



Pro Bono Practices and Opportunities in Vietnam¹

INTRODUCTION

The Socialist Republic of Vietnam (“**Vietnam**”) is a socialist country under the leadership of the Communist Party.² Since 1986 and the launch of the *Doi Moi* (Open Door) policy, Vietnam has implemented certain economic and political reforms that have helped it in its path towards greater international integration, including advancements in the legal sphere.³

When compared to the culture of pro bono work of other countries like the United States or the United Kingdom, Vietnam’s pro bono culture is still very much in its infancy. However, important legal developments have taken place which will hopefully pave the way for greater development of the practices of both legal aid and pro bono.

OVERVIEW OF LEGAL SYSTEM

The Justice System

Constitution and Governing Laws

The current constitution of Vietnam was adopted in 2013 and is the fifth constitution adopted by the Vietnamese National Assembly since Vietnam became independent in 1945. As the document with the highest legal authority, “it sets out the structure of the legal and political system, such as the relationship between the governing institutions, as well as the relationship between the institutions and the people.”⁴

The National Assembly is the highest authority responsible for lawmaking activities and is also the country’s representative and legislative body.⁵ The Government is the executive body of the National Assembly and the highest administrative body of the State.⁶ At a local level, the People’s Committees act as the executive arm of the provincial government.⁷

The Courts

Levels, Relevant Types & Locations

Under the Vietnamese judicial system, there are the People’s Courts and organizations for economic arbitration.⁸ The People’s Courts are made up of the Supreme People’s Court, the Superior People’s Courts, the Provincial Courts, the District Courts and the Military Courts.⁹

¹ This chapter was drafted with the support of the Vietnam International Law Firm, Yana Georgieva and Kaiyan Yeo.

² The Constitution of the Socialist Republic of Vietnam of the National Assembly dated November 28, 2013, art. 2 and art. 4 (the “**Constitution**”).

³ Vietnam is now a member of various international organisations including the United Nations, the Association of Southeast Asian Nations and the World Trade Organisation.

⁴ International Bar Association, How to qualify as a lawyer in Vietnam (2011), available at http://www.ibanet.org/PPID/Constituent/Student_Committee/qualify_lawyer_Vietnam.aspx (last visited on September 4, 2015).

⁵ The Constitution, art. 69.

⁶ The Constitution, art. 94.

⁷ The Constitution, art. 114.

⁸ Law on organization of the People’s Courts of the National Assembly dated November 24, 2014 (62/2014/QH13) (“**Law on organization of the People’s Courts**”), art. 3, and Law on Commercial Arbitration of the National Assembly dated June 17, 2010 (54/2010/QH12) (“**Law on Commercial Arbitration**”).



Each administrative district of the country has a District Court that functions as a court of first instance for most domestic civil and criminal cases.¹⁰ A Provincial Court is located in each province of Vietnam and functions mainly as a court of appeal for cases held by the District Court, whilst also adjudicating as a court of first instance for cases which do not fall within the jurisdiction of the District Courts. The Supreme People's Court is the highest judicial body and reviews under cassation (*giám đốc thẩm*) or reopens judgments or decisions of lower courts that may have acquired legal force but have been appealed because of procedural violations.¹¹ It consists of a judicial council, the assisting apparatus and training institutions.¹² The judicial council may conduct trial under cassation or reopen procedures with a trial panel composed of five judges or all judges of the Supreme People's Court.¹³

Traditional means of informal dispute resolution continue to be used outside of the judicial process, and are often encouraged by law. One such area in which conciliation is encouraged as a means to resolve disputes is land law.¹⁴ If such informal dispute resolution fails, the parties may send a petition to the People's Committee at the commune level of the locality where the disputed land is located for reconciliation. In the process of conciliation,¹⁵ the parties need to coordinate with the Vietnam Fatherland Front Committee at the commune level and its member organizations and other social organizations.¹⁶

Appointed and Elected Judges

The judges of the Supreme People's Court are appointed by the National Assembly on the proposal of the Chief Justice of the Supreme People's Court for a term of five years.¹⁷ The Chief Justice of the Supreme People's Court is elected by and accountable to the National Assembly.¹⁸ The judges of the District and Provincial Courts are appointed by the President, other than those that are appointed by the Chief Justice of the Supreme People's Court¹⁹ based on the suggestion of the National Council for Judge Selection and Supervision.²⁰

At the levels of the District and Provincial Courts, aside from judges, people's assessors also adjudicate and have equal rights to the judges.²¹ These lay assessors are elected by the competent People's Council at the recommendation of the Fatherland Front Committee.²²

The Practice of Law

Education

Legal education is undertaken at university where one can receive a bachelor's diploma in law. However, only a small number of law graduates pursue a career as lawyers. Critics of legal training in Vietnam say that the system needs an overhaul as it places a greater emphasis on theoretical learning and bypasses

⁹ Law on organization of the People's Courts, art. 3.

¹⁰ Law on organization of the People's Courts, art. 44.

¹¹ Law on organization of the People's Courts, art. 20.1.

¹² Law on organization of the People's Courts, art. 21.1.

¹³ Law on organization of the People's Courts, art. 23.1.

¹⁴ Law on land of the National Assembly dated November 29, 2013 (45/2013/QH13) ("**Land Law**"), art. 202.1.

¹⁵ Land Law, art. 202.2.

¹⁶ Land Law, art. 202.3.

¹⁷ Law on organization of the People's Courts, art. 27.7.

¹⁸ Law on organization of the People's Courts, art. 26.1.

¹⁹ Law on organization of the People's Courts, art. 27.8.

²⁰ Law on organization of the People's Courts, art. 70 and 71.

²¹ Civil Procedure Code of the National Assembly dated June 15, 2004 (24/2004/QH11), art. 11.

²² Law on organization of the People's Courts, art. 86.1.



the development of practical skills required for lawyers like legal analysis, drafting and advising clients.²³ The stated goal for 2020 is to improve the university education system to meet the people's learning needs and the country's modernization requirements.

Licensure

Practising law in Vietnam requires a bachelor's diploma in law, attendance at a lawyers' training course certified by the Vietnam Judicial Academy and a 12 month period of practical training at a law firm.²⁴ All lawyers must receive a certificate issued by the Ministry of Justice and be admitted to the Bar in the place of their practice.²⁵

Foreign lawyers may practise in Vietnam if they are granted a permit for professional practice in Vietnam by the Ministry of Justice.²⁶ The process involves the submission of a written request to the Ministry of Justice for a practising license in Vietnam which should enclose, among other things, the foreign lawyer's practising certificate, his/her brief resume and certification that he/she was appointed to practise or recruited to work in Vietnam.²⁷

Demographics: Number of Lawyers per Capita

Vietnam has a population of 94.3 million individuals with 9,436 lawyers, and more than 3,500 trainee lawyers as of March 31, 2015.²⁸

Legal Regulation of Lawyers

The Ministry of Justice and the local Bar Association in each province regulate the legal profession in Vietnam. The Vietnam Bar Federation is the national Bar Association to which the local Bars are affiliated.²⁹ Lawyers are permitted to (i) participate in legal proceedings as defense counsels or representatives or defenders of legitimate rights and interests of claimants; (ii) providing legal consultancy; and (iii) representing clients beyond legal proceedings so as to carry out related legal tasks.³⁰ Nearly all provinces host a Bar Association and Provincial Associations which are established after consideration by the Ministry of Justice and decision by the People's Committee.³¹

LEGAL RESOURCES FOR INDIGENT PERSONS & ENTITIES

Right to Legal Assistance

Vietnam has signed and ratified human rights treaties including the International Covenant on Civil and Political Rights (1969) (the "ICCPR"), the International Covenant on Economic, Social and Cultural Rights (1976), the International Convention on the Elimination of all forms of Racial Discrimination, the Convention on the Elimination of all forms of Discrimination Against Women, and the Convention on the

²³ UNDP National Consultant, Final Report: Assessment of Clinical Legal Education Program Law Training Institution in Vietnam at 3, (September 2014), Ha Noi, Vietnam. (hereinafter "UNDP Report"), available at https://www.babseacle.org/?attachment_id=7569 (last visited on September 4, 2015).

²⁴ Law on Lawyers of the National Assembly dated June 29 2006 (65/2006/QH11) ("**Law on lawyers**"), art. 10, and Circular on law practice probation of the Ministry of Justice dated November 28, 2013 (19/2013/TT-BTP), art. 6.1

²⁵ Law amending and supplementing a number of articles of the Law on Lawyers of the National Assembly dated November 20, 2012 (20/2012/QH13) ("**Law amending the Law on Lawyers**"), art. 1.8.3.

²⁶ Law amending the Law on Lawyers, art. 1.31.1.

²⁷ Law amending the Law on Lawyers, art. 1.31.4.

²⁸ Ministry of Justice (2015), The Second National Lawyers' Congress, (April 16, 2015), available at http://moj.gov.vn/btp/News/Lists/ttls/View_Detail.aspx?ItemID=506 (last visited on September 4, 2015).

²⁹ Law on Lawyers, art. 64.1, and Law amending the Law on Lawyers, art. 1.37.

³⁰ Law on lawyers, art. 22.

³¹ Law amending the Law on Lawyers, art. 1.21.1 and 1.21.2.



Rights of the Child. The right to legal aid is an important right regulated in ICCPR, and is stipulated in Article 14.3.d.

Since 1945, legal aid organizations in Vietnam have been introduced based on the constitutional principle that “the power belongs to the people.” From 1946 to 1987, legal aid was regarded as a subset of administrative and jurisdiction services, and Bar Associations in each province allowed lawyers to provide legal aid. However, there still remained a lack of legal aid services. As a result, the National Legal Aid Agency and Provincial Legal Aid Centers were established in 1997.³²

The National Legal Aid Agency of Vietnam is a body established under the Ministry of Justice that performs an advisory function to the Minister in connection with the state wide management of legal aid.³³ The Agency’s responsibilities include, among other things, formulating the strategy and national master plan for legal aid development and organizing the implementation of these objectives.³⁴ Legal aid in Vietnam extends to diverse fields such as civil and criminal proceedings, as well as family and children, administrative and employment law.³⁵

State-Subsidized Legal Aid

Eligibility Criteria³⁶

Legal aid beneficiaries include the poor³⁷, specifically those individuals in urban areas, with an average income of VND 500,000³⁸ / person / month (VND 6,000,000 / person / year) or less. In rural areas, those households with an average income of VND 400,000³⁹ / person/ month (VND 4,800,000 / person / year) or less are also eligible for legal aid.

In addition to those in financial need, there are a number of preferential groups of individuals who are also eligible for legal aid. These groups include:

- Revolutionary activists before the uprising of August 19, 1945, war heroes and their families and persons awarded military titles;⁴⁰
- Senior citizens aged 60 or older who live without a network of support;⁴¹
- Disabled people,⁴²
- Individuals exposed to toxic chemicals or those that are HIV positive who live without a network of support;
- Children under 16 years of age who live without a network of support;⁴³

³² Decision on establishing legal aid organizations for poor people of the Prime Minister dated September 6, 1997 (734/TTg) (“**Decision 734**”).

³³ Decision 734, art. 1.

³⁴ Decision 734, art. 2.

³⁵ Law on Legal Aid of the National Assembly dated June 29, 2006 (69/2006/QH11) (“**Law on Legal Aid**”), Ch 5, s. 1.

³⁶ Decree detailing and guiding the implementation of the Law on Legal Aid of the Government dated January 12, 2007 (07/2007/ND-CP) (“**Decree 07/2007**”), art. 2, and Decree on amending and supplementing Decree 07/2007 of the Government dated February 5, 2013 (14/2013/ND-CP) (“**Decree 14/2013**”), art. 1.

³⁷ Decree 07/2007, Article 2.1.

³⁸ Decision on setting the poverty line in respect of poor households and households in danger of falling into poverty for the period 2011-2015 of the Prime Minister dated January 30, 2011 (09/2011/QĐ-TTg) (“**Decision 09/2011**”), art. 1.2. Roughly the equivalent of USD 23.00.

³⁹ Decision 09/2011, art. 1.1.

⁴⁰ Decree 07/2007, art. 2.2 and Decree 14/2013, art. 1.1.2.

⁴¹ Decree 14/2013, art. 1.1.3.

⁴² Decree 14/2013, art. 1.1.4.



- Ethnic minorities who live in areas with particular economic or social difficulties;⁴⁴
- Others who are beneficiaries of legal aid pursuant to international treaties to which Vietnam is a member;⁴⁵ and
- Victims of human trafficking⁴⁶

Assignments to Legal Aid Matters

Assignments to legal aid matters are on a voluntary basis. To be eligible to assist with legal aid, a person must fulfill, among other things, the following criteria:⁴⁷

- have full capacity for civil acts and be of good moral character;
- hold a bachelor of law degree;
- have a certificate of legal aid training;
- have at least two years' legal work experience; and
- be physically fit to ensure the fulfilment of assigned tasks.

Legal aid practitioners may obtain a salary pursuant to the salary bands of civil servants as prescribed by law and may be reimbursed for travel fees.⁴⁸

Unmet Needs & Access Analysis

Lack of comprehensive documentation and reporting means that it is unclear whether the current state-subsidized legal aid scheme adequately meets the needs of indigent and marginalized individuals and NGOs. However, comparing Vietnam's number of lawyers per capita against that of other countries, it is likely that the current legal aid scheme is not sufficient to service the needs of the people.

Alternative Dispute Resolution – Mediation & Arbitration

Legal aid organizations can assign their staff to mediate between parties in a dispute to avoid sending cases to the courts or other agencies. When required, mediation can be carried out to avoid community strife, to maintain public order and security, and to protect the lawful rights and interests of legally aided persons.

The Arbitration Law states that disputes arising from “commercial activities,” disputes where at least one party is engaged in commercial activities, and other disputes where the law stipulates that arbitration is a permissible means of resolution may be resolved through arbitration.⁴⁹

PRO BONO ASSISTANCE

Pro Bono Opportunities

Although the obligation for lawyers to work on a pro bono basis is enshrined in law⁵⁰, the concept of pro bono assistance is still in its infancy in Vietnam. There are opportunities for private attorneys, law firms

⁴³ Decree 07/2007, art. 2.5.

⁴⁴ Decree 07/2007, art. 2.6.

⁴⁵ Decree 14/2013, art. 1.1.7.

⁴⁶ Decree 14/2013, art. 1.1.8.

⁴⁷ Law on Legal Aid, art. 21.

⁴⁸ Decree 07/2007, art. 26, and Decree 14/2013, art. 1.9.

⁴⁹ Law on Commercial Arbitration of the National Assembly dated June 17, 2010 (54/2010/QH12), art. 2.



and in-house counsel to get involved with pro bono work but this is largely dependent on the initiative of the particular attorney, law firm or legal department.

Private Attorneys

Examples of private attorneys engaging in pro bono work range from those who continue to assist with legal proceedings and waive their fees when it becomes clear that their clients can no longer afford to pay⁵¹, to those who provide free legal advice in newspaper columns to readers on topics of interests.⁵²

Law Firm Pro Bono Programs

A foreign law firm may provide pro bono assistance in Vietnam as part of its global pro bono project. DLA Piper's Capacity Building workshop for NGOs in Vietnam is one such example.⁵³ In partnership with ActionAid, DLA Piper delivered a two-day training course to NGOs in Vietnam covering training on risk management and time management.

Locally, there are instances of law firms extending pro bono service to clients who fulfill the criteria for legal aid beneficiaries – see for example the website of Dragon Law Firm which sets out the firm's commitment to providing pro bono services in the form of free representation and legal advice, as well as provision of free legal texts to legal aid beneficiaries.⁵⁴ It is also common for law firms to provide pro bono services as part of the celebrations connected with Vietnam Lawyer's day held on October 10th annually.⁵⁵

Legal Department Pro Bono Programs

Similarly, legal departments of large companies may also organize projects undertaken on a pro bono basis, such as IBM's CLE workshops for Vietnamese university students.⁵⁶ This program consists of IBM in-house lawyers preparing and leading clinical legal education classes for Vietnamese university students in five Vietnamese universities, including the National Economics University of Viet Nam. The program's success has led to the incorporation of the program into some of the universities' official syllabi.

NGOs

Organizations such as Bridges Across Borders Southeast Asia Community Legal Education Initiative (BABSEA CLE) work with universities, law students, law faculties and members of the legal community to

⁵⁰ Law on Lawyers, art. 21.2(d), and Law amending the Law on Lawyers, art. 1.37, and Decree on the implementation of the Law on Lawyers of the Government dated October 14, 2013 (123/2013/ND-CP), Article 3.1.

⁵¹ BBC (2015), Vietnamese lawyers do not only counsel in return for fees, (October 28, 2014), available at http://www.bbc.com/vietnamese/vietnam/2014/10/141028_lawyers_reaction_mp_vn (last visited on September 4, 2015).

⁵² Luat Su Ngay Nay (2013), Free Legal Advice (September 2014), available at <http://luatsungaynay.vn/news/Tu-van-phap-luat/Tu-van-phap-luat-mien-phi-so-9-2014-766/> (last visited on September 4, 2015).

⁵³ DLA Piper (2015), Capacity Building for NGOs in Vietnam, available at <http://www.dlapiperprobono.com/what-we-do/work/pro-bono/capacity-building-ngo-vietnam.html> (last visited on September 4, 2015).

⁵⁴ Dragon Law Firm (2015), Dragon Law Firm – Legal aid (April 2010), available at <http://www.vanphongluatsu.com.vn/cong-ty-luat-dragon-tro-giup-phap-ly/> (last visited on September 4, 2015).

⁵⁵ Trung Nguyen Law Firm (2015), Trung Nguyễn Law Firm participated in free legal advice week to celebrate Vietnam Lawyer's day (September 2014), available at <http://www.luattrungnguyen.vn/2014/09/cong-ty-luat-tnhh-trung-nguyen-tro-giup.html> (last visited on September 4, 2015).

⁵⁶ BABSEA CLE (2015), IBM's Pro Bono Work in Viet Nam, available at <https://www.babseacle.org/articles/ibms-pro-bono-work-in-viet-nam/> (last visited on September 4, 2015).



develop CLE programs to assist communities, provide legal aid services and increase awareness of social justice and pro bono initiatives.⁵⁷

Bar Association Pro Bono Programs

Bar Associations in Vietnam have, in the past, set up pro bono programs which are usually organized as part of the celebrations connected with Vietnam Lawyer's day, a day dedicated to recognizing the achievements of the Vietnamese legal profession. These programs often involve members of the relevant Bar Association dedicating one day of pro bono work advising individuals and organizations on matters such as property reclamation and compensation, as well as initiating legal proceedings.⁵⁸ Other pro bono programs may involve lawyers introducing and explaining the impact of significant legislation relating to the rights and interests of the Vietnamese citizen. One recent example involved the Bar Association of Ha Tinh province, whose delegation introduced and explained important statutes to more than 100 inhabitants of Đức Lĩnh commune, Vũ Quang district.⁵⁹

University Legal Clinics & Law Students

Law clinics have been set up at a number of universities throughout the country including, Ho Chi Minh City University of Law, Can Tho University, University of Economics and Law, Hue University and National Economic University. The services provided primarily include in-house legal counselling that allow students a platform to provide legal teaching to communities in need.⁶⁰

Historic Development & Current State of Pro Bono

Historic Development of Pro Bono

Before legislation regarding the practise of law and lawyers was put in place in the form of the Law on Lawyers, the involvement of lawyers in pro bono work was voluntary. Lawyers' involvement was inconsistent and limited to the provision of legal advice at Bar Association events, in certain legal newspapers, local radio and/or television programs with some work at legal aid centers.

Current State of Pro Bono including Barriers and Other Considerations

After the Law on Lawyers came into effect, legislation clearly stipulated that lawyers were obligated to do pro bono work and that pro bono work is an integral part of a lawyer's practice. The Law on Lawyers also provided certain guidance on the quality of service to be provided by the lawyer including, among other things, ensuring that a pro bono client be treated the same way as other fee paying clients.

As to future considerations, suggestions as to how pro bono practices in Vietnam could be developed further include the request (i) that the Vietnam Bar Federation implements guidance for the various Bar Associations and other legal practising organizations on legal aid and pro bono work, including recognizing achievements of pro bono practitioners; and (ii) for greater coordination between the state

⁵⁷ BABSEA CLE (2015), Our Mission & Goals, available at <https://www.babseacle.org/our-mission-goals/> (last visited on September 4, 2015).

⁵⁸ Vietnam Bar Federation (2010), Hanoi Bar Association provides free legal advice to citizens (April 2014), available at <http://liendoanluatsu.org.vn/vi/gioi-thieu/Ky-niem-Ngay-truyen-thong-Luat-su-10-10-1945-10-10-2013/Doan-Luat-su-Ha-Noi-tu-van-mien-phi-cho-nguoi-dan-19/> (last visited on September 4, 2015).

⁵⁹ Vietnam Bar Federation (2010), Ha Tinh Province Bar Association provides free legal advice to citizens in remote regions (July 2015), available at <http://liendoanluatsu.org.vn/vi/news/Doan-luat-su/Doan-luat-su-tinh-Ha-Tinh-tro-giup-phap-ly-mien-phi-cho-nguoi-dan-vung-sau-vung-xa-1095/> (last visited on September 4, 2015).

⁶⁰ UNDP Report, supra n 22. at 37-39.



legal aid centers and the various Bar Associations in order to encourage lawyers to become involved in legal aid and pro bono work.⁶¹

Laws & Regulations Impacting Pro Bono

The following are the laws that may impact pro bono services in Vietnam:

- *Law on Lawyers* – covering, among other things, the practise of law, rights and obligations of law practising organizations and socio-professional organizations of lawyers, legal training and encouragement of pro bono work;
- *Law amending the Law on Lawyers* – covering, among other things, the obligation of a lawyer to provide legal aid;
- *Law on Legal Aid* – covering, among other things, legal aid beneficiaries, legal aid providing organizations, persons, services and management of legal aid;
- *Decree 07/2007* – covering, among other things, the implementation of the Law on Legal Aid;
- *Decree 14/2013* – covering, among other things, the implementation of Decree 07/2007.

Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

Obstacles which hinder access to justice include the nascent legal aid system, the shortage of lawyers, a lack of understanding by citizens of their legal rights and the role of lawyers in civil society.⁶²

Pro Bono Resources

Entities engaged in pro bono are:

- Vietnam Legal Aid <http://legalaid.gov.vn/> (last visited on September 4, 2015)
- Bridges Across Borders Southeast Asia Community Legal Education Initiative <https://www.babseacle.org/articles/ibms-pro-bono-work-in-viet-nam/> (last visited on September 4, 2015)
- Vietnam Bar Federation <http://liendoanluatsu.org.vn/vi/> (last visited on September 4, 2015)

CONCLUSION

Although still in its infancy, pro bono legal work is continuing to gain increasing importance in Vietnam and is supported by the development of the Law of Lawyers which sets out the obligation of lawyers to be involved in legal aid / pro bono work. Greater coordination is required between the legal aid agencies of the state and the Bar Associations, but so far the signs are promising.

September 2015

Pro bono Practices and Opportunities in Vietnam

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text

⁶¹ Vietnam Bar Federation (2010), Legal aid activities of Vietnamese lawyers and some solutions (January 2014), available at <http://liendoanluatsu.org.vn/vi/news/Dien-dan-44/Thuc-tien-hoat-dong-tro-giup-phap-ly-mien-phi-cua-luat-su-Viet-Nam-va-mot-so-giai-phap-382/> (last visited on September 4, 2015).

⁶² Japan Federation of Bar Association (2015), Information Sheet Vietnam at 13, available at http://www.nichibenren.or.jp/library/ja/bar_association/word/data/Vietnam.pdf (last visited on September 4, 2015).