



Pro Bono Practices and Opportunities in Malaysia¹

INTRODUCTION

While robust government-sponsored legal aid and pro bono initiatives operate throughout Malaysia for litigation matters, there is no central clearinghouse for the coordination of pro bono efforts by private practitioners. Moreover, the representation of pro bono clients before Malaysian courts is limited to Malaysian-barred attorneys. However, in light of the generally unregulated nature of legal practice in Malaysia, pro bono opportunities are available either through NGOs or private initiatives and alliances, be it in the direct provision of, engagement in or creation of pro bono services and programs.

OVERVIEW OF THE LEGAL SYSTEM

Malaysia is a constitutional monarchy, operating through dual federal and state governmental systems, while adhering to a common law legal system. Federal laws apply throughout its 13 states and three federal territories, while matters that are local by nature are governed by applicable state laws.²

The Justice System

The Malaysian Constitution, dated August 31, 1957, is considered the highest law of the land. The Constitution sets forth the government structure and guarantees fundamental rights to its citizens, including the right to life, liberty, equality, and freedom of religion. The Constitution is unique in providing a dual justice system of secular (criminal and civil) and sharia laws.

The jurisdiction of Malaysian courts is set forth under the Subordinate Courts Act 1948 and the Courts of Judicature Act 1964.³ Courts are divided into two levels; the Superior Courts and the Subordinate Courts.

The Superior Courts consist of the Federal Court, the Court of Appeal and two High Courts. The Federal Court of Malaysia is the court of highest judicial authority, hearing cases on appeal from the Court of Appeal. The Court of Appeal hears cases on appeal from the High Court relating to both civil and criminal matters. Third in hierarchy of the Superior Courts are the two High Courts; the High Court in Malaya and the High Court in Sabah and Sarawak, which pursuant to Article 121 of the Constitution, are of co-ordinate status and jurisdiction, hearing criminal and civil cases, along with cases on appeal from the Magistrate and Session Courts.⁴

The Subordinate Courts in each of Peninsular Malaysia and Sabah and Sarawak, in order of hierarchy, consist of the Sessions Court and the Magistrates' Courts, having jurisdiction over certain civil and criminal cases.⁵ Jurisdiction and related matters concerning these courts are governed by the Subordinate Courts Act 1948 (revised 1972).

According to Section 74 of the Court of Judicature Act 1964, every proceeding in the Federal Court shall be heard and disposed of by three judges or such greater uneven number of Judges as the Chief Justice may in any particular case determine. Currently, the Federal Court typically sits with a quorum of five judges, which includes the Chief Justice of Malaysia (head of the judiciary), the President of the Court of

¹ This chapter was drafted with the support of Zaid Ibrahim & Co.

² See INTRODUCTION TO MALAYSIA LEGAL SYSTEM, available at http://www.nyulawglobal.org/globalex/Sources_Law_Malaysia1.htm (last visited on September 4, 2015).

³ INSTITUTE OF DEVELOPING ECONOMIES, THE MALAYSIAN LEGAL SYSTEM, LEGAL PRACTICE & LEGAL EDUCATION (March 2001), available at <http://www.ide-jetro.jp/English/Publish/Download/Als/pdf/04.pdf> (last visited on September 4, 2015).

⁴ Id.

⁵ Id; see also HIERARCHY STRUCTURE, MALAYSIAN LEGAL SYSTEM HIERARCHY, available at <http://www.hierarchystructure.com/malaysian-legal-system-hierarchy/> (last visited on September 4, 2015).



Appeal, the Chief Judge of Malaya, and the Chief Judge of Sabah and Sarawak. According to Section 38 of Court of Judicature Act 1964, every proceeding in the Court of Appeal shall be heard and disposed of by three Judges or such greater uneven number of Judges as the President may in any particular case determine. A typical sitting in the Court of Appeal will comprise of three judges.⁶ Yang di-Pertuan Agong, the king of Malaysia, appoints judges to all levels of the Superior Courts' judiciary, on the advice of the Prime Minister and after consulting with the Council of Rulers (a council comprising of rulers of the Malay states and the governors of the four other states). Judicial and legal services are operated by the Judicial and Legal Commission (consisting of the Chairman of the Public Services Commission, the Attorney General, along with members of the judiciary of the Federal Court, the Court of Appeal and the High Court). The Attorney General is head of the Attorney General's Chambers, a department within the Judicial and Legal Services of the Malaysian Federation.⁷ Court rulings are reported through three major reports: the *Malayan Law Journal*; the *Current Law Journal*; and all *Malaysia Reports*.⁸

The Practice of Law

Attorneys practicing in the federal government sector are regulated through the Judicial and Legal Service Commission. However, in the private sector, the legal profession does not have an overarching governmental regulatory body. Instead, private practice is governed through three main bar associations: (i) the Bar Council of Malaysia of Peninsular Malaysia (the "**Bar Council**"); (ii) the Sabah Law Association of Sabah; and (iii) the Advocates' Association of Sarawak for attorneys in the Sarawak state. Members of one particular bar may practice only in their respective jurisdiction, and may not practice in other locations.⁹

As of 2014, there were a total of 7,058 law firms operating throughout West Malaysia, and a total of 16,450 practicing attorneys registered with the Bar Council.¹⁰ There are currently 1,250 attorneys on the Bar roll of Sarawak¹¹ and approximately 260 law firms¹² in the Sarawak state. The Sabah Law Association records the presence of 209 firms in the State but does not presently list the total number of practitioners. The Bar Council, created under the purview of the Legal Profession Act of 1976 is an independent bar. To be admitted as an advocate and solicitor, one must either be a citizen or resident of Malaysia and obtain a law degree from a recognized law school, along with meeting other requirements set forth under the Legal Profession Act of 1976 ("**LPA**"),¹³ which includes showing that s/he is a "qualified person"¹⁴ and passing the bar exam. From an educational standpoint, the Bar Council

⁶ The Constitution further requires 47 judges in the Malaya High Court and 10 judges in the Sabah and Sarawak High Court, among others. See THE JUDICIARY, available at http://d-arch.ide.go.jp/idedp/IAL/IAL000400_003.pdf (last visited on September 4, 2015).

⁷ Supra n.3, at 14-16.

⁸ See BAR COUNCIL LIBRARY, available at http://www.malaysianbar.org.my/bar_council_library.html (last visited on September 4, 2015).

⁹ See INFORMATION SHEET – MALAYSIA, available at http://www.nichibenren.or.jp/library/ja/bar_association/word/data/Malaysia.pdf (last visited on September 4, 2015).

¹⁰ THE MALAYSIAN BAR, STATISTICS – NO. OF LAWYERS AND LAW FIRMS, available at http://www.malaysianbar.org.my/statistics_no_of_lawyers_and_law_firms.html (last visited on September 4, 2015).

¹¹ ADVOCATES' ASSOCIATION OF SARAWAK, Rolls, available at <http://sarawak-advocates.org.my/index.php/rolls-a-directories/rolls> (last visited on September 4, 2015).

¹² ADVOCATES' ASSOCIATION OF SARAWAK, Legal Firms, available at <http://sarawak-advocates.org.my/index.php/rolls-a-directories/legal-firms> (last visited on September 4, 2015).

¹³ Supra n.9, at 6-10.

¹⁴ To become a "qualified person," one must either (1) complete a final examination leading to the degree of Bachelor of Laws from one of the listed universities; (2) become a barrister-at-law of England; or (3) be a person



recognizes graduates from Singapore, England, Australia and New Zealand, as equally as graduates from Malaysian law schools.¹⁵ An advocate and solicitor, however, must be a citizen or permanent resident of Malaysia.¹⁶

The Malaysian system does not distinguish between barristers and solicitors; advocates and solicitors practicing in Peninsular Malaysia are automatically considered members of the Malaysian Bar if they hold a valid practicing certificate. Moreover, the Malaysian legal system, generally, does not have stringent regulations for the practice of foreign attorneys, and leaves the practice of in-house counsel unregulated.¹⁷

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

Criminal Defense

With respect to criminal defense work, four initiatives are available to practitioners:

Legal Aid Bureaus.

The Malaysian government offers legal aid pursuant to the Legal Aid Act of 1971 through its Legal Aid Bureaus. In criminal defense matters, individuals may seek legal assistance (free or subsidized representation and advice) through the Legal Aid Bureaus if they have annual income below a certain specified level (the “**Means Test**”).¹⁸ Government legal aid does not extend to criminal cases where the accused makes a request for trial, as set forth under the 2nd Schedule of the Legal Aid Act of 1978.¹⁹ Attorneys providing services through the Legal Aid Bureaus are on the payroll of the Prime Minister Department.

Criminal Defense Support.

Complimentary to the Legal Aid Bureaus’ services, the Criminal Defense Support, under the purview of the office of the Chief Justice, extends free legal representation to defendants in criminal cases, including capital punishment in the High Court.

Legal Aid Centres.

The Bar Council provides legal aid (free or subsidized representation and advice) under the LPA through its Legal Aid Centres, providing legal representation through 16 centres in Peninsular Malaysia. Legal aid is self-funded (membership dues are RM 100 per year), and requires members to do one case per year

in possession of such other qualification as may be declared by the Board to be sufficient to make such person a qualified person for the purposes of the Legal Profession Act. See supra n. 9, at 6-7.

¹⁵ Sections 10 - 19 of the LPA.

¹⁶ See GLOBALEX, AN OVERVIEW OF MALAYSIAN LEGAL SYSTEM AND RESEARCH, available at <http://www.nyulawglobal.org/globalex/Malaysia.htm> (last visited on September 4, 2015).

¹⁷ Id; foreign attorneys practicing in Peninsular Malaysia must comply with certain rules and regulations set forth under the LPA and the Legal Profession Rules 2014, see THE MALAYSIAN BAR, FOREIGN LAW FIRMS AND FOREIGN LAWYERS NOW PERMITTED TO PRACTICE IN PENINSULAR MALAYSIA, available at http://www.malaysianbar.org.my/press_statements/press_release_%7C_foreign_law_firms_and_foreign_lawyers_now_permitted_to_practise_in_peninsular_malaysia.html (last visited on September 4, 2015).

¹⁸ The Means Test limits free representation and legal advice to persons whose income does not exceed RM 25,000 per annum (USD\$8,000). Also, applicants whose yearly income is more than RM 25,000 but less than RM 30,000 (i.e. RM2, 500 per month) may be eligible for subsidized legal aid. Applicants who do not qualify for the first or second category can apply to the Director of BBG for a special exemption to obtain legal aid, subject to certain approvals and processes. See JUSTICE AUDIT MALAYSIA, available at http://malaysia.justicemapping.org/?page_id=22 (last visited on September 4, 2015).

¹⁹ LEGAL AID IN MALAYSIA: THE NEED FOR GREATER GOVERNMENT COMMITMENT, available at http://www.malaysianbar.org.my/members_opinions_and_comments/legal_aid_in_malaysia_the_need_for_great_er_government_commitment.html (last visited on September 4, 2015).



on a pro bono basis.²⁰ The Legal Aid Centres have assisted over 24,000 clients with the help of 1,400 volunteer attorneys.²¹ The Legal Aid Centres provide criminal defense services for all defendants, including cases involving capital punishment. To obtain representation, an applicant must provide proof of income and meet the Means Test.

National Legal Aid Foundation Yayasan Bantuan Guaman Kebangsaan (“NLAFF”).

NLAFF provides criminal defense legal assistance, from the point of arrest through mitigation, hearing and appeal, only to Malaysian citizens of income not exceeding RM 36,000 per annum.²²

Civil Proceedings

Legal aid organizations also extend legal aid in civil matters. For instance, the Legal Aid Department provides legal services and representation in cases pertaining to family law, workers’ compensation matters, accident cases and money-lending matters, among others. Moreover, the Bar Council operates a number of clinics to service immigrants and women, including the Legal Aid Centres Clinic and Syariah Clinic, which offer free legal advice and representation.²³ Such clinics and programs are administered by “pupils” (recently graduated attorneys who serve under the supervision of senior attorneys). All recently graduated attorneys must serve in such capacity for a period of nine months after graduation. Attorneys may volunteer to supervise and train the pupils in the provision of services. The Legal Aid Centres’ clinics provide a multitude of programs, including Women’s Aid Organisation Legal Information of Advocacy (joint program with the Women’s Aid Organisation, which provides legal advice and assistance on family matters and domestic violence issues), Tenaganita Migrant Workers Clinic (joint program with Tenaganita Migrant Worker’s Desk, which provides legal assistance and representation to migrant workers), United Nation High Commissioner for Refugees Clinic (joint program with the United Nation High Commissioner for Refugees, which provides legal advice and assistance to refugees), among others.²⁴ Additionally, Legal Aid Bureaus provide legal representation and advice for civil matters, including divorce, child custody, estate and monetary claims, as well as assistance in drafting various legal documents, for persons qualifying under the Means Test.²⁵

Mediation

The Legal Aid Bureaus²⁶ and the Jabatan Bantuan Guaman (“JBG”) offer free mediation services for qualifying persons who satisfy the Means Test with respect to family law matters, Syariah (Islamic) family

²⁰ Supra n.9 at 15-18.

²¹ SPEECH BY LIM CHEE WEE, CHAIRMAN OF THE BAR COUNCIL, AT THE OPENING OF THE LEGAL YEAR 2012 (Jan. 2012), available at http://www.malaysianbar.org.my/index2.php?option=com_content&do_pdf=1&id=3467.

²² Supra n.9, at 21-22; see also YBGK, SERVICE PROVIDED, available at http://www.ybgk.org.my/index.php?option=com_content&view=article&id=52&Itemid=57&lang=en (last visited on September 4, 2015).

²³ See BAR COUNCIL LEGAL AID CENTRE, available at www.klbar.org.my/newsletter/file/LACReport062010.pdf (last visited on September 4, 2015).

²⁴ See generally KUALA LUMPUR LEGAL AID CENTRE - PROGRAMS, available at <http://www.kllac.com/Programs.html> (last visited on September 4, 2015).

²⁵ See LEGAL AID BUREAU, WHAT TYPES OF CASES ARE HANDLED BY LAB?, available at www.klbar.org.my/newsletter/file/LACReport062010.pdf (last visited on September 4, 2015); see, e.g., LEGAL AID BUREAU (BIRO BANTUAN GUAMAN) IN MALAYSIA, available at <http://www.elawyer.com.my/blog/legal-aid-bureau-bira-bantuan-guaman-in-malaysia/> (last visited on September 4, 2015).

²⁶ MEDIATION IN MALAYSIA: IS IT FACILITATIVE, EVALUATIVE OR TRANSFORMATIVE?, available at <http://westeastinstitute.com/journals/wp-content/uploads/2014/09/2Norjihan-Ab-Aziz.pdf> (last visited on September 4, 2015).



law cases, probate matters, accident cases, hire-purchase matters, workers' compensation matters, consumers' claims, inheritance matters, money-lending matters, and tenancy matters, among others.²⁷

Unmet Needs Analysis

According to the Universal Periodic Review of 2013, as conducted by the United Nations under the auspices of the Human Rights Council, human rights violations remain a concern in Malaysia.²⁸ Legal aid initiatives have not been responsive to human rights violations primarily due to the ad hoc approach to criminal and civil legal needs.²⁹ Moreover, within the existing legal aid space, government funding is limited and utilizes stringent qualification tests (e.g., the Means Test), which inhibit persons from receiving adequate representation and equal access to the justice system.³⁰

PRO BONO ASSISTANCE

Pro Bono Opportunities and Other Considerations

Pro bono opportunities in Malaysia are pursued mainly through the Legal Aid Centres and Legal Aid Bureaus, as described above, which focus primarily on criminal defense representation. Clearinghouses and referral organizations for pro bono opportunities outside these channels have not yet been established in Malaysia. Moreover, only advocates and solicitors admitted to the Malaysian Bar are permitted to appear in Malaysian courts. As such, foreign attorneys are unable to take on any pro bono representation.

The unavailability of any established clearinghouse may make it difficult for non-local practicing attorneys to find or connect to readily-available pro bono opportunities in Malaysia. This is especially true with respect to transactional-based pro bono opportunities due to the system's focus on criminal and civil proceedings. Generally, law firms operating in Malaysia do not have widely publicized structured pro bono programs. However, where there are cases that raise issues of public interest or have an element of human rights issues in play, there will inevitably be attorneys or law firms that will volunteer to take on such cases on a pro bono basis.

Historic Development and Current State of Pro Bono

Historical development of the four main legal aid initiatives is as follows:

²⁷ See LEGAL AID DEPARTMENT, FAQ GENERAL, available at http://www.jbg.gov.my/index.php?option=com_content&view=article&id=192&Itemid=239&lang=en (last visited on September 4, 2015).

²⁸ Reported violations include restrictions on the freedoms of assembly, expression and association; arbitrary arrest and detention; excessive force and unlawful killings by security forces; torture, ill-treatment and deaths of persons in custody; abuse and non-recognition of refugees and asylum seekers. See MALAYSIA 2013 UNIVERSAL PERIODIC REVIEW SUBMISSION, available at <https://www.hrw.org/news/2013/09/03/malaysia-2013-universal-periodic-review-submission> (last visited on September 4, 2015).

²⁹ See, e.g., the UN Refugee Agency reports that "[A]sylum-seekers and refugees are treated as irregular migrants, and in the absence of any substantive engagement by the authorities, UNHCR remains the principal actor in providing international protection." 2015 UNHCR SUBREGIONAL OPERATIONS PROFILE - SOUTH-EAST ASIA, available at <http://www.unhcr.org/pages/49e4884c6.html> (last visited on September 4, 2015).

³⁰ According to the head of the Bar Commission approximately 80% of those on remand and 95% of those tried lack representation. See MALAYSIA: COURT BACKLOG AND DELAY REDUCTION PROGRAM, A PROGRESS REPORT (Aug. 2011), available at <https://openknowledge.worldbank.org/bitstream/handle/10986/16791/632630Malaysia0Court0Backlog.pdf?sequence=1> (last visited on September 4, 2015).



- The government Legal Aid Department (JBG) was founded in 1970 as the “Legal Aid Bureau.” Shortly thereafter, the Legal Aid Act of 1971 was passed as legislation, which provides legal aid grants and administers the JBG by the Prime Minister’s Legal Affairs Division. In 2010, the Legal Aid Bureau became part of the government, operating as its “Legal Aid Department.”³¹
- In 1980, the Bar Council founded a “Legal Advisory Centre” in the state of Penang, pursuant to the Legal Profession Act. The purpose of the Bar Council is to make provision for or assist in the promotion of a scheme whereby underprivileged persons may be represented by attorneys.³² The first official Legal Aid Centre opened its doors in Kuala Lumpur in 1982.³³ Shortly thereafter, the Bar Council passed a resolution in 1983, requiring all practicing attorneys to pay dues of RM 100 per year to the Bar Council, thereby enabling the Bar Council to operate as an independent and self-funded entity.
- Court-Assigned Counsel, a remnant of the World War II era, today operates under the Chief Registrar of Malaysia and only offers free representation to accused individuals who cannot defend themselves in capital offense cases. Its head office is in the Palace of Justice, Putrajaya, Malaysia.³⁴
- The NLAFF was incorporated as a charity by the Malaysian government in February 2011. The NLAFF’s objectives are to fund the provision of legal aid, enhance services to attorneys who represent those needing legal representation, determine administration guidelines for the national legal aid scheme, and operate educational programs designed to promote public understanding of rights and duties under the laws of Malaysia. Attorneys representing persons through NLAFF are paid at rates determined by the organization, and are not carried out on a purely pro bono basis.³⁵

Pro Bono Resources

For additional information or insight on the availability of established pro bono opportunities, interested attorneys may reach out to:

- The Malaysian Bar - http://www.malaysianbar.org.my/legal_aid_centres.html/ (last visited on September 4, 2015)
- Legal Aid Bureaus - <https://www.mlaw.gov.sg/content/lab/en.html> (last visited on September 4, 2015)
- Lawyers for Liberty³⁶ - <http://www.lawyersforliberty.org/a> (last visited on September 4, 2015)
- Advocates Association of Sarawak - <http://sarawak-advocates.org.my> (last visited on September 4, 2015)
- SUARAM - <http://www.suaram.net/> (last visited on September 4, 2015)
- Kuala Lumpur Legal Aid Centre - <http://www.kllac.com/> (last visited on September 4, 2015)
- UNDP Malaysia - <http://www.my.undp.org/> (last visited on September 4, 2015)
- Legal Aid Centre Programs - <http://www.kllac.com/Programs.html> (last visited on September 4, 2015)
- Legal Aid Centre Clinic and Syariah Clinic (joint clinics)
- All Women Action Society Legal Information Service
- Women’s Aid Organisation Legal Information of Advocacy

³¹ Supra n. 9, at 11 – 12.

³² Id.

³³ Id.

³⁴ Id.

³⁵ Id.

³⁶ Lawyers for Liberty is a Non-Governmental Organization that provides legal and human rights advice and representation for private individuals and organizations suffering human rights and civil liberties violations.



- Tenaganita Migrant Workers Clinic
- United Nation High Commissioner for Refugees Clinic
- Dock Brief Program

CONCLUSION

Malaysia enjoys well established government and bar sponsored litigation legal aid and pro bono systems that assist individuals in both criminal and civil matters. As such, with respect to litigation pro bono opportunities, interested attorneys are advised to reach out to the Legal Aid Centres (vis-à-vis the Malaysian Bar), which can connect practitioners with qualified individuals seeking assistance. Moreover, while there is no central clearinghouse to link private practitioners to pro bono clients, pro bono opportunities are available through NGOs and other organizations. Due to the unregulated nature of the private practice of law, attorneys have wide latitude in pioneering efforts in the private realm, and are able to initiate programs, collaborate with local attorneys and directly provide pro bono services.

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