

A Survey of *Pro Bono* Practices and Opportunities in Selected Jurisdictions

September 2010

Pro Bono Practices and Opportunities 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.

© Copyright 2010. All Rights Reserved.

Contents

<i>Pro Bono</i> Practices and Opportunities in Argentina.....	1
<i>Pro Bono</i> Practices and Opportunities in Australia	7
<i>Pro Bono</i> Practices and Opportunities in Austria	13
<i>Pro Bono</i> Practices and Opportunities in Belgium	16
<i>Pro Bono</i> Practices and Opportunities in Brazil	21
<i>Pro Bono</i> Practices and Opportunities in Chile	26
<i>Pro Bono</i> Practices and Opportunities in China	31
<i>Pro Bono</i> Practices and Opportunities in Colombia	38
<i>Pro Bono</i> Practices and Opportunities in the Czech Republic	42
<i>Pro Bono</i> Practices and Opportunities in Denmark	49
<i>Pro Bono</i> Practices and Opportunities in England & Wales	52
<i>Pro Bono</i> Practices and Opportunities in Finland.....	58
<i>Pro Bono</i> Practices and Opportunities in France	63
<i>Pro Bono</i> Practices and Opportunities in Germany	68
<i>Pro Bono</i> Practices and Opportunities in Greece	73
<i>Pro Bono</i> Practices and Opportunities in Hong Kong	78
<i>Pro Bono</i> Practice and Opportunities in Hungary	84
<i>Pro Bono</i> Practices and Opportunities in India.....	87
<i>Pro Bono</i> Practices and Opportunities in The Republic Of Ireland.....	93
<i>Pro Bono</i> Practices and Opportunities in Northern Ireland	98
<i>Pro Bono</i> Practices and Opportunities in Israel.....	103
<i>Pro Bono</i> Practices and Opportunities in Italy	110
<i>Pro Bono</i> Practices and Opportunities in Japan.....	114
<i>Pro Bono</i> Practices and Opportunities in Jordan	119
<i>Pro Bono</i> Practices and Opportunities in Kenya	126
<i>Pro Bono</i> Practices and Opportunities in Liechtenstein	129

<i>Pro Bono</i> Practices and Opportunities in Luxembourg	132
<i>Pro Bono</i> Practices and Opportunities in Mexico.....	137
<i>Pro Bono</i> Practices and Opportunities in the Netherlands.....	141
<i>Pro Bono</i> Practices and Opportunities in New Zealand	145
<i>Pro Bono</i> Practices and Opportunities in Nigeria.....	150
<i>Pro Bono</i> Practices and Opportunities in the Philippines.....	160
<i>Pro Bono</i> Practices and Opportunities in Poland.....	168
<i>Pro Bono</i> Practices and Opportunities in Romania	175
<i>Pro Bono</i> Practices and Opportunities in the Russian Federation	187
<i>Pro Bono</i> Practices and Opportunities in Scotland.....	194
<i>Pro Bono</i> Practices and Opportunities in South Africa	197
<i>Pro Bono</i> Practices and Opportunities in Spain.....	203
<i>Pro Bono</i> Practices and Opportunities in Sweden	207
<i>Pro Bono</i> Practices and Opportunities in Taiwan, R.O.C.....	212
<i>Pro Bono</i> Practices and Opportunities in Turkey	218
<i>Pro Bono</i> Practices and Opportunities in the United Arab Emirates.....	225
<i>Pro Bono</i> Practices and Opportunities in International Law	229

Foreword

This survey of *pro bono* practices and opportunities in various jurisdictions goes back to an initiative of the Pro Bono Institute and Latham & Watkins in 2005 to make information about global *pro bono* accessible. *Pro bono* refers to the legal representation of the indigent, of organizations dedicated to relieving the plight of the indigent, as well as the representation of human rights and civil liberties. The survey is part of an ongoing effort, shared by many law firms, organizations, and corporate legal departments, to promote and stimulate the growth of *pro bono* representation globally and in international settings. Its purpose is to describe, for each jurisdiction, what access-to-justice or publicly funded legal aid programs exist, what unmet needs for legal representation remain, what perceptions or culture shape the discussion of *pro bono*, and what professional-conduct laws and rules provide the framework for *pro bono* representation.

In 2005, the survey started with 11 jurisdictions, mostly in Europe. It now includes 43 jurisdictions in Europe, Asia and the Pacific region, the Americas, Africa, and the Middle East. As the interest in global *pro bono* has grown, and this survey with it, the conversation about global and international *pro bono* has shifted. Two or three years ago the focus was on issues of permissibility and compatibility with the local legal system. Today the focus is practical: *pro bono* has gained in acceptance and the question is how, not whether, *pro bono* representations can be undertaken. The developments have been genuinely exciting.

In 2010, many lawyers from the 30 offices of Latham & Watkins around the globe have updated the information for almost all jurisdictions (and added an additional jurisdiction, *i.e.*, Greece).

This survey is a work in progress. We will continue to update the existing chapters and to add new jurisdictions. In South America, in particular, we intend to add new surveys in the coming months. Please feel free to send suggestions of additional jurisdictions that you would like to be added to this survey (please direct your requests to: gianni.destefano@lw.com).

While we have worked, to the extent possible, with local counsel and NGOs to provide information that is both current and accurate, we realize that errors and omissions are unavoidable. The survey is therefore a work in progress in this sense as well. Please send us your feedback and comments to help us improve future versions.

We owe a debt of gratitude to Esther Lardent and Tammy Taylor of the Pro Bono Institute, with whom we have collaborated on this project. The survey is the effort of a large team, involving not only many lawyers at Latham & Watkins, but also local counsel, in-house lawyers, and NGOs around the globe. We are grateful for their contributions and their time. It is our hope that this survey will encourage lawyers everywhere, both in law firms and legal departments, to become active in *pro bono* representations to address the unmet legal needs of those with limited means.

Amos Hartston / Gianni De Stefano / Wendy Atrokhov / Danielle Lackey
September 2010

PRO BONO PRACTICES AND OPPORTUNITIES IN ARGENTINA

The Argentine legal system has long provided a mechanism of free legal services for the indigent. However, support in Argentina for the emerging concept of voluntary *pro bono* work among private lawyers and law firms began in earnest in the late 1990's and intensified as the country suffered through a crippling economic crisis. The Argentine legal community is increasingly recognizing that fostering a culture of *pro bono* facilitates equal access to justice, bolsters democratic institutions, provides satisfying personal and professional experiences for lawyers, and is ultimately good for business. As leaders push for the development of this culture, the infrastructure supporting *pro bono* opportunities and lawyers who perform this work in Argentina is on the rise. This chapter summarizes the existing regime of legal aid for the indigent, highlights the recent growth of the *pro bono* movement, and discusses avenues for obtaining *pro bono* work in Argentina.

I. *The Legal Profession and Legal Aid in Argentina*

Argentina's Constitution and Supreme Court decisions interpreting its provisions provide that all individuals, even when they cannot afford it, have the right to a legal defense in criminal matters as well as when they are sued in civil court.¹ If a criminal defendant chooses to proceed without securing legal representation or without representing himself, a judge will appoint an official defender ("*defensor oficial*") to the case.² In addition, people of limited resources with legal needs outside of the criminal system may seek free assistance through university legal clinics. Although the work performed by official defenders and law students is free of charge, it is not typically categorized as *pro bono* in Argentina because the former is government funded and, as explained below, the latter is a university requirement. Nonetheless, this legal aid system helped to shape the modern *pro bono* movement, and therefore merits some explanation.³

Similar to the clinical education programs prevalent in U.S. law schools, law students in many Argentine universities learn the practical skills of lawyering by offering free legal assistance to the indigent through clinical programs. In Buenos Aires, for example, all University of Buenos Aires law students must spend part of their final year of study providing free services either through the *Consultorio Jurídico Gratuito* ("*Consultorio*"),⁴ a legal clinic supervised by law professors, or through an NGO-affiliated clinic in collaboration with the *Centro de Estudios Legales y Sociales* (the Center for Legal and Social Studies or CELS),⁵ overseen by its legal professionals. Other Argentine universities such as *Universidad de Belgrano*, *Universidad de*

¹ *Constitución Argentina*, Article 18; *Fallos de La Corte Suprema*: 308:1557.

² *Ley Del Ministerio Público* No. 24.946, Art. 60. Though the public defender provides free legal services, a defendant who is convicted and has sufficient means at the time of sentencing must reimburse the cost of this representation.

³ The importance of Argentine universities in promoting free legal services to the indigent is also evidenced by the fact that, as of April 3, 2009, six Argentine law schools were signatories of the Pro Bono Declaration for the Americas, more than in any other signatory country. "Pro Bono Declaration for the Americas: Signatories by Country," available at: <http://www.nycbar.org/vc/decl.pdf>.

⁴ The *Consultorio* is structured through commissions, each of which centers around a particular area of law, e.g., children's rights or property law. "*Docentes y Alumnos Llevan Las Causas*," May 14, 2007, available at: <http://edant.clarin.com/diario/2007/05/14/sociedad/s-03401.htm>. See also, the description of the *Consultorio* program on the University of Buenos Aires' "University Extension" website, available at: http://www.uba.ar/extension/trabajos/derecho_patro.htm.

⁵ CELS is a non-governmental organization that promotes the protection of human rights and the strengthening of the democratic system in Argentina. See <http://www.cels.org.ar>.

Palermo, Universidad Nacional de Córdoba, and Universidad Nacional del Comahue have similar clinical programs.⁶

Legal aid provided through the *Consultório* and similar programs is confined to persons with extremely limited means.⁷ More than a quarter of the clients are unemployed with a monthly income of under \$300.⁸ Law students may not charge a fee for their services.⁹ There are also certain substantive restrictions, such as, for example, the preclusion of labor cases.¹⁰ Finally, this free legal assistance is only available to individuals; non-profit organizations do not qualify.¹¹ As this chapter highlights below, this exclusion is an important gap in the legal aid regime that is being addressed by the *pro bono* movement.

Practically speaking, the clinics have a tremendous impact on indigent communities in Argentina. The requirement that each member of the University of Buenos Aires' annual graduating class of over 3,000 law students participate in a clinic equates to free legal services for between 10,000 and 20,000 individuals of limited means each year.¹² The clinics also influence the legal community as a whole because, even before beginning their careers, law students learn that providing free legal assistance is a meaningful and fulfilling way to give back to their communities and experience professional growth. However, while universities are undoubtedly where the seeds of the modern *pro bono* movement must continue to be planted, as the next section of this chapter explains, it has been non-profit organizations and the large law firms in Buenos Aires that have been at the forefront of the *pro bono* movement in Argentina.

II. *Pro Bono in Argentina*

A. The Growth of the Pro Bono Movement

The *pro bono* movement in Argentina was shaped in large part by the two aspects of the country's legal aid system described above. First, law students who provide free services through their university clinics do so as a requirement to graduate, rather than as volunteers. Second, non-profit organizations are not eligible to receive free government or student legal aid. These two unique facts presented leaders of the Argentine *pro bono* movement with opportunities for improvement and for developing a complementary system. The Buenos Aires Bar Association has been instrumental in this effort.

In the late 1990's, before Argentina's financial crisis, Argentine lawyers began considering how to address these opportunities. The answer was to define the concept of *pro bono*, and to create an infrastructure that would facilitate the performance of *pro bono* work and educate lawyers about the merits of *pro bono*. While the idea of *pro bono* was still in its infancy, Argentina descended into an unprecedented financial crisis, and members of the legal community

⁶ See *Red Latinoamericana de Clínicas Jurídicas*, available at: <http://www.clinicasjuridicas.org/universidades-latinoamerica.htm>. Students who participate in the NGO-affiliated clinic at the University of Córdoba work with the *Centro de Derechos Humanos y Ambiente* (CEDHA), <http://www.cedha.org.ar>.

⁷ *Reglamento del Consultório Jurídico Gratuito*, Title IV, Article 9.

⁸ "Acceso a la Justicia para todos," Sebastian Scioscioli, *Facultad de Derecho, Universidad de Buenos Aires*.

⁹ *Reglamento del Consultório Jurídico Gratuito*, Title III, Article 7.

¹⁰ *Id.* Title IV, Article 9.

¹¹ *Id.* Title II, Article 7.

¹² "Acceso a la Justicia para todos," Sebastian Scioscioli, *Facultad de Derecho, Universidad de Buenos Aires*.

came face to face with pervasive poverty. This experience strengthened the conviction among early *pro bono* supporters that offering free legal services was an ethical responsibility of those with the greatest access to the judicial system.

When defining the concept of *pro bono*, the Buenos Aires Bar Association distinguished the term from the already-existing practice of free legal aid in several important ways. First, *pro bono* work is not to be conducted out of obligation, but rather from a firm or lawyer's individual motivation or commitment, and as such, should be carried out with the same quality as all other paid legal work. Second, in order to leverage the scarce resources of practitioners in a way that insures the greatest social impact, the Buenos Aires Bar Association treats as *pro bono* only those cases deemed to be in the "public interest," meaning cases implicating broad social issues or the rights of multiple persons. Toward that end, unlike in the free legal assistance regime, NGOs and other organizations can qualify as *pro bono* clients to the extent they seek assistance with issues that are in the public interest.

In December 2000, the Buenos Aires Bar Association formed the Comisión de Trabajo Profesional Pro Bono en Causas de Interés Público (the Pro Bono Commission).¹³ Not to be confused with a group of lawyers offering *pro bono* legal work, the Pro Bono Commission is an administrative group that acts as a clearinghouse to match lawyers with *pro bono* clients. Potential *pro bono* clients first present the Commission with a request for services, which the Commission analyses to determine if it qualifies as a matter of "public interest." If accepted, the case is circulated among registered law firms with a summary of its essential characteristics, and assigned to the law firm that manifests an interest in taking the case. If several law firms are interested, the case will be assigned in accordance with the preference of the client or, lacking such a preference, by lottery.¹⁴ In order to facilitate a positive match between attorneys and clients, and to ensure that public interest cases receive the highest quality of legal work, the Pro Bono Commission formed a network of participants consisting of many of the leading law firms in Argentina.¹⁵ It also works in association with other bar associations in Latin America.

B. Governing Structure

Pro bono services are, like all legal services in Argentina, governed by the code of ethics of the applicable legal district. In order to practice law in Argentina, attorneys must earn a law degree from an accredited university and register with the *Colegio de Abogados* (Bar Association) of the legal district in which they intend to practice.¹⁶ Bar associations regulate and discipline their members by adopting and enforcing the ethical rules that govern the practice of law in their

¹³ The Pro Bono Commission's website is www.probono.org.ar.

¹⁴ Commission Protocols and Standards, *available at*: <http://www.probono.org.ar/en/commission-s-protocol-and-standards.php>.

¹⁵ The network has grown over time. The participating law firms as of September 13, 2010, are: (1) Allende & Brea; (2) Baker & McKenzie; (3) Beccar Varela; (4) Brons & Salas; (5) Bruchou, Fernández Madero & Lombardi; (6) Bulló, Tassi, Estebanet, Lipera, Torassa & Asociados; (7) Cárdenas, Di Cío, Romero & Tarsitano; (8) Casal, Romero Victorica & Vigliero; (9) Del Carril, Colombres, Vayo & Zavalía Lagos; (10) Klein & Franco; (11) Llerena y Asociados Abogados; (12) M. & M. Bomchil; (13) Marval, O'Farrell & Mairal; (14) O'Farrell; (15) Pérez Alati, Grondona, Benites, Arntsen & Martínez de Hoz (h); (16) Raggio & García Mira; and (17) Zapiola Guerrico & Asociados.

¹⁶ Colegios de Abogados are authorized semi-public bodies. Although these Bar Associations collect dues from their members, they are distinct from private clubs for lawyers, such as the *Asociación de Abogados de Buenos Aires*.

jurisdiction.¹⁷ In addition to regulating its attorneys' conduct, bar associations promote and organize the provision of free legal services by its members.¹⁸ They also oversee free student legal clinics. The Buenos Aires Bar Association, for example, oversees the *Consultorio Jurídico Gratuito*, offered by Buenos Aires University law students. The Bar Association of Córdoba is similarly responsible for creating free student clinics for the indigent and developing the procedures and policies that govern these clinics.¹⁹ One of its policies provides that the Association's attorney members have a duty to provide free legal services.²⁰

Lawyers and law firms may publicize that they offer *pro bono* work,²¹ but practically speaking, they do not generally offer their services to the public since they receive cases through the Pro Bono Commission or other *pro bono* clearinghouses. Though there is technically no ethical restriction on *pro bono* lawyers' ability to collect fees (as is the case with the *Consultorio Jurídico Gratuito*'s free legal assistance program), lawyers must comply with the *pro bono* policies of whichever clearinghouse or referring agency with which they work. For example, any fees collected by a lawyer who is affiliated with the Pro Bono Commission must be donated to the Pro Bono Commission and any press announcements about cases sourced through the Pro Bono Commission require prior approval.²²

C. Pro Bono Declaration for the Americas

The *Pro Bono* Declaration for the Americas, spearheaded by the Cyrus R. Vance Center for International Justice of the New York Bar, was launched in January of 2008 by a committee of leading practitioners in Latin America and the United States.²³ Signatories affirm that it is the duty of the legal profession to promote both a fair and equitable legal system and respect for human and constitutional rights. The Declaration calls for each signatory to commit to an average of no less than twenty hours of annual *pro bono* work per practicing attorney. As of April 3, 2009, sixteen private Argentine law firms had signed the Declaration, as well as the Bar Association of Buenos Aires, six law schools, one NGO (the *Fundación Poder Ciudadano*, described below), and one private practitioner.²⁴

In October of 2008, the San Andres Law School in Buenos Aires hosted a conference on the institutionalization of *pro bono*, which was attended by signatories of the Declaration from more than 75 law firms from North and South America, as well as members of the New York City Bar Association, the Bar Association of the City of Buenos Aires, Instituto Pro Bono in Brazil,

¹⁷ See, e.g., “*Requisitos para el ejercicio de la profesión de abogado en la Capital Federal, Jerarquía, deberes y derechos, Matricula, colegiación.*” (Law No. 23.187), June 25, 1985; *Código de Ética del Colegio de Abogados de Buenos Aires*, approved by the General Assembly of the BA Bar Association on March 31, 1987; *Colegio De Abogados de La Provincia de Córdoba*, Ley No. 5805.

¹⁸ See, e.g., Law No. 23.187, Article 20(d).

¹⁹ *Colegio De Abogados de La Provincia de Córdoba*, Ley No. 5805, Art. 32(15).

²⁰ *Colegio De Abogados de La Provincia de Córdoba*, Ley No. 5805, Art. 19.

²¹ See, e.g., the *pro bono* page on Estudio Becar Varela's website, available at: <http://www.ebv.com.ar/tipo.php?sec=167>

²² See Articles 4 and 5 of the Pro Bono Commission's “*Normas Básicas de funcionamiento y derivación de casos,*” available online at: <http://www.probono.org.ar/la-comisión-normas-de-funcionamiento.php>

²³ http://www.nycbar.org/VanceCenter/PBDA/PBDA_English.pdf

²⁴ “Pro Bono Declaration for the Americas: Signatories by Country,” available at: <http://www.nycbar.org/vc/decl.pdf>.

Appleseed Mexico, Pro Bono Foundation in Chile and faculty from the University of San Andres Law School. A subsequent roundtable was convened in Buenos Aires to focus exclusively on the advancement of *pro bono* work in Argentina.²⁵

III. *Pro Bono Opportunities in Argentina*

As previously discussed, the Buenos Aires Bar Association's Pro Bono Commission is a bridge between large law firms and *pro bono* clients. The Pro Bono Commission's major areas have traditionally emphasized disability, microfinance, NGO advice and transparency. New focus areas also include criminal as well as childhood and adolescence.²⁶ As examples of recent accomplishments by the Commission, attorney participation in "Project Manuel" has successfully enabled completion of adoption procedures for 130 children.²⁷ A favorable judgment was also obtained in a summary action against the City of Buenos Aires Government seeking compliance with the 5% quota of disabled employees required by the City's Constitution.²⁸

Fundación Poder Ciudadano (the Argentine chapter of Transparency International) is a non-profit organization in Buenos Aires that promotes civic participation and political transparency. *Fundación Poder* houses the *Programa Acción Colectiva por la Justicia* (the Collective Action Program, or the PAC) which acts as the second major clearinghouse for *pro bono* legal work in Buenos Aires. Like the Pro Bono Commission, the PAC accepts cases that are in the public interest. It additionally finds matches for individual clients, provided that such individuals demonstrate that their claimed legal rights are representative of violations being committed against a larger group of individuals. The PAC maintains an Internet-based network of volunteer lawyers rather than a network of law firms (although law firms can and do participate). PAC members include lawyers not only from Buenos Aires, but from throughout Argentina. Lawyers in the network can take cases individually, in groups, or can arrange to provide limited assistance in a particular case, such as only performing investigative work. Generally, the PAC offers flexibility and a broad range of opportunities for lawyers interested in *pro bono*. In 2007, approximately 200 potential clients presented their case to *Fundación Poder*, of which the organization was able to take 150.²⁹

The Cyrus R. Vance Center for International Justice in New York serves as a clearinghouse for foreign attorneys to offer *pro bono* services in Argentina. For example, in November 2002, Shearman & Sterling assisted *Fundación Poder* with issues of citizenship, civic information, collective action and democracy, and with its incorporation in the United States as a 501(c)3.³⁰ The Vance Center has also set up a small committee of senior human rights law practitioners from Africa and Latin America. The committee, called the South-South Human Rights Steering Committee, meets by telephone on a regular basis to discuss the challenges that are common to human rights advocates in Africa and Latin America and to identify opportunities

²⁵ Vance Center eNotes, June 2009, available at: http://www.nycbar.org/citybarjusticecenter/pdf/VC_eNotes_06_0209.pdf

²⁶ See <http://www.probono.org.ar/en/index.php>.

²⁷ "Con todas las de la ley," Aug. 29, 2010, available at: http://www.lanacion.com.ar/nota.asp?nota_id=1299138.

²⁸ "Pro Bono and Public Interest Commission of the City of Buenos Aires Bar Association," Dec. 18, 2009, available at: <http://intprobono.blogspot.com/2009/12/pro-bono-and-public-interest-commission.html>.

²⁹ Telephone interview with staff member of *Poder Ciudadano's Programa Accion Colectiva* on December 21, 2007.

³⁰ The Vance Center for International Justice: Global Clearinghouse, Transactional Assistance, available at: <http://www.abcny.org/VanceCenter/PDF/Transactional%20Assistance.pdf>

for collaboration, including drafting amicus briefs, convening conferences or organizing training sessions for judges, commissioners, or lawyers and other advocates, and engaging in joint advocacy campaigns.³¹

IV. *Conclusion*

The *pro bono* movement in Argentina is part of the growing recognition within the legal community in Latin America of the importance of fostering a culture of *pro bono* among lawyers and law firms. On a national level, the movement is still growing, and has made rapid strides. With an effective infrastructure in place, the Argentine *pro bono* movement is poised to continue this momentum.

September 2010
Pro Bono Practices and Opportunities in Argentina

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.

³¹ “Vance Center Establishes South-South Human Rights Steering Committee,” January 10, 2101, *available at*: http://vancenet.org/index.php?option=com_content&task=view&id=185&Itemid=9. Gastón Chillier, Executive Director of the *Centro de Estudios Legales y Sociales* (CELS) in Buenos Aires serves as the Argentine representative.

PRO BONO PRACTICES AND OPPORTUNITIES IN AUSTRALIA

Pro bono legal services remain an increasingly important focus for lawyers and law firms throughout Australia. Australia now prides itself as one of the leaders in the world in providing *pro bono* legal services. Although such efforts are not as widespread as in the United States, a more strategic push for the development of *pro bono* services in certain targeted areas is allowing for greater access to those in need of free legal services in Australia.

In 1992, the first formal *pro bono* referral scheme was established in Australia.¹ Since then, additional *pro bono* clearinghouses and legal assistance referral schemes have developed in response to concerns about access to justice. Whether they are focused on the public interest or on particular disadvantaged groups or individuals, referral schemes generally aim to provide assistance to those who would not otherwise be able to assert their legal rights. They do this mainly by connecting individuals and organizations with lawyers who are willing to assist them on a *pro bono* basis. Referral schemes also provide a focal point in the legal community for the coordination of a wide range of *pro bono* activity. Among other things, they undertake projects with their lawyer members—often in conjunction with community organizations—directed at a particular community problem or issue. These efforts have effectively increased access to justice for those who would otherwise not know how or have the means to seek legal help.

I. Legal Services and the Legal Profession in Australia

The Australian legal profession is comprised of two types of lawyers: solicitors and barristers. Solicitors are regulated and represented by the Law Society² of the state in which they practice, while the practice of barristers is governed by the Bar Council.³ One of the primary differences between solicitors and barristers is the public's access to them. Whereas solicitors have direct contact with the public, barristers are generally instructed through solicitors.

Australia has a federal system of government, comprising federal, state and territory jurisdictions.⁴ The Australian (Commonwealth) and State and Territory governments are each responsible for the provision of legal aid for matters arising under their laws.⁵

A. Legal Aid

The system of *pro bono* in Australia complements a system of legal aid which uses public funds to help those in need of legal services. In 1977, the Australian Government enacted the Commonwealth Legal Aid Commission Act 1977 ("LAC Act") which established cooperative arrangements between the Australian Government and State and Territory governments under which legal aid would be provided by independent legal aid commissions to be established under State and Territory legislation.⁶

¹ The New South Wales Law Society Community Referral Service Pro Bono Scheme. Information about the Pro Bono Scheme is available at: www.lawsociety.com.au/community/findingalawyer/probono.

² For example, the Law Institute of Victoria (<http://www.liv.asn.au/>).

³ For example, the New South Wales Bar Association (<http://www.nswbar.asn.au/>).

⁴ *The Australian System of Government*, House of Representatives Info Sheet, No. 20 March 2008.

⁵ *Information and Resources*, National Pro Bono Resource Center Pro Bono Manual, Chapter 4.3.

⁶ This Act was repealed in 1999 by the *Statute Stocktake Act 1999* in response to a report in 1995 by the Access to Justice Advisory Committee, *Access to Justice - an Action Plan*, delivered to the Attorney-General and Minister

Legal aid for both Commonwealth and State matters is primarily delivered through State and Territory legal aid commissions (“LACs”), which are independent statutory agencies established under State and Territory legislation. The Australian Government funds the provision of legal aid for Commonwealth family, civil and criminal law matters under agreements with State and Territory governments and LACs. The majority of Commonwealth matters fall within the family law jurisdiction.⁷

Each state and territory in Australia has a LAC. As the laws, legal practices, guidelines and funding of LACs differ across jurisdictions, so do too the services and assistance offered by each LAC. Eligibility for LAC services and grants of legal assistance also varies among LACs and can be confirmed by contacting the appropriate commission.⁸

As a general matter, this system of public legal aid does not adequately meet the demand for free legal services largely due to the means and merit testing, which effectively excludes portions of the population who either (i) fall above the minimum means standards, rendering them financially ineligible, but who nonetheless have insufficient funds for legal representation or (ii) meet the minimum means standards but are seeking assistance on matters that do not meet the merit standards.⁹ In addition, people who receive legal aid may be required to make a financial contribution and, if monetary sums are recovered, may be required to reimburse certain legal fees. Finally, in some jurisdictions, legislation related to legal aid includes cost indemnity provisions with regard to persons who receive legal aid.¹⁰ For example, the New South Wales Legal Aid Commission Act of 1979 generally provides that, where a court or tribunal makes an order regarding costs against a person to whom legal aid is provided, the state’s LAC shall pay the whole of such costs; but this provision contains several carve outs and exceptions to the general rule.¹¹ A practitioner prepared to undertake *pro bono* work should ensure that she or he is familiar with any such provision in the relevant jurisdiction.

B. Community Legal Centers

Community legal centers (“CLCs”) are independent, non-profit organizations that provide free referral, advice and assistance to approximately 400,000 people each year.¹² There are around 200 centers in Australia. They range from centers with no paid staff to offices of ten or more employees, with most having three to six staff and at least one employed solicitor. Many CLCs operate with the assistance of volunteer lawyers and law students. CLCs often experience a high turnover of staff, particularly in rural, remote and regional CLCs.

for Justice. Among other things, the Report proposed to establish an Australian Legal Aid Commission, which was subsequently established. [Bills Digest No. 178 1998-99: Statute Stocktake Bill 1999].

⁷ National Legal Aid, *A New National Policy for Legal Aid in Australia*, 2007, pg 2.

⁸ Commissions can be contacted through the National Legal Aid, GPO Box 9898, Hobart, Tasmania, 7001.

⁹ Details of merit testing can be found at *Information and Resources*, National Pro Bono Resource Center Pro Bono Manual, Chapter 4.3. The biggest gap in legal aid coverage is in the area of civil law, where it is difficult if not impossible to get a grant of aid for many kinds of cases.

¹⁰ *Information and Resources*, National Pro Bono Resource Center Pro Bono Manual, Chapter 4.3.

¹¹ Legal Aid Commission Act 1979 (NSW), s 47, available at: <http://www.legalaid.nsw.gov.au/data/portal/00000005/public/98153001149550409656.pdf>.

¹² *Information and Resources*, National Pro Bono Resource Center Pro Bono Manual, Chapter 4.4.

II. *Pro Bono Opportunities in Australia*

Solicitors in Australia have a long tradition of providing *pro bono* legal services; however, certain initiatives by the government and NGOs in recent years have led to greater access to and awareness of *pro bono* services.

In 2001, the National Pro Bono Task Force made a recommendation to the Commonwealth Attorney-General that a National Pro Bono Resource Center be established. The Center opened in August 2002 and is an independent, non-profit organization funded by the Commonwealth Attorney-General's Department, the State and Territory Attorney-Generals and the Faculty of Law at the University of New South Wales.¹³ The Center aims to encourage *pro bono* legal services and support lawyers and law firms to make it easier for them to provide *pro bono* legal services.¹⁴ Its work includes reviewing and reporting on *pro bono* legal work undertaken throughout the nation, making available information and resources to existing and potential *pro bono* legal service providers, and promoting *pro bono* law to community organizations and the general public.

The Center is not able to refer individuals to lawyers for help with a legal problem. Rather, the Center promotes and supports *pro bono* through its independent role as advocate, broker, coordinator, researcher and resource provider. It directs individual case referrals to *pro bono* clearinghouses and referral agencies which exist in many Australian states.

In April 2007, the Center launched the National Pro Bono Aspirational Target ("the Target"), through which it seeks barristers, law firms and chambers of barristers to commit to a voluntary 35 hours of *pro bono* legal work per lawyer per year.¹⁵ Over 5,700 lawyers across Australia have signed up to the Target, and a 2009 performance report indicated that lawyers who had signed up to the Target performed an average of 41.9 hours of *pro bono* work in the financial year from July 1, 2008 through June 30, 2009.¹⁶

A. PILCH

Independent Public Interest Law Clearing Houses ("PILCHs") have been established by collaborations among groups including independent organizations, legal non-profits, private law firms, university law schools, community legal centers and individual attorneys. At present, PILCHs operate in New South Wales (founded in 1992), Queensland (founded in 2001), Victoria (founded in 1994), South Australia (founded in 2009), and West Australia (founded in 1992). PILCHs' operations are substantially funded by fees from member legal practices. PILCHs refer "public interest"¹⁷ matters to member law firms and other members (for example, barristers and

¹³ www.nationalprobono.org.au/about/index.html.

¹⁴ "Submission to the Senate Legal and Constitutional References Committee Inquiry into Legal Aid and Access to Justice," National Pro Bono Resource Center, October 2003, *available at*: www.nationalprobono.org.au/ssl/CMS/files/cms/senateinquiry.pdf

¹⁵ See www.nationalprobono.org.au/target.

¹⁶ "Lawyers Aspiring to do More," National Pro Bono Resource Center, Media Release, 1 October 2009. In addition to the *pro bono* organizations described herein, various additional organizations offering *pro bono* services in different areas or on a smaller scale are described on the Center's website at www.nationalprobono.org.au/about/index.html.

¹⁷ The meaning of "public interest" varies among PILCHs. For example, QPILCH (Queensland) considers a matter to be "in the public interest" if it "affects a significant number of people; or raises matters of broad public concern, or requires legal intervention to avoid a significant and avoidable injustice, or particularly impacts on

some corporations' legal departments) for services to be provided on a *pro bono* basis. PILCHs receive and assess requests for assistance and then contact member firms to see if they will accept a referral.¹⁸

B. Australian High Court

The Australian High Court, established by the Constitution of Australia, is the supreme court in the nation's court hierarchy and the final court of appeal. One of its major functions is interpreting the Constitution of Australia.¹⁹

Nowadays, even the High Court avails itself of *pro bono* assistance in some cases. There are instances where the Court has explored *pro bono* options through professional associations (generally comprised of lawyers, legal academics and law students) on behalf of litigants with little means and who appear to have an arguable case.

C. Pro Bono Bar Council Programs

Several bar associations have recognized and sought to address the need for a system to meet the growing demand for legal assistance from the courts, community organizations and the general public. For example, the Victorian Bar established the Victorian Bar Pro Bono Scheme ("VBPBS")²⁰ in 1995.²¹ The Scheme is run in the state of Victoria on a voluntary basis and is funded by the Victorian Bar with support from the Legal Practice Board. VBPBS is administered by PILCH and is staffed by full-time employees and volunteers.²²

VBPBS provides a referral for *pro bono* advice and representation in cases which call for the retainer of a barrister. Matters referred to barristers cover diverse areas of law including family, crime, migration, contract, trusts, tort, personal injury, transport accidents, employment, debt recovery, tenancy and discrimination.

Any member of the Victorian Bar who has expressed a willingness to provide assistance on a *pro bono* basis and whose practice covers a wide range of areas of law may become a member of VBPBS. In 2008-09, over 630 barristers volunteered to participate the scheme, more

disadvantaged or marginalized groups" (http://www.qpilch.org.au/01_cms/details.asp?ID=64#228). PILCH New South Wales interprets "public interest" to include "issues that particularly impact on disadvantaged, vulnerable and marginalized groups or raise matters of broad public concern" (<http://www.pilchnsw.org.au/assistance.html>).

¹⁸ For more details, see www.pilchnsw.org.au, www.qpilch.org.au, www.pilch.org.au, www.justicenet.org.au and www.lawsocietywa.asn.au.

¹⁹ *The Australian System of Government*, House of Representatives Info Sheet, No. 20 March 2008.

²⁰ Formerly known as the Victorian Bar Legal Assistance Scheme.

²¹ Other prominent bar association-run pro bono schemes include: ACT Pro Bono ClearingHouse (Australian Capital Territory); NSW Bar Association Legal Assistance Referral Scheme (New South Wales); Law Society NY Pro Bono ClearingHouse (Northern Territory); JusticeNet SA (South Australia); Law Society of Tasmania's Pro Bono ClearingHouse (Tasmania); and Law Access Pro Bono Referral Scheme (WA) (Western Australia). Links to the homepages of and additional information regarding each of these organizations are available at: <http://www.nationalprobono.org.au/page.asp?from=7&id=129>.

²² www.vicbar.com.au/b.7.asp; see also *Pro Bono Referral Schemes in Australia*, National Pro Bono Resource Center, May 2006, pg 40; <http://prod.pilch.roadhouse.com.au/VBPBS>.

than 35% of the state's practicing barristers. Many other barristers, although not formally registered as members, have welcomed requests to assist when approached.²³

Members of the community in need of legal assistance can telephone the VBPBS office who will then send out an application form. Completed forms and necessary documentation must then be provided by applicants for assessment by VBPBS administrators; however, the application process may be circumvented when the request for assistance is urgent.

In order to be eligible for assistance from VBPBS, applicants must have first sought legal assistance from Victoria Legal Aid²⁴ and cannot otherwise be eligible for assistance from CLCs or "no-win-no-fee" firms.²⁵ VBPBS does not consider itself a substitute for legal aid. In addition, an applicant must be a resident of Victoria and the case must have legal merit and require the assistance of a barrister. The applicant must then pass a means test showing that he or she does not have the financial ability to obtain legal assistance from any other source.

D. International Pro Bono Advisory Group and Disbursement Assistance Fund

In July 2009, the Attorney-General of Australia established the International Pro Bono Advisory Group to better coordinate and develop international *pro bono* work and strengthen the partnership between government, the legal community and the non-government sector in order to facilitate projects that address international law and justice needs.²⁶ The Attorney-General also established the International Pro Bono Disbursement Fund, funded through a one-off grant of AUD\$100,000, to encourage the provision of international *pro bono* legal work by making grants to help meet the costs associated with undertaking such work. Barristers or law firms eligible for such funding may apply before 30 June 2011.²⁷

E. Student Participation

Most law schools across Australia encourage students to volunteer their time to CLCs, Legal Aid schemes or local clearinghouses or referral schemes. However, in contrast to law faculties in many other parts of the world, legal aid work and clinics are generally not part of the law school curriculum in Australia.

III. *Conclusion*

Pro bono opportunities and access have significantly increased since the establishment of the first *pro bono* clearinghouse in 1992. The heightened awareness and expanded activity in the realm of *pro bono* have been accomplished in large part through the efforts of the government, bar

²³ "PILCH – Annual Report 2008-09." Pg. 7. www.pilch.org.au/Assets/Files/PILCHAnnualReport08-09.pdf.

²⁴ www.vicbar.com.au/b.7.1.asp. Victoria Legal Aid is a statutorily mandated and government funded organization that provides information, referrals, advice and legal representation in matters of family, civil and criminal law in the state.

²⁵ *Pro Bono Referral Schemes in Australia: A History of Professional Association & Law Firm Schemes*, National Pro Bono Resource Center, May 2006, pg 42. "No-win-no-fee" firms operate on contingency-fee bases and generally do not charge legal fees unless a client's claim is successful.

²⁶ Information about the group is available at: www.ag.gov.au/www/agd/agd.nsf/Page/International_Pro_Bono_Advisory_Group.

²⁷ More information, guidelines for applicants and applications are available at: www.nationalprobono.org.au/page.asp?from=8&id=279.

associations and various NGOs. However, many areas remain to be developed, particularly with respect to the inclusion of legal aid and clinical courses within Australian law school curriculums.

September 2010

Pro Bono Practices and Opportunities in Australia

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.

PRO BONO PRACTICES AND OPPORTUNITIES IN AUSTRIA

This chapter describes the law governing the provision of legal services, the practice and culture of *pro bono*, and *pro bono* opportunities for international law firms in Austria.

I. Legal Services and the Legal Profession in Austria

In Austria, the compensation of lawyers is regulated by a set of federal laws and professional rules issued by the Austrian Bars.¹ Pursuant to these laws and rules, Austrian lawyers are, in principle, free to agree on their fees, including the type of fee, the amount of the fee and how it is to be paid.² In practice, Austrian lawyers charge their clients hourly rates rather than, for instance, flat rates. Contingency fees are prohibited; however, Austrian lawyers may agree on a premium for successful services.³

If there is no agreement on the fees between the lawyer and the client, the statutory fee schedules for legal services set forth in the federal laws and professional rules apply.⁴ The calculation of the statutory fees is based on the value of the dispute and, to some extent, on the time the lawyer spent on the matter. The statutory fee schedules are actually designed for litigation matters, in which the defeated party basically has to bear all incurred costs and fees.⁵ A characteristic of the statutory fee schedules is that they provide fees for every individual service rendered by the lawyer to the client (such as phone calls, memos, letters, briefs, participation in negotiations or in court proceedings, etc.).⁶ For that reason, the Austrian statutory fees are comparatively high.⁷

In any event, the fees charged by the lawyer must be reasonable. As a general standard, the charged fees are not reasonable if they exceed more than twice the market value of the rendered service. To determine whether the invoiced amount is fair, one has to take into consideration the statutory fee schedules set forth in the federal laws and professional rules.⁸ Insofar as these statutory fee schedules are mandatory in litigation matters, Austrian lawyers are not allowed to offer their clients free legal services. The purpose behind that is not to render legal services less affordable (Austrian lawyers may charge their clients fees even higher than the

¹ The pertinent laws and professional rules regulating the fees lawyers may charge and the legal profession are the Federal Attorney-at-law-Standard-Rate-Act (*Rechtsanwaltstarifgesetz*/"RATG"), the Federal Profession Code (*Rechtsanwaltsordnung*, "RAO"), the Professional General Terms on Fees (*Allgemeine Honorar-Kriterien*, "AHK") and the Professional Guidelines (*Richtlinien für die Ausübung des Rechtsanwaltsberufs, für die Überwachung der Pflichten des Rechtsanwalts und für die Ausbildung der Rechtsanwaltsanwärter*, "RL-BA").

² See sections 2 para. 1 and 26 para. 2 RATG; section 16 para. 1 RAO, section 1 AHK; section 50 para. 1 RL-BA.

³ See section 879 para. 2 Nr. 2 ABGB (Austrian Civil Code); see also section 12 AHK which allows in criminal matters a premium up to 50 % of the incurred fees.

⁴ See section 879 para. 2 Nr. 2 ABGB (Austrian Civil Code); see also section 12 AHK which allows in criminal matters a premium up to 50 % of the incurred fees.

⁵ See section 41 para. 1 ZPO (Code of Civil Procedure); *Wrabetz/Betrans*, AnwBl 1987, 505, 508.

⁶ See *Lesigang*, *Anwaltsblatt*, 1965, 157, 161; *Neidhart*, DAR 1983, 122.

⁷ In addition, lawyers may charge to their client a premium of up to 100% for services rendered between 8 p.m. and 8 a.m. or during weekends and holidays

⁸ See section 2 AHK.

statutory fees⁹), but rather to prevent lawyers from competing with each other too extensively on pricing.

In the past, in principle, any kind of dumping, *i.e.*, to charge less for legal services than provided for the respective services in the statutory fee schedules, was prohibited.¹⁰ An exception was made only for reasons of equity and only subsequent to the conclusion of the matter. This, however, has changed significantly in recent years. Under present Austrian law, lawyers may, even in litigation matters, go below the statutory fees.¹¹

A. Legal Advice

In Austria, there is a variety of forums for free legal advice.¹² For example, the Austrian Bars have set up information centers in which individuals can obtain free primary legal advice.¹³ Legal advice is only given by lawyers who are admitted to one of Austria's Bars and is provided irrespective of whether one is indigent or not. However, such legal advice only comprises an initial legal assessment, practical information, legal information, or a referral to a specialized body or organization. Some lawyers even offer this service in their own office. It is not mandatory for Austrian lawyers to participate in this program.

Primary legal advice is also provided by the Austrian municipal courts. For this purpose, the judges are obliged to provide individuals free legal advice at specific dates (at least once a week).¹⁴ In cases where a representation by a lawyer is not required by statute,¹⁵ actions and other motions can be filed by the parties. Nevertheless, a party unrepresented by a lawyer will receive guidance *during the trial proceedings* since the judge must fulfill his legal duty to inform and notify the party.

B. Legal Aid

In civil and criminal proceedings, a party (individuals or legal entities) is to be granted legal aid by the court under certain circumstances.¹⁶ Receiving legal aid results in the partial or complete exemption from paying attorney's fees (if the assignment of an attorney is mandatory by law or seems to be necessary) and court fees. To receive legal aid, the applicant has to be indigent. To demonstrate indigence, the applicant has to disclose an income statement and a declaration of assets. Furthermore, in civil proceedings the applicant's claim must not be frivolous or without merits on its face.¹⁷ In criminal proceedings, the legal and/or factual circumstances must require the assignment of counsel to the accused. As a matter of fact, in most cases legal aid is granted.

⁹ See section 2 para. 2 RATG.

¹⁰ See Lesigang, *Anwaltsblatt*, 1965, 157

¹¹ See Lesigang, *Anwaltsblatt*, 1965, 157

¹² Detailed information is provided by the *Bundeskanzleramt*, available at: <http://www.help.gv.at/Content.Node/98/Seite.980300.html#Recht>.

¹³ More detailed information on this service ("*Erste Anwaltliche Auskunft*") is available at: www.rechtsanwaelte.at.

¹⁴ See section 439 para. 1 ZPO (Austrian Code of Civil Procedure) – so-called "Amtstage".

¹⁵ In criminal proceedings the representation by a lawyer is mandatory, in civil proceedings it primarily depends on the value in dispute.

¹⁶ See sections 63 *et seq.* ZPO (Austrian Code of Civil Procedure).

¹⁷ See sections 63 para. 1, 66 para. 1 ZPO (Austrian Code of Civil Procedure); see also sections 56 *et. seqq.* RL-BA.

If legal aid is granted, the state will pay the statutory fees to the attorney of the applicant's choice and will waive the court fees. If the applicant prevails in the litigation, the other party pays the attorney's fees and court fees.

II. *Pro bono Opportunities in Austria*

Austrian attorneys' above-mentioned participation in free legal advice programs exemplifies Austria's tradition in providing *pro bono* services. This tradition is by no means limited to primary legal advice. Many Austrian lawyers, including law firms, regularly offer free legal advice on a secondary level. Typical beneficiaries of such *pro bono* activities are cultural and art institutions, welfare or church institutions, regardless of their ability to pay.

One of Austria's leading law firms, for example, provides *pro bono* services to *Medecins Sans Frontières* (an international medical and humanitarian aid organization) regarding the establishment of associations, labor law, real estate law, and law of succession.

With respect to the legal representation of parties in litigation matters, however, restrictions exist. Although the applicable federal law allows Austrian lawyers to go below the statutory fees or even to waive any fees vis-à-vis the client, there is only a marginal *pro bono* practice in the litigation context. The main reason is that it is considered a violation of professional ethics to represent a party in a litigation matter without charging any fees. As explained above, in court proceedings legal aid is provided by the state, so there is no need to obtain free legal services.

III. *Conclusion*

In Austria there is a strong culture of providing *pro bono* work to indigents. Although free legal services are rendered by the Austrian state to a considerable extent, there are remaining *pro bono* opportunities for law firms. With respect to litigation matters, however, *pro bono* opportunities are limited in Austria.

September 2010
Pro bono Practices and Opportunities in Austria

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.

PRO BONO PRACTICES AND OPPORTUNITIES IN BELGIUM

This chapter describes the current *pro bono* system in Belgium,¹ including current laws, regulations and practices, and opportunities for international law firms to expand their *pro bono* practices in Belgium.

I. *Legal Services and the Legal Profession in Belgium*

Belgian law is practiced in two languages, French and Flemish, and regulated by two Bars, the Francophone Order (*Ordre des Barreaux Francophone et Germanophone*) and the Flemish Order (*Ordre van Vlaamse Balies*) (hereinafter, the “Orders”).² As a result, Belgium’s *pro bono* system is governed by one law, but there are two administrations responsible for its application. In practical terms, the two administrations are identically organized and governed by the same principles; thus, they are treated as one in this chapter.

The Belgian Constitution grants all people a right to legal assistance.³ Legal assistance is provided by the Legal Assistance Commission (the “LAC”), which maintains offices in each of Belgium’s 28 court districts.⁴ The amended Judicial Code of 1967⁵ provides for two complementary forms of legal assistance in civil, criminal, and administrative matters: legal advice (both primary and secondary),⁶ and legal aid.⁷ The LAC is responsible for and organizes the primary legal advice centers, which are staffed by lawyers. Secondary legal advice and representation is organized by a legal assistance bureau set up within each of the local bars.⁸

The Orders require that every trainee lawyer provide legal assistance *pro bono* during their three-year “apprentice” period.⁹ The legal services provided by trainee lawyers are overseen by both the trainee’s supervisor and an official of the LAC in that court district.

In addition, *pro bono* legal assistance work can be undertaken by qualified lawyers who are paid by the state through the intermediary of the Orders. Compensation levels are set by the state and depend on a point system by which the value of services is determined annually based on

¹ In Belgium *pro bono* is referred to as *pro deo*, which is Latin for “free of charge.”

² The French Order also regulates the practice of law in German for the German-speaking minority of the country.

³ Article 23, available at: http://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/grondwetEN.pdf.

⁴ District commission offices are comprised of representatives of the Bar, public welfare centers, and approved legal assistance organizations.

⁵ With reference to legal aid, the most recent changes were introduced by the law of November 23, 1998.

⁶ See sections 446 *bis* and 508/1 to 508/23 of the Judicial Code, as well as the implementing Royal Decrees. See also *Legal Aid: Belgium*, European Judicial Network in Civil and Commercial Matters, available at: http://ec.europa.eu/civiljustice/legal_aid/legal_aid_bel_en.htm.

⁷ See sections 664 to 699 of the Judicial Code.

⁸ The Brussels Legal Assistance Bureau is located at Rue de la Régence, 63, 1000 Bruxelles (1st floor). More information is available at: www.aidejuridiquebruxelles.be.

⁹ Trainee lawyers have completed their studies and passed all requisite exams but are required to complete a practice period of three years under the supervision of a qualified attorney before being allowed to practice independently. To fulfill their *pro bono* requirement, most trainee lawyers work in the areas of criminal, immigration, and family law, mainly due to the sheer volume of such cases. This is often true even if their ultimate areas of practice are completely unrelated to the experience gained from their *pro bono* work.

the entire legal assistance budget and the number of matters in that year.¹⁰ In recent years, the level of remuneration, on the whole, has decreased as the number of cases has increased. Under the Orders' rules, lawyers cannot accept contingency fees from clients, nor can they seek further remuneration from an indigent client who receives complete aid.¹¹

A. Legal Advice

Primary legal advice is available to individuals only and provides an initial legal assessment, practical information, legal information, or a referral to a specialized body or organization.¹² In practice, assistance is typically dispensed within a set time frame of 10-15 minutes per person. Historically, this service was provided for a flat fee, but as of January 1, 2004, it is a free service for all. Primary advice is granted by a lawyer who is a member of an Order and has been authorized or designated by that Order. The Order supervises the lawyer in the performance of his or her duties and monitors the quality of the advice provided. A lawyer may be disbarred for a breach of these duties.

When primary legal advice results in a referral to a specialized body or attorney, the service subsequently provided is secondary legal advice. This assistance is also available only to individuals and involves more detailed legal advice or assistance, including help with formal proceedings, assistance with court actions, and legal representation.

Typically, a recipient of secondary legal advice has received a referral from the lawyer who provided primary legal advice. The same lawyer cannot be both the primary and secondary advisor in a case. By law, an individual could choose any of the attorneys qualified by the Orders as his secondary advisor, but in practice the lawyer selected is typically someone who is on-duty according to the LAC's daily roster, which designates lawyers available for *pro bono* purposes on a rotating basis, as determined by the Orders. Individuals can also go directly to individual attorneys, who can then make the request for legal aid if they are willing to take the case. These lawyers must also be qualified by the Orders to give secondary legal assistance. In cases of an emergency, individuals may also seek help from his or her court district's after-hours providers.

B. Legal Aid

Legal aid is typically granted within the context of secondary legal advice, but it is also available in other circumstances. Receiving legal aid results in partial or complete exemption from paying legal fees. Eligibility is determined by reference to the applicant's financial means and social situation, and legal aid covers the costs of both judicial and extrajudicial proceedings. This system ensures that indigent clients have full access to justice and legal representation by a qualified lawyer who is paid by the state. The basic qualification requirements are proof of low income and evidence of a well-founded claim.¹³ Access to legal aid is available to Belgian nationals, foreign nationals in accordance with international treaties, all nationals of member states of the Council of Europe, and foreign nationals in immigration proceedings.

¹⁰ In 1983, (the first year in which lawyers were compensated) the legal assistance budget was the equivalent of €743,680.57; for the 2007-2008 legal year, the amount allocated was €54,220,000.00. The value of one point was €23.25.

¹¹ See section 459 of the Judicial Code.

¹² See section 508/1 of the Judicial Code; see also *L'aide Juridique: Un Meilleur Accès à la Justice*, Service Public Fédéral Justice, available at: http://www.just.fgov.be/img_justice/publications/pdf/65.pdf.

¹³ See Sections 667 and 668 of the Judicial Code.

Individuals can apply for legal aid after a referral for secondary legal advice, or after seeking counsel through normal channels. The process for requesting legal aid is the same in both instances: the lawyer or the petitioner presents a request to the legal aid office of the court in which the action is being brought or where the aid is to be provided.¹⁴ The request for legal aid must be accompanied by proof of income. As of September 1, 2010, single individuals without dependents must have net monthly earnings of less than €878 to receive a complete exemption from fees.¹⁵ To qualify for partial aid, the same individual may only earn between €878 and €1128 per month.¹⁶ Legal aid is also available to those of unsound mind and minors.

Legal aid is available in the following types of cases:

- procedural steps related to applications that have been referred to or are pending before an ordinary or administrative court or panel of arbitrators;
- procedural steps relating to the enforcement of judgments and decisions;
- application proceedings;
- appeal proceedings;
- procedural steps decided by judges or requiring action by a professional or an official; and
- family mediation proceedings.

C. Legal Insurance

Under Belgium's current system, those who do not meet the eligibility criteria for legal aid must cover the costs of an attorney themselves. However, in June of 2006, the Minister of Justice and the Minister of Budget and Consumer Affairs proposed the creation of a new system of legal insurance designed to offer the middle class legal protection.¹⁷ The scheme came into force on February 27, 2007. For a minimal premium, (€144 or less a year, with a maximum excess of €250) this insurance covers a variety of legal expenses.¹⁸ Companies offering the new policies receive incentives from the state in the form of tax benefits.¹⁹

¹⁴ See Section 670 of the Judicial Code.

¹⁵ The monthly salary ceiling for single individuals with a dependent or cohabitants, and families is €1,104.00 for complete aid and between €1,104.00 and €1,348.00 for partial aid. "*Conditions d'accès à l'aide juridique de deuxième ligne et à l'assistance judiciaire*", (*Seuils en vigueur du 1er septembre 2009 au 31 août 2010*), available at: www.aidejuridiquebruxelles.be.

¹⁶ See *Service Public Fédéral Justice, L'aide Juridique: Un Meilleur Accès à la Justice* (2009), available at: <http://www.just.fgov.be>.

¹⁷ *Le Soir*, June 2, 2006, at 5.

¹⁸ Press Release, Council of Ministers, Assurance Protection Juridique (June 2, 2006), available at: <http://www.presscenter.org>. The insurance only covers cases where the costs of the claim exceed €5,000; this threshold is reduced to €750 for divorce proceedings and increased to €12,500 for certain contractual claims and certain penal proceedings. For further information, see the website of Assuralia, the trade association of Belgian insurance companies, at <http://www.assuralia.be>.

¹⁹ See *supra*, note 413.

II. *Pro Bono Opportunities in Belgium*

In 2003-2004 legal aid was granted in approximately 99,000 *pro bono* matters, an increase of more than 60% from 1999-2000. This number is expected to have increased even more following the introduction of new eligibility thresholds in 2005.²⁰

Nothing in the Judicial Code nor in the Code of Conduct of the Orders requires a lawyer to request payment for services. Thus, while the Belgian system of *pro bono* covers individuals receiving a free initial consultation and/or being granted legal aid, a law firm may provide free legal advice to an individual, a company, or a non-governmental organization (“NGO”) regardless of their ability to pay, and without any prohibitions against doing so for free or for a set fee.²¹ Increasingly, American law firms are providing such services to the many NGOs in Brussels.²²

Pro bono services have been provided by law firms to NGOs seeking legal advice on matters relating to European law or information on how to lobby for or against initiatives of European institutions. The main beneficiaries of such services have been groups like Amnesty International, Human Rights Watch, and Friends of the Earth. Moreover, Brussels can be used as a base for launching human rights cases both before the International Court of Human Rights and the European Court of Human Rights.

Examples of these more expansive forms of *pro bono* undertakings include *Avocats Sans Frontières*, a Belgian association that seeks to provide legal assistance in sensitive cases around the world.²³ More recently, a Brussels-based project investigated *pro bono* opportunities for U.K. lawyers in Brussels.²⁴ In 2004, that project yielded a report identifying specific needs and possibilities for firm involvement.²⁵ While there were plans to use the project to help British lawyers coordinate their efforts in Brussels in the future, it appears as though this has not yet come to fruition. U.S.-style *pro bono* practices have also been undertaken in Brussels, mainly through international and American law firms based there.

III. *Prohibition Against Advertising*

One issue that indirectly affects *pro bono* practice in Belgium is the restriction on legal advertising. Lawyers in Belgium are severely restricted as to the form of advertising or business development initiatives they may undertake. The only permissible advertising is what is necessary to give the public information pertaining to the legal practice of the lawyer or firm. The names of past or current clients cannot be publicized. Further, it is illegal to solicit legal work in

²⁰ See Press Release, *Ordre des Barreaux Francophone et Germanophone, Aide Juridique: l'Etat Belge Condamné* (Mar. 23, 2005), available at: <http://www.avocats.be>.

²¹ The law firm can provide the service free of charge, for a minimum charge, or for an upfront fee.

²² For instance, American law firms that encourage *pro bono* work in the U.S. also provide such services in Brussels. There is also the U.K. Solicitor *Pro bono* Group (now LawWorks) and various U.K. barrister groups that provide legal advice in matters affecting Brussels, the European Commission, the European Court of Justice, and the European Court of Human Rights.

²³ For further information, the group's website is: <http://www.asf.be>.

²⁴ The “Brussels *Pro Bono* Project” and the “European *Pro Bono* Network” were set up by Andrew Jackson and U.K. trainee solicitors from the following firms: Eversheds, Linklaters, CMS, NabarroNathanson, Dechert, Lovells, Coudert Brothers, Clifford Chance, and Mayer Brown Rowe & Maw, under the auspices of the former Solicitors *Pro Bono* Group (now LawWorks).

²⁵ Solicitors *Pro Bono* Group, *The Brussels Pro Bono Project* (2004).

any form, either by going to the workplace or home of a potential client, or by sending an unsolicited description of potential work (unless it has been requested by the individual).

Since advertising is only permissible in order to convey information that is strictly necessary, advertising *pro bono* services in some circumstances may be beyond the scope of what is legally permissible. Although firms can advertise specialties (e.g., securities) subject to approval by the Orders, *pro bono* work does not fit neatly into that form of targeted solicitation.

IV. Conclusion

Although *pro bono* work in Belgium takes place in a regulated environment, there are opportunities for law firms, especially international ones, to provide free legal advice outside of this system. It is clear from recent developments that there is much *pro bono* work that can be undertaken in Belgium, especially in the city of Brussels.

September 2010
Pro Bono Practices and Opportunities in Belgium

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.

PRO BONO PRACTICES AND OPPORTUNITIES IN BRAZIL

Brazil is Latin America's largest country and arguably the region's leading economy, home to a vibrant and developed legal community. Despite these and its many other positive attributes, it is also a country suffering from blatant inequality. While this combination would appear to present meaningful opportunities for the provision of *pro bono* legal services, the Brazilian legal community does not have a tradition of providing such services and regulatory restrictions have significantly contributed to hinder the development of *pro bono* work in the country. However, this scenario has seen important changes in the last few years, with gradual but clear signs of evolution in terms of regulation and the mentality of the legal community in general. Now, many leading practitioners and law firms devote ever-increasing resources to *pro bono* services and it appears that such activities will only increase further in the future. This chapter describes the current regulation of *pro bono* legal advice in Brazil and addresses the opportunities available to international law firms in this area.

I. Legal Services and the Legal Profession in Brazil

Brazil is a federated nation comprised of 26 states (*estados*) and the federal district, where the capital *Brasília* is located. The practice of law is organized through bar associations in each of these jurisdictions (each jurisdiction has a distinct "Bar Association"). These Bar Associations are in turn joined into the *Ordem dos Advogados do Brasil* (the "Brazilian Bar Association"),¹ which is empowered by federal law to regulate the profession. The practice of law in Brazil is regulated by means of a federal statute – Law No. 8906 of 4 July 1994 – and of enacting legislation, among which the Brazilian Bar Association's Code of Ethics and Discipline of 13 February 1995.

A. Law No. 8906, Regulating the Legal Profession in Brazil

Each of the states and the federal district is responsible for licensing attorneys in their territories, through the respective Bar Associations. For example, an attorney must have gained admission to the Bar Association of Sao Paulo² prior to practicing law in that jurisdiction. In order to be admitted to a Bar Association, a lawyer must have obtained a law degree from an accredited university and must have passed the applicable state bar examination.³ Prospective attorneys may register with a Bar Association as trainees, in order to follow a two year internship at a registered legal practice, usually a law firm.⁴ This internship is typically performed concurrently with the prospective attorney's legal studies.

While there is a significant and growing number of international law firms that have established offices in Brazil, foreign lawyers are not authorized to practice Brazilian law. The Brazilian Bar Association authorizes foreign lawyers to act as consultants in foreign law, as long as they are registered with the Brazilian Bar Association for this purpose.⁵ Many international firms have established offices in Brazil by entering into close affiliations with local Brazilian firms. Alliances between international and Brazilian firms have been subject to increasing scrutiny from Bar Associations, as local firms argue that in some cases these alliances in practice serve to bypass the existing restrictions for foreign lawyers to practice law in Brazil.

¹ <http://www.oab.org.br>.

² <http://www.aasp.org.br>.

³ Law No. 8906 of 4 July 1994, Article 8.

⁴ Law No. 8906 of 4 July 1994, Article 9.

⁵ Ruling No. 91 of 13 March 2000 of the Brazilian Bar Association.

B. Rules on Legal Ethics and Professional Conduct

The Brazilian Bar Association's Code of Ethics and Discipline sets forth the rules of professional conduct and ethics concerning issues such as advertising, client relationship and legal fees. These regulations are also embodied in professional conduct codes enacted by the individual Bar Associations.

In Brazil, lawyers enjoy wide latitude to enter into fee arrangements with their clients, as long as they observe the more general rules of ethics and professional conduct. Legal fees can be agreed in the form of billable hours, flat fees and contingent or success fees. Bar Associations restrict, however, the terms on which free legal services can be provided. Lawyers that do not charge for legal services are generally deemed to breach professional ethics rules. Bar Associations generally view *pro bono* work as an unethical marketing tool, which would withdraw low-income clients from lawyers that could rely on such type of work. As an exception to this rule, the Bar Associations of São Paulo and Alagoas have recently edited resolutions that allow *pro bono* services to be supplied to NGOs and other legal entities without profitable purposes, as detailed below.

Pro bono work is subject to the general advertising restrictions imposed by the different Bar Associations on their members: Brazilian lawyers cannot advertise their clients, publicise the value of their services (paid or free) or solicit legal work; they may only inform the public about the type of legal services that they provide.⁶

II. *The Provision of Non-Remunerated Legal Services in Brazil*

Non-remunerated legal services may be made available in Brazil as follows:

- through the appointment of a lawyer (Public Defender) by the state;
- under Law 1060 of 5 February 1950, concerning legal assistance;
- through the operation of legal clinics; and
- through the rendering of *pro bono* legal advice by qualified lawyers, either individually or collectively.

A. Appointment of Lawyers by the State

Where a person is unable to pay for legal representation, the Brazilian State must appoint an attorney free of charge to ensure the exercise of the constitutional right of access to justice.⁷ In such cases, counsel is appointed from the Public Defenders Office, at Federal or State level. Public Defenders are bachelors in law who must pass a public concours to join the Public Defenders Office. Usually, individuals who demonstrate that their monthly income is lower than three times the minimum wage in Brazil (around US\$ 600/month) are considered to be unable to pay for legal representation and may thus be assisted by a Public Defender; individuals who earn more than this amount may also qualify for the benefit.

Public Defenders may provide legal assistance in relation to a broad range of matters. Typical examples are assistance to criminal defendants, individuals seeking alimony payments or other family law rights, as well as individuals involved in civil law disputes of all sorts. The

⁶ Ruling No. 94 of 5 September 2000 of the Brazilian Bar Association.

⁷ Brazilian Federal Constitution, Article 5, LXXIV and Article 134.

number of Public Defenders is often insufficient to handle the large demand for legal assistance and it is common for the different Public Defenders Offices to establish cooperation agreements with local Bar Associations to ensure additional legal support where needed. Lawyers that register with their Bar Associations to assist the Public Defenders Office are remunerated by the State in accordance with a pre-approved table of fees. Such fees are not high and the lawyers available to take on this type of work are usually themselves in need; being overworked and underpaid, the quality of their legal services is often questionable.

The obligation of the State to provide access to the Courts and free legal advice to the public is also foreseen in Brazil in specific legislation concerning, for instance, consumer rights, labor unions and access to small claims courts.

B. Legal Assistance Legislation

Law 1060 of 5 February 1950 ensures legal assistance to any person who alleges he is unable to bear legal costs without affecting the financial ability to support his or her own family or himself or herself.⁸ Legal assistance in this sense is ensured to Brazilian nationals and also foreigners resident in Brazil and can be provided in relation to any legal matter. It is granted by the Judge, in view of the request formulated by the interested party as plaintiff or defendant in a legal proceeding. The person who invokes Law 1060 is presumed to have the right to legal assistance and does not need to prove such inability to support himself or herself; however, the Judge may withdraw such benefit in case the other party to the proceedings is able to rebut such presumption. Recent case law has recognized that legal entities, and not only individuals, may be entitled to legal assistance based on Law 1060, as long as inability to pay is demonstrated.

In addition to legal fees, beneficiaries of Law 1060 may be exempt from the general fees involved in judicial proceedings, such as fees to the Court, DOJ publications, experts and witnesses. The law does not, however, prevent bar attorneys that represent clients who benefit from legal assistance based on Law 1060 from charging fees for their work. For instance, if the beneficiary of the legal assistance wins the claim, fees will be due by the sucumbent party. Also, if the beneficiary of the legal assistance wins the case and if contingent fees have been agreed, they may be due by the beneficiary himself or herself, as long as they do not affect the beneficiary's ability to provide for his or her family or himself or herself.

C. Legal Clinics

The operation of legal clinics is not specifically regulated in Brazil. Legal clinics are normally run by qualified lawyers that supervise a group of junior and trainee lawyers, who in turn have the most interaction with the client. Traditionally, legal clinics have been organized through Brazilian universities and law schools.⁹ In view of the regulatory restrictions from Bar Associations to the provision of unpaid legal services, legal assistance provided by legal clinics is largely based on the provisions of Law 1060.

There is a growing movement in Brazil of "third sector" initiatives. These are essentially NGO-driven initiatives meant to provide various forms of social services. There have been attempts to set up NGOs to provide legal services, but these have generally been prohibited by Bar Association rules.

⁸ Law No. 1060 of 5 February 1950, Article 2, sole paragraph.

⁹ For instance, since the early 1920s *pro bono* legal assistance is provided by students of the Law School of the University of São Paulo through the "*Departamento Jurídico XI de Agosto*" (<http://www.djonzedeaugosto.org.br>).

D. Pro Bono Services

It is often argued that Article 133 of the Brazilian Constitution provides support for *pro bono* legal services, for it states that advocacy is an essential component of the proper administration of justice to which the state is bound. Notwithstanding such argument, there is no specific requirement for individual attorneys to provide *pro bono* legal services.

Bar Associations and local lawyers in general have not historically given much attention to the provision of *pro bono* legal services in a systematic and consistent manner. This has been in part due to the sharp growth in the number of lawyers in Brazil and the difficulty in finding work for these new lawyers. As explained above, Bar Associations have tended to focus greater attention on the needs of their less successful members than on making legal services available to civil society at large. For these reasons, Bar Associations have traditionally banned *pro bono* work as adversely affecting the ability of other attorneys to earn a livelihood.

In 2001, a group of lawyers from São Paulo created the *Instituto Pro Bono*,¹⁰ a groundbreaking organization designed to organize, expand and promote the provision of *pro bono* legal services in Brazil. One of the first tasks undertaken by this group was to overturn the São Paulo Bar Association's prohibition on performing *pro bono* services. *Instituto Pro Bono* was able to overcome resistance from other members in lobbying the São Paulo Bar Association to pass a resolution permitting attorneys to provide free assistance to non-profit organizations, though not to individuals. This resolution was passed in 2002. As São Paulo is the state boasting the most sophisticated legal practice and practitioners in Brazil, this was an important step to the wider spread of *pro bono* services throughout the country. In 2008, the Bar Association of the State of Alagoas issued a similar resolution to allow *pro bono* work, although also not to individuals.

Launched with the advice and cooperation of the Public Counsel Law Center in Los Angeles,¹¹ the *Instituto Pro Bono* serves as a clearing house for *pro bono* cases, though it also has a number of in-house attorneys who provide *pro bono* services directly. It works with a network of Brazilian attorneys and law firms, referring cases to qualified attorneys who have volunteered to accept these on an unpaid basis. This organization often deals with cases asserting the public interest right of action, known as *interesses difusos e coletivos*, comparable to a class action. Since its first years, *Instituto Pro Bono* has advised NGOs in matters concerning children's rights, women's rights, rights of minorities and persons with special needs, environment law, etc. It has also established wide international alliances with similar organizations in the Americas and elsewhere. It was active, for example, in the drafting of the Pro Bono Declaration for the Americas, undertaken by the Cyrus R. Vance Center for International Justice Initiatives of the New York City Bar, and launched in January 2008.¹² Furthermore, it is active in lobbying the Brazilian Bar Association and the various Bar Associations to legalize *pro bono* legal services throughout the country and to permit attorneys to provide *pro bono* legal services not only to NGOs but also directly to individuals.

A type of *pro bono* practice that has been growing among law firms in Brazil is to have some lawyers act as board representatives in NGOs and other "third sector" entities and thereby participate in the administration of such entities free or charge.

¹⁰ <http://www.institutoprobono.org.br>.

¹¹ <http://www.publiccounsel.org>.

¹² <http://www.nycbar.org/VanceCenter/Projects/PBDA.htm>.

III. *Pro Bono Opportunities in Brazil for International Law Firms*

Bearing in mind that foreign lawyers (*i.e.*, lawyers that are not registered with the Brazilian Bar Association) may not practice Brazilian law, opportunities for an international law firm to provide *pro bono* legal services in Brazil may still arise from relations with established local law firms, with Brazil-based NGOs and other entities of the “third sector” (such as Ashoka Organization¹³ and Connectas Human Rights¹⁴), as well as from Contacts with the *Instituto Pro Bono*, which can be particularly valuable to help matching up institutions in need of *pro bono* work and capabilities available from international law firms. There are presently several websites which concentrate a list of entities of the “third sector” in Brazil and specify areas in which they may need assistance.¹⁵ The Cyrus R. Vance Center at the New York City Bar is another potential source of *pro bono* cases.

IV. *Conclusion*

There is a growing awareness and willingness in Brazil to provide *pro bono* legal services in a systematic and organized manner. Access to justice remains an unattainable right for many in Brazil and *pro bono* advocacy could play a much more instrumental role than it currently does to help achieve such objective. Bar Association rules remain an obstacle for the development of *pro bono* initiatives in the legal field, but activities such as the work from *Instituto Pro Bono* and the regulations passed by the São Paulo and Alagoas Bar Associations point towards a gradual change. Although it is clear that much work remains to be done, the opportunities available to local and international law firms in the *pro bono* arena will certainly only increase in the years to come.

September 2010
Pro Bono Practices and Opportunities in Brazil

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.

¹³ <http://www.ashoka.org/>; <http://www.ashoka.org.br>.

¹⁴ <http://www.conectas.org/index.php/Home/index>.

¹⁵ <http://www.terceirosetor.org.br/>; www.portaldovoluntario.org.br; www.voluntariado.org.br; www.voluntarios.com.br.

PRO BONO PRACTICES AND OPPORTUNITIES IN CHILE

The Chilean bar is recognized throughout Latin America as having a notable dedication to *pro bono* work. Chilean lawyers, in particular those in the capital, Santiago, have long had a culture of volunteering their time and skills to help society. Their commitment to providing *pro bono* legal services has increased in recent years, aided by organized efforts to grow *pro bono* practice throughout Latin America. This regional push has helped institutionalize practices formerly performed by Chilean attorneys on an individualized and ad hoc basis. These efforts will likely increase the availability and effectiveness of *pro bono* services provided to the Chilean populace. This section provides a brief overview of the Chilean legal system, reviews different avenues of free legal aid available to indigent persons and discusses various organizations currently providing *pro bono* legal services in Chile.

I. *Legal Services and the Legal Profession in Chile*

A. Overview of the Chilean Legal System

The Republic of Chile stretches over 6,400 kilometers along the western coast of South America. A democracy since 1990, the elected government is divided into executive, legislative and judicial branches. Chile's current Constitution has been in effect since 1980.¹ It guarantees rights comparable to those outlined in the Constitution of the United States and goes further, guaranteeing the right to equality under the law, right to privacy, right to education, right to a multiparty system, right to life, right to fair wages, right to collective bargaining and right to a clean environment, among others.² This litany of constitutional rights, and the multiple avenues available to enforce them, provide great opportunities for attorneys to engage in *pro bono* efforts resulting in significant societal impact.

Chilean judges have original jurisdiction in civil, commercial, mining, treasure, family, criminal and labor matters. The lower court system is divided into civil tribunals (*tribunales de letras*), criminal tribunals (*juzgados de juicio oral* and *juzgados de garantía*), the *judicatura de cobranza laboral* with jurisdiction over labor disputes and other, more specialized, bodies. The seventeen courts of appeals preside over appeals from judges and arbitrators, and have administrative supervision over judges sitting within their jurisdiction. The *Corte Suprema* is Chile's court of final appeal, adjudicating errors of law in the appellate courts, with administrative supervision over all judges in the country. The twenty-one members of the *Corte Suprema* are appointed by the President and approved by the Senate from lists of candidates provided by the *Corte Suprema*. Members of the *Corte Suprema* elect a president every three years.

Chile's *Tribunal Constitucional* is a specialized court focusing solely on constitutional matters. The *Tribunal Constitucional* determines whether general laws, *leyes orgánicas constitucionales*, decrees with the force of law or foreign treaties conflict with the Chilean Constitution.³ The *Tribunal Constitucional* also reviews the constitutionality of decisions of the *Corte Suprema*, courts of appeals and elections tribunal, and reviews proposed legislation for compliance with constitutional principles. The *Tribunal Constitucional* may, by majority vote, declare a law or act inapplicable to a specific case or may, by four-fifths vote, declare a law or act

¹ Decreto 1150 de Oct. 21, 1980.

² *Constitución Política De La República De Chile*, Art. 19.

³ *Constitución Política De La República De Chile*, Art. 93.

unconstitutional and of no general effect.⁴ The *Tribunal Constitucional* is made up of ten members: three appointed by the *Corte Suprema*, three appointed by the President, and the last four chosen by the Senate, two of whom are chosen from a proposal made by the Chamber of Deputies. The members of the *Tribunal Constitucional* elect a president every two years.

B. Criminal Proceedings and the Right to Legal Assistance

Chile inherited its former criminal law system from Spain during the country's initial colonization. It was an inquisitional system that concentrated investigation, prosecution and adjudication in the judiciary. This system relied largely on written evidence and permitted little or no contact between the parties or between the parties and the judge. However, the Chilean criminal system underwent a radical transformation beginning in 2000 and culminating in June 2005, pursuant to which it was transformed into an oral and adversarial system. Under this new system, trials are public, and court records, rulings and findings are generally accessible to the public. An accused party enjoys a presumption of innocence, has the right to appeal and to be released if guilt is not established within a short period of time.⁵ The reforms also grant new rights to victims, including the right to work with the prosecutor to seek an appropriate sentence for the accused, to take part in hearings and to enter into reparatory agreements.⁶ The reforms have been largely successful, with the citizenry generally reacting favorably to the system's increased speed and transparency. As a result, citizens are better informed about and have increased confidence in the legal system.

The radical transformation of the criminal system was marked by the introduction of several new features and legal institutions. The first was the reformation of the judiciary, dividing criminal courts into *juzgados de garantía* and *juzgados de juicio oral*. *Juzgados de garantía* handle the pre-trial phase through the pre-trial hearing and safeguard the rights of parties, especially of the accused.⁷ *Juzgados de juicio oral* handle the subsequent oral and adversarial proceedings, ruling on guilt and dictating sentences. Because the *juzgado de garantía* handles the pre-trial phase, each three-judge panel forming a *juzgado de juicio oral* first hears the evidence presented at trial. The second legal innovation was the creation of an independent prosecutor's office charged with representing the State in the investigation of crimes, formulation of charges and prosecution of cases. The third important innovation was the creation of the public defender's office. This office defends all those charged with a crime and lacking legal representation, whether in proceedings before a *juzgado de garantía* or *juzgado de juicio oral*. The adversarial nature of the new system is intended to guaranty impartiality and fairness for the defendant.

The Chilean Constitution guaranties all criminal defendants the right to an attorney.⁸ While the public defender's office is charged with representing all criminal defendants, whether indigent or not, it may require a non-indigent defendant to contribute a co-payment for services up to the entire cost of the representation, depending on such person's financial means. In practice, nearly ninety-seven percent of the public defenders' clients are indigent and therefore represented

⁴ *Id.*

⁵ Sergio Endress Gómez, Essential Issues of the Chilean Legal System, <http://www.nyulawglobal.org/globalex/Chile1.htm>.

⁶ Rafael Blanco, Richard Hutt & Hugo Rojas, *Reform to the Criminal Justice System in Chile: Evaluation and Challenges*, 2 LOY. U. CHIC. INT'L L. REV., 253, 258, available at: http://luc.edu/law/activities/publications/ilrdocs/vol2_no2/vol2_no2/blanco_hutt_rojas.pdf.

⁷ *Ley Orgánica Constitucional 7421, Título II.*

⁸ *Constitución Política De La República De Chile*, Art. 19(3).

free of charge.⁹ The public defender's office is generally viewed favorably, and seen as granting high-quality defense to indigent defendants. It is considered a marked improvement over the former system where recent law school graduates represented indigent defendants.

C. Requirements to Practice Law and Mandatory Professional Practice

The *Corte Suprema* grants licenses to practice law in Chile. Obtaining a license to practice requires that a candidate have graduated from a Chilean university with a law degree, be no less than twenty years of age, have no criminal record or pending criminal prosecutions, present evidence of good moral character, be of Chilean nationality or permanent residence and have successfully completed a period of post-graduate professional practice in a Legal Aid Corporation ("*Corporación de Asistencia Judicial*").¹⁰ Only Chile-qualified attorneys may represent clients in court. However, attorneys qualified in other jurisdictions can and do practice law in Chile, often focusing on transactional matters rather than litigation.

The mandatory six months of professional practice in a *Corporación de Asistencia Judicial*¹¹ mentioned above is geared towards providing services to low-income persons, and may include service with the public defenders' office or the prosecutors' office.¹² Recent graduates work in the areas of criminal, labor, family and civil law. A licensed and practicing attorney supervises these recent graduates at all times. This will often serve as a young attorney's second exposure to direct legal services, as many law schools incorporate clinical work as either a mandatory component of a law degree or a voluntary activity open to all students.

D. Advertisement of Pro Bono Legal Services

Chilean attorneys face no impediment to publishing or advertising accurate accounts of their *pro bono* activities, provided that such communications are factually accurate and protect client confidentiality in addition to complying with all other applicable ethical norms and regulations. Accordingly, a number of leading law firms advertise their *pro bono* activities on their firm website. We note that *El Colegio de Abogados de Chile*, the Chilean voluntary bar association, discourages the advertisement of all legal services, including *pro bono* legal services. *Fundación Pro Bono* (further discussed below) initially encountered a reluctance on the part of law firms to promote their *pro bono* activities, stemming from both a sense of modesty and a feeling that *pro bono* work was performed for the betterment of society rather than for its marketing potential.¹³ Currently, however, twenty-eight law firms are members of *Fundación Pro Bono*, and several mention their membership prominently on their websites.¹⁴

⁹ Sofia Libedinsky, "The Reform Of The Criminal Justice System In Chile: From An Inquisitorial To An Adversarial Oral System – The Public Defender Office Role And Goals," presented at the Second European Forum on Access to Justice on February 24-26, 2005.

¹⁰ Ley Orgánica Constitucional 7421, Arts. 523, 526.

¹¹ Ley N° 17.995 establishes the *Corporación de Asistencia Judicial de la Región Metropolitana de Santiago in Santiago*, the *Corporación de Asistencia Judicial de la Región de Valparaíso in Valparaíso*, and the *Corporación de Asistencia Judicial de la Región del Bío-Bío in Concepción*.

¹² Ley Orgánica Constitucional 7421, Art. 523, Ley N° 17.995.

¹³ Pilar Aspíllaga and Pablo Guerrero, "Chile: *Fundación Pro Bono. Orígenes y Evolución de su Trabajo* (Parte II)," available at: http://vancenet.org/index.php?option=com_content&task=view&id=42.

¹⁴ Fundación Pro Bono, <http://www.probono.cl/miembros/>.

E. Pro Bono Declaration for the Americas

The *Pro Bono* Declaration for the Americas, which took effect on January 1, 2008, was drafted by a committee of leading practitioners from Latin America and the United States.¹⁵ The Declaration affirms that it is the duty of the legal profession to promote both a fair and equitable legal system and respect for human and constitutional rights. It calls for each entity that is a signatory to the Declaration to commit to perform an average of no less than twenty hours of *pro bono* work per practicing attorney per year. Sixteen private Chilean law firms signed the Declaration, as well as two corporate legal departments, two members of the judiciary, two government ministries, three law schools, two NGOs and *El Colegio de Abogados de Chile*.

The signing of the Declaration has invigorated *pro bono* work in Chile. It has served to spur the nation's leading law firms to institutionalize their *pro bono* practice and to develop formal structures and programs to perpetuate *pro bono* work. The Declaration has also helped define exactly what activities constitute *pro bono* legal services and distinguish them from other civic-minded activities that attorneys already perform, such as teaching university-level courses and serving on the boards of civic organizations. Larger law firms have generally leaned towards performing tax and transactional work for non-profit organizations, though they also provide a fair amount of legal services directly to indigent clients.

II. *Pro Bono Opportunities in Chile*

Fundación Pro Bono is Chile's leading clearinghouse for *pro bono* work. It is the only non-profit organization that focuses on finding and distributing *pro bono* opportunities to private attorneys.¹⁶ Founded in 2000, it was based on the United States' model and adapted to Chile's circumstances after extensive discussions with Chile's leading law firms. *Fundación Pro Bono* does not provide direct services but instead serves solely as a clearinghouse, referring matters to private firms and individual attorneys and developing new *pro bono* programs serving non-profit entities, NGOs and private citizens. As of early 2008, *Fundación Pro Bono* received around thirty requests for *pro bono* services per week, which it screens and refers to practitioners on a regular basis. Boasting a network of twenty-eight affiliated firms and over one thousand individual affiliated attorneys, *Fundación Pro Bono* aims to refer over 20,000 hours of *pro bono* services on an annual basis. In 2009, affiliate attorneys reported 9,967 hours of *pro bono* services. This organization has been held up as a model throughout the Latin American legal community and has been recognized for its efforts by the United Nations.

Fundación Pro Bono divides its efforts into a number of programs: family law, government transparency and access to information, arbitration, transactional and tax services to NGOs and microentrepreneurs, and legal assistance to victims of violent crimes. *Fundación Pro Bono* has entered into a collaboration agreement with the State pursuant to which private attorneys provide no-cost legal assistance to criminal victims. In 2009, for example, members took on 137 criminal cases.¹⁷ *Fundación Pro Bono*'s primary mission involves developing the *pro bono* practice and placing *pro bono* matters with private attorneys.

¹⁵ http://www.nycbar.org/VanceCenter/PBDA/PBDA_English.pdf

¹⁶ <http://www.probono.cl>

¹⁷ <http://www.probono.cl/documentos/memorias/Memoria2009.pdf>

Other NGOs in Chile provide direct legal services to victimized or indigent groups. Rather than referring cases to private attorneys, these NGOs bring cases on behalf of such pro bono clients.

Corporación de Promoción y Defensa de los Derechos del Pueblo (CODEPU) is an NGO focusing its efforts on the defense of human rights.¹⁸ CODEPU was founded in 1980, during Augusto Pinochet's military dictatorship. CODEPU offers social, legal and psychiatric assistance to individuals and groups that are victims of human rights violations, assisting in close to 1,000 cases a year. CODEPU also disseminates information relating to human rights and conducts trainings for social organizations and at schools.

Un Techo Para Chile is a youth-led non-profit organization begun in 1997.¹⁹ While its central focus is on building low-cost housing, it also provides legal and other advice aimed at developing the skills and qualifications of Chile's underprivileged population. The organization's objectives include imparting legal assistance and educating the people regarding their rights under the law. To this effect, its volunteers and affiliated organizations sponsor legal clinics to provide direct assistance with specific problems and also hold seminars to educate the people of Chile on their constitutional and legal rights and the various mechanisms available to enforce such rights. *Un Techo Para Chile's* model has been very successful and has expanded to multiple other Latin American countries under the name *Un Techo Para Mi País*.²⁰

III. Conclusion

The Chilean bar is already a Latin American leader in providing *pro bono* legal services. In fact, many attorneys already perform more than the twenty hours per year *Pro Bono* Declaration for the Americas commitment.²¹ The practice of *pro bono* is likely to continue to increase and become further institutionalized in the coming years.

September 2010
Pro Bono Practices and Opportunities in Chile

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.

¹⁸ <http://www.codepu.cl>

¹⁹ <http://www.untechoparachile.cl>

²⁰ <http://www.untechoparamipais.org>

²¹ Pilar Aspillaga and Pablo Guerrero, "Chile: Fundación Pro Bono. Orígenes y Evolución de su Trabajo (Parte II)," available at: http://vancenet.org/index.php?option=com_content&task=view&id=42.

PRO BONO PRACTICES AND OPPORTUNITIES IN CHINA

In the last thirty years, China has implemented a number of legal and economic reforms and legal services are playing an increasingly important role in protecting citizens' rights and interests.¹ In 1982, China began the process of privatizing the practice of law after the legal profession had been reduced nearly to nonexistence during the Anti-Rightist Movement and the Cultural Revolution. In 2004, there were over 120,000 lawyers in China.² Since 1994, China has also been building a legal aid system which includes a variety of local adaptations for those who cannot otherwise afford legal services. The Chinese approach is similar to the U.S. mixed system which includes the judiciary and salaried lawyers models, with local variations.³ The Department of Legal Aid of the Ministry of Justice, PRC has been established to: guide and conform the development of legal aid laws and regulations as well as to execute legal aid policies; plan for the development of legal aid work; manage legal aid institutions and legal aid practitioners; and provide guidance to social organizations and voluntary organizations in their developing legal aid work.⁴

The development of legal aid services in the PRC has been making steady progress. According to a speech delivered by the Minister of Justice in the fifth nationwide legal work meeting held on June 9, 2009, the number of legal aid cases has grown by 30% each year since 2004. As of 2008, nearly 550,000 legal aid cases have been handled and over 4.3 million people have received legal aid consultation services. Twenty-five provinces (i.e., regional districts and cities) have enacted local rules and regulations which will facilitate the management and quality of the legal aid work. By the end of 2008, 3,268 legal aid institutions have been established nationwide and the total number of people assisting legal aid institutions reached 12,778.⁵ In 2009, 641,065 legal aid cases were handled by the legal aid institutions nationwide and over 4.8 million people received legal aid consultation services.⁶

In addition, in June 2009, the Ministry of Justice organized activities in order to promote "legal aid services for the convenience of the people" and promoted ten measures nationwide to help ordinary people with legal affairs. The coverage of legal aid has been expanded throughout the country, and issues which are closely related to the citizens' well-being have been

¹ See generally Francis Regan, *How and Why is Pro Bono Flourishing: A Comparison of Recent Developments in Sweden and China*, (archived at Flinders University), available at: <http://dspace.flinders.edu.au/dspace/bitstream/2328/1034/1/ProbonoComparison.pdf>.

² Ge Wu, *Private Lawyer, Government Lawyer, and Public Interest Lawyer*, available at: <http://www.chineselawyer.com.cn/pages/2004-11-19/s25126.html>

³ Allen C. Choate, *Legal Aid in China*, The Asia Foundation Working Paper Series, Working Paper #12, p. 6 (April 2000), available at: <http://www.asiafoundation.com/pdf/wp12.pdf>.

⁴ The major functions of the Department of Legal Aid, Ministry of Justice, PRC, are pursuant to "Notice of the State Council about the Publishing of the Internal Institutions with Major Duties and Personnel of the Ministry of Justice" (GuoBanFa [2008] No. 64), available at: http://www.moj.gov.cn/flyzs/content/2009-04/08/content_1066853.htm?node=7851

⁵ The speech delivered by Ms. Wu Oiyong, the Minister of the Ministry of Justice in the 5th meeting of legal aid work dated June 9, 2010, available at: http://www.moj.gov.cn/flyzs/content/2009-06/22/content_1111680.htm?node=7673

⁶ "Overview of Legal Aid Work in China 2009," available at: http://www.chinalegalaid.gov.cn/China_legalaid/content/2010-08/26/content_2260721.htm?node=24953

incorporated as supplements into the coverage of legal aid for the protection of citizens' rights and interests.⁷

However, because the current laws regulating lawyers and the representative offices of foreign law firms in China strictly limit the offices' practice to foreign legal services, there is almost no room for foreign law firms to engage in any *pro bono* representation of Chinese nationals.

I. Legal Services and the Legal Profession in China

Chinese law recognizes that the government has a responsibility to provide legal aid to its citizens.⁸ The legal aid system was first proposed by the Ministry of Justice in 1994, and in 1996 the Ministry established the Legal Aid Center ("LAC") to monitor and promote the development of legal aid bodies nationwide, and the China Legal Aid Foundation ("CLAF")⁹ to raise funds for legal aid.¹⁰ The system is guided and coordinated by legal aid institutions, lawyers, notary clerks, and paralegals who are "required to provide free or rate-reduced legal services for clients who encounter financial difficulties or for special cases."¹¹ A "China Legal Aid" website has been launched and is maintained by the LAC.¹²

The legal aid institutions supervised by LAC include national, provincial, regional (municipality or prefecture), and county or district legal aid centers.¹³ The national and provincial centers are tasked with policy-making and management rather than handling actual cases.¹⁴ Legal aid cases are generally handled directly by municipal and county legal aid centers.¹⁵ These local legal aid centers, which provide legal services for civil, criminal and administrative proceedings and other non-litigation matters such as legal consultation, mediation and notary services, are responsible for accepting and examining legal aid applications and for arranging for personnel to provide legal aid to qualified citizens.¹⁶ While local legal aid institutions do occasionally handle

⁷ *Legal Aid in China*, The Ministry of Justice of the PRC, available at: http://english.moj.gov.cn/Legal-Aid/content/2010-01/25/content_2035688.htm?node=7619.

⁸ Regulation on Legal Aid (No. 385) (promulgated by the State Council, July 16, 2003; effective September 1, 2003) available at: http://www.chinalegaid.gov.cn/China_legalaid/content/2010-08/25/content_2259022.htm?node=24970. The rate of subsidy is determined by the judicial administrative department and the department of public finance for each provincial government. The subsidy usually only covers the expenses incurred by the law firm in handling the case. Court fees are the responsibility of the legal aid recipient, not the law firm which provides legal aid, but courts may waive the court fees for qualified legal aid recipients.

⁹ See <http://www.claf.com.cn/>.

¹⁰ Some major cities, such as Beijing, Guangzhou, Shanghai and Wuhan, set up municipal legal aid centers and legal aid foundations as pilot projects in 1994 and 1995. See Wong Kai-shing, *China: Legal Aid in China*, available at: <http://www.hrsolidarity.net/mainfile.php/1999vol09no11/1949>.

¹¹ Notice Regarding Development of Legal Aid Work (promulgated by the Ministry of Justice, May 1997), available at: www.asiafoundation.com/pdf/wp12.pdf; Allen C. Choate, "Legal Aid in China," The Asia Foundation Working Paper Series, Working Paper #12 (April 2000).

¹² Available at: <http://www.chinalegaid.gov.cn>.

¹³ Choate, *supra* note 3.

¹⁴ Choate, *supra* note 3, at 14.

¹⁵ *Id.*

¹⁶ Regulation on Legal Aid, *supra* note 8, art. 5. If an application is rejected by the legal aid center, the applicant may appeal the decision to the supervising judicial administrative department.

cases with their own staff attorneys, most cases are referred to outside private attorneys practicing at law firms.¹⁷ It is illegal for an attorney who provides legal aid service to receive any money or articles of value as compensation.¹⁸ Attorneys who provide legal aid service will receive subsidies via the legal aid institutions.¹⁹ Private attorneys providing legal aid services remain under the direction and supervision of the judicial administrative departments, national or local lawyers' associations, legal aid institutions, and legal aid recipients.²⁰

China's legal aid institutions are supported by government funds, private donations and lawyers' free services.²¹ Government funding supports the legal aid centers' operations and provides subsidies to the assigned private lawyers.²² Private donations raised by the legal aid foundations are another important source of income.²³

Legal aid volunteers have also become an important part of the legal aid system in China.²⁴ These individuals volunteer with local legal aid centers and generally fall into three categories: (1) lawyers, notaries, grassroots community legal service workers, law school students, non-practicing lawyers and retired legal workers; (2) journalists who report legal news and have the responsibility of publicizing the national legal aid system; and (3) social activists who are able to donate or raise funds for legal aid.²⁵

¹⁷ Choate, *supra* note 3, at 14. In staffing, the centers usually consider their own financial resources and availability of professional legal personnel. The number of cases assigned to private attorneys varies by center. *See also The Interim Measures on Administration of Carrying Out Legal Aid Services by Lawyers and People Who Provide Legal Service at the Local Level* (promulgated by the Ministry of Justice, September 8, 2004, effective September 8, 2004), art. 3, available at: <http://law.chinalawinfo.com/newlaw2002/SLC/SLC.asp?Db=chl&Gid=55203>.

¹⁸ Rule 28 of the Regulation on Legal Aid (No. 385) (promulgated by the State Council, July 16, 2003; effective September 1, 2003). If the attorney has infringed Rule 28(2) which renders as an illegal act, the administrative department of the Ministry of Justice shall order the attorney to return the money and the articles of value. The attorney will be subject to a penalty in the amount of between greater than one time and less than three times the value of the money and articles that had been received by him or her.

¹⁹ Rule 24 of the Regulation on Legal Aid (No. 385) stipulates that "For the attorney who has been assigned with legal aid cases or the personnel who serves at that social organization which provides the legal aid service, when legal aid case comes to an end, they shall submit the materials, such as the duplicate or photo copies of the relevant legal documents or case report, to the legal aid institutions. After the legal aid institutions have received the materials, subsidy shall be awarded to the attorney who has been assigned with legal aid cases or the personnel who serves at that social organization. The standard for the amount of subsidy awarded is determined by the department of administration and justice of the people's government of the provinces, autonomous regions and municipalities and the finance department at the same level according to the local economic development level and making reference to the average cost for the legal aid institutions to undertake various types of legal aid cases, etc., and adjustments shall be made according to the needs."

²⁰ The judicial administrative departments have the power to suspend the lawyer's license if he or she is not in compliance with the relevant regulations. Law firms who handle legal aid cases are subject to the review of the legal aid centers. The legal aid recipients can also file complaints with relevant judicial administrative departments, legal aid centers and lawyers associations if they are not satisfied with the attorney handling the case. *See Interim Measures, supra* note 17, at art. 4.

²¹ Xinhua News Agency, "Ordinary Chinese Citizens Access More Legal Aid," available at: http://www.chinadaily.com.cn/english/doc/2004-10/01/content_379270.htm.

²² Regulation on Legal Aid, *supra* note 8, article 24.

²³ Regulation on Legal Aid, *supra* note 8.

²⁴ *Id.*

²⁵ *Id.*

A. Eligibility for Legal Aid

In criminal proceedings, citizens can either apply for legal aid or be assigned legal aid lawyers by the People's Courts. All criminal defendants can apply for legal aid if they meet the standard for "financial hardship."²⁶ Courts may also appoint defense counsel for a defendant who is blind, deaf, mute, or if he is a minor, or is prosecuted for a capital crime.²⁷ The Joint Notice of the Supreme People's Court and the Ministry of Justice regarding Legal Aid Work in Criminal Cases issued in April 1997 provides that legal aid may be provided to the defendant if (i) he or she is an indigent defendant, and his or her economic situation is not known; (ii) the defendant's family repeatedly refuses to pay legal cost; (iii) other co-defendants in a conspiracy case have legal counsel; (iv) he or she is a foreigner without counsel; and (v) the case is "of great social significance." Whether free legal aid will be assigned will be subject to the court's discretion.²⁸

In civil or administrative proceedings, citizens meeting "financial hardship" criteria can apply to legal aid centers either for assistance in litigation or for legal consultation services.²⁹ Legal aid is available for state compensation claims, claims for social security payments or minimum living guarantee payments, pensions for the disabled or bereaved, parental or child support or alimony, labor remuneration, and for disputes arising as a result of actions taken "in the interest of justice."³⁰

II. *Pro Bono Opportunities in China*

Currently, private attorneys in China are required to fulfill legal aid obligations imposed by the state.³¹ The All-China Lawyers Association and local lawyers associations also require

²⁶ Provisions on Legal Aid Work in Criminal Litigation (promulgated by the Supreme People's Court, the Supreme People's Protectorate, Ministry of Public Security and Ministry of Justice, September 28, 2005, effective December 1, 2005), art. 4, *available at*: <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=30912#id30912>.

See also Guidance on Legal Aid, published by the China Legal Aid Center on June 1, 2007, *available at*: http://www.chinalegalaid.gov.cn/China_legalaid/content/2010-08/10/content_2235284.htm?node=24966.

²⁷ Legal Aid in China, Ministry of Justice of the PRC, *available at*: http://www.legalinfo.gov.cn/english/Legal-Aid/node_7622.htm;

Article 34 of the Criminal Procedure Law of the PRC (amended in accordance with the Decision on Revising the Criminal Procedure Law of the People's Republic of China adopted at the Forth Session of the Eighth National People's Congress on March 17, 1996), *available at*: <http://www.china.org.cn/english/government/207332.htm>.

²⁸ *See* <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan017813.pdf>.

²⁹ Regulation on Legal Aid, *supra* note 8, art. 10.

³⁰ *Id.* Provincial governments may also adopt supplementary provisions governing legal aid in cases other than those provided for by law. In fact, the local rules and regulations often provide a broader scope of legal aid services than the national regulations. For example, in Shanghai, legal aid institutions also provide legal aid in labor contract disputes, claims for damages for work-related injuries, automobile accidents, or medical malpractice, and for domestic violence and child neglect. *See* Provisional Measures on Legal Aid (promulgated by the executive comm. of the Shanghai People's Cong., April 26, 2006, effective July 1, 2006), art. 5, *available at*: http://www.law-lib.com/law/law_view.asp?id=166365.

³¹ According to the law governing lawyers, every lawyer is obligated to perform a certain amount of legal aid work assigned by the legal aid institutions and lawyers associations. Law on Lawyers (promulgated by the Standing Committee of the National People's Congress, May 15, 1996, amended October 28, 2007, effective June 1, 2008), art.42, *available at*: http://www.chinacourt.org/flwk/show.php?file_id=122226. The number of legal aid cases and the amount of service a lawyer is obligated to provide vary from province to province.

their members to participate in legal aid services.³² The emphasis on legal aid is due to the fact that Chinese attorneys have historically been designated as “legal workers of the State” and the privatization of the legal profession is a relatively new occurrence. Attorneys shall be subject to a fine or suspension from practice for three months if they refuse to discharge their legal aid duties. Given the relative size and youth of the legal profession in China this means that it is more practical for the state to assign cases to lawyers through the legal aid institutions.

A growing number of nongovernmental legal aid bodies in China are also providing legal *pro bono* services, including labor unions, the Communist Youth Community, women’s organizations and disabled persons’ groups.³³ Among these, law centers of universities in China are active and are playing a role in the provision of *pro bono* legal assistance by taking on high profile cases with significant social importance.³⁴

As foreign law firms and lawyers are limited under Chinese law to providing advice only in the sphere of foreign law, there has not been a demand by Chinese individuals or NGOs for legal services from foreign and international lawyers. However, foreign international law firms with expertise in foreign laws and practice could act as a resource to the clinics by introducing students to international practice and legal concepts, and by providing guidance in developing the clinics’ practice. Another possibility for foreign firms to do *pro bono* work in China under the current laws and regulations is to advise Chinese clients on foreign laws and international laws. However, with the development of Chinese NGOs and the increasing number of international treaties to which China has become a party, foreign law firms may have the opportunity to represent Chinese NGOs in the countries where they are allowed to practice or before an international tribunal. A foreign law firm might also be able to partner with local counsel to advise NGOs on legal issues they might face which have an international dimension, such as contracts with multinational aspects or intellectual property issues.

The Chinese government has been very cautious in permitting international or foreign NGOs to enter the country. However, many international NGOs such as Greenpeace and the Red Cross have successfully opened branch organizations in China. In the event of a relaxation of the historically strict governmental policy towards international NGOs, foreign lawyers should have more opportunities to assist these organizations with the legal issues they encounter in China. Although current law prohibits foreign lawyers from representing organizations directly, they can

³² Law on Lawyers, art. 42.

³³ Opinion on Implementation of “Regulation on Legal Aid,” *Promotion and Formalization of Legal Aid* (promulgated by Ministry of Justice, September 12, 2003, effective September 12, 2003), art. 11, available at: <http://www.jincao.com/fa/22/law22.s15.htm>.

³⁴ The Center for the Protection of the Rights of Disadvantaged Citizens at Wuhan University Law School, available at: <http://www.cprdc.org/web/>, Constitutional and Civil Rights Center at Qinghua University Law School; Center for Women’s Law Studies and Legal Aid Society of the Beijing University, available at: <http://laa.lawpku.org/> are among the most established law school clinics in China. See, e.g., *Skeletal Legal Aid Requires Flesh and Muscle*, China Development Brief, available at: <http://www.chinadevelopmentbrief.com/node/307>.

See also South-Central University for Nationalities Clinical Legal Education and South-Central University for Nationalities Legal Aid Centre, available at: http://www.scuec.edu.cn/flyz/introduce/zhensuo_introduce.htm?node=24974

See also Chinese universities students online, Zhongnan Economics, Law and Politics University, available at: <http://lac.univs.cn/index.jsp>

“provide information on the impact of the Chinese legal environment” which may enable foreign lawyers to provide meaningful services to Chinese organizations.³⁵

A. Barriers to *Pro Bono* Practice for Foreign Law Firms

Only attorneys licensed in China may appear in court and advise on questions of Chinese law.³⁶ Foreign lawyers cannot qualify to practice Chinese law, and foreign law firms cannot form joint ventures with Chinese lawyers.³⁷ In addition, the rules of the Ministry of Justice specify that representative offices acting in the capacity of a lawyer cannot: represent parties in a litigation; give legal opinions or certifications on specific issues with respect to the application of Chinese law in contracts, agreements, or arbitration; or file applications on behalf of clients before Chinese administrative authorities.³⁸ The legal aid cases currently permitted under the legal aid regulations are well within the scope of “Chinese legal affairs” in which foreign law firms cannot participate. Under this system, it is effectively impossible for foreign lawyers in China to take on the legal aid cases or initiate their own *pro bono* cases involving any Chinese law matters. Therefore, foreign law firms are currently limited in their opportunities to do *pro bono* work within China.

Strict practice rules also apply to Chinese lawyers who choose to work at foreign law firms and these rules restrict their ability to provide *pro bono* services. When a PRC-qualified lawyer is hired by a foreign law firm, the lawyer’s practicing license in China is suspended for as long as he or she is employed by the foreign firm.³⁹ Even though the Lawyers Law requires all Chinese lawyers to take legal aid cases, “lawyer” is defined as “a practitioner who has acquired a lawyer’s practicing certificate pursuant to law and provides legal services to the public.”⁴⁰ Once suspended from practicing Chinese law, a lawyer can no longer “provide legal service to the public” and is therefore no longer assigned legal aid cases by his or her local lawyers association. In addition, the legal aid regulations require that legal aid cases be assigned to law firms instead of individual lawyers.⁴¹ Therefore, resident attorneys at the foreign firms’ offices in China cannot accept legal aid cases in their own names even if they are qualified in China and are allowed to keep their practicing licenses active. These rules effectively prevent Chinese-qualified attorneys at foreign law firms from providing legal aid.

³⁵ Legal Services, The American Chamber of Commerce in Shanghai, *available at*: <http://www.amcham-shanghai.org/AmChamPortal/MCMS/Presentation/Publication/WhitePaper/WhitePaperDetail.aspx?Guid={41DB3F40-2CB1-49E6-848A-9FA41CE5F95F}>.

³⁶ China Business Law Handbook, USA International Business Publications, 2007, p. 68.

³⁷ How to practice in China, The Law Society of England and Wales, *available at*: <http://www.international.lawsociety.org.uk/ip/asia/586/practice>.

³⁸ *See Implementing the Administration of Representative Offices of Foreign Law Firm in China Regulations* (promulgated by the Ministry of Justice, July 4, 2002, effective September 1, 2002), art. 33, *available at*: http://www.gov.cn/english/laws/2005-08/24/content_25816.htm

³⁹ Legal Services, The American Chamber of Commerce in Shanghai, *available at*: <http://www.amcham-shanghai.org/AmChamPortal/MCMS/Presentation/Publication/WhitePaper/WhitePaperDetail.aspx?Guid={41DB3F40-2CB1-49E6-848A-9FA41CE5F95F}>.

⁴⁰ *Id.*

⁴¹ Interim Measures, *supra* note 136.

III. *Conclusion*

The current laws and regulations prohibiting foreign law firms from practicing Chinese law greatly limit their ability to provide *pro bono* legal services in China. However, there may still be opportunities for foreign firms to engage in *pro bono* legal work by developing partnerships with NGOs that provide *pro bono* services or law school legal clinics. For resourceful law firms and practitioners, there may even be opportunities to facilitate legal reform and the development of *pro bono* in the legal profession by providing consulting and information-based services to the Chinese government, NGOs, and law schools.

September 2010

Pro Bono Practices and Opportunities in China

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.

PRO BONO PRACTICES AND OPPORTUNITIES IN COLOMBIA

The *pro bono* movement in Colombia has gained significant momentum over the last few years. Though the Colombian legal establishment does not have a long history of commitment to *pro bono* work, this is changing significantly. This change comes as a result of both the concerted efforts of a younger generation of attorneys and the increased emphasis on and visibility of *pro bono* work throughout Latin America. Today, many of the leading law firms in the country engage in systematic *pro bono* activities. This newfound commitment has encouraged a nascent culture of *pro bono* work that appears certain to only increase in the coming years. This section provides a brief overview of the Colombian legal system, reviews different avenues of no-cost legal aid available to indigent persons and introduces a number of organizations currently providing *pro bono* services in Colombia.

I. *Legal Services and the Legal Profession in Colombia*

A. Overview of Legal System

The current Colombian Constitution was enacted in 1991, replacing the Constitution of 1866.¹ This document establishes Colombia as a unitary republic with a national government composed of legislative, judicial and executive branches. The judicial power is exercised by four roughly coequal, supreme judicial organs. The Supreme Court of Justice is the highest court of civil, labor, land, commercial and criminal law. The Council of State is the highest court of administrative law. The Superior Judicial Council administers and disciplines the civilian judiciary and resolves jurisdictional conflicts arising between other courts. Finally, the Constitutional Court is the sole judicial body with jurisdiction in constitutional law, hearing and deciding on actions that seek to uphold fundamental rights or to attack unconstitutional laws and regulations. The Constitution includes a wide range of rights that are aimed at providing legal avenues for the underprivileged to have access to justice. Largely because of this, actions before the Constitutional Court have become an important way to safeguard the legal, social and human rights of the Colombian population.

B. Requirements to Practice Law

To practice law in Colombia, an attorney must be registered with the *Consejo Superior de la Judicatura*.² To obtain such registration, an attorney must hold a law degree from a licensed Colombian university. Attorneys holding law degrees from foreign universities may be admitted to practice if their degree is evaluated and considered by the authorities to be the equivalent of a Colombian degree, and they pass the ECAES, the national qualification exam. While degrees granted in some jurisdictions, such as Spain and other Latin American countries, are regularly deemed to be equivalent, degrees granted in the United States are unlikely to be so regarded. This difference is likely explained by the divide between civil and common law. As such, a U.S.-trained attorney must associate herself with a licensed Colombian attorney if she wishes to provide any sort of legal services in Colombia.

C. Right to Legal Assistance

All criminal defendants in Colombia are entitled to the assistance of counsel. Indigent criminal defendants are understood to have the Constitutional right to be represented by counsel

¹ Andrade and de Castro, 956 T.M., Business Operations in Colombia, A-2.

² Martindale-Hubbell Law Digest 2007, COL-11.

free of charge.³ Assistance is provided by the *Defensoría del Pueblo*, an entity created by the Constitution of 1991 and charged with providing free services for indigent criminal defendants. The *Defensoría del Pueblo* is also empowered to provide legal assistance to those persons who are not indigent, but are unable for another reason to obtain competent legal representation.⁴

All licensed and practicing attorneys may be required to provide free assistance to indigent criminal defendants if called to service by the *Defensoría del Pueblo*. This occurs where no *defensor público* is available to take the case because they are over-committed on other cases.⁵ These *defensores de oficio*, are called by the *Consejo Superior de la Judicatura* and must serve as part of their professional obligation to protect the State of Law and human rights.⁶ While *defensores de oficio* receive payment only in exceptional situations, they are subject to the same obligations as a *defensor público*. The failure of an attorney to respond to such a summons may result in the institution of disciplinary proceedings against him or her.⁷ Disciplinary sanctions include censure, fines, suspension and expulsion from the profession.⁸

Indigent criminal defendants may also obtain free legal assistance from the *consultorios jurídicos* (legal clinics) run by all registered Colombian law schools. These programs were established over two decades ago and have been instrumental in instilling a sense of duty to the community in a younger generation of attorneys. Law students must provide free legal services in a *consultorio jurídico* during their last year of studies. While the *consultorios jurídicos* are supervised by a licensed attorney, law students are explicitly authorized to provide representation in certain types of criminal cases.⁹ Students in *consultorios jurídicos* may also assist clients in connection with civil, family, or labor matters. Law schools also have *centros de conciliación*, which engage in enforceable mediations.

II. *Pro Bono Opportunities in Colombia*

Historically, most *pro bono* services were performed by attorneys on a purely altruistic and sporadic basis, rather than as part of structured programs. This has changed in the last few years, in part because a new generation of attorneys, active in providing direct services in the *consultorios jurídicos* during their training, has felt a need to contribute to society through the provision of free legal services. This new generation has been able to overcome some initial institutional resistance to *pro bono* work on the part of the legal establishment. A second contributing factor is that the Latin American legal community as a whole has placed an increasing emphasis on *pro bono* services in recent years. This emphasis is evidenced by the recent development and implementation of the *Pro Bono Declaration for the Americas*. This Declaration was drafted by a committee of leading lawyers from Latin America and the United States. To date, nearly twenty Colombian law firms and some law faculties have signed on to it,

³ Colombian Constitution art. 29; Ley 1123 de 2007, Libro II, Título I, Capítulo I, art. 21; <http://www.defensoria.org.co>

⁴ Art. 43, Ley 941 de 2005.

⁵ Constitutional Court Decision C-075 of 1995 (Law 941 of 2005 tried to eliminate the duty of *defensores de oficio*, there were simply not enough *defensores públicos* to meet the demand. Thus the Constitutional duty to be a *defensor de oficio* when called prevails.).

⁶ Ley 1123 de 2007, lib. II, tit. I, cap. I § 21 (the national disciplinary code of attorneys).

⁷ *Id.*; Art. 8, Ley 941 de 2005; Constitutional Court Decision C-075 of 1995.

⁸ *Id.* at lib. II, tit. II, cap. I art. 40.

⁹ Art. 17, Ley 941 de 2005; Constitutional Court Decision C-075 of 1995.

thereby committing themselves to provide an average of more than twenty annual *pro bono* hours per practicing attorney.¹⁰

It should be noted that the bulk of *pro bono* services currently provided by Colombian law firms are corporate services to non-profit entities. For various reasons, including security concerns, many law firms and attorneys do not currently provide direct representation in controversies concerning political and human rights. Below is a brief introduction to several organizations that currently provide *pro bono* services in Colombia.

In addition to legal clinics, Colombian law schools are growing “*grupos de derecho publico*,” which undertake high-impact human rights litigation, mainly through constitutional actions. *Universidad Los Andes* has a number of them, including the *grupo de derecho publico* (“G-DIP”), run by Professor Daniel Bonilla, and PAIIS, which focuses on disability rights. *Universidad del Rosario* has a similar group: *Grupo de Acciones Públicas*, as does *Universidad Sergio Arboleda*.

Fundación Pro Bono Colombia is a *pro bono* clearinghouse.¹¹ Officially launched in 2008, its members include over twenty law firms. Within its first year of operation, *Fundación Pro Bono Colombia* received approximately one hundred cases and referred eighty of those to firms and private attorneys. In addition, the foundation runs legal seminars for the underprivileged and researches human rights issues.

Servicios Jurídicos No Remunerados is a partnership formed between *Universidad de Los Andes* and a number of Colombian law firms. The entity offers free legal services to non-profit groups dedicated to humanitarian causes, in particular in the areas of health, education, environment, disability and children’s law.¹² Over twenty-five Colombian law firms donate their services to this project, permitting the organization to provide its clients with specialized support in nearly every area of substantive law. Initially, the program offered only services related to legal incorporation and the negotiation of contracts. However, attorneys linked to the program also now provide representation in specific controversies concerning the public interest.

Compartamos con Colombia is an alliance of professional services firms formed to support not-for-profit entities. It undertakes initiatives designed to contribute to Colombia’s development. The alliance counts seventeen world-class law firms, investment banks and consulting firms among its ranks.¹³ *Compartamos con Colombia* provides subsidized institutional support to non-profit organizations, projects that seek to efficiently channel resources, projects promoting social entrepreneurship and initiatives furthering self-sustaining social investment. The organization also develops strategies promoting corporate responsibility and family-based philanthropy. To date, *Compartamos con Colombia* has provided free or low-cost institutional support to over sixty non-profit organizations operating in the areas of sustainable development, children’s rights, education, health and microfinance, among others.

The NGO *Comisión Colombiana de Juristas* is dedicated to the preservation of human rights in Colombia. Its activities include commenting on proposed legislation, compiling and distributing information and legal analysis to the population at large and providing direct

¹⁰ <http://www.nycbar.org/VanceCenter/Declaration.pdf>.

¹¹ <http://probono.org.co>.

¹² http://www.abcny.org/VanceCenter/PDF/strategysummit/programprofiles/Servicios%20Los%20Andes_Esp.pdf.

¹³ <http://www.compartamos.org>.

representation in impact litigation aimed at preserving and safeguarding human rights.¹⁴ It files cases both before the Constitutional Court and other Colombian bodies and before the Inter-American Commission on Human Rights.

Attorneys not licensed in Colombia may provide services in specific controversies if they partner with locally licensed attorneys. For example, a foreign attorney may aid in the drafting of briefs filed before Colombian courts that seek to safeguard human and social rights. Note that the Constitutional Court may consider foreign law in its decisions, and amicus briefs based on foreign or international law have therefore begun to play an important role in constitutional litigation.¹⁵ In one recent notable success, the New York-based firm of Weil, Gotshal and Manges LLP partnered with *Universidad de los Andes* in submitting to the Constitutional Court an amicus brief in support of extending the benefits of marriage to unwed same-sex couples. This brief helped the plaintiffs obtain a landmark decision permitting same-sex couples to register their domestic partnerships and receive economic benefits on equal terms with opposite-sex couples. The Cyrus R. Vance Center for International Justice in New York serves as a clearinghouse for these types of opportunities.

III. Conclusion

The last few years have seen great strides in the field of *pro bono* legal services in Colombia. A *pro bono* clearinghouse was founded. Many of the top law firms in the nation have publicly committed themselves to devoting a percentage of their time to providing *pro bono* services and have established programs for doing so. Despite these advances, much work remains to be done. The Colombian legal codes contain numerous actions and remedies designed to safeguard the legal and social rights of its citizens—these, however, are technical and complex, and their application often requires the specialized assistance of an attorney. Furthermore, as one leading practitioner notes, the country has significant unaddressed needs in the areas of population displacement, the environment, anti-corruption programs, family law and children's rights, among others.¹⁶ There is much reason for optimism, however, given the recent trajectory of *pro bono* services in Colombia

September 2010

Pro Bono Practices and Opportunities in Colombia

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.

¹⁴ <http://www.coljuristas.org>.

¹⁵ http://nycbar.org/VanceCenter/eNotesandNews/06_Aug_amicus.htm.

¹⁶ Paula Samper Salazar, *Pro Bono en Colombia*: <http://www.probono.cl/>.

PRO BONO PRACTICES AND OPPORTUNITIES IN THE CZECH REPUBLIC

The return of democracy to the Czech Republic has brought with it a variety of legislation governing legal aid. However, there are currently no uniform procedures for granting legal aid, and calls for a comprehensive legal aid act have gone unanswered. Not surprisingly, *pro bono* work in the Czech Republic is minimal. However, recent trends and improvements are cause for cautious optimism. As the Czech Republic moves away from its Communist past and continues to conform its legal system to European Union (“EU”) and other international obligations, legal aid reform efforts have made headway. Improvements have been made toward streamlining and standardizing the processes through which parties may request legal aid from the courts and bar association. Additionally, several NGOs have become firmly established in the country, providing free legal assistance, particularly in the areas of asylum and immigration. Finally, a few large international law firms have also begun to take on *pro bono* projects.

I. Legal Services and the Legal Profession in the Czech Republic

The Czech legal system is a civil law system based on the Austro-Hungarian codes. The current Constitution of the Czech Republic was adopted on December 16, 1992, just before Czechoslovakia peacefully split into the Czech and Slovak republics.¹ The Czech Republic joined NATO in 1999 and the European Union in May, 2004, developments which have brought new international influences and obligations to the legal structure.²

The court hierarchy in the Czech Republic comprises district courts, regional courts, and superior courts. With a few exceptions, matters of first instance are heard before one of the 86 district courts, and appeals are heard in eight regional courts and two superior courts. The Supreme Court is the highest court in all matters except constitutional and administrative matters, which are heard by the Constitutional Court and the Supreme Administrative Court. All three courts of last instance are seated in Brno.³

A. The Legal Profession

Since the fall of Communism, the number of Czech attorneys has quickly multiplied. In 1989 there were only 600 attorneys, but there are now over 10,000.⁴ The Czech legal profession is regulated by the Law on the Legal Profession, passed in 1996.⁵ It established the Czech Bar Association (also known as the Czech Chamber of Advocates), the only bar association in the country. Membership is mandatory for all practicing attorneys, and requires a law degree from a Czech law school, three years of apprenticeship, and a passing score on the advocates exam.⁶ Foreign lawyers may become members by passing a recognition exam, but are still limited to providing legal services related to international law and the jurisdictions in which they are qualified. However, European lawyers may practice other types of law, either as guest or settled

¹ Ústavní zákon České republiky (Constitution of the Czech Republic).

² See, e.g., Martindale-Hubbell Law Digest, Czech Republic Law Digest 1 (LexisNexis Martindale-Hubbell 2007).

³ *Id.* at 7. See also Michal Bobeck, An Introduction to the Czech Legal System, available at: http://www.nyulawglobal.org/globalex/czech_republic.htm.

⁴ See, e.g., Conference of the International Bar Association, available at: <http://prague.ibanet.org/introduction.html#vladimir>.

⁵ Zákon č. 85/1996 Sb. (Law No. 85/1996 Coll., Law on the Legal Profession) (also known as the Advocacy Act).

⁶ Czech Republic Law Digest 15-16. There is an exception for in-house attorneys, who do not need to maintain bar membership.

European attorneys. Guest attorneys need not register with the Bar, but may provide legal services only temporarily.⁷

B. Legal Aid

There are several Czech charters and codes that have bearing on the right to legal aid in the Czech Republic. These provisions can be found in codes governing everything from administrative procedure to the legal profession. It is not always clear how these provisions support, overlap, or override one another, and the need for a uniform law is apparent.⁸ Moreover, because the actual granting of legal aid is left to each court, and as the exact procedures for granting legal aid have not been specified, the decisions are highly subject to the discretion of each individual judge and court.⁹ Further, the existing provisions guarantee the right to legal aid only in court proceedings, making it difficult for clients who cannot afford a lawyer to obtain legal advice in anticipation of, or outside of, litigation.¹⁰

Attempts to adopt a comprehensive legal aid law have not yet been successful. On May 15, 2003, the Czech Legislative Council approved the Draft Law on Free Legal Aid.¹¹ The Draft Law signified an attempt to develop comprehensive legal aid legislation and uniform procedures for providing legal aid in judicial proceedings. For example, it set forth a standardized means test to be used by courts in determining the financial status of a party requesting legal aid. However, the only section of the Draft Law submitted to and finally approved by Parliament was the narrow section pertaining to cross-border disputes.¹² As adopted, the Law provides for legal aid only in the limited instance where a citizen of another EU member state is caught in a cross-border dispute before a Czech court, or where a Czech citizen is before the court of another EU member state.¹³ There are no current plans to revive the Draft Law or to institute similar legislation.¹⁴

Of the existing provisions relating to legal aid, the most basic one is the broad right to legal aid, found in the Charter on Fundamental Rights and Freedoms, which has constitutional force.¹⁵ The Charter also guarantees the right to free court-appointed counsel in criminal

⁷ *Id.*

⁸ See Barbora Bukovská, Summary of Significant Legal Aid Developments in the Czech Republic in 2002-2005 1-3, *available at*: http://www.justicieinitiative.org/db/resource2?res_id=103496.

⁹ See, e.g., Pavel Šturma, Report on the Situation of Fundamental Rights in the Czech Republic, EU Network of Independent Experts on Fundamental Rights 90, *available at*: <http://crdho.cpd.r.ucl.ac.be/documents/Download.Rep/Reports2004/nacionales/CFR-CDF.repCZECHREP.2004.pdf>; Bukovská Summary at 2.

¹⁰ See Veronika Kristková and the Public Interest Law Institute (PILI), The Tradition and Current Opportunities for Pro Bono Legal Services in the Czech Republic 10 (unpublished paper on *pro bono* opportunities in the Czech Republic).

¹¹ Draft Law on Providing Legal Aid in Proceedings before Courts and Other Authorities in Cross-Border Disputes within the European Union, on Reimbursement of Expenses of Legal Aid by the State, and on the Modification of Certain Laws (2003); see also Bukovská Summary at 3.

¹² The Law was approved on November 11, 2004, as zákon č. 629/2004 Sb. (Law No. 629/2004 Coll., Law on the Provision of Legal Aid in Cross-Border Disputes within the European Union).

¹³ See, e.g., zákon č. 629/2004 Sb.; Šturma at 90.

¹⁴ See Interview with Veronika Kristková, lawyer for the League of Human Rights (January 23, 2008).

¹⁵ Charter on Fundamental Rights and Freedoms art. 37(2), *available at*: http://test.concourt.cz/angl_verze/rights.html ("In proceedings before courts, other state bodies, or public

proceedings.¹⁶ Similarly, the Code of Civil Procedure states that an individual may apply to the court for counsel, and the court may grant the request if “necessary for protection of [his] interests.”¹⁷

The Law on the Legal Profession further stipulates that a disadvantaged party may apply “to have his lawyer appointed by the Bar.”¹⁸ The Czech Bar Association, if it feels the case is warranted, may appoint an attorney to work for free or at a reduced rate. However, because neither the client nor the state pays for the legal aid, the Bar Association faces funding problems.¹⁹ Following amendments to the law in 2006, an individual has the right to obtain an attorney through the Bar Association only after the court has rejected an individual’s request for legal aid.²⁰ The individual must also provide proof that at least two lawyers have also refused to provide legal services.²¹ Furthermore, an appointed attorney may inquire into the financial status of the applicant and the merits of the case, and may, upon notifying the Bar and the applicant, refuse to represent the individual if the aid sought is “obviously unreasonable.”²² Public awareness of the opportunity to apply to the Bar for legal aid is low, and the Bar Association does not advertise it widely.²³

Other legal aid provisions may also be found in the Criminal Procedure Code,²⁴ the Administrative Procedure Code,²⁵ and the Law on the Constitutional Court.²⁶ Of particular interest are the recent amendments to the Criminal Procedure Code, which provide examples of one area (criminal representations) where legal aid practices have been elaborated upon and improved. Prior to 2004, the sole legal aid provision of the Criminal Procedure Code simply permitted courts to determine that a defendant had a right to free legal aid if the defendant could

administrative authorities, everyone shall have the right to assistance of counsel from the very beginning of such proceedings.”).

¹⁶ Charter on Fundamental Rights and Freedoms art. 40(3).

¹⁷ Zákon č. 99/1963 Sb. (Law No. 99/1963 Coll., Civil Procedure Code) §§30, 138, *available at*: <http://mujweb.cz/www/vaske/osr.htm>. The Code allows courts to appoint free legal counsel for defendants and victims of crime who can “prove [that] they do not have sufficient means to cover the expenses of their defense.” However, no counsel may be appointed if “the matter is an obviously unsuccessful exercise of, or defense of, a right.”

¹⁸ Zákon č. 85/1996 Sb. §18(2).

¹⁹ *See Šturma* at 89.

²⁰ *Id.*

²¹ *See Bukovská Summary* at 6-7; *see also* European Commission, Legal Aid – Czech Republic, at question 3, *available at*: http://ec.europa.eu/civiljustice/legal_aid/legal_aid_cze_en.htm. This can prove to be a difficult requirement to meet, as lawyers frequently fail to provide documentation that they refused to represent the potential client in question. *See Kristková and PILI* at 13.

²² Zákon č. 85/1996 Sb. §§18(2), 19. The amendments also dictate that only one attorney may be assigned to each case; *see also Bukovská Summary* at 2, 6-7.

²³ *See Kristková and PILI* at 16. The Czech Bar Association also sponsors free legal counseling hours at the seat of each regional court. This is a purely voluntary service that is not widely publicized. *See id.*

²⁴ Zákon č. 141/1961 Sb. (Law No. 141/1961 Coll., Criminal Procedure Code).

²⁵ Zákon č. 150/2002 Sb. (Law No. 150/2002 Coll., Administrative Procedure Code). Attorneys may be appointed for plaintiffs who lack sufficient financial means. However, the plaintiff’s claim must not be “manifestly frivolous.”

²⁶ Zákon č. 182/1993 Sb. §83 (Law No. 182/1993 Coll., Law on the Constitutional Court). The Constitutional Court may grant legal aid if justified by the applicant’s interests, particularly if she lacks the means to obtain counsel.

prove a lack of financial means.²⁷ The Code did not specify any process for the appointment of lawyers — even in mandatory (or “obligatory”) defense cases, where the defendant is required under Czech law to be represented by an attorney. The Code also did not specify the extent of legal aid available for indigent defendants in nonmandatory defense cases.²⁸

A 2004 amendment to the Criminal Procedure Code established a mechanism for selecting attorneys to be appointed by courts in mandatory defense cases. Attorneys who volunteer to provide free legal defense and who reside in the jurisdiction are kept on an alphabetical waiting list and appointed by courts as the need arises. Courts also keep a second list of all attorneys in the district, in case no volunteer attorney from the first list is available.²⁹ Similarly, procedures regarding legal aid in nonmandatory defense cases have become more precise. Another 2004 amendment addressed the problem of defendants who have requested, and are granted, free legal aid, but have difficulty finding a lawyer.³⁰ The amendment allows the court, upon granting legal aid, to immediately appoint an attorney for the defendant at her request.³¹

Despite these procedural improvements, only a small number of those defendants entitled to free legal aid actually request it. There appears to be significant room for improving defendants’ awareness of the right to request free legal aid.³²

II. *Pro Bono Opportunities in the Czech Republic*

A. Existing Opportunities

The Ministry of Justice and the Czech Bar Association have not kept track of decisions to grant legal aid in the past, and, as a result, there are currently no records of how often legal aid provisions have been utilized, and how often lawyers represent *pro bono* clients in the courts.³³ Regardless, it is evident that the Czech Republic lacks an entrenched *pro bono* culture. While attorneys may undertake an occasional *pro bono* case, such activities are not widely systematized.³⁴

Nevertheless, several Czech NGOs that provide free legal services have become established over the last fifteen years. Most of these NGOs limit their legal assistance to counseling, without providing actual legal representation.³⁵ The exceptions are asylum and

²⁷ *Zákon č. 150/2002 Sb. §33; see also Bukovská Summary at 5.*

²⁸ *See Bukovská Summary at 4-5.* Mandatory defense cases include cases where the sentence allows for imprisonment of more than five years; proceedings involving a juvenile or fugitive; and cases where the accused is in custody or serving a prison sentence. *See also* Karabec, Diblicová, and Zeman, National Criminal Justice Profiles: Czech Republic, 43-44 (2002), *available at*: www.heuni.fi/12543.htm.

²⁹ *Zákon č. 283/2004 Sb. (Law No. 283/2004 Coll., Amendment of the Criminal Procedure Code).*

³⁰ Prior to 2004, the request for legal aid was considered a request for a waiver of legal fees. After the court granted a defendant’s request for legal aid (*i.e.*, ordered the state to pay for the representation), it was still up to the defendant to find an attorney.

³¹ *Zákon č. 539/2004 Sb. (Law No. 539/2004 Coll., Amendment of the Criminal Procedure Code).*

³² *Bukovská Summary at 6.*

³³ *See Barbora Bukovská, Access to Justice Country Report: Czech Republic 2, available at*: http://www.pili.org/en/dmdocuments/CR_CzechRepublic.pdf.

³⁴ *See Kristková and PILI.*

³⁵ *Bukovská Summary at 7.*

immigration cases, which NGO lawyers have brought into administrative courts. The relatively new Asylum Act provides that “[a] participant in the proceedings shall be entitled to request the assistance of a legal entity or private individual who provides legal assistance to refugees.”³⁶ The funding for such legal aid may be provided by the Ministry of Interior.³⁷ Prominent NGOs include the Organization for Aid to Refugees, the Counselling Center for Refugees, and the Society of Citizens Assisting Migrants.³⁸ The Organization for Aid to Refugees runs legal clinics for asylum seekers, including one affiliated with the Charles University law school.³⁹ It has also partnered with large international law firms on various *pro bono* projects.⁴⁰

In addition to registering with courts and the bar association, or working with NGOs providing legal services, attorneys interested in exploring *pro bono* opportunities may also consider legal reform and public interest organizations. For example, the Counselling Center of Citizenship, Civil and Human Rights works to raise public legal awareness in general, while the Open Society Fund focuses on judicial reform and access to justice.⁴¹ The Counselling Center has commissioned an ongoing study documenting the limitations of Czech civil and criminal legal aid. It also worked with other NGOs to comment on the 2004 Draft Law on Free Legal Aid and to work on preparing its own version of a legal aid law.⁴² Organizations like League of Human Rights focus on aspects of citizens’ rights, such as health care, education, and international human rights.⁴³ In the past many of these NGOs have also worked heavily on issues of discrimination, particularly against Czech Roma.⁴⁴ Finally, international law firms interested in engaging in *pro bono* work in the Czech Republic should contact the Public Interest Lawyers Association (PILA), which assists law firms in establishing *pro bono* programs.⁴⁵

B. Barriers to Pro Bono Work

The Act on the Legal Profession distinguishes between “Czech attorneys,” “Visiting European attorneys,” “settled European attorneys,” and “foreign attorneys.”⁴⁶ While lawyers in the first three categories will not encounter barriers to *pro bono* practice, as previously discussed, it may be more difficult for foreign attorneys to provide a range of legal services. However, “legal services” are defined under the Law on the Legal Profession as representation in courts, legal counseling, and legal drafting, regularly and for remuneration. Thus, it should be possible

³⁶ *Zákon č. 325/1999 Sb. §21(1)* (Law No. 325/1999 Coll., Asylum Act).

³⁷ *Id.*

³⁸ See Organization for Aid to Refugees, <http://www.opu.cz/index.php?lang=en>; Counselling Center for Refugees, <http://www.uprchlici.cz/en/index.html>; Society of Citizens Assisting Migrants, <http://soze.hyperlink.cz/EngWeb/index.htm>.

³⁹ See Organization for Aid to Refugees; Refugee Law Clinic Resources: Prague, http://www.larc.info/clinics/Prague_organization_for_aid_to.

⁴⁰ *Id.*

⁴¹ See Counselling Center of Citizenship, Civil and Human Rights, <http://www.poradna-prava.cz/english/index.htm>; Open Fund Society, <http://osf.cz/en/programove-oblasti/budovani-pravniho-statutu/access-to-justice>.

⁴² See *Bukovská* Summary at 7, n. 40; Counselling Center.

⁴³ See League of Human Rights, <http://www.llp.cz/en>; see also, e.g., Czech Helsinki Committee, <http://www.helcom.cz/en/>. The League of Human Rights has partnered with international law firms before. Interview with Kristková.

⁴⁴ See, e.g., League of Human Rights; Multicultural Center Prague, <http://www.mkc.cz/en/home.html>.

⁴⁵ See Public Interest Lawyers Association, <http://www.pilaw.cz>.

⁴⁶ *Zákon č. 85/1996 Sb.*

for foreign lawyers to participate in *pro bono* work without meeting the above requirements, as they will not be participating in the work for remuneration.⁴⁷ While foreign lawyers will not be permitted to appear in court, they can still be involved in support work for NGOs in areas such as legal research and drafting, as well as providing assistance in understanding foreign legal systems for use before the European Court of Human Rights and international tribunals.

III. Conclusion

While further legal aid reform is needed, and awareness must be raised regarding the existence of free legal aid, the past several years have witnessed moderate improvements to the legal aid system. More improvements may come as the Czech legal system adjusts to its new international standards. To date, *pro bono* work has not figured prominently in the legal profession. However, proactive Czech and European lawyers seeking *pro bono* representation opportunities can register with the courts and bar association. Non-European foreign lawyers may have a more difficult time, but may consider assisting various local NGOs. There have been some instances of international law firms successfully partnering with NGOs in the past, which bodes well for future *pro bono* opportunities.

Organizations Providing Pro Bono Services In The Czech Republic

Asociace občanských poraden, www.obcanskeporadny.cz (in Czech only)

Provides legal aid in the form of consultations only; does not provide legal representation in court.

Bílý kruh bezpečí, <http://www.bkb.cz/index.php>

Provides legal counseling to victims of crime; does not provide legal representation.

Český helsinský výbor, <http://www.helcom.cz/> (Czech Helsinki Committee)

Provides legal counseling and legal representation.

Iuridicum Remedium, www.iure.org

Provides legal services, including legal representation, to the socially disadvantaged.

Liga lidských práv, www.llp.cz

Provides legal services, including representation, in cases involving patient rights, rights of people with mental disabilities, coercive sterilizations, segregation in education and placement of children in institutions, and police violence.

Ekologický právní servis, www.eps.cz

Provides legal aid in environmental cases, employment discrimination, and consumer protection

IQ Roma Servis, <http://iqrs.cz/>

Provides legal aid to socially disadvantaged, mainly Roma clients.

Organizace pro pomoc uprchlíkům, www.opu.cz

Provides legal services to refugees – asylum applicants.

Public Interest Lawyers Association (PILA), www.pilaw.cz

Assists international law firms in implementing *pro bono* programs in the Czech Republic.

Poradna pro uprchlíky, www.uprchlici.cz

Provides legal services to refugees – asylum applicants.

Poradna pro občanství, občanská a lidská práva, www.poradna-prava.cz

Provides legal services to the victims of discrimination.

⁴⁷ See *id.*

Legal Clinics in the Czech Republic

Elsa First Legal Aid - Faculty of Law, Charles University, Prague

Run by a students' organization; faculty supervises the legal counseling provided by students in all major legal areas.

Refugee Legal Clinic - Faculty of Law, Charles University Prague (in cooperation with Organization for Aid to Refugees and Linklaters Alliance)

The clinic's aim is to provide both theoretical and practical training to students interested in the field of refugee law.

Legal clinic - Faculty of Law, Palackeho University in Olomouc

Law students provide free legal aid to disadvantaged clients, under supervision of the faculty .

Environmental Clinic - Faculty of Law, Masaryk University Brno

Refugee Clinic - Faculty of Law, Masaryk University Brno

November 2008

Pro Bono Practices and Opportunities in the Czech Republic

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.

PRO BONO PRACTICES AND OPPORTUNITIES IN DENMARK

There are not, as for instance in France and Germany, any civil codes in Denmark – rather specific civil law rules are found in specific legislation, or are established by practice. Cooperation between the Nordic countries has also played a key part in the development of Danish law.

I. Legal Services and the Legal Profession in Denmark

The provision of legal services in Denmark is governed by the Code of Conduct (*Advokatetiske regler*) for the Danish Bar and Law Society (*Advokatsamfundet*), which follows the provisions of the Code of Conduct for Lawyers in the European Union provided by the Council of Bars and Law Societies of the European Union (the “CCBE”). The General Council of the Danish Bar and Law Society supervises compliance with the Code of Conduct, and the Disciplinary Board (*Advokatnævnet*) hears complaints about attorneys pursuant to the provisions of the Administration of Justice Act. The Disciplinary Board is chaired by a Supreme Court Judge and the members are representatives of the public and the legal profession. The chairman and the vice-chairmen are appointed by the president of the Supreme Court. Complaints regarding fees charged by lawyers are handled by the local complaints boards of the 11 constituencies, the decisions of which may be appealed to the Disciplinary Board.

Attorneys in Denmark must at all times preserve absolute independence, comply with confidentiality rules, serve the client’s interests diligently, conscientiously and promptly, and cannot act in situations where a conflict of interest exists.

Attorneys’ fees must be “fair and reasonable” pursuant to Section 126(2) of the Administration of Justice Act, and attorneys must keep their clients informed of the basis for their fees, and respond promptly to any fee queries. In accordance with the CCBE Code of Conduct, attorneys cannot enter into a *pactum de quota litis*, or an arrangement in which the attorney’s fee is a share of whatever is to be recovered. Accordingly, payments for legal services rendered on a “no win no fee” basis are not permitted.

A. Legal Aid and Advice

In Denmark there are two types of legal aid: in court proceedings and outside court proceedings.

Free legal aid in court proceedings (*fri process*) covers court costs, an appointed attorney, costs of expert opinions and witnesses (if appropriate), and exemption from applying the legal fees of the opponent if the case is lost. Such legal aid for proceedings at the first instance level is granted upon application by the Civil Law Agency (*Civilstyrelsen*) under the Ministry of Justice. The decision can be appealed to the Board of Appeal Permission (*Procesbevillingsnævnet*), whose decision is final. Free legal aid for appeal proceedings is granted by the appeal court, whose decision can be appealed to the Supreme Court, subject to permittance by the Board of Appeal Permission. However, if a party submits a new claim under the appeal proceedings, legal aid for appeal proceedings is granted by the Civil Law Agency and the Board of Appeal Permission as the competent instance of recourse.

To be eligible for free legal aid in court proceedings, a party must be able to identify a reasonable cause for taking legal action. In addition, legal aid is only granted to a party whose annual gross income is below a certain limit (DKK 275,000 for unmarried individuals, DKK

350,000 for married couples, with an increase limited to DKK 48,000 per child under 18 years of age). Furthermore, an application for legal aid will only prove successful for a person who does not hold private legal costs insurance.

Legal aid is only exceptionally granted for libel actions, in cases arising from a party's independent commercial enterprises, and in cases concerning the enforcement of undisputed claims.

Legal advice outside court proceedings includes the legal aid clinics (mainly in Copenhagen and *Aarhus – Retshjaelpen*) where a person can receive verbal advice, and volunteer lawyers, will assist with basic written communications. The legal aid clinic in Copenhagen will assist persons with annual gross incomes below the limits that apply for legal aid in court proceedings (see above). By contrast, the legal aid clinic in Aarhus will assist all persons, regardless of domicile and levels of income.

The legal aid clinics in Copenhagen and *Aarhus* will not assist in matters arising out of a person's ongoing commercial enterprises, cases concerning the sale of real estate, or defendants in criminal cases. Moreover, in most towns (about 90 towns across Denmark), local lawyers have established free legal advisory clinics (*Advokatvagterne*), where people can receive verbal advice concerning ordinary legal matters, free of charge, and without regard to income.

Free legal advisory clinics are deemed to be "Step 1" in the legal aid regime established under Section 323(1) of the Administration of Justice Act, pursuant to which any person has the right to free legal aid. "Steps 2 and 3" are free access to basic oral counseling and counseling in regard to negotiation of disputes.

A number of lawyers are affiliated with each court, and are appointed in cases where free legal aid has been granted. A recipient of free legal aid can request the appointment of a specific lawyer to the case. Since a recent change in the Administration of Justice Act, trainee lawyers may count a proportion of their hours working for legal aid clinics towards their mandatory training commitments.

B. Ombudsman and Agencies

Citizens may also seek redress against acts of public authorities by having recourse to review by the Danish Ombudsman (*Folketingets Ombudsmand*). Access to Ombudsman review is free, and the review may result in a recommendation that legal aid be granted in a case under the auspices of the Ombudsman.

The Ombudsman was established by the Constitution of 1953, and the Parliamentary Ombudsman Act of 1996 articulates the Danish Ombudsman's activities. The Danish Parliament (*Folketinget*) elects the Ombudsman, and he may be freely dismissed by Parliament as well.

The Danish Ombudsman monitors the activities of national and municipal authorities. The Ombudsman can initiate actions based on complaints about the decisions of authorities or the treatment of citizens in specific cases. The Ombudsman can then decide himself whether he or she will conduct an investigation into that complaint. The Ombudsman can also initiate investigations himself, under circumstances when, although there may be no complaint from a citizen, the Ombudsman may identify a situation which requires closer investigation.

II. *Pro Bono Opportunities in Denmark*

The provision of *pro bono* legal services in Denmark is not as well-established or widespread, as is the case, for instance, in the United States and the United Kingdom.

The majority of *pro bono* work is done through the legal aid clinics described in 1.1 above. There has, however, been a decrease in the number of such cases in recent years, and apparently an increase in *pro bono* work for NGOs and similar organizations, as is more common in the United States and the United Kingdom. Sources indicate that this trend is particularly noticeable in the case of attorneys at large firms in larger cities.

In the Spring of 2010, the Minister of Justice established a study group to examine the reason for the decrease in legal aid cases. At present, there is a discussion at the level of the Bar as to whether the Danish Bar and Law Society should recommend or require lawyers and law firms, primarily, to provide free legal services through the existing system of legal aid clinics,¹ or law firms and lawyers should be free to direct their *pro bono* activities to NGOs and similar organizations. This debate is related to the future funding of the local Danish legal aid system and in particular, to the practical implementation of the right under Section 323(1) of the Administration of Justice Act, pursuant to which any person has the right to free legal aid.

III. *Conclusion*

In Denmark, legal aid and some limited free legal advice is available, but no established *pro bono* culture exists outside of (i) the encouragement of lawyers to contribute time to legal aid clinics; and (ii) some limited advice rendered to charitable organizations and other interest groups by certain law firms and some sole practitioners, whose practice area coincides with the focus of such organizations and groups.

The future of legal aid in Denmark is being discussed at the level of the Danish Bar and Law Society. The outcome of this debate is uncertain. We understand that there are views within the Danish Bar and Law Society that believe that *pro bono* activities should primarily be directed towards legal aid clinics and assistance to low income citizens. This may limit the development of *pro bono* activities of the type known in the United States and the United Kingdom.

September 2010
Pro Bono Practices and Opportunities in Denmark

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.

¹ In a 2009 statement, the Danish Bar and Law Society expressed a preference for *pro bono* work being directed through the legal clinic work of individual attorneys. (*Advokatrådets retssikkerhedsprogram 2009*: “*Advokatrådet er af den opfattelse, at såvel den enkelte advokat som professionen som sådan har pligt til at medvirke til at sikre borgernes adgang til juridisk rådgivning og hjælp til tvistløsning i såvel den offentlige forvaltning som i retsplejen. Advokaterne i Danmark løser denne opgave ved at give anonym og gratis retshjælp til tusindvis af mennesker om året i advokatvagterne. Hertil kommer, at mange enkeltadvokater vederlagsfrit giver en helt indledende rådgivning til personer, som søger deres råd.*”)

PRO BONO PRACTICES AND OPPORTUNITIES IN ENGLAND & WALES

Pro bono legal services are of ever-increasing importance for attorneys and law firms within England and Wales. Although such efforts are not as widespread as in the United States, various organizations and institutions within England and Wales have fostered and developed *pro bono* activity in the legal field, and significant strides continue to be made year after year. Research for the 12 months prior to June 2009 estimates that £399 million worth of *pro bono* legal services were provided by private practice attorneys, approximately 2% of the profession's gross fees for 2008.¹ While many attorneys provide *pro bono* legal services because of a personal desire to help people, law firms in England and Wales are becoming increasingly aware of the value their existing and prospective clients place on a firm's *pro bono* activities. This may include taking *pro bono* involvement into consideration when such clients select their own legal advisers.

I. Legal Services and the Legal Profession in England and Wales

An awareness of the structure of the English legal system is necessary for an understanding of its *pro bono* practices. The legal profession is comprised of two types of lawyers: solicitors and barristers. Solicitors are regulated and represented by the Law Society and provide advice on everyday matters, from drafting wills to completing commercial transactions.² Barristers, who are governed by the Bar Council, are generally more specialized. Their predominant functions are to advise clients on the strengths and weaknesses of their cases and act as courtroom advocates. One of the primary differences between solicitors and barristers is the public's access to them. Whereas solicitors have direct contact with the public, barristers are generally reached only through solicitors.

A. Legal Aid

One explanation why England and Wales have a less robust *pro bono* system than the U.S. is a system of legal aid which uses public funds to help those in need of legal services. This mostly covers criminal matters but extends to civil cases as well. The legal aid system was first established under the Legal Aid and Advice Act of 1949.³ In 2000, the Legal Services Commission (the "LSC") became the body responsible for the administration of legal aid under the Access to Justice Act of 1999. The LSC operates the Community Legal Service ("CLS") for civil cases and the Criminal Defence Service ("CDS") for criminal cases.⁴ On the criminal side, the CDS was established in 2001 and allows for solicitors' firms to offer advice, assistance, and magistrate court representation under contract. In 2001, the LSC also launched the Public Defender Service ("PDS"), which directly employs solicitors to provide criminal defense services to the public.

¹ Catherine Baksi, "Lawyers provide £400m of pro bono work a year," *Law Society Gazette*, Nov. 5, 2009.

² See *The Role of Solicitors in England and Wales*, The Law Society, available at: <http://www.lawsociety.org.uk/aboutlawsociety/whatwedo/roleengwal.law>.

³ See *The Story of Legal Aid*, Legal Services Commission, available at: http://www.legalservices.gov.uk/public/the_story_of_legal_aid.asp.

⁴ See *About our legal aid schemes*, Legal Services Commission, available at: http://www.legalservices.gov.uk/public/about_our_schemes.asp.

The LSC is responsible for coordinating the resources and funds available for civil legal assistance in accordance with the Funding Code.⁵ Changes to the Code from 2010 include a movement towards paying for immigration and asylum work retrospectively rather than through interim payments, which has in some instances led to lawyers having to abandon work for vulnerable clients.⁶ The overall legal aid budget of £2.2 billion is also expected to be cut by several hundred million pounds as part of cutbacks at the Ministry of Justice, with civil legal aid expected to bear most of the reductions.⁷

Demand for civil legal aid has risen sharply as a result of the recent economic crisis.⁸ It is increasingly apparent that the public legal aid system does not adequately meet the demand for legal services, something only likely to be exacerbated by the implementation of the 2010 changes, particularly in civil cases.⁹ *Pro bono* services are increasingly required to help fill this gap. Furthermore, legal aid in England and Wales is only available to individuals. Legal advice to charitable organizations must be delivered by the legal profession *pro bono* and on an ad hoc basis.

B. Advice Agencies

Within England and Wales there is a national network of advice agencies staffed primarily by volunteers. The two most prominent are the Citizens Advice Bureau Service (the “CABx”) and the Law Centres Federation. CABx is a charity that provides free advice to the public on topics that include legal matters. Advisers help clients fill out forms, write letters, negotiate with creditors, and also represent them in courts or tribunals.¹⁰ CABx’s bureaus, located throughout England and Wales, are able to give advice on where to obtain legal services and often provide legal advice themselves. CABx is funded mainly by government and local authority grants but also by corporations and charitable trusts.

The Law Centres Federation is the governing body for the Law Centres, and its mission is to promote publicly funded legal services, mainly through the Law Centres.¹¹ Law Centres provide free legal advice to needy individuals within the center’s coverage area. These services are targeted for the poor and most disadvantaged members of society. The Law Centres give legal advice on multiple subjects, provide education and information on the law and individual rights, and lobby for improvements to existing laws. Funding for the Law Centres comes mainly from the LSC, but to satisfy increased demand additional funding has been secured from sources

⁵ See *What cases do we fund ?* Legal Services Commission, available at: http://www.legalservices.gov.co.uk/civil/what_cases_do_we_fund.asp.

⁶ See *BBC Online* Legal aid clients left in limbo after payment changes, available at: <http://www.bbc.co.uk/news/uk-10868049>.

⁷ See James Kirkup, “Kenneth Clarke to slash Legal Aid budget,” *Daily Telegraph*, July 16, 2010.

⁸ See Citizens Advice Bureau Need for civil legal aid has soared during recession says Citizens Advice, available at: http://www.citizensadvice.org.uk/index/pressoffice/press_index/press_20090710.

⁹ See Lawyers demand review of Legal Aid changes, Channel 4, available at: http://www.channel4.com/news/articles/politics/domestic_politics/lawyers+demand+review+of+legal+aid+changes/3746097.

¹⁰ About Us: Citizens Advice Service, Citizens Advice Bureau, available at: <http://www.citizensadvice.org.uk/index/aboutus.htm>.

¹¹ The Law Centres Federation is a registered charity and a Company Limited by Guarantee and registered in England and Wales. See *What Does the Law Centers Federation Do?*, Law Centres Federation, available at: <http://www.lawcentres.org.uk/>.

including London Councils, the Big Lottery Fund, the European Union and the Equality and Human Rights Commission. Each donor organization funds a specific project, topped up by annual subscriptions paid by member Law Centres. The Law Centres Federation had a total income for 2008/09 of over £1 million.¹²

II. *Pro Bono Opportunities in England and Wales*

Pro bono legal services have always been provided by barristers, yet until 1997 there was no organization specifically focused on encouraging and structuring *pro bono* activities among solicitors. In 1997, a group of solicitors founded the Solicitors *Pro Bono* Group (“SPBG”). SPBG is a registered charity whose mission is “to support, promote and encourage a commitment to *pro bono* across the solicitors’ profession.”¹³ SPBG does not take on *pro bono* cases itself but instead acts as a resource for those seeking *pro bono* services or seeking to become involved in *pro bono* activities.

LawWorks is the operating name of SPBG. LawWorks was originally a joint operation between SPBG and Law Centres. The aim was to connect those solicitors wanting to provide *pro bono* legal services with clinics or agencies offering such services.¹⁴ LawWorks also runs the LawWorks for Community Groups project which acts as a direct clearinghouse for legal projects, matching those in need of legal services (generally non-profit organizations) with law firms or larger companies’ in-house legal departments.¹⁵ Members of the LawWorks for Community Groups project provide advice on issues relating to matters as diverse as property, charity, corporate matters, finance, employment, intellectual property, and information technology.

Other projects run by LawWorks include LawWorks Mediation and LawWorks Web. LawWorks Mediation provides mediation services for individuals who are clients of an advice agency, *i.e.*, Law Center, CABx, or a member of the Bar *Pro Bono* Unit, and the other party to the dispute.¹⁶ LawWorks Web is a project sponsored by the Department of Constitutional Affairs and the Active Community Unit of the Home Office and provides legal advice via the internet.¹⁷ There are two types of resources available: Initial Electronic Advice and In-Depth Assistance. Initial Electronic Advice is geared towards short, finite advice, usually requiring an answer to one legal question. However it is only accessible to the public at advice agencies’ offices. Advice agency representatives forward single questions to an appropriately specialized solicitor before relaying the response back to the client. In-Depth Assistance is also only available through advice agencies. Here, the agency determines whether the person seeking advice is eligible for public legal aid. If not, the person’s case and file are submitted to a senior solicitor for review. The senior solicitor decides whether to accept the case and if so, the client’s case is passed to a solicitor or barrister.

¹² See About the LCF : Funding and Structure, *available at*: <http://www.lawcentres.org.uk/about/detail/structure>.

¹³ Introduction, Solicitors Pro Bono Group, *available at*: <http://lawworks.org.uk/>.

¹⁴ Law Works Clinics, Solicitors Pro Bono Group, *available at*: http://lawworks.org.uk/?id=lw_clinics.

¹⁵ LawWorks for Community Groups, Solicitors Pro Bono Group, *available at*: http://lawworks.org.uk/?id=lw_community_groups.

¹⁶ Mediation Introduction, Solicitors Pro Bono Group, *available at*: <http://lawworks.org.uk/?id=mediation>.

¹⁷ LawWorks Web, Solicitors Pro Bono Group, *available at*: http://lawworks.org.uk/?id=lw_web.

Gaining membership to LawWorks is relatively easy and open to individuals, firms or organizations involved in *pro bono* work. Membership is paid annually and fees vary depending on the type of applicant.

In 2002, various *pro bono* groups launched the first “National *Pro Bono* Week” to encourage lawyers to become involved with *pro bono*, to link the legal profession with various non-governmental organizations (“NGOs”), and to allow those organizations to publicize their legal needs.

The eighth annual “National *Pro Bono* Week” took place between November 9th and 14th in 2009 and included a variety of workshops, forums and seminars, as well as the first ever two-day “Joint National *Pro Bono* Conference” split between London and Manchester.¹⁸ The initiative has grown significantly since 2002, and now enjoys the support and sponsorship of many of the top law firms in the U.K. The 2009 event focused particularly on helping those affected by the economic downturn, while the 2010 edition will turn its attention to students.¹⁹

A. Bar *Pro Bono* Unit and Bar Council Programs

The Bar Pro Bono Unit (“PBU”) is a registered charity, established in 1996 to provide *pro bono* legal advice and representation to individuals who are unable to obtain it privately or through legal aid. Besides advising on the law, PBU provides representation in any court or tribunal in England or Wales and assists with mediation. There are over 2,000 barristers who offer their services through PBU, encompassing virtually every area of the law. In determining which cases to accept, PBU assesses whether the matter requires a barrister (who may act without a solicitor where none is necessary), the legal merits of the case, whether the applicant can reasonably obtain legal services elsewhere (such as legal aid or paying privately), and whether the work will take longer than three days.²⁰

Barristers wishing to volunteer for PBU must be willing to assist with cases for a minimum of three days per year. Additionally, PBU asks that barristers make the same effort and apply the same level of commitment to its *pro bono* cases as to their paid work. PBU has also developed a panel of firms that provide solicitors’ services where needed. For professional, insurance and practical reasons, solicitors joining the panel may only do so through their firm. Once the firm has joined, any solicitor at that firm is permitted to join the Unit’s panel. However, due to the nature of the cases taken on by PBU, solicitors are rarely called upon. PBU is funded solely by donations and does not require a membership fee.²¹

In addition, the Bar Council has a registered charity, named Bar in the Community (“BIC”). BIC encourages volunteering by barristers, other legal professionals and law students; under this initiative volunteers serve on management committees of various voluntary organizations. Barristers use the skills they have learned in the profession to give back to the community in a managerial role, rather than providing legal advice per se.

¹⁸ See *National Pro Bono Week 2009*, Law Works, available at: http://www.lawworks.org.uk/?id=lw_mediation.

¹⁹ See *National Pro Bono Week 2010*, Law Works, available at: <http://www.lawworks.org.uk/?id=580>.

²⁰ See Advice Agencies & Solicitors: Applying for help, Bar Pro Bono Unit, available at: <http://www.barprobono.org.uk/?cID=6>.

²¹ See How to Help: Donations, Bar Pro Bono Unit at <http://www.barprobono.org.uk/?cID=donations>.

B. Free Representation Unit

The Free Representation Unit (“FRU”) is a registered charity providing *pro bono* legal advice. It prepares cases and provides representation at tribunals in matters such as employment, social security and criminal injury compensation. FRU is based chiefly in Greater London. Services are provided to those who cannot obtain them privately or through legal aid.²² FRU was established in 1972 and continues to play a leading role in the *pro bono* community. FRU can only be accessed by members of the public through a referral by an agency such as Citizens Advice Bureau, Law Centres, or firms of solicitors. FRU’s volunteers are law students and legal professionals in the early stages of their career (including pupil barristers, trainee solicitors and newly qualified lawyers). All will be trained by FRU and cannot take on cases until they have the appropriate experience. FRU provided representation for 1,011 cases in the year to March 31, 2009, with some 465 volunteers involved.²³

C. Business in the Community

Business in the Community (“BITC”) is a business-led charity with over 800 member companies and 17.8 million staff employed worldwide, including many of the top London law firms. In addition, a 3,000 other companies are engaged through BITC’s programs and campaigns. BITC aims to encourage businesses to make a positive contribution to society to help ensure a sustainable future for people and planet.²⁴ Law firms often get involved in ways other than providing of legal advice, such as offering mentoring services, helping out in schools or community centers, or partaking in local urban regeneration programs. The programs offered by ProHelp afford member firms’ employees the opportunity to aid those in need within their community as well as gain valuable experience and improve communication skills.

D. Other Organizations and Opportunities

There are other organizations offering *pro bono* services in different areas or on a smaller scale. For example, Liberty (also known as the National Council for Civil Liberties) is an organization focusing on human rights and civil liberties, and has been active in these areas since 1934. Liberty’s activities include lobbying Parliament, challenging unjust laws through test cases at the national and European Union level, public campaigning, undertaking research, writing reports on civil liberties and human rights issues, and providing advice and information.

Information regarding these types of organizations and other *pro bono* opportunities can be found on the website “ProBonoUK.net,” launched in May 2002 by the Attorney General’s *Pro Bono* Committee. ProBonoUK.net Limited was formed in 2003 as a registered charity to establish, run and develop the website. The members of the Attorney General’s *Pro Bono* Committee established the website at the request of various *pro bono* groups in order to coordinate *pro bono* activities and provide a resource for those interested in *pro bono* work.²⁵

²² For further information see: <http://www.thefru.org.uk/>.

²³ See FRU’s Annual Report 2009, available at: <http://www.thefru.org.uk/annual-reports>.

²⁴ BITC, About, available at: http://www.bitc.org.uk/about_bitc/index.html.

²⁵ Further information is available at: <http://www.probonouk.net/index.php?id=about>.

E. Initiatives for Students

Students in England and Wales are able to get involved with *pro bono* work through universities, law schools, and organizations such as LawWorks. Several law schools and universities have established *pro bono* centers and clinics where students have the opportunity to participate directly in *pro bono* work. BPP Law School is one example, having by September 2010 set up five centers within England and Wales providing legal information, advice and assistance to members of the public.²⁶

LawWorks' student initiative provides information for students on *pro bono* opportunities and seeks to encourage involvement by offering guidance on *pro bono* projects.²⁷ Several English law firms assist in managing this initiative. Other organizations, such as FRU (see Section B, above), also provide students with *pro bono* opportunities.

III. *Conclusion*

Pro bono legal work continues to gain importance in England and Wales. In 2007, in acknowledgment of National *Pro Bono* Week, both the Prime Minister Gordon Brown and Prince Charles HRH the Prince of Wales sent messages of support and encouragement to the legal profession and praised those who give their time to *pro bono* activities. Many organizations are expanding their efforts to promote *pro bono* access, thereby creating opportunities for both individuals and firms to become involved. It is evident that the amount of *pro bono* work undertaken within the English legal structure has grown tremendously in previous years and will continue to grow in the coming years.

September 2010
Pro Bono Practices and Opportunities in England & Wales

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.

²⁶ Further information is available at: <http://www.bpplawschool.com/probono/index.htm>.

²⁷ Further information is available at: <http://www.lawworks.org.uk/?id=students>.

PRO BONO PRACTICES AND OPPORTUNITIES IN FINLAND

When Finland declared independence in 1917, the new state had a long history of Swedish rule (from the 12th century until 1809) and of being an autonomous Grand Duchy of the Russian Empire (from 1809 until 1917). Their common history with Sweden is the basis of the similarities between the Finnish and Swedish societies – similarities that can be seen in the culture as well as in political and legal structures.

I. *Legal Services and the Legal Profession in Finland*

By contrast to most legal systems in the European Union, a party to a court proceeding in Finland has no obligation to employ an advocate, and may be represented by another person with a Master's degree in law or, in certain cases, any person who is honest and otherwise suitable and competent.¹ Nevertheless, in most cases, trained legal specialists are employed.

Under Section 5 of the Advocates Act (*Laki asianajajista / Lag om advokater*, 1958/496), an advocate shall conscientiously fulfill the tasks entrusted to him and observe the Rules of Proper Professional Conduct for Advocates (*Hyvää asianajajatapaa koskevat ohjeet / Vägledande regler om god advokatsed*). The requirements of proper professional conduct are defined in the Advocates Act, various statutes and, above all, by the governing and executive bodies of the Finnish Bar Association. In practice, many disciplinary decisions taken by the Board of the Finnish Bar Association are reflected in the Rules of Proper Professional Conduct for Advocates, which have become very important guidelines for practicing advocates.

An advocate's fee for each mandate is determined by the amount and type of work required. The degree of difficulty of the mandate and the interest involved are also relevant.² When called for by social circumstances, services may be provided for a reduced fee or free of charge.³ Disadvantaged citizens may also be granted legal aid, whereby expenses are covered by public funds (see section below).

Arrangements in which the advocate's fee is a share of whatever may be recovered (*pactum de quota litis*) or is charged only if a certain, pre-defined end result is achieved (*pactum de palmario*) are allowed under special circumstances.⁴ However, it follows from the Code of Conduct for Lawyers in the European Union (CCBE) that *pactum quota litis* may not be applied when an assignment involves cross-border activities of a Finnish lawyer in other Member States of the European Union and the European Economic Area.⁵

A. Legal Aid

In Finland, persons with limited means may be granted legal aid, whereby legal expenses are provided from public funds. Legal aid is regulated by the Legal Aid Act (*Oikeusapulaki /*

¹ Code of Judicial Procedure, Chapter 15, Sections 1-2.

² Principles laying down the basis for advocate fees (*Asianajopalkkioiden määräämisperusteet / Grunderna för bestämmande av advokatarvoden*), Section 1.

³ Principles laying down the basis for advocate fees (*Asianajopalkkioiden määräämisperusteet / Grunderna för bestämmande av advokatarvoden*), Section 4.

⁴ Principles laying down the basis for advocate fees (*Asianajopalkkioiden määräämisperusteet*) (8.6.1990, amended as of 1.1.1993), Section 5.

⁵ Code of Conduct for Lawyers in the European Union, Section 3.3.

Rättshjälpslagen, 2002/257), the Act on Legal Aid Offices (*Laki valtion oikeusaputoimistoista / Lag om statliga rättshjälpsbyråer*, 2002/258) and various government decrees that have been issued based on these Acts.⁶

Legal aid may be granted to an individual whose case is being heard in a Finnish court or whose place of residence is in Finland, as well as citizens of a Member State of the European Union or the European Economic Area.⁷ Companies or associations are not eligible for legal aid. Legal aid is granted for free or against a deductible, on the basis of the financial means of the applicant.⁸ However, it will not be granted to a person who benefits from legal expense insurance in relation to a matter, except if the maximum amount to be paid out under the policy has been exceeded.⁹

Legal aid shall be applied for from one of the legal aid offices, which are located in areas in which it is deemed that legal aid will be most required, normally in the same municipalities as the District Courts in Finland. In these offices, work subject to legal aid is undertaken by public legal aid attorneys. Legal aid matters may, however, also be handled by advocates and any other person with a Master's degree in law subject to certain exceptions as described further below.

In Finland, legal aid covers all types of legal matters, such as family and employment law related issues, contract law, assistance to suspected offenders and to victims of crime, and various appeals (*e.g.*, relating to welfare and social security payments). The services covered by legal aid in any given case depend on the nature and importance of the matter.

In criminal proceedings and pre-trial investigations, the defendant is, under certain circumstances, entitled to a public defender regardless of his or her financial situation. A public defender will be appointed on request for a suspect of an aggravated offense and for a person who has been arrested or detained. The court may on its own initiative appoint a public defender for a person under 18 years of age or for a person incapable of seeing to his or her own defense. The fee of the public defender is paid by the State. If the defendant is convicted of an offense, he or she is obligated to reimburse the State for the public defender's fee.¹⁰ If, however, the means of

⁶ For example Government Decree 388/2002 on Legal Aid (*Valtioneuvoston asetus oikeusavusta / Statsrådets förordning om rättshjälp*); Government Decree 290/2008 on Legal Aid Fee Criteria (*Valtioneuvoston asetus oikeusavun palkkioperusteista / Statsrådets förordning om grunderna för arvoden vid allmän rättshjälp*), Decree 425/2002 of the Ministry of Justice on the location of legal aid offices and their branches and sub-branches (*Oikeusministeriön asetus valtion oikeusaputoimistojen sekä niiden sivitoimistojen ja sivuvastaanottojen sijainnista / Justitieministeriets förordning om förläggningsskommunerna för de statliga rättshjälpsbyråerna samt deras filialbyråer och filialmottagningar*) and Decree 819/2009 of the Ministry of Justice on legal aid districts and the location of legal aid offices (*Oikeusministeriön asetus oikeuspiireistä ja oikeusaputoimistojen toimipaikoista / Justitieministeriets förordning om rättshjälpsdistrikten och om rättshjälpsbyråernas verksamhetställen*).

⁷ Legal Aid Act, Section 2. Legal aid will not be given if the matter is of little importance to the applicant, if the benefit of legal aid would not outweigh its costs or if the pursuit of the matter would constitute an abuse of process.

⁸ The means of the applicant are determined based on a calculation of the funds available to him or her per month. Legal aid may be granted where the available means of a single person are below €1,300 or of spouses €1,200 per person. The amount of the basic deductible is determined based on the applicant's means (Government Decree on Legal Aid). For more information, see *Millä tuloilla oikeusapu myönnetään / Med vilka inkomster beviljas rättshjälp*, available at: <http://www.oikeus.fi>.

⁹ Legal Aid Act, Section 3(b).

¹⁰ Criminal Procedure Act, Sections 10-11.

the defendant are such that he or she would be entitled to legal aid, the obligation to reimburse the State will be determined accordingly.

Moreover, if a person becomes a victim of domestic violence or a sexual offense, the court may appoint an attorney or a support person (trial counsel) for the victim for purposes of the pre-trial investigation and the trial. The attorney or the support person may be appointed regardless of the means of the victim, and their fees and expenses are paid by the State.¹¹

In addition to court proceedings, legal aid covers other legal services such as legal advice, settlement negotiations with an opposing party, inventories of decedent's estates, assistance in asset distributions and estate distributions, drafting of documents and filing of appeals and complaints. These other legal services are provided as legal aid only by public legal aid attorneys, not by private attorneys.

When the legislation on legal aid was revised in 2002, one of the goals was to create a scheme where a considerable share of the population would be eligible for legal aid, *i.e.*, a system close to a civil right. According to the government bill, approximately 75% of the population is entitled to some form of legal aid under the current thresholds for means-testing.¹²

B. Ombudsman and Agencies

Following the Swedish model, the Finnish government has established Ombudsman Offices and agencies where individuals can bring complaints against private companies and authorities.

The most prominent ombudsman is the Parliamentary Ombudsman, who together with the Chancellor of Justice oversees legality in Finland. The task of the Parliamentary Ombudsman is to ensure that authorities and officials observe the law and fulfill their duties. Special attention is paid to the implementation of fundamental and human rights and children's rights as well as police operations. Anyone, regardless of their citizenship, is entitled to turn to the Parliamentary Ombudsman and/or the Chancellor of Justice, should the complainant believe that an authority, public official or public body has acted in a manner that violates their rights. The services of the Parliamentary Ombudsman and Chancellor of Justice are free of charge to the complainant. An investigation carried out by their offices may in itself result in the authority or public official himself or herself correcting an error.

There are also numerous Ombudsman offices whose task is to monitor the compliance with specific laws or policies. Thus, the Ombudsman for Minorities advances the status and legal protection of ethnic minorities and foreigners; the Ombudsman for Equality supervises compliance with the Act on Equality between Women and Men; the Ombudsman for Children promotes the interests and the implementation of the rights of children; the Data Protection Ombudsman maintains and promotes the right of privacy under the Data Protection Act and the Consumer Ombudsman ensures consumers' economic, health and legal position and implements consumer policy.

Apart from the Ombudsman offices, there are agencies empowered to settle disputes between private persons and undertakings. The Consumer Complaint Board, for example, is a

¹¹ Criminal Procedure Act, Section 10.

¹² This is compared to approximately 44% prior to the change in the law which occurred in 2002. See Government Bill for a new Legal Aid Act and certain related legislation (HE 82/2001), Section 3.2.2.

neutral and independent expert body whose members represent consumers and businesses. The Board issues recommendations concerning disputes involving consumer and housing transactions. It can also issue statements to courts handling cases which fall within its sphere of competence.

The services of the various Ombudsman offices and agencies are generally free of charge to the complainant. Although many of these offices/agencies issue non-binding recommendations only, their opinions often serve as important guidelines for other authorities and courts. Filing a complaint is therefore an inexpensive and often effective remedy for private persons.

C. NGOs

Several NGOs also provide free legal advice within specific spheres. For example, the Finnish Refugee Advice Centre (*Pakolaisneuvonta / Flyktrådgivningen*) advises asylum seekers, refugees and other foreigners with regard to their legal rights. The Finnish League for Human Rights (*Ihmisoikeusliitto / Förbundet för mänskliga rättigheter*) provides more wide-ranging advice in relation to human rights in general, while the Feminist Association Union (*Naisasialiitto Unioni / Kvinnosaksförbundet Unionen*) focuses on issues related to women's rights.

II. *Pro Bono Opportunities in Finland*

Due to the well-developed and broad system of public welfare services, the need for *pro bono* services in Finland is limited. Nevertheless, the Finnish Bar Association encourages lawyers to become involved in *pro bono* activities. For example, following the Asia tsunami disaster in December 2004, it urged law firms and advocates, within the limits of their practice areas and available resources, to offer legal assistance to the victims and their relatives free of charge.¹³ Some 70 law firms signed up to the Bar Association's list of law firms offering *pro bono* services to the victims.¹⁴

The Finnish Bar Association also runs a program, *Asianajajapäivystys / Advokatjouren*, in which advocates provide oral advice free of charge in relation to various legal questions. The purpose of the program is to help private persons assess their need for further legal advice, and to help them identify advocates with relevant experience and/or competent authorities where further advice is required. *Asianajajapäivystys* operates in 10 locations in Finland, for a few hours at a time once or twice a week. In 2005, free advice was given to some 2,000 persons.¹⁵ In practice, attorneys from law firms of all sizes participate in the program.

In 2006 the Finnish Bar Association set up a project to educate young people about the Finnish legal system. Under the *Oikeuskasvatusprojekti / Projekt om juridiskt lärande*, lawyers go to schools to speak with 14-16 year olds about the basics of the legal system in Finland, the foundations of civil and criminal law, as well as rights and responsibilities of children and young people in society.¹⁶

Medium-sized and large Finnish law firms engage in *pro bono* or charitable work on a regular basis, particularly as the influence of American and English firms in this respect continues

¹³ Editorial in *Defensor Legis* 1/2005. More than 200 Finns were reported dead or missing in the disaster, which was seen as the largest peacetime catastrophe to overtake Finland in the modern era.

¹⁴ "Maksuton oikeusapu Kaakkois-Aasian katastrofin uhreille alkoi", published on www.verkkouutiset.fi.

¹⁵ Editorial in *Defensor Legis* 1/2005.

¹⁶ More information about the Bar Association's *pro bono* initiatives is available at: <http://www.asianajajaliitto>.

to grow. Apart from the *Asianajajapääivystys*, *pro bono* work often involves assisting different charity organizations and foundations rather than private persons. Some of the big commercial law firms, for instance, have board representatives in foundations and thereby provide continuous legal assistance free of charge.

III. *Conclusion*

The positive approach of the Finnish Bar Association to *pro bono* work is favorable to a more widespread *pro bono* practice in Finland. However, due to their well-developed social welfare system, which includes State-funded legal services, *pro bono* work in Finland is likely to remain focused on assisting various foundations and charity organizations in achieving their objectives.

September 2010
Pro Bono Practices and Opportunities in Finland

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.

PRO BONO PRACTICES AND OPPORTUNITIES IN FRANCE

France has a long-standing tradition of providing legal aid to indigent clients. French lawyers have historically viewed representing those without resources in criminal and civil proceedings as part of their role as the guardians of civil rights and liberties. By 1278 French institutions founded under Saint Louis had already secularized the practice of lawyers representing clients who could not pay for their services. For centuries thereafter the French *batonnier* (legal guild) independently assumed the responsibility for organizing *pro bono* activities, with little or no state help or financial sponsorship. Under this practice, lawyers were designated by the guild to serve those indigent clients who asked for legal assistance. The system presumed that those less fortunate had a right to bring a claim in front of the court, and it was therefore the lawyer's duty to represent them without a fee.

The American terminology of *pro bono* (from the Latin *pro bono publico*, meaning for the public good) does not exist in the French jurisprudential lexicon. Instead, the French refer to *assistance juridique gratuite* (free legal assistance) or *assistance bénévole* (benevolent assistance), terms that do not mean precisely the same as their American counterpart. Whereas *pro bono* in the American sense implies free services, the French model of legal aid often provides payment of lawyers by the state, albeit a small amount compared to typical legal fees. Further, the French Bar organizes legal aid through its general rules and regulations pertaining to the practice of law,¹ while *pro bono* practice in the United States generally consists of partnerships between a multitude of legal referral services, including various bar associations and law firms, which bring together indigent clients and lawyers seeking to fulfill their professional ethical aspirations. Lastly, as the French *pro bono* practice is highly centralized around the Paris Bar, it is appropriate to limit the scope of this inquiry to the Paris jurisdiction, noting that practices might differ in other jurisdictions.

I. Legal Services and the Legal Profession in France

The contemporary legal aid system in France has two components: (1) *aide juridictionnelle*, which coordinates funding public legal representation to those who fall below a certain financial threshold and (2) *accès au droit*, which gives all indigent clients the necessary resources to have equal access to legal information. Both systems grew out of a legislative initiative to systematize the legal assistance program in France, beginning with the law of January 3, 1972,² and then the law of July 10, 1991.³

A. Aide Juridictionnelle

The first category of legal aid, *l'aide juridictionnelle*,⁴ allows indigent clients to receive legal representation from a qualified attorney who is paid by the state. The program, run by the French Bar, has created an entire market of French lawyers whose practice focuses on cases referred through the *aide juridictionnelle* system. The work these lawyers receive tends to be individualized and often concerns smaller daily matters from clients who cannot afford any other

¹ See Le Règlement Intérieur du Barreau de Paris, available at: <http://www.avocatparis.org/ribp.html>.

² See Law of January 3, 1972, No. 72-11.

³ See Law of July 10, 1991, No. 91-647. This law established the *Conseil National de l'Aide Juridique*, or C.N.A.J. (the National Counsel of Legal Aid).

⁴ *L'aide juridictionnelle* was instituted by the law of July 10, 1991, and modified in particular by the law of December 18, 1998, No. 98-1163.

form of representation. *Aide juridictionnelle* is generally available to several groups: French or European Union citizens, foreign citizens residing in France, and foreign citizens appearing in refugee cases. The aid can also apply to foreigners in other special circumstances: minors, witnesses, criminal defendants, convicted criminals, or those in exceptional situations.⁵ The aid can be afforded to the plaintiff or the defendant in a proceeding in any of the three jurisdictions in France: civil, criminal, or administrative.⁶

The essential criterion for receiving *aide juridictionnelle* is financial. The system distinguishes between total and partial aid, depending on one's financial situation.⁷ In 2010, applicants with total resources under €915 per month qualify for total aid, whereas applicants with less than €1,372 per month qualify for partial aid.⁸ In order to receive the aid, each petitioner must fill out a request for *aide juridictionnelle*, along with proof of income. Once accepted, the choice of the lawyer is initially up to the petitioner. If the petitioner does not choose an attorney, the file is sent to the Bar Association, which designates a lawyer based on the specifics of the case.⁹ In 2009, 908,000 matters were admitted to the *aide juridictionnelle* in France.¹⁰

The number of applicants to the *aide juridictionnelle* will almost certainly increase since, as per the Law of July 24, 2006,¹¹ asylum cases now fall within the scope of *aide juridictionnelle*.

Under the system of *aide juridictionnelle*, lawyers who donate their time receive payment from the Bar according to a level set by the state.¹² The amount paid for each matter is based on the Decree of December 19, 1991, which establishes a coefficient for each legal procedure and a base unit value which, multiplied together, determine the payment.¹³ This payment, however, is insignificant in comparison to what many lawyers in Paris typically receive.¹⁴ Unfortunately, a large percentage of lawyers rely on this type of aid as their primary source of income. It is therefore important to note that while the indigent do receive free legal services, the lawyers are not performing *pro bono* aid in the classic American sense insofar as they are not giving their services free of charge. Consequently, the use of the *aide juridictionnelle* mechanism by international law firms would conflict directly with the work of attorneys who make a living on this form of public aid, thereby jeopardizing their livelihood.

⁵ See Law of July 10, 1991, Article 3.

⁶ See Law of July 10, 1991, Article 10. The constitutional right to legal counsel in the United States, by comparison, only applies to criminal infractions punishable with jail time.

⁷ See Law of July 10, 1991, Article 4.

⁸ See *Circulaire relative à l'aide juridictionnelle* of 31 December 2009, N° NOR: JUS A 0931885C.

⁹ See Law of July 10, 1991, Article 25. England has a similar system where the client chooses his lawyer. In Germany, choice is possible for all legal matters, except in criminal proceedings. In Italy, clients do not have a choice of attorney for most matters before a civil court.

¹⁰ See *Rapport de l'Assemblée nationale sur le projet de loi de finance 2010 (No. 1974)*, available at: <http://www.assemblee-nationale.fr/13/budget/plf2010/a1974-tV.asp>.

¹¹ See Law of July 24, 2006, No. 2006-911, as modified.

¹² See Law of July 10, 1991, Article 27.

¹³ See Decree of December 19, 1991, No. 91-1266. For example, the unit value is €22.50 (V.A.T. excluded) since 2007, and the coefficient for a divorce proceeding is 36 (2009/2010), so the lawyer would be paid €765.

¹⁴ See Alain Balsan, *Guide Pratique de l'Aide Juridictionnelle*, Paris: Edilaix. The base unit value varies from €22.84 to €25.90 (depending on the Bars), and the coefficients vary from 4 to 36 for civil matters, 2 to 50 for criminal matters, and 3 to 20 for administrative matters.

B. Accès au Droit

The second category of legal aid, *l'accès au droit*,¹⁵ serves as the corollary to *aide juridictionnelle*. It provides clients in need with consultations and assistance to help them make informed legal decisions.¹⁶ For several years now the French Bar has provided free anonymous and confidential general consultations by volunteer lawyers, regardless of the client's financial situation, intended to guarantee equal access to legal information.¹⁷ General consultations under the *accès au droit* program are available, in particular, at the *Palais de Justice*, in each of the 20 *arrondissements* in Paris, in the *Maisons de la Justice et du Droit* (MJD) and in the *Points d'accès au droit* (PAD). Specific legal advice is available in tax law, entrepreneurial law, employment law, family law, immigration/naturalization law, criminal law, juvenile law, elderly law, and general victims' rights.¹⁸

The *accès au droit* form of legal work, unlike *aide juridictionnelle*, is unpaid and completely voluntary. One problem that has emerged in recent years for some French lawyers is the inability of those who donate their time to perform a conflict-of-interest check for each individual client. Despite this difficulty, the *accès au droit* program has been such a success that the Paris Bar has been forced to turn away many lawyers who have volunteered.

C. Barreau de Paris Solidarité

A recent initiative of the Paris Bar is the *Barreau de Paris Solidarité*.¹⁹ To provide legal services to the most destitute, the Paris Bar has developed partnerships with public interest aid groups, such as *Droits d'Urgence*,²⁰ to address legal concerns in the poorest areas of the city. Started in March 2003, the *Barreau de Paris Solidarité* provides an effective comprehensive service for those in extreme difficulty. The scope of the activities undertaken by the *Barreau de Paris Solidarité* is vast: employment, housing, health, education, citizenship, etc. The program consists of several layers: permanent consulting centers in designated areas throughout the city, a bus that travels throughout the city in order to give legal advice to the indigent community, and partnerships with various humanitarian organizations. In 2008, legal services were provided to 3,303 people.²¹

II. *Pro Bono Opportunities in France*

There are some opportunities for new forms of *pro bono* work in a French environment otherwise run by centralized institutions. First, a firm could establish strong relationships with and provide representation to public interest organizations. This form of representation has not

¹⁵ Implemented by the Law of July 10, 1991.

¹⁶ See Law of July 10, 1991, Article 53.

¹⁷ See Paris Bar website, available at: http://www.avocatparis.org/avocats_service/consultations_gratuities2.aspx.

¹⁸ See Paris Bar website, available at: http://www.avocatparis.org/avocats_service/PDF/Recto_verso_consultations.pdf.

¹⁹ See Paris Bar website, available at: http://www.avocatparis.org/avocats_service/consultations_gratuities_bus.aspx.

²⁰ See Droits d'Urgence website, available at: <http://www.droitsdurgence.org/partenariat-avec-le-barreau-de-paris/le-bus-barreau-de-paris-solidarite.html>.

²¹ *Id.*

yet been attempted on a large scale in France. It appears that most French organizations are not aware that large law firms based in Paris provide *pro bono* assistance.

Large law firms in Paris may also consider working on projects with international human rights groups to expand their *pro bono repertoire* in France. Law firms could, for example, seek to represent individual clients before international bodies. This form of representation could consist of representing individuals or non-state actors before international institutions, representing underdeveloped countries in disputes between states, or involvement as *amicus curiae*. Organizations such as FIDH (International Foundation for Human Rights)²² may gather the volunteers and assign them to relevant projects.

International law firms may also expand their presence within the *accès au droit* framework. The *accès au droit* form of public legal aid is the area in which most law firms have provided U.S.-style *pro bono* aid to the community. Many attorneys at large firms have opted to donate some of their time on a weekly or monthly basis to one or more of the consulting services. Firms could systematize their participation within specific *accès au droit* programs, such as by offering a rotation for young lawyers through an already established consultation agency. While publicity constraints would most likely impede firms from advertising this kind of *pro bono* work, the association in charge of the service could most likely advertise each individual law firm's involvement.

A group of firms in the Paris market could also potentially work together to deal with a deficiency in the current *pro bono* structure. One option would be to collaborate with the Paris Bar to develop a partnership that would effectively remedy a need that is not currently met by the centralized system. Another option is the development of partnerships with other large international law firms to create organizations that would deal with a specific *pro bono* problem. Justice for Cambodia, a partnership recently created to unite victims of the regime with lawyers around the world, is one example of this form of partnership.²³

Finally, individual lawyers, either with a firm or individually, could more systematically take part in the *aide juridictionnelle* structure, work that is well-regarded by the legal community even if it is paid by the state. Entering this area of *pro bono* work may not be desirable because, as stated above, it will conflict with the market of French lawyers who rely on the income they receive from the *aide juridictionnelle* system. However, one possibility is for international law firms in France to get involved in exceptional, high-profile cases which require a substantial amount of material work.

An informal group composed of representatives of the large U.S. and U.K. law firms based in Paris (*Paris Pro Bono Roundtables*) was set up in 2007 in order to discuss ways to better promote and facilitate *pro bono* work. The group, which meets every trimester, works in close consultation with the Paris Bar. Among other proposals, the group is contemplating creating a clearinghouse for organizations willing to benefit from *pro bono* work and to lobby in favor of the creation of a specific tax-regime for *pro bono* hours.

²² See FIDH website, available at: <http://www.fidh.org/>.

²³ See Justice for Cambodia, available at: <http://www.justicepourleCambodge.org/sommaire.php3>.

III. *Prohibition Against Advertising*

One problem facing *pro bono* practice in France is a restriction on legal advertising. Attorneys in France are only permitted to advertise their services in order to give the public the necessary information pertaining to the legal practice of the lawyer or law firm. It is illegal to solicit legal work in any form, either by going to the residence or workplace of a potential client or by sending a personalized proposition of work without having been properly invited beforehand.²⁴ It is also illegal to advertise the names of past and current clients. This form of advertising is nevertheless permitted if the client consents and the advertising is inaccessible from French territory.

Since advertising in France is only permissible in order to convey strictly necessary information to the public, the advertisement of *pro bono* services would be seen as beyond the scope of what is legal. Although firms can advertise their specialties, *e.g.*, securities, *pro bono* work does not fit neatly into that form of targeted solicitation. The only permissible form of publicity for *pro bono* work in Paris should be confined to advertising that is consented to by the client and inaccessible to the French market.

IV. *Conclusion*

The French legal aid system attempts to create an exhaustive system run by the Bar to assist the indigent community. The *aide juridictionnelle* system gives all clients in need an attorney, paid for by the Bar, to represent their interests in a courtroom. The *accès au droit* system seeks to ensure that the indigent community is sufficiently well-informed to make proper legal decisions by organizing meetings with unpaid volunteer lawyers. Currently, lawyers who wish to represent indigent clients and do meaningful *pro bono* work must offer their services as part of the social legal aid system, but numerous opportunities for expanding the scope of *pro bono* work in France exist. However, any proposed changes to the legal aid system should include direct consultation and cooperation with the Paris Bar.

September 2010
Pro Bono Practices and Opportunities in France

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.

²⁴ *Règlement Intérieur du Barreau de Paris*, Article 10.2.

PRO BONO PRACTICES AND OPPORTUNITIES IN GERMANY

I. Legal Services and the Legal Profession in Germany

In Germany, the compensation of lawyers is regulated by a set of federal laws¹ and professional rules issued by the German Bars.² The system is generally based on a statutory fee scale annexed to the Federal Attorneys-At-Law Remuneration Act (“RVG,” *Rechtsanwaltsvergütungsgesetz*) for legal services. As a general rule, German lawyers are required to charge fees for their services and the German state provides financial aid to those unable to afford a lawyer. However, German lawyers are allowed to negotiate fees with a client when the lawyer is giving advice outside the litigation context. Since June of 2008, a negotiable success fee is also permissible within the litigation context, as an exception to the general rule that success fees are forbidden in Germany.

Statutory fees that are charged according to the RVG in the litigation context are based on the “value of the dispute” (*Streitwert*) — for instance the amount of a damage claim or the consideration in a transaction — and not on the time spent on the matter. Individual “fees” are earned for various stages in proceedings: consultation, drafting and filing a complaint, trial, settlement or adjudication, appeals and so forth.³ The system has traditionally been focused on court activities and litigation. However, it is also possible — under certain circumstances — to agree on hourly-rate fees or a lump-sum payment for the whole case. The primary purpose behind the scheduled fees in the litigation context is to prevent price competition among lawyers and secondarily to keep legal services affordable. There continues to be a strong belief in Germany that price competition among lawyers will not only compromise lawyers’ integrity and ethical responsibility to clients’ interests, but also the administration of justice in general. Success fees have been historically prohibited and considered unethical in Germany.⁴ However, in December 2006, the German Federal Constitutional Court ruled that the prohibition of success fees without any exceptions violated the German Constitution.⁵ Thus, the German legislator changed the regulations regarding the prohibition of success fees and created exemptions for cases in which success fees are essential to allow clients to pursue their rights. These provisions can be found, *inter alia*, in Section 6 (1) of the Legal Services Act (*Rechtsdienstleistungsgesetz* (“RDG”)) and Section 34 (1) of the RVG. The latter provision states that consultation, legal opinions and mediation outside the litigation context – if not associated with billable legal services – do not fall under the statutory fee scale annexed to the RVG (*Vergütungsverzeichnis*). Lawyers and clients may freely agree – in the above mentioned cases (acc. Section 34 (1) RVG) on a compensation below the statutory fees, and also on legal advice free of charge, *i.e.*, *pro bono*.

The statutory fee constitutes a minimum fee in matters involving legal proceedings, such as lawsuits and administrative proceedings. In matters outside the litigation context, negotiated

¹ See the Federal Attorneys-At-Law Remuneration Act (*Rechtsanwaltsvergütungsgesetz* (“RVG”)) and the Legal Services Act (*Rechtsdienstleistungsgesetz* (“RDG”)).

² The pertinent laws regulating the German legal profession standards are the Federal Attorneys-At-Law Code (*Bundesrechtsanwaltsordnung* (“BRAO”)), as well as the Professional Code (*Berufsordnung* (“BORA”)).

³ *Inter alia*, the so-called “*Geschäftsgebühr*,” a “business fee” payable on first consultation and draftings and the so-called “*Terminsgebühr*,” the fee payable to the attorney for attending a court hearing.

⁴ See Kleiner-Cosack, *Bundesrechtsanwaltsordnung mit Berufs- und Fachanwaltsordnung, Kommentar*, Paragraph 49b, marginal number 11.

⁵ See Judgment of the German Federal Constitutional Court (*Bundesverfassungsgericht* (“BVerfG”, file number 1 BvR 2576/04) dated December 12th, 2006, BVerfGE 117, 163 et seq.

fees below the statutory levels are permissible for legal representation, *i.e.*, if they are proportionate to the effort and the risk of liability to the lawyer. Consequently, German lawyers may agree on fees below the statutory levels in matters that do not involve the representation of clients before courts, magistrates or administrative courts.⁶ General consultation, corporate representation and transactional practice therefore can be undertaken *pro bono* or at fees below the statutory levels as stated above. Fee agreements, where they deviate from the statutory fees, must be in writing and must be executed before the representation is undertaken. This rule is designed to protect the client and does not restrict the ability of German lawyers to render transactional legal services on a *pro bono* basis.

Furthermore, a German lawyer may waive his or her fees *after* the conclusion of the matter, but only for “reasons [particular to] the client, particularly indigence.”⁷ The restriction of fee waivers to reasons particular to the client is interpreted to preclude fee waivers in circumvention of the prohibition of success fees. Thus, a fee may not be waived because a case was lost.⁸ Also, an attorney may not waive a fee because there are ulterior motives in representing the client, such as publicity due to the representation of celebrity clients.⁹ A waiver may not be promised before the representation is undertaken.

II. *Legal Aid in Germany*

The requirement that German lawyers have to charge minimum fees for their services in the litigation context is considered acceptable in Germany because the state provides legal aid to those in need of legal services who are unable to fully afford them. Furthermore, there are several governmental and non-governmental organizations that provide general legal advice, such as municipal offices, ministries, agencies, and charitable and civic organizations. Actual representation by counsel is available through a court-administered system of legal aid. Such legal aid is geared toward litigation or representation in magisterial and administrative proceedings.

An indigent litigant who has a claim that is “reasonably expected to be successful” has a statutory right to both court fees and attorney’s fees if he or she is unable to afford them.¹⁰ Both German residents and foreign residents are eligible. The applicant must disclose income and assets to demonstrate indigence, and schedules exist to determine whether to grant full or partial aid, deferment of fee payments, or installment payments. It should be noted that Germany follows the “loser pays” system, such that a successful indigent litigant will not bear any fees or costs.

The requirement for whether a claim can “reasonably be expected to be successful” has been solidified by German courts in the past. A judge processes the application for legal aid and

⁶ See Section 4 (2) RVG.

⁷ Section 49 (b) (1) 2 BRAO. Other instances in which fee waivers have been considered acceptable in the representation of friends or relatives. See also judgment of the German Federal Court of Justice (*Bundesgerichtshof* (“BGH”), BGH NJW 1995, 1425 (elaborating that fees can be reduced even after the decision of the German Federal Constitutional Court (*Bundesverfassungsgericht* (“BVerfG”), BVerfGE, 76, 171; NJW 1988, 191).

⁸ See Kleiner-Cosack, marginal number 10.

⁹ As in most countries, there are restrictions on German lawyers when it comes to advertising their services. While specific solicitation in view to a particular matter is impermissible, advertising in general is now permitted. The names of clients may be listed in brochures with their consent.

¹⁰ Sections 114 et. seq. German Code of Civil Procedure (*Zivilprozessordnung* (“ZPO”)).

assesses the claim's chances of success. Therefore, it is not required that the claim has a strong chance of success but it is sufficient so long as it has a reasonable basis. In practice, only hopeless and frivolous claims are denied legal aid. An interesting indication of the German approach in this area is seen in cases where a claim is made in the face of contrary precedent. In such cases, a claim for legal aid may not be denied if the applicant makes a plausible showing of why existing precedent should be overturned. However, a claim for legal aid will be denied if it is apparent that the applicant cannot offer sufficient evidence to support his or her claim.

If the state grants legal aid, the state will pay the scheduled statutory fees to the attorney of the indigent litigant's choice and will waive court fees.¹¹ If the indigent litigant prevails in the litigation, the opposing party is responsible for attorneys' and court fees and the state is reimbursed. However, if the indigent litigant loses the case, the court fees will be waived but he or she must bear the costs for the opponents' attorney.

III. *Pro Bono Opportunities in Germany*

The rules impacting *pro bono* work in Germany contain three basic principles:

- The minimum attorney's fees in the litigation context are set by a statutory fee scale annexed to the RVG,
- "the loser pays," and
- the state provides legal aid to those who cannot afford court or attorney's fees.

These principles shape not only the law but also the legal culture in Germany. Traditionally, there are common convictions that: fees should be set; too much competition among lawyers is bad; success fees give lawyers the wrong incentives; one ought not to have to pay for a lawsuit if one wins; and those in need of assistance to gain access to the courts should receive it as a matter of right, and not as a charitable act of the legal profession.

However, this legal culture has shifted noticeably in Germany. In fact, there has been widespread press coverage and discussion of *pro bono* work,¹² and the word itself has already become established as part of a German lawyer's vocabulary. The profession has changed profoundly due to the globalization of finance and commerce, the arrival of international, and in particular American and British law firms, and a prolonged wave of consolidations among German law firms. *Pro bono* work has become more common in Germany, especially by international law firms taking on *pro bono* work outside the litigation context. German lawyers increasingly recognize the need for *pro bono* legal services in addition to the traditional financial contributions to charitable and civic organizations. In this context, so-called "round tables" have been established in several German cities where German lawyers, mainly from international law firms, discuss the possibilities to establish and extend *pro bono* work in Germany. Most of them

¹¹ In the lowest courts (such as small claims courts) in which representation by counsel is not required, the state will pay for a lawyer if the judge assessing the claim feels that it is necessary (that is, helpful) or if the opponent is represented by counsel (section 121 ZPO).

¹² See, for example: *Westenberger*, BRAKMagazin, June 2009, *Pro Bono – Do good and talk about it* (*Pro Bono – Tue Gutes und rede darüber*); *Budras*, *Frankfurter Allgemeine Zeitung*, October 6th, 2007, *Advocates in favor of good cause* (*Advokaten für die gute Sache*); *Amann*, *Financial Times Deutschland*, March 31st, 2006; *In favor of good cause and for a positive image* (*Für die gute Sache und das gute Image*); *Baelz/Moelle/Zeidler*, *Neue Juristische Wochenschrift* 2008, p. 3383 ff., *Legal advice pro bono publico in Germany – a review* (*Rechtsberatung pro bono publico in Deutschland – eine Bestandsaufnahme*).

have already presented their *pro bono* concepts to their respective local bar associations, the majority of which have responded positively to the concepts. Furthermore, the annual European *pro bono* forum under the patronage of the Public Interest Law Institute (PILI) is scheduled to take place in Paris, France in November 2010. Charity organizations and law firms meet at the forum to discuss the possibilities of *pro bono* work throughout Europe.¹³

In fact, there is a need for *pro bono* work in Germany despite the comprehensiveness of the existing legal aid system. For example, very extensive and complex cases may be unsatisfactorily dealt with by the legal aid system since lawyers will tend to provide minimum effort to these cases, ultimately resulting in an unsatisfactory outcome. Also, charitable organizations sometimes have problems fulfilling the requirements for legal aid, forcing organizations to choose between abandoning professional legal services or diverting funds from the main purpose of the organization: to cover legal expenses. Furthermore, some potential *pro bono* cases cannot be handled on a legal aid basis because special expertise is required. For example, cases with international components cannot be handled by a single lawyer on a legal aid basis. The judgment of the German Federal Constitutional Court in the context of prohibition of success fees in December 2006¹⁴ recognized that the legal aid system in Germany may not be sufficient to provide legal services in all cases in which legal aid is necessary. Consequently, the German legislator substituted the German Act on Legal Counseling (*Rechtsberatungsgesetz* (“RBerG”), which generally prohibited free legal advice, with the RDG. According to Section 6 of the RDG, free legal services can be provided by non-lawyers who must be instructed by a professional lawyer, if they are not associated with a paid legal service given by a professional (“*unentgeltliche Rechtsdienstleistungen*”).¹⁵ If non-professionals are permitted to give free legal advice for reasons of civic engagement, it follows that professionals with the ability to provide legal advice should also be permitted to do so. With the intention of enhancing active citizenship and a sense of solidarity, the German legislator encouraged the already ongoing *pro bono* movement in Germany.

It remains true, however, that German lawyers are in general only allowed to grant free legal services outside the litigation context to people and organizations who usually cannot afford their services. In this context, the offices of Latham & Watkins in Munich, Frankfurt and Hamburg represent several individuals, non-profit associations and charitable foundations. Furthermore, it would be conceivable to give legal advice to a variety of populations in need, such as casualties of natural disasters (such as tsunamis, earthquakes or hurricanes), the homeless and jobless, founders of new businesses, or other needy people outside the litigation context. These are just a few of the possible *pro bono* opportunities available in Germany.

In the litigation context, State financial aid for litigants appears to satisfy the demand for affordable legal representation. Since there are many individuals practicing in the German Bar, the supply of lawyers actively seeking court appointments under the legal aid system exceeds the demand. Seeking to represent litigants *pro bono* would therefore create competition with a segment of the German Bar. Further, it is not permissible to establish a formal *pro bono* program in the litigation context since fee waivers are not allowed to be agreed upon before the conclusion of a case. However, it should be possible for international law firms to take on more time-consuming, difficult, and complex cases that are not particularly attractive to other lawyers on an individual basis, and agree to waive the fee *after* the conclusion of the litigation. *Pro bono*

¹³ http://www.pili.org/index.php?option=com_content&view=article&id=40291&Itemid=30096.

¹⁴ See *supra* note 4.

¹⁵ Legal services according to Section 2 (1) RDG are all legal activities specifically being of others’ concern.

representation in litigation cases will therefore necessarily remain occasional, unless the German practice or regulations on this subject change.

IV. *Conclusion*

Pro bono work in Germany is currently possible in the fields of representation of non-profit associations, charitable foundations or other needy people outside the litigation context.

With respect to *pro bono* activities in the litigation context, the Legal Services Act, which entered into force on 1st July 2008, and the revised Legal Fees Act (“RVG”) have amended German fee rules in the litigation context already. However, at present, the impact of fee rules in Germany is that *pro bono* matters in the litigation context can only be obtained through contacts or by chance; they are never solicited by a law firm. Thus, they are not always called *pro bono* matters because it is impermissible to agree upon a fee waiver before the conclusion of a case. There is currently no organization that acts as a clearinghouse for *pro bono* projects, and substantial *pro bono* projects are difficult to come by.

In response to the latest judgment of the German Federal Constitutional Court that the blanket prohibition of success fees is unconstitutional,¹⁶ the German legislature may take the opportunity to allow success fees in the context of *pro bono* cases.

September 2010
Pro Bono Practices and Opportunities in Germany

This memorandum was prepared by **Latham & Watlins 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.

¹⁶ See *supra* note 547.

PRO BONO PRACTICES AND OPPORTUNITIES IN GREECE

Greek legal order traces its origins to Roman law. The highest form of binding law in the Greek state is the Constitution. The present Constitution was adopted in 1975 and underwent minor changes in 1986 and 2001. Immediately below the Constitution are the laws adopted by the Parliament. The Parliament along with the President of the Republic have legislative power vested to them by the Constitution.

Under Article 43 of the Constitution, the President of the Republic, acting on the proposal of the competent Minister, issues the decrees necessary to implement the laws and may not suspend the implementation of laws or exempt anyone from their application. For the regulation of more specific matters, matters of local interest and matters of a technical or detailed nature, regulatory decrees may be issued on the basis of special authorization given by law, within the limits laid down in the authorization. Regulatory acts may be issued by other administrative bodies.

Under Article 1 of the Civil Code, *“the rules of law are contained in legal acts and customs.”* However, in the Greek legal system the role of custom as a source of law is negligible, if not non-existent.

Unlike the Anglo-Saxon system, court rulings do not constitute a source of law. The courts’ rulings are an important source of interpretation of existing laws.

I. Legal Services and the Legal Profession in Greece

The provision of legal services in Greece is subject to the Lawyers Code (*Κώδικας περί Δικηγόρων*), which regulates disciplinary law, fees and advancement in status in general. Lawyers in Greece must also comply with a Code of Conduct (*Κώδικας Δεοντολογίας*) and the rules of the bar associations (*Εσωτερικοί Κανονισμοί Δικηγορικών Συλλόγων*), which follow the provisions of the Code of Conduct for Lawyers in the European Union provided by the Council of Bars and Law Societies of the European Union (the “CCBE”). Lawyers are initially admitted to the courts of first instance, after which they practice in the courts of appeal and in the Supreme Court, depending on how long they have been in practice and the type of cases they accept.

Under Presidential Order 152/2000 aiming to facilitate on a permanent basis in Greece the practice of the profession of lawyer by individuals who obtained their qualification in another Member State of the EU (Directive 98/5/EC), lawyers who are nationals of EU Member States may practice on a permanent basis in Greece, in either a self-employed or a salaried capacity. They must have obtained their qualification in an EU Member State. In Greece, they must register with the bar association and keep chambers in the area in which they practice.

Lawyers whose application for registration is accepted are subject to the same obligations and have the same rights as Greek lawyers, but may only integrate fully into the legal profession in Greece once they can show that they have actually practiced their profession on a regular basis in Greece for three years. During these three years, lawyers wishing to represent a client in court must be assisted by a lawyer entitled to appear before the court hearing the case. Acts or duties which Greek law considers to constitute an exercise of public authority may be performed only by lawyers of Greek nationality. The profession may be pursued jointly by one or more lawyers practicing in Greece, under their professional title of origin, as members or associates of a grouping in the country of origin which has a branch or office in Greece.

Attorneys in Greece must at all times preserve absolute independence, comply with confidentiality rules, serve the clients' interests diligently, conscientiously and promptly; they cannot act in situations where a conflict of interest exists.

According to Article 175 of the Lawyers Code, it is prohibited for an attorney to provide legal services without receiving a fee, except if the client is a close relative to the attorney or can prove that he/she does not have the means to pay for the legal services provided.

Attorneys' fees are negotiated between the attorney and the client and cannot be lower than the minimum statutory fees set by a Joint Ministerial decision issued periodically. This minimum fee is collected in advance by the Bar Association from the attorney and is a pre-requisite for representation before a Court of Justice. In the case of legal aid (see below), the beneficiaries are exempted from the advance deposition of fees. It is possible for an attorney to negotiate and receive a monthly salary for legal services provided to a client.

A. Legal Aid

According to Law no. 3226/2004, it is possible for citizens with lower income to receive legal services without paying fees. The attorney undertaking such a case is appointed on the basis of lists of attorneys put together and kept by local Bar Associations. The attorneys are included in these lists on their own initiative and if chosen, are obliged to provide their legal services without receiving fees. The Ministry of Justice will cover the legal fees owed to these attorneys and the amount will be the minimum statutory fee issued by the Ministerial decision (see above).

In parallel with the services provided by Law no. 3226/2004, articles 194-202 of the Code of Civil procedure and 100 and 304 of the Code of Penal Procedure provide respectively for the possibility of receiving legal aid in case of a trial.

In principle, the main costs of a trial have to be borne by the party who brings the action. The defeated party will be ordered to bear the costs of trial for both parties. Legal aid exempts the applicant from all legal costs, including judicial stamp duty, duty on the writ of execution, surcharges on these stamp duties, solicitor's and bailiff's fees, costs relating to witnesses and experts, and the fees of the barrister or other representative.

The following citizen categories are eligible for legal aid:

1. anyone (any national) who can show that payment of his legal costs is liable to deprive him and his family of the means necessary for their maintenance;
2. corporate bodies which are in the public interest or nonprofit-making and groups of persons which have the right to take part in court proceedings if it is shown that payment of the costs of the proceedings would make it difficult or impossible for them to accomplish their aims;
3. partnerships or associations if the partnership or association cannot pay the costs of proceedings and its members cannot do so without depriving themselves and their families of the means necessary for their maintenance;
4. foreign nationals provided there are reciprocal arrangements, and stateless persons on the same conditions as apply to Greek nationals.

Legal aid is available before all courts, civil, criminal and administrative, both for contentious and non-contentious proceedings. It does not cover, however, procedures before administrative authorities.

There is no special application form for requesting legal aid. Legal aid is requested from and granted by: (a) the district court, (b) the (single-judge) regional court or (c) the president of the full regional court in which the proceedings are to be instituted or are pending. In matters unrelated to a trial, legal aid is granted by the district court of the place of residence of the applicant. The applicant should submit the evidence justifying its application at least fifteen (15) days before the trial or the deed for which aid is requested. The competent authority appoints an attorney, who will represent the applicant, without the right to provide an objection to the representation.

Legal aid is available if, as a result of payment of the cost of the case, the applicant may not be able to maintain himself or his family. As evidence of his circumstances, the applicant must submit:

1. an attestation from the mayor or president of his municipality stating his financial and family circumstances and occupation, and certifying that he is unable to pay without risk to himself and his family; in the case of a non-profit-making corporate body, it must be shown that the accomplishment of its aims would be made impossible or difficult, and in the case of a partnership or association, that the partnership or association cannot pay the costs of proceedings and its members cannot do so without depriving themselves and their families of the means necessary for their maintenance;
2. an attestation from his local tax office certifying that in the previous three years the applicant has submitted an income-tax return and a return for any other tax due and that the returns have been checked by the tax office;
3. in the case of a foreign national, an attestation from the Ministry of Justice certifying that there are reciprocal arrangements.

The request for legal aid should be made to one of the courts referred to above in accordance with the criteria already outlined.

Legal aid may be withdrawn or restricted by the court, at the prosecutor's request or by its own motion, if the requirements for the granting of legal aid are not met or if the circumstances warranting legal aid no longer prevail or have changed. If the applicant succeeds in securing legal aid on the basis of false statements or information, the court will order the withdrawal of legal aid and will impose a fine, without prejudice to the obligation on the applicant to repay the sums received, and without prejudice to the possibility of criminal prosecution.

Furthermore, if the aided party loses the case, he will still have to pay some or all of the costs of the winning party as soon as his circumstances improve and have been verified.

B. Ombudsman

The Greek Ombudsman is a constitutionally sanctioned Independent Authority. It was founded in October 1998 and operates under the provisions of Law no. 3094/2003. The Ombudsman provides its services to the public free of charge, and received more than 85,000 complaints.

The Greek Ombudsman investigates individual administrative actions or omissions or material actions taken by government departments or public services that infringe upon the personal rights or violate the legal interests of individuals or legal entities. Complaints can be

submitted by every citizen, regardless of nationality, who has a problem with a Greek public service anywhere in Greece or abroad.

Before submitting a complaint to the Greek Ombudsman, the complainant should first come into contact with the public service involved with his or her case. Only if the problem is not resolved by the service concerned should a complaint be submitted to the Ombudsman.

The principal mission of the Greek Ombudsman is to mediate between the public administration and citizens, in order to help citizens exercise their rights effectively. The Greek Ombudsman also defends and promotes children's rights, promotes equal treatment and fights discrimination in the public sector based on race or ethnicity, religious or other conviction, disability, age or sexual orientation, promotes and monitors the equal treatment of men and women in matters of employment both in the public and the private sector.

As a mediator, the Greek Ombudsman makes recommendations and proposals to the public administration. The Ombudsman does not impose sanctions or annul illegal actions by the public administration.

II. *Pro bono Opportunities in Greece*

The provision of *pro bono* legal services in Greece is not well-established or widespread. According to the law, the attorneys should always receive fees for the provision of legal services. The exceptions to these principles are very concrete and the applicant who wishes to benefit should provide all the necessary documentation showing the lack of the necessary means to cover the expenses.

However, because of the particular geographic location of Greece and of the numerous migrants/refugees it has been receiving lately, a special niche for legal aid in relation to their rights has been created.

The Marangopoulos Foundation for Human Rights (“MFHR”)¹ offers free legal aid to people (without any discrimination as to race, religion, sex, language, national or social origin) whose fundamental human rights and freedoms have been infringed on and who are unable to pay for legal counsel. MFHR has accepted many different types of cases, including the following:

- (1) Offering legal assistance to refugees and asylum seekers by submitting applications for asylum and going through the procedures involved in determining refugee status in accordance with the provisions of the 1951 Geneva Convention. Although the implementation of Greek law on political asylum is strict, MFHR has managed to achieve a positive outcome for a satisfactory number of cases.
- (2) Supporting detainees and prisoners by providing legal aid and defending them before the court.
- (3) Examining the conditions and terms under which detainees and prisoners are being kept, especially in mental hospitals, in addition to taking action to assure that their rights are not being violated.
- (4) Greeks of Northern Epirus have received special attention and assistance concerning their settlement in Greece, residence and work permits, including procedures to obtain Greek citizenship.

¹ <http://www.mfhr.gr/?ln=1>

- (5) Intervening in cases of deportation wherever necessary and preventing, at the entry check points of the borders, the deportation of foreigners who are in danger of torture or physical and psychological oppression in their own countries.
- (6) Offering assistance to the homeless and those outside of the social security system.
- (7) Assisting individuals to resolve problems with the Greek public authorities by taking the necessary steps.

Moreover, various groups of lawyers have been constituted in an effort to provide help to migrants and refugees and ensure respect of their rights. Indicatively, we can mention the “Group of lawyers for the Rights of Migrants and Refugees” (*Ομάδα Δικηγόρων για τα δικαιώματα προσφύγων και μεταναστών*).²

Finally, recently (in 2010) the General Secretariat for Youth of the Greek State has launched a program called “Youth Legal Aid” aiming to provide free legal aid to socially vulnerable target groups of young citizens. Legal services will be provided by young lawyers (up to 35 years old). The program wishes to serve two purposes (i) to fight against social discrimination often experienced by the youth target groups and (ii) to prompt and support the young lawyers when undertakings similar cases.³

III. Conclusion

In Greece, legal aid and some limited free legal advice is available, but there seems to be no established *pro bono* culture. The particular geographic position of the country, receiving numerous immigrants and refugees, and the recent severe economic crisis have increased the number of applicants requesting legal services free of charge. *Pro bono* organizations promoting various voluntary activities are rather proactive in various fields of the society, but in the field of provision of legal services, there is a lot of margin for improvement.

September 2010
Pro Bono Practices and Opportunities in Greece

This memorandum was prepared by **Latham & Watlins 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.

² <http://omadadikigorwn.blogspot.com/>

³ <http://www.neagenia.gr/frontoffice/portal.asp?cpage=RESOURCE&cresrc=1287&cnode=1>

PRO BONO PRACTICES AND OPPORTUNITIES IN HONG KONG

The provision of *pro bono* legal services by private law firms in Hong Kong is less common than in the United States and Europe because Hong Kong has a tradition of providing legal aid through the government. However, there is an increasing recognition that there are legitimate legal needs which are not being met through the traditional legal aid system and over the past few years many international law firms have expanded their *pro bono* practices in the region. This chapter discusses the law governing *pro bono* activities in Hong Kong, the legal aid services provided by various governmental bodies, as well as existing *pro bono* opportunities in Hong Kong.

I. Legal Services and the Legal Profession in Hong Kong

A. The Legal Aid Department

The Legal Aid Department is a separate administrative department of the Hong Kong government which provides legal representation to eligible applicants in civil or criminal proceedings before various courts and tribunals.¹ The “Legal Aid Services Council Ordinance” passed by the Legislative Council on May 1, 1996, established a supervisory body (the “Legal Aid Services Council”) to supervise the provision of legal aid services in Hong Kong, oversee the work of the Legal Aid Department and advise the Hong Kong government on legal aid policy. The Legal Aid Services Council may also (i) formulate policies governing the services provided by the Legal Aid Department, (ii) review the work functions of the Legal Aid Department and (iii) advise generally on the expenditures of the Legal Aid Department.²

Any person in Hong Kong, whether a resident or not, may apply for legal aid. However, applicants may be required to contribute towards the costs and expenses incurred by the Legal Aid Department unless that person’s financial resources fall below a certain amount or no money or property is recovered or preserved in a civil proceeding. If a claim is unsuccessful, aided persons may be responsible for paying the difference between the costs and expenses incurred by the Legal Aid Department and any contribution paid by the person. Where no contribution has been paid or the contribution does not cover the Legal Aid Department’s costs, the director of the Legal Aid Department has a right to require reimbursement of its costs and expenses from property recovered or preserved in civil proceedings. If the contribution is more than the costs and expenses, the Legal Aid Department will refund the difference to the aid beneficiary.³

Legal aid is provided under three different schemes: Ordinary Legal Aid, Supplementary Legal Aid and Criminal Legal Aid. Civil proceedings for which legal aid is granted are handled

¹ The Legal Aid Department provides representation for proceedings in the District Court, the Court of First Instance, the Court of Appeals and the Court of Final Appeals, committal proceedings before the Magistrates’ Courts, proceedings before the Mental Health Review Tribunal and proceedings before the Coroner’s Courts under certain conditions. See <http://www.lad.gov.hk/english/las/overview.htm>.

² See Establishment of LASC, available at: <http://www.info.gov.hk/lasc/frame.htm>. See also Legal Aid Services Council Ordinance (Cap. 489).

³ See What is Legal Aid?, Guide to Legal Aid Services in Hong Kong, Chapter 1 at 4, available at: <http://www.lad.gov.hk/english/las/overview.htm> and [http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong\(e\)_lowr.pdf](http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong(e)_lowr.pdf).

by either in-house lawyers from the Legal Aid Department or by assigned solicitors or counsel in private practice who have expressed a willingness to undertake these cases.⁴

To qualify for Ordinary Legal Aid,⁵ applicants must generally satisfy a means test⁶ and a merits test.⁷ The major types of cases covered are family and matrimonial disputes, personal injury claims, employment disputes, contractual disputes, immigration matters and professional negligence claims. Legal aid is not generally available for matters involving defamation, matters before the Small Claims Tribunal or Labour Tribunal, election petitions or money claims in matters involving derivatives or futures.

The Supplementary Legal Aid⁸ scheme provides legal representation to people who are not eligible for Ordinary Legal Aid but whose financial resources are still below a specified amount.⁹ Applicants must pay an initial application fee plus an interim contribution upon acceptance of legal aid. Supplemental Legal Aid is available for cases involving personal injury, death or professional negligence, where the claim is likely to exceed HK\$60,000, and for claims under the Employee's Compensation Ordinance.

The Supplementary Legal Aid Scheme is financed by recovered damages, an initial application fee and any interim contributions. All costs and expenses incurred will be deducted from the damages recovered. If the proceedings are successful, aided persons must pay a percentage of the recovered damages into a Supplementary Legal Aid Fund. If the proceedings are unsuccessful, the application fee and interim contribution are only refunded to the extent that they exceed the actual costs and expenses incurred.

To qualify for Criminal Legal Aid,¹⁰ an applicant must satisfy the same means test required for civil cases. Applicants charged with murder, treason or piracy with violence can apply to a judge for exemption from the means test and the legal aid contribution. Legal aid must be provided for any appeal involving charges of murder, treason or piracy with violence. For other criminal appeals, legal representation will only be provided if it is shown that there are

⁴ See What is Legal Aid?, Guide to Legal Aid Services in Hong Kong, Chapter 1 at 5, *available at*: [http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong\(e\)_lowr.pdf](http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong(e)_lowr.pdf).

⁵ See Civil Legal Aid, Guide to Legal Aid Services in Hong Kong, Chapter 2 at 6–8, *available at*: [http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong\(e\)_lowr.pdf](http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong(e)_lowr.pdf).

⁶ To be eligible for Ordinary Legal Aid, an applicant's monthly disposable income multiplied by 12 plus his or her disposable capital must be less than HK\$155,800. See Paragraph (1), Section 5, Cap. 91 Legal Aid Ordinance. See also The Means Test, Guide to Legal Aid Services in Hong Kong, Chapter 3 at 11–12, *available at*: [http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong\(e\)_lowr.pdf](http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong(e)_lowr.pdf).

⁷ The Legal Aid Department must be satisfied that the case has a reasonable chance of success and may seek the opinion of counsel or solicitors in private practice before making its determination. See The Merits Test, Guide to Legal Aid Services in Hong Kong, Chapter 4 at 13–15, *available at*: [http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong\(e\)_lowr.pdf](http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong(e)_lowr.pdf). Legal aid may also be refused for other reasons specified in the Legal Aid Ordinance such as when the applicant leaves Hong Kong and stays outside of Hong Kong for a continuous period of six months or fails to provide information requested by the Legal Aid Department. See Paragraph (2), Section 10, Cap 91 Legal Aid Ordinance.

⁸ See Civil Legal Aid, Guide to Legal Aid Services in Hong Kong, Chapter 2 at 9–10, *available at*: [http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong\(e\)_lowr.pdf](http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong(e)_lowr.pdf).

⁹ The “specified amount” is currently designated as below HK\$488,400. See Paragraph(b), Section 5A, Cap. 91 Legal Aid Ordinance.

¹⁰ See Criminal Legal Aid, Guide to Legal Aid Services in Hong Kong, Chapter 6 at 18–20, *available at*: [http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong\(e\)_lowr.pdf](http://www.lad.gov.hk/pdf/guide_to_legal_aid_services_in_hongkong(e)_lowr.pdf).

meritorious grounds for an appeal. A successful applicant must pay a contribution calculated in accordance with his or her financial resources unless, as in civil cases, the applicant's resources do not exceed HK\$175,800.¹¹

B. The Duty Lawyer Service

The Duty Lawyer Service was established in 1978 and is an independent organization fully subsidized by the Hong Kong government.¹² The organization is managed by the Hong Kong Bar Association and the Law Society of Hong Kong through a governing council.¹³ The Duty Lawyer Service offers three legal assistance schemes which complement the legal aid services provided by the Legal Aid Department: the Duty Lawyer Scheme, the Free Legal Advice Scheme and the Tel-Law Scheme.

The Duty Lawyer Scheme provides legal representation, by qualified lawyers in private practice, to persons brought before all Magistrate Courts, Juvenile Courts and Coroner's Courts.¹⁴ To be eligible for representation, in most instances a person must pass a merits test,¹⁵ a means test¹⁶ and pay a fixed handling charge of HK\$436 which may be waived for students or other dependents. The Scheme also provides lawyers to advise defendants facing extradition and to undertake representation of hawkers (street sellers) with appeals to the Municipal Services Appeals Board. In 2009, 36,991 defendants were represented via the scheme, with an overall acquittal rate of 75.45%.¹⁷

¹¹ Paragraph (1), Rule 15, Cap. 221D Legal Aid in Criminal Cases Rules.

¹² See The Duty Lawyer Service, About Us, Our Aim *available at*: <http://www.dutylawyer.org.hk/en/text/about/aim.asp>.

¹³ The Duty Lawyer Service is composed of 12 members, four appointed by the Law Society of Hong Kong, four appointed by the Hong Kong Bar Association, three lay members who are not legal professionals and an administrator. See The Duty Lawyer Service, About Us, Our Council *available at*: <http://www.dutylawyer.org.hk/en/text/about/council.asp>.

¹⁴ Cases in the Coroner's Courts arise as a result of person being accused of giving incriminating evidence in coroner's inquests. See The Duty Lawyer Service, The Duty Lawyer Scheme *available at*: <http://www.dutylawyer.org.hk/en/text/duty/duty.asp>.

¹⁵ The Criteria (apart from means) for deciding whether a grant of legal representation for summary trials is "in the interests of justice" are as follows: (a) that the charge is a grave one in the sense that the accused is in real jeopardy of losing his liberty or suffering serious damage to his reputation; (b) that the case raises a substantial question of law; (c) that the accused is unable to follow the proceedings and state his own case because of language barrier, mental illness or other physical disability; (d) that the nature of defense involves the tracing and interviewing of witnesses, or expert cross-examination of witnesses for the prosecution; (e) that legal representation is desirable in the interest of someone other than the accused as, for example, in the case of sexual offenses against young children where it is undesirable that the accused should cross-examine the witness in person. See The Duty Lawyer Service, Annual Report 2009 *available at*: http://www.dutylawyer.org.hk/en/text/annual_09/scheme.asp.

¹⁶ Duty Lawyer representation is offered to defendants charged with certain types of offenses at their first court appearance. For a list of qualifying offenses, see <http://www.dutylawyer.org.hk/en/doc/list.xls>. If the defendant wishes to have legal representation for subsequent appearances, he or she must go to the Court Liaison Office for a means test. The financial eligibility limit is set at a gross annual income of HK\$131,860. A defendant who fails the means test can apply to the Administrator to waive his or her means test. The decision of the Administrator is final. The means test does not apply to matters before the juvenile court.

¹⁷ See The Duty Lawyer Service, Annual Report 2009, *available at*: http://www.dutylawyer.org.hk/en/text/annual_09/scheme.asp.

The Free Legal Advice Scheme provides preliminary legal advice to members of the public at nine Legal Advice Centers located throughout Hong Kong. The objective of the scheme is to help clients understand the nature of their problems, their legal rights and obligations and the channels available for resolution. The scheme does not offer any follow-up services or ongoing representation of the clients. The main areas of inquiry include matrimonial, landlord and tenant, employment, estate administration, commercial and property disputes, criminal, personal injuries, bankruptcy and debt.¹⁸

There is no means test and the service is free, but a person seeking free legal advice must first visit a referral agency to make an appointment to meet a volunteer lawyer. All volunteers providing services at the Legal Advice Centers are Hong Kong-qualified lawyers.¹⁹

The Free Legal Advice Scheme also provides volunteer lawyers to render legal advice in connection with programs run by the Federation of Women's Centre, the Hong Kong Federation of Women and Action for Reach Out. The Women's Centre Free Legal Advice Clinic was established under the Free Legal Advice Scheme in 1992 and specializes in matrimonial and domestic matters. The Free Legal Advice Hotline was established by the Hong Kong Federation of Women in 1998 and provides legal advice on family, property, probate and bankruptcy matters. The Free Legal Advice Clinic was established by Action for Reach Out in 2003 and provides advice to female sex workers.²⁰

The Tel-Law Scheme provides the general public with free recorded legal information on legal topics over the telephone. The audio tapes have also been converted to digital format. Both the tapes and the transcripts are available on the Duty Lawyer Service website in English, Cantonese and Putonghua (Mandarin).²¹ There are 78 topics divided into the following eight groups: family law; land law, landlord and tenant; criminal law; employment law; commercial, banking and sales of goods; administration and constitutional law; environmental law and tort; and general legal information. Any person who intends to initiate legal action is encouraged to consult his or her own lawyer or a volunteer lawyer provided through the Free Legal Advice Scheme.²²

C. The Bar Free Legal Service Scheme

The Bar Free Legal Service Scheme was established in 2000 and is sponsored by the Hong Kong Bar Association, the professional organization for barristers in Hong Kong. A management committee arranges for legal advice and representation to be provided by volunteer panel members in cases where assistance is unavailable through the Legal Aid Department or where the committee believes there are grounds to appeal a decision by the Legal Aid Department to refuse

¹⁸ See The Duty Lawyer Service, Free Legal Advice Scheme, *available at*: <http://www.dutylawyer.org.hk/en/text/free/free.asp>.

¹⁹ As of December 31, 2009, there were over 700 lawyers participating in the Free Legal Advice Scheme. See The Duty Lawyer Service, Annual Report 2009, *available at*: <http://www.dutylawyer.org.hk/en/text/free/free.asp>.

²⁰ See The Duty Lawyer Service, Annual Report 2009, *available at*: http://www.dutylawyer.org.hk/en/text/annual_09/advice.asp.

²¹ See The Duty Lawyer Service, Annual Report 2009, *available at*: http://www.dutylawyer.org.hk/en/text/annual_09/tel-law.asp

²² See The Duty Lawyer Service, Annual Report 2009, *available at*: http://www.dutylawyer.org.hk/en/text/annual_09/tel-law.asp.

legal aid to an applicant. These services are provided free of charge, in both civil and criminal matters.²³

Barristers may volunteer to provide free services for three days or 20 hours each year. Once the case has been accepted by a volunteer, the Bar Association ceases to be actively involved unless there is some unexpected difficulty. For lengthier cases, volunteers may request the assistance of solicitor firms who have expressed a willingness to assist in *pro bono* cases.²⁴

D. Resource Centre for Unrepresented Litigants

The Resource Centre for Unrepresented Litigants was established by the Judiciary in 2003 to provide free assistance on procedural matters to unrepresented litigants involved in civil proceedings in the High Court or District Court.²⁵

The Resource Center for Unrepresented Litigants provides oath and declaration services to unrepresented litigants who are required to file affirmations or affidavits in preparation for their cases. Computer terminals with access to the Judiciary website, interlinked with the websites of the Legal Aid Department and of other agencies offering free legal advice, are available to users. Users may also access a database of frequently asked questions raised by unrepresented litigants. The Resource Center for Unrepresented Litigants also provides brochures outlining civil proceedings in the High Court and District Court, sample court forms and videos of court procedures. Guidance with completing court forms and submission of court documents is also provided. The staff will not advise on the merits of a case and assistance is not available for matrimonial, lands, employees' compensation and probate matters.²⁶

II. *Pro Bono Opportunities in Hong Kong*

In a speech at the ceremonial opening of the legal year in January 2010, outgoing Chief Justice Andrew Kwok-nang Li urged the legal profession to become more involved in the provision of *pro bono* legal advice to unrepresented litigants. He stated that "All lawyers should contribute their fair share to service of the profession and public service. They should also do their part to develop *pro bono* services, which are much needed."²⁷ Kwok went on to state that "The practice of law cannot be treated merely as a business."²⁸ There is a growing need for *pro bono* legal services in Hong Kong that could be met through the efforts of volunteer lawyers from

²³ See Bar Free Legal Service Scheme, available at: <http://www.hkba.org/the-bar/free-legal-service/free-legal-service1.html>. Applications for assistance are reviewed by the management committee which considers the following factors in deciding whether to refer a case to a panel member: (a) Does the case appear to deserve assistance? (b) Can the applicant or his or her family afford legal assistance? (c) Are the services of a barrister needed? (d) What is the nature of the work involved? See <http://www.hkba.org/the-bar/free-legal-service/free-legal-service2.html>

²⁴ See Bar Free Legal Service Scheme, available at: <http://www.hkba.org/the-bar/free-legal-service/free-legal-service1.html>.

²⁵ See Resource Centre for Unrepresented Litigants website, available at: <http://rcul.judiciary.gov.hk/rc/cover.htm>. The Judiciary is responsible for the administration of justice in Hong Kong. It hears all prosecutions and civil disputes. It is completely independent of the executive and legislative branches of the government. See Judiciary, About Us, available at: http://www.judiciary.gov.hk/en/crt_services/pphlt/html/guide.htm.

²⁶ See Resource Centre for Unrepresented Litigants website, available at: <http://rcul.judiciary.gov.hk/rc/cover.htm>.

²⁷ See "HK Law Firms Fall Short on Pro Bono Work" by Naomi Rovnick and Barclay Crawford, *South China Morning Post*, April 5, 2010.

²⁸ *Id.*

private practice. This need is greatest with respect to representation of unrepresented litigants in the court system.²⁹

In response to this perceived need, the Law Society of Hong Kong established a working party to study the possibility of introducing free legal services in Hong Kong like those offered by some of the solicitors' firms in London and many American firms. Similarly, the Legal Aid Services Council has also questioned whether it would be desirable to invite solicitors' firms to handle cases in the District Court on a *pro bono* basis. Other opportunities exist to provide legal advice to nonprofit organizations that serve the arts community, domestic helpers, low-income households, the elderly and refugees.³⁰ In addition, in 2008, a group of leading international law firms came together to form the Hong Kong Legal Community Roundtable, which meets on a quarterly basis to discuss and address *pro bono* opportunities in the region.³¹ However, law firms that are licensed by the Law Society of Hong Kong as foreign firms—which include the Hong Kong offices of many U.S. firms—are unable to assist needy persons in the Hong Kong courts or advise nonprofit organizations on Hong Kong law.³²

III. Conclusion

There are already several institutions in Hong Kong that have been established to serve the needs of low-income persons with legal problems. Given the lack of funding in recent years, these institutions are under pressure to handle more cases with fewer resources. This presents a potential opportunity for law firms that are locally qualified to expand their *pro bono* efforts to fill this need, in addition to the ongoing efforts of international law firms currently providing *pro bono* services. This would be best accomplished through collaboration via an organization, such as the Hong Kong Legal Community Roundtable, which can both encourage *pro bono* participation by private law firms and serve as a link between those in need and those willing and able to help.

September 2010

Pro Bono Practices and Opportunities in Hong Kong

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.

²⁹ See *id.*

³⁰ Two of the most successful of these organizations, the Hong Kong Refugee Advice Center (see <http://www.hkrac.org>) and Helpers for Domestic Helpers, an organization run in collaboration with a local church (see <http://www.helpersfordomestichelpers.org>), have been successful in partnering with international law firms to assist in provision of *pro bono* legal services to refugees and foreign domestic helpers, respectively.

³¹ See “HK Law Firms Fall Short on Pro Bono Work” by Naomi Rovnick and Barclay Crawford, *South China Morning Post*, April 5, 2010.

³² See Clause 12 (Prohibition on the practice of Hong Kong Law), Foreign Lawyers Registration Rules, The Law Society of Hong Kong.

PRO BONO PRACTICE AND OPPORTUNITIES IN HUNGARY

I. The Hungarian Legal Profession

The Hungarian legal profession has been in a period of transition for the past two decades because of the fall of communism in the late 1980s and Hungary joining the European Union in 2004.¹ In fact, this is the first time in Hungary's history where it has had a society with a democratically enforced rule of law.² In order to practice law in Hungary, a person must be a member of a regional bar association, which requires the person to undergo a formal legal education, pass a state-administered standardized test, and serve as a clerk for three years with a licensed attorney.³

II. The Right to Counsel and Legal Aid in Hungary

The Hungarian Constitution provides the right to representation at any time during a judicial or criminal proceeding.⁴ In fact, legal representation is required for certain types of detentions, and if a detained person has not contacted a lawyer within 72 hours of a detention, the Hungarian state has an obligation to provide that person with an attorney.⁵

Hungary offers legal aid in both civil and criminal proceedings, and people can also obtain legal aid for legal advice or the drafting of legal documents.⁶ If a person needs legal services during court-administered judicial proceedings, the court will administer such legal services.⁷ If a person qualifies for legal aid during such proceedings, such aid will cover the entirety of the person's involvement in the legal process, including any appellate work or assistance in enforcing court decisions.⁸

Hungarian courts look to numerous factors in deciding whether a person can qualify for legal aid, including such person's financial status and the need for trained legal services in the given legal proceeding.⁹ A person seeking legal aid must submit: (1) a statement of personal data on the applicant and his or her dependent(s); (2) a statement of the financial situation of the applicant and his or her dependant(s); (3) if the applicant or his or her dependant is employed, a certificate from the employer on his or her income at the date of the application; (4) a certificate regarding taxable income received in the calendar year preceding the application; (5) if the

¹ Zoltán Tallódi, "Changes Effected in the 2004-2005 Hungarian Legislation on Public Law," *European Public Law*, Volume 12, Issue 4, © Kluwer Law International, 2006; Bado Attila and Nagy Zsolt, "Some Aspects of Legal Training in Hungary," *The University of Toledo Law Review* Volume 34 – Number 1 – Fall 2002.

² Thomas Land, "Hungary's Guardian of Human Rights," 1999.

³ The Budapest Bar Association – Attorneys in Hungary Home page, http://www.bpugyvedikamara.hu/attorneys_in_hungary/

⁴ Press Release, "Human Rights Committee Takes Up Hungary's Fourth Periodic Report: Experts Praise Reforms, Express Concern Over Minorities," *HR/CT/618* (Mar. 22, 2002), available at: www.un.org/news/Press/docs/2002/hrct618.doc.htm.

⁵ *Id.*

⁶ European Judicial Network in Civil and Commercial Matters, http://ec.europa.eu/civiljustice/legal_aid/legal_aid_hun_en.htm

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

applicant receives a pension, the last postal certificate indicating the amount of the pension; and (6) if the applicant or his or her dependant receives unemployment benefit or other continuous social aid, the certificate stating the period of eligibility and the amount received.¹⁰ In addition, a person seeking legal aid from the Hungarian state must be one of the following: (1) Hungarian national; (2) foreign national registered as a resident in Hungary or involved in asylum proceedings in Hungary; (3) a non-Hungarian national of a country that has an international treaty with Hungary with an agreement on reciprocity; (4) a national of an EU member state; or (5) a national of a non-EU country but still a legal resident within an EU member state.¹¹

If a party hopes to receive legal aid for a legal proceeding, such party can obtain the required forms at the court where the matter is occurring. If a party is seeking legal aid for a legal issue that is not part of a legal proceeding, such party can obtain the required forms at the local county office of the Justice Department.¹² A party may also download the forms from the Ministry of Justice website: www.im.hu.¹³ The lawyer or organization providing the legal aid can also provide a party with the needed forms.¹⁴

In cases where a person receives legal aid during the course of legal proceedings, the court will designate who will represent the party receiving legal aid.¹⁵ If the party seeking legal aid needs legal services outside of court proceedings, other lawyers, notaries, civil organizations with commissioned lawyers, or university law clinics will provide the services requested.¹⁶ Applicants may choose among these different groups from a registry kept by a Central Justice Office.

The Hungarian state compensates lawyers for the legal aid services they provide, but there are reports that the State does not adequately compensate lawyers for such services, which apparently has led to instances of people receiving incompetent legal aid.¹⁷

III. *Opportunities for International Law Firms to Offer Pro Bono Services in Hungary*

Charities and NGOs that provide legal assistance through attorneys, as well as legal clinics, can register as legal aid providers with the Ministry of Justice.¹⁸ Such an entity's registration can note what kinds of legal services it can provide legal aid for, as well as the quantity of legal aid they are able to provide.¹⁹ Based on this registration, the Ministry of Justice will then contract with these entities to provide legal aid when the need arises.²⁰

¹⁰ *Id.*

¹¹ Legal Aid Act LXXX of 2003.

¹² European Judicial Network in Civil and Commercial Matters, http://ec.europa.eu/civiljustice/legal_aid/legal_aid_hun_en.htm

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Legal Aid Act LXXX of 2003; see also Press Release, "Human Rights Committee Takes Up Hungary's Fourth Periodic Report: Experts Praise Reforms, Express Concern Over Minorities."

¹⁸ Marta Pardavi, address entitled "Access to Justice: Legal Aid in Civil Cases in Hungary," (June 2004).

¹⁹ *Id.*

²⁰ *Id.*

Private law firms and lawyers throughout Hungary are beginning to play an active role in supporting the efforts of NGOs which serve the legal needs of the poor.²¹ In fact, many well-known international law firms with headquarters in the U.S. and U.K. have begun to establish Hungarian offices in partnership with Hungarian lawyers, which has given them the opportunity to take on *pro bono* cases within Hungary.²² Several of these law firms have also drafted and signed a declaration in which they publicly affirm their commitment to advancing the public good by working for more clients who cannot afford to pay.²³

IV. Conclusion

Law firms that would like to provide *pro bono* services in Hungary should contact the Public Interest Law Institute (“PILI”), which promotes *pro bono* practice through organizing the involvement of the legal community in *pro bono* matters in Hungary.²⁴ PILI seeks to bridge the gap between NGOs and law firms, and is currently creating a *pro bono* clearinghouse to match law firms with NGO needs.²⁵

November 2008

Pro Bono Practices and Opportunities in Hungary

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.

²¹ Public Interest Law Institute, <http://www.pili.org/en/content/view/363/62/>

²² *Id.*

²³ Hungarian Lawyers’ Role in Advancing the Public Good (Pro bono Publico)

²⁴ Public Interest Law Institute, <http://www.pili.org/en/content/view/363/62/>

²⁵ *Id.*

PRO BONO PRACTICES AND OPPORTUNITIES IN INDIA

This chapter describes the current legal services market in India, including the laws and jurisprudence relating to *pro bono* work, major *pro bono* service providers in India, and opportunities for foreign-qualified attorneys to participate.

I. *Legal Services and the Legal Profession in India*

A. Indian Law: Defining the Shape of Legal Services

India's laws strongly support the provision of *pro bono* legal services. The Constitution of India, national legislation, and its Supreme Court jurisprudence together articulate an aspiration for broadly accessible legal aid.¹ Despite robust support in the letter of the law, the national network of legal services providers is unable to meet the needs of India's disadvantaged populations, and non-governmental organizations (NGOs) providing legal services face significant resource constraints.²

First, the Constitution of India (hereinafter "Constitution") itself guarantees access to legal services. Specifically, Article 39A of the Constitution provides:

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Further, Article 22(1) of the Constitution requires that any person who is detained be given the right to "consult, and to be defended by, a legal practitioner of [their] choice."³ The Indian Supreme Court has interpreted the Constitution broadly with respect to rights of the underprivileged. For example, the Court has held that the right to free legal aid falls within the ambit of the right to life set out in Article 21 of the Constitution.⁴

Second, the Legal Services Authorities Act, as amended by the Legal Services Authorities (Amendment) Bill, 2002 (hereinafter "the Act") describes a hierarchy of state, district and taluk⁵ legal services authorities intended to give effect to the Constitutional promise of equal access to justice. The Act was originally enacted by India's Parliament in 1987 and adopted by various Indian states during the mid-1990s. Sections 15, 16 and 17 of the Act respectively, establish National, State and District Legal Aid Funds which collect government funding, grants and donations to finance legal services and legal literacy activities.⁶ The work of this hierarchy of

¹ See, e.g., India Const. art. 39A; The Legal Services Authorities Act, No. 39 of 1987, as amended by The Legal Services Authorities (Amendment) Act, 2002, No. 37 of 2002; India Code, *S. P. Gupta v. Union of India*, (1982) 2 S.C.R. 365.

² Telephone Interview with Linda McGill, Partner, Bernstein Shur (Dec. 6, 2007, as confirmed Oct. 4, 2010); E-mail from Swagata Raha, Law Faculty, Christ College, Bangalore to author (Dec. 6, 2007, as confirmed Oct. 1, 2010) (on file with author).

³ India Const. art. 22(1).

⁴ *Hussainara Khatoon (III) v. Home Sec'y, State of Bihar*, A.I.R. 1979 S.C. 1377.

⁵ A taluk is a subdivision of a district much like a municipality in Western countries.

⁶ The Legal Services Authorities Act as amended, *supra* note 192.

nationally organized legal services organizations has, however, fallen far short of the demand for public legal services.⁷

The Act also frames the work of the *Lok Adalats*.⁸ *Lok Adalats* are local “people’s court” settlement and mediation bodies, intended to promote equal access to justice to those economically or otherwise less privileged in the formal court system. Though criticized for their informality, *Lok Adalats* do provide final settlements to disputes quickly as compared to the traditional court system. Disputes are presented before a *Lok Adalat* if the parties agree to its jurisdiction. Importantly, Section 22(2) of the Act provides that *Lok Adalat* awards are final and binding on the parties to the dispute. *Lok Adalats* charge no court fee, do not follow procedural rules, and allow disputants to interact with the judge directly to explain their cases. In practice, for example, in the southern state of *Tamil Nadu*, by the end of 2001, 4,871 separate *Lok Adalats* had been organized, and such *Lok Adalats* had decided 91,178 cases.⁹ The Act provides for permanent *Lok Adalats* as a compulsory pre-litigation mechanism to settle public utilities cases for amounts up to INR 1 million.¹⁰ *Lok Adalats* usually decide money claims, and matrimonial and land acquisition matters. However, they are not a forum for large scale public interest litigation and do not offer the procedural safeguards characteristic of traditional courts.

Third, and perhaps with greatest impact on legal services in India, the Public Interest Litigation (the “PIL”) mechanism has liberalized access to the courts. Article 32 of the Constitution gives the Indian Supreme Court jurisdiction over PIL actions. In *S.P. Gupta v. Union of India*, the Court articulated a broad rule of *locus standi*: if a petitioner were “by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public” might petition on their behalf against the government of India to enforce a fundamental constitutional right.¹¹ The *S.P. Gupta* Court further held that it would “respond even to a letter addressed by such individual acting *pro bono publico*” and treat it as a writ petition for the PIL case.¹²

PIL cases are intended to be cooperative and collaborative, rather than adversarial in nature. They allow judges to involve *amici curiae* and expert advisors to provide information and help structure orders such that they are easily implemented. PILs place the Court in the role of an active fashioner of remedies and ongoing monitor, eliciting forward-looking injunctive remedies rather than focusing entirely on monetary damages.¹³ Critics argue that this reliance on outside experts grants *amici* too much influence over judicial outcomes, that the judicial activism that the PIL mechanism encourages violates the separation of powers in Indian government, and that the PIL has invited a flood of frivolous cases which abuse the increased access to the courts provided

⁷ E-mail from Swagata Raha, *supra* note 193.

⁸ The Legal Services Authorities Act as amended, *supra* note 192, ch. 6.

⁹ S. Arunajatesan and S. Subramanian, “Lok Adalat for Speedy Justice,” *The Hindu*, Dec. 18, 2001, at Open Page, available at: <http://www.hinduonnet.com/thehindu/op/2001/12/18/stories/2001121800060100.htm>.

¹⁰ The Legal Services Authorities (Amendment) Act, 2002, *supra* note 192, Section 22C.

¹¹ *S. P. Gupta*, 2 S.C.R. 365 at paras. 1-11.

¹² *Id.* at para. 17.

¹³ Avani Mehta Sood, Ctr. for Reproductive Rights, *Litigating Reproductive Rights: Using Public Interest Litigation and International Law to Promote Gender Justice in India* 24-30 (2006); Ranjan K. Agarwal, *The Barefoot Lawyers: Prosecuting Child Labour in the Supreme Court of India*, 21 *Ariz. J. Int’l & Comp. L.* 663, 689-690, 693 (2004). See Jamie Cassels, *Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?* *Am J. Comp. L.* 495, 498 (1989).

by PIL.¹⁴ Its critics notwithstanding, PIL litigation has led to court rulings issuing guidelines for compensating and rehabilitating rape victims, ordering the release of bonded laborers, banning smoking in public places, and defining sexual harassment in the workplace.¹⁵ The potential for effective PIL cases is strengthened by the relative independence of India's judiciary. The PIL provides a unique opportunity for public legal services providers in India, and is central to the work of legal services organizations such as the Lawyers Collective, Human Rights Law Network, and the Alternative Law Forum.

B. Eligibility for Legal Services

Section 12 of the Legal Services Authorities Act lays out the criteria for eligibility for legal services under the Act. According to its provisions, every person who has to file or defend a case is entitled to legal services if they are: (a) from a low caste according to the historical caste system in India; (b) a victim of human trafficking or a beggar; (c) a woman or child; (d) a mentally ill or disabled person; (e) a victim of a natural disaster or man-made disaster or conflict, such as ethnic violence; (f) an industrial workman; (g) in custody, including with the legal authorities and with a mental health institution; or (h) earning an income below the poverty ceiling amended from time to time according to the Act.¹⁶ However, as the bulk of legal services are provided by organizations established outside of the national network of legal aid, these eligibility guidelines are not determinative of whether legal services are available to marginalized groups.¹⁷ At the same time, the expansive entitlement provided in the Act remains an unfulfilled promise.¹⁸

II. *Pro Bono Opportunities in India*

The major organizations which provide pro bono services in India are the Lawyers Collective (LC), the Human Rights Law Network (HRLN), and the Alternative Law Forum (ALF).¹⁹ The LC comprises lawyers, law students and human rights activist members. Its fee-paying work subsidizes its public interest work, and the LC also runs funded centers addressing HIV/AIDS discrimination and women's rights.²⁰ HRLN is a not-for-profit NGO with 25 offices across India that advocates for civil, political, economic, social, cultural and environmental rights. HRLN works on a variety of issues including criminal justice, housing rights and human trafficking. It has organized a network of Indian advocates who take on *pro bono* cases in addition to their individual legal practices.²¹ Finally, ALF provides legal support to groups and people marginalized on the basis of class, caste, disability, gender or sexuality.²²

¹⁴ Sood, *supra* note 202, at 28-30; Agarwal, *supra* note 11, at 696, 700; *see also* V.S. Vadivel, *Public Interest Litigation (PIL) A Boon or Bane?*, <http://www.legalserviceindia.com/articles/pil.htmhtm> (last visited Oct. 1, 2010).

¹⁵ Jasper Vikas George, *Social Change and Public Interest Litigation in India* (Mar. 8, 2005), http://www.ssvk.org/social_change_public_interest_litigation_in_india.pdf (the author is an Advocate in the Delhi High Court).

¹⁶ The Legal Services Authorities Act as amended, *supra* note 191, at §12.

¹⁷ *See infra* text accompanying notes 17-30.

¹⁸ *See supra* note 192.

¹⁹ E-mail from Swagata Raha, *supra* note 192.

²⁰ Lawyers Collective, <http://www.lawyerscollective.org> (last visited Oct. 2, 2010).

²¹ Human Rights Law Network, <http://www.hrln.org> (last visited Oct. 3, 2010).

²² Alternative Law Forum, <http://www.altlawforum.org> (last visited Oct. 3, 2010).

Other legal services organizations providing *pro bono* services in India include: in New Delhi, the Public Interest Legal Support and Research Center, which works on environmental, refugee, religious freedom and representative governance issues;²³ in *Kolkata*, *Swayam* focuses on women's rights,²⁴ and *Manabadhikar Suraksha Mancha* (MASUM) focuses on civil and political rights;²⁵ in *Bangalore*, human rights organization SICHREM²⁶ and the National Law School's Legal Services Clinic;²⁷ in *Mumbai*, *Majlis*, defending women's rights;²⁸ in *Uttaranchal*, Rural Litigation and Entitlement Kendra, an NGO serving indigenous populations and women and children;²⁹ and with offices across *Tamil Nadu*, People's Watch *Tamil Nadu*, which focuses on human rights litigation.³⁰

Further, numerous Indian NGOs engage in law-related advocacy work. For example, the Center for Civil Society advocates for the right to education and the rights of street entrepreneurs.³¹ Womens' rights organizations include the Center for Social Research,³² SAKSHI and WomenPowerConnect.

In general, Indian law firms do not have organized *pro bono* practices.³³ However, when invited, major firms such as *Amarchand Mangalda* and *Trilegal* have contributed some attorney hours to certain structured *pro bono* efforts. While several individual advocates may contribute their time to public service activities, the work is ad hoc and consequently difficult to organize or measure.

While *pro bono* work is supported in Indian law, the provision of *pro bono* services is unlikely to increase for a variety of reasons. First, the rising demand for commercial lawyers in India deters growth in the *pro bono* sector. In addition, India's tremendous diversity; its liberal laws and jurisprudence in relation to legal services for the underprivileged; its large population living in poverty; its history and present status as a secular, democratic republic; and its recent economic growth along with the rising expectations that growth has prompted, together make it a unique and challenging environment in which to develop *pro bono* legal services.

²³ PILSARC, <http://www.pilsarc.org> (last visited Oct. 3, 2010).

²⁴ Swayam, <http://www.swayam.info> (last visited Oct. 5, 2010).

²⁵ *Manabadhikar Suraksha Mancha*, <http://www.masum.org.in/about.htm> (last visited Oct. 5, 2010).

²⁶ South India Cell for Human Rights Education and Monitoring, <http://www.sichrem.org> (last visited Oct. 6, 2010).

²⁷ National Law School of India University Legal Services Clinic, <http://www.nls-lsc.org/blog/> (last visited Oct. 6, 2010).

²⁸ Majlis, http://www.majlisbombay.org/legal_01.htm (last visited Oct. 4, 2010).

²⁹ Rural Litigation and Entitlement Kendra, <http://www.rlek.org> (last visited Oct. 5, 2010).

³⁰ People's Watch, <http://pwn.org> (last visited Oct. 5, 2010).

³¹ Center for Civil Society, <http://www.ccsindia.org> (last visited Oct. 7, 2010).

³² Center for Social Research, <http://www.csrindia.org> (last visited Oct. 7, 2010).

³³ E-mail from Mohit Abraham to author (Nov. 26, 2007) (on file with author).

III. *Foreign-Qualified Lawyers*

Although Indian law prevents foreign-qualified lawyers from directly representing *pro bono* clients,³⁴ the opportunity for such lawyers to contribute to the legal services market in India more broadly is immense.

A. General Restrictions on Foreign-Qualified Lawyers

To qualify as an “advocate” under the 1961 Advocates Act, a lawyer must be admitted to the rolls of an Indian Bar.³⁵ The Advocates Act further specifies that only advocates, as defined under that Act, are entitled to practice law in India,³⁶ and only advocates may practice in any Indian court or before any Indian authority.³⁷ The language of the Advocates Act draws no distinction between fee-paying and *pro bono* work. According to this legislation, foreign-qualified lawyers cannot make any legal filings or appear in court on *pro bono* matters. Further, the Indian government does not routinely grant work visas to legal interns or lawyers.³⁸ Litigation is currently ongoing in relation to the entry of foreign-qualified lawyers into practice in India.³⁹

B. What Role Can Foreign-Qualified Lawyers Play in *Pro Bono* Work?

As the restriction on foreign-qualified lawyers practicing law extends to both fee-paying and non-fee-paying work, foreign-qualified lawyers are not permitted to take on *pro bono* cases in India. They also may not participate in a joint venture with local lawyers to undertake *pro bono* work. Foreign law firms therefore can not develop their own *pro bono* practices in India. However, they can partner with local organizations in a variety of support, advisory and capacity-building roles. Provided that foreign-qualified lawyers do not file any documents under their names or seek to represent their *pro bono* clients in court, these lawyers can assist in a multitude of ways. For example, they can identify issues, research domestic and foreign precedents, interview parties, assist in drafting documents, and review and rehearse arguments for *pro bono* cases. They can provide strategic advice in particular cases or in relation to models and structures for delivering *pro bono* services in coordination with Indian NGOs and law firms among others. They can aid legal literacy, policy, and advocacy efforts.⁴⁰ In addition to assisting legal services organizations in these ways, foreign-qualified lawyers might also volunteer their time to develop legal clinics in coordination with Indian law schools, and to help professionalize *pro bono* work in India more broadly.

IV. *Conclusion*

In the last three decades, legislative, institutional, and jurisprudential developments in India have laid the foundation for the provision of myriad free legal services to the poor. In practice, however, only a handful of organizations effectively deliver these services. Such

³⁴ The Advocates Act, No. 25 of 1961; India Code

³⁵ *Id.* at §2, Clause 1(a).

³⁶ The Advocates Act, *supra* note 224, at §29.

³⁷ The Advocates Act, *supra* note 224, at §33.

³⁸ E-mail from Swagata Raha, *supra* note 192.

³⁹ Malathi Nayak, *Bar Council of India resolution opposes entry of foreign firms*, Livemint, Nov. 19, 2007, <http://www.livemint.com/2007/11/19225307/Bar-Council-of-India-resolutio.html> (last visited Oct.8, 2010).

⁴⁰ Telephone Interview with Linda McGill, *supra* note 192.

organizations rely on India's unique Public Interest Litigation mechanism to provide legal aid. At present, domestic law restricts foreign-qualified lawyers from representing *pro bono* clients. However, foreign-qualified lawyers can contribute to *pro bono* legal services directly, for example, by providing research and writing skills in individual cases, as well as indirectly through capacity-building efforts alongside Indian organizations.

September 2010
Pro Bono Practices and Opportunities in India

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.

PRO BONO PRACTICES AND OPPORTUNITIES IN THE REPUBLIC OF IRELAND

Although conceptually it has long been a part of Irish legal culture, efforts to undertake *pro bono* work are typically piecemeal and *ad hoc*, most often as a response to noteworthy occurrences in society or as the outgrowth of an individual lawyer's strong sense of civic duty.¹

Pro bono in Ireland is just beginning to become an established part of the legal practice of solicitors and barristers; however, the Irish state has long supported an extensive system of criminal and civil legal aid which has mitigated, although certainly not fully met, the need for *pro bono* services.² The "gap" in *pro bono* legal services is in part met by voluntary organizations providing basic legal advice, but Ireland is a country where it is still fair to say that *pro bono* is in its infancy.

I. Legal Services and the Legal Profession in Ireland

Ireland is a common law jurisdiction, and as in many common law countries legal services are provided by two distinct groups: barristers and solicitors. Each branch of the legal profession is subject to its own governing body and has its own code of conduct and ethical standards.³ The Bar Council of Ireland governs barristers and the Law Society of Ireland governs solicitors.

A. The Role of Barristers

There are approximately 2,000 barristers in the Republic, with over 1,700 of those practicing in or around Dublin.⁴ Members of the Bar are split into categories of junior and senior counsel.⁵ The difference is largely a formal one: the Irish government appoints lawyers as "senior counsel" in recognition of their experience and the quality of their practice.

Public service has long been a tenet of the Bar Council, and it has always encouraged its members to take on worthy matters on a *pro bono* basis.⁶ However, barristers traditionally practice before the courts and do not deal directly with the public, instead relying on referrals from solicitors.⁷ Predictably, this system limits the types of *pro bono* matters in which they are involved as barristers work independently and concentrate on "providing an advisory and/or

¹ See, e.g., *What Counts? A Compilation of Queries and Answers*, The Law Firm Pro Bono Project, 2003, at 6; cf. John Costello, *Why we need a solicitor's pro bono scheme*, Law Society Gazette, August/September 1998, at 5-6, available at: <http://www.lawsociety.ie/Documents/Gazette/Gazette%201998/augustseptember1998.pdf> (defining "pro bono" practice as "legal work done without charge or at reduced cost, for members of the public with limited means, or for charitable and other non-profit making organizations").

² See Citizens Information Online, *Civil Legal Aid*, available at: http://www.citizensinformation.ie/categories/justice/legal-aid-and-advice/legal_aid_intro; *Criminal Legal Aid*, available at: <http://www.citizensinformation.ie/categories/justice/legal-aid-and-advice/criminal-legal-aid>.

³ See Bar Council of Ireland, *The Irish Bar – Aims and Objectives*, available at: <http://www.lawlibrary.ie/ViewDoc.asp?fn=/documents/aboutus/irishbar.asp&CatID=1&m=a>; Law Society of Ireland, *History and Functions*, available at: <http://www.lawsociety.ie>.

⁴ See *id.*

⁵ *Id.*

⁶ See *id.*

⁷ *Id.*

advocacy service for which [they are] ‘briefed’ by a solicitor or other body having direct professional access [in certain non-contentious matters].”⁸

In September 2005, the Irish Bar Council enacted a “voluntary assistance” scheme whereby barristers could provide their services to non-governmental organizations (“NGOs”) working with members of the community who could not otherwise afford representation.⁹ Under this program, NGOs serve the referral function that would normally be filled by solicitors.¹⁰ The NGOs filter claims and brief barristers, who in turn provide advocacy and advisory representation to clients.¹¹ All areas of the law except family law are eligible for assistance.¹² The main areas of support include: housing issues, landlord and tenant issues, prison-related issues, and social welfare appeals.

B. The Role of Solicitors

There are more than 12,000 solicitors in Ireland.¹³ Solicitors deal directly with the public, but do not have a regulatory obligation to provide volunteer services.¹⁴ In the past, solicitors have provided *pro bono* services, but have done so on a limited basis. Solicitors’ professional conduct and practice is governed by the standards established by the Law Society of Ireland.¹⁵ Solicitors are qualified to appear before a number of Irish courts, but the majority of their practice—*i.e.*, negotiating and facilitating transactions, “briefing” barristers, and providing legal opinions—is typically conducted outside the courts.¹⁶

There are no statutory restrictions on providing *pro bono* services contained in the laws regulating solicitors¹⁷ and the profession’s ethical regulations do not contain the mandated fee schedules that have frustrated *pro bono* development in other EU countries.¹⁸ Further, the regulations governing advertising by Irish solicitors do not bar the publication of information regarding prices or free services.¹⁹ During 2006, the Solicitors Acts 1954 to 2002 (Independent Law Centers) Regulations 2006 (SI No. 103 of 2006) were introduced, in order to regularize the previously anomalous position of solicitors working for registered charities providing legal services free of charge. This group, widely acknowledged as serving important, but otherwise unmet needs for legal services by disadvantaged groups of people, is discussed below.

⁸ *Id.*

⁹ See *The Irish Bar Council’s Voluntary Assistance Scheme*, available at: http://www.lawlibrary.ie/docs/The_Bar_Councils_Voluntary_Assistance_Scheme/542.htm.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* The scheme does not provide assistance in the area of family law because government legal aid in that field has proven adequate.

¹³ See Law Society of Ireland Overview, available at: <http://www.lawsociety.ie/Pages/About-Us/>.

¹⁴ See generally Law Society of Ireland, *A Guide to Professional Conduct of Solicitors in Ireland* (2d ed. 2002) available at: <http://www.lawsociety.ie/newsite/documents/Committees/conduct2.pdf>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See generally, The Solicitor Acts, 1954-2002, available at: <http://www.irishstatutebook.ie>

¹⁸ See *A Guide to Professional Conduct of Solicitors in Ireland*, *supra* note 597.

¹⁹ The Solicitors Acts, 1954-2002, Solicitors (Advertising) Regulations, S.I. No. 518 § 4(b)(iv) (2002).

While the Law Society has begun efforts to form relationships with NGOs and legal service providers to encourage participation by mid- to large-sized firms of solicitors,²⁰ these efforts have stalled over recent years and *pro bono* work among solicitors is neither systematic nor comprehensive.²¹ While the Irish Bar suggests non-mandatory public service for barristers, the Law Society's efforts to create a comprehensive *pro bono* program for solicitors remain in their infancy. The Law Society did not adopt an official position on *pro bono* work until the late 1990's after members of the Law Society of Ireland had waged a campaign to create a formal *pro bono* scheme inspired, in part, by other common law countries, such as the U.K.²²

C. Legal Aid

There are two separate legal aid regimes in Ireland for criminal and civil law related representation. Irish legal aid provides free legal services to defendants in criminal matters and to qualifying applicants, who contribute to overall costs, in civil matters. These services are generally provided by state-employed legal aid lawyers or private lawyers reimbursed by the state for the services they provide.

Criminal legal aid, pursuant to the Criminal Justice (Legal Aid) Act, provides for free representation by a solicitor or barrister to any criminal defendant of insufficient means. The program is administered by the Department of Justice.²³ Representation is provided to any defendant who requests it and satisfies the "fair minimum standards" mandated by the European Union. In practice, this system is similar to the American program governing the representation of indigent criminal defendants.

Civil legal aid is administered by the Irish Legal Aid Board pursuant to the Civil Legal Aid Act of 1995 and uses a far more complicated analysis to determine eligibility.²⁴ A person must satisfy separate means and merits tests to meet the eligibility requirements for relief under the statute. Currently, the means test requires the applicant to show a disposable income of less than €18,000 annually and disposable capital of less than €320,000.²⁵ The merits test requires the Board to consider a number of factors including "the prospect of success in the proceedings, the availability of any method other than court proceedings for dealing satisfactorily with the problem [, and] the probable cost to the Board of providing legal services measured against the likely

²⁰ See Law Society of Ireland, *Report of Law Society Council meeting held on 10 March 2006*, Law Society Gazette, June 2006 at 47, available at: <http://www.lawsociety.ie/Documents/Gazette/Gazette%202006/june2006.pdf> (discussing an *ad hoc* committee formed within the Law Society to assess proposals for cooperation between the Law Society and community law organizations).

²¹ See Law Society of Ireland, News Report, Law Society Gazette, December 2000, at 19, available at: <http://www.lawsociety.ie/Documents/Gazette/Gazette%202000/december2000.pdf>.

²² See Law Society of Ireland, Report of the Law Society Council Meeting, Law Society Gazette, December 2001, at 40, available at: <http://www.lawsociety.ie/Documents/Gazette/Gazette%202001/december2001.pdf>.

²³ Criminal Justice (Legal Aid) Act, 1962; Legal Aid Board, Home page, available at: <http://www.legalaidboard.ie>.

²⁴ Civil Legal Aid Act, 1995, available at: <http://www.irishstatutebook.ie/1996/en/si/0273.html> and Civil Legal Aid Regulations 2002, available at: <http://www.irishstatutebook.ie/2002/en/si/0008.html>.

²⁵ See Citizens Information Online, "Eligibility for Legal Aid," available at: http://www.citizensinformation.ie/categories/justice/legal-aid-and-advice/legal_aid_eligibility.

benefit to the applicant if he/she is successful in the proceedings.”²⁶ The merits test is modified in cases involving the welfare of a child, such as custody and access issues.²⁷

Civil legal aid is provided by government-employed lawyers and financed with public money. In a few specified circumstances – including domestic violence, maintenance, and custody cases – services are provided by private practitioners who are compensated by the government. While services are available for a range of civil matters, the vast majority of cases which receive aid are in the area of family law.²⁸

The existence of legal aid has had an important impact on the practice of *pro bono* advice in Ireland by obscuring the pressing need for *pro bono* services. Many commentators agree that Irish legal aid has been woefully inadequate to meet the needs of deserving clients.²⁹ Unfortunately, the overstretched legal aid program has helped to create an impression that the legal needs of Ireland’s indigent population are being met, and by doing so, legal aid has impeded the progress of formal *pro bono* schemes. Some critics have held that a formal *pro bono* scheme would be only a stop-gap solution that would further obscure the failings of a troubled legal aid regime and encourage the government to continue to underfund the existing programs.³⁰ This viewpoint has hindered progress in the past but has largely dissipated in recent years as the need for a formal *pro bono* network to complement legal aid has become more obvious.

II. *Pro Bono Opportunities in Ireland*

It has been widely recognized that the current legal aid regime fails to meet the demand for *pro bono* legal services in Ireland.

There are a small number of associations seeking to provide legal advice on a voluntary basis; these include the nationwide FLAC (Free Legal Advice Centres),³¹ and the Dublin based Northside and Ballymun Community Law Centers. These groups provide limited basic legal advice directly from volunteering solicitors and students, but also make use of barristers’ services for voluntary work. These organizations are themselves oversubscribed and underfunded.

Two substantive areas of law have had a particularly high demand for volunteer legal services in recent years. The first is in the realm of human rights law, particularly for refugees and asylum-seekers. Since the passage of the Irish Human Rights Act, Irish litigants must either pay their own representation costs or hope to find a solicitor (often through FLAC) willing to represent them on a *pro bono* basis.³² Although the Civil Legal Aid Act makes provision for refugees and asylum-seekers, it is not clear that it has been successful in meeting the demand. The problem is magnified by Ireland’s increasing popularity as a destination for would-be asylum-seekers. The second area of need relates to Ireland’s “travellers,” the nomadic people who roam

²⁶ *Id.*

²⁷ *Id.*

²⁸ See *The Irish Bar Council’s Voluntary Assistance Scheme*, *supra* note 593.

²⁹ See, e.g., *Can’t Refuse*, *Law Society Gazette*, December 2003, at 17.

³⁰ See Law Society of Ireland, Report of Law Society Council Meeting held on 6 July 2001, *Law Society Gazette*, August/September 2001, at 39 (citing a report showing that in countries where an institutionalized *pro bono* scheme had developed, governments had used such schemes as excuses for refusing to subsidize legal aid).

³¹ www.flac.ie.

³² Law Society of Ireland, *An Unconventional Approach*, *Law Society Gazette*, January/February 2003, at 28.

the country's roadways living in caravans. The Irish Traveller Movement ("ITM") has an established legal unit to provide representation to these marginalized people. Travellers, many of whom are indigent, have difficulty securing even basic legal services, and the ITM is actively recruiting solicitors willing to undertake these representations, preferably on a *pro bono* basis.³³

III. Conclusion

A strong conception of *pro bono* legal work is already developing in the Republic of Ireland, with no legal impediments to its further development. *Pro bono* legal services are in great demand. The primary obstacle to *pro bono* legal service now is a logistical one and the governing bodies of the profession are gradually taking steps to remedy the deficiency. The Law Society's recent initiative to create an organized approach to provide *pro bono* services is a direct but untested solution which requires renewed vigor to produce material results; the "voluntary assistance" program instituted by the Irish Bar Council presents a more concrete opportunity for barristers to participate in community law projects.

In this context, mid-size national and large international law firms are in an excellent position to capitalize on Ireland's demand for *pro bono* legal services by providing support for developing programs and serving as an impetus for further progress.

September 2010
Pro Bono Practices and Opportunities in Ireland

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.

³³ Law Society of Ireland, *Remember When You Wanted to Make a Difference?*, Law Society Gazette, March 2004, at 10-11.

PRO BONO PRACTICES AND OPPORTUNITIES IN NORTHERN IRELAND

In Northern Ireland, the provision of free or partly funded legal assistance from barristers and solicitors is achieved through publicly funded legal aid, voluntary legal aid, or through the services provided by the Northern Ireland Lawyers' *Pro Bono* Group.

The Northern Ireland Legal Services Commission assumed responsibility on November 1, 2003, for the provision of publicly funded legal aid services in Northern Ireland and is in the process of implementing radical changes in the provision of community legal services.

I. Legal Services and the Legal Profession in Northern Ireland

The legal profession in Northern Ireland is divided into two distinct branches, the Bar (which comprises barristers) and the Law Society of Northern Ireland (which comprises solicitors). A Code of Conduct governs barristers in Northern Ireland for the Bar of Northern Ireland¹ while solicitors' conduct is governed by the Law Society.² At present there are approximately 580 barristers in independent practice, 77 Queen's Counsel³ and approximately 1850 solicitors practising in Northern Ireland.⁴

A. The Judicial System in Northern Ireland

Northern Ireland's legal system is similar to that of England and Wales and jury trials have the same place in the system. Until 2007, the Northern Ireland (Emergency Provisions) Act 1978, the Terrorism Act 2000 and the Terrorism (Northern Ireland) Act 2006 governed the operation of the courts in the trial of terrorist offenses, and the circumstances in which there may be a trial without a jury to eliminate the possibility of jury intimidation. Non-jury courts were introduced in Northern Ireland in 1973 after a review of the then law by Lord Kenneth Diplock and have been a source of controversy ever since. Human rights groups were also opposed to them. Although 'Diplock' courts were abolished by the Justice and Security (Northern Ireland) Bill in July 2007, judge-only trials are to be retained for "exceptional" cases where juries could still be intimidated and currently the Director of Public Prosecutions is able to certify that a case should be tried without a jury if it meets a defined statutory test.⁵

The Northern Irish courts consist of superior courts and inferior courts; the former comprising the Court of Appeal, the High Court, and the Crown Court, and the latter comprising county courts and magistrates' courts.

Superior courts: All matters relating to the Court of Appeal, the High Court and the Crown Court are under the jurisdiction of the U.K. parliament, and judges are appointed by the Crown. Magistrates' courts deal with minor local criminal cases, while civil matters are covered in the county court.

¹ See Barristers' Code of Conduct, *available at*: www.barlibrary.com.

² Under the 1976 Solicitors (Northern Ireland) Order, the Law Society acts as the regulatory authority governing the education, accounts, discipline and professional conduct of solicitors.

³ See the Northern Ireland Bar Library website, *available at*: www.barlibrary.com.

⁴ See Law Society for Northern Ireland website, *available at*: www.lawsoc-ni.org.

⁵ This means that the presumption will be for jury trial in all cases, while the small number of exceptional cases requiring non-jury trial will still be able to be treated appropriately from Explanatory Notes to the Justice and Security (Northern Ireland) Bill, *available at*: www.nio.gov.uk.

The Court of Appeal has the power to review the civil law decisions of the High Court and the criminal law decisions of the Crown Court, and may in certain cases review the decisions of county courts and magistrates' courts. Subject to certain restrictions, an appeal from a judgment of the Court of Appeal can go to the House of Lords.

Inferior courts: The inferior courts are the county courts and the magistrates' courts, both of which differ in a number of ways from their counterparts in England and Wales. County courts are primarily civil law courts, and are presided over by county court judges. The county court judges in Belfast and Londonderry are called "recorder." The county courts also handle appeals from the magistrates' courts in both criminal and civil matters, and appeals go from the county courts to the High Court.

In civil matters, the county courts decide most actions in which the amount or the value of specific articles claimed is below a certain level. The courts also deal with actions involving title to land or the recovery of land, equity matters, such as trusts and estates, mortgages, and the sale of land and partnerships.

The day-to-day work of dealing summarily with minor local criminal cases is carried out in magistrates' courts, presided over by a full-time, legally qualified resident magistrate. The magistrates' courts also exercise jurisdiction in certain family law cases and have a very limited jurisdiction in other civil cases.

Court Administration: The Secretary of State for Justice and Lord Chancellor is responsible for court administration, while the Northern Ireland Office, under the Secretary of State, deals with policy and legislation concerning criminal law, the police and the penal system. The Secretary of State for Justice has general responsibility for legal aid, advice and assistance.

The Director of Public Prosecutions for Northern Ireland, who is responsible to the Attorney General, prosecutes all offenses tried on indictment, and may do so in other summary cases. Most summary offenses are prosecuted by the police.

B. Legal Aid Scheme in Northern Ireland

1. *Publicly Funded Legal Aid*

At present, legal aid falls mainly under two distinct headings: Civil Legal Aid, which provides help and assistance in civil and family matters and Criminal Legal Aid, which provides help and assistance to those accused of a criminal offense.

Civil Legal Aid: Civil Legal Aid provides help across a range of areas: bail, bankruptcy, family matters, injunctions, judicial review and negligence and personal injury cases for example. Within Civil Legal Aid there are three main stages: legal advice and assistance, Assistance By Way of Representation ("ABWOR") and legal aid.

Legal advice and assistance consists of the provision of initial advice on any aspect of Northern Ireland law, and qualification is subject to the individual's financial circumstances (the "means test"). This scheme extends to Assistance by Way of Representation (known as "ABWOR") for court proceedings in very specific cases.

Legal Aid provides for more comprehensive assistance including, where required, representation at court. To qualify for Legal Aid, two tests must be met. The first involves financial eligibility; depending on the applicant's personal circumstance, he or she may receive

free assistance or may have to contribute towards the cost of the case. The second test involves the merits of the case, *i.e.*, a person shall not be given legal aid in connection with any proceedings unless he shows that he has reasonable grounds for taking, defending or being a party thereto.

The Northern Ireland Legal Services Commission is currently undertaking a substantial reform program which it is hoped will result in the introduction of Community Legal Services under the Access to Justice Order (Northern Ireland) 2003 (“AJO”). This is discussed in detail below.

Criminal Legal Aid: There are three levels of service in criminal Legal Aid: (i) advice and assistance on criminal matters in general (under the same provisions for civil cases); (ii) free advice and assistance for anyone being interviewed at a police station in connection with a suspected offense (PACE advice); and (iii) free legal aid.

To grant criminal legal aid, the court must satisfy itself on two matters: (i) that the means of the accused are insufficient to enable him to obtain legal aid; and (ii) that it is desirable in the interests of justice that the accused, or a person brought before the court to be dealt with, should have free legal aid.

Currently there is free Legal Aid in all criminal proceedings in Northern Ireland. Approximately 35% of the total of individuals who appeared in the magistrates’ court and 98% of the total individuals who appeared in the Crown Court were legally aided.⁶

Under the Legal Aid (General) Regulations (Northern Ireland) 1965 and the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981, which prescribe the terms under which legal aid can be paid, approximately 500 solicitor firms are remunerated for the provision of their public legal services. The aggregate cost of legal aid in civil and criminal cases in Northern Ireland is estimated to be £90 million per annum in 2008.⁷

2. *Voluntary Legal Aid*

The main organizations within the voluntary sector that provide legal services for the public include Citizens’ Advice Bureaux, Law Center (NI), Children’s Law Center, and Housing Rights and Services.

Within the framework of voluntary Legal Aid, Law Center (NI) provides legal services to other advice agencies in Northern Ireland. It is a non-profit charity and provides a specialist legal service (advice, representation, training, information and policy comment) in five areas of law: immigration, social security, community care, employment law and mental health. These services are provided to almost 500 member agencies, and members include local Citizen Advice Bureaux, independent advice agencies, local solicitors, trade unions, social services, probation offices, constituency associations of local political parties, libraries and other civic organizations.

All of the above organizations operate under a waiver agreement with the Law Society of Northern Ireland, allowing them to employ solicitors.

⁶ See commentary on “Legal Aid” on Northern Ireland Court website, *available at*: www.courtsni.gov.uk.

⁷ See “Lawyers Face Legal Aid Fees Cut,” *available at*: http://news.bbc.co.uk/1/hi/northern_ireland/8319449.stm.

C. Northern Ireland Legal Services Commission

The Northern Ireland Legal Services Commission (the “Commission”) assumed responsibility on November 1, 2003 for the provision of publicly funded legal aid services in Northern Ireland.

The Commission is an executive Non-Departmental Public Body (“NDPD”) that is sponsored by the Northern Ireland Court Service, a part of the Ministry of Justice. The Commission’s aim is to promote fair and equal access to justice in Northern Ireland in its provision of publicly funded legal services. It operates within the powers set out in Article 7 of the Access to Justice (Northern Ireland) Order 2003 (the “AJO”).

In November 2007, the Commission published consultation papers⁸, setting out the reforms to the current Legal Aid system, which the Commission intends to implement through the AJO. These include the introduction of the following financial reforms: (i) a new funding code (the “NI Funding Code”) which sets out the criteria for the provision of civil legal services; and (ii) the Financial Eligibility leading to Civil Legal Services (Financial) Regulations (NI) 2007, which creates a simple and transparent “means test” to decide who qualifies for legal aid. From April 2009, the lower limit for disposable income below which legal advice is provided without any contribution is set at £3,355, while the upper limit of disposable income above which legal aid is not available is set at £9,937. This upper limit is raised to £10,955 in personal injury cases. From April 2006, the lower disposable capital limit is set at £3,000, while the upper limit is set at £6,750 and for personal injury cases it is £8,560.⁹

Development of “Community Legal Services”: This is the term which is given to the mixed model in the provision of publicly funded legal services through which advice can be provided by a trained person (although formal legal training is not necessary) in a community or voluntary organization. Legal Aid organizations in England, Scotland and Wales have already established pilot community legal services in their respective jurisdictions, and the Commission aims to introduce such pilot projects in Northern Ireland in 2008.

D. Northern Ireland Lawyers’ Pro Bono Group

The Northern Ireland Lawyers Pro Bono Unit (the “Unit”) is a joint venture sponsored by the General Council of the Bar of Northern Ireland and the Law Society of Northern Ireland. The objective of the Unit is to provide *pro bono* free legal advice and representation in deserving cases where legal aid or other funding is not available and where the applicant is unable to afford legal assistance. The Unit was set up as a company limited by guarantee and was registered as a charity in October 2000. As the Unit is a charity, it relies on donations and covenants to meet all of its running costs.

Advice and representation is provided by barristers and solicitors who have volunteered to join the panel and who cover the full range of legal specialisations. Each has to offer their services free of charge up to 3 days or 20 hours each year. More than 100 barristers from across Northern Ireland, including more than 30 QCs,¹⁰ have volunteered for this scheme, which

⁸ See “A Strategy for the Development of Community Legal Services” and “Draft Equality Impact Assessment: Financial Eligibility for Legal Aid,” available at: www.nilsc.org.uk.

⁹ See http://www.nilsc.org.uk/faq_view.asp?faq_catid=4&on=faqs.

¹⁰ See the figures in ‘NI Pro Bono Group,’ available at: www.barlibrary.com.

formalizes and complements a long tradition of barristers individually acting without a fee in deserving cases. The Barristers' Code of Conduct expressly states that an employed barrister may give advice on legal matters free to a friend or relative or on a charitable basis.¹¹ The 1976 Solicitors (Northern Ireland) Order doesn't directly address the provision of free legal services by solicitors, and instead there is an established culture of informal *pro bono* assistance among Northern Irish solicitors. At present, over 100 firms of solicitors have volunteered to participate in the Unit.¹²

The Unit is designed to help those who cannot reasonably afford the legal assistance they need and who are not eligible for Legal Aid or other forms of help with legal expenses. The factors which are normally taken into account in deciding whether it is appropriate for the Unit to offer advice and/or representation are as follows: the merits of the case; whether the applicant or members of his or her family can reasonably afford Legal Aid; and the estimated length of the representation (the Unit will not be able to provide a barrister or solicitor to advise on a continuing basis over a long period or to provide assistance for long cases in court).¹³ The cases most likely to meet the eligibility criterion of the Unit will be appeals, applications for leave to appeal, judicial review applications, specific steps in proceedings, tribunal hearings and advisory work. Cases that raise a specific issue of principle or test cases are particularly welcomed.

The Unit can help by putting members of the public in touch with barristers and solicitors who can give advice or represent them, free of charge, in any Court or Tribunal in Northern Ireland. Where representation in a Court or Tribunal is involved, it would normally not be possible to act unless a solicitor or Citizens Advice Bureau is prepared to assist, however, there will be some cases where a barrister may be able to act even though there is no solicitor involved. These cases are currently decided by a senior member of the Unit's management committee and the barrister who is willing to act.

II. Conclusion

The availability of *pro bono* assistance from the legal profession in Northern Ireland shares elements in common with both English and Irish legal systems. The existence of the Northern Ireland Lawyers' Pro Bono Group and the pilot concept of "community legal services" shares a public recognition of *pro bono* with the English legal system which is not apparent in Ireland. On the other hand, the informal and ad hoc provision of *pro bono* services by solicitors in Northern Ireland is more akin to the Irish model which supports volunteer work, but has not established any institutionalized *pro bono* practice for solicitors.

September 2010
Pro Bono Practices and Opportunities in Northern Ireland

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.

¹¹ See Section 26.06 Barristers' Code of Conduct, *available at*: www.barlibrary.com.

¹² See the figures in 'NI Pro Bono Group,' *available at*: www.barlibrary.com.

¹³ See pdf entitled 'Further Information about the Lawyers' Pro Bono Unit,' *available at*: www.barlibrary.com.

PRO BONO PRACTICES AND OPPORTUNITIES IN ISRAEL

Traditionally, the public obligation of the legal profession in Israel was seen as corresponding to the project of nation-building and contributing to national institutions. There was no sense that the provision of free legal services was required to fulfill any social obligation that the profession might have, or to uphold the legitimacy or exclusivity of the profession with respect to legal services. Issues such as access to justice, legal representation of the poor, and protection of human rights were generally absent from the discourse and practices of the Bar.¹

Since the 1990s, however, both the traditional concept of lawyering as well as the Bar Association's hegemony in this area have eroded. Several factors have contributed to this erosion: the entry of new social groups into the profession due to changes in legal education; the sharp rise in competition between lawyers; new leadership of the Bar Association; the emergence of public interest and community-based lawyering; and a stronger inclination by the Israeli Supreme Court to scrutinize the Bar's practices under Israel's new constitutional framework.²

I. *Legal Services and the Legal Profession in Israel*

The Israel Bar Association Act provides that "the Bar Association is entitled, *inter alia*, to provide legal relief to those of limited means."³ *Pro bono* practice is, in other words, permissible but not mandatory. Though not required, *pro bono* is increasingly being viewed as essential for the fulfillment of the right of legal representation. This dramatic change in *pro bono* culture and practice is perhaps best illustrated by the 2002 launch of the Bar Association's first *pro bono* program, described below. This move was preceded by a two-year struggle within the Bar Association's internal institutions, as critics feared that the initiative would encroach upon the livelihoods of practitioners who currently provided legal services for a fee to many of the same individuals who would become eligible for *pro bono* services.⁴

A. Legal Aid

Today the term "legal aid" is more prevalent in Israeli legal discourse than the term "*pro bono*." Lawyers usually refer to one of three categories of no-fee or reduced-fee services as falling under the concept of legal aid:

1. State-sponsored legal aid, which exists in two forms. One is the Legal Aid Bureau of the Ministry of Justice, which is charged with the administration of legal aid in civil matters, such as family and labor law and social benefit litigation.⁵ The other

¹ N. Ziv, *The Legal Profession: Looking Backward: Combining Professionalism, Nation Building and Public Service: The Professional Project of the Israeli Bar 1928 – 2002*, 71 Fordham L. Rev. 1621 at 1623 (2003).

² *Id.*

³ Israel Bar Association Act 1961 section 3(2).

⁴ The struggle to reform the Bar Association and the profession can be traced through a series of Supreme Court cases that challenged the legality and even constitutionality of some of the established rules and regulations, most notably the prohibitions on advertising and on holding certain additional occupations. In 2001, the total ban on advertising by lawyers was replaced with a regulatory scheme that allows lawyers to advertise their services under certain conditions. Israel Bar Association Rules (Advertising) 2001; Israel Bar Association Rules (Additional Practices) 2002, respectively.

⁵ Legal Aid Act 1972 and Legal Aid Regulation 1973. In 2009, more than 60,000 people applied to the Legal Aid Department at the Ministry of Justice, which provided legal representation in more than 180,000 legal proceedings. Ministry of Justice, Israel, *Functions of the Legal Aid Department*,

is the Office of the Public Defender (OPD), which is charged with providing legal aid in criminal cases;

2. Legal aid provided by non-profit organizations and NGOs.⁶ Examples of leading NGOs that provide legal aid include ACRI (the Association for Civil Rights in Israel); *Adalah* (the Legal Center for Arab Minority Rights in Israel); *Kav LaOved* (Worker's Hotline); and *Naamat* (Israel's Working Women's Organization); or
3. Legal services provided by private-sector attorneys. The more than 2,000 attorneys who participate in the Israeli Bar Association's *pro bono* project⁷ and over 900 registered with the OPD⁸ are an indication of the private sector's capacity and willingness to provide legal aid.

Civil legal aid is governed by the Legal Aid Act and the Legal Aid Regulations.⁹ The law stipulates that any resident of Israel may receive legal assistance in the form of legal services provided by staff attorneys so long as he or she qualifies under the economic criteria. In order to qualify for legal aid, a petitioner must fulfill three conditions:¹⁰

1. The legal issue must pertain to one of the following areas of law: matters of personal status; prosecution or defense of suits related to rights to dwelling-places; fiscal matters (*e.g.*, bankruptcy); civil torts; matters in the competence of the Labor Courts; suits filed in accordance with amendments concerning pension rights, grants, rehabilitation, and other rights of the disabled and Holocaust survivors; all suits involving the rights of demobilized soldiers; suits involving the Law of Return and Citizenship and Population Registry Laws; representation before forced hospitalization committees under the Treatment of Mental Patients Law (Amend. No. 5); representation of victims of human trafficking; and registration of businesses, trades, or professions.¹¹ The Ministry of Justice also provides legal aid for social security benefits under the National Insurance Act, a category that includes general disability benefits, employment disability benefits, unemployment benefits, benefits for children, compensation for reserve service, old-age welfare rights, minimum wage, compensation for victims of terror and hostilities, national medical insurance, and maternity insurance.¹²

<http://www.justice.gov.il/NR/exeres/0DE80AAC-B813-4C41-80E6-4235922F02BE,frameless.htm?NRMODE=Published> (last visited Sept. 28, 2010).

⁶ This includes cause-lawyering. In this chapter the term "cause-lawyering" refers to legal aid provided by attorneys who are paid, albeit not by a client, such as staff attorneys at NGOs.

⁷ The Israel Bar Association, "*Schar Mitzvah*," *The Israel Bar Association Pro Bono Program* (May 20, 2010), http://www.israelbar.org.il/english_inner.asp?pgId=75176&catId=372 (last visited Oct. 4, 2010).

⁸ Ministry of Justice, Israel, *Functions of the Legal Aid Department*, *supra* note 5.

⁹ Legal Aid Act 1972 and Legal Aid Regulation 1973, respectively.

¹⁰ Legal Aid Act 1972 and Legal Aid Regulation 1973.

¹¹ Ministry of Justice, Israel, *What are the Conditions for Granting Legal Aid?*, <http://www.justice.gov.il/MOJEng/SiuaMishpati/Resources+Center/TnaimLekabaltSiyua.htm> (last visited Oct. 4, 2010).

¹² National Insurance Act (Consolidated Version) 1995; National Insurance Regulations (Legal Aid) 1973. Further, pursuant to a May 1977 amendment to the National Insurance Act (NIA), any (non-corporate) applicant will receive legal assistance in proceedings before the Labor Court in which the National Insurance Institute (NII),

2. The petitioner must meet two economic criteria: (a) an income threshold—total pre-tax earnings may not exceed 2/3 of the average income for a family of three, with increases of 6% for each additional family member; and (b) a property ownership threshold—available funds from property may not exceed three times the average income mentioned above, with an exclusion for one private residence. In social security or family matters, economic eligibility criteria are modified or waived.
 3. The claim must have legal merit.¹³
- B. The Israel Bar Association *Pro Bono* Project (Sahar Mitzvah)

In addition to the state-sponsored civil legal aid system, the Bar Association, as part of its reform in recent years, has taken a leadership position with respect to the promotion of a *pro bono* culture. In 1999, shortly after a change in the Bar Association's elected leadership, a special task force was appointed by the Bar Association's chair to prepare a platform for a comprehensive *pro bono* initiative. The plan met with opposition from the Bar Association's Central Committee, which argued that *pro bono* work might constitute unfair competition. Despite these objections, in April of 2002 the Central Committee approved the *Sahar Mitzvah* program. The mission of *Sahar Mitzvah* was to "substantially expand accessibility to the justice system and provide legal aid to those who cannot afford to pay for legal services."¹⁴

As part of the *Sahar Mitzvah* program, the Bar Association appealed to all members of the Bar to join the program. It launched a media campaign aimed at fostering public awareness of the new initiative. It also created a database of volunteer lawyers, classified by geographical area, type of voluntary work, and area of specialization. To date, the pool of volunteers includes approximately 2,000 lawyers in addition to law students nationwide.

Two kinds of legal aid are provided under the program. One consists of initial counseling and guidance offered in 43 help centers located throughout the country. The primary aim of the centers is to guide petitioners and empower them to independently pursue their claims and assert their rights *pro se*. This service is provided at no cost to the petitioner and with no eligibility threshold. The other form of assistance provides legal representation before judicial tribunals. In order to be eligible for this form of assistance, the petitioner must meet a set of eligibility requirements.

While run exclusively by the Bar Association, the eligibility threshold of the *Sahar Mitzvah* for representation before judicial tribunals is designed to complement the Ministry of Justice legal aid program. As such, the Bar Association will not provide legal aid to a petitioner who is eligible for state-sponsored legal aid, other than in emergency situations. The *Sahar Mitzvah* eligibility test consists of two components: economic eligibility and substantive eligibility. The economic threshold allows a petitioner to earn 18% more than the levels allowed

either under the NIA or some other legislation mandating payments by the NII. This assistance is provided at the expense of the NII and through the Legal Aid Bureaus, regardless of the applicant's ability to pay. Thus, while the general right to legal aid in connection to labor law is protected by the Legal Aid Act, the NIA provides further legal guaranties in specific labor law-related issues specified therein.

¹³ Legal Aid Law of 1972, Section 4.

¹⁴ The Israel Bar Association, "*Schar Mitzvah*," *The Israel Bar Association Pro Bono Program* (May 20, 2010), http://www.israelbar.org.il/english_inner.asp?pgId=75176&catId=372 (last visited Oct. 4, 2010).

by the Ministry of Justice described above. This means a family of up to 3 persons whose earnings total 67%-85% of the national average will be eligible for legal aid provided by the Bar Association, whereas earnings of less than 67% mean a petitioner will be referred to the Ministry of Justice program. There is also a property ownership threshold: in order to qualify for legal aid, the petitioner must not own more than one private residence and one car. In addition, the petitioner must not have available funds exceeding ten times the national average income.

C. Public Defense Reform

In 1995, comprehensive legislation was passed establishing the Office of the Public Defender (“OPD”) and expanding the right to counsel in criminal cases. The Public Defender Act expanded the right of public defense to indigent defendants charged with crimes carrying a maximum prison term of five or more years. The law also extended the right of a publicly funded defense counsel to indigent detainees at bail hearings. Like the Bar Association’s civil initiative, this reform also met with objections from members who feared that the public defender would dominate the market for criminal defense.¹⁵

Nonetheless, the legislation passed and the resulting Public Defense Act gave the OPD the responsibility of ensuring effective assistance of counsel for all suspects and defendants who were entitled to legal aid. Currently, the public defense system includes five district offices covering all criminal courts; state expenditures for criminal legal aid have grown tenfold. There are now approximately 80 attorneys employed by the OPD and approximately 100 other workers, including administrative staff, students, and interns. The OPD also retains over 700 private bar attorneys to assist with its caseload.¹⁶ In addition to attorneys affiliated with or commissioned by the OPD, some private criminal defense attorneys provide *ad hoc pro bono* services at their discretion.¹⁷

D. Non-Profit and Private Sector Legal Aid Initiatives

Since 1998, there has been a surge in the provision of legal aid. This increase is attributed to the 20% rise in the general population resulting from the vast wave of immigration from the former Soviet Union and Ethiopia in the early 1990s and is also seen as a response to Israel’s severe economic downturn in recent years. During the same period, however, public funding has constantly dwindled. These and other factors create a growing need for legal aid services that exceed the capacities of both the private and the public sectors.¹⁸

Following is a description of legal aid initiatives. The list aims to capture the diversity of legal aid work currently taking place, including universal issues such as refugee rights and unique issues like access to Rabbinical courts.

¹⁵ On the right to counsel prior to 1992, the development of the right to state-funded defense counsel, and the establishment of the OPD, see K. Mann and D. Weiner, “Creating A Public Defender System In The Shadow Of The Israeli–Palestinian Conflict,” 48 N.Y.L. Sch. L. Rev. 91 (2003).

¹⁶ Ministry of Justice, Israel, *A Little History*, <http://www.justice.gov.il/MOJHeb/SanegoriaZiborit/Odot/History.htm> (last visited Oct. 10, 2010) (in Hebrew).

¹⁷ No official numbers are available to ascertain the scope of this type of *pro bono* criminal defense.

¹⁸ See M. Hacohen, “Building a Rights-Based Framework for Legal Aid in Israel” in *Justice Initiatives* 51 (a publication of the Open Justice Initiative) (2004) available at: http://www.soros.org/initiatives/justice/focus/criminal_justice/articles_publications/publications/justice_20040225

1. *Naamat* (Israel's Working Women's Organization) operates bureaus providing legal counseling on issues such as divorce and violence against women, assists in representation in divorce proceedings, and advocates for legislation promoting women's rights.
2. The Association for Support and Defense of Bedouin Rights in Israel provides initial legal advice and participates in petitions to the High Court of Justice on issues pertaining to "unrecognized villages" and the right to education.
3. The Clinical Legal Education Programs of Tel Aviv University Faculty of Law offer clinics on the topics of human rights, criminal justice, social welfare law, refugee rights, environmental justice, Jaffa community law, and street law.
4. *Al Haq* provides legal consultations on human rights violations such as restrictions on travel, confiscation of identity cards, and withholding of licenses and other permits, as well as liaisons with Israeli authorities in the Palestinian territories.
5. The Israel Union for Environmental Defense provides legal guidance on environmental issues, advice on environmental planning, and assistance to community groups to structure legal responses to environmental threats.
6. The Israel Religious Action Center is the public and legal advocacy arm of the Reform Movement in Israel and promotes religious tolerance, equality, and social justice through legislative advocacy and petitions to the High Court of Justice on issues such as conversion, medicine, *halacha* (Jewish law), rabbinical courts, and the right to marry.

Multinational law firms, to this point, generally have not engaged in *pro bono* initiatives in Israel ("multinational law firms" in this context excludes Israeli law firms with offices or affiliates overseas). The firm of Kelley Drye & Warren represented an elderly American now living in Israel after his Retirement Insurance Benefits were reduced by the Social Security Administration on the basis of his receipt of an Old Age Allowance from Israel.¹⁹ However, this might better be seen as an American *pro bono* case, whose recipient happened to be living in Israel. The firm Mintz Levin Cohn Ferris Glovsky & Popeo provides *pro bono* legal services to Tmura, a not-for-profit organization focused on education and other youth initiatives and established by Israeli venture capital and high tech leaders. Mintz Levin offers, on behalf of Tmura, *pro bono* legal support to U.S.-registered companies that are interested in becoming donors to Tmura, helping them through whatever legal difficulties may arise in the donation process.²⁰ However, this initiative might not be seen as truly Israeli *pro bono* either, as the direct recipients are American companies.

E. Cause Lawyering

Cause lawyering developed as a distinct specialization some twenty years prior to the 2002 Bar Association initiative. The first issues tackled by practitioners focusing on social causes were focused almost exclusively on human rights: freedom of expression, freedom of movement, and

¹⁹ *KDW Obtains Social Security Benefits for Pro Bono Client in Israel*, Press Release, August 1, 2004, available at: http://www.kelleydrye.com/news/pro_bono/0015.

²⁰ See, generally Mintz Levin, Israel Business Practices, *Commitment to the Community*, http://www.mintz.com/practices/17/Israel_Business.

freedom of religion and conscience. Gradually, the scope of these interests extended to include the areas of gender equality and discrimination on the basis of sexual orientation, disability, and nationality. Today it includes many additional areas, such as poverty law, social and economic rights, and environmental justice.²¹

Pro bono work in the Arab community, as well as Palestinian cause lawyering, are also relatively under-documented developments.²² In particular, it is difficult to assess the extent to which private-sector attorneys provide free legal services in the Arab community. There is, however, a growing number of non-profit organizations and NGOs that provide legal aid. Among them is *Adalah*, The Legal Center for Arab Minority Rights in Israel, which was established in 1996. *Adalah* symbolizes the emergence of all-Arab cause lawyering.

The Arab population is disadvantaged with respect to access to the rights and benefits provided by the state-sponsored legal aid system largely because legal aid agencies and organizations are located in major urban centers, while a high percentage of the Arab population is impoverished and rural. In addition, some social benefits and services are contingent upon military service from which Arab and other non-Jewish populations are typically excluded. The Bedouin population, too, faces distinct legal challenges, most commonly related to residential planning and construction laws.²³

The changes in the legal profession and in legal aid particularly must be viewed as part of larger social processes. Until the 1980s, Israel was, by and large, a socialist welfare state. At that time, Israel began its transformation into a full market economy, a process completed by an accelerated privatization process that took place in the 1990s. The Arab community, in turn, has become more politicized during the first and second *Intifadas*, contributing to a general awakening of activism in the all-Israeli public sphere.

II. *Pro Bono Opportunities in Israel*

The Justice Haim Cohen Center for Legal Defense of Human Rights is a non-profit organization founded in 2002 for the sole purpose of providing *pro bono* services. By virtue of its function and relationships with lawyers at Israeli law firms, it can also provide an inroad to the Israeli private-sector *pro bono* network for non-Israeli firms.

The New Israel Fund (NIF), a philanthropic organization with branch offices in Israel, North America, and Europe, is dedicated to providing financial and technical assistance to grassroots organizations while aiding with coalition and capacity-building. Its subsidiary, *Shatil*, works directly with NGOs to assist with organizational and training issues, complementing the NIF's financial support. Having worked with more than 800 organizations since its founding in 1979, the NIF could provide a gateway to the Israeli public sector.

²¹ See N. Ziv, *Hanging by the Cloak – Advocates for Social Change in Israel: Between the Legal and the Political*, *Adalah's Newsletter* (June 2004).

²² See R. Shamir & S. Chinski, *Destruction of Houses and Construction of a Cause: Lawyers and Bedouins in the Israeli Court*, in *Cause Lawyering: Political Commitments and Professional Responsibilities* 227 (A. Sarat & S. Scheingold eds., 1998) (regarding cause lawyering in the representation of Bedouins); G. Bisharat, *Attorneys for the People, Attorneys for the Land: The Emergence of Cause Lawyering in the Israeli-Occupied Territories*, in *Cause Lawyering: Political Commitments and Professional Responsibilities* 453 (A. Sarat & S. Scheingold eds., 1998) (regarding Palestinian cause lawyering).

²³ See *id.*

III. Conclusion

Despite recent reforms and developments in Israel's legal aid system, there are entire areas of need that are largely unaddressed by the state, most notably legal protections for non-residents.²⁴ Local non-profit organizations and local governments, however, provide services to some of these underrepresented groups to fill in gaps in the State's legal services.²⁵ In addition, even in areas in which the state or the public and private sectors do provide legal aid, resources are scarce and legal needs are not fully met. Given the success of the Bar Association's attempts to create a systematic operational scheme for *pro bono* on the national level, one possible way to establish a *pro bono* presence in Israel might be to approach the Bar Association's *Pro bono* Committee seeking partnership on *pro bono* initiatives.

September 2010
Pro Bono Practices and Opportunities in Israel

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.

²⁴ This group includes foreign workers (legal and illegal migrant workers), non-citizen Palestinians, and Palestinians who are Israeli citizens but lack proper identification documents.

²⁵ See, e.g., Hotline for Migrant Workers, Kav LaOved, and the Mesila Aid & Information Center, operated by the Tel Aviv Municipality.

PRO BONO PRACTICES AND OPPORTUNITIES IN ITALY

In Italy, the U.S. notion of *pro bono publico* legal services does not exist. Moreover, *pro bono* work is not a common practice, and it is unusual for large law firms to engage in such activities. It appears that *pro bono* work simply is not part of the legal culture or framework in Italy. Instead, *pro bono* activities are restricted to (i) the state provision of free legal aid to those unable to afford a lawyer in judicial matters, and (ii) legal assistance based on ethical and social motivations of non-profit entities or individuals who cannot pay for legal services, as determined by scholarly and case law interpretation of the applicable rules to legal activity in Italy.

I. *Legal Services and the Legal Profession in Italy*

Section 24(3) of the Italian Constitution guarantees the fundamental right to proper representation in court.¹ This protection is an extension of the fundamental right of every person to have access to the courts to initiate legal proceedings to protect his or her rights. In the past, the protection of the right enshrined in Section 24(3) of the Constitution was ensured by a system of “free legal representation” (*gratuito patrocinio*) available to indigents.² Attorneys were required to provide free legal services to indigents if certain requirements were met (*i.e.*, the person seeking aid was able to prove that he or she was indigent and had a meritorious claim) and if they were called upon by a specific commission or the president of the competent court.³ Under the law, free legal representation of indigents was considered an attorney’s “honorary and mandatory task.”

However, the system did not work properly: indigents often received inadequate and inferior legal services from lawyers who lacked commitment to their cases. The need for reform became apparent, and in 1973 a new system of legal aid was introduced. Under the new system, entitled “*patrocinio a spese dello stato*”, the state bore the cost of the legal representation of indigents and marked the end of the older system of *gratuito patrocinio*. The current legal aid system is available in all phases of litigation and before any court.

A. Legal Aid

Legal aid is available only in litigation. Furthermore, it is available to Italian, non-Italian citizens, and stateless individuals who satisfy specific objective requirements of the law.⁴ In criminal cases, legal aid is available to non-citizens regardless of whether they are regularly present in Italy; in civil and administrative cases, residency in the country is required.⁵ Non-profit associations and entities that do not carry out economic activity are also entitled to legal aid, but only in civil and administrative cases.

In order to qualify for legal aid, an individual’s annual income must be below certain thresholds set every two years by a decree of the Ministry of Justice. The thresholds vary in

¹ Pursuant to Section 24(3) of the Constitution, “[i]ndigents shall be entitled, through special legislation, to proper means for action or defense before any court.”

² See Royal Decree No. 3282 of December 23, 1923.

³ In civil and commercial matters, these specific commissions are composed of two judges and the president of the local bar; in criminal matters, it is the president of the competent court.

⁴ See Judgment No. 219 of June 1, 1995 of the Constitutional Court.

⁵ See Judgments No. 2684 of March 10, 2003 of the Supreme Civil Court and No. 144 of May 14, 2004 of the Constitutional Court.

accordance with the consumer price index for employees and workers ascertained by the Italian National Institute of Statistics (“ISTAT”).⁶ In both civil and criminal proceedings, the court will also take into account the income earned by family members. In civil, administrative, and tax law proceedings, applicants for legal aid must also show that their claims are not manifestly unfounded.

In criminal cases, applications for legal aid are addressed to the court before which the case is pending. In all other cases, the request is addressed to the Bar, specifically to the Council or governing body of the Bar of the district where the competent court is located.

Once granted legal aid, the beneficiary can appoint the attorney of his or her choice, with one limitation: the attorney must have registered for legal aid purposes with the Court of Appeals in the district in which the court hearing the case is located. Registration is conditional upon meeting certain requirements, including membership in the Bar for at least two years.⁷

The fees paid to the attorney providing legal aid are determined by a ruling of the court that decided the case. Such fees may not exceed the average of those set by ministerial decree for the type of work done. In civil, administrative, and tax law proceedings if the legal aid beneficiary wins the case, the court may order the other party to refund to the state the fees paid to the attorney representing the indigent party.

B. Effect of the 2006 Abolishment of Fixed and Minimum Attorneys’ Fees

Law decree No. 223 (the “Bersani Decree”), dated July 4, 2006, became law on August 2, 2006. The Bersani Decree was designed to address competition concerns within the Italian legal market.

Specifically, the Bersani Decree: (1) abolished statutorily fixed and minimum attorney fees; (2) lifted the prohibition on contingency fees;⁸ and (3) permitted lawyers to advertise their title, professional specialization, the characteristics of their services, and the pricing and whole costs of their professional services.⁹

These reforms created the possibility for competitive pricing of legal services in Italy and removed, albeit unintentionally, the major obstacle to *pro bono* services in Italy – namely, statutorily imposed minimum attorneys fees.¹⁰ Still, while the new law did trigger controversy in

⁶ Section 77 of the Decree of the President of the Republic No. 115 of May 30, 2002.

⁷ Section 80 of the Decree of the President of the Republic No. 115 of May 30, 2002, as amended by Section 2 of Law No. 25 of February 24, 2005.

⁸ The Bersani Decree also abrogated the third paragraph of section 2233 of the ICC and added a paragraph stating that agreements between lawyers and their clients on legal fees must be in writing, otherwise they will be deemed null and void.

⁹ Such advertising is permissible provided that the advertisements satisfy a standard of transparency and truthfulness verified by the Bar Association (*Ordine degli Avvocati*). Such advertising, however, should not include clients’ names (even with the client’s authorization), prices for the services offered, the number of cases won, or the turnover generated by the attorney or the firm. Advertising should be limited to information such as the attorneys’ names and publications.

¹⁰ Historically, minimum fees effectively prevented attorneys from engaging in genuine *pro bono* work. There was an exception: an attorney could provide services for a fee below the statutory levels when the minimum fees were excessive in light of the specific circumstances of the case. However, attorneys could only utilize this exception with authorization from the Bar on a case-by-case basis and the exception could never be applied to

Italy, the removal of minimum attorney fees has had no effect on the level of *pro bono* services in Italy. That is, *pro bono* legal services still are not part of the Italian legal culture. It is important to note that the motivation for the Bersani Decree did not stem from *pro bono* concerns. Instead, the rationale for the reform was to address changes in the legal profession, such as the globalization of legal services and the anti-competitive nature of the older minimum fee system. The European Union (“EU”) had also frowned upon the minimum fee system, noting that the anticompetitive nature of the system was at odds with the EU’s longstanding policy of promoting competitive behavior.¹¹

Taken together, it is not surprising that a law that was designed to foster efficiency and competitive pricing in the Italian legal market did not incentivize *pro bono* services. The fact remains that Italian lawyers do not consider *pro bono* services to be part of practicing law. It is not as if these attorneys actively decide not to provide the services; instead it is simply not part of the business plan.

In addition, it should be noted that the removal of minimum attorney fees, as provided by the Bersani Decree, does not expressly allow *pro bono* work. Furthermore, under the principles governing the legal activity in Italy provided by the Italian Bar Association’s Code of Professional Conduct rules (the “Professional Rules”), lawyers cannot carry out any conduct direct to the acquisition of clients’ relationships by means not conforming to principles of propriety and decorum (including the offer of legal services free of charge). In addition, lawyers must inspire their conduct to duties of probity, dignity, and decorum, and carry out their professional activities with honesty and integrity.

Scholars and case law has interpreted the Professional Rules to only allow legal services free of charge if they are based on ethical or social motivations. Accordingly, *pro bono* work in Italy is currently limited to legal services offered to nonprofit organizations, nongovernmental organizations, charity organizations, and foundations unable to pay for legal services in order to realize their ethical and social purposes.

In addition, it is generally difficult for Italian lawyers who intend to provide *pro bono* legal services to establish a professional relationship with nonprofit entities due to the fact that such organizations primarily focus on social activities, with a secondary focus on legal matters.

Finally, because *pro bono* services have historically not been part of the Italian legal culture, large law firms do not gain any goodwill or recognition for providing such services. Thus, a lack of financial or social incentives probably stymies any possibility for such *pro bono* legal services, even though the main statutorily imposed obstacle – minimum attorneys’ fees – has been removed.

criminal cases. According to the *Corte di Cassazione* (i.e., the Italian Supreme Court), the mandatory nature of the minimum fees was justified by the need to “protect the dignity of the legal profession from the harmful consequences” of “price competition” among attorneys (see judgment No. 592 of March 22, 1962, of the *Corte di Cassazione*), as there is a widespread belief that price competition affects the integrity of the Italian legal profession. Similar beliefs led to the explicit prohibition of contingency fees. See ICC Section 2233(3).

¹¹ See European Parliament Resolution, *Market Regulations and Competition Rules for the Liberal Professions*, December 16, 2003; see also the conclusion of the General Advocate of the European Court of Justice delivered on February 1, 2006 in the case C-94/04 (*Federico Cipolla v. Rosaria Fazari née Portolese* – reference for a preliminary ruling from the Appeal Court of Turin), and in the case C-202/04 (*Stefano Macrino and Claudia Capodarte v. Roberto Meloni* - reference for a preliminary ruling from the Court of Rome), stating the noncompliance of the Italian legislation concerning the fixing of lawyers’ minimum fees with the competition rules and the principle of freedom to provide services established by the European Union regulation.

II. *Pro Bono Opportunities in Italy*

The primary means for attorneys who wish to provide legal assistance to persons who cannot afford such services is through the State's legal aid system.

Pro bono legal services can also be offered to nonprofit associations pursuing social objectives, non-governmental organizations, charity organizations, and foundations for nonjudicial matters, provided that *pro bono* work is carried out in accordance with the above-mentioned Professional Rules governing the legal profession in Italy.

III. *Conclusion*

Italian law firms generally do not engage in *pro bono* legal services, as it is not part of the Italian legal culture. However, some U.S. global firms operating in Italy, local firms, and individual attorneys provide free legal services to indigent persons (and then are reimbursed for their services by the Italian government under Italy's legal aid system) in judicial matters, and to nonprofit entities for deserving projects in nonjudicial matters.

Although statutorily-mandated minimum attorneys' fees were repealed, Italian attorneys largely have not embraced this change as an opportunity to engage in *pro bono* legal services. One contributing factor is that professional rules governing legal activity in Italy do not clearly support and sponsor *pro bono* work.

Finally, it remains to be seen whether the new EU regulations will effectively create a *pro bono* obligation for lawyers practicing in the EU member states. Not only could this create an obligation in Italy, but it could strongly affect the current Italian legal culture in relation to *pro bono* legal services.

September 2010
Pro Bono Practices and Opportunities in Italy

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.

PRO BONO PRACTICES AND OPPORTUNITIES IN JAPAN

Providing legal assistance to the indigent is an important value in the Japanese legal tradition. Yet, compared to the United States, there is a different understanding and approach to fulfilling this public interest component of the legal profession. In Japan, there is no statutory mention of the term “*pro bono*.” Instead, the public interest cause is expressed through terms such as “human rights” and “social justice.”¹ These ideals are specifically set forth as the mission of each and every practicing attorney.²

Legal aid has been, and remains, the traditional and primary means of providing legal services to the indigent in Japan. Bar associations and the government play a large role in administering the legal aid system. In addition to legal aid, certain large multinational law firms in Japan, both foreign and domestic, engage in a limited amount of *pro bono* work.

I. Legal Services and the Legal Profession in Japan

A. The Legal Profession

Japan’s legal profession experienced two fundamental changes after WWII with the adoption of a new Japanese Constitution and the Attorney Act. The Japanese Constitution was adopted in 1946, including provisions on guaranteeing fundamental human rights. This was followed by the enactment of the Attorney Act in 1949, a general law governing attorneys with a human rights philosophy, consistent with the Japanese Constitution.³ In particular, the Attorney Act provided, among other things, that the mission of a practicing attorney is to protect fundamental human rights and to realize social justice.

Under the Attorney Act, the Japan Federation of Bar Associations (the “Federation”) was formed in 1949. The Federation became the controlling body overseeing the nation’s attorneys, instead of the government’s Ministry of Justice, freeing the profession from governmental influence and potential conflicts of interest. As the national bar association, the Federation has self-regulatory powers, such as the ability to formulate its own rules and regulations and the power to discipline its members.⁴

This autonomy enables the Federation to achieve its two-fold objectives of governing matters related to the supervision and guidance of its members,⁵ and acting “as a source of protection of fundamental human rights and of [the] realization of social justice.”⁶

¹ Attorney Act, Law No. 205 of 1949, art. 1, no. 1., *available at*: <http://www.japaneselawtranslation.go.jp/law/detail/?id=1878&vm=02&re=02&new=1>. “An attorney is entrusted with the mission of protecting fundamental human rights and achieving social justice.”

² *Id.*

³ See Japan Federation of Bar Associations, <http://www.nichibenren.or.jp/en/about/profile.html> (last visited Sep. 7, 2010).

⁴ See Japan Federation of Bar Associations, http://www.nichibenren.or.jp/en/about/attorney_system.html (last visited Sep. 7, 2010). Members of the Bar include all licensed attorneys from any of the 52 local bar associations throughout the country.

⁵ See Attorney Act, Law No. 205 of 1949, art. 45, no. 2., *available at*: <http://www.japaneselawtranslation.go.jp/law/detail/?id=1878&vm=02&re=02&new=1>.

⁶ Articles of Association of Japan Federation of Bar Associations, *available at*: <http://www.nichibenren.or.jp/en/about/pdf/articles.pdf>.

The independence of the Federation, protection of fundamental human rights, and achievement of social justice continue to be the core ideals under which practicing attorneys in Japan operate today.

B. Legal Aid

Given the clear focus on human rights and social justice in the Attorney Act, the Federation created the Japan Legal Aid Association in 1952. This nonprofit, government-subsidized organization was modeled after the British system of using public funds to establish a system of advice, aid, and assistance to service the legal needs of those unable to afford them. Services were originally offered only in civil matters, but they were subsequently expanded to include criminal matters as well. As government funding of the Japan Legal Aid Association was not mandatory, the Association experienced serious and chronic fiscal deficits over the years as demand for legal aid increased. This issue triggered the gradual adoption of the new legal aid system as described below.

In 2000, Japan passed the Civil Legal Aid Act as the general legal aid law of the country for civil matters. The Civil Legal Aid Act was the first law to stipulate that it was the government's responsibility to support the legal aid system. Long-awaited, it was the product of efforts by both the Federation and the Japan Legal Aid Association calling, for greater government involvement in expanding and improving the existing system. The Civil Legal Aid Act's objective was to make the judicial system more accessible to the public in furtherance of the greater constitutional mandate that "[n]o person shall be denied the right of access to a court."⁷

In 2004, Japan passed the Comprehensive Legal Support Act, which superseded the Civil Legal Aid Act. Its objectives are considered groundbreaking, and include (1) ensuring that all individuals can access legal services via any of the 50 newly created legal aid local offices located throughout Japan; and (2) the provision of comprehensive legal aid services to those who do not have financial means, regardless of whether the case involves a civil or criminal matter.⁸ The Comprehensive Legal Support Act also enhanced the government's role in the administration of legal aid, as evidenced by the creation in April 2006 of a new centralized organization called the Japan Legal Support Center (the "Center").⁹

Under the Comprehensive Legal Support Act, the newly-created Center replaced the Japan Legal Aid Association and became the central legal aid organization for the country.¹⁰ It assumed the staffing, administrative, and other logistical functions that were previously provided to the Japan Legal Aid Association by the Federation and local bar associations, and further benefits from greater management support from the government.¹¹ The various activities of the Center are generally aimed at expanding access to legal services, including comprehensive legal aid services in both civil and criminal matters.

⁷ The Constitution of Japan (Kenpo), art. 32, *available at*: <http://www.japaneselawtranslation.go.jp/law/detail/?id=174&vm=02&new=1>.

⁸ See Japan Legal Support Center, http://www.houterasu.or.jp/en/about_jlsc/executives.html (last visited Sep. 7, 2010).

⁹ See Japan Legal Support Center, http://www.houterasu.or.jp/en/about_jlsc/history.html (last visited Sep. 7, 2010).

¹⁰ The Japan Legal Support Center began providing services in October of 2006, while the Japan Legal Aid Association dissolved in 2007.

¹¹ See Comprehensive Legal Support Act, Law No. 74 of 2004, art. 1, *available at*: <http://www.japaneselawtranslation.go.jp/law/detail/?id=1832&vm=02&re=02&new=1>.

As to civil legal aid, the Center offers support to indigents through legal consulting without charge, loans for attorney's fees for preparation of documents to be submitted to the court, and loans for attorney's fees for legal representation in civil trials, including family-related cases and administrative cases. Loans extended by the Center for attorney's fees are ultimately forgiven if the recipient is a welfare recipient at the time of application and remains a welfare recipient at the repayment date. Foreign nationals lawfully residing in Japan may also receive assistance through the civil legal aid system.

As to criminal legal aid, prior to indictment, suspects under detention for offences punishable by death, life imprisonment, or imprisonment for a term longer than 3 years who are indigent are entitled to the appointment of defense counsel. If indicted, regardless of the gravity of the alleged offence, the defendant is entitled to defense counsel if he/she is indigent. A defense counsel appointed prior to indictment may be reappointed as trial counsel upon request by the defendant. If a defendant is indicted for an offence punishable by death, life imprisonment, or imprisonment for a term longer than 3 years and there is no defense counsel, a court will appoint a defense counsel, regardless of whether it is requested by the defendant. In each of the foregoing cases, all legal fees and expenses for the court-appointed defense counsel are paid from public funds through the Center. Foreign nationals may also receive assistance through the criminal legal aid system regardless of their status of residence.

C. Additional Aid Provided by the Federation and Local Bar Associations

Certain types of legal services for the indigent are not covered by the Center. Thus, the Federation and local bar associations still play important roles in providing legal services in such areas.

The duty attorney system is one of the legal services provided by the Federation and the local bar associations. This system was created to protect the rights of criminal suspects, prior to indictment, who are detained and not provided with, or otherwise eligible under, the legal aid regime to receive assistance from a court-appointed attorney. The goal of this system is to ensure that those detained are sufficiently informed of their rights. When requested by a suspect under detention, the duty attorney, who is a defense attorney appointed by a local bar association, will immediately visit the suspect's place of detention and attend suspect interviews in order to inform the suspect of his or her rights, including, for example, the right to remain silent and the right to deny depositions drafted by investigators. The Federation provides duty attorney services to criminal suspects, regardless of nationality or visa status of such suspect. If the suspect is a foreign national, an interpreter accompanies the attorney. The first consultation with a duty attorney is free of charge. Interpreting fees are likewise free and borne by the local bar associations.¹² If a suspect wishes to receive further assistance, the suspect may appoint the duty counsel as his or her defense attorney at his or her own expense.

There are some areas of Japan where the number of attorneys is extremely low relative to the population. While the Center provides services in some of these areas, the Federation, local bar associations, and regional federations of bar associations also operate Federation- and bar-funded law offices in rural areas that may not otherwise be covered. In addition, in June 2008, the

¹² The Federation collects special dues from its members in order to financially support this system. See Japan Federation of Bar Associations, <http://www.nichibenren.or.jp/en/about/activities.html> (last visited Sep. 7, 2010).

Federation began providing economic support aimed at encouraging attorneys to settle in areas with a shortage of attorneys.¹³

II. *Pro Bono Opportunities in Japan*

The primary channel through which *pro bono* work is undertaken by practicing attorneys in Japan is the local bar association. Each local bar has broad discretion in formulating its own bylaws and “rules pertaining to legal support.”¹⁴ Thus, there is no standard mandatory requirement for practicing attorneys in Japan to participate in *pro bono* activities, unless their local bar association has adopted such rules in its articles of association. In some of the more progressive districts, such as Tokyo, and in 8 of the 52 other districts, local bar associations have adopted rules requiring their members to perform mandatory public interest service.

For example, the Tokyo Bar Association, one of the three local bar associations in Tokyo, with some 6,000 members, compels its members to perform public interest activities, such as civil legal aid work or acting as court-appointed or duty attorneys for criminal suspects and defendants, at least once a year.¹⁵ If the attorney does not comply, he or she can face consequences, including admonition, publication of their names as non-compliers, and paying a ¥50,000 penalty per year.

Certain local bar associations expressly define what kind of activities qualify as public interest activities. Bar associations that define public interest activities more narrowly and specifically are generally more effective than those that simply define them as “activities done without asking for payment.” For example, the Daini Tokyo Bar Association, another local bar association in Tokyo, defines, among others, activities as a duty attorney, certain legal consulting organized by the local bar association, and activities for indigents and vulnerable groups as public interest activities. In addition, activities at committees of local bar associations are also usually regarded as public interest activities. In effect, the range of the activities considered as public interest activities in Japan are broader in scope than “*pro bono* activities” in the United States and other countries.

The Federation and local bar associations are also generally open to expanding their areas of public interest activities. For example, the Daini Tokyo Bar Association has set up a counseling service to handle children’s problems through which individuals can seek advice on issues, such as bullying and corporal punishment. Among the attorneys actively contributing to these local bar association-led, public interest activities are those from large law firms, and large law firms often publicize their participation in such activities.¹⁶

¹³ *Id.*

¹⁴ Practicing Attorney Law, Law No. 205 of 1949, art. 33, no. 2 (9), *available at*: <http://www.japaneselawtranslation.go.jp/law/detail/?id=1878&vm=02&re=02&new=1>.

¹⁵ The duty attorney system is a private-sector system created by the bar associations in order to effectively guarantee the right of suspects to court-appointed attorneys. When requested by a suspect, the duty attorney will immediately visit the suspect’s place of detention and interview him or her, regardless of nationality or visa status. If the suspect is a foreign national, an interpreter accompanies the attorney. The first consultation with a duty attorney is free of charge. Interpreting fees are likewise free and borne by the local bar association. The number of duty attorney cases in 2005 was 67,711.

¹⁶ <http://www.noandt.com/en/practice/probono.php> (last visited Oct. 4, 2010), <http://www.mhmjapan.com/en/probono/index.html> (last visited Oct. 4, 2010).

In addition to local bar association activity, a limited number of large law firms have also contributed their services to the community on a *pro bono* basis.¹⁷ Because there are still many cases that fall outside of local bar association activities and Center-provided services, *pro bono* services by private law firms are generally aimed at filling this gap. However, *pro bono* activity among law firms is still relatively limited. This may be due, in part, to the fact that no *pro bono* clearinghouses currently exist in Japan to match law firms and lawyers with *pro bono* clients.

Multinational western law firms with local branch offices in Japan have also engaged in public interest and *pro bono* services including, for example, fundraising campaigns for charitable causes, working with humanitarian organizations, such as the Japanese Red Cross,¹⁸ and asylum representation.¹⁹ However, the time spent on *pro bono* activities by these firms generally comprises a very small portion of the firms' overall volume of work, particularly when compared to their respective domestic offices in the United States or United Kingdom.

III. Conclusion

Whereas the relationship between legal aid and the local bar associations in Japan is a close and dependent one, the relationship between legal aid and private law firms has room to grow. Although *pro bono* activity by law firms has historically been, and remains, relatively limited, the legal aid and other public interest activities led by the Federation and local bar associations in Japan function as good alternatives, and meet the need for free legal services among many within Japan's indigent population. However, there are still matters falling outside of the areas covered by the Federation, the Center, and local bar where law firms can meaningfully contribute through their *pro bono* efforts to fill the gap..

September 2010
Pro Bono Practices and Opportunities in Japan

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.

¹⁷ <http://www.mhmjapan.com/en/probono/index.html> (last visited Oct. 4, 2010).

¹⁸ <http://www.allenoverly.com/AOWEB/Community/Editorial.aspx?contentTypeID=1&itemID=52811&prefLangID=410> (last visited Sep. 7, 2010).

¹⁹ Latham & Watkins 2005 Pro Bono Annual Review, p. 15 (where Latham's Tokyo attorneys successfully handled an asylum case, achieving a rare grant of asylum by the Japanese government for their client, a refugee from the Democratic Republic of the Congo).

PRO BONO PRACTICES AND OPPORTUNITIES IN JORDAN

The provision of *pro bono* legal services by lawyers in the Hashemite Kingdom of Jordan (“Jordan”) is less common than it is in the United States. There are, however, several governmental and nongovernmental organizations in Jordan that provide free legal services to disadvantaged individuals and other groups. This chapter discusses these organizations, and provides a general overview of *pro bono* practices and opportunities in Jordan.

I. *Legal Services and the Legal Profession in Jordan*

The Jordanian judicial system consists of three categories of courts: civil courts, religious courts, and special courts.¹ The civil courts are courts of general jurisdiction, and hear civil and criminal cases that are not reserved by law for other courts.² The religious courts, which consist primarily of *Shari’a* (Islamic law) courts, have jurisdiction over personal status matters, such as marriage and inheritance.³ There are several special courts, the jurisdiction of which is specified in the laws creating them, including the State Security Court, which has jurisdiction over certain cases related to state security and drug offenses.⁴

In 2010, Jordan had approximately 9,000 practicing lawyers.⁵ The legal profession in Jordan is governed by the 1972 Bar Association Law (the “Bar Association Law”).⁶ Under the Bar Association Law, all practicing lawyers in Jordan are required to join the Jordanian Bar Association (the “Bar Association”).⁷

Foreign-qualified lawyers generally may not practice Jordanian law or represent parties in Jordanian courts, although lawyers from Arab countries are permitted to practice law in Jordan on a basis of reciprocity. Foreign-qualified lawyers are permitted to advise Jordanian clients on matters of foreign or international law. A few international law firms operate in Jordan in association with Jordanian law firms.⁸

The provision of *pro bono* legal services by lawyers is not common in Jordan. According to the Bar Association Law, one of the goals of the Bar Association is to assist in providing legal services to those who cannot afford them.⁹ However, the Bar Association, has not established

¹ Nathan J. Brown, *Arab Judicial Structures*, available at: <http://www.undp-pogar.org/publications/judiciary/nbrown/jordan.html>.

² *Id.*

³ *Id.*

⁴ *Id.*; BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP’T OF STATE, JORDAN; 2009 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (2010), available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136071.htm>.

⁵ E-mail from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Sept. 12, 2010) (on file with author).

⁶ Bar Association Law No. 11 of 1972, available at: http://www.lob.gov.jo/ui/laws/search_no.jsp?no=11&year=1972.

⁷ Bar Association Law No. 11 of 1972 art. (7), available at: http://www.lob.gov.jo/ui/laws/search_no.jsp?no=11&year=1972.

⁸ Legal 500, Jordan, <http://www.legal500.com/c/jordan>.

⁹ Bar Association Law No. 11 of 1972 art. (5).5, available at: http://www.lob.gov.jo/ui/laws/search_no.jsp?no=11&year=1972; Jordanian Bar Association, <http://www.jba.org.jo/>.

mechanisms to organize and encourage *pro bono* efforts by its members. Under the Bar Association Law, the President of the Bar Association may assign any Jordanian lawyer to represent an individual lacking the means to hire a lawyer on a *pro bono* basis, once per year.¹⁰ In practice, accepting a *pro bono* assignment is not mandatory, and the lawyer may refuse to provide the representation.¹¹ Moreover, there are no guidelines regarding who is eligible for such legal aid, and the decision to request a lawyer to provide free representation rests in the sole discretion of the President of the Bar Association.¹²

A. Legal Aid in Criminal Cases

The Jordanian government provides free legal representation to indigent defendants in certain criminal cases. Under the Jordanian Criminal Procedure Law, the defendant in any case involving a possible penalty of life imprisonment or death is entitled to a government-provided lawyer if he or she cannot afford one.¹³ In these cases, the court is required to ask the defendant whether he or she has appointed a lawyer. If the defendant replies that he or she lacks the financial means to do so, the court is required to appoint a lawyer to represent the defendant.¹⁴ The defendant is not required to make any showing regarding his or her inability to afford a lawyer, and the trial cannot proceed until a lawyer is appointed to represent the defendant.¹⁵

In such a case, the president of the court appoints a private lawyer to represent the defendant.¹⁶ The appointment is not mandatory, and the lawyer may refuse the representation, or ask to be excused at any time, in which case the court is required to appoint another lawyer. The fees paid to the court-appointed lawyer are specified in the Criminal Procedure Law. The fees are paid following the issuance of the judgment, and are based on the number of court sessions, subject to specified minimum and maximum fees.¹⁷ These fees are modest relative to the fees that would ordinarily be charged by a lawyer for such a case.¹⁸

¹⁰ Bar Association Law No. 11 of 1972 art. (100).A, *available at*: http://www.lob.gov.jo/ui/laws/search_no.jsp?no=11&year=1972.

¹¹ E-mail from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 20, 2008) (on file with author); *contra* Bar Association Law No. 11 of 1972 art. (100).B, *available at*: http://www.lob.gov.jo/ui/laws/search_no.jsp?no=11&year=1972.

¹² E-mail from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 15, 2008) (on file with author).

¹³ Criminal Procedure Law No. 9 of 1961 art. (208), *available at*: http://www.lob.gov.jo/ui/laws/search_no.jsp?year=1961&no=9; ARAB COUNCIL FOR JUDICIAL AND LEGAL STUDIES, ACJLS WHITE PAPER ON ACCESS TO JUSTICE AND LEGAL AID IN THE ARAB WORLD, *available at*: <http://www.acjls.org>.

¹⁴ Criminal Procedure Law No. 9 of 1961 art. (208), *available at*: http://www.lob.gov.jo/ui/laws/search_no.jsp?year=1961&no=9; e-mail from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 15, 2008) (on file with author).

¹⁵ E-mail from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 15, 2008) (on file with author).

¹⁶ Criminal Procedure Law No. 9 of 1961 art. (208), *available at*: http://www.lob.gov.jo/ui/laws/search_no.jsp?year=1961&no=9; e-mail from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 15, 2008) (on file with author).

¹⁷ Criminal Procedure Law No. 9 of 1961 art. (208), *available at*: http://www.lob.gov.jo/ui/laws/search_no.jsp?year=1961&no=9; e-mail from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 15, 2008) (on file with author).

¹⁸ E-mail from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 15, 2008) (on file with author).

Defendants generally must pay court fees in order to appeal verdicts in criminal cases.¹⁹ It is not possible to have such fees waived or postponed.²⁰ The National Centre for Human Rights (the “NCHR”), a government-supported human rights body, has criticized the imposition of court fees on criminal appeals, calling it “an impediment facing many in practicing the right to self defence before courts of different levels.”²¹ Verdicts resulting in a penalty of life imprisonment or death are automatically appealed, however, and no court fees are charged for such appeals.²² In addition, indigent defendants are entitled to a government-provided lawyer for such appeals.²³

B. Legal Aid in Civil Cases

Litigants in civil cases before the civil courts of first instance, and higher, must be represented by lawyers.²⁴ Neither the plaintiffs nor the defendants in civil matters have a right to free legal representation. In addition to lawyers’ fees, plaintiffs bringing civil cases, and parties appealing rulings, must pay court fees based on a percentage of the value of the claim.²⁵ Litigants must also pay verdict and implementation fees, which may be equal to the initial trial fees.²⁶ These court fees are intended to reduce the burden on the court system by ensuring the seriousness of cases brought before the courts.²⁷ The NCHR, however, has observed that many people are prevented from resorting to the judiciary due to an inability to afford the costs of litigation.²⁸

Under the court fee regulations, the president of the court or the presiding judge can postpone the payment of court fees by a litigant upon a showing of financial inability to pay.²⁹ In order to obtain a postponement, the litigant must submit a petition to the president of the court stating that the litigant is unable to pay the court fees.³⁰ The petition must include a statement from the land and survey department, stating that the litigant does not own any property, and must

¹⁹ See THE NATIONAL CENTRE FOR HUMAN RIGHTS, STATE OF HUMAN RIGHTS IN THE HASHEMITE KINGDOM OF JORDAN (2008), para. 24 (2009), *available at*: http://www.nchr.org.jo/uploads/NCHR-2008_Report-Final-Eng.doc.

²⁰ E-mail from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 22, 2008) (on file with author).

²¹ THE NATIONAL CENTRE FOR HUMAN RIGHTS, STATE OF HUMAN RIGHTS IN THE HASHEMITE KINGDOM OF JORDAN (2008), para. 24 (2009), *available at*: http://www.nchr.org.jo/uploads/NCHR-2008_Report-Final-Eng.doc.

²² E-mail from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 24, 2008) (on file with author).

²³ E-mail from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Sep. 27, 2010) (on file with author).

²⁴ Civil Procedure Law No. 24 of 1988 art. (63), *available at*: http://www.lob.gov.jo/ui/laws/search_no.jsp?year=1988&no=24.

²⁵ THE NATIONAL CENTRE FOR HUMAN RIGHTS, THE STATE OF HUMAN RIGHTS IN THE HASHEMITE KINGDOM OF JORDAN DURING THE PERIOD (1 JUNE 2003 – 31 DECEMBER 2004), 28 (May 31, 2005), *available at*: <http://www.nchr.org.jo/uploads/nchr-report.pdf>.

²⁶ *Id.*

²⁷ *Id.* at 29.

²⁸ *Id.* at 28; THE NATIONAL CENTRE FOR HUMAN RIGHTS, STATE OF HUMAN RIGHTS IN THE HASHEMITE KINGDOM OF JORDAN (2008), para. 24 (2009), *available at*: http://www.nchr.org.jo/uploads/NCHR-2008_Report-Final-Eng.doc.

²⁹ E-mail from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 15, 2008) (on file with author).

³⁰ *Id.*

be accompanied by the testimony of two witnesses regarding the litigant's financial status.³¹ Petitions for postponement of fees are generally granted.³²

Court fees, including lawsuit fees, execution fees, and expert fees, are also charged for cases before the Shari'a courts. The NCHR has observed that these fees are high, and prevent many individuals, particularly women, from resorting to the Shari'a courts.³³

It is permissible for a Jordanian lawyer to represent a client on a contingency fee basis, such that the lawyer's fees are paid out of the proceeds of the litigation received by the client, and the lawyer is not paid unless the client prevails in the litigation.³⁴ Lawyers working on a contingency fee basis are not providing *pro bono* services, but the possibility of retaining a lawyer on a contingency fee basis may allow some individuals who could not otherwise afford to hire lawyers to obtain legal representation.

C. Governmental and Nongovernmental Organizations Providing Legal Services

Although the provision of *pro bono* legal services by Jordanian lawyers is not common, several governmental and nongovernmental organizations ("NGOs") provide free legal services to individuals in Jordan. Several of these organizations are discussed below.

The governmental Ombudsman Bureau was established in 2009 to receive and investigate complaints by citizens regarding actions by public agencies or their employees.³⁵ As of December 11, 2009, the Ombudsman Bureau had received over 2,400 complaints. Of these, 86 were resolved through reconciliation, 59 resulted in the Ombudsman Bureau providing citizens with advice about how to proceed with their cases, 1,071 were dismissed as outside of the mandate of the Ombudsman Bureau, and the remainder remained under investigation.³⁶

The NCHR is a government-supported human rights body that, among other activities, provides free legal services to victims of human rights violations.³⁷ The NCHR was established by law in 2002 to promote the culture of human rights, improve the human rights situation in Jordan, and assist victims of human rights violations.³⁸ The Complaints & Legal Services unit of the NCHR, which employs several lawyers, receives and addresses complaints of human rights violations, including pursuing judicial remedies where appropriate.³⁹ The NCHR operates a

³¹ *Id.*

³² *Id.*

³³ THE NATIONAL CENTRE FOR HUMAN RIGHTS, STATE OF HUMAN RIGHTS IN THE HASHEMITE KINGDOM OF JORDAN (2008), para. 25 (2009), available at: http://www.nchr.org.jo/uploads/NCHR-2008_Report-Final-Eng.doc.

³⁴ E-mail from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 22, 2008) (on file with author).

³⁵ Mohammad Ghazal, *Ombudsman Bureau receives over 2,400 complaints since February*, JORDAN TIMES, 11 December 2009.

³⁶ *Id.*

³⁷ The National Center for Human Rights, Introduction, http://www.nchr.org.jo/pages.php?menu_id=32&local_type=0&local_id=0&local_details=0&local_details1=0&localsite_branchname=NCHR.

³⁸ *Id.*

³⁹ The National Center for Human Rights, Complaints & Legal Services, http://www.nchr.org.jo/pages.php?menu_id=11&local_type=0&local_id=0&local_details=0&local_details1=0&localsite_branchname=NCHR.

hotline for complaints of human rights violations, and complaints may also be submitted via its website.⁴⁰ In 2008, the NCHR received 617 complaints and requests for assistance, of which 182 were closed with satisfactory results, and 232 were still being followed up as of the end of 2008.⁴¹

MIZAN – Law Group for Human Rights (“MIZAN”) is an NGO that engages in human rights education and awareness campaigns, and provides free legal counselling and representation to vulnerable individuals and victims of human rights violations.⁴² MIZAN focuses in particular on providing legal assistance to juveniles, women, prisoners, labourers, refugees, asylum seekers, and victims of torture. MIZAN employs nine full-time lawyers and provides a range of free legal services, including providing legal advice, interfacing with government agencies on behalf of its clients, and representing its clients in court. Since it was formed in 1998, MIZAN has provided legal assistance to more than 8,000 individuals.⁴³ MIZAN has offices in three cities, and operates a mobile legal clinic that travels to other areas to offer legal consultations to walk-ins. MIZAN also operates a 24-hour telephone helpline that provides free legal advice. In addition, MIZAN receives case referrals from 12 different government departments and NGOs, including the Jordanian Women’s Commission and the Jordan River Foundation, as well as various juvenile centers and women’s shelters administered by the Ministry of Social Development.⁴⁴

MIZAN is primarily funded by donations from international sources, which have included the European Union and the Royal Embassy of the Netherlands in Jordan.⁴⁵ In addition to its full-time lawyers, MIZAN utilizes a group of “volunteer” lawyers who have agreed to provide legal services to individuals on MIZAN’s behalf in exchange for reimbursement of costs and payment of nominal fees by MIZAN. Engaging the services of these lawyers to represent individuals in need of legal services has enabled MIZAN to meet the increasing demand for its services.⁴⁶

The Justice Center for Legal Aid (the “JCLA”) is an NGO that provides free legal counseling and representation to individuals who are unable to afford legal services.⁴⁷ The JCLA has a team of in-house lawyers and operates three legal aid clinics in Jordan.⁴⁸ The JCLA has also organized a “*Pro Bono Legal Network*,” consisting of law firms and individuals who provide free legal advice and representation to individuals referred to them by the JCLA.⁴⁹ As of September 2010, the JCLA had provided legal counseling to 376 individuals and legal representation to 159

⁴⁰ The National Center for Human Rights, Contact Us, http://www.nchr.org.jo/pages.php?menu_id=10&local_type=0&local_id=0&local_details=0&local_details1=0&localsite_branchname=NCHR; The National Center for Human Rights, Human Rights Violation Complaints, http://www.nchr.org.jo/pages.php?menu_id=9&local_type=0&local_id=0&local_details=0&local_details1=0&localsite_branchname=NCHR.

⁴¹ THE NATIONAL CENTRE FOR HUMAN RIGHTS, STATE OF HUMAN RIGHTS IN THE HASHEMITE KINGDOM OF JORDAN (2008), paras. 214-15 (2009), *available at*: http://www.nchr.org.jo/uploads/NCHR-2008_Report-Final-Eng.doc.

⁴² MIZAN – Law Group for Human Rights, http://www.mizangroup.jo/index_en.php; interview with Eva Abu Halaweh, Executive Director, MIZAN – Law Group for Human Rights (Jan. 16, 2008).

⁴³ E-mail from Jocelyn Knight, MIZAN Law Group for Human Rights (Sept. 28, 2010) (on file with author).

⁴⁴ E-mail from Jocelyn Knight, MIZAN Law Group for Human Rights (Sept. 13, 2010) (on file with author).

⁴⁵ MIZAN – Law Group for Human Rights, http://www.mizangroup.jo/index_en.php; interview with Eva Abu Halaweh, Executive Director, MIZAN – Law Group for Human Rights (Jan. 16, 2008).

⁴⁶ *Id.*

⁴⁷ Justice Center for Legal Aid, About Us, <http://www.jcla-org.com/#/en-about-us>.

⁴⁸ Justice Center for Legal Aid, Legal Aid Clinics, <http://www.jcla-org.com/#/en-legal-and-clinics>.

⁴⁹ Justice Center for Legal Aid, Pro Bono Legal Network, <http://www.jcla-org.com/#/en-pro-bono-legal-network>.

individuals since its establishment in 2008.⁵⁰ The JCLA is funded by donors that include the Foundation for the Future and the World Bank.⁵¹

The Media Legal Aid Unit of the Center for Defending Freedom of Journalists (“MELAD”), an NGO, provides free legal services to journalists.⁵² MELAD employs six lawyers and, as of September 2010, had been involved in more than 114 court cases since 2002, primarily defending journalists against charges of publication offenses, such as character defamation and incorrect information.⁵³ In addition to representing journalists in litigation, MELAD operates a hotline offering free legal advice to journalists.⁵⁴ It also conducts legal awareness workshops for journalists and press law training workshops for lawyers. MELAD is funded by donations from the European Commission, and other donors.⁵⁵

II. *Pro Bono Opportunities in Jordan*

According to the NCHR, many of the inmates in Jordanian prisons do not receive adequate legal assistance due to their poverty or their ignorance regarding the importance of legal representation.⁵⁶ In 2006, the NCHR sent the Bar Association a list of inmates in need of legal assistance, and the Bar Association responded that it was willing to provide legal assistance to needy inmates, in accordance with the provisions of the Bar Association Law.⁵⁷ The NCHR has continued to note that inmates receive insufficient legal assistance, however, and has expressed its hope that NGOs and the Bar Association will eventually play a larger role in providing this assistance.⁵⁸

Individual Jordanian lawyers have the ability to take on, or become involved in, *pro bono* legal work by volunteering to do so and/or by working with NGOs in Jordan. In particular, Jordanian lawyers can provide legal services to NGOs on a *pro bono* basis, or partner with NGOs, to provide free legal services to needy individuals. For instance, Jordanian lawyers can join MIZAN’s or JCLA’s network of lawyers who have agreed to provide free legal representation to individuals on MIZAN’s or JCLA’s behalf.

Foreign-qualified lawyers are limited in their ability to engage in *pro bono* legal work in Jordan by the fact that they cannot appear before Jordanian courts, or practice Jordanian law. One

⁵⁰ Justice Center for Legal Aid, Home, <http://www.jcla-org.com/#/en-home>.

⁵¹ Justice Center for Legal Aid, Our Supporters, <http://www.jcla-org.com/#/en-our-supporters>.

⁵² Linda Hindi, *Legal Aid Unit Study Focuses on Lawsuits Against Journalists*, JORDAN TIMES, Aug. 20, 2007; Media Legal Aid Unit of Center for Defending Freedom of Journalists, <http://cdfj.org/look/en-law.tpl>.

⁵³ Linda Hindi, *Legal Aid Unit Study Focuses on Lawsuits Against Journalists*, JORDAN TIMES, Aug. 20, 2007; Hani Hazaimah, *Media watchdog provides legal services for journalists*, JORDAN TIMES, June 26, 2009; e-mail from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Sept. 12, 2010) (on file with author).

⁵⁴ Linda Hindi, *Legal Aid Unit Study Focuses on Lawsuits Against Journalists*, JORDAN TIMES, Aug. 20, 2007.

⁵⁵ *Id.*

⁵⁶ THE NATIONAL CENTRE FOR HUMAN RIGHTS, STATE OF HUMAN RIGHTS IN THE HASHEMITE KINGDOM OF JORDAN (2008), para. 15 (2009), available at: http://www.nchr.org.jo/uploads/NCHR-2008_Report-Final-Eng.doc; THE NATIONAL CENTRE FOR HUMAN RIGHTS, STATUS REPORT OF HUMAN RIGHTS; THE HASHEMITE KINGDOM OF JORDAN; 2006, 21 (2007), available at: <http://www.nchr.org.jo/uploads/HRstatus2006-Eng1.pdf>.

⁵⁷ *Id.*

⁵⁸ THE NATIONAL CENTRE FOR HUMAN RIGHTS, STATE OF HUMAN RIGHTS IN THE HASHEMITE KINGDOM OF JORDAN (2008), fn. 20 (2009), available at: http://www.nchr.org.jo/uploads/NCHR-2008_Report-Final-Eng.doc.

possibility for international law firms to engage in *pro bono* work in Jordan is to provide advice regarding foreign or international laws to nonprofit organizations in Jordan. International law firms may also be able to partner with Jordanian NGOs to provide needy individuals with legal assistance on matters involving foreign laws. For instance, MIZAN has received requests for assistance from Jordanian women who are involved in marital or custody disputes in the United States.⁵⁹ U.S. law firms may work with MIZAN to assist such individuals.

III. Conclusion

Although the provision of *pro bono* legal services is not common in Jordan, there are several organizations in Jordan that provide free legal services to disadvantaged groups, and there are a number of opportunities for Jordanian lawyers to become involved in *pro bono* legal work in Jordan. In particular, at least two NGOs have organized networks of lawyers who provide free legal services on a *pro bono* basis, or for a nominal fee, which Jordanian lawyers could join. While restrictions on the practice of law by foreign-qualified lawyers in Jordan limit the opportunity for international law firms to engage in *pro bono* legal work in Jordan, there may be opportunities for international law firms to assist nonprofit organizations and needy individuals on matters involving foreign laws or international law.

September 2010
Pro Bono Practices and Opportunities in Jordan

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.

⁵⁹ Interview with Eva Abu Halaweh, Executive Director, MIZAN – Law Group for Human Rights (Jan. 16, 2008).

PRO BONO PRACTICES AND OPPORTUNITIES IN KENYA

Kenya faces significant challenges in implementing a legal aid system. The Kenyan government only provides legal aid to individuals accused of capital crimes, which leaves many Kenyans without legal representation. The majority of legal aid services are provided by non-governmental organizations (“NGOs”), which are located mainly in large cities and lack the resources and capacity to represent the large number of Kenyans in need of legal aid. Without representation, most Kenyans are unable to maneuver the legal system because of complex legal procedures, lack of education regarding the court system, financial impediments, or other time and resource constraints.

I. Legal Services and the Legal Profession in Kenya

Kenya’s legal system is a combination of statutory law, Kenyan and English common law, tribal law, and Islamic law.¹ Kenya has both formal courts and customary village courts. The formal courts consist of the Court of Appeal, the High Court, and several lower magistrate’s courts. In addition to the formal courts, which are mainly at the regional and national levels, Kenya has several informal customary courts at the local level. The customary courts are presided over by local chiefs and a council of elders, and have jurisdiction over limited types of criminal cases, but often exceed their powers.²

A. Legal Aid

Governmental Legal Aid: The Kenyan government only provides free legal services to individuals accused of capital crimes.³ Kenya’s Constitution guarantees the rights of a person who has been charged with a criminal offense, but limits legal aid to individuals charged with capital crimes.⁴ As a result, individuals accused of noncapital crimes, or who want to bring a civil claim, must represent themselves, hire a lawyer, or hope to receive the help of a local NGO. A new draft constitution,⁵ which would have enlarged the government’s role in providing legal aid, was recently rejected.⁵

In noncapital cases, government-funded legal aid is virtually nonexistent because poorer segments of the population are unable to afford legal representation. In addition to the lack of aid, the government withholds certain government-held evidence from defense lawyers prior to trial.⁶

¹ Crime and Society: A Comparative Criminology Tour of the World, *available at*: <http://www-rohan.sdsu.edu/faculty/rwinslow/africa/kenya.html>.

² Crime and Society: A Comparative Criminology Tour of the World, *available at*: <http://www-rohan.sdsu.edu/faculty/rwinslow/africa/kenya.html>.

³ U.S. Department of State, Country Reports on Human Rights Practices, Kenya (2006) at 7, *available at*: <http://www.state.gov/g/drl/rls/hrrpt/2006/78740.htm>.

⁴ Kenyan Const. ss. 77(2)(d); 77(14); *see also* Ombati, Omwanza, “Access to Legal Information: Still A Pipe Dream for Kenya?” University of Technology, Sydney Law Review (2004), *available at*: <http://www.austlii.edu.au/au/journals/UTSLRev/2004/7.html>.

⁵ Draft Bill, the Constitution of the Republic of Kenya ss. 205(1)(f); 210(4)(s. 205(1)(f) emphasizes that the function of the Judicial Service Commission is to advise the Government on how to improve access to legal aid, and s. 210(4) would have ensured that the Public Defender provided legal representation to people unable to afford it.

⁶ U.S. Department of State, Country Reports on Human Rights Practices, Kenya (2006), at 7, *available at*: <http://www.state.gov/g/drl/rls/hrrpt/2006/78740.htm>.

The Government may declare that certain evidence is protected by the State Security Secrets Law, and local officials often classify certain documents to protect corrupt government officials.

Role of NGOs: NGOs, particularly the Federation of Women Lawyers, provide legal services. However, many NGOs have resource and funding constraints and mainly operate in major cities, leaving many rural citizens with no legal recourse.

Self-representation: Many Kenyans are unable to represent themselves because of a lack of resources or a lack of understanding of the court system and its complex court procedures. High court filing and case fees prevent most citizens from access to the legal system. In order to argue a case in front of a judge, a person must pay \$28 (2,040 shillings), which is too expensive for most citizens.⁷ Many poorer individuals remain unaware of their rights, lack knowledge of the court system, or experience frustrations in accessing it. Many people have to attend court 20 to 30 times before their complaint is heard, and lack the time and resources travel to court.⁸ On average, civil matters take between two and six years, with frequent delays in court proceedings.⁹ Delays are often caused by complex court procedures or technicalities, thus preventing individuals from adequately representing themselves in court.¹⁰

Kenyan Lawyers and Courts: Many Kenyans also lack access to lawyers and courts. Kenya has a shortage of lawyers, with only 5,000 lawyers for 33 million people.¹¹ Courts also remain inaccessible to many rural villagers. The majority of Kenya's 71 districts only have one magistrate in the entire district, and the northeastern province does not have a visiting judge.¹²

II. *Pro Bono Opportunities in Kenya*

The majority of legal aid in Kenya is provided by NGOs, such as the Federation of Women Lawyers.¹³ Many of these NGOs, however, lack the resources and capacity to provide legal aid on a widespread scale.¹⁴ To help alleviate this resource concern, the Open Society

⁷ U.S. Department of State, Country Reports on Human Rights Practices, Kenya (2006) at 7, *available at*: <http://www.state.gov/g/drl/rls/hrrpt/2006/78740.htm>.

⁸ Legal Programme Developed For Kenya's HIV patients (April 19, 2007), *available at*: <http://www.soschildrensvillages.org.uk/charity-news/legal-programme-developed-for-kenya-s-hiv-patients.htm>; *see also* Ensuring Justice for Vulnerable Communities in Kenya: A Review of HIV and AIDS-related Legal Services, Open Society Initiative for East Africa, at 8, *available at*: www.soros.org/initiatives/osiea/articles_publications/publications/kenya_20070416/kenya_20070416.pdf.

⁹ Ensuring Justice for Vulnerable Communities in Kenya: A Review of HIV and AIDS-related Legal Services, Open Society Initiative for East Africa, at 8, *available at*: www.soros.org/initiatives/osiea/articles_publications/publications/kenya_20070416/kenya_20070416.pdf.

¹⁰ Ensuring Justice for Vulnerable Communities in Kenya: A Review of HIV and AIDS-related Legal Services, Open Society Initiative for East Africa, at 8, *available at*: www.soros.org/initiatives/osiea/articles_publications/publications/kenya_20070416/kenya_20070416.pdf.

¹¹ Legal Programme Developed For Kenya's HIV patients (April 19, 2007), *available at*: <http://www.soschildrensvillages.org.uk/charity-news/legal-programme-developed-for-kenya-s-hiv-patients.htm>.

¹² Ensuring Justice for Vulnerable Communities in Kenya: A Review of HIV and AIDS-related Legal Services, Open Society Initiative for East Africa, *available at*: www.soros.org/initiatives/osiea/articles_publications/publications/kenya_20070416/kenya_20070416.pdf.

¹³ Federation of Women Lawyers Kenya website, <http://www.fidakenya.org>.

¹⁴ Ensuring Justice for Vulnerable Communities in Kenya: A Review of HIV and AIDS-related Legal Services, Open Society Initiative for East Africa, at 8, *available at*: www.soros.org/initiatives/osiea/articles_publications/publications/kenya_20070416/kenya_20070416.pdf.

Initiative for East Africa recently donated more than 70 million Kenya shillings (approximately \$1 million) to provide legal aid to HIV patients.

The Open Society Initiative stresses the importance of establishing a legal aid system in Kenya. Through its initiative, the Open Society Initiative has emphasized that the establishment of a legal aid system requires several steps, including education, governmental and legal capacity-building, and supporting partnerships between local legal services and national campaigns against governmental abuses.¹⁵

In addition to NGOs and international organizations, local law school clinics also provide an avenue to help provide legal aid to those who need it. Kenyan universities have established legal aid clinics that allow students to advocate in court. Fourth year clinic students at Moi University, for example, plead cases to the High Court with the permission of the Attorney General.¹⁶

III. *Conclusion*

Kenya currently lacks a substantial legal aid system. The Kenyan government only provides legal aid attorneys to individuals accused of capital crimes. NGOs attempt to fill the need for legal representation, but often face resource and capacity constraints. Individuals without adequate legal representation often face resource constraints, a lack of knowledge of the system, and extensive delays in the process. To help provide legal aid, international organizations, such as the Open Society Initiative, have donated funds. However, without a greater governmental commitment for legal aid or more widespread legal aid initiatives, many Kenyans will continue to lack access to justice.

November 2008

Pro Bono Practices and Opportunities in Kenya

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.

¹⁵ Ensuring Justice for Vulnerable Communities in Kenya: A Review of HIV and AIDS-related Legal Services, Open Society Initiative for East Africa, at 8, *available at*: www.soros.org/initiatives/osiea/articles_publications/publications/kenya_20070416/kenya_20070416.pdf.

¹⁶ Combining Learning and Legal Aid: CLE in Africa, Open Society Justice Initiative, *available at*: <http://www.justiceinitiative.org/activities/lcd/cle/durban2003>.

PRO BONO PRACTICES AND OPPORTUNITIES IN LIECHTENSTEIN

This chapter discusses the law governing the provision of free legal services, the practice and culture of *pro bono*, as well as *pro bono* opportunities for international law firms in Liechtenstein.

I. *Legal Services and the Legal Profession in Liechtenstein*

Practicing as a lawyer in Liechtenstein generally requires admission to the Liechtenstein bar association. However, there are exceptions for foreign lawyers. For instance, lawyers admitted in a country which is part of the European Economic Area are generally privileged; they can offer legal services in Liechtenstein upon notifying the mandate to the bar association. This notification has to contain information on the matter, the client, as well as documents concerning the qualification and admission of the lawyer from his country of origin.

In Liechtenstein, the compensation of lawyers is freely negotiable. However, contingency fees are prohibited. Generally, compensation is based on a statutory fee schedule for legal services and a set of professional rules governing the fees that lawyers may charge. Within this system, a lawyer's fee is based on the "amount in dispute" (*Streitwert*) — *e.g.*, the amount of the damages claim or the consideration in a transaction — and the length of the procedure.

Similar to the German system, separate "fees" are earned in various stages of the proceedings, *e.g.*, the drafting of a contract is compensated with 1% of the value of its subject matter. Within litigation, separate fees are paid for consultation, drafting, and filing a complaint, trial, settlement or adjudication, appeals, and so forth.

These statutory fees apply for the reimbursement of costs from the opponent as well. Like most continental European states, Liechtenstein follows the "loser-pays" system, according to which the losing party of a litigation has to bear the costs of the opponent, as well as the court fees. These costs are calculated according to the statutory fees.

Within the context of *pro bono* opportunities and benefits, it is also noteworthy that regular forms of advertisement for legal services are strongly restricted in Liechtenstein. According to the Lawyers Professional Code, lawyers may only "inform" potential clients about the services they offer. The information provided must be correct, objective, and within the interest of the potential client.

A. Legal Aid

Although, in principle, fees are freely negotiable, in reality, they are commonly based on the statutory fee schedule. Therefore, access to legal services by those who are unable to fully afford them is ensured by a system of legal aid. General legal advice can be obtained by governmental and nongovernmental organizations. Within the course of litigation, legal aid is granted by a court-administered system.

All natural persons are eligible for legal aid, which is granted based on two requirements: (i) the party has to prove its indigence, *i.e.*, the applicant must disclose his income and assets to determine whether to grant full or partial aid, or a deferment of fees (payment in installments); and (ii) the claim or defense upheld must not be obviously willful or hopeless, the standard for this being whether a reasonable person would actually enforce the claim or defense at hand.

If legal aid is granted for all legal costs, the state will waive the court fees and pay the scheduled statutory fees to the attorney chosen by the President of the Liechtenstein Bar Association. Depending on the applicant's financial situation, the state may also decide to grant legal aid only for part of the costs or part of the procedure (*Teilverfahrenshilfe*). In such cases, the decision sets out the extent of the aid, and may further allow additional time for payment or allow payment by installments. Due to the "loser-pays" system, the state will be reimbursed if the applicant prevails in the litigation, as the other party will have to pay all of the applicant's attorneys' and court fees. If the applicant loses, however, he will have to bear the costs of his opponent (and his counsel). Such costs are not covered by the Liechtenstein legal aid system.

II. *Pro Bono Opportunities in Liechtenstein*

Although Liechtenstein is the fourth smallest country in Europe (around 35,000 inhabitants), it may offer interesting *pro bono* opportunities. Liechtenstein is one of the few countries with more registered companies than inhabitants. It has the highest GDP per inhabitant worldwide (roughly \$120,000 in 2007). In addition, the financial sector is highly developed and comparably large-scale. Fifteen financial institutions are located in Liechtenstein, with balance sheets totaling approximately 55 billion Swiss francs (roughly \$57 billion), and client assets of approximately 125 billion Swiss francs (roughly \$130 billion). Due to some very advantageous characteristics in the law on foundations, and the fact that foundations are generally only subject to a capital duty of 1‰ of the newly contributed/invested capital per year, Liechtenstein is the registered office of numerous foundations, holding in trust great amounts of assets. Another particularity of Liechtenstein law requires bankers to maintain a high level of secrecy concerning their clients' details and assets. Therefore many high-net-worth individuals manage their fortunes in Liechtenstein. In recent years it has also become apparent that Liechtenstein is a good place to issue funds. Finally, the country is famous for its well-established art collections and outstanding exhibitions.

III. *Conclusion*

Although Latham & Watkins LLP has no office in Liechtenstein, cross-border offering of legal services would be possible with a manageable administrative effort. Moreover, the legal framework, especially the fact that lawyers' fees are freely negotiable, allows *pro bono* representations within all contexts. However, an indirect restriction arises due to the "loserpays" system, because the client has to bear the costs of the opponent if he loses in litigation.

That being said, Liechtenstein is an extraordinarily wealthy country, so there may not be an exceeding demand for *pro bono* work as far as indigent natural persons are concerned. It should also be taken into consideration that the well-established system of legal aid minimizes the need for such efforts. In addition, it creates competition between lawyers, even as far as indigent clients are concerned

However, *pro bono* activities could still be worth pursuing, considering the fact that regular forms of advertisement are strongly limited in Liechtenstein, and despite its small size, the country presents a market that may especially interest an international law firm. *Pro bono* work in the fine arts field may provide the opportunity to catch the attention of high-net-worth individuals, which could generate business with them, as they could afford the legal services of an international law firm. The same can be said about corporations owned by such persons and

registered in Liechtenstein. The other interesting market is the financial sector. *Pro bono* work in this environment may grant access to the numerous Liechtenstein-seated financial institutions and private equity funds issuing from Liechtenstein.

September 2010
Pro Bono Practices and Opportunities in Lichtenstein

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 to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.

PRO BONO PRACTICES AND OPPORTUNITIES IN LUXEMBOURG

Luxembourg enjoys solid economic growth, low inflation, a low unemployment rate, and an unusually high standard of living. Its GDP per capita ranks first in the world. Considering these statistics, and that there are few indigent people among its 502,066 inhabitants,¹ it seems unnecessary for law firms based in Luxembourg to do any local *pro bono* work.

Moreover, Luxembourg has an expansive and well-implemented legal aid system. The system is managed nationally by the *Conseil de l'Ordre* of the Luxembourg Bar. This efficient state-run legal aid system reduces the need for *pro bono* work in Luxembourg.

Finally, the Luxembourg Bar Association and its corresponding internal regulations strictly limit advertising in the legal profession.² As such, law firms in Luxembourg are largely unable to advertise their involvement in, or offering of, any type of *pro bono* work. These limitations block any real possibility for exploiting the marketing potential of *pro bono* work. Taken together, it appears there is little need, or incentive, for *pro bono* legal services in Luxembourg.

I. Legal Services and the Legal Profession in Luxembourg

As the smallest independent state in the European Union (“EU”), the Luxembourg Bar does not count more than 1,800 members.³

Luxembourg City is home to Luxembourg’s most important local courts: the *Cour de Cassation* and the *Cour d’Appel*. Both courts are part of the *Cour Supérieure de Justice* of Luxembourg. The capital city also houses the Court of Justice of the European Free Trade Association and the key EU judicial organ of the Court of Justice of the European Union, which comprises (i) the Court of Justice; (ii) the General Court; and (iii) the Civil Service Tribunal.

The Luxembourg legal market is buoyant, and law firms are growing – many through the hiring of foreign lawyers from France, Belgium, and Germany. Since 2007, foreign lawyers are no longer required to pass oral tests in Luxembourg’s three national languages: French, German, and Luxembourgish.⁴ Indeed, in 2006, the Court of Justice ruled that the Bar’s requirement that attorneys be able to speak Luxembourgish was discriminatory, and that the requirement is not a valid ground for refusing admission to the Bar.⁵

A. Legal Aid

It is the mission of the *Conseil de l'Ordre* to provide legal aid to persons who are unable to find an attorney for their defense or to those who cannot afford to pay the costs of their defense.⁶ A person’s ability to pay the costs of their defense is determined by assessing his or her total gross

¹ Population statistics as of January 2010. See www.statistiques.publiques.lu.

² Clause 6.2 (Publicity) of the “*Règlement Intérieur de l’Ordre des Avocats du Barreau de Luxembourg*”, effective on 12 September 2007.

³ Members of the Luxembourg Bar are divided between the Attorneys-at-law, Attorneys and lawyers practising under their home-title professional title.

⁴ Law of 21 June 2007.

⁵ Court of Justice of 19 September 2006, Commission/*Grand-Duché de Luxembourg*, C-193/05.

⁶ Clause 37 (1) of the Law of 10 August 1991 on the attorney profession, as subsequently modified.

income and capital and the gross income and capital of any other member of the household.⁷ Unlike other European countries offering legal aid, the Luxembourg rules do not impose a strict monetary threshold above which a person cannot apply for legal aid.

Persons with insufficient means can obtain legal aid provided they are either (i) Luxembourg nationals; (ii) foreigners authorized to take up residence in Luxembourg; (iii) nationals of a Member State of the EU; (iv) foreigners placed on the same footing as Luxembourg nationals for legal aid purposes by virtue of an international agreement; or (v) any other foreigner in a proceeding relating to his or her rights of asylum, entry, residence, establishment, and/or expatriation from Luxembourg.⁸ In June 2009, the benefit of legal aid has been extended to minors, irrespective of the financial resources of their parents or of the people they live with. In those cases, the State retains the right to a refund of the expenses from parents who have sufficient means.

Legal aid in Luxembourg is, therefore, available to a large population because the geographic and financial requirements to obtain such aid are very wide. The scope of work covered by legal aid is also very diverse. Legal aid can be granted to both plaintiffs and defendants, in contentious or non-contentious cases, whether handled in or out of court. Moreover, legal aid is available for all cases brought before ordinary or administrative courts. Legal aid can be granted to those who are seeking declaratory and precautionary court orders and to those involved in enforcement actions.⁹

Still, legal aid is not available in all situations: it is not available to owners or drivers of motor vehicles for disputes resulting from the use of such motor vehicles. Likewise, legal aid is not available to traders, manufacturers, artisans, or professional persons involved in disputes relating to their commercial or professional activity except in cases of “proved rigour,” or for persons involved in disputes arising from speculative activity.¹⁰

This legal aid system is more user-friendly than most comparable systems set up in other member states of the EU, since, under this system, the *Bâtonnier* (Chairman of the Bar) in the applicant’s district of residence automatically appoints the lawyer chosen by the applicant. Where the applicant has not chosen a lawyer, or the *Bâtonnier* considers the applicant’s choice inappropriate, the *Bâtonnier* appoints the lawyer of his choice.¹¹ Once appointed, legal counsel cannot refuse this appointment, except for reasons of impediment or conflicting interests.¹² While this system of “forced” volunteer work may shock outside observers, it is widely accepted by local lawyers who have been trained to work on a “charitable basis” from the outset of their legal career.

⁷ Clause 37-1 (1) of the Law of 10 August 1991.

⁸ *Id.*

⁹ Clause 37-1 (2) of the Law of 10 August 1991.

¹⁰ *Id.*

¹¹ Clause 37-1 (5) of the Law of 10 August 1991, Clause 2.6 (*Commissions et désignations d’office*) *règlement intérieur de l’ordre des avocats du Barreau du Luxembourg*.

¹² *Id.*

B. Training Requirements in Luxembourg and “Commissions d’Office”

The Luxembourg educational system does not offer a full legal education, and its legal studies system is adapted to neighbor countries’ university programs. After a two-year “first cycle” offered by Luxembourg’s *Center Universitaire*, Luxembourg’s law students spend up to four years in Belgium or France completing their legal studies.

Through their experiences in civil law countries such as Belgium or France, nations that strongly emphasize the role of lawyers as representatives of “*those without resources in criminal and civil proceedings as part of their role as the guardians of civil rights and liberties.*”¹³ young Luxembourgish law students are trained to serve indigent clients.

Most Luxembourg law students return to Luxembourg at the end of their legal studies to seek admittance to the Luxembourg Bar. It is at this point that their practical involvement in charitable work culminates, since the Bar requires that each applicant complete a yearly quota of “*commissions d’office*” during his or her two-year traineeship.¹⁴ “*Commissions d’office*” are contentious cases where lawyers are paid a statutory minimum fee by the State. The system ensures that legal assistance is provided to indigents in need of representation. Most cases concern political asylum, divorce, or drug-related crime. As a result of the bar’s requirement, a large part of individual *pro bono* work is done by trainee lawyers seeking to fulfill the bar requirements.

Other mandatory requirements for trainee lawyers in Luxembourg include: providing free legal advice on behalf of the Luxembourg Bar, 24-hour legal advice in police stations, and “*cabinet d’instruction*” in the Luxembourgish courts.

As seen above, the Luxembourg state-managed legal aid system is unique as far as the extent of its generosity is concerned, and mainly populated by dynamic and highly skilled lawyers, freshly out of law school, and hence trying to gain as much contentious and noncontentious experience as possible by offering legal services to those most in need.

The extensive legal aid system raises the question as to whether there is a role to be played by *pro bono* work on a private basis in Luxembourg.

II. ***Pro Bono Opportunities in Luxembourg***

A handful of large law firms located in Luxembourg mention *pro bono* initiatives on their external websites. For example, some firms are involved with, and provide legal counsel for, Luxembourgish nonprofit organizations, such as the Luxembourg Association against Multiple Sclerosis.

For instance, Linklaters has engaged in a *pro bono* project providing *pro bono* legal assistance for the creation of microfinance accreditation (“LuxFLAG”) by the Luxembourg Fund Labeling Agency in July 2006. The accreditation scheme is a collaborative initiative of the public, private, and NGO sector in Luxembourg. The Agency aims to promote the raising of capital for microfinance by awarding a recognizable label to eligible Microfinance Investment Vehicles (MIVs). Its objective is to reassure investors that the MIV actually invests, directly or

¹³ See Pro bono Practices and Opportunities in France, Introduction.

¹⁴ Clause 2.9 (*Obligations du stage judiciaire*) *Reglement interieur de l’ordre des avocats du Barreau de Luxembourg*.

indirectly, in the microfinance sector. Elvinger, Hoss & Prussen is also regularly involved in a range of *pro bono* work, providing free legal services to nonprofit organizations and individuals in need. In the emerging sector of microfinance – where Luxembourg has developed into a premier actor – Elvinger, Hoss & Prussen is regularly rendering services, either on a purely *pro bono* basis or at significantly reduced rates.

Although the legal aid system in Luxembourg is extensive, there is still room for *pro bono* work. Given that opportunity, specialized lawyers (notably in the banking, corporate finance, litigation, and capital markets sectors) working in international law firms have adopted creative and innovative approaches to *pro bono* work. They have used their top-end technical skills and expertise to propose cost-savings solutions and/or problem-solving approaches to help indigent people, in Luxembourg or elsewhere (through NGOs, charities, etc). This appears to be a departure from most EU countries, where the legal aid systems occupy the entire market for free legal services.

III. *Prohibition Against Advertising*

Pursuant to Clause 6 of the Luxembourg Bar’s internal regulations, canvassing is forbidden, and advertisements are regulated. Specifically, advertisements are limited to objective facts, must be done with “dignity, delicacy and probity,” must be sincere, and must comply with a lawyer’s professional obligation of independence and secrecy. Moreover, advertisements may not identify the clients represented, or the matters being handled, by the lawyer or law firm. All advertisements are susceptible to review by the *Conseil de l’Ordre* or the *Bâtonnier*, the regulatory authorities of the Luxembourg Bar.

Since it is forbidden, in any personal advertisement, to identify either the clients of the lawyer or of his or her law firm, or any matter handled by such lawyer, it may be difficult to reconcile the severity of these advertising rules with the well-deserved need to publicize any *pro bono* work undergone by a law firm based in Luxembourg. As such, it appears difficult for Luxembourg law firms to enhance their professional reputations or create goodwill by conducting *pro bono* work.

Still, the Luxembourg Bar seems to have partially understood this inherent need for recognition. The Bar allows lawyers to disclose information about exceptional matters or clients, in order to answer an information request emanating from a professional magazine or publication. However, the lawyer or firm must have obtained prior informed consent from the necessary clients in order to do so.

IV. *Conclusion*

Given Luxembourg’s exceptional and extensive state legal aid system, Luxembourg does not appear to be a country in urgent need of *pro bono* legal services. However, there is a niche for sophisticated *pro bono* work, done by highly specialized and technically skilled commercial,

banking and litigation lawyers based in Luxembourg, who can provide innovative and cost-efficient solutions, locally or internationally.

September 2010
Pro Bono Practices and Opportunities in Luxembourg

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.

PRO BONO PRACTICES AND OPPORTUNITIES IN MEXICO

The Mexican legal system has several structures in place to guarantee that people of limited means have equal and free access to justice. Historically, the infrastructure for free legal services revolved around criminal defense, family rights, and land tenancy. In the early 1990's, faced with an economic downturn in the country, leaders, academics, lawyers, and students began fostering and promoting a *pro bono* culture, focusing on bringing equal access to justice to a more widespread group.

However, the dissemination of U.S.-style *pro bono* culture has not yet permeated the entire gamut of the legal profession. The push for a further-reaching *pro bono* culture among universities, non-profit organizations, and law firms exists, but realities of an underdeveloped economy pose a day-to-day challenge for its development. Although the *pro bono* culture has achieved significant growth in the past fifteen years, it is a slowly emerging movement that has mainly concentrated in the larger cities of the country.

I. *The Legal Profession and Legal Aid in Mexico*

Mexico is a federal republic composed of 31 states, with an elected president and bicameral legislature. The Mexican federal court system consists of the Supreme Court, 91 circuit courts of appeal, 49 courts of appeal, and 185 district courts. State judicial systems consist of trial-level courts and appeals courts with jurisdiction over family, criminal, civil, and administrative matters.¹

The Mexican Constitution in Article 17 provides Mexican citizens as well as foreigners in Mexican territory, who cannot afford legal defense, a right to free legal defense in certain situations.² Court costs in Mexico are absorbed by the government, so access to justice is free. However, in order to appear before a judge, a party must have engaged the services of a lawyer. Unless, as detailed below, the subject matter allows for a public defender, each person is responsible for paying his or her own lawyers. This is one of the principal barriers to justice in Mexico. Likewise, corruption and inefficiency pose problems in the judiciary. The conviction rate hovers around 1 to 2 percent, and a recent poll found that 68 percent of respondents had little or no trust in the judiciary.³

In 1998, the Federal Public Defense Law was enacted,⁴ creating a mechanism through which criminal defendants and underprivileged individuals are appointed a public defender (*defensor público*) to assist in their criminal or, in a few cases, civil court case.⁵ People of limited resources with legal needs who do not fall within the coverage offered by this law, including custody disputes, discrimination suits, or employment/disability pension issues, are forced to seek free legal assistance through other channels.

¹ U.S. Department of State, 2009 Human Rights Report: Mexico at 7, <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136119.htm>.

² See Article 17 of the Mexican Political Constitution.

³ U.S. Department of State, 2009 Human Rights Report: Mexico at 7, <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136119.htm>.

⁴ *Ley Federal de Defensoría Pública*, published on May 28, 1998.

⁵ See Articles 1 to 4 of the *Ley Federal de Defensoría Pública*.

The most well-known sources of free legal services include the *Asociación de Servicios Legales, A.C.* (“ASL”) handled through the Mexican Bar Association, and the independent legal aid programs in two of the country’s top law schools, the *Universidad Panamericana* and the *Instituto Tecnológico Autónomo de México*. The ASL enlists the support of lawyers in some of the country’s most prominent law firms. The law school programs are staffed with law students and law professors, all providing their services free of charge. Nonetheless, the *pro bono* culture is not yet fully ingrained in the legal community.

A. Free Legal Assistance and the Mexican Bar Association

In Mexico, the legal profession is regulated by the Federal Government through the Federal Professions Law.⁶ Thus, affiliation to the Mexican Bar Association,⁷ or any other professional bar association, is not mandatory. Nonetheless, due to its well-established reputation and prominent members, the Mexican Bar Association sets out non-binding ethical regulations to discipline legal professionals. Among these regulations is the obligation of each member to promote and provide *pro bono* legal assistance. The nonbinding nature of these regulations has made its compliance sporadic at best.

Faced with this problem, the Mexican Bar Association created the ASL in 2000 to provide a channel for its members to meet their *pro bono* commitment. This nonprofit entity is run by lawyers and support staff retained and funded by the Mexican Bar Association. The purpose of the ASL is to act as a clearinghouse for *pro bono* cases. This includes identifying the most needy groups, managing incoming caseload, distributing the caseload to the appropriate interested member, and following up with both the clients and the lawyers as the cases progress.

Legal aid through the ASL is only available to groups or communities that lack equal access to justice. The ASL identifies these groups and does field research on the NGOs that service them. In order to qualify for assistance from the ASL, the NGOs need to provide evidence that their target group or members fall under one of the following categories: (i) extreme poverty or illiteracy; (ii) physical or mental disability; or (iii) minority or discrimination. For example, the ASL supports groups for the blind or people with HIV/AIDS. Once the NGO has cleared the first filter, they have to apply to the ASL Board of Directors for approval. Once approved, they begin working together, based on verbal agreements; nothing is ever put in writing. Some of the types of cases that the ASL has recently referred to its members include: (i) family law issues, including violence against women; (ii) issues involving minor children; (iii) employment actions; (iv) mental and physical discrimination claims; and (iv) wills for needy people. Both the services of the ASL and the lawyer who takes the case are provided on a *pro bono* basis.

B. The Role of Universities

In addition to academic requirements, in order to obtain a law degree from an accredited Mexican University, the Federal Professions Law requires that law students complete 180 hours of social service.⁸ Most universities provide their students with a list of authorized governmental agencies, nongovernmental organizations (“NGOs”), and academic institutions where students may complete their requirement.

⁶ *Ley Reglamentaria del Artículo 50, Constitucional, Relativo al Ejercicio de las Profesiones en el Distrito Federal*, first published May 26, 1945; most recently amended on December 22, 1993.

⁷ *Barra Mexicana Colegio de Abogados, A.C.*, founded in 1922.

⁸ See Articles 52 to 60 Federal Professions Law.

Private Mexican universities began developing clinical education programs, as well as legal aid justice centers, in the early 1990's. Their primary objective is to make the student body and faculty aware of the growing need for *pro bono* legal services. They see it also as an opportunity to train law students prior to their entrance into law firms. With the growing interest of the student bodies, alumni, and professors of the universities, what began as clinical education programs have become full-time *pro bono* legal aid centers.

The first law school to set up a *pro bono* center was the *Universidad Panamericana*, School of Law ("UP"). Its *Bufete Jurídico Gratuito Social, A.C.* was founded in 1992. It is staffed primarily by law students who chose the clinic to meet their social service requirement, and law professors who are qualified lawyers. They take on cases at any time in the litigation process, from trial court to constitutional appeals. They litigate cases before almost all the courts, including civil court, family court, commercial court, real estate court and criminal court. The decision to take on a case depends on several factors, including the social-economic situation of the individual, the jurisdiction of the case, the viability of the claim, and the ethical repercussions. UP recently opened a new clinic at its Bonaterra campus, the Centro de Acceso a la Justicia.

The second school to follow the trend was the *Instituto Tecnológico Autónomo de México*, School of Law ("ITAM"). Its *Centro de Acceso a la Justicia* was founded in 1994. It is staffed primarily by law students, professors, and honorary members (practicing attorneys who wish to join the initiative). They provide counseling and legal support in many fields, including domestic relations actions (divorce, custody, child support), adoption, civil contracts, intellectual property, property rights, and wills and estates.

The recent trend of combining legal education with hands-on assistance that Mexican Universities have taken exposes law students and select lawyers to the realities of the country. In doing so, the universities are closing the gap between the traditional legal services model and a modern, more community-aware *pro bono* practice.

II. *Pro Bono in Mexico*

A. The Growth of the Pro bono Movement

In addition to helping indigent people find legal aid, the Law Schools and the ASL are actively promoting *pro bono* awareness amongst Mexico's leading lawyers and law firms. With the support of U.S. organizations such as Appleseed⁹ and the Cyrus R. Vance Center for International Justice,¹⁰ they are encouraging lawyers to individually commit to *pro bono* service.

Project Appleseed is a nonprofit network of public interest justice centers throughout the U.S. and Mexico. In Mexico, they work through *Fundación Appleseed México, A.C.* ("FAM"),¹¹ whose purpose is to offer free legal services to those sectors and social groups that represent a collective interest, without any ideological or political affiliation, with the sole purpose of achieving the greater good.¹² FAM has created the Red Pro Bono, consisting of a network of affiliated law firms, lawyers, and legal clinics who assist as needed.¹³ Additionally, FAM has

⁹ See <http://www.appleseeds.net> for more information.

¹⁰ See <http://www.nycbar.org/VanceCenter/Projects/PBDA.htm> for more information.

¹¹ See <http://mexico.appleseednetwork.org/> for more information.

¹² *Id.*

¹³ See <http://mexico.appleseednetwork.org/Proyectos/tabid/304/Default.aspx> for more information.

brought on board leaders in the legal and business community as members of its board of directors.

The Cyrus R. Vance Center for International Justice of the New York City Bar helps promote and develop international access to justice. Their most notable project is the Pro Bono Declaration for the Americas, which is intended as both a statement of principle and a plan of action for expanding the commitment of lawyers to provide legal services to the poor and underprivileged in the Americas.¹⁴ Mexico was one of the countries involved in the Declaration, through some of its most reputable lawyers, law firms, and law schools. Those who have already signed the Declaration are committed to bringing more lawyers on board.

B. Pro Bono Opportunities in Mexico

The three long-standing reputable organizations that already have well-established *pro bono* practices in Mexico are the clinics at UP and ITAM, and the ASL. As detailed above, all three groups have established infrastructures, run much like legal aid centers in the United States, and welcome the assistance of lawyers, law firms, or companies that are trying to get involved in *pro bono* activities.

The program,s backed by FAM and the Cyrus Vance Center, are in the early stages of development, and will likely become more well-known in the years to come as more lawyers and law firms participate.

III. *Conclusion*

Mexico has been increasingly exposed to the *pro bono* practices of the world. As the practice of law becomes more international, both the private and public sectors recognize the importance of embracing a more proactive *pro bono* culture among its lawyers and law firms. While not ingrained in the law firm culture yet, the exposure of students through the law school clinics has created a wave of young professionals who are aware of the current state of *pro bono* infrastructure, and are pushing for new structures in their firms. The signing of the Pro Bono Declaration of the Americas by sole practitioners, members of the judiciary, and important law firms is a good indicator that this movement is growing.

International awareness has begun to illuminate the current deficiencies and future possibilities. While the commitment to *pro bono* is certainly growing in Mexico, it remains concentrated in its most affluent cities, Monterrey and Mexico City. This leaves uncharted territory for the movement to continue to expand in a country where many need an opportunity for access to justice.

September 2010
Pro Bono Practices and Opportunities in Mexico

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.

¹⁴ See http://www.nycbar.org/VanceCenter/PBDA/PBDA_English.pdf for more information.

PRO BONO PRACTICES AND OPPORTUNITIES IN THE NETHERLANDS

The Netherlands is a small, comparatively wealthy country with approximately sixteen million inhabitants. In 2003, the average household income was € 28,000.¹ The relatively large economy of the Netherlands sustains a welfare state, resulting in few homeless, or otherwise destitute, citizens.² Due to the perceived absence of destitute people in the Netherlands, Dutch commercial law firms generally feel no particular responsibility to provide *pro bono* legal services. The Dutch Constitution provides for a right to access to justice and legal representation,³ and people with limited means seeking legal advice are believed to be well-represented by the system of government-subsidized legal services. Moreover, the Dutch legal aid system's registration requirements, low statutory fees, cumbersome reporting requirements, and the particular legal issues involved have motivated a number of attorneys to specialize in areas of law specifically affecting indigents.⁴ These same factors have also led commercial law firms to discourage associates from providing subsidized legal assistance. Consequently, the Dutch market for legal services is roughly divided between large commercial law firms and smaller law firms providing legal representation to people with limited means. In order to protect their respective profit margins, both large commercial law firms and smaller law firms assisting indigent clients are likely to resist efforts to establish a widespread *pro bono* culture in the Netherlands.

I. *Legal Services and the Legal Profession in the Netherlands*

Dutch civil procedure mandates that all cases with limited financial impact, all landlord-tenant disputes, and all employment-related disputes are within the exclusive subject matter jurisdiction of a one-judge tribunal ("*Kantonrechter*"), where representation by an attorney is not required. In addition, administrative appeals of adverse decisions in public benefits disputes do not require legal representation either. Consequently, persons with limited means are not required to retain counsel for the types of legal disputes they encounter most frequently. To serve their needs, a variety of nonprofit organizations subsidized by national and local governments are available to provide legal services. For instance, there is a national organization of "social advisers" ("*Sociaal Raadslieden*"), with approximately eighty offices across the Netherlands, that assists indigents in completing forms, writing letters, and bringing administrative appeals.⁵

The Dutch government also subsidizes legal assistance provided to indigents by attorneys in private practice.⁶ The subsidy itself consists of a statutory hourly fee that is paid by the

¹ See *Centraal Bureau voor de Statistiek* (The National Statistics Office), available at: <http://www.cbs.nl/en-GB/menu/themas/inkomen-bestedingen/publicaties/artikelen/archief/2005/2005-1774-wm.htm>.

² Largely unnoticed in official figures, however, is the number of illegal immigrants who live in poverty. Between April 2005 and April 2006, an estimated 75,000 to 115,000 illegal immigrants resided in the Netherlands. See *New Figures Concerning Illegal Immigrant Population*, Immigratie- en Naturalisatiedienst (Immigration and Naturalization Service), available at: http://www.ind.nl/en/inbedrijf/actueel/Nieuwe_cijfers_omvang_illegalenpopulatie.asp.

³ Articles 17 and 18.

⁴ See e.g., *De Vereniging voor Sociale Advocatuur Nederland*, available at: <http://www.vsanadvocaten.nl/>.

⁵ See *Sociaal Raadsliedenwerk*, available at: <http://www.sociaalraadslieden.nl>.

⁶ The Netherlands is a signatory of the European Convention on Human Rights. Article 6 of this Convention requires persons involved in civil or criminal disputes to have access to an impartial tribunal with general jurisdiction. See, e.g., *Albert and Le Compte v. Belgium*, 7299/75 Eur. Ct. H.R. (February 10, 1983) and *Schmautzer v. Austria*, 15523/89 Eur. Ct. H.R. (October 23, 1995). The right of access to an impartial tribunal

government to the representing attorney. In order to discourage frivolous litigation, persons with limited means are also required to pay a limited, one-time fee to the attorney. The amount owed varies, depending on the amount of time spent on the case and the client's means.

A. Legal Aid

The Dutch Legal Aid Act ("*Wet op de Rechtsbijstand*") provides that attorneys must be admitted to a specific panel of attorneys providing legal services to indigents before they are eligible to receive statutory representation fees from the government.⁷ In order to be admitted, any attorney in private practice must submit an application to the Legal Aid Board ("*Raad voor Rechtsbijstand*"). The Board consists of five regional offices and one central office. Legal advice, and, if necessary, help by a bar-registered lawyer are made available by two bodies: the so-called Legal Services Counters act as what is commonly known as the "front office" (primary help), whereas private lawyers and mediators provide legal aid in more complicated or time-consuming matters (secondary help). The legal aid system, therefore, is a mixed model, consisting of public first-line and private second-line help. In 2008, the Legal Services Counters provided legal assistance in 645,000 cases over the telephone, in person, and via e-mail and website inquiries.⁸

Attorneys admitted to provide legal services to indigents are required to submit specific applications for legal assistance to the Legal Aid Board before starting new representations.⁹ Applications must indicate the facts and circumstances of the case, the arguments that will be presented, and the client's legal interest in bringing the case.¹⁰ The Dutch Legal Aid Act provides that the Legal Aid Board is required to deny the application if: (a) it lacks any basis in law or fact; (b) the costs of the proceedings are excessive in comparison with the interest at issue; or (c) the case can reasonably be expected to be resolved by the client with or without the assistance of another person or organization not employing attorneys covered by this specific legal regime.¹¹

The statutory criteria for denying legal assistance is further explained in a January 11, 1994 administrative decree regarding criteria for subsidized legal assistance ("*Besluit Rechtsbijstand en Toevoegingscriteria*").¹² Article 3 of this decree directs the Legal Aid Board to deny subsidized legal representation if it is "reasonable to assume that the client's claim or defense will be denied in light of recent case law."¹³ In addition, article 4 of the decree directs the Council to deny subsidized legal representation if the monetary interest at stake is less than twenty percent of the client's monthly income or less than €180.¹⁴ Finally, article 8 of the decree requires

includes the right to legal representation if such representation is required to pursue a claim or appeal. See *Gnahoré v. France*, 40031/98 Eur. Ct. H.R. (September 19, 2000).

⁷ See *Wet op de Rechtsbijstand*, articles 14 and 13 (1) lit. a.

⁸ *Legal Aid in the Netherlands – a broad outline*, available at: <http://www.rvr.org/binaries/about-rvr/default.aspx?opmaakvoorsel-brochure-legal-aid--rvr90265-ve.pdf>.

⁹ See *Wet op de Rechtsbijstand*, articles 24(2) and 28(1)(a).

¹⁰ *Id.* at Article 24(3) and (5).

¹¹ *Id.* at Article 12(2)(a), (b), and (g).

¹² See *Besluit Rechtsbijstand en Toevoegingscriteria*, available at: <http://www.rvr.org/>.

¹³ *Id.* at Article 3(e).

¹⁴ *Id.* at Article 4(2).

the Council to deny subsidized legal assistance to immigrants seeking admission to the Netherlands, unless the immigrant seeks asylum, or is threatened with imminent incarceration.¹⁵

II. *Pro Bono Opportunities in the Netherlands*

Like many other continental European jurisdictions, the Dutch regulatory regime does not generally allow attorneys to provide their services based on a contingency fee. It is believed that remuneration based on the outcome of a case will jeopardize the professional independence of attorneys and encourage frivolous litigation. However, the reluctance to allow attorneys to agree to outcome-dependent remuneration has not resulted in a prohibition on *pro bono* legal services, and attorneys in the Netherlands are free to provide legal services free of charge.¹⁶

Still, large commercial law firms in the Netherlands rarely provide legal services *pro bono*. An important factor discouraging commercial law firms from engaging in *pro bono* activities is the existence of alternative, government-subsidized legal services to persons with limited means. Despite this reluctance, however, it is evident that there is a demand for *pro bono* legal services in the Netherlands. Illegal immigrants seeking admission to the Netherlands, for example, are generally not entitled to subsidized legal assistance with regard to their immigration status. Moreover, although citizenship is not required for subsidized legal assistance in other types of disputes, a number of immigrants, as well as a number of Dutch people, are too poor to pay the required individual fee.

III. *Restrictions on Advertising*

Restrictive advertising regulations further discourage commercial law firms from providing *pro bono* services by limiting their ability to approach potential indigent clients.¹⁷ Aggressive advertising is not perceived as compatible with the nature of the attorney-client relationship, or the social status, or perceived societal role, of attorneys. The Dutch Bar Association (“*Nederlandse Orde van Advocaten*”) has therefore issued a publicity decree (“*Verordening op de Publiciteit*”), restricting both the content and the manner in which lawyers can advertise their services, with the stated aims of protecting the public and promoting a spirit of trust and cooperation among attorneys.¹⁸

The publicity decree indicates that attorneys are not allowed to approach possible clients, other than through the mail,¹⁹ to compare their services to those provided by other specifically identified attorneys,²⁰ to indicate success rates,²¹ or to advertise the nature of prior representations

¹⁵ *Id.* at Article 8(1)(a).

¹⁶ See, e.g., *Nederlandse Orde van Advocaten, Verordening op de praktijkuitoefening (onderdeel Resultaatgerelateerde Beloning)*, available at: <http://www.advocatenorde.nl/nova/novvade.nsf/c70ce544d407054ec12569f1004485c2/45470ba0b0965d39c1256e7e002b2fijdb?OpenDocument> (“*Overigens staat (en stond) het de advocaat te allen tijde vrij om met zijn cliënt overeen te komen om af te zien van enige financiële vergoeding, de zgn. no pay-afsprake, mits die afspraak maar niet gekoppeld is aan het in de zaak te behalen resultaat.*”).

¹⁷ A recent initiative of some large commercial firms aiming to bridge the gap with potential indigent clients involves externships with smaller law firms specializing in the representation of people with limited means.

¹⁸ See *Verordening op de Publiciteit, Introductie*, available at: <http://www.advocatenorde.nl/nova/novvade.nsf/0/8a3fc6a713200937c12565a60051089c?OpenDocument>.

¹⁹ *Id.* at Article 4.

²⁰ *Id.* at Article 3.

or particularities of clients without obtaining prior consent.²² In addition, attorneys have to be clear about the fees they charge, they cannot simply state a minimum representation fee, and they are not allowed to compare fees with other identified attorneys.²³

Unlike the general rules regulating attorney conduct (“*Gedragsregels*”), the Dutch Bar Association decree is binding, and attorneys are subject to sanctions for violating its provisions.²⁴ Although it limits competition among attorneys and hinders their ability to search for clients, the decree does seem to allow law firms to advertise *pro bono* efforts by distributing annual *pro bono* reports or brochures, depending on their content.²⁵

IV. Conclusion

Dutch law firms do not generally provide legal services *pro bono*, and many attorneys actually specialize in areas of law specifically affecting indigents because their fees are subsidized by the government.²⁶ Consequently, law firms in the Netherlands are not likely to embrace *pro bono*, even though there are populations, such as undocumented immigrants, who are in need of legal services but who do not have access to the free legal aid provided by the Dutch government.

September 2010
Pro Bono Practices and Opportunities in the Netherlands

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.

²¹ *Id.* at Article 6(1).

²² *Id.* at Article 6(2).

²³ *Id.* at Article 8.

²⁴ See *Gedragsregels* 1992, Article 1.1.

²⁵ See, e.g., Stibbe, *Pro Bono*, <http://www.stibbe.nl/stibbe/view/About/template.do?UID=8ae45a010ab71d2ebf015328>.

²⁶ See, e.g., *De Vereniging voor Sociale Advocatuur Nederland*, available at: <http://www.vsanadvocaten.nl/>.

PRO BONO PRACTICES AND OPPORTUNITIES IN NEW ZEALAND

I. *Introduction*

Like other jurisdictions, such as England and Wales, New Zealand has a legal aid system that uses public funds to provide free legal services to those in need. In particular, legal aid and other publicly funded legal services are administered in New Zealand through the Legal Services Agency. No *pro bono* referral or clearinghouse organizations or infrastructure currently exist in New Zealand.

A November 2009 report on New Zealand's legal aid system prompted further legislative and operational reviews and recommendations. As a result, the current legal aid system will likely change significantly over the next few years. The laws and structures currently in place, and the changes being proposed to New Zealand's legal aid system, are described below.

II. *Current Legal Aid System*

A. The Legal Services Agency

The Legal Services Agency (the "Agency") is a Crown entity¹, established under the Legal Services Act 2000 (the "Act"). The purpose of the Act is to promote access to justice by providing legal aid schemes and other means of legal assistance, and supporting community legal services by funding community law centers, education, and research.²

The Agency reports to the Minister of Justice (the "Minister") and advises the Minister on issues relating to the provision of legal services in New Zealand. The objectives of the Agency are to: (1) administer legal schemes in a consistent, accountable, inexpensive, and efficient manner; (2) fund, provide, and support community legal services for the public or any section of it; (3) investigate and advise on any matter relating to legal schemes or community legal services referred to it by the Minister; and (4) carry out any other functions conferred upon it by the Act or any other act.³ From July 1, 2009 to June 30, 2010, the Legal Services Agency assisted approximately 67,000 people with legal services through approximately 89,000 grants of legal aid.⁴

B. Agency Administered Legal Aid Schemes

Legal Aid. Legal Aid is available to individuals in New Zealand who have been charged with a criminal offense (Criminal Legal Aid), or have a legal problem that might go to court (Civil/Family Legal Aid). Being a citizen or permanent resident of New Zealand is not a requirement in order to qualify for Legal Aid.⁵

¹ "Crown entities" are organizations formed by law, which are legally separate from New Zealand's hereditary monarchy, the Crown, but in which the Crown has a controlling interest (for example, by having authority to appoint and replace a majority of governing members, or by owning a majority of voting shares). See www.treasury.govt.nz/statesector/crownentities.

² Preamble, Legal Services Act 2000.

³ About Us, Legal Services Agency, www.lsa.co.nz/about-us, 17 September, 2010.

⁴ Media Releases - 2 September 2010, Legal Services Agency, www.lsa.govt.nz/about-us/media-releases.php#Services09to10, 17 September, 2010.

⁵ Legal Aid, Legal Services Agency, available at: www.lsa.co.nz, 17 September, 2010.

There are different financial thresholds for Legal Aid, depending on an individual's particular circumstances. In some situations, an individual may be required to pay back some, or all, of the fees for the Legal Aid they receive. The rules relating to eligibility, management, and repayment obligations for Legal Aid are set out in the Act.⁶

Duty Solicitor Scheme. In addition to administering legal aid, the Agency oversees the Duty Solicitor scheme, which provides free legal assistance for an individual's first appearance in court. The Duty Solicitor scheme is not means tested and anyone who does not have their own lawyer is entitled to use the scheme. Generally, a Duty Solicitor will explain the charge to the individual and will advise on pleas, bail, and the sentencing options available to the court. The Duty Solicitor may also assist the individual in applying for legal aid.

Police Detention Legal Assistance Scheme. The Agency also oversees the Police Detention Legal Assistance scheme, which enables anyone arrested or held by the police to obtain free and confidential legal advice from a lawyer. Advice may be provided by a lawyer over the telephone or in person.

Public Defense Service. The Agency employs full-time salaried criminal defense lawyers to take on criminal legal aid cases in the Auckland, Manukau, Waitakere, and North Shore courts through its Public Defense Service ("PDS"). The objectives of the PDS program are to: (a) provide high quality, consistent, and independent, value for money services to legally aided persons; (b) improve system flexibility and provide opportunities to test different approaches to meeting cultural and other needs of clients; (c) provide opportunities to test new and innovative approaches to the management of legal services, and to encourage the development of areas of expertise; and (d) improve the Agency's understanding of issues facing private practice lawyers when providing legal services to the public by collecting benchmark information.⁷

C. Law Related Education and Legal Information

In addition to administering its Legal Aid Schemes, the Agency also provides law-related education and legal information, such as Law Access, law-related education kits, and legal aid information sheets. Law Access is a web-based catalogue of law, related information, and resources listed by over 150 organizations throughout New Zealand. The resources, which are free of cost to anyone, include videos, website links, free phone numbers, and fact sheets.

D. Report on the 2006 National Survey of Unmet Legal Needs and Access to Services

The Agency undertakes its own research, or funds research projects, to identify community legal services, proposed schemes, and the currently unmet legal needs of communities, and ways to meet these needs. In June and July 2006, the Agency undertook a national survey to identify unmet legal needs and access to services (the "Survey"). The survey was the largest of its kind in New Zealand, providing a comprehensive picture of the individuals seeking legal assistance, including information about where and why they sought assistance.

In addition, the Survey identified barriers to access and the outcomes of those who did not access services. The Agency reasoned that, by quantifying the number of people with a legal problem who could not afford a lawyer or access services, it could identify gaps in service availability and, thus, better target and develop regional and national strategies to help people

⁶ Part 1-4, Legal Services Act 2000.

⁷ Legal Services Agency, *available at*: www.lsa.co.nz, 17 September 2008.

access justice. The Survey found that 30% of New Zealanders surveyed had unmet legal needs. The Survey defined “unmet legal need” as:⁸

- a problem that is currently being experienced, but the person is not doing anything to resolve it because they do not know what to do;
- the person gave up trying to resolve the problem; or
- no advice or help was sought for the problem because of specific barriers, *e.g.*, language barriers, anticipated costs, or intimidated by the legal process.

In addition, 27% of New Zealanders surveyed stated that the fear of cost had stopped them from approaching a lawyer or inquiring about legal aid.⁹

The Survey has not been repeated to date, nor has the Agency announced plans to repeat or update the Survey in the near future.¹⁰

III. *Advice Agencies*

A. Community Law Centers

There are 26 Community Law Centers (“CLCs”) throughout New Zealand that provide a mix of legal services tailored to their community’s needs. Services provided by CLCs may include representation of individuals of limited financial means, the provision of law-related education and information, law reform submissions, and various other services aimed at addressing the needs of particular communities.

The Agency contracts with, and allocates funding to, CLCs, and is responsible for ensuring that CLC-provided legal services meet clients’ needs and achieve governmental objectives for the justice sector. In May 2010, the Agency developed national performance standards relating to the nature and quality of community legal services. These performance standards are based on the principles of lawfulness, accountability, openness, value for money, fairness, and integrity.¹¹

B. Citizens Advice Bureau

The New Zealand Citizens Advice Bureau is an independent community organization whose member bureaus and specialist services around New Zealand provide free information, advice, advocacy, and support to individuals. There are over 90 locations throughout New Zealand, and their mission is to promote awareness of the legal rights, responsibilities and resources/services available to individuals, and to influence the development of national and local social policies and services.¹²

⁸ Pg 3, 2006 National Survey of Unmet Legal Needs and Access to Services, July 2006. Copies of the full survey report are *available at*: www.lsa.co.nz.

⁹ Pg 5, National Survey of Unmet Legal Needs and Access to Services, July 2006.

¹⁰ P. 44, Bazley, Dame Margaret DNZM, Transforming the Legal Aid System: Final Report and Recommendations, *Legal Aid Review*, November 2009.

¹¹ “Legal Services – Community Law Centres,” Legal Services Agency, *available at*: www.lsa.co.nz, 17 September 2010.

¹² Citizens Advice Bureau, *available at*: www.cab.org.nz, 17 September 2010.

C. Consumer NZ

Consumer NZ, formerly known as the Consumers' Institute, is an independent, nonprofit organization established in 1959. Its work covers a wide range of activities relating to consumer protection and information, including comparative tests and surveys of consumer goods and services; research into and advice on financial, food, health, safety, welfare, and environmental matters; representation at parliamentary committees and public enquiries; and other projects related to the organization's interest in consumer education and complaints advisory work.¹³

IV. *Pro Bono Initiatives by New Zealand Law Firms*

In New Zealand, solicitors have a history of providing *pro bono* services. To date, however, no clearinghouses, referral organizations, or other infrastructure have been established to allocate *pro bono* legal services, nor are there any rules that encourage lawyers to undertake *pro bono* work. The general practice in New Zealand is for law firms to develop their own *pro bono* strategies in conjunction with the CLCs and other Agency-administered legal aid programs, as well as through sponsorship of other nonprofit organizations.

V. *Initiatives by Students*

Pro bono legal services are also provided by student initiatives organized by universities and law students. Such initiatives generally include the opportunity for law students to volunteer at CLCs.

One prominent example of a student initiative is the Equal Justice Project ("EJP"), a student-run organization sponsored by the Auckland District Law Society. The EJP was launched in 2005 through the Auckland University law school. It aims to promote access to justice in Auckland by providing assistance to those who cannot access CLCs, or otherwise fall outside of the legal aid scheme.¹⁴ Services are provided by law student volunteers in partnership with community groups and members of the legal profession. The EJP's current initiatives include: (1) promoting access to justice for particular communities such as refugees and migrants; (2) conducting legal education workshops in schools to increase awareness about practical aspects of law; (3) through partnerships with CLCs, operating legal clinics and conducting legal research to increase the capacity for CLCs to meet legal needs in their communities; and (4) furthering discourse related to human rights by contributing to various government and nongovernment initiatives.¹⁵

VI. *Current and Future Reforms to the Legal Aid System*

In November 2009, Dame Margaret Bazley, a prominent New Zealand public servant, published a report analyzing the current legal aid system in New Zealand.¹⁶ This report, along with subsequent Cabinet decisions, is leading to the development and implementation of broad changes in the nation's legal aid system. It is not yet clear how these changes, described below, will impact the scope and nature of law firm participation in the realm of *pro bono*.

¹³ Consumer Institute, *available at*: www.consumer.org.nz, 17 September 2010.

¹⁴ Equal Justice Project, *available at*: www.equaljustice.co.nz, 17 September 2010.

¹⁵ *Id.*

¹⁶ Bazley, "Transforming the Legal Aid System."

A. Changes Under Current Legislative Framework

Currently, the Agency is implementing several changes within the existing legislative framework. These include: (1) expanding the Public Defender Service to several new sites by mid-2011; (2) implementing changes to the Agency's duty lawyer service designed to ensure that defendants receive consistently high quality representation; (3) reforming criminal case assignment; (4) appointing a central officer to manage complaints from lawyers, courts, and the general public; and (5) improving CLCs nationally.¹⁷

B. Proposed Legal Services Bill

Additionally, Parliament is currently considering a new legal services act, the Legal Services Bill (the "Bill"), to replace the Act.¹⁸ The Bill, introduced into Parliament on August 4, 2010, is expected to take effect in mid-2011, and will likely introduce several additional changes to the legal aid system. These changes include: (1) unwinding the Agency and moving its functions to the Ministry of Justice; (2) creating a new quality assurance framework to make sure legal aid lawyers have the skills required to do the jobs assigned to them; and (3) streamlining the legal aid granting processes. Within the Ministry of Justice, new offices and review bodies will be established, such as a Legal Aid Commissioner, responsible for ensuring that there is independence in the granting of legal aid to individuals, a Legal Aid Review Tribunal, and Review Authority.¹⁹

VII. *Conclusion*

Free legal services are available in New Zealand through Agency-run initiatives and other organizations, but a portion New Zealanders' needs for legal aid and *pro bono* support are not being met. While some law firms engage in providing *pro bono* legal services, there is generally no organizational support or infrastructure to allocate *pro bono* legal services, nor are there any rules that encourage lawyers to undertake *pro bono* work. As a result, there is much scope for further initiatives and involvement. It is possible that development in this area will be supported and expedited by the broad changes in the legal aid system that are expected to come into effect in the coming years.

September 2010

Pro Bono Practices and Opportunities in New Zealand

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.

¹⁷ More information about these changes is *available at*: www.justice.govt.nz/policy-and-consultation/legal-aid/overview-of-reforms-to-the-legal-aid-system, 17 September 2010.

¹⁸ Explanatory Note, Legal Services Bill, *draft available at*: www.legislation.govt.nz/bill/government/2010/0189/10.0/whole.html, 17 September 2010.

¹⁹ www.justice.govt.nz/policy-and-consultation/legal-aid/overview-of-reforms-to-the-legal-aid-system, 17 September 2010.

PRO BONO PRACTICES AND OPPORTUNITIES IN NIGERIA

This chapter examines legal aid and its development, and describes the current *pro bono* system in Nigeria, including the governmental and legal infrastructure of the country, affecting *pro bono* practices and opportunities.

I. Legal Services and the Legal Profession in Nigeria

A. Specificity of the Nigerian Legal System and Profession

Nigeria is a federal republic, divided into 36 states and 1 federal capital territory.¹ Each state is divided into counties, called local government areas; there are 774 in total.² Local government is, therefore, the third tier of the administrative structure in Nigeria, besides the federal and state ones.

Thus, the current Nigerian Constitution, which came into effect on May 19, 1999, provides for:

- a National Assembly, composed of a Senate and of a House of Representatives at the federal government level;³
- a House of Assembly and a governor for each state at state government level;⁴ and
- local government councils to govern at local government level.⁵

In addition to this three-pronged system of government, Nigeria also has a tripartite legal system⁶ made up of:

- statutory law, based on English law/common law legal principles (and including judicial precedent, a constitution, and federal/state laws);⁷
- Islamic Sharia law in the Northern states (Muslim emirates);⁸ and
- customary/traditional law in the non-Muslim areas.⁹

¹ WIKIPEDIA, Nigeria, *available at*: <http://en.wikipedia.org/wiki/Nigeria> (last visited Oct. 11, 2010).

² *Id.*

³ CONSTITUTION OF NIGERIA (1999), § 47.

⁴ *Id.* at § 90.

⁵ *Id.* at § 7.

⁶ CENTRAL INTELLIGENCE AGENCY, The World Factbook: Nigeria, <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html> (last visited Oct. 11, 2010); Yemisi Dina, *Update: Guide to Nigerian Legal Information*, GLOBALEX, *available at*: <http://www.nyulawglobal.org/globalex/Nigeria1.htm#LEGALSYSTEM> (last visited Oct. 11, 2010).

⁷ Yemisi Dina, *Update: Guide to Nigerian Legal Information*, GLOBALEX, *available at*: <http://www.nyulawglobal.org/globalex/Nigeria1.htm#LEGALSYSTEM> (last visited Oct. 11, 2010).

⁸ *Id.*

⁹ *Id.*

With regards to court structures, there are separate federal and state courts and one Supreme Court.¹⁰ The courts in each state are controlled by the state government.

Although Nigeria inherited the English common law tradition due to colonisation, common law applies only to the English law-based courts, and not to the Islamic and customary law courts.¹¹ Nigerian criminal procedure in English law-based courts is based on an adversarial approach, with the burden of proof most commonly placed on the prosecution.¹² Contrary to that, the Islamic and customary courts use an inquisitorial approach in their criminal procedures.¹³

It is by virtue of enrollment at the Supreme Court that an individual can become a legal practitioner and a member of the legal profession in Nigeria.¹⁴ A legal practitioner is enrolled in Nigeria both as a Solicitor and Advocate (Barrister) of Nigeria (“SAN”) because, unlike in England and Wales, the legal profession is fused.¹⁵ The activities and conduct of members of the legal profession are regulated by statutory bodies, like the General Council of the Bar and the Body of Benchers. These bodies are established by the Legal Practitioners Act, Cap. 207, LFN 1990.¹⁶ The Nigerian Bar Association (“NBA”) is the foremost professional association in the legal profession.¹⁷ Though the NBA is not a statutory body, it is recognized by statutes, and it appoints members to supervisory bodies of the legal profession.¹⁸

B. Legal Aid

1. *The Legal Aid Council*

The Legal Aid Council (“LAC”), under the Federal Ministry of Justice, was set up in 1976 by the federal government to provide free legal assistance and advice to Nigerian citizens who could not afford the services of a private lawyer.¹⁹ The LAC was created within the context of the Legal Aid Act (the “Act”), adopted in 1976. The Act lays out the rules and policies of the LAC, listing the specific offenses for which legal aid is available²⁰. According to the Act, prior to being granted legal aid, the applicants have to fill in statutory criminal and civil legal aid application forms to be considered. Eligibility to receive legal aid depends on being unemployed, without an

¹⁰ ENCYCLOPEDIA OF THE NATIONS, Nigeria – Judicial System, *available at*: <http://www.nationsencyclopedia.com/Africa/Nigeria-JUDICIAL-SYSTEM.html> (last visited Oct. 11, 2010).

¹¹ Obi N. I. Ebbe, World Factbook of Criminal Justice Systems – Nigeria, *available at*: <http://bjs.ojp.usdoj.gov/content/pub/ascii/WFBCJNIG.TXT> (last visited Oct. 11, 2010).

¹² *Id.*; Emeka Maduewesi, *Intorudction to Legal Literacy in Nigeria* 16, http://www.nigerianlawsite.citymaker.com/f/Introduction_to_Legal_Literacy_in_Nigeria.pdf.

¹³ *Id.*

¹⁴ Dina, *supra* note 8.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ LEGAL AID COUNCIL OF NIGERIA, *available at*: <http://www.legalaidcouncilofnigeria.org/> (last visited Oct. 12, 2010).

²⁰ David McQuoid-Mason, *Legal Aid in Nigeria: Using National Youth Services Corps Public Defenders to Expand the Services of the Legal Aid Council*, 47 J. AFR. L. 107, 111 (2003).

income or on fulfilling the “means test”.²¹ The income levels below which an aid is granted are determined by the Federal Executive Council, which can also authorize legal aid on a contributory basis to a person whose income exceeds the national minimum wage.²²

The legal aid provided by the LAC ranges from rendering legal services through consultation, advice, or representation in court. The LAC guarantees the provision of such services through either the salaried lawyers staffed in LAC’s offices or private practitioners. In particular, LAC makes referrals to private legal practitioners, who receive a nominal fee. Moreover, the LAC relies on services provided by National Youth Service Corps (“NYSC”) lawyers.²³

The LAC headquarters is located in Abuja, with offices in each of Nigeria’s 36 states, but the capacity of each office is extremely limited.²⁴ In 2005, only one lawyer was staffed in each state’s LAC office, which has been heavily criticized by state attorney generals and judges as being inadequate.²⁵ There were plans to extend this to two per state by the end of 2005, according to the Legal Aid Council’s director of Planning, Research and Statistics.²⁶ Recent surveys indicate that LACs across the country are still understaffed, with only about 100 lawyers divided in 37 offices.²⁷

As mentioned, the LAC also utilizes the possibility of referrals to private lawyers, whose names are registered on panels of practitioners maintained by the LAC, in accordance with the Legal Aid Act.²⁸ They provide legal services to the LAC for a nominal fee.²⁹ Lawyers who are willing to assist persons seeking legal aid are entitled to be included on the panel, unless the Council has good reason for excluding them.³⁰ Some lawyers on the panel have done legal aid work *pro bono* because it has not been worthwhile to claim the nominal fee.³¹ Due to the dearth of salaried and staffed LAC lawyers, it can be assumed that a majority of the cases are referred to these private practitioners.³²

The LAC also relies on NYSC lawyers to accomplish its mission. In particular, they pay visits to police stations and prisons to interview applicants for legal aid, they handle minor

²¹ *Id.* at 110.

²² *Id.* at 111.

²³ *Id.* at 112.

²⁴ *Id.* at 113.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Human Rights Watch, *Nigeria: Halt Plan to Resume Executions*, June 25, 2010, available at: <http://www.hrw.org/en/news/2010/06/25/nigeria-halt-plan-resume-executions> (last visited Oct. 13, 2010).

²⁸ McQuoid-Mason, *supra* note 20 at 113.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

offenses in lower courts, and they perform various other duties under the supervision of experienced lawyers.³³

The federal government has sought ways to strengthen the Nigerian LAC. Although the Council has been in existence for 30 years, it has not succeeded in living up to public expectation.³⁴

Various reasons have been cited for its seeming ineffectiveness. These have ranged from:

- inadequate funding;³⁵
- lack of police cooperation;³⁶
- lack of publicity and inadequate information on access to justice;³⁷
- delays in treating case files;³⁸
- delays in investigating crime by the police;³⁹
- prison congestion;⁴⁰
- delays in the administration of justice;⁴¹ and
- lack of empowerment of LAC to provide legal aid in respect to certain categories of persons and in respect to certain matters—scope of eligibility was not wide enough.⁴²

Limited funding of the LAC is said to have seriously undermined the support system for lawyers taking on complex cases, such as death penalty cases seeking appeals.⁴³ Offenses punished by death penalty do not figure in the Act's list of offenses for which legal aid is available. Therefore, the LAC does not provide legal assistance and advice to people facing

³³ Legal Aid Council of Nigeria, *available at*: <http://www.legalaidcouncilofnigeria.org/pages/operandi.html>.

³⁴ *Id.*

³⁵ McQuoid-Mason, *supra* note 20 at 111; Human Rights Watch, *supra* note 21.

³⁶ Human Rights Watch, *Rest in Pieces: Police Torture and Deaths in Custody in Nigeria*, Part IX (July 2005), *available at*: <http://www.hrw.org/en/node/11630/section/10>.

³⁷ LEGAL AID COUNCIL OF NIGERIA, *supra* note 19.

³⁸ Annual Report 2004, Legal Aid Council: Federal Republic of Nigeria, at 31.

³⁹ Human Rights Watch, *supra* note 35.

⁴⁰ Annual Report 2004, *supra* note 37 at 42.

⁴¹ Human Rights Watch, *supra* note 35.

⁴² Annual Report 2006, Legal Aid Council: Federal Republic of Nigeria, at 12.

⁴³ Olawale Fapohunda, *Inmates who are on Death Row are Without Legal Representation*, IPS, Oct. 12, 2007, *available at*: <http://ipsnews.net/africa/nota.asp?idnews=39628>.

capital punishment.⁴⁴ The direct consequence is that inmates on death row in Nigeria's prisons are generally without legal representation.⁴⁵

The overcrowding has gotten so bad that recently the Nigerian government announced it would execute death row inmates to ease prison congestion.⁴⁶ The overcrowding is due, in part, to delays in trials and failure to provide enough lawyers representing the detainees. It is believed that due, the flaws in the justice system on various levels, some, or even many, of those may be innocent, and unduly detained.⁴⁷

Over the years, several initiatives have been launched to identify the problems of the legal aid system and of the overall access to justice, and to suggest how these can be improved.

At the National Consultative Forum on Transforming the Administration of Justice System in Nigeria, convened by the Federal Minister of Justice and the Federal Attorney-General in November 2001, it was decided to draft a National Action Plan on Justice Sector Reform in Nigeria and produce a Justice Vision document.⁴⁸ The Ministry of Justice and the Attorney-General's office identified the need to examine ways of:

- (a) upholding the Constitution and the rule of law;
- (b) promoting justice, fairness, and human dignity; and
- (c) incorporating and expanding community participation in the administration of justice.⁴⁹

In 2003, Professor McQuoid-Mason⁵⁰ proposed that the Legal Aid Council of Nigeria could contribute to this process by establishing a public defender network by using law graduates in the NYSC, which could expand the services provided by the LAC.⁵¹

In October 2004, LAC began a police duty project in collaboration with the Open Society Justice Initiative⁵² and the police,⁵³ aiming at deploying lawyers to police stations and Magistrates Courts in Imo, Kaduna, Ondo, and Sokoto States.⁵⁴ There, four duty solicitors were to provide

⁴⁴ *Id.* Please note that this is the only source stating that LAC does not provide legal assistance and advice to people facing death penalty. We searched for other sources confirming this but we could not find any.

⁴⁵ *Id.*

⁴⁶ Human Rights Watch, *supra* note 27.

⁴⁷ *Id.*

⁴⁸ McQuoid-Mason, *supra* note 20.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² The Open Society Justice Initiative uses law to protect and empower people through litigation, advocacy, research, and technical assistance. The staff is based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, Freetown, the Hague, London, Mexico City, New York, Paris, Phnom Penh, Santo Domingo, and Washington D.C. (<http://www.soros.org/initiatives/justice/about#about>).

⁵³ *Id.*

⁵⁴ Human Rights Watch, *supra* note 35

pre-trial legal assistance.⁵⁵ The project is now also enacted in Plateau and Rivers States.⁵⁶ The project's goal was to train "duty solicitors" to provide assistance at the first points of conflict and contact with the law, such as the police station, magistrate, and area courts,⁵⁷ but this has met with little success.

2. *Other organizations*

Several domestic non-governmental organizations ("NGOs") also provide legal aid services in the form of legal advice and assistance to improve access to justice. Legal Defence and Assistance Project ("LEDAP"),⁵⁸ an NGO of lawyers working to improve the rule of law and the overall access to justice, human security, and human rights, is a prominent actor in the *pro bono* field in Nigeria. LEDAP not only deals with individual cases litigated under their routine legal aid program, but also with larger public interest litigation cases (see further below).⁵⁹

Furthermore, several international organizations, such as the international sections of the Law Society of England and Wales and the European Instrument for Democracy and Human Rights, have also provided impetuses for change within the legal aid movement in Nigeria.⁶⁰

Recently, the Legal Aid Council collaborated with the International Federation of Women Lawyers through an awareness project on the Child's Rights Act in the six political zones of Nigeria.⁶¹ Their aim is to encourage the 36 states to give effect to the Act's contents, or to adopt the Act. Through collaboration with other organizations, the LAC is reaching out and striving to make a difference in the field of free legal services provided in the country.

II. *Pro Bono Opportunities in Nigeria.*

A. Recent Developments: Duty Solicitor Scheme ("DSS")

The Duty Solicitor Scheme was created as part of the Nigeria Law Project, whose specific purpose was to establish a nationwide system for the state-based provision of free legal representation to indigent defendants and victims of human rights violations in order to better

⁵⁵ *Id.*

⁵⁶ Open Society Justice Initiative, *PreTrial Detention in Nigeria*, available at: http://www.soros.org/initiatives/justice/focus/criminal_justice/projects/nigeria (last visited Oct. 13, 2010).

⁵⁷ Felicitas Aigbogun-Brai, *Pre-Trial Detention in Nigeria: A Bird's Eye View of the Work of the Rights Enforcement and Public Law Centre*, NIGERIAN BAR ASSOCIATION, available at: http://www.nigerianbar.org/index.php?option=com_content&task=view&id=145&Itemid=105 (last visited Oct. 13, 2010); Annual Report 2006, *supra* note 41 at 29.

⁵⁸ LEDAP, http://www.ledapnigeria.org/index.php?option=com_content&view=article&id=77&Itemid=96 (last visited Oct. 13, 2010).

⁵⁹ Hussainatu Abdullah, *Economic, Social and Cultural Rights in Nigeria* at 53 (May 2000), available at: <http://www.humanrights.se/upload/files/2/Rapporter%20och%20seminariedok/eng-ESC%20Rights%20in%20Nigeria.pdf>.

⁶⁰ Polly Botsford, *A Helping Hand*, LAW SOCIETY GAZETTE, Aug. 2, 2007, available at: <http://www.lawgazette.co.uk/features/a-helping-hand-1>.

⁶¹ Abuja Olorok, *Legal Aid Council, Women Lawyers Collaborate on Child Rights Act*, NBF Topics (Aug. 31, 2010), available at: <http://www.nigerianbestforum.com/generaltopics/?p=63979>; Today Nigeria is divided into six geopolitical zones, with every state falling into these categories. The idea was started by the late General Sani Abacha, former military ruler (1993-1998), and has persisted ever since (<http://nigeriagateway.com/the-geopolitical-zones-that-make-up-nigeria-part-one/>).

defend their rights and obtain legal redress.⁶² The Duty Solicitor Scheme is the equivalent of the public defender system in the United States or in Brazil.⁶³

The scheme was initiated in 2000, following a partnership between the Law Society of England and Wales and LEDAP.⁶⁴

The first phase of the project focused on the implementation of the DSS from 2000 to 2003. This project involved training lawyers to offer *pro bono* legal advice and representation to prisoners held on remand.⁶⁵ The DSS was well received and established in 10 states, training 260 lawyers in the provision of legal assistance and representation of over 6,000 prisoners and victims of human rights abuses.⁶⁶

The second phase of the project took place from 2006-2009, and focused on strengthening the DSS as a legal aid model and integrating it in five additional states.⁶⁷

Since its start, the DSS has trained over 600 *pro bono* lawyers across those 15 states and 65,000 *pro bono* days-in-court.⁶⁸

B. Indigent and Human Rights Defence (LEDAP)

This LEDAP program aims to provide free legal assistance to indigent remand prisoners, and thereby promote positive changes in the criminal justice system.⁶⁹ It also provides legal assistance to indigent victims of human rights violations, other than those caused by the prison remand system.⁷⁰ Through this, the project desires to reform state-level criminal justice administration. Its main objective, through advocacy, is to facilitate the replication of this program to be projected in states' legal aid schemes.⁷¹ Some of the program's objectives include: (1) depopulating the prisons through legal support and release; (2) improving lawyers' skills and expertise; and (3) publishing *The Prosecutor Magazine* to help criminal justice practitioners.⁷²

⁶² LEDAP, *supra* note 57 at Rule of Law and Access to Justice.

⁶³ WIKIPEDIA, Duty Solicitor, *available at*: http://en.wikipedia.org/wiki/Duty_solicitor (last visited Oct. 13, 2010).

⁶⁴ THE LAW SOCIETY, *Law Society's Nigerian Partner Wins MacArthur Award*, Apr. 11, 2008, *available at*: <http://international.lawsociety.org.uk/node/3017> (last visited Oct. 13, 2010).

⁶⁵ THE LAW SOCIETY, *Nigerian Partnership*, Mar. 1, 2006, *available at*: <http://www.lawsociety.org.uk/newsandevents/newsletters/international/archive/view=article.law?NEWSLETTERID=269918> (last visited Oct. 13, 2010).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ THE LAW SOCIETY, *supra* note 63.

⁶⁹ LEDAP, *supra* note 61.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

C. NGOs Providing Legal Assistance

Many NGOs provide free legal assistance, particularly in the human rights arena. Although some NGOs have a staff of only a few lawyers, or retain external consultant lawyers to provide legal aid, others propose a more elaborate legal aid and law reform program.⁷³

An example of such an NGO is the Civil Liberties Organization (“CLO”) and its program called Legal Assistance Network (“LANE”), which has trained over 2,500 lawyers in human rights litigation.⁷⁴ CLO has also undertaken an Administration of Justice program in collaboration with other organizations aiming, to train over 200 lower court judges in human right jurisprudence.⁷⁵

CLO, National Association of Democratic Lawyers (“NADL”), Human Rights Law Service (“HURILAWS”), and Constitutional Rights Project (“CRP”) have been particularly active in the domain of human rights litigation due to their knowledge of regional and international standards.⁷⁶

Although most NGOs provide some kind of legal advice and assistance, demand tends to far exceed supply, especially in rural regions.⁷⁷ The number of personnel available for case litigation is often inadequate to meet the numerous legal assistance requests from the public. Some NGOs, such as CLO and CRP, have sought to remedy this by creating a network of volunteer lawyers assisting in human rights litigation; however, the success has been limited due to the inadequate number of volunteer lawyers.⁷⁸

Other NGOs active in the field include:

- **Commission for the Defence of Human Rights (“CDHR”)**

CDHR was formed in 1989. It started out as a result of the unfair detention of Mr. Femi Aborishade, under a preventive detention decree, the State Security Decree No.2 of 1984.⁷⁹ It grew to serve the purpose of defending the rights of other similar detainees to liberty and, generally, the fundamental human rights to all Nigerians.⁸⁰

- **Human Rights Monitor (“HRM”)**

Based in Kaduna, this organization was started in 1993 in response to the need for a human rights body overseeing the North part of the country and not being headquartered in

⁷³ Bonny Ibhawoh, *Human Rights Organizations in Nigeria* 56 (January 2001), available at: <http://www.humanrights.dk/files/pdf/publikationer/human%20rights%20organisations%20in%20nigeria%20for%20the%20danish%20centre%20for%20human%20rights%20bonny%20ibhawoh%20january%202001.pdf>.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 57.

⁷⁸ *Id.*

⁷⁹ CDHR, <http://www.cdhrnigeria.org/> (last visited Oct. 13, 2010).

⁸⁰ *Id.*

Lagos.⁸¹ This organization has taken cases to court in collaboration with the CLO. Since it is fully self-funded, activities have been hampered by lack of available funding.⁸²

- **Institute of Human Rights and Humanitarian Law (“IHRHL”)**

The IHRHL was set up in Port Harcourt in 1993 by a former CLO employee, and provides human rights advocacy and education on issues specific to the Port Harcourt area.⁸³ Despite its lack of funding, it has managed to publish numerous articles on human rights issues in the local press, conduct human rights education in schools, and carry out some legal aid work.⁸⁴

- **Social and Economic Rights Action Center (“SERAC”)**

SERAC emerged in 1995 with more of a specific focus on economic and social rights, marking a departure from the emphasis on civil and political rights shown by NGOs in the 1980s.⁸⁵ SERAC has adopted long-term strategies to promote these rights through projects such as the Institutional Development Project, the Forced Eviction Prevention Project, and the Right to Health Project.⁸⁶

- **HURILAWS**

HURILAWS specializes in providing *pro bono* public interest legal services. A major part of its activity is test case litigation.⁸⁷ They have several test cases in Nigerian courts involving economic and social rights, especially regarding shelter and environmental rights.⁸⁸

Other NGOS that do not have the resources to retain their own lawyers for legal aid programs establish working arrangements whereby they recommend cases requiring legal attention to other NGOs.⁸⁹

III. Conclusion

It has been suggested that a holistic approach to legal aid and access to justice, combining several of the methods discussed above, would be beneficial to Nigeria.⁹⁰

In summary, the key initiatives that could potentially facilitate the access to justice, the availability of legal aid and of legal assistance, as well as the increase of *pro bono* services provided to indigent population, are as follows:

⁸¹ HUMAN RIGHTS LIBRARY, *The Status of Human Rights Organizations in Sub-Saharan Africa: Nigeria*, available at: <http://www1.umn.edu/humanrts/africa/nigeria.htm> (last visited Oct. 13, 2010).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Ibhawoh, *supra* note 72 at 48.

⁸⁶ Abdullah, *supra* note 58 at 41.

⁸⁷ *Id.* at 42.

⁸⁸ *Id.*

⁸⁹ Ibhawoh, *supra* note 72 at 58.

⁹⁰ The State of Human Rights in Nigeria 2007, available at: http://web.ng.undp.org/publications/governance/Humanright_electronic_2007.pdf (last visited Oct. 13, 2010).

- strengthening of government agencies, especially at the federal level, such as the Nigerian prisons, the National Human Rights Commission, and the LAC to enable them to perform their statutory duties more efficiently;
- proper funding and adequate staffing of the LAC;
- enforcement of NBA's role in encouraging lawyers to take on cases on a *pro bono* basis in order to increase access to justice, as well as to monitor and discipline lawyers paid by the federal government to assist citizens;
- promotion of partnership agreements or arrangements between the LAC and private practitioners and/ or NGOs;
- institutionalization of duty solicitor schemes in criminal cases;
- institutionalization of public defender networks using law graduates in the NYSC in order to maximise the resources provided by the NYSC; and
- funding by the LAC of legal aid clinics and of justice centers manned by younger lawyers in NYSC, aiming at increasing access to justice.

September 2010
Pro Bono Practices and Opportunities in Nigeria

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.

PRO BONO PRACTICES AND OPPORTUNITIES IN THE PHILIPPINES

Due to widespread poverty and a recent increase in human rights violations, the Philippines presents numerous opportunities for *pro bono* work.

I. Legal Services and the Legal Profession in the Philippines

The 1987 Philippine Constitution, established after a period of martial law declared by President Ferdinand E. Marcos in 1972 and lasting until 1986, provides the basis for the country's law.¹ It delineates the powers granted to the nation's Supreme Court, which, along with lower courts such as the Court of Appeals and regional trial courts, comprise the Philippine court system.² The Philippines also has a system known as the Katarungang Pambarangay, or Barangay Justice System ("BJS").³ The BJS operates at the level of the barangay, which is a local government unit, similar to a town or village, and is based on traditions used to mediate local disputes.⁴ It is run by appointed government officials, but has limited jurisdiction.⁵ For example, it can only hear disputes arising between people in the same, or neighboring, barangays, and cannot hear criminal cases where the penalty exceeds certain limitations.⁶ Shari'a Courts also exist and have jurisdiction in certain cases involving Muslim parties or arising under the Code of Muslim Personal Laws.⁷ The Philippine legal system is unique because it combines civil law, common law, Muslim law, and indigenous law.⁸ The Philippine Constitution states that Filipino is the country's national language, but both Filipino and English are official languages for the purpose of communication and instruction.⁹

Although the Philippines has remained a republic since 1986,¹⁰ signs of government instability are evident. The current leader of the Philippines, President Gloria Macapagal-Arroyo, has been accused of rigging the country's 2004 national elections.¹¹ Further, in 2006, when the government claimed it foiled an attempted military coup,¹² she declared emergency rule, which

¹ Milagros Santos-Ong, Update: Philippine Legal Research § 3 (2009), *available at*: <http://www.nyulawglobal.org/globalex/Philippines1.htm>.

² *See id.* at § 3.3.

³ Stephen Golub, *Non-state Justice Systems in Bangladesh and the Philippines: Paper Prepared for the United Kingdom Department for International Development* 12 (2003), *available at*: www.gsdr.org/docs/open/DS34.pdf.

⁴ *Id.*

⁵ *Id.* at 12-13.

⁶ *Id.* at 13.

⁷ Santos-Ong, *supra* note 666, at § 3.

⁸ *Legal System in Philippines*, <http://www.tradechakra.com/economy/philippines/legal-system-in-philippines-235.php> (last visited Oct. 7, 2010).

⁹ Santos-Ong, *supra* Note 7 at § 1.

¹⁰ *Id.* at § 3.

¹¹ Carlos H. Conde, *Emergency Rule in Philippines After Failed Coup is Cited*, N.Y. TIMES, Feb. 25, 2006.

¹² *Id.*

allowed the government to use police and the military to maintain order.¹³ In the past two decades, twelve coups have been attempted.¹⁴

Additionally, despite efforts towards peace, conflict continues between the Philippine government and the Communist Party of the Philippines.¹⁵ The armed wing of the Communist Party of the Philippines (NPA) has been waging a guerilla campaign in the countryside for four decades.¹⁶ Hostilities also remain between the Philippine government and Muslim separatist groups, such as the Moro National Liberation Front and Moro Islamic Liberation Front.¹⁷ The country faces threats from domestic and foreign terrorist groups, including the Abu Sayyaf Group, a militant spin-off of the separatist groups, which has been implicated in a number of bomb attacks against civilians.¹⁸ Further, in Davao City on the island of Mindanao, there are reports of a so-called “death squad,” originally set up to execute gang members and drug dealers without legal process.¹⁹ The “death squad” is now reported to regularly assassinate, without trial, people who are merely suspected of petty crimes and those who have not committed any crimes at all, and these killings have been on the rise.²⁰ Finally, there is much concern over human rights violations and the killing of leftist activists in the Philippines.²¹

II. *Legal Aid in the Philippines*

Widespread poverty in the Philippines²² makes the provision of free legal aid particularly important. The Philippine Constitution and the Philippine Code of Professional Responsibility for Lawyers both reflect the principle that attorneys should provide legal representation to indigent individuals.²³ The Constitution states that, “Free access to the courts and quasi judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.”²⁴ In a section entitled “A Lawyer Shall Not Refuse His Services to the Needy,” the Code of Professional Responsibility requires that absent, serious and sufficient cause to decline representation, lawyers must accept certain *pro bono* cases assigned to them.²⁵

There are a number of government programs offering legal assistance to indigent persons in the Philippines. The Public Attorney’s Office (“PAO”), an agency under the Department of

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Philip Alston United Nations Report of the Special Rapporteur on extrajudicial, summary, arbitrary executions 7 (2007), available at: <http://www2.ohchr.org/English/issues/executions/docs/AHRC8.doc>.

¹⁶ *Troops Overrun Leftist Rebels’ Camp in Compostela*, PHILSTAR, Sept. 26, 2010.

¹⁷ Alston, *supra* note 679.

¹⁸ *See id.*; see also U.S. DEPARTMENT OF STATE, “Travel Warning,” http://travel.state.gov/travel/cis_pa_tw/tw/tw_2190.html (last visited Sept. 30, 2010).

¹⁹ WIKIPEDIA, http://en.wikipedia.org/wiki/Davao_death_squads (last visited Sept. 30, 2010).

²⁰ Carlos H. Conde, *Philippine Death Squads Extend Their Reach*, N.Y. TIMES, Mar. 23, 2005; Human Rights Watch, *You Can Die Anytime: Death Squad Killings in Mindanao*, Part I (Apr. 2009), available at: <http://www.hrw.org/en/node/82034/section/2>.

²¹ Carlos H. Conde, *Leftist Activist is Slain in Philippines*, N.Y. TIMES, July 5, 2010..

²² U.S. DEPARTMENT OF STATE, <http://www.state.gov/r/pa/ei/bgn/2794.htm> (last visited Sept. 30, 2010).

²³ Code of Professional Responsibility, Canon 14, Rule 14.02.

²⁴ CONST. (1987), art. III, sec. 11 (Phil.).

²⁵ Code, *supra* note 687.

Justice, was established to provide free legal representation to individuals who either have no income or are below certain income thresholds in civil, criminal, and administrative cases.²⁶ The PAO, in its effort to fulfill “the constitutional mandate that ‘free access to courts shall not be denied by reason of poverty,’”²⁷ provides representation, as well as mediation and various other legal services.²⁸ Other government-based agencies provide free legal assistance regarding a specific area of the law, for example, the area of agrarian reform.²⁹ The Philippine courts may also appoint lawyers to provide free representation to indigent defendants in criminal cases.³⁰

The Integrated Bar of the Philippines (“IBP”) also provides legal assistance to indigent Filipinos.³¹ The IBP is a mandatory bar association that was created by the Philippine Supreme Court in the 1970’s.³² All Philippine lawyers are required to join the IBP and cannot practice law in the Philippines without doing so.³³ The IBP describes itself as “semi-governmental,” or “a private organization endowed with certain governmental attributes.”³⁴ The IBP’s stated mission consists of three fundamental objectives: “1. To elevate the standards of the legal profession; 2. To improve the administration of justice; [and] 3. To enable the Bar to discharge its public responsibility more effectively.”³⁵ To meet the third objective, the IBP’s National Committee on Legal Aid runs the IBP Legal Aid Program, which includes 83 local legal aid committees throughout the Philippines.³⁶ This committee provides free legal counseling and advice to the those who qualify, and also drafts necessary documentation for them.³⁷ Free legal representation before the courts, quasi-judicial or administrative bodies, is provided to individuals who qualify for representation under “the double M tests,” which consider the means of the individual and the merits of the case.³⁸

A variety of non-government entities, including private law firms, also provide free legal aid to indigent individuals and disadvantaged groups, and promote certain public interest causes.³⁹ Member organizations of a coalition called the Alternative Law Groups (“ALG”) provide free legal aid to poor and marginalized groups and communities in the Philippines, and seek to enable greater access to justice for these disadvantaged groups. They also engage in matters relating to

²⁶ See Carlos P. Medina, Legal Aid Services in the Philippines, *available at*: http://www.pili.org/index.php?option=com_content&view=article&id=156&Itemid=95; PUBLIC ATTORNEY’S OFFICE, DEPARTMENT OF JUSTICE, <http://www.doj.gov.ph/agencies/pao.html> (last visited Sept. 30, 2010).

²⁷ *Id.*

²⁸ Medina, *supra* note 690.

²⁹ *Id.*; DEPARTMENT OF AGRARIAN REFORM, <http://www.dar.gov.ph/freqaqs.html#4> (last visited Sept. 30, 2010).

³⁰ Medina, *supra* note 690.

³¹ *Id.*

³² IBP HISTORY,, <http://ibp.ph/history.html> (last visited Sept. 30, 2010).

³³ *Id.*

³⁴ *Id.*

³⁵ IBP MISSION, <http://ibp.ph/mission.html> (last visited Sept. 30, 2010).

³⁶ IBP LEGAL AID PROGRAM, <http://ibp.ph/lap.html> (last visited Sept. 30, 2010).

³⁷ *Id.*

³⁸ *Id.*

³⁹ See Baker & McKenzie, Working in the Philippines, <http://www.bakermckenzie.com/careers/philippines/> (last visited Oct. 1, 2010); CHAN ROBLES LAW FIRM, Pro-Bono, http://www.chanrobles.com/pro_bono.php (last visited Sept. 30, 2010); Medina, *supra* note 690.

public issues, such as the environment, gender equality and human rights.⁴⁰ ALG programs are generally aimed at promoting the pursuit of public interest, respect for human rights, and social justice. According to ALG's website, "[t]he practice of alternative or developmental law looks at conditions, incidents and other legal matters or issues from a structural perspective . . . and merges law and the social sciences."⁴¹ The work of the participating organizations includes impact litigation, policy reform efforts, education initiatives to inform marginalized groups about their legal rights and concerns, and an effort to create groups of paralegals in communities and organizations which can provide legal assistance from within.⁴² Member groups of the coalition often maintain relationships with law schools to carry out their objectives.⁴³

Law students have also played a role in providing legal services. In the Philippines, law students who have completed a required amount of study and are supervised in a clinical legal education program may represent clients without compensation in civil, criminal, or administrative cases.⁴⁴ A number of Philippine law schools, including the Ateneo de Manila Law School in Makati City, have set up clinical programs through which their students provide free legal assistance.⁴⁵ Foreign law schools have also provided assistance. In 2007, students from the Osgoode Hall Law School of York University in Canada traveled to the Philippines as part of an effort to provide *pro bono* legal assistance to developing nations.⁴⁶

III. *Human Rights Pro Bono Opportunities*

The area of human rights is ripe for *pro bono* work in the Philippines. Domestically, the Philippine Constitution includes a section prioritizing the protection of human rights.⁴⁷ Also, the Philippine Revised Penal Code criminalizes various violations of human rights.⁴⁸

Internationally, the Philippines is also a party to various treaties that require a commitment to protecting human rights. The Philippines has signed the International Covenant on Civil and Political Rights (ICCPR),⁴⁹ a binding treaty that requires signatory countries to protect human

⁴⁰ THE ALTERNATIVE LAW GROUPS, <http://www.alternativelawgroups.org/about.asp?sec=index> (last visited Sept. 30, 2010); Medina, *supra* note 690.

⁴¹ THE ALTERNATIVE LAW GROUPS, "The History of ALG," <http://www.alternativelawgroups.org/about.asp?sec=history> (last visited Sept. 30, 2010).

⁴² THE ALTERNATIVE LAW GROUPS, "What We Do," <http://www.alternativelawgroups.org/whatwedo.asp?sec=index> (last visited Sept. 30, 2010).

⁴³ THE ALTERNATIVE LAW GROUPS, "Members of ALG," <http://www.alternativelawgroups.org/members.asp?sec=mem> (last visited Sept. 30, 2010).

⁴⁴ Medina, *supra* note 690.

⁴⁵ *Id.* See ATENEO DE MANILA LAW SCHOOL, <http://law.ateneo.edu/index.php?p=82> (last visited Sept. 30, 2010).

⁴⁶ *Osgoode Students Provide Pro Bono Legal Service in the Philippines*, FILE, <http://www.yorku.ca/yfile/archive/index.asp?Article=8607> (last visited Sept. 30, 2010). While there, they hosted a forum addressing the legal issues regarding the Philippine's worst oil spill.

⁴⁷ Const. (1987), art. XIII, (Phil.).

⁴⁸ The Revised Penal Code criminalizes arbitrary detention, delay in delivery of detained persons to the proper judicial authorities, dissolution of peaceful meetings, maltreatment of prisoners, homicide, and kidnapping, among other human rights violations. REVISED PENAL CODE, Act No. 3815, Art. 124, 125, 131, 235, 249, & 267, Act No. 3815, as amended (Phil.).

⁴⁹ U.N.H.C.R., *supra* note 712, at ¶ 4.

rights, including the right to life and the right to be free from torture.⁵⁰ The Philippines is also a signatory of the Geneva Conventions of 1949 and the Second Additional Protocol to the Geneva Conventions, both of which set standards for international humanitarian law.⁵¹

A. Extrajudicial Executions

Extrajudicial executions have been a significant problem in the Philippines. Amnesty International defines extrajudicial executions as “unlawful, deliberate killings carried out by order of a government or with its complicity or acquiescence.”⁵² The Philippines has experienced an unprecedented surge in these executions since 2005,⁵³ prompting extensive investigations since then by the United Nations (“U.N.”), Amnesty International, and Human Rights Watch.⁵⁴

In the Philippines, these illegal killings have primarily been carried out by the military,⁵⁵ and have targeted a large number of leftist activists, human rights advocates, labor organizers and journalists.⁵⁶ The latest Human Rights Watch World Report on the Philippines declared that “[h]undreds of leftist politicians, political activists, journalists, and outspoken clergy have been killed or abducted since 2001. So far only 11 people have been convicted for these extrajudicial killings, two in 2009 [and] [n]o member of the military active at the time of the killing has been brought to justice for such crimes.”⁵⁷ As mentioned earlier, the death squads in Davao City in Mindanao are believed to be responsible for a rise in targeted killings: 2 in 1998; 98 in 2003; 124 in 2008; and, in 2009, 33 reported killings in January alone.⁵⁸ Although the exact number of killings in the past years is unclear, the effects have been extremely deleterious.⁵⁹

⁵⁰ International Covenant on Civil and Political Rights art. 6, 7, Dec. 16, 1966, 999 U.N.T.S. 171.

⁵¹ U.N.C.R., *supra* note 712, at ¶ 4.

⁵² AMNESTY INTERNATIONAL, *Philippines: Political Killings, Human Rights and the Peace Process* 3 (2006), available at: <http://www.amnesty.org/en/library/asset/ASA35/006/2006/en/6d1f080e-f774-11dd-8fd7-f57af21896e1/asa350062006en.pdf>.

⁵³ Seth Mydans, *Rights Groups Say Military Is Behind Killings in Philippines*, N.Y. TIMES, Aug. 25, 2006 (stating that there has been an increase from 2005 to 2006); U.N.H.R.C. Special Rapporteur, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston*, p 3, U.N. Doc. A/HRC/8/3/Add.2 (Apr. 16, 2008).

⁵⁴ *Id.* The Human Rights Watch has released several reports in January 2007, June 2007, July 2007, April 2009, January 2010, and April 2010. The Amnesty International has released reports in 2006, 2007, 2008, and 2009.

⁵⁵ Both the U.N. Special Rapporteur and a commission created by the Philippine president concluded that the military is to blame for the killings. See Veronica Uy, *UN Exec to RP: Admit Extrajudicial Killings are Happening*, INQUIRER.NET, Feb. 21, 2007; N.Y. TIMES, *Philippine Military is Linked to Killings*, N.Y. TIMES, Feb. 23, 2007; Carlos H. Conde, *Rights Group Accuses Philippine Army of Abuses Against Leftists*, N.Y. TIMES, June 29, 2007.

⁵⁶ See U.N.H.C.R., *supra* note 712, 713; Amnesty International Report (April 2009) available at: <http://www.amnesty.org/en/region/philippines/report-2009#>.

⁵⁷ Human Rights Watch, *World Report Chapter: Philippines*, ¶ 2 (Jan. 2010), available at: http://www.hrw.org/sites/default/files/related_material/philippines_0.p.

⁵⁸ Human Rights Watch, *You Can Die Anytime: Death Squad Killings in Mindanao*, Part I (Apr. 2009), available at: <http://www.hrw.org/en/node/82034/section/2>.

⁵⁹ U.N.H.C.R., *supra* note 712 at p 2 (The U.N. Special Rapporteur reported that these executions have, “eliminated civil society leaders, . . . intimidated a vast number of civil society actors, and narrowed the country’s political discourse.”).

Among the main obstacles to addressing the problem of extrajudicial killings has been the steps taken by the government. When government investigations do actually take place, they do not meet the international standards set forth by the U.N. for such inquiries.⁶⁰ These ineffective investigations, along with witness intimidation and lack of political will to prosecute suspects, have created a “culture of impunity.”⁶¹ The U.N. Special Rapporteur found the systematic intimidation and harassment of potential witnesses to be particularly problematic, suggesting that 80% of strong cases may fail to move from the initial investigation to actual prosecution as a result.⁶²

Further compounding the situation, the government has restricted freedom of speech and the press by attempting to control the media. The government places pressure on journalists by issuing warnings to them; placing them on watch lists and under surveillance; and threatening to sue them, arrest them, and charge them with sedition.⁶³ Additionally, the director of the national police force has told news outlets that they must conform to unspecified standards for reporting, which the government will interpret on a case-by-case basis.⁶⁴ Finally, the government has attempted to exert influence over the media in other ways. In February 2006, when President Gloria Macapagal-Arroyo declared emergency rule,⁶⁵ she claimed she could take over media outlets if necessary.⁶⁶ This burden on freedom of speech and the press helps to perpetuate the cycle of impunity; it is dangerous for journalists to ever suggest government or military involvement in the killings.

B. Current Efforts and Opportunities to Protect Human Rights

In addition to the investigations by prominent international human rights organizations such as the U.N., Amnesty International and Human Rights Watch, other smaller organizations have also engaged in both research and service projects aimed at protecting human rights in the Philippines.

For example, the Center for Constitutional Rights, based in New York, has collaborated with GABRIELA Network, an organization that works in support of women’s human rights both in the U.S. and the Philippines. The Asia Foundation, funded in part by the United States Agency for International Development, has also run numerous programs, including a project to train judges and prosecutors in an effort to develop a more accountable judiciary⁶⁷, and a project to increase confidence in election results, which included creating a voter’s guide and bringing in election monitors.⁶⁸ Additionally, the National Union of Peoples’ Lawyers was recently formed by Romeo Capulong, a prominent human rights lawyer and judge serving on the U.N. Tribunal for

⁶⁰ Amnesty International, *supra* note 715.

⁶¹ *Id.*

⁶² U.N.H.C.R., *supra* note 712 at ¶ 52, 40 (reporting that the climate of impunity is so pervasive that the operatives who carry out the killings often do not wear masks to hide their identities).

⁶³ *Id.* at ¶ 40.

⁶⁴ Seth Mydans, *The Philippines Wages a Campaign of Intimidation Against Journalists*, N.Y. TIMES, April 3, 2006.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ THE ASIA FOUNDATION, *Philippines Overview*, <http://www.asiafoundation.org/Locations/philippines.html>.

⁶⁸ *Id.*

the Former Yugoslavia.⁶⁹ It is a voluntary association of human rights lawyers who are working together to defend, protect, and promote human rights in the Philippines by engaging in litigation on behalf of victims of human rights violations, organizing concrete programs to protect lawyers who are threatened or attacked, and advocating other types of reform.⁷⁰

IV. *Other Pro Bono Opportunities*

There are also opportunities to do *pro bono* work in other areas, such as environmental law. In 2010, a *pro bono* environmental lawyer helped Philippines climate change activists take their fight against flooding to the country's supreme court.⁷¹ The lawyer, along with Global Legal Action on Climate Change (GLACC), sought to compel the government to implement two existing laws that could ease flooding, which is a common problem in the Philippines.⁷² The organization sought a remedy under the Writ of Kalikasan, which is "the first legal weapon in the world that empowers the man on the street to seek concrete actions for ecological protection from their government officials."⁷³ Under this writ, the court can issue a *writ of mandamus* commanding the government to execute laws already on the books.⁷⁴ This significant tool shows the potential for future environmental *pro bono* work in the Philippines, as well as possibilities in other *pro bono* areas.

V. *Potential Barriers to Pro Bono Work*

As in any developing country with an intermittently unstable government, attorneys may experience some barriers to performing *pro bono* legal services in the Philippines.

First, because the government limits freedom of speech and the press in certain situations,⁷⁵ attorneys may have difficulty publicizing their availability to assist on a *pro bono* basis to those in need.

Second, the government has previously shown that it may not be hospitable to certain types of *pro bono* work. In December 2006, an attorney from the International Labor Rights Fund, who had investigated the killings of union leaders, was barred from entering the country.⁷⁶

⁶⁹ THE NATIONAL UNION OF PEOPLES' LAWYERS, <http://www.nupl.net/about.php> (last visited Oct. 1, 2010).

⁷⁰ *Id.*

⁷¹ Purple S. Romero, *Pro Bono Lawyer Leads Landmark Court Challenge in Philippines*, TrustLaw, June 29, 2010, available at: <http://www.trust.org/trustlaw/news/pro-bono-lawyer-leads-landmark-court-challenge-in-philippines/> (last visited Oct. 7, 2010).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ U.N.H.C.R., *supra* note 712; INTERNATIONAL NEWS SAFETY INSTITUTE, *Threats Faced by Filipino Journalists*, http://www.newssafety.org/index.php?view=article&catid=144%3Aphilippines-media-safety&id=3818%3Aphilippines-threats-faced-by-filipino-journalists&option=com_content&Itemid=100435 (last visited Oct. 1, 2010).

⁷⁶ See HUMAN RIGHTS WATCH, *Philippines: Government Bans Its Critics From Entering*, <http://www.hrw.org/en/news/2008/10/29/philippines-free-labor-rights-lawyer> (last visited Oct. 1, 2010).

Evidence also suggests that other lawyers and activists are currently or have previously been “blacklisted” from entering the country.⁷⁷

This is also illustrative of Philippine resistance to allow foreign law firms to enter the market. It is difficult for foreign firms to offer *pro bono* services, since non-Filipino lawyers are not permitted to offer advice on Philippine, law and foreign law firms are not allowed to have offices in the Philippines.⁷⁸ Also, very few domestic law firms have associations with large foreign firms, with the notable exception of Baker & McKenzie, which has a formal arrangement with the local firm, Quisumbing Torres.⁷⁹ The difficulty for foreign law firms to work with local firms or establish a presence themselves translates into difficulties for *pro bono* opportunities as well.

VI. Conclusion

There is a great need for *pro bono* legal assistance in the Philippines. Because of the potential barriers to providing such assistance, the best opportunities may be found by reaching out to, and joining forces with, groups that have already worked in, or are knowledgeable about, the Philippines.

September 2010
Pro Bono Practices and Opportunities in the Philippines

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.

⁷⁷ *Id.* However, in February of 2007, the government allowed a U.N. Special Rapporteur to enter the country to investigate the killings. See U.N.H.C.R., *supra* note 712. (Press Statement *available at*: <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/7B6094F7150CDC99C125728A003B12B1?opendocument>)

⁷⁸ ASIA LAW, *Asialaw Market Survey: Asia's Best Local Law Firms*, <http://www.asialaw.com/Article/1971349/Search/Results/Asialaw-Market-Survey-Asias-Best-Local-Law-Firms.html?Keywords=Law+Firm+Poll+China+India+Indonesia+Malaysia+Philippines+South+Korea> (last visited Oct. 7, 2010).

⁷⁹ *Id.*

PRO BONO PRACTICES AND OPPORTUNITIES IN POLAND

After Poland's accession to the European Union ("EU") in 2004, the EU's legal requirements and extensive jurisprudence on the right of access to justice became binding on Poland. Conceptions of legal aid, the state's role in providing it, and the possible provision of legal aid through *pro bono* services undertaken by the private sector are influenced, on the one hand, by the waning legacy of the Communist era and, on the other hand, by integration into the EU. Although traditionally no *pro bono* culture *per se* existed in Poland, currently, as a result of involvement of non-governmental organizations ("NGOs") and multinational and domestic law firms, an active *pro bono* culture is emerging.

I. *Legal Services and the Legal Profession in Poland*¹

The Polish legal profession consists of attorneys, called "advocates," who can provide a range of legal services, and "legal advisors," who service predominantly the business and administrative sectors, and cannot undertake work in criminal or family matters. Legal aid follows the *ex officio* assigned-counsel system, in which the courts appoint counsel for indigent defendants and attorneys' fees are paid by the State. Both advocates and legal advisors provide legal aid through this system. However, access to legal aid is limited, and consequently, difficult to obtain in Poland, partly because there is a shortage of practicing lawyers.

No single law governing legal aid exists. Relevant provisions are scattered throughout various statutory codes. The following is an overview of the central criminal and civil legal aid provisions.

A. Legal Aid in Criminal Cases

A defendant in a criminal proceeding has a constitutional right to defense in all stages of the proceeding; the defendant may hire counsel of his choice or have one appointed *ex officio*, according to principles specified by law.² These principles are echoed by the Code of Criminal Procedure of the Republic of Poland, which provides that every accused person has the right to a fair hearing, including the right to counsel of his choice.³ There are also several statutes providing for the right to representation in non-criminal cases, which are discussed further below.⁴

The eligibility criteria for legal aid in criminal cases include substantive and financial standards. Substantively, the presence of counsel is mandatory in the following instances: (1) cases wherein a defendant is a juvenile; (2) cases wherein defendant is deaf, blind, or mute; (3) cases involving reasonable doubt as to the defendant's sanity; (4) cases where the defendant

¹ L. Bojarski, *Access to Justice Country Report: Poland (2003)*, Public Interest Law Initiative/Columbia University Kht., available at: http://www.pili.org/dmdocuments/CR_Poland.pdf. This report accompanies the Access to Justice in Central and Eastern Europe: A Source Book (2003) publication prepared by the Public Interest Law Initiative, Columbia University Budapest Law Center in collaboration with Interights in London, the Bulgarian Helsinki Committee in Sofia, the Polish Helsinki Foundation for Human Rights in Warsaw, and the Open Society Justice Initiative, as part of the Project Promoting Access to Justice in Central and Eastern Europe, available at: http://www.pili.org/index.php?option=com_content&view=article&id=51:country-reports&catid=29:books&Itemid=53. Unless otherwise noted, the information contained in this section is derived from this report.

² Article 42, Point 2, of the Constitution of the Republic of Poland.

³ Article 6 and Article 83 of the Code of Criminal Procedure of the Republic of Poland.

⁴ Article 117 of the Code of Civil Procedure of the Republic of Poland.

has been accused of a high crime or has been deprived of liberty; and (5) when the court determines the necessity for such in light of the circumstances.⁵ If the defendant does not hire his own counsel, the court will appoint one for the defendant.⁶ A defendant may demand that counsel be appointed for him if he suffers financial hardship. The applicant is obligated to demonstrate that he or she is unable to pay attorney's fees without impeding his ability to support himself or his family.⁷ If approved, the costs of the *ex officio* counsel are covered by the Treasury. However, the court may reverse its decision to appoint counsel if circumstances permitting for such appointment are found false.⁸ Because it is within the prerogative of the court to refuse legal aid without clearly stating the grounds for its decision, and because of the lack of recourse to appellate review, these financial criteria have been criticized for being potentially arbitrary and difficult to enforce.

B. Legal Aid in Civil Cases

Neither the Constitution of the Republic of Poland nor the Code of Civil Procedure of the Republic of Poland provide for mandatory representation or legal aid in civil cases. However, a party who has been exempted from court costs on his own motion, or granted a statutory exemption in whole or in part, may apply for the appointment of an *ex officio* attorney.⁹ The court determines whether the presence of counsel or legal advisor is necessary in such case.¹⁰ Discretionary exemptions are granted based on the legal and factual complexity of the case, as assessed by the court, and on the helplessness of the applicant.

Exemption from attorney's fees can be granted at any stage of the proceedings. It can also, however, be withdrawn when circumstances permitting such appointment are found false or have changed, and the applicant may be required to pay attorney's fees when an award has been granted to him.¹¹ An applicant for exemption from court costs is obligated to submit detailed information, supported by evidence, regarding his or her familial situation, property, and income, and, as in the case of criminal legal aid, must demonstrate that he is unable to pay attorney's fees without impeding his ability to support himself and his family.¹² As a result of severe under-budgeting of the judicial system, it is estimated that legal aid is granted in only about 0.18% of non-criminal cases. After granting an application, the court issues an order of appointment of an *ex officio* advocate or legal advisor sent by the court to the relevant Regional Council of the Bar or Regional Council of Legal Advisers, to carry out the order.

One flaw of the civil legal aid system is that it is easier for court-appointed lawyers to collect their fees after losing a case, because the money comes directly from the Treasury. Meanwhile, in the event of winning a case, fees have to be collected from the losing party. This system creates an economic disincentive from winning cases, a central systematic flaw. In addition, no mechanisms exist to determine the quality of the legal representation in *ex officio*

⁵ Article 79, Sections 1 and 2, and Article 80 of the Code of Criminal Procedure of the Republic of Poland.

⁶ Article 81 of the Code of Criminal Procedure of the Republic of Poland.

⁷ Article 78, Section 1, of the Code of Criminal Procedure of the Republic of Poland.

⁸ Article 78, Section 2, of the Code of Criminal Procedure of the Republic of Poland.

⁹ Article 117 of the Code of Civil Procedure of the Republic of Poland.

¹⁰ Article 117, Section 4, of the Code of Civil Procedure of the Republic of Poland.

¹¹ Article 120 of the Code of Civil Procedure of the Republic of Poland.

¹² Article 117, Section 6, of the Code of Civil Procedure of the Republic of Poland.

cases or to monitor the actions of the lawyers. Monitoring by professional bodies via disciplinary procedures has been widely criticized as not fulfilling its function.

Furthermore, legal aid is provided only in court proceedings. No statutes provide for legal aid during administrative proceedings or in the prior stage of granting legal advice only.¹³

C. Legal Aid Legislation

The rapid economic growth Poland has sustained in the past two decades has left a large portion of the population behind, creating a situation in which most citizens are unable to afford the costs associated with legal proceedings. Included in the list of reform priorities identified by the Polish government is a “better functioning of judiciary.”¹⁴ However, the Polish government lacks the resources often required to provide the necessary legal aid.¹⁵

There have been, however, promising developments pertaining to legal services for the indigent. On February 1, 2005, the EU Council Directive establishing minimum common rules relating to legal aid in cross-border disputes came into force, and was later adopted by Poland.¹⁶

Poland’s Parliament has explored ways to broaden access to the legal profession and increase the number of practicing attorneys in order to provide greater access to legal aid by making the entry procedure more objective, transparent and organized, and by allowing more input from the Ministry of Justice. Many NGOs and advocates have lobbied for reform of legal corporations, and continue to do so in order to make the legal profession more accessible and transparent, which could lead to an increase in legal aid activity. Members of the Bar Association especially consider it necessary to provide better and wider access to legal aid for all citizens.¹⁷

II. *Pro Bono Opportunities in Poland*

Traditionally, there has been no culture of providing *pro bono* legal services in Poland. No-fee services were for many years largely frowned upon and commonly associated with working on behalf of the government, a pursuit which carries the stigma of the earlier Communist era. As a result, young attorneys were not encouraged to take on *pro bono* cases, and there was no sense of commitment to the cause within the profession. However, with the arrival of the new century, some positive changes to “[t]his aversion to *pro bono* services”¹⁸ began to emerge. These changes were mainly brought about by a general ideological shift from the expectation that legal aid would be exclusively state-sponsored as it was under Communism, to anticipation that

¹³ Report on Legal Situation of Asylum Seekers in Austria and Poland, available at: <http://www.fluequal.at/picture/upload/AP1b%20legal%20report%20final.pdf>.

¹⁴ *Poland Country Brief 2010*, World Bank Online Publication, available at: <http://www.worldbank.org.pl/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/POLANDEXTN/0,,menuPK:304804~pagePK:141132~piPK:141107~theSitePK:304795,00.html>.

¹⁵ See e.g., V. Terzieva, *Access to Justice in Central and Eastern Europe: Comparative Report*, (2003), Public Interest Law Initiative, available at: http://www.pili.org/dmdocuments/CR_ComparativeReport.pdf.

¹⁶ *EU Council Directive 2005/19/EC*, Official Journal of the European Union, available at: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_058/l_05820050304en00190027.pdf.

¹⁷ K. Zaczekiewicz-Zaborska, *Palestra ma wreszcie poparcie Ministra*, available at: http://prawo.gazetaprawna.pl/artykuly/3596,palestra_ma_wreszcie_poparcie_ministra.html.

¹⁸ Interview with Barbara Micgiel, Assistant Legal Librarian, Latham & Watkins, New York (Aug. 6, 2004).

other sectors, such as civil society and private actors, will become greater participants in the provision of legal services.

Each year during the past few years, Poland has experienced the development of many new *pro bono* programs, and those *pro bono* activities initiated earlier in the decade have shown a healthy pattern of expansion and diversification. The pioneers of *pro bono* activities in Poland were NGOs, and they have been instrumental in establishing a long-term *pro bono* presence in Poland.

In November of 2009, Poland participated in the European Pro Bono Forum hosted by the Public Interest Law Institute. The forum, which focused on the global economic crisis and its effect on legal aid, encouraged greater commitment to *pro bono* service by providing advice, as well as setting up a network forum for law firms and private practitioners. Adam Bodnar, Board Member of the Polish Helsinki Foundation for Human Rights (“HFHR”), was one of its distinguished speakers.¹⁹

A. Helsinki Foundation for Human Rights

HFHR, based in Warsaw, is a foundation devoted to research and education in the field of human rights. As part of its wide array of initiatives, HFHR runs several programs aimed at providing cost-free legal advice. Since 1992, through its Legal Assistance for Foreigners and Refugees Program (which includes a Migration and Refugee Law Clinic), HFHR has assisted non-nationals and refugees in obtaining free legal aid in Poland.²⁰ Under the auspices of this program, HFHR litigates cases on behalf of non-nationals, and also monitors the legality of the actions of the Polish government with respect to the non-nationals. Lawyers are on call to interview and give advice to non-nationals and refugees. Lawyers also represent non-nationals and refugees at administrative proceedings, prepare opinions on legal act drafts, and educate the public about laws concerning non-nationals through leaflets, lectures, and seminars.

HFHR also founded the Public Interest Law Action Program, which is largely run by students. The main aim of this program is to ameliorate the standards of compliance with human rights laws through direct observation of trials, participation in trials as a social organization with the right to speak on important points concerning human rights laws, or provision of expertise on human rights laws. Law students, under the supervision of qualified lawyers, play the main role by attending court and administrative proceedings, assisting with drafting complaints, supporting clients, addressing authorities on the issues of law and participating in other related activities.²¹

Another HFHR law student clinic, the Law Clinic “Innocence” Program, deals with representation in criminal cases. Law students analyze cases, including whether or not there was a violation of a right to a fair trial. They investigate the facts, observe court proceedings and draft reports.²²

¹⁹ 2009 European Pro Bono Forum, *available at*: <http://arcs.ceu.hu/event/601/2009-european-pro-bono-forum>.

²⁰ *Cost-free Legal Advice for Foreigners and Refugees*, Helsinki Foundation for Human Rights, *available at*: <http://www.hfhrpol.waw.pl/program-10-en.html>.

²¹ *Public Interest Law Actions*, Helsinki Foundation for Human Rights, *available at*: <http://www.hfhrpol.waw.pl/Nprogram-2-en.html>.

²² *The “Innocence” Clinic*, Helsinki Foundation for Human Rights, *available at*: <http://www.hfhrpol.waw.pl/Nprogram-16-en.html>.

In addition, HFHR's Strategic Litigation Program was designed to allow HFHR to commence or join strategically important judicial or administrative proceedings. By its participation in those proceedings, HFHR aims to achieve groundbreaking judicial decisions, changing the existing law or legal practice in the field of human rights laws.²³

B. Legal Clinics Foundation

The Legal Clinics Foundation (the "Foundation"), in its goal to establish clinics at law faculties nationwide, aims to "provide legal aid to poor members of the community" and seeks to "enlighten students on the public service aspect on the legal profession."²⁴ While the Foundation itself does not provide legal assistance, it has set up a network of legal clinics and promoted *pro bono* work throughout Poland. Today, nine law faculties across Poland offer law clinics for law students.²⁵ The Foundation's programs and initiatives are especially promising because they aim at incorporating *pro bono* ethics into legal education. While providing those in need with legal aid, the clinics provide the law students with educational and practical skills, as well as with an essential element of their future careers – serving the public. On October 19-21, 2007, the Foundation organized the VIII Annual Colloquium on Clinical Legal Education in Poland.²⁶ At the Colloquium, future steps in the development of clinical legal education were discussed. The meeting also included workshops on mediation, moot court competitiveness, as well as NGO and small business clinics.

The Foundation also involves lawyers in its *pro bono* activities. In 2004 the Foundation launched the "Pro Bono Lawyer" competition, which has now become an annual event. The qualifications for the competition include "provision of free of charge and voluntary legal services" to charity organizations or the community, participation in programs and initiatives aiming at the development of a system of free legal advice, and achievement of goals in the area of public interest law.²⁷

In 2007, the Foundation, along with HFHR, the Public Interest Law Institute and Ashoka Foundation organized a roundtable *pro bono* conference at the Polish Constitutional Tribunal in Warsaw, Poland.²⁸ The conference contributed yet another important step to the establishment of *pro bono* culture in Poland. It was attended by many prominent members of the Polish legal community including judges, members of the Polish Bar Association and the National Association of Legal Advisors, as well as representatives from many law firms. The highlight of the roundtable was the signing of the *Pro Bono Publico* Declaration, a public affirmation of the

²³ *Strategic Litigation Program*, Helsinki Foundation for Human Rights, available at: <http://www.hfhrpol.waw.pl/precedens>.

²⁴ *Legal Clinics Foundation*, Legal Clinics Foundation available at: http://fupp.org.pl/index_eng.php.

²⁵ *Polish Legal Clinics*, Legal Clinics Foundation available at: http://fupp.org.pl/index_eng.php?id=clinics.

²⁶ *VIII Annual Colloquium on Clinical Education in Poland*, Legal Clinics Foundation, available at: http://www.fupp.org.pl/index_eng.php?id=8okspp_eng.

²⁷ *Lawyer Pro Bono*, Legal Clinics Foundation, available at: http://fupp.org.pl/index_eng.php?id=probono2004eng.

²⁸ *Global Pro Bono: Polish Lawyers Sign Pro Bono Declaration in Poland*, Pro Bono Wire, available at: <http://www.probonoinst.org/wire/09207-8.pdf>.

commitment to the provision of legal services to those in need. In addition, a new *pro bono* program was introduced in Poland, the Pro Bono Center.²⁹

C. Pro Bono Center

The Pro Bono Center (the “Center”) serves as a clearinghouse for legal *pro bono* activities.³⁰ Its main goal is to create an institutional framework for the further development of *pro bono* legal assistance in Poland. The Center has set up and coordinates a cooperative network between law firms and NGOs. Most aspects of *pro bono* work distribution between NGOs and private law firms are now handled by the Center. The law firms participating in the program are assigned specific cases depending on the difficulty and area of expertise involved. The Center also issues an annual report, in which it discusses the *pro bono* activities of the participating law firms. Additionally, the Center offers a series of legal educational programs for NGOs and others engaged in social work. All such educational programs are run by lawyers and experts associated with the Center.

D. Private Law Firms

Besides NGOs, other instrumental players in the creation of a *pro bono* culture in Poland have been private law firms. Initially, foreign law firms with offices in Poland provided the majority of *pro bono* services, bringing the practice to Poland mainly from the United States and Western Europe. For example, the Warsaw office of Weil, Gotshal & Manges provides extensive *pro bono* services to its community; in fact, in 2007, the firm was named a finalist for the Pro Bono Award.³¹ An associate of another U.S.-based law firm, Hogan & Hartson (with a local office in Warsaw), founded The Talizman Foundation (*Fundacja Talizman*) which collects goods and funds from donors to assist orphanages, homes for the elderly, and homes for the mentally and physically disabled in rural Poland.³²

More importantly, however, a culture of *pro bono* has started to emerge in Polish domestic law firms. One of the largest law firms, Wierzbowski Eversheds, has taken on multiple *pro bono* projects, including providing training and explaining legislation for “The Friends of Integration Association,” an NGO that helps handicapped people participate in social life.³³ Another Polish law firm, Domański Zakrzewski Palinka, supports the development of legal education and other legal initiatives in the country by sponsoring the European Law Students Association.³⁴ The firm of Soltysinski Kawecki & Szlezak also undertakes numerous *pro bono* activities. For example, the attorneys from this firm advised on the creation and implementation of the Mass Privatization Program and also represented the Polish government on a *pro bono* basis in a criminal case involving alleged illegal arms dealing.³⁵

²⁹ The Polish Legal Clinics Foundation is going to establish Pro Bono Center, Legal Clinic Foundation, available at: http://www.fupp.org.pl/index_eng.php?id=news_eng2005.

³⁰ Centrum Pro Bono, available at: <http://www.centrumprobono.pl>.

³¹ Weil, Gotshal & Manges Website, available at: <http://www.weil.com/warsaw>.

³² 2004 Annual Report: Community Services Department, Hogan & Hartson, available at: <http://www.hhlaw.com/probono/annualreport>.

³³ Wierzbowski Eversheds website, <http://www.eversheds.pl>.

³⁴ Domański Zakrzewski Palinka website, <http://en.dzp.pl/index.php>.

³⁵ Soltysinski Kawecki & Szlezak website, http://www.skslegal.pl/pro_bono.php.

The increasing role of domestic law firms in promulgation of *pro bono* culture in Poland is also evidenced by the fact that all three law firms that were distinguished in the annual ranking of law firms prepared by Gazeta Prawna (a Polish national newspaper) were domestic firms.³⁶ These were Kosztys, GESSEL, and Budzowska Fiatowski & Partners.

III. Conclusion

Although *pro bono* culture in Poland is certainly not as established and sophisticated as that existing in many countries of Western Europe or in the United States, the many examples of *pro bono* activities recently springing up in Poland provide strong support for the conclusion that there is a rising interest in developing proper *pro bono* culture in the country. As discussed in the preceding section, the past couple years especially have witnessed a sort of awakening in the Polish *pro bono* culture.

Having said that, one should not forget that there is still more that could, and should be done with respect to developing *pro bono* activities in Poland. The situation of many NGO, working for the public good is quite difficult, as they lack resources to develop their *pro bono* efforts. Many private law firms have those resources, and the next step in increasing *pro bono* awareness in Poland is to link the NGOs with the law firms.

September 2010
Pro Bono Practices and Opportunities in Poland

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.

³⁶ Gazeta Prawna, 2009 *Ranking of Law Firms*, available at: http://prawo.gazetaprawna.pl/artykuly/378365,vi_ranking_kancelarii_prawnych_dziennika_gazety_prawnej.html, 3.

PRO BONO PRACTICES AND OPPORTUNITIES IN ROMANIA

In Romania, few lawyers engage in *pro bono* work. The country's communist/socialist history is in part responsible for the culture of civic disengagement.¹ Despite the fall of socialism in 1989, Romanians still foster feelings of distrust towards unpaid community work. Things are nevertheless changing, especially since Romania's accession to the European Union in 2007. With increased competition in the legal profession, the proliferation of law firms, and the arrival of several international law firms, Romania's legal community is increasingly recognizing the value of *pro bono* services. As such, the infrastructure supporting *pro bono* opportunities and lawyers who perform this work is improving. This chapter describes the current framework governing the provision of legal services, reviews the legal aid system, and discusses *pro bono* opportunities in Romania.

I. *Legal Services and the Legal Profession in Romania*

A. General Framework for Legal Services

In order to be allowed to practice law in Romania, a person must have graduated from a law school and must have successfully passed the bar examination administered by the National Association of the Romanian Bars ("UNBR").² Following the passing of the bar examination, the candidate registers with one of the forty-one local Romanian Bars (which correspond to Romania's forty-one counties) and becomes a trainee lawyer. After two years of training under the supervision of a fully qualified lawyer, a trainee lawyer takes the second bar examination. If successful, the trainee lawyer becomes a fully qualified lawyer and is allowed to argue cases in front of most Romanian courts (subject to certain exceptions) and to work on his own.

The number of law schools and lawyers in Romania has increased dramatically with the onset of privatization. The number of law schools increased from three in 1989 to twenty-six in 2000³ and thirty-nine in 2009 (of which seventeen are state law schools and twenty-nine are accredited private law schools).⁴ The number of law students went from 3,975 (314 graduates) in 1990-1991 to 53,445 (9,624 graduates) in 1997-1998 and to 82,696 (12,568 graduates) in 2006-2007.⁵ The number of lawyers admitted to practice law similarly went up from 12,880 in 2003 (including 10,488 fully qualified lawyers and 2,392 trainee lawyers)⁶ to 25,789 in 2010 (including 22,141 fully qualified lawyers and 3,648 trainee lawyers).⁷

¹ Kandis Scott, *Decollectivization and Democracy: Current Law Practice in Romania*, 36 Geo. Wash. Int'l L. Rev. 817, 817 (2004).

² Law No. 51/1995 regarding the organization of law offices and the practice of law, republished in 2001 in Monitorul Oficial No. 113 of March 6, 2001, as further amended (hereafter, "Law No. 51/1995"), Articles 11 and 16, and the Regulations regarding the practice of law adopted by the UNBR, published in Monitorul Oficial No. 45 of January 13, 2005, as further amended (hereafter, the "UNBR Regulations"), Articles 33-37.

³ Scott (2004) at 834.

⁴ Government Decision No. 749/2009, published in Monitorul Oficial No. 465 of July 6, 2009.

⁵ *Romanian Statistical Yearbook 2008*, published by Institutul National de Statistica (National Institute of Statistics), available at: www.insse.ro/cms/files/pdf/ro/cap8.pdf.

⁶ Scott (2004) at 818.

⁷ 2010 Report of the *Uniunea Nationala a Barourilor din Romania* (National Association of the Romanian Bars), available at: www.unbr.ro/Brosura_Congres_2010.pdf, page 37 and Annex 26.

Lawyers from member states of the European Union⁸ can practice law in Romania as foreign lawyers simply by requesting to be registered on the Special List of Foreign Lawyers maintained by each local bar. They can represent clients before Romanian courts and can provide legal advice regarding Romanian law, European Union law, international law and the law of the country where they are registered as lawyers. Lawyers from member states of the European Union (as well as lawyers from countries that have bilateral conventions with the UNBR) can also request to practice law in Romania and to be admitted to a Romanian local Bar. In order to be admitted to the Bar, foreign lawyers must (a) request the UNBR to recognize their professional title and (b) either complete a three-year training period with a Romanian attorney or pass an examination in Romanian law (except if they have practiced Romanian law as foreign lawyers in Romania continuously for at least 3 years).

Lawyers from non-European Union countries⁹ can practice law in Romania as foreign lawyers simply by requesting to be registered on the Special List of Foreign Lawyers maintained by each local Bar, but they cannot represent clients before Romanian courts (they can, however, represent them before international arbitration tribunals) and they cannot give advice regarding Romanian law (unless they pass an examination in both Romanian law and Romanian language). Unless there is a bilateral convention between the UNBR and the foreign bar where they are registered to practice, lawyers from non-European Union countries cannot become admitted to a Romanian local Bar.

B. Legal Aid

Though many Romanians are poor, few are destitute. Most are able to afford the relatively low fees for legal representation and/or legal advice.¹⁰ Additionally, due to the surge in the number of lawyers, many are willing to negotiate their fee (or to accept installments) in order to secure more business. Nonetheless, Romania also maintains a legal aid system.

The Romanian Constitution provides the right to representation by a lawyer (selected by the person or appointed by the State) during any judicial proceeding.¹¹ As discussed in more detail below, legal representation is mandatory in certain cases where a lawyer will be appointed by the State if the person does not have one. In other cases, indigent persons may request and be granted legal aid (either in the form of legal representation or legal advice). Lawyers interested in providing legal aid must make a request to be included in the Legal Aid Registry (*Registrul de Asistentă Juridică*) maintained by each local Bar.¹² If the number of attorneys listed in the Legal Aid Registry is insufficient, the local bar may designate other lawyers to provide legal aid. Failure to provide legal aid by an attorney who is so designated is subject to disciplinary sanctions.¹³ Each local Bar maintains a Legal Aid Registry and has created a Legal Aid Bureau (“SAJ”) responsible, among other things, for designating the lawyers who provide legal aid.

⁸ Law No. 51/1995, Articles 12 and 80¹ - 80¹⁶; UNBR Regulations, Articles 17, 23-26, 44-45 and 314¹-314⁴.

⁹ Law No. 51/1995, Article 12; UNBR Regulations, Articles 17 and 44-45.

¹⁰ Scott (2004) at 831-32.

¹¹ Constitution of Romania (2003), Article 24.

¹² Framework Regulations regarding the organization of the Legal Aid Bureaus (*Servicii de Asistentă Juridică*) of the Romanian Bars, adopted by Decision No. 419 of September 27, 2008 of the UNBR Council, as further amended (hereafter, “Legal Aid Framework Regulations”), Article 1.

¹³ Legal Aid Framework Regulations, Articles 1, 70 and 71.

1. *State-Sponsored Legal Aid For Criminal Proceedings*

The Romanian State must ensure that any criminal defendant is represented by a lawyer, either of his or her choice or appointed by the State (via the SAJ infrastructure described above), throughout all stages of the criminal proceedings, but only in the following circumstances: (a) the defendant is a minor; (b) the defendant is detained in a rehabilitation center or in an educational medical institution; (c) the defendant is detained or arrested (even in connection with another case); (d) the defendant, as a preventive measure, is detained in a medical institution or is obliged to receive medical treatment (even in connection with another case); (e) the prosecutor or the court determines that the defendant is not capable of defending himself or herself; or (f) the defendant is facing a charge for which the sentence is imprisonment for five years or more (but, in the case of this clause (f), only during the trial proceedings and not throughout all stages of the criminal proceedings).¹⁴ The provision mandating that the court or the prosecutor appoint a lawyer if the defendant is not capable of defending himself or herself is rarely put into practice, except in the case of mentally disabled, sick or handicapped defendants. It is still debated whether this provision also covers indigent defendants.¹⁵ Moreover, defendants accused of a crime for which the maximum sentence is less than five years of imprisonment are not automatically entitled to free legal representation.¹⁶

The Romanian State must also ensure that a person is represented by a lawyer, either of his or her choice or appointed by the State (via the SAJ infrastructure described above), in the following circumstances: (a) the prosecutor or the court determines that the victim, the civil party or the civilly responsible defendant in a criminal proceeding is not capable of defending himself or herself¹⁷ (for example, when the person is a minor or has been declared mentally incompetent by court order); (b) the beneficiary is a victim of the crime of trafficking in persons;¹⁸ (c) upon request, when the person being represented is (i) a victim of a serious crime (such as murder, attempted murder, physical bodily harm, rape or sexual perversion), (ii) a close family member of a victim who has died as a consequence of a violent crime committed with intent, or (iii) a victim of a less serious crime or a close family member of such a victim, if the income of the victim's family is under the minimum wage, provided, in all cases, that the crime was promptly reported to the authorities;¹⁹ (d) during extradition proceedings, international transfer proceedings, and execution of European arrest warrants;²⁰ and (e) other circumstances expressly set forth by the law which require that a person be represented by an attorney.

¹⁴ Code of Criminal Procedure, Article 171.

¹⁵ Cozmin Obancia, Marinela Cioroaba, and Andrei Savescu, *Access to Justice in Central and Eastern Europe Country Reports: Romania* (2003), available at: www.pili.org, at 16.

¹⁶ Jill Parker, *Comment: West Meets East: A Discussion of European Union Enlargement and Human Rights*, 11 *Tulsa J. Comp. & Int'l L.* 603, 625 (2004).

¹⁷ Code of Criminal Procedure, Article 173(3).

¹⁸ Law No. 678/2001 regarding the prevention of and fight against trafficking in persons, published in Monitorul Oficial No. 783 of December 11, 2001, as further amended, Articles 43 and 44.

¹⁹ Law No. 211/2004 regarding certain measures for the protection of crime victims, published in Monitorul Oficial No. 505 of June 4, 2004, as further amended.

²⁰ Law No. 302/2004 regarding international judicial cooperation regarding criminal proceedings, published in Monitorul Oficial No. 594 of July 1, 2004, as further amended.

2. *State-Sponsored Legal Aid For Non-Criminal Matters*

Before 2008, State-sponsored legal aid for non-criminal matters was only available to a few categories of persons, in each case, according to a separate law: victims of domestic violence, children, refugees and asylum seekers, persons petitioning to obtain or re-obtain Romanian citizenship, persons whose properties were expropriated during the period of 1945-1989, heroes of the 1989 Romanian revolution or citizens of a foreign state (“special legal aid matters”).²¹ The special legal aid matters are still applicable but a 2008 Emergency Ordinance (the “Ordinance”) has created a general mechanism for providing indigent persons with State-sponsored legal aid for all non-criminal matters.²²

According to the Ordinance, legal aid is provided for any civil, commercial, administrative, labor, social security and other matters and proceedings, upon request, if the applicant: (a) is a natural person; (b) resides in Romania or in a member state of the European Union; (c) has a net income per household member of less than 500 RON (subject to certain exceptions); and (d) the costs related to legal proceedings or for obtaining legal advice in order to defend a legitimate right are sufficiently high to jeopardize the applicant’s financial means necessary to provide for his or her family. The maximum amount of legal aid that a person may receive during the course of one year is equal to 12 national minimum net monthly salaries.²³

Legal aid can be granted in one of the following forms: (a) legal representation and/or legal advice from a lawyer, either appointed by the relevant authority or selected by the applicant (with the lawyer’s consent); (b) payment for the fees charged by an expert, translator or interpreter during a judicial proceeding; (c) payment for the fees charged by a marshal to enforce a judicial decision; and (d) an exemption, reduction, installment or deferral of payment of court taxes, including any court fees for the enforcement of judicial decisions.²⁴

²¹ See, for example, Law No. 217/2003 regarding the prevention of and fight against domestic violence, published in Monitorul Oficial No. 367 of May 29, 2003, as further amended, Articles 23 and 24; Law No. 272/2004 regarding the protection and promotion of children’s rights, published in Monitorul Oficial No. 557 of June 23, 2004, as further amended, Articles 37, 57; Law No. 105/1992 regarding international private law, published in Monitorul Oficial No. 245 of October 1, 1992, as further amended, Article 163; Ordinance, Articles 41-49; Law No. 122/2006 regarding asylum, published in Monitorul Oficial No. 428 of May 18, 2006, as further amended, Article 17; Law No. 42/1990 regarding the honoring of and the granting of certain rights to the heroes of the Romanian Revolution of December 1989 and their families, republished in Monitorul Oficial No. 198 of August 23, 1996, as further amended, Article 10.

²² Emergency Ordinance No. 51/2008 regarding judicial public help with respect to civil matters, published in Monitorul Oficial No. 327 of April 25, 2008. The provisions of the Ordinance have not yet been properly transposed into Law No. 51/1995 because Emergency Ordinance No. 159/2008, published in Monitorul Oficial No. 792 of November 26, 2008 (amending Law No. 51/1995 to integrate the provisions of the Ordinance) was rejected by Law No. 81/2010, published in Monitorul Oficial No. 300 of May 10, 2010, following a ruling of the Romanian Constitutional Court that Emergency Ordinance No. 159/2008 was unconstitutional.

²³ Ordinance, Articles 2, 3, 4, 7 and 8.

²⁴ Ordinance, Article 6.

3. *Procedural Aspects Regarding Legal Aid*

In all cases of State-sponsored legal aid, the fees of the lawyer are paid by the State from the budget of the Ministry of Justice. The compensation is set forth in a Protocol between the Ministry of Justice and the UNBR (the “Protocol”),²⁵ as a flat fee for each type of legal aid service. The compensation is not adjusted to take into account the time spent on the case or the outcome of the case, which does little to advance zealous and committed representation. Moreover, the fees are relatively small, therefore discouraging many experienced lawyers from pursuing these *pro bono* opportunities. As a result, and because legal aid assignments provide an opportunity to gain experience, young lawyers typically volunteer to take them on.²⁶ In fact, the relevant regulations state that legal aid in non-criminal matters will be primarily assigned to young lawyers.²⁷

The request for State-sponsored legal aid in the form of legal representation in judicial proceedings must be presented to the court or the prosecutor (except where the appointment of a lawyer is directly ordered by the court or the prosecutor, such as in criminal cases where representation of the defendant is mandatory). The court or the prosecutor must approve the request and send it to the SAJ of the relevant local Bar, which then designates a lawyer to handle the legal proceedings. The lawyer’s fee is established by the court or by the prosecutor pursuant to the Protocol. The request for State-sponsored legal aid in the form of legal advice is filed directly with the SAJ, which then designates a lawyer and establishes the fee to be received by the lawyer pursuant to the Protocol.

As discussed above, prior to 2008 there was no State-sponsored legal aid for non-criminal matters (except for special legal aid matters) and, even in criminal matters, legal aid was limited to those circumstances where the State had the express legal obligation to ensure that a person was represented by a lawyer. For all other situations, a person could petition the Dean of the local bar and request free legal services (legal representation and/or legal advice in any case or matter). That possibility still exists but is of less importance given that the scope of State-sponsored legal aid has expanded to cover non-criminal matters (subject to the conditions described above). Additionally, due to the lack of publicity, many indigents are unaware of the opportunity to receive free legal assistance directly from their local Bar.

To receive legal aid from the Dean, the petitioner must demonstrate that (i) he or she lacks financial means and (ii) his or her rights would be prejudiced by delay.²⁸ There are no set criteria to guide or restrict the Dean’s decision to grant or deny assistance, no clear financial or other criteria to establish the lack of financial means and no clear rules regarding the evidence that should be produced in support of the petition. If the request is granted, the Dean then designates a lawyer to provide the requested legal services. It is unclear whether the lawyer must be designated from those listed in the Legal Aid Registry or from among the other lawyers. However, in practice it appears that the Dean only appoints lawyers with their consent and that the

²⁵ Protocol between the Romanian Ministry of Justice and the National Association of the Romanian Bars No. 1/3928/2008 effective December 1, 2008, *available at*: www.unbr.ro.

²⁶ Cozmin Obancia, Marinela Cioroaba, and Andrei Savescu, *Access to Justice in Central and Eastern Europe Country Reports: Romania* (2003), *available at*: www.pili.org, at 16.

²⁷ Legal Aid Framework Regulations, Article 27; UNBR Regulations, Article 217.

²⁸ Law No. 51/1995, Article 68; UNBR Regulations, Articles 156, 157, 161.

applicant usually indicates on the petition the name of the lawyer who will provide legal assistance.²⁹

II. *Pro Bono Opportunities in Romania*

A. Issue-Based Organizations

There are a number of international and local issue-based NGOs that provide Romanians with free legal assistance. These organizations are always in need of help from lawyers, as the demand for legal aid is generally greater than the available resources. In fact, some NGOs hire outside counsel to provide advice to, and make court appearances on behalf of, their beneficiaries because they lack an adequate number of in-house counsel or volunteer lawyers. Below is a brief overview of some of the issues that currently command the attention of such NGOs.

1. *Protection of Roma Rights*

As in other Eastern European nations, there is widespread discrimination against Roma in Romania. Romania has the largest Roma minority in Europe, with approximately 1 million Roma living in Romania (approximately 5% of its total population).³⁰ In Romania, the Roma are impoverished, vulnerable communities who face discrimination and exclusion across all spheres of society, including education, housing, health care and employment.³¹ According to the 2007 Roma Inclusion Barometer, 23% of Roma were illiterate and 95% did not complete high school.³² Additionally, ethnic violence against Roma has been reported, prompting many NGOs to focus on promoting and protecting Roma rights in Romania. Following Romania's accession to the European Union, a new issue appeared because many Romanian Roma left Romania and established themselves in other member states of the European Union. In September 2010, France publicly announced plans to dismantle Roma camps and to deport back to Romania the Roma living in the camps. This announcement steered political discussions, as it appears to be in violation of European law regarding the freedom to travel and live within the European Union.³³

The European Roma Rights Center ("ERRC") is an international public interest organization aimed at combating anti-Roma racism and human rights abuses of Roma in Eastern European nations, including Romania. The approach of the ERRC involves strategic litigation, international advocacy, research and policy development, and human rights training of Roma activists. Since its establishment in 1996, ERRC has set in motion more than 500 court cases in fifteen countries to bring to justice State and non-State actors who have discriminated against Roma individuals or have committed violence against them. The ERRC is active in both domestic and international litigation. The ERRC supports local lawyers in domestic legal proceedings both professionally and financially. When domestic remedies are exhausted, the ERRC prepares legal

²⁹ Cozmin Obancia, Marinela Cioroaba, and Andrei Savescu, *Access to Justice in Central and Eastern Europe Country Reports: Romania* (2003), available at: www.pili.org, at 21.

³⁰ *Health and the Roma Community, analysis of the situation in Europe: Bulgaria, Czech Republic, Greece, Portugal, Romania, Slovakia, Spain* (2009), available at: www.romanicriss.org.

³¹ *At Risk: Roma and the Displaced in Southeast Europe*, United Nations Development Program (2006); *Roma: The Plight of Europe's Largest Minority* (2008), available at: <http://meero.worldvision.org>.

³² *2009 Human Rights report: Romania*, U.S. Department of State, available at: www.state.gov/g/drl/rls/hrrpt/2009/eur/136053.htm.

³³ See Judy Dempsey and Stephen Castle, *France and Germany Spar Over Policies on Roma*, The New York Times, September 18, 2010.

submissions to international tribunals, including the European Court of Human Rights, the European Committee of Social Rights and UN treaty bodies. For example, following an application to the European Court of Human Rights by ERRC on behalf of 21 Roma victims of a 1993 pogrom incident in Hadareni, Romania, in July 2005 Romania was found in violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”) and agreed to pay compensation and undertake positive steps to resolve discrimination against the Roma.³⁴ The Romanian government undertook to initiate community development projects to improve living conditions and inter-ethnic relations. However, little progress has been made since then to improve the condition of the Roma. In October 2009, a member of the National Council for Combating Discrimination (“CNDC”) went on a hunger strike over the failure by the government to implement the measures promised in the wake of the ECHR Hadareni decision. He ended his hunger strike after eight days following assurances by the government that it would not obstruct funding for the Hadareni community projects.³⁵

The Roma Center for Social Intervention and Studies (“Romani CRISS”)³⁶ and the Roma Center for Public Policies (“Aven Amentza”)³⁷ are two local NGOs that also advocate for Roma rights and provide free legal aid to victims of discrimination based on ethnicity. Romani CRISS also monitors the implementation of a 2007 regulation³⁸ forbidding segregation of Roma students.

The NGO Ovidiu Rom³⁹ also works to assist and encourage Roma children in the school enrollment process and conducts a national public awareness campaign entitled “School Makes You Great” to promote the importance of school enrollment to families and children.⁴⁰

2. *Discrimination Based on Sexual Orientation and HIV Positive Status*

Despite having some of the harshest anti-homosexual laws approximately a decade ago,⁴¹ Romania has since made important progress in protecting the rights of its LGBT citizens, especially after its accession to the European Union. In 2000, Romania enacted regulations that outlawed discrimination on the basis of sexual orientation in a variety of fields, including employment, the provision of and access to goods and services, housing, education, health care, audiovisual programming, the justice system, social security and other public services, which were thereafter further enhanced following Romania’s accession to the European Union in 2007.⁴² In 2001, Romania repealed the last of its anti-gay laws, Article 200 of the Criminal Code, which

³⁴ For more information regarding ERRC, *see* www.errc.org.

³⁵ *Human Rights in Romania*, Amnesty International Report 2009, *available at*: www.amnesty.org.

³⁶ For more information regarding Romani CRISS, *see* www.romanicriss.org.

³⁷ For more information regarding Aven Amentza, *see* www.romanothan.ro.

³⁸ Order of the Ministry of Education No. 1540/2007 in respect of forbidding segregation of Roma children in schools and the approval of the methods for preventing and eliminating the segregation of Roma children in schools, published in Monitorul Oficial No. 692 of October 11, 2007.

³⁹ For more information regarding Ovidiu Rom, *see* www.ovid.ro.

⁴⁰ *Human Rights in Romania*, Amnesty International Report 2009, *available at*: www.amnesty.org.

⁴¹ *See* Adrian Bridge, *Gay Call to Boycott Wine from Romania Wines*, *The Independent*, January 22, 1997; Bruce Benderson, *Out of Darkness – Minor Change in Romania’s Sodomy Law*, *The Advocate*, June 20, 2000.

⁴² Ordinance No. 137/2000, republished in Monitorul Oficial No. 99 of February 8, 2007, as further amended.

criminalized public manifestations of homosexuality.⁴³ The CNDC is the Romanian public authority that is empowered to, among other things, prevent, monitor and investigate any forms of discrimination. The CNDC has successfully filed cases against and fined individuals and firms due to discrimination based on sexual orientation.⁴⁴ Nevertheless, discrimination and persecution based on sexual orientation still continue in Romania⁴⁵ and much remains to be done.⁴⁶

Discrimination based on HIV-positive status is also widespread in Romania. Thousands of Romanian children and youth are living with HIV and face discrimination that keeps them from attending school, obtaining necessary medical care, working, or even learning about their medical condition. The few affected children who attend school are relegated to special schools with inferior resources, or barred from attending vocational programs in fields such as food service and hairdressing, for which Romanian law requires mandatory HIV testing. HIV-positive youth may be denied jobs because Romanian law mandates medical testing for a wide variety of jobs in which the risk of HIV transmission is minimal, and fails to protect individuals from HIV tests performed without informed consent by public and private employers. Such discrimination cases are difficult to litigate and may draw further attention to plaintiffs' HIV status because court documents are not private.⁴⁷

ACCEPT is an NGO that deals with both of these issues at a national level through awareness campaigns and advocacy. Founded in 1994, ACCEPT was the leading advocate of the repeal of Article 200 of the Criminal Code. ACCEPT provides free legal assistance to people discriminated against on account of their sexual orientation, gender, or HIV positive status. ACCEPT also assists gay and gay-friendly NGOs with the legal paperwork and filings required for an organization to be registered with the State.⁴⁸

With press reports placing Romania on the eve of an HIV epidemic and UNICEF, the Open Society Institute and the Global Fund to Fight AIDS, Tuberculosis and Malaria having all withdrawn funding for Romania's HIV program since June 2010,⁴⁹ the situation is likely to worsen. Other Romanian NGOs, such as the Romanian Association Against AIDS ("ARAS"),⁵⁰ are both leading an awareness raising and prevention campaign and providing advocacy help for vulnerable groups.

⁴³ See *Romania Steps Closer to EU after Article 200 Eliminated*, The Washington Blade, February 15, 2002.

⁴⁴ For example, in 2005, the CNCD fined TAROM, the national air carrier, for its refusal to allow gay partners to take advantage of its Valentine's Day couples discounts. See *Airline Fined for Anti-Gay Offer*, The Independent, March 2, 2005; *Valentine's Deal 'Left Out Gay People'*, The Guardian, March 1, 2005.

⁴⁵ For example, protestors hurled stones and fireworks at the participants of the 2007 Gay Parade in Bucharest and, the night after the Parade, two men were beaten by eight attackers upon leaving the Bucharest cinema which hosts the annual "Gay Fest" festival. See *Protesters Clash With Police At Romania Gay Parade*, Reuters, June 9, 2007; *Attackers Stone Romania Gay Rights March*, The Associated Press, June 9, 2007.

⁴⁶ For example, as of October 1, 2011 when the New Civil Code will come into force, the definition of marriage will be amended to refer to marriages "between a man and a woman" (whereas before the reference was to "between spouses") and the New Civil Code will state expressly that Romania does not recognize foreign same-sex marriages. See Articles 258 and 277 of the New Civil Code.

⁴⁷ *Romania: Discrimination Closes Doors for Children with HIV*, Human Rights Watch (2006).

⁴⁸ For more information regarding ACCEPT, see www.accept-romania.ro.

⁴⁹ William Lee Adams, *Eve of an HIV Epidemic in Romania*, Time Magazine, September 20, 2010, available at: www.time.com/time/magazine/article/0,9171,2017055,00.html.

⁵⁰ For more information regarding ARAS, see www.arasnet.ro.

3. *Treatment of Adults with Mental Health Problems*

Several NGOs have publicly reported the involuntary placement of citizens in psychiatric hospitals for treatment (even where they had not been charged with any criminal offense), the inadequate living conditions in many of the psychiatric wards and hospitals in Romania, the ill-treatment of patients, methods of restraint and enforcement of seclusion, the lack of adequate habilitation and rehabilitation or adequate medical care as well as the failure to investigate impartially and independently reports of ill-treatment.⁵¹ The Estuar Foundation (“*Estuar*”) aims to combat these problems and to provide basic protection for adults with mental health problems. Estuar provides free legal advice and representation for clients discriminated against because of their mental health status, and advocates for the rights of the mentally ill.⁵²

4. *Prison Conditions*

Several NGOs reported that prison conditions in Romania are harsh and do not meet international standards. There is abuse of prisoners by authorities and other prisoners. Sanitation, hygiene, medical care and food quality are poor. The Association for the Defense of Human Rights in Romania – Helsinki Committee (“APADOR-CH”) is an NGO focused on changing both the legislation and the perceptions in the field of civil rights, with an emphasis on individual freedom, the right to privacy, access to information and the rights of minorities.⁵³ APADOR-CH also visits prisons with the Romanian government’s permission and is involved in the government’s efforts to improve prison conditions. In 2009, APADOR-CH reported that prison meals did not provide the minimum necessary calories, water at some prisons was unsuitable for drinking and in many facilities the kitchens were infested with mold. APADOR-CH also stated that daily activities, work opportunities, and educational programs continued to be insufficient. APADOR-CH called for the establishment of a joint medical commission of the Ministries of Justice and Health to investigate the causes of deaths in prison, following the death of a prisoner in 2007 in a case of suspected medical negligence. The practice of labeling certain prisoners as “dangerous” without clear criteria and subjecting them to greater restrictions than the remainder prison population as well as the practice of subjecting prisoners to multiple punishments for a single act of misbehavior were also reported and criticized.⁵⁴

5. *Corruption*

During Romania’s negotiations for accession to the European Union, corruption was one of the most debated topics. Transparency International (“Transparency”) is an NGO that promotes transparency in elections, public administration and business. Transparency utilizes advocacy campaigns to lobby national and local governments to implement anti-corruption reforms, and provides victims of corruption with practical assistance to pursue complaints and address their grievances.⁵⁵

⁵¹ *Bulgaria and Romania: Amnesty International’s Human Rights Concerns in EU Accession Countries*, Amnesty International (2005); Report concerning the observance of the rights and liberties of persons committed to healthcare and social establishments for people with mental disabilities, Center for Legal Resources (2009).

⁵² For more information regarding Estuar, see www.estuar.org.

⁵³ For more information regarding APADOR-CH, see www.apador.org.

⁵⁴ *2009 Human Rights report: Romania*, U.S. Department of State.

⁵⁵ For more information regarding Transparency, see www.transparency.org.

6. *Microfinance*

Romania had the fastest economic growth rates in the European Union until a real estate and credit bubble burst in 2008. It now faces rising unemployment and social unrest against painful spending cuts and tax rises. The economy nudged out of recession in the second quarter of 2010 but is likely to contract again through the rest of the year as higher value added tax crimps spending. Prospects of recovery are undermined by scarce foreign direct investment and a collapse in property prices.⁵⁶ In this context, microfinance initiatives are vital for the local small and medium enterprises (“SMEs”). Several Micro Finance Institutions (“MFIs”) are providing loans to SMEs and are an important factor for revitalizing the economy at the SMEs level. Lawyers’ *pro bono* assistance is needed to pair up with MFIs in order to put in place more MFI projects and the related loan documentation, raise awareness of the existence of microfinance solutions, help SMEs apply for loans from MFIs and assist the SMEs with corporate and other legal advice once the microfinance project is under way.

B. Clinical Programs

In Romania, legal education focuses to a large extent on memorizing statutes and does not invite the breadth of exploration of a problem-solving approach to education.⁵⁷ As such, clinical programs are rare in Romanian law schools. Several international organizations, such as the Public Interest Law Institute (“PILI”)⁵⁸ and American Bar Association Central European and Eurasian Law Initiative (“ABA-CEELI”),⁵⁹ have been involved in an effort to establish clinical education programs at Romanian law schools. Given Romania’s historical background, one of the challenges in setting up such programs is finding mentor lawyers willing to run the legal education clinics on a *pro bono* basis. As such, foreign lawyers who possess the language skills necessary to teach Romanian clinical programs and who would be willing to lecture without compensation could greatly contribute to the reshaping of the legal education system in Romania.

C. Mediation

While a few years ago the typical present-day lawyer appeared to engage in relatively little work with government agencies or institutions other than the courts, and mediation rarely occurred,⁶⁰ there have been several developments since. A law passed in 2006⁶¹ introduced mediation as a dispute resolution mechanism in Romania in practically every type of conflict. Mediation is a dispute resolution mechanism based on the parties’ cooperation, communication and negotiation.⁶² The parties may apply for mediation before or after court proceedings have

⁵⁶ Reuters *Factbox – Key political risks to watch in Romania*, October 1, 2010, available at: <http://www.reuters.com/article/idUSRISKRO20101001?pageNumber=1>.

⁵⁷ Kandis Scott, *Decollectivization and Democracy: Current Law Practice in Romania*, 36 Geo. Wash. Int’l L. Rev. 817, 869 (2004).

⁵⁸ For more information regarding PILI’s Legal Education Reform program, see www.pili.org.

⁵⁹ For more information regarding ABA-CEELI’s programs, see www.abanet.org/rol/europe_and_eurasia.

⁶⁰ Scott (2004) at 868.

⁶¹ Law No. 192/2006 regarding mediation and the profession of mediator, published in Monitorul Oficial No. 441 of May 22, 2006, as further amended by Law No. 370/2009, published in Monitorul Oficial No. 831 of December 3, 2009, and Government Ordinance No. 13/2010, published in Monitorul Oficial No. 30 of January 30, 2010.

⁶² Law No. 192/2006 as amended, Article 50(1).

commenced, and they have the right to solve through mediation any conflict (whether in the realm of civil, commercial, family, criminal law, etc.). If the mediation is started after the commencement of court proceedings, such proceedings will be suspended for the duration of the mediation. A recent provision stipulates that law enforcement bodies have a duty to inform the parties of the availability of the mediation process and its benefits.⁶³ The law also sets out the procedures for qualifying as a mediator, provides for the set-up of a governing body of the mediator profession (the Mediators Council) and introduces mediation training courses.

III. *Prohibition against Advertising*

One issue that indirectly affects *pro bono* practice in Romania is the restriction on legal advertising coupled with the lack of information regarding legal aid made available by the local Bars and the UNBR. Lawyers in Romania are only permitted to advertise their services in order to give the public the necessary information pertaining to the legal practice of the lawyer or law firm and there are important restrictions in place as to the form and means of advertising. The names of past or current clients cannot be publicized, except under certain limited circumstances, if the client consents. Further, it is illegal to solicit legal work in any form, by going to the home of a potential client, in a public place or by sending a personalized unsolicited proposition of potential legal work. All advertisements are susceptible to review by the relevant authorities of the local Bar and infringement of the applicable limitations and prohibitions is subject to disciplinary sanctions.⁶⁴

Because advertising is permitted only for conveying information that is strictly necessary, advertising *pro bono* services in some circumstances may be outside the scope of legally permitted advertising exceptions. As it may be difficult to reconcile the severity of these anti-advertising rules with the well-deserved need to publicize any *pro bono* work, Romanian law firms and attorneys understandably have fewer incentives to attempt to enhance their professional reputation by conducting *pro bono* work.

IV. *Conclusion*

Within the framework of the legal aid system, the mediation mechanism and the programs of the local and international NGOs that operate in Romania, there are several exciting opportunities for international lawyers to engage in *pro bono* work in Romania. Despite the many positive developments in Romania during the past twenty years, the demand for free legal services remains greater than the supply and there continues to exist an overriding hesitation on the part of Romanian lawyers to voluntarily engage in *pro bono* work. International law firms and foreign lawyers can also help make a difference by simply enhancing the perception of *pro bono* work in the Romanian legal community. The effects are appearing already. An initiative launched in May 2010 by a former judge and a professor of corporate law at the University of Bucharest Law School to set up a network of 100 Romanian *pro bono* lawyers is off to a good start with 62 lawyers reported to have joined by September 2010.⁶⁵ The local press is starting to report about

⁶³ Zeno Daniel Sustac and Elena Bustea, *Mediation in Romania* (February 2010), available at: www.mediate.com/articles/sustack75.cfm.

⁶⁴ Law No. 51/1995, Article 46; UNBR Regulations, Articles 230-237.

⁶⁵ *First Meeting of the Lawyers of Project Piperea: 100 "pro bono" Lawyers for Romania* (September 8, 2010), available at: www.juridice.ro. See also www.spunesitu.ro/proiect-avocati.

cases taken over by the lawyers of the network on a *pro bono* basis, which further raises the Romanian public's awareness of legal *pro bono* work.

September 2010
Pro bono Practices and Opportunities in Romania

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.

PRO BONO PRACTICES AND OPPORTUNITIES IN THE RUSSIAN FEDERATION

This chapter discusses the law and regulations governing the provision of free legal services and the specific *pro bono* opportunities available to international law firms in the Russian Federation.¹

Historically, there has been no culture of *pro bono* legal assistance in the Russian Federation. Under the communist regime that prevailed for so many years in the USSR, legal aid, like most other services, was exclusively the province of the state. Perhaps as a vestige of the former communist era, Russia still lacks a professional environment that fully supports *pro bono* work. However, with Russia's transition to a democratic government and capitalist economy, there has been an ideological shift from the expectation that legal aid be exclusively state-sponsored to an anticipation that private sector attorneys also play a role in the provision of free legal services. A growing number of international firms and non-governmental organizations are appearing in Russia, many of which seek to foster *pro bono* and give back to the community. There have also been some positive steps taken at the federal level which aim to expand regulation of the free legal aid system in the Russian Federation. As a result, *pro bono* culture in Russia is slowly developing.

I. *Legal Services and the Legal Profession in the Russian Federation*

A. The Russian Judicial System

The Russian federal judicial system is a tri-partite system consisting of the constitutional, *arbitrazh* and general court systems. The constitutional court decides questions of constitutional law, statutory interpretation and allocation of powers; the *arbitrazh* court handles commercial matters; and the general court hears civil cases with the participation of individuals, criminal cases and disputes between individuals and State authorities.² The general court system's lowest level court (the regional court) hears more than 90% of all civil and criminal cases.³ The greatest need for *pro bono* assistance is at the regional court level. Unlike courts in the United States and Europe, which frequently encourage *pro bono* representation of *amicus curiae* at the appellate level, few such opportunities exist in the Russian Federation.

B. Regulation of the Legal Profession and Legal Services

The legal profession in Russia is comprised of state-licensed attorneys (called "advocates") and unlicensed lawyers (called "jurists"). Jurists do not need to meet the same educational or licensure requirements as advocates but may still provide a broad range of legal services to the public, with the exception of undertaking certain criminal matters.⁴ Advocates, on the other hand, must successfully complete an examination and application process administered by regional bar chambers and are thereafter subject to regulation by the Russian Bar. Given the

¹ For a discussion of opportunities available in public international law more generally, see, e.g., Richard J. Ferris, Jr., et. al., *Directory of Pro-Bono Opportunities in International Law* (2004), <http://www.law.georgetown.edu/graduate/documents/InternationalDCProBono.pdf>.

² See *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* [SZ RF] [Russian Federal Collection of Legislation] 1997, No. 1, item 1 ("On Judicial System in the Russian Federation").

³ See *id* (Comments to art. 21). Local justices of the peace also have jurisdiction to hear limited types of cases.

⁴ See *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* [SZ RF] [Russian Federal Collection of Legislation] 2002, No. 23, item 2102 ("On Attorney's Activity and the Bar in the Russian Federation").

ability to practice law without obtaining advocate status, many attorneys, particularly those practicing in commercial areas, do not ultimately become licensed.

The lack of advocates in Russia is significant because only advocates have an obligation under Federal law to provide free legal aid.⁵ The mandatory legal aid provided by advocates is free to clients; however, the advocate is paid a minimal fee by the federal government (and in some cases regional governments) in accordance with federal law and local ordinances.⁶ Legal aid is administrated chiefly by the judiciary and the investigators' office through an assigned-counsel system in which courts or investigators appoint counsel for criminal suspects and defendants from a regional registry of licensed advocates.⁷ While there are few formal exceptions to such service when called upon by the government, in practice many advocates find ways to avoid providing the required legal aid service.

C. The Right to Counsel in the Russian Federation

The Constitution of the Russian Federation guarantees to Russian citizens the right to qualified legal counsel and, in cases set forth by law, the right to free legal aid.⁸ The current law requires that a government-appointed attorney be provided free of charge to defendants in certain criminal proceedings;⁹ to men who serve in the military on questions related to their military service obligations;¹⁰ and to minors residing in state institutions with respect to child neglect and juvenile offenses. There is also a right, in certain civil cases,¹¹ to free legal assistance if the individual meets specified financial eligibility criteria.¹²

⁵ See *id.*

⁶ See *id.* Under the Criminal Procedure Code and the Federal Law "On Attorney's Activity and the Bar in the Russian Federation," advocates' fees for the provision of legal aid are paid from the federal budget, save for the provision of legal aid in remote and sparsely populated areas. In these areas, advocates' fees are financed from regional budgets.

⁷ See *Ugolovno Protsessual'nyi Kodeks* [UPK][Criminal Procedure Code], Art 5. The investigators' office is part of the executive branch but separate from the prosecutors' office. Investigators are officers authorized to conduct pre-trial investigations in criminal proceedings.

⁸ *Konstitutsiia Rossiiskoi Federatsii* [Konst. RF][Constitution] Art. 48.1.

⁹ This includes, inter alia, cases where the defendant: (1) is a minor; (2) has physical or psychological disabilities that prevent him from defending himself; (3) is not fluent in Russian; (4) is charged with crime punishable by more than 15 years of imprisonment; (5) is to stand trial in front of a jury; or (6) has admitted the charges and motioned for summary proceedings. See *Ugolovno Protsessual'nyi Kodeks* [UPK] [Criminal Procedure Code], Art 51.

¹⁰ See *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* [SZ RF] [Russian Federal Collection of Legislation] 1998, No. 22, item 2331 ("On the Status of Military Men").

¹¹ The indigent also have access to counsel in the following civil and criminal matters: (1) to plaintiffs: in cases concerning alimony, damages relating to a breadwinner's death and serious job-related injuries; (2) to veterans of the Great Patriotic War: on any issue not relating to entrepreneurial activity; (3) to citizens of the Russian Federation: where applications for pensions and benefits are drawn up; and (4) to the citizens of the Russian Federation who suffered from political repression: on issues relating to their rehabilitation. See *supra* note 412.

¹² In order to qualify for legal aid, applicants must have an average per capita household income that is under the standard of living minimum, established by the Federal government and currently set at 5,518 Russian Rubles per month. See *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* [SZ RF] [Russian Federal Collection of Legislation] 26 July 2010, No. 30, item 4102 ("On Establishment of Size of Living Minimum in the Russian Federation for First Quarter of 2010"). The standard of living minimum, however, may be raised (but not lowered) by regional governments. In Moscow, for example, this amount is currently set at 8,424 Russian Rubles per month. See

In practice, however, access to free legal aid in Russia is quite limited. The combination of financial eligibility criteria and the restriction on the type of civil cases in which indigent citizens may assert the right to receive free legal assistance ultimately deprives individuals of access to justice in a number of important spheres, including housing law, family law, labor law, actions against officials, and numerous others. In addition, the right to receive free legal assistance is guaranteed exclusively to citizens of the Russian Federation – to the exclusion of a significant and growing number of foreign citizens, including refugees. Practically speaking, the quality and availability of legal aid varies dramatically across the country, making it substantially more difficult to secure free legal assistance in small metropolitan and rural areas. The problem is compounded by the fact that many citizens are almost entirely uninformed about their right to receive free legal assistance, as evidenced by how rarely legal aid is requested.¹³

D. Legal Aid Legislation

While the Constitution of the Russian Federation guarantees qualified legal representation for its citizens in certain criminal and civil cases, this guarantee has not been accompanied by any meaningful implementing legislation. Absent a developed set of laws that specify, for example, how such legal aid is to be administered and funded, the promise of legal representation will likely continue to go unfulfilled for many Russian citizens.¹⁴

The regulation of legal aid and the provision of free legal services in the Russian Federation is based predominantly on the Code of Criminal Procedure and the Federal Law “On Attorney’s Activity and the Bar in the Russian Federation.” The current regulatory regime, however, is limited both in terms of the categories of people that may avail themselves of free legal aid and the scope of services available to them.¹⁵ Funding from the federal budget is limited and the fees authorized for advocates who provide legal aid are minimal, making it difficult to attract lawyers and provide high quality legal aid. In addition, a significant portion of the population is often denied access to legal aid by virtue of their residence in remote and sparsely-populated areas with an inadequate number of legal offices and lawyers.¹⁶

In 2005, in an attempt to address some of these problems, the federal government expanded legal aid regulation by implementing a Government Decree “On Rendering Free Legal Aid to the Indigent” dated 22 August 2005 (“Decree No. 534”), which established experimental legal consultation offices, or “legal aid bureaus,” in ten regions of the Russian Federation.¹⁷ These legal aid bureaus are authorized to provide a variety of services to the indigent, including general advice on legal issues, drafting of complaints, applications, notifications and other court

Gazeta Tverskaya 13 [Tverskaya Newspaper 13], Aug. 08, 2010, No. 101 (“On Establishment of Size of Living Minimum in Moscow for Second Quarter of 2010”).

¹³ See O. Yu. Krivososova, D.V. Kulagin & D.V. Shabelnikov, *Provision of Legal Aid in the Russian Federation: Legislation and Practice* (2004), <http://www.pili.org>.

¹⁴ See *id.*

¹⁵ See *Ugolovno Protsessual’nyi Kodeks [UPK]* [Criminal Procedure Code], Art 5; *Sobranie Zakonodatel’sstva Rossiiskoi Federatsii [SZ RF]* [Russian Federal Collection of Legislation] 2002, No. 23, item 2102 (“On Attorney’s Activity and the Bar in the Russian Federation”).

¹⁶ See O. Yu. Krivososova, *et al.*, *supra* note 421.

¹⁷ See *Sobranie Zakonodatel’sstva Rossiiskoi Federatsii [SZ RF]* [Russian Federal Collection of Legislation] 2005, No. 35, item 3615 (“On Rendering Free Legal Aid to the Indigent”).

documents, and representation in various civil and administrative proceedings, before local authorities, public associations and other organizations.¹⁸

The legal aid regime under Decree No. 534, however, remains markedly deficient in a number of areas. Most notably, legal aid bureaus remain thinly funded and few in number. In addition, to be effective, these bureaus must overcome numerous practical and legislative hurdles. Under Decree No. 534, legal aid offices are not permitted to exceed 15 employees.¹⁹ At the same time, it is extremely difficult for legal aid offices, which have few resources with which to compensate their staff, to recruit and retain properly qualified attorneys.²⁰ In addition, state legal bureaus are plagued by bureaucracy which often results in applications for legal aid being rejected on formal grounds, such as the failure to meet burdensome documentation requirements.²¹

In April 2010, the Ministry of Justice of the Russian Federation introduced a new bill on “the system of free legal aid in the Russian Federation” aimed at expanding the framework of legal aid regulation in Russia.²² This bill, if passed, would be the first and only federal law dedicated specifically to regulating free legal aid across Russia. This is significant because the Russian constitution provides that free legal aid shall be regulated by federal law, not subordinate regulation, and marks recognition by the Russian legislature of the need for federal government support and intervention in this area.

The bill provides, among other things, for more detailed regulation of the activities undertaken by, and funding of, state legal aid bureaus, as well as expanded access to legal aid in various civil as well as criminal matters.²³ In addition, the bill proposes to eliminate the statutory income threshold for free legal services for a number of important groups such as veterans and the physically and mentally disabled.²⁴ While the bill places primary funding obligations for legal aid on regional governments, it contemplates federal subsidies in circumstances where regional governments are otherwise unable to meet those funding obligations.²⁵

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ See *Sobranie Zakonodatel'stva Rossiiskoi Federatsii* [SZ RF] [Russian Federal Collection of Legislation] 14 December 2009, No. 50, item 6099 (“On State Legal Aid Bureaus”). The salary for all lawyers in Russian legal aid bureaus is fixed at 9,000 Russian Rubles per month by regulation (in comparison, the standard of living minimum in Moscow is currently set at 8,424 Russian Rubles per month). See *supra* note 420.

²¹ See O. Kuznetsov, *State Legal Aid Offices: The Gloss and Poverty of the Experiment*, <http://www.bestlawyers.ru/php/news/newsnew.phtml?id=370&idnew=24570&start=0>. For example, during the first six months following implementation of the legal aid bureau pilot program, 1002 of 1292 applicants in the Sverdlov region alone were rejected on the grounds that the applicants were unable to supply the required documentation to prove their indigence.

²² See Ministry of Justice of the Russian Federation homepage, <http://www.minjust.ru>.

²³ See *Id.* The bill contemplates that local bar associations would be responsible for providing a list of advocates who would participate in the free legal aid program. These advocates would render free legal services on a contract basis and each year submit free legal aid reports to the relevant State authorities.

²⁴ See *Id.* See also Alexander Lebedev, *Lawyers for the Indigent*, <http://www.epam.ru/index.php?id=23&id2=1474&l=rus>.

²⁵ See *supra* note 430.

II. *Pro Bono Opportunities in the Russian Federation*

Pro bono opportunities for international law firms located in the Russian Federation center largely around the representation of public non-governmental organizations (“NGOs”). While there is also a need for legal aid at the individual level, there are numerous barriers to taking on the representation of individuals in Russian courts – among them, admission to practice law in Russia and a high degree of fluency in the Russian language.

International NGOs are still relatively new to the Russian Federation. These NGOs provide a variety of humanitarian services ranging from the provision of legal assistance to meeting the basic day-to-day needs of Russia’s indigent population. The function of NGOs in Russia, however, is not nearly as robust as it is in the United States or in other developed European countries. This is due, in part, to the fact that the Russian federal government has not taken a proactive interest in and has done little to stimulate or encourage the growth of NGOs.²⁶ Moreover, Russian NGO legislation is complicated and is often applied by the government unevenly, making it difficult for NGOs to navigate the legal landscape.²⁷ As a result, most of these organizations look to foreign and private sources, such as the New Eurasia Foundation,²⁸ for financial and other support. While such organizations are growing in Russia, their resources nevertheless remain limited.

Accordingly, NGOs in Russia have a substantial need for *pro bono* assistance. In recent times, international law firms located principally in Moscow and Saint Petersburg have provided legal aid to NGOs and other public or charitable institutions on a variety of different matters. Among the dozens of organizations that have requested and received *pro bono* assistance in recent times are the Hermitage Museum,²⁹ the AIDS Foundation East-West,³⁰ Doctors Without Borders,³¹ the Danish Refugee Council,³² Integra,³³ the Humanitarian Programs Support

²⁶ See, e.g., Jeffrey Thomas, *U.S. Says Russian NGO Law Does Not Meet Human Rights Commitments*, http://florence.usconsulate.gov/viewer/article.asp?article=/File2006_01/alia/a6012711.htm (criticizing Russian NGO legislation which gives the executive wide latitude to determine the fate of NGOs); see also L.U. Grudtsina, *History of Russian Bar*, *The Advocate* (2006).

²⁷ See Alison Kamhi, *The Russian NGO Law: Potential Conflicts with International, National, and Foreign Legislation*, 9 Int’l J. of Not-for-Profit Law 1, 34 (Dec. 2006); see also *Moscow Branch of the Salvation Army v. Russia*, No. 72881/01, Eur. Ct. H.R. (2006), <http://www.echr.coe.int/echr>.

²⁸ The New Eurasia Foundation is a nongovernmental, noncommercial organization working to improve the lives of Russian citizens by consolidating the efforts and resources of the public, private, and nongovernmental sectors and implementing social and economic development programs at the regional and local levels. See generally, New Eurasia Foundation homepage, <http://www.neweurasia.ru>.

²⁹ See Baker & McKenzie, *Pro Bono and Community Service: The Rewards of Giving* (2007), http://www.bakerinfo.com/NR/rdonlyres/BC9D3EF2-9CA4-44B2-B108-5309A2F683E5/0/probono_brochure07.pdf.

³⁰ AIDS Foundation East-West (“AFEW”) is an international, humanitarian, public health, non-governmental organization whose mission is to contribute to the reduction of the impact of HIV/AIDS in the Newly Independent States (NIS) of the former Soviet Union. See generally, AIDS Foundation East-West Homepage, <http://www.afew.org>.

³¹ See Medecins Sans Frontieres homepage, <http://www.doctorswithoutborders.org>.

³² See Chadbourne & Parke LLP, *Pro-Bono Year in Review 2005*, <http://www.chadbourne.com/files/upload/Pro%20Bono%20Year%20in%20Review%202005.pdf>

³³ Integra is non-profit partnership whose mission is to alleviate poverty, reduce unemployment and help transform communities by supporting the development of small businesses. See generally, Integra homepage, <http://www.integrarussia.ru>.

Charitable Foundation,³⁴ the International Center for Not-for-Profit Law³⁵ and United Way Moscow.³⁶

In December 2007, the Public Interest Law Institute (“PILI”) launched a *pro bono* clearinghouse in Moscow.³⁷ The clearinghouse attempts to bridge the gap between NGOs, which know the legal needs of the community but lack the ability to provide legal representation, and law firms, which possess the legal resources but lack a direct connection to local NGOs and individuals in need. PILI identifies and screens potential *pro bono* clients and circulates a bi-monthly newsletter to participating firms that provides a description of clients in need of legal aid and a summary of the respective legal issues with which they need assistance.³⁸ The clearinghouse also provides Russian NGOs with training and know-how on a variety of issues related to the daily operation of non-profit organizations.³⁹ A firm having expertise or an interest in a particular area can notify PILI’s Moscow office and PILI will then put the firm into direct contact with the relevant client. PILI also holds quarterly meetings with participating law firms and NGOs in Moscow to discuss the clearing house and various topical themes and issues in the sphere of Russian *pro bono* services. PILI is currently exploring ways to replicate its Moscow-based clearinghouse in other Russian regions. Dmitry Shabelnikov is the country director for Russia at PILI.

In addition to work for locally established NGOs, there are also opportunities for Russia-based lawyers to take on broader *pro bono* work in the European community. For example, PILI operates a global clearinghouse out of their headquarters in Budapest, Hungary. The international clearinghouse is open to firms from all countries and generates work relating to Europe, predominately representing *amicus curiae* in European courts. Additionally, through organizations such as the European Human Rights Advocacy Center (“EHRAC”), there are litigation opportunities to work on cases that have been appealed to the European Court of Human Rights.⁴⁰

³⁴ Humanitarian Programs Support Charitable Foundation (“HPSCF”) is a non-profit organization aimed at implementing programs that contribute to the improved quality of life of children with disabilities and their families. *See generally*, HPSCF homepage, <http://www.fpgp.ru>.

³⁵ The International Center for Not-For-Profit Law (ICNL) is an international not-for-profit organization that seeks to promote an enabling legal environment for civil society, freedom of association, and public participation around the world. *See generally*, ICNL homepage, <http://www.icnl.org>.

³⁶ United Way Moscow is a community based non-profit organization dedicated to improving the lives of people in Moscow and fostering the concepts of modern philanthropic giving in Russia generally. *See* United Way Moscow homepage, <http://www.unitedway.ru>.

³⁷ *See generally*, Public Interest Law Institute homepage, <http://www.pili.org>. The clearinghouse was opened with the assistance of the American Bar Association Rule of Law Initiative and several private law firms. Since 2007, PILI’s Russian clearinghouse has grown from partnering with four international law firms to more than 20 local and international firms and 2 corporations, and has taken on over 85 matters for more than 40 NGOs.

³⁸ *See* Alexander Lapidus, *PILI’s Russian Clearinghouse Making Great Strides*, http://pili.org/index.php?option=com_content&view=article&id=899&Itemid=95. PILI connects with civil society networks, working through umbrella organizations such as the International Center for Not-for-Profit Law, Charities Aid Foundation, Lawyers for Civil Society, United Way Russia and UNHCR.

³⁹ *See* United States Agency for Internal Development, *Alliances in action: Pro bono clearinghouse in Moscow*, http://www.usaid.gov/our_work/global_partnerships/gda/resources/Pro_Bono_Clearinghouse.pdf.

⁴⁰ *See generally*, EHRAC homepage, <http://www.londonmet.ac.uk/ehrac>. Established in January 2003, EHRAC (based at London Metropolitan University) works in Russia in partnership with the Memorial Human Rights

Finally, the American Bar Association, through its Rule of Law Initiative program, has made significant inroads in advancing *pro bono* and developing legal infrastructure in Russia.⁴¹ Among other things, the ABA facilitates a series of public events aimed at publicizing and fostering a commitment to *pro bono* service within the Russian legal community. The ABA seeks to engage lawyers, judges and academics to publish works on *pro bono* as well as to attend, speak or otherwise participate at ABA conferences in Russia.

III. Conclusion

While Russia does not have a legacy of *pro bono* culture, a professional environment that accepts *pro bono* as part of a lawyer's role in the community is slowly developing. The government is also taking new steps to expand its role in the provision of free legal aid, evidenced by the April 2010 draft law on legal aid. There is still much work to be accomplished in terms of developing the legal infrastructure in Russia and transforming how the local legal community thinks about *pro bono*. Nonetheless, there are a growing number of *pro bono* opportunities, both for litigators and transactional attorneys, available in Russia. Thanks to PILI, the Moscow-based *pro bono* clearinghouse now provides a steady stream of *pro bono* work for both Russian and foreign qualified lawyers to draw upon. While it is a first step in many respects, creating such opportunities is a critical component in developing a robust professional culture that embraces *pro bono* service.

September 2010

Pro bono Practices and Opportunities in the Russian Federation

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.

Center through a dedicated project office in Moscow. EHRAC's primary objective is to assist individuals, lawyers and NGOs within the Russian Federation in taking cases to the European Court of Human Rights.

⁴¹ Significant projects have included: assisting in the reintroduction of jury trials in Russia; assisting in drafting a new criminal procedure code based on select adversarial principles; founding clinical legal education programs throughout Russia and publishing Russia's first clinical legal education textbooks; providing training to social advocates to assist victims of domestic violence; and assisting in adoption of judicial and legal profession codes of ethics. Telephone interview with Anton Alferov, Deputy Country Director, ABA/ROLI in the Russian Federation (Feb. 6, 2008); *see also* American Bar Association homepage, <http://www.abanet.org>.

PRO BONO PRACTICES AND OPPORTUNITIES IN SCOTLAND

In recent years *pro bono* legal services have become an increasingly important focus for law firms within Scotland. The push towards the development of *pro bono* services in Scotland is the result of various factors including an awareness that the legal aid system is failing to serve charitable causes and the increasing visibility of corporate social responsibility (“CSR”) of both law firms and their corporate clients.

I. Legal Services and the Legal Profession in Scotland

An awareness of the structure of the Scottish legal system is necessary for an understanding of its *pro bono* practices. The legal profession in Scotland is split into two branches: solicitors and advocates. Solicitors are regulated and represented by the Law Society of Scotland and provide advice on all legal matters. They have rights of audience in the lower courts. Advocates, who are regulated by the Faculty of Advocates (the “Faculty”), are also able to provide advice on all legal matters but have rights of audience in the high courts in Scotland, the Court of Session and the High Court of Justiciary. Advocates are primarily instructed directly by solicitors.

A. Poor’s Roll

Scotland has had a *pro bono* tradition since the establishment of the Poor’s Roll in 1424 “*for onie puir creature, for faulte of cunning or expenses, that cannot, nor may not follow his cause*” for civil matters and an act of the Scots Parliament of 1587 for criminal matters. Prior to 1950, with various refinements along the way, these matters were entirely staffed by solicitors and advocates on a voluntary basis.

B. Legal Aid

In 1950 the Legal Aid and Solicitors (Scotland) Act 1949 came into force for civil matters and in 1964 for criminal matters. Legal Aid is means-tested on a person’s income and assets and the thresholds for suitability are re-assessed every year. In 2007-2008 the Scottish Legal Aid Board (“SLAB”) (the body which administers legal aid in Scotland) provided nearly 360,000 grants of legal assistance (initial legal advice) and received almost 100,000 requests for legal aid (funding actions or defenses). The total cost was just over £155 million¹.

However, legal aid is not available to charities or other organizations and *pro bono* legal advice continues to be delivered by the legal profession to these organizations on an ad hoc basis.

C. Advice Agencies

Within Scotland, as in England and Wales, there is a national network of advice agencies staffed primarily by volunteers. The two most prominent are the Citizens Advice Bureau Service in Scotland (the “CABS”) and the Scottish Association of Law Centers (“SALC”). CABS is a charity that provides free advice to the public on topics that include legal matters. CABS assists clients with the drafting of letters, the instigation of small claims, negotiating with creditors and also representing them in courts or tribunals. CABS is located throughout Scotland and is able to give advice on where to obtain legal services and often provide legal advice themselves. CABS is

¹ See *Scottish Legal Aid Board* Scottish Legal Aid Board publishes report 2007-08 available at: <http://www.slab.org.uk/news/2008/Annualreportpressrelease.htm>.

funded and supported mainly by government (through SLAB) and local authority grants but also by companies, charitable trusts and the legal professional bodies.

SALC is the representative organization for Scotland's community and user-controlled law centers and employs approximately 40 full time solicitors. All law centers are charities and they aim to tackle the unmet legal needs of those individuals in poverty and disadvantage within the centers' coverage area. The law centers give legal advice on multiple subjects, provide education and information on the law and individual rights, and advocate for improvements to existing laws. Funding for the law centers comes mainly from the law centers themselves and whatever local funding they raise.

II. *Pro bono Opportunities in Scotland*

As discussed above, *pro bono* legal services have always been provided by solicitors and advocates. However, unlike in England and Wales with "LawWorks," there is no organization focused on encouraging and structuring the *pro bono* activities. Instead, the *pro bono* initiatives have been driven by the regulatory bodies for both branches of the legal profession.

A. Scottish Legal Services Trust

The Scottish Legal Services Trust ("SLST") was established to provide financial assistance to facilitate a member of the Law Society of Scotland to meet any costs and expenses incurred for the provision of *pro bono* legal services. These are restricted to providing legal services to members of the public who are in need or are suffering financial hardship; or to charitable institutions of limited means which support community organizations or activities. Should financial help be sought from the SLST, applications should be addressed through a solicitor. SLST does not yet publish details on the amount or scope of the funding it provides.²

B. Faculty of Advocates

The Faculty's Free Legal Services Unit ("FLSU") was established to provide advice and assistance where the legal complexity of the case makes it difficult for non-lawyers to help. The Faculty also organizes the Free Representation Unit ("FRU") whereby 'devils' (trainee advocates) provide written advice on legal issues and representation before Employment and Social Security Tribunals.

Both the FLSU and the FRU require a referral from a recognized agency, *i.e.*, CABS, SALC and the university law clinics outlined below.

Advocates who have volunteered to join the FLSU can provide written or verbal advice, help with mediation or appear in any court or tribunal in Scotland. Over 60 advocates (around 15% of the active bar) have signed up to advise or appear in cases free of charge.

C. Law Firms

As mentioned above, the raising of the profile of *pro bono* in Scotland has coincided with an awareness of CSR. As a result many law firms in Scotland seek to fulfill their *pro bono* initiative through law centers and also through interaction with the local community. As

² See *The Law Society of Scotland* Scottish Legal Services Trust Charity Registered in Scotland available at: http://www.lawscot.org.uk/Public_Information/using/legal_fees/scot_leg_serv_trust.aspx.

discussed above, there is a wide array of organizations providing *pro bono* legal services, thus many law firms provide services other than legal advice to the local community, such as mentoring at local schools, offering commercial advice to local small businesses and volunteering in the community. Many large law firms also provide exclusive *pro bono* legal advice to one or more high profile charities.

D. Initiatives for Students

Additional sources for *pro bono* legal services are student initiatives organized by universities and law schools. Several law schools and universities have established *pro bono* centers and clinics where students have the opportunity to participate directly in *pro bono* work.

The two most notable student organizations are the Strathclyde University Law Clinic³ and the University of Edinburgh-run, Pro Bono Advice Centre.⁴ Both of these bodies are staffed by students and staff and are supported by law firms. The student-run bodies do not operate in fields where adequate *pro bono* services are already provided, such as debt or immigration.

III. *Conclusion*

Due to the extensive provision of legal aid and professional and semi-professional citizens' support bureaux, there is a limited need for the provision of *pro bono* legal services to individuals. However, the growth of CSR and the increasing importance placed on *pro bono* services by corporate clients will necessitate an increase in the publicity and sophistication of law firms' *pro bono* services or community projects.

September 2010
Pro Bono Practices and Opportunities in Scotland

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.

³ See <http://www.lawclinic.org.uk/>.

⁴ See <http://www.law.ed.ac.uk/probono/>.

PRO BONO PRACTICES AND OPPORTUNITIES IN SOUTH AFRICA

South Africa operates a state system of legal aid which uses public funds to assist those in need of legal services. Nevertheless, it is widely recognized that the legal aid system falls short of meeting the needs of the poorest South Africans, particularly in view of the specific challenges facing a country that has seen such significant changes over the last 20 years.

The legal profession in South Africa had a long history of involvement with voluntary work during the apartheid era, and in recent years there have increasingly been calls for lawyers to redouble their *pro bono* efforts as part of a new spirit of volunteerism which the South African government sees as key to the country's ongoing development. Following a national conference in 2002 entitled "*The Responsibility of Lawyers in South Africa to Undertake Pro Bono Publico and Public Interest Work*", one of South Africa's regional law societies, the Law Society of the Cape of Good Hope (the "Cape Law Society"), introduced a mandatory *pro bono* initiative for its members. Since then, several other regional law societies have followed suit such as the Black Lawyers Association and Kwa Zulu Law Society. In addition, a number of South Africa's leading law firms have made significant efforts to develop and increase their *pro bono* activities, including the implementation of a *pro bono* website seeking to match firm lawyers with organizations in need. It is expected that *pro bono* work will continue to grow in importance for the South African legal profession over the next several years, as law professionals are increasingly encouraged to establish their social responsibility credentials consistent with principles embedded in the South African Constitution.

I. *Legal Services and the Legal Profession in South Africa*

The legal profession in South Africa is comprised of two types of lawyers: attorneys and advocates. No dual practice is permitted. Attorneys provide advice on matters ranging from commercial transactions to the drafting of wills. Advocates represent clients in major court proceedings and some arbitrations, and may also be instructed to provide written or oral opinions on matters involving South African law. The advocates' profession in South Africa is a referral profession, meaning that those seeking advice from or representation by an advocate must first approach an attorney who, in turn, will instruct an advocate. Attorneys are regulated by the regional law societies – the Black Lawyers Association, Law Society of the Northern Provinces, the Cape Law Society, the Kwa Zulu Law Society, the Law Society of the Free State and the National Association of Democratic Lawyers, under the umbrella body of the Law Society of South Africa ("LSSA").¹ The advocates' profession in South Africa is represented by the General Council of the Bar ("GCB"), a federal body comprising ten societies of practicing advocates known as Bars. There is a Bar at the seat of every provincial and local division of the High Court of South Africa.²

II. *Legal Aid*

Separate from *pro bono* practices, South Africa has a system of legal aid which uses public funds to assist those unable to afford legal services. The Legal Aid Board of South Africa (the "Board") is an autonomous statutory body established by the Legal Aid Act (Act 22 of 1969) and the Legal Aid Amendment Act (Act 20 of 1996). Its objective is to afford every citizen access to justice, as contemplated in the Constitution of South Africa (Act 108 of 1996), by providing legal

¹ See www.lssa.org.za.

² See www.sabar.co.za.

representation to indigent persons at the State's expense.³ The Board's work covers both civil and criminal cases, although criminal matters comprise a larger percentage of its services and budget. In its civil work, the Board is particularly dedicated to providing legal advice and protecting and defending the rights of women, children and the homeless.

The Board is accountable to the Minister of Justice and Constitutional Development, and ultimately to Parliament, for service delivery and the efficient and effective use of its budget allocation. In 2008, the Board secured Parliament's approval on a new Legal Aid Guide, which was prepared for the first time in plain English to improve comprehension and to make the guide more accessible to legal practitioners, community organizers, and clients.

According to its Annual Report,⁴ during the year 2008 to 2009, the Board provided:

- the delivery of legal services in 434,932 new legal matters;
- legal assistance in 46,194 matters involving children; and
- assistance in 404,613 new criminal matters and 30,309 civil matters.

The Board uses three principle outlets to fulfill its mandate:

- justice centers;
- cooperation agreements with university law clinics; and
- special litigation.

The Board also continues to explore other effective and efficient access-to-justice models to complement the outlets outlined above.

A. Justice Centers

The justice centers operate in a similar fashion to private practice firms and are the primary source for applicants seeking legal aid in South Africa. Each justice center is headed by a principal attorney, with assistance from professional assistants, candidate attorneys and paralegals. Justice centers offer legal assistance for certain defined criminal and civil matters and the services offered include advice, referrals and litigation.⁵ The Board has established approximately 62 justice centers as of 2009 with 55 satellite offices serving mostly rural areas. Through its justice

³ See Annual Report for the period 2008 – 2009 of the Legal Aid Board; Legal Aid Guide 2009.

⁴ See page 5 and 19 of the Annual Report for the period 2008-2009 of the Legal Aid Board.

⁵ Matters eligible for legal aid are outlined in Chapter 4 of the Legal Aid Guide 2009. Criminal and civil matters eligible for representation are offense and jurisdiction specific. For example, legal aid may be granted in matters where District Courts have increased penal jurisdiction, such as theft, dealing in drugs and drunk driving. Legal aid is available for many common law offenses such as arson, assault, bribery, fraud, rape, murder, kidnapping, and robbery. Covered statutory offenses include those relating to children, mental disability, corruption and vehicle theft. Legal aid is also available for miscellaneous offenses such as bail reviews and HIV testing. In addition, legal aid is available for certain High Court appeals if the client qualifies under the means test. On the civil side, legal aid is available for family law issues including divorce, child custody and domestic violence and in a range of other civil matters such as labor dispute, housing law and asylum. There are many limitations placed on the scope of civil legal aid, such as no representation for certain personal torts (infringement of privacy and adultery); for cases in small claims court; and in the administration of estates.

centers, which employ a total of approximately 1,600 salaried lawyers, the Board estimates that it provides legal aid to approximately 114,000 people in South Africa each year.⁶

B. Cooperation Agreements

The Board enters into cooperation agreements with certain university law clinics to provide additional legal assistance to the local communities. As of 2009, cooperation agreements are in place with the following universities:

- Potchefstroom University for Christian Higher Education;
- University of the Witwatersrand;
- University of Venda;
- Stellenbosch University; and
- University of Port Elizabeth.

C. Special Litigation

Special litigation involves cases which, if successful, would have a major impact on South African law. These types of cases primarily involve class actions suits as a means to challenge constitutional violations and require special teams of legal representatives to assist them. The legal representatives may be chosen from the justice centers or they may be private practice attorneys. The Board considers special litigation on a case-by-case basis, and the cost is covered through a dedicated fund.

D. Eligibility for Legal Aid

Legal aid in South Africa is generally means-tested.⁷ The Board grants legal aid in criminal cases to any indigent person, defined generally as a person with no income or income less than 5,000 rand (approximately \$700 US) per month. In determining whether a person qualifies for legal aid in criminal matters under this standard, the Board will consider the income of the applicant and his or her assets. The Board grants legal aid in civil matters to all children resident in South Africa or any indigent person. In determining whether a person qualifies for legal aid in civil matters, the joint income and assets of an applicant and his or her spouse are considered, except in certain situations, for example, divorce proceedings.

III. *Pro Bono Legal Advice*

Although *pro bono* work had been carried out by legal practitioners on an informal basis for many years,⁸ no formal initiative in respect to *pro bono* practice developed in South Africa

⁶ See Annual Report for the period 2008 – 2009 of the Legal Aid Board.

⁷ See Legal Aid Guide 2009. For Special Litigation matters, the Board operates under an Impact Services Policy, which recognizes that the Board may have opportunities to assist or fund litigation with the potential to positively effect the lives of a large number of indigent persons. The Board looks at whether an opportunity exists to establish legal precedent either by class action or strategic intervention and rendering of non-litigious services. Rather than evaluate each client individually, special litigation matters are submitted to the Board through written proposals and approved on a case-by-case basis.

⁸ Indeed, it was noted during the introduction to the May 2002 conference on “*The Responsibility of lawyers in South Africa to undertake Pro Bono Publico and Public Interest Work*” that “the legal profession in South Africa has a long history of engagement in voluntary legal service. During the apartheid era, it was largely *pro bono* lawyers who actively challenged the racist and oppressive laws of the time.”

until 2003, when one of the regional law societies regulating attorneys, the Cape Law Society, instituted a mandatory *pro bono* rule for its members. All attorneys practicing in the Northern, Western and Eastern Cape Provinces are required to register as members of the Cape Law Society. The society's initiative was prompted by the recognition that the legal aid system, even coupled with the *pro bono* work being carried out, was not adequate to address the South African public's legal needs, particularly those of the poorest members of South African society.

A. The Cape Law Society Rules

"*Pro Bono Services*" are defined under the rules of the Cape Law Society (the "Cape Rules") as including, but not limited to:

*"the delivery of advice, opinion or assistance in matters falling within the professional competence of an attorney, to facilitate access to justice for those who cannot afford to pay, through recognised structures [...]. Recognised structures shall include, but not be limited to, the office of the Registrars of the High Court when issuing in forma pauperis instructions, Legal i, small claims courts, community (non-commercial) advice offices, university clinics, non-governmental organizations, the office of the Inspectorate of Prisons, Circle and specialist committees of the Society, etc [...]. Those who cannot afford to pay shall be those who ordinarily qualify for assistance through recognised structures."*⁹

The Cape Law Society requires each of its members¹⁰ to perform at least 24 hours of *pro bono* services per calendar year (subject to their being approached to do so).¹¹ Refusing to perform *pro bono* services without good cause amounts to unprofessional conduct.¹²

Members may submit to the Cape Law Society a written description of areas of professional work proposed for recognition as "*Pro Bono Services*".¹³ The Cape Law Society is obliged to publish, through "The Cape Attorney," a list of services which, when performed by attorneys at no charge for those who cannot afford to pay, are recognized as *pro bono* services capable of being delivered in compliance with the provisions of the Cape Rules.¹⁴

Several other South African law societies have followed the lead of the Cape Law Society and implemented their own *pro bono* requirements. In 2009, the Black Lawyers Association instituted a *pro bono* requirement nearly identical to the Cape Law Society's, including a 24 hour *pro bono* requirement per calendar year, a provision calling for the publication of those lawyers meeting requirements in a Society circular, and deeming the failure to deliver *pro bono* services

⁹ Rule 21.1 of the Cape Rules.

¹⁰ Practicing members who have practiced for less than 40 years and who are less than 60 years of age.

¹¹ Rule 21 of the Cape Rules. This is also subject to limited carve-outs for attorneys who either became practicing members in the year of publication of the Cape Rules or become practicing members during the course of a year.

¹² Under Rule 21.16 of the Cape Rules, "*it shall be unprofessional conduct for a practicing member who has still to perform pro bono service hours to refuse, with no good cause, to delivery pro bono services.*" Members guilty of unprofessional conduct are referred to the Cape Law Society Disciplinary Committee who may elect to impose a fine as punishment. The maximum punishment for unprofessional conduct is R10,000 (approximately \$1,500 US). Rule 15.9.3 of the Cape Rules.

¹³ Rule 21.3 of the Cape Rules.

¹⁴ Rule 21.4 of the Cape Rules.

unprofessional conduct.¹⁵ Similarly, the Kwa Zulu Law Society implemented a *pro bono* rule that mirrors the Cape Law Society's requirements.¹⁶ At a recent annual meeting of the Law Society of the Northern Provinces, the Society decided that all member attorneys should be required to provide *pro bono* legal services as well.

B. Non-mandatory *Pro Bono* Services

In addition to the efforts of the law societies, individual legal practitioners and firms in South Africa are continuing to provide *pro bono* services on a voluntary and informal basis. In 2006, one of South Africa's biggest law firms, Edward Nathan Sonnenbergs, introduced a scheme under which each of its attorneys is required to carry out a minimum of 32 hours of *pro bono* work per calendar year, and established a dedicated *pro bono* office in Mitchells Plain, an impoverished township on the outskirts of Cape Town. The aim of the Mitchells Plain office is to provide a convenient location for township residents to access free legal advice and be educated about their legal rights. As another example, the law firm Webber Wentzel has a permanent *pro bono* partner to coordinate the firm's *pro bono* practice. According to the firm's *pro bono* department 2009 Annual Report, Webber Wentzel attorneys provide services on a wide-range of cases and issues including police misconduct, land reform and housing, HIV/AIDS discrimination and violence against women.

Bowman Gilfillan, another prominent South African law firm, expects each of its attorneys to contribute an average of 50 hours of *pro bono* work annually. Since 2003, Bowman Gilfillan attorneys have contributed over 51,000 hours of *pro bono* worth an estimated 43 million rand. Bowman Gilfillan also implements a program whereby attorneys are placed on six-month assignments with the Public Defenders office. Additionally, in 2005, Bowman Gilfillan helped launch ProBono.org, a website based out of Johannesburg which matches law firm attorneys interested in practicing *pro bono* with cases provided by outreach programs specializing in high need areas such as HIV/AIDS organizations and refugee legal clinics.¹⁷

At the University of Cape Town, it is a compulsory graduation requirement for law students to complete a total of 60 hours of community service. The service need not be legally oriented, but must provide a direct service or benefit to an underprivileged or vulnerable group or to a social or economic uplift organization.

IV. *Conclusion*

It has long been recognized that access to justice for the poorest in society is crucial to South Africa's ongoing development. The organizers of the 2002 national conference on "*The Responsibility of lawyers in South Africa to undertake Pro Bono Publico and Public Interest Work*" noted that the culture of *pro bono* work was underdeveloped in South Africa compared to other jurisdictions, and that developing a *pro bono* policy was one means of rising to President Thabo Mbeki's call for South Africans to engage in a new spirit of volunteerism in order to help the country consolidate the democratic gains achieved since 1994. In preparation for the conference, the organization Lawyers for Human Rights conducted a survey of over 6,000 law firms in South Africa, examining their involvement in *pro bono* work. Of the responding firms (with a response rate of only 2.5%), the majority indicated that they were involved in *pro bono*

¹⁵ Rule 25 of the Black Lawyers Association Rules.

¹⁶ Rule 27 of the Kwa Zulu Law Society Rules.

¹⁷ See www.bowman.co.za/pro-bono.asp

work, yet only a third considered themselves “very familiar” with the concept, often mistaking it for community service or charity work. The findings of the survey indicated that, despite the confusion over the concept of *pro bono* work, law firms were in favor of developing a more formal *pro bono* system, but one that was based on voluntary input.

As noted above, in the period since the conference, the Cape Law Society’s mandatory *pro bono* initiative has been introduced, a number of South African law firms have independently developed more structured *pro bono* practices and engaged in *pro bono* beyond the firm in efforts like ProBono.org. In recent years, the Black Lawyers Association and the Kwa Zulu Law Society have followed the Cape Law Society’s lead and implemented their own *pro bono* policies. The trend illustrates a renewed commitment to *pro bono* among formalized South African legal organizations. Nevertheless, access to justice, particularly for the poorest communities, continues to be a significant problem in South Africa. In light of numerous pressures on State funding, it is likely that the legal profession will increasingly be looked on to develop and broaden voluntary *pro bono* practices in an effort to address the problem. In a country where the gap between the wealthy and poor is vast, the need for *pro bono* legal services for South Africa’s most underserved populations continues.

September 2010
Pro Bono Practices and Opportunities in South Africa

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.

PRO BONO PRACTICES AND OPPORTUNITIES IN SPAIN

In Spain, legal aid to indigent clients is a long-standing tradition. Traditionally, the system presumed that those less fortunate had a right to bring a claim in front of the court, and it was therefore the lawyer's right and duty to represent them without a fee. The Spanish Constitution of 1978, following this tradition, introduced a system to grant legal aid to indigent clients.

The American terminology of *pro bono* does not exist in the Spanish jurisprudential lexicon as currently defined by the Spanish Constitution of 1978. Instead, following the tradition of other European jurisdictions, the Spanish legal system refers to *asistencia jurídica gratuita* (free legal assistance). This legal term is not exactly equivalent to the American *pro bono* although it fulfills a similar social function. Whereas *pro bono* in the American sense implies free services provided by lawyers, the *asistencia jurídica gratuita* in Spain is a citizen's right set out in the Spanish Constitution and an obligation of the State. It is conceived as a public service and the State pays the legal fees, although these fees are significantly lower than typical legal fees.

Further, the Spanish system of *asistencia jurídica gratuita* is determined by law and organized and managed by the General Council of Spanish Advocacy ("*Consejo General de la Abogacía Española*," hereinafter, the "CGAE") and the Spanish Bar. In particular, the CGAE organizes legal aid through its general rules and regulations pertaining to the practice of law, while *pro bono* practice in the United States generally consists of partnerships among legal referral services, various bar associations, and law firms, which bring together indigent clients and lawyers seeking to fulfill their professional ethical aspirations.

I. *Legal Services and the Legal Profession in Spain*

The Spanish system of *asistencia jurídica gratuita* consists of a right to free legal assistance established by law and financed by the State, characterized as a public service. In addition, the CGAE and the bar of each territory have gradually developed additional services that are financed by the bars themselves, in conjunction with specific aid from regional or local administrations. These additional services are known as "*servicios especiales*" (special services).

A. Right to *Asistencia Jurídical Gratuita*

The right to *asistencia jurídica gratuita* is set out in Article 119 of the Spanish Constitution and is developed by Law 1/1996, of 10 January, of *asistencia jurídica gratuita*.¹ The right to *asistencia jurídica gratuita* consists of:

- Legal assessment in advance of proceedings with the aim of avoiding legal proceedings or assessing the viability of the claim;
- Assistance to the detained person or prisoner;
- Free legal assistance to plaintiffs and defendants by lawyers during proceedings (the so-called *turno de oficio*);

¹ Law 1/1996 of 10 January, of free legal assistance, implements Article 119 of the Spanish Constitution and develops further the system as initially set out in Articles 20(2) and 440(2) Law 6/1985. Law 1/1996 is developed by Royal Decree 2103/1996, of 20 September, as modified by Royal Decree 1455/2005, of 2 December.

- Other free services such as access to public registries and documents.²

Asistencia jurídica gratuita is generally available to several groups: Spanish or European Union citizens, and foreign citizens residing in Spain.³ The aid can be afforded to the plaintiff or the defendant in a proceeding in any of the four jurisdictions in Spain: civil, criminal, administrative or labor.

The essential criterion for receiving *asistencia jurídica gratuita* is financial need.⁴ Any individual has the right to *asistencia jurídica gratuita* when he or she meets the threshold set out by law. *Asistencia jurídica gratuita* will be granted when the individual can show that the income of the family unit does not exceed double the statutory minimum wage annually established by the State. In 2010, the threshold was set at €633 per month. Exceptionally, the law also allows for *asistencia jurídica gratuita* to be granted to individuals who may not meet the financial threshold, but still may qualify given their low income and economic circumstances.

The system of *asistencia jurídica gratuita* is organized and monitored by the Bar of each province. Each Bar has a Committee specifically created following Law 1/1996 to be in charge of managing the system of *asistencia jurídica gratuita* within its territory (*Comisiones de Asistencia Jurídica Gratuita*). In order to receive the aid, each petitioner must complete a request for free legal assistance before the Bar of the province of their residence or where the legal proceedings are due to take place, along with proof of income. The *Comisiones de Asistencia Jurídica Gratuita* will assess whether the criteria are met and will assign a lawyer. Applicants for *asistencia jurídica gratuita* may waive their right to a lawyer during the proceedings and appoint a lawyer of their choice without losing the other benefits of *asistencia jurídica gratuita*. However, this will only be permitted if the lawyer chosen by the applicant does not request payment for legal services offered.⁵

Under the system of *asistencia jurídica gratuita*, lawyers who donate their time receive payment from the State according to a fee structure set by the State. This payment, however, is lower than those typically received by Spanish lawyers, in particular the fees of large firms.

In 2008, there were 1,400,000 cases of free legal assistance in Spain. Approximately 35,000 lawyers provided free legal assistance. The costs of the services in 2008 totalled €219.7 million, an 11.2% increase from 2007.

On average, the annual fees paid to the lawyers under the *turno de oficio* in 2008, were €4,260. 60% of the cases under the *turno de oficio* concerned criminal proceedings, 25% were civil proceedings, 9% were administrative proceedings, and 3% were labor proceedings.⁶

² See Article 6 of Law 1/1996.

³ In criminal and administrative proceedings, foreign citizens not residing in Spain will also have the right to free legal assistance if they fulfill the applicable financial criteria.

⁴ See Article 3 of Law 1/1996.

⁵ See Articles 27 and 28 of Law 1/1996. However, the recently created *Observatorio de la Justicia Gratuita*, a monitoring center of free legal assistance, proposed in June 2007 to allow free legal assistance by the lawyer of the applicant's choice. This proposal has not yet implemented; however, in 2008 a pilot project was conducted in order to test the proposal.

⁶ III Informe del Observatorio de la Justicia Gratuita, p 22.

B. Servicios Especiales

In addition to the right to *asistencia jurídica gratuita* developed by Law 1/1996, the CGAE, the different Bars, as well as regional and local administrations have created several services that complement *asistencia jurídica gratuita*. These services benefit from mixed financing from the Bars and regional and local administrations.

Services that have been created include the *Servicio de Asistencia a las Víctimas del Delito* (assistance to the victims of crime); *Servicio de Asistencia a las Mujeres Maltratadas* (assistance to victims of gender-based violence); *Servicio de Extranjería* (assistance to immigration), *Servicios de Asistencia Jurídica a los mayores* (assistance to the elderly); and *Servicio de Orientación y Asistencia Jurídica Penitenciaria* (assistance in prison).⁷

The creation of these services and their gradual evolution and implementation has led several courts to consider them covered by the *turno de oficio* (free legal assistance to plaintiffs and defendants by lawyers during proceedings), which is part of the *asistencia jurídica gratuita*.

In addition, some of these services have been developed by law in the recent years. In this regard, the new Regulation on Alien Persons of 2004⁸ has developed the services for assistance to immigration; and the Law for the Protection of Gender-Based Violence of 2004 has developed services for the assistance to victims of gender-based violence.⁹

II. *Pro Bono Opportunities in Spain*

There are some opportunities for new forms of *pro bono* work in the Spanish environment otherwise run by centralized institutions. First, a firm could establish strong relationships with and provide representation to public interest organizations. Large law firms in Madrid and Barcelona may also consider working on projects with international human rights groups to expand their *pro bono* projects in Spain. Firms may also get more involved in *pro bono* projects in their local communities.

In fact, many law firms, including the largest Spanish law firms as well as international law firms with a presence in Spain, have ongoing *pro bono* projects. Some large law firms have created community service committees to offer legal know-how and resources to the community, as well as being actively involved in *pro bono* projects. Through these committees, law firms promote the development of humanitarian projects and participate in charitable and cultural activities.

Also, many opportunities exist in initiatives led and monitored by institutions such as the CGAE and the regional bars. In this respect, the CGAE recently created the *Observatorio de la Justicia Gratuita*, a monitoring center for free legal assistance. Other initiatives in this field include the creation of an internet portal managed by the CGAE to facilitate access to *asistencia jurídica gratuita*: www.justiciagratis.es. This portal allows requests for *asistencia jurídica gratuita* online, and contains information on the applicable law in each Autonomous Region in Spain, a service for legal guidance and other legal information.

⁷ *Observatorio de la Justicia Gratuita, Informe: Antecedentes y Estado de la Cuestión*, p. 13.

⁸ *Reglamento de Extranjería*, RD 2393/2004, of 30 December.

⁹ *Ley Orgánica 1/2004, of 28 December, de Medidas de Protección Integral contra la Violencia de Género*.

In addition, many of the regional Bars have created working groups in support of human rights, as well as a working group for social action and cooperation.

III. *Conclusion*

The Spanish legal aid system attempts to create an exhaustive system run by the CGAE and the regional Bars to assist the indigent community. The *asistencia jurídica gratuita* system gives all clients in need an attorney paid for by the State to represent their interests in a courtroom, as well as other complementary services, such as legal advice prior to any legal proceedings and free or reduced fee access to public registries and documents. The system seeks to ensure that the indigent community is sufficiently well-informed to make proper legal decisions and receives free legal assistance to represent their interests in a courtroom. In addition, the CGAE and the regional Bars, in conjunction with regional and local administrations, have developed additional services which benefit from mixed financing from the Bars and regional and local administrations.

Currently, lawyers who wish to represent indigent clients must offer their services as part of the social legal aid system in order to do meaningful *pro bono* work, but numerous opportunities for expanding the scope of the *pro bono* practice in Spain do exist and some law firms already have *pro bono* practices that go beyond the institutionalized system of *asistencia jurídica gratuita*.

September 2010
Pro Bono Practices and Opportunities in Spain

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.

PRO BONO PRACTICES AND OPPORTUNITIES IN SWEDEN

Sweden has never been forcibly subjected to the rule of a foreign power and therefore, “although deriving stimulation and ideas from other nations, has succeeded in carrying forward from its own distant past, the main thoughts, and basic tradition of its legal order.”¹ The legal systems in the Nordic countries are very similar and their governments have a strong tradition of cooperation in the larger areas of law, such as contract law, consumer protection law, and to a certain degree, judicial procedure. In light of this tradition, the rules of professional conduct for attorneys are very similar throughout the region.

I. *Legal Services and the Legal Profession in Sweden*

Under the Swedish Code of Judicial Procedure² (*Rättegångsbalken*), a lawyer is required to zealously perform any assignment given and in general to act honestly and in accordance with the rules governing good professional conduct (*Vägledande regler om god advokatsed*; hereinafter “Rules of Professional Conduct” or “Rules”). The Rules of Professional Conduct are a codification of the practices established by the board of the Swedish Bar Association (*Advokatsamfundet*) and the precedents of the Bar Association’s disciplinary committees (*Advokatsamfundets disciplinnämnd*). Although the Rules were originally intended to protect the public from unqualified and dishonest attorneys, they have over time become very important as guides for practicing attorneys.

Compensation to attorneys in Sweden is regulated by law and by the Rules of Professional Conduct. Under Section 25 of the Rules, an attorney “shall charge” clients a “reasonable fee” for work performed. The reasonableness of the fee is determined by the amount and quality of the work required, as well as the difficulty of the assignment and the type of claim involved. The main purpose of this rule is to avoid overcharging a client, not to prevent attorneys from working for free. In any case, there is no guidance on whether an attorney may waive the payment of the fee.

The Swedish Bar Association (together with all the national Bars and law societies of the European Union and the European Economic Area) is also a member of the Council of the Bars and Law Societies of the European Union (the “CCBE”). According to the Code of Conduct for Lawyers in the European Union issued by the CCBE, a lawyer shall not enter into a *pactum de quota litis*, an arrangement in which the lawyer’s fee is a share of whatever is to be recovered.³ Consequently, payments for legal services rendered pursuant to *de quota litis* and “no cure no pay” agreements are prohibited.

Sweden (together with the other Nordic countries), has a well-developed social welfare system, and legal services provided by the state are part of that system. Under the welfare system, State and municipal agencies provide general advice in matters relating both to private persons and public organizations. Most of the services provided by these agencies are available to *all* citizens or persons legally present in Sweden, not only to indigent individuals.

¹ Introduction to the *Swedish Code of Judicial Procedure*, part 24 of The American Series of Foreign Penal Codes, 1979, p. 2.

² Chapter 8, Section 4.

³ Code of Conduct for Lawyers in the European Union, Section 3.3.

A. Legal Aid and Advice

In Sweden, public legal advice and legal aid are provided by the State and are regulated by the Act of Legal Aid (*Rättshjälpslagen*) and the Ordinance Concerning Legal Aid (*Rättshjälpsförordning*). The Swedish Constitution provides that foreign nationals sojourning in Sweden have the same rights as Swedish nationals to obtain legal aid.⁴

There are six statutory forms of public legal aid: (1) Advice (*Rådgivning*); (2) Public Defense Counsel (*Offentlig försvarare*), which is a distinct constitutional right and not considered “legal aid”; (3) Legal Aid (*Rättshjälp*); (4) Aggrieved Party Counsel (*Målsägandebiträde*); (5) Special Representatives for Children (*Särskild företrädare för barn*); and (6) Public Counsel (*Offentligt biträde*).

As in most European Union member states, the Public Defense Counsel is appointed by a court and must be made available if a person is suspected of committing a criminal offense. However, Public Defense Counsel is not provided for misdemeanor offenses.

The Legal Aid Authority (*Rättshjälpsmyndigheten*) is responsible for granting or refusing all legal aid with two exceptions: (1) family law matters, where the decision to grant legal aid is made by the lawyer consulted and (2) criminal proceedings, where the decision is made by the court. In order for aid to be granted, the Legal Aid Authority must find it reasonable for the State to contribute towards the cost of legal representation, and the applicant may not have an income exceeding approximately €27,750 per year. In addition to this income restriction, a person cannot obtain Legal Aid if a monetary value at issue is less than a certain amount.⁵ As a general rule, legal aid is also unavailable to individuals who possess insurance that covers legal representation. Currently, legal coverage is automatically included in almost all Swedish households, home, and vacation home insurance policies, and is typically included in car and boat policies as well. Legal aid is provided to private persons and estates of deceased individuals and consequently is not available to associations or other legal entities. Once it grants a request for aid, the Legal Aid Authority has no control over subsequent proceedings and it cannot recover any money from property retrieved in those proceedings, even where the victorious party was the recipient of legal aid funds.

Legal Aid is a provision of services for individuals unable to obtain legal assistance by any other means. In addition to criminal cases, Legal Aid cannot be granted in matters regarding taxes; customs duties; preparation of wills or marital property agreements; gift documents; estate inventories; or division of marital property because the State provides legal advice in such matters.

Legal advice is available to private persons, associations, or individuals given legal stay, is provided for a fixed low fee, and is limited to two hours. Advice usually covers matters such as the rules applicable to marriage or other forms of co-habitation; statutory rules in connection with divorce; inheritance and testamentary issues; and tenancy issues. While such advice is usually provided by lawyers at firms, this is not required under the Act of Legal Aid.

The Aggrieved Party Counsel protects the interests of crime victims. Its task is to provide support and assistance, which may include help in establishing the victim’s claim for damages

⁴ See Instrument of Government, Chapter 2, Section 22.

⁵ This amount was €2,150 in 2007.

related to a criminal case. According to the Act on Assistance to the Injured Person (*Lag om Målsägandebiträde*), these state-funded legal services are provided for victims of sexual offenses; assault; unlawful deprivation of liberty; robbery; or other offenses under the Penal Code (*Brottsbalken*) for which imprisonment may be imposed.

In cases where a guardian, or someone with whom the guardian has a close relationship, is suspected of an offense against a child, a *guardian ad litem* may be appointed by the court to protect the child's interests during the preliminary investigation and court proceedings. In accordance with the Act Regarding a *Guardian ad Litem* for a Child (*Lag om särskild företrädare för barn*) an attorney acting as a *guardian ad litem* is paid by the State, and the child does not bear any of the costs associated with the attorney's work.

Assistance by Public Counsel is a factor in cases regarding administrative courts or authorities. Under the Act Regarding Public Counsel (*Lag om offentligt biträde*), these attorneys are appointed by the agency administering the matter and paid for by the State. Typically, the recipients of this aid are individuals appealing administrative decisions or immigrants threatened with deportation.

B. Ombudsman and Agencies

The Swedish welfare system includes a distinct feature: the "Ombudsman." The Swedish government has established various Ombudsman offices where individuals can bring complaints against both private companies and state agencies. As with other government agencies, each Ombudsman office is independent and usually established to ensure compliance with specific laws or a general legal area. For example, the Equal Opportunities Ombudsman (*Jämställdhetsombudsmannen*) was established to ensure compliance with the Equal Opportunities Act (*Jämställdhetslagen*). The Children's Ombudsman (*Barnombudsmannen*) was established to monitor Sweden's implementation of the United Nations Convention on the Rights of the Child and to protect children's rights in general. The Ombudsman institution has also been adopted by some non-governmental organizations such as the Tenant's Association, where an aggrieved party may resolve its complaint against a landlord.

In addition to the various Ombudsman offices, the Swedish government has also established an agency empowered to settle disputes between consumers and vendors free of charge (*Allmänna reklamationsnämnden*). This agency covers disputes such as those arising from travel, purchases of household appliances, and services provided by banks and financial institutions. The agency does not have the authority of a court, but the recommendations it issues, though not binding on the parties, are usually followed. This remedy is an inexpensive option for aggrieved consumers. The agency's recommendations are considered important guidelines for vendors in their business conduct, and the agency also provides guidance to the courts as they interpret consumer protection laws.

II. *Pro Bono Opportunities in Sweden*

A distinguishing feature of the Swedish social model is its comprehensive range of publicly subsidized welfare services for everything from childcare to care of the elderly. With such a comprehensive system in place, there has been little need for lawyers to provide free legal services and consequently, there is no long tradition of providing *pro bono* services among commercial law firms.

In 1998, the Swedish Bar Association initiated the so-called *Advokatjouren* program, in which a person is afforded a fifteen minute meeting with a local lawyer. In this meeting, the lawyer identifies the legal issue and provides guidance on how to proceed.⁶ This service is free of charge and is intended to provide people who are ineligible for legal aid with an opportunity to see a lawyer. However, no legal advice is given during these meetings – only guidance on whether a legal issue exists and how the person should proceed. The program makes free advice available to individuals who otherwise would not seek help, but it also gives attorneys an opportunity to offer their services. The participation in *Advokatjouren* is voluntary for the lawyers. Although many practicing attorneys greeted the program with enthusiasm, participants mainly were lawyers from smaller law firms, usually practitioners in family law or related fields. The large commercial law firms have rarely made available their attorneys to this program.⁷

Nonetheless, *pro bono* work is gaining ground in Sweden even among the larger commercial law firms. However, in Sweden, it is more a question of sociopolitical commitment and image building rather than the intention to offer legal aid.

Hence, it is very common for Swedish law firms to provide services for the community in other ways. For example, some law firms help children with reading and studying, and some provide scholarships for talented students from immigrant families in order to promote more diversity in the field of law. Many law firms also act as sponsors for non-profit organizations, sports clubs or cultural events.

In 1998, a Swedish group of lawyers founded the non-profit organization “*Advokater utan Gränser*,” which administers several human rights projects all around the world. The organization is composed of lawyers with different backgrounds, but many of them are from the larger law firms.⁸

In the last few years some commercial law firms have also started to provide legal *pro bono* aid.⁹ This kind of *pro bono* work is certainly influenced by the practice in the U.S. and can also comprise ongoing advice in different areas, often corporate law for non-profit organizations, but can also cover advice in intellectual property, contracts or tax law.¹⁰

An impulse for this recent development might also have been the engagement of lawyers in Sweden’s largest legal *pro bono* project ever—a cooperation of lawyers offering legal aid for the victims of the Tsunami catastrophe in 2004 in Southeast Asia which affected Sweden very strongly. Immediately after the alarming dimensions of the catastrophe became publicly known (543 Swedish citizens died or were missing), the Swedish Bar Association decided to start a legal aid project to help the natural disaster’s victims and families. Law firms of all sizes participated in the project and spent many hours free of charge working on cases from many different fields of

⁶ See *Advokaten* 6/98, p. 16.

⁷ See *Advokaten* 9/99, p. 18.

⁸ See www.advokaterutanranser.se.

⁹ See *Svenska Dagbladet* on 3 august 2007; see also www.e24.se/bransch/bankfinans/artikel_47279.e24.

¹⁰ See www.delphi.se/?id=2255, www.mannheimerswartling.se/en/Career/Work-at-Mannheimer-Swartling/Pro-Bono/ and www.vinge.se/upload/broschyrrer/F%C3%B6retags%C3%B6vergripande/Vinge_business_review_2009_en.pdf.

law, such as foundation law; corporate law; family and estate law; and, to a great extent, insurance law.¹¹

III. *Conclusion*

In Sweden, legal advice and legal aid are largely provided by the state to all citizens as part of Sweden's comprehensive social welfare system. Although the underfunding of the welfare system suggests a gap between the supply and demand for *pro bono* legal services, experience with *Advokatjouren* and the fee requirement in the Rules of Professional Conduct has not yet promoted such a culture in Sweden. Swedish lawyers typically engage the community in other ways.

However, this might change in the future when more Swedish law firms discover that *pro bono* services are not only a question of humanity and responsibility but might also have positive effects on their public reputation. Some law firms have at least already established ongoing *pro bono* projects and will continue to do so.

September 2010
Pro Bono Practices and Opportunities in Sweden

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.

¹¹ See *Sveriges Advokatsamfund Verksamhetsberättelse* 2005, p. 6/7.

PRO BONO PRACTICES AND OPPORTUNITIES IN TAIWAN, R.O.C.

In the past decade, the Taiwanese legal community has recognized access to legal aid as a pressing concern. Legislative reform efforts have resulted in the passage of the 2004 Legal Aid Act, which seeks to provide legal assistance to the underprivileged. Although the *pro bono* culture in Taiwan is not yet pervasive, the Legal Aid Act, along with other regulations and trends, demonstrates an emerging *pro bono* culture that presents a variety of *pro bono* opportunities.

I. Legal Services and the Legal Profession in Taiwan

The Taiwanese legal framework is a civil law system with heavy German and Japanese influences, as well as significant Chinese elements brought over from the mainland by the Kuomintang (The Nationalist Party or KMT). More recently, the legal system has also begun to adopt some Anglo-American practices.¹ Over the last two decades, the Taiwanese legal profession has undergone a profound transformation. Between 1986 and 1996, the number of attorneys admitted to private practice has roughly doubled.² Lawyers have come to the forefront of efforts to spur judicial reform and deepen democratization. One place where Taiwanese attorneys are certainly projecting a positive image is in the area of legal aid.³ To this end, Taiwan's government established the Judicial Reform Committee in the fall of 1994, and the Judicial Reform Foundation ("JRF") was formed by a group of lawyers, professors and social activists in that same year with goals of achieving (i) the revision of laws, (ii) supervision and assessment of the judiciary, (iii) legal reform education initiatives, and (iv) more broadly a follow-up on individual legal issues.⁴ Since 2000, the JRF has also been endeavoring to promote legal aid.⁵

In 2003, the courts began to implement an adversarial system of criminal law modeled after Anglo-American systems. The new regime aims to better protect the rights of the accused and strengthen the judiciary.⁶

The Judicial Yuan, one of the five branches of the Taiwanese government, governs the judiciary and also serves as the Constitutional Court. The Judicial Yuan directly supervises the judicial administrative affairs of 12 institutes (including the Supreme Court). The objective of judicial administrative supervision is to establish a sound judicial system, promote its

¹ See Martindale-Hubbell International Law Digest, Taiwan Law Digest 1 (LexisNexis Martindale-Hubbell 2007).

² Jane Kaufman Winn, "The Role of Lawyers in Taiwan's Emerging Democracy," in *Raising the Bar: The Emerging Legal Profession of East Asia* (William Alford ed., Harvard University Press 2004), available at: http://www.law.washington.edu/Directory/docs/Winn/lawyers_taiwan.pdf.

³ See Brian Kennedy and Elizabeth Kuo, *Raising the Bar for Taiwan's Attorneys*, Taiwan Review Vol. 57 No. 7 (2007), available at: <http://taiwanreview.nat.gov.tw/ct.asp?xItem=24314&CtNode=128>.

⁴ See Judicial Reform Foundation, <http://www.jrf.org.tw/newjrf/english.htm>.

⁵ In 2000, the JRF finished drafting a bill on the Basic Law of Legal Aid (bill). In 2001, the bill was tabled before the Legislative Yuan (*i.e.*, Legislative Council). In 2002, the bill was discussed by the committee with the JRF persuading the Legislative Yuan for its passage. In 2003, an amendment to the bill for inclusion of legal aid was proposed. In 2004, the JRF promoted the establishment of the Legal Aid Foundation. See <http://www.jrf.org.tw/newjrf/Layer2/benefit.asp>.

⁶ See Brian Kennedy, *LA Law in Taiwan?*, Taiwan Review Vol. 52, No. 5 (2002), available at: <http://taiwanreview.nat.gov.tw/site/Tr/ct.asp?xItem=722&ctNode=119>.

performance, improve efficiency, and enhance the quality of trials, which does not interfere with the judicial independence.⁷

A. The Legal Profession

The legal profession in Taiwan is governed by the Taiwan Bar Association and various local bar associations, the most prominent of which is the Taipei Bar Association, which has a membership base of more than 3,000, or 70% of around 4,700 practicing attorneys in Taiwan as of September 2010.⁸ The bar associations have adopted self-regulating ethical rules that encourage attorneys to participate in legal aid work and accept *pro bono* assignments from the courts. Article 22 of the Attorney Regulation Act requires attorneys to “fulfill and complete all lawful court assignments” unless excused by good cause.⁹ In addition, Article 9 of the Code of Ethics of the Taipei Bar Association states that “attorneys shall participate in legal aid, services for the people, or engage in other public interest activities, so as to make legal services widely available.”¹⁰ Attorneys violating Article 22 of the Attorney Regulation Act, or seriously violating the code of ethics or the Articles of Incorporation of the Bar Association in which the attorneys are the members, may be subject to disciplinary action, which can be by way of warnings, reprimands, suspension of the right to practice law for a period not exceeding two years, or disbarment.¹¹

B. Legal Aid

Before the passage of the Legal Aid Act in 2004, disadvantaged litigants in need of legal services sought help from volunteer attorneys, charitable organizations and clinical programs at law schools. The lack of organization, financing, and government sponsorship meant that in reality the majority of disadvantaged litigants remained unrepresented. In 1999, both parties were represented by counsel in only 4.6% of all civil lawsuits. In criminal cases, only 12.5% of defendants were represented at the district court level, and less than a third at the appeals court level.¹² In response to the clear need for legal aid, three private groups — the Judicial Reform Foundation, the Taipei Bar Association and the Taiwan Association for Human Rights — began to draft the Legal Aid Act in the late 1990s.¹³ In January 2004, the Legislative Yuan promulgated the Legal Aid Act, which stipulates that the purpose of the enactment of this Act is “for protecting

⁷ The 12 institutes are: Supreme Court, Supreme Administrative Court, the Institute for Judicial Professionals of the Judicial Yuan, Commission on the Disciplinary Sanctions of Functionaries, Taiwan High Court, Taipei High Administrative Court, Taichung High Administrative Court, Kaohsiung Administrative High Court, Intellectual Property Court, Fuchien High Court Kinmen Branch Court, Fuchien Kinmen District Court, and Fuchien Lienchiang District Court. See Directory of the Judicial Branch, The Judicial Yuan of the Republic of China, <http://www.judicial.gov.tw/en>.

⁸ See Taipei Bar Association, available at: http://www.tba.org.tw/index/english_01.asp.

⁹ Attorney Regulation Act art. 22, available at: http://law.moj.gov.tw/eng/UserControl/print_en.html.

¹⁰ Code of Ethics of the Taipei Bar Association, art. 9, available at: <http://www.tba.org.tw/about.asp?id=67&class=39&classname=公會規章>

¹¹ Attorney Regulation Act art. 39, 44.

¹² Tsung-fu Chen, *The Rule of Law in Taiwan: Culture, Ideology, and Social Change*, in *Understanding China's Legal System: Essays in Honor of Jerome A. Cohen* (C. Stephen Hsu ed., 2003, New York, New York University Press).

¹³ *Who We Are*, Legal Aid Foundation, available at: http://www.laf.org.tw/laf2010/big5/a1_1.php.

the rights of the people, and for those who, due to the lack of financial resources or other reasons, are unable to obtain necessary legal assistance.”¹⁴

Article 5 of the Legal Aid Act stipulates for the establishment of the Legal Aid Foundation (LAF) for achieving the purposes of the Legal Aid Act. The LAF commenced operation in July 2004. By 2009, 21 branch offices had been opened throughout Taiwan to provide legal services. The LAF is funded by the Judicial Yuan.¹⁵ One year after its operation, the LAF undertook nearly 18,000 application cases. In 2008, the total number of general applications to the LAF was 40,723 cases, of which 17,698 cases were granted legal aid.¹⁶ In 2009, the LAF received 37,117 application cases, 24,022 of which have been granted full assistance, 539 of which have been granted partial assistance and 11,618 of which have been rejected. Nonetheless, legal aid has been granted in 67.89% of all the applications.¹⁷

The Legal Aid Act envisions legal aid to be broad in scope. Access to legal aid applies to two major categories of matters: (1) litigation, which includes civil, criminal, family, administrative and “to be classified” cases; and (2) non-litigation.¹⁸ Non-litigation matters encompass negotiations, settlements, and “any other services that the LAF has resolved to provide.”¹⁹ Recipients of legal aid may include foreigners. The majority of the foreign legal aid seekers are laborers.²⁰ In practice, the LAF will limit the scope of legal aid. Certain matters, including but not limited to, criminal litigation and special appeals, privately prosecuted criminal matters, arbitration, bankruptcy, small claims, and retrials, are excluded unless expressly approved by the director of the LAF branch office.²¹ For criminal matters, the customary procedure is for the Judicial Yuan to appoint public defenders or lawyers for certain indigent defendants.²²

By the end of 2009, a total of 2,296 attorneys had registered to provide legal services through the LAF.²³ As of September 2010, the LAF has not yet established an in-house lawyer system, so case examination and follow-up are conducted by project-based lawyers. There is no

¹⁴ Legal Aid Act art. 1, *available at*: <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=A0030157>.

¹⁵ *Supra* note 13. Article 4 of the Act places responsibility on the government for funding the LAF’s work. Article 6 of the Act provides for an endowment of TWD 10 billion.

¹⁶ *See* pp. 24 - 25 of Annual Report 2008 of Legal Aid Foundation of Taiwan (English version); *available at*: <http://www.laf.org.tw/laf2010/upload/20091123094354.pdf>.

¹⁷ *See* pp. 25 – 26, Annual Report 2009 of Legal Aid Foundation of Taiwan (Chinese version); *available at*: http://www.laf.org.tw/laf2010/big5/c3_1.php.

¹⁸ *See* p.27 of Annual Report 2009 of Legal Aid Foundation of Taiwan (Chinese version) *available at*: http://www.laf.org.tw/laf2010/big5/c3_1.php.

¹⁹ Article 2 of the Legal Aid Act states that “legal aid” includes (1) legal consultation, (2) mediation and reconciliation, (3) drafting of legal documents, (4) representation or advocacy in litigation or arbitration, (5) assistance in providing other necessary legal services and expenses, and (6) any other services that the LAF has resolved to provide.

²⁰ *See* p. 42 of Annual Report 2009 of Legal Aid Foundation of Taiwan (Chinese version) *available at*: http://www.laf.org.tw/laf2010/big5/c3_1.php.

²¹ *See Get Legal Help*, Legal Aid Foundation, *available at*: http://www.laf.org.tw/laf2010/english/a2_2_1.php. Legal aid also does not currently apply to corporations and organizations.

²² *See* The Judicial Yuan of the Republic of China, <http://www.judicial.gov.tw/en>.

²³ *See* p. 20, Annual Report 2009 of Legal Aid Foundation of Taiwan (Chinese version) *available at*: http://www.laf.org.tw/laf2010/big5/c3_1.php.

employment relationship between the volunteer lawyers and the LAF.²⁴ Every lawyer shall provide legal aid pursuant to the Legal Aid Act in the bar associations he or she joined. Exemption can be granted for legitimate reasons. A name list of all participating attorneys and a working schedule are kept by the national and local bar associations and made available to the LAF.²⁵ Under the Legal Aid Act, attorneys chosen to provide services may not decline doing so without providing a good reason.²⁶ In 2009, the five major types of civil cases that the LAF has taken are cases related to: general tortious claims, debts, dismissal compensation, salary payment and illegal dismissal.²⁷ The five major types of criminal cases that the LAF has taken are cases related to: manufacturing, trafficking and selling various grades of drugs, robbery, grievous bodily harm, murder and conspiracy.²⁸ The LAF provides assistance to applicants regardless of any special status that they may have, such as laborers, women, aboriginal people, people suffering from mental or physical disabilities, the elderly, children, adolescents and foreigners legally residing in Taiwan.²⁹

Outside of the scope of assistance of the LAF, criminal legal aid is administered by the Judicial Yuan. Under the Code of Criminal Procedure, if counsel has not been obtained in a case where the alleged offense carries a sentence of three years or more, the judiciary must appoint a public defender or lawyer to represent the defendant. In cases where the possible sentence is less than three years but a defendant is indigent and requests counsel, the court must also appoint counsel.³⁰

II. *Pro Bono Opportunities in Taiwan*

Attorneys interested in providing *pro bono* services can register with the LAF or local bar associations, which provide many avenues for both representing and counseling individuals in direct need of legal aid. The LAF takes on matters ranging from domestic violence cases to labor disputes. Lawyers who have registered with the court may also be appointed to represent indigent defendants in criminal cases. In addition, bar associations often take on specific types of representations. The Taipei Bar Association, for example, is committed to representing any defendant facing the death penalty who cannot afford defense counsel.³¹ Legal advice and consultations also take place on a regular basis. The Taipei Bar Association provides legal

²⁴ See *Business Features*, Legal Aid Foundation, available at: http://www.laf.org.tw/laf2010/english/a1_5.php.

²⁵ See Legal Aid Act, art. 25 available at: <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=A0030157>.

²⁶ See Legal Aid Act, art. 27: “Cases of serious violation will be referred to the Attorney Discipline Committee by the Foundation and be determined according to the Attorney Regulation Act” available at: <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=A0030157>.

²⁷ See p.28 of Annual Report 2009 of Legal Aid Foundation of Taiwan (Chinese version) available at: http://www.laf.org.tw/laf2010/big5/c3_1.php.

²⁸ See p.29 of Annual Report 2009 of Legal Aid Foundation of Taiwan (Chinese version) available at: http://www.laf.org.tw/laf2010/big5/c3_1.php.

²⁹ See *Get Legal Help*, Legal Aid Foundation available at: <http://www.laf.org.tw>.

³⁰ See, The Code of Criminal Procedure, art. 31, available at: <http://db.lawbank.com.tw/Eng/FLAW/FLAWDAT0201.asp>. (requiring the presiding judge to appoint a public defender or attorney where no defense attorney has been retained, and (1) “the minimum punishment for the charged offense is no less than three years imprisonment, or the accused is unable to make a complete statement due to unsound mind,” (2) the accused is indigent and has requested that a defense attorney be appointed, or (3) representation is otherwise considered necessary).

³¹ See Recruitment of Lawyers, Legal Aid Foundation, available at: http://www.laf.org.tw/laf2010/big5/c1_2.php

counseling services at a municipal government center during its office hours.³² National Taiwan University, National Taipei University, National Chengchi University, Fu Jen Catholic University, and Soochow University all staff legal clinics where legal counseling services are available.³³ However, to some extent, restrictions on the advertising of legal services may hinder the growing *pro bono* culture in Taiwan, since it is difficult to let potential clients know that individual legal services are available without cost.³⁴

In recent years, large international law firms have become involved with many *pro bono* activities, taking on cases through the LAF, providing advice to governmental and nonprofit organizations, helping to draft laws and regulations, and teaching at nonprofit institutions. Foreign lawyers who wish to represent *pro bono* clients should be aware of various limitations on their practice. Foreign lawyers must receive special approval from the Judicial Yuan and join the local bar association in order to practice in Taiwan, and may not engage in courtroom representation unless the court approves it.³⁵ Despite these apparent obstacles, foreign lawyers are unlikely to be denied approval by the Judicial Yuan.³⁶ However, language barriers may present a different problem, since under the Attorney Regulation Act, foreign attorneys providing legal services in Taiwan are “required to use Chinese (Mandarin dialect) language.”³⁷ At the same time, foreign lawyers are also uniquely positioned to provide *pro bono* services that involve foreign governments and organizations. Following Taiwan’s accession to the World Trade Organization (WTO), there has been a steady increase in the number of foreign attorneys in Taiwan,³⁸ which may bode well for future *pro bono* opportunities for foreign lawyers.

There are also opportunities for *pro bono* involvement with Non-Governmental Organizations (NGOs) working on legal reform and other issues. Attorneys may help draft laws and regulations, provide free legal advice to various organizations, or serve on the boards of nonprofit organizations.³⁹ The JRF and the Taiwan Association for Human Rights are two prominent organizations which have substantially contributed to the formulation of Legal Aid Act in 2004.

III. Conclusion

The Legal Aid Act, the Code of Ethics of the Taipei Bar Association and the generally increasing awareness of the need for legal aid are all promising signs that Taiwan is beginning to develop its own *pro bono* culture. There are meaningful opportunities for *pro bono* legal

³² See Taipei Bar Association, available at: <http://www.tba.org.tw/index.asp>

³³ See National Taiwan University, available at: <http://www.law.ntu.edu.tw/legalservice/page1.htm>; see also National Taipei University, http://www.ntpu.edu.tw/college/e1/about_04.php.

See Fu Jen Catholic University, <http://laws.fju.edu.tw/english/legal02.html>; see also National Chengchi University, College of Law, http://www.law.nccu.edu.tw/Engpages/EN_legal_Aid_Society.htm; see also Soochow University School of Law, http://www.scu.edu.tw/ENGLISH/law/students_organizations.htm.

³⁴ See Attorney Business Development Rules, art. 4, Taipei Bar Association (1996), available at: <http://www.tba.org.tw/about.asp?id=80&class=39&classname=公會規章> (prohibiting advertising through mass media such as radio broadcasting, television, film, newspaper, billboards and balloons).

³⁵ See Attorney Regulation Act, art. 47-1 to 47-7.

³⁶ Interview with Marianne Chao, Partner, Jones Day (Jan. 25, 2008).

³⁷ See Attorney Regulation Act, art. 47.

³⁸ See Martindale-Hubbell Law Digest: Taiwan 18, *supra* note 348.

³⁹ See, Interview with Marianne Chao, Partner, Jones Day (Jan. 25, 2008).

representation, counseling, and cooperative work with NGOs and the opportunities for foreign attorneys may be on the rise. As the legal profession in Taiwan steadily gains more recognition, it appears that *pro bono* work will continue to benefit from the profession's commitments and to strengthen the profession itself.

September 2010
Pro Bono Practices and Opportunities in Taiwan

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.

PRO BONO PRACTICES AND OPPORTUNITIES IN TURKEY

Pursuant to Article 2 of the Turkish Constitution, the Republic of Turkey is a democratic, secular and social state governed by the rule of law. Article 10(1) of the Constitution provides that all individuals are equal before the law without any discrimination, irrespective of language, race, color, sex, political opinion, philosophical belief, religion and sect, or any other considerations. Article 36 of the Constitution and Article 6(1) of the European Convention On Human Rights (the “ECHR”)¹ together guarantee the right of every individual to fair trial and the right to legal remedy either as a plaintiff or defendant.

In light of the above, it can be concluded that the Turkish State has a constitutional duty to establish effective mechanisms to ensure access to justice, which includes the provision of free legal assistance. Further, as part of its efforts to harmonize the Turkish legislation with the *acquis communautaire*, in August 2009, Turkey has adopted a “judicial reform strategy” which, among other things, covers issues related to efficiency and effectiveness of the judiciary, and facilitation of access to justice.² In order to facilitate access to justice, the reform strategy focuses on, among other things, (i) reviewing the legal aid system to enable effective access to justice, (ii) setting up standardized websites for courts, and (iii) standardizing interpretation services for people speaking local languages.

I. Legal Services and the Legal Profession in Turkey

In Turkey, the exercise of the legal profession in general and the provision of free legal assistance (called “legal aid”) in particular are organized and controlled by local bar associations (each, “Bar,” together, the “Bars”). Bars provide free legal representation both in criminal and in civil matters, but the scope of representation, as well as the application and implementation procedures in respect to each type of legal aid, are governed by different set of rules.

A. Criminal Legal Aid

Criminal legal aid was introduced to Turkey in 1992 through amendments to the Code of Criminal Procedure then in effect.³ In 2004, Turkey adopted a new Code of Criminal Procedure (as amended from time to time, the “Criminal Procedure Code”⁴). Pursuant to Article 150 and onwards of the Criminal Procedure Code, any suspect or defendant who wishes to benefit from criminal legal aid qualifies for criminal legal aid, regardless of his or her financial status or seriousness of the crime in question. Having Turkish nationality is not a requirement to receive

¹ Turkey ratified the ECHR on May 18, 1954. Pursuant to Article 90 of the Turkish Constitution, international agreements duly ratified by Turkey bear the force of law. In case of conflict between domestic laws and international agreements concerning fundamental rights and freedoms such as the ECHR, the terms of the relevant international agreement shall prevail.

² *Judicial Reform Strategy* by the Ministry of Justice of the Republic of Turkey, available at: <http://www.sgb.adalet.gov.tr/yrs/Judicial%20Reform%20Strategy.pdf> (last verified, September 28, 2010). See also the *Commission Staff Working Document, Turkey 2009 Progress Report* accompanying the Communication from the Commission to the European Parliament and the Council dated October 14, 2009, SEC (2009) 1334.

³ I. Elveris, G. Jahic and S. Kalem, *Alone in Court-Room, Accessibility and Impact of the Criminal Legal Aid Before Istanbul Courts*, Istanbul Bilgi University, Human Rights Law Research Center, June 2007 (unpublished), page 1.

⁴ Published in the Official Gazette dated December 17, 2004 and Numbered 25673.

criminal legal aid.⁵ Furthermore, mandatory criminal legal aid is in place for those suspects, defendants and victims of crimes who are mentally disabled, deaf mute, minor or, in the case of a suspect or a defendant, charged with a crime that may be punished with five years of imprisonment or more.⁶ Bars have been entrusted with the task of providing criminal legal aid, and many Bars in Turkey have established Code of Criminal Procedure Practice Units (the “CCPP Units”) which are funded by the Turkish government. In addition, pursuant to Articles 234 and 239 of the Criminal Procedure Code, victims of crimes are also entitled to apply to the CCPP Units and request that the relevant Bar appoint a lawyer to represent them as intervening party if the crime is a sexual offense or is punishable with five years of imprisonment or more. In addition, within the framework of the National Judiciary Network Project (“UYAP”), there is a public and free-of-charge specific information system entitled “Citizen Portal” set up in Turkey to inform and help victims of crimes, and efforts are underway to ensure that citizens may examine their files in a comprehensive manner and be informed via mobile text messages (SMS) of any updates.⁷

Despite the increase in funds allocated to CCPP Units’ services, preliminary research suggests that, in certain parts of Turkey, approximately nine out of ten defendants are not represented by a lawyer at any stage of the criminal justice process, and overall the CCPP representation rate is a mere 2.8%, meaning that only one in every 35 offenders benefited from CCPP services at any stage of the criminal justice process.⁸ However, given that routine data on the provision and cost of legal aid is not kept, any finding based on this preliminary data would also call into question the accuracy of these figures. The key finding of this research is the strikingly low accessibility rate of Turkish people to the CCPP Units’ services. Ironically, however, the results of the study also suggested worse final outcomes (in terms of conviction rates or duration of trial, for example) for defendants represented by a CCPP Unit lawyer compared to defendants who were represented by private lawyers, or even those who had no legal representation during trial.

Under the existing regime, neither the defendant himself nor his family can approach the Bar with a request for a lawyer. Only the police, the prosecutor or the court can ask the Bar to send a lawyer to assist the defendant. The majority of the Bars have a list of attorneys who have volunteered to assist defendants, but, in more rural areas of Turkey where there are only a few attorneys registered with the Bar, Turkish regulations require such attorneys to assume the task of participating in criminal legal aid schemes.

Pursuant to the Regulation Concerning the Principles and Procedure Regarding the Funds Payable to Attorneys under the Criminal Procedure Code,⁹ the government funding process functions as follows: (i) the Ministry of Finance provides the funds to the Bars; (ii) the Bars process the required paperwork and submit the same to the relevant prosecutor’s office for review; (iii) upon approval of the latter, the Bars process the payments on the basis of a tariff jointly issued by the Ministry of Finance and Ministry of Justice, which sets forth the amount of fees

⁵ U. Karan, *Impact of Financial Obligations on Access To Justice In Turkey, Legal Aid and Pro Bono*, January 2005 (unpublished), page 7.

⁶ Articles 150, 234 and 239 of the Criminal Procedure Code.

⁷ Scheme for Evaluating Judicial Systems 2007, European Commission For the Efficiency of Justice (CEPEJ), Turkey’s Responses, *available at*: http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2008/turkey_en.pdf (last verified on September 28, 2010).

⁸ *Supra* 969, page 7.

⁹ Published in the Official Gazette dated March 2, 2007, numbered 26450.

payable per case and per task. The Tariff is revised on a yearly basis to be effective as of January 1st of each year.

The CCPP system adopted by the Istanbul Bar Association is said to be the most advanced in Turkey. Where a CCPP Unit is not established, Bars have instead set up commissions to provide legal aid services. These commissions differ from the CCPP Units in that the commissions often do not have their own independent budget or do not employ representatives on a full-time basis; instead, they have an on-call attorney appointed.¹⁰

B. Civil Legal Aid

In Turkey, legal aid to plaintiffs and defendants in disputes of a civil or administrative nature is governed jointly by the Code of Civil Procedure (the “Civil Procedure Code”¹¹), the Code of Lawyers¹² and the Legal Aid Regulation¹³ issued by the Union of Turkish Bar Associations.

The scope of civil legal aid covers all civil, administrative and commercial disputes, as well as execution proceedings and interim measures. Unlike criminal legal aid, provision of civil legal aid is subject to two qualifications: (i) the applicant should have limited financial means; and (ii) the applicant should appear likely to succeed on the merits of the dispute, *i.e.*, his or her case or claim is not frivolous. Under Turkish laws and regulations, foreigners can only benefit from civil legal aid services on the basis of reciprocity. In this respect, Turkey is party to the Hague Convention Regarding Civil Procedure dated March 1, 2004, under which Turkey is bound to provide legal aid to citizens of the countries which have ratified this convention on the basis of reciprocity.

Pursuant to Article 176 of the Code of Lawyers, legal aid covers (1) exemption from court fees and (2) free legal representation by an attorney appointed by the Bar.

- (1) Under Articles 465-472 of the Civil Procedure Code, request for exemption from court fees is filed with the competent court verbally or in writing, and can be done at any stage of the proceedings by the applicant in person or by his attorney. Such request is limited, however, to individuals and organizations of public interest only. It is not compulsory for the court to respond to the applicant in writing. Accordingly, any applicant who requested such an exemption needs to follow up on the outcome of her request. If the request is rejected by the court, the Bar providing free legal representation services can still pay the court fees on behalf of the applicant through the funds allocated to it, if it so decides, by virtue of a board resolution.
- (2) Requests for free legal representation, on the other hand, are made directly to the relevant legal aid bureaus which are established within the organization of the Bars (the “Legal Aid Bureaus”). The applicant must submit the documents proving her identity, cause and lack of financial means. If the request is rejected, the applicant

¹⁰ *Supra* note 969, page 13-15.

¹¹ Published in the Official Gazettes dated July 2, 1927, July 3, 1927, and July 4, 1927, numbered 622, 623 and 234 respectively.

¹² Published in the Official Gazette dated April 7, 1969, numbered 13168.

¹³ Published in the Official Gazette dated March 30, 2004, numbered 25418.

can appeal verbally or in writing to the president of the relevant Bar, whose decision shall be final. The attorneys appointed by the Legal Aid Bureaus are paid on the basis of the fees set forth in the Lawyers' Minimum Tariffs.¹⁴

C. Criticisms on the Legal Aid System

The existing criminal and civil legal aid structure has been criticized for a number of important reasons.

First, with respect to civil legal aid, attorneys appointed by the Legal Aid Bureaus to provide civil legal aid services are not subject to an exam, interview process or prior training on providing legal aid services. Attorneys working for the CCPP Units are subject to a very short training only. The distribution of work among attorneys appointed by the Legal Aid Bureaus and CCPP Units is made irrespective of the attorney's performance.¹⁵ Other than quarterly reporting requirements to the Union of Turkish Bars concerning the cases, there are no auditing or disciplinary procedures to control case development.¹⁶

Second, although the CCPP Units and the Legal Aid Bureaus function side by side under the umbrella of the Bars, they do not have a coordinated approach, nor do they coordinate their work with the social services, the police or the NGOs.¹⁷

Third, Legal Aid Bureaus established with different Bars apply different criteria for providing civil legal aid, as there is no coordinating and supervisory body that standardizes the implementation process for all of the bureaus.¹⁸ Furthermore, as will be discussed under "Barriers To *Pro Bono* Practice," the scope of civil legal aid is vaguely defined in Turkey, and calls into question whether the lawmakers' intention was to limit the Bars' authority in this area to legal representation before the courts and other authorities or to entrust them with the task of providing free legal advice in Turkey.¹⁹ This is problematic because, under Turkish law, Bars have exclusive jurisdiction over provision of legal services which by law are entrusted in them. This exclusivity, if considered broadly, would effectively prevent persons other than licensed attorneys, such as legal clinic programmes or NGOs, from giving legal advice, even *pro bono* (see below "Barriers To *Pro Bono* Practice").

D. Recent Developments

The Ministry of Justice has, in collaboration with the United Nations Development Programme, jointly initiated a project entitled "*Development of Preventive Justice Programs for*

¹⁴ The Lawyers' Minimum Tariffs for the year 2010 is published in the Official Gazette dated December 24, 2009, numbered 27442.

¹⁵ *Roundtable Discussion On Legal Aid In Turkey: Policy Issues and Comparative Perspective*, Report and Selected Papers and Report Delivered at a Roundtable Held in Istanbul, Turkey, on April 16, 2004, including The Agenda and List of Participants, Istanbul Bilgi University in Cooperation with Open Society Justice Institute, page 2. See also Corey Stoughton, *A Comparative Analysis of the Turkish and American Criminal Legal Aid Systems*, Ankara L. Rev. Vol. 6, No. 1, pages 1-16.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ I. Elveris, *IR 708, Social Policy Final Paper: Access to Justice For the Poor In Turkey: Can legal clinics empower?* (unpublished), page 7.

¹⁹ *Id.*

Legally Empowered Citizens and Increased Access to Justice for All in Turkey” in May 2010.²⁰ The project aims at increasing the administrative capacity and developing the infrastructure for preventive legal mechanisms in Turkey and, to that effect, specifically focuses on increasing awareness of rights, knowledge of specific legal rights and issues and public confidence through, for example, operating a preventive justice website, launching a nationwide legal awareness campaign, and investing in process through introducing preventive justice to primary school curricula.

II. *Pro Bono Opportunities in Turkey*

A. Legal Clinics and Pro Bono Networking In Turkey

Istanbul Bilgi University Human Rights Law Center (“Bilgi”) is the first university in Turkey to set up legal clinics based on the models used in law schools in the United States. Currently, Bilgi has three legal clinics (street law, refugee law and private law). In the private law clinic, they provide legal information rather than legal representation before courts because, legal complications aside, as a practical matter, litigation takes too long in Turkey.²¹

Bilgi is the only institution to set up a *pro bono* network in Turkey. The *pro bono* network teams up NGOs with law firms in Istanbul. The network functions by making a needs assessment of the NGOs to determine if the NGOs (or their constituents) need legal drafting, representation or pure legal advice. The compiled filings are then sent to the law firms in Istanbul. The law firms, in turn, choose the NGO they want to work with, as well as the type of legal assistance they wish to provide. The law firms are then introduced to the NGOs.

III. *Barriers to Pro Bono Practice*

A. Bilgi’s Experience

Bilgi’s experience with legal clinics and its *pro bono* initiative highlights some of the practical and legal barriers to providing *pro bono* services in Turkey. For example, Idil Elveris, coordinator and lecturer at Bilgi, states that the NGOs have at first been skeptical, almost suspicious, of their initiative to try to assist them. The initial skepticism of the NGOs vis-à-vis the intentions of Bilgi, as well as the law firms, pinpoints the lack of a strong cultural background and tradition of community work, voluntarism and social trust among Turkish citizens.²² This conceptual barrier constitutes one of the practical impediments to *pro bono* initiatives in Turkey. The barrier to their legal clinics’ initiative, on the other hand, has been legal in nature.

B. Legal Barriers – Monopoly of Bars

Generally speaking, the legal profession is subject to rigid regulation in Turkey. To begin with, the scope of legal services, the provision of which requires an attorney’s license, is defined rather broadly.

²⁰ A summary of the project (in Turkish), *available at*: <http://www.sgb.adalet.gov.tr/projeler/koruyucuhukukprojesi.pdf> (last verified on September 28, 2010).

²¹ I. Elveris, *Educating and Supporting A Commitment To Public Service Lawyering*, Fourth International GAJE Conference, Cordoba-Argentina, November 2006, Promotion of *Pro Bono* Initiatives, Presentation Notes (unpublished).

²² I. Elveris, *Brief Statement of Pro Bono Work In Turkey* (unpublished), page 2.

Under Article 35 of the Code of Lawyers, *only* attorneys registered with a local Bar are entitled to “render legal opinions, appear before courts, arbitrators and other judiciary bodies, pursue matters before courts and to prepare all documents in relation thereto.” If persons other than a registered attorney exercises such licensed rights, the law provides that they shall be fined and condemned to imprisonment for six months to one year.²³ In addition, the Lawyers’ Minimum Tariff provides that any task which is set forth in the Lawyers’ Minimum Tariff can only be undertaken by attorneys and at the fees set forth in the Lawyers’ Minimum Tariff. The tariff includes various tasks which not only relate to representation of clients before courts, arbitrators, execution officers or other judiciary bodies, but also to provision of “verbal or written legal advice,” as well as drafting of certain agreements such as lease agreements, wills or some corporate documents.

Article 35 of the Code of Lawyers together, with the Lawyers’ Minimum Tariff, delineate the scope of licensed services so broadly that many (including Bars) argue that provision of any type of legal advice, whether or not it pertains to representation before judicial bodies, is under the exclusive competence of attorneys registered with the Bars. However, others argue that restricting the provision of legal advice to attorneys, and attorneys only, is not compatible with the freedom of thought and expression guaranteed under the Turkish Constitution.²⁴

C. Legal Barriers – Minimum Tariffs

Pursuant to Article 2 of the Lawyers’ Minimum Tariff, attorneys cannot agree on fees lower than those set forth in the Minimum Tariff. This raises the question of whether even an attorney can provide *pro bono* service in the legal field. Fortunately, under Article 164 of the Code of Lawyers, in the event a lawyer takes on a case *pro bono* (without any consideration), he needs to notify the board of directors of the relevant Bar accordingly. In addition, pursuant to an opinion rendered by the Disciplinary Committee of the Union of Turkish Bars dated September 23, 2000, numbered E. 2000/72, 2000/128, “accepting a case *pro bono* is different than accepting a case in exchange for a fee which is lower than those set forth in the Lawyers’ Minimum Tariff. If the parliament’s intention was to ban *pro bono* work, it would explicitly do so by inserting a provision in the law to that effect.” Accordingly, we believe that there is no legal barrier to attorneys providing *pro bono* work, including taking on a case *pro bono*, to the extent they notify the Bar they are registered with accordingly.

D. Legal Barriers – Ban On Advertising

Pursuant to Article 8 of the Regulation Regarding Ban On Advertising,²⁵ law firms, attorneys and trainees cannot carry out any advertising activities. In connection with their professional activities, they cannot make public statements as spokesmen for their client before the media, or on the Internet, about a case they have pursued or are pursuing unless the circumstances require otherwise. Moreover, they cannot make any statements before the media that can be construed as an advertisement. This ban on advertising effectively disincentivizes law firms to take on *pro bono* work in Turkey.

²³ S. Guner, *Law of Lawyers*, Ankara Bar Publications, 2003, page 125.

²⁴ I. Elveris, *Current Provisions Of Legal Profession and Associated Access To Justice Problems* (unpublished), page 7.

²⁵ Published in the Official Gazette dated November 21, 2003, numbered 25296.

E. Legal Barriers – Foreign Law Firms and NGOs

Whether persons who are not licensed attorneys, including foreign law firms, can provide *pro bono* services in Turkey is questionable. The broad description in the applicable laws and regulations of the scope of work which falls under the exclusive competence of lawyers constitutes a barrier to initiatives in this area. In addition, the standing-to-sue requirements in litigation are extremely narrow, making it difficult for claimants, such as the NGOs, to file a case on behalf of the applicant unless they have a direct tangible interest in the outcome. There is no barrier, however, for foreign firms to represent Turkish clients before international courts and take on cases, for example, before the European Court of Justice, European Court of Human Rights or International Court of Justice.

IV. *Conclusion*

Pro bono opportunities in Turkey are limited. Under the applicable Turkish regulations, if a Turkish qualified attorney or a domestic law firm wishes to take on a case *pro bono*, a notification to the Bar to that effect is required. Otherwise, the relevant attorney or the domestic law firm, as the case may be, is deemed to have breached the requirement to provide licensed services based on the mandatory minimum tariffs. The ban on advertising further disincentivizes attorneys to take on matters *pro bono*. Persons who are not attorneys (such as the NGOs and university legal clinics) are hesitant to give *pro bono* legal advice because Bars in Turkey have a legal monopoly over the provision of a wide range of legal services. Accordingly, *pro bono* work which can be undertaken by foreign law firms and NGOs is limited to taking on cases before international bodies, or otherwise liaising with domestic law firms and university legal clinics to assist them in their efforts to promote *pro bono* efforts in Turkey.

September 2010

Pro Bono Practices and Opportunities in Turkey

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.

PRO BONO PRACTICES AND OPPORTUNITIES IN THE UNITED ARAB EMIRATES

The provision of US-style *pro bono* legal services is not common in the United Arab Emirates. The government, however, provides certain legal assistance to individuals. This chapter discusses the legal profession, the provision of free legal services and *pro bono* opportunities for foreign law firms in the United Arab Emirates.

I. Legal Services and the Legal Profession in the United Arab Emirates

A. The Legal Profession

The United Arab Emirates is a federation of seven largely self-governed Emirates.¹ It has a dual system of civil courts and *Shari'a* courts.² The civil courts hear civil and criminal cases and, other than in Dubai and Ras al-Khaimah, are part of a three-tier federal court system that culminates in the Federal Supreme Court.³ The Emirates of Dubai and Ras al-Khaimah administer their own trial- and appellate-level civil court systems.⁴ The *Shari'a* courts, which apply Islamic law, generally hear family law cases and certain criminal cases and are administered by each Emirate.⁵

The legal profession in the United Arab Emirates is governed by Federal Law No. 23 of 1991, which generally limits the practice of law before the federal courts to citizens of the United Arab Emirates with certain legal qualifications.⁶ In order to appear before the federal courts, lawyers must be licensed by the Ministry of Justice, and in order to appear before courts in Dubai and Ras al-Khaimah (including *Shari'a* courts), lawyers must be licensed as advocates by the local ruler's court.⁷

Although foreign lawyers generally are not permitted to act as advocates before courts in the United Arab Emirates, foreign law firms are permitted to operate in the United Arab Emirates as legal consultancies.⁸ In order to operate as legal consultancies, foreign law firms must be licensed by each Emirate in which they operate an office.

There are also a number of free zones in the United Arab Emirates from which international law firms may operate an office. The most relevant for law firms is the Dubai International Financial Centre (the "DIFC"), a financial free zone within the Emirate of Dubai.⁹

¹ FED. RESEARCH DIV., LIBRARY OF CONGRESS, COUNTRY PROFILE: UNITED ARAB EMIRATES (UAE) 19 (2007), available at: <http://lcweb2.loc.gov/frd/cs/profiles/UAE.pdf>. The seven Emirates are: Abu Dhabi, Dubai, Sharjah, Ajman, Umm al-Quwain, Ras al-Khaima and Fujairah.

² *Id.* at 21; Essam Tamimi, *Litigation in the United Arab Emirates*, 20 INT'L LEGAL PRAC. 134, 135 (1995).

³ FED. RESEARCH DIV., LIBRARY OF CONGRESS, COUNTRY PROFILE: UNITED ARAB EMIRATES (UAE) 21 (2007), available at: <http://lcweb2.loc.gov/frd/cs/profiles/UAE.pdf>; Tamimi, *supra* note 2, at 134, 138.

⁴ Tamimi, *supra* note 2, at 134, 138.

⁵ FED. RESEARCH DIV., LIBRARY OF CONGRESS, COUNTRY PROFILE: UNITED ARAB EMIRATES (UAE) 21 (2007), available at: <http://lcweb2.loc.gov/frd/cs/profiles/UAE.pdf>; Tamimi, *supra* note 2, at 135.

⁶ Programme on Governance in the Arab Region, United Nations Dev. Programme, UAE Judiciary, <http://www.pogar.org/countries/judiciary.asp?cid=21>.

⁷ Gulf-law.com, United Arab Emirates Judicial System, http://www.gulf-law.com/uae_judicial.html; Tamimi, *supra* note 2, at 136.

⁸ Gulf-law.com, United Arab Emirates Judicial System, http://www.gulf-law.com/uae_judicial.html.

⁹ Dubai International Financial Centre, About Us, <http://www.difc.ae/>.

The DIFC is a separate legal jurisdiction with its own body of law, including a companies law and employment law, as well as its own court system, the DIFC Courts.¹⁰ The DIFC operates a sophisticated regulatory regime overseen by the Dubai Financial Services Authority (the “DFSA”).¹¹ Any law firm that operates in or from the DIFC must be licensed by the ruler’s court in Dubai and as an ancillary services provider by the DFSA.¹² Unlike in the United Arab Emirates generally, foreign law firms are permitted to advise clients before the DIFC Courts, *provided* that they are appropriately registered with the DIFC Courts.

B. Government-Provided Legal Assistance

The government provides free legal representation to defendants in certain criminal cases in the United Arab Emirates. Under the Criminal Procedures Code, a defendant has the right to be represented by a government-provided lawyer in any case that involves a possible punishment of death or life imprisonment, regardless of financial need.¹³ The government also has discretion to provide lawyers for indigent defendants in certain other felony cases.¹⁴ We understand that when a defendant is entitled to a government-provided lawyer, the court appoints a private lawyer to represent the defendant, the court assesses the lawyer’s fees at the end of the case, and the government pays the lawyer.¹⁵ Accepting such an appointment is optional for the lawyer, and the fee paid to the lawyer is less than the fee that a lawyer would normally charge for such representation.

As the United Arab Emirates has a large number of migrant workers, the government also provides certain forms of legal assistance to foreign employees with labor grievances. The Ministry of Labor distributes information to foreign workers in several languages, explaining their rights under the labor law and how they can individually or collectively pursue labor disputes.¹⁶ Workers can file labor-related complaints with the Ministry of Labour, which provides mediation services for labor disputes.¹⁷ We understand that parties are not required, and generally are not allowed, to be represented by lawyers in such mediations and that no fees apply in such mediations. Either party to the mediation can have the dispute referred from mediation to a court, and such court cases are not subject to court fees.¹⁸ Domestic employees are not covered by the

¹⁰ SUZANNE ABDALLAH & AMMAR HAIK, AL TAMIMI & COMPANY, UNITED ARAB EMIRATES: QUESTION OF JURISDICTION DIFC VS. DUBAI (2010), *available at*: <http://www.mondaq.com/article.asp?articleid=107548>.

¹¹ *Id.*

¹² DUBAI FINANCIAL SERVICES AUTHORITY, APPLYING FOR DFSA REGISTRATION, *available at*: <http://www.dfsa.ae/Documents/Applying%20for%20Registration.pdf>.

¹³ Penal Procedure Law, Federal Law No. 35 of 1992; *see also* BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP’T OF STATE, 2009 HUMAN RIGHTS REPORT: UNITED ARAB EMIRATES (2010), *available at*: <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136082.htm>.

¹⁴ *Id.*

¹⁵ *See* Federal Law No. 23 of 1991, art. 24.

¹⁶ BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP’T OF STATE, UNITED ARAB EMIRATES; COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES - 2006 (2007), *available at*: <http://www.state.gov/g/drl/rls/hrrpt/2006/78865.htm>.

¹⁷ *Id.*; U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review; United Arab Emirates, para. 59, U.N. Doc A/HRC/10/75 (Jan. 12, 2009).

¹⁸ *Id.*; BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP’T OF STATE, UNITED ARAB EMIRATES; COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES - 2006 (2007), *available at*: <http://www.state.gov/g/drl/rls/hrrpt/2006/78865.htm>.

labor law, but may file employment-related complaints with the Ministry of Interior as an alternative to resorting to litigation.¹⁹

The current economic downturn and resultant increase in civil litigation has led a number of legal practitioners in the United Arab Emirates to suggest that authorities should also establish a scheme to offer *pro bono* legal services to indigent clients in civil cases.²⁰

In the DIFC free zone, the DIFC Courts recently established a *pro bono* program, the first of its kind in the Middle East, in October of 2009.²¹ The *pro bono* program allows individuals who cannot afford a lawyer the ability to seek free advice from lawyers registered with the DIFC Courts.²² The services offered as part of the *pro bono* program range from basic advice to full case management and representation in litigation proceedings.²³ The services are accessible to eligible individuals approved by the DIFC Courts' Registry office.²⁴ We understand that, to date, seven law firms have registered to provide voluntary services under this program, and five *pro bono* litigant applications have been filed at the DIFC Courts.²⁵

C. Privately Provided Legal Assistance

Private lawyers and law firms in the United Arab Emirates do not generally engage in *pro bono* legal work on a regular basis. There are also very few non-governmental organizations ("NGOs") in the United Arab Emirates that provide free legal services to individuals or that focus on providing legal aid to disadvantaged groups.

All NGOs in the United Arab Emirates are required to register with the Ministry of Social Affairs and are subject to a number of regulations.²⁶ Despite this requirement, several unregistered NGOs operate in the United Arab Emirates without interference from the government.²⁷ The first human rights NGO in the United Arab Emirates, the Emirates Human Rights Association, was licensed by the government in 2006.²⁸ The association is headed by a

¹⁹ *Id.*

²⁰ *Call to extend free legal aid to civil cases*, EMIRATES BUSINESS 24/7, Aug. 9, 2009, available at: http://www.uaeinteract.com/docs/Call_to_extend_free_legal_aid_to_civil_cases/37151.htm.

²¹ Press Release, DIFC Courts first *pro bono* case to be represented by Clyde and Co. (Nov. 9, 2009), available at: www.ameinfo.com/215288.html.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, 2009 HUMAN RIGHTS REPORT: UNITED ARAB EMIRATES (2010), available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136082.htm>.

²⁷ *Id.* As of 2009, there were approximately 100 registered domestic NGOs in the United Arab Emirates, and it was estimated that there were more than 20 unregistered local NGOs in operation. *Id.*

²⁸ BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, UNITED ARAB EMIRATES; COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES - 2005 (2006), available at: <http://www.state.gov/g/drl/rls/hrrpt/2005/61701.htm>; Programme on Governance in the Arab Region, United Nations Dev. Programme, Human Rights in UAE, <http://www.pogar.org/countries/humanrights.asp?cid=21>.

government prosecutor and focuses on human rights issues and complaints, including those relating to labourers', stateless persons' and prisoners' rights.²⁹

II. *Pro Bono Opportunities in the United Arab Emirates*

Several factors make it difficult for foreign law firms to provide *pro bono* legal services in the United Arab Emirates. The ability of foreign lawyers to represent disadvantaged individuals is limited by the fact that, in general, only citizens of the United Arab Emirates may represent litigants before courts in the United Arab Emirates. In addition, many of the foreign lawyers in the United Arab Emirates do not speak Arabic, which makes it difficult for them to assist disadvantaged individuals who only speak Arabic or local organizations that conduct most of their work in Arabic. Foreign law firms in the United Arab Emirates have, therefore, focused the bulk of their charitable efforts on non-legal charitable work, such as fundraising for local charities, rather than on engaging in *pro bono* legal work.

Notwithstanding these issues, foreign law firms have provided certain *pro bono* legal consultancy services to local charities in the United Arab Emirates. Generally, these services have consisted of advising such charities on issues involving foreign laws. For instance, a foreign law firm has advised a regional NGO on its microfinance program and other general corporate and finance matters, and other foreign law firms have helped local charities negotiate cooperation agreements with partner organizations in other countries. According to a foreign law firm that has approached local charities offering to provide *pro bono* legal services to them, local charities have welcomed its offers of assistance, indicating that there may be additional opportunities for foreign law firms to engage in this type of *pro bono* work in the United Arab Emirates.

In addition, a number of foreign law firms in the United Arab Emirates provide *pro bono* legal services from their offices in the United Arab Emirates to NGOs outside of the region.

III. *Conclusion*

The practice of providing *pro bono* legal services is not well established in the United Arab Emirates, where local private lawyers and law firms do not regularly engage in *pro bono* legal work and a number of legal and institutional obstacles exist that prevent foreign law firms from engaging in *pro bono* legal advocacy. Nonetheless, foreign law firms have provided *pro bono* legal consultancy services to nonprofit organizations in the United Arab Emirates, particularly on matters involving foreign laws, and there may be further opportunity to expand this work.

September 2010
Pro Bono Practices and Opportunities in the United Arab Emirates

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.

²⁹ BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, 2009 HUMAN RIGHTS REPORT: UNITED ARAB EMIRATES (2010), available at: <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136082.htm>.

PRO BONO PRACTICES AND OPPORTUNITIES IN INTERNATIONAL LAW

Individual access to international legal bodies is a relatively new, but rapidly expanding phenomenon. This chapter provides an introduction to *pro bono* in the international legal sphere. On the litigation side, *pro bono* initiatives in international law provide a unique opportunity for lawyers, not only to assist individuals and non-state actors in vindicating their rights, but also to influence the formation of international law and precedent. There are also many opportunities for international *pro bono* outside of litigation, as will be discussed in more detail below.

I. *The History and Development of Individual Participation in International Law*

Traditionally, only states were considered to be subjects of international law. The rights and duties of individuals were regarded as matters entirely within each state's domestic jurisdiction and unsuitable for regulation by international law.

This began to change as early as 1907, when the Hague Convention XII Relative to the Creation of an International Prize Court recognized the right of an individual to appeal a national decision to an international tribunal. A few years later, the Treaty of Versailles and the other peace treaties that followed the conclusion of World War I allowed individuals to advance claims against a foreign state or against nationals of a foreign state and to be entitled to compensation. These and other developments served as a basis for the paradigm shift that would take place in the second half of the twentieth century: the recognition of the legal personality of individuals to sue or be sued before international tribunals.¹

World War II was the catalyst for the transformation. After 1945, the need for a supra-national system of checks and balances was clear. Human rights law consequently developed as the first area explicitly to recognize the individual as a subject of international law. This extension of international law was enshrined in the UN Charter, which established general obligations requiring member states to respect human rights. The UN Charter also provided for the creation of a Human Rights Commission to protect and advance these individual rights.²

Human rights law has expanded dramatically since 1945. Numerous international instruments have been adopted, among the most notable of which are the Universal Declaration of Human Rights and the Genocide Convention (1948); the Convention on the Elimination of All Forms of Racial Discrimination (1965); the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (1966); the Protocol Relating to the Status of Refugees (1967); the Convention on the Elimination of All Forms of Discrimination Against Women (1979); the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984); the Convention on the Rights of the Child (1989); and the Convention on Migrant Workers (1990).³

¹ See F. Orrego-Vicuna, *Individual and Non-State Entities Before International Courts and Tribunals*, Max Planck UN Year Book 53 at 54–55 (2001).

² See H. Hannum (ed.), *Guide To International Human Rights* 4 (3rd edition) (1999).

³ See Hannum, *supra* note 940. For additional background and overview see also, A. A. Cancado Trindade, *The Consolidation of the Procedural Capacity of Individuals in the Evolution of the International Protection of Human Rights: Present State and Perspectives at the Turn of the Century*, 30 Columbia Law Review 1 (1998); A. Orakhelashvili, *The Position of the Individual in International Law*, 31 Cal. W. Int'l L.J. 241; P. Alston & H. Steiner, *International Human Rights in Context: Law, Politics, Morals: Text and Materials* (2000).

Another wave of international legislation and institution-building similar to the one that characterized the late 1940s happened after the Cold War and in the 1990s. International courts and tribunals proliferated, and the role and capacities of individuals and non-state actors (primarily non-governmental organizations (“NGOs”) and corporations) within that framework expanded commensurately.⁴

II. *Individual Access to International Legal Bodies*

Today, the scope of individual access to international justice goes far beyond the field of human rights; it encompasses international trade regulation, environmental law, immigration and refugee law, and labor law—to name only the most significant examples. The range of international institutions and mechanisms can be grouped into the following categories:⁵

1. Regional human rights bodies (*e.g.*, the Inter-American Court of Human Rights (“IACHR”));
2. International criminal tribunals (*e.g.*, the International Criminal Tribunal for Rwanda (“ICTR”));
3. Regional economic agreement courts (*e.g.*, the North American Free Trade Agreement (“NAFTA”) Arbitration Panel);
4. Inspection panels of inter-governmental organizations (*e.g.*, the World Bank Inspection Panel);
5. International claims and compensation bodies (*e.g.*, the Claims Resolution Tribunal for Dormant Accounts in Switzerland);
6. International administrative tribunals (*e.g.*, the Administrative Tribunal of the International Labor Organization); and
7. Law of the sea tribunals (*e.g.*, the International Tribunal for the Law of the Sea).

These international legal mechanisms can be classified as either purely international regimes (such as the international criminal courts) or regional regimes, also referred to as “transnational” or “supra-national” regimes (such as the European Union, the NAFTA trade regime, the African human rights regime, and the Arab League).⁶

In both international and regional regimes, organizations can be categorized further as either treaty regimes or non-treaty regimes. These terms refer to the instrument through which an international legal body was established and in which its mandate is defined. An example of a non-treaty body is the International Criminal Tribunal for the former Yugoslavia, which was established in 1993 through UN Security Council Resolution 808. Treaty bodies include the

⁴ See M. Steinitz, *‘The Milosevic Trial – Live!’: An Iconic Analysis of International Law’s Claim of Legitimate Authority*, 3 Oxford Journal of Internal Criminal Justice 103 (2005). Previously published as: *Authority, Legitimacy and Participation in International Legal Institutions: The Case of the Milosevic Trial*, NYU Global Law Working Papers (2004).

⁵ See J. Almqvist, *Individual Access to International Justice: A Theoretical Study*, Paper presented at the annual meeting of the American Political Science Association, Philadelphia Marriott Hotel, Philadelphia, PA, Aug. 27, 2003.

⁶ The term “international” in this chapter refers to both regional and purely international levels.

World Trade Organization (established in 1994 through the General Agreement on Tariffs and Trade, a multilateral treaty) or the Marshall Islands Nuclear Claims Tribunal (established in 1983 through the Agreement Between the Government of the United States and the Government of the Marshall Islands, a bilateral treaty). Ordinarily, the establishing instrument—usually a treaty or a UN resolution—is supplemented by a statute or a protocol that is the legal source of authority for the international body. Often, regulations are promulgated under such statutes and protocols. Together, these treaties, resolutions, statutes, and regulations contain the substantive rights and the procedures that govern their implementation. Some rights and duties of individuals are also recognized as part of customary international law or as *jus cogens*.⁷

The European Union (“EU”) has the most extensive, and the most effective, regional human rights system.⁸ The institutions primarily entrusted with enforcement of the European Convention on Human Rights (the “Convention”) are the European Court of Human Rights (the “ECHR”) and the Committee of Ministers of the Council of Europe, which oversees the enforcement of the ECHR’s judgments.⁹ The Court of Justice of the European Union established by the Treaty of Paris of 1951 as part of the European Coal and Steel Community has jurisdiction over matters governed by the substantive law of the Treaty.¹⁰ Although both the ECHR and the Court of Justice of the European Union have the power to adjudicate state-to-state disputes, the vast majority of their case load involves private parties litigating directly against state governments or against each other.¹¹

As regards the obligation to respect fundamental rights in the EU, it has to be noted that the Lisbon Treaty which entered into force on December 1, 2009, grants the Charter of

⁷ *Jus Cogens* rights are peremptory norms of general international law from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. Customary international laws are laws resulting from a general consistent practice of states. See generally, G. M. Danilenko, *International Jus Cogens: Issues of Law-Making*, 2 *EJIL* 42 (1991) and A. E. Roberts, *Traditional and Modern Approaches to Customary International Law: A Reconciliation*, 95 *Am. J. Int’l. L.* 757. See also, *Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.)*, Merits, 1986 ICJ REP. 14 (Judgment of June 27).

⁸ See L.R. Helfer & A.M. Slaughter, *Toward A Theory of Effective Supranational Adjudication*, 107 *Yale L. J.* 273 (1998) and J. H. H. Weiler, *The Transformation of Europe*, 100 *Yale L. J.* 2403 (1991). The number of applications registered annually with the European Commission of Human Rights (an intermediary body that was eliminated in a 1998 reform) increased from 404 in 1981 to 4,750 in 1997. Since the entry into force of Protocol No. 11, which simplified and fortified the operation of the Court, the number of applications rose from 5,979 in 1998 to 13,858 in 2001. See *The European Court Of Human Rights: Historical Background, Organization And Procedure*, Information Document issued by the Registrar of the European Court of Human Rights, available at: <http://www.echr.coe.int/Eng/EDocs/HistoricalBackground.htm>. Meanwhile, the number of cases before the European Court of Justice increased from nine cases in 1969 to over 150 per year in 1993. See Helfer & Slaughter, *supra* note 974 at 63.

⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (as amended by Protocol No. 14 in 2010) (the “Convention”).

¹⁰ The Court of Justice of the European Union thus constitutes the judicial authority of the European Union and, in cooperation with the courts and tribunals of the Member States, it ensures the uniform application and interpretation of European Union law. The Court of Justice of the European Union, which has its seat in Luxembourg, consists of three distinct courts: the Court of Justice (the “ECJ”), the General Court (created in 1988) and the Civil Service Tribunal (created in 2004).

¹¹ See Helfer & Slaughter, *supra* note 974.

Fundamental Rights of the European Union¹² (the “Charter”) legally binding status. As a result, the Charter has become a – if not the – primary source of fundamental rights in the EU. The general principles of EU law remain binding as an additional source of fundamental rights.¹³

A. The European Court of Human Rights

The ECHR has jurisdiction over 45 contracting states (including Turkey, Russia and the Ukraine), together representing more than 800 million Europeans. The ECHR has jurisdiction over all matters relating to the interpretation and application of the Convention and its protocols. The Convention covers a wide range of civil and political rights. The ECHR’s efficacy is largely owed to the fact that almost all of the contracting states allow the Court to review judgments of domestic courts and have submitted to the compulsory jurisdiction of the Court. Individuals and groups can also file complaints against their national governments in the ECHR alleging violations of European human rights norms.

Article 34 of the Convention provides:

The Court may receive applications from any person, non-governmental organization, or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto.¹⁴

A finding of a breach of the Convention imposes an obligation on the respondent State to remedy the breach and make reparations to the individual so as to restore, as much as possible, the situation existing before the breach. The Court may award both pecuniary and non-pecuniary damages as well as reasonable and necessary legal costs.¹⁵ Final judgments of the ECHR are binding on the respondent State. At the request of the Committee of Ministers, the Court may also render advisory opinions.

A lawyer is not generally required for proceedings before the ECHR. An applicant may be self-represented or may be represented by anyone of his or her choice approved by the Court. However, the President of the Chamber may direct that an applicant obtain legal representation where an application raises serious issues, especially if the applicant would have difficulty in representing his or her own interests.¹⁶

An applicant may appoint any advocate authorized to practice in any member state of the Council of Europe or another approved representative. Such other approved representatives are often professors of law. The Convention has been interpreted so as to hold that legal aid itself is a

¹² OJ 2007, C 303, p. 1 Article 6(1) of the Treaty on European Union (“TEU”) provides that “[t]he Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000 [...] which shall have the same legal value as the Treaties”.

¹³ See Article 6(3) TEU.

¹⁴ Article 34 of the European Convention on Human Rights and Fundamental Freedoms of 1950.

¹⁵ Article 41 the European Convention on Human Rights and Fundamental Freedoms of 1950.

¹⁶ Rule 36 of the Court. In several cases brought against Turkey, the government objected to the applicants being represented by lawyers from the UK on the ground of costs. However, the Court ruled that an applicant may engage a lawyer from *any* member state. See Hannum, *supra* note 940 at 145.

right and the ECHR is free to decide that the applicant is entitled to compensation from his or her home state if legal aid was improperly refused in domestic proceedings.¹⁷

B. The ECJ

The ECJ is primarily charged with interpreting and applying the EU Treaties in disputes between member States of the European Union, or between the European Commission of the Community and one or more Member States. Over time, the ECJ gained jurisdiction over disputes between individuals and Member States through broad interpretation of Article 267 of the Treaty on the Functioning of the European Union (“TFEU”), which requires national courts of last resort to refer cases involving the application of European law to the ECJ for preliminary ruling on the issues of European law.¹⁸

The ECJ’s Rules of Procedure provide for free legal aid.¹⁹ This assistance is paid for from Council of Europe funds. The Court may grant legal aid either at the request of an applicant or on its own initiative. Legal aid is based on means and eligibility is determined by whether an applicant would be entitled to legal aid in his or her country. The fees are not generous and are deemed to be only a “contribution” to the costs. However, the fees normally provide for travel and out-of-pocket expenses, and if an application succeeds, the Court normally awards reasonable fees and expenses to the applicant’s lawyer.²⁰

III. *Attorneys’ Qualifications and Fee Structures*²¹

The rapid expansion and increased activity of international courts and tribunals in recent years has been largely uncoordinated. Both substantive and procedural law and practices vary dramatically from court to court. The effects of this fragmentation are exacerbated by the fact that the courts are not set in a hierarchical structure and their decisions are not binding on one another.²² As a result, it is impossible to speak generally of rules, regulations or practices regarding attorneys’ qualifications or fee structures. The following paragraphs should be read with this reservation in mind.

¹⁷ See http://europa.eu.int/comm/dgs/health_consumer/library/pub/legalaid/c5-6-1.html.

¹⁸ See Helfer & Slaughter, *supra* note 947 at 290–91 (citing Case 26/62, *N.V. Algemene Transp. & Expeditie Onderneming Van Gend & Loos v. Nederlandse administratie der belastingen*, 1963 E.C.R. 1, 12 in which the ECJ declared the “doctrine of direct effect” holding that certain provisions of the Treaty of Rome are directly applicable to individuals within national legal systems). Subsequently, individuals can now invoke these provisions in national courts against contrary provisions of national law and the national court is then to refer the issue to the ECJ for resolution. In a later case involving private parties in a domestic court, the ECJ also held that a state that failed to implement the Community directive could be required to pay compensation to injured private parties. See Cases C-6/90 & C-9/90, *Francovich v. Italy*, 67 C.M.L.R. 66 (1991) as discussed in Helfer & Slaughter, *Id.*

¹⁹ Rule 76 and Additional Rules 4 & 5 of the Court (also specifying the means and merits tests for legal aid). Legal aid can be paid for from the ECJ’s own treasury. The Court’s Registrar is in charge of obtaining such legal services. In Article 267 TFEU cases, when a party is already granted legal aid in a case heard by a domestic court of a contracting state and the case is then referred to the ECJ legal aid must be extended to cover the proceedings at the ECJ. See *R. v. Marlborough Street Stipendiary Magistrate, ex parte Bouchereau* 3 ALL ER 365 (Divisional Court of Queens Bench) (1977); Case 30/77 of ECJ. See also Article 14 and Article 6 (subsec. (1)-civil; subsec. (2)-criminal legal aid).

²⁰ See Hannum, *supra* note 940 at 146.

²¹ Unless otherwise specified, the information in this section has been gathered through discussions and correspondence with UN officers, clinical professors and staff-attorneys at NGOs.

²² Decisions of other courts are merely persuasive.

A. Qualifications for Representation Before International Courts

Qualification requirements before international bodies vary widely. As one commentator has stated, “[t]he regulation of counsel who practice before international tribunals, particularly public law tribunals, is almost a complete vacuum.”²³ On one end of the spectrum is the Inter-American human rights system, where an advocate need not have any legal training or certification whatsoever: the rationale is to allow victims to petition the Commission and the Court directly. The same practice is used across the various quasi-judicial UN committees. At the other end of the spectrum is the ECJ, where the qualifications required to serve as representative are determined by the national law of the advocate.²⁴

Criminal tribunals are distinct, in that the statutes of the tribunals provide for legal representation as a right. If a defendant cannot afford legal representation, the tribunal will provide for the defense at no cost to the defendant. The tribunal registrars publicly invite eligible persons to submit applications and maintain lists of eligible counsel.²⁵ In order to qualify:

[A] counsel for the defence shall have established competence in international or criminal law and procedure, as well as the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings. A counsel for the defence shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court. Counsel for the defence may be assisted by other persons, including professors of law, with relevant expertise.²⁶

As a matter of policy, criminal tribunals encourage representation by members of the local bar, *i.e.*, the base of the place where the tribunal is located. It is often argued that the very legitimacy of an international criminal tribunal hinges, in part, on the employment and involvement of local attorneys. However, post-conflict societies are often devastated and devoid of legal capacity to service adjudication on the scale required in post-conflict situations. For example, in post-genocide Rwanda only 50 lawyers survived. Similarly, most of the current Sierra Leonian defense lawyers have fewer than 5 years of experience.²⁷

²³ D. F. Vagts, *The International Legal Profession: A Need for More Governance?*, 90 Am. J. Int'l L. 250, 260. (“Fee arrangements between clients and lawyers are regulated very differently in different countries: can an American lawyer be paid on a contingent basis for arguing before the International Court of Justice? Do German fee schedules apply to such a case? The way in which a case is tried before an international tribunal, setting aside permanent bodies, depends greatly on the composition of the panel”).

²⁴ Article 19 of the ECJ Statute. The information about representation and fees at the ECJ was provided by *Interights*—The International Center for the Legal Protection of Human Rights (chapter on file with author).

²⁵ See, e.g., Articles 55 and 67 of the Rome Statute of the International Criminal Court 2002 (right to legal assistance); Rules 20–22 of the Rules of Procedure and Evidence (assignment of legal assistance and qualifications of counsel for the defense). Among the documentation requirements set by the Registrar are requirements for a certificate of good standing from a professional association of which the candidate is a member; certificate from the relevant state authority specifying criminal convictions, if any. Similar provisions, subject to some variations, exist in the Statutes and rules of the *ad hoc* International Criminal Tribunals for the Former-Yugoslavia and for Rwanda and the Special Court for Sierra Leone.

²⁶ Rule 22 of the Rules of Procedure and Evidence. The working languages of the criminal court and the criminal tribunals are English and French. In exceptional cases, it may be enough that counsel speaks the language of the accused. See *Delalic et al.*, Decision of ICTY (June 24, 1996).

²⁷ See M. Minnow, *Between Vengeance and Forgiveness XX (XXXX) and Report on Defence Provision for the Special Court for Sierra Leone* (February, 2003), available at: www.specialcourt.org (suggesting appointment of

B. Fee Structures

Like appointment of counsel, the issue of attorney compensation has proven to be a sensitive matter. The ICTR, for example, faced allegations of over-billing and fee splitting between attorneys and their clients.²⁸ Generally, criminal defense attorneys' fees are set by the courts' Registry. The standard hourly rate at the International Criminal Tribunal for the Former Yugoslavia ("ICTY") is \$110 per hour for a lead counsel with 20 years' experience (and somewhat less for those with less experience) and \$80 per hour for co-counsel.²⁹ The Tribunal is in the process of implementing a lump-sum payment scheme which will supersede the hourly rate.

In civil proceedings, such as petitions to the IACHR, fees are usually not provided by the courts.³⁰ Representation is often provided by NGOs or on a *pro bono* basis. The Court at its discretion may award payment of fees; however, these would be significantly lower than the custom in American courts (between \$100 and \$2,000 per case).³¹

IV. *Establishing a Pro Bono Presence Internationally*

Generally, *pro bono* representation before international bodies can be provided in one of at least three capacities:

1. Representation of individuals or non-state entities, such as NGOs, before international institutions;
2. Representation of underdeveloped countries in disputes between States (*e.g.*, in relation to requests for advisory opinions from the ICJ or disputes brought before the World Trade Organization Arbitration Panel); or
3. Intervention as *amicus curiae*.

Within this framework, three major avenues of opportunity can be identified for law firms wishing to increase access to *pro bono* opportunities in international law: (1) partnering with NGOs or other organizations such as law school clinics; (2) partnering with UN agencies; and

local attorneys as co-counsel and the establishment of pools of specialists who can assist with legal research, legal investigations and interpretation). In order to qualify to represent as defense counsel at the ICTY, for example, the requirement is a minimum of 7 years experience.

²⁸ See T. Deen, *UN War Crimes Courts Embroiled in Corruption Charges*, Inter Press Service (March 11, 2002).

²⁹ The rates at the ICTR are the same but a cap of 175 hours a month has been implemented in response to the allegations of abusive practices.

³⁰ An exception is the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice. In order to overcome the financial impediments to the judicial settlement of disputes between states at the ICJ, (also known as the "World Court"), a special fund was established in 1989 by the UN Secretary General to assist developing countries; the primary reason being the recognition that many developing countries have neither the capacity to self-represent nor the resources to retain foreign counsel. The Secretary General is the manager of the trust fund and is assisted in its implementation by the UN Secretariat through the Office of Legal Affairs. *International Court of Justice*, UN Doc. A/47/444, at 4 (1992). See also, P. F. Bekker, *Current Development: International Legal Aid In Practice: The ICJ Trust Fund*, 87 *Am. J. Int'l L.* 659.

³¹ Information on representation and fees at the IACHR was provided by Prof. James Cavallaro, Associate Director of the Human Rights Program at the Harvard Law School. For a precedent-setting award of attorneys' fees see *In re Blake*, Judgment of the Inter-American Court of Human Rights (January 24, 1998).

(3) establishing working relationships with Registrars of the various international courts and tribunals.

A. Partnering with NGOs

Many international NGOs have well-established networks of connections and experience with representing individuals in international bodies. Still, these NGOs may be under-staffed, under-budgeted or may simply lack expertise in a certain area of law and may be happy to cooperate with law firms who have the right resources and institutional knowledge. Leading international NGOs that undertake individual representation include Amnesty International, Human Rights Watch, No Peace Without Justice, the International Rescue Committee and Interights.³² Often these NGOs have a legal department, and contacting the heads of such departments may be the most effective way of reaching out. National NGOs doing international work (such as the American ACLU and other leading civil rights organizations) can be equally fruitful partnerships to explore.

One issue to be aware of when approaching NGOs is that their public funding, or ability to attract private funding, is often contingent upon being able to point to high-profile successes for the organization. Accordingly, they may be disinclined or even hostile towards the idea of sharing the limelight with law firms. This concern can be addressed at the outset by clarifying that the law firm offering its services is willing to assume a back seat role, if that is indeed the case.

B. Partnering with UN Agencies

A number of UN agencies have corporate partner programs and NGO partner programs.³³ The partnership model is familiar and encouraged; therefore, expanding the scope of partnerships to include law firms should not meet with resistance. UN agencies that may be particularly relevant to law firms looking to provide legal services include the United Nations Development Program (“UNDP”), the United Nations Human Rights Commission (“UNHRC”), United Nations International Children’s Fund (“UNICEF”) and the United Nations High Commissioner for Refugees (“UNHCR”).

Most of these UN bodies are headquartered in New York. However, given that the needs of any given program may vary from country to country, and given the bureaucratic nature of the UN, it would probably be more effective to contact Country Offices rather than UN Headquarters. For example, contacting the Rule of Law Officers or the Governance Program Officers at UNDP’s Country Offices or the Child Protection Officers at UNICEF’s Country Offices may prove more effective than contacting the Country Bureau at UNDP or UNICEF’s Headquarters.

C. Establishing Working Relationships with Registrars

Each of the international courts has a Registry. Unlike many domestic courts, the Registrars of the international courts are senior staff holding sway over policy, regulation, and

³² Interights has been particularly active in the field of access to justice and legal aid. In collaboration with the European commission, the Public Interest Law Institute and the Open Society Justice Initiative, Interights helped produced a source book on access to justice in Central and Eastern Europe as well as nine country reports reviewing access to justice and legal aid in Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia, *available at*: <http://www.interights.org/pubs/accesstojusticenew.asp>; <http://www.pili.org/en/content/view/349/53/>.

³³ See e.g., UNHCR’s partners/donors website at <http://www.unhcr.ch/cgi-bin/texis/vtx/partners>.

procedures and are second in influence only to the judiciary itself. Among other responsibilities, the Registrars are entrusted with the administration of defendants' representation (in criminal courts), with allocating and disbursing attorneys' fees (when paid by the court), and with enforcing the attorneys' qualification requirements. Because Registrars also keep rosters of eligible attorneys, formally applying to be included on these rosters should be a first step for those wishing to volunteer their services. Similarly, in order to represent petitioners appearing before the ICJ, a good first step might be to establish contact with the Office of Legal Affairs at the UN Secretariat.

D. Specific Examples of International *Pro Bono* Opportunities

As can be seen by the non-exhaustive list below, *pro bono* work in the international sphere is not restricted to litigation. Transactional attorneys can provide legal services to those in need of assistance accessing international justice. For example, law firms can provide assistance directly to governments in developing countries and emerging market economies by drafting codes, statutes, and regulations (*e.g.*, tax codes or banking laws). Alternatively, attorneys can work through international organizations such as the International Monetary Fund, the World Bank, or USAID to develop fiscal policies and guidelines. Transactional attorneys can assist and advise entrepreneurs in developed and developing countries to incorporate and register businesses, companies, and non-profit organizations as well as providing guidance on issues such as credit, taxation, real estate and intellectual property.

Attorneys are also needed to provide counseling on issues such as privatization and enforcement in areas such as energy law and insolvency, or supply legal training and mentorship geared towards sustainable skill transfer. Finally, attorneys can assist local, regional, and international NGOs with researching and documenting human rights violations. Other than providing a basis for advocacy, reports can also be submitted to various UN treaty bodies (such as the Committee on the Elimination of Discrimination against Women) or serve as evidence in trials.

Law firms have engaged in a wide variety of international *pro bono* work. In terms of litigation, Latham & Watkins LLP recently collaborated with the Harvard Law School Student Advocates for Human Rights in preparing two *amicus curiae* briefs for submission to the Inter-American Court of Human Rights in two individual petitions against Trinidad and Tobago and Suriname for violations of the Inter-American Convention on Human Rights.

Shearman & Sterling has an ongoing program with the Office of the Prosecutor at the ICTR through which associates are sent to the ICTR to assist the Prosecution in various aspects of its work, particularly legal research and legal training. In addition, Shearman has organized and led several trial advocacy seminars in Arusha, Tanzania for the staff of the Office of the Prosecutor.

Latham has also entered into partnerships with several Eastern European NGOs to provide assistance with petitions to the European Court of Human Rights. Recently, Latham partnered with the Romania Helsinki Committee ("RHC") in *Tatar v. Romania*, a case concerning mining pollution. The case culminated in an oral hearing in Strasbourg at which lawyers both from Latham and the RHC pled to the Court. The firm has also provided research assistance to NGOs on international and comparative law in other cases before the ECHR.

Debevoise & Plimpton litigated successfully the rights of 51 Mexican nationals on death row in the United States under the Vienna Convention on Consular Relations in front of the

International Court of Justice. In March 2004, the ICJ held that the United States had violated the Vienna Convention in the cases of these individuals, and ordered U.S. courts to review and reconsider their convictions in light of the violations. Debevoise has also represented the Committee to Protect Journalists, filing amicus briefs in the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights and the courts of Croatia and Taiwan to challenge criminal libel prosecutions of journalists.

Shearman also partnered with the Open Society Justice Initiative to file a brief in the European Court of Human Rights. The brief concerned the development of legal norms on racial discrimination and violence. The Grand Chamber of the ECHR eventually returned a decision affirming in substantial part its first-ever findings of racial discrimination in breach of Article 14 of the European Convention of Human Rights.

Law firms have also undertaken a great deal of interesting international work not focused on litigation. For example, Mayer, Brown, Rowe & Maw sponsored the placement of a solicitor in Belize, where the solicitor spent three months assessing compliance of Belize laws with the UN Convention on the Rights of the Child. Hunton & Williams provided Afghanistan with corporate legal advice on updating its commercial code, its corporate code, and its registration of business entities code.³⁴

Latham provided a team of attorneys to assist Virtue Foundation, an NGO with special consultative status to the United Nations, and its partners in the structuring and documentation of the Cambodian Healthcare Partnership. The partnership's goal is to establish a rural Cambodian village as a health-care focused millennium village.

Baker & McKenzie and Covington & Burling have worked with Public International Law & Policy Group ("PILPG"), a global *pro bono* law firm that provides free legal assistance to developing states emerging from conflict. Baker has done several projects with PILPG, including working with them on Kosovo's independence from Serbia. There, lawyers from seven Baker offices drafted position papers on international law, politics and negotiating strategy for one of the parties in the talks. Through PILPG, Baker also helped the Anuak Justice Council in Ethiopia to negotiate health and water rights for the Anuak minority. Similarly, in Sri Lanka, representatives of twelve Baker offices researched and prepared memoranda and legal advice on a variety of complex issues as part of PILPG's ongoing support of the peace negotiations to end two decades of ethnic strife.

Covington has also been involved with PILPG, helping them advise the government of Armenia in connection with conducting a political status referendum in the disputed Nagorno-Karabakh region of Azerbaijan. In another project for PILPG, Covington is evaluating Liberian electoral law to ensure its consistency with international practice and offering recommendations for reform.

Other law firms have been involved with microfinance programs that enable the poor, especially women, to start or expand businesses. For example, Cleary Gottlieb Steen & Hamilton has provided counsel to the Nobel Prize-winning Grameen Foundation, which operates in Bangladesh. Similarly, Covington has worked with the Foundation for International Community Assistance, an organization that makes micro-loans to small groups of individuals, usually women, in villages in underdeveloped countries. Covington developed a plan and appropriate

³⁴ See, e.g., Hunton & Williams 2004 *Pro bono* Report (on file with author); Mayer, Brown, Rowe & Maw's website available at: <http://www.mayerbrownrowe.com/london/overview/index.asp?nid=464>.

documents, including consideration of complex tax issues, whereby FINCA licenses specialized accounting software that it has acquired and improved to manage micro-loans in 23 countries in Latin and South America, Africa and the former Soviet Union.

White & Case served as *pro bono* counsel to The Nature Conservancy and Conservation International, in conjunction with the governments of the United States and Costa Rica, in a large debt-for-nature swap. The United States forgave \$26 million of Costa Rica's debt, with Costa Rica spending that amount on tropical forest conservation programs.

V. *Conclusion*

Pro bono initiatives in international law provide a unique opportunity for lawyers to influence and learn from an evolving jurisprudence. International *pro bono* work can also serve as an opportunity to integrate attorneys working in non-U.S. offices and to share staffing and resources, thus providing a sense of global teamwork across offices. Such work also gives young associates the opportunity to develop the skills necessary to work in multicultural settings—a facility which can be carried over into non-*pro bono* practice. Encouraging international *pro bono* also makes sense from a business development standpoint: cases that reach international bodies are often high-profile both in the jurisdiction in which they originated and internationally, providing high visibility to the representing law firm.

September 2010

Pro Bono Practices and Opportunities in International Law

This memorandum was prepared by **Latham & Watlins 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.