

**REPORT OF THE NATIONAL LEGAL AID AGENCY OF VIETNAM**

**AT**

**2009 INTERNATIONAL FORUM ON LEGAL AID IN TAIWAN**

**Legal Aid under Global Economic Recession – New Challenges and Opportunities**

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## **1. Providers of legal aid**

Before 1997, in Vietnam legal aid was mainly provided by Provincial Bar Associations to the accused in capital cases, the accused who are juveniles or have mental or physical defects. The appointment of defence counsels to represent these groups of people in court proceedings was at the request of the investigation bodies, procuracy or courts in the event that the accused or their lawful representatives did not invite defence counsels.

In September 1997, the legal aid system was officially established by the Prime Minister. At the central level, the National Legal Aid Agency (NLAA) was set up within the Ministry of Justice while the Provincial Legal Aid Centers (PLACs) were established within the Provincial Departments of Justice at the provincial level. So far, PLACs have been set up in all provinces of Vietnam (63 provinces). A number of PLACs have their branches at the district level.

The NLAA and PLACs provided legal aid services through their legal aid officers and collaborators. The legal aid clients included the poor, ethnic minority people and beneficiaries of preferential social policy and some other groups. Legal aid forms include legal advice, legal representation, petition making and mediation. For legal representation cases, the PLACs had to hire private lawyers on a case by case basis.

In 2006, the National Assembly of Vietnam adopted the Law on Legal Aid. According to this Law, the legal aid officials working in the PLACs have the right to represent legal aid clients in courts and have the same rights and obligations in judicial proceedings as private lawyers. This is very important to ensure that the demand of people for defense counsels is met, since the number of private lawyers is very small<sup>1</sup> compared to the population of 86 million people in Vietnam. According to this Law, legal aid clients have the right to choose legal aid providers from state legal aid organisations or lawyers' offices.

According to the Law on Legal Aid 2006, legal aid providers in Vietnam include:

### ***Legal aid officials***

Legal aid officials are working as permanent staff members in the Provincial Legal Aid Centers (PLACs) and appointed by the Chairperson of the Provincial People's Committees (provincial authorities). To be appointed as legal aid officials, one must have a law degree, 2

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<sup>1</sup> There are about 4,600 private lawyers by October 2008.

years' experiences of working in the legal field and pass legal aid training program held by the NLAA.

Legal aid officials are entitled to provide legal aid in all forms (legal advice, legal representation, etc).

Currently, there are about 200 legal aid officials in Vietnam.

### ***Legal aid collaborators***

Legal aid collaborators are persons who work as collaborators of the PLACs to provide legal aid. They may be private lawyers, legal advisers or persons who have law degrees or persons who have other degrees and are working in sectors relating to rights and interests of citizens.

Collaborators who are not lawyers only have the right to provide legal advice. They are paid on a case by case basis by the PLACs.

There are now more than 8000 legal aid collaborators nation-wide.

### ***Lawyers***

There are 5,200 practising lawyers, who are members of provincial bar associations in Vietnam. The lawyers can provide legal aid as collaborators of the PLACs or their professional organisations can register to provide legal aid directly to the poor and other disadvantaged groups. They also provide legal aid according to their own regulations. The registration is made at the Provincial Departments of Justice where the lawyers' offices register their operation. This Department has the duty to provide training support to organisations that have registered to provide legal aid.

Currently, more than 800 lawyers are working as legal aid collaborators.

### ***Legal advisers***

Legal advisers working in the legal consultancy centers under mass organisations can provide legal aid in the form of legal advice if the centers have registered to provide legal aid with the Provincial Departments of Justice. They can choose to provide legal aid to certain groups of legal aid clients and scope of activities appropriate for their capacity. These legal advisers are often invited to join the training courses on legal aid skills organised by the NLAA and PLACs.

So far, most of legal aid cases in Vietnam have been provided by the PLACs through their staff and collaborators. Legal consultancy centers under social organisations are still very weak.

## **2. Organisation**

The National Legal Aid Agency under the Ministry of Justice has the function to carry out state management on legal aid in Vietnam. According to the Law on Legal Aid 2006 and Decree No. 07/2007 of the Government, its specific tasks include:

- Drafting legal normative documents on legal aid
- Guiding the organisation and operation of legal aid organisations
- Providing professional training for legal aid providers
- Inspecting and checking legal aid activities
- Monitoring the quality of legal aid services
- Managing the Legal Aid Fund of Vietnam
- Synthesizing statistics of legal aid cases resolved nation-wide
- Carrying out international cooperation on legal aid.

After the Law on Legal Aid 2006 took into force on 1 January 2007, the NLAA stopped providing legal aid directly to legally aided persons.

The organisational structure of the NLAA is as follows:

- Director
- 03 Vice Directors
- 02 branches in Thai Nguyen province and Ho Chi Minh City
- Division on Professional Management
- Division on Monitoring the Quality of Legal Aid
- Division on International Cooperation

- Division on Training
- Division on Information and Research
- Division on Accounting
- Legal Aid Fund
- Office
- Legal Aid Offices for Women
- Legal Aid Club for Juveniles
- A Council on cooperation in providing legal aid in legal proceedings
- A team running the Website “Legal aid in Vietnam” ([www.nlaa.gov.vn](http://www.nlaa.gov.vn))
- A Management Board on the legal aid project supported by Sida, Novib, SDC and SCS
- Legal library for the public
- Groups researching the possibility to set up legal aid offices for children, ethnic minority people and people infected by HIV.

There is a PLAC under the Provincial Department of Justice in every province (63 PLACs/63 provinces). The establishment of the PLACs and the appointment of the Directors of the PLACs are decided by the Chairperson of the Provincial People’s Committees. The budget for the operation of the PLACs is provided by Provincial People’s Committees. The PLACs provide legal aid through their legal aid officials and collaborators. In addition, the staff of the PLACs also include other members such as accountants, administrative officers, etc.

Main activities of the PLACs are as follows:

- Advertising legal aid services on mass media or by other means
- Surveying legal aid needs of target groups
- Receiving legal aid clients and providing legal aid services at the office
- Organising legal aid mobile clinics to rural and remote areas
- Distributing legal leaflets, legal talks to the communities

- Organising training courses on legal aid skills and updated law for legal aid officials and collaborators
- Cooperating with state agencies, judicial agencies and mass organisations in providing legal aid to people

According to the Law on Legal Aid, the PLACs may set up Branches at the district level (one branch one or more districts). There are more than 100 Branches of the PLACs nation-wide. Branches also have legal aid officials and collaborators to provide legal aid services.

There have been no problems so far for the NLAA and PLACs in maintaining independence from the Government since the Government has not influenced the work of these organisations. In cases against state agencies, the PLACs use collaborating private lawyers to deal with the cases.

### **3. Financial affairs**

In 2007, the budget for the whole legal aid system is USD 4 million, including USD 1.9 million from the central and local governments (except for in-kind contribution) and USD 2.1 million from the international donors.

In 2008, the Prime Minister decided to establish the Legal Aid Fund of Vietnam to mobilise contributions of agencies, organisations, enterprises and individuals in Vietnam and abroad to the development of legal aid services. The Fund will provide funding to support legal aid activities in poor provinces. The supported activities may include training courses, legal aid mobile clinics, legal aid clubs, etc. Currently, the budget of the Fund is very limited (USD 150.000 – 200.000 per year). Budget for the Fund in 2009 is USD 250.000.

The budget for the legal aid system in 2008 is about USD 4.6 USD.

According to the Law on Legal Aid 2006, legal aid services are totally free of charge for legal aid clients.

### **4. Supervision**

The NLAA works under the supervision of the Minister of Justice. Its annual work plan, budget and report must be submitted to the Minister for approval.

The NLAA has the function to supervise the organisation and operation of the PLACs and other legal aid organisations nation-wide. The PLACs have to provide monthly reports to the

NLAA. The NLAA staff pays regular monitoring visits to the PLACs in provinces. The NLAA also organises teams to assess the quality of legal aid cases resolved by the PLACs and guides the PLACs to assess the quality of legal aid cases by themselves.

## **5. Procedures and criteria for granting legal aid**

According to the Law on Legal Aid 2006, the following groups are eligible for legal aid:

- People from poor households<sup>2</sup>
- People with meritorious services to the Revolution
- Helpless single elderly people
- Helpless disabled people
- Helpless children
- Ethnic minority people living in areas with especially difficult socio-economic conditions.

Criminal Procedure Code 2003 provides that investigation bodies, procuracy or courts must require Provincial Bar Associations to assign lawyers' offices to send defence counsels, or request the Vietnam Fatherland Front Committees or members of the Front to send defence counsels free of charge for the accused, if the accused or their lawful representatives do not invite their own defence counsels in the following cases:

- The accused in capital cases
- The accused are juveniles
- The accused who have physical or mental defects

Besides, Civil Procedure Code 2004 requires parties in civil cases to provide evidence to prove their claims. This new provision gives a burden to people who have low level of education to claim their legitimate rights and interests. It is the obligation of the State to provide legal aid to them.

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<sup>2</sup> According to Decision No 170/QĐ-TTg of the Prime Minister dated 8 July 2005, poor households have the average income per capita less than VND 200,000/person/month in rural areas and VND 260,000/person/month in urban areas.

Apart from the above mentioned groups, within the framework of the project “Support to the Legal Aid System in Vietnam, 2005-2009” co-funded by the Swedish Agency for International Development (Sida), the Swiss Agency for Development and Cooperation (SDC), Oxfam Novib and Save the Children Sweden (SCS), the following groups are also provided with free legal aid services:

- Juveniles
- Trafficked women
- Victims of domestic violence
- People living with HIV/AIDS
- Ex-prisoners integrating into society

Poverty line will be periodically raised by the Government and therefore the number of people eligible for legal aid will change in the years to come.

Legal aid providers can make decisions to provide legal aid to the applicants if they provide enough supporting documents. According to the Law on Legal Aid, the legal aid clients can personally make their applications or do so through their legal representatives.

For court cases, the prospect of success is not a criterion for legal aid organisations to refuse the cases. However, the legal aid provider can give advice to legal aid clients on whether or not they should pursue the cases.

## **6. Models of service delivery**

Most of legal advice cases are resolved by legal aid officials while about 90% of court cases are resolved by private lawyers who are collaborators of the PLACs. Legal aid clients have the right to choose legal aid providers according to the Law on Legal Aid 2006.

In the event that clients do not choose lawyers, directors of the PLACs will assign legal aid officials or collaborating lawyers to them based on the expertise of legal aid providers and their availability. Written decisions on assigning lawyers will be issued and sent to law enforcement agencies for their information.



The PLACs also assign a staff member to monitor the case if it is conducted by collaborating lawyers to ensure the quality of the case and improve the capacity of the staff.

## **7. Legal aid fees**

Currently, on average collaborating lawyers get USD 25 per court case. Legal aid officials get 10% of what a collaborating lawyer gets in the same case. The fee of USD 25 per case given to lawyers is about 5 to 10 times lower than the market price depending on the specific situations in provinces.

The NLAA has to work with bar associations to encourage lawyers to provide legal aid without fees or with reduced fees.

## **8. Legal aid for specific communities**

Apart from the groups mentioned in Section 5, the NLAA and PLACs is studying how to provide legal aid services for Vietnamese migrant workers, poor consumers who are victims of bad consumer goods, people affected by environmental pollution and people living near the poverty line.

The NLAA is also working with the authorities in the northwest provinces and the provinces with poor districts to strengthen legal aid activities in these areas.

## **9. Scope and types of services**

The Law on Legal Aid provides that free legal aid is provided in all areas of law, except for business and commercial laws, for people eligible for legal aid.

In fact, most of legal aid cases resolved so far are related to land, criminal, civil, family and administrative laws.

According to this Law, legal aid may be provided in forms of legal advice, legal representation in or beyond court proceedings and mediation, etc.

According to the statistics of the NLAA, less than 10% of legal aid cases are court cases. The other cases have been resolved in forms of legal advice, mediation, etc.

According to the Law, legal aid applicants have the obligation to prove their legal aid eligibility. However, in practice, legal aid providers can provide legal advice in simple cases. In these cases, legal advice can also be provided through telephone.

Legal aid services can be provided to foreigners according to the mutual judicial assistance agreements between Vietnam and other countries. So far, the agreement to provide legal aid to citizens of state parties has been put in the mutual judicial assistance between Vietnam and Russia, China and France. Citizens of these countries will be provided with legal aid in the same conditions for Vietnamese citizens.

#### **10. Innovative legal aid initiatives**

The NLAA assisted the Minister of Justice to develop a Joint Circular on Providing Legal Aid in Court Proceedings between the Ministry of Justice, Ministry of Public Security, Supreme Court, Supreme Procuracy, Ministry of Defence and Ministry of Finance, which was promulgated in 2007. According to this Circular, law enforcement agencies (police, procurators, courts) have the obligation to inform the accused or the arrested persons of their right to legal aid and the contact information of the PLACs.

Since a large part of the population lives in the rural and remote areas and have difficulties in accessing legal aid organisations, the NLAA guided the PLACs in organising 2-3 legal aid mobile clinics each month to these areas to provide legal aid to local people. In these mobile clinics, the PLACs also provide people with legal leaflets and legal talks about legal issues relating to lives of people. So far, about 50% of legal aid cases have been received in legal aid mobile clinics.

The NLAA guided the PLACs in using loudspeakers in communes and villages to inform people about legal aid services. By this way, many people have known about legal aid services.

Currently, the NLAA is assisting the Minister of Justice to develop a Strategy on Development of Legal Aid Services in Vietnam towards 2030. This Strategy will help the Government to better use the resources of different actors in the society for legal aid service delivery in the future.

## **11. Access to legal aid**

The NLAA and PLACs communicate legal aid services to the public through central and local TVs, radios, newspapers, leaflets, putting posters about legal aid in the offices of law enforcement agencies, detention centers and prisons. In addition, the PLACs also translate leaflets about legal aid services into ethnic minority languages and record the contents of these leaflets in cassettes so that ethnic minority people can understand.

Legal aid clubs have been set up in a large number of communes for local people to discuss their legal problems. The core members of the clubs, who have legal knowledge at a certain level, answer simple problems and refer complicated ones to the PLACs or their branches at the district level.

Legal aid officials and collaborators frequently participate in legal aid mobile clinics to rural and remote areas. Legal aid providers are provided with daily allowance in these trips. Before the trips, the PLACs often cooperate with local mass organisations to survey legal aid needs of people and inform people about the trips.

## **12. Legal aid lawyers**

According to the Law on Legal Aid 2006, in order to be recruited in the PLACs and become legal aid officials (or salaried legal aid lawyers working permanently in the PLACs), one needs to have a bachelor of law degree, 02 years' experiences of working in the legal sector and a certificate of completing compulsory legal aid training course.

Private lawyers can work for the PLACs in legal aid cases as legal aid collaborators.

The reality in Vietnam shows that in legal aid cases, legal aid lawyers (legal aid officials and collaborating lawyers) are given more respect and support by law enforcement agencies (police, procuracy and courts). The cooperation between legal aid lawyers and law enforcement agencies have been further enhanced after the Joint Circular on Providing Legal Aid in Court Proceedings was promulgated in 2007.

## **13. Quality assurance**

A code of standards for quality of legal aid services has been issued by the Minister of Justice to review the quality of legal aid cases. The NLAA will use these standards to monitor the quality of legal aid services provided by different legal aid organisations. In addition,

procedures of reviewing legal aid cases and grading system for quality of legal aid cases will be developed to ensure that the application of the quality standards is proper. The results of reviewing quality of legal aid cases will help the NLAA and PLACs to timely improve the quality of legal aid services.

The NLAA also provides guidelines for the PLACs to assess the quality of legal aid cases resolved by its staff members and collaborators. Legal aid providers also have to assess the legal aid cases resolved by themselves. Apart from reviewing the files of cases, the assessors also need to collect feedbacks from legal aid clients, law enforcement agencies and other relevant agencies about the quality of legal aid cases resolved by legal aid staff and collaborators.

#### **14. Participation in reforms**

The NLAA encourages legal aid providers from the PLACs to find and report loopholes in the law discovered in specific legal aid cases to the NLAA. The NLAA then reviews the proposals and makes official petitions to change certain laws to competent agencies such as the National Assembly or its Standing Committee, the Government and ministries. Each year, the NLAA makes about 5 to 7 such petitions.

The NLAA also organises workshops with the participation of representatives of competent agencies to raise the problems relating to the law and policies that need to be resolved.

In addition, the NLAA is also proposing reforms in the legal framework, administration and procedures of legal aid.

#### **15. Challenges**

##### ***Human resources***

The number of lawyers and legal aid officials in Vietnam is quite small compared to the population of Vietnam (there are about 5,300 lawyers and 200 legal aid officials while the population is about 86 million people). There has not been regulations to oblige lawyers to resolve a certain number of legal aid cases each year. Though the number of legal aid collaborators is large (more than 8,000 people), many of them cannot spend much time in legal aid cases. The number of legal advisers from legal advice centers under mass organisations is also very few.

Since most of law graduates tend to work in big cities like Hanoi or Ho Chi Minh City, it is normally very difficult for the PLACs to recruit enough qualified staff members. Recently, some experienced legal aid officers have come to work for private sectors with higher salary. In addition, in many PLACs, their staff members are frequently moved to other divisions within the Provincial Departments of Justice.

### ***Access of people to legal aid services***

The awareness of people about legal aid services has been considerably improved compared to 10 years ago when the legal aid system was first established. However, so far about 40% of the target groups' population has not been aware of the existence of legal aid services and their right to legal aid. For many poor people in mountainous or remote areas, even though they know about legal aid services, they still cannot access legal aid organisations since they do not have enough money and time to travel. Though the PLACs organise many legal aid mobile clinics, each commune has a maximum of 1 mobile clinic per year.

### ***Capacity of legal aid providers***

Most of legal aid officials are still becoming more familiar with representing legal aid clients in court proceedings. They only have the right to provide legal representation since the Law on Legal Aid took into force in 2007. In the last years, legal aid training courses for legal aid staff only provided few hours for legal representation skills and the trainees did not have chance to practice. The training courses have not been frequent enough to update legal aid officers with necessary knowledge and skills.

In addition, most of legal aid providers have not been trained enough with skills to work with particular groups of legal aid clients such as children, women victims of domestic violence or trafficking, ethnic minority people, children, people living with HIV/AIDS, ex-convicts integrating into society, etc. Therefore, it is very difficult for them to provide sensitive services for these clients.

There has not been an effective mechanism to monitor the quality of legal aid cases. The code of standards for quality of legal aid cases is still being developed. In additions, so far, most of the PLACs have not had enough personnel to properly check the quality of legal aid cases.

### ***Financial resources***

Although the Government and local authorities have paid great attention to developing legal aid services, the legal aid budget in Vietnam is still very small compared to other developed countries and legal aid needs of the population. The recent financial difficulties in Vietnam make it more difficult for the Government to increase budget for the legal aid system. With the limited budget, it is difficult for legal aid organisations to advertise legal aid services, invite private lawyers for representation cases and expand their legal aid activities to the grassroots level.