する知識など、法令・司法制度などに関する市民の知識を向上させるための、情報普及や広報の活動、法教育などを指すものである。

以上の(a)から(c)は、リーガル・エンパワーメントに向けた取組みとして、いわば最大公約数的に想起されるものといえるが、実は「リーガル・エンパワーメント」はそれだけでは十分とは言えない。すなわち、正面からリーガル・エンパワーメントを目的とした活動以外の場面においても、その成果を最終的な裨益者である一般国民が享受し、市民社会・民間セクターが健全に発展していくためには、常にリーガル・エンパワーメントへの配慮が必要となる。

すなわち、ある国において「法の支配」が実現されるためには、(ア)ルールが整備されることはもとより、(イ)法の運用や執行をする組織の機能が改善され、更には、(ウ)市民社会への法情報の提供や市民側の司法アクセスが向上すること(リーガル・エンパワーメント)までが必要であり、これら3つの要素のいずれが欠けても「法の支配」は達成されない。(ア)あるルールが整備された場合、そのルールは全国の実務担当者及びユーザーに理解され、適切に運用されなければルールを整備した目的は達成できないのであり、(イ)法の運用を適切に行いうる組織が整備されるためには、ルールの整備機関との双方向的な協働による運用可能なルールの整備や、ユーザーである市民社会目線に立った機能強化が不可欠であり、さらに(ウ)市民社会の法的知識・能力の向上が図られることは、一般市民に理解可能なルールが整備されることと表裏一体であり、

¹ プロボノ(Pro Bono)活動とは、弁護士などの専門職がその知見・ノウハウを活用して無報酬または低報酬で行う活動を指す。

また、法運用組織が市民社会の法的知識・能力の向上を担えるように整備されることが求められるのである。

このような観点から、(ア) (イ) の支援を実施するにあたっては、例えば (ア) に関しては、市民の声を取り入れ、社会の現場で生じている問題に即したルール作りがなされること、(イ) に関しては、裨益者の視点から業務内容を改善し、裨益者に成果が還元されるような機能強化を行うことが必要となる。²

この点は、特に 3-2 において、JICA の取組みの具体例とともに詳述する。

1-2 リーガル・エンパワーメントの目的

法・司法制度は、それらが制定され、構築されるだけでは目的を達成できないのであって、市民社会の中で実際に機能しなければならないが、市民が法・司法制度を生活の中で活用しようとしても現実には容易ではない。法は内容が専門的であることが多く、内容を理解するためには高度な知識を要するし、また、司法制度も法律専門家でない一般市民にとっては難しく利用しにくいと捉えられるのが現状である。そうであれば、市民が法・司法制度を活用するために法律専門家のサポートを容易に得られればよいが、これを得ようとしても、一般市民には法律専門家のサポートをどのように得ればよいのか分からなかったり、身近に信頼できる法律専門家が存在しなかったり、あるいは法的サポートには通常多額の費用を要するのが実情である。その結果、法律専門家のサポートを得られるのはごく一部の者に限られてしまうが、このような状況を放置すると、法・司法制度の恩恵は一部の限られた者だけが受けることになり、一般市民に適切に裨益しないばかりか、法・司法制度へのアクセスを持つ一部の者がこれを悪用することにもつながる。

例えば、カンボジアでは、内戦終結後に制定された土地法の規定を悪用して、当該規定の内容を知らず、かつ法的サービスを受けることができない社会的弱者に対し訴訟を提起し、訴訟に適切に対応できなかった者から土地を（勝訴判決に基づき合法的に）入手するというケースが多発した。土地法の当該規定自体は、真の所有者の確定が困難な土地につき、現状の占有状態を追認し、これ以上の社会的混乱を防止しようという目的のものであり、その目的には一定の合理性があったが、実際には、土地法の内容を知っている者と知らない者との間、司法制度を利用できる者と利用できない者との間で新たな混乱を生じる結果となった。³

法・司法制度が市民社会の中で実際に機能し、その目的を達成するためには、市民が法・司法制度に容易にアクセスできるような仕組みを構築するとともに、市民の間にも法・司法制度に関する基本的な知識が普及する必要がある。リーガル・エンパワーメントは、市民が法・司法制度へアクセスすることや法・司法制度に関する知識を得るに当たっての障害を可能な限り克服し、ルールの内容が市民に理解され、紛争解決の基準となること、市民がその属性（経済力・社会的地位・居住地域等）に関わらず法律・司法制度へのアクセスを確立することを目的とする極めて重要な取組みである。

2 本報告書では、正面からリーガル・エンパワーメントを目指した制度構築・改善、すなわち (a) 司法制度、紛争解決制度へのアクセス向上、(b) その他法的サービス全般へのアクセスの向上及び利用促進、(c) 法律情報の普及・教育を「一般的なリーガル・エンパワーメント」とし、それ以外の裨益者の視点に立ったルール作り、法運用組織の機能強化を「分野横断的なリーガル・エンパワーメント」という。

3 カンボジア土地法（1992）には、ある土地を5年間占有し続けた者は当該土地の所有権を取得する旨の規定があった。この規定の目的は本文のとおりであるが、この規定を悪用する者は、「5年前から自分が占有していた土地を現在の占有者が不法に占拠している」として立ち退きを求める訴訟を提起する。現在の占有者（社会的弱者であることが多い）が、「原告（規定を悪用する者）は5年間占有を継続していない」ことを適切に主張し、裁判所にその旨認めさせれば原告（規定を悪用する者）の請求は棄却されるはずであり、現在の占有者は保護されるはずであるが、土地法の規定をまったく知らず、裁判とは何か（どのような主張をすればよいのか）をまったく知らない社会的弱者にとって、適切な対応を取ることは困難であった。

第2章 各国のリーガル・エンパワーメントの現状・課題・取組み

本章では、本国際会議に参加した各国のリーガル・エンパワーメントの現状・課題・取組みについてその概要を把握するとともに、特に本国際会議にて議論された各国に共通する重要なトピックを取り上げ、法整備支援の対象国において参考になるとと思われる有益な取組みについて紹介する。なお、各国の詳細な状況に関しては、付属資料の Information Sheet⁴に記載されている。

2-1 一般的なリーガル・エンパワーメント

本国際会議では、参加各国に共通する問題として、「土地問題」及び「家庭内問題」に関連する法律上の紛争が多発していることが確認された。土地問題は、政府による開発事業において政府と住民間で紛争が発生するケース、近年の経済成長に伴う地価の高騰に起因する紛争、土地所有権・管理権をめぐる政府と住民の対立、植民地化・内戦・独立の過程において土地所有者が曖昧となった結果生じている土地紛争のケース等々が事例として挙げられた。また、家庭内問題については、特にドメスティックバイオレンスが多発しており、各国の共通課題であることが確認された。

本国際会議では、リーガル・エンパワーメントの観点から、このような各国の喫緊の法律上の問題に対処するための、各国における法的サービスの提供状況、課題、またその対応策について、参加国間で議論が繰り広げられた。

2-1-1 司法制度、紛争解決制度へのアクセス向上

(1) 法律扶助（リーガルエイド）

前述のとおり、市民が法律・司法制度を利用するにあたり、大きな障害となるものとして、司法制度を利用するための費用（訴訟費用・弁護士費用等）の問題が挙げられる。

この問題に関する各国の対応状況としては、海外ドナー、各種基金からの支援によって、法律扶助（リーガルエイド）の資金を賄っているケースが多く見られる。これに対し、ラオスからは NGO、弁護士の使命に基づき、弁護士会組織による自助努力等、民間団体による活動の重要性も説かれたが、基本的には、継続的かつ十分な資金源の確保の観点から、政府からの資金提供の必要性が一番の課題であるとされた。また、法律扶助（リーガルエイド）対象者の基準の設定、判定方法についても各国の状況に応じて、明確に規定していく必要性が指摘された。

この点において、政府との連携が重要であるが、弁護士会の各支部と現地裁判所等の連携を試み、また 2011 年に法律扶助に予算措置を行う立法がなされたインドネシアの動向や、政府財源提供の拡大に向けて積極的に活動するマレーシアの弁護士会の活動は他国にとって参考になる取組例といえる。

また、多数のアクターが法律扶助の実施に積極的に関与している国々においては、それらの資金と人的・組織的エネルギーをどのように結集、配分し、最も効果的な法律扶助の実施を行うかという観点も必要との指摘もあり、この点においては、政府組織である法的扶助協会、韓国弁護士会による法的扶助財団、家事紛争を専門とする NGO の法的扶助機関等々、各機関が専門性をもって法律扶助を行っている韓国の取組みが有益な参考例になるだろう。

4 Information Sheet は、本国際会議開催に先立ち、会議参加各国の弁護士会にアンケートをとったものである。

(2) 裁判外紛争解決手続 (ADR)

ADR⁵は、訴訟と比較すると、手続のルールがシンプルであり、複雑な司法手続に精通していなくても利用しやすい紛争解決手段の一つである。したがって、ADRの普及は司法アクセスの向上に大きく役立つものと言える。また、ADRにおいては、手続きがシンプルであることから、場合によっては一般市民が調停人や仲裁人として紛争を予防・解決する立場にもなることが可能である。このようなADRは、市民が自分たちの手で紛争を解決する手続であり、Legal Awarenessの向上（これもリーガル・エンパワーメントの重要な内容である）の手段ともなり得る。ここでは、本国際会議におけるモンゴル、ネパールからのADR、コミュニティ調停の取組みに関する発表内容を踏まえ、両国の取組みの概要についてまとめるとともに、参加者からの有益な指摘について紹介する。⁶

モンゴルでは、モンゴル弁護士会の中に土地、雇用、家族等の事件を扱う弁護士会調停センターを設立したことをきっかけに、裁判所も調停制度による紛争解決手段に着目し、裁判所と弁護士会の協力のもと、パイロットコートにおいて、弁護士を中心とした調停人が試行調停を実施しながら、調停制度の設計を進めている。また、調停により紛争を解決する法的環境を整え、調停人の役割、調停制度の手続きのルールを明確に定めることが課題であり、現在大統領府と最高裁判所を中心に、調停法の起草を進めている。

ネパールでは、過去の内戦の影響で、特に地方において行政や司法が効果的に機能しておらず、また、民族、宗教、政治思想やカーストなど、国内に多様な住民集団を抱えている。そのため、土地の境界や水資源の利用など、住民同士の些細なトラブルが、集団同士のトラブルに発展しやすい傾向がある。そこで、ネパール司法省は、国際的な援助機関や国内のNGOなどの支援を得て、コミュニティ調停の制度整備、普及を行うとともに、調停人の育成、調停人による紛争解決に取り組んでいる。ネパールのコミュニティ調停では、モンゴルとは異なり、必ずしも法律家が調停人になるのではなく、様々な社会背景を持つ人々がコミュニティの中から選出され、調停人として活動している。このように各地でコミュニティ調停が利用されている状況を受け、2011年5月には、調停法が国会を通過し、施行を待っている状況である。

他方で、本国際会議では、調停人等による当事者への社会的圧力が排除できない等、不公正な形での強制的な紛争解決が図られかねないという弊害も指摘された。これに対しては、調停制度の導入にあたって、主催機関による内部規則の制定や、政府による調停法の制定、調停人が中立かつ適切に手続を運営できるような倫理規則、そして調停人の研修などの制度構築の重要性も示唆された。

2-1-2 法的サービスへのアクセス向上、利用促進

(1) 国選弁護人の選任

逮捕や刑事訴追を受ける等の法律上の問題が発生した時に、市民がその属性（経済力・社会的地位・居住地域等）に関わらず、中立的かつ法律の専門性を有する弁護人の協力を得られるか否かという点は、市民の司法へのアクセスという観点から、最も基本的な課題の一つである。

この点において、ネパール、韓国のように裁判所が国選弁護人を任命するケースや、インド

⁵ 本国際会議では、当事者が互いに話し合い、合意に至ることによって紛争の解決をめざすとともに、そのプロセスに第三者として調停人が関わる調停手続について主に取り上げた。

⁶ なお、JICAではモンゴル、ネパールにおいて、調停制度の導入・構築にかかる支援を行ってきており、この点は、本報告書第3章にて詳述している。

ネシアのように裁判所もしくは警察を通じて弁護人が選任される仕組みも紹介された。一方で、警察を通じて弁護人が選任されるため、中立性に問題があるのではないかといった指摘や、裁判所が国選弁護人を任命し、給与を与えて事務所も提供していることから、国選弁護人の独立性が保たれていないとの批判があることも問題提起された。

(2) 法律相談、弁護士過疎

各国の発表から、弁護士会、NGO等の市民団体、地方自治体を始めとする公的機関等々、様々な法律相談の窓口・形態があることが確認された。例えば、モンゴルでは、司法省・弁護士会・ソロス財団の資金提供により設置されたリーガルアシスタンスセンターにて法律相談を行っており、ベトナムやラオスのように、地元の地方自治体や、村落の調停機関等に相談する傾向の強い国もある。このように様々な法律相談の窓口がある中、本国際会議では、主に弁護士会の果たす役割及び課題について議論された。

本論点に関し、各国の弁護士会ともほぼ同様の課題を抱えており、弁護士の数、資金が十分でなく、特に貧困層の多い地方における弁護士不足は、各国に共通する普遍的なトピックであることが参加各国で共有された。このような問題に対し、過疎地への弁護士派遣をある程度制度化して対応している国（東ティモール、韓国、日本⁷）や、弁護士資格取得後9ヶ月間の研修期間のうち、14週間のボランティアプログラムを実施し、若手弁護士の意欲喚起に積極的に取り組んでいる国（マレーシア）の事例が紹介された。更にはそのような制度化には多大な資金と組織力が必要であり、それまでの道のりにおいては、出張法律相談などが有効であるところ、ラオスやカンボジア、ネパールにおける移動式の無料法律相談の取組みは有益な事例として挙げられる。

2-1-3 法律情報の普及・教育

法律扶助制度、その他の法的サービスの利用にあたっては、地方の貧困層を含めた利用者への周知方法も課題である。周知方法については、各国ともその国の実情に応じて様々な取組みを行っており、ネパールのように弁護士の地方への出前出張、テレビ・ラジオを通じた宣伝、周知活動を担うパラリーガルの地方への配置等の取組みや、インドネシアのように若い弁護士のアウトリーチ委員会が積極的に地方に出向き周知活動を行っているケース、韓国のようにインターネット、チャットを積極的に活用しているケースもある。

2-2 分野横断的課題としてのリーガル・エンパワーメント

多くのアジアの国々においては、市場経済化や変化する社会ニーズにあわせて法律や司法制度を整備することが喫緊の課題となっている。このとき、法律がただ条文として起草されるだけでなく、実際にそれが社会において定着し、適切に運用されなければ、法律の目的が達成されない。したがって、法律・司法制度の制定にあたっては、社会の実情や市民の考えが反映された法律が起草され、法律を運用する行政組織や裨益者である国民に理解されることが重要である。

このような観点から、本国際会議では、法律の制定にあたって積極的に市民社会のニーズを汲み上げているベトナムの取組み、民事訴訟法適用後4年を経過したカンボジアの現状と課題、2015

⁷ 弁護士のみならず、司法書士でも法的対応ができるようになっていること、ひまわり基金法律事務所、日本司法支援センターを全国各地に設置し、法律相談の窓口を全国的に展開している日本の取組みも紹介された。

年の民法典制定に向けて市民社会との対話を重視しているラオスの取組みが参加国の間で共有された。

まずベトナムからは、法案の起草・立法化・普及という一連のプロセスにおいて、社会の実情調査や、法令制定による社会、経済、環境等へのインパクトの分析⁸を行うことが法令起草に必要なプロセスとして「法規範文書制定に関する法律⁹」に定められていること、及び、法令起草の各段階におけるパブリックコンサルテーションを通じ、社会の実態を踏まえた法律の起草を行っている取組みが共有された。具体的には、研究機関、関連団体の専門家が参加して、①現行法の評価・レビュー、②法令起草のための社会調査、③関連する外国法、国際条約等の比較研究、④RIAサーベイを実施する他、起草段階でパブリックコメントを募集し、コメントを踏まえて再度法案の修正を検討するといったプロセスを経て、法令の起草を行っている。

カンボジアからは、民事訴訟法適用開始後4年の経験を経て、法律が適切に運用され、国民が真の裨益者となるために、どのように法曹関係者に法律の内容を浸透させ、更には市民や経済界に理解を広めていくかが今後の課題であるところ、現状において、法律専門家内においても民事訴訟法の条文の意味について統一的な見解が共有されていないことが紹介され、まずは法律専門家に対する教育・研修が最優先事項として必要であるとの見解が述べられた。

ラオスからは、市民の権利を保障するための制度の策定という観点から、2015年の民法典制定に向けた各種取組みが紹介された。特に注目すべき点として、起草プロセスにおいて、各種団体、市民社会とのパブリックコンサルテーションを進めていく計画や、49の民族が併存するラオスにおいて、文化、慣習の多様性の考慮が不可欠であるところ、各民族における慣習法の調査が行われており、調査結果を民法典の制定においても検討する予定となっていること等が紹介された。

⁸ ベトナムではRIA (Regulatory Impact Assessment) サーベイを実施している。RIAとは、合理的な政策手法を選択するために、規制案による社会的な便益・コスト・リスク等を事前評価する手法である。

⁹ 法規範の制定プロセスを定めた法律 (The Law on Promulgation of Legal Normative Documents)。

第3章 リーガル・エンパワーメント支援に対するアプローチ

ここでは、1-1で述べたリーガル・エンパワーメントの概念に沿って、これまでのJICAの取組みを振り返るとともに、他のドナー機関によるリーガル・エンパワーメントのアプローチとして、リーガル・エンパワーメントに向けた多種多様な活動を展開しているUNDPと世界銀行を取り上げ、それぞれのアプローチを、両機関の取りまとめた報告書をベースに紹介する。

3-1 JICAによる一般的なリーガル・エンパワーメント支援

1-1においてすでに述べたとおり、リーガル・エンパワーメント支援の中には、(a) 司法制度、紛争解決制度へのアクセス向上、(b) その他法的サービス全般へのアクセスの向上及び利用促進、(c) 法律情報の普及・法教育といった活動が含まれる。

3-1-1 司法制度、紛争解決制度へのアクセス向上

この分野でJICAが支援を行っているものとしては、特に、ADRの構築・強化支援が挙げられる。

(1) 調停制度の導入・強化・構築支援

①モンゴルにおける調停制度導入・強化支援

モンゴルにおける調停制度導入にかかる現在の取組みは、本国際会議においても紹介されているが、当初は、モンゴル弁護士会から日本に対する支援要請があり、弁護士会に対する支援の一環として始まった。モンゴルは、90年代初頭に、ソ連崩壊と合わせて、それまでの社会主義体制から民主化・自由主義経済化への途をたどっているが、その過程において、土地や家畜などの財産の私有化などの社会制度の変化に伴い、財産や取引、雇用などをめぐる民事紛争や離婚・相続などの親族間の紛争が増加していた。一方で、当事者の自主的かつ柔軟な解決を図ることのできる調停手続は、公的には設けられていなかった。このため、モンゴル弁護士会が、日本の弁護士会の紛争解決センターなどの制度を参考に、弁護士会の下部機関として、調停センターの設立を要望し、これに日本が技術協力を行ったものである。当初は、調停が新しいものであったことや、制度が十分整備されていなかったことが原因となり、事件数もあまり伸びなかったが、広報活動などを通じて、少しずつ調停制度が知られることとなった。また、弁護士会が調停センターの活動を始めて2年ほど経過した頃から、裁判所が調停による紛争解決に関心を寄せるようになり、現在は、2つのパイロットコートにおいて、裁判所に持ち込まれた事件についても、弁護士を中心とする調停人が調停を試みる手続を、試行的に実施している。裁判所の主な関心は、調停による紛争解決を導入して裁判所の負担を軽減することとともに、特に増加している離婚事件において、子の扱いや財産の分与などに関し、当事者の実情に合った解決を図ることにある。

②ネパールにおけるコミュニティ調停制度構築支援

モンゴルの調停では、調停人は弁護士を中心とする法律家であるが、一方で、JICAはネパールにおいてコミュニティベースの調停制度構築の支援も実施している。ネパールでは、90年代後半から、王政に反対する共産主義者の武力闘争が生じて内戦状態となり、最終的に王政を廃

止し、民主国家を建設することで和平合意が成立した。しかし、制憲議会が招集された後も、特に地方において、司法や行政があまり機能していない地域が存在する。このため、コミュニティの中で紛争を解決する調停制度が各地で利用されており、多くのドナーが支援を行っている。JICAは、インフラ整備支援との相乗効果を目指して、道路建設などの案件が実施されているシンズリ郡、マホタリ郡を対象に、コミュニティ調停のプロジェクトを実施しており、コミュニティの中から選ばれてトレーニングを受けた調停人が、事件の処理を行っている。2011年2月の事件受付開始から、同年12月までの間に、両郡で69件の紛争を解決しており、家庭内の紛争や隣人関係など、まさに地域に根差した紛争が持ち込まれている。

なお、調停人の選考においては、民族やカースト、宗教や政治思想など、コミュニティにおける住民集団のバランスに対する配慮が強く求められる。また、政治的・経済的その他のパワーのアンバランスによって、一方当事者が不利になったり、個人の人権と相いれない伝統的な価値観が過度に尊重されることによって、当事者を抑圧する結果となったりしないような配慮も求められる。

（2）訴訟手続を利用しやすいものにするための支援

訴訟手続を市民にとって利用しやすくするための支援としては、ベトナム、カンボジア、中国などで実施されている訴訟法の起草改正支援に、一部そのような制度を構築する支援が含まれている。

例えば、ベトナムにおける行政事件訴訟法起草支援においては、行政事件を提起するに当たって行政機関に対する不服申立を行った後でなければ提訴できないとするのかどうか（不服申立前置主義）¹⁰について、ベトナム側と日本側で様々な側面からの対話を行い、その中でリーガル・エンパワーメントの観点からも検討を行い、最終的に成立した行政事件訴訟法では不服申立前置主義を採らないこととされ（日本の制度も同様である。）、当事者は行政機関に対する不服申立を経ずに行政訴訟を提起することができるようになった。¹¹また、カンボジアでは、日本が支援した民事訴訟法の中に、日本の制度も参考にして、資力のない人に裁判費用の支払を猶予する制度（訴訟救助）の規定が盛り込まれている。加えて、中国における民事訴訟法起草支援においては、受理難（裁判所に訴状をなかなか受理してもらえない状況）や立案難（訴状が受理された後の立案廷での審査が放置されるという状況）にどのように対応していくかという全人代法制工作委員会民法室の取組みを支援している。

（3）法律扶助（リーガルエイド）支援

法律扶助（リーガルエイド）の実施に関しては、財政的な裏付けが必要であるところ、法律扶助団体、弁護士会、NGO等への財政支援などを通じて実施しているドナーも多いが、JICAでは持続可能性等の観点から、直接的な財政支援は実施していない。ただし、カンボジアやモンゴルの弁護士会に対する支援の一環として、日本の法律扶助制度構築の概要や経緯、国選弁護士制度の現状などを紹介する等の支援も実施された。

¹⁰ 行政事件訴訟法の前身である行政事件解決手続令では、不服申立前置主義が採られている。

¹¹ ただし、法令の起草（制度設計）に当たって、起草・立法者は、リーガル・エンパワーメントの観点に加えて、その他の社会・経済状況を考慮しなければならない。本文の事例では、結果としてリーガル・エンパワーメントにとって好ましい条文が採用されたが、パートナー各国の文脈に応じ、リーガル・エンパワーメントの重要性に対する気づきがあっても、他の状況に鑑み、この観点からの助言が必ずしも採用されるとは限らない。この点は起草支援における困難性の一つであるが、支援側としては、リーガル・エンパワーメントの重要性を常に共有し、この視点への意識付けを継続することが求められる。

3-1-2 法的サービスへのアクセス向上、利用促進

本分野で JICA が行っているのは、主に弁護士会の機能強化支援である。

(1) カンボジアの弁護士会及び弁護士養成校支援

カンボジアにおいて、JICA は日本弁護士連合会と協力して、カンボジア王国弁護士会に対する支援、カンボジア弁護士会の弁護士養成校に対する支援を実施した。これによって、2001 年の弁護士養成校開設以来、359 人の弁護士が新しく養成され、市民と司法制度の橋渡しをすることが期待されているほか、既存の弁護士に対しても、継続教育を実施し、その能力を高める支援を実施している。また、弁護士養成校では、リーガルクリニックが設けられ、学生たちが弁護士の監督の下、市民に対して法律サービスを無償提供した。

(2) モンゴルの弁護士会強化支援

モンゴルでは、民主化に伴い、財産の私有化や民間取引の活性化などによって民事紛争が増加したり、様々な新しい制度が導入されたりすることとなったが、弁護士及び弁護士会はその変化に十分対応しきれていなかった。モンゴル弁護士会は、JICA が支援を開始する前は、登録している弁護士の数も正確に把握できない状況であったが、JICA のプロジェクトによって弁護士名簿を作成し、会に登録しているメンバーを把握できるようになった。また、この弁護士名簿には、各弁護士の得意とする分野や使用言語なども記載され、会員である弁護士のほかに、裁判所や警察など、市民が法的サービスを必要とする場所にも配布された。このほか、弁護士会の法律相談センター、調停センターの設置支援、弁護士に対する能力強化のための各種研修などが実施された。

(3) ベトナム弁護士連合会に対する支援

ベトナムでは、2009 年に各地の弁護士会から構成される全国的な組織であるベトナム弁護士連合会が結成された。JICA は、現地セミナーや本邦研修などの支援を通じて、法曹倫理や懲戒制度、弁護士自治など、弁護士会の果たすべき機能についてのインプットや、弁護士に対する研修に関する支援を行っている。また、ベトナムでは大都市に弁護士が集中しており、地方における弁護士過疎が司法へのアクセスにとって障害となっているところ、日本でも類似の問題があり、ここ 10 年程度の間さまざまな対策が講じられたことを踏まえ、ベトナム各地の弁護士を対象とした本邦研修において、日本の実情や取組みの視察の機会等を設けた。

3-1-3 法律情報の普及・教育

(1) ラオスにおける法律のモデル教材作成支援

ラオスでは、1980 年代半ばより市場経済の進展を目指して、各ドナーの支援も得ながら法制度整備が進められてきたが、法律間で整合性が取れていない、適切な法運用が行なわれていない、法律・司法人材が乏しいなどの問題があった。

そこで、JICA では、民法、民事訴訟法、刑事訴訟法の 3 つの主要な法律について、実務家や研究者から構成されるそれぞれのワーキンググループメンバーとともに、ラオス法の理論と実

務上の問題を分析し、その結果を「モデルハンドブック」としてまとめることを通じて人材を育成する支援を実施している。

この支援は、直接にはモデルハンドブック作りのプロセスにおける現役法律家の育成を目指したものであるが、同時に、作成するハンドブックは、ラオスにおける法理論と実務上の問題についての分析をわかりやすく記述することを目指しており、大学での法学教育はじめ、様々な活用方法が期待される。

(2) ネパールにおける民法解説書の出版支援

ネパールでは、2006年の停戦合意を受け、選挙で選ばれた制憲議会議員による新憲法の制定が進められ、これに伴って、民事・刑事の基本的な法律も新たに編纂されることとなった。JICAは、ネパール司法省の要請により、ネパール民法・民事訴訟法起草タスクフォースによる民法起草作業にアドバイスを行う支援を実施し、民法草案が完成した。現在は、法律が成立した後速やかに民法が普及し、定着することを目指して、解説書の作成を支援している。

(3) モンゴルにおける判例集出版支援

モンゴルでは、90年代初頭の民主化以後、司法改革が行われてきたが、裁判所の判決は原則として一般に公開されておらず、当事者ですら判決書の謄本を入手するのが困難な場合がある、といった状況であった。JICAでは、2004年以降、法務内務省にアドバイザーを派遣し、前記の弁護士会の機能強化や、ADRの導入など、さまざまな支援を行うとともに、判決の公開を目指して、最高裁判所、国立法律研究所と協力し、民事事件の判例集を作成する支援を実施した。この判例集は、モンゴル国内で出された判決の中から、特に重要と考えられるものを選択し、全文を掲載したものである。なお、民事判例集の出版に前後して、他のドナーが刑事事件、行政事件の判例集も支援することとなった。

判例集は、裁判所や関係法律機関に配布されると同時に、国立研究所や一般の書店で有償販売された。売上げは国立法律研究所において基金として管理され、将来の継続的な判例集出版のための原資に充てられることとなり、その後、実際に、国立法律研究所による自主的な出版が行われている。判例集は、主に裁判官や裁判所の職員、弁護士などが業務の参考にしているが、一方で、大学でも講師や学生に広く読まれ、法学教育において事例に基づいた実務的な学習を進める契機となったほか、企業や市民にも貴重な法律情報として参照されている。ドナーの支援の成果品は、関係機関のみに無償配布されることが多いが、書店などで一般にも有償販売したことが、普及をより促進したといえる。

3-2 JICAによる分野横断的課題としてのリーガル・エンパワーメント支援

第1章において述べたように、「法整備」の最終的な裨益者である国民がその成果を享受するためには、リーガル・エンパワーメントの他に、(ア) ルールが整備されること、(イ) 法運用組織の機能が向上すること、が必要であり、(ウ) リーガル・エンパワーメントを含め、こうした取組みをパートナー国自身が独自の力で継続していけるように、(エ) 人材を育成することが不可欠である。これらは相互に関連し合っており、(ア) から (エ) の取組みのいずれが欠けても「法の

支配」の実現は叶わないこととなる¹²。

JICA の法整備支援においては、(ア) ルールの整備の取組みを支援する際も、(イ) 法運用組織の機能向上の取組みを支援する際も、パートナー国が利用者の視点、すなわち (ウ) 国民のリーガル・エンパワーメントの視点を踏まえて取組みを行えるよう、支援を実施している。

(1) 利用者の視点に立った「ルールの整備」

ルールは、社会の実情や市民の考えを踏まえたものでなければその目的を達することができない。社会の実情を反映したものでなければ、そのルールは社会に定着しないのであり、また、市民の考えが反映されたものでなければ、そのルールは市民に受け入れられない。これは、本報告書でも繰り返し述べてきたことであり、改めて説明をするまでもないであろう。

ところが、途上国においては、ルールの整備に際して、社会の実情や市民の考えを十分に反映することなく、ルール作りが行われる場合がある。例えば、国際金融機関が融資のコンディショナリティとしてある法律の成立を条件づける場合や、ある法律の制定が国際条約加盟の条件とされており、その条約の加盟を政治的に急いだ場合など、主に外部的な要因からルール作りを性急に行わなければならない場合がある。これに対して、パートナー国の起草・立法担当者において、実情調査（社会調査）の必要性への気づきが十分でなかったり、これらの調査に関する知見・ノウハウが十分でなかったりする場合もある。このいずれかの場合に（多くはオーバーラップするであろうが）、社会の実情や市民感覚から乖離したルールが成立することになる。

前者の問題は、国際社会全体で考えていかなければならない問題であるが、後者については、ルールの整備を支援するにあたり、パートナー国のキャパシティを向上させることによって解決を志向すべき課題である¹³。具体的には、ルールの整備支援において、法令の内容に対するインプットのみならず、実情調査（社会調査）の必要性への気づきを与え、これら調査に関する知見・ノウハウを共有するという方法を検討しなければならない。もちろん、社会・経済発展を急ぐパートナー国には、早急に対応しなければならない喫緊のニーズが数多く存在する。こうしたニーズに対応するためルールの整備を急ぐ必要があることは否定できない。しかしながら、社会の実情に目を向けることなく、一部のニーズに対処するだけのために作られたルールは、最終的に社会に根付くことはない（少なくとも相当の時間が経過しなければ根付かない）のであり、中長期的な視点からは、社会の実情に配慮したルール作りの方が、一見遠回りに見えても、実は近道であることも少なくない。言わば、対症療法のみを考えるのではなく、病理学的な視点を持って臨床に当たることが必要なのである¹⁴。

JICA は、上記の視点に鑑み、ルールの整備において、社会の実情を把握するための社会調査をパートナー国担当者と共同で実施することや、対話を重視しながらの起草支援、起草され

12 JICA 法整備支援に関するプロジェクト研究『「法の支配」の実現を目指して』（2009）参照。

13 この課題の解決は、やがて前者の課題に関しても、パートナー国の対処能力を向上させるであろう。すなわち、実情に配慮したルールの整備が必要であるという確固たる意識を有するようになれば、性急なルールの整備を求める外部者に対して、実情を踏まえた整備の必要性を説明することができるようになり、外部要因を一定の範囲で排除することが可能になるであろうし、仮に外部要因が排除できない場合であっても、一定の範囲で社会の実情を配慮したルールの整備が可能となるであろう。

14 なお、これは視点を持つことの必要性に関する議論であって、喫緊の課題への対処が必要な場合に早急にルールを整備することの必要性を否定するものではない。目の前で血を流している患者を目の前にしながら悠長な研究をしている場合でないとの批判は、ある意味では正当である。しかしながら、法整備への取組みは、短期的な視点と中長期的な視点の双方を持つことが必要であり、一方のためにもう一方を無視してよいというものではない。

た草案に関するパブリックコンサルテーションの実施の支援などの方法により、社会の実情や、市民の考え方にマッチしたルールの整備を支援してきた。

① ベトナムにおける民法改正案起草の際の社会調査支援

ベトナムにおいては、計画経済の下における法令を市場経済に適した法令に改正する取組みが継続しており、JICA は 1990 年代半ばから、市場経済化に向けた民法改正の取組みを支援してきた。民法は、自由な経済活動に不可欠な取引の一般的なルールを定めるものであり、その改正案の起草を適切に行うためには、現実の取引はどのように行われているのか、取引にはどのような慣習が存在するのか、国民はどういったニーズを有しているのか、といった点について、実体を把握する必要がある。

ところが、90 年代半ばのベトナム側起草担当者には、法令の起草に当たり現状を把握することが必要であることについての意識は十分ではなかった。長く染みついた社会主義的な法令の考え方の下にあっては、法令は政策の実現の手段であり、法令は「あるべき姿」を示すものであり、法令を起草するに際して現状に配慮したり、ニーズを調査したりすることは重視されていなかったのである。

しかし、市場経済化を進めようとするのであれば、取引の現状の理解や、取引慣行の把握、取引社会のニーズに合わせた起草内容の検討などが必要不可欠である。市場経済の下にあっては、商品は自由に流通するのであり、法令の内容はそうした現実の取引・流通を活性化するものでなければならず、取引・流通に不具合が生じたときに適切に修正するものでなければならない。このようなルールを策定しようとするならば、起草するに当たって取引・流通の実態を把握することは当然の前提となる。また、我が国においても、民事分野の法令の起草に際して現状分析を行うことは通例であり、過去には全国規模の慣行調査を実施した経験も有する。こうした我が国の経験も踏まえ、JICA の支援においては、ベトナム司法省が行う社会調査（実態調査）の支援を行った。その調査に基づいて、ベトナム司法省を中心とする民法改正起草委員会は改正民法草案を作成し、2005 年に改正民法が成立した。

ベトナムにおいては、その後も、国家賠償法（2008 年成立）、民事判決執行法（2008 年成立）、不動産登記法、担保取引登録令などの起草支援が実施されているところ、こうした法令の起草支援においても、JICA はベトナムのイニシアチブによる社会調査への支援を行っている。なお、ベトナムにおいては、法案起草に当たっての社会調査の必要性の理解やノウハウの研究が進み、2009 年に成立した「法規範文書制定に関する法律」においては、法案起草に際して RIA サーベイ¹⁵を行うことが法案起草責任官庁に義務付けられた。この「法規範文書制定に関する法律」の内容自体は JICA の起草支援の対象ではないが、ベトナム側で社会調査の必要性の気づきを得て、それを重要な法令の内容にした点において、JICA のキャパシティ・ディベロップメント支援の好事例の一つと言えよう。

② カンボジア民法・民訴法起草支援の際の共同起草作業

カンボジアは、長く続いた内戦の終結後、平和で安定した国づくりへの取組みを進めており、完全に破壊されてしまった法秩序を再構築すべく、基本的な法律を新たに起草する必要

15 脚注 9 参照。

に迫られていた。JICA は 1999 年からカンボジアの民法・民事訴訟法起草に関する支援を開始し、2006 年に民事訴訟法が、2007 年に民法がそれぞれ成立した。

これらの法律の起草支援においては、対話を重視した共同作業が行われた。すなわち、単に条文案を作って渡すのではなく、条文案の一つ一つについて意見交換を行い、カンボジアの実情を確認するとともに、法律制定後の運用可能性についてカンボジア側起草グループメンバーからの意見を聞きながら起草支援が進められた。なお、カンボジアでは、内戦等の影響により、長く法律・司法制度が機能しない状況が続いたため、法令に用いる抽象的な用語も一つ一つ確定していく必要があり、また、新しい法令の内容をユーザーである国民が理解する手助けとして、用語の意味や条文の内容について解説する資料も必要とされた。JICA の支援においては、こうしたニーズにも対応し、新しい民法・民事訴訟法が社会に根付き、その恩恵を国民が受けられるよう、法令用語集や民法・民事訴訟法の解説書などの作成も支援を行った。また、JICA は、起草支援と並行して、2002 年から弁護士養成支援、2004 年から裁判官・検察官養成支援を実施し、これらの人材育成支援を通じて、新しい民法・民事訴訟法が社会に根付くための取組みを支援している。

こうした支援に基づき成立した民法・民事訴訟法は、関連制度の準備、周知の期間を経て、現在、適用が開始されており、今後、解説書の活用や人材育成への支援を通じて、カンボジア社会の基本的なルールとして定着することが望まれている。そして、これらのルールが適切に機能することによって、カンボジアの平和で安定した国づくりへの努力が実を結ぶことが期待される。

③ ネパールにおけるパブリックコンサルテーション実施支援

ネパールは、2006 年の停戦合意を受け、選挙で選ばれた制憲会議員による新憲法の制定が進められており、これに伴って、民事・刑事の基本的な法律も新たに編纂することとした。JICA は、ネパール司法省の要請を受け、ネパール民法・民事訴訟法起草タスクフォースによる、ネパール民法の起草作業に対する支援を実施した。

この支援においては、上記タスクフォースが作成した準備草案に基づき、その内容について対話を繰り返し、ネパール司法省が求めた「ネパールの文化に配慮しつつ国際スタンダードにマッチした」民法となるよう、支援が進められた。ネパールの文化への配慮に関し、日本は、自らの法整備のプロセスにおいて、独自の文化・風土、既存の制度などに適合するようにカスタマイズしながら西欧法を取り入れてきた経験を有しているところ、ネパールは、こうした経験を日本が有していることに着目して、民法起草支援を日本に要請した。また、国際スタンダードに合致させる点については、日本の法令の内容のみならず、各国法や EU 契約法原則といった国際枠組みの中から、最先端の条文の紹介も行われた。

こうした支援の結果、タスクフォースの手による民法草案が完成したが、ネパールは多数の民族から構成される国家であり、民族ごとに異なる風習・伝統・文化があることから、タスクフォースは地方でのパブリックコンサルテーションを実施することとし、JICA もこの取組みを支援した。パブリックコンサルテーションにおいては、さまざまな民族、さまざまな階層の参加者から多数の意見が寄せられ、タスクフォースはこうした意見も参考にしながら、最終的な詰めを行い、首相提出版となる最終草案が作成された。現在最終草案は立法化のプロセスにあり、立法化された後は、ネパールで最初の民法典（これまでは個別法に分かれて

いた。)として、ネパール社会の基本的なルールとして活用されることが期待されている。

(2) 利用者の視点に立った法運用組織の機能向上

法運用組織の存在意義は、これらの組織が法を適切に運用することによって法の目的が適切に達成される、すなわち最終的な裨益者である国民に成果が届くことにある。こうした組織の機能強化を考えるにあたり、国民の法へのアクセスの保障や制度の利用の促進の視点は不可欠である。

ところが、組織改善は往々にして自己目的化し、最終的な裨益者のニーズや便益を置き去りにして、自らの機関の利益を追求しがちである。各国ごとに程度は異なるが、セクショナリズムが蔓延していたり、省益主義に走る傾向があったりする事例は少なからず存在し、加えて、国づくりの途上にある国では、組織の機能強化は権限争いの道具ともなり得る。リソースが極めて限られている中で組織の機能強化に取り組まなければならないパートナー国の対象機関は、国民目線での中長期的な改善よりも自らの機関の実益を短期的に求めがちである。さらに、中央機関の能力向上にばかり目が行ってしまい、国民・住民の窓口となる現場の実務改善が疎かになってしまうこともある。このように、パートナー国の機関は、全体を俯瞰して中長期的に最終裨益者である国民・住民に成果を還元するという視点での機能向上の方向性を保ちにくいのが現状である。

法運用組織の機能強化を支援対象とする場合には、上記のような事情にも配慮し、最終的な裨益者に成果が還元される形での機能強化が図られるよう、パートナー国関係者と十分に認識を共有した上で、支援を実施する必要がある。JICAでは、上記の視点に鑑み、対象機関との対話によって認識の共有を図りながら、パートナー国全体の状況や対象機関の現状を考慮しながら、どのようにすれば成果が国民に裨益するのかを検討しつつ、法運用組織の機能向上を支援してきた。

① ラオスにおける中長期的な発展を前提とする組織機能の向上支援

ラオスにおいては、市場経済化に向けた政策に基づき、1990年代から法整備が進められてきたが、外国法に倣って導入された法律はラオスにおける実務を十分に反映しておらず、そうした法律の下で実務家はそれぞれ法律の運用に苦慮し、ときには法律に基づかない実務が行われていることもあった。JICAは、2000年初頭から本格的な協力を開始し、教科書や実務マニュアルなどの作成の支援を行ったが、急速なラオス社会の変化に即してラオスの法・司法制度を自立的に発展させていくためには、ラオスの人々の手によってラオス法を分析し、ラオス法の理論的な枠組みを検討しながら、法律と実務を結びつけることが必要と考えられた。そうしなければ、今後も法律に基づかない実務が展開されてしまい、国民にとって予測可能性のない不安定な社会が形成されてしまうからである。

そこで、JICAは、4つの司法関係機関、すなわち、司法省、最高人民裁判所、最高人民検察院、ラオス国立大学とともに、民法、民事訴訟法、刑事訴訟法について、現行法と実務のプラクティスの双方を整理・分析し、実務や研究や研修や教育に役立つハンドブックの作成を通じながら組織の機能強化・人材育成に取り組んでいる。この協力の開始前の協議では、実務改善を急ぐ必要があったことから、上記司法関係機関は、それぞれの課題に対処する個別の協力も希望していた。しかし、法律と実務が矛盾している、またしかも機関ごとに法律

の捉え方が異なることが、国民生活に不利益を生じさせていることを相互に確認し、それぞれのプラクティスを持ち寄り、一緒に検討することによって、矛盾のない法運用を可能にしていこうとする方向性で認識が一致した。

この取組みは、現在、民法の事例集や民事訴訟法・刑事訴訟法の手続チャートという形にまとまってきており、これらはラオスの法律と実務の間の溝を埋め、法運用機関における統一的な法運用能力の向上及び国民の法律の理解の促進につながることを期待されるほか、この活動を通じて育成された人材が「ラオス法」の理論と実務を発展させていくことが期待される。さらに、ラオスが進めている新しい民事訴訟法・刑事訴訟法の起草においても、実務や現行法の分析等の協力の成果が活用されているほか、今後進められる民法典編纂作業に当たっても、知見の活用が期待される。このように、国民目線に立った運用組織の機能向上への取組み・人材育成への取組みの成果は、法律作りに裨益することも期待されるのである。

② カンボジア王立裁判官検察官養成校におけるカリキュラム・教材の改善支援

カンボジアにおいては、前述のとおり、内戦により司法制度は壊滅的な打撃を受けたため、能力のある裁判官・検察官の育成が重要な課題であった。カンボジアは 2002 年に王立裁判官検察官養成校を開校し、JICA は民事法の教育についてカリキュラムや教材の改善の支援に取り組んだ。

養成校の開設当初は、教官の不足、教材の不足が甚だしく、必要性よりも、リソースのある科目を優先してカリキュラムの穴を埋めるという状況であった。また、大学教育において法理論の学習が十分に行われていないために、本来はより実践的な教育を行うべき同校においても、理論面の教育に力を注がざるを得ず、関係者の努力にもかかわらず、国民の期待に応えうる司法の担い手たる法律実務家を養成するという目的を十分果たせていなかった。JICA は、王立裁判官検察官養成校の関係者と協議を繰り返し、実務家養成に相応しいカリキュラムへの改善を支援したほか、訴訟手続を実務と法令に即して詳しく学べるように、同校の教育に模擬裁判を導入する支援を行った。教材についても、実務においてすぐに直面する問題に対応できるようにするため、手続マニュアルの作成を支援したり、同校の卒業生が実務において直面した質問を集約して、QA 集として他の実務家にも共有したりした。また、卒業生から選抜したメンバーを、将来同校の教官になるべき人材としてトレーニングし、教員人材の充実を図るとともに、支援の各場面において、現役裁判官でもある彼らの意見を取り入れ、カンボジアの実務の現状と乖離しないように配慮した。

こうした支援の結果、王立裁判官検察官養成校のカリキュラム・教材は、徐々にではあるが、より実務家養成機関に相応しいものに改善されてきている。そして、JICA の支援は、カリキュラム・教材の改善といった喫緊の課題への対処に加え、養成校の機能向上、自立的運営も目指しており、法律実務家の養成を通じて、国民の信頼を得られる司法制度の再構築というより大きな目標を実現できるよう、関係者の努力が続いている。

③ ベトナムにおける国家賠償法成立後の運用支援

ベトナムに対する支援においては、2005 年から、ベトナム司法省が責任官庁となって起草が進められていた国家賠償法に対する支援も行われた。起草内容について、ベトナム国家賠償法起草委員会メンバーとの対話を繰り返し、司法省が実施する地方でのサーベイに協力し、

また、国家賠償実務について日本で実際に学ぶなどの過程を経て草案が起草され、2009年に国家賠償法として制定された。

しかし、国家賠償はベトナムにとってまったく新しい制度であり、損害の賠償を求める国民の窓口となる地方の公務員にとっては、成立した法律のみを手渡されても、その内容を十分に理解することは容易でなかった。これでは国家賠償法が適切に運用され、国民がその内容に基づき適正な賠償を求めることは期待できないため、現場の司法関係者や公務員の法律の内容の正確な理解が急務であった。そこで、ベトナム司法省は、JICAの協力の下、現場の公務員を対象に「国家賠償法トレーニングコース」を各地方で実施した。このコースに参加した地方の公務員からは、内容の理解のために有益であることや、中央機関の担当者に内容を直接聞けることのメリットなどポジティブな評価が聞かれた。

こうした制定法の普及に関する取組みは、ベトナムにおいて従前から実施されていたものの、その重要性についての気づきは近年ますます増してきたと言えよう。JICAにおいても、ベトナムに対する支援を開始した当初は、中央機関のキャパシティの向上に目が向きがちであったが、協力が進捗するにつれて、ベトナムの現状も把握され、ベトナム法整備支援の方向性についても検討が進められた。現在のベトナム法整備支援は、ベトナムとの対話を通じ、法律をいかに適切に運用し、国民に成果を裨益していくかに重点を置いて実施されている。

3-3 国際的な潮流

ここでは、他のドナー機関によるリーガル・エンパワーメントのアプローチとして、この分野で幅広い活動を展開しているUNDPと世界銀行を取り上げ、それぞれのアプローチを、両機関の取りまとめた報告書をベースに紹介する。

両機関とも、リーガル・エンパワーメントをより直接的に貧困削減のための支援として位置付けており、法的なID取得の促進なども活動のスコープに含めている他、貧困層の具体的なニーズに焦点を当てたアプローチとなっている。

3-3-1 国際連合及び国連開発計画による「リーガル・エンパワーメント」

国際連合は、国連開発計画の主導のもと、2005年に「貧困層のリーガル・エンパワーメント委員会」¹⁶を立ち上げ、2008年に同委員会の最終報告（“Making the Law Work for Everyone” Volume I and II）が作成された。

この報告書では、特に貧困層のリーガル・エンパワーメントに対象を限定しつつ、リーガル・エンパワーメントの4つの柱として、次のものを挙げ、様々なアプローチが説明されている。

- 1 司法アクセスと法の支配（Access to Justice and the Rule of Law）
- 2 財産権（Property Rights）
- 3 労働権（Labour Rights）
- 4 ビジネスにおける権利（Business Rights）

1の司法アクセスの中には、貧困層にも利用可能な公正な法制度の構築、外部監査などを含む行政システムへのアクセス向上が含まれている他、途上国の貧困層において、そもそも出生登録や住民登録が行われていないことも多い現状に鑑み、市民としての権利享受の前提となる

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法的な ID の取得の重要性が強調されるとともに、住民登録制度の整備、それらの手続へのアクセス向上が重要な要素として挙げられている。

また、特に、貧困層にも利用可能な公正な法制度の構築の具体的な内容として、(1) 低コストでの法的サービス提供（パラリーガルの活用、学生によるリーガルクリニックの活用、弁護士会の強化）、(2) エンパワーメントに資する法的サービスの提供、(3) ADR の拡充、(4) ワンストップサービスなど他のサービスと合わせたアクセス、(5) 法律家の資格制限や養成制度に関する障壁の除去といったアプローチが掲げられている。この他、貧困層のセルフヘルプの強化とそのため法律情報の提供、インフォーマルな、または慣習による紛争解決手段の改善も、法的サービスを利用しやすくし、リーガル・エンパワーメントを実現する方法として挙げられている。なお、法律扶助（リーガルエイド）制度に関しては、これらの法的サービスへの財政的なアクセスの問題として、権利保護保険とともに、意義と問題点の分析がなされている。

2 から 4 は、特に貧困削減を目標とした場合に重要となる権利について、具体的なリーガル・エンパワーメントへのアプローチを示している。2 の財産権では、主に土地の所有権や利用権の保障をはじめとする財産権を正当に保障することで貧困の削減を目指すアプローチと、女性や先住民族、難民などの弱者への配慮の必要性が指摘されている。3 の労働権については、貧困層にとって自身の労働力が最も大きな財産であり、生計の手段であるとの認識の下、それを適切に保護するために、労働条件や安全の確保のための制度整備とともに、労働関係における権利保護の重要性を指摘する。4 のビジネスにおける権利については、家内工業などの小規模なビジネスが貧困層の生計の手段として多くみられることから、市場や金融サービスへのアクセスを改善することによって貧困層のエンパワーメントが達成されることが指摘されている。

これらの権利の具体的な内容には、1 の法的サービスの実現によって実現され得るものと、当該権利に特有の政策配慮や制度整備によって実現されるものとの両方が含まれる。

上記報告に基づき、現在、国連開発計画の中に、貧困層へのリーガル・エンパワーメントを推進するグループ¹⁷が組織され、前述の 4 つの柱に対応した活動を行っている。¹⁸

3-3-2 世界銀行による「リーガル・エンパワーメント」に向けた活動

世界銀行でも、貧困削減の目標のもと、法と正義分野の一環として、司法アクセス向上とリーガル・エンパワーメントのための様々な活動を実施しており、この分野における世界銀行の活動を分析した 2009 年の報告書（“Access to Justice and Legal Empowerment: A Review of World Bank Practice” Vivek Maru）では、世界銀行の活動を以下の 5 つのカテゴリーに分けている。

- 1 裁判所改革
- 2 法的サービスとリーガルエイド
- 3 法律情報の普及、法教育
- 4 ADR
- 5 公共セクターの透明性

¹⁷ Initiative on Legal Empowerment of the Poor

¹⁸ http://www.undp.org/legalempowerment/focus_intro.shtml

1. 財産権と土地保有権 (Property Rights and Tenure Security)、2. 生計手段と自営事業への権利 (Rights to Livelihood and Entrepreneurship)、3. 労働権 (Labour Rights)、4. 法の支配と司法アクセス (Rule of Law and Access to Justice)

1の裁判所改革では、事件管理システムの構築の他に、裁判所の建物の建設や改築によって、物理的な裁判所へのアクセスが向上する場合があることが指摘されている。世界銀行の活動例として、ベネズエラの司法インフラ開発プロジェクトにおいて、社会的給付に関する訴訟の平均審理期間が、プロジェクト開始前と比較して、地域により半分から3分の1にまで短縮された例、フィリピンの司法改革支援プロジェクトにおいて、移動裁判所（Mobile Courts）を導入した例などが紹介されている。

2の法的サービス、リーガルエイドは、世界銀行の支援の中でも比較的新しいものとされ、90年代のエクアドルの司法改革プロジェクトが、初めて法的サービスの実施を組み込んだ大規模なプロジェクトであったとされている。

このプロジェクトでは、のべ40の市民組織を通じてさまざまな活動を行ったが、その中には貧困層の女性を対象に無料の法的サービスを提供した2つのNGOも含まれていた。同国では、司法制度の権威主義や腐敗、女性蔑視により、女性が法的サービスを利用するのは無料であっても難しいと考えられていたが、このプロジェクトは相応の効果を示し、特に子供の扶養や家庭内暴力などのケースにおいて、女性に対する心理的、医学的救済やシェルター紹介など、総合的な解決を提供した。

引き続いて行われた貧困層のための法と正義プロジェクトでは、弁護士会への研修とセットでリーガルエイド事業が実施され、弁護士会の積極的な関与を得るとともに、同国において公益弁護の文化を生み出すきっかけとなった。

タンザニア、ガーナ、マリ、モーリタニアなどのアフリカ圏においても、弁護士会と協働したものと女性をターゲットにしたものを含む、いくつかのリーガルエイド事業が実施されている。

このほか、コミュニティから選ばれた人々を準法律家（パラリーガル）としてトレーニングし、代理人や調停人として活用する案件が、シエラレオネ、インドネシアで実施された。

リーガルエイドに関しては、市民のエンパワーメントによって国家から敵対視される可能性を孕んでいるため、リーガルエイド機関の独立性を確保するようにしたり、逆に国家にとっても有益とみなされるように、より全体的な発展のプロセスに結びつける配慮をしたりする必要性も指摘されている。国家との関係は、リーガルエイドに不可欠な財政面での持続可能性にも影響する。

3番目の法律情報の普及、法教育については、テレビやラジオ番組に法律情報をわかりやすく盛り込む支援、情報を発信するNGO組織や、メディアを志す学生の教育など発信者向けの支援のほか、特定の領域の法令に関する支援と合わせた普及活動などが挙げられている。支援にあたっては、地域の特性に配慮すること（メディアの浸透度や言語）、貧困層に向けた具体的な内容にすること、政府の情報開示やメディアの独立、市民によるモニタリングなどに配慮することの重要性が指摘されている。

4のADRは、1の裁判所改革や2に含まれるパラリーガルの活用とも重なる部分が多いが、よりコストが低く、より迅速で、より平和的な紛争解決として、リーガル・エンパワーメントにつながるとされる。エクアドルの司法改革プロジェクト、貧困層のための法と正義プロジェクトでは、それぞれ、裁判所併設型のADRと、コミュニティ型のADRが導入された。

一方、ADRについては、当事者の自主性を尊重する手段であることから、逆に結論が弱者に妥協を強制するものになっていないかが常に認識すべき問題点として挙げられる。

5 番目の公共セクターの透明性向上については、貧困層の法的な ID 取得に関する問題が指摘されている。このほか、保健や教育などの社会的権利の実施を求める訴訟が貧困層の権利救済に有効であることから、今後支援を検討すべき分野として挙げられており、地方分権、オンブズマン制度のほか、市民の利益を保護するための行政手続きの構築についても、リーガル・エンパワーメントにつながる可能性が指摘されている。

第4章 まとめ これからの法整備支援とリーガル・エンパワーメント

4-1 一般的なリーガル・エンパワーメント支援とその留意点

1-1において述べたように、リーガル・エンパワーメントは、最大公約数的には（a）司法制度、紛争解決制度へのアクセス向上、（b）その他法的サービス全般へのアクセスの向上及び利用促進、（c）法律情報の普及・教育を含む概念である。

JICAでは、これまで、主にこれら（a）（b）（c）の活動を、JICAの法整備支援の3本柱¹⁹のうちの（ウ）リーガル・エンパワーメント支援と位置付けてきた。

これらは、法令の内容や制度の設計そのものを検討するのではなく、それら法令や制度をいかにして法的サービスの「受け手」の手元に届け、利用してもらうかという活動である。

しかし、同時に、これらの活動においては、制度設計と担い手の人材育成もさることながら、もっとも鍵となるのは、法的サービスを受け手に届ける費用を誰がどのように負担するかの問題である。このことは、各国から紹介された取組みの中でも、たとえば法律扶助に関して、政府からの資金提供の必要性が一番の課題であるとされていることに端的にあらわれている（2-1-1（1））。

これまで、JICAの法整備支援においては、リーガル・エンパワーメント支援に分類される活動は、3本の柱の1つとされながらも比較的少なかった。それは、JICAの法整備支援が資金供与ではなく技術移転を中心としていたために、リーガル・エンパワーメントにおいて重要な要素となる資金の問題を解決できず、活動の自立発展性が担保できなかったことが大きな原因である。

このことは、JICAの法整備支援が、日本自身の法制度構築の試行錯誤の経験を他国に伝える技術移転を主軸にする限り、今後も大きく変わることはないものであるが、これらの活動の中でも、特に制度設計や担い手の人材育成については、日本がその知見を伝えていく意義と効果が大きいといえる。

たとえば、ADR構築支援については、制度設計の占める割合が大きく、技術協力としての支援にも馴染みやすいこと、制度設計によっては、利用者からの回収、裁判所やコミュニティ等の既存のリソースの活用等により、費用負担の問題も解決できる可能性があることから、既にいくつかのプロジェクト実績がある。弁護士の養成や弁護士会の機能強化についても同様である。

一方、法律扶助や無料法律相談、国選弁護人等の制度については、財源を提供することはできないものの、制度設計に際して日本の知見を提供することは可能かつ有意義といえる。

なお、これらの支援にあたって留意すべきこととして、各国に共通する課題として、土地紛争の増加、家庭内事件、特にドメスティックバイオレンスの問題が指摘されていること（2-1）に照らし、まず、ADR制度構築支援については、ADR機関、調停人の中立性を担保し、紛争を不当に抑え込んだり、泣き寝入りをさらに正当化したりするような運営を許さない制度構築が求められる。また、法律扶助については、政府等の公的資金の獲得が課題となる一方、各国の経験の紹介の中で、土地問題をめぐって政府と住民が対立する事例が多いとの指摘がある（2-1）こと等に鑑み、財政基盤は公的資金によって強化されるとしても、弁護士等の活動の独立性・客観性は確保される制度設計とする配慮が必要となる。国選弁護人に関しても同様で、裁判所や警

19. (ア) 具体的な法案の起草の支援や、起草された草案の立法化の促進の支援などの「ルールの整備支援」、(イ) 法を執行・運用する機関や法を適用して紛争を解決する機関の機能の改善に向けた支援などの「法運用組織の機能強化支援」、(ウ) 人々の法・司法制度へのアクセスの向上に対する支援などの「リーガル・エンパワーメント支援」

察を通じて公的費用で選任されるとしても、その活動は独立したものでなければならない。

4-2 分野横断的課題としてのリーガル・エンパワーメント

他方、これまでも繰り返し述べたように（1-1、2-2、3-2）、リーガル・エンパワーメントは、上記のような活動だけでは十分でなく、分野横断的課題としてのリーガル・エンパワーメントへの配慮も重要である。すなわち、ルールが市民に受け入れられ、根付いていくために、ルール作りの段階で、社会の実情や市民の考えを反映する必要がある、法運用組織の機能向上を図る際には、アクセス保障や利用促進の視点が求められる。

これらは、これまで JICA の法整備支援の中では、必ずしも当初からリーガル・エンパワーメント支援として認識されてきたわけではなかったが、（ア）ルールの整備支援、（イ）法運用組織の機能強化支援において、常に配慮されてきたものである。結果としてこれまでの支援においてその意図が実現されているかどうかは、今後の評価に委ねられるものもあるが、このような配慮の重要性には今後も変わりはなく、JICA の実施する法整備支援においては、起草支援であっても、組織強化支援であっても、常に受け手のアクセスや利用促進の観点からの検証が必要とされる。

4-3 むすび

これまで JICA では、法整備支援の活動を（ア）ルールの整備支援、（イ）法運用組織の機能強化支援、（ウ）リーガル・エンパワーメント支援の3つの柱に分類し、これらすべての支援に共通する基盤として、（エ）人材育成支援を位置づけてきた。

しかし、実は（ウ）リーガル・エンパワーメントは、法的サービスの受け手が法令や制度を使いやすくするために、（ア）ルールの整備、（イ）法運用組織の機能強化を支援するにあたって、横断的に配慮すべきものと位置付けられる。それは、いわば「送り手」の強化である（エ）人材育成支援に対して、「受け手」への配慮として、ルールとその運用機関を担ぐ車の両輪にもたとえられるものかもしれない。

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Information Sheet – Nepal Bar Association

I General Information

Nepal Bar Association (NBA) was established in December 21st 1956. At that time, legal education in Nepal was in primitive stage. Thus, most of the lawyers were licensed on the basis of their experience in the legal field and without any academic qualification in law. Gradually, afterward law graduates from the universities started replacing traditional lawyers and now a days most of the member lawyers are with formal academic degrees from the universities.



In its preliminary stage NEBA was functional without formal registration and formally in the year 1963 His majesty's Government of Nepal registered it as a professional organization under the provision of National Guidance Act 1961.

Previously the Supreme Court of Nepal was the authority to issue a practicing license. Moreover, Disciplinary Committee of the Supreme Court of Nepal was responsible for any kind of disciplinary action against lawyers. As a result of continued effort of NEBA in the year 1993 Nepal Bar Council Act was evolved and Nepal Bar Council composed under provision of above act has full authority for issuing license to lawyers and to take disciplinary action against any lawyer. Bar Council Act 1993 has recognized NEBA and Vice-president of Bar Council is 'President of NEBA. Additionally, most of the Members of Bar Council are nominated/elected amongst members of NEBA. Legal Aid Act -1997 has also recognized NEBA. Government sponsored legal aid activities are also to be conducted through NEBA. Central Legal Aid Committee, a statutory body, chaired by HMG Minister of Law and Justice, comprises president of NEBA as ex officio member and secretary General of NEBA as ex officio member-secretary. Thus NEBA is not only a professional organization but also a statutorily recognized institution having responsibility of performing some legally specified duties.

Nepal Bar Association is the federal organization of Nepalese practicing Lawyers. The Central Executive Committee (CEC) is the supreme executive body of it, which is popularly known as NEBA. Direct voting of all members elects Central Executive Committee. In addition to CEC, NEBA has 84 units, spread all over the country. Composition of such units are based upon structure of courts. The CEC has 17 officials containing President - 1, Vice-President - 5(from 5 Regions), Secretary-General - 1, Treasurer - 1 and Members - 9.

1 Number of stakeholders in the Country

1-1-1 Population

Nepal lies between India and China. Nepal's population is 25 million.

1-1-2 Number of lawyers/attorneys-at-law

There are around 12,000 lawyers including senior advocates, advocates and pleader.

1-1-3 Number of judges

1-1-4 Number of prosecutors

2 Number of court cases handled by first instance courts

In the fiscal Year 2009/2010(2066/2067) total 82,631 cases were handled by first instance Courts. 82,631

1-2-1 Number of civil cases

50,383 civil cases

1-2-2 Number of family cases

1-2-3 Number of criminal cases

32,248 criminal cases

3 Attorneys for Defendants in Criminal Procedures

Please explain in what kinds of criminal cases attorneys must be appointed for suspects or defendants in your country. Please also explain who appoints and bears the costs for the attorneys appointed.

4 Profile of the Bar Association/ Organization and Attorney System

1-4-1 Location and contact information

Nepal Bar Association Ramshah Path, Kathmandu, Nepal, P.O.Box No 5502 Tel No: 0977-01-4254647, Fax: 0977-01-4218049 Web: nepalbar.org, email:neba@wlink.com.np, premkhadka_adv@yahoo.com, Cell: 0977-9851063356

1-4-2 History of Organization

History is available in general information.

1-4-3 Governmental Supervision of the Organization and Registration of Members (Please explain whether or not, and if so how, your organization is

supervised by the government.)

1-4-4 Main Activities of the Organization

Democracy, Rule of Law, Independent Judiciary and Human Rights activities.

1-4-5 Categories of Membership

Senior Advocate, Advocate, Pleader and Agent

1-4-6 Number of Members (as of 2011)

Senior Advocate, Advocate, Pleader and Agent are around 12,000.

1-4-7 Membership (voluntary or compulsory, please also explain where such registration should be filed)

NBA has no direct membership scheme. All the members of NBA units are members of NBA, Membership or Bar are Voluntary. NBA has its units all three tier of the courts VIZ, Supreme Court, Appellate Court And District Court

1-4-8 Executives and Officers, Number of Positions

One President, Five Vice-President (Five Regional Office One Each), One Secretary General, One Treasurer and Nine Members including Seventeen Central Executive Committee

1-4-9 Finances and membership fees (Please provide the yearly budget amount of your organization and also the yearly membership fees in USD)

Each Bar Units decided their membership fees according to their decisions.

1-4-10 Journal, Newsletter, Website

English and Nepali version Nayadoot, www.nepalbar.org

1-4-11 Other Bar Associations (including the provincial associations) in the Country and the Number of Members of such Other Organizations

Nepal Bar Association is sole organization of legal profession.

1-4-12 Qualifications To Become an Attorney

Minimum Bachelor Degree and 15 years practice in law field.

1-4-13 Laws, Decrees or Regulations on Attorneys (Please explain if there are any laws, decrees or regulations on attorneys in your country. Please provide the JFBA an English translation if they are available.)

1-4-14 Code of Ethics and/or Rules of Professional Conduct (Please provide the JFBA an English translation if an English translation of these is available.)

1-4-15 Disciplinary Functions (Please explain who has the power to take disciplinary action against members.)

Bar Council has the power to take disciplinary action against members. The President of NBA is Vice president of Bar Council.

1-4-16 Continuous Legal Education for Members (Please explain about the program, if any)

Mediation Training, Legal Awareness, Legal Education, Mobile Clinic, Para Legal etc

1-4-17 Challenges the Organization is Facing (Please briefly explain the problems and challenges your organization is currently facing.)

II Legal Aid

2-1 Please describe briefly the history of legal aid in your country.

Applying the principle of natural justice and equality of arms the Nepalese legal system has been providing legal aid to the poor, marginalized and disenfranchised groups in the society since the decade of 1960. Especially, after 1990 the legal aid has somehow grown up as Nepal Bar Association took lead to bring the legal aid system in extended form in more institutionalized. The Constitution of the Kingdom of Nepal, 1990 had provided that the right to consult and to be defended by a lawyer as a fundamental right. The constitutional development has placed right to legal aid for indigent as fundamental entitlement. These all instruct for a formal existence of legal aid. As the poor, marginalized and disenfranchised people cannot exercise this right where system of legal aid formally exist but does not operates actively to bring about the desired outcomes. Therefore it needs to be accessible, effective and efficient.

Recognizing this fact, the Supreme Court of Nepal, Appellate Courts, District Courts and Nepal Bar Association are providing legal aid in different parts of the country. Generally, there are four sources of legal aid in practice. They are Courts (*Baitanik*), Legal Aid Committees, Bar Units and NGOs. Among them some are providing legal aid since five decades. But, still legal aid in the country has not yet been firmly institutionalized.

The first source of legal aid is Courts, which provide the service through court-remunerated lawyer (*Baitanik Waki*) appointed by the court itself. There are 75 District Courts, 16 Appellate Courts and Supreme Court in the country. In each of these courts, one court-remunerated lawyer is appointed by the courts for a period of one year. However, in the Supreme Court, normally there are two court-remunerated lawyers. The Courts have provided legal aid throughout the country but despite this strength the legal aid provided by the court is less effective and far from being satisfactorily.

Another source of legal aid in Nepal is the Central and District Legal Aid Committees (DLAC). There is a District Legal Aid Committee in each District where the Legal Aid Act, 1997 has been implemented. Presently the Act has been implemented in 33 Districts. In each of these Districts, a DLAC has been formed that has a single room office with one staff of His Majesty's Government (HMG). Statutory back up is one of the most important strengths of this type of legal aid but it is available only in limited Districts. Because it does not have its own lawyer(s) for providing legal aid, it depends on Bar for the legal aid lawyers. Bar assigns lawyers to provide legal aid but the lawyers are paid very low. The fund provided by the Government for legal aid is very nominal. Therefore, it is not being able to create tangible impacts.

Nepal Bar Association is another source of legal aid. It provides legal aid through different Bar Units. It has a Unit in the Supreme Court and each Unit in all of the Appellate Courts. It has District Units in most of the District Courts as well. To date there are 84 units having coverage across Nepal. It also has a Women Lawyer Centres under 29 Units where there are more than three women lawyers practicing. One of the most acute weaknesses of the Bar is that it does not have its own funding for the legal aid. It depends on donors for fund. Currently the Bar is providing legal aid with the assistance of the Norwegian Bar Association.

The fourth source of legal aid is domestic and international non-governmental organizations. The legal aid they provide has weaknesses such as over donor-driven, non-transparent financial transactions, short-term project-based

service and discontinuity, urban-area centric coverage of service and un-sustainability.

The fact is that existing legal aid in Nepal has not yet been widely used by the targeted groups, especially by the poor, marginalized, disenfranchised, minors and women. In most of the cases, the targeted groups are not aware or informed about the legal aid in place. On the other hand, who are informed and aware about the legal aid in place have no high confidence to it and therefore do not resort to it. One of the reasons of this is that legal aid in Nepal is not effective.

2-2 Please outline the legal aid organization and its programs.

Actually there is many governmental and non governmental organization provide the legal aid service for unprivileged people who have not direct access to claim their right. Basically Nepal Bar Association Access to justice Project has provided legal Aid service and legal awareness program for needy people. Under Access to Justice Project, 29 women Lawyers centers are assisting to providing legal aid services to unprivileged people especially for women. Access to Justice Project aims at improving accessibility of justice to weakest and most vulnerable groups in the communities. The Legal aid is specifically guided by objectives as:

- To provide court-oriented legal aid to the indigent and disadvantaged people,
- To launch a strategic legal aid campaign through legal literacy programs to arouse people's consciousness about their rights.
- Preparation of necessary petitions and application and representation in courts, tribunals and other quasi-judicial bodies on behalf of the indigent and poor persons.
- Collection of information about the women prisoners to provide them free legal assistance and representation of all indigent women by *Waris* (Authorized person to appear in courts at a given them) in courts.
- Providing direct financial help to indigent women, *Dalits* and ethnic groups to meet expenses like court fees, transportation and similar essential expenses. Settlement of dispute through conciliation and/or compromise. Training to the persons responsible for alternative dispute resolution or developing paralegal human resources. Launch community mobile legal aid clinic and awareness campaigns for deprived, remote area and communities. Policy and legal reform and advocacy. Promotion of legal knowledge by including information in educational curricula and paralegal training and awareness activities of legal knowledge.

2-2-1 Name of the legal aid organization/head office location

1. Central Legal Aid Committee
Secretariat, Nepal Bar Association,
Ramshahpath, Kathmandu Nepal
(Supreme Court Premises)

2. Nepal Bar Association
Access to Justice Project
(Cooperation between Norwegian Bar Association and Nepal Bar Association)
Ramshahpath, Kathmandu Nepal
(Supreme Court Premises)

3. The Supreme Court of Nepal
Ramshahpath, Kathmandu Nepal

2-2-2 When was the above organization established?

The court is being provided legal aid service to needy people through court salaried lawyer since 1958. Previously this service was provided by the Supreme Court only later on this provision is extended to Appellate Court and District Court as well. Nepal Bar Association, previously, had provided legal aid service through Legal Aid Project with the support of Norwegian Bar Association since 1988 to 2009. The project was renamed by Access to Justice Project since 2010 and it is mutually agreed to run the project upto 2014. The legal aid service is formally established by Government of Nepal since 1997 by enacting Legal Aid Act.

2-2-3 Please describe briefly the organization structure such as branches and other offices.

However the Government of Nepal has declared about the enactment of Legal Aid Act in all 75 district of the country, the district legal aid offices are established only 34 districts i.e. Kapilbastu, Baglung, Syangja, Jhapa, Sunsari, Rupandehi, Darchula, Siraha, Kaski, Dang, Pyuthan, Morang, Dhankuta, Saptari, Rauthat, Bardiya, Nepangunj, Palpa, Parbat, Kailali, Mahotari, Parsa, Chitwan, Dadeldhura, Kanchanpur, Janakpur, Kavre, Sarlahi, Sindhuli, Arghakhachi, Tanahu, Bara, Kathmandu and Dolakha.

The Access to Justice Project is established in central level and authority to handle legal aid cases of disadvantaged section of the society especially women and children is provided to 29 women lawyer centers (WLC). The WLC is established in Supreme Court WLC, Appellate Court WLC: Baglung, Biratnagar, Butwal, Ilam, Janakpur, Mahendranar, Nepalgunj, Patan, Pokhara, Rajbiraj, Surkhet and District Court WLC: Banke, Bardiya, Bhaktapur, Chitwan, Dhankuta, Jhapa, Kailali, Kathmandu, Kavre, Lalitpur, Morang, Palpa, Rupandehi, Sunsari, Tanahu, Udayapur and Dang.

Similarly, through court legal aid is provided by Salaried (*Baitanik*) lawyer in 75 district courts, 16 appellate courts and two in Supreme Court.

2-2-4 Please explain about the organization's service delivery model such as salaried legal professional (staff attorney) and/or private legal professional (judicare).

The legal aid lawyer under Supreme Court, appellate court and district court deliver their service as salaried legal professional. The legal aid lawyer under district legal aid committees, under the Access to Justice Project in central level and in appellate/district level is handled by roster of lawyers / women lawyers working in respective WLC. They get very nominal fees (tips) for their service on work basis.

2-2-5 Please explain about the budget for the legal aid system.

Since the legal aid is provided through different source the budget is also allocated differently by different organization. For the fiscal year 2011/2012 the government of Nepal has allocated budgeted of NRs. 8500000/- (eight million and five thousand hundred), the budget of the NEBA Access to Justice Project is 15000000/- (Fifteen million). Similarly, the different organizations have their own budget plan.

2-2-6 How many recipients have received the legal aid assistance in main legal aid programs in recent years?

In district legal aid committees the distribution of cases varies from district to district. The registration of legal aid cases in some districts is very few where as some districts have very high ratio of legal aid cases registration. Calculating the registered cases and the population, in average each district legal aid committees handles 25 cases annually. This shows that tentatively 800 to 1000 needy people gets legal aid support through district legal aid committees annually.

The NBA Access to justice project central office handled 36 cases in the year 2010. Among them 12 were civil, 17 were criminal, and seven were writ petition. The central office of the project had provided counselling services to 79 needy people. Similarly, among 29 Women Lawyer Centers (WLC) four centres provided legal services to the needy service seekers and service received from those in 28 cases in the year 2010. The service was provided in civil and criminal litigations where 17 cases were of civil nature and 11 were of criminal nature.

2-2-7 Please explain about the main activities of the legal aid organization, including entitlement to legal aid and reimbursement of the assisted legal aid costs

There is not any provision of reimbursement of the assisted legal aid costs in our country.

2-3 What are the future issues or challenges with respect to the legal aid system in your country?

The major challenges of legal aid system are as follows:

- The legal aid provided by the court is confined only in the hearing of the case before a bench.
- The legal aid provided by Nepal Government is not extensive. The fund allocated by the government for legal aid is mere formal and extremely nominal.
- The legal aid provided by the Bar is basically supported by donor and still has not developed a sustainable base.
- Due to many factors including information, effective communication, financial constrains lack of coordination among various legal aid provider institutions and regulation mechanism and others the legal aid is still used in an ad hoc basis by the targeted groups.

2-4 Please let me know if the legal aid organization have an English language website.

Nepal Bar Association Access to Justice Project has its website in English language which is www.nepalbar.org.np

III Legal consultation (other than that covered by the Legal Aid system explained in above II.)

3-1 Legal Consultation Programs (Please explain if there are legal consultation programs managed by your organization (or other institutions) other than those covered under the Legal Aid system in your country.)

3-2 Fees for Legal Consultation (Please explain the fee structure for such legal consultation programs.)

3-3 Management of the Legal Consultation Program (Please explain how such program is run by the organization.)

3-4 Appointment of an Attorney for Legal Consultation (Please explain how an attorney (consultant) is appointed.)

3-5 Flow to the legal representation (Please explain how such legal consultation may lead to legal representation by an attorney)

3-6 Number of Consultations (Please provide statistics on how many legal consultations have been carried out per year.)

IV Shortages of Lawyers in Local Areas

4-1 Is there any figure of lawyers who work in local areas in your country?

4-2 Do you think that there are a sufficient number of qualified lawyers working for citizens in local areas in your country?

4-3 If the answer of Question 3-2 is negative, what have caused such shortage of lawyers?

4-4 Does the legal aid organization or the bar association/law society has any programs in dealing with legal services in local areas in your country?

4-5 If the answer of Question 3-4 is affirmative, please describe briefly such programs.

4-6 What are the future issues or challenges with respect to the shortage of legal services in local areas in your country?

V Other Obstacles to Hinder Access to Justice

5-1 Are there any obstacles to hinder access to justice other than the problems with the legal aid system and the shortage of lawyers in local areas?

5-2 If the answer of Question 4-1 is affirmative, please describe briefly such obstacles.

5-3 Please explain briefly the educational system to produce qualified lawyers in your country.

5-4 Do you think that your country has enough lawyers to substantiate the access to justice?

5-5 Do you think that your country produces newly qualified lawyers every year to substantiate the access to justice?

5-6 If the answer of Question 4-4 or 4-5 is negative, please describe briefly the reason for such shortage and your thoughts on how to solve such problems.

VI Cooperation with Foreign Organizations

6-1 Please explain the details of recent and future projects relating to any of the above discussed issues in your country, in regard to which any foreign (governmental or non-governmental) organizations are providing assistance.

VII Others

7-1 Recent Judicial Movement

Please describe briefly the recent movements or topics in the legal community, including the bar association/law society in relation to the topics above.

7-2 Comments

Please fill in any comments or your thoughts to way to achieve the well-organized access to justice in your country.

Information Sheet - MONGOLIA

submitted as of November 10, 2011

General Information

1 Number of stakeholders in the Country

1-1-1 Population

2,754,685 (as of 2010)

1-1-2 Number of lawyers/attorneys-at-law

1,200 attorney

In 1980 the number of attorney was approximately 100, in 1990 it grown to 500 and present days the number is 1247.

1-1-3 Number of judges

amount 429 judges

1-1-4 Number of prosecutors

amount 381 prosecutors

2 Number of court cases handled by first instance courts

1-2-1 Number of civil cases

on 2007 year: 30699

on 2010 year 31055

1-2-2 Number of family cases

on 2007 year: 3544

on 2010 year 4632

1-2-3 Number of criminal cases

on 2007 year: 5831

On 2010 year 5460

3 Attorneys for Defendants in Criminal Procedures

Please explain in what kinds of criminal cases attorneys must be appointed for suspects or defendants in your country. Please also explain who appoints and bears the costs for the attorneys appointed.

- The participation of defense counsel in a **judicial examination** shall be obligatory in cases of following suspect, accused or defendant:

- mute, deaf, blind, and other persons who by reason of their physical or mental defects are not able to exercise their right to defend themselves;
 - minors;
 - persons who do not have command of Mongolian language;
 - to whom death penalty may be applied;
 - if one of suspects, accused or defendants who have contradicting interests on a case has a defense counsel, then other suspects, accused or defendants.
- If in instances provided for in Article 40.1. of this Law, defense counsel is not engaged by the suspect, accused, and defendant him/herself, or by his legal representative, member of family, relative or by other persons upon his/her commission, the inquiry officer, investigator, procurator or court shall be obliged to secure the participation of defense counsel in the case.

4 Profile of the Bar Association/ Organization and Attorney System

1-4-1 Location and contact information

Association of Mongolian Advocates
 Grand Plaza #1505, 15th floor
 Peace avenue -46, Bayangol district
 Ulaanbaatar city, Mongolia
 Tel: 976-70127491
 Fax: 976-70126861
 Website: ama.org.mn
 E-mail: monadvocate@monadvo.org.mn

1-4-2 History of Organization

In 1926, in article 65 of Mongolian Law of inspecting and punishment was stated that the prosecutor could participate in punishing process and as well as juridical organs could appoint plaintiff to defend a criminal or could hire him to involve in punishing process if criminal wanted. It was the first basis of the advocating activities in Mongolia.

In 28 May, 1928 was approved first rule for advocators named “Rule of group to help to public in inspecting and punishment” including 5 units, 12 articles by the Mongolian Congress.

According to the ideas of second constitution of 1940, in 19.., in criminal law clearly stated the rule to participate an advocators into the judicature. In that way, One side of the judicature, legal position stated in law named “advocatory” became and so, advocating unit to deal with advocating activities was established in 19.., in ministry of judicature.

In 1959, This unit has changed into “Public advocating Bar/board”.

The first Law of Advocate that approved in December, 1994 entered important role to originate guaranty of implementation of advocator’s authority when stating the fundament of legal regulations of advocating process, establishing new structure, direction of the advocating organization and advocating process.

In 2002, Second Law of Advocate was approved by Congress.

1-4-3 Governmental Supervision of the Organization and Registration of Members (Please explain whether or not, and if so how, your organization is supervised by the government.)

The Association of Mongolian Advocates is a professional, non-governmental organization.
Special license of advocacy is granted by Minister of Justice to persons who passed the bar examination.

1-4-4 Main Activities of the Organization

Main activities of the Association:

Protection of rights of members and represent their common interest
Organizing advocacy on territory of Mongolia, and provide professional administration
Provide support to social issues of members and improve working conditions.
To develop professional ability of members and organizing trainings and seminars.
Provide information to members regarding the profession.
To enhance reputation of advocates within the society
Participating in organizing bar examination
Establish and develop relations with similar foreign organizations.

1-4-5 Categories of Membership

No classification.

1-4-6 Number of Members

Counted in November 2010

Full: 1247

male 565

Female 682

1-4-7 Membership (voluntary or compulsory, please also explain where such registration should be filed)

Membership is mandatory, all advocates has to be members of the Association.

1-4-8 Executives and Officers, Number of Positions

- President (1)
- Vice President (1)
- Assistant of the President – 1
- Foreign affairs officer – 1
- Officer in charge of training and human resource – 1
- Secretary of publication – 1
- Director of information center -1
- Worker of information center – 1
- Worker of disciplinary committee – 2
- Finance worker – 1

1-4-9 Finances and membership fees (Please provide the yearly budget amount of your organization and also the yearly membership fees in USD)

Membership fee of advocates varies depending on location and population:
Capital city: around 240 USD per year
Orkhon and Darkhan provinces: around 195 USD per year.
Others: 154 USD per year.

Source of the financing are the following:

Fees from members
 Gifts/Presents
 Voluntary contribution/donation/aid
 Properties accumulated by contribution works
 Incomes from activities
 Incomes from renting
 Others

1-4-10 Journal, Newsletter, Website

“Advocate” magazine

Association of Mongolian advocates illustrated first magazine for Mongolian advocates in May, 2006 together with International Cooperation Association of Japan. This monthly magazine is dedicated for the advocates to express their ideas, to change information to each other, to deal their experience.

Website: www.ama.org.mn

1-4-11 Other Bar Associations (including the provincial associations) in the Country and the Number of Members of such Other Organizations

The Association of Mongolian advocates is the sole organization of legal professionals in Mongolia.. There are no provincial bar associations.

1-4-12 Qualifications To Become an Attorney

According to law on qualification of lawyers, persons who graduated law school and worked for 2 years will be eligible to give lawyer’s examination.

Persons who passed lawyers examination shall be eligible to give bar examination (advocate’s examination).

Persons who give bar examination shall be without any criminal record.

And former judges and prosecutors, investigators shall be prohibited to give bar examination for 3 years since quitting the former job.

1-4-13 Laws, Decrees or Regulations on Attorneys (Please explain if there are any laws, decrees or regulations on attorneys in your country. Please provide the JFBA an English translation if they are available.)

Advocacy law

Charter of the Association of Mongolian Advocates

Professional ethic rules

Rules of Disciplinary Committee of the Association
 (English translation not available)

1-4-14 Code of Ethics and/or Rules of Professional Conduct (Please provide the JFBA an English translation if an English translation of these is available.)General meeting of the Association adopts the disciplinary code but it’s not available on English.

1-4-15 Disciplinary Functions (Please explain who has the power to take disciplinary action against members.)

The Ministry of Justice is responsible for the discipline of lawyers in Lao PDR.

Disciplinary committee of the Association is a non standing body which regulates ethical and disciplinary issues of member advocates.
Members of the disciplinary committee is elected from the General meeting of the Association.

1-4-16 Continuous Legal Education for Members (Please explain about the program, if any)

According to lawyer's examination law and continued training of lawyers, advocates has to collect 10 credit hours equal to 40 hours of seminars, per year.

1-4-17 Challenges the Organization is Facing (Please briefly explain the problems and challenges your organization is currently facing.)

- Although the Association is a non-governmental organization, competence of granting advocacy license, suspending the license and revocation of the license belongs to the Minister of Justice. So the Association drafted new law on advocacy to take over those issues and submitted the draft to legislative organs.
- We need programs and seminar on issues related to international treaties to provide our member advocates better understanding and information on international laws and treaties.
- Issue of developing and promoting alternative dispute resolution to people and refuse from deciding all cases by courts.

II Legal Aid

2-1 Please describe briefly the history of legal aid in your country.

0. the Court Law Provision

On the article 20 of the Court Law, the government is referred to be responsible to the fees of court procedure for those who can not pay them to protect their rights. But this operation had been expanded for a long time until reflect to budged of government and fulfill actual.

I. the Association of Mongolian Advocates

Until this time the Association of Mongolian Advocates has made following own measures:

- Schedule and arrange attorneys for legal assistance to citizen from each branch
- The Association of Mongolian Advocates provided attorneys to citizen in criminal case according to their authority ordinance or their mission.

In 2000 the government decided to spend a certain amount of budget (9 000 000 -12 000 000 togrog, about USD9000-USD12000) to provide legal assistance for poor people. This money should have been paid to advocates thorough the AMA. This operation was monitored by the Ministry of Justice and Home Affairs. To get money, the attorney should be confirmed by 2 kinds of documents: one is a certification from investigators, prosecutors or judges which shows he/ she participated in the procedure. The other is a certification of clients' financial state issued by the administrative offices. But the procedure is complicated and the fees were too small for time and effort they spent on. So many advocates did not receive money nor some did not work for the poor.

The rate by the order of Minister dated 1st May 2003 was as follows.

for criminal light cases	12600 tugrug, (about \$12)
heavy cases	21600 tg
heavier cases	28800 tg
heaviest cases	43200 tg

But now this program is stopped.

In 2002 the Law on Advocacy was reformed and it included a clause that requires each attorney to advocate at least two cases of the indigent every year. When the request come from the authorities like investigators, prosecutors and judges, the Association of Mongolian Advocates assigned an attorney for the case. Attorneys who were assigned to serve the poor citizen did their work excellently. But there were a certain number of attorneys who did not do this kind of work. Some of them were not assigned by AMA, and there was not any clause reffered to the responsibility of advocates to handle at least two cases before 2002. Even after 2002, there is no penalty

Since 2007 the Ministry of Justice and Home Affairs has not been assigned to pay back fee for free legal assistance to Association of Mongolian Advocates.

II. Pilot Legal Aid Centers by the fund of Soros Foundation

From 2004 to 2006, the Ministry of Justice and Home Affairs and Association of Mongolian Advocates founded the National Advocate Center by the fund of the

Soros Foundation for poor people in “SonginoKhairhan” district and “Khentii” province to give free legal assistance.

III. “National Legal Assistance Programme for the Indigent”

The Ministry of Justice and Home Affairs, the Open Society Forum and UNDP have implemented “Access To Justice” programme. They found four Legal Aid Centers on 1st May of 2008 and 26 Centers on 1st August of 2008 which give free legal advice on each province and each district of capital. They made competition and made contracts with applied attorneys to serve indigent people.

IV. Legal Clinic Center in Universities

The law universities have been operating the clinic center which give free legal advice to poor people by undergraduated and teachers. Those universities are the National University, Legal Institute, Shihihutug, Ikh Zasag and etc.

2-2 Please outline the legal aid organization and its programs.

I. AMA lawyers types of advocacy activity

- Represent before courts and administrative organization in civil cases and administrative offence
- Represent victims in the criminal procedure
- Advocacy in criminal cases (in investigations, inquests and trials)
- The provision of legal advice and information
- Assistance in the preparation of documents with legal contents

II. Pilot Legal Aid Centers

Two centers were built and

In two years the Ulaanbaatar city center of the advocation to insolvency citizen had been advocate 1012 criminal case without fees on judge, case regisrtration, inquisition step. Project period ended and it was abolished.

III. Legal Aid Centers by National Legal Assistance Programme for the Indigent

On 2006 by Mongolian government 236 ordinances had been founded legal assistant centers which total 30 attorneys. And each center had two employer one attorney and second assistant.

Government of Mongolia adopted resolution 263 on “**National Legal Assistance Programme for the Indigent**” According to Programme Legal Aid Centers shall be established throughout the country in every Aimag and district engaged to deliver free legal aid, legal training and public advocacy in order to ensure constitutional right to legal aid.

Service provided by Legal Aid Centers;

- Free legal assistance to indigent people involved in criminal case
- Basic legal aid in criminal, civil and administrative matters
- Legal training and public advocacy

IV. Law schools clinic center

The teacher with license of advocate teaches at universities and they provide legal clinic service with their students. This operation will be made by agreement of consumer without fees.

2-2-1 Name of the legal aid organization/head office location

I. Association of Mongolian Advocates:

Grand Plaza #1505, 15th floor, Peace avenue-46, Bayangol district, Ulaanbaatar city, Mongolia

I. Pilot Legal Aid Centers

Two centers were in Ulaanbaatar Songinokhaikhan district and Khentii Aimag

II. Legal Aid Centers

Governor's office of each Aimag(province) and each district of UB.

IV. Legal Clinic

MNU of Law School, Shikhikhutag Law school, Ikh Zasag Law schools building

2-2-2 When was the above organization established?

I. **Association of Mongolian Advocates (AMA)** established on 1928

II. **2 pilote Legal Aid Centers** 2004.06.10-2006.06.10

III. **“ National Legal Assistance Programme for the Indigent” programme**

4 Legal Aid Centers on 2008.05.01

26 Centers on 2008.08.01

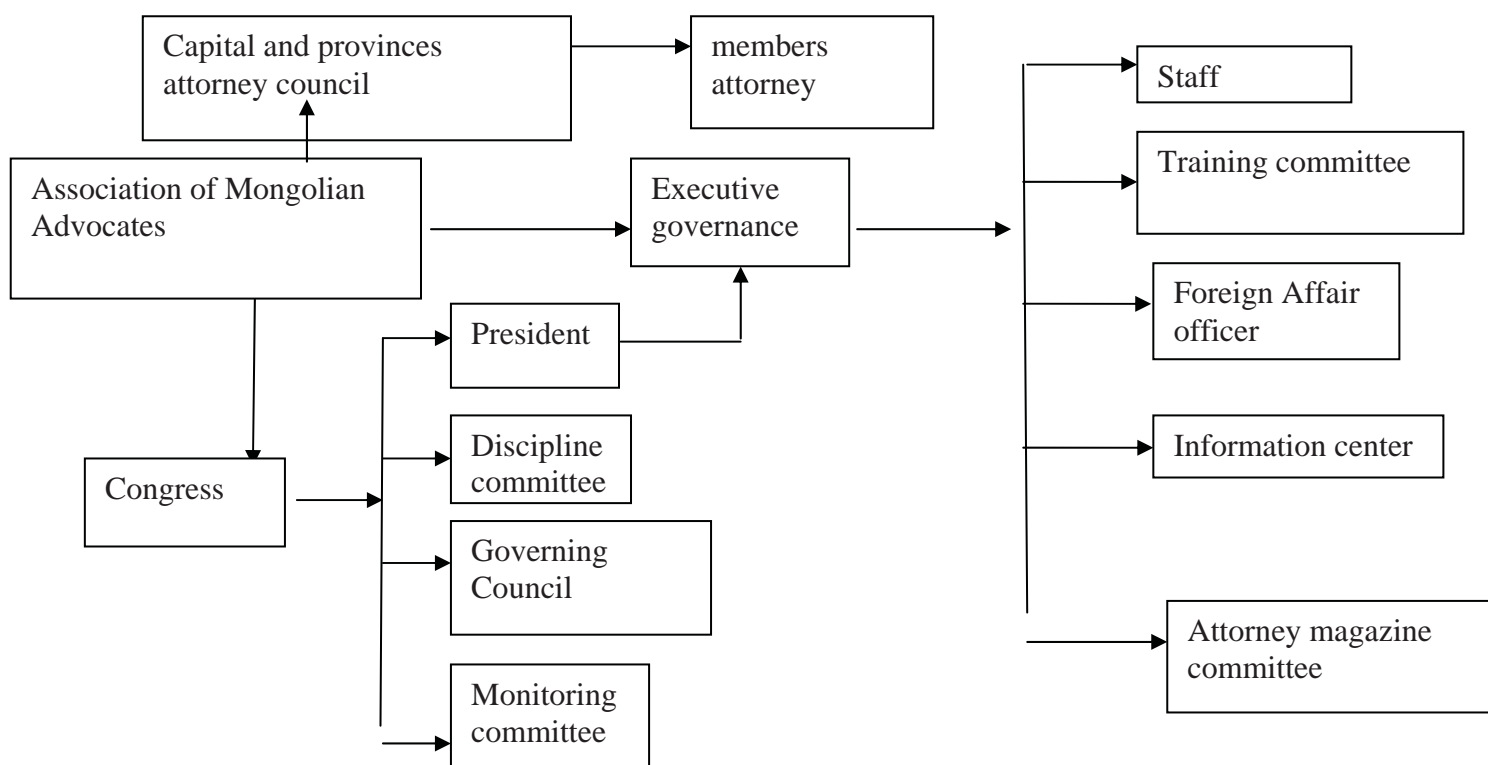
IV. Law schools clinic center

Legal Clinic Center of Mongolian National Law School since 1999

During the period 1999-2001 it was supported by Soros Fund

2-2-3 Please describe briefly the organization structure such as branches and other offices.

I. **AMA** Association of Mongolian Advocates



II. 2 Pilot Legal Aid Centers

They had 2-3 lawyers in each office

III. “National Legal Assistance Programme to Indigent”

Every aimag's and district's LAC consist of two members. One is an advocate with license and he/she will work on contract. And the other is an officer of administrative unit responsible for legal training and public advocacy.

IV. Law schools clinic center 2003

Undergraduate, instructor teacher and clinic center teacher with license.

2-2-4 Please explain about the organization's service delivery model such as salaried legal professional (staff attorney) and/or private legal professional (judiciary).

I. Association of Mongolian Advocates (AMA) –private legal professional

Our organization is serve to the client by private legal professional. Every advocates have to do pro bono cases at least 2 in a year.

II. 2 pilote Legal aid Centers – salaried legal professional with license

III. Legal Aid Centers according to “National Legal Assistance Programme for the Indigent”

One is an advocate with license and he/she will work on contract and be paid monthly salary. And the other is an officer of administrative unit responsible for legal training and public advocacy.

IV. Law schools clinic center

Students and law teachers with license provide service free of charge

2-2-5 Please explain about the budget for the legal aid system.

I. Association of Mongolian Advocates (AMA)

From 1992- 2007 by state budget, from 2008 self funded

II. 2 pilote Legal aid Centers

By the support of Soros Fund(Open Society Forum)

III. “National Legal Assistance Programme to Indigent”

UNDP provided equipment for Legal Aid Centers.

After establishment the Government is responsible to maintain the LACs.

Salary of advocates of each center is paid by the fund of Open Society Forum.

The officers from the administrative units are paid by the government.

IV Law schools clinic center

In the first 1-2 years, they were founded by Soros Foundation.

2-2-5 How many recipients have received the legal aid assistance in main legal aid programs in recent years?

I. Association of Mongolian Advocates (AMA)

2007- 1331 recipients

2008- 1290 recipients
2009- 1327 recipients
2010- 1183 recipients

II. 2 pilot Legal aid Centers

At the Songinohairhan (UB) office
From 2004 Jun. to 2006 Jun.
Solved 1012 cases (1131 recipients)
Solved after the end of project period 56 cases (62 recipients)

III. LAC by “ National Legal Assistance Programme for the Indigent”

From 2008.05.01 until now 72 clients applied for LAC service, 199citizens were given basic legal aid, 7 training were conducted in LACs of Ulaanbaatar city districts.

conducting its activity in 21 provinces and 9 districts
2008 – 757 recipients
2009 – 1468 recipients
2010 – 1593 recipients

2-2-7 Please explain about the main activities of the legal aid organization, including entitlement to legal aid and reimbursement of the assisted legal aid costs

I. Association of Mongolian Advocates (AMA)

Advocates provide legal service for the indigent after confirmation by local administration
Government should pay these advocates according to the order of Minister on 1st May 2003.
for criminal light cases 12600 tugrug, (about \$12)
heavy cases 21600 tg
heavier cases 28800 tg
heaviest cases 43200 tg
Now this budget is stopped.

II pilote Legal aid Centers

Monthly salary of 180,000tugrug

III. LAC by “ National Legal Assistance Programme for the Indigent”

Monthly salary of 240 000 tugrug

2-3 What are the future issues or challenges with respect to the legal aid system in your country?

To access to justice by international level and improve our legal system. Our country purposing to establish perfect legal service to the society.

2-4 Please let me know if the legal aid organization have an English language website.

AMA does not have web sites in English. But we will soon make it.

III Legal consultation (other than that covered by the Legal Aid system explained in above II.)

Legal consultation is not developed in Mongolia, so it's becoming an issue which the Association pays attention recently.

3-1 Legal Consultation Programs (Please explain if there are legal consultation programs managed by your organization (or other institutions) other than those covered under the Legal Aid system in your country.)

3-2 Fees for Legal Consultation (Please explain the fee structure for such legal consultation programs.)

3-3 Management of the Legal Consultation Program (Please explain how such program is run by the organization.)

3-4 Appointment of an Attorney for Legal Consultation (Please explain how an attorney (consultant) is appointed.)

3-5 Flow to the legal representation (Please explain how such legal consultation may lead to legal representation by an attorney)

3-6 Number of Consultations (Please provide statistics on how many legal consultations have been carried out per year.)

IV Shortages of Lawyers in Local Areas

4-1 Is there any figure of lawyers who work in local areas in your country?

Arhangai Province 6
 Bayanhongor Province 9
 Bayan-Ulgii 6
 Bulgan 6
 Govi-Altai 4
 Govi-Sumber 2
 Darhan-Uul(includes the third biggest city) 19
 Dornogovi 5
 Dornod 13
 Dundgovi 7
 Zavhan 6
 Sukhbaatar 7
 Selenge 10
 Orkhon (includes the second biggest city) 26
 Uvurhangai 14
 Umnugovi 8
 Ubs 11
 Tuv 7
 Khovd 10
 Khuvsgul 8
 Khentii 7
 Bor-Undur
 Selenge Zvvn kharaa 2

4-2 Do you think that there are a sufficient number of qualified lawyers working for citizens in local areas in your country?

No. there are not enough lawyers working for citizens in province for our country. On provinces there are approximatedly two hundred attorneys, and there are six attorney for one aimag by average. On Govi-Sumber aimag province there are 2 attorney working there it is minimum number. On Darkhan – Uul province there are 18 attorney and on the capital of the city approximately one thousand attorney working.

4-3 If the answer of Question 3-2 is negative, what have caused such shortage of lawyers?

In the local areas lot of problem like sufficient of information, salary fees is low and biggest problem is poor consumer, so they can't pay the money to the lawyer. So advocates prefer to live and work in city.

4-4 Does the legal aid organization or the bar association/law society has any programs in dealing with legal services in local areas in your country?

No. Our organization program is same for all advocates

4-5 If the answer of Question 3-4 is affirmative, please describe briefly such programs.

4-6 What are the future issues or challenges with respect to the shortage of legal services in local areas in your country?

Our organization purposing to establish perfect rule of law in every place of Mongolia and access to justice. For this we have to do lot of thing.

IV Other Obstacles to Hinder Access to Justice

5-1 Are there any obstacles to hinder access to justice other than the problems with the legal aid system and the shortage of lawyers in local areas?

Luck of information, large migration of people from rural to urban settlements,

5-2 If the answer of Question 4-1 is affirmative, please describe briefly such obstacles.

Obstacle hinder of access to justice is old socialist society mentality. They use law by old established type not by adapting to human right, fundamental freedom. Now issue new cadres but in adjudge step the decision can't be true quickly.

5-3 Please explain briefly the educational system to produce qualified lawyers in your country.

In Mongolia the lawyers study 4-5 years in bachelorship. After this 2 years study by own education course. But generally they going to be assistant of attorney. After all this they going to give examine by each point which who want attorney, judge, prosecutor lawyer.

5-4 Do you think that your country has enough lawyers to substantiate the access to justice?

The number of the lawyers enough. But there are not enough lawyer in local areas who work in.

5-5 Do you think that your country produces newly qualified lawyers every year to substantiate the access to justice?

Yes

5-6 If the answer of Question 4-4 or 4-5 is negative, please describe briefly the reason for such shortage and your thoughts on how to solve such problems.

For me our country every year improve our education system on law. Therefore it is showing improvement our education system.

VI Cooperation with Foreign Organizations

6-1 Please explain the details of recent and future projects relating to any of the above discussed issues in your country, in regard to which any foreign (governmental or non-governmental) organizations are providing assistance.

No considerable program.

VII Others

7-1 Please describe briefly the recent movements or topics in the legal community, including the bar association/law society.

1 New Activities by committees formed in the capital branch of AMA
10 committees were organized in the capital branch of AMA in February 2008.

Those are;

- Committee on Special Ethics for Advocates
- Committee on Human Development
- Committee on Public Relations
- Committee on the Rights and Interests of Advocates
- Committee on Legal Training
- Committee on Economy and Business
- Committee on International Relationship
- Committee on Juvenile Justice
- Committee on the Rights of victims

Average 20-30 lawyers are working in each committee for each aim. And they sometimes have recreational events like championship of sports or performance among all the committees.

2 JICA Project

AMA is working with JICA project since 2004.

JICA project supports AMA with issuing monthly journal, making Directory of Advocates, training in Japan and in Mongolia on several subjects.

And also the Mediation Center was established under AMA by support of JICA.

3 Continuous Training for Lawyers

Continuous training has started from 2008. Lawyers including advocates, prosecutors, judges and notaries have to take 30 credits in 3years otherwise they lose their license. Those 30 credits includes mandatory 6 credits for legal ethics, mandatory 3 for constitutional law, 21 from selective subjects. Training are provided by National Legal Institute (training and research organization under the Ministry of Justice and Home Affairs).

7-2 Please fill in any comments or your thoughts to way to achieve the well-organized access to justice in your country.

To establish access to justice we should completely establish the rule of law. To access international contract of human right and fundamental freedom. Educate all the lawyer for this duties.

INFORMATION SHEET Indonesia (PERADI)

I General Information

1 Number of stakeholders in the Country

1-1-1 Population

According to the data in 2010, the number of population in Indonesia was approximately 230,641,000.

1-1-2 Number of lawyers/attorneys-at-law

According to the membership data in PERADI by November 2011, the number of lawyers in Indonesia is 23,075.

1-1-3 Number of judges

According to the Annual Report 2010 of Indonesian Supreme Court, there were approximately 7,320 judges in Indonesia.

1-1-4 Number of prosecutors

We do not have the recent data of prosecutors. But in 2004, there were approximately 6,177 prosecutors in Indonesia.

2 Number of court cases handled by first instance courts

According to the Annual Report 2007 of Indonesian Supreme Court, there were approximately 3,514,709 cases handled by the first instance court.

1-2-1 Number of civil cases

According to the Annual Report 2007 of Indonesian Supreme Court, there were approximately 159,157 civil cases.

1-2-2 Number of family cases

According to the Annual Report 2007 of Indonesian Supreme Court, there were approximately 217,084 family cases.

1-2-3 Number of criminal cases

According to the Annual Report 2007 of Indonesian Supreme Court, there were approximately 3,134,120 criminal cases.

3 Attorneys for Defendants in Criminal Procedures

Please explain in what kinds of criminal cases attorneys must be appointed for suspects or defendants in your country. Please also explain who appoints and bears the costs for the attorneys appointed.

Mostly in all criminal cases, the suspects or defendants are entitled to be defended by a lawyer, except in the light criminal actions, such as; breach the traffic law, or other simple criminal action where the decision is made through the simple hearing. Usually the suspects or the defendant will appoint the lawyer for his own defense, however, in the case that the suspects or the defendant is not financially capable to do that, the court will provide the lawyer for pro bono legal defense for the suspects or defendant.

4 Profile of the Bar Association/ Organization and Attorney System

→See attached as the Indonesian Advocate Association Country Report 2010

1-4-1 Location and contact information

1-4-2 History of Organization

1-4-3 Governmental Supervision of the Organization and Registration of Members (Please explain whether or not, and if so how, your organization is supervised by the government.)

1-4-4 Main Activities of the Organization

1-4-5 Categories of Membership

1-4-6 Number of Members (as of [], 2011)

1-4-7 Membership (voluntary or compulsory, please also explain where such registration should be filed)

1-4-8 Executives and Officers, Number of Positions

1-4-9 Finances and membership fees (Please provide the yearly budget amount of your organization and also the yearly membership fees in USD)

1-4-10 Journal, Newsletter, Website

1-4-11 Other Bar Associations (including the provincial associations) in the Country and the Number of Members of such Other Organizations

1-4-12 Qualifications To Become an Attorney

1-4-13 Laws, Decrees or Regulations on Attorneys (Please explain if there are any laws, decrees or regulations on attorneys in your country. Please provide the JFBA an English translation if they are available.)

1-4-14 Code of Ethics and/or Rules of Professional Conduct (Please provide the JFBA an English translation if an English translation of these is available.)

1-4-15 Disciplinary Functions (Please explain who has the power to take disciplinary action against members.)

1-4-16 Continuous Legal Education for Members (Please explain about the program, if any)

1-4-17 Challenges the Organization is Facing (Please briefly explain the problems and challenges your organization is currently facing.)

II Legal Aid

2-1 Please describe briefly the history of legal aid in your country.

Legal aid for the destitute is a fundamental right of which should be provided by the state in order to obtain a proper legal protection towards them. In fact, the state could not afford such fundamental right. One of the reasons is because the government, in the early independence era, had chosen an improper procedural law. They designated HIR (*Herziene Indonesisch Reglement*) as our procedural law despite of Rv (Reglement op de Rechtsvordering) or Sv (Reglement op de Strafvordering) of which grants better security towards the citizen to obtain legal assistance.

The development of legal aid movement in Indonesia could not be separated from the role of legal aid institute as the organization which works consistently in struggling for the people rights that often becomes the object of oppression by the Authorized party. The existence of legal aid movement is indicated with the establishment of some legal aid institution to provide legal assistance for the member of community who cannot afford to pay for the service of lawyers.

Significant progress of legal aid movement started in 1970 with the establishment of Jakarta Legal Aid Institution (Lembaga Bantuan Hukum Jakarta, abbreviated to LBH Jakarta) by the Indonesian bar association at that time, called “PERADIN (Persatuan Advokat Indonesia)”.

The purposes of the establishment of LBH Jakarta are:

- To provide legal assistance towards poor people;
- To develop and increase the legal awareness of the people, especially their right as legal subject;
- To submit legal development in order to fulfill the people needs.

The existence of LBH Jakarta, in fact, stimulates the existence of other legal aid institutions in the following regions: Yogyakarta, Surabaya, Bandung, and Medan.

In 1980, in a national meeting of legal aid institution, it was agreed to unify the vision and mission of legal aid institution. Furthermore, they also agreed to establish the Indonesian Legal Aid Foundation (Yayasan Lembaga Bantuan Hukum Indonesia, abbreviated to YLBHI) as the umbrella organization of those

legal aid institutions.

Recently, the activity of legal aid in Indonesia has altered to empower the people. They provide legal education and raise legal awareness of the people so that they can fight for their own right. This activity is also known as a structural legal aid activity.

2-2 Please outline the legal aid organization and its programs.

Herewith the brief of YLBHI programs:

Despite a number of political leadership transitions, fundamental problems are still impeding the challenges of establishing YLBHI values. Those problems are the escalating and widening scale of corruption and bribery, expanding violence – both communal and purely political, and the escalating arm conflicts in provinces such as Aceh and Papua. In addition, the multi-parties system and political liberalizations that have been initiated have not produced deliberative and rational political procedure and system of which secures people's authentic participation. This was obviously reflected in the failure and deadlock grass root aspiration in the power structure in the regional level.

YLBHI has come to believe that democracy as a vision should be placed as an empty signifier opened to any kind of both strengthening and weakening establishments and interpretations of democratic security. YLBHI will be in the front line to strengthen the bases of democracy.

As the consequences, YLBHI has to deal with new challenges of the post-authoritarianism politics, such as conflicts and violence in a number of areas, the strengthening primordial aspiration and expanded autonomy, calls for economic justice, the prospects of political institutions' independence, polemic concerning constitutional amendment, etc. In summary, it is how we build peace and reconciles the need of a powerful state (having the capability in preventing conflicts, secure social justice) and protects pluralism.

The programs will carry out; therefore, will comply with the dynamic social alterations. The chance to promote protection and promotion of human rights which would be more open, and human rights will be the conducting basis of policy. LBH works will remain focused on the protection and promotion of civil and political, economic, social and cultural rights and the rights of women and children, and reviews on attempted promotion of human rights protection which would be treated as the main focus to develop people's political participation of

which would appear as a capable political and legal subject in struggling for their rights.

In order to apply the above ideas, YLBHI has outlined five priority programs:

1. Case advocacy (litigation and non litigation);
2. Education on and development of people's legal resources;
3. Policy research/study (legal reform);
4. Network development (national and international);
5. Campaign and publication.

2-2-1 Name of the legal aid organization/head office location

There is a prominent legal aid institution in Indonesia known as YLBHI, with the head office located in Jakarta, the address:

Jl. Diponegoro No. 74
 Jakarta Pusat 10320, Indonesia
 Phone: +62 21 392 9840
 Facs: +62 21 319 30140
 Email: info@ylbhi

YLBHI consists of some branches in Indonesia, including LBH Jakarta (address: Jl. Diponegoro No. 74, Jakarta Pusat 10320, Indonesia, email: jakarta@lbh.or.id, website: <http://jakarta.lbh.or.id>). The other branches are as follow:

- LBH Bandung
 Jl. Rengas Dengklok Raya No. 26, Perumahan Antapani, Bandung, Indonesia
 Phone: +62 22 720 6760
 Facs: +62 22 720 6760
 Email: bandung@lbh.or.id; lbh.bandung@lbhbandung.org
 Web: <http://www.bandung.lbh.or.id>
- LBH Banda Aceh
 Jl. Elang Timur Lampoh Bungong Biang No. 12A, Desa Blangcut, Banda Aceh, Indonesia
 Phone: +62 651 22940
 Facs: +62 651 740 0023, +62 651 22940
 Email: banda-aceh@lbh.or.id
 Web: <http://www.banda-aceh.lbh.or.id>
- LBH Medan

Jalan Hindu No.12 Medan 20111, Indonesia

Phone: +62 61 451 5340

Facs: +62 61 456 9749

Email: medan@lbh.or.id; prodeo@indo.net.id

Web: <http://www.medan.lbh.or.id>

- LBH Papua

Jl. Gerilyawan Nomor 46, Abepura, Jayapura, Papua, Indonesia

Phone: +62 967 581 710

Facs: +62 967 582 559

Email: papua@lbh.or.id

Web: <http://www.papua.lbh.or.id>

- LBH Surabaya

Jl. Kidal Nomor 6, Surabaya 60131, Indonesia

Phone: +62 31 502 2273, +62 31 502 4826

Facs: +62 31 502 4717

Email: surabaya@lbh.or.id; lbhsby@telkom.net

Web: <http://www.surabaya.lbh.or.id>

- LBH Bandar Lampung

Jl. M.H. Thamrin No. 63/3 Kelurahan Gotong Royong, Kecamatan Tanjung Karang Pusat, Bandar Lampung, Indonesia

Phone: +62 721 747 8795

Email: bandar-lampung@lbh.or.id; lbh-bl@indo.net.id

Web: <http://www.bandar-lampung.lbh.or.id>

- LBH Makassar

Jl. Macan No 1, Makassar, Sulawesi Selatan, Indonesia

Phone: +62 411 871 747

Facs: +62 411 873 239,

Email: ujung-pandang@lbh.or.id; lbhmks@indosat.net.id

Web: <http://www.makassar.lbh.or.id>

- LBH Manado

Jl. Arnold Mononutu No. 29 Manado 95116, Indonesia

Phone: +62 431 859 962

Facs: +62 431 859 963

Email: manado@lbh.or.id

Web: <http://www.manado.lbh.or.id>

- LBH Padang
Jl. Pekan Baru No. 21 Padang, Indonesia
Phone: +62 751 517 560
Facs: +62 751 517 560
Email: padang@lbh.or.id
Web: <http://www.padang.lbh.or.id>
- LBH Palembang
Jl. Sumpah Pemuda Blok K No. 21/1790, Kampus Palembang Rt. 32/09 Kel.
Lorok Pakjo, Palembang, Indonesia
Phone: +62 711 353 803
Facs: +62 711 353 803
Email: palembang@lbh.or.id
Web: <http://www.palembang.lbh.or.id>
- LBH Semarang
Jl. Parang Kembang No. 14 Bumi Tlogosari, Semarang, Indonesia
Phone: +62 24 671 0687
Facs: +62 24 671 0495
Email: semarang@lbh.or.id
Web: <http://semarang.lbh.or.id>
- LBH Yogyakarta
Jl. H. Agus Salim No. 36 Yogyakarta 55262, Indonesia
Phone: +62 274 375 321, +62 274 376 316
Facs: +62 274 376 316
Email: yogyakarta@lbh.or.id; lbhyogya@indo.net.id
Web: <http://www.yogyakarta.lbh.or.id>
- LBH Bali
Jl. Plawa No. 57 Denpasar 80233 Bali, Indonesia
Phone: +62 361 223 010
Facs: +62 361 227 465
Email: bali@lbh.or.id; lbhbali@indo.net.id
Web: <http://www.bali.lbh.or.id>

2-2-2 When was the above organization established?

YLBHI was established in 1980.

2-2-3 Please describe briefly the organization structure such as branches and other offices.

See the answer of question number 2-2-1.

2-2-4 Please explain about the organization's service delivery model such as salaried legal professional (staff attorney) and/or private legal professional (judicare).

2-2-5 Please explain about the budget for the legal aid system.

According to the Instruction Letter of Ministry of Justice No. M.24 UM.06.02 Year 1985, the government provides certain amount budget (at that time Rp150.000/case) for each case treat as legal aid category. Based on the Instruction Letter, legal aid budget/fund provided by the government c.q. Department of Justice through the State Court.

Member of community can ask for the legal aid pro bono to the Chief of State Court. Chief of State Court will then appoint a lawyer to handle the case of that member of community. The legal aid fund will be given to the lawyer when the process of case starts in the court. The lawyer has to make a report regarding to the progress of the case.

But, nowadays, there is no such data whether this system is still implemented by the Department of Justice (now it is called Department of Law and Human Rights) or the State Court.

Right now, the legal aid institution itself covers the operational cost of legal aid assistance. Many legal aid institutions funded their operational cost by themselves. Most of them got the fund from the following resources:

- Donation from member of community;
- Donation from donor agencies.

2-2-6 How many recipients have received the legal aid assistance in main legal aid programs in recent years?

We do not have the accurate data concerning the total number of recipients in Indonesia who have received the legal aid assistance. We only have such data of Jakarta.

According to the data in the website of LBH Jakarta in 2007 (<http://www.bantuanhukum.org/index-6.php?title=BERITA&fileid=1&beritaid=376>), there were 1.140 cases handled by them and those cases involved 20837 members of community.

In 2006, there were 10.015 members of community that have received the legal aid assistance provided by LBH Jakarta. The entire recipients were involved in 1.123 cases which could be divided into 5 classifications:

- a. Labor cases;
- b. City and urban community cases;
- c. Civil and political right cases;
- d. Women and children cases;
- e. Specific cases.

Comparison Table Cases
Handled by LBH Jakarta from 2003 - 2007

Year	Cases Handled by LBH Jakarta	Number of Recipient which Received Legal Assistance for LBH Jakarta
2007	1140	20.837
2006	1123	10.015
2005	1134	21.409
2004	1097	32.370
2003	1026	21.409

2-2-7 Please explain about the main activities of the legal aid organization, including entitlement to legal aid and reimbursement of the assisted legal aid costs

The main activities of the legal aid organization: see the answer of question no.

2-2

Reimbursement of the assisted legal aid costs: see the answer of question no. 2-2-5

2-3 What are the future issues or challenges with respect to the legal aid system in your country?

The issue remains how to ensure the fundamental right of people in Indonesia as legal subject can be implemented properly by the state, even though they are located at remote area.

2-4 Please let me know if the legal aid organization have an English language website.

<http://www.ylbhi.or.id/>

III Legal consultation (other than that covered by the Legal Aid system explained in above II.)

3-1 Legal Consultation Programs (Please explain if there are legal consultation programs managed by your organization (or other institutions) other than those covered under the Legal Aid system in your country.)

[]

3-2 Fees for Legal Consultation (Please explain the fee structure for such legal consultation programs.)

[]

3-3 Management of the Legal Consultation Program (Please explain how such program is run by the organization.)

[]

3-4 Appointment of an Attorney for Legal Consultation (Please explain how an attorney (consultant) is appointed.)

[]

3-5 Flow to the legal representation (Please explain how such legal consultation may lead to legal representation by an attorney)

[]

3-6 Number of Consultations (Please provide statistics on how many legal consultations have been carried out per year.)

[]

IV Shortages of Lawyers in Local Areas

4-1 Is there any figure of lawyers who work in local areas in your country?

Since Law Number 18 Year 2003 regarding Advocates (“Advocates Law”) had applied on April 5, 2003, the lawyer’s area of work covers the entire territories of The Republic of Indonesia and not only the area in which they are legally domiciled. These lawyers spread across the country, but mostly they work in the capital of province or big city in their provinces.

4-2 Do you think that there are a sufficient number of qualified lawyers working for citizens in local areas in your country?

Since most lawyers in our country works in the capital of provinces or big cities in their capital or nearby, many of small town particularly with small amount of population have shortage of lawyers.

4-3 If the answer of Question 3-2 is negative, what have caused such shortage of lawyers?

The promulgation of area development does not cover throughout the territory of the country.

4-4 Does the legal aid organization or the bar association/law society has any programs in dealing with legal services in local areas in your country?

Yes. The legal aid organization has a program to provide pro bono legal aid assistance for member of community who cannot afford lawyers fee.

Beside, both the bar association and legal aid organization are also trying to maintain the quality of their members or staffs. For instance, the Indonesia Advocates Association (Perhimpunan Advokat Indonesia, abbreviated to PERADI) as the bar association mandated by Law No. 18/2003, are now trying to conduct programs such as continuing legal education in order to maintain the quality of its members in regions.

So does the legal aid organization, LBH Jakarta, a part of YLBHI, continuously conduct legal education program for legal scholar. The program called Karya Latihan Bantuan Hukum (Kalabahu). In Kalabahu, the participant is given many

kinds of knowledge, like ideology in relation with the law, the concept of structural legal aid activity, also practical knowledge to handle a case. This program also becomes one of the selection processes to join as public defender of LBH Jakarta.

4-5 If the answer of Question 3-4 is affirmative, please describe briefly such programs.

See the answer of question 3-4.

4-6 What are the future issues or challenges with respect to the shortage of legal services in local areas in your country?

- The existence of lawyers which is not evenly distributed in every area in Indonesia;
- Improvement of number of lawyers in Indonesia;
- Maintain the quality of recruitment system of advocate;
- Maintain the quality of advocate;

V Other Obstacles to Hinder Access to Justice

5-1 Are there any obstacles to hinder access to justice other than the problems with the legal aid system and the shortage of lawyers in local areas?

5-2 If the answer of Question 4-1 is affirmative, please describe briefly such obstacles.

5-3 Please explain briefly the educational system to produce qualified lawyers in your country.

In order to ensure the quality of advocates in Indonesia, the Advocates Law (Law No. 18/2003) regulates that every person who wants to become an advocate must follow a certification process that consist three steps:

- Being successful in the advocate profession training;
- Pass a bar exam successfully;
- Complete apprentice program for two years simultaneously in an advocate office.

Nowadays, according to the Advocates Law, the certification process becomes the authority of PERADI. There is significant change with the implementation of certification process run by PERADI. Nobody, not even the Board of National Governors nor the Bar Exam Committee, able to manipulate the result of bar exam since the examining process is done by the computer. The participant pass the bar exam purely based on their competency to complete the test.

Below, the percentage number of participant pass the bar exam conducted by PERADI:

No.	Date of Bar Exam	Total Participant	Total of Participant Pass the Exam	Number of Participant Fail	Percentage of Participant Pass the Exam (%)
1	4 February 2006	6.457	1.944	4.513	30,11%
2	9 September 2006	3.404	593	2.811	17,42%

In addition, in order to maintain the quality of advocate, PERADI as bar association also conducted a program called continuing legal education (“CLE”) to maintain the quality of its members, especially their legal skill. Several CLE activities already conducted by PERADI for its members, as example: the management law firm training, training of procedural law in the Constitutional Court, etc.

5-4 Do you think that your country has enough lawyers to substantiate the access to justice?

If we compare the number of existing lawyers with the population in Indonesia, we think Indonesia is still in the lack condition of sufficient lawyers. But increasing the number of lawyers do not solve the problem since the existence of lawyers itself has not been covered throughout the territory of the country. Most lawyers are located in big cities. It makes some regions in the remote area do not have sufficient lawyers.

It means it is important to increase the number of lawyers but also the bar association must find a solution of how to distribute the existence of lawyers itself so that there will be no area which has no lawyers.

5-5 Do you think that your country produces newly qualified lawyers every year to substantiate the access to justice?

The system, which was established by PERADI, has objective to improve the quality of the Advocates’ Profession. We hope that with all steps followed by candidate of advocate (special training, bar exam, and two years apprenticeship program), he/she will have a proper qualification to be admitted as an advocate.

5-6 If the answer of Question 4-4 or 4-5 is negative, please describe briefly the reason for such shortage and your thoughts on how to solve such problems.

VI Cooperation with Foreign Organizations

6-1 Please explain the details of recent and future projects relating to any of the above discussed issues in your country, in regard to which any foreign (governmental or non-governmental) organizations are providing assistance.

VII Others

7-1 Please fill in any comments or your thoughts to way to achieve the well-organized access to justice in your country.

Answer:

- First, there has to be clear regulation that guarantees legal right of the people.
- Second, there has to be awareness from legal enforcer to ensure the legal rights of the people, especially in every step of judiciary process.
- Third, the people also have to be aware about their right to have the same treatment in legal process.

7-2 Comments

Please fill in any comments or your thoughts to way to achieve the well-organized access to justice in your country.

Attachment

The Indonesian Advocates Association Country Report 2010

I. General Information about PERADI

Foundation of PERADI

The Indonesian Advocates Association (Perhimpunan Advokat Indonesia) or known as "PERADI" was formed on 21 December 2004 based on an agreement among the leaders of the seven previously existing bar associations and the new Indonesian Syariah Law Association (Asosiasi Pengacara Syariah Indonesia or "APSI"), following the enactment of the first Indonesian Advocates Law (i.e., Law Number 18 Year 2003 concerning Advocates). Shortly after its formation, PERADI was recognized as the only government-sanctioned group for advocates.

Membership of PERADI

Until now PERADI's members throughout Indonesia have exceeded over 22,000 advocates, let alone those who have obtained temporary license. There is only one type of membership issued by the organization (PERADI) and becoming a member is compulsory for every law graduate in order to get a practice license, thus enable him / her to practice as an advocate after passing certain requirements.

Advocates in Indonesia

In Indonesia, we use the term "advocate" for practicing lawyer and under Law No.18/2003 on Advocate, an advocate appointed by an advocate association such as PERADI is eligible to practice law in Indonesia. The Advocates Law defines "advocate" is a person with a profession to provide legal services, either inside or outside the court and has met the requirements set forth in this law (Article 1 paragraph 1 of the Law).

The Law stipulates that an advocate is prohibited from holding or possessing any other position or having any other profession that could cause a conflict of interest with the duties and dignity of his profession or position that may prejudice the advocate's profession, or

interfere with or diminish his / her independence and freedom as an advocate in performing his / her duties and responsibilities. It is clearly stipulated in the Law on Advocate that if an advocate accepts a state office appointment or alike and becomes one, he / she must not go on practice and shall not be permitted to practice as an advocate until the time he / she resigns from such appointment.

Code Ethics of Advocate

Pursuant to the Law on Advocate, duties, rights, and privileges of an advocate are set out in the Code of Ethics of Indonesian Advocates and shall be applicable to advocates admitted under the Law.

This Code of Ethics is the ultimate governing rule for a lawyer to uphold in performing legal profession. The Code sets out, among others, the minimum standard of conduct that Indonesian Advocates should seek to observe. This Code imposes obligation on every advocate to act sensibly, responsibly and in proper manner in performing his / her legal profession towards clients, the court, the state, the society, and, of course toward himself / herself.

Indonesian advocates have serious ethical and legal obligations to their clients. The Code specifically governs the advocate's duties to his/her client, which include:

- a. Do not provide misleading information to a client in respect of the case.
- b. Do not guarantee a client for successful outcome.
- c. Do not burden a client with unnecessary expenses and costs.
- d. Must not Refuse to handle a case that lack of legal ground;
- e. Maintaining the confidentiality of all matters informed to him by his client and such confidentiality must be maintained at all times even after advocate-client relationship comes to an end.
- f. Not withdrawing from a case at a time that is inopportune for the client, or when such withdrawal could bring irreparable loss or prejudice against the client.
- g. Not representing a client there is a "conflict of interest". A "conflict of interest" can occur if the lawyer's personal interests, another client's interests, or former client's interests conflict with client's interests.

The Code of Ethics also governs relationship among lawyers. Pursuant to the Code of Ethics, a lawyer shall not be permitted to entice or “poach” clients away from another lawyer. Should a client wishes to change his / her legal representative, then his / her new lawyer may only accept the case after receiving proof that the proxy which was granted to the original lawyer is withdrawn. The new lawyer must also remind the client that the client must fulfill his / her obligations to the original lawyer. Should a case be transferred by a client to a new lawyer, then the original lawyer must furnish all material documents and information pertaining to the case to the new lawyer subject to the right of retention of the lawyer in respect of his client.

Supervision

Advocates are supervised by the Honorary Council as stipulated in article 9 codes of ethics. Advocates are also supervised by the government, which is Minister of Law and Human Rights and the Supreme Court of the Republic of Indonesia, based on Joint Statement Letter of Head of the Supreme Court and Minister of Justice No.KMA/005/SKKB/VII/1987.

Advocates' Rights

In the court, an advocate has the freedom to express his / her views and to perform his / her legal service in defending cases one is responsible for. A suit can not be filed against an advocate either civil or criminal suits, when and during performing his / her professional duties in good faith for the purpose of defending a client in the court.

An Advocate shall have the right to acquire information, data, and other documents, either from government institutions or from other parties to defend their client in accordance with the law.

An Advocate has the right to keep the relationship with a client confidential, in term of protecting the rights and interest of his / her client including protection of the files and documents from seizure or inspection and protection against tapping of any communications by any means.

Advocate' s Privilege

Under the Law, an advocate is obliged to maintain the confidentiality

of all matters that come to his / her knowledge or any information given by a client based on their professional relationship, save where otherwise provided for by law.

Article 19 of the Law specifically states that:

"(1) Every Advocate shall maintain the confidentiality of all matters that come to his/her knowledge or which are informed to him/her by his/her Client based on his/her professional relationship, save where otherwise provided by this Law"

(2) "An Advocate has the right to keep confidential anything pertaining to his/her relation with his/her client, including the protection of his/her files or documents from confiscation, investigation and from taping of the Advocate's electronic communication".

It is clear that under the Law an advocate has a privilege not to disclose confidential communications made between or information obtained from his/her client. It is important to note that the Law protects the confidentiality of not only communications made between a client and an advocate but also any information (including non-written information) pertaining to his/her relation with the client that is obtained by the advocate for the purpose of providing legal assistance or services to the client.

Under the applicable Code of Ethics, the advocate's duty to maintain the confidentiality must continue until after the advocate-client relationship comes to an end.

Advocate's Liability

A breach of engagement agreement or violation of a statutory provisions or ethical rules may be used to establish the advocate's liability.

PERADI statistics indicate that the number of legal malpractice or misconduct complaints made by clients against their lawyers to the Disciplinary Council of PERADI is increasing. Possible reasons for this include better educated clients and higher client expectations. Most of the misconducts that have been reported to the bar association

includes:

- Representing one client which causes disadvantage to another client (such as representing another defendant in the same lawsuit)
- Being untruthful to a client about important information in respect to the case;
- Settling client's case for less than it was worth without first obtaining client's approval;
- Inappropriately using money belonging to a client.

Recognition by the Government and Court

After a long court battle, The Constitutional Court in 2006 rejected a judicial review of the law on Advocate and upheld PERADI's status as an organization for Indonesian lawyers. As written in the Consideration of the Decision of The Court, "Whereas Article 28 Paragraph (1) of the Law on Advocate refers to a single bar organization, but from the fact in the hearing according to statements of PERADI and eight organizations holding temporary duty before the establishment of advocate organizations concerned (vide Article 32 Paragraph (3) and (4) of the Law on Advocate) namely IKADIN, AAI, IPHI, SPI, HAPI, AKHI, HKHPM, and APSI, these eight organizations as the founders of PERADI still exist but their authorities as organizations of advocate profession, in making code of ethics, reviewing, monitoring, and removing advocates (vide Article 2 Paragraph (2), Article 12 Paragraph (1), Article 9 Paragraph (1) the Law on Advocate) have been officially declared as to become the authorities of PERADI. The eight advocate organizations founding PERADI still have authorities other than that of PERADI, hence Article 28 Paragraph (1) of the Law on Advocate cannot remove the existence of the eight organizations, and violate the principle of freedom of association and assembly as regulated by the 1945 Constitution (vide Decision of The Court Number 019/PUU-1/2003)."

Advocate as Officer of the Court

The Law on Advocate regards that an advocate is an officer of the court in the administration of justice. The Law on Advocate specifically states that advocate's independence and autonomy shall be guaranteed by the law. Because of the critical role of advocates in the Indonesian legal and judicial system, the Law on Advocate grants

immunity to advocates.

Although Indonesian advocates possess immunity in theory, but practically speaking, such immunity has not been really honored by other law officers. In Indonesia, an advocate must not only represent his/her client zealously and within ethical guidelines, but must also take care to protect against potential claims.

II. Attorney System in Indonesia

Requirements for an advocate

The requirements to be appointed Advocate based on article 3 of Advocates Law No 18 of 2003, which is as follows:

1. Indonesian Citizen;
2. Residing in Indonesia;
3. Is not as civil servant/ government officials;
4. Aged at least 25 (twenty five) years;
5. Undergraduate with legal high education background;
6. Has passed the examination held by PERADI;
7. Has finished internships for at least 2 years consecutively on Advocates' Office;
8. Has never been penalized due to a criminal acts threatened with an imprisonment for 5 (five) years or more;
9. Has a good conduct, honest, responsible, fair, and high integrity.

Admission Procedure of PERADI's membership

Under the Law No. 18/ 2003, it is required that for someone who wants to be an advocate and obtain a license must follow these steps:

1. Attend Special Education for Advocate Profession ("PKPA");
2. After PKPA, must pass the Advocate Profession Examination;
3. Work as internship for 2 years in a law firm is a compulsory;
4. When the candidate has been intern through a period for 2 years, then will be appointed Advocate at the induction by PERADI.
5. After appointed, an advocate will obtain Advocate Identity card ("KTPA") and this card must be renewed every 3 years.

Foreign Advocates Practicing in Indonesia

The regulation regarding certification of foreign advocates is stipulated under Article 23 of the Law on Advocate. In this article

there are several issues, which clearly need to be underlined.

- Foreign advocates are not allowed to appear before any court. Neither are they allowed to practice law and/or set up law firms or branches of their overseas law firms in Indonesia.
- Foreign advocates are only allowed to work in Indonesia if they are employed by a local advocate/law firm as an employee or an expert in foreign laws of their home country. This means that the foreign advocates can only be involved in issues relating to foreign law other than Indonesian law and they are prohibited from rendering legal advice relating to Indonesian law.
- Foreign advocates working in Indonesia have to be hired by an Indonesian firm and have to obtain a working visa from the Indonesian government. A recommendation from PERADI is required.

III. Main Activities of PERADI

Advocates Certification

PERADI has:

- a. Organized PKPA throughout the country;
- b. Organized Examination for Advocate Profession;
- c. Published provision concerning 2 (two) years internships for candidates and advocates office in relation to internship;
- d. Issued practicing license for those who have passed all the requirements;
- e. Provide recommendations for Foreign Advocate working in Indonesian Law firm.

Enforcement Code of Ethics

The Honorary Council or also known as the Disciplinary Committee which has been formed and part of PERADI is an independent body whose task is to examine and evaluate the performance of ethical conduct of an advocate This board reports to the national congress which is the highest authority in PERADI.

Organization

PERADI's activities in organization are:

- a. Continuing in updating and verifying PERADI members;
- b. Establishing branches of PERADI across the country. Until now have been formed 37 branches of PERADI that will help run the program of the National Council of Leaders ("DPN"), decisions and policy making;
- c. Employing Staff to run day-to-day activity at the Secretariat of PERADI.

Advocate training

In addition, in order to maintain as well as to develop the quality of Indonesia advocates, PERADI as bar association also conducted a program called continuing legal education ("CLE") to maintain the quality of its members, especially their legal skill. Several CLE activities already conducted by PERADI for its members, as example: the management law firm training, training of procedural law in the Constitutional Court, etc.

Legal Aid

PERADI has recently formed a new department called Legal Aid Centre in the organization to equip its mission to help those who seek for legal assistance. Although it is new, but the activities have been long implemented.

International

With the number of members of approximately 21,039, PERADI also has built a network with foreign advocates in various countries. PERADI existence and recognition can be seen in the International Bar Association ("IBA"), The Law Association for Asia and the Pacific ("LAWASIA") as well as the President of Law Association in Asia ("POLA").

Cooperation

Secretariat of PERADI:

PERHIMPUNAN ADVOKAT INDONESIA (PERADI) /
Indonesia Advocates Association

Address : Graha Soho Slipi, 11th Floor
Jalan S. Parman Kav. 22-24
Jakarta Barat 11480. Indonesia

Telephone. : +62 21 2594 5192

Facsimile : +62 21 2594 5173

E-mail : info@peradi.or.id

Website : <http://www.peradi.or.id>

*****PERADI*****

Information Sheet: MALAYSIA

From: Bar Council Malaysia

3rd Conference on Access to Justice and the
Role of Bar Associations and Law Societies in Asia
30 Nov – 2 Dec 2011
Tokyo, Japan

Information Sheet – MALAYSIA

I General Information : Number of stakeholders

1-1-1 Population – 28.667 million (Malaysia’s Department of Statistics, 2011)

1-1-2 Number of lawyers/attorneys-at-law – 13, 972 (as of Nov. 2011)

1-1-3 Number of judges – 429 (as informed by the Palace of Justice in August 2010, and as informed at the House of Parliament in June 2010)

1-1-4 Number of public prosecutors – 508 (as informed by the Attorney General’s Chambers of Malaysia in August 2010)

2 Number of court cases handled by first instance courts (Magistrates and Sessions Courts)

2-2-1 Number of civil cases

Year 2009

Courts	Registered	Concluded*
Sessions	141,031	160,906
Magistrate	306,246	367,138
Total	447,277	528,044

**Total included cases brought forward from previous years.*

2-2-2 Number of family cases – information not available

2-2-3 Number of criminal cases

Year 2009

Courts	Registered	Concluded*
Sessions	31,856	31,247
Magistrate	144,048	159,392

Information Sheet: MALAYSIA
From: Bar Council Malaysia

Total	175,904	190,639
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**Total included cases brought forward from previous years.*

3 Attorneys for Defendants in Criminal Procedures

Please explain in what kinds of criminal cases attorneys must be appointed for suspects or defendants in your country. Please also explain who appoints and bears the costs for the attorneys appointed.

In all criminal cases - lawyers are appointed by the defendants and defendants bear the cost for the lawyers appointed.

If a defendant cannot afford a lawyer, he/she or his/her relatives or friends could go to the Bar Council Legal Aid Centre (BCLAC) to seek legal assistance. If the defendant satisfies the means test*, BCLAC can provide a volunteer lawyer to offer legal representation to the defendant.

If a defendant cannot afford a lawyer in a case that carries a mandatory death sentence, BCLAC will not provide legal representation. In this situation, the Court will appoint a lawyer for the defendant and the payment to the lawyer will be borne by the Court.

*** Means test:**

Applicants eligible for BCLAC legal aid services are those who earned less than MYR 650 (for single person) or MYR 900 (for married couple) per month, after deducting all monthly expenses. In addition, the applicants do not have assets worth over MYR 45,000 (for house/flat), MYR 20,000 (car), MYR 4,500 (motorcycle) and MYR 5,000 (in savings account).

***The figures are for guidance only, some applicants are eligible based on merits of the case. The figures also vary from state to state in Peninsular Malaysia depending on the standard of living in each state.*

If the applicant is qualified for legal aid services, they need to pay disbursements either to the BCLAC or the volunteer lawyers to cover the cost of transportation for the lawyers to go to court and documentation fees. Disbursements range from about MYR 300 to MYR 700 depending on the case. Disbursements can be paid in installments. Lawyers do not charge professional fees for legal advice and legal representation to the client.

4 Profile of the Bar Association/ Organisation and Attorney System

1-4-1 Location and contact information

Bar Council Malaysia

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From: Bar Council Malaysia

No. 15 Lebuhr Pasar Besar
50050 Kuala Lumpur, MALAYSIA
Tel: +603 2050 2050
Fax: +603 2034 2825 / +603 2026 1313 / +603 2072 5818
Email: council@malaysianbar.org.my
URL: www.malaysianbar.org.my

1-4-2 History of Organisation

Malaysian Bar

The Malaysian Bar was established under the Legal Profession Act 1976 (“LPA”). It is an independent Bar whose aims are to uphold the rule of law and the cause of justice, and protect the interest of the legal profession as well as that of the public. The purposes of the Malaysian Bar, inter alia, are:

- to uphold the cause of justice without regard to its own interests or that of its members, uninfluenced by fear or favour;
- to maintain and improve the standards of conduct and learning of the legal profession in Malaysia;
- to facilitate the acquisition of legal knowledge by members of the legal profession and others;
- to express its view on matters affecting legislation and the administration and practice of the law in Malaysia;
- to represent, protect and assist members of the legal profession in Malaysia and to promote in any proper manner the interests of the legal profession in Malaysia;
- to protect and assist the public in all matters touching ancillary or incidental to the law;
- to make provision for or assist in the promotion of a scheme whereby impecunious persons may be represented by advocates and solicitors; and
- to establish a Compensation Fund.

The legal profession in Malaysia is fused: there is no distinction between a barrister and a solicitor. Every advocate and solicitor practising in Peninsular Malaysia is automatically a Member of the Malaysian Bar so long as he or she holds a valid Practising Certificate.

Bar Council

Bar Council, which comprises 36 members is the body that manages the affairs and performance of the Malaysian Bar. The members hold office for one year and are eligible for re-election. Bar Council consists of:

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- the immediate past President and Vice-President of the Malaysian Bar;
- the Chairman of each of the 11 State Bar committees;
- one member elected by each of the 11 State Bars to be its representative to Bar Council; and
- 12 members elected from throughout Peninsular Malaysia by way of postal ballot.

Each term's Bar Council takes office at the end of the Annual General Meeting ("AGM") and concludes at the AGM of the following year. At the first meeting, which is traditionally held immediately after the AGM, the Office Bearers, namely the President, Vice-President and Secretary, are elected. In addition, a Treasurer is appointed. The Office Bearers are full-time advocates and solicitors and their honorary appointments are subject to reelection every year. The President, Vice-President and Secretary cannot hold office for more than two consecutive years. All Bar Council members serve as volunteers since the LPA prohibits payment of fees or remuneration.

1-4-3 Governmental Supervision of the Organisation and Registration of Members

Malaysian Bar is an independent body established by the Legal Profession Act 1976 ("LPA"). It is an independent Bar, as such it is neither supervised nor funded by the government. It funds itself and carries out its activities independently, without fear or favour.

The Malaysian Bar and the Bar Council adopt positive working relations with the government and non-government organisations on matters related to the drafting and amendment of the laws and public policies, matters pertaining to the administration and regulations of its members and matters that affect the society at large especially on human rights.

1-4-4 Main Activities of the Organisation

- (i) Administer, manage and update the membership of practicing lawyers in Peninsular Malaysia;
- (ii) Organise short courses, workshops, seminars, and forums to members of the Bar, members of the public and non-governmental organisations (NGOs) on matters related to the laws including human rights;
- (iii) Engage with the government and other NGOs on matters relating to the

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drafting and amendment of laws and legislations;
(iv) Provide legal aid services to the impecunious;
(v) Attend to complaints from the public against members of the Bar; and
(vi) Manage a compensation fund to protect interests of members of the public whom as clients of lawyers have suffered losses arising out of the dishonesty of lawyers.

1-4-5 Categories of Membership

1 category – paid membership

1-4-6 Number of Members

13, 972 (as of 11 Nov 2011)

1-4-7 Membership (voluntary or compulsory, please also explain where such registration should be filed)

Compulsory in order to practise as an advocate and solicitor in Peninsular Malaysia.

Registration must be filed with the Bar Council via post or in person. Membership must be renewed yearly.

1-4-8 Executives and Officers, Numbers of Positions

- President (1)
- Vice-President (1)
- Secretary (1)
- Treasurer (1)
- Chief Executive Officer (1)
- Deputy Chief Executive Officer (1)
- Others: Heads of Departments (4), Executive Officers (15), Officers (10), Administrative staff (50)

1-4-9 Finances and membership fees (in USD → MYR 1 = USD 0.31)

Yearly budget = USD 2.2 million (approximately, for running of the Bar Council Secretariat, including salaries and allowances, maintenance, administration, purchases of equipment and stationaries, organizing of events, including food and travel allowances for Secretariat staff and members of the Bar Council committees)

Yearly membership fees = USD 240 per year (not including compulsory membership fees to State Bar Committees)

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1-4-10 Journal, Newsletter, Website

(i) Praxis, Chronicle of the Malaysian Bar

First published in 1986 as Infoline, repackaged as Praxis in December 2006. In 2010, the Malaysian Bar entered into a collaborative agreement with LexisNexis Malaysia to produce Praxis every quarter for a period of five years.

(ii) The Malaysian Bar website – www.malaysianbar.org.my

The official website of the Malaysian Bar, was launched in 2005. One of the most important means by which Bar Council keeps in touch with members of the Bar and members of the public.

From 1 Jan to 31 Dec 2010, the website was viewed 7.6 million times.

1-4-11 Other Bar Associations

There are three separate Bar Associations in Malaysia with independent jurisdictions over their members:

(i) Malaysian Bar for active lawyers in Peninsular Malaysia, governed by the Bar Council Malaysia;

(ii) Sabah Law Association for lawyers in the Sabah state; and

(iii) Advocates' Association of Sarawak for lawyers in the Sarawak state.

1-4-12 Qualifications to Become an Attorney (for Peninsular Malaysia)

Admission - Qualifying as an Advocate and Solicitor

The provisions governing admission and qualifications for admission to the Malaysian Bar can be found in **Sections 10 - 19** of the Legal Profession Act 1976 (LPA) and the Notifications made from time to time under section 3 thereof. In any event, all decisions regarding the recognition of qualifications for the purposes of admission come under the jurisdiction of the **Legal Profession Professional Qualifying Board ("Board") of Malaysia** which is established under Part II of the LPA.

Legal Profession Professional Qualifying Board, Malaysia

Introduction

Legal Profession Qualifying Board of Malaysia (the Board) was established under the Part II of the LPA. One of the functions of the Board is to decide on the qualifications which may entitle a person to become a "qualified person" within the meaning of section 3 of the Act for purposes of Admission as an advocate and solicitor in Malaysia. "Qualified person" means any person who:

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- (a) has passed the final examination leading to the degree of Bachelor of Laws of the University of Malaya, the University Malaya in Singapore, the University of Singapore or the National University of Singapore;
- (b) is a barrister-at-law of England; or
- (c) is in possession of such other qualification as may by notification in the Gazette be declared by the Board to be sufficient to make a person a qualified person for the purpose of the LPA.

Qualifications for admission to the Malaysian Bar

Under sections 10 and 11 of the LPA and subject to section 14 of the LPA, a "qualified person" may be admitted as an advocate and solicitor in Malaysia if he/she satisfies the following conditions:

- (a) he / she attained the age of eighteen years;
- (b) is of good character;
- (c) is either a Federal citizen or a permanent resident of Malaysia;
- (d) has satisfactorily served in Malaysia the prescribed period of pupillage for qualified persons: and
- (e) as from 1st January 1984, has passed or is exempted from the Bahasa Malaysia Qualifying Examination conducted by the Board.

Bahasa Malaysia Qualifying Examination

By virtue of **section 5(f)** and **11(2)** of the Act, the Board is granted the powers to conduct and organise the **Bahasa Malaysia Qualifying Examination (BMQE)**. This examination consists of an oral test on the proficiency in **Bahasa Malaysia** for admission to the Malaysian Bar. For applicants who are able to provide proof of their proficiency the Board grants exemptions to such applicants.

Membership of Legal Profession Professional Qualifying Board

By virtue of **section 7** of the Act, the Board consists of:

- (a) the Attorney General who is the Chairman;
- (b) two judges nominated by the Chief Justice;
- (c) the Chairman of the Bar Council; and
- (d) a Dean of the Faculty of Law nominated by the Minister of Education.

Apart from the persons mentioned above, the Chief Registrar of the Federal Court is the Secretary to the Board. The Board is further granted powers to

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appoint other officers and staff to perform its day to day functions. The **Certificate in Legal Practice** (CLP) Examination is headed by the Director of Examinations appointed by the Board. THE **BMQE** is conducted by the special panel appointed by the Board.

The office of the Board is located at:

Legal Profession Qualifying Board Malaysia

3rd Floor, Wisma Straits Trading
No 2, Jalan Lebuhr Pasar Besar
50050 Kuala Lumpur
Tel: 03-2691 0054, 03-2691 0080
Fax: 03-2691 0142

List of Universities and Qualifications recognised in Malaysia

Country Institutions and Qualifications

Malaysia

1. Universiti Malaya Bachelor of Laws (LL.B)
2. Qualifying Board CLP
3. Institut Teknologi MARA ADIL
4. International Islamic University Bachelor of Laws (LL.B)
5. Universiti Kebangsaan Bachelor of Laws (LL.B)

Singapore

1. University of Singapore Bachelor of Laws (LL.B)
2. National University of Singapore Bachelor of Laws (LL.B)
3. University of Malaya in Singapore Bachelor of Laws (LL.B)

United Kingdom

1. The Inner Temple Barrister-at-Law
2. The Middle Temple Barrister-at-Law
3. Gray's Inn Barrister-at-Law
4. Lincoln's Inn Barrister-at-Law
5. The Law Society Solicitor of the Supreme Court of Judicature England

Australia*

1. Australian National University Bachelor of Laws (LL.B)
2. University of Sydney Bachelor of Laws (LL.B)
3. University of Adelaide Bachelor of Laws (LL.B)
4. Monash University Bachelor of Laws (LL.B)
5. University of Melbourne Bachelor of Laws (LL.B)

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6. University of Western Australia Bachelor of Laws (LL.B)
7. Macquarie University Bachelor of Laws (LL.B)
8. University of New South Wales Bachelor of Laws (LL.B)
9. University of Queensland Bachelor of Laws (LL.B)
10. University of Tasmania Bachelor of Laws (LL.B)
11. University of Technology, Sydney Bachelor of Laws (LL.B)
12. Bond University, Queensland Bachelor of Laws (LL.B)
13. Murdoch University Bachelor of Laws (LL.B)
14. Queensland University of Technology Bachelor of Laws (LL.B)

New Zealand*

1. University of Auckland Bachelor of Laws (LL.B)
2. University of Centerbury Bachelor of Laws (LL.B)
3. Victoria University of Wellington Bachelor of Laws (LL.B)
4. University of Otago Bachelor of Laws (LL.B)
5. University of Waikato Bachelor of Laws (LL.B)

Ireland

1. King's Inn, Dublin Barrister-at-Law

* **Note:** In the cases of [Australian](#) and [New Zealand](#) degrees listed above, apart from having to pass the final examination leading to the Bachelor of Laws (LL.B) degree, the graduate must also satisfy additional requirements as prescribed in the relevant Gazette.

1-4-14 Code of Ethics and/ or Rules of Professional Conduct

- Legal Profession Act 1976
- Notifications and Orders made under the Legal Profession Act 1976
- Accountant's Report Rules 1990
- Advocates and Solicitors' Compensation Fund Rules 1978
- Advocates and Solicitors (Issue of Sijil Annual) Rules 1978
- Bahasa Malaysia Qualifying Examination (Qualified Persons) Fees Rules 1984
- Legal Profession (Articled Clerks) Rules 1979
- Legal Profession (Disciplinary Board) (Procedure) Rules 1994
- Legal Profession (Disciplinary Proceedings) (Appeal) Rules 1994

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- Legal Profession (Disciplinary Proceedings) (Investigating Tribunal And Disciplinary Committee) Rules 1994
- Legal Profession (Discipline Fund) Rules 1994
- Legal Profession (Practice & Etiquette) Rules 1978
- Legal Profession (Professional Liability) (Insurance) Rules 1992
- Legal Profession (Publicity) Rules 2001
- Solicitors' Accounts (Deposit Interest) Rules 1990
- Solicitors' Account Rules 1990
- Solicitors' Remuneration Order 2005
- Solicitors' Remuneration (Enforcement) Rules 2004
- Solicitors' Remuneration (Multi-Currency Trade Finance and Indirect Exporter Financing Schemes) Order 2006

[All these documents can be found on the Malaysian Bar website at:

http://www.malaysianbar.org.my/governing_laws/]

- Bar Council Rulings (<http://www.malaysianbar.org.my/rulings/>)

1-4-15 Disciplinary Functions (Please explain who has the power to take disciplinary action against members)

The Advocates and Solicitors' Disciplinary Board ("DB") has the jurisdiction to carry out inquiries into complaints of misconduct of lawyers and to impose penalties under the LPA.

The DB is an independent body from the Bar Council and the Malaysian Bar.

Please refer to Attachment:

Bar Council Malaysia: Frequently Asked Questions on Complaints and Disciplinary Proceedings Against Advocates and Solicitors

1-4-16 Continuous Legal Education for Members (Please explain about the programmes, if any)

The Professional Standards and Development Committee at the Bar Council organises talks, seminars and courses on various practice areas for

members of the Bar throughout the year. For details of activities in 2010,

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please visit:

http://www.malaysianbar.org.my/index.php?option=com_docman&task=doc_details&gid=3093&Itemid=332

II Legal Aid

2-1 Please describe briefly the history of legal aid in your country.

There are four legal aid providers in Malaysia:

- i. Legal Aid Department (Jabatan Bantuan Guaman) (JBG) – set up in 1970 as Legal Aid Bureau. Following that, in 1971, the Malaysian Government passed the Legal Aid Act 1971. The Act makes provisions for the grant of legal aid to certain persons and for matters connected with it. JBG is administered by the Legal Affairs Division of the Prime Minister’s Department. The status of Legal Aid Bureau was elevated to a government’s department in January 2010. Its head office is in the Federal Administrative Centre, Putrajaya, Malaysia

- ii. Bar Council Legal Aid Centre (BCLAC) – set up by the Bar Council. The first of such centre was set up in 1980 in the state of Penang as Legal Advisory Centre. This was pursuant to the Legal Profession Act (LPA) 1976, Section 42 (1) (h) – which says “The purpose of the Malaysian Bar shall be, amongst others, to make provision for or assist in the promotion of a scheme whereby impecunious persons may be represented by advocates and solicitors”. The first official Legal Aid Centre was set up in Kuala Lumpur in 1982. In 1983, the Malaysian Bar gave substance to the LPA 1976 Section 42 (1) (h) by passing a resolution to set up its Legal Aid Scheme whereby every practicing lawyer is required to contribute MYR 100 per year towards the scheme. Its head office is the Bar Council, Kuala Lumpur, Malaysia.

- iii. Court-Assigned Counsel – was set up by the British in Malaya way back during the pre-World War II era. This scheme is under the purview of the Chief Registrar of Malaysia and it only offers representation to accused who cannot defend themselves in capital offence cases. Its head office is in the Palace of Justice, Putrajaya, Malaysia.

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- iv. National Legal Aid Foundation/ Yayasan Bantuan Guaman Kebangsaan (NLAF/YBGK) – was launched by the government as an incorporated charity company on 25 February 2011. The NLAF’s objectives are, amongst others, to fund the provision of legal aid, enhance services for lawyers to represent those needing legal representation, determine the guidelines for the administration of the national legal aid scheme, and initiate and carry out educational programmes designed to promote understanding amongst members of the public of their rights and duties under the laws of Malaysia. NLAF will provide legal assistance to all Malaysians (irrespective of their financial means) upon arrest, at remand hearings and when they are charged in court. Insofar as hearings are concerned, the accused must satisfy a means test* before qualifying to receive legal assistance from the NLAF. In order to provide these services, YBGK will work closely with the BCLAC. As at the time of writing this report, the services of the NLAF have yet to commence.

*Means test for NLAF clients:

Eligibility: Free service to clients for legal advice from point of arrest to remand stage. No charge to clients at trial stage for those earning below MYR 25,000; a charge of MYR 300 for those earning above MYR 25,000 to MYR 36,000. Those earning over MYR 36,000 and above are not eligible for legal representation service in trial stage under the NLAF.

2-2 Please outline the legal aid organizations and their programmes.

The organizations and their programs are listed below:

- i. JBG – offers free legal advice at its offices and temporary legal aid clinics across the country. It also offers mediation services and legal representations at in courts across Malaysia.
- ii. BCLAC – offers free legal advice at its centres and free legal representation at courts in Peninsular Malaysia only. BCLACs also conduct the following programmes:
 - a. Dock Brief programs – free legal services such as mitigation of sentences, bail applications and remand matters to accused at lower courts.
 - b. Prisons Visits – legal advices to prison inmates and do necessary follow-ups from the BCLACs.

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- c. Legal Awareness Programs – offer talks on legal rights and distribute pamphlets at schools, public places, villages, and juvenile homes. In some occasions BCLACs partner with non-governmental organizations such as women’s organization and youth organizations in organizing legal awareness programmes.
 - d. Skill Development Programmes – organize training for volunteer legal aid lawyers on Family Law, Human Rights, Syariah Law, and Criminal Law, among others.
- iii. Court-assigned Counsel - offers representation to accused who cannot defend themselves in capital offence cases from High Court to Federal Court level.
- iv. Yayasan Bantuan Guaman Kebangsaan (National Legal Aid Foundation - NLAF) – offers legal advice and legal representation to Malaysian citizens involved in criminal cases only from point of arrest to trial stage.

2-2-1 When were the organizations established?

- i. JBG – Biro Bantuan Guaman (Legal Aid Bureau) was set up in 1970.
- ii. BCLAC – established in 1980 in Penang state by the Penang State Bar Committee. Other offices were set up by the Bar Council from 1982 onwards.
- iii. Court-assigned Counsel – was introduced during pre-war Malaya by the British government.
- iv. NLAF – set up and launched by the government on 25 February 2011. However, its services have yet to commence.

2-2-2 Please describe briefly the organization structure such as branches and other offices.

- i. JBG – has offices throughout Malaysia. The Minister appoints from amongst members of the Judicial and Legal Service a person to be or to act as a Director General. The Director General shall prepare and maintain panels of solicitors willing to investigate, report and give an opinion upon applications for the grant of legal aid, to act for persons receiving legal aid or to give legal advice under the provisions of this Legal Aid Act 1971. There may be separate panels for different purposes and for different courts.
- ii. BCLACs – has one or two offices in each state in the Peninsular

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Malaysia. There are now 15 BCLACs and all are managed by the Bar Council through the National Legal Aid Committee. Each centre is headed by a Chairperson assisted by the Management Panel. The Chairperson and members of the Management Panel are all active members of the Malaysian Bar. The centre is staffed either by the office administrator, executive officers or office clerks. Lawyers volunteer to give free legal advice or represent the clients.

- iii. Court-Assigned Counsel – The scheme is available to accused of capital offences at the High Court up to the Federal Court, who cannot defend themselves across Malaysia.
- iv. NLAF is administered by a Board of Directors chaired by the Attorney General, with the President of the Malaysian Bar serves as the Vice Chairperson. Its head office is currently situated in Bangi, Selangor, managed by an Office Manager.

2-2-3 Please explain about the organization’s service delivery model such as salaried legal professional (staff attorney) and/or private legal professional (judicare).

- i. JBG – administrative staff and legal professionals at the department are civil servants, thus, they receive salaries from the government.
- ii. BCLACs – salaries to officers and staff of BCLACs come from the Bar Council Legal Aid Fund. Volunteer lawyers do not receive any salary. Most BCLACs charge administrative fees to open files for clients. Legal Aid clients pay disbursements to BCLAC or the volunteer lawyers to cover travel expenses and fees for court documents. Legal advices and representation are given for free.
- iii. Court-assigned counsel – fees for counsels are paid by the Court based on the Practice Direction of the Chief Registrar.
- iv. NLAF – lawyers serving under the NLAF must be accredited by the NLAF and are to be paid with a nominal flat rate for rendering their services. The funds for NLAF come from the Government.

2-2-4 Please explain about the budget for the legal aid system.

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- i. JBG – budget comes from the Malaysian Federal Government. The allocation for 2010 is about MYR 2.5 million. This amount will cover the expenses to run JBG offices (including purchase of stationery and other office materials), promotional works, and payments to JBG panel lawyers (about MYR 200,000 yearly). Salaries to JBG lawyers, officers and staff are not included in this amount and come separately from the salaries for civil servants under the Federal Government.
- ii. BCLACs – budget comes from the Bar Council Legal Aid Fund. Members of the Malaysian Bar have to contribute a compulsory fee of MYR 100 per year to this fund. The fund receives about MYR 1.3 million per year from Malaysian Bar members, and it also disburses out about the same amount to all BCLACs yearly to run the centres and also to carry out their outreach activities.
- iii. Court-Assigned Counsel Scheme – budget comes from the Federal Government (amount not available at the time of preparing this Information Sheet).
- iv. NLAF – budget comes from the Malaysian Government. The set up budget was about MYR 5 million. The Malaysian Government has announced to inject another MYR 10 million the year 2012.

2-2-5 How many recipients have received legal aid assistance in main legal aid programs in recent years?

- i. JBG – about 41,415 in 2010 [comprising advice-only services (22,963), syariah/muslim family cases (9,804), mediation services (3,496)]
- ii. BCLAC – about 21,570 in 2010. The total covered those who received free legal advice and also free court representation. The total did not include the number of people including students who attended BCLAC-organized talks and those who received pamphlets from BCLACs during outreach activities to schools, villages, juvenile homes and other public places.
- iii. Court-assigned Counsel Scheme – (we were not able to get the statistics at the time of preparing this Information Sheet).
- iv. NLAF – services have yet to commence.

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2-2-6 Please explain about the main activities of the legal aid organizations, including entitlement to legal aid and reimbursement of the assisted legal aid costs.

i. JBG – the main activities are offering legal advice, legal representation and mediation services to clients. JBG handles the following cases:

Family law matters, Syariah (Islamic) family law cases, probate and letter of administration, accident cases, hire-purchase matters, workers' compensation matters, consumers' claims, inheritance matters, money-lending matters, tenancy matters and criminal matters (but only in criminal cases where clients pleads guilty, exceptions to this are in small criminal offences and child criminal cases).

Procedure: Applicant must pay a registration fee of MYR 2 when applying for legal aid at the office. Upon registration, the “means test” will be conducted on the applicant. If the subject of dispute falls within JBG’s jurisdiction, the applicant will fill all the relevant legal aid forms. The applicant will be interviewed and requested to produce a statutory declaration authorized by a Commissioner of Oaths. The office will then open and register a brief and will process the brief for the applicant.

Eligibility for legal aid services under the JBG – there are two categories:

(a) First category

Financial resources not exceeding MYR 25,000 per annum
(Registration fee: MYR 2)

(b) Second category

Financial resources exceeding MYR 25,000 but less than MYR 3,600 per annum
(Registration fee: MYR 2 and contribution of MYR 300)

All JBG legal aid lawyers are civil servants, in exception, the JBG panel lawyers are private lawyers registered with the JBG. Their services are utilized when two parties in a case, for example a family case, applied for and eligible for legal aid services under JBG. JBG lawyers cannot represent both or either one of the clients, this case will then be referred to JBG panel lawyers.

ii. BCLAC – the main activities are offering legal advice and legal

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representation. BCLAC handles the following cases:

Criminal cases, public interest cases, housing/tenancy issues, labour/employment, family law matters, Syariah (Islamic) family law cases, domestic violence cases, migrant/refugees issues, immigration issues (passport, identity cards) and public interest litigation cases.

Procedure: Applicant applies for legal aid at the centre and pay the registration fee. Registration fees vary from one centre to another depending on their location in the country. Some centres do not charge registration fee. Upon registration, the “means test” will be conducted on the applicant. If the subject of dispute falls within the BCLAC’s jurisdiction, the applicant will fill all the relevant legal aid forms. The applicant will be interviewed and requested to produce a statutory declaration authorized by a Commissioner of Oaths. The centre will then open and register a brief and will process the brief for the applicant.

Eligibility**:

Applicants eligible for BCLAC legal aid services are those who earned less than MYR 650 (for single person) or MYR 900 (for married couple) per month, after deducting all monthly expenses. In addition, the applicants do not have assets worth over MYR 45,000 (for house/flat), MYR 20,000 (car), MYR 4,500 (motorcycle) and MYR 5,000 (in savings account).

***The figures are for guidance only, some applicants are eligible based on merits of the case. The figures also vary from state to state in Peninsular Malaysia depending on the standard of living in each state.*

If the applicant is qualified for legal aid services, they need to pay disbursements either to the BCLAC or the volunteer lawyers to cover the cost of transportation for the lawyers to go to court and documentation fees. Disbursements range from about MYR 300 to MYR 700 depending on the case. Disbursements can be paid in installments. Lawyers do not charge professional fees for legal advice and legal representation to the client.

iii. Court-assigned counsel – main activity is offering legal representation to those charged with mandatory death sentence, who cannot afford a lawyer.

iv. NLAF – main activity is offering legal advice and legal representation to Malaysians charged with criminal cases. Eligibility: Free service to clients for legal advice from point of arrest to remand stage. No charge to clients at

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trial stage for those earning below MYR 25,000; a charge of MYR 300 those earning between MYR 25,000 and above MYR 36,000. Those earning over MYR 36,000 and above are not eligible for legal representation service in trial stage under the NLAf.

2-3 What are the issues or challenges with respect to the legal aid system in your country?

i. JBG – the department only handles criminal cases where accused plead guilty and need assistance with mitigation. It handles very limited criminal cases, as stated below, and other criminal cases are referred to BCLAC:

- Criminal proceedings under the Child Act 2011 [Act 611]; and
- Criminal proceedings under Minor Offences Act 1955 [Act 336]

ii. BCLAC - are totally funded by lawyers who pay MYR 100 as part of their annual membership subscription to the Bar Council. This comes up to about MYR 1.3 million. The total population of Malaysia is over 28 million people, BCLAC has a perennial problem of lack of funds to serve the impecunious. The current scheme prevents access to justice to the impecunious in its entirety. In addition, lack of volunteer lawyers poses difficulty for BCLACs to attend to more legal aid cases.

iii. Court-assigned Counsel – difficulty in finding qualified and committed lawyers to conduct capital cases. However, the Bar Council and the Chief Registrar office had collaborated and updated the guidelines and criteria for court-assigned counsels. The updated guidelines are effective from 1 April 2010. Among others, the guidelines state that lawyers who want to apply as court-assigned counsels must have at least 3 years of experience in conducting capital offence cases. In addition, when assigned to a case under the scheme, the counsel cannot hand over his/her duty to other lawyers, without prior consent from the Court.

iv. NLAf – although the NLAf was launched in February 2011. Its services have yet to commence. The Attorney General Chambers and the Royal Malaysian Police Force have yet to agree on a date to start the services.

In addition, the rate of payment for NLAf lawyers is low that it is difficult to attract lawyers to offer services under the NLAf. In addition, NLAf lawyers cannot claim any travel expenses. This is problematic for access to justice

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for those living in rural areas as lawyers are mostly concentrated in the urban/town areas. *(Please see attachment titled Yayasan Bantuan Guaman Kebangsaan: Rate of Payments to Lawyers)*

2-3 Do the legal aid organizations have English language websites?

- i. JBG – website is available in English and Malay Language – www.jbg.gov.my
- ii. BCLAC – no official website at the moment. Some information can be found on www.malaysianbar.org.my, and <http://www.facebook.com/pages/Bar-Council-Legal-Aid-Centre-Kuala-Lumpur/>
- iii. Court-Assigned Counsel – no website.
- iv. NLAFF – website available in Malay and English language : www.ybgk.org.my

III Legal Consultation (other than that covered by the Legal Aid system explained in above II)

The Bar Council does not managed any legal consultation programmes.

IV Shortages of Lawyers in Local Areas

4-1 Is there any figure of lawyers who work in local areas in your country?

Numbers of active lawyers based on the states in Peninsular Malaysia:

	<u>State</u>	<u>Number of Members</u>
1	Melaka	350
2	Kelantan	333
3	Federal Territory Labuan	10
4	Selangor	3,047
5	Others	147
6	Perak	682
7	Terengganu	201
8	Pahang	332
9	Negeri Sembilan	367
10	Federal Territory Kuala Lumpur	5,920

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11	Perlis	32
12	Kedah	400
13	Johor	1,055
14	Penang	1,096
	Total:	13,972

4-2 Do you think that there are a sufficient number of qualified lawyers working for citizens in local areas in your country?

No.

4-3 If the answer of Question 3-2 is negative, what have caused such shortage of lawyers?

For its pro bono legal aid services, the BCLAC depends on volunteer lawyers. This largely means that volunteer lawyers devote their additional time to the cause of legal aid. Although this is good, generally, access to justice must not depend on voluntarism. There must be a concerted effort to ensure that every person who wants to get access to justice is given legal representation. It is disheartening to note that out of about 13,000 active lawyers registered with the Bar Council, only about 10% listed themselves as volunteer lawyers with the BCLACs.

4-4 & 4-5 Does the legal aid organization or the bar association/law society has any programs in dealing with legal services in local areas in your country? Please describe briefly such programs.

- i. JBG – Yes, at least an office is available in each of the major cities throughout Malaysia. Apart from offering free legal advice, legal representations and mediations in Syariah (Islamic) law matters and civil matters, the offices also carry out legal awareness programmes for the public in community centres and shopping centres.
- ii. BCLACs – Yes, at least one centre in each of the major cities across Peninsular Malaysia. Apart from offering free legal advice and legal representations for criminal and civil matters, BCLACs also conduct outreach programmes by going to schools, villages, juvenile homes and native people settlements to create awareness on legal rights and human rights.
- iii. Court-assigned counsel – No programmes, information about the scheme is informed to the clients by the Courts.

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iv. NLAFF – no programmes at the moment.

4-6 What are the future issues or challenges with respect to the shortage of legal services in local areas in your country?

Currently, the Bar Council Legal Aid Centres (BCLACs) undertake legal representation for criminal matters, civil matters, law awareness programs and also public interest litigation cases. This means the BCLACs are stretched in its financial and human resources. If the Government can take over the provision of legal aid to the impecunious including criminal cases, then the BCLAC can focus more in providing legal awareness and doing public interest litigation cases. In addition, access to justice is limited, it is generally confined in town areas.

V Other Obstacles to Hinder Access to Justice

5-1 Are there any obstacles to hinder access to justice other than the problems with the legal aid system and the shortage of lawyers in local areas?

Yes.

5-2 If the answer of Question 5-1 is affirmative, please describe briefly such obstacles.

Lack of financial and human resources to offer legal aid services. We need a government-funded legal aid scheme that is broader in its coverage and scope of representation.

The Bar Council proposed to the Malaysian Government in 2009, and reiterated its proposal to the Prime Minister in early 2010, for the setting up of the National Legal Aid Foundation (NLAFF). The primary objective of the NLAFF is to fund the provision of legal aid and the cost of other proceedings for, and on behalf of, those needing legal aid.

On 25 February 2011, the Prime Minister of Malaysia, Najib Razak, launched the NLAFF with a fund of MYR 5 million. The NLAFF will be offering legal representation to accused in criminal cases from point of arrest to trial stage. The services, however, are only for Malaysians.

Although the foundation has been set up, the government has yet to confirm

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the date for the services to commence.

The Bar Council is hoping for the services under the NLAFF to be extended to non-Malaysians in Malaysia, including foreign workers, asylum seekers, refugees and other undocumented individuals.

5-3 Please explain briefly the educational system to produce qualified lawyers in your country.

Malaysian law graduates from recognized local universities in Malaysia must undertake a nine-month pupillage programme under a senior lawyer. Upon completing the pupillage programme, a person may be called to the Malaysian Bar.

Malaysian law graduates from recognized overseas universities have to sit for an examination known as the Certificate of Legal Practice (CLP) before they can start their pupillage programme.

Recognized universities are determined by the Legal Profession Professional Qualifying Board. The Chairperson of the Bar Council, who is also the President of the Malaysian Bar sits on the Qualifying Board, other members are the Attorney General, two judges and a dean of the Faculty of Law.

As for legal aid skills, all pupils during their pupillage must complete a 14-day compulsory legal aid services at any of the BCLAC closer to their location as part of the requirement to be called to the Malaysian Bar.

In addition, the Bar Council and the State Bar Committees are active in organizing skill and development training courses to lawyers at their premises with minimal fees in efforts to produce highly skilled lawyers.

5-4 Do you think that your country has enough lawyers to substantiate the access to justice?

No, because over 60% of lawyers in Peninsular Malaysia are concentrated in the urban areas, namely the Federal Territory Kuala Lumpur and Selangor State.

5-5 Do you think that your country produces newly qualified lawyers every year to substantiate the access to justice?

Yes, the country produces newly qualified lawyers yearly. However, the problem with the legal profession in Peninsular Malaysia is that the increase of the number of lawyers has been stagnant at 5%-10% yearly over the

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years. In addition, the number of those leaving the profession is also about the same as the number who just join the profession every year.

5-6 If the answer of Question 5-4 or 5-5 is negative, please describe briefly the reason for such shortage and your thoughts on how to solve such problems.

- Legal profession is a highly stressful profession – especially for litigation lawyers;
- Salary is low compared to lawyers in Singapore and Hong Kong –not an attractive profession for junior lawyers to stay on;
- Public awareness on the value of legal service is still low - public does not want to pay high fees for legal services. As such, law firms find it difficult to cover their overhead costs to sustain their practice;
- Incentives from Government such as low-interest loans for lawyers to set up own legal firms could encourage young and senior lawyers to do so especially in rural areas.

VI Cooperation with Foreign Organisation

6-1 Please explain the details of recent and future projects relating to any of the above discussed issues in your country, in regard to which any foreign (governmental and non-governmental) organisations are providing assistance.

At the moment, the Bar Council does not have any cooperation with foreign organisation on the provision of legal aid services or on the issue of access to justice in Malaysia.

VII Recent Movements

7-1 Please describe briefly the recent movements or topics in the legal community, including the bar association/law society:

i. The setting up of the National Legal Aid Foundation

The Malaysian Bar saw its efforts for a government-funded legal aid services bear fruition with the setting up of the National Legal Aid Foundation, launched on 25 February 2011. After the launch of the NLAFF, Bar Council has been active in training lawyers who are interested to render their services under the NLAFF. So far, over 300 lawyers have been trained in Peninsular Malaysia, Sabah and Sarawak. Lawyers offering legal aid services under the NLAFF will be paid a nominal fee. However, at the time of writing this report, the government has yet to confirm the date to commence

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services.

ii. Proposal to set up the Coroner's Court Act in Malaysia

The Malaysian Bar is lobbying the government for the setting up of the Coroner's Court Act in Malaysia in view of the alarming number of deaths in custody in the country, including deaths in police custody, in detention centres and in the custody of the Malaysian Anti-Corruption Commission. Based on the statistics disclosed by the Ministry of Home Affairs in Parliament, a total of 156 persons died in police custody from the year 2000 until February 2011.

The Bar Council is in the midst of preparing a position paper to be submitted to the government on the Coroner's Court Act.

iii. Various human rights issues

The Malaysian Bar is active in lobbying the Malaysian government to abolish all draconian laws in Malaysia which allow the detention of individuals without trial. Such laws include the Internal Security Act (ISA), the Emergency (Public Order and Prevention of Crime) Ordinance 1969 and the Dangerous Drugs (Special Preventive Measures) Act 1985. The Malaysian Bar believes that it is a fundamental human right that all accused persons are entitled to legal representation, where due process of the law is respected and where accused persons are given a fair trial.

On 16 September 2011, the Prime Minister announced that the government will be repealing the ISA, the Banishment Act 1959 and will review the Restricted Residence Act 1933 and the Printing Presses and Publications Act 1984. In addition, the Government will also review section 27 of the Police Act 1967, regarding freedom of assembly so as to be in line with international practice.

In addition, the Malaysian Bar is actively advocating an attitude of openness and acceptance to allow people to exchange their views especially on the issue of freedom of expression and freedom of religion. It has called on the Government to play its role to promote avenues for open exchange of views, especially in a democratic manner.

Recently, on 2 November 2011, the Malaysian Bar issued a press release condemning the Government for banning the organisation of *Seksualiti Merdeka* (SM). SM is an annual sexuality rights festival held in Kuala Lumpur, which is organised by a coalition of Malaysian NGOs and individuals. Events organised under the festival include workshops, forum, and film screenings with an aim to provide a safe environment for the lesbian, gay, bisexual and

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transgender (LGBT) community and also general public to discuss and better understand the LGBT community's rights, problems and challenges in Malaysia.

The Malaysian Bar has also expressed its disgust over the abuse of power by the police force when using tear gas, water cannons and physical force to disband peaceful assemblies including a major public rally calling for electoral reforms organised by a coalition called Bersih 2.0, which took place on 9 July 2011.

The Bar Council sent a monitoring team consisting of close to 100 members to monitor the rally on 9 July 2011 to record if any violations of human rights took place during the rally. Bar Council produced a report dated 12 July 2011 containing observations by the monitoring team at the rally. The report was released to the media and sent to the National Human Rights Commission (SUHAKAM) and the Malaysian Royal Police Force. A public inquiry into the allegations of violations of human rights prior and during the public rally on 9 July 2011 is being conducted by SUHAKAM and the Bar Council sends a watching brief team to the inquiry. The inquiry starts on 11 October 2011 and is ongoing. Members of the Bar Council monitoring team have also volunteered to appear as witnesses at the inquiry.

7-2 Please fill in any comments or your thoughts on the way to achieve a well-organized access to justice in your country.

The setting up of the National Legal Aid Foundation (NLAF) in Malaysia with committed funds from the government is the first step towards a comprehensive and well-organised access to justice in Malaysia. With the establishment of the NLAF, the Bar Council envisages more lawyers will undertake legal aid work and cases because the services will be paid by the NLAF, albeit the low payment rate. However, this is still a commendable effort by the Government.

In 2008, about 80% of some 108,000 persons charged in the Magistrate Courts in Malaysia were unrepresented. The situation was equally grave in respect of remand hearings and proceedings, where likely over 90% of remanded persons were without legal representation.

The Bar Council strongly believes legal aid services cannot rely heavily on volunteer lawyers. It is the Government's responsibility to provide a comprehensive access to justice to everyone in Malaysia.

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The Government initial fund of MYR 5 million to the NLAFF is miniscule compared to over Yen 30 billion spent by the Japanese Government on legal aid yearly (as stated in the National Report - Japan, prepared by the Japan Legal Support Centre, 2010).

The Bar Council will continue to lobby the Government to expand the scope of the NLAFF to cover other cases in addition to criminal cases, to extend NLAFF services to non-Malaysians, and to improve the payment rate for NLAFF lawyers.

Prepared by:

Adilah Ariffin
Executive Officer
Bar Council National Legal Aid Committee
24 November 2011

Frequently Asked Questions on Complaints and Disciplinary Proceedings Against Advocates and Solicitors

1. What type of conduct can a complaint be based on?

A complaint may be based on the professional misconduct or unsatisfactory professional conduct of a solicitor.

2. What is professional misconduct?

Professional misconduct covers a broad range of acts and circumstances. Examples (the list is not exhaustive) may include:

- (a) Dishonesty/Fraud;
- (b) Contravening the Legal Profession Act (“LPA”) 1976 and any Rules or Rulings made there under;
- (c) Being found guilty or convicted of a serious offence;
- (d) Failing to abide by professional ethics/obligations;
- (e) Misappropriating client’s funds/Monetary dishonesty;
- (f) Charging manifestly excessive fees;
- (g) Breaching stakeholder duties;
- (h) Inordinate delay;
- (i) Unbefitting conduct; and
- (j) Grossly disregarding client’s interest.

3. What is unsatisfactory professional conduct?

It generally involves a substantial failure by a solicitor to reach or maintain a reasonable standard of competence and diligence in practice.

4. Where and how can a complaint be lodged?

- (a) A complaint can be lodged with the Advocates & Solicitors Disciplinary Board (“ASDB”). The relevant guidelines can be obtained from ASDB, 8th & 9th Floor, Wisma Maran, 28 Medan Pasar, 50050 Kuala Lumpur, or downloaded from <http://www.asdb.org.my>. For further information, please contact the ASDB by telephone at 03-2034 1911, or by email at secretariat@asdb.org.my;
- (b) All complaints must be in writing and include:
 - (i) All supporting documents to substantiate the allegations; and
 - (ii) A non-refundable administrative fee of RM100.

Source: Legal Profession (Disciplinary Proceedings) (Investigating Tribunal And Disciplinary Committee) Rules 1994

- (c) Supporting documents would include:
 - (i) Proof of appointment of counsel, eg warrant to act;
 - (ii) Agreement as to fees, proof of payment of fees and disbursements (receipts);

- (iii) All relevant documents/correspondence relevant to the subject-matter of the complaint; and
- (iv) Chronological narration of all record of meetings and phone calls, record of documents and/or correspondence to and/or from third party witnesses, and list of potential witnesses where applicable.

5. What is the ASDB?

The ASDB is a statutory body established under section 99(3) of the LPA. It is a body entrusted with powers to conduct disciplinary proceedings against advocates and solicitors and to mete out appropriate punishments.

6. Is the ASDB under Bar Council?

- (a) The ASDB and Bar Council (“BC”) are separate and distinct entities established pursuant to section 93 and section 47 of the LPA 1976; and
- (b) The ASDB and BC are independent of each other. The independence of the ASDB ensures transparency and accountability so that there is no perceived bias in its conduct and decisions. BC does not exercise any right or control over the investigation process.

7. What are the powers exercised by BC?

The powers conferred to BC under the LPA include the following:

- (a) Suspending a Member in the interim by an Order of the High Court under section 88A of the LPA 1976, pending a full inquiry by the Disciplinary Committee (“DC”);
- (b) Initiating intervention proceedings against a firm in the event there is reasonable cause to believe that an advocate and solicitor has been dishonest in the course of practice;
- (c) Commencing injunction proceedings against lawyers who have failed to renew their *Sijil Annual/Practising Certificate* for the current year; and
- (d) Suspending an advocate and solicitor who has been adjudicated bankrupt, pending the consent of BC to reinstate.

8. What is the composition of the ASDB?

The ASDB consists of the following members:

- (a) A Chairman;
- (b) The President of the Malaysian Bar, or any Member of BC as his or her alternate; and
- (c) 15 practitioner Members of the Bar of not less than 15 years standing.

Source: Section 93(3) of the LPA 1976

9. How does the ASDB deal with a complaint?

- (a) The ASDB will deliberate on a complaint to ascertain whether there is merit on the issues as alleged;
- (b) Should there be merit in the complaint, the ASDB may proceed to embark on the following:
 - (i) Direct that a DC be constituted to conduct a formal inquiry; or
 - (ii) Issue a Notice to the solicitor to appear to tender an explanation before the Board; and
- (c) Should there be no merit in the complaint, the ASDB will dismiss the complaint without a formal hearing.

10. What is the composition of the DC?

Three members; two of whom shall be legally qualified and one lay member.

Source: Section 103A(2) of the LPA 1976

11. What is the role of the DC?

- (a) To conduct a full inquiry by perusing the relevant documentary evidence in the presence of the Complainant and the advocate and solicitor concerned, and by summoning the attendance of witnesses (if any); and
- (b) To arrive at an appropriate finding on liability (guilt) and/or sentence, as the case may be and furnish the finding/recommendation to the ASDB.

Source: Section 103C of the LPA 1976

12. Is the ASDB bound to concur with the findings/recommendations of the DC?

No. It may concur, enhance or dismiss the complaint, as it deems fit.

Source: Section 103D of the LPA 1976

13. Is there a need to be represented by counsel at the disciplinary hearing?

No, but Complainants not well-versed in the law and procedures related are advised to engage a solicitor of their choice to ensure that their rights and interests are protected at all times.

Source: Rule 28 of the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal And Disciplinary Committee) Rules 1994

14. What are the sentencing powers of the ASDB?

- (a) Striking off the advocate and solicitor from the Register of Advocates and Solicitors (“Roll”);
- (b) Suspension (for a period not exceeding five years);
- (c) Imposition of a fine/penalty;

- (d) Reprimand/Censure; and
- (e) Restitution of monies (in appropriate instances and on a case to case basis).

Source: Section 100(8) of the LPA 1976

15. What is an Order of striking off the Roll?

It is an Order that effectually removes the name of the lawyer from the Roll. The Order also restrains the lawyer from continuing to practise as an advocate and solicitor for an indefinite period pending any Order of Court to be reinstated to the Roll.

16. What is a Suspension Order?

It is an Order that has the effect of suspending an advocate and solicitor for a definite period (not exceeding five years as provided for under the LPA 1976). The length of time for suspension depends on the seriousness of the alleged misconduct.

17. What is a Fine Order?

It is an Order imposing that a specific sum of money be paid to the Discipline Fund by the advocate and solicitor concerned. The amount ordered to be paid depends on the seriousness of the alleged misconduct.

18. Can an Order imposing a fine be enforced by the ASDB?

A fine payable pursuant to an Order by the ASDB shall be deemed to be a debt outstanding to the ASDB and may be recoverable as a civil debt.

Source: Section 103(2) of the LPA 1976

19. What is an Order of Reprimand/Censure?

It is an Order that has the effect of a warning/admonishment to prevent possible recurrence of the alleged misconduct in the future. This is the least severe of all Orders. Such Orders are basically recorded where the ASDB is reasonably satisfied with the explanation and/or the remedial measures undertaken by the advocate and solicitor concerned.

20. What is an Order for Restitution?

It is an Order requiring the advocate and solicitor to refund any monies due and owing to the Complainant, and stipulate such time period, within which such refund should be made.

In the event the advocate and solicitor fails to comply with the Order, the Complainant may proceed to recover the sums due and owing in a Court of Law as a civil debt.

Source: Section 100(10) of the LPA 1976

21. Is there an avenue to appeal against the decision of the ASDB?

An aggrieved party (either the Complainant or the advocate and solicitor) may lodge an appeal to the High Court against the decision of the ASDB within one month from the date of notification of the Order.

Source: Section 103E(1) of the LPA 1976

22. What is the requisite mode of appeal?

The appeal shall be by way of originating motion setting out the grounds of the appeal supported by an affidavit.

The relevant mode and procedures are set out in the Legal Profession (Disciplinary Proceedings)(Appeal) Rules 1994.

23. Does the ASDB or BC offer assistance to appoint a counsel and/or offer legal advise?

The ASDB or BC will not appoint a counsel and/or offer legal advice.

24. Do the BC Legal Aid Centres offer assistance?

The BC Legal Aid Centres do not offer assistance in respect of disciplinary proceedings.

25. Does the ASDB have powers to investigate complaints against a lawyer who has been struck off the Roll?

Once a lawyer has been struck off the Roll, the ASDB will no longer investigate any complaints against the lawyer. Even though the ASDB will continue to accept such complaints, they will be kept in abeyance and be investigated if the advocate and solicitor concerned is reinstated.

26. What happens in the event of withdrawal of a complaint?

The ASDB will forward the complaint to BC for its consideration on whether to intervene (ie to ascertain whether there is merit) and proceed with the complaint on its own motion.

Source: Rule 8 of the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal & Disciplinary Committee) Rules 1994

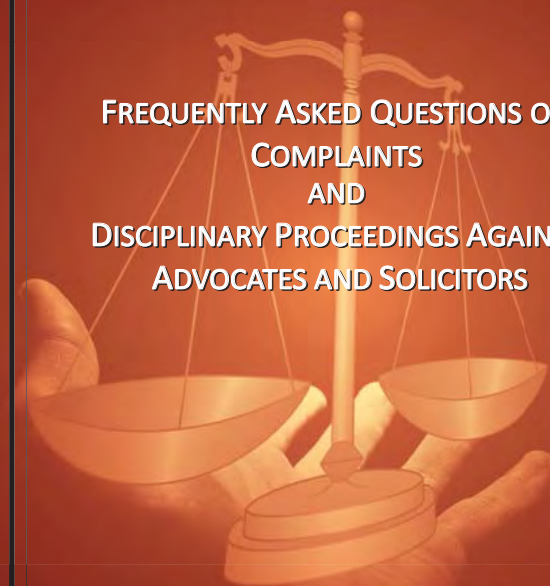
27. How to verify whether a lawyer is a registered practitioner:

- (a) Every advocate and solicitor who intends to conduct legal practice in West Malaysia must be registered with BC and must at all material times be in possession of a valid and current *Sijil Annual/Practising Certificate*; and
- (b) The public may check if a person is an advocate and solicitor by accessing the Malaysian Bar website at www.malaysianbar.org.my and clicking on "Directories", or by contacting the BC Secretariat by telephone at 03-2050 2050.



**MAJLIS PEGUAM MALAYSIA
BAR COUNCIL MALAYSIA**

**FREQUENTLY ASKED QUESTIONS ON
COMPLAINTS
AND
DISCIPLINARY PROCEEDINGS AGAINST
ADVOCATES AND SOLICITORS**



Yayasan Bantuan Guaman Kebangsaan

Rates of Payment to Lawyers

No	Service provided	Rates
1	Duty solicitor	<p>The duty solicitor will receive no payment when on standby and will only go to the police station when required.</p> <p>The total amount payable, dependent on the number of clients the duty solicitor actually sees and advises, is as follows:</p> <p>(a) One client: RM50; (b) Two clients: RM90; (c) Three clients: RM120; (d) Four clients: RM140; and (e) Five or more clients: RM150.</p> <p>No claims for travel and no disbursements.</p>
2	Remand hearing	RM10 per client and a maximum of RM250 per day.
3	Bail application (oral)	RM30 per application and a maximum of RM250 per day.
4	Bail application (formal)	RM100 per application.
5	Hearing in Magistrates Court	<p>Attending court for mention of case: RM40 per day.</p> <p>Attending first day of hearing: RM80 per day or part of a day.</p> <p>Attending hearings on subsequent days: RM60 per day or part of a day.</p> <p>No claims for travel.</p> <p>RM50 for disbursements on conclusion of case.</p>
6	Hearing in Sessions Court	<p>Attending court for mention of case: RM40 per day.</p> <p>Attending first day of hearing: RM90 per day or part of a day.</p> <p>Attending hearings on subsequent days: RM70 per day or part of a day.</p>

		<p>No claims for travel.</p> <p>RM50 for disbursements on conclusion of case.</p>
7	Hearing in High Court (full trial)	<p>RM1,200 if the matter originates from the Magistrates Court.</p> <p>RM1,500 if the matter originates from the Sessions Court.</p> <p>No claims for travel.</p> <p>RM50 for disbursements on conclusion of case.</p>
8	Hearing in Court of Appeal (full trial)	<p>RM1,500.</p> <p>No claims for travel.</p> <p>RM50 for disbursements on conclusion of case.</p>
9	Interview of OKT in prison	<p>RM150 (only one interview in respect of the same OKT).</p>
10	Revision	<p>RM150 per revision.</p>

Information Sheet - [Korea]

I. **General Information**

1 Number of stakeholders in the Country

1-1-1 Population

The total population of Korea as of 2010 is approximately 48,989,000, of which about 10,039,000 (nearly 20%) are living in the capital city Seoul. (Statistics Korea, 2011)

1-1-2 Number of lawyers / attorneys-at-law

As of October 2011, there are 12,590 certified lawyers, and approximately 10,990 are active in practice, of which 7,923 are practicing in Seoul.

1-1-3 Number of judges

As of December 31, 2010, the total number of judges, including the Chief Justice and Supreme Court justices, is 2,490, and if professor-judges at the Judicial Research & Training Institute (JRTI) are included, the number will be 2,545. (The National Court Administration)

1-1-4 Number of prosecutors

As of February 2011, the number of prosecutors is 1,846.

2 Number of court cases handled by first instance courts

1-2-1 Number of civil cases

The total number of civil cases was 881,137 in 2001, 1,169,283 in 2005, and 1,041,468 in 2010.

1-2-2 Number of family cases

The total number of family cases was 111,594 in 2001, 109,131 in 2005, and 136,986 in 2010.

1-2-3 Number of criminal cases

The total number of criminal cases was 267,333 in 2001, 285,637 in 2005, and 356,587 in 2010.

3 Attorneys for Defendants in Criminal Procedures

Please explain in what kinds of criminal cases attorneys must be appointed for suspects or defendants in your country. Please also explain who appoints and bears the costs for the attorneys appointed.

The Constitution of the Republic of Korea provides the right to request the assistance of attorney for any person who are arrested or detained under Chapter II Rights and Duties of Citizens:

Article 12

(4) Any person who is arrested or detained shall have the right to prompt assistance of counsel. When a criminal defendant is unable to secure counsel by his own efforts, the State shall assign counsel for the defendant as prescribed by Act.

Also, The Criminal Procedure Act provides that the defence counsel is assigned by court as follows;

Article 33 (Defence Counsel Assigned by Court)

(1) In any case falling under any of the following subparagraphs, if no defence counsel is available, the court shall appoint a defence counsel *ex officio*:

1. When the defendant is **placed under arrest**;
2. When the defendant is **a minor**;
3. When the defendant is **seventy years of age or over**;
4. When the defendant is **deaf and dumb**;
5. When the defendant is **suspected of having a mental and physical disorder**;
and
6. When the defendant is **indicted for a case corresponding to death penalty, life imprisonment, or imprisonment with or without labor for a short term of 3 three years or more**.

(2) Where the defendant is unable to appoint a defence counsel because of poverty or any other reason, if the defendant requests, the court shall appoint a defence counsel.

(3) When the court deems it necessary to protect the rights considering the age, intelligence and level, etc. of education of the defendant, it shall appoint a defence counsel within the scope that does not go against the explicit intention of the defendant.

All expenses are paid by the court, regarding the defence counsel.

4 Profile of the Bar Association/ Organization and Attorney System

1-4-1 Location and contact information

Korean Bar Association

Address

4/5F, Lawyer's Hall, 1718-1, Seocho 3-dong, Seocho-gu, Seoul, 137-885, KOREA
Tel. +82 2 3476 4060 (Rep.)

Fax. +82 2 3476 2770

E-mail international@koreanbar.or.kr

1-4-2 History of Organization

1950's

July 28, 1952	The KBA was founded.
Dec. 10, 1953	Held the first nationwide lawyer conference. It was resolved that “the lawyers shall make efforts to realize the Universal Declaration of Human Rights by the UN, comply with the rules on human rights protection as set forth in the Korean Constitution and Criminal Law, manage the KBA as an independent organization, and enhance the dignity of its members.”
Jan. 22, 1958	Made a formal proposal to the National Assembly on the amendment of the Court Organization Act
July 1958	Sent a group of representatives to the annual conference of the International Bar Association (IBA) for the first time (7th annual conference, the KBA has been attending the IBA conference every year ever since)

1960's

June 30, 1962	Established the “Lawyers’ Code of Ethics”
Aug. 6, 1966	Attended the inaugural conference of the Law Association for Asia and the Pacific (LAWASIA) as its founding member (the KBA has been attending the LAWASIA conferences every year ever since)
Aug. 1969	Organized the first Korean Legal Culture Awards (the award has been given out every year ever since)

1970's

Mar. 7, 1970	Published the initial issue of the journal "Hoibo" (later renamed as "Human Rights and Justice" and published every month).
Sept. 1, 1972	Held a symposium on the subject of “Lawyers Expected by Democratic Citizens” to commemorate its 20 th anniversary
Aug. 28, 1977	Hosted the 5 th LAWASIA Conference
Jan. 4, 1978	Organized the first lawyer training session (held every year ever since)
May 25, 1979	Published 『History of Korean Attorneys』 describing the history of the Korean bar system and the history of Korean lawyers since the end of Chosun Dynasty (19 th century)

1980's

Dec. 31, 1982	Lawyer registration was now to be effected with the KBA, instead of with the Ministry of Justice as was previously the case.
May 21, 1983	Established the Lawyer Training Center to train lawyers and paralegals
Sept. 9, 1985	Established the Legal Aid Institution in accordance with the Attorney-At-Law Act and related rules and opened its branches at local bar associations
May 1, 1986	Published the first issue of 『Human Rights Report』 (published every year

	ever since)
Sept. 6-9, 1987	Held the first exchange conference with the Japan Federation of Bar Associations (JFBA) (held every year ever since)

1990's

Feb. 1, 1990	Co-hosted the symposium entitled “Economic Development and Legislation of Asia” with the Chinese and Japanese bar associations
Mar. 8, 1990	Attended the inaugural conference of the Presidents of Law Associations of Asia (POLA) and its first conference. (the KBA has been attending POLA conferences every year ever since)
May 9-11, 1991	Hosted the 2 nd POLA conference
Apr. 24, 1992	Co-hosted the symposium entitled “Regulation on Foreign Lawyers and Countermeasures against the Opening of the Legal Market” with the Chinese and Japanese bar associations
Mar. 10, 1993	Took over the “Right to Impose Disciplinary Measures on Lawyers” from the Ministry of Justice
Oct. 30 – Nov. 2, 1996	Held the first exchange conference between the KBA and the All China Lawyers Association (held every year ever since)
Sept. 7-11, 1999	Hosted the 16 th LAWASIA conference in Seoul
Nov. 8, 1999	Launched the KBA website (http://www.koreanbar.or.kr)

2000's

Jan. 28, 2000	Lawyers are obliged to engage in pro bono activities under the amended Attorney-At-Law Act (No. 6207).
Mar. 27, 2000	Launched the “KBA Newspaper”
July 28, 2002	Published 『Fifty-year History of the Korean Bar Association』 to commemorate the 50 th anniversary of the KBA
Jan. 29, 2003	Established KBA Legal Aid Foundation
Apr. 5, 2006	Published “Lawyer Practice Guide” to assist new member lawyers in rationalizing and systematically managing the business opening and operation
May 8, 2006	The 10,000th member was registered since the lawyer registration began.
Sept. 28, 2006	Published 『2006 White-paper on Human Rights in North Korea』 both in Korean and English for the purposes of knowing the situation of human rights in North Korea (published every two years ever since)
Jan. 26, 2007	Under the amended Attorney-At-Law Act (No. 8271), lawyers are obliged to take the training course.
July 4, 2007	The “Act on the Establishment and Operation of Law School (Law School Act)” was passed in the National Assembly.
July 27, 2008	Launched ‘Legal Ethics and Professional Conduct Council’ jointly with the Court Administration Office and the Ministry of Justice, to establish legal ethics and promote sound legal culture
Aug. 25, 2008	Co-held the Korean Lawyers Convention to celebrate the 60 th National Foundation Year with the Korea Legal Center, the Supreme Court, the Constitutional Court, the Ministry of Justice and the Korean Law Professors

	Association
Apr. 20, 2009	Prepared the “Report on Human Rights Violation in North Korea” jointly with the Citizens’ Alliance for North Korean Human Rights, focusing on political prison camps and people’s right to food in North Korea, and submitted it to the UN Human Rights Council
July 2-4, 2009	Hosted the 20 th POLA conference
Sept. 14, 2009	Launched the Lawyers’ Specialty Registration System to enhance the quality of professional service
Dec. 17, 2009	Sent delegates to the UN human rights conference in Geneva regarding the Universal Periodic Review (UPR) of North Korea to influence the UN Human Rights Council to make a written recommendation for improvement of North Korean human rights situation

2010 - Present

Feb. 7, 2010	Launched the Law School Evaluation Committee
July 6, 2010	Established the KBA Human Rights Foundation
Nov. 29, 2010	Published 『2010 White-paper on Korean Lawyers』 including all statistics and materials of the lawyers for the first time since the lawyer system was adopted in the Republic of Korea
Dec. 11, 2010	Announced the ‘Joint Declaration for Compensation to Victims by Japanese Imperialism’ with the Japanese Bar Association
Dec. 27, 2010	Changed the paper I.D. card to the plastic I.D. card through the business agreement with Shinhan Card Company
Feb. 10, 2011	Published the “Practice Guideline for Legal Service for Victims by Sexual Violence”
Feb. 14, 2011	Started online education for lawyers through the business agreement with EBS, the education-focused media channel in Korea (http://e.koreanbar.or.kr)
Feb. 28, 2011	Induced the Asian Regional Division of IBA to be located in Seoul
Mar. 3-4, 2011	Held and sponsored the 14 th International Arbitration Day conference hosted by IBA in Seoul
Apr. 1, 2011	Started to implement ‘One Attorney for One School’ system
Apr. 28-29, 2011	Co-hosted the Competition Law Conference with IBA in Seoul
Oct. 9-12, 2011	Held the 24th LAWASIA Conference

1-4-3 Governmental Supervision of the Organization and Registration of Members (Please explain whether or not, and if so how, your organization is supervised by the government.)

The Ministry of Justice has conferred the authority to register the attorneys to the KBA. However, approval from the Ministry of Justice is required for establishing law offices and law firms, and approval is also required when the law firms and offices amends their constitution.

1-4-4 Main Activities of the Organization

Protecting Human Rights

As prescribed in the beginning part of Article 1 of the Attorney-at-law Act of Korea that lawyers shall take it as their mission to defend the fundamental human rights, protection of human rights is not an option but a mission imposed by the laws to be performed by lawyers as their obligation. The KBA with its member lawyers has been doing various activities to protect human rights by considering it as the most important duty of the association.

For example, if a citizen suffers from the violation by governmental authorities of his/her fundamental human right, the KBA conducts an investigation, demands remedy, and seeks measures to prevent recurrence of such violation. Also, the KBA publishes ‘Human Rights Report’ annually that objectively summarizes and analyzes the status of human rights for the purpose of raising human rights-related problems as social issues and encouraging appropriate measures to deal with them.

Meanwhile, the KBA is taking a bigger role in the International Bar Association (IBA) with an increasing exchange with them. Accordingly, it is important for the KBA to raise its awareness of international human rights issues and to enhance its capacity to handle them. The KBA has been involved in international human rights activities. For example, the association dispatched its delegates to the Board of Directors of UN Human Rights in Geneva in order to arouse international interest in the human rights in North Korea so that the recommendation for improvement of human rights status in North Korea can be adopted. The KBA also sent a lawyer to Honduras to assist a Korean citizen who was unjustly charged with murder. The association has actively involved in international aid activities, recently the KBA raised fund to aid the victims of the Japan and Haiti earthquakes.

In addition, in 2010 the KBA established ‘the KBA Human Rights Foundation’ with mission to enhance and improve human rights in Korea to all residents including foreigners. The contributors for the Foundation are as follow:

Contributor	Amount of Contribution
KBA and 13 local bar associations	KRW 482,000,000
Law firms	KRW 661,500,000
Individuals (180 persons)	KRW 780,600,000
Total	KRW 1,924,100,000

Legal Aid Service

The KBA founded a legal aid institution in 1986 to improve access of justice and to protect the rights of people. However, since an independent legal aid organization was deemed necessary to meet the increasing demands for legal aid services and to expand its scope, the KBA established the KBA Legal Aid Foundation in 2003. The Foundation, with its increased financial funding through sources such as membership fees and external donations, has been able to actively participate in legal aid programs and expand the scope of legal aid services to include a broader scope of the socially underprivileged such as the elderly, minors, the disabled, and refugees from North Korea.

Support for Multicultural Families

With the rapid increase of international marriages, conflicts within the multicultural families are also increasing. Such conflicts are mostly led to legal disputes, but the legal aid programs to handle an

increasing number of such disputes are insufficient. To settle this problem, the KBA provides legal aid service for multicultural families in cooperation with the KBA Human Rights Foundation. Also, in collaboration with multicultural centers and the female immigrant emergency service centers nationwide, the KBA operates the ‘one lawyer at one center system’ and seeks ways to realize ‘on-duty lawyer system’ through the business agreement with the Ministry of Gender Equality and Family. It also develops other legal aid service systems for multicultural families.

Furthermore, the KBA makes active efforts to give practical help to prevent legal disputes of multicultural families including: providing information regarding international marriage, opening of the portal website aimed at offering legal aid to multicultural families and proposal of related legislative bills.

Legal Aid for North Korean Defectors

The number of North Korean defectors reached 20,000 in 2010, showing a drastic increase each year. After settling in the Korean society, the defectors face many difficulties (debts, broker-related problems, marriage, family entrance, unfair dismissal from employment, frauds, violence, etc.) due to lack of understanding about the legal system in Korea. To help them have stable life and adapt to new environments in Korea, the KBA has been providing them with legal counselling, education and other legal aid service to North Korean defectors by organizing the ‘Legal Aid Lawyer Group for North Korean Defectors.’

Support for Public Lawsuits

The KBA provides legal service for public lawsuits in order to help consumers who suffered from damages but find it difficult to get professional legal service because the case involves a large number of victims but the claim money is small. The victims are represented by the lawyers belonging to the ‘Special Committee for Public Lawsuits of KBA’ in a public lawsuit in return for only a minimum level of fees. The KBA is committed to protecting consumers’ rights by finding the cases involving a large number of victims and helping them with public lawsuits, thus contributing to strengthening the rule of law.

Reform of Judicial System

In order to realize rule of law in the society, the standing committee of the KBA, Committee for Research on Legal System, provides opinions to more than 200 legislative bills each year and forms opinions based on the members’ questions regarding the Attorney-At-Law Act to guide government legislations in the right direction.

In order to better represent the wishes of the citizens and the judiciary body, the KBA provides suggestions on nomination for appointment to positions such as the Chief Justice of Supreme Court, Supreme Court Justices, the Attorney General, Justices of Constitutional Court and independent prosecutors and on reform of the judicial system including the law school system, the bar examination and the system of unifying the judicial officers in an effort to create a judicial system that fully protects people’s rights, provides professional legal services to people and enjoys public trust.

The KBA, as a legal and a human rights organization, safeguards the Constitution and the rule-of-law principles necessary to realize social justice, by conducting investigations, issuing public statements and presenting its criticism of governmental actions when the basic rights of citizens or rule-of-law principles are violated.

Self-Reform of Lawyers

With the increasing number of lawyers and the diversified misconducts of legal professionals, the sense of ethics of individual attorneys and the importance of ethical education are being emphasized. The KBA helps lawyers to perform the duties for clients in good faith and to build an exemplary image of lawyers. For example, if any misconduct by a lawyer is found, the association investigates it and takes a disciplinary action against the relevant lawyer through the Disciplinary Committee, Investigation Committee and Ethics Committee of the KBA.

In order to help lawyers build a sense of ethics, the KBA published the Bill of Ethics for Lawyers in 1962 that outlines the basic missions of lawyers in the Code of Ethics section and lawyers' obligations in the Regulations of Ethics section. Also, the association published the 'Collection of Disciplinary Cases' that describes the precedent disciplinary actions taken by the Disciplinary Committee of the KBA to provides guidelines on ethical standards for the present and future lawyers.

In the event of a dispute between a lawyer and a client or between lawyers with respect to legal fees, the KBA tries to settle it by having the Dispute Mediation Committee at each local bar association investigate the case, and recommends a compromise or a mediation proposal to the concerned parties.

International Exchange

The KBA is taking an initiative in liberalization and specialization of legal community in order to stay competitive, actively respond to problems arising from rapid globalization of legal markets and adapt to this rapid changing international environment.

The KBA hosts international conferences including the conference of the Law Association for Asia and the Pacific (LAWASIA) and conference of the President of Bar Associations of Asia (POLA), and actively participates in the conferences of International Bar Association (IBA), Inter-Pacific Bar Association (IPBA), etc. It also supports its member lawyers to serve at international legal professionals organizations.

Also, the KBA collects the recruiting information of international organizations, law firms and overseas companies to help Korean lawyers to advance to the international stage, support young lawyers to participate in international conferences, and make efforts to secure the opportunities of internship for Korean lawyers.

The KBA promotes mutual cooperation and understanding of different legal systems between the bar associations of other countries by sharing information on the operation of bar association, judicial system, bar exam system, etc. We have regular exchanges with the Japanese Bar Association and the All China Lawyers' Association to promote amicable relationship and increase mutual understanding on the law system. It also sponsors the International Association of Korean Lawyers (IAKL), which consists of Korean descent lawyers in overseas.

In addition, the KBA makes active exchanges with foreign legal professional groups including signing a memorandum of understanding with the lawyers' groups of the U.S., U.K., Australia, France, etc. It spares no efforts to grasp the changing trend in the legal profession and prepare for the liberalization of the legal service market.

1-4-5 Categories of Membership

The KBA consists of the lawyers who reported their private practice (individual members), law firms/limited liability law firms established by lawyers to perform their duties systematically and

professionally, foreign lawyers whose practice is approved (foreign members), law & notary public offices established to perform the duties of notary public pursuant to the Notary Public Law (corporate members), and 13 local bar associations established in the location of every district court (group members); and it is mandatory for all of those to join the KBA.

1-4-6 Membership Numbers (as of October, 2011)

Category	Number of Members
Private practice (individual members)	10,990
Law firms	514
Limited liability law firms	13
Foreign legal consultants (approved)	0
Law & notary public offices established to perform the duties of notary public pursuant to the Notary Public Law (corporate members)	49
Others (*Joint Law Offices)	115

*Law Offices: requires at least two people for registration

1-4-7 Membership (voluntary or compulsory, please also explain where such registration should be filed)

The KBA membership is compulsory for all the qualified lawyers in Korea and the registration should be filed to the KBA.

1-4-8 Executives and Officers, Number of Positions

- President (1)
- Senior Vice President (5)
- Secretary General (1)
- Vice President (10)
- Auditors (3)
- Spokesperson (3)
- Deputy Secretary General (2)

1-4-9 Finances and membership fees (Please provide the yearly budget amount of your organization and also the yearly membership fees in USD)

The KBA Yearly Budget → USD 6,300,101.75 (as of 2011)

Monthly (Yearly) membership fees → USD 40

Registration fee → USD 442

1-4-10 Journal, Newsletter, Website

Human Rights Report

The KBA has been publishing the "Human Rights Report" which objectively examines, summarizes, and evaluates the situation of human rights in Korea each year since

1986. The annual report is used to assess the status of human rights in Korea and to seek measures to improve human rights situation.

White Paper on North Korean Human Rights

The KBA has published the "White Paper on North Korean Human Rights" every two years since 2006 with the purpose of correctly assessing the human rights related laws and the reality of North Korea. The paper aims to objectively discuss the human rights laws and its application to North Korean citizens. It is free from all political considerations and interests, and aims to provide an accurate report to the world. An English version of the paper was also published with the latter intention in mind.

KBA Newspaper

Under the slogan "to embody human rights, realize social justice, and improve legal culture," the KBA launched a weekly publication, the "KBA Newspaper," on March 27, 2000. The newspaper introduces various legislative, judicial, and executive activities that affect legal practice as well as the activities of the KBA and local bar associations. As an opinion leader in many issues regarding the legal community, it provides useful information to both lawyers and law students.

Human Rights and Justice

In March 1970, the KBA published the first issue of its journal, then called "Hoibo," to create an anthology to strengthen relationships among lawyers and to provide the legal community with information on local bar associations, other legal groups and lawyers in different fields, in order to promote the development of local and international legal culture and to introduce new legislation.

After renaming the journal to "Human Rights and Justice," the monthly "Human Rights and Justice" has served as a forum for official announcements and notices on various regulations that need to be proclaimed to internal and external readers alike. The journal has also published various papers and data on legal practice and study, serving as a comprehensive legal journal in charge of leading the creation and improvement of legal culture, as well as the judicial system.

Literary Magazine 'The Way'

As the number of lawyers increased to exceed 10,000 and new law school graduates are ready to join the legal market, the KBA launched the literary magazine titled 'The Way' aimed at providing emotional encouragement and consolation to lawyers and removing negative image of lawyers. The magazine is expected to bring positive and friendly image of lawyers to people.

White Paper on Korean Lawyers

In 2010, the KBA published the ‘2010 White Paper on Korean Lawyers’ for the first time in Korea. It includes various statistics and data regarding lawyers including the number of lawyers, their income level, the number of lawsuits, retaining status, notary public system, state-appointed attorney system, public activities of lawyers, etc.

Other Publications

In order to allow members to adequately respond to the rapidly changing legal environment of Korea, the KBA publishes "Summary of Lawyer Practice," "Commentary on Selected Court Decisions Based on the Attorney-At-Law Act," "Register of Lawyers’ Specialty Areas” and special training materials in independent volumes. These publications, in keeping up with the trend of the legal market in becoming more specialized, aid in the production of skilled lawyers specialized in various fields in order to better provide citizens with high-quality legal services.

Korean Bar Association website: www.koreanbar.or.kr

1-4-11 Other Bar Associations (including the provincial associations) in the Country and the Number of Members of such Other Organizations

(As of October, 2011)

Number of lawyers registered with each local bar association	
Seoul	7,923
Northern Gyeonggi	223
Incheon	331
Central Gyeonggi	575
Gangwon	87
Chungbuk	94
Daejeon	306
Daegu	366
Busan	394
Ulsan	108
Gyeongnam	175
Gwangju	245
Jeonbuk	125
Jeju	38

1-4-12 Qualifications to Become an Attorney

Qualification

To become a licensed lawyer, one must pass the bar examination conducted by the government and then complete the mandatory training course of the Judicial Research and Training Institute or should

be qualified as a judge or a public prosecutor.

However, since the new U.S.-style law school system was adopted with the ratification of the “Act on Bar Examination” by the National Assembly in March 2009, one must have completed the graduate level law school program and pass the national bar examination in order to qualify as a licensed lawyer beginning in 2012. The previous bar examination system will remain in effect until it is abolished in 2017.

Registration as a Lawyer and Private Practice

In order to begin legal practice, one needs not only to be a licensed lawyer, but also be registered with the KBA and the local bar association which he/she wants to be affiliated with prior to practicing.

However, the Registration Committee of the KBA may deny the registration through resolution if the Committee decides that the person has reasons for disqualification or is deemed significantly inappropriate to perform duties as a lawyer.

FLC Registration

FLC (Foreign Legal Consultant) refers to a person who has been qualified by the Minister of Justice as a holder of the lawyer’s license of a foreign country and then has registered at the KBA in accordance with the prescribed regulations.

A foreign lawyer who desires to be an FLC shall apply to the Minister of Justice for qualification as an FLC. The requirements for qualification are that the origin country where his/her lawyer’s license was issued is the counter country of the FTA or any similar agreement made by the Republic of Korea and that his/her lawyer’s license is valid in the origin country.

However, in case that a foreign lawyer is disqualified or his/her qualification is suspended temporarily, the KBA may revoke his/her qualification as an FLC.

Registration of Lawyers’ Specialty Area

To provide quality legal service to meet the needs of clients and to maximize the professionalism in each practice area through free competition among its members, the KBA has been implementing the system of registering lawyers’ specialty area of practice.

A lawyer who wishes to register his/her specialty area with the KBA should submit an application together with materials evidencing his/her specialty in the area concerned and then is allowed to register his/her specialty area after passing the examination by the Professional Specialization Review Committee of the KBA.

1-4-13 Laws, Decrees or Regulations on Attorneys (Please explain if there are any laws, decrees or regulations on attorneys in your country. Please provide the JFBA an English translation if they are available.)

Please refer to the attached files:

[1] Korea Attorney-At-Law Act

[2] Enforcement Decree Attorney-At-Law Act

1-4-14 Code of Ethics and/or Rules of Professional Conduct (Please provide the JFBA an English translation if an English translation of these is available.)

Code of Ethics

- Lawyers shall take it as their mission to defend fundamental human rights and realize social justice.
- Lawyers shall perform their duties fairly and diligently, preserving their honor and dignity.
- Lawyers shall serve the nation and society by devoting themselves to promoting the public awareness of the law.
- Lawyers shall contribute to improving legal culture with their courage, intelligence and creativity.
- Lawyers shall make efforts to establish the fundamental order of democracy and condemn immorality and injustice.
- Lawyers shall act in cooperative spirits while respecting friendship and trust.
- Lawyers shall contribute to world peace by promoting goodwill among legal communities of the world.

1-4-15 Disciplinary Functions (Please explain who has the power to take disciplinary action against members.)

The Attorney-At-Law Act, Article 92, provides that the establishment of Attorney Disciplinary Committee as follows;

Article 92 (Establishment of Attorney Disciplinary Committee)

- (1) All disciplinary action against an attorney-at-law shall be taken by the Attorney Disciplinary Committee.
- (2) Both the Korean Bar Association and the Ministry of Justice shall have their own Attorney Disciplinary Committee, respectively.

Article 92-2 (Establishment of Investigative Committee)

- (1) The Investigative Committee mandated to investigate attorneys-at-law who are suspected for being subject to disciplinary action shall be set up in the Korean Bar Association.
- (2) The Investigative Committee may, if deemed necessary, request relevant agencies, organizations, etc. to submit material or interview the parties or persons concerned to consider their opinions about facts.
- (3) Necessary matters concerning the composition, operation, etc. of the Investigative

Committee shall be determined by the Korean Bar Association.

1-4-16 Continuous Legal Education for Members
(Please explain about the program, if any)

The Attorney-At-Law Act provides that the Training and Education of Attorneys-at-Law as follows;

Article 85 (Training and Education of Attorneys-at-Law)

(1) Each attorney-at-law shall receive training and education offered by the Korean Bar Association to enhance their expertise and awareness of ethics (hereinafter referred to as "training and education") for a period determined by Presidential Decree or longer: Provided that the same shall not apply to cases falling under any of the following subparagraphs:

1. Cases where an attorney-at-law is unable to render his/her legal services normally due to disease, etc.;
2. Cases where there is a justifiable ground which prevents an attorney-at-law from receiving training and education, such as suspension of practice;
3. Cases prescribed by the Korean Bar Association, where an attorney-at-law is unable to receive training and education due to his/her advanced age.

(2) The Korean Bar Association may delegate training and education to local bar associations or commission any agency or organization with the training and education.

(3) In cases where any attorney-at-law attends a law-related academic seminar, etc., the Korean Bar Association may recognize that he/she received the training and education as prescribed by the Korean Bar Association.

(4) The subject of legal ethics shall be included in the training and education.

(5) Necessary matters concerning the method of and procedure for the training and education, and procedures and standards for designating institutions and organizations to which the training and education may be commissioned, etc. shall be prescribed by the Korean Bar Association

The Enforcement Decree Attorney-At-Law Act provides that hours the training and education for Attorneys-at-Law as follows;

Article 17-2 (Hours of Training and Education for Attorneys-at-Law)

The hours of training and education for attorneys-at-law pursuant to Article 85 (1) of the Act shall be eight more hours each year, including one hour for legal ethics course, and the method of calculating hours spent for the completion of such training and education, frequency of such training and education, etc. shall be determined by the Korean Bar Association.

KBA Lawyer Training Program

Regular Training

To respond to new demand for legal services and provide citizens with specialized and high-quality legal services, the KBA holds two regular training courses each year (summer & winter) on legal theories, practical knowledge, code of ethics and other areas of interest such as human rights and the environment for all lawyers. The training allows individual lawyers to stay up-to-date on the latest legal developments while encouraging mutual cooperation and solidarity among lawyers to increase morale of the lawyer community.

Special Training

Since the establishment of the Lawyer Training Center on March 17, 1997, the KBA has been holding specialized courses to enhance the capability and competitiveness of its members in specialized areas. As the number of lawyers reaches 10,000 and the law school system has been newly introduced, the association is required to develop specialized and diverse training programs for lawyers. To meet such requirement, the KBA opened the online lawyer training center (<http://e.koreanbar.or.kr>) in collaboration with the Education Broadcasting System (EBS) in January 2011, allowing the lawyers to take online courses of professional legal practice without limit of place and time. The association is trying to keep offering high quality training courses to lawyers.

Overseas Training (Scholarship for Legal Training)

To strengthen the international competitiveness of lawyers to prepare for globalization and opening of the legal market, the KBA provides its members with overseas training programs such as Young Leaders' Program, a regular one-year course in Japan, and Eisenhower Fellowship in the U.S. and UN International Law Fellowship which are irregular courses.

By introducing and conducting these overseas training programs, the KBA aids young and talented members of the association to become prominent lawyers.

1-4-17 Challenges the Organization is Facing (Please briefly explain the problems and challenges your organization is currently facing.)

1. Tension with the patent attorneys in pursuing right to conduct litigation and right for audience in IP cases
2. Establishing the international arbitration centre in Korea
3. Providing legal service to multicultural families

II Legal Aid

2-1 Please describe briefly the history of legal aid in your country.

Korean Legal Aid Corporation (www.klac.or.kr)

The Korean Legal Aid Association, an incorporated foundation, was established in July 1, 1972 under its wing of the Ministry of Justice. As time went by, the Korean Legal Aid Association unveiled many problems, since it was operated under the direction of the Prosecution as opposed to the principle of private autonomy, which should serve as the guiding principle in resolving civil disputes. In particular, providing counsel for the detained suspects and the accused who are physically restrained was out the question, given the nature of the Prosecution.

In order to overcome these restrictions, the Legal Aid Act was enacted and proclaimed on December 23, 1986, under which the Korea Legal Aid Corporation, a special corporation led by the private sector, came into existence on September 1, 1987.

Legal Aid Foundation of the Korean Bar Association (“KBA”) (www.legalaid.or.kr)

It is prescribe in Article 80 of the Attorney-At-Law Act that matters relating to legal aid programs shall be entered in the regulations of the KBA, and also prescribed in Article 84 that a Committee on Legal Aid shall be established to carry out legal aid projects in the KBA, and its subcommittee may be established in a local bar association.

In accordance with the foregoing, the KBA provided legal aid services at its own expense from 1986 to 2003. The Foundation was permitted to be established on March 19, 2003 and began its operation from January 2004, and it was designated in July 2005 as recipient of public contribution by the Ministry of Finance and Economy.

Korean Legal Aid Centre for Family Relations (www.lawhome.or.kr)

The Korea Legal Aid Centre for Family Relations was established in 1956 by lawyer Tae-Young Lee, under the philosophy of human dignity and equality before law. It was registered at the Ministry of Justice as a legal aid corporation under the Legal Aid Act in 1988, and provides a variety of legal aid services from legal counselling on family affairs and mediation to legal aid in litigation.

2-2 Please outline the legal aid organization and its programs.

Korea Legal Aid Corporation

A. Legal counselling

B. Legal aid

(1) Civil and family cases

(2) Criminal cases (including free defending by right to counsel).

(3) Administrative Review & Judicial Review of Administrative Act.

* Administrative review cases are restricted to the cases pending on such committees of Prime Minister, Cities, and Provinces, respectively.

(4) Adjudication on Constitutional Complaint.

Legal Aid Foundation of the KBA

A. Legal aid

B. Other activities

(1) Legal support programs for the retired and senior citizens

(2) Operation of Citizen's Law School

Korea Legal Aid Center for Family Relations

A. Legal Counselling

B. Mediation and Free paper preparation for necessary lawsuits.

C. Aid for litigation in court

D. Anti-Domestic Violence Counseling Program

2-2-1 Name of the legal aid organization/head office location

Korea Legal Aid Center for Family Relations

11-13 Yeouido-dong, Youngdeungpo-gu, Seoul 150-868, Korea
02)780-5688

Korea Legal Aid Corporation

Korea Legal Aid Corporation Bldg, 1703-10, Seocho 3-dong, Seocho-gu, Seoul
Tel. 02)532-0132

Legal Aid Foundation of the KBA

5th Floor, Korean Bar Association, 1718-1, Seocho-dong, Seocho-gu, Seoul
Tel. 02) 3476 - 6515
Fax. 02) 3476 - 4008

2-2-2 When was the above organization established?

The Korea Legal Aid Center for Family Relations was established in 1956.

The Korea Legal Aid Corporation was established on September 1, 1987.

The Legal Aid Foundation of the KBA was permitted to be established on March 19, 2003.

2-2-3 Please describe briefly the organization structure such as branches and other offices.

Korea Legal Aid Corporation

18 branches; 40 sub-branches

Number of employees: 753 persons (as of October 2011)

Legal Aid Foundation of the KBA

It is operated under the auspices of the KBA and 13 local bar associations.

Korea Legal Aid Center for Family Relations

31 branches home and abroad

2-2-4 Please explain about the organization's service delivery model such as salaried legal professional (staff attorney) and/or private legal professional (judicare).

Korea Legal Aid Center for Family Relations- Group of 100 lawyers

Volunteer lawyers provide free legal counseling and other legal services in the daytime and evening to assist the persons with family law problems during weekdays. Currently a total of 618 lawyers are listed to provide services to those who could otherwise not afford them.

Legal Aid Foundation of KBA

There are no in-house lawyers.

Korea Legal Aid Corporation

The lawyers and public-service advocates of the Corporation provide legal aid and the Ministry of Justice dispatch 100 public-service advocates each year.

2-2-5 Please explain about the budget for the legal aid system.

Korea Legal Aid Corporation

It receives government subsidies (KRW 26.4 billion in 2008).

Korea Legal Aid Center for Family Relations

It has received financial subsidies from the Ministry of Justice since 1989, and the amount of the current annual subsidy is approximately KRW 1 billion.

Legal Aid Foundation of the KBA (as of 2010)

Category	Balance
1. Commitment of Donation for 2010	KRW 786,410,000
- Law Firms:	KRW 292,000,000
- Individuals	KRW 4,410,000
- Deposit Management Commission	KRW 300,000,000
- Ministry of Gender Equality and Family	KRW 190,000,000
2. Balance (carried forward from the last account)	KRW 551,134,535
Total Budget	KRW 1,337,544,535

2-2-6 How many recipients have received the legal aid assistance in main legal aid programs in recent years?

Korea Legal Aid Corporation

□ Status of Provision of Legal Aid □

(As of 2010, www.klac.or.kr)

Year	Civil Case, Family Case, Administrative Case, Non-litigation Case, Constitutional Appeal				Criminal Case
	Total	Before Proceeding	Aid in litigation	Expenses (KRW / Billion)	
1987~1984	141,546	99,867	41,679	578.4	-
1995	14,165	5,958	8,207	191.6	-
1996	15,824	5,366	10,458	226.3	654
1997	17,184	4,900	12,284	243.7	1,954
1998	19,971	4,369	15,602	331.8	2,716

1999	20,921	3,301	17,620	261.9	3,752
2000	25,664	2,745	22,919	324.6	9,442
2001	29,884	1,698	28,186	383.7	11,880
2002	33,310	1,256	32,054	444.1	11,606
2003	44,437	999	43,438	639.8	16,705
2004	49,339	743	48,596	729.1	20,153
2005	58,980	453	58,527	914.7	17,078
2006	75,976	377	75,599	1,456.5	17,304
2007	77,653	271	77,382	1,614.3	22,494
2008	99,043	190	98,853	2,143.5	25,952
2009	108,654	120	108,534	3,604	24,619
2010	113,092	115	112,977	2,836.7	19,579
Total	945,643	132,278	812,915	169,247	205,888

□ Legal Aid Foundation of the KBA

□ Status of Provision of Legal Aid □

(2004 ~ 2010. 12)

Type Year	Annual Total	Classification of Legal Aid					
		Civil Case	Criminal Case	Family Case	Administrative Case	Non-litigation Case	Constitutional Appeal
2004	61	44	0	12	0	4	1
2005	31	23	2	5	0	1	0
2006	37	20	4	5	3	5	0
2007	22	15	2	2	3	0	0
2008	107	58	10	25	13	1	0
2009	167	81	3	58	25	0	0
2010	355	122	56	113	40	23	1

Korea Legal Aid Center for Family Relations (www.lawhome.or.kr)

Since the Center's founding in 1956, it has provided counselling and other legal services on domestic issues to 945,405 people. (1956-2008)

In addition, its branch offices have given aid in 1,549,010 cases, making a grand total of 2,494,415 over for one-half century of legal aid to Korean families

2-2-7 Please explain about the main activities of the legal aid organization, including entitlement to legal aid and reimbursement of the legal aid costs

□ Korea Legal Aid Corporation

A. Legal counselling

It provides free legal counselling services on all legal areas including civil, family, criminal and administrative cases. Anyone wishing to get legal counselling may do so by visiting the office of the Corporation or by phone call or letter.

B. Legal Aid

Legal advice is free for everybody. However, services such as mediation / disputes resolution, preparation of free legal forms, legal representation including civil, family law cases, and free criminal representation, are limited to those listed below:

- ① Domestic citizens and foreign residents in Korea with their average income under KRW 2.6 million per month.
- ② Public officials under the 6th rank, or its equivalents.
- ③ Military Officers ranked below of 2nd lieutenant.
- ④ Consumers suffering damage from the use of goods and services.
- ⑤ The claimant for whom the Constitutional Court of the Republic of Korea appointed as a court-appointed counsel, our legal-aid lawyer or public service attorney.
- ⑥ The person for whom the court concerned decided to grant litigation-aid services (including bankruptcy or credit recovery cases), except when granted only to the costs of a lawsuit including that stamp tax.
- ⑦ The stated person who shall receive Free Legal Aid under the necessity of particular assistance for farmers, fishermen, handicapped person, subsidized person of social security and so forth (See page 7 for 'Free Legal Aid' cases).
- ⑧ Criminal suspects or defendants for whom the court concerned designated as a court-appointed counsel our legal-aid lawyer or public service attorney.

- ⑨ And others who are poor and short of legal knowledge, thus unable to take measures or remedies at law on their own.

C. Free legal forms and Documents, including their Preparation.

As for an obviously simple case like a loan contract producing material written evidence, we provide free services of preparing documents such as application forms of complaints or temporary attachment. We also continue to give additional advice to our clients on the details of proceedings so that they may conduct their litigations by themselves without hiring private lawyers

D. Legal Representation in Civil, Family Law Cases, and others.

Legal Aid Procedure

The cases required to be represented in court by the legal-aid lawyer or the public service attorney will be determined among such ones as were referred from the legal-aid advice stage or transferred from the Secretary's Office of the President, Anti-corruption & Civil Rights Commission, and so forth. The cases to be referred to legal aid are allowed for most of cases including civil, family, administrative, constitutional complaint cases.

Costs of a lawsuit

Even for the cases referred to Legal Aid, when represented by the legal-aid lawyer or the public service attorney, the actual expenses paid to court such as stamp revenue, delivery service fee, and the attorney's fee specified by the Korea Legal Aid Corporation are liable for refund by the applicant at the conclusion of the legal-aid case. But the attorney's fee to be refunded is about the half of that provided in the related Rule of the Supreme Court, amounting only to the level of from 20 to 30 percent of a private lawyer's fee.

E. Free Defence by Attorney in Criminal Cases.

When either the defendant or the accused are in custody, detention, imprisonment, or the case concerned is in (or referred to) the court or the juvenile court for a trial or a new trial, the determination of Legal Aid or the decision of court to designate the Legal-Aid

lawyer and our public service attorney as a court-appointed counsel render our client(s) Free Legal Aid Defense, including Free Right to Counsel.

Payment of Bail

While the criminal representation of Korea Legal Aid Corporation is cost-free, the client is required to pay for bail or bail-bond. The money paid for bail renders refund from the court at the conclusion of proceedings.

Legal Aid Foundation of the KBA

*Carries out similar activities with the Korea Legal Aid Corporation as above.

Eligibility for the legal aid (of the Legal Aid Foundation of the KBA)

- ① People who are protected under the National Basic Living Security Act
- ② People whose living can be endangered due to the expenses of lawsuit
- ③ Senior citizens, minors, the disabled, criminal victims, and refugees from North Korea
- ④ For foreigners - immigrant workers, multicultural family, refugees under the international law
- ⑤ People whom the human rights committee of the KBA acknowledged to be eligible
- ⑥ People whom the foundation acknowledged to be eligible

Legal Aid for sexual violence victims

- With the Ministry of Gender Equality and Family and the KBA

There are 176 lawyers who provide legal aid services as of 2010.

Korea Legal Aid Center for Family Relations

The Center was established as the pioneer legal aid center in Korea in 1956 and since that time has continued to work to protect those in need through free legal counseling. In order to solve domestic problems through legal solutions, counselors and lawyers at the Center provide legal counseling, mediation, preparation of documents and legal representation, when necessary at the courts all free of charge. In addition, as one of several counseling centers designated by the Family Court, the Center offers specific counseling for offenders in cases of domestic violence.

To educate about and prevent family problems, the Center has an educational department, which endeavors to raise awareness on domestic conflict issues through a variety of programs.

Likewise, in an effort to extend the network of the Center domestically as well as internationally, the Center has established branches in various areas of Korea and in the United States.

The Center is also actively involved in movements to revise Korea's discriminatory family laws, often based in long-held customs that create gender and spouse discrimination and other family problems. These efforts are geared for creating an atmosphere where improved family relations for all can thrive.

2-3 what are the future issues or challenges with respect to the legal aid system in your country?

There is no set manual summarizing information on the procedures of getting legal aid including where to turn to for initial counseling, and the level of awareness of legal aid is insufficient. Even when the need for legal aid is recognized in the course of initial counseling, the necessary legal aid is, in many cases, not available in one package due to the absence of networking among different legal aid providers.

The Korea Legal Aid Corporation is the top ranking legal aid provider in the country in terms of the number of cases. Established in 1987, the Korea Legal Aid Corporation has so far provided legal aid for 945,643 cases (excluding counseling), and the number is still growing every year. However, the Corporation's directors and auditors are appointed by the recommendation of the representative director, which often brings question of independence as to their roles. Under such circumstance, there is concern that the organization will become bureaucratized if the board of directors fails to play its part effectively. In addition, the centralized management style resulting in an organizational culture where the lawyers responsible for the provision of legal aid are less respected than those in charge of administrative affairs is pointed out as a factor that invites more red tape.

To ensure legal aid is provided to more people, the promotion of private legal aid providers is necessary. Unfortunately, private legal aid providers tend to lack human resources and material compared to the Corporation, which is more evident in the rural areas.

2-4 Please let me know if the legal aid organization has an English language website.

The Korea Legal Aid Corporation

<http://www.klac.or.kr>

The Korea Legal Aid Center for Family Relations

<http://lawhome.or.kr>

The Legal Aid Foundation of the KBA

<http://www.legalaid.or.kr>

III Legal consultation (other than that covered by the Legal Aid system explained in above II)

3-1 Legal Consultation Programs (Please explain if there are legal consultation programs managed by your organization (or other institutions) other than those covered under the Legal Aid system in your country)

The local governments and local bar associations in Korea have provided free legal consultations in order to strengthen remedies for people in the fields.

3-2 Fees for Legal Consultation (Please explain the fee structure for such legal consultation programs.)

All fees for legal consultation through the local governments and local bar associations above are free of charge.

3-3 Management of the Legal Consultation Program (Please explain how such program is run by the organization.)

Each organization is managing the legal consultation program with fund and subsidies.

3-4 Appointment of an Attorney for Legal Consultation (Please explain how an attorney (consultant) is appointed.)

It depends on an attorney whether he or she become a member of pro-bono legal service group.

3-5 Flow to the legal representation (Please explain how such legal consultation may lead to legal representation by an attorney)

There is no exact flow or procedure to lead to legal representation by an attorney.

3-6 Number of Consultations (Please provide statistics on how many legal consultations have been carried out per year.)

Korea Legal Aid Corporation

Legal Counseling (as of 2010, www.klac.or.kr)

Year	Direct Counseling	Provision of information via 132 voice and fax	Provision of information via the Internet	Total
1987~1994	2,035,163	327,964	114,346	2,477,473
1995	365,142	231,256	86,936	683,334
1996	489,205	442,113	150,834	1,082,152
1997	594,777	338,620	227,834	1,161,231
1998	804,535	379,226	407,007	1,590,768
1999	822,864	364,058	412,802	1,599,724
2000	840,283	391,745	662,200	1,894,228
2001	894,006	405,702	1,984,093	3,283,801
2002	899,285	252,803	3,558,578	4,710,666
2003	1,001,370	251,500	4,682,673	5,935,543
2004	996,255	201,537	4,280,237	5,478,029
2005	1,002,908	159,090	4,274,940	5,436,938
2006	1,035,714	148,047	3,061,695	4,245,456
2007	1,085,712	166,328	2,506,979	3,759,019
2008	1,194,603	255,870	1,921,828	3,372,301
2009	1,260,401	297,053	1,934,431	3,491,885
2010	1,218,792	247,254	2,141,009	3,607,055
Total	16,541,015	4,860,166	32,408,422	53,809,603

Since most of organizations do not want to provide the statistics, there is no exact data regarding how many legal consultations have been carried out in each organization.

IV Shortages of Lawyers in Local Areas

4-1 Is there any figure of lawyers who work in local areas in your country?

Of 10,997 certified lawyers currently in practice as of October 2011; approximately 72% are practicing in Seoul. The rest 28% are practicing in local areas (575 in Suwon, 394 in Pusan and 366 in Daegu).

4-2 Do you think that there are a sufficient number of qualified lawyers working for citizens in local areas in your country?

It is quite clear that many qualified lawyers are heavily located in Seoul, compared to other locations. However, considering the number of cases, population and the demand in other areas, it is unclear whether there are shortages of lawyers in the local areas as of now.

In addition, it is expected that the local areas will have more lawyers working in their areas soon as there will be significant increase in the number of lawyers with the first graduates of the new law school system to join in the legal market in Korea from 2012 (the regional distribution is reflected in setting student quota for law schools).

4-3 If the answer of Question 4-2 is negative, what have caused such shortage of lawyers?

The shortage of lawyers in local areas can be attributed to the concentration of political, economical, socio-cultural activities in Seoul.

4-4 Does the legal aid organization or the bar association/law society has any programs in dealing with legal services in local areas in your country?

Yes, they have such programs such as free legal consultation.

4-5 If the answer of Question 3-3 is affirmative, please describe briefly such programs.

The Korea Legal Aid Corporation and the Korea Legal Aid Center for Family Relations operate branches and sub-branches in local areas to fill the gap in legal service provision.

The KBA is also making efforts to bring quality legal aid to the residents in the areas other than Seoul through the establishment of the Legal Aid Foundation within itself.

4-6 What are the future issues or challenges with respect to the shortage of legal services in local areas in your country?

A. Increase in the number of lawyers

As of 2010, the number of certified lawyers is over 12,000, and there will be an explosive increase in the number of new lawyers from 2012 when the first graduates of law schools will enter into practice. It is projected that the number of lawyers will be doubled around 2020.

B. Expansion of legal aid and establishment of networking among legal aid providers

The Korean government plans to expand the subsidy for Korea Legal Aid Corporation in the long term. The Legal Aid Foundation of the KBA is also planning to enhance its legal aid by attracting more contributions. As discussed above, establishing effective networking among legal aid providers will also contribute to enhance legal services.

V Other Obstacles to Hinder Access to Justice

5-1 Are there any obstacles to hinder access to justice other than the problems with the legal aid system and the shortage of lawyers in local areas?

Yes.

5-2 If the answer of Question 4-1 is affirmative, please describe briefly such obstacles.

All decisions of the courts are not available to the public due to procedural problems and lack of human resources.

5-3 Please explain briefly the educational system to produce qualified lawyers in your country.

Currently, legal professionals (judges, prosecutors and lawyers) are qualified through judicial exam and Judicial Research and Training Institute in Korea. The exam is open to anyone not subject to certain disqualification and they may apply for the exam with no restriction of qualification, age, etc. After passing the judicial exam, one must complete a two-year training program in the Judicial Research & Training Institute to be qualified as a lawyer. Then, they are required to have themselves registered at the Korea Bar Association to be allowed to practice as a lawyer.

In addition, as of 2009, the graduate law school system was established, similar to American model. Those who have passed bar exam after graduating 3 year course in law school will be qualified as lawyer, and the first bar exam will be held in 2012. Through the first bar exam, 1,500 law school graduates will be newly qualified. 6 months of training period is required after passing the bar exam in order to practice.

Meanwhile, the judicial exam will continue to exist until 2017. The number of passers of the judicial exam will be brought down by stages. Hence, more than 2,000 new lawyers will be produced each year from 2012 when the law schools in Korea will firstly graduate their students.

5-4 Do you think that your country has enough lawyers to substantiate the access to justice?

Korea has a total of approximately 1,200 certified lawyers for its population of 50 million, and thus, it might look there is a shortage of lawyers in Korea. However, given the Korean context where small claims not requiring legal representation account for 80% of the total trials, it is hard to conclude that the number of lawyers is insufficient in Korea. If successfully launched, it seems that the law school system will contribute to the improvement of the access to justice.

5-5 Do you think that your country produces newly qualified lawyers every year to substantiate the access to justice?

Until this year (2011), the annual qualified legal professionals were 1,000 through the Judicial Research and Training Institute. However, with the new law school system and the new bar exam, additional 1,500 legal professionals will be qualified in 2012 (out 2000 graduates of the law school). The exact number of qualified lawyers from 2013 is still to be decided by the National Assembly.

VI Cooperation with Foreign Organizations

6-1 Please explain the details of recent and future projects relating to any of the above discussed issues in your country, in regard to which any foreign (governmental or non-governmental) organizations are providing assistance.

There are no cooperating foreign organizations in relation to the issues discussed above.

VII Others

7-1 Please fill in any comments or your thoughts to way to achieve the well-organized access to justice in your country.

The KBA has two suggestions to improve the access to justice in Korea:

A. The judges to have prior experience (at least 10 years of practice) in order to be appointed, to ensure that the judges are more qualified and experienced. The KBA also encourages and promotes smooth change of careers between different legal professions.

B. To increase number of justices of the Supreme Court to 40, to ensure smooth and fast trial procedure.

Information Sheet - Cambodia

I- General Information

Cambodia is a country in Southeast Asia, also known as Kâmpŭchéa. More than a thousand years ago, Cambodia was the center of the Khmer (Cambodian) kingdom of Angkor, a great empire that dominated Southeast Asia for 600 years. A monarchy since ancient times, Cambodia was a French protectorate from 1863 to 1953. A republic replaced the monarchy in 1970, and in 1975 a Communist regime known as the Khmer Rouge took power, naming the country Democratic Kâmpŭchéa. The Khmer Rouge's brutal repression and radical socialist reforms devastated Cambodia's society and economy. In 1979 anti-Khmer Rouge Communist forces from Vietnam and Cambodia overthrew the Khmer Rouge and established a more moderate socialist state. In 1989 the country abandoned socialism, and in 1993 a new constitution restored the monarchy.

Cambodia's official name is the Kingdom of Cambodia. Cambodia is bounded on the northeast by Laos, on the east and southeast by Vietnam, on the west and northwest by Thailand, and on the southwest by the Gulf of Thailand (Siam). The country's capital and largest city is Phnom Penh.¹

The formal introduction of the legal profession in Cambodia is marked by Royal Declaration N0. 32 of 15 march 1932, later amended by Royal Kram N0. 648 of 30 march 1951. The legal profession in Cambodia has undergone a dramatic evolution due to frequent political and social changes in the country. The needs for lawyers' services have been developing in accordance with the complexity of legal and judicial system and increase in the number of conflicts in the society.

1 Number of stakeholders in the Country

- **Institutions:**

- Constitutional Council
- Supreme Council of Magistracy
- Supreme Court
- Appeal Court
- Provincial Courts or first instant courts
- Ministry of Justice
- Ministry of Interior
- NGOs

- **Actors:**

- Judges
- Prosecutors
- Lawyers
- Notary

¹ Microsoft © Encarta © 2009. © 1993-2008 Microsoft Corporation

- Court Clerks
- Member of the constitutional council
- Member of the supreme council of magistracy
- Minister of the ministry of justice
- Minister of the ministry of interior
- Victim and offender

1-1-1 Population

The Cambodian population is approximately 15.3 million.²

1-1-2 Number of lawyers/attorneys-at-law

754 lawyers³

1-1-3 Number of judges

224 judges⁴

1-1-4 Number of prosecutors

108 prosecutors⁵

2 Number of court cases handled by first instance courts

No data

1-2-1 Number of civil cases

No data

1-2-2 Number of family cases

No data

1-2-3 Number of criminal cases

No Data

3 Attorneys for Defendants in Criminal Procedures

In principal, in any criminal cases, any person who has been indicated has the right to have assistance from the lawyer at all procedural stages. Base on this principle, an accused has the right to request the court to appoint a lawyer to defend him or her in case that he or she cannot afford a lawyer. The automatic appointment of lawyer is made by Chief Judge or Investigating Judges when (1) the victim is a minor without defense, (2) the accused person is mute, deaf, blind, or has a mental disorder; (3) the accused is not able to afford a lawyer.

Pursuant to the LOB and Code of Ethics, defending the poor is compulsory. Thus, the BAKC sets up a Legal Aid Department (LAD) entrusted with providing free legal services in order to help the poor and vulnerable. Besides the attorney who works for the LAD, the Bar President may assign cases to private offices' lawyers. All attorneys are obligated to defend poor people in the same manner as they would defend their other paying clients whether in criminal or civil cases. The government regularly provides 200,000,000 riel which is equal to 50,000 USD every year for Legal Aid

² World food program statistic: General Population Census

³ Including death lawyers and dismissed lawyers. Source from: www.bakc.org.kh

⁴ www.bakc.org.kh

⁵ www.bakc.org.kh

Program. Besides the government budget, LAD using budget from membership fees, especially the funds from NGOs.

4 Profile of the Bar Association/ Organization and Attorney System

The Bar Association of the Kingdom of Cambodia (BACK) was established in 1995 after the Law on the Bar was adopted by National Assembly on 22 August 1995. Its formal and actual operation was on 16 October 1995. During that time the Ministry of Justice authorized only 30 lawyers who had been trained since 23 June 1995 to be sworn in and become full-fledged lawyers. Since then the number of lawyers has increased significantly in response to the need for lawyers to ensure respect for fundamental human rights, improve access to justice for all people, and strengthen the judiciary as whole.

The BACK is an organization representing the legal profession. It is headed by a president and governed by the Bar Council. The number of members of the Bar Council varies depending on the number of lawyers registered with the BAKC. The Bar Council deals with all issue in respect of legal practice, including the supervision and defense of the legal profession and individual lawyer's rights. All approvals or decisions of the Bar Council must be made by meeting of a majority of members. Pursuant to article 19 of the LOB, the Bar council is competent to:

- Make internal rule and code of ethic for lawyer;
- Decide on the registration and traineeship of members to the Bar Roll;
- Decide on requests for authorization submitted by lawyers;
- Verify any agreements and documents which lawyers are obliged to submit for examination and to issue guiding opinions on such agreements and documents;
- Control the accuracy of book keeping by lawyers;
- Ensure disciplinary rules are obeyed and impose disciplinary sanction against lawyers who do not do so;
- Ensure the overall administration and management of the BAKC.
- Manage the property and budgets of the BAKC and determine the amount of contributions to be paid by each individual lawyer and payment to the common insurance premium for the legal profession;
- Administer the funds of the BAKC; and
- Give opinions on any problems concerning the justice and rights of defense, especially when it is requested by a public authority.

To be eligible to be Bar Council, all candidates must have been registered in the Bar Roll for at least two years and have not lost their voting rights in that time. All members of the Bar Council are elected for a term of three years. A member may serve two terms but not consecutively. Former members of the Bar Council may only stand for re-election three years after the termination of their previous term. The President of the BACK may be elected as a member immediately following the termination of his or her mandate. The number of the Bar Council is

5 when the Bar has more than 30 members, 9 when the Bar has from 31 to 50 members, 13 when the Bar has from 51 to 200 members, 19 members, when the Bar has from 201 to 500 members, 27 members, when the Bar has from 501 to 1000 members, and 33 members, when the Bar has more than 1001 members. Recently, the Bar Council consists of 27 members.

The organizational structure of the Bar is:

The President of the Bar, which is elected for a term of two years, has some duties and responsibilities to lead the Bar, preside over general meetings of the BAKC and each meeting of the Bar Council, guarantee the interests of the legal profession and interests of all members, conciliate or, if necessary and upon request from the parties, arbitrate disputes between individual lawyers or between lawyers and respective clients, represent the legal profession before third parties or public authorities, and represent the BAKC in any litigation against the BAKC, with approval from the Bar Council.

The Secretariat assists the president in administration and budget management. The Secretariat is headed by a General Secretary who is nominated by the Bar Council upon request by the president. In principle, General Secretary is appointed for a non-fixed term. In addition to his or her daily administration work, the General Secretary is in charge of managing the research and documentation center and coordinates the implementation of the different cooperation projects of the BAKC. He or she may be assisted by a Deputy General Secretary, secretaries and additional staff. The President may, at his or her discretion delegate any other work to the general Secretary.

Under the controlling of the President and the General Secretary, there are a Civil Commission, Penal Commission, Commercial Commission, Lawyer Training Center (LTC), The Legal Aid Department, The Inspection Department, The Financial Department, and the Administration Office. Totally, there are 21 administrative staffs work for the Bar and 5 at LTC, besides, are the voluntary lawyers who work for each project provided.

1-4-1 Location and contact information

The Bar Association of the Kingdom of Cambodia (BAKC) is located in Phnom Penh, the capital city of Cambodia, building N# 10-11, street 180, Sangkat Beoung Raing, Khan Daun Penh.

Tel: 855-23 220 237

Fax: 855-23 213 658

Web: www.bakc.org.kh

1-4-2 History of Organization

In 1994, a group of people experienced in law and human rights jointly created legal aid organization to provide legal service to the poor in criminal cases in the country as a whole.

In 1996, after the Bar was established, the Bar created its Legal Aid

Department to provide legal aid assistance to the poor for the purpose of sustainability and strengthening legal aid service to the poor.

Many legal aid organizations had been established to provide legal aid service for the poor in Cambodia. But only three main legal aid organizations including the Bar likely have provided legal aid service continuously for the poor for the past 10 years. The programs of these organizations are operating under the assistance of donors and are not sustainable. Sometimes, they can take more cases and sometimes they take less case.

1-4-3 Governmental Supervision of the Organization and Registration of Members.

The legal profession is an independent and autonomous profession involved in serving justice and may only be pursued from within the framework of the BACK.⁶ Regulation of the profession is under the control and supervision of the BACK, which is independent from legislative, executive and judicial branches of power. Only the Bar Council can examine and resolve all problems concerning the legal profession.⁷

According to article 13 of the LOB, BAKC shall not be subordinate to any political party, any religious organization, or any other organizations. All ideological, religious, or political expressions shall be prohibited.

Pursuant to Article 21 of the LOB, all decision made by the Bar Council and having the character of rules must be notified to the General Prosecutor to the Appeal Court registered mail or by hand delivery and may be directly challenged by individual lawyer or the General Prosecutor. Such notifications and challenges do not affect the independence of legal profession.

Furthermore, each lawyer is independent from BACK and other institutions in terms of his or her legal practice. Lawyer practice the profession based on his or her professional skills, the Laws and Internal Rule, as well as Code of Ethic, are not subject to any instruction or influence in any manner.

1-4-4 Main Activities of the Organization

- Pushing for justice in the judicial process at any courts level.
- Defending the poor based on legal aid program.
- Capacity Building of lawyers through training, workshops, seminars, and conferences.
- Educating and raising awareness of laws and regulations to the public.
- Commending on any draft laws drafted by the Government.
- Participating in the development of the rule of law and the strengthening of social justice and order in the society.
- Solving all problems concerning the conduct of the legal profession.
- Legal Representations (Fair Trials)

⁶ Article 1 of the LOB

⁷ Article 19 of the LOB

- Advocacy ⇒ Legal Reform ⇒ Best Practice ⇒ Rule of Law: High impacted litigation cases, Meeting, Workshop and News Conference Issuing Statement,
- Legal Training
- Legal Outreach: Radio talk-show, Forum, community gathering, Leaflets, postures, brochures.
- Observation and research ⇒ Result to explore new tools or strategy

1-4-5 Categories of Membership

- Honorable Lawyer
- Practicing Lawyers
- Non Practicing Lawyers Due to the Professional Incompatibility
- Trainee Lawyers
- Non Practicing Lawyers

1-4-6 Number of Members

683 Practicing Lawyers (2011)

1-4-7 Membership (voluntary or compulsory, please also explain where such registration should be filed)

Membership is voluntary. The registration shall be filed at the administrative office of the Bar Association of the Kingdom of Cambodia (BAKC).

1-4-8 Executives and Officers, Number of Positions

- President
- Bar Council
- Secretary General
- Deputy Secretary General
- Civil Affair Commission
- Penal Affair Commission
- Commercial Affair Commission
- Inspection Department
- Legal Aid Department
- Lawyer Training Center
- Communication Publication and Public Relationship Department
- Administrative Department

1-4-9 Finances and membership fees (Please provide the yearly budget amount of your organization and also the yearly membership fees in USD)

BAKC receives finance support from Government and NGOs. Each Lawyer has an obligation to pay the membership fee the amount of 10 USD per month. A yearly membership fee is **81,960 USD** and it change based on the number of lawyers registered. A yearly budget of BACK is based on funds provided by the other stakeholder, so it is hard to estimate.

1-4-10 Journal, Newsletter, Website

- Bulletin Metheavy issuing every 3 months
- Website: www.bakc.org.kh

1-4-11 Other Bar Associations (including the provincial associations) in the Country and the Number of Members of such Other Organizations

Cambodia has only one Bar Association Office located in Phnom Penh, the Capital City and lawyers have freedom to practice her or her professional throughout the 23 provinces.

1-4-12 Qualifications to become an attorney

- Graduates from Lawyer Training Center (LTC)
- Judge who has worked in the judicial profession for more than five years or a former judge who has an associate degree in law (Secondary Certificate of Law) and has performed his or her work for more than two years.
- Lawyers who originally held Cambodian nationality and have been registered in the bar of a foreign country.
- Law graduates with a Doctorate in Law or Ph.D. in law
- Those who have a Bachelor Degree in Law; and have two years of work experience in the Legal and judicial field.

1-4-13 Laws, Decrees or Regulations on Attorneys (Please explain if there are any laws, decrees or regulations on attorneys in your country. Please provide the JFBA an English translation if they are available.)

- Law on the Bar
- Internal Rule of the BAKC
- The Code of Ethics
- Decisions made by the Bar Council

1-4-14 Code of Ethics and/or Rules of Professional Conduct (Please provide the JFBA an English translation if an English translation of these is available.)

- The Code of Ethics provides for rules regarding venue of legal practice, general rules on secrecy, writing of power of attorney, lawyer's Identification Card (ID) and robe, advertising by lawyers and obligations to notify the president of the BAKC, relationship between and among lawyers, clients, judges, and the back. Furthermore, the lawyer shall be independence, ethical and moral values, care and prudence, honesty and morality, protection of professional secrecy and confidentiality and avoiding conflict of interest.
- The Rules of Professional Conduct are to consult, advice, represent or defend clients at all level of the courts and court proceeding including civil, criminal, commercial, administrative, labor, and social cases. Lawyer may also assist their clients before any disciplinary council. Lawyers may advise and prepare legal documents, and provide legal consultation to the public at large. Lawyers may be assigned by disputing parties or judges to act as a

conciliator or mediator, or an arbitrator where permitted by law.

1-4-15 Disciplinary Functions (Please explain who has the power to take disciplinary action against members.)

The Bar council may punish lawyers who have committed wrongdoings in the practice of their profession, especially when they have been found to have breached the obligations required by the LOB, Code of Ethics, and internal rules of the BAKC, for example in the following cases: they have received a legal fee from a client but have not performed work properly, accepted clients when there is a conflict of interest, disclosed a client's confidential information, have not paid their dues or continued to practice law while they are engaged in another profession incompatible with the legal profession.

The disciplinary action against lawyer can take the following form:

- Warnings;
- Blame;
- Ban from practicing in the profession for a period not to exceed two years; or
- Disbarment or removal of the title Honorable Lawyer.

1-4-16 Continuous Legal Education for Members (Please explain about the program, if any)

The BAKC conduct a workshop, training course, seminar, conference and other kinds professional training almost twice a month in order to promote the awareness of its member. Such a program mostly sponsor by the other organizations. Moreover, BAKC has appointed its member upon requested to attain the workshop, training course, seminar, conference locally and internationally which is set up by the other organization.

The LAD conducts various legal education and dissemination activities through publishing bulletins, which is distributed free of charge to all related national and international institutional.

1-4-17 Challenges the Organization is Facing (Please briefly explain the problems and challenges your organization is currently facing.)

- Lack of laws, regulation and rule to control the Bar Council meeting, Practicing Lawyers and Administrative Controlling in the BAKC.
- Lack of Human Resource (Lawyers)
- Lack of budgets spends on each project which is already planned, especially legal aid program.
- Co-operations with legislative body, executive body, court and other organizations still limited.
- Ethical and moral values of lawyers are still limited and need to be revised.

II- Legal Aid

2-1 Please describe briefly the history of legal aid in your country.

In 1994, a group of people experienced in law and human rights jointly created legal aid organization to provide legal service to the poor in criminal cases in the country as a whole. In 1996, after the Bar was established, the Bar created its Legal Aid Department to provide legal aid assistance to the poor for the purpose of sustainability and strengthening legal aid service to the poor.

2-2 Please outline the legal aid organization and its programs.

Many legal aid organizations had been established to provide legal aid service for the poor in Cambodia. But only three main legal aid organizations including the Bar likely have provided legal aid service continuously for the poor for the past 10 years. The programs of these organizations are operating under the assistance of donors and are not sustainable. Sometimes, they can take more cases and sometimes they take less case. So many criminal cases are pending at courts.

• CAMBODIA DEFENDER PROJECT

It has 4 main programs operating in 2 provinces:

- **General legal aid Program:** This program provides lawyers for the accused with free of charge based on the budget provided by donors.
- **Trafficking program:** This program focuses trafficking cases but legal representation was provided for the victims only and the accused was not represented.
- **Women Rights program:** This program focuses domestic violent cases. It is the same as trafficking cases, the legal representation was provided only for the victims and the accused was not represented.
- **Legal Awareness Program:** This program provides legal and human right training for the lawyers and the public for the purpose of improving and promotion of legal knowledge and rights to access to justice. The awareness was conducted through workshop, seminar, radio and TV talk shows.

• LEGAL AID OF CAMBODIA

It has 4 main programs operating in 6 provinces:

- **General Legal program:** This program provides legal aid service for the poor who were accused in general criminal cases.
- **Women program:** This program focuses domestic violent cases. It is similar to Cambodia Defender Project, the legal representation was provided for the victims of domestic violence only and the accused was not represented.
- **Juvenile Justice Program:** Legal representation is given to the minor, both victim and accused, in criminal cases.

- **Land Program:** As the country is under developing, land price is going up where many rich and powerful persons grab the land. Poor does not know the law and ignores on legal paper of land entitlement. As result, the poor was arrested and detained because they live and challenge for their ownership of the land. In this situation, legal assistance was provided for this purpose.

- **LEGAL AID DEPARTMENT OF THE BAR**

The Bar has 2 main programs for free legal aid service operating in 22 provinces:

- **General Legal program:** This program provides legal aid service for the poor who were accused in general criminal cases such as murder, robbery, fraud and others...etc.
- **Women and Children program:** This program focuses women and children who have involved with both civil and criminal cases. This legal representation is provided for any case, both victim and accused, that is related to children and women.

2-2-1 Name of the legal aid organization/head office location 22 provinces in Phnom Penh

- **Cambodian Defenders Project (CDP)** N#12, Street N# 282, Sangkat Boeng Keng Kang 1, Phnom Penh, Cambodia.
Tel: 023 720 032 Fax: 023 720 031
- **Legal aid of Cambodia (LAC)** N# 18, Street N#604, P.O.BOX 1197, Sangkat Beong Kok II, Khan Toulkok, Phnom Penh, Cambodia.
Tel: 023 884 262 Fax: 023 884 263
- **Legal Aid Depatement of the Bar (LAD)** N# 10-11, street 180, Sangkat Beoung Raing, Khan Daun Penh.
Tel: 855-23 220 237 Fax: 855-23 213 658

2-2-2 When was the above organization established?

- Legal Aid Department of BAKC was established in 1996.
- Legal aid organization was established in 1994.
- Legal aid of Cambodia organization was established in 1995.

2-2-3 Please describe briefly the organization structure such as branches and other offices.

The Bar received funds from (ASF-France) to run a legal aid program for the poor in 24 provinces. The lawyer who is hired to serve this program shall have their own branch office in that province. If there is no branches exist, the project will rent the office for them.

2-2-4 Please explain about the organization's service delivery model such as salaried legal professional (staff attorney) and/or private legal professional (judiciary).

There are two models of legal aid service providing for the poor in

Cambodia:

- Lawyer is hired to provide legal service to the poor and she/ he gets payment / salary per month. The amount of payment is based on the budget allocated by donors. This practice usually is implemented by non-governmental organization.
- The Bar Association assigns any lawyer to take some pro-bono cases with no payment as required by the law. But it is very difficult to do it as many lawyers are poor and the expenses for the cases are high.

2-2-5 Please explain about the budget for the legal aid system

The budget for legal aid system relies on donor's contribution. Each legal organization receives funding directly from donors. The Bar does not know how much money to be contributed to these legal aid organizations. There is no national budget to cover legal aid service as guaranteed by the law. Since 2004, the Bar has received budget from government 200,000,000 million riel equal to 50,000 USD to operate legal aid program but this money is a little. With this money, we cannot represent many cases.

2-2-6 How many recipients have received the legal aid assistance in main legal aid programs in recent years?

Based on the annual report of 2011 of BAKC, there were 1257 cases requested to LAD for assistance. Among 1257 cases, there are only 4 cases pending at the court.

2-2-7 Please explain about the main activities of the legal aid organization, including entitlement to legal aid and reimbursement of the assisted legal aid costs.

The main activities of the legal aid organization are different from one to another based on its projects and funds provided by the donors. Any organizations are entitled to provide legal aid service under the LOB. The reimbursement of the assisted legal aid costs rely on each organizations policy and rule and it shall provide to individual who are selected to work for its projects only.

2-3 What are the future issues or challenges with respect to the legal aid system in your country?

There are four main issues or challenges with respect to the legal aid system in Cambodia:

- Most of legal aid programs were run by legal aid organizations. Sometimes, they have funding and sometimes the fund is not enough to pay for lawyers' service. Based on this, it can be seen that the legal program is not sustainable in the justice system.
- Only a few lawyers are working or opening their own offices in remote provinces. It is hard to convince lawyers to work in the province as most of

the populations there are poor and the economic is too low.

- The government has not had policy to allocate national budget for legal aid program but the burden of providing legal aid service is put on the shoulder of the Bar Association. Presently, the Bar has 712 members and the Bar due for its members is only 10 USD per month. For this money, it is not enough to cover for the administration's expenses. In short the Bar does not have money to run legal aid program as required by the law.
- The law is not well enforced by the law enforcement officers, prosecutor and up to the judges. In addition, the right to fair trial of the accused is preserved.

2-4 Please let me know if the legal aid organization have an English language website.

- <http://www.cdpcambodia.org>
- <http://www.lac.org.kh>
- <http://www.bakc.org.kh>

III- Legal consultation (other than that covered by the Legal Aid system explained in above II)

3-1 Legal Consultation Programs (Please explain if there are legal consultations programs managed by your organization (or other institutions) other than those covered under the Legal Aid system in your country)

BAKC provides a free legal consultant through hot line phone call. BAKC had set up 2 hot lines for people who have legal problems. BAKC also received fund from donor to allocate average 3 lawyers per province to provide a free consultant.

3-2 Fees for Legal Consultation (Please explain the fee structure for such legal consultation programs.)

There is a free of charge for the poor. Principally, lawyers are asked to submit a request to BAKC to claim for money to pay for copying document and to pay for court administrative fees before the processing the cases. However, in practice, because of the slow process, lawyers may advance spending with his money and will submit a report to reimbursement.

3-3 Management of the Legal Consultation Program (Please explain how such program is run by the organization.)

The Legal Consultation Program is managed by the BAKC. This program is run based on each project sponsored by the donors and lawyer receives financial support based on the donors provided. Sometime, lawyers work voluntary and received only the amount of money to pay for copy documents for the cases they responsible and court administration fees.

3-4 Appointment of an Attorney for Legal Consultation (Please explain how an attorney (consultant) is appointed.)

Attorney is appointed by the President of BAKC upon requested from the Chief of Judge in criminal case. The poor person may come to the administration office of the BAKC or the LAD office to apply for legal assistance. The administration office forwards the application to LAD Director to assign a particular volunteer lawyer to take the case and who will then send this assignment to the President for approval.

3-5 Flow to the legal representation (Please explain how such legal consultation may lead to legal representation by an attorney)

Besides the explanation in 3-4 above, BAKC prepares legal aid offices in first instant court and appeal court to represent the immediate cases happened in the court under the funding from (ASF-France). BAKC wishes to continue the operation of its legal aid offices at all provinces in Cambodia.

3-6 Number of Consultations (Please provide statistics on how many legal consultations have been carried out per year.)

Based on the annual report of 2011 of BAKC, there were 82 cases requested to LAD for consultation during a year, related to married cases, traffic cases, family violation, penal and civil case, violation of human rights and delay in court procedures.

IV Shortages of Lawyers in Local Areas

4-1 Is there any figure of lawyers who work in local areas in your country?

BAKC has no exact data. However, it's about 80% of lawyer works and run his office in Phnom Penh, Capital city of Cambodia because of inefficient court process and lack of knowledge from public regarding legal service in other provinces.

4-2 Do you think that there are a sufficient number of qualified lawyers working for citizens in local areas in your country?

Recently, the quantity of lawyers is sufficient for citizens in local areas, however, the quantity of the qualified lawyers is not sufficient.

4-3 If the answer of Question 4-2 is negative, what have caused such shortage of lawyers?

- Long term training to become a lawyer: four years legal education at university and two years training at lawyers training center.
- The article of 32 of the LOB (Swearing in to be a lawyer) is restricted.
- Unawareness of the important of law and justice and its role in society.
- Improper of selection process.
- Unfair professional competition.

4-4 Does the legal aid organization or the bar association/law society has any programs in dealing with legal services in local areas in your country?

In dealing with legal service in local areas, the BAKC selects law students to study at the Lawyer Training Center (LTC) for 24 months (12 months in class and 12 months practicing) every year to become a qualify lawyers.

4-5 If the answer of Question 4-4 is affirmative, please describe briefly such programs.

40 to 50 lawyers were selected every year by the BAKC (LTC). They have to study 84 hours on Civil Code, 74 hours on Civil Procedure, 60 hours on Penal Code, 81 hours on Penal Procedure, 57 hours on Business Dispute, 201 hours on Case Defending Technique, and 135 hours on international instruments.

4-6 What are the future issues or challenges with respect to the shortage of legal services in local areas in your country?

- Unfair trial
- Injustice
- No rule of law
- Power abused
- Procedure abused
- People become disorder and aggressive

V Other Obstacles to Hinder Access to Justice

5-1 Are there any obstacles to hinder access to justice other than the problems with the legal aid system and the shortage of lawyers in local areas?

Yes, there are.

5-2 If the answer of Question 5-1 is affirmative, please describe briefly such obstacles.

- Lack of Laws and Regulations
- Lack of Human Resource
- Poor law enforcement
- Corruption, nepotism
- The legal system is not developed and people do not trust it.
- Lack of Good Governance / No proper case administration
- Abuse of Power / No check and balance
- No sense of responsibility (individual and state agents)

5-3 Please explain briefly the educational system to produce qualified lawyers in your country.

Primary, secondary, and high school, totally take 12 years and students who finished high school and wish to continuous for bachelor degree, have to pass the entrant exam to study at the University. One who wishes to be a lawyer has to go to the Law school. The well known law school in Cambodia is Royal University of Law and Economic (RULES). After 4 years in university, the students who hold a law bachelor degree have to pass another exam organized

by the Lawyer Training Center (LTC) of the BAKC. There are two examinations, written examination and oral examination. If they pass these exams, they are allowed to study for 12 months. The successful trainee must undergo an internship in law office for 12 months. When the internship finished, they can register with the BAKC, then they are awarded a Certification of Membership of the Bar Association.

Those who have a Bachelor Degree in Law; and have two years of work experience in the Legal and judicial field are also entitled to swearing to become a lawyer. LTC have been selecting 40 to 50 lawyers every year. LTC curriculum are to study 84 hours on Civil Code, 74 hours on Civil Procedure, 60 hours on Penal Code, 81 hours on Penal Procedure, 57 hours on Business Dispute, 201 hours on Case Defending Technique, and 135 hours on international instruments. Furthermore, Law graduates with a Doctorate in Law or Ph.D. in law could directly become a member of the BAKC upon requested.

5-4 Do you think that your country has enough lawyers to substantiate the access to justice?

No, I don't.

5-5 Do you think that your country produces newly qualified lawyers every year to substantiate the access to justice?

No, I don't.

5-6 If the answer of Question 5-4 or 5-5 is negative, please describe briefly the reason for such shortage and your thoughts on how to solve such problems.

The reason for shortage of Lawyer:

- Long term training to become a lawyer: four years legal education at university and two years training at lawyers training center.
- The article of 32 of the LOB (Swearing in to be a Lawyer) is restricted.
- Unawareness of the important of law and justice and its role in society.
- Improper of selection process.
- Unfair professional competition

How to solve:

- Strengthening the quality of education system.
- Promoting the awareness of the important of law and justice and its role in society.
- Correcting and revising the lawyer selection process.
- Providing a fair professional competition.

VI Cooperation with Foreign Organizations

6-1 Please explain the details of recent and future projects relating to any of the above discussed issues in your country, in regard to which any

foreign (governmental or non-governmental) organizations are providing assistance.

Recently, BAKC works closely with donors on its projects such as France Government, JICA, EWMI, UNICEF, USAID, and others. We perform a good corporation with local and internal organizations as well as government, however, the direct funds supports to BAKC still insufficient to complete its goals. So far, we had prepared and operated many projects such as general legal aid, trafficking, women rights, legal awareness, juvenile justice, land dispute, ethical problem, etc. BAKC had also created 3 commissions (Civil Affair, Penal Affair, and Commercial Affair) to deal with and follow up the improper practice of Civil Code and Civil Procedure, Penal Code and Penal Procedure, as well as Business Affair. However, the main obstacle for each projects operating is funding and human resources problem. In order to strengthen the social justice in a country, BAKC opens for discussion with any donors who interested. For our future project which is already prepared is a hot line call for any Cambodian citizen who have a questions of law and had no ability to afford a lawyer for free legal assistance. Recently, a Civil Commission of the Bar has no budget to support the administration expenses to run a court monitoring on the practice of Civil Code. A several projects are pending because of sponsor unable to complete on schedule.

VII Others

7-1 Recent Judicial Movement

Please describe briefly the recent movements or topics in the legal community, including the bar association/law society in relation to the topics above.

Comparing to the past 10 years, the judicial system in Cambodia recently is significantly moving forward. People turn to seek for a legal advice after taking any legal actions. Legal aid organizations including the Bar, obtaining more trust from people in providing a good and efficient legal consulting and representing in the court case. Freedom of speech also expansion and the right to receive fair trial are in progress. Since the anti corruption law is adopted and put in to force, the corruption in the court system is decreased and the ethical and moral of judges, prosecutors, court clerks, and lawyer is improved. The BAKC try to produce more lawyers every year to full fill the need of the society which is the key to access to justice.

7-2 Comments

Please fill in any comments or your thoughts to way to achieve the well-organized access to justice in your country.

- Promoting awareness of legal knowledge to the whole.

- Building trust on legal system.
- Developing legal system.
- Creating a system to keep track legal cases for the purpose to study and find out actual cases existed per year.
- Adopting policy required each lawyer to do pro-bono cases per year with financial support as an incentive.
- Advocating and lobbying government to allocate some budget for legal aid service.
- Strengthening the independency of any court levels and other related institutions.
- Abolishing the corruption in the court system by strictly enforce the anti corruption law.
- Strengthening the ethical and moral values of Judges, Court Clerks, Prosecutors, and lawyers.

Information Sheet - Lao PDR

I General Information

1 Number of stakeholders in the Country

1-1-1 Population

Laos has approximately 6,400,000 people.

1-1-2 Number of lawyers/attorneys-at-law

Laos has 144 lawyers (members of the Lao Bar Association) as at 11 November 2011, with 17 interns lawyers that soon to become lawyers. There are also approximately 30 or so legal consultants who are not members of the Lao Bar Association that provide advice on Lao law, but do not appear in court.

1-1-3 Number of judges

According to statistic of Supreme Court as updated in 2011, there are; one Supreme People's Court, 3 Appeal Courts, 16 Provincial, one Capital City Courts, and 39 Area Courts. There are also Military courts: One High Military Court and 3 Regional Military Courts. Throughout the country, there are totally 375 judges and 29 military judges.

1-1-4 Number of prosecutors

According to the statistic of Supreme Prosecutor Office, throughout country, there are 348 prosecutors. There are also 1,070 officials working in prosecutor offices throughout country.

2 Number of court cases handled by first instance courts

1-2-1 Number of civil cases

According to statistic of Supreme Court in 2011, there are totally 1,888 civil cases was filed at the first instant courts.

1-2-2 Number of commercial cases

According to statistic of Supreme Court in 2011, there are totally 290 commercial cases was filed at the first instant courts.

1-2-3 Number of family cases

According to statistic of Supreme Court in 2011, there are totally 951 family cases was filed at the first instant courts.

1-2-4 Number of criminal cases

According to statistic of Supreme Court in 2011, there are totally 3,017 criminal cases was filed at the first instant court.

3 Attorneys for Defendants in Criminal Procedures

Please explain in what kinds of criminal cases attorneys must be appointed for suspects or defendants in your country. Please also explain who appoints and bears the costs for the attorneys appointed.

In the case that the accused or defendant is a minor (*children*) who have yet to reach the age of 18, a deaf or mute person, someone not in control of their mental facilities, or someone who does not know the Lao language, or is someone who receive death penalty by the law, that person must have a defender. If an accused or a defendant has no any defenders, the court will appoint a lawyer for the accused or defendant.

The court shall appoint the lawyer. The court shall pay a small fee for lawyer.

4 Profile of the Bar Association/ Organization and Attorney System

1-4-1 Location and contact information

Head Office: 4th Floor, Vientiane Capital Court Building, Km 3 Thadeua Road,
Beungkahyong Village, Sisattanak District.

Vientiane Capital

Lao People's Democratic Republic

TEL: +856 21 990 446

FAX: +856 21 990 445

Email: contact@laobar.org

1-4-2 History of Organization

In 1991, further to Decree No.24/PCM (1989), the Minister of Justice appointed four lawyers as founders to set up “The Group of Lawyers in Vientiane Municipality.” The Minister subsequently appointed an additional six lawyers and 11 auxiliary lawyers, pursuant to Decision Nos. 166/MJ and No.165/MJ (both 1991). In 1996, following the Government of Lao PDR’s Development of Social-Economic Plan, the Prime Minister issued Decree No.64/PM (1996) which created the Bar Association of Lao PDR (also known as the Lao Bar Association – LBA).

Pursuant to Decree 64 the Minister of Justice appointed 29 lawyers as the members of the Lao Bar Association. This group was given the title “The Lawyers of the Lao PDR,” further to Decision Nos. 355/MJ (1996) and 153/MJ (1997). The Lao Bar Association thus replaced the former Group of Lawyers of Vientiane Municipality.

New draft Law on Lawyer is currently waiting to be passed at the National Assembly Session in December 2011

1-4-3 Governmental Supervision of the Organization and Registration of Members (Please explain whether or not, and if so how, your organization is supervised by the government.)

The LBA was established under the Ministry of Justice and is supervised by the Ministry of Justice.

Members of the LBA are appointed by the Minister of Justice on the recommendation of the Executive Committee of the LBA.

1-4-4 Main Activities of the Organization

- Intern Lawyer Training (once a years);
- Continue Legal Training for Lawyers (several times a year);
- Legal Aid Programs (there are 3 Legal Aid Clinics: in Vientiane, in Oudomxay Province (Northern part), and in Champasak Province (Southern part));
- Law Dissemination (several times a year);
- Paralegal Training (several times a year).

1-4-5 Categories of Membership

There are two categories of membership: Regular/Full members and Intern/Candidate members (lawyers who are undergoing training to become

regular members).

1-4-6 Number of Members (as of November, 2011)

- Regular/Full: 109 (Male: 93, Female: 16)
- Intern/Candidate: 35 (Male: 24, Female: 11)

1-4-7 Membership (voluntary or compulsory, please also explain where such registration should be filed)

Compulsory. All members are required to registered in a unit or regional office of the LBA.

There are presently eight unit offices in Vientiane Capital and six regional offices throughout the provinces of Lao PDR.

1-4-8 Executives and Officers, Number of Positions

- President (1)
- Vice President (2)
- Members (6)
- Inspectors (5)

1-4-9 Finances and membership fees (Please provide the yearly budget amount of your organization and also the yearly membership fees in USD)

LBA only has income from its membership fees. Annual budget is around 10,000 USD. The yearly membership fee is around 125 USD.

1-4-10 Journal, Newsletter, Website

No journal, No newsletter.

Website: www.laobar.org

1-4-11 Other Bar Associations (including the provincial associations) in the Country and the Number of Members of such Other Organizations

The Lao Bar Association is the sole organization of legal professionals in Lao PDR. There are no provincial bar associations.

1-4-12 Qualifications To Become an Attorney

To become qualified to practice as an attorney in Laos, one must complete a law school curriculum that gained bachelor of law of equality degree, pass the bar training, and complete a one-year apprenticeship at the Lao Bar Association. After the one-year apprenticeship, LBA will reconsider if one is qualified for a

lawyer or not. If one is qualified for a lawyer, Lao Bar Association shall send name of one to Ministry of Justice in order to issue lawyer license.

Once qualified, candidates must register with the Lao Bar Association in order to practice as attorneys.

1-4-13 Laws, Decrees or Regulations on Attorneys (Please explain if there are any laws, decrees or regulations on attorneys in your country. Please provide the JFBA an English translation if they are available.)

Decree No. 64 dated 21 February 1996. The Law on Lawyer is currently waiting to be passed at the National Assembly Session in December 2011.

1-4-14 Code of Ethics and/or Rules of Professional Conduct (Please provide the JFBA an English translation if an English translation of these is available.)

Drafting process is currently completed and waiting for signature of the Minister of Justice.

1-4-15 Disciplinary Functions (Please explain who has the power to take disciplinary action against members.)

The Ministry of Justice is responsible for the discipline of lawyers in Lao PDR.

1-4-16 Continuous Legal Education for Members (Please explain about the program, if any)

Depending on supports from donors, LBA shall organize a one day or two days CLE training for lawyers in various topics that related to the practice of lawyers.

1-4-17 Challenges the Organization is Facing (Please briefly explain the problems and challenges your organization is currently facing.)

The ultimate challenge of LBA is annual budget. LBA has only less than 10,000 USD per year from its membership fees. This budget does not enough for its administrative cost. Other challenges are (1) lack of experiences of executive board to operate and manage the bar; (2) LBA does not have its own office. Currently, the office is at the same building of the Vientiane Capital Court and it belongs to the Government; and (3) other Government sectors do not understand the roles of lawyers so lawyers could not practice law under the “rule of law”.

II Legal Aid

2-1 Please describe briefly the history of legal aid in your country.

Legal aid is only a recent phenomenon in Laos. Through the UNDP Project “Enhancing Access to Justice Through the Lao Bar Association” (a project which commenced in 2003) a legal aid clinic was opened in the capital, Vientiane, in 2007. Due to further funding from The Asia Foundation, the Lao Bar Association has been able to open a clinic in Southern Laos (in Pakse) and one in Northern Laos (in Oudomxai). Development of a mobile legal aid clinic is also underway (again, through the funding of The Asia Foundation).

2-2 Please outline the legal aid organization and its programs.

Legal aid is currently run by the Lao Bar Association, and the Project staff of the UNDP/TAF Projects. It provides free consultations on legal issues, free representation to eligible clients (and, in some cases, reimbursement for their travel costs etc) and legal dissemination activities.

It also runs a legal aid hotline from Monday to Friday, and then for one hour on Saturday (which coincides with a television program educating on legal issues and to promote legal aid services).

Some units (which operate a little like private law firms with some very important differences) also have recently began to provide legal aid. We have no data about how much those services are being utilized yet.

2-2-1 Name of the legal aid organization/head office location

Lao Bar Association.

4th Floor, Vientiane Capital Court Building. Km 3. Tha Deua Road Beungkhanhong Tai Village, Siattanak Village, Vientiane, Lao PDR.

2-2-2 When was the above organization established?

As set out above, legal aid was only established in 2007. The Lao Bar Association itself was established in 1996.

2-2-3 Please describe briefly the organization structure such as branches and other offices.

One pilot legal aid clinic in Vientiane (staffed by three administrative staff, plus a roster of lawyers who are paid a nominal sum to work in the clinic). One clinic in Pakse (with one manager and one permanent, salaried lawyer, and one clinic in Oudomxai (with one manager/lawyer and two permanent salaried lawyers).

2-2-4 Please explain about the organization's service delivery model such as salaried legal professional (staff attorney) and/or private legal professional (judicare).

Please see our answer to the question above. The legal aid clinic in Vientiane relies on "volunteer" lawyers who receive payment of, on average, \$US10 per day for their work.

2-2-5 Please explain about the budget for the legal aid system.

Currently the funding comes from donors - the UNDP and The Asia Foundation. These donors have committed funding until 2011.

2-2-6 How many recipients have received the legal aid assistance in main legal aid programs in recent years?

The legal aid clinic in Vientiane has given advice to 254 people this year (up to the end of November). In 2010, the number of clients was 189.

Over that time, 74 clients were provided with actual legal representation services (as opposed to just simply legal advice).

The hotline has provided advice to 425 people this year (to November).

2-2-7 Please explain about the main activities of the legal aid organization, including entitlement to legal aid and reimbursement of the assisted legal aid costs

The Legal Aid clinic provides legal dissemination in villages in Vientiane for free. It also provides its hotline for free. Further, any person can come and receive free legal advice at the legal aid clinic.

To receive legal representation however, clients must be eligible. Eligibility is based partly on income, and partly on if the client falls within the target group of

vulnerable people (broadly speaking, women, children, disabled people and ethnic minorities). Eligible people are eligible to not only have their representation provided for free, but also to have their travel to the courts and other expenses covered.

2-3 What are the future issues or challenges with respect to the legal aid system in your country?

There are many issues facing legal aid in Laos. These include:

1. There is a very low number of lawyers comparative to the population.
2. Being a lawyer is not a lucrative profession in Laos. Thus it is hard to get lawyers to volunteer their time (as it takes them away from earning money from clients).
3. There is not a tradition of using lawyers in disputes, or on legal issues in Laos and a low awareness of what lawyers are and what they do. In fact, there is a lack of understanding of lawyers roles - both in the public and within Government and the justice sector itself.
4. As legal aid grows, and more people are exposed to the legal system, the legal system itself needs to provide those people with just outcomes otherwise people will not develop faith in legal aid and/or the legal system. This is an area for development within Laos.
5. Lack of infrastructure such as roads and telephone access can make going to legal aid clinics, or lawyers visiting remote villages difficult.
6. Currently legal aid is funded by donors (The Asia Foundation). When those donor-funded projects end, the LBA and/or the Government will have to fund legal aid itself. It may not have the financial resources to do that.

2-4 Please let me know if the legal aid organization have an English language website.

The Lao Bar Association does have an English language website: www.laobar.org. It is in the process of being updated.

III Legal consultation (other than that covered by the Legal Aid system explained in above II.)

3-1 Legal Consultation Programs (Please explain if there are legal consultation programs managed by your organization (or other institutions) other than those covered under the Legal Aid system in your country.)

N/A

3-2 Fees for Legal Consultation (Please explain the fee structure for such legal consultation programs.)

N/A

3-2 Management of the Legal Consultation Program (Please explain how such program is run by the organization.)

N/A

3-3 Appointment of an Attorney for Legal Consultation (Please explain how an attorney (consultant) is appointed.)

N/A

3-4 Flow to the legal representation (Please explain how such legal consultation may lead to legal representation by an attorney)

N/A

3-5 Number of Consultations (Please provide statistics on how many legal consultations have been carried out per year.)

N/A

IV Shortages of Lawyers in Local Areas

4-1 Is there any figure of lawyers who work in local areas in your country?

The number is very small. Outside of the capital, there are a total of 16 members of the Lao Bar Association. Even then, these are in relatively sizeable regional towns. More rural areas have no private legal presence (any legal personnel in those regions work for the government).

4-2 Do you think that there are a sufficient number of qualified lawyers working for citizens in local areas in your country?

Definitely not.

4-3 If the answer of Question 3-2 is negative, what have caused such shortage of lawyers?

As set out above, there is a very low number of lawyers comparative to the population in general. There is not enough lawyers even in Vientiane.

Also, as set out above, being a lawyer is not a lucrative profession in Laos. It would be even less so in the provinces. Thus it is hard for the provinces to attract lawyers to work there.

4-4 Does the legal aid organization or the bar association/law society has any programs in dealing with legal services in local areas in your country?

Yes.

4-5 If the answer of Question 3-4 is affirmative, please describe briefly such programs.

There are public legal education outreach programs that visit the provinces, providing information about the role of lawyers, the legal aid services of the LBA, and about people's rights under law generally. The LBA (through the UNDP) intends to conduct an access to justice survey which will cover local areas.

Two provincial legal aid clinics have recently been opened.

4-6 What are the future issues or challenges with respect to the shortage of legal services in local areas in your country?

As set out in our response to question 2-3:

1. There is a very low number of lawyers comparative to the population.
2. Being a lawyer is not a lucrative profession in Laos. Thus it is hard to get lawyers to volunteer their time (as it takes them away from earning money from clients).
3. There is not a tradition of using lawyers in disputes, or on legal issues in Laos and a low awareness of what lawyers are and what they do. In fact, there is a lack of understanding of lawyers roles - both in the public and within Government and the justice sector itself.
4. As legal aid grows, and more people are exposed to the legal system, the legal system itself needs to provide those people with just outcomes otherwise people will not develop faith in legal aid and/or the legal system. This is an area for development within Laos.
5. Currently legal aid is funded by donors (The Asia Foundation). When those donor-funded projects end, the LBA and/or the Government will have to fund legal aid itself. It may not have the financial resources to do that.

In addition to these, the following are challenges specific to rural areas:

1. Many of the people in rural areas speak languages other than Lao. Currently there are many languages which are used in Laos by ethnic minorities, for which there is not a single Lao lawyer who speaks that language.
2. Literacy levels in rural areas are low, making dissemination by written materials less helpful.
3. Rural infrastructure is poor, thus traveling times from villages to legal offices can be long even if the distance is relatively short. Also, telecommunications infrastructure can be poor and can make communications difficult.

V Other Obstacles to Hinder Access to Justice

5-1 Are there any obstacles to hinder access to justice other than the problems with the legal aid system and the shortage of lawyers in local areas?

Yes.

5-2 If the answer of Question 4-1 is affirmative, please describe briefly such obstacles.

As in many developing countries where public sector pay is low, corruption is a big issue affecting access to justice.

Also, the general lack of understanding on the part of the populace and, crucially, many Government officials, about rights, and the role of lawyers, hinders access to justice.

Judges and local officials are often not well trained in legal issues (students straight out of law school can become judges for instance - and not all judges have formal legal training).

5-3 Please explain briefly the educational system to produce qualified lawyers in your country.

Lawyers complete a bachelor degree at one of the Law Faculties in the country. They then undertake the LBA intern training course (a six week training course).

However, there are many lawyers (particularly older lawyers) who have not received such formal training. Many former judges and prosecutors (bearing in mind that a law degree is not necessary to be a judge) become members of the LBA (and therefore lawyers) on the basis of their legal experience as a judge or prosecutor. The LBA is working on a draft Law on Lawyers which may change that for future members.

5-4 Do you think that your country has enough lawyers to substantiate the access to justice?

No.

5-5 Do you think that your country produces newly qualified lawyers every

year to substantiate the access to justice?

No. While there is a large number of law graduates each year (some 3000 or so), not many go on to become lawyers.

5-6 If the answer of Question 4-4 or 4-5 is negative, please describe briefly the reason for such shortage and your thoughts on how to solve such problems.

Low payment for the profession is a factor as is the fact that, because the role of lawyers is not particularly understood, there is no prestige attached to being a lawyer as there is in some other countries.

VI Cooperation with Foreign Organizations

6-1 Please explain the details of recent and future projects relating to any of the above discussed issues in your country, in regard to which any foreign (governmental or non-governmental) organizations are providing assistance.

Name of the foreign organization: The Asia Foundation

Name of the program: Enhancing Access to Justice through Lao Bar Association

Program details: Legal Aid Programs, Mobile Legal Aid Clinic, Paralegal Training.

Website in English: <http://asiafoundation.org/country/overview/laos>

VII Others

7-1 Recent Judicial Movement

Please describe briefly the recent movements or topics in the legal community, including the bar association/law society in relation to the topics above.

There a number of new laws in Laos that, over time, will have a significant impact on business - including a new law on Intellectual Property, and the implementation of a Law on Enterprises. As yet, though, Lao lawyers are not so involved in business-related legal matters (with some exceptions). This will increase as Laos moves towards WTO membership (the current goal is 2012 or soon after)

The big change on the horizon is the potential new Law on Lawyers. This is currently being drafted by the LBA. If approved by the Government and passed by the National Assembly, it will provide for more definite regulation of the profession, and entrance into the profession. It will also remove some of the ambiguities of the current system (such as the lack of regulation of foreign legal firms and prevention of LBA members setting up firms), and provide for formal disciplinary procedures.

7-2 Comments

Please fill in any comments or your thoughts to way to achieve the well-organized access to justice in your country.

The project which is supported by the UNDP and other donors (The Asia Foundation, the European Community, and the Australian Government) is working on the above mentioned issues. It's aims are to:

1. Improve the functioning of the LBA as a Professional, Self-Regulatory Organization
2. Improve the Legal Knowledge, Skills and Professionalism of Members of the LBA
3. Improve the Awareness of the Role and Functioning of the Lao Bar Association.
4. Increase the number of practicing Lawyers in Lao PDR and the LBA Membership.
5. Improve Access to Justice for the Poor and Vulnerable, Particularly Women,

Elderly, Ethnic Groups, Disabled and Children.

6. Formulation of Long Term Strategy of Sustainable Activities.

All of these aims go towards increasing access to justice. However, the key activities are:

- improving the awareness of the public of the role of lawyers;
- increasing the number of lawyers;
- improving the skills of lawyers;
- establishment of a legal aid clinic in Vientiane;
- establishment of a legal aid clinic in the north and the south of the country;
- public legal education outreach and dissemination activities about legal aid and legal rights; and
- mobile legal aid clinics (which as yet are not set up).

One of the key challenges for Laos, and the project, is that, if one of the outcomes proceeds quicker than the others, this could in itself cause problems. For example, if we increase the numbers of lawyers quickly, but do not improve the public's knowledge of the role of lawyers, those lawyers may find they have no business, and thus may leave the profession. Conversely, if we get more people going to lawyers when they have problems, but those people then have a negative experience either because the lawyer does not have appropriate training, or due to embedded problems in the legal sector (such as corruption, lack of training of officials etc) then they will be disillusioned.

Ultimately, there are some issues with access to justice in Laos that are out of the control of the LBA - such as training for judicial officers, low public sector pay leading to corruption, poor infrastructure, lack of court technology facilities leading to delays etc. These need to be tackled by the Government as well as the project running through the LBA.

Information Sheet - Vietnam

I General Information

1 Number of stakeholders in the Country

1-1-1 Population

90,549,390 people.

1-1-2 Number of lawyers/attorneys-at-law

Vietnam has 6559 lawyers as of 31 September 2011.

1-1-3 Number of judges

About 4,680 Judges of People's Court at all levels and about 140 Judges of Military Court at all levels.

1-1-4 Number of prosecutors

About 7,590 prosecutors of People's Procuracies at all levels and about 390 prosecutors of Military Procuracies.

2 Number of court cases handled by first instance courts

1-2-1 Number of civil cases

177, 417 civil cases as of 2009.

1-2-2 Number of family cases

Number of family cases had been included in the number of civil cases aforementioned.

1-2-3 Number of criminal cases

65,462 criminal cases as of 2009.

3 Attorneys for Defendants in Criminal Procedures

Please explain in what kinds of criminal cases attorneys must be appointed for suspects or defendants in your country. Please also explain who appoints and bears the costs for the attorneys appointed.

According to Criminal Procedure Code, attorney must be appointed in some special cases in which the accused or defendants are tried for offenses with death penalty as the highest punishment; the accused or defendants are minors or persons with physical or mental defects.

In above cases, if the accused, defendants or their lawful representatives do not seek the assistance of lawyer, then, the investigating bodies, procuracies or courts must request bar associations to assign lawyers' offices for appointing an attorney for such persons or request the Vietnam Fatherland Front Committees or the Front's member organizations to appoint an attorney for their organizations' members.

4 Profile of the Bar Association/ Organization and Attorney System

1-4-1 Location and contact information

The Vietnam Bar Federation

Address: 38 Hoang Ngoc Phach Street, Dong Da District, Hanoi, Vietnam

Tel: +84-4-37765685/+84-4-37765686

Fax:+84-4-37765689

Email: ldsvietnam@gmail.com

1-4-2 History of Organization

On October 10, 1945, President Ho Chi Minh signed Decree No. 46/SL on the organization of legal profession. Constitutions of the Democratic Republic of Vietnam in 1946, 1959, 1980 and 1992 assert the role and position of the legal profession and provided that the lawyers' organization is established for the purpose of protecting the

legitimate rights and interests of individuals and organizations and at the same time contribute to protection of the rule of the socialist law.

The Vietnam Bar Federation (“**VBF**”) was established on May 12, 2009, under Decision No. 76/QĐ-TTg of Prime Minister dated January 16, 2008. VBF is the nationwide socio-professional organization of Vietnamese lawyers which gathers, unites lawyers and represents the legitimate rights and interests of lawyers and bar associations in Vietnam.

At the time of establishment, VBF had approximately 5300 lawyers.

1-4-3 Governmental Supervision of the Organization and Registration of Members (Please explain whether or not, and if so how, your organization is supervised by the government.)

VBF is a self-governance organization.

1-4-4 Main Activities of the Organization

VBF represents and protects the legitimate rights and interests of lawyers and bar associations as its members; sets up professional standards for Vietnamese lawyers; improves ethic and competence of lawyers in order to meet the demand of society, contribute to economic development and improve a fair, democratic and civilized society.

VBF is a member of the Vietnam Fatherland Front, having working relations with other state agencies and social organizations under the Constitution and the law. VBF is entitled to develop cooperative relations with international bar associations; and join international organizations which operate in line with VBF’s missions and purposes.

1-4-5 Categories of Membership

Members of VBF are: Bar Associations, Practising Lawyers and Honor Members (not a practicing lawyer).

1-4-6 Number of Members

Currently, VBF has 6559 lawyers and 62 Bar associations (without Honorary members) as of 31 September, 2011.

1-4-7 Membership (voluntary or compulsory, please also explain where

such registration should be filed)

Compulsory. All members are required to pay membership fee (provided by The national Council of Lawyers)

1-4-8 Executives and Officers, Number of Positions

- President: 1
- Vice President: 4
- VBF Office and technical committees.

1-4-9 Finances and membership fees (Please provide the yearly budget amount of your organization and also the yearly membership fees in USD)

Currently, operation of VBF relies upon the budget provided by the State (within 3 first years since the date of establishment). Membership fee is 30,000 VND/month/member (equal to US\$ 1.4/month/member).

1-4-10 Journal, Newsletter, Website

Website: www.liendoanluatsu.org.vn

1-4-11 Other Bar Associations (including the provincial associations) in the Country and the Number of Members of such Other Organizations

VBF is the sole organization of lawyers in Vietnam. Provincial bar associations are members of VBF.

1-4-12 Qualifications To Become an Attorney

To become lawyers, one must obtain a law bachelor diploma, be trained in legal profession, complete the probation of legal profession.

The legal professional training duration is six months. A person who completes the legal professional training program shall be granted a graduation certificate by lawyer-training institution.

Persons who obtained professional training certificates will take probation at

law-practicing organizations within 18 months in general. After completing probation, probationers shall report in writing on law-practicing probation results to the bar association with which they have registered for probation. The Ministry of Justice shall preside and coordinate with the national lawyers' organization in testing law practice-probation results. Persons who pass law practice probation tests shall be granted certificates by the Justice Minister.

Persons who pass law practice probation tests shall submit application dossiers for law practice certificate to managing boards of bar association where they register probation. Within 30 days after receiving completed application dossiers for law practice certificates, the Justice Minister shall grant such certificates.

A person who obtained a law practice certificate may join a bar association of his/her choice for law practice.

1-4-13 Laws, Decrees or Regulations on Attorneys (Please explain if there are any laws, decrees or regulations on attorneys in your country. Please provide the JFBA an English translation if they are available.)

- Law on Lawyers No. 65/2006/QH11 dated June 29, 2006 by National Assembly;
- Criminal Procedure Code No. 19/2003/QH11 dated November 26, 2003 by National Assembly;
- Civil Procedure Code No. 24/2004/QH11 dated June 15, 2004 by National Assembly;
- Law on Administrative Procedure No. 64/2010/QH12 dated November 24, 2004 by National Assembly;
- Decree No. 28/2007/ND-CP dated February 26, 2007 by the Government detailing and guiding the implementation of a number of articles of the Law on Lawyers;
- Decree No. 131/2008/ND-CP dated December 31, 2008 by the Government guiding the implementation of the Law on Lawyers regarding lawyers' socio-professional organizations;

- Circular No. 21/2010/TT-BTP dated December 01, 2010 by Ministry of Justice promulgating the regulation on law-practicing probation;
- Circular No. 02/2007/TT-BTP dated April 25, 2007 by Ministry of Justice guiding a number of provisions of the Law on Lawyers and the Decree detailing and guiding the implementation of a number of articles of the Law on Lawyers;
- Circular No. 17/2011/TT-BTP dated October 14, 2011 by Ministry of Justice guiding a number of provisions of the Law on Lawyers, the Decree detailing and guiding the implementation of a number of articles of the Law on Lawyers and the Decree guiding the implementation of the Law on Lawyers regarding lawyers' socio-professional organizations Joint Circular No. 88/2007/TTLT-NTC-BTP dated June 19, 2007 guiding remuneration and payment of expenses for lawyers who participate in legal proceedings at the request of proceedings-conducting agencies. This Circular will take effect from December 1, 2011 and supersede Circular No. 02/2007/TT-BTP.
- Decision No. 667/2004/QĐ-BTP dated December 8, 2004 promulgating the regulation on testing law practice probation result by Minister of Justice.

1-4-14 Code of Ethics and/or Rules of Professional Conduct (Please provide the JFBA an English translation if an English translation of these is available.)

Code of Ethics and Professional Conduct have been approved by National Council of lawyers. On July 20, 2011, President of VBF signed Decision No. 68/QĐ-HĐLSTQ promulgate this Code.

1-4-15 Disciplinary Functions (Please explain who has the power to take disciplinary action against members.)

The managing board of a bar association has the power to take disciplinary action against members.

1-4-16 Continuous Legal Education for Members (Please explain about the program, if any)

There are a Committee on Education, Training, Legal Development and Dissemination and a Professional Training Center. These units co-ordinate in

organizing professional training courses for lawyers, such as: training on Code of Ethics and Professional Conduct, training course for improving legal knowledge on several sectors: commercial arbitration, investment consult, land...

1-4-17 Challenges the Organization is Facing (Please briefly explain the problems and challenges your organization is currently facing.)

The VBF is a newly established organization. It has facing both institutional and financial difficulties to run its operation. Therefore, VBF is facing the challenge to establish and put into practice a solid legal solutions system for promoting lawyers' role and improving their competence.

The number of lawyers per capita in Vietnam is still lower than many developed countries in the world. The number of lawyers is not equally distributed among local areas. The quality of lawyers' work is also need to be improved, especially its capacity to handle cross-border and international litigation and dispute settlement.

The financial support of the State in favor of VBF is only provided during the first three years after the establishment of VBF. In the long term, VBF must pay all operating costs and expenses by itself, while the current fees of the members are far to enough.

II Legal Aid

2-1 Please describe briefly the history of legal aid in your country.

Legal aid activities have been conducted since the late of twentieth century. From 1945 to 1996, free legal aid services developed along with activities of lawyers and the judiciary bodies.

Under the direction of the Government, Ministry of Justice researched and advised the Government to establish Legal Aid Centers of the State in several provinces. From these initial results, based on experience in organizing legal assistance activities of developed countries, the Prime Minister issued Decision No. 734/TTg dated September 6, 1997 on establishment of a system of legal assistance for the poors and policy beneficiaries. This Decision created a legal basis for the introduction of legal aid organization system of the State. Accordingly, Legal Aid Department under Ministry of Justice was established at national level and Legal Aid Centers under Departments of Justice are established in provinces and cities directly under the

Central Government.

On June 29, 2006, National Assembly of Vietnam approved the Law on Lawyers and the Legal Aid Act. The issuance of two Acts has shown a consistent policy on legal to protect rights and legitimate interests of people.

2-2 Please outline the legal aid organization and its programs.

Legal Aid Centers under Departments of Justice:

- Organizing public legal education programs and spreading leaflet which introduce the main content of legal documents ;
- Establishing legal aid clubs at localities.

2-2-1 Name of the legal aid organization/head office location

- Legal Aid Department under Ministry of Justice, 58 – 60 Tran Phu street, Ba Dinh district, Ha Noi.
- Legal Aid Centers under Departments of Justice: located in many cities and provinces in Vietnam

2-2-2 When was the above organization established?

Legal Aid Department under Ministry of Justice was established in September 6, 1997 under Decision No. 734/TTg of the Prime Minister.

2-2-3 Please describe briefly the organization structure such as branches and other offices.

Legal Aid Department under the Ministry of Justice is responsible for matters of legal aid work at national level, while matters at local level shall be handled by Legal Aid Centers under Departments of Justice.

2-2-4 Please explain about the organization’s service delivery model such as salaried legal professional (staff attorney) and/or private legal professional (judicare).

There are two models of legal service delivery. First one is salaried legal professional

which means that legal consulting centers will appoint their lawyers to give clients legal advice per case. Another model is private legal professional where the legal consulting center appoints a specific private lawyer to handle all legal matters at client's request at any time.

2-2-5 Please explain about the budget for the legal aid system.

Legal Aid Fund is created to annually finance Legal Aid Department's activities.

2-2-6 How many recipients have received the legal aid assistance in main legal aid programs in recent years?

Legal aid activities have gradually developed in recent years. Legal aid centers in Vietnam assisted many subjects such as: the poor, children, women, the disabled person, people of ethnic minority...

2-2-7 Please explain about the main activities of the legal aid organization, including entitlement to legal aid and reimbursement of the assisted legal aid costs

- Main activities of Legal Aid Department under Ministry of Justice are:
 - Managing and guiding on operation of legal aid centers.
 - Providing training and professional improvement courses for officers/staffs conducting legal aid activities and granting certificate of professional training in legal aid.
 - Managing legal aid fund.
- Main activities of Legal Aid Centers under Departments of Justice are:
 - Organizing public legal education programs for the people and subjects of legal aid activities.
 - Appointing lawyers who collaborate with Legal Aid Center to protect the rights and legitimate interests for subjects of legal aid activity in the proceedings in accordance with the law.
 - Organizing seminars on some legal issues and disputes arising frequently.

2-3 What are the future issues or challenges with respect to the legal aid system in your country?

Some challenges with respect to the legal aid system in Vietnam are:

- Financial, equipments and working facilities are not adequate enough for legal aid centers to work well.
- There are a very few legal aid centers. Therefore, people have a number of difficulties in accesssign the legal aid centers.
- The limitation of professional level of officers in rural areas and financial shortage also cause a lot of challenge for legal aid centers.

2-4 Please let me know if the legal aid organization have an English language website.

Not available.

III Legal consultation (other than that covered by the Legal Aid system explained in above II.)

3-1 Legal Consultation Programs (Please explain if there are legal consultation programs managed by your organization (or other institutions) other than those covered under the Legal Aid system in your country.)

VBF has just established its one legal consulting center but this center has not operated yet.

Vietnam Lawyers' Association has established legal consulting centers located in some cities like Hanoi and Ho Chi Minh city. These centers give legal advice to individuals and organizations and also organizes working legal consulting activities in remote areas every year.

3-2 Fees for Legal Consultation (Please explain the fee structure for such legal consultation programs.)

N/A.

3-3 Management of the Legal Consultation Program (Please explain how such program is run by the organization.)

Legal consulting centers of Vietnam Lawyers' Association have many boards in these legal consulting centers: civil - land consulting board, business consulting board, administrative - labour - marriage and family consulting board, criminal consulting board. Each board will be responsible for legal advice in each legal area.

3-4 Appointment of an Attorney for Legal Consultation (Please explain how an attorney (consultant) is appointed.)

Legal consulting centers may also appoint lawyers involving in legal proceedings to defend and protect legitimate rights and interests for individuals and organizations before the court.

3-5 Flow to the legal representation (Please explain how such legal consultation may lead to legal representation by an attorney)

The legal consultation shall be provided at the specific request of clients. If the client asks the lawyer to be their legal representation before the court, the lawyer shall become an attorney in order to defend and protect legitimate rights and interests for clients.

3-6 Number of Consultations (Please provide statistics on how many legal consultations have been carried out per year.)

There is no accurate statistics on the number of consultations since it depends on each legal consulting centers in the country.

IV Shortages of Lawyers in Local Areas

4-1 Is there any figure of lawyers who work in local areas in your country?

The number of lawyers is not equally distributed among local areas. In some rural areas, the number of lawyers are too small to establish bar association.

4-2 Do you think that there are a sufficient number of qualified lawyers working for citizens in local areas in your country?

It would be difficult to assess whether the current number of qualified lawyers working for the citizens in the local areas because of the lack of the statistics and assessment from the clients' perspectives. However, there is a fact that most of the highly qualified lawyers are based in the city or urban locations.

4-3 If the answer of Question 3-2 is negative, what have caused such shortage of lawyers?

I think that the main reason is that there are more demands and businesses in the cities and urban locations.

4-4 Does the legal aid organization or the bar association/law society has any programs in dealing with legal services in local areas in your country?

Yes.

4-5 If the answer of Question 3-4 is affirmative, please describe briefly such programs.

Such programs shall be provided by bar associations in accordance with specific demand and actual context of each locality, including public education, career orientation...

4-6 What are the future issues or challenges with respect to the shortage of legal services in local areas in your country?

The shortage of lawyers for legal aid activities may lead to numerous unsolvable cases and failure in handling cases timely, thus affects the legitimate rights and interests of people.

5-1 Are there any obstacles to hinder access to justice other than the problems with the legal aid system and the shortage of lawyers in local areas?

Yes.

5-2 If the answer of Question 4-1 is affirmative, please describe briefly such obstacles.

Some obstacles which hinder access to justice other than the problems with the legal aid system and the shortage of lawyers are:

- A lack of understanding on rights and the role of lawyers.
- Corruption is big issue in Vietnam as in other developing countries, affecting access to justice.

5-3 Please explain briefly the educational system to produce qualified lawyers in your country.

To become lawyers, one must obtain a law bachelor diploma, be trained in legal profession, complete the probation of legal profession as provided in section 1.4.12 above.

5-4 Do you think that your country has enough lawyers to substantiate the access to justice?

There are not enough lawyers to substantiate the access to justice.

5-5 Do you think that your country produces newly qualified lawyers every year to substantiate the access to justice?

No, because only a small number of law graduate go on to become lawyers. Besides, the training period is quite long to obtain law practice certificate.

5-6 If the answer of Question 4-4 or 4-5 is negative, please describe briefly the reason for such shortage and your thoughts on how to solve such problems.

There is a very low number of lawyers comparative to the population. Moreover, the number of lawyers residing in such areas is too small in rural areas.

VBF should work with the local government authorities to address this issue.

VI Cooperation with Foreign Organizations

6-1 Please explain the details of recent and future projects relating to any of the above discussed issues in your country, in regard to

which any foreign (governmental or non-governmental) organizations are providing assistance.

UNDP and other donors have provided support for legal activities in Vietnam. Some of projects are: Supporting for the Task Force on implementation of the Enterprise Law and the Investment Law; Strengthening the capacity of the Vietnam Lawyers Association; Supporting for implementation of Vietnamese law system development strategy, etc.

VII Others

7-1 Recent Judicial Movement

Please describe briefly the recent movements or topics in the legal community, including the bar association/law society in relation to the topics above.

Resolution No. 49-NQ/TW of the Politburo of the Communist Party of Vietnam on “Judicial reform strategy till 2020” has provided for the policy and direction to increase the awareness of the people and state agencies of the position and the role of lawyers and the improvement of the legal profession.

The recent policy and law making agendas also paid attention to the increase of the role and quality of the legal profession.

7-2 Comments

Please fill in any comments or your thoughts to way to achieve the well-organized access to justice in your country.

To achieve the well-organized access to justice in your country, it is necessary to:

- Intensify the function of VBF;
- Improve the awareness of the role of lawyers;
- Encourage the lawyer to return to their countryside and joined bar association in their locality.

Information Sheet – [East Timor]

I General Information

1 Number of stakeholders in the Country

1-1-1 Population

It is more than a million people.

1-1-2 Number of lawyers/attorneys-at-law

It is more than one hundred

1-1-3 Number of judges

More than 30, including international judges

1-1-4 Number of prosecutors

The same as above

2 Number of court cases handled by first instance courts

1-2-1 Number of civil cases

More than a thousand in a year

1-2-2 Number of family cases

More than one hundred

1-2-3 Number of criminal cases

V

3 Attorneys for Defendants in Criminal Procedures

Please explain in what kinds of criminal cases attorneys must be appointed for suspects or defendants in your country. Please also explain who appoints and bears the costs for the attorneys appointed.

Whenever the suspects or the people don't have economic means to finance the lawyer's expenses the suspect will request for a Public Defender or request

assistance from the legal aid groups.

4 Profile of the Bar Association/ Organization and Attorney System

1-4-1 Location and contact information

Associação de Advogados de Timor-Leste, Bairro dos Grilos, Dili, Timor-Leste

1-4-2 History of Organization

It started in the year 2001. It is still an association. We want it to become “Ordem the Advogados”, which is an institution that regulate all the activities of the lawyers and also protect and promote them and be an independent body.

1-4-3 Governmental Supervision of the Organization and Registration of Members (Please explain whether or not, and if so how, your organization is supervised by the government.)

At the moment the Government is creating conditions for the creation of a future “Ordem de Advogados”, something like a Bar Association. There is a training Center for the lawyers which is taking care by the Government and also financed by some donor countries.

1-4-4 Main Activities of the Organization

1-4-5 Categories of Membership

1-4-6 Number of Members (as of 2011)

There is not a compulsory registration of the lawyers. There are some registered in the Association of Lawyers but there are others who are not. But in the future all the lawyers must be registered at the Judiciary Training Center.

1-4-7 Membership (voluntary or compulsory, please also explain where such registration should be filed)

See the above answer

1-4-8 Executives and Officers, Number of Positions

See the above answer

1-4-9 Finances and membership fees (Please provide the yearly budget amount of your organization and also the yearly membership fees in USD)

The answer is related to the above answer. No lawyer pays membership fees.

1-4-10 Journal, Newsletter, Website

None

1-4-11 Other Bar Associations (including the provincial associations) in the Country and the Number of Members of such Other Organizations

There will be an Association for female lawyers.

1-4-12 Qualifications To Become an Attorney

Be 5 years graduated in Law in the University.

1-4-13 Laws, Decrees or Regulations on Attorneys (Please explain if there are any laws, decrees or regulations on attorneys in your country. Please provide the JFBA an English translation if they are available.)

There is a Law, approved in the National Parliament. There is no translation into English yet. It is only in the Portuguese and Tetum, the official languages of Timor-Leste.

1-4-14 Code of Ethics and/or Rules of Professional Conduct (Please provide the JFBA an English translation if an English translation of these is available.)

There is not in English version yet. It is only in the Portuguese and Tetum, the official languages of Timor-Leste.

1-4-15 Disciplinary Functions (Please explain who has the power to take disciplinary action against members.)

There is no institution created yet. At the moment the Association of Lawyers doesn't have any power to do that. The "Ordem de Advogados", a kind of Bar Association, which is to be created will have power to do that.

1-4-16 Continuous Legal Education for Members (Please explain about the program, if any)

The continuous legal education is done by Judiciary Training Center. There is a non governmental organization, The Asia Foundation who does that too.

1-4-17 Challenges the Organization is Facing (Please briefly explain the problems and challenges your organization is currently facing.)

Need more training and to create conditions for working. It means need to have finance for that.

II Legal Aid

2-1 Please describe briefly the history of legal aid in your country.

The legal aid is supported and financed by foreign non governmental organizations, such as The Asia Foundation and others. The legal aid in Timor-Leste is established as association. It is composed by lawyers and paralegals. These associations are in the main districts in the country.

2-2 Please outline the legal aid organization and its programs.

The ONG support financially the legal aid organization and give them training.

2-2-1 Name of the legal aid organization/head office location

There are in the following districts : Dili, Baucau, Suai and Oecusse.

2-2-2 When was the above organization established?

There were, before, more groups of legal aid. As the Non Governmental Organizations come and go the legal aid groups died because of the lack of finance. Now there are few that survived.

2-2-3 Please describe briefly the organization structure such as branches and other offices.

See the answer above in number 2-1

2-2-4 Please explain about the organization's service delivery model such as salaried legal professional (staff attorney) and/or private legal professional (judicare).

2-2-5 Please explain about the budget for the legal aid system.

2-2-6 How many recipients have received the legal aid assistance in main legal aid programs in recent years?

2-2-7 Please explain about the main activities of the legal aid organization, including entitlement to legal aid and reimbursement of the assisted legal aid costs

The main activity is to help people in the cases in the Court and also mediation. Give the people the necessary legal information.

2-3 What are the future issues or challenges with respect to the legal aid system in your country?

The legal aid need to be controlled. The institution that should control is the “Ordem de Advogados”, or Bar Association but it must also be controlled by the Ministry of Justice. Because the non governmental organizations wants to control the judicial system of the country and they are very dangerous for a post conflict country. They try to impose their policies and make interferences, according to the policies of who finance them, especially their Governments.

2-4 Please let me know if the legal aid organization have an English language website.

None existed in the web

III Legal consultation (other than that covered by the Legal Aid system explained in above II.)

3-1 Legal Consultation Programs (Please explain if there are legal consultation programs managed by your organization (or other institutions) other than those covered under the Legal Aid system in your country.)

None

3-2 Fees for Legal Consultation (Please explain the fee structure for such legal consultation programs.)

None

3-3 Management of the Legal Consultation Program (Please explain how such program is run by the organization.)

None

3-4 Appointment of an Attorney for Legal Consultation (Please explain how an attorney (consultant) is appointed.)

Any lawyer in my office can be consulted.

3-5 Flow to the legal representation (Please explain how such legal consultation may lead to legal representation by an attorney)

In my office, as private lawyer we may give free legal representation after having study case by case.

3-6 Number of Consultations (Please provide statistics on how many legal consultations have been carried out per year.)

At least fifteen cases in my office in a month.

IV Shortages of Lawyers in Local Areas

4-1 Is there any figure of lawyers who work in local areas in your country?

There are not enough lawyers for the people. At least there are around ten in a District.

4-2 Do you think that there are a sufficient number of qualified lawyers working for citizens in local areas in your country?

There are not enough qualified lawyers working in the Districts.

4-3 If the answer of Question 3-2 is negative, what have caused such shortage of lawyers?

The education system is not good. Most of the lawyers were studying in Indonesian universities. The quality is so low.

4-4 Does the legal aid organization or the bar association/law society has any programs in dealing with legal services in local areas in your country?

The Government is trying to raise the qualities of the lawyers through a two years program running by the “Centro de Formação Jurídica” (Juridical Training Center). There is a NGO, The Asia Foundation which also give small trainings.

4-5 If the answer of Question 3-4 is affirmative, please describe briefly such programs.

“Centro de Formação Jurídica” (Juridical Training Center) is running by the Government. It is two years programs. It is very intensive. It is given in the two official languages of Timor-Leste, which is in Portuguese and Tetum. It is a very good program. The Asia Foundation also gives small trainings on the procedure in the Courts and also how to deal with the clients.

4-6 What are the future issues or challenges with respect to the shortage of legal services in local areas in your country?

Increasing more lawyers, given them good trainings on Civil Law, which is the system of Timor-Leste. Following and improving the existed system, which is the Civil Law and not to mix more system which only complicates. Paying good salaries and give other incentives to the lawyers.

V Other Obstacles to Hinder Access to Justice

5-1 Are there any obstacles to hinder access to justice other than the problems with the legal aid system and the shortage of lawyers in local areas?

The people need more information on justice system. More than half of the Timorese people are illiterate. Not everybody has television at home or radio. If they have television or radio there is no power. The Government needs to develop a good information system in order to reach the people.

5-2 If the answer of Question 4-1 is affirmative, please describe briefly such obstacles.

There are not conditions to work in the districts. No transportation. There are remote areas that the public transportation doesn't reach. The lawyers prefer to concentrate in Dili, the capital of the country. The salary is not good. There are no incentives for people to work in the districts.

5-3 Please explain briefly the educational system to produce qualified lawyers in your country.

The educational system should be in the official languages (Portuguese and Tetum) of my country. Not in English or any other foreign languages because we use in the Court our official languages. The system must be the Civil Law system and not the Common Law. We need good law teachers who can understand not only the system but also the reality of Timor-Leste.

5-4 Do you think that your country has enough lawyers to substantiate the access to justice?

We have enough lawyers but their quality is very low. If the quality is low the access to justice continues to be difficult for everybody.

5-5 Do you think that your country produces newly qualified lawyers every year to substantiate the access to justice?

No, I don't think so.

5-6 If the answer of Question 4-4 or 4-5 is negative, please describe briefly the reason for such shortage and your thoughts on how to solve such problems.

Already explain in the referred numbers.

VI Cooperation with Foreign Organizations

6-1 Please explain the details of recent and future projects relating to any of the above discussed issues in your country, in regard to which any foreign (governmental or non-governmental) organizations are providing assistance.

Timorese always assumed that any foreign Non Governmental Organizations pursue the policy of their own countries. It means that the main objective is not helping the people or the country that they say to go for helping them. The experiences talk by themselves. In ten years of independence we have witness some interesting things. Some non governmental organizations have become like jokes among Timorese. The Timorese believe that the last thing that the Non Governmental Organizations would do is for Timor-Leste and its people. However there are some Non Governmental Organizations who were more balanced between their Governmental objectives and the Timorese objectives. We don't trust them either but we can work together because it is acceptable.

VII Others

7-1 Recent Judicial Movement

Please describe briefly the recent movements or topics in the legal community, including the bar association/law society in relation to the topics above.

7-2 Comments

Please fill in any comments or your thoughts to way to achieve the well-organized access to justice in your country.

Information Sheet – [Japan]

I General Information

1 Number of stakeholders in the Country

1-1-1 Population

127,510,000 in 2010 and about 10% is in Tokyo.

1-1-2 Number of lawyers/attorneys-at-law

30,524 (incl. 5,151 female members-16.88%) as of Nov, 2011

1-1-3 Number of judges

3,611 in 2010

1-1-4 Number of prosecutors

2,621 in 2010

2 Number of court cases handled by first instance courts

1-2-1 Number of civil cases

812,885 cases (including administrative cases) in 2010 *relatively stable every year

1-2-2 Number of family cases

815,052 cases in 2010 *gradually increasing year by year

1-2-3 Number of criminal cases

62,840 cases in 2010 *relatively stable or gradually decreasing in recent years

3 Attorneys for Defendants in Criminal Procedures

Please explain in what kinds of criminal cases attorneys must be appointed for suspects or defendants in your country. Please also explain who appoints and bears the costs for the attorneys appointed.

Basically, a court appoints an attorney when a defendant or a suspect is unable to appoint counsel privately because of indigency or other reasons and requests the court to appoint an attorney. Also, a court may appoint one ex-officio under a certain condition. Formerly, the court-appointed attorney system was only for defendants and bar associations made registration lists of court-appointed attorneys and courts appointed attorneys from the lists as negotiated between bar associations and courts. On October 2, 2006, the system was reformed so that the Japan Legal Support Center (JLSC) nominates attorneys from its list of contracted attorneys and the courts can appoint attorneys for suspects in certain types of serious cases. On May 21, 2009, the system was expanded to cover suspects facing servitude or imprisonment for a maximum of three years or more, for which trials require the presence of attorneys. The JLSC pays defense counsel's fees. When the defendant is sentenced guilty, he/she is obliged to pay the fees. However, a court may discharge him/her from payment of the fees after taking his/her financial situations into consideration. Many of the defendants sentenced guilty are exempt from paying the fees.

4 Profile of the Bar Association/ Organization and Attorney System

1-4-1 Location and contact information

Japan Federation of Bar Associations (JFBA)

Bar Association Building: 1-1-3 Kasumigaseki, Chiyoda-ku, Tokyo 100-0013, Japan

TEL: +81 (0)3 3580 9741

FAX: +81 (0)3 3580 9840

1-4-2 History of Organization

The first formal regulation of attorneys (bengoshi) in Japan can be traced back to February 1876, when the Attorney Rules (Daigen-nin Kisoku) were promulgated. At that time attorneys were called Daigen-nin and enjoyed a special status or prerogative to represent clients in court, subject to strict supervision by public prosecutors.

In 1893, the first Attorney Act was enacted which limited the scope of attorneys'

practice to courtroom work. This law also established a qualifying examination for attorneys and provided for the registration of attorneys in each district court jurisdiction. Local bar associations were also established but were subject to the overall supervision of the Chief District Public Prosecutors. In 1933, amendments to the Attorney Act expanded the scope of the attorneys' practice to a much wider range of legal work. Even under the amended law, bar associations remained under the control of the Minister of Justice.

In 1946, the present Japanese Constitution, with its guiding principles of guaranteed fundamental human rights, democracy (popular sovereignty), and pacifism, was adopted, bringing with it a historic transformation in the attorneys' role. The current Attorney Act, enacted in 1949 after the establishment of the Japanese Constitution, transferred control of attorneys from the Minister of Justice to the JFBA and bar associations. It defined the mission of attorneys as the protection of fundamental human rights and the realization of social justice. These concepts of self-regulation, protection of fundamental human rights, and achievement of social justice continue to be the core ideals under which attorneys operate today.

1-4-3 Governmental Supervision of the Organization and Registration of Members (Please explain whether or not, and if so how, your organization is supervised by the government.)

Attorneys in Japan do not fall under the supervision of any government power, and they submit to the disciplinary authority of their local bar associations and the JFBA.

1-4-4 Main Activities of the Organization

Protection of Human Rights

Education

Efforts to Improve Access to Justice

Efforts to Improve Criminal Procedures

Activities Related to the Practice of Law

Promotion of Appointment of Attorneys as Judges

Activities to Improve the Legal System

Training Programs

International Activities

1-4-5 Categories of Membership

There are six categories of membership:

- ① Local Bar Associations
- ② Member Attorneys
- ③ Quasi-members
- ④ Special Members in Okinawa
- ⑤ Registered Foreign Lawyers
- ⑥ Legal Profession Corporation

1-4-6 Number of Members (as of November, 2011)

- ① Local Bar Associations : 52
- ② Member Attorneys: 30,524 (incl. 5151 female members-16.88%)
- ③ Quasi-members : 1
- ④ Special Members in Okinawa : 10
- ⑤ Registered Foreign Lawyers : 357
- ⑥ Legal Profession Corporation : 543

1-4-7 Membership (voluntary or compulsory, please also explain where such registration should be filed)

Membership is compulsory. Attorneys, legal professional corporations, and registered foreign lawyers should register with the JFBA at the same time when they are admitted to local bar associations.

1-4-8 Executives and Officers, Number of Positions

- President (1)
- Vice President (13)
- Secretary General (1)
- Deputy Secretary General (6)

1-4-9 Finances and membership fees (Please provide the yearly budget amount of your organization and also the yearly membership fees in USD)

As financial independence is an essential element of autonomy, the JFBA meets its expenses with revenue obtained from dues, registration fees, training fees, publications, and other sources. No external constraints are imposed on how the JFBA uses its funds; however, in order to ensure impartiality, the JFBA has

voluntarily entered into an audit agreement with an audit corporation.

The JFBA has an annual budget of approximately \$77.5million (FY 2011), and more than 80% of its total revenue is accounted for by membership dues (\$2,100 per year per attorney).

*Besides the above-mentioned JFBA dues, an attorney should pay a membership due of his/her bar association, of which an amount varies between ¥10,000(\$125) and ¥52,000(\$650) per month depending on bar associations.

*1USD=80yen

1-4-10 Journal, Newsletter, Website

"Jiyu to Seigi" (Liberty & Justice) [Monthly]

"Nichibenren Shimbun" (The JFBA's Newsletter) [Monthly]

"Nichibenren News" [As required]

JFBA Web Site <http://www.nichibenren.or.jp/en/>

1-4-11 Other Bar Associations (including the provincial associations) in the Country and the Number of Members of such Other Organizations

Japan has 52 local bar associations, one for each of the 50 district court jurisdictions with the exception of Tokyo, where three bar associations existed before the promulgation of the Attorney Act.

Local bar associations in a district of jurisdiction of each high court established 8 Regional Federations of Bar Associations in all to cope with specific issues together.

1-4-12 Qualifications To Become an Attorney

To become qualified to practice as an attorney, judge, or prosecutor in Japan, one must complete a law school curriculum, pass the bar examination, and complete a one-year apprenticeship at the Legal Training and Research Institute of the Supreme Court. The new system that requires graduation from law schools as a qualification for the bar examination started in April 2004. Under the old system, anyone could take the bar examination, but this system ended in 2010. In 2011 Japan also institutes another system under which candidates will be able to sit for the bar examination by passing a preliminary test even if they have not completed law school. As special exceptions, candidates with practical experience in the law as defined by the Attorney Act and candidates that have served as professors and assistant professors at law schools after passing the bar

examination may be qualified as attorneys without completing a one-year apprenticeship but after completing a training course assigned by the Minister of Justice and being certified by the Minister of Justice.

Attorneys, judges, and public prosecutors are distinct statuses that cannot be held by the same person at the same time, but they receive the same basic education and training, making it possible for judges and prosecutors to become attorneys and vice versa. Japanese citizenship is not required to qualify as an attorney.

Once qualified, candidates must register with the JFBA in order to practice as attorneys. In addition to becoming members of the JFBA, attorneys must also join the local bar association where their practices are located and they come under the supervision of both organizations.

1-4-13 Laws, Decrees or Regulations on Attorneys (Please explain if there are any laws, decrees or regulations on attorneys in your country. Please provide the JFBA an English translation if they are available.)

Please refer to: <http://www.nichibenren.or.jp/en/about/regulations.html>

1-4-14 Code of Ethics and/or Rules of Professional Conduct (Please provide the JFBA an English translation if an English translation of these is available.)

Please refer to: <http://www.nichibenren.or.jp/en/about/regulations.html>

1-4-15 Disciplinary Functions (Please explain who has the power to take disciplinary action against members.)

The JFBA and local bar associations have been authorized to take disciplinary actions against attorneys and legal professional corporations. The self-disciplinary system has been established because if the nation has the disciplinary authority, it is difficult for attorneys, to complete their mission in case citizens' fundamental human rights conflict with the nation. A disciplinary action is interpreted as an administrative action in the broad sense, which is taken under the public authority given to the bar associations and the JFBA.

1-4-16 Continuous Legal Education for Members (Please explain about the program, if any)

1. Ethical Training

All attorneys are required to participate in ethical training courses during their first, fifth and tenth years after registration and every 10 years thereafter.

2. Training for Newly-Registered Attorneys

The courses cover issues such as the proper frame of mind for beginning attorneys, the role of the legal profession in modern society, and guidance on the self-governance of attorneys, as well as providing ethics courses for attorneys who have been registered for one-year and individual training courses on legal practices.

3. Training to Improve Practical Skills

1) Summer training: Courses are conducted in nine blocks (eight mainland blocks and Okinawa) and last for about two days during the summer. Topics include amendments to the law and practical courses to enhance the skills of attorneys.

2) Live and on-demand training: Live satellite-based training has been transmitted to each local bar association and branch from Tokyo. In 2010, the JFBA offered 28 courses, 9,599 attorneys per course throughout Japan. After the live satellite broadcast, the lectures may be viewed on a JFBA member-only website.

3) E-learning: Starting from March 2008, lectures that would be directly helpful in practice areas have been delivered on the internet. E-learning programs are appreciated by JFBA members because they are able to receive lectures wherever or whenever convenient for them if they have access to the internet. The JFBA will utilize E-learning as a main training tool and further enhance its courses in the future.

1-4-17 Challenges the Organization is Facing (Please briefly explain the problems and challenges your organization is currently facing.)

One of the most important issues is the response to the Great East Japan Earthquake on March 11.

On March 11, the JFBA set up an Emergency Headquarters, headed by the JFBA President, and after one week, confirmed the safety of all JFBA members in the areas severely affected by this disaster and announced this news on its website. At the same time, the JFBA established a system to provide free legal counseling by telephone as well as at evacuation centers and dispatched many pro-bono attorneys from areas that were not affected by the earthquake.

II Legal Aid

2-1 Please describe briefly the history of legal aid in your country.

1946 New Constitutional Law was enforced. Indigent defendants have a right to be represented by a court-appointed lawyer at the government's expense under this new constitution, but suspects don't.

1952 The Japan Legal Aid Association (JLAA), private sector sponsored mainly by the Japan Federation of Bar Associations (JFBA) was established.

1958 A subsidy from the Ministry of Justice for civil legal aid is delivered to JLAA.

1992 The JFBA started to offer aid in defense of suspects in criminal cases through JLAA at JFBA's expense.

1999 The statement is released by the Chairman of the Judicial Reform Council, demanding improvements in the legal aid system.

2000 The Civil Legal Aid Law is enacted and becomes effective. (Criminal legal aid was not enacted. Instead, the JFBA continued to offer aid in defense of suspects in criminal cases at JFBA's expense.)

2000 The JLAA is designated as the body to conduct the civil legal aid service by the Ministry of Justice.

2001 The statement is released by the Justice System Reform Council, including fundamental reform in the legal aid system.

2004 The Comprehensive Legal Support Law was enacted.

2006 Japan Legal Support Center (JLSC) was established under the Comprehensive Legal Support Law, which enables suspects charged with certain felony cases to have a right to be represented by a lawyer at the government's expense (about 7,000 cases a year). The JLSC also established the staff attorney system to handle increased suspects case and other civil cases.

2007 JLAA dispersed and transformed into JLSC.

2009 Suspects charged with certain misdemeanor cases also have a right to be represented by a lawyer at the government's expense (about 100,000 cases a year). SAIBAN-IN has started (about 2,500 cases a year).

2-2 Please outline the legal aid organization and its programs.

2-2-1 Name of the legal aid organization/head office location

Japan Legal Support Center

Head office:

Harmony Tower Bldg. 8F, 32-2 Honcho 1-chome Nakano-ku, Tokyo 164-8721, JAPAN

TEL +81-(0)50-3383-5340

2-2-2 When was the above organization established?

April 10, 2006

2-2-3 Please describe briefly the organization structure such as branches and other offices.

(1) District Offices (50)

50 district offices are located in each prefecture under the jurisdiction of district court.

Each office provides free information and liaison services by legal consultant, provides free legal counseling by attorneys who are enrolled in advance, arrange civil legal aid for legal representation and pays for attorney's fees, arrange court-appointed attorneys for defendants and suspects, provides victim support services etc. Civil legal aid and criminal legal aid for defendants and suspects are offered mainly by judicare who are enrolled in advance.

Some of the district offices where the number of judicare is not enough have a few full-time staff attorneys. The main role of staff attorney is to represent both civil legal aid clients and criminal defendants and suspects.

(2) District Branch Offices and Sub-Branch Offices (16)

Some of the district offices which cover large area or population have branch office and sub-branch office , which provide same service as district office.

(3) Local Law Offices (35)

Local law Offices are located in rural area including small islands where attorneys are none or very few.

Full-time staff attorney is working in each local law office.

(4) Staff

Total staff number 868 as of March 31, 2011

2-2-4 Please explain about the organization's service delivery model such as salaried legal professional (staff attorney) and/or private legal professional (judicare).

Japan Legal Support Center adopted dual model so-called "Mixed Model" delivery. This is a combination of salaried and private legal professionals providing the services to clients.

(1) Salaried legal professional (staff attorney)

Japan Legal Support Center has hired about 200 full-time staff attorneys, which is expected to be about 300 in a few years.

They have a legal office in the district offices and in some of the district branch offices and local law offices.

(2) Private legal professional (judicare)

There are about 13,000 judicare who provide civil legal aid and about 20,000 judicare who provide criminal legal aid.

2-2-5 Please explain about the budget for the legal aid system.

About 31,000,000,000 yen (387,500,000 USD using the exchange rate: 1 USD= 80 yen) funded by government in 2010. This amount is expected to be increased in the future.

2-2-6 How many recipients have received the legal aid assistance in main legal aid programs in recent years?

(1) Information services

Japan Legal Support Center provides information based on users inquiries.

For telephone inquiries, call center is staffed with specialized operators to provide users with easy access to useful information to help them solve their issues. If users wish to consult face-to-face, specialists staffed at the district offices around the country are ready to provide guidance.

□ Call Center

287,897 inquiries in 2008

401,841 inquiries in 2009

370,124 inquiries in 2010

□ Face-to-face consultation

188,661 inquiries in 2008

247,172 inquiries in 2009

234,608 inquiries in 2010

(2) Legal consultation aid (targeting those whose financial status falls below the criteria, serviced for free of charge)

179,546 consultations in 2008

237,306 consultations in 2009

256,719 consultations in 2010

(3) Civil legal aid services in the form of legal representation (in principle reimbursement of the assisted legal costs is required, or grace or exemption from reimbursement to be granted in certain situation.)

80,442 cases in 2008

101,222 cases in 2009

110,217 cases in 2010

(4) Documents preparation aid in the form of writing legal documents by judicial scriveners for people with financial difficulties

5,101 cases in 2008

6,769 cases in 2009

7,366 cases in 2010

(5) Criminal legal aid services for defendants (usually automatically appointed by court when defendant's financial status falls below the criteria and many of defendants are exempt from reimbursement of the assisted legal costs after trial due to the poverty.)

69,756 cases in 2008

74,658 cases in 2009

69,634 cases in 2010

(6) Criminal legal aid services for suspects during the pre-indictment investigation

7,415 cases in 2008

61,857 cases in 2009

70,917 cases in 2010

(7) Legal aid services for juvenile criminal cases (usually reimbursement of the assisted legal costs is not required due to the poverty)

4,732 cases in 2008

6,914 cases in 2009

(8) Some of other legal aid (financial status is not usually required to apply these legal aid)

Legal aid for crime victims: 376 cases in 2008, 515 cases in 2009

Legal aid for refugees: 171 cases in 2008, 585 cases in 2009

Legal aid for undocumented foreigners: 491 cases in 2008, 774 cases in 2009

Legal Aid for physically or mentally handicapped persons: 301 cases in 2008, 345 cases in 2009

Legal aid for the elderly: 761 cases in 2008, 1727 cases in 2009

2-2-7 Please explain about the main activities of the legal aid organization, including entitlement to legal aid and reimbursement of the assisted legal aid costs

(1) Information Services

The JLSC has 50 district offices and 16 branch offices, sub-branch offices to provide free information and liaison services by legal consultant.

In addition, the center has one centralized main information office in Sendai which has skilled telephone operators to provide free information to people in trouble over both the telephone and the Internet including e-mail. For example, it maintains a database of contact information for bar associations, judicial scrivener associations, local government agencies and other institutions providing consultations around the country, and refers users to the one most suited to their situation or transmit users to the most appropriate regional or branch office. A Telephone call to the centralized main information office in

Sendai from landlines cost only 8.5 yen nationwide for three minutes. There are about 1,000 telephone calls to this main office from the whole country every day.

(2) Civil Legal Aid

The JLSC now provides the civil legal aid services that were formerly provided by the Japan Legal Aid Association and provides free legal consultations and loans for attorney fees, etc. for people who require the assistance of legal experts but for economic reasons are unable to pay for attorney and court costs.

* Entitlement to civil legal aid

The Center formulated the screening criteria which cover those applicants in the lowest 20% income bracket. For example, the maximum monthly income to get entitlement after tax is 182,000 yen (1,820 USD using the exchange rate: 1 USD=100 yen) in single family, 299,000 yen (2,990 USD using the same exchange rate) in family of four.

* Reimbursement of the assisted civil legal aid costs

The civil legal aid recipients should repay the assisted legal cost in principle, which the Japan Legal Support Center paid for them, regardless of the results of litigation.

According to the guidelines, if the aid recipients are on welfare support, or are facing severe financial difficulty in their lives after the settlement of the cases, such recipients may be exempted from the reimbursement.

(3) Services for Areas with insufficient Legal Services

In communities like rural area where shortages of attorneys make it difficult for sufficient legal services to be provided, the JFBA has set up so-called "public law offices" to which it dispatches attorneys since 2000. The Japan Legal Support Center works in coordination with local bar associations to establish local law offices and to assign attorneys to areas that are suffering from shortages of attorneys across the country, thus providing people in these areas with legal services.

So far the Center has established 35 local law offices in rural area.

(4) Provision of Court-Appointed Defense Counsel

Before the Comprehensive Legal Support Law was enacted, Japan doesn't have a court-appointed defense counsel system to cover suspects. Instead, the JFBA has offered aid in defense of suspects through JLAA at JFBA's expense. Under the Comprehensive Legal Support Law and the Japan Legal Support Center, court-appointed defense counsel for suspects has been realized, ensuring a

consistent public defense system. This system has two stages. First, suspects charged with certain felony case come to have a right to be represented by attorney in 2006 (about 7,000 cases). Second, suspects charged with certain misdemeanor case also come to have a right to be represented by attorney in 2009 (about 100,000 cases in total).

* Entitlement to criminal legal aid

Because entitlement to criminal legal aid is constitutional right except aid in defense of suspects, there isn't a strict screening criterion and almost all of the applicants are admitted to criminal legal aid.

* Reimbursement of the assisted criminal legal aid costs

The criminal legal aid recipients usually don't have to repay the assisted legal cost due to the poverty.

(5) Crime Victims Support

The Japan Legal Support Center works in coordination with a number of other support organizations to refer victims to lawyers and consultation services with expertise in victim support.

(6) Entrusted Services

Other than five main original activities mentioned as (1) to (5) above, Japan Legal Support Center can accept the legal aid service at the request at the expense of another organization like the JFBA. So far, at the request of the JFBA, the Japan Legal Support Center accepted some of legal aid services below.

- ① Supporting criminal suspects (This service will be transferred to (4) above in 2009 when the system to provide legal services to criminal suspects will be implemented in full scale.)
- ② Attendant services for the juveniles in family court
- ③ Other legal services for juveniles (legal services to be provided to children who need redress of human rights abuses due to child abuse, etc., when cooperation of a person who has parental authority over the child cannot be obtained because of poverty, hostility or other reasons)
- ④ Legal aid to crime victims (representing crime victims for litigation and accusation, in responding to media, communication with victimizers, and others)
- ⑤ Legal aid related to the application of refugee adjudication (joint service of the JFBA and the UNHCR)
- ⑥ Legal aid to foreigners staying in Japan who are not subject to (2) above

- ⑦ Legal aid to people with mental disorders
- ⑧ Legal aid under the Medical Supervision of Mentally Disordered Offenders Act
- ⑨ Legal aid to the elderly, disabled, homeless, etc

2-3 What are the future issues or challenges with respect to the legal aid system in your country?

(1) Low budget and cost-efficiency

On the one hand, Japan established comprehensive government-funded legal aid organization "Japan Legal Support Center" for the first time in our history. On the other hand, the budget is about only 231,000,000,000 yen a year. This is very low compared with other developed countries though it is expected to grow year by year. One of the reasons the budget is tight is that Japan Legal Support Center as well as other recent government-funded organizations are under the strong influence of "new public management" to enhance the efficiency of the public sector and the control that government has over it in these long economic recession. The Center has just started its activity and has to expand its activity widely from now, but the method of "new public management" is likely to force the Center to cut the cost or to become cost-effective in cheap meaning as much as possible. These contradictions often disturb creative and strategic legal aid activity.

(2) Relatively strict entitlement to civil legal aid

Japan Legal Support Center stipulates that the applicant's financial status in the judicial procedures in the civil matters should satisfy the case where the aid applicant is too poor to pay for the legal expenses involved in defending their own rights, or where the payment of the legal expenses might incur serious hardship in their daily life. The Center formulated the screening criteria which cover those applicants in the lowest 20% income bracket. For example, the maximum monthly income to get entitlement after tax is 182,000 yen in single family, 299,000 yen in family of four. Future issue is to set the criteria higher level to include broader citizen and overcome poverty and social exclusion.

(3) Relatively strict reimbursement of the assisted civil legal aid costs

The civil legal aid recipients should repay the assisted legal cost in principle, which the Japan Legal Support Center paid for them, regardless of the results of litigation. According to the guidelines, if the aid recipients are on welfare support, or are facing severe financial difficulty in their lives after the settlement of the cases, such recipients may be exempted from the reimbursement. However

the actual ratio of exemption from the reimbursement has remained low.

* 75% of reimbursement is achieved on the average.

(4) short of staff attorney

Japan Legal Support Center adopted public-funded staff attorney system for the first time in our legal history. The Center hired 24 staff attorneys in 2006 and they were dispatched to the area where shortages of attorneys make it difficult for sufficient legal services to be provided. The Center has hired about 200 staff attorneys in 2011. As Japan has long tradition of judicare system which sometimes leads to "resist against central government and protect freedom of citizen," public-funded staff attorneys are likely to be regarded not-independent of the government and not always welcomed by judicare. Some judicare also fear that staff attorneys may deprive future clients of judicare. In addition, we have not established good career path for such lawyers, as "public interest lawyer" is well acknowledged in other countries such as the United States. Therefore, young lawyers in Japan hesitate to become a staff attorney having concern that they can't establish a good career. The Center's important mission is how the center can combine judicare system and staff attorney system smoothly and organically in the future.

(5) Insufficient strategy

Japan has just finished establishing the public-funded comprehensive legal aid organization for the first time in our history, but Japan Legal Support Center does not seem to have sufficient creative strategy. As to strategy, many developed nations currently make much of handling "social exclusion" and they are looking for the way how people can be included in the society in economic, social, political, cultural meaning etc. The Center does not have firm strategy so far but are responsible for building up it with other nations in these global eras.

2-4 Please let me know if the legal aid organization have an English language website.

Japan Legal Support Center (<http://www.houterasu.or.jp/en/>)

Japan Federation of Bar Associations (<http://www.nichibenren.or.jp/en/>)

III Legal consultation (other than that covered by the Legal Aid system explained in above II.)

3-1 Legal Consultation Programs (Please explain if there are legal consultation programs managed by your organization (or other institutions) other than those covered under the Legal Aid system in your country.)

Local bar associations establish legal counseling centers so as to provide all citizens with access to attorney consultations anytime, anywhere. The types of consultations provided and consultation fees charged differ from center to center, and many bar associations go beyond ordinary legal consultations to include issues such as multiple consumer loan problems, family problems, and other specialties. Some also provide nighttime consultation services. The JFBA supports the establishment and operation of legal counseling centers as part of its program to alleviate shortages of attorneys. As a result of these efforts on the part of the JFBA and local bar associations to provide services in line with community needs, a total of 315 legal counseling centers have been established around Japan as of January 2010. The JFBA continues to encourage the establishment of legal counseling centers and is also examining other programs to improve the quality of the legal counseling available, such as the use of videoconferencing systems, better access to specialty consultations, and better schemes for dealing with complaints.

3-2 Fees for Legal Consultation (Please explain the fee structure for such legal consultation programs.)

It may differ from center to center. Generally speaking, 5,250 yen for a 30min. consultation (including consumption tax).

3-2 Management of the Legal Consultation Program (Please explain how such program is run by the organization.)

Every local bar association has the committee of legal counseling. The programs are run by the committees.

3-3 Appointment of an Attorney for Legal Consultation (Please explain how an attorney (consultant) is appointed.)

The committees make registration lists of attorneys and the appoint attorneys.

3-4 Flow to the legal representation (Please explain how such legal

consultation may lead to legal representation by an attorney)

It may vary from center to center. Basically, an attorney who is in charge of counseling should provide legal representation.

3-5 Number of Consultations (Please provide statistics on how many legal consultations have been carried out per year.)

Legal counseling center of 3 bar associations in Tokyo provide 29,021 consultations in 2010.

IV Shortages of Lawyers in Local Areas

4-1 Is there any figure of lawyers who work in local areas in your country?

Number of attorneys-at-law in Japan is 30469 in July 2011.

14,468 of 30,469 are in Tokyo and 71 % of attorneys-at-law belong to big cities, five populous cities in Japan (namely, Tokyo, Osaka, Yokohama, Aichi and Fukuoka). As a result, only 29 % attorneys-at-law belong to other areas.

4-2 Do you think that there are a sufficient number of qualified lawyers working for citizens in local areas in your country?

No. More lawyers need to be located in local areas especially in serious rural areas.

4-3 If the answer of Question 4-2 is negative, what have caused such shortage of lawyers?

Rapid industrialization and globalization in the late 20th century caused rural depopulation and overpopulation in city, which made most attorneys-at-law attractive to open law office in big city.

4-4 Does the legal aid organization or the bar association/law society has any programs in dealing with legal services in local areas in your country?

Both the JFBA and Japan Legal Support Center have set up the program.

4-5 If the answer of Question 4-4 is affirmative, please describe briefly such programs.

(1) Activity of Japan Federation of Bar Associations

In communities like rural area where shortages of attorneys make it difficult for sufficient legal services to be provided, the Japan Federation of Bar Associations has set up law firms so-called "public law offices" ("Himawari" (sunflower) law offices in Japanese) to which it dispatches attorneys since 2000. By November 2011, the JFBA has completed to set up 103 "public law offices" in rural areas.

(2) Operation of Japan Legal Support Center

In the fall of 2006, government-funded legal aid organization "Japan Legal Support Center" started to operate of which one of the duties is services for communities with shortages of attorneys.

By November 2011, Japan Legal Support Center completed to set up 35 law offices in rural areas..

4-6 What are the future issues or challenges with respect to the shortage of legal services in local areas in your country?

Coordination between the JFBA and Japan Legal Support Center

Thus, the JFBA and Japan Legal Support Center come to work in coordination to develop legal services in rural areas effectively since the fall of 2006.

One of the ideal coordination style may be that Japan Legal Support Center sets up its local law offices in the most serious and under populated rural areas and the JFBA sets up in other areas, that is relatively populous rural areas because Japan Legal Support Center is based on government-fund, which means stronger basis to maintain offices continuously in economically harder area than private sector.

V Other Obstacles to Hinder Access to Justice

5-1 Are there any obstacles to hinder access to justice other than the problems with the legal aid system and the shortage of lawyers in local areas?

Yes.

5-2 If the answer of Question 5-1 is affirmative, please describe briefly such obstacles.

Shortage of lawyers working in local areas

5-3 Please explain briefly the educational system to produce qualified lawyers in your country.

Please refer to 1-4-12

5-4 Do you think that your country has enough lawyers to substantiate the access to justice?

No. The number of the attorneys in Japan as of July 2011 is 30,469 while the population in Japan is approximately 127,920,000. Therefore, there is one lawyer per 4,198 people. In addition, there are 18,176 lawyers, 59.7% of the total number of the lawyers concentrated in Tokyo and Osaka. From this statistics, it is easily imagined that there are shortage of lawyers in Japan.

5-5 Do you think that your country produces newly qualified lawyers every year to substantiate the access to justice?

Yes. Recently, the number of people who passed the bar examination has increased largely due to the legal reform, which has caused the rapid increase in the number of local bar associations members.

5-6 If the answer of Question 5-4 or 5-5 is negative, please describe briefly the reason for such shortage and your thoughts on how to solve such problems.

The JFBA has made systematic efforts to deal with the shortage of lawyers and to realize the access to justice in Japan. The followings are the examples of such efforts.

Establishment and Operation of “Public Law Offices”

The JFBA, local bar associations, and the local bar association federations established law practices to alleviate regional shortages. These practices, which have commenced services one after another from June 2000, are operated by individual attorneys but are "public law offices," as they are provided with assistance to cover their opening and administrative costs as well as the operations thereof by the JFBA, local bar association, and local bar association federation on condition that they provide a certain level of public services in the form of court-appointed defense attorneys and providing legal aid on civil cases. The costs required to operate offices are paid from a fund to which is allocated a certain percentage of bar association member dues. Some bar associations and local bar association federations have also opened urban "public law offices" to train attorneys and candidates for judgeships who intend to work with the Japan Legal Support Center or to practice in areas suffering from a shortage of attorneys. These practices provide a certain level of public services and make legal more accessible to urban areas.

Legal Counseling Centers

Please refer to 3-1

Provision of Economical and Technical Support in Order to Eliminate Areas Where the Number of Attorneys is Extremely Low

The JFBA has started to provide economical support from January 2008 which aims to encourage attorneys to settle in areas under jurisdictions of local district courts with populations over 30,000 per attorney, excluding areas subject to countermeasures against shortages of attorneys to be taken by the public law offices mentioned above and the Japan Legal Support Center. With the condition of receiving applications from a local bar association federation and the relevant attorney, this program will provide services as follows: (i) provision of preparation costs and loan of opening costs to attorneys who are going to settle and start practices in the areas set forth above; (ii) provision of costs and expenses required to open and expand a law firm that is to train attorneys who are going to settle and start practices in the areas set forth above, and training cost of those attorneys; and (iii) provision of technical support including training by local bar associations and local bar association federations to attorneys who are going to settle and start practices in the areas set forth above.

The program prepared and funded with new funds aims to open ten base law firms and to have about 200 attorneys who will be deployed to cover the areas that are suffering from the shortage of attorneys before 2013.

VI Cooperation with Foreign Organizations

6-1 Please explain the details of recent and future projects relating to any of the above discussed issues in your country, in regard to which any foreign (governmental or non-governmental) organizations are providing assistance.

The JFBA began to be active in international cooperation in 1995 and has sent lecturers to seminars held by various organizations in Japan that invite trainees from overseas and also dispatches attorneys to countries such as Vietnam, Cambodia, Mongolia, Laos, and Indonesia, as JICA (Japan International Cooperation Agency) experts.

In 2001 the JFBA applied to be a partnership enterprise with the JICA and for a three-year period from September 2002 to August 2005 provided assistance for the establishment and operation of the Lawyers' Training Center in Cambodia and for enhancements to the legal aid system in that country. As for the Bar Association of the Kingdom of Cambodia, the JFBA started a new support project in December 2007 commissioned by the JICA.

VII Others

7-1 Recent Judicial Movement

Please describe briefly the recent movements or topics in the legal community, including the bar association/law society in relation to the topics above.

For over the past several years, the Japanese judicial system has been in the midst of major reforms.

One specific issue for judicial reform is achieving a substantial increase in the number of people involved in the legal profession. In 2005, Japan had approximately 25,000 legal professionals, which is expected to double to 50,000 by 2018. This represents a significant acceleration; in the past it has taken approximately 33 years for the number of legal professionals to double.

In 2004, Japan opened its first graduate-level law schools to provide training for these new lawyers. Since 2004, legal training and education at law schools has been implemented. This reform aims to shift the focus of legal training from section through the single event of the bar examination to training through the broader process of professional legal education at law schools.

To provide for greater public involvement, the "SAIBAN-IN(lay judge)" system will begin in 2009 and will allow ordinary citizens to participate in certain serious criminal trials alongside professional judges.

* About "SAIBAN-IN (lay judge)"

Six lay judges will be chosen to serve alongside three professional judges in examining cases involving certain serious crimes. Lay judges will be involved in criminal proceedings, determine facts and decide sentences with an authority basically equivalent to that of professional judges.

The system is similar to a jury system in that lay judges are chosen at random from voter lists and assigned to serve on specific cases. It also resembles a lay judge (Schöffe or échevin) system in that citizens participate in trials alongside professional judges.

In the fall of 2006, government-funded legal aid organization "Japan Legal Support Center" started to operate. The Center is organized as a "quasi-independent administrative institution," and opened offices in each of the areas where the district courts are located throughout Japan, as well as in areas suffering from a shortage of attorneys. (For details see section 3, 4 and 5) It provides an access point for the resolution of legal issues and legal services on both

the civil and criminal sides.

Many other reforms are also moving ahead. These reforms include: various systemic reforms regarding the criminal justice system such as provision of court-appointed attorneys to suspects; reforms of the administrative litigation system such as expansion of the range of parties qualified to file suits; reforms of the intellectual property system such as establishment of the Intellectual Property High Court; reforms of the system concerning judges such as appointment and evaluation of judges; establishment of a system where judges and prosecutors experience other professions; liberalization of profit-earning activities of attorneys; deregulation of legal fees; improvement of the disciplinary system; and establishment of the labor adjudication system.

7-2 Comments

Please fill in any comments or your thoughts to way to achieve the well-organized access to justice in your country.

Legal education should be reformed so that it can play the significant role to instill all lawyers, legal apprentices and law students the duty of ensuring access to justice to all citizens.

