

## A Hub, a Knot, and a Powerhouse: The Legal Aid Foundation and Access to Justice in Taiwan

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### Abstract

*The main legal force for access to justice in Taiwan is the Legal Aid Foundation, a state-subsidized but independent agency. The institutionalization of legal aid was a crucial part of judicial reform during democratization in Taiwan, in which lawyers aimed to advance access to justice for the general public and the judiciary agreed to take up responsibility as supervising agency. Over time the Legal Aid Foundation has moved beyond court representation of indigent persons, and it now plays a critical role in legal mobilization, coordinating public interest lawyers, social minorities, and other actors in the Taiwanese civil society, and allowing them to bring cases to court and lobby for social justice legislation in the parliament. The Legal Aid Foundation's expanded role has however exposed its organizational weakness as a hybrid model of access to justice, creating tension with the state regarding accountability and conflict with the bar over quality control.*

### I. INTRODUCTION

The Taiwan Legal Aid Foundation ('LAF'), which started operations in 2004, is the official organization authorized to administer legal aid with public funds, providing pre-trial legal counsel, formal representation in litigation, and other legal services. LAF also plays a critical role in legal mobilization in Taiwan, coordinating public interest lawyers, social minorities, and other actors in the Taiwanese civil society, and allowing them to bring cases to court as well as lobby for social justice legislation in the parliament. The expanded reliance on LAF has however exposed its organizational weakness as a hybrid model of access to justice, and LAF has experienced tension with the state and conflicts with the bar.

In Taiwan, *fa lu fuchu* or 法律扶助 refers to legal aid: *fa lu* is law, and *fuchu* means aid, or assistance. The abbreviation *fa fu* or 法扶 (law-aid) refers to the legal service provided by LAF to indigent persons. Pro bono is a widely accepted foreign concept among Taiwanese legal professionals, who often use the Latin phrase to refer to the practice of free legal representation in public interest litigation, usually by large law firms. The common understanding of a pro

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bono case is a dispute of great public interest in which ideologically driven lawyers are willing to assist. There are no expectations of monetary reward for these legal services, but the necessary costs (such as court fees, transportation, and/or other administrative costs) might be reimbursed by their firms or civic organizations that mobilize support. Because pro bono cases usually involve mid- to large-scale mobilization and have a longer civic tradition in the Taiwanese context, the concept of pro bono has great moral importance. Pro bono lawyers have represented victims of serial labour disputes, and sometimes more controversial cases, such as rescuing allegedly innocent convicts from death row.<sup>1</sup> In contrast, *fafu* (legal aid) has neutral cultural connotations, and the term only appeared after 2004, specifically referring to services assigned and supported by LAF.

Currently, LAF is the primary provider of legal services involving indigent persons, and given these responsibilities and its expanded role in access to justice, this chapter focuses not on individual lawyer pro bono but rather on this major player in the Taiwan context. We first introduce the background of LAF, providing the context of relevant legislation and the policy goals of the institutionalization of access to justice in Taiwan. Next, using official data from LAF, including public annual reports as well as internal records provided to the authors in connection with this research, we present three important trends of the past decade: the growing need for legal assistance, ensuring fair quality legal services, and diversification of legal aid. In the third section, we use two instances of legal mobilization in Taiwan, a class-action lawsuit regarding recovery for injuries caused by toxic chemicals in manufacturing, and legislation regarding consumer credit card debt, to argue that LAF functions as a hub and a powerhouse in Taiwanese civil society. The fourth section presents an analysis of the embedded tension between LAF and the state, and conflicts between LAF and the Taiwanese Bar. A final discussion situating Taiwan in a comparative context concludes the chapter.

## II. BACKGROUND: LAWYERS, DEMOCRATIZATION, AND THE LEGAL AID FOUNDATION

Taiwan is a civil law jurisdiction. The Judicial Yuan, one of the five main branches of the Taiwanese government, is a civil administrative body that governs the judiciary. Regarding admission to the bar, students with an undergraduate or graduate law degree, or those who have taken more than 20 credits of given law subjects in a recognized institution, may take the bar exam.<sup>2</sup> A national Taiwan Bar Association and 16 local bar associations carry out lawyer disciplinary functions, while the Minister of Justice ('MOJ') issues a practising licence.<sup>3</sup> Taiwanese lawyers are required to register at (a) any Taiwanese court, and (b) the local bar association where s/he wishes to litigate in order to represent clients in proceedings.<sup>4</sup>

Currently, there are roughly 9,000 to 10,000 lawyers in the country of roughly 23 million people, per official statistics from the MOJ (Table 11.1).<sup>5</sup>

<sup>1</sup> A prototypical example is the pro bono lawyer group for the *Xhizi Trio* case, where Lawyer Su Yo-chen led a team of six lawyers and fought side by side with the three defendants for over a decade. They were eventually declared innocent in 2012. For the lawyers' role, see Chang Chuang-fen, 無彩青春 (Colourless Youth) (Taipei: Flâneur Culture Lab, 2013).

<sup>2</sup> 專門職業及技術人員高等考試律師考試規則 (Regulations of Bar Examination), Taiwan 2001 (as amended 12 April 2019), s 5.

<sup>3</sup> 律師法 (Attorney Regulation Act), Taiwan 1941 (as amended 15 January 2020) [Attorney Regulation Act], s 6.

<sup>4</sup> Attorney Regulation Act, *supra* note 3, s 11.

<sup>5</sup> Taiwan, Ministry of Justice, 本國律師人數 (Numbers of Domestic Lawyers) (2019), online: [www.rjtd.moj.gov.tw/RJSDWeb/common/WebList3\\_Report.aspx?list\\_id=1527](http://www.rjtd.moj.gov.tw/RJSDWeb/common/WebList3_Report.aspx?list_id=1527).

TABLE 11.1. *Number of lawyers in Taiwan*

Year	Number of licences issued by MOJ (accumulated)	Number of lawyers registered in bar associations	Number of lawyers registered in courts
2017	16,451	9,153	10,007
2018	17,288	9,768	10,625
2019	18,028	10,305	11,217

Bar fees vary from region to region. For example, one-time registration fees range from TWD23,000 (US\$779.65)<sup>6</sup> in the Taipei Bar Association to TWD50,000 (US\$1,694.89) in the Taitung Bar Association, and monthly fees range from TWD300 (US\$10.17) in the Keelung Bar Association to TWD700 (US\$23.73) in the Taipei Bar Association.<sup>7</sup>

LAF in Taiwan is a state-subsidized but independent agency that provides free legal aid to the ‘socially disadvantaged and minorities’.<sup>8</sup> LAF is in charge of registering lawyers who want to provide legal services in legal aid cases and assigning cases to them. Practising lawyers are not obligated to provide legal aid, but they can sign up with local LAF offices and request cases after three years of practice. Each lawyer can register with up to three branch offices in different regional jurisdictions and take up to 24 cases per year.<sup>9</sup>

LAF was first advocated by a group of liberal-minded lawyers in the late 1990s,<sup>10</sup> and was subsequently enacted in 2004.<sup>11</sup> The institutionalization of legal aid was a crucial part of judicial reform during democratization in Taiwan, in which lawyers aimed to advance access to justice for the general public, and the judiciary agreed to take up responsibility as the supervising agency.<sup>12</sup>

<sup>6</sup> XE Currency Converter, online: [www.xe.com/currencyconverter/convert/?Amount=50%2C000&From=TWD&To=USD](http://www.xe.com/currencyconverter/convert/?Amount=50%2C000&From=TWD&To=USD). All references to US\$ denominations in the chapter were derived from [www.xe.com](http://www.xe.com) at the time of publication; they are intended for general reference and may have been rounded up or down for ease of reference.

<sup>7</sup> You Po Hsiang, 請將權利還給律師－論律師權益、公會存續與執業區域限制 (Please Return the Rights Back to Lawyers: On the Lawyers’ Rights and Benefits, Survivals of Bar Associations, and Limitation on Practice Locations) (2016) 20 *National Lawyers* 9 at 54.

<sup>8</sup> 法律扶助法 (Legal Aid Act), Taiwan 2004 (as amended 1 July 2015) [*Legal Aid Act*], ss 1, 5, 37.

<sup>9</sup> The authors acquired information regarding the limited number of registrations in interviews. The 24-case limitation is an internal regulation but it is referred to in many documents by LAF. For example, one of the former board members explained why he set the limitation, first at 36, then at 24, in Hua Jin-Ding, ‘An Interview of Lawyer Lin Chun-Rong on Quality of Legal Aid’, Special Issue on the Fifteenth Anniversary of Legal Aid Foundation, 31 July 2019, online: Legal Aid Foundation, <https://reurl.cc/1gxoNG>.

<sup>10</sup> Taiwan, Legislative Yuan, 立法院第五屆第四會期第 16 次會議記錄 (Conference Minutes of Session 5-4), Book 92, Issue 60 (Taiwan: 2003) [*Conference Minutes*] at 485: ‘Today, in order to substantiate the constitutional protection of equality and right to litigate, the Taipei Bar Association, Judicial Reform Foundation and the Taiwan Association for Human Rights collaborated to form an action group in 1998, calling monthly meetings to gather scholars and lawyers to study comparative institutions. In July 1999, the National Judicial Reform Forum also resolved to “institute a legal aid institution” which shows consistent goals, reaffirming our resolution.’

<sup>11</sup> *Legal Aid Act*, *supra* note 8, Preamble.

<sup>12</sup> *Conference Minutes*, *supra* note 10, at 380. The Judicial Yuan put forward a statement to advocate for the pressing need of the legal aid legislation. In the statement, the Yuan justifies its support of the legislation by referring to the 1999 National Judicial Reform Forum, which resolved to institute a system to defend financially disadvantaged defendants. In the National Judicial Reform Forum, the Judicial Yuan was asked to fund a legal organization by the 2002 budget year, and gradually stopped the original public defendant system. In fact, at the time, there were only 51 public defendants nationally, and on average, each of them had to defend 26.4 cases every month, while courts in all jurisdictions in Taiwan had 11,750 cases to address annually. This showed the urgent need: without a new legal aid institution, no proper legal representation could be afforded to these defendants, especially when the Yuan was also implementing a new criminal litigation policy of cross-examination in the early 2000s.

Before LAF was founded, disadvantaged litigants in need of legal services usually sought assistance from individual volunteer lawyers, or from civic organizations on specific social justice issues such as women's rights or labour rights. In 1999, it was reported that only 4.6 per cent of all civil lawsuits had representation for both parties, whereas in criminal cases, 'only 12.5% of defendants were represented at the district court level, and less than one-third were represented at or above the High Court level'.<sup>13</sup>

The legislation to create legal aid and LAF was initiated in 1999 at the National Forum of Judicial Reform, where the concept was accepted unanimously by government officials, lawyers, judges, prosecutors, and academics. Heeding this consensus to reform, the Judicial Yuan put forth a draft bill in 2002.<sup>14</sup> The then newly elected government had strong incentives to follow through and legislate a bill for two reasons. First, liberal lawyers were major supporters of the new ruling party, and some prominent leaders of the bar actually took up positions in the judiciary to commence a series of judicial reforms. Second, the bill to institutionalize legal aid was lobbied as non-partisan legislation that enhanced social justice. In fact, 'help the poor in court', the slogan publicized by lawyer-led NGOs at the time, was such a strong mandate that even the opposition party could not say no. LAF was therefore a collaborative project, supported by all stakeholders and driven by the democratization momentum: the new government needed a gesture of reform, the judiciary was pressured to transform, and the bar pushed for more comprehensive representation in court on behalf of their clients. Access to justice was therefore a shared purpose in the Taiwanese context in the early 2000s, and the LAF became the way to realize this shared policy goal via the Legal Aid Act.<sup>15</sup> See Table 11.2 for information on the number of registered lawyers in legal aid offices.

### III. LEGAL AID IN ACTION

LAF is an independent organization, legally authorized to administer legal aid. At the time of writing, LAF had 22 branch offices with 4,352 lawyers registered to provide service, and as of 2019 it had provided assistance in approximately 60,000 cases.<sup>16</sup>

LAF provides legal representation in both civil and criminal cases to disadvantaged citizens.<sup>17</sup> Disadvantaged status is determined by: (1) property and disposable income, depending on the number of in the household and the place of residence;<sup>18</sup> or (2) legal status as a low-income household, defined by the Public Assistance Act;<sup>19</sup> or (3) legal status as a family in need, defined by the Act of Assistance for Family in Hardship.<sup>20</sup> The applicant is also deemed disadvantaged, if s/he is: (1) aboriginal; (2) mentally challenged; (3) a juvenile; (4) a debtor defined in the Consumer Debt Clearance Act;<sup>21</sup> or (5) a criminal defendant whose offence is legally prescribed

<sup>13</sup> *A Survey of Pro Bono Practices and Opportunities in 84 Jurisdictions* (Latham & Watkins LLP, 2016) at 640.

<sup>14</sup> Taiwan, Legislative Yuan 法律扶助基本法草案 (Legal Aid Fundamental Act Draft), Volume 91, Issue 32 (Taiwan: Legislative Yuan Gazette, 2002) [*Legal Aid Fundamental Act Draft*] at 173–217.

<sup>15</sup> *Legal Aid Act*, *supra* note 8, s 38.

<sup>16</sup> 2019 *Legal Aid Foundation Annual Report* (Legal Aid Foundation, 2020) [2019 *LAF Report*] at 6, online: Legal Aid Foundation, [www.laf.org.tw/index.php?action=report](http://www.laf.org.tw/index.php?action=report).

<sup>17</sup> *Legal Aid Act*, *supra* note 8, ss 4, 5.

<sup>18</sup> For the regulations on the Means Test for the Recipient, please see the LAF website, online: <https://ppt.cc/fbYL3x>.

<sup>19</sup> *Legal Aid Act*, *supra* note 8, s 5.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

TABLE 11.2. *Number of registered lawyers in legal aid offices (2017)*<sup>22</sup>

Branch office	Number of registered legal aid lawyers
Keelung	370
Taipei	1,890
Shilin	1,325
New Taipei	1,780
Taoyuan	845
Hsinchu	205
Miaoli	211
Taichung	634
Nantou	281
Changhua	343
Yunlin	133
Chiayi	120
Tainan	191
Kaohsiung	465
Pingtung	240
Taitung	28
Hualien	56
Yilan	61
Kinmen	201
Matsu	119
Penghu	74
Total number of registrations	9,572
Number of lawyers after removal of repeated appointments	3,722

no less than three years of imprisonment, or whose case is tried in the first instance by the Taiwan High Court.<sup>23</sup>

LAF also has detailed regulations regarding eligible case types. In criminal cases, LAF does not provide assistance for the following matters: (1) complaints or reports of an offence, with the exception of mentally challenged clients and victims of sexual offences and human trafficking; (2) private prosecutions; (3) defence in retrials and extraordinary appeals, with the exception of death penalty cases; (4) applications for setting the case for trial; or (5) complaints in trademark infringements.<sup>24</sup> In civil cases, LAF does not provide assistance in: (1) election lawsuits; (2) small-claims procedures and compulsory executions; (3) retrials; or (4) trademark and patent cases.<sup>25</sup> Finally, LAF does provide non-citizens with legal assistance, such as legal migrant workers in certain trades, or spouses of Taiwanese citizens who are economically underprivileged.<sup>26</sup>

In the following section, we present three important trends regarding LAF and access to justice that have emerged in the past decade: the growing need for legal assistance, measures undertaken to maintain the quality of legal aid services, and diversification of legal aid services. Drawing on LAF's annual reports<sup>27</sup> as well as internal data provided to the authors by LAF in connection with this research, we argue that LAF takes a holistic approach to promoting access

<sup>22</sup> Interview with TWO201702 (29 January 2018, Taipei) [*Interview with TWO201702*].

<sup>23</sup> *Ibid.*

<sup>24</sup> 法律扶助施行範圍辦法 (Regulation of the Extent of Legal Aid), Taiwan 1993 (as amended 12 November 2013) [*Regulation of the Extent of Legal Aid*], s 3.

<sup>25</sup> *Regulation of the Extent of Legal Aid*, *supra* note 24, s 4.

<sup>26</sup> *Legal Aid Act*, *supra* note 8, s 14.

<sup>27</sup> All annual reports can be found on the official website of LAF, online: [www.laf.org.tw/index.php?action=report](http://www.laf.org.tw/index.php?action=report).

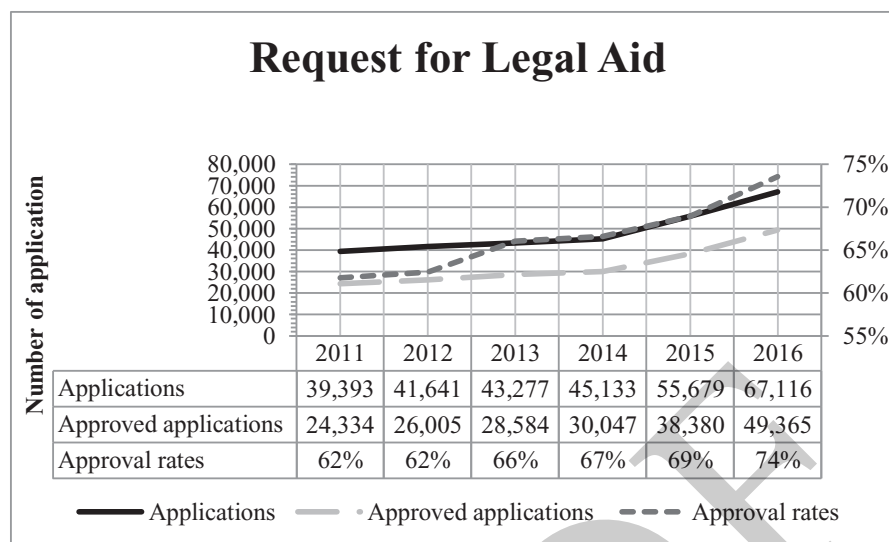


FIGURE 11.1. Growth of legal aid applications (2017)<sup>28</sup>

to justice in Taiwan. LAF not only offers a wide variety of services to the general public and disadvantaged groups, but also initiates systematic remedies and legal mobilization, to provide protection from the very beginning of legal disputes to their final resolution.

#### A. Growing Needs

Undoubtedly, there is a growing need for legal aid, and data from LAF corroborates this consistent trend. First, the number of applications for legal aid has grown steadily since 2011. Second, the application approval rates, which are consistently higher than 60 per cent, also increased in the same time period (Figure 11.1).

The LAF has provided aid to three special types of applicants through separate schemes since 2014: labourers, aboriginal persons, and credit card debtors. Statistics also show an increasing trend in the number of these types of filed and approved applications, although the approval rate for credit card debtors dropped in 2015 (Figures 11.2–11.4).

#### B. The Quality of Legal Representation in Legal Aid

As LAF is an independent organization, and the only organization legally authorized to administer legal aid, bar associations in Taiwan have no power to oversee the conduct of lawyers providing legal aid services. LAF is therefore concerned with the quality of legal service that lawyers provide, and it takes steps to ensure that indigent clients receive quality services. First, LAF provides legal aid recipients primarily with experienced lawyers. Statistics provided by LAF show, as presented in the pie charts in Figure 11.5, that 72–79% of lawyers registered with LAF have over six years of practice (2013: 79%; 2012: 75%; 2011: 73%; 2010: 72%; 2009: 75%). Admittedly, more experienced lawyers do not necessarily translate into better quality legal

<sup>28</sup> Compiled by the authors from LAF Annual Reports.

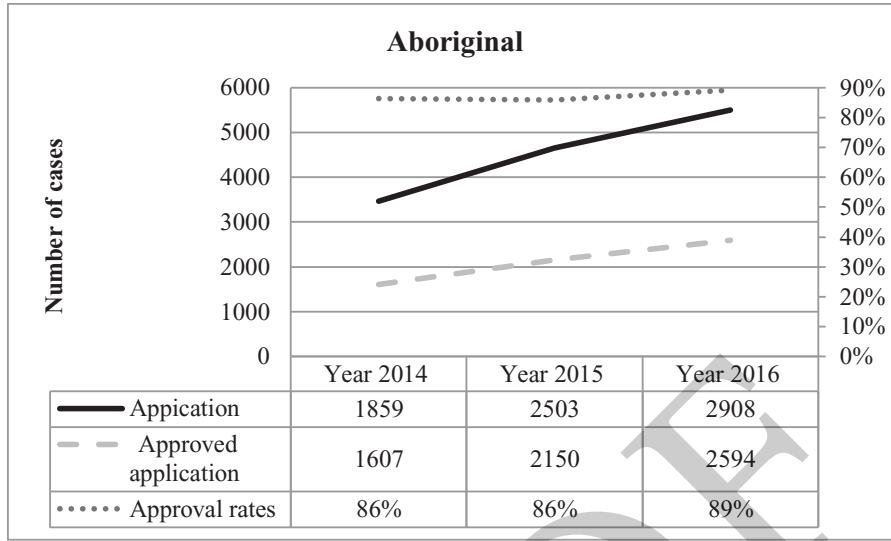


FIGURE 11.2. Growth of legal aid applications (aboriginal cases) (2017)<sup>29</sup>

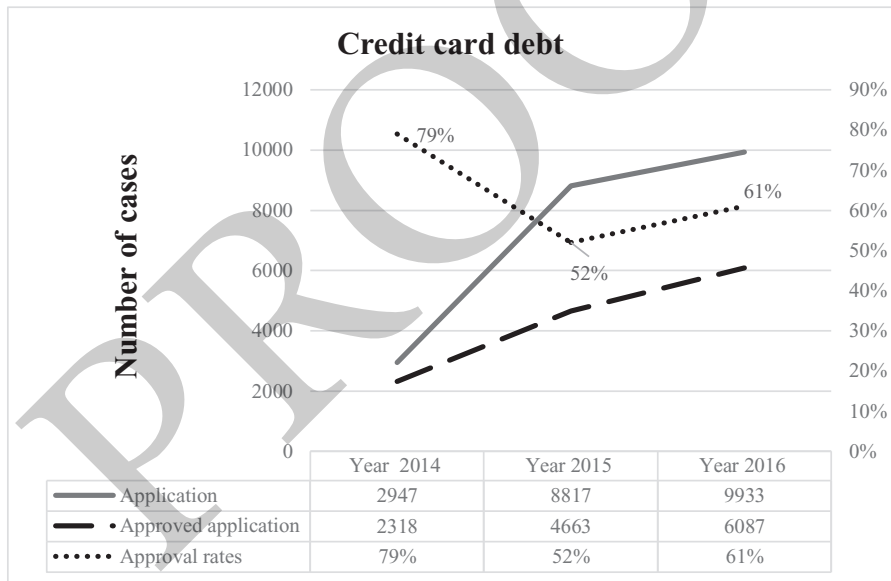


FIGURE 11.3. Growth of legal aid applications (credit card debtor cases) (2017)<sup>30</sup>

services, but this practice does allow legal aid recipients in Taiwan to avoid the legal services of inexperienced lawyers.

Viewed from the client's perspective, legal aid recipients generally report positive experiences with their lawyers. According to surveys conducted by LAF (Figure 11.6), approximately 50 per cent of the respondents believed that the legal aid lawyer's assistance brought about a favourable

<sup>29</sup> Compiled by the authors from LAF Annual Reports.

<sup>30</sup> Compiled by the authors from LAF Annual Reports.

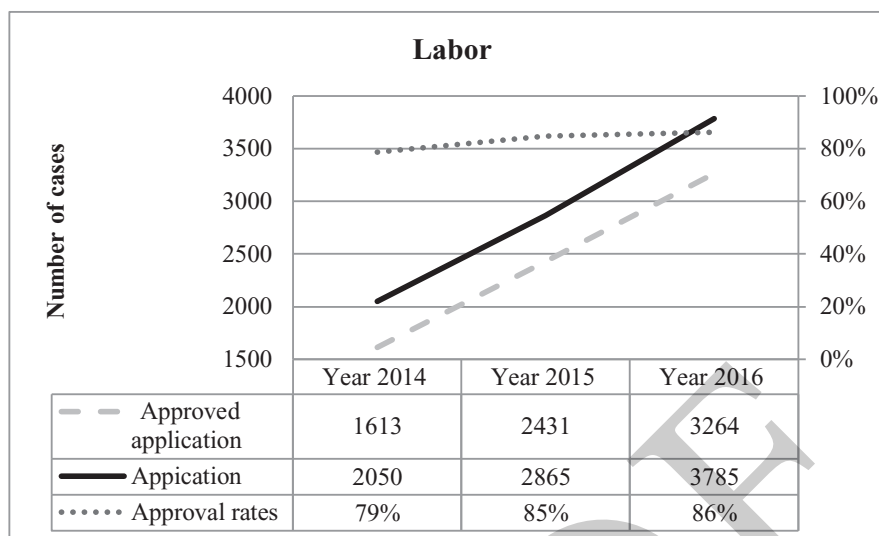


FIGURE 11.4. Growth of legal aid applications (labour cases) (2017)<sup>31</sup>

outcome in criminal cases from 2005 to 2013. In a 2012 survey, 87.7 per cent of legal aid recipients were satisfied with the quality of legal services provided by LAF in litigation.<sup>32</sup> In fact, not just legal aid recipients, but presiding judges and groups that refer applicants to legal aid, such as social workers, recognized the quality of LAF legal services: 76.3% of the recipient respondents, 78.8% of referral groups, and 51.4% of judges provided positive feedback.

LAF also tracks outcomes in legal aid cases. LAF reported that in 2005–13, LAF clients prevailed or partially prevailed in around 35–52% of civil cases, and that 20–39% of LAF cases settled with LAF’s assistance, while fewer than 20% of LAF cases did not prevail at all (Figure 11.7). Admittedly, LAF’s application review system, which excludes cases ‘with clearly no chance of winning’, likely produces a pool of cases with relatively fair chances of prevailing. However, the data suggest that legal services delivered via LAF had consistently fair quality, as reflected by stable distributions of case outcomes with no tendency toward negative results in the past decade. It can be argued that LAF-registered lawyers render a quality of legal service that is either no different from or better than average lawyers in the legal services market.

### C. Diversification of Aid Services

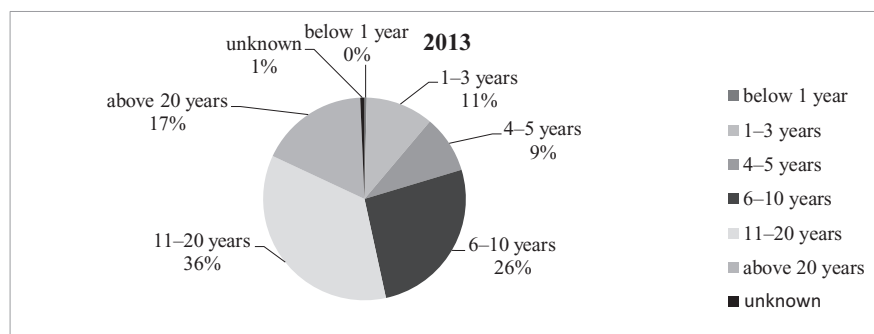
Along with litigation-focused legal aid assistance, LAF also carries out a wide variety of legal activities for poor or vulnerable persons, such as free legal consultation, community and public education, and legislative counsel or lobbying. A distinct feature of LAF in the Taiwanese context is that the focus of LAF has expanded, from legal representation in court to various public services. LAF can be said to take a holistic approach to facilitating access to justice in Taiwan.

LAF has overseen a rise in the number of clients who received free legal consultation, a figure which increased by a factor of 23 from 2005 to 2016 (Figure 11.8). These increases are a direct

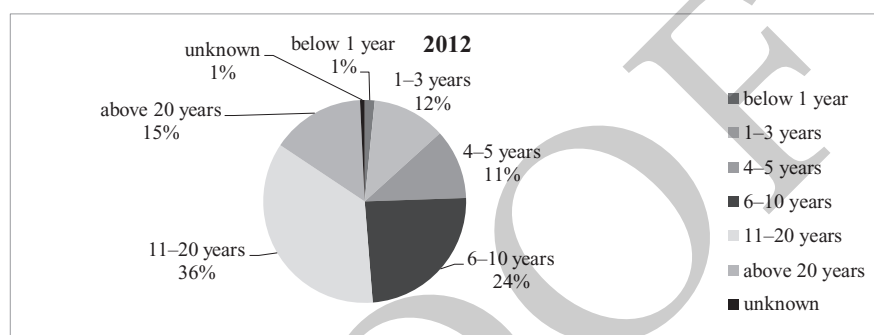
<sup>31</sup> Compiled by the authors from LAF Annual Reports.

<sup>32</sup> 法扶律師服務品質評鑑調查結果報告 (The Report of the Survey of the Quality of the Services Provided by Legal Aid Lawyers) (Apollo Survey & Research Co. Ltd, 2012) at 26.

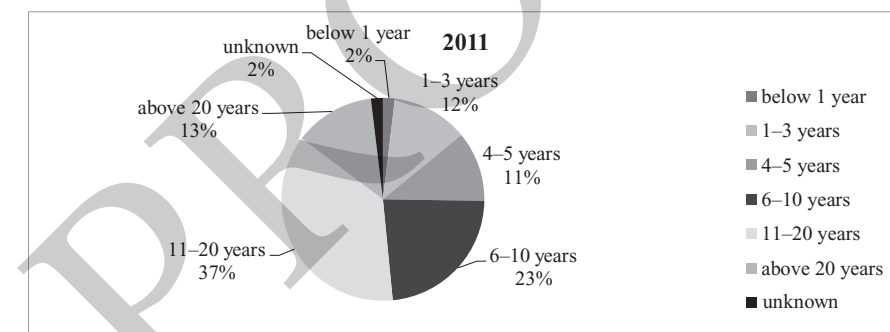




(i) Years of practice: legal aid lawyer's seniority distribution in 2013



(ii) Years of practice: legal aid lawyer's seniority distribution in 2012

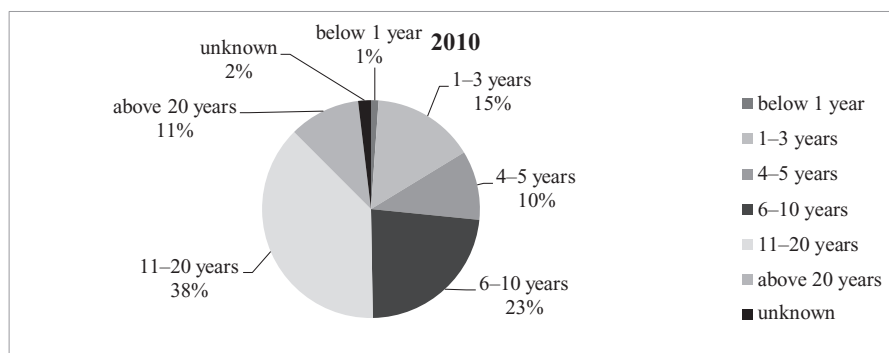


(iii) Years of practice: legal aid lawyer's seniority distribution in 2011

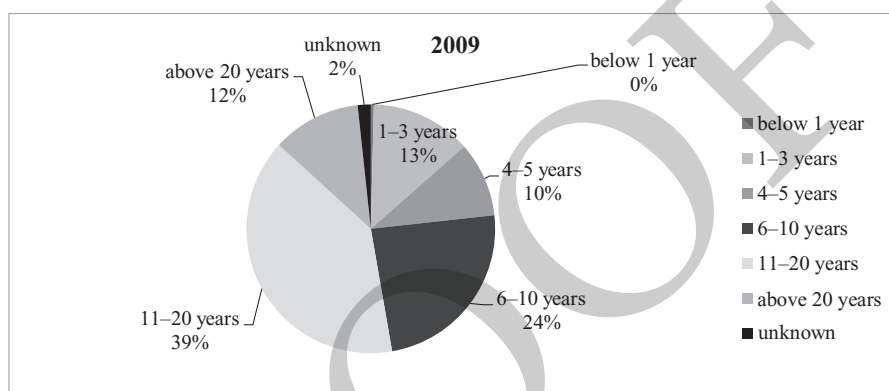
FIGURE 11.5. Legal aid lawyers' qualification: seniority by years of practice (2017)<sup>33</sup>

result of LAF loosening up the means test. Particularly notable is 2009, when the number of consultation cases quintupled from 6,446 to 35,852, due to a new policy LAF instituted to promote better access to legal advice through the Internet, hotlines, and over 60 local community centres across Taiwan, e.g. at household registration offices and district offices. Figure 11.9 shows further details on the approval rates for free consultation applications; here, the overall number of applications as well as approval rates are increasing. In 2009, the application approval rate rose sharply from about 16% to 43%, and it has remained high at over 50% ever since.

<sup>33</sup> Compiled by the authors from LAF Annual Reports.



(iv) Years of practice: legal aid lawyer's seniority distribution in 2010



(v) Years of practice: legal aid lawyer's seniority distribution in 2009.

FIGURE 11.5. (cont.)

Evidently, by increasing the provision of free legal consultation, LAF stepped into the earlier stages of dispute resolution and effectively broadened public access to justice.

In addition, LAF put in considerable effort to raise legal consciousness across the country. Evidence shows positive results from LAF's early efforts to publicize its services. As illustrated in Figure 11.10, most respondents in 2005, one year after LAF was founded, reported that they came for legal aid because of advertisement and promotion materials. After the first successful wave of promotion, LAF promoted its services by word of mouth and by recommendation of courts, as indicated in the 2006 and 2007 survey results. The data corroborates the LAF's active role, not only as a legal aid services provider, but as a promoter of access to justice recognized by its users, legal aid recipients, and its collaborator, the court.

In 2015, in order to provide general legal education and publicize LAF services, LAF held 578 events in schools, churches, temples, prisons, aboriginal communities, and many other local agencies across the country, indicating wide coverage.

Finally, LAF is deeply involved in the legislative process in Taiwan. The Consumer Debt Clearance Act<sup>34</sup> provides a good example. In 2005, Taiwan suffered from the worst credit card debt crisis in its history, in which over 500,000 card debtors went bankrupt and became

<sup>34</sup> 消費者債務清理條例 (Consumer Debt Clearance Act), Taiwan (11 July 2007).

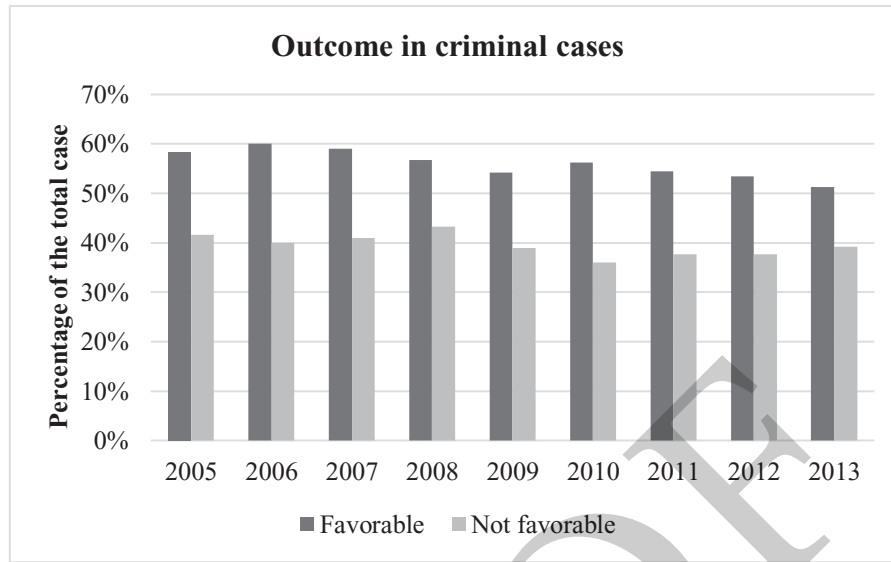


FIGURE 11.6. Legal aid case outcome: criminal case (2017)<sup>35</sup>

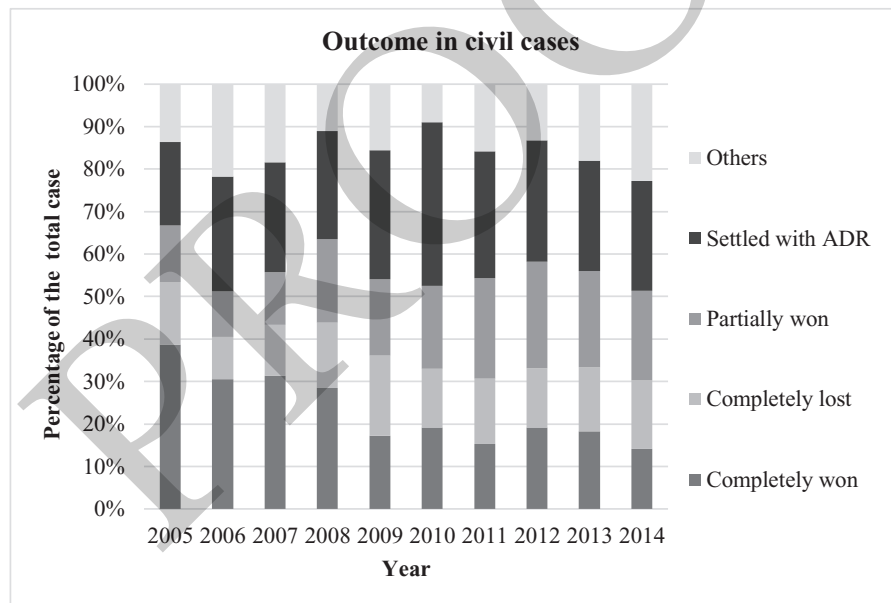


FIGURE 11.7. Legal aid case outcome: civil case (2017)<sup>36</sup>

insolvent.<sup>37</sup> The government authorities launched a relief measure to help the debtors, and LAF played a critical role in this policy-making process. After representing a number of credit card debtors suffering from high interest rates, LAF took the initiative with other NGOs to lobby for

<sup>35</sup> Compiled by the authors from LAF Annual Reports.

<sup>36</sup> Compiled by the authors from LAF Annual Reports.

<sup>37</sup> 回顧 2005 年 -2006 年之台灣卡債風暴 (Reflection on the 2005–2006 Credit Card Debt Crisis in Taiwan) (National Policy Foundation, 2007), online: [www.npf.org.tw/2/3558](http://www.npf.org.tw/2/3558).

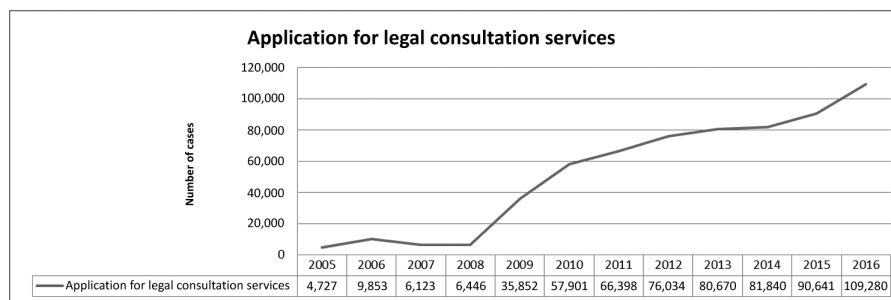


FIGURE 11.8. Number of applications requesting legal advice (2017)<sup>38</sup>

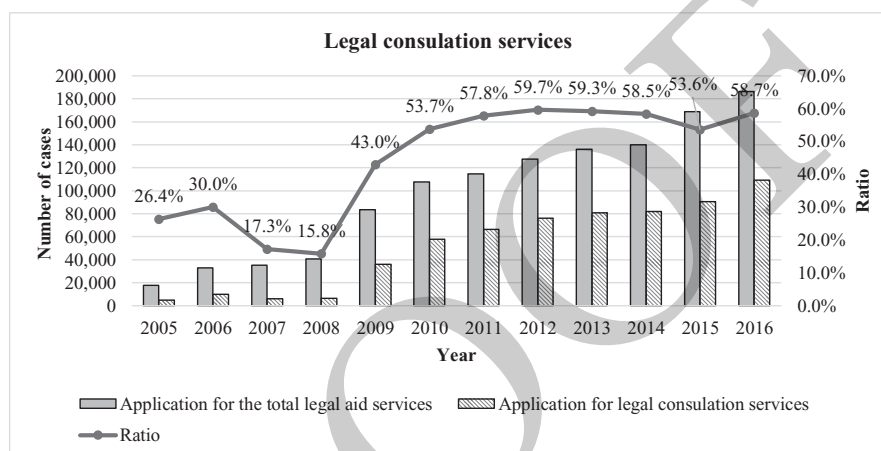


FIGURE 11.9. Approval rate of legal consultation application (2017)<sup>39</sup>

legislation to balance the asymmetrical bargaining power between banks and individual consumers. The Consumer Debt Clearance Act was quickly passed, and it remains a powerful instrument today. Other examples of LAF's legislative prowess include the revisions to Taiwan labour law in 2013. LAF found that the discrepancy between the high rate of occupational accidents and the low rate of labour insurance coverage indicated that legal protection for employees was insufficient. Consequently, LAF cooperated with other concerned groups to lobby for a revision to the Labour Standards Act.<sup>40</sup> LAF also played a vital role in drafting a number of bills concerning social welfare and environmental protection,<sup>41</sup> including the Water Pollution Control Act (2013),<sup>42</sup> the maintenance chapter in the family law in the Civil Code (2009),<sup>43</sup> and decriminalization of shotgun possession by aboriginals in the Act for Controlling Guns, Ammunition and Knives (2015).<sup>44</sup>

<sup>38</sup> Compiled by the authors from LAF Annual Reports.

<sup>39</sup> Compiled by the authors from LAF Annual Reports.

<sup>40</sup> 勞動基準法 (Labour Standards Act), Taiwan 1984 (as amended 10 June 2020).

<sup>41</sup> Zhan Shun-Gui and Chen Pin-An, 法律人如何捍衛環境—從水汙法修法談起 (How Do Attorneys Protect Environment? From the Perspective of the Modification of Water Pollution Control Regulation) (2013) 43 *Legal Aid Quarterly* 33 at 33–8.

<sup>42</sup> 水汙染防治法 (Water Pollution Control Act), Taiwan 1983 (as amended 13 June 2018).

<sup>43</sup> 民法 (Civil Code), Taiwan 1929 (as amended 19 June 2019).

<sup>44</sup> 槍砲彈藥刀械管制條例 (Controlling Guns, Ammunition and Knives Act), Taiwan 1983 (as amended 14 June 2017).

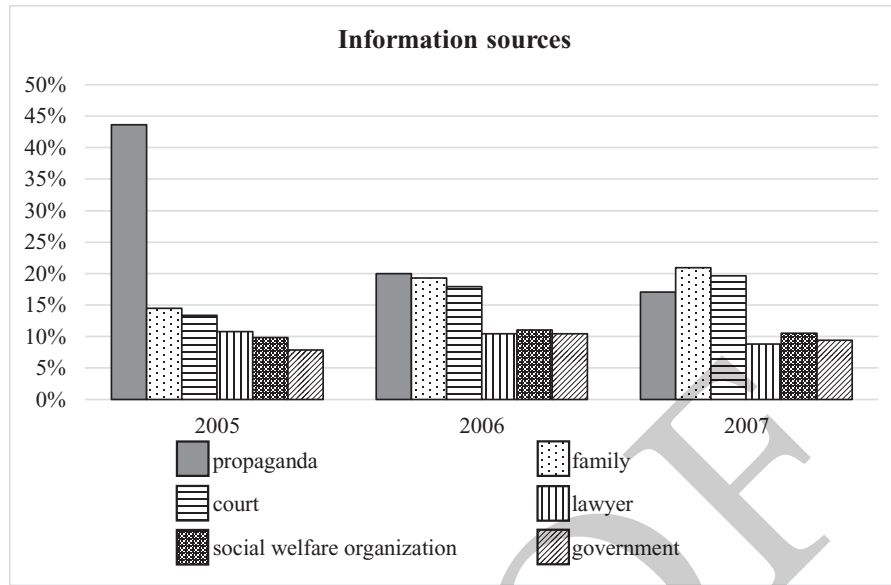


FIGURE 11.10. Information source of Legal Aid Foundation (2017)<sup>45</sup>

To conclude, LAF takes a holistic approach to promoting access to justice in Taiwan. Moving from individual representation to systemic problems, and taking up roles both in the legislature and on the street to advance legal consciousness and legal protection for the public, LAF visibly supports access to justice on a wide variety of platforms.

#### IV. A POWERHOUSE AND A HUB OF THE TAIWANESE CIVIL SOCIETY

Evolving from a service provider to an organizer, LAF has moved from a passive agency, set up to fulfil a semi-governmental function, to an active player, mobilizing resources and connecting with social groups. Simply put, LAF functions as a hub and a powerhouse in Taiwanese civil society. In the following section, we use two cases, a class-action lawsuit and a piece of consumer legislation, both well known in Taiwan in the late 2000s and 2010s, to argue that LAF has grown to be a focal point of public interest legal mobilization in the jurisdiction.

##### A. *A Powerhouse of Legal Mobilization: The Civil Society in Taiwan v. Radio Corporation of America*

The Radio Corporation of America ('RCA') set up production lines for televisions and other electronics in Taoyuan City, Taiwan, in 1970. During its two decades of operation, RCA manufacturing continuously released unprocessed toxic chemicals, mainly trichloroethene and tetrachloroethene, first directly onto land and later into illegally dug wells.<sup>46</sup> The waste contaminated both the soil and the groundwater in the region. This manufacturing caused

<sup>45</sup> Compiled by the authors from LAF Annual Reports.

<sup>46</sup> Indy Liu and Chu Fangchun, 'RCA Taiwan and Its Victims', *New Bloom* (24 September 2015), online: <https://newbloommag.net/2015/09/24/rca-taiwan-and-its-victims/>.

unprecedented environmental pollution as well as large-scale occupational injury amongst its employees. Without proper protection, RCA employees had direct exposure to, and even intake of, organic solvents used in the manufacturing process. The RCA plant closed in 1992, but in 1998 former employees organized a self-help association. Their records show that in 2001, at least 1,375 people had been diagnosed with various types of cancer, 221 of them terminal.<sup>47</sup> Another report from the Council of Labour Affairs of the Taiwanese government indicated an even higher number of 829 deaths recorded among former RCA employees.<sup>48</sup> These numbers could still be underestimated, as the insurance record at the time shows that RCA once employed more than 50,000 people, whose offspring might also be affected.

For the victims, holding RCA accountable was a long and difficult journey. The manufacturing had taken place three decades ago, and RCA formally closed the plants in 1992. Many employees had left the region or even died, extinguishing their right to claim damages. Bringing these cases to court in Taiwan also raised considerable procedural and substantive legal barriers. First, collective redress in Taiwan requires that claimants meet strict standing requirements. Victims filed a lawsuit as early as in 2004, but it took the courts three years to grant standing to the self-help association to carry out litigation. Second, the substantive legal issues in this case were complex and challenging. As the plaintiffs in a civil case, the victims had the burden of proving the claims, but the victims and their lawyers encountered a massive volume of evidence requiring extensive knowledge of epidemiology and public health – if they were lucky enough to acquire the needed decades-old data. Attributing legal responsibility was also difficult, as RCA Taiwan was first bought by General Electric Company ('GEC') and then Thomson Consumer,<sup>49</sup> both multinational technology companies. Lastly, victims had to fight a legal battle regarding the criterion for damage and the amount of compensation, and little property was left in Taiwan to satisfy a judgment.

With several ongoing lawsuits, the initial class action filed in 2007 reached its first victory in 2018. The Taiwanese Supreme Court finalized compensation of roughly TWD\$510 million (US\$17.29 million) to 262 workers, while the remaining 246 victims in the case were sent back to the High Court. In the decade-long process, however, the Taiwanese courts have largely supported the workers' claims: in 2015, the Taipei District Court ordered the now-defunct RCA, and Thomson its current owner, to pay TWD\$564.45 million (US\$19.13 million). In October 2017, the Taiwan High Court confirmed judgment in favour of the workers, raising the amount to TWD\$718.4 million (US\$24.35 million) and further ordering GEC to jointly compensate.<sup>50</sup> With a partial victory in the Supreme Court, a separate group of RCA victims filed a second class action for further compensation and greeted their first victory in the Taipei

<sup>47</sup> 工作傷害受害人協會 (Association for Victims of Occupational Injury), RCA 工人職業性癌症答客問 (Q&A: Occupational Cancer of the RCA Employees) (2001) 33 *Judicial Reform Magazine* 49 at 49–51.

<sup>48</sup> Liu Tsui-jung, 近二十年來 1986–2006 臺灣河川污染的防治 (River Pollution Prevention in Taiwan in the Recent Two Decades (1986–2006)) in Fu-san Huang, ed., 海、河與台灣聚落變遷 (Ocean, River and Urban Change in Taiwan) (Taipei: Institute of Taiwan History, Academia Sinica, 2009) 229 at 247.

<sup>49</sup> A year after the takeover of RCA by General Electric ('GE') in 1986, the firm was sold to Thomson Consumer Electronics, the US subsidiary of France-based Thomson Multimedia, which is now called Technicolor SA: see Apple Daily, RCA 案判賠確定無良商相應不理 律師團出大絕讓奇異吐還 7 億 (Ignoring the RCA Decision, GE was Cornered by Lawyers to Compensate 700 million), *Apple Daily* (5 December 2019), online: <https://reurl.cc/OqZKAy>.

<sup>50</sup> Lin Yu-yo, 沒有盡頭的抗爭—RCA 污染案不只爭官司勝利, 還有世代的覺醒 (The Endless Fight: They are Fighting Not Only for a Victory in Court, but a Generational Awakening), *The Reporter* (27 December 2019), online: <https://reurl.cc/L03mZ9>.

District Court on 27 December 2019. In the second lawsuit, the court ordered the four companies to compensate TWD\$2.3 billion (US\$82 million) to 1,120 workers.<sup>51</sup>

The volunteer lawyers received the Supreme Court verdict positively, and they welcomed LAF's expanded approach to legal mobilization. Organized by LAF, volunteer lawyers played an essential role in this monumental class action in Taiwan. The most important role LAF played was coordination, thereby substantially reducing communication costs. In 2007, when the case first entered the substantive review procedure, there were over 400 plaintiffs involved. The supporting network was composed of dozens of experts from law, public health, and environmental engineering, several governmental agencies such as the Ministry of Labour and the Environmental Protection Administration, multiple NGOs, and a movie documentary team. LAF not only helped victims establish common grounds for standing in litigation, but also incorporated and translated the expert knowledge into comprehensible legal arguments. The size of the team reflected this extensive professional manpower: LAF solicited help from its own in-house lawyers, hired lawyers through legal aid schemes, and mobilized yet another group of volunteer lawyers to provide legal support. The entire team, composed of 50 lawyers, was led by the charismatic and high-profile human rights lawyer Joseph Lin. Another crucial role that LAF played was supplying stable administrative resources for RCA victims and a support network to prevent clients from dropping out of the prolonged litigation process. As pointed out by an evaluation report, a private law firm in Taiwan 'would not have had the manpower, money, and time to coordinate hundreds of plaintiffs for over 10 years'.<sup>52</sup>

Judging from the RCA experience, LAF, with its stable governmental funding, provided an indispensable link between disadvantaged labourers and their rightful claims. This landmark case between Taiwanese civil society and American/international corporations demonstrates LAF's role in empowering the disadvantaged to secure access to justice in court.

### B. A Hub of Law-Making: Legislating the Consumer Debt Clearance Act

In addition to acting as a powerhouse in dispute resolution, LAF acts as a hub in legislation. It has played a vital role in coordinating social groups, raising awareness for a concrete goal of legislation, and framing social issues in a legal way that can be addressed by law and policy.

Lobbying for credit card debtors began in 2007. The Taipei branch of the Legal Aid Foundation ('TLAF') was approached by the Antipoverty Coalition, an NGO network working on a wide range of social justice issues, including youth labour, poverty, social housing, tax and judicial reform, disability, and other social economic rights.<sup>53</sup> Many credit card debtors were in great debt not because they were luxurious consumers; rather, they were usually financially unstable small-wage earners, and credit cards gave them a quick loan with unreasonably high interest rates (usually 20% annual interest), which dragged them into a vicious circle. As stated

<sup>51</sup> Lin Chang-shun, RCA 二軍求償判賠逾 23 億元, 創工傷賠償紀錄 (The Second Group of RCA Victims Received Over \$2.3 billion, Marking a Historical Record for Vocational Injury), *Central News Agency* (27 December 2019), online: [www.cna.com.tw/news/firstnews/201912275004.aspx](http://www.cna.com.tw/news/firstnews/201912275004.aspx).

<sup>52</sup> Liang Chia-ying and Lee Bin-hung, 法扶作為重大集體訴訟之平台: 從 RCA 公害及職災集體訴訟案談起 (The Legal Aid Foundation as Platform for Critical Class Action Lawsuits: The RCA Case), online: Legal Aid Foundation, [www.laf.org.tw/index.php?action=media\\_detail&p=1&id=120](http://www.laf.org.tw/index.php?action=media_detail&p=1&id=120).

<sup>53</sup> These groups and NGOs include: 卡債受害人自救會 (Victims of Debtor Self-Help Association), 當代漂泊協會 (The Contemporary Homeless Alliance), 社會住宅推動聯盟 (Alliance of Social Housing Promotion), 台灣國際醫學聯盟 (Taiwan International Medical Alliance), 台灣人權促進會 (Taiwan Association for Human Rights), 勞工陣線 (Alliance of Labour), 稅改聯盟 (Alliance of Taxation Reform), 殘障聯盟 (Disability Alliance), 民間司法改革基金會 (Judicial Reform Foundation).

by a labour union activist, the 'issue of credit card debtors is a common issue that all of us [different NGOs] encountered when helping different groups of socially disadvantaged, such as labourers and the homeless'.<sup>54</sup> This activist also clearly identified the then president of TLAF, Joseph Lin, as the key person who took up coordination responsibilities to push for the 2007 legislation: 'We NGOs went to Joseph Lin for volunteer legal counsel very often. We know each other from social movements via long-term cooperation and with firm mutual trust. The 2007 legislation was lobbied by several key figures, such as Joseph Lin (lawyer) and Chien Hsi-chieh (politician), who coordinated multiple NGOs.'<sup>55</sup>

Similar to the role LAF played in the RCA case, TLAF provided critical support in the making of the Consumer Debt Clearance Act on three fronts. First, there was strong and consistent administrative assistance for NGOs, such as space for meetings and events, and press correspondence and other logistical support. Second, TLAF mobilized legal knowledge to effectively frame the issue in a rights discourse, which elevated the debate to a systematic level that called for state intervention via legislation. Lawyers at TLAF also provided essential knowledge to credit card debtors, allowing them to commence negotiation with banks or initiate necessary legal procedures to restructure their debts. Third, TLAF organized a lobbying team with NGO workers to visit different stakeholders, including the banks, financial institutions, legislators, and the Judicial Yuan.

TLAF's role in pushing for legislation attracted attention, and in fact TLAF faced pressure from the government, namely the Judicial Yuan, to defer their involvement in this lobbying process with social movement organizations.<sup>56</sup> Facing concerns from the Judicial Yuan, the TLAF originally halted the lobbying efforts but eventually joined other NGOs to push for the legislation, because:<sup>57</sup>

after completing 300 cases of debt negotiation, we felt so strongly that these negotiations were unfair and unreasonable. The banks had in-house counsels but did not allow the debtors to have lawyer[s] as representatives. The negotiation deals were set by the banks, where the debtors and lawyers had no room to negotiate. It's meaningless to the debtors. . . . if the bill did not pass in the first half of 2007, elections would come . . . and every bill restarts in the new term . . . therefore, the Legal Aid Foundation and all the concerned organizations aligned to push for the Consumer Debt Clearance Act.

TLAF encountered disagreement with other LAF branch offices. The main objection, that the credit card debtors are fully responsible for their debts, overlooked the high interest rates, the unfair payment structure, and the unbalanced negotiation power between the bank and the debtors. The public stigma debtors suffered was exactly the target that the TLAF and NGO alliance sought to tackle: 'We repeatedly explained and emphasized that these credit card debtors are victims. They are the disadvantaged group that the Legal Aid Act ought to protect; this is the right thing to do to realize the policy goal of the Act. Also NGOs kept mobilizing, and the Judicial Yuan gradually conceded to the public opinion.'<sup>58</sup>

Essentially, TLAF and the NGOs formed a team to overcome multiple challenges from different collective actors: the government (including the Judicial Yuan and the legislature), the private sector (including the bank and other financial stakeholders), and the public.

<sup>54</sup> *Interview with TWO201702*, *supra* note 16.

<sup>55</sup> *Ibid.*

<sup>56</sup> Joseph Yong-Song Lin, 從日本之經驗看台灣律師在「消費者債務清理條例」立法與施行的功能及角色 (Taiwan Attorneys in the Legislation and the Enforcement of the Consumer Debt Clearance Act – From the Japanese Experience Perspectives) (2008) 344 *Taipei Bar* 78.

<sup>57</sup> Xia Chuan-Wei, 塑膠鴉片 (Plastic Opium) (Taipei: Pedestrian, 2008) at 10–11.

<sup>58</sup> *Interview with TWO201702*, *supra* note 16.



More specifically, TLAF played two roles in law-making. It was a coordinator, constituting a hub for NGOs and lawyers to transform legal expertise and practical experience into policy statements and problem resolution. It was also a gatekeeper, especially in subsequent rounds of legislation revision in the 2010s, when LAF, together with TLAF and the Judicial Reform Foundation, took active roles in the legal debates, but with the NGOs 'consciously waiting for their signals to take combat positions to mobilize'.<sup>59</sup> In sum, the process of legislating the Consumer Debt Clearance Act demonstrates the deep involvement of LAF in policy-making and its reciprocal relationship with Taiwanese NGOs.

## V. EMBEDDED TENSION WITH THE STATE AND THE BAR

Having taken up more responsibilities to advance access to justice, both as an actor in civil society and as a public agency, LAF occupies a pivotal position in the legal community, but its embeddedness within a monolithic governmental system creates tension with the state and with the normally autonomous lawyering of the bar. LAF constitutes a quasi-governmental agency yet functions without direct democratic supervision. To address this potential accountability issue, LAF developed two organizational strategies to sustain its legitimacy, bureaucratization and power delegation. In this section, we argue that the embedded tension between state and bar is a development of the growth of LAF's role. It is not only empirically intriguing but suggests an inherent contradiction in the institutionalization of access to justice.

### A. Hybrid Model: A Quasi-Governmental Agency

LAF is a quasi-governmental agency that is fully resourced and well run, but its recent development means that it runs the risk of outgrowing its original goals. Because it administers public legal aid, LAF undoubtedly has the organizational nature of a governmental agency, and its legally guaranteed status affords LAF ample resources that flow directly from the government. The scale of monetary support differentiates LAF from other similar public organizations in Taiwan, such as the Consumers' Foundation and the Association for Victim Support, which are also legally regulated and publicly funded. Budget figures illustrate these differences. In 2018, the annual spending of LAF was over TWD1.49 billion (US\$50.51 million),<sup>60</sup> while the Association for Victim Support operated with TWD152 million (US\$5.15 million).<sup>61</sup> Compared to the Association for Victim Support, the Consumers' Foundation had an even smaller amount of initial funding when it was set up in 1980, only TWD 1 million (US\$33,897.26), and their budget growth has been limited.<sup>62</sup> LAF also has a higher proportion of governmental funds. In 2020, 87.6 per cent of LAF's income came directly from the government,<sup>63</sup> while the Association for Victim Support, for example, received only 71.8 per

<sup>59</sup> Ibid.

<sup>60</sup> 2018 *Legal Aid Foundation Annual Report* (Legal Aid Foundation, 2019) at 8, online: [www.laf.org.tw/upload/2019/05/20190524132457.pdf](http://www.laf.org.tw/upload/2019/05/20190524132457.pdf).

<sup>61</sup> 財團法人犯罪被害人保護協會 107 年度決算書 (Association for Victim Support 2018 Annual Financial Statement) (Association for Victim Support, 2018) at 12.

<sup>62</sup> 關於我們 (About the Consumers' Foundation), Consumers' Foundation, online: [www.consumers.org.tw/contents/text?id=11](http://www.consumers.org.tw/contents/text?id=11).

<sup>63</sup> 財團法人法律扶助基金會 109 年度預算 (The Legal Aid Foundation 2020 Annual Budget) (Legal Aid Foundation, 2020) at 82.

cent of its funding from the government.<sup>64</sup> The source of LAF's funding within the government appears critical to its expansion and success in different roles, as the Judicial Yuan is an independent judiciary immune to shifting political and financial winds.

LAF is also equipped with substantial human resources. According to LAF's 2019 Financial Report, LAF has 288 employees (including 21 in-house lawyers), with another 30 staff members on special projects, and it operates with yet another 4,352 registered lawyers across the country to take on legal aid cases.<sup>65</sup> The coverage of LAF branch offices is extensive, and almost every court jurisdiction in Taiwan has a corresponding LAF office. By contrast, the Consumers' Foundation has 2 managers and only 12 employees in the main office, with 52 full-time staff members in 22 branch offices across the country, according to the 2020 annual budget.<sup>66</sup>

With steady funds and sufficient manpower, LAF has engaged in an expanding cycle of activities. Resources enlarge the LAF's capacity to take on more tasks and provide more and diverse services. As business grows, LAF needs more resources to deal with various tasks. Two indicators signal the degree of growth. First, legal aid recipients have increased quantitatively and qualitatively. The vulnerable groups entitled to legal services have shifted, from the original target of low-income individuals, to broadly defined social minorities, depending on their ethnicity, occupation, and legal status, e.g. labourers, aboriginals, and felony defendants. Because of these separate tracks for specific groups, current legal aid recipients are not necessarily financially disadvantaged, leaving the means test a less effective filter. Second, LAF is moving beyond the strict confines of the official policy goal legislated in the act,<sup>67</sup> which is protection of the 'right to litigate'.<sup>68</sup> LAF started with legal aid for formal legal representation, then moved to informal consultation, and later began to provide counsel assistance in pre-trial investigations. The right to litigate no longer manifests only in courtrooms, but constitutes an umbrella concept that offers citizens protection via various legal means.

LAF is in a tough position. The scale and practice of legal aid in large part defines what access to justice is in Taiwan, but LAF's hybrid model raises tensions which are difficult to resolve. It operates with autonomy and flexibility, like a civic association, but it has stable funding from the state. It is essentially a quasi-governmental agency, but with the strengths of a non-governmental organization. The outcome is positive, as LAF has grown to be an able and indispensable organizational actor in the Taiwanese justice system. However, this model faces two serious issues: first, how much authority and discretion in policy development does LAF have, and what are the normative bases for that? Second, how will LAF respond to rising expectations from the state to take up more responsibilities in access to justice, and at the same time maintain a balanced budget with growing operational costs? LAF's continual growth and record of success have created risks to its current authority and further development.

### *B. Organization Strategies: Bureaucratization and Delegation*

In response to its organizational weakness as a hybrid agency, LAF uses two strategies that regularize and disperse responsibility. First, its administration of legal aid has become a highly

<sup>64</sup> 財團法人犯罪被害人保護協會 109 年度預算 (Association for Victim Support 2020 Annual Budget) (Association for Victim Support, 2020) [*Victim Support*] at 31.

<sup>65</sup> 2019 LAF Report, *supra* note 17, at 6 and 42.

<sup>66</sup> *Victim Support*, *supra* note 64, at 1–2.

<sup>67</sup> *Legal Aid Fundamental Act Draft*, *supra* note 14.

<sup>68</sup> *Legal Aid Fundamental Act Draft*, *supra* note 14, at 173.

bureaucratic process. Second, it delegated the authority of approving legal aid provision to a separate committee, composed of external experts to enhance its legitimacy.

The Legal Aid Act includes a set of detailed regulations that assign roles and responsibilities at the management and decision-making level of legal aid. According to Chapter 5, 'The Organization and Supervision of the Foundation', LAF is required to set up the Board of Directors as the highest decision-making body, comprising 13 directors who have a three-year term.<sup>69</sup> The President of the Judicial Yuan appoints the directors, and discharges them when requested by LAF. In addition to the Board of Directors, the Legal Aid Act also assigns a Chief Executive Officer to oversee the daily operation, as well as a Deputy Chief Executive Officer, various specialized Committees handling matters relating to legal aid, presidents of branch offices, and executive secretaries. The Legal Aid Act also lays out a detailed structure for policy implementation.

In practice, LAF not only adheres to the Legal Aid Act but develops further standard operating procedures to carry out daily operations. A good example is the legal aid application process. A potential recipient first files standardized application forms, and then the applicant is interviewed by the Review Committee in person. Next, if the applicant passes the means test and merits test, a lawyer will be assigned or other legal services will be provided in a timely manner. If the applicant is denied, s/he may submit a request for reconsideration, and a Reconsideration Committee then reviews the case. Finally, after the legal recipient's case is complete, LAF will follow up to review the performance of the assigned lawyer. The recipient is also able to file a complaint against the lawyer with LAF at this stage. The entire process involves a lot of paperwork, is well structured, and is supervised by different agencies, which altogether makes it a highly bureaucratic operation. By developing a standard operating procedure and strictly following it, LAF reduces uncertainty and limits personal discretion in the process of providing aid. This approach helps them to maintain their legitimacy as a quasi-governmental agency by acting like a bureaucracy.

Another organizational strategy, authority delegation, complements this detailed bureaucratic structure. LAF does not approve individual applications, but only administers the process. The Review Committee and the Reconsideration Committee are the entities that have the authority to approve and deny legal aid, but they are composed of external lawyers, judges, and/or prosecutors in the jurisdiction, who serve on a committee independent from LAF. This separation decentralizes LAF's power over resource distribution, which in fact protects LAF from challenges to its legitimacy. Using the example of a case he handled, a lawyer working at the management level in LAF explained the dynamics:<sup>70</sup>

We once aided a case of a runaway migrant worker. The district prosecutor's office sent a letter to the Judicial Yuan, questioning why a runaway migrant worker could get legal aid. And they attached a document showing that the worker was not residing in Taiwan [so was indeed not eligible for legal aid], but the LAF Review Committee did not have access to this type of information when they reviewed the case. Later the Judicial Yuan asked us to send the application documents to the Yuan for supervision. The director said, sure, let them have it, it is a decision made by the external Review Committee, not us [LAF].

LAF is aware of the need for supervision and accountability. As a hybrid organization that has strong governmental funding but the flexible autonomy of a civic association, LAF practises its prerogatives with conscious strategies.

<sup>69</sup> *Legal Aid Act*, *supra* note 8, s 38.

<sup>70</sup> Interview with TWL201718 (14 August 2017, Taipei).

*C. Tension With the Bar: Who is Responsible for Ensuring Quality Service?*

Tension between LAF and the lawyer community has become aggravated in recent years, because LAF has taken steps to control quality in legal aid cases, which in turn puts pressure on the bar. LAF's bureaucratic evaluation process sometimes fails to comprehensively capture lawyers' input in legal aid cases, resulting in grievances among lawyers providing legal services.

Both LAF and the general lawyer community agree that in order to better support access to justice, the monetary reward for legal aid service can and should be a minimum amount. However, LAF and legal service providers are at odds regarding the ways in which legal aid service is delivered. LAF applies a hands-on approach, closely recording and evaluating lawyers' performance in legal aid cases. LAF has developed various standard operating procedures and guidelines of reward and sanction for quality control. This supervision creates inevitable tension with lawyers. A disagreement demonstrating this tension occurred in September 2017, when a renowned human rights lawyer, Leon Huang, publicly announced that he would no longer take legal aid cases. Leon Huang stated that, despite his effort acquiring extralegal evidence and presenting oral defence in court for his client, LAF withdrew payment simply because he did not offer a written statement for the defendant. This provoked a fierce discussion among legal professionals, some disappointed by the bureaucratic and formal paperwork at LAF, especially when the remuneration of legal aid cases is disproportionately low compared to the time spent. A sympathetic judge commented, "Those who work their butts off do not get their full payment, and those who sleep through it get the pay cheques comfortably. This is the kind of legal aid we have."<sup>71</sup>

This debate points to a profound tension. LAF is the only association that actively holds lawyers accountable for their performance in individual cases. Although the bar associations are the regulatory agencies with official disciplinary authority, they take cases passively via complaints. The Taiwanese bar associations assume an unassertive role in overseeing the quality of legal service in Taiwan, whereas LAF, based on the separate market it has created for lawyers via legal aid cases, challenges lawyer autonomy by supervising and evaluating their performances. LAF has done its own comprehensive lawyer evaluations biannually since 2007, and as of December 2016, LAF had identified 101 incompetent lawyers subject to sanctions, e.g. removal from the legal aid registry, official admonishment, suspension, decreased assignments for a certain time period, or formal notification of the need for improvement. The general lawyer community feels pressured by LAF, to the extent they take on legal aid cases. Arguably, the ways in which legal aid agencies promote access to justice can and will affect the autonomy of lawyers' legal practices. The institutionalization of access to justice inevitably involves mobilization and reshaping of the lawyer community, and the Taiwanese experience suggests that the legal profession's individual autonomy might be at odds with a more extensive and meticulous administration of access to justice.

VI. CONCLUSION: SITUATING TAIWAN IN COMPARATIVE CONTEXT

An evaluation of LAF's performance indisputably establishes it as a strong, dominant presence in the administration and promotion of access to justice in Taiwan. Two developments stand out. On the one hand, the legal services that LAF provides have expanded exponentially, in volume and in kind. Starting from litigation services, LAF continuously added new schemes to serve more clients, sometimes in collaboration with other governmental agencies, and added new types of legal services, to raise legal consciousness and intercept disputes early. On the other

<sup>71</sup> Interview with TWJ201710 (14 August 2017, Taipei).

hand, LAF grew to be a major actor with dynamic relationships with civil society and the state. However, an issue with the current model also stands out. To guarantee quality service and equal distribution of legal aid, LAF is in need of the government's resources and centralized authority, yet its organizational nature as a quasi-autonomous agency creates the risk of over-reaching and invites criticisms based on lack of accountability and legitimacy.

The role of Taiwanese lawyers and NGOs in the ascendancy of civil rights and liberties has been diligently recorded and studied in the legal mobilization literature.<sup>72</sup> The partnership of lawyers and NGOs advances public interests and rights protection via judicial means in many Asian jurisdictions. In fact, Asian experiences show that legal mobilization evolves to adapt to various political and social contexts. For example, in Singapore, Chua<sup>73</sup> presents an unexpected story of gay rights mobilization in an authoritarian state. In Thailand and Nepal, where resources are scarce for marginalized women, cause lawyers and NGOs play a role in helping individuals to engage with the legal system.<sup>74</sup> Tactics also move across borders; for example, to win compensation for Korean leprosy survivors, Korean lawyers took a template from Japan.<sup>75</sup>

However, what is missing in the current literature is the entangled relationship between state and lawyers serving a public interest. Studies on pro bono lawyers, coming first from common law jurisdictions, naturally label lawyers as representatives of normative values, supported by a professional community with ample material means. A strong image arising out of American pro bono programmes is the private practice lawyer, able and independent, volunteering outside the state.<sup>76</sup> In contrast, studies on legal aid identify the state as the major actor that determines service delivery. In the context of state-provided legal aid, good governance is at the core of discussions, regarding the amount of the budget, the appropriate means and merits tests, the quality of legal service provision, and other accountability issues.<sup>77</sup> The role of lawyers is either active, autonomous from the state, or passive, employed by the state.

LAF in Taiwan restructures the access to justice debate by altering the relationship between lawyers, the state, civil society, and the legal profession. All are autonomous actors with a 'two-way street' relationship with one another that evolved over time. First, a group of reformist lawyers pressured the newly democratized state to institutionalize a state-funded organization to provide legal aid to people in need. Over time, LAF developed and expanded, and it hosted and then mobilized lawyers in Taiwan. In public interest litigation, LAF organized various types of resources and capital to challenge the state, but it also helped the state achieve better governance, sometimes even filling gaps that state agents were unable to reach. In many ways, the Taiwan LAF markedly reduced costs in legal mobilization, between indigent clients and

<sup>72</sup> Ching-fang Hsu, 'The Currency Exchanger: Taiwanese Public Interest Lawyers in the 21st Century' (2019) 36 *UCLA Pacific Basin Law Journal* 33 at 36.

<sup>73</sup> See Lynette J. Chua, *Mobilizing Gay Singapore: Rights and Resistance in an Authoritarian State* (Philadelphia: Temple University Press, 2014) at 25; Lynette J. Chua, 'Collective Litigation and the Constitutional Challenges to Decriminalizing Homosexuality in Singapore' (2017) 44 *Journal of Law and Society* 433.

<sup>74</sup> See Margaret Becker, 'Constructing SSLM: Insights from Struggles over Women's Rights in Nepal' (2015) 39 *Law, Support Structures and the Realisation of Human Rights in Asia* 247; Frank W. Munger, 'Trafficking in Law: Cause Lawyer, Bureaucratic State and Rights of Human Trafficking Victims in Thailand' (2015) 39:1 *Asian Studies Review* 69.

<sup>75</sup> See Celeste L. Arrington, 'Leprosy, Legal Mobilization, and the Public Sphere in Japan and South Korea' (2014) 48:3 *Law & Society Review* 563.

<sup>76</sup> Rebecca L. Sandefur, 'Lawyers' Pro Bono Service and American-Style Civil Legal Assistance' (2007) 41:1 *Law & Society Review* 79 at 84–5.

<sup>77</sup> Steve Hynes and Jon Robins, *The Justice Gap: Whatever Happened to Legal Aid?* (London: Legal Action Group, 2009) at 8–11; Don Fleming and Francis Regan, 'Evatt's Bastard Child: The Commonwealth Legal Service Bureaux 1942–51' (2003) 7:2 *Australian Journal of Legal History* 255 at 272–7.

lawyers, between different civic associations with common goals in advancing public interests, and between the state bureaucracy and its constituency. Its practices changed the state–society dynamic, by changing the interactions among lawyers, the rights-supporting community, and the state. In its daily practice, LAF is substantially successful in rendering service to the public, yet individual lawyers have diverse relationships with LAF, both positive and negative, and LAF quality control practices have created tension and even grievances within the legal profession.

Our findings, which substantiate LAF’s success in delivering legal aid and identify LAF’s growing importance as a hub and powerhouse in Taiwan, suggest that the Taiwanese experience is an example of positive access to justice development with several intriguing empirical characteristics. Ruptures between LAF and the state and the bar warrant special attention in understanding the embedded tensions between different stakeholders acting to advance access to justice. Initial indications though are that LAF will continue its expanded role in Taiwan, and that while skirmishes and sporadic disagreements will arise, the tensions between different actors appear to have created a new equilibrium.

APPENDIX 11.1 INTERVIEWEE DETAILS

To keep the interviewees anonymous in accordance with the ethical guidelines for the research project conducted by one of the authors, the following system is used to assign IDs, with numbers to indicate the order of the interviewee. For example, if the interviewee is the fourteenth judge in Taiwan the author(s) interviewed in 2016, the ID will be TWJ2016014.

TABLE 11.3. *Interviewee’s occupation and location*

Jurisdiction	Abbreviation	Profession	Abbreviation
Taiwan	TW	Lawyer	L
		Judge	J
		Other professionals	O

Interviews quoted in this article include:

TABLE 11.4. *Basic information on interviewees*

Identifier of interviewee	Location of the interview	Format	Full date	Notes
TWO201702 <sup>78</sup>	Taipei, Taiwan	Personal interview	29-01-2018	20 years’ experience as a major Taiwanese labour union staff member
TWL201718	Taipei, Taiwan	Personal interview	14-08-2017	Lawyer in admin. position at LAF, superior to TWL201719
TWL201719	Taipei, Taiwan	Personal interview	14-08-2017	Lawyer in admin. position at LAF
TWJ201710	Yunlin, Taiwan	Personal interview	19-06-2017	About eight years’ experience on the bench at a rural district court

<sup>78</sup> Identified in 2017 and interviewed in 2018.