

ATTACKS ON JUSTICE - TAIWAN

Highlights

A rigorous reform program begun as a result of the 1999 National Judicial Reform Conference, including the establishment of an adversarial system for criminal cases, has led to better public perception of judicial integrity. However, in some areas the reforms have not been actively implemented by the police and prosecution services. Although the Constitution provides for separation of powers, the traditional dominance of the executive has only recently subsided. Though in fact quite rare, harassment, physical intimidation and bribery by organized crime elements remain occasionally problematic for judges and lawyers. A relatively small legal profession concentrated in major cities means that access to justice is often limited, especially for those with fewer economic resources, although the adoption in January 2004 of a Basic Law on Legal Aid is a major step towards redressing this imbalance. While Taiwan's unique position prevents it from fully participating in the international human rights system, it is seeking to introduce a domestic Human Rights Basic Law in accordance with recognized international standards.

BACKGROUND

Taiwan was ceded by the Qing empire of China to **Japan** in **1895**, becoming the second territory in Asia to implement a modern civil law system, after Japan itself. After the end of the Second World War, Taiwan came under the control of the **Nationalist government of China** on behalf of the Allies. Following the **1949** Communist victory in the Chinese civil war, two million nationalists fled to Taiwan where they set up a separate government pursuant to the **1947 Constitution** drawn up for all of China. On the pretence of preparing for an invasion to "retake the mainland" which never occurred, **martial law** was imposed on Taiwan from **1949 until 1987**. Since then, Taiwan's progress has been characterised by economic prosperity, greater democracy, and increased recognition and acceptance of the native Taiwanese population within the governing structure.

On **25 October 1971**, the **United Nations** enacted *Resolution 2758*, restoring the rights of the **People's Republic of China** and recognising the representatives of the Chinese government as "the only lawful representatives of China to the United Nations" (see <http://www.taiwandc.org/un-2001.htm>). As a consequence, Taiwan was, and continues to be, excluded from the United Nations, and is not recognised as a sovereign state by most of the international community.

Whilst corruption in the form of vote buying and organized crime is a legacy of Taiwan's authoritarian regime, the **Ministry of Justice** has carried out periodic and concerted campaigns against corruption in all sectors of government since the end of martial law and subsequent establishment of an operative multi-party system. Power

was peacefully transferred from the **Nationalist Party** to the **Democratic Progressive Party** in the **March 2000** presidential elections. On **20 March 2004**, Taiwan conducted its third direct presidential elections where the incumbent, **Chen Shui-bian** of the Democratic Progressive Party, was declared the winner in an extremely close outcome.

China and **Taiwan** continue to have a strained relationship due to China's refusal to rule out the use of its military capabilities to force reunification, and the question of Taiwanese independence remains a dominant political issue.

Taiwan's political structure continues to be based on the 1947 Constitution, as amended several times since **1991**, which combines elements of the cabinet and presidential systems of government. It consists of the **Presidency**, a constitutional council known as the **National Assembly** (abolished by the most recent constitutional amendment in **June 2005**), and five governing branches called "yuans": the **Executive Yuan** (Cabinet), the **Legislative Yuan** (Parliament), the **Judicial Yuan**, the **Examination Yuan** (in charge of the Public Service), and the **Control Yuan** (which performs oversight, audit and disciplinary functions).

Whilst the introduction of democracy in **1987** has led to more discussion of rights and greater awareness of their importance in Taiwan, the process of establishing civil society has been slow and difficult due to the absence of a tradition or culture that recognises the primacy of human rights and to Taiwan's lengthy isolation from the development of international human rights standards.

In **2001**, the **Executive Yuan** established an inter-ministerial **Human Rights Promotion Committee** to set an agenda for the domestic implementation of human rights policies (see <http://www.gio.gov.tw/>). The Committee has identified three major projects to achieve this objective – the ratification of the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*; the adoption of domestic human rights legislation; and the establishment of an independent national human rights institution in accordance with the *United Nations Paris Principles*. In addition, the **President** has promoted a number of additional policies to improve domestic conditions and implement international standards. These include the drafting of Taiwan's first "national human rights report", enacting a **National Human Rights Action Plan**, supporting legislative reforms to abolish the death penalty and strengthen protection against discrimination, and developing human rights education programs and institutions for the general public and specific groups such as school pupils and members of the legal sector. In addition to the Executive Yuan committee, the **Office of the President** has also established an **Advisory Group on Human Rights** headed by the Vice-President, and comprising 21 human rights activists, experts, and lawyers.

Taiwan has not implemented domestic counter-terrorism legislation or devoted significant public funds to combat terrorism. The investigation of suspected terrorist activity is instead carried out using existing criminal laws and special statutes on organized crime and money laundering, although concerns have been raised about the lack of coordination between the government departments responsible for national security and the investigation of crime.

JUDICIARY

Judicial and legal reforms

Reforms have been introduced with the objective of modernising the legal system to incorporate a higher degree of rights protection (see <http://hir.harvard.edu/articles/965/>). Legal reforms initiated following the end of Taiwan's martial law period in **1987** have given practical effect to Article 80 of the 1947 Constitution which provides that judges shall be free from partisanship and shall, in accordance with law, hold trials independently and free from interference.

Following almost 10 years of lobbying by the **Taipei Bar Association** (see <http://www.tba.org.tw/>) and other local organizations, a **National Judicial Reform Conference** was held in **July 1999** and attended by representatives of the Judicial Yuan, the prosecutors' service, the legal profession and academia. At the conference, consensus was reached on 53 proposals to reform laws governing the operation of the Taiwanese judicial system including judicial training, qualifications for appointment, performance standards, financial disclosure by judicial officers, and the availability of appeal and judicial review. The proposals also dealt with substantive legal issues such as expert participation in trials, the introduction of the presumption of innocence and cross-examination in criminal trials, access to justice issues such as the introduction of a *pro bono* defence system for poor defendants, and the establishment of additional specialized courts and tribunals with dedicated judges.

Despite the success of the conference, the reform process has been slow and a number of proposals are still to be implemented. They are being introduced slowly (see <http://hir.harvard.edu/articles/965/>). Judges have also promoted rights in recent judgments where they have provided fresh interpretations of the 1947 Constitution. Despite these advances, Taiwan is still plagued with implementation problems, particularly in relation to the administration of criminal justice and the reform of the judicial system.

In **May 2002**, the **Legislative Yuan** passed amendments to the *Code of Criminal Procedure* which significantly altered the position of judges in proceedings. Pursuant to these reforms, judges hold the status of impartial adjudicators rather than inquisitors who assist the prosecutor in compiling evidence. Further reforms to the *Code of Criminal Procedure* that took effect in **September 2003** saw the introduction of a cross-examination system for criminal trials across the country (See below, [Access to Justice](#)).

Independence

Executive and Legislative Interference

During the 40 years of martial law, the judicial system in Taiwan suffered from intensive interference from the executive power. After the lifting of martial law, this situation began to improve gradually. A decisive break came in **2000** when the former opposition won the presidential election and thus control of the executive, while the former ruling party retained control of parliament, essentially eliminating the formidable influence of the executive branch. This rebalancing of power has largely relieved the judicial branch of the burden of political intervention. In recent years, the

executive, including the President, has been careful not to make any statement, tacit or explicit, to pressure the justice system to achieve certain results. On the other hand, the political tension between the executive and legislative branches has on occasion spilled over to the justice system. The most serious example came following the contested presidential election in 2004. In **August 2004**, the **Legislative Yuan** passed the **March 19 Shooting Truth Investigation Special Committee Statute**, creating a new quasi-judicial body under its own jurisdiction to investigate the assassination attempt on the President and Vice President, which the opposition claimed was staged, on the eve of the election. However, in **December 2004**, the **Constitutional Court** ruled that key parts of the statute were unconstitutional, including the infringement on the powers of the judiciary (see <http://www.taipeitimes.com/News/editorials/archives/2004/12/16/2003215347>). The opposition parties claimed that this decision was biased and retaliated in **January 2005** by pushing through a budgetary amendment to cut the benefits of **Constitutional Court** judges. The **Constitutional Court** had to make a further decision elaborating their legitimate claim to these payments and rewards by asserting that they qualify as judges entitled to the employment and welfare security provided by the Constitution (see <http://www.taipeitimes.com/News/taiwan/archives/2005/07/23/2003264664>).

Public pressure on the judiciary

Parties to criminal cases who are of high status, including politicians and industrial tycoons, sometimes make critical comments about the judge or prosecutor in their case to the media. This is, however, normally kept in check until after a decision is rendered to avoid damaging one's own case by offending the court.

Perhaps the more disturbing trend is media coverage, a by-product of the high degree of free speech in Taiwan. Almost all Taiwanese mass media frequently exploit litigation cases to generate sensational headlines. The resulting popular reaction may, intentionally or not, have the effect of influencing the decisions of courts although there is no clear evidence that courts are in fact swayed by this factor.

Security of tenure

Article 81 of the 1947 Constitution provides that a judge shall hold office for life and shall not be removed from office unless he or she has been found guilty of a criminal offence, subjected to disciplinary measures, or declared to lack capacity to carry out his or her duties. There is a special regime for newly-appointed judges, due to the fact that they are not required to have any prior professional experience. They serve in a reserve capacity for five years, after which they are permitted to hold office on a probationary basis for one year. They attain full judicial status, including full security of tenure, after the satisfactory completion of their probationary year. There is a potential concern in that the procedure for the promotion of judges remains partially controlled by the **Examination Yuan** (a branch of government overseeing the Public Service), rather than being solely within the power of the **Judicial Yuan** (see <http://www.tba.org.tw/>). This may compromise independence.

Judicial discipline and accountability

The present system of judicial discipline, established in **2000**, provides that the **Control Yuan** and the **Judicial Yuan** may, after consideration, refer judges to the **Committee on the Disciplinary Sanctions of Public Functionaries (CDSPF)** on

charges of misconduct. The **CDSPF** is a subordinate organ of the **Judicial Yuan**, with jurisdiction to adjudicate in cases of wrongdoing by a public official, and is reportedly independent and not subject to influence from the other branches of government. Upon determining the charge, the CDSPF is empowered to impose a disciplinary penalty upon the judge. The minimum sanction is a reprimand. In more serious cases, a demerit may be recorded or a judge's salary may be reduced. In the gravest cases of misconduct, the CDSPF may order a judge into retirement or dismiss him or her from office. CDSPF procedures are separate from ordinary criminal prosecution that may also be brought against a judge.

Judges do not have a right to appeal against CDSPF disciplinary decisions, and there is no body with jurisdiction to review the decisions. This is inconsistent with Article 20 of the *UN Basic Principles on the Independence of Judges* (http://www.unhchr.ch/html/menu3/b/h_comp50.htm), which provides that "(d)ecisions in disciplinary, suspension or removal proceedings should be subject to an independent review." This has been recognized by the **Republic of China Association of Judges**, the **Taiwan Law Society**, the **Taipei Bar Association** and the **Judicial Reform Foundation**, which have lobbied for the establishment of an appropriate appeals procedure. The draft *Law of Judges*, prepared in **1998**, calls for the creation of a court to hear cases concerning matters of judicial discipline at first instance and on appeal. In order for the decisions of the court to be afforded proper respect by judges, and for its existence to act as a spur for judicial self-discipline, it has been proposed that the court be staffed by persons holding the necessary qualifications for appointment as judges. These proposals have not been adopted as at **June 2005** and the law remains in draft form only (see <http://www.tba.org.tw/>).

Corruption

Although less prevalent than in the past, bribery and physical intimidation by organized crime elements remain a residual threat to judicial independence, along with occasional harassment by aggrieved citizens. These problems are generally isolated instances, especially at the local level.

As standards of judicial conduct come under increased scrutiny particularly since the **National Judicial Reform Conference** in **1999**, both self-discipline and criminal prosecution have strengthened, resulting in the conviction of several judges and prosecutors for accepting bribes (See below, Cases) and improving the morale of the large majority of judicial officials.

Under Article 4 of the **1993 Public Functionary Assets Disclosure Law**, judges are required to provide details of their financial circumstances to the president of the **Judicial Yuan**, who subsequently reports to the **Control Yuan**. There is a significant degree of untruthful disclosure amongst public officials as a whole. In **2002**, the Control Yuan enquired into 806 of the 1,915 cases filed, and found that assets had not been disclosed truthfully in 352 cases.

Cases

In the aftermath of the **2004** Presidential election where **President Chen Shui-bian** was re-elected with a margin of 0.228 per cent or a mere 29,000 votes, large mobs of opposition supporters gathered outside major court houses around Taiwan to demand that the courts seize the ballot material as evidence. They broke doors and windows,

and injured several police officers guarding the buildings. The **High Court** did grant the request, setting in motion a lengthy legal process of investigation of the election results (See

<http://www.taipeitimes.com/News/front/archives/2004/03/22/2003107241>).

Eventually two lawsuits were filed by the losing candidates as plaintiffs, one naming as a defendant the **Central Election Commission**, and one the victorious **President** and **Vice President**. This politically-charged situation was the harshest possible test for the justice system. Under a procedure essentially created from scratch by the **High Court**, hundreds of judges, prosecutors and volunteer lawyers efficiently carried out a complete recount of all ballots nationwide. The two trials and their appeals were conducted strictly in accordance with the law, and after a year, the **Supreme Court** finally sustained the legitimacy of Chen's re-election. The judiciary played a critical role in maintaining justice in a politically divided society.

Corruption

On **25 November 2004**, the **Supreme Court** sentenced Taichung High Court judge **Tsai Hsin-nan** to 10 years' imprisonment plus five years of deprivation of civil rights (including that of holding public office) for taking a bribe to deliver a verdict in a case, becoming the first judge to be convicted of corruption in the past 10 years (see "Judicial Reform Magazine, No. 54", **December 2004** (in Chinese), http://www.jrf.org.tw/mag/mag_02s.asp?SN=1354).

Of cases still underway, that of Tainan District Court **Li Tung-ying**, convicted in the first and second instances of operating a brothel and using his position to protect the business from police scrutiny, is notable. In **August 2004**, the **Ministry of Justice** launched a special program to investigate possible wrongdoing by judicial officials, and in **July 2005** announced that six High Court judges, five district court judges, and 31 prosecutors were under investigation for crimes ranging from accepting bribes to improper links with business or criminal organizations to soliciting prostitutes and extramarital affairs (see: "Liberty Times", **23 July 2005** (in Chinese), <http://www.libertytimes.com.tw/2005/new/jul/23/today-so2.htm>).

LEGAL PROFESSION

Independence

Lawyers are still sometimes identified with their clients or their clients' causes as a result of discharging their functions, which has in the past resulted in intimidation, hindrance, harassment or improper interference. There are reported instances of lawyers suffering harassment and threats to their physical safety as a consequence of accepting cases that challenge the system of organized crime in Taiwan. The authorities do not provide proper safeguards for lawyers whose security is threatened as a result of the discharge of their professional duties.

The confidentiality of lawyer-client communications is not absolutely protected. The law provides a right of lawyers to refuse to testify against their clients, as well as a positive responsibility to maintain the confidentiality of information obtained through the discharge of professional duties. However, it is not clear from the law that records of communications are protected. If they were acquired legally (for instance, when a

suspect has been subject to an authorized wiretap), such records may be admissible as evidence. Decisions on the admissibility are made by the judges in each case.

Bar Associations

Taiwan has 16 local bar associations, of which the Taipei Bar Association is the oldest and largest, and these associations in turn make up a national federation, the **Taiwan Bar Association** (which does not have individual members). Lawyers are obliged to join the Bar Association in the jurisdiction of each District Court that they wish to appear before. Until **2002**, a lawyer could only join four local bar associations but legal amendments in that year abolished the limit. However, the time and expense of multiple registrations can constitute a burden on lawyers. In addition, there are several voluntary associations, notably the **Taiwan Law Society** and the **Judicial Reform Foundation**.

The **Taipei Bar Association (TBA)** was established in **1947** with 34 members. By **2002**, its membership had increased to approximately 70 per cent of Taiwan's practising lawyers. The TBA has been led by a president, selected from the board of directors, since **1990**. The 40 members of the board of directors are directly elected by the Association's members every three years. The TBA also has approximately 30 functional committees dealing with specialized areas of the law (see <http://www.tba.org.tw>).

The **TBA** has actively campaigned for legal and democratic change in Taiwan, particularly following the end of the martial law regime in 1987. It has championed causes such as judicial reform, the independence of the legal profession, and the establishment of a human rights regime in accordance with international standards.

In **August 2003**, the **TBA** invited the **International Commission of Jurists (ICJ)** to Taiwan to evaluate proposals for the incorporation of international human rights standards by the enactment of a *Human Rights Basic Law* (http://www.icj.org/news.php3?id_article=3054&lang=en). In its report, the **ICJ** noted that Taiwan's current status under international law meant that any attempt to ratify the *ICCPR* (http://www.unhchr.ch/html/menu3/b/a_ccpr.htm) and *ICESCR* (http://www.unhchr.ch/html/menu3/b/a_ceschr.htm) was unlikely to be accepted by the **United Nations**. As Taiwan was effectively denied access to international monitoring mechanisms, the enactment of a well-drafted domestic human rights law, enforced by an independent body, was essential. The ICJ observed that in the transition context, "such a law could carry high legal and moral authority to be the fundamental reference point for human rights law within Taiwanese society and the legal system", meaning that it could be relied upon by the judiciary in interpreting legislation and deciding cases where appropriate. The ICJ also emphasised the importance of ensuring that the law does not have ordinary status, but is ideally constitutionally entrenched.

In addition to reform activities, the TBA has also established an **Ethics and Discipline Committee** to deal with complaints against its members. Commissioners, who are drawn from the association's directors and supervisors, conduct investigations into allegations of ethical misconduct and present a report to the Board for a final determination to be made. The Committee also has the power to investigate and determine complaints laid against lawyers who are not members of the TBA, but

who may have incurred criminal liability under the *Law of Lawyers* (see <http://www.tba.org.tw>).

Cases

No cases affecting the independence of lawyers have been reported in recent years.

PROSECUTORS

As part of the general liberalization of Taiwan, the independence of prosecutors has greatly improved, and today they usually practise with almost complete autonomy. While prosecutors in Taiwan are able to carry out their functions independently, they have had practical difficulty in coping with their changed status and duties under the newly-introduced adversarial format for criminal proceedings.

Amendments to the *Code of Criminal Procedure* introduced in **May 2002** changed the manner in which criminal proceedings are conducted from the traditional inquisitorial format to a more adversarial system, thereby having the effect of downgrading the status of prosecutors. Rather than ranking alongside judges in criminal proceedings, prosecutors are required to bear full responsibility for investigations and charges and must present a case for conviction of the accused to the judge. Prosecutors have been criticised by the **Judicial Yuan** and legal professional organizations for failing to actively implement these reforms since their introduction in **May 2002**. Prosecutors have sometimes failed to prevent illegal conduct by other members of the executive branch, such as the **police** and the **Ministry of Justice Investigation Bureau**. Furthermore, procedures utilised by law enforcement officials often infringe due process rights concerning search and seizure, arrest and detention, and do not protect the privacy of the suspect during the initial phases of the enquiry. This has resulted in reliance upon evidence obtained through illegal searches and seizures, and by means of unlawful arrest and detention. This is contrary to the obligation of prosecutors to respect and uphold human rights in the discharge of their duties, as well as the requirement that prosecutors refuse to use any evidence obtained through unlawful methods, or as a consequence of a grave violation of a suspect's human rights (**UN Guidelines on the Role of Prosecutors**, http://www.unhcr.ch/html/menu3/b/h_comp45.htm).

The system of discipline for prosecutors is essentially the same as that for judges, including referral to the **Committee on the Disciplinary Sanctions of Public Functionaries** (CDSPF) as well as regular criminal prosecution.

Cases

The limits of prosecutors independence are being tested in a case in which **prosecutor Lee Tsu-chun** in **December 2004** decided to file an indictment against **You Ying-lung** for vote-buying when he was the ruling party's candidate in a **2003** by-election. This was despite the order from his superior prosecutor not to do so. It sparked a debate about internal discipline within the prosecutorial service, as well as whether Lee or his superiors might have been motivated by political considerations. In **June 2005**, Lee was countersued by You (see <http://www.taipeitimes.com/News/taiwan/archives/2005/06/28/2003261185>). The case was previously noted for the summons issued by Lee in **2003** during the

investigation on **President Chen** who became the first sitting president to submit to questioning by a prosecutor.

The most common criticism about political pressure on prosecutors is that legislators would try to use their budgetary powers to influence the judicial process, either for personal or political gains. Lawmakers facing prosecution often succeed in obtaining seats on the **Legislative Yuan**'s judicial committee. For example, in **March 2005**, indicted legislator **Ho Chih-hui** became the convenor of the judicial committee despite allegations that he had threatened prosecutors with budget cuts (see <http://www.taipeitimes.com/News/front/archives/2005/03/08/2003245334>).

The *March 19 Shooting Truth Investigation Special Committee Statute*, which was eventually declared unconstitutional by the Council of Grand Justices (see above, Judiciary), would have meant a serious breach of prosecutorial independence. Among its most controversial provisions were those giving the Committee, although constituted solely by the legislative branch, the power to command prosecutors (see <http://www.taipeitimes.com/News/front/archives/2004/08/19/2003199289>).

Corruption

Statistics released by the **Ministry of Justice** showed that three prosecutors were disciplined by the CDSPP in **2004**, compared to 22 in the previous four years (see "Liberty Times", **6 April 2005** (in Chinese), <http://www.libertytimes.com.tw/2005/new/apr/6/today-so9.htm>). The most serious case in 2004 was that of **Song Zong-yi**, who was indicted in **August 2004** for multiple counts of corruption, for which the prosecution sought a 20-year sentence (see "Liberty Times", **24 August 2004** (in Chinese), <http://www.libertytimes.com.tw/2004/new/aug/24/today-so10.htm>). In **July 2005**, a special task force reported that it was investigating 31 prosecutors (see above, Judiciary).

ACCESS TO JUSTICE

Given the relatively recent shift to an adversarial system in **May 2002**, as at **June 2005**, jurisprudence has not yet developed as to who should bear the burden of ensuring that a fair trial is received when an accused person is not represented, and judges are not yet active in ensuring that the integrity of the process is protected.

The implementation of reforms to enhance the adversarial process, which were first proposed at the **1999 National Judicial Reform Conference**, is not yet complete (See above, Judiciary). The proposals deal with issues including expert participation in trials and access to justice issues, such as the introduction of a *pro bono* defence system for poor defendants and the establishment of additional specialised courts and tribunals with dedicated judges.

Legal reforms

Code of Criminal Procedure

Further reforms to the *Code of Criminal Procedure* that took effect in **September 2003** saw the introduction of a cross-examination system for criminal trials across the country. These reforms are intended to make court procedures more adversarial in

nature, to place the burden of proof more squarely on the State in criminal proceedings, and to promote the principle of equal access to information in criminal trials. The reforms also afford the suspect the right to be informed by police of the charges in question, the right to remain silent, the right to a lawyer, and the right to ask police to investigate evidence that would be favourable to the suspect. The police must also inform the suspect if the charges are subsequently changed. The amendments also require that interrogations be recorded by audiotape and videotape.

Act to Counter Terrorist Activities

The *Act to Counter Terrorist Activities* was submitted to the **Legislative Yuan** in **October 2003** for final consideration, having previously been approved by the **Executive Yuan** (Cabinet). Pursuant to this draft law, authorities are empowered to investigate and arrest anyone suspected of engaging in terrorist activities, which include activities undertaken with the intent to “cause public fear” for political and other motives. The legislation also makes reference to “previously internationally identified terrorists and terrorist organizations”, a vague term that gives the authorities broad discretion to prosecute, and imposes heavier penalties on those found guilty of offences (see <http://taipeitimes.com/News/front/archives/2002/11/12/179226>)

Article 4 of the draft legislation also places the **National Security Bureau**, Taiwan’s primary intelligence agency and a body largely unaccustomed to public scrutiny or accountability, in charge of investigating terrorist offences. The Bureau’s powers are supplemented by provisions that weaken constitutionally-entrenched procedural guarantees on arrest and detention, the conduct of searches and wiretapping, and the confiscation of money and property of suspected terrorists. The legislation passed its first reading in the **Legislative Yuan** in **December 2003**, but lapsed automatically at the end of the legislative term in **January 2005**, and has not yet been resubmitted by the **Executive Yuan**. In **January 2003**, Taiwan also passed money-laundering legislation which enhanced reporting requirements, increased penalties and empowered the government to freeze bank accounts in circumstances where funds were suspected of being used for terrorist activity (see <http://taipeitimes.com/News/front/archives/2003/05/02/204324>).

Legal Aid

The Constitution does not expressly protect the suspect’s right to a lawyer immediately upon arrest or detention. Article 27(1) of the *Code of Criminal Procedure* provides that a defendant may retain counsel at any time.

The relatively small numbers of lawyers in Taiwan has resulted in a lack of access to legal representation in the past. Although fees are not extraordinary compared to countries at a similar stage of development, they are still beyond the reach of many citizens. In addition, both the *Civil* and *Criminal Procedure Codes* (until the recent revisions) did not have strict requirements for legal representation, creating a lack of a sense of value for legal service among Taiwanese people. These factors have led to an extremely high proportion of unrepresented litigants in Taiwanese courts, particularly in civil district court cases and in criminal cases.

A state-funded legal aid policy was established in **1999**. In addition, consensus was reached at the **1999 National Judicial Reform Conference** regarding the establishment of a *pro bono* defence system for poor litigants. However, these

systems did not meet international standards. Legal aid was not available to persons accused of criminal offences at the investigation stage and was only available where certain crimes were alleged. Few public defenders actually received government funding for their services and, as a consequence, legal aid lawyers were often considered incompetent and ineffective.

However, the *Legal Aid Law*, which deals with the provision of legal services at public expense, came into effect on **7 January 2004**. The law enhances the state-funded legal aid policy introduced in **1999**. In order to qualify for aid under the new system, an applicant must demonstrate that he or she is of low income and that his or her case has legal merit. Priority is given to vulnerable groups such as Aborigines, the disabled, the young, and foreign migrants.

Pursuant to the law, in **July 2004**, the **Legal Aid Foundation** was established to process applications for legal assistance. It has since set up 19 branch offices throughout the country (see <http://www.taipeitimes.com/News/taiwan/archives/2005/07/02/2003261877>). This represents a significant advance in ensuring access to justice, since there was previously no formal institution to coordinate the supply of legal aid services which was generally offered by law schools, charity organisations and social activist groups. These groups were, however, unable to provide comprehensive assistance.

LEGAL REFORMS DURING THE PERIOD

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| May 2002: | Amendments to <i>Code of Criminal Procedure</i> |
| September 2003: | Amendments to <i>Code of Criminal Procedure</i> |
| October 2003: | New <i>Act to Counter Terrorist Activities</i> (draft before Legislative Yuan on first reading) |
| November 2003: | <i>Basic Human Rights Law</i> (being drafted by Cabinet) |
| January 2004: | <i>Legal Aid Law</i> |