

2014 International Forum on Legal Aid

Report on Legal Aid

1. Please provide the following country information:

Country	Legal Aid Organization Name	Date of Establishment	Poverty Line & Percentage of Population in Poverty	Total No. of Practising Lawyers & Legal Aid Lawyers (including in-house and private practice)
Vietnam	National Legal Aid Agency (NLAA), under Ministry of Justice (MOJ)	Since 1997	400,000 VND (\$19)/person/month for person resides in countryside and 500,000 VND (\$24) person/month for person resides in cities (It may be higher depend on the condition of cities/provinces) ¹ ; About 6.6% of population	8,233 practising Lawyer, of which 1,055 persons are legal aid collaborator lawyers; 483 legal aid officials ²
Population	GDP	Total No. of Applications Received in the Past Year	Total No. of Applications Approved in the Past Year	Total No. of Applications Refused in the Past Year
89.708.000 people in 2013	About 3.584.262 billion VND (169 billion USD) in 2013 ³	No statistic	81,813 applications in 2013	No statistic

2. Please describe the main provider(s) of legal aid services in your country:

- (a) *What is the nature of the provider's organization (ie, a government department, an independent statutory body or association)?*

According to Law on Legal Aid, legal aid is the State's duty. Legal aid system in Vietnam is divided into 2 branches. State legal aid organizations and organizations participating in legal aid

- (b) *If supervised by another authority, how does the provider maintain independence in decision-making and in carrying out its duties and responsibilities?*

The Provincial Legal Aid Centers (PLACs) and legal aid providers carry out their duties and responsibilities based on Law on Legal Aid, proceedings laws and related laws. Therefore they can provide legal aid services independently.

3. Please describe the legal aid organization and the recent business figures:

- (a) *Organizational structure:*

- **The NLAA** is a unit directly under the MOJ. The NLAA has the function to assist the Minister of Justice to conduct State management on legal aid nationwide.

It has the function as below:

¹ Decision 09/2011/QĐ-TTg dated 30 January 2011 of Prime Minister promulgating the poverty line, the potential poverty line of households in 2011-2015.

² Count to June 2013.

³ According to General Statistics Office, Ministry of Planning and Investment.

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- Building and proposing the MOJ, Prime Minister, Government, National Assembly to promulgate strategies and plans for the legal aid development and legal normative documents in relation to legal aid.
- Promulgating legal aid documents implementing about-mentioned documents and guidelines on legal aid.
- Managing and directing the organization and operation of PLACs and their branches; Managing and training legal aid providers;
- Implementing the regimes of reports and statistics on legal aid;
- Building and managing the Legal Aid Fund;
- Inspecting, checking and resolving complaints and denunciation, awarding, penalizing and settling breaches in legal aid activities.
- Conducting international cooperation in legal aid.

The NLAA has 01 Director, 02 Vice Directors, 36 staff members and 06 Divisions as Professional Management Division; Division for Monitoring the Quality of Legal Aid Service; Office; Financial and Accounting Division; Professional Training Center; and Legal Aid Fund.

- The PLACs and their branches: there are 63 PLACs under the Provincial Departments of Justice with their 199 branches provide directly legal aid services. Each PLAC may have 04 Divisions. 63 PLACs have 1,244 staff members, of which 483 persons are legal aid official⁴.

In addition, there are 277 law officers/firms, 40 legal consultant centers under mass-organizations or universities registered to provide legal aid (organizations participating in legal aid). There are 8,980 legal aid collaborators of which 1,055 persons are lawyers. There are 4,345 Legal Aid Clubs at the commune level⁵.

The PLACs and organizations participating in legal aid are called as legal aid organizations. Legal aid officials and legal aid collaborators are called as legal aid providers.

(b) Analysis of the matter types aided in the past year.

In 2013, the PLACs resolved 81,813 legal aid cases (increased by 23.4% in comparison with 2012), including 75,158 advice cases, 5, 584 court cases, 99 cases of representative beyond legal proceedings and 972 others.

83,777 persons were provided legal aid services in 2013, including 41,204 the poor, 42,573 people contributed meritorious services to the Revolution, 22,754 ethnic minorities, 1,170 elderly persons, 440 disabled persons, 3,113 children, 1,228 women who are victims of domestic violence or victims of trafficking in persons, 29 persons

⁴ Count to June 2013.

⁵ Count to June 2013.

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living with HIV/AIDS and 22,969 others.

(c) What is the number and percentage of cases conducted by in-house/staff attorneys and legal aid lawyers in private practice?

In 2013, 53% of the total number of cases was resolved by legal aid officials, 13% by lawyer collaborators and 34% by other collaborators.

4. Please describe your country's (or organization) legal aid funding arrangements:

(a) What are the sources and amount of legal aid funding? Are there caps on annual spending?

According to the Law on Legal Aid, the State has the responsibility to ensure budget for its legal aid system. At the central, the Government shall support budget for the NLAA. At the provincial level, Provincial People's Committees shall support budget for the PLACs.

In 2013, the total number of legal aid budget is 110,078,792,091 VND (5.2 million USD), of which the central budget is 16,122,173,912 VND (0.8 million USD) and the local budget is 93,952,618,179 VND (4.4 million USD). The legal aid budget is quite small (gains 0.0033% GDP) in comparison with legal aid budget of other countries.

About volunteer legal aid activities beyond the State, funds for these activities are based on contribution and support of agencies, organizations and individuals.

(b) Has your organization experienced large-scale funding cuts? If so, what were the strategies for responding to such situation?

When Vietnam declared to escape from list of poor countries (2010), ODA was finished. Therefore, budget from the Government (about 4 million USD per year) is not enough for sustainable development of legal aid in Vietnam.

Responding to such situation, the NLAA have been directing Provincial People's Committees to increase funds for legal aid; directing the PLACs to focus on main activities; and strengthening international cooperation to seek more supports for legal aid.

(c) What is the percentage of funding spent on paying lawyers' fees and costs, and on administration expenses respectively?

There is an imbalance in the structure of legal aid budget. The budget for legal aid cases is very limited. In 2012-2013, only 1.14% central budget was spent on legal aid cases, the remain budget was spent on communication, printing legal leaflets, meetings of Legal Aid Clubs, training legal aid collaborators at commune level and members of steering board of Legal Aid Clubs. 3.25% local budget was spent on legal aid cases, the remain budget was spent on salaries of legal aid officials and legal experts of the PLACs (69.9%), professional legal aid activities (32.3%) and other works (6.7%).

(d) Does assistance extend to covering costs such as court costs, government charges, and costs awarded against the legal aid recipient?

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Legal aid services are free of charge. Legally aided persons do not have to pay any fee, cost or money. Legal aid services delivered through forms as legal advice, participation in proceedings (court cases), representation beyond proceedings and other forms.

5. How does your organization evaluate performance? What are the effective tools or methods of evaluation? If your organization has established branch offices, how are their performances evaluated?

According to the Legal Aid Law, we have to evaluate legal aid performance. Evaluation is State management activity on legal aid. We have the Standards code of evaluating the quality of legal aid cases (promulgated by Circular 02/2013/TT-BTP dated 05 January 2013 of the MOJ). Most of evaluation is performed by the PLACs and annually report to the NLAA. In addition, annually, Departments of Justice and the NLAA conduct visits to the PLACs to evaluate legal aid cases. The evaluation bases on reviewing reports; visits; complaints of legally aided persons; complaints of related organizations, individuals or media; surveys. If cases are not fulfilled the quality standards, the legally aided persons have rights to request to be re-provided legal aid services or claim for damages caused by providing legal aid services (if any); the Legal aid officers shall be settled according to the Law on civil servants, legal aid law and the related laws.

6. Please describe the methods of service delivery in your country (or organization):

(a) *Are the bulk of the approved cases conducted by in-house/staff attorneys or by lawyers in private practice?*

Please, see Section 3 (c)

(b) *What are the conditions of registering as a legal aid lawyer?*

According to Law on Legal Aid, legal aid lawyers must have the following conditions:

- having a bachelor of law;
- having at least two years working in the legal sector;
- Fullfil lawyer training course conducted by Judicial Academy;
- Fullfil training course for potential persons for legal aid lawyer.

Collaborator lawyers are practising lawyers, registered to provide legal aid services and granted collaborator card by the Director of Departments of Justice.

Other collaborators are paralegals who have registered to provide legal aid services and granted collaborator cards by the Director of Departments of Justice.

In addition, other private lawyers have obligation to provide legal aid services according to the Law on Lawyers.

(c) *What are the rules and procedures of assigning approved cases to legal aid lawyers?*

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In head office of legal aid organizations: In advice cases, legal aid providers have to immediately provide services after the legal aid applications are approved. In court cases, cases of representative beyond legal proceedings, legal aid providers have to report to the Director of legal aid organizations to assign legal aid officers or collaborator lawyers to provide legal aid services.

In case proceedings agencies request to assign defenders, the Director of legal aid organizations shall assign legal aid officers or collaborator lawyers to participate in legal proceedings.

(d) How do the salaries and fees paid to legal aid lawyers compare with the general market rate?

The salaries of legal aid officials are much lower in comparison with the salaries of other judicial titles (prosecutors, judges, notary public...). Salaries of legal aid officials are equal to 44% the salaries of procurators.

The payment for collaborator lawyers is very low in comparison with the general market rate (the payment for collaborator lawyers is equal to 20% the general market rate).

7. Please describe the types of legal aid services provided in your country (or organization), and the types of matters aided.

According to Law on Legal Aid, there are the following forms of legal aid:

1. Legal advice;
2. Participation in proceedings;
3. Representation beyond proceedings;
4. Other forms of legal aid (mediation, performing works related to administrative and complaint procedures and other activities stipulated by laws).

According to the Law on Legal Aid, legal aid is provided in areas relating to legitimate rights and interests of legally aided persons excluding of business and trade.

8. Please describe application procedures and the criteria of granting legal aid.

When receiving legal aid applications, legal aid providers have to examine and response to the applicants quickly.

A legal aid cases is granted if it meets the conditions as below: (1) applicant provides documents to show that he/she is a legally aided person; (2) the case is related to legitimate rights and interests of the applicant, but is not business and trade; (3) it is in accordance with the operation scope of legal aid of legal aid organizations; (4) it is not case of refusal or termination of legal aid.

If the applications do not fulfill the condition to be provided legal aid services, legal aid providers have to inform the applicants. If the applications are approved, legal aid

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providers have to provide legal aid services in advice cases. In court cases, cases of representative beyond legal proceedings, legal aid providers have to report the Director of legal aid organizations to assign legal aid officers or collaborator lawyers to provide services.

9. In order to satisfy demand:

(a) *Are there services or standards specifically designed to help disadvantaged groups, such as women, children, indigenous people, labor and residents living in remote areas?*

According to the Law on Legal Aid, legally aided persons are (1) the poor, (2) persons contributed meritorious services to the Revolution, (3) ethnic minorities, (4) elderly people, (5) disabled persons, (6) people living with HIV, (7) children under 16 years old, (8) ethnic minorities, (9) victims of trafficking in persons, (10) legally aided persons according to treaties to which Vietnam is a party, (11) others.

(b) *Are there special standards or rules for deciding whether (and how much) legal aid resources should be allocated to assist complex cases (eg, environmental lawsuits or other class action lawsuits)?*

Annually, the NLAA support some money to the PLACs to provide legal aid services in some complex cases (eg, cases are raised by media, under the direction of the Minister of Justice...).

10. How does your organization monitor the quality of legal aid lawyers' services?

It is similar to evaluation performance in Section 5.

11. How does your country (or organization) inform potential applicants (particularly residents living in remote locations) of the availability of legal aid services?

The LNAA and the PLACs use many forms to advertise legal aid to the public. At the central level, the NLAA regularly informs the public about legal aid activities through the NLAA website: trogiupphaply.gov.vn, media and organizing some communication conferences. At the provincial level, the PLACs advertise legal aid services through the following main activities: printing leaflets introducing about legal aid services in provinces; putting posters on legal aid in offices of Judicial Agencies and People's Committees in Provinces; broadcasting information about legal aid services on local televisions and radios; advertising legal aid services on local newspapers.

To help persons living at grass-roots level, remote areas to access legal aid, the PLACs often organize legal aid mobile clinic at communes and hamlets. In addition, the PLACs support People's Committees in Communes to establish Legal Ai Clubs and maintain their meetings monthly. When people have legal problems, they can rise in the meetings and legal aid providers can support to settle there.

12. How does your organization help to reduce the amount of disputes which resort to the courts? Does your organization participate in law reform or offer legal education to the public? If so, please describe these activities or services.

Legal aid service helps to reduce the amount of disputes. Legal aid helps legally aided persons protect their legitimate rights and interests, raise their legal awareness and their attitude to respect and comply with the law, contributing prevention and control of

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conflicts and violations of the law. Through advice cases and mediation cases (95% total number of cases), legally aided persons are analyzed the content of cases, their rights and obligations relating to cases, proposal of different ways to settle their cases... Base on advices, legally aided persons can chose the appropriate way to settle their cases instead of resorting to the courts.

The NLAA is a State management agency, so one of its functions is regulating and proposing to regulate legal aid documents. In addition, the NLAA participate in drafting and implementing other legal documents and policies relating to legal aid as the Strategy of Judicial Reform to 2020 (regulated by the Solution 49-NQ/TW dated 02 June 2005 of the Central Committee of Communist Party), the Constitution 2013, Civil Law, Criminal Law, Civil Proceedings Code, Criminal Proceedings Code, Administrative Proceedings Law...

Through providing legal aid services, the PLACs also raise legal awareness of people and conduct legal education to the public.

13. Please describe recent initiatives which made services accessible through the use of technology. If self-help services are available, please comment on the effectiveness of these services.

The NLAA has been building a national data base to manage and coordinate resources (both human and financial resources) for various regions and localities nationwide.

14. Please describe the difficulties encountered by your country (or organization) in promoting legal aid work in the recent years, and the strategies for responding to these difficulties.

In recent years, legal aid system have been facing some difficulties as (1) legal aid normative documents have appeared some drawbacks; (2) the structure of current legal aid apparatus is applied throughout the country without taking into account local specifics of different areas and regions; (3) several PLACs, other than focusing on performing legal aid cases, particularly on participation in the legal proceedings, just pay attention to communications and legal clinics or legal aid club activities; (4) budget from the Government is not enough for sustainable development of legal aid in Vietnam.

To deal with these difficulties, the NLAA is drafting a Reform Project to submit to the Prime Minister. The Project focus on: (1) accelerating the socialization of legal aid activities with appropriate and feasible mechanisms to leverage all the social resources available and engage mass-organizations forces particularly lawyers in carrying out legal aid activities; (2) maintaining the role of the State in managing, attracting and coordinating resources (both human and financial resources) for various regions and localities nationwide, in ensuring a certain proportion of the annual State budget for legal aid activities is set aside to coordinate the performance of cases particularly participation in the legal proceedings and beyond-proceedings representation; (3) doing pilot scheme (in term of legal aid model, activities and financial mechanism) to propose to draft Law amending the Law on Legal Aid (2015 - 2016).

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15. Has your country (or organization) established any mechanisms of co-operation with legal aid organizations abroad?

According to the Law on Legal Aid, the NLAA has the function to cooperate with legal aid organizations abroad. Since 1997, the NLAA have been cooperating with nearly 20 international organizations and countries in the world through international cooperation projects, cooperation activities or visits⁶. The content of cooperation focus on sharing international legal aid experiences; supporting finance and facilities to legal aid organizations and activities; providing technique assistants to strengthen the ability of legal aid providers...

16. How does your country (or organization) adopt United Nations legal aid principles and guidelines in policies and services?

Although Vietnam has not announced official statement to adopt the United Nations legal aid principles and guidelines, many principles are implemented. Vietnam performs rights and obligations of the member of 08 international conventions relating to human rights, especially the CCPR, the CESCR and the CRC⁷.

To fulfill all principles in this document, the recent years, Vietnam has been conducting a lot of important judicial reforms. The Constitution 2013 regulates the right to be defended of arrestees, accused (Clause 4 Article 31), the right of protection of legitimate rights and interests of parties in proceedings (Clause 4 Article 103) and the principle of institute proceedings against is guaranteed in trials (Clause 5 Article 103). In addition, the Central Steering Committee of Judicial Reform of Communist Party has just summarized 8-year implementation of the Strategy of Judicial Reform to 2020. One of directions is increasing the percentage of lawyers to participate in criminal courts (from 20% to 30 - 40% at the first instance). Based on this direction, the Criminal Proceedings Code is amended and supplemented with direction to have lawyers in all criminal cases of over-15-year imprisonment...

⁶ Oxfam Novib - the Netherlands; Swiss Agency for Cooperation and Development (SDC); The Swedish International Development Agency (Sida); Save the Children, Sweden (SCS); European Union; New Zealand Agency for International Development (NZAID); Asia Foundation; Denmark Human Rights Institute (DHRI); International Organization for Migration (IOM); United Nation Development Program (UNDP); United Nation Office on Drugs and Crime (UNODC); United Nation Children Foundation (UNICEF); the Government of Denmark, Sweden, Ireland, Hungary, United State...

⁷ CCPR - International Covenant on Civil and Political Rights (24/8/1982); CEDAW - Convention on the Elimination of All Forms of Discrimination against Women (17/02/1982); CERD - International Convention on the Elimination of All Forms of Racial Discrimination (09/06/1982); CESCR - International Covenant on Economic, Social and Cultural Rights (24/9/1982); CRC - Convention on the Rights of the Child (28/02/1990); CRPD - Convention on the Rights of Persons with Disabilities (22/10/2007); CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (22/12/2001); CRC-OP-SC - Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (20/12/2001).