

Legal Aid and Public Defense: Making Rights Usable for Ordinary People

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Series: Justice, Rule of Law & Criminal Procedure — research papers accompanying [the Justice, Rule of Law & Criminal Procedure working blueprint](#). **Paper J4.**

Justice, Rule of Law and Criminal Procedure series, paper J4.

1. The question

The right to a lawyer means something only if the lawyer belongs to the accused. How should a constitutional republic organize free criminal defense so that people who cannot afford counsel get competent, prompt, independent representation? And how can it ensure that no prosecutor, police force, ministry or party can use the legal aid system to choose, block or replace a defendant's lawyer?

This matters most for a democratic successor to the PRC (Mainland) system, where aid has grown while lawyers in sensitive cases were detained, disbarred or replaced.

2. The hub position

The Justice, Rule of Law and Criminal Procedure hub

(<https://freechina.live/governance-public-policy/justice-rule-of-law-criminal-procedure/>) covers due process, detention and remedies. Its detention dossier

(<https://freechina.live/governance-public-policy/justice-rule-of-law-criminal-procedure/justice-detention-criminal-procedure/>) supports:

- stronger counsel;
- exclusion of coerced confessions;
- prompt appearance before an independent judge;
- a detention registry open to family and counsel.

It judges safeguards by actual access and outcomes; this paper applies that test to defense funding and control.

3. Evidence and comparative options

3.1 The international floor

Article 14(3)(b) and (d) of the International Covenant on Civil and Political Rights gives everyone charged with a crime:

- adequate time and facilities to prepare a defense;
- the right to communicate with counsel of their own choosing;
- assigned legal assistance where the interests of justice require it, free for anyone who cannot pay (<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>).

The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems were adopted by

General Assembly resolution 67/187 on 20 December 2012 (<https://digitallibrary.un.org/record/748365>). Their main points:

- **Principle 1:** legal aid should be guaranteed at the highest legal level, including the constitution.
- **Principle 2:** the state must fund legal aid adequately and must not interfere with how the defense is organized.
- **Principle 3:** anyone facing imprisonment or death is entitled to aid at every stage.
- **Principle 7:** aid must be prompt and include confidential access to the lawyer and access to case files.
- **Principle 12:** lawyers must be protected from intimidation and from sanctions for doing their professional duties.
- **Guideline 11:** a legal aid body should "Be free from undue political or judicial interference."
- **Guideline 12:** states should consider reserving a percentage of the criminal justice budget for legal aid.

3.2 PRC (Mainland): more aid, controlled counsel

The PRC Legal Aid Law took effect on 1 January 2022 (<https://www.chinalawtranslate.com/en/legal-aid-law/>). It requires appointed defense for:

- minors;
- persons with visual, hearing or speech disabilities;
- adults who cannot fully understand their own conduct;
- cases where life imprisonment or death may be imposed;
- death-penalty review cases;
- trials in absentia.

Capital cases require a lawyer with at least three years of practice. The law also creates duty lawyers stationed in courts, procuratorates and detention centers (Arts. 14, 25, 26, 30, same URL). In 2022 the four central justice bodies extended "full defense coverage" to the stage where prosecutors review the case and decide whether to charge (<https://chinajusticeobserver.com/a/china-requires-full-coverage-of-lawyer-s-defense-in-criminal-cases>).

The structure is the problem. Legal aid work must "uphold the leadership of the Chinese Communist Party" (Art. 3). Legal aid institutions are created by judicial-administrative departments and run under their direction, and those institutions appoint the lawyers (Arts. 5, 12, same URL). The 2018 Criminal Procedure Law adds two limits in state-security and terrorism cases (<https://www.chinalawtranslate.com/en/decision-of-the-standing-committee-of-the-national-peoples-congress-on-revising-the-criminal-procedure-law-of-the-p-r-c/>):

- during investigation, defense lawyers need the investigating organ's permission to meet their clients (Art. 39);
- suspects can be held under residential surveillance at a designated location (Art. 75).

The 2015 "709" crackdown showed these powers in use:

- Police took in more than 300 lawyers and activists, and at least 20 lawyers later lost their licenses (<https://www.amnesty.org/en/latest/news/2025/07/chinese-government-impunity-for-crackdown-on-lawyers-fuels-decade-of-repression/>).
- Most detainees were denied lawyers of their choice. Lawyers hired by families were told their clients had dismissed them in favor of lawyers approved by the government (<https://www.hrw.org/news/2016/04/03/china-detained-lawyers-activists-denied-basic-rights>).
- Police notices reported at least ten such switches. No visit was allowed to verify any of them (<https://www.nchr.org/2016/04/update-on-709-crackdown-against-rights-lawyers/>).

Formal coverage means little when the state assigns the lawyer.

3.3 ROC (Taiwan): foundation and public defenders side by side

ROC (Taiwan) promulgated its Legal Aid Act in January 2004 and set up the Legal Aid Foundation in July 2004 (<https://clp.law.harvard.edu/wp-content/uploads/2023/06/Taiwan-National-Report-ILAG-Conference-2023.pdf>). The foundation is established by the government but privately run. Its staff are not civil servants. It is supervised by a Judicial Yuan committee and reviewed each year by the Legislative Yuan and the National Audit Office. About 96 percent of its 2022 spending came from the government. That year it had 22 branches, approved 65,693 grants and handled 16,134 mandatory-defense cases. It also runs a program that accompanies suspects at their first interrogation.

Separately, the courts employ public defenders. They are assigned in felony cases above a three-year threshold, and in other cases where the judge sees a need (<https://cyd1.judicial.gov.tw/en/show.asp?id=14>). Detained defendants must have counsel, and police must tell suspects that the foundation can help (<https://www.theadvocatesforhumanrights.org/res/USDOS+Human+Rights+Report+Taiwan+2023.pdf>).

The two channels have come into tension. Since 2020 the Judicial Yuan has shifted mandatory-defense cases toward public defenders and lawyers recruited by the courts, citing cost. The foundation, the Taipei Bar Association and the Judicial Reform Foundation have questioned whether courts should assess defense performance (same Harvard report).

3.4 United States and England and Wales

In *Gideon v. Wainwright* (1963), the US Supreme Court required states to provide a lawyer to indigent felony defendants. It called lawyers in criminal courts "necessities, not luxuries" (<https://supreme.justia.com/cases/federal/us/372/335/>).

In England and Wales, anyone held at a police station may consult a solicitor privately at any time. A superintendent may delay this only for indictable offences, on listed grounds, and for no more than 36 hours (<https://www.legislation.gov.uk/ukpga/1984/60/section/58>). The 2012 legal aid statute bars the minister from directing individual cases, and the Director of Legal Aid Casework must act independently (<https://www.legislation.gov.uk/ukpga/2012/10/section/4>). Eligibility depends on an "interests of justice" test, which looks at:

- risk to the person's liberty, livelihood or reputation;
 - whether a substantial question of law arises;
 - whether the person can understand the proceedings;
 - whether witnesses need to be traced or cross-examined
- (<https://www.legislation.gov.uk/ukpga/2012/10/part/1/crossheading/criminal-legal-aid>).

The weak point there is money. A 2021 independent review warned that the system might not cope without substantial new funding. In Wales, criminal legal aid solicitors fell from 113 in 2014-15 to 63 in 2023-24 (<https://research.senedd.wales/research-articles/a-deserted-landscape-access-to-criminal-legal-aid-in-wales-part-1/>).

3.5 Options compared

Model	Strength	Main risk
Executive legal aid bureau (PRC (Mainland))	Broad formal coverage	State picks the lawyer
Court-employed public defenders (ROC (Taiwan))	Low, predictable cost	The judge both assigns and evaluates the defense

Model	Strength	Main risk
Independent foundation with private panel (ROC (Taiwan))	Choice and independence	Depends on budget and statute
Ministry-funded agency with a statutory firewall (England and Wales)	Clear legal independence	Funding erosion

4. Recommended design

1. **Constitutional right.** Everyone has the right to counsel of their own choosing from arrest or first questioning as a suspect. The state pays when the person lacks means or the interests of justice require it.
 2. **Independent authority.** A statutory Public Defense and Legal Aid Authority sits outside the justice ministry, the procuracy, the police and the courts. Its board draws on the bar, the judiciary, the legislature, academia and civil society, and no branch or party holds a majority. Members serve fixed, staggered terms and can be removed only for cause.
 3. **No case-level direction.** No minister, prosecutor, judge or party organ may direct, approve or veto the assignment of a particular lawyer or the conduct of a particular defense. Attempts are logged and reported to the legislature.
 4. **Mixed delivery.** Defense comes from two sources: salaried public defenders employed by the Authority (not the courts), and a rotating panel of private lawyers.
 5. **Choice protected.** Defendants may keep a lawyer they or their family hired at any time. A change of lawyer takes effect only after the defendant confirms it, either in a private meeting with the outgoing lawyer or before a judge. A dismissal reported only by police or custodial staff has no effect.
 6. **Access from the first hour.** Duty lawyers are available around the clock at every detention site. No interrogation may begin without counsel unless there is a recorded, valid waiver. Any delay needs prior judicial authorization, may last no more than 24 hours, and must state its reasons. No offense category, including state security, makes lawyer meetings subject to the investigator's permission.
 7. **Mandatory defense.** Counsel is compulsory for:
 - minors;
 - persons with disabilities;
 - anyone facing five or more years' imprisonment;
 - detention hearings;
 - every case involving a confession.
1. **Eligibility.** Means tests are simple and published. Urgent help is given while eligibility is being checked. A refusal can be appealed to a court.
 2. **Protected funding.** By statute, legal aid receives a minimum share of total spending on police, prosecution and courts. It cannot be cut mid-year without legislative approval.
 3. **Protection of lawyers.** No lawyer may be disciplined, prosecuted or disbarred for acts within the scope of the defense. Discipline rests with an independent bar body, with appeal to the courts.
 4. **Quality.** The Authority sets caseload limits, runs peer review, and publishes regional data, including the rate of representation at first interrogation.
 5. **Paralegals and victims.** Accredited paralegals may give advice under a lawyer's supervision in areas that are hard to serve. Victims in serious cases may receive legal aid without reducing the rights of the accused.
 6. **Transition review.** During the transition, a defendant may apply to reopen any conviction where they were denied counsel of their choice, or were represented only by counsel the authorities appointed over their objection.

5. Open questions and risks

- **Capacity.** Trusted defense lawyers will be scarce at first; paralegals and remote advice must not become second-class defense.
- **Budget floor.** The share proposed in Provision 9 needs modeling. The UN Guidelines endorse a percentage approach but set no figure.
- **Lawyers from the old system.** Some lawyers took part in replacing counsel in political cases. Vetting them must fit the transitional-justice framework without weakening Provision 10.
- **Public defenders versus private panel.** The ROC (Taiwan) dispute shows that the balance between the two shifts with budgets. A formula set in statute may work better than administrative discretion.

6. Cross-links

- Hub: Justice, Rule of Law and Criminal Procedure: <https://freechina.live/governance-public-policy/justice-rule-of-law-criminal-procedure/>
- Dossier: Justice, Detention and Criminal Procedure: <https://freechina.live/governance-public-policy/justice-rule-of-law-criminal-procedure/justice-detention-criminal-procedure/>
- Sibling paper J3, Prosecutors Under Law (forthcoming in this series)
- Third Republic Transitional Justice Legislative Package: <https://freechina.live/governance-public-policy/third-republic-governance-blueprints/en-transitional-justice-legislative-notes-roadmap-v1-1/>
- Truth Commission Act (Model Draft): <https://freechina.live/governance-public-policy/third-republic-governance-blueprints/en-truth-commission-act-draft/>
- Political Prisoners: <https://freechina.live/political-prisoners/>

In this series: [Prosecutors Under Law](#).

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