

A Survey of *Pro Bono* Practices and Opportunities in 71 Jurisdictions

**Prepared by Latham & Watkins LLP
for the Pro Bono Institute**

August 2012

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FOREWORD

This Survey of *Pro Bono* Practices and Opportunities in 71 Jurisdictions goes back to an initiative of the Pro Bono Institute and Latham & Watkins to make information about global *pro bono* legal services accessible. The first edition of the survey published in 2005 covered 11 jurisdictions, mostly in Europe. The 2012 edition covers over 70 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. Whereas the focus just a few years ago was on issues of permissibility and compatibility with the local legal system, the focus today is decidedly practical: *pro bono* has gained in acceptance and the question is how, not whether, *pro bono* representations can be undertaken. The developments have been profound and exciting.

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 serve as an introductory resource for law firms, private practitioners, in-house lawyers and NGOs seeking to engage or learn more about the culture and provision of *pro bono* in their own or other countries. The chapters 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 2012, lawyers from Latham & Watkins' 30 offices around the globe have updated all prior chapters and added chapters covering nearly 30 new jurisdictions. We consider the survey to be a work in progress and welcome your feedback and comments to help us improve future versions (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 note that the situation in many of the jurisdictions is fluid, and that errors and omissions are unavoidable. The survey is therefore a work in progress in this sense as well and we invite your comments.

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 law firms and practitioners, in-house lawyers and NGOs around the globe. We are grateful for their contributions and their time.

August 2012

Gianni De Stefano and Wendy Atrokhov



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THANKS

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NGOs: Canadian Bar Association (Canada) – Free Legal Advice Centres (UK) – MANS (Montenegro) – Mizan Law Group for Human Rights (Jordan) – the Peace Institute (Slovenia) – PILnet (China) – ProVene foundation (Uruguay) – Public Interest Alliance Centre (Ireland) – Public Interest Law Clearing House of Victoria (Australia) – Red Pro Bono (Mexico)

Local counsels: AF Mpanga Advocates (Uganda) – ALMT Legal (India) – Altenburger (Switzerland) – Amna Akbar (Pakistan) – Vincent Berger (International) – Bech-Bruun (Denmark) – M. & M. Bomchil (Argentina) – Cariola Diez Perez-Cotapo (Chile) – Delphi (Sweden) – Dittmar & Indrenius (Finland) – Ehecopar (Peru) – Ferrere (Paraguay) – Gómez Pinzón Zuleta Abogados (Colombia) – Maria Khan (Pakistan) – Kinstellar (Czech Republic, Slovakia, Serbia) – Luthra & Luthra Law Offices (India) – Mannheimer Swartling (Sweden) – Marxer & Partner Rechtsanwältin (Liechtenstein) – McCarthy Tétrault LLP (Canada) – MMAKS Advocates (Uganda) – Morais Leitão, Galvão Teles, Soares da Silva (Portugal) – Picón Seguros y Servicios Financieros (Uruguay) – Naureen Shah (Pakistan) – Shalakany Law Office (Egypt) – Sharkawy & Sarhan (Egypt) – Sorainen (Latvia) – Stibbe (Belgium, Luxembourg, the Netherlands) – Szecskay Attorneys at Law (Hungary) – Tilleke & Gibbins (Thailand) – Zammit & Associates (Malta)

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Last, but not least, each individual, both in law firms and legal departments, active in *pro bono* representations to address the unmet legal needs of those with limited means.

PRO BONO PRACTICES AND OPPORTUNITIES IN ANGOLA

Angola is an emerging democracy with a rapidly developing natural resources sector in Southern Africa. Following a protracted civil conflict which lasted from 1975 to 2002, the country has embarked upon constructing new constitutional foundations; it held multiparty parliamentary elections in 2008 and approved a new constitution in January 2010. Legal assistance programs are new and developing in Angola; however, the Angolan Bar Association (*Ordem dos Advogados de Angola*, or “OAA”) and the Ministry of Justice are increasingly aware of the need to support institutions providing legal assistance to ordinary citizens and establish methods of alternative dispute resolution as part of the ongoing constitutional reforms in the country.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN ANGOLA

A. The Legal Profession

According to the OAA, there are approximately 1,000 lawyers in Angola out of a population of 15 million, corresponding to a ratio of approximately one lawyer per 9,500 inhabitants.¹ The low number reflects the dislocation caused by the long period of civil strife which led to relatively high levels of emigration of skilled professionals.²

There is a severe shortage of lawyers in Angola. Many Angolans cannot get divorced or obtain legal assistance in a variety of civil and criminal matters because there are so few lawyers. According to OAA statistics, some provinces with more than a million inhabitants have just a handful of lawyers. Lawyers tend to be concentrated in Luanda, the capital, and other large provincial centers.³

OAA membership is mandatory for lawyers. The OAA functions as a self-regulatory body with the status of a public interest organization under Angola law. It was founded in 1996. The OAA derives its status as self-regulatory from the Advocacy Law (*Lei da Advocacia*) of 1995 which establishes that the legal profession will be regulated by the Advocacy Law and the rulemaking of the OAA.⁴ The mandates of the OAA include, *inter alia*, representing the interests of legal professionals in the country, regulating the conduct of lawyers and assisting the government in legislative drafting. The OAA also maintains a comprehensive legal library of case law, commentaries and legislation, much of which is accessible online.

Angola’s judiciary is federative, consisting of 19 provincial courts corresponding to the 18 provinces of the country (one province has two provincial courts within it) presiding over 168 municipal courts therein; each of the provincial and municipal courts are courts of first instance.⁵

Provincial courts have separate chambers for criminal, civil and administrative matters. In addition, the provincial court of Luanda, the capital, has a specialized admiralty chamber.⁶ In certain instances, cases tried in municipal courts have limited recourse for review by the relevant provincial courts.

The court of final appeal is the Supreme Court (*Supremo Tribunal*) with twenty-one seats. Judges of the Supreme Court are nominated by the President and confirmed upon an examination system (*concurso*).⁷ The Supreme Court decides questions of law, not fact, except in certain instances, such as for trials involving high-ranking state officials, when the Supreme Court functions as a court of first

¹ Fonseca Bengui, *Angola sem advogados para a demanda*, JORNAL DE ANGOLA Sep. 21, 2011, <http://jornaldeangola.sapo.ao/20/0/angola-sem-advogados-para-a-demanda>. Accessed May 22, 2012.

² *Angola: Promoção da Justiça Pós-Conflito*, INTERNATIONAL BAR ASSOCIATION HUMAN RIGHTS INSTITUTE (“IBA”), 23 (Jun. 2003), http://www.ibanet.org/Human_Rights_Institute/Work_by_regions/Africa/Angola.aspx (hereinafter *Angola*). Accessed May 22, 2012.

³ *Ordem dos advogados leva serviços às áreas mais longínquas do interior*. JORNAL DE ANGOLA, Aug. 9, 2011, <http://jornaldeangola.sapo.ao/20/0/ordem-dos-advogados-leva-servicos-as-areas-mais-longinquas-do-interior>. (Accessed May 22, 2012).

⁴ Lei da Advocacia (no. 1/95 of 6 January) at art. 1, available at <http://www.oaang.org/content/lei-advocacia-1>. Accessed Jul. 7, 2012.

⁵ *Angola*, *supra* n.2, at 29.

⁶ *Id.*

⁷ Gabriel Bunjal, *Primeira Lei Orgânica do Tribunal Supremo*, JORNAL DE ANGOLA, Jan. 20, 2011, <http://jornaldeangola.sapo.ao/20/0/primeira-lei-organica-do-tribunal-supremo>. Accessed May 22, 2012.

instance, in which case it tries cases on questions of fact and law.⁸ There is no intermediate appeals court.

The Constitution established a Constitutional Court (*Tribunal Constitucional*) which functions as a court above the Supreme Court and decides questions of judicial power and jurisdiction and performs constitutional review of legislation and government acts.⁹ The Constitutional Court was formally established in 2008 and comprises seven judges, of which three are chosen by the President, three by the National Assembly voting with two-thirds majority and one is elected by a plenary session of the Supreme Court.¹⁰

There is also a Court of Audits (*Tribunal de Contas*) that hears tax cases, contract cases where the amount in dispute is in excess of US\$50,000 and cases involving matters of the public purse, corruption and fraud.¹¹ The Court of Audits has seven judges and began hearing cases in 2003. The Court of Audits has co-equal status with the Supreme Court and therefore no reviews of the Court of Audits decisions are performed by the Supreme Court; though for questions with a constitutional nexus, the Constitutional Court may review the Court of Audits decisions.¹²

B. Legal Aid

Until recently, the OAA managed a constitutionally mandated legal assistance program to those who cannot afford legal representation. According to article 196 of the Constitution, the indigent must apply for certification of inability to pay from a government office.¹³ Upon obtainment and presentation of the certificate to the OAA, the OAA appoints a lawyer for the client and OAA pays the lawyer certain fees that have been pre-established. However, the OAA's ability to provide such legal assistance is limited by the number of Angolan lawyers who have signed up for the program.

Practitioners in the OAA program are typically in private practice and accordingly perform such legal assistance with presumably reduced remuneration, as a public service or as a supplement to their fee-paying clients. According to the OAA, the program is operative in five out of 18 provinces of the country (as of early 2011).¹⁴ In 2011, the Angola state began to consider establishing a Public Defender Institute (*Instituto de Defesa Pública*) which would be staffed with full-time public defenders and receive an exclusive mandate from the government to deliver legal assistance to indigent people.¹⁵ However, certain ambiguities remain which have hindered the establishment and rollout of the Public Defender Institute throughout the country.

II. PRO BONO IN ANGOLA: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. Pro Bono Opportunities

There is a clear consensus among legal practitioners and the Angola government that there are not enough lawyers to meet the demands of Angola's citizens and ensure that their constitutional protections are met.¹⁶ In addition, there are opportunities for training of legal professionals, judges and prosecutors in human rights law that Angola has recently adopted and alternative forms of dispute resolution (such as mediation) which may reduce the number of court cases and assist Angola's citizens in connection with their unmet legal needs.

⁸ Angola, *supra* n.2, at 29.

⁹ *Id.*

¹⁰ André Ribeiro Leite, *Aspectos da Legitimidade para a composicao e designacao de juizes de tribunais constitucionais no direito comparado*, 13 REVISTA DA ESMESE 91, 107 (2010).

¹¹ Angola, *supra* n.2 at 31.

¹² *Id.*

¹³ *Acesso à justiça deve ser rigoroso*, JORNAL DE ANGOLA, Aug. 6, 2011, http://jornaldeangola.sapo.ao/20/0/acesso_a_justica_deve_ser_rigoroso. (Accessed May 22, 2012.)

¹⁴ *Apoio judicial aos mais pobres*, JORNAL DE ANGOLA, Feb. 19, 2011, http://jornaldeangola.sapo.ao/20/0/apoio_judicial_aos_mais_pobres. (Accessed May 22, 2012.)

¹⁵ Josina de Carvalho, *Magistrada propõe patrocínio judiciário*, JORNAL DE ANGOLA, Jan. 15, 2011, http://jornaldeangola.sapo.ao/20/0/magistrada_propoe_patrocínio_judiciário. (Accessed May 22, 2012.)

¹⁶ Bengui, *supra* n.1.

B. Barriers To *Pro Bono* Work And Other Considerations

There are certain procedural and regulatory barriers to undertaking *pro bono* work in Angola. According to Article 10 of the Advocacy Law, only lawyers who are registered with the OAA may practice law in Angola. This includes foreign lawyers who are resident in Angola and may register with the OAA, subject to the OAA's determination of the equivalency of their qualifications. For lawyers who are not resident in Angola, OAA rulemaking requires that nonresident foreign lawyers offering legal services in Angola must associate themselves with a duly registered Angola lawyer, with the exception of foreign lawyers providing advice on international law, foreign law or in connection with proceedings before fora outside of Angola.¹⁷ In addition, fees for judicial assistance to low-income people are fixed by law.

C. *Pro Bono* Resources

To date, as *pro bono* is still an emerging field in Angola, clearing houses and referral organizations have not yet been established. The key focal point remains the OAA which functions as a regulator and service provider until the Public Defender Institute becomes fully established throughout the country.

III. CONCLUSION

Angola is a country with an emerging *pro bono* commitment that is currently engaged in creating and institutionalizing a framework to facilitate access to justice. Prospective *pro bono* partners should engage with local organizations to identify the areas in which *pro bono* assistance could be provided.

July 2012

Pro Bono Practices and Opportunities in Angola

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¹⁷ *Interpretação do art. 41 do Estatuto da Ordem dos Advogados* (Approved Ap. 2, 1998), <http://www.oaang.org/content/interpretacao-do-art%C2%BA41%C2%BA-do-estatuto-ordem-advogados>. (Accessed Jul. 8, 2012).

PRO BONO PRACTICES AND OPPORTUNITIES IN ARGENTINA¹

The Argentine legal system has long provided a mechanism of free legal services for indigent citizens. Support in Argentina for the emerging concept of voluntary *pro bono* work among private lawyers and law firms began in earnest in the late 1990s and intensified as the country suffered through a crippling economic crisis. The Argentine legal community is increasingly recognizing that fostering a *pro bono* culture 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 population, highlights the recent growth of the *pro bono* movement and discusses avenues for providing *pro bono* services in Argentina.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN ARGENTINA

A. The Legal Profession

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.² Bar associations regulate and discipline their members by adopting and enforcing the ethical rules that govern the practice of law in their jurisdiction.³ In addition to regulating attorneys' conduct, bar associations promote and organize the provision of free legal services by their members.⁴ They also oversee free student legal clinics. For example, the Buenos Aires Bar Association 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.⁵ One of its policies provides that the Association's attorney members have a duty to provide free legal services.⁶

Lawyers and law firms may publicize that they offer *pro bono* work,⁷ 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 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.⁸

B. Legal Aid

Argentina's Constitution and Supreme Court decisions provide that all individuals, even those unable to pay for such services, have the right to a legal defense in criminal and civil matters.⁹ If a criminal defendant does not or can not secure his or her legal representation, a judge will appoint a defensor official, an official defender to the case.¹⁰ In addition, people of limited resources with legal needs outside of the criminal system may seek free assistance through university legal clinics.

¹ This chapter was drafted with the support of Mrs. Melisa Romero from the law firm M. & M. Bomchil.

² *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*.

³ See, e.g., *Requisitos para el ejercicio de la profesión de abogado en la Capital Federal, Jerarquía, deberes y derechos, Matrícula, colegiación*, Ley No. 23.187, (Jun. 25, 1985); *Código de Ética del Colegio de Abogados de Buenos Aires*, (approved by the General Assembly of the Buenos Aires Bar Association on Mar. 31, 1987); *Colegio De Abogados de La Provincia de Córdoba*, Ley No. 5805.

⁴ See, e.g., Ley No. 23.187, art. 20(d).

⁵ Ley No. 5805, *supra* n.3 at art. 32(15).

⁶ *Id.* at art. 19.

⁷ See, e.g., the *pro bono* page on Estudio Becar Varela's website.

⁸ 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-comision-normas-de-funcionamiento.php>.

⁹ CONST. ARGENTINA art. 18; Fallos de La Corte Suprema: 308:1557.

¹⁰ 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.

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 Office of Legal Aid (*Consultorio Jurídico Gratuito*),¹¹ 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”),¹² overseen by its legal professionals. Other Argentine universities such as *Universidad de Belgrano*, *Universidad de Palermo*, *Universidad Nacional de Córdoba* and *Universidad Nacional del Comahue* have similar clinical programs.¹³

Legal aid provided through the *Consultorio Jurídico Gratuito* and similar programs is confined to persons with extremely limited means.¹⁴ More than a quarter of the clients are unemployed with a monthly income of under \$300 (Argentinian pesos).¹⁵ Law students may not charge a fee for their services.¹⁶ There are also certain substantive restrictions, such as, the preclusion of labor cases.¹⁷

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 10,000 to 20,000 individuals of limited means each year.¹⁸ 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 an important factor in encouraging and growing the modern *pro bono* movement, it has been nonprofit organizations and large law firms in Buenos Aires that have been at the forefront of the *pro bono* movement in Argentina.

II. PRO BONO IN ARGENTINA: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. Pro Bono Opportunities

In December 2000, the Buenos Aires Bar Association created the *Comisión de Trabajo Profesional Pro Bono en Causas de Interés Público* (the “**Pro Bono Commission**”).¹⁹ 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 analyzes to determine if such potential client qualifies as a matter of public interest. 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 set up a network of participants consisting of many of the leading law firms in Argentina.²⁰ It also works in association with other bar associations in Latin America.

¹¹ 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.

¹² CELS is a nongovernmental organization that promotes the protection of human rights and the strengthening of the democratic system in Argentina. See <http://www.cels.org.ar>.

¹³ See RED LATINOAMERICANA DE CLÍNICAS JURÍDICAS 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://wp.cedha.net/?lang=en>.

¹⁴ Reglamento del Consultorio Jurídico Gratuito, tit. IV, art. 9.

¹⁵ Sebastian Scioscioli, *Acceso a la Justicia para todos* (Facultad de Derecho, Universidad de Buenos Aires).

¹⁶ Reglamento del Consultorio Jurídico Gratuito, tit. III, art. 7.

¹⁷ *Id.* tit. IV, art. 9.

¹⁸ Scioscioli, *supra* n.15.

¹⁹ The Pro Bono Commission’s website is <http://www.probono.org.ar/>.

²⁰ The network has grown over time. The participating law firms as of Sep. 13, 2010, are: (1) Allende & Brea; (2) Baker & McKenzie; (3) Becar 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.

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.²¹ New focus areas also include criminal, healthcare, public ethics and political transparency matters. As an example of recent accomplishments by the Commission, attorney participation in "Project Manuel" has successfully enabled completion of adoption procedures for 130 children.²² 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.²³

It is also worth noting that some in-house legal departments have also been engaged in pro bono work, as well as the Argentina Chapter of the Association of Corporate Counsel.

B. Barriers To *Pro Bono* Work And Other Considerations

In the late 1990s, before Argentina's financial crisis, Argentine lawyers began considering how to seek opportunities to engage in a *pro bono* movement. While the idea of *pro bono* was still in its infancy, Argentina descended into an unprecedented financial crisis, and members of the legal community came face-to-face with pervasive poverty. It has been difficult reaching poor communities and individuals, who are not aware of their rights to free legal assistance. As such, it is key to promote the development of legal education projects in Argentina. There is a need to educate, motivate and encourage people so that more lawyers in Argentina are committed to this cause.

C. *Pro Bono* Resources

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. The Congress was attended by representatives from prestigious law firms, law schools, bar associations and NGOs from Argentina, Brazil, Chile, Colombia, Mexico and Peru. Signatories endorsing such declaration, including Argentina, acknowledged that it is the duty of the legal profession to promote a fair and equitable legal system and respect for human and constitutional rights. The Declaration calls for each signatory to encourage its domestic attorneys to perform, on average, no less than twenty hours of annual *pro bono* work. 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

Fundación Poder Ciudadano (the Argentine chapter of Transparency International) is a nonprofit organization in Buenos Aires that promotes civic participation and political transparency. The 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. The PAC maintains an Internet-based network of volunteer lawyers rather than a network of law firms (although law firms can and do participate). 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. The website for Fundación Poder is <http://poderciudadano.org/>.

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.²⁵ 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 tax-exempt organization. The Vance Center has also set up a small committee of senior human rights law practitioners from Africa

²¹ See <http://www.probono.org.ar/en/index.php>.

²² *Con todas las de la ley* (Aug. 29, 2010) available at http://www.lanacion.com.ar/nota.asp?nota_id=1299138.

²³ PRO BONO AND PUBLIC INTEREST COMMISSION OF THE CITY OF BUENOS AIRES BAR ASSOCIATION, (Dec. 18, 2009).

²⁴ PRO BONO DECLARATION FOR THE AMERICAS: *Signatories by Country*, available at <http://www2.nycbar.org/vancecenter/images/stories/pdfs/signatarios.pdf>.

²⁵ VANCE CENTER FOR INTERNATIONAL JUSTICE, Red Pro Bono Internacional, <http://redprobono.org/>.

and Latin America with a presence in Argentina. The committee, called the South-South Human Rights Steering Committee, meets by telephone on a regular basis. They discuss the challenges that are common to human rights advocates in Africa and Latin America, and try to identify opportunities for collaboration, including drafting amicus briefs, convening conferences, organizing training sessions for judges, commissioners, lawyers and other advocates, and engaging in joint advocacy campaigns.²⁶

The Pro Bono and Public Interest Commission of the City of Buenos Aires Bar Association convenes a group of lawyers engaged in providing *pro bono* services in public interest cases and who understand the law as a tool of social change and modification of public policies. Organized as a *pro bono* network of law firms, the Public Interest Commission provides free legal services to public interest cases which involve collective interests and thus have the potential to impact broad sectors of the community. In practice, the Commission operates as a link between individuals or civil entities requesting *pro bono* services, and the law firms of the *pro bono* network providing such services. The Commission was created in December 2000 by a group of members of the City of Buenos Aires Bar Association (*Colegio de Abogados de la Ciudad de Buenos Aires*) and works in association with other bar associations in Latin America. In particular, the Commission works within four areas of interest: disability, microfinance, NGO advice and transparency. The Commission began assisting with criminal matters in 2009, and in 2010 branched out into childhood and adolescent matters. The website for the Commission is <http://www.probono.org.ar/>.

III. 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.

Moreover, the Pro Bono Commission is currently working with several universities such as Universidad de Buenos Aires and Universidad Austral to promote *pro bono* services and foster the understanding of law as a tool for social change and developing public policies.²⁷ Attorneys interested in the practice of *pro bono* legal services are encouraged to contact the *pro bono* community and any of the institutions described above.

July 2012

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.

²⁶ *Vance Center Establishes South-South Human Rights Steering Committee*, (Jan. 10, 2101) available at <http://www2.nycbar.org/vancecenter/images/stories/enotes/feb-2010-enotes.pdf>. Gastón Chillier, Executive.

²⁷ See <http://www.probono.org.ar/probono-y-las-universidades.php>.

PRO BONO PRACTICES AND OPPORTUNITIES IN AUSTRALIA¹

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.² 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.

According to a recent survey by the National Pro Bono Resource Centre (“NPBRC”), the amounts of *pro bono* legal work being done by large law firms in Australia has increased over the past few years despite large cuts in the total numbers of lawyers (due to the economic downturn). Of the twenty-four firms providing data on the numbers of *pro bono* hours recorded by their attorneys, nearly half reported an increased *pro bono* budget or target compared to the proceeding two years, with no firms reporting a decrease in their *pro bono* targets or budgets. Attorneys participating in *pro bono* work spent an average of 29 hours per lawyer on such matters.³

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN AUSTRALIA

A. The Legal Profession

There are approximately 56,000 barristers and solicitors in Australia.⁴ According to a recent survey of the employment sector in New South Wales, around 69% of these practitioners work in private practice, about 14.6% work in-house (corporate), and around 10.6% in government.⁵ The Australian legal profession is comprised of two types of lawyers: solicitors and barristers. Solicitors are regulated and represented by the Law Society⁶ of the state in which they practice, while the practice of barristers is governed by the Bar Council.⁷ 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.⁸ The Australian (Commonwealth) and State and Territory governments are each responsible for the provision of legal aid for matters arising under their laws.⁹

¹ This chapter was drafted with the support of Fiona McLeay, Executive Director of the Public Interest Law Clearing House in Victoria, and Shankari Chandran, former Head of Pro Bono and Community Affairs for Allen & Overy LLP and owner of <http://duckformation.wordpress.com/>.

² THE NEW SOUTH WALES LAW SOCIETY COMMUNITY REFERRAL SERVICE PRO BONO SCHEME, available at <http://www.lawsociety.com.au/community/findingalawyer/probono/index.htm>.

³ *Survey of Large Law Firms Highlights Areas of Unmet Legal Need* (Dec. 2010), available at http://www.nationalprobono.org.au/news_detail.asp?id=77 (last accessed on Jul. 13, 2012).

⁴ NATIONAL PRO BONO RESOURCE CENTRE, *Annual Report 2011*, https://wic041u.server-secure.com/vs155205_secure/CMS/files_cms/NPBRC_AR1011_colour_cover.pdf (last accessed on Jul. 13, 2012).

⁵ NATIONAL PRO BONO RESOURCE CENTRE, *Pro Bono in Australia: An Introduction for Practical Legal Training students*, available at https://wic041u.server-secure.com/vs155205_secure/CMS/files_cms/Pro%20Bono%20in%20Australia.pdf (last accessed on Jul. 13, 2012).

⁶ For example, the LAW INSTITUTE OF VICTORIA, available at <http://www.liv.asn.au/> (last accessed on Jul. 13, 2012).

⁷ For example, the NEW SOUTH WALES BAR ASSOCIATION, available at <http://www.nswbar.asn.au/> (last accessed on Jul. 13, 2012).

⁸ THE AUSTRALIAN SYSTEM OF GOVERNMENT, *House of Representatives Info Sheet*, No. 20 (Mar. 2008).

⁹ NATIONAL PRO BONO RESOURCE CENTRE, *Information and Resources*, Pro Bono Manual, ch. 4.3.

B. Legal Aid

1. Governmental 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.¹⁰

The federal Attorney General’s Department administers funding for the provision of legal aid services for federal law matters through legal aid commissions (“**LACs**”), and manages a Community Legal Services Program and other legal aid services for indigenous Australians. State and territory governments fund legal aid services for cases brought under state and territory law. There are eight independent LACs, one in each state and territory, with a total budget of around \$400 million. Funding is provided mainly by the federal, state and territory governments. Additional funding comes from interest earnings, contributions and fees.¹¹

As the laws, legal practices, guidelines and funding of LACs differ across jurisdictions, so too do 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.¹² Generally, some services will be provided free of charge and without means testing, such as legal information and referral services, advice and minor assistance (some commissions operate telephone hotlines which provide legal advice, or offer it face-to-face), and duty lawyers who provide advice and assist clients with restraint orders, seeking remands, applying for bail and/or presenting pleas in mitigation.¹³

LACs can grant aid for legal representation to lawyers to undertake ongoing matters for their clients. However, grants of legal aid for representation in ongoing matters are not available to everyone. Aid will generally be granted only if: (i) the matter is of a type the commission may take on in accordance with Commonwealth and/or state government guidelines; (ii) the applicant passes a means test, based on the applicant’s income and assets and those of any financially associated person; and (iii) the matter is assessed as having merit. If a grant of aid is made, the case will then be referred to either a private practitioner or a lawyer from the commission’s in-house practice.¹⁴

2. Privately Funded Legal Aid – Community Legal Centres

In addition to LACs, Australians can also take advantage of Community Legal Centres (“**CLCs**”) for legal assistance. CLCs are independent, nonprofit organizations that provide free referral, advice and assistance to approximately 400,000 people each year.¹⁵ 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.

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

¹⁰ 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 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].

¹¹ AUSTRALIAN GOVERNMENT: DEPARTMENT OF FOREIGN AFFAIRS AND TRADE, *about Australia: Legal System*, available at http://www.dfat.gov.au/facts/legal_system.html (last accessed on Jul. 13, 2012).

¹² Commissions can be contacted through the National Legal Aid, GPO Box 9898, Hobart, Tasmania, 7001.

¹³ THE AUSTRALIAN PRO BONO MANUAL, *Legal Aid*, section 4.3, available at <http://www.nationalprobono.org.au/probonomanual/page.asp?sid=4&pid=9> (last accessed on Jul. 13, 2012).

¹⁴ *Id.*

¹⁵ *Information and Resources*, *supra* n.9 at ch. 4.4.

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.¹⁶ 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.¹⁷ 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.¹⁸ A practitioner prepared to undertake *pro bono* work should ensure that she or he is familiar with any such provision in the relevant jurisdiction.

II. *PRO BONO* IN AUSTRALIA: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

Solicitors in Australia have a long tradition of providing *pro bono* legal services. Certain initiatives by the government and NGOs in recent years have led to greater access to and awareness of *pro bono* services. Moreover, in recent years there has been an explosion of interest in providing free legal services by lawyers employed in the for-profit sector.¹⁹

Pro bono legal work is defined by the NPBRC as “time spent by lawyers giving legal assistance for free or at a substantially reduced fee to: (i) low income or disadvantaged individuals who do not qualify for legal aid; (ii) not-for-profit organizations which work on behalf of low-income or disadvantaged members of the community or for the public good; (iii) doing law reform or policy work on issues affecting low-income or disadvantaged members of the community or in public interest matters; and (iv) on secondment at a community organization or at a referral service provider.”²⁰

In 2001, the National Pro Bono Task Force made a recommendation to the Commonwealth Attorney General that a National Pro Bono Resource Centre be established. The Centre opened in August 2002 and is an independent, nonprofit organization funded by the Commonwealth Attorneys General Department, the State and Territory Attorney Generals and the Faculty of Law at the University of New South Wales.²¹ The Centre 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.²² 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 Centre is not able to refer individuals to lawyers for help with a legal problem. Rather, the Centre 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*

¹⁶ Details of merit testing can be found at *Information and Resources*, *supra* n.9, ch. 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.

¹⁷ *Id.*

¹⁸ Legal Aid Commission Act 1979 (N.S.W.), s 47, available at <http://www.legalaid.nsw.gov.au/for-lawyers/policyonline/policies/2.-legal-aid-commission-act/2.4.-part-3-provision-of-legal-aid> (last accessed on Jul. 13, 2012).

¹⁹ *Introduction for Practical Legal Training*, *supra* n.5 available at https://wic041u.server-secure.com/vs155205_secure/CMS/files_cms/Pro%20Bono%20in%20Australia.pdf.

²⁰ NATIONAL LAW FIRM PRO BONO SURVEY: AUSTRALIAN FIRMS WITH MORE THAN FIFTY LAWYERS, FINAL REPORT (Dec. 2010), available at <http://tinyurl.com/csl6nx3> (last accessed on Jul. 13, 2012).

²¹ <http://www.nationalprobono.org.au/page.asp?from=1&id=16> (last accessed on Jul. 13, 2012).

²² NATIONAL PRO BONO RESOURCE CENTRE, *Submission to the Senate Legal and Constitutional References Committee Inquiry into Legal Aid and Access to Justice*, (Oct. 2003), available at www.nationalprobono.org.au/ssl/CMS/files_cms/senateinquiry.pdf (last accessed on Jul. 13, 2012).

bono legal work per lawyer per year.²³ 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, 2009.²⁴

Recently, in May 2012, new legislation in Victoria commenced operation which allows in-house lawyers to undertake *pro bono* legal work. Prior to this, Victoria's in-house lawyers were permitted to provide legal advice only to their employers. Queensland and New South Wales have also already lifted similar restrictions and other jurisdictions are expected to follow.²⁵

1. Referral Schemes

One key aspect of the *pro bono* framework in Australia is the use of formal *pro bono* schemes, often coordinated or established by professional associations, courts and Public Interest Law Clearing Houses (“PILCHs”) throughout Australia.

(a) Professional association legal assistance schemes

Many professional associations coordinate *pro bono* legal assistance schemes. Each scheme determines eligibility for assistance based on its own guidelines, usually using a means and a merits test, but generally assistance is not provided under these schemes if another form of assistance is available to the applicant (such as assistance from a CLC or legal aid). Depending on the scheme, assistance may be provided on a without-fee, a reduced-fee, or a conditional-fee basis. To apply for assistance through these schemes, applicants need to complete an application form, divulge information about their case, and provide detailed information (including documentation) concerning their income, assets and expenditure.

(b) PILCHs

PILCHs have been established by collaborations among groups including independent organizations, legal nonprofits, 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”²⁶ matters to member law firms and other members (for example, barristers and 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.²⁷

(c) Court-based *pro bono* referral schemes

Some courts have also established formal referral schemes under their own rules. These schemes aim to facilitate the provision of legal services to litigants who otherwise would not be able to obtain them in instances where doing so is in the interest of the administration of justice. Court registries generally maintain lists of

²³ See www.nationalprobono.org.au/target (last accessed on Jul. 13, 2012).

²⁴ NATIONAL PRO BONO RESOURCE CENTRE, *Media Release, Lawyers Aspiring to do More*, (Oct. 1, 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 Centre's website at https://wic041u.server-secure.com/vs155205_secure/CMS/files_cms/SECOND%20Target%20report%20Media%20Release%20final.pdf (last accessed on Jul. 13, 2012).

²⁵ <http://www.nationalprobono.org.au/page.asp?from=4&id=312#4> (last accessed on Jul. 13, 2012).

²⁶ 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 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/what-we-stand-for/> (last accessed on Jul. 13, 2012).

²⁷ For more details, see <http://www.pilchnsw.org.au/>, <http://www.qpilch.org.au/>, <http://www.pilch.org.au/>, <http://www.justicenet.org.au/> and <http://www.lawsocietywa.asn.au/> (last accessed on Jul. 13, 2012).

firms and lawyers who have volunteered to participate in these schemes, and the referrals are generally made by the court to a court registrar for referral to a solicitor or barrister.²⁸

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.

(d) Court duty lawyer schemes

Many Australian courts and tribunals now operate duty lawyer schemes as well. These schemes are often coordinated by the courts or tribunals, which maintain lists of lawyers available to provide limited assistance to unrepresented litigants. Firms interested in being a part of these kinds of schemes should contact their local professional association for more information.

2. Firms

According to a 2010 survey of 39 of the largest law firms in Australia, employment law and applications for Deductible Gift Recipient (DGR) tax status were among the practice areas most commonly receiving *pro bono* assistance. The NPBRC points out that “Legal Aid funding for employment law matters is in many states limited if not nonexistent. Obtaining DGR status from the Australian Tax Office is a complex process that can be vital for not-for-profit organizations to be able to receive tax deductible gifts and donations. Many do not have the resources or the expertise to prepare an application without expert legal assistance.” In contrast, matters involving family law and criminal law faced the highest levels of rejected requests for *pro bono* assistance in 2010 for reasons other than the means of the applicant or the merits of the case. The NPBRC explains that this is likely because many large firms have limited expertise in these areas.²⁹

The most common sources for new *pro bono* matters are: referrals from a clearing house and/or other referral scheme, direct requests from current *pro bono* clients, and referrals from employees of the firm.³⁰ Most commonly, the type of *pro bono* assistance provided by law firms is providing legal advice, though transactional matters are a significant portion of *pro bono* work as well, followed by litigation.³¹

3. Student Participation

Most law schools across Australia encourage students to volunteer their time to CLCs, Legal Aid schemes or local clearinghouses or referral schemes. In contrast to law faculties in many other parts of the world, however, legal aid work and clinics have generally not been part of the law school curriculum in Australia. However, this is rapidly changing. Currently there are at least 26 law schools in Australia offering Clinical Legal Education programs. The Kingsford Legal Centre at the University of New South Wales publishes a guide to these courses, available at:

http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/doc/eBulletins/CLE_GUIDE_2011_12.pdf.

In response to growing demands of Australian law students for more social justice opportunities,³² the National Pro Bono Resource Centre also recently published a guide for students focused on social justice careers, promotion of volunteering opportunities, and

²⁸ NATIONAL PRO BONO RESOURCE CENTRE, *Pro Bono Manual: 4.2 Pro Bono referral schemes*, available at <http://www.nationalprobono.org.au/probonomanual/page.asp?sid=4&pid=8> (last accessed on Jul. 13, 2012).

²⁹ *Survey of Large Law Firms Highlights Areas of Unmet Legal Need* (Dec. 2010), available at http://www.nationalprobono.org.au/news_detail.asp?id=77 (last accessed on Jul. 13, 2012).

³⁰ *Id.*

³¹ *Id.*

³² NATIONAL PRO BONO RESOURCE CENTRE, *Law Students Want More Social Justice Opportunities*, available at http://www.nationalprobono.org.au/news_detail.asp?id=86 (last accessed on Jul. 13, 2012).

directing students to resources and materials on *pro bono*. The guide discusses the many ways students can get more involved in such work; such as through volunteering their time, while studying at university, in their PLT placements, in their careers, and by doing *pro bono* legal work. Ideas include volunteering at CLCs or other community legal organizations, participating in Clinical Legal Education at Australian Universities, getting involved in Internships/Outreach Programs, taking Practical Legal Training (PLT) Courses in Public Interest, and pursuing employment in LACs, government and nongovernmental organizations. The guide can be found at http://www.nationalprobono.org.au/news_detail.asp?id=88.

B. Barriers To *Pro Bono* Work And Other Considerations

The core barriers to firms doing *pro bono* work in Australia are firm capacity, conflict of interests with fee paying clients, insufficient expertise in relevant areas of law, and lack of partner support within the firm. Other constraints include *pro bono* hours not counting towards billable hours/financial targets, lack of information on *pro bono* opportunities, ability to fund external disbursements, and external economic climate.³³ However, Australian lawyers need not charge Value Added Tax (“VAT”) on services which they provide for free.

1. Professional Indemnity Insurance

Another major barrier to those doing *pro bono* work in Australia has historically been the many legal and insurance considerations that come along with it. Providing legal advice can result in liabilities, even when done on a *pro bono* basis. It is essential that those interested in doing *pro bono* work in Australia consider whether they are sufficiently insured before providing their services, as they can potentially be held liable for any negligence resulting from their services.³⁴ A new National Pro Bono Professional Indemnity Insurance Scheme now provides free Professional Indemnity insurance cover for lawyers doing *pro bono* legal work on approved bono projects in New South Wales, Queensland and Victoria (as of May 2012).³⁵ This insurance covers lawyers for any civil claims that may arise from their *pro bono* legal work.³⁶

2. Regional, Rural and Remote Areas (“RRRs”)

Many parts of Australia are considered to be RRRs, and *pro bono* legal services are especially limited in these areas. Of the firms surveyed in the NPBRC’s 2010 report, 45% reported doing *pro bono* work for clients in regional, rural and remote (“RRR”) areas. The percentage of the firms’ overall *pro bono* work which focused on RRR clients varied significantly, from 5% to 60%, with a median of 15%. However, much of this work was not actually done in the RRR area, but carried out in the firms’ offices (about 96%).³⁷

3. Fee Waivers

Exemptions or waivers of court and tribunal fees (such as filing fees, setting down and daily hearing fees) may be available to those undertaking *pro bono* matters. In fact, the Acts, rules or regulations for many courts and tribunals *expressly* provide for fee waiver, exemption, remittal or postponement of fees. Other courts, like the Supreme Court of South Australia does not have express fee waiver provisions in its rules or Acts, but interested parties are still able to apply for waiver by the court, using its prescribed forms.

³³ NATIONAL LAW FIRM PRO BONO SURVEY, *supra* n.20, available at https://wic041u.server-secure.com/vs155205_secure/CMS/files_cms/National%20Law%20Firm%20Pro%20Bono%20Survey%20Final%20Report%20Dec%202010.pdf (last accessed on Jul. 13, 2012).

³⁴ CPA AUSTRALIA, *Volunteering: Mandatory legal considerations*, available at <http://www.cpaaustralia.com.au/cps/rde/xchg/cpa-site/hs.xsl/members-volunteering-legal.html> (last accessed on Jul. 13, 2012).

³⁵ NATIONAL PRO BONO RESOURCE CENTRE, *New in-house lawyer pro bono insurance scheme and guide launched in Victoria*, available at http://www.nationalprobono.org.au/news_detail.asp?id=95 (last accessed on Jul. 13, 2012).

³⁶ NATIONAL PRO BONO RESOURCE CENTRE, *National Pro Bono PI Insurance Scheme*, available at <http://www.nationalprobono.org.au/page.asp?from=8&id=236> (last accessed on Jul. 13, 2012).

³⁷ *Id.*

In the Administrative Appeals Tribunal and in Commonwealth courts (the High Court, the Federal Court of Australia, the Federal Magistrates Court and the Family Court) any party may apply to the registrar for a fee waiver. Fees may be waived if the registrar believes that the payment of the fee would cause financial hardship. Additionally, applicants are eligible for a fee exemption if they (1) have been granted legal aid; (2) hold a particular benefit or concession card; (3) are a prison inmate or lawfully detained; or (4) are under 18 years of age, or in receipt of a youth allowance, Austudy or Abstudy payment.

4. Disbursement Assistance

The costs of disbursements and the procedures to apply for disbursement assistance often act as a barrier to litigants, even in instances where *pro bono* assistance is available. Limited disbursement assistance is available for *pro bono* matters, and the amount of disbursement funding available, if any, varies by jurisdiction. Some states and territories have funds that can be used, but the availability of funding is limited. It may not be possible for applications for assistance to be made until the disbursement has been incurred, and there are often significant exemptions and caps on amounts recoverable.

Disbursements can include (1) the costs of obtaining expert reports or transcripts of proceedings; (2) the cost of hiring an attorney; and (3) interpreter fees. However, many schemes impose limits prohibiting them from providing assistance in cases that are handled on a “no win, no fee” basis and are likely to result in damages or payment of compensation. Firms are advised to always check whether a client may be eligible for legal aid, as grants of legal aid usually cover both disbursements and costs.³⁸

C. ***Pro Bono Resources***

- *National Pro Bono Resource Centre*: <http://www.nationalprobono.org.au/home.asp>
- *Social Needs Directory*: <http://www.socialneeds.net.au/sn/>
- *Pro bono Australia*: <http://www.probonoaustralia.com.au/>
- *Probono.net*: <http://www.probono.net/au/>
- *International Bar Association: Australia*:
<http://www.internationalprobono.com/clearinghouse/item.2540-Australia>
- *Centre for Asia-Pacific Pro Bono*: <http://www.cappb.org/>
- *American Society of International Law: ProBono Opportunities*:
<http://www.asil.org/probono.cfm>
- *Foolkit: Pro Bono Legal Advice*:
<http://www.foolkit.com.au/sa/public/search?sq=pro+bono+lawyers&submit=Go>
- *The Law Society of Western Australia*: <http://www.lawsocietywa.asn.au/>
- *Federation of Community Legal Centres (Victoria)*: <http://www.communitylaw.org.au/>
- *National Association of Community Legal Centres*: <http://www.naclc.org.au/>
- *Legal Services Commission of South Australia*:
http://www.lsc.sa.gov.au/cb_pages/practitioners.php
- *CPA Australia*: <http://www.cpaaustralia.com.au/cps/rde/xchg/cpa-site/hs.xsl/members-volunteering.html>
- *Volunteering Australia*: <http://www.volunteeringaustralia.org/News-and-Events/-National-Conference-on-Volunteering/Pro-Bono-Australias-Online-News-Service.asp>

³⁸ *Introduction for Practical Legal Training, supra n.5, available at* https://wic041u.server-secure.com/vs155205_secure/CMS/files_cms/Pro%20Bono%20in%20Australia.pdf (last accessed on Jul. 13, 2012).

- *Clinical Legal Education at Australian Universities*: http://www.klc.unsw.edu.au/sites/klc.unsw.edu.au/files/doc/eBulletins/CLE_GUIDE_2011_12.pdf
- *Australian Council of Social Service (ACOSS)*: <http://www.acoss.org.au/>

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 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.

Lawyers interested in providing *pro bono* services in Australia should visit the resources listed above and contact their local referral schemes, professional associations, courts, tribunals, and clearing houses to get involved.

July 2012

Pro Bono Practices and Opportunities in Australia

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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

A. The Legal Profession¹

In Austria, the compensation of lawyers is regulated by a set of federal laws and professional rules issued by the Austrian Bars.² 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.³ 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.⁴

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.⁵ 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.⁶ 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.).⁷ For that reason, the Austrian statutory fees are comparatively high.⁸

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.⁹ 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 even higher fees than the statutory fees¹⁰), 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.¹¹ 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.¹²

¹ In Austria the median number of attorneys per capita is roughly 1 per 1494 residents (data of 2011) and the number of licensed lawyers keeps increasing each year. http://www.statistik.at/web_de/statistiken/bevoelkerung/index.html; <http://www.oerak.or.at/www/getFile.php?id=43&pos=1>.

² 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**").

³ See RATG § 2, ¶ 1 and § 26, ¶ 2; RAO § 16, ¶ 1; AHK § 1; RL-BA § 50, ¶ 1.

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

⁵ AHK, § 12.

⁶ See (Code of Civil Procedure ("**ZPO**")) § 41, ¶ 1 ZPO; *Wrabetz/Bertrams*, AnwBl 505, 508 (1987).

⁷ See *Lesigang*, AnwBl, 157, 161 (1965); *Neidhart*, DAR 122 (1983).

⁸ 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.

⁹ See AHK, § 2.

¹⁰ See RATG, § 2, ¶ 2.

¹¹ See *Lesigang*, *supra* n.7 at 157.

¹² *Id.*

B. Legal Advice

In Austria, there is a variety of forums for free legal advice.¹³ For example, the Austrian Bars have set up information centers in which individuals can obtain free primary legal advice.¹⁴ 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).¹⁵ In cases where a representation by a lawyer is not required by statute,¹⁶ 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.

C. 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.¹⁷ 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.¹⁸ 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.

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

A. Pro Bono Opportunities And Barriers To Pro Bono Work

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.

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.

B. Pro Bono Resources

Many law firms, including the largest Austrian law firms as well as international law firms with a presence in Austria, have ongoing *pro bono* projects. Sources such as main referral organizations, NGOs or clearing houses for *pro bono* opportunities especially for social organizations cannot be found

¹³ Detailed information is provided by the *Bundeskanzleramt*, available at <http://www.help.gv.at/Content.Node/98/Seite.980300.html#Recht>.

¹⁴ More detailed information on this service (*Erste Anwaltliche Auskunft*) is available at <http://www.rechtsanwaelte.at/>.

¹⁵ See ZPO § 439, ¶ 1 – so-called “*Amtstage*.”

¹⁶ In criminal proceedings the representation by a lawyer is mandatory; in civil proceedings it primarily depends on the value in dispute.

¹⁷ See ZPO §§ 63 et seq.

¹⁸ See ZPO § 63, ¶ 1 and § 66, ¶ 1; see also §§ 56 et. seq. RL-BA §§ 56 et seq.

in Austria so far. However, individuals have the opportunity to obtain free primary legal advice in information centers which the Austrian Bars have set up¹⁹ and there is also a variety of other forums for free legal advice where lawyers can participate in a *pro bono* way.²⁰

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.

July 2012

Pro Bono Practices and Opportunities in Austria

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¹⁹ More detailed information on this service (*Erste Anwaltliche Auskunft*) is available at <http://www.rechtsanwaelte.at/>.

²⁰ <http://www.help.gv.at/Content.Node/98/Seite.980300.html#Recht>.

PRO BONO PRACTICES AND OPPORTUNITIES IN BELGIUM¹

Under the Belgian Constitution, all individuals have the right to legal assistance, which is provided and easily obtained in the form of advisory services (primary legal assistance) and representation in judicial matters (secondary legal assistance). However, as described below, opportunities exist for law firms to provide *pro bono*² legal services outside of this state-organized legal assistance and legal aid system, including, for example, advising and representing nonprofit organizations on European law.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN BELGIUM

A. The Legal Profession

Belgian law is practiced in Dutch, French, and German (the three official languages of the country). As of 2009, there were approximately 16,000 registered lawyers in Belgium.³ The lawyer-to-inhabitant ratio in Belgium is approximately 14 lawyers per 10,000 inhabitants. Brussels has by far the largest number of registered lawyers in Belgium. There are about 7,200 lawyers in Brussels,⁴ amounting to about 45% of the total amount of lawyers in Belgium.

The Belgian court system is modeled after the French system. In general terms, administrative, civil and criminal law proceedings are distinct. The highest administrative court in Belgium is the *afdeling administratie van de Raad van State*. Minor criminal offenses are brought in first instance before a police tribunal (*politierechtbank*); more serious criminal offenses before the District Court (*correctionele rechtbank*). The most serious criminal law offenses are brought before a so-called “*Hof van assisen*,” which is a trial by jury. Civil lawsuits in first instance are dealt with by a so-called “justice of the peace” (*vrederechter*) or the District Court (*burgerlijke rechtbank*), depending on the nature of the dispute and/or the monetary value of the dispute. Certain courts (*rechtbank van koophandel* and *arbeidsrechtbank*) deal exclusively with commercial and labor law matters. Judgments in first instance can normally be appealed. For instance, appeals against District Court judgments are brought before one of the Courts of Appeal. The supreme court in Belgium is called the Constitutional Court (*grondwettelijk hof*). A case may be brought before the Constitutional Court in two ways: (a) in the form of an action for annulment that may be instituted by any authority designated by statute or by any person who has a justifiable interest; and (b) any Belgian tribunal may refer preliminary issues to the Court.

The legal profession is governed by two overarching Bar Associations: the *Orde van Vlaamse Balies* for the Dutch-speaking Bar Associations and the *Ordre des Barreaux Francophones et Germanophones* for the French- and German-speaking Bar Associations (referred to herein collectively as, the “*Ordes*”). Divided over 27 Court Districts, there are in total 14 Dutch, 13 French, and 1 German local Bar Associations.⁵ In practical terms, all of the Belgian Bar Associations are organized under and governed by similar principles. Consequently, the Belgian Bar Associations are treated as one in this chapter. The *Ordes* are the principal bodies which organize legal assistance. The *Ordes* monitor lawyers’ legal services and the quality of secondary legal assistance (described below) provided. A lawyer can be disbarred for certain breaches of its legal and ethical duties (regulated by the *Ordes*’ Code of Conduct).

The Belgian *pro bono* system contains two aspects: legal assistance and legal aid (described below). Article 23, 3, 2° of the Belgian Constitution grants all people the right to legal assistance. The Belgian Judicial Code provides for legal assistance at two “levels”: primary and secondary legal assistance.

- Primary legal assistance is provided by a local Legal Assistance Commission⁶ (“**LAC**”). Each Court District has its own LAC, composed of an equal number of representatives from the local Order and social welfare centers. During LAC sessions – which are consultation sessions open to natural persons only – lawyers provide practical and legal information. Lawyers provide primary (yet limited) legal advice on a variety of issues, or they refer persons to lawyers or a

¹ This chapter was drafted with the support of Stibbe Brussels.

² In Belgium, *pro bono* is commonly referred to as *pro deo*.

³ See http://www.barreaudebruxelles.be/PDF/brochures/Le%20Barreau_site.pdf, p. 4 for figures in 2009.

⁴ See http://www.barreaudebruxelles.be/PDF/brochures/Rapp2010_site.pdf, p. 9 (May 31, 2010 figures) together with <http://www.baliebrussel.be/nl/wie-zijn-wij/wat-is-noab> (Dec. 1, 2011 figures).

⁵ The Court District of Brussels has both a Dutch and a French Bar Association.

⁶ *Commission d’Aide Juridique/Commissie voor Juridische Rechtsbijstand/Ausschuß für rechtlichen Beistand*.

specialized body⁷ capable of providing secondary (more elaborate) legal assistance.⁸ In practice, each LAC session lasts approximately 10 to 15 minutes per person. Each qualified lawyer willing to participate in primary LAC sessions informs the LAC on the areas of the law that he or she is qualified to advise on. The *Ordes* generally require that every trainee lawyer participate in a minimal number of LAC sessions during their three-year “apprentice” period.⁹ Historically, primary legal assistance at LAC sessions was charged at a flat fee, however, as of January 1, 2004 it is a free service.¹⁰

- Secondary legal assistance is organized by a Legal Assistance Bureau¹¹ (“**LAB**”) and consists of giving more sophisticated legal advice and/or assisting and representing someone in a judicial proceeding. A LAB is in charge of organizing the availability of secondary legal assistance in each Court District, depending on the Order to which that district is subject. Secondary legal assistance is available only to natural persons with insufficient financial means. Citizens who fulfill the criteria are partially or completely exempt from paying fees for secondary legal assistance. Lawyers rendering secondary legal assistance services are paid by the Belgian Department of Justice through the intermediary of the local *Ordes*. The remuneration is determined by the Department of Justice and is based on a points system, in which the value of one point is determined annually, taking into account the entire State’s legal assistance budget and the number of matters in that year.¹² Under the *Ordes*’ rules, lawyers cannot accept contingency fees from clients, nor can they seek further remuneration from an indigent client who receives complete legal aid.¹³ Secondary legal assistance often results from a referral of the lawyer providing primary legal assistance (the lawyer providing primary legal assistance cannot provide secondary legal assistance for the same matter). However, natural persons have the right to choose any lawyer qualified by the local Order for secondary legal assistance. If the lawyer is willing to accept the case, he or she can request that the LAB designate him or her as the person’s secondary legal assistance provider. Ultimately, every lawyer must be authorized by the Order to give secondary legal assistance in each individual case. In urgent matters, one may contact an on-duty lawyer from the emergency service of the LAB for this authorization.

As of August 2011, under the Statute of August 13, 2011¹⁴ (also called the “**Salduz Statute**” in reference to the Case Law of the European Court of Human Rights), all natural persons have the right to prior consultation and assistance, i.e., every person who is subject to questioning is entitled to consult with a lawyer beforehand, and demand that this lawyer be present at the first interrogation by the police or the judge in charge of an inquest. To effectuate this statutory right, the *Ordes* have established a “Salduz-Permanency.” In theory, when an individual wishes to invoke his or her right to prior consultation and assistance, the police must first contact a call center set up by the *Ordes*, requesting the assistance of an on-duty lawyer from the neighborhood. The on-duty lawyer will then offer a 30-minute (maximum) consultation. After that, the interrogation can take place.¹⁵ In practice, due to

⁷ BELGIUM JUDICIAL CODE (BELG. JUD. CODE), art. 508/1; *see also L’aide Juridique: Un Meilleur Accès à la Justice*, SERVICE PUBLIC FEDERAL JUSTICE, available at http://justice.belgium.be/fr/publications/een_betere_toegang_tot_justitie.jsp?referer=tcm:421-138590-64.

⁸ Each LAC maintains a list of all lawyers qualified by the local Order wishing to perform services in the context of secondary legal assistance, which is updated annually.

⁹ “Trainee lawyers” have law degrees but are required to complete a training period of three years under the supervision of a qualified lawyer before being qualified to practice independently. During this period they must also pass all bar exams. Primary legal assistance provided by trainee lawyers is overseen by both the trainee’s supervisor and an official of the local LAC. Most *Ordes* also require trainee lawyers to provide a fixed, minimal (number of hours of) secondary legal assistance during their traineeship.

¹⁰ Royal Decree, Dec. 18, 2003.

¹¹ BUREAU D’AIDE JURIDIQUE/BUREAU VOOR JURIDISCHE BIJSTAND/BURÖ FÜR RECHTLICHEN BEISTAND.

¹² For 2012, the budget for secondary legal assistance is approximately €70 million according to the verbal answer of the Minister of Justice to a written question during the plenary meeting of 24 May 2012, DOC. PARL. CHAMBRE, 2011-2012, PLEN 088, p. 20. The value of one point is €24.03.

¹³ *See* BELG. JUD. CODE art. 459.

¹⁴ Legislation of Aug. 13, 2011; M.B., Sep. 5, 2011.

¹⁵ Before the interrogation, the on-duty lawyer needs to obtain a sworn declaration from the client stating that he or she meets the eligibility conditions for secondary legal assistance.

the limited number of lawyers available, prior consultations are sometimes held over the phone, and lawyers rarely assist in the actual interrogation.

B. Legal Aid

The other component of state-sponsored legal services is legal aid, which is generally granted within the context of secondary legal advice, but it is also available in other circumstances.¹⁶ The provision of legal aid ensures that everyone has full access to justice, in accordance with Article 6 of the European Convention of Human Rights. By receiving legal aid, one is partially or completely exempt from paying legal fees and judicial or extrajudicial procedural costs (e.g., fees related to the costs for a bailiff's intervention). To be eligible for legal aid, an applicant must show insufficient financial means, and evidence of a well-founded claim (i.e., the claim is not unreasonable and "appears fair").¹⁷ Access to legal aid is available to Belgian nationals, nationals of member states of the Council of Europe, foreign nationals in accordance with international treaties, foreign nationals having their ordinary residence in Belgium or in a Member State of the European Union, and foreign nationals in immigration proceedings.

Individuals can apply for legal aid after receiving a referral for secondary legal assistance, or after seeking a counsel through other channels. The process for requesting legal aid is the same in both instances: the lawyer or the applicant submits a request to the legal aid office of the court before which the action is brought or the court in the district of which a legal act needs to be performed.¹⁸ The request for legal aid must be accompanied by a proof of income. Legal aid is available in the following types of cases: procedural steps related to petitions 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 determined by judges or steps that require action by a professional or official; and family mediation proceedings.

In 2011, legal aid was granted in approximately 198,000 matters, almost double the amount of the year 2004-2005.¹⁹

II. PRO BONO IN BELGIUM: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. Pro Bono Opportunities

Neither the Belgian Judicial Code nor the Code of Conduct for Lawyers of the *Ordres* requires a lawyer to request payment for his or her services. Thus, while the comprehensive Belgian legal system described above renders it possible for individuals to receive legal consultation for free, a free defense, free consultation and assistance, and legal aid, law firms are permitted to provide free legal assistance at their discretion to anyone, regardless of their ability to pay and without being sanctioned for offering services for free or for a fixed fee.²⁰

Law firms have commonly provided *pro bono* services 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 *pro bono* services are groups like Amnesty International, Human Rights Watch, and Friends of the Earth. According to the results of the *Brussels Pro Bono Project*, initiated in 2004 and led by lawyers of different Anglo-American law firms, Brussels in particular offers a wide "number of opportunities, especially in the area of advising and representing nonprofit organizations in Europe."²¹

The handling of (high profile) *pro bono* cases is in part due to the increasing implementation of corporate social responsibility charters by international law firms, thus obliging or stimulating lawyers from such firms to take up a minimal amount of *pro bono* hours every year. Another reason is the setting up of expansive forms of *pro bono* undertakings like *Avocats Sans Frontières* ("ASF"). This

¹⁶ Legal persons may also make use of legal aid in particular circumstances, such as in the case of mediation.

¹⁷ See BELG. JUD. CODE at arts. 667-668.

¹⁸ See *id.* at art. 670.

¹⁹ Verbal answer of the Minister of Justice to a written question during the plenary meeting of May 24, 2012, DOC. PARL. CHAMBRE 2011-2012, PLEN 088, p.20.

²⁰ A law firm can provide the service either free of charge, for a minimum charge or for a fee upfront.

²¹ MAYER, BROWN, ROWE & MAW LLP, *Pro Bono Update*, 30 (2005), available at http://www.mayerbrown.com/Files/Publication/ec4bcbbf-cfef-4563-9a1c-9b8fbb2e0b3e/Presentation/PublicationAttachment/6fa6db0c-318e-4ec7-9921-9c0bb4563479/news1_probono_July05.pdf.

Belgian association seeks to provide legal assistance in sensitive cases around the world. ASF counts some major international law firms in its International Legal Network.²² However, the vast majority of its members are individual lawyers, working for international law firms and mid-sized Belgian law firms, choosing independently to commit themselves in accepting difficult or high profile *pro bono* cases.

B. Barriers To *Pro Bono* Work And Other Considerations

One indirect barrier to maintaining a *pro bono* practice in Belgium is the State's restriction on legal advertising. The importance of these restrictions differs between the *Ordre des Barreaux Francophones et Germanophones* and the *Orde van Vlaamse Balies*. For instance, while the *Orde van Vlaamse Balies* permits its members to publicize the names of past or current clients (*provided* consent is given by the client), the *Ordre des Barreaux Francophones et Germanophones* only permits the publication of clients' names in the framework of calls for tenders (and again subject to client consent). Furthermore, the *Ordre des Barreaux Francophones et Germanophones* explicitly forbids their lawyers to solicit legal work in 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 person wishing to receive such information). The *Orde van Vlaamse Balies* does not contain similar restrictions on solicitation; its members are allowed to present their services and applicable fee practices to potential clients as long as the communicated information is unequivocal, general and complete. Consequently, for lawyers who are subject to the *Orde van Vlaamse Balies*, there are no significant restrictions to advertising *pro bono* services. For members of the *Ordre des Barreaux Francophones et Germanophones*, such advertising is restricted and might go beyond the scope of what is permissible.

The relative ease by which natural persons can access state-organized legal assistance and legal aid also attracts potential *pro bono* clients away from law firms. People are indeed more inclined to bring their case to the LAB and receive a referral, rather than starting an independent search for a *pro bono* lawyer willing to assist and represent him or her for free.

C. *Pro Bono* Resources

As stated on ASF's website, the International Legal Network is comprised of "lawyers with one or several fields of legal expertise, thematic or contextual, who are available to act in the field or from their local bar association. Whenever there is a new mission to be undertaken, the ILN sends out a 'call for volunteers' to the whole of the network and entrusts the mission to available lawyers according to their fields of expertise of ASF." More information regarding ASF and the International Legal Network are available at <http://www.asf.be/international-legal-network>.

III. CONCLUSION

Pro bono work in Belgium takes place in a regulated environment. However, opportunities exist for law firms to provide free legal assistance outside this system. Considering the large amount of presence of various international organizations in Belgium, interesting *pro bono* work can be undertaken here, especially in the capital of Brussels.

July 2012

Pro Bono Practices and Opportunities in Belgium

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²² See <http://www.asf.be/action/>.

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 such activities are expected to increase in the future. This chapter describes the current regulation *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

A. The Legal Profession

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 July 4, 1994 – and other legislation, among which the Brazilian Bar Association's Code of Ethics and Discipline of February 13, 1995.

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 São 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 Brazilian 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.

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 who 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 who 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.

¹ See <http://www.oab.org.br>.

² See <http://www.aasp.org.br>.

³ Law No. 8906 of Jul. 4, 1994, art. 8.

⁴ Law No. 8906 of Jul. 4, 1994, art. 9.

⁵ BRAZILIAN BAR ASSOCIATION, Ruling No. 91 of Mar. 13, 2000.

B. Legal Aid

Non-remunerated legal services may be made available in Brazil through: (i) the appointment of a lawyer (Public Defender) by the State; (ii) under Law 1060 of February 5, 1950 (concerning legal assistance); (iii) through the operation of legal clinics; and (iv) through the rendering of *pro bono* legal advice by qualified lawyers, either individually or collectively.

1. Appointment of Public Defenders

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.⁶ 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 concourse 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\$900/month)⁷ 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 number of Public Defenders is often insufficient to handle the large demand for legal assistance (for instance, in the state of São Paulo, for each existing Public Defender there are over 50 thousand individuals from the public in need of legal assistance)⁸ 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 who 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, overworked and underpaid.

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

2. Legal Assistance Law

Law No. 1060 of February 5, 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.⁹ 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 the 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.

⁶ CONSTITUIÇÃO FEDERAL (CONST. FED.), art. 5, LXXIV and art. 134.

⁷ In 2012, the minimum wage in Brazil is set in R\$ 622,00, or approximately US\$ 300.

⁸ See <http://www.probono.org.br/ipb-fala-undefinidacesso-a-justica-e-advocacia-pro-bonoundefinid-aos-estudantes-da-direito-sao-bernardo>; <http://www.conjur.com.br/2012-jun-24/entrevista-daniela-cembranelli-defensora-publica-geral-sao-paulo>.

⁹ Law No. 1060 of Feb. 5, 1950, art. 2, sole paragraph.

3. Legal Clinics

The operation of legal clinics is not specifically regulated in Brazil. Legal clinics are normally run by qualified lawyers who 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.¹⁰ 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 No. 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.

4. Pro Bono Legal Advice By Qualified Lawyers, Either Individually Or Collectively

Pro bono opportunities are discussed in section A below.

II. **PRO BONO IN BRAZIL: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. ***Pro Bono* Opportunities**

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.

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,¹¹ 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 nonprofit 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 exclusively to nonprofit organizations.

Launched with the advice and cooperation of the Public Counsel Law Center in Los Angeles,¹² 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 2008.¹³ Furthermore, it is active in lobbying the Brazilian Bar Association and the various Bar

¹⁰ 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.djonzedagosto.org.br>).

¹¹ See <http://www.institutoprobono.org.br>; <http://www.probono.net/>.

¹² See <http://www.publiccounsel.org>.

¹³ See <http://redprobono.org/>.

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 of charge.

B. Barriers To *Pro Bono* Work And Other Considerations

As mentioned above, Brazilian bar associations restrict the terms on which free legal services can be provided and regard lawyers who do not charge for their services as breaching professional ethics rules, as *pro bono* work might be suggestive of unethical marketing.

Only the Bar Associations of São Paulo and Alagoas in Brazil allow *pro bono* services to be provided, but their authorization is limited to *pro bono* services directed to nonprofit organizations. In January 2012, the Ethics Commission of the São Paulo Bar Association issued a resolution expressly prohibiting the provision of *pro bono* services to individuals.¹⁴

Moreover, *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, publicize 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.¹⁵

C. *Pro Bono* Resources

Bearing in mind that foreign lawyers (i.e., lawyers who 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 Organization and Connectas Human Rights¹⁷), 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 that concentrate a list of entities of the “third sector” in Brazil and specify areas in which they may need assistance.¹⁸ The Cyrus R. Vance Center at the New York City Bar is another potential source of *pro bono* cases.

III. 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 point towards a gradual – albeit slow – 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 hopefully only increase in the years to come.

July 2012

Pro Bono Practices and Opportunities in Brazil

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¹⁴ See <http://www.conjur.com.br/2012-jan-05/advocacia-pro-bono-destina- apenas-pessoa-juridica-oab-sp>; <http://www.migalhas.com.br/Quentes/17,MI162849,81042-ADIn+questiona+lei+do+MT+que+ responsabiliza+advogado+por+obrigacao+de>.

¹⁵ BRAZILIAN BAR ASSOCIATION, Ruling No. 94 of Sep. 5, 2000.

¹⁶ See <http://www.ashoka.org/international>; <http://www.ashoka.org.br>.

¹⁷ See <http://www.conectas.org/artigo-1>.

¹⁸ See <http://www.terceirosetor.org.br/>; <http://portaldovoluntario.v2v.net/>; <http://www.voluntariado.org.br/>; <http://www.voluntarios.com.br/>.

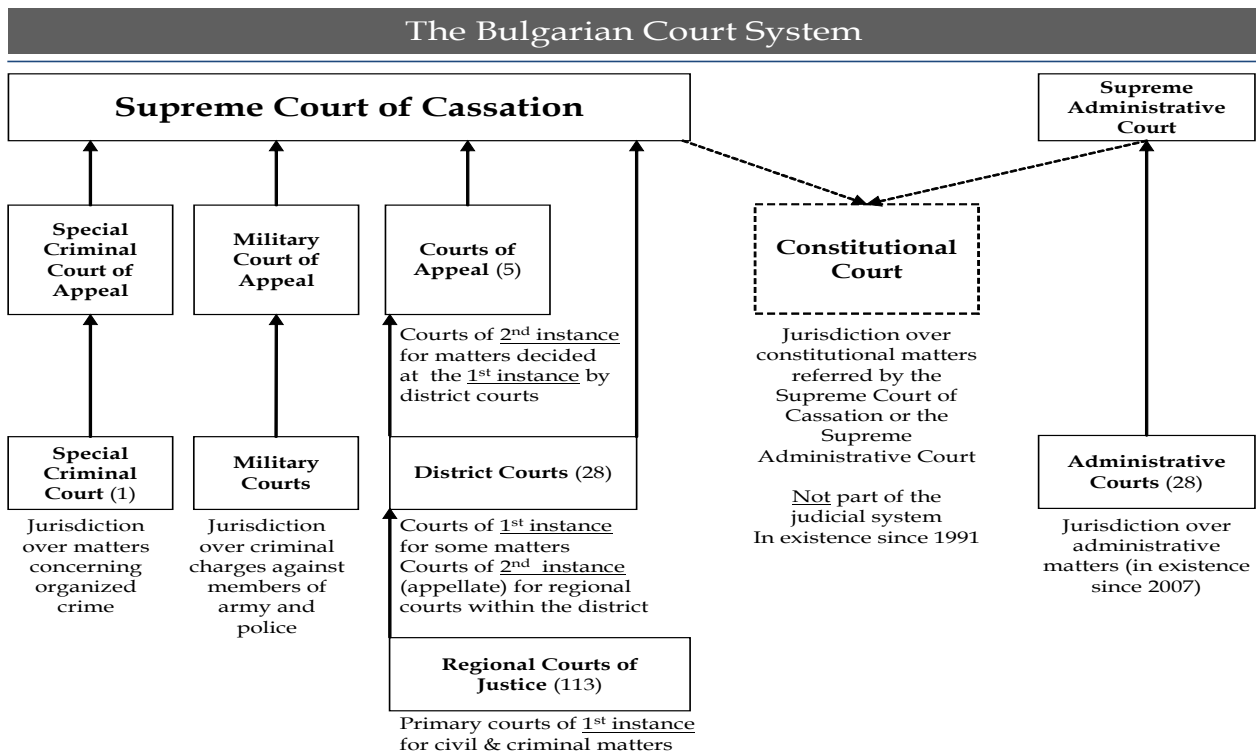
PRO BONO PRACTICES AND OPPORTUNITIES IN BULGARIA

Free legal representation was institutionalized in Bulgaria in 2006 with the adoption of the Legal Aid Act, which recognized the need for ensuring equal access to the justice system for all. In accordance with the policies reflected in the Legal Aid Act, there are no regulatory barriers to providing *pro bono* legal services. Nevertheless, while free legal representation is not discouraged, there are both financial and practical considerations that may affect practitioners’ willingness or ability to provide *pro bono* services. The legal aid system, for example, is in distress, since due to budget cuts, it is exceedingly difficult for legal aid attorneys to collect the compensation for their services. Likewise, some practitioners may be required to charge and remit VAT to the State, regardless of whether their services were provided free of charge. The most critical impediment to *pro bono* services in Bulgaria, however, is the overall lack of cultural awareness of such services and a resulting lack of *pro bono* “infrastructure” in place (such as the lack of referral organizations or clearing houses). Most free legal representation in Bulgaria is provided by nongovernmental organizations (“NGOs”) in the course of their general operations, or by private practitioners on an individualized, ad-hoc basis. However, there lacks a systematic, organized approach to the provision of *pro bono* services.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN BULGARIA

A. The Legal Profession

The Bulgarian Constitution provides for an independent judiciary established in accordance with the framework set forth in the Constitution.¹ The Bulgarian judicial system is comprised of the Investigator’s Office, the Prosecutor’s Office, and the court system (known as the “courts of justice”). The chart below illustrates the structure of the court system in detail.



The fundamental document regulating the legal profession is the Attorney Act of 2004,² which governs the acquisition (and loss) of one’s rights to provide legal services. The precursor to the Attorney Act of 2004 was its namesake of 1991,³ which did away with the regulatory scheme in place during Communist rule in Bulgaria from 1945-1989, and established the legal profession as a vocation regulated by the Constitution and aimed at protecting individual rights and liberties. Legal professionals’ ethical obligations are governed by the Attorney’s Code of Ethics, adopted by the Supreme Bar Council, a professional organization comprised of elected members representing bar associations across the country. The Code of Ethics addresses matters of independence, confidentiality

¹ BULGARIA CONST., ch. 7, arts. 117-134.

² SG 55/2004, last amended 1/1/2012.

³ SG 80/91.

and conflicts of interest, as well as questions of remuneration for legal services, incorporating by reference Ordinance No. 1 of July 9, 2004 on the Minimum Size of Attorneys' Fees.⁴ Finally, the Legal Aid Act of 2006⁵ regulates the provision of State-sponsored legal services for qualifying individuals.

As of 2003, there are approximately 10,000 registered legal professionals in Bulgaria out of a total population of 7.9 million (about 0.12%).⁶ This number includes lawyers (including in-house counsel), prosecutors, judges and notaries. As of February 2012, there are 2,275 judges and 2,517 prosecutors practicing law in Bulgaria.

B. Legal Aid

In 2006, Bulgaria established the framework for the provision of legal aid in civil, administrative and criminal proceedings with the adoption of the Legal Aid Act (the "**Legal Aid Act**").⁷ The law was part of an initiative to reform the Bulgarian judicial system, one of whose key objectives was ensuring equal access to the judicial system for all Bulgarian citizens.

The agency responsible for administering legal aid is the Bulgarian National Legal Aid Bureau (NLAB), an independent State entity, whose structure and functions are regulated by the Legal Aid Act, the Decree of the Council of Ministers No 4/06.01.2006.⁸ The responsibilities of NLAB include the monitoring and supervision of activities related to the provision of legal aid, the administering of payments for legal aid, the maintenance of the National Register of Legal Aid and the promotion of the legal aid system.⁹

Attorneys wishing to provide legal aid under the Legal Aid Act must file an application with NLAB, which must be pre-approved by their local Bar Council. The NLAB then includes all such individuals in the National Legal Aid Register, which is a public document, available to individuals seeking legal aid. Currently there are approximately 4,000 legal professionals listed in the National Legal Aid Register.

Whether one qualifies for legal aid depends on the specific category of legal aid sought. The Legal Aid Act provides for the following categories of legal aid: (i) legal consultations aimed at reaching a settlement prior to filing a case; (ii) preparing a case file for the purposes of filing a case; (iii) legal representation in civil, criminal and administrative proceedings; and (iv) legal representation of individuals detained for probable cause.¹⁰ Where an individual is not currently involved in legal proceedings (categories (i) and (ii)), they may receive legal aid if they qualify for the receipt of State aid, if they have been placed in a social services institution, or if they have a foster child in custody. The determination of whether an individual not currently in civil proceedings qualifies for legal aid is vested with NLAB.¹¹

Where an individual is involved in ongoing civil, criminal and administrative proceedings (category (iii)), legal aid is available if that individual cannot afford an attorney, wishes to retain an attorney and the interests of justice so require. The institution administering the proceedings (e.g., the court) determines whether an individual can afford an attorney. Legal aid in civil, criminal and administrative proceedings is also available by law in all cases where the relevant laws implicated in the proceedings require legal representation.¹² Legal aid is not available in commercial and tax matters.¹³

At the time it was promulgated, the Legal Aid Act was viewed as an important novel initiative for ensuring equal access to the justice system; however, its practical implementation has been hampered by the limited financial resources available to support it. From 2010-2012, the budget allocated to legal aid was on average BGN 8 million (US\$5.1 million) each year, and for 2013-2015, the projected yearly

⁴ Last suppl. SG 31/15.04.2011.

⁵ SG 79/04.10.2005.

⁶ A more recent statistic is unavailable.

⁷ SG 79/04.10.2005, in force since 01.01.2006.

⁸ SG 5/17.01.2006.

⁹ Legal Aid Act, § 8.

¹⁰ *Id.* § 21.

¹¹ *Id.* § 22.

¹² *Id.* § 23.

¹³ *Id.* § 24.

budget is BGN 10 million (US\$6.3 million). The increase likely accounts for the growing demand for legal aid due to the economic turnaround.

However, various bar associations have noted discrepancies between the budget on paper and the resources actually allocated, due to the across-the-board cost-cutting initiatives instituted by the Bulgarian government since 2008. Notably, NLAB has started each fiscal year with large budgetary deficits (approximately BGN 2 million, or US\$1.3 million) and significantly delayed payments owed to practitioners. In 2010, practitioners effectively boycotted the legal aid system by ceasing to provide legal aid because of payments that were over ten months overdue. As of March 30, 2012, payments are delayed by approximately four months, and there is a concern that the 2010 crisis will be repeated.

II. **PRO BONO IN BULGARIA: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. **Pro Bono Opportunities**

While the concept of *pro bono* legal representation exists in principle in Bulgaria, there is no structured approach to it, and there appears to be an overall lack of awareness of *pro bono* services both among practitioners and among individuals who need them.

Most *pro bono* services are provided on an ad-hoc basis resulting from a fortuitous encounter of supply and demand rather than a streamlined, systematic approach. For example, it is common practice to publish announcements in the media advertising temporary law clinics or hot lines offering free legal consultations, usually for a particular social group. The only systematic approach to *pro bono* representation lies in the work of NGOs, which sometimes provide free legal services in their field of operation, and the work of *pro bono* law clinics at higher education institutions. Accordingly, free legal services are usually provided by public service attorneys or law students. Private practitioners engage in free legal representation less frequently and usually on an ad-hoc, individual basis.

In practice, *pro bono* representation is provided in one of four ways:

- (1) *NGOs offering pro bono services.* This is the most common approach to *pro bono* services in Bulgaria, as many NGOs offer free legal consultations in the field in which they operate. The NGOs' activities may be primarily law-related, or they may cover a broader range of social services, with legal representation as only one aspect of them. For example, a "legal" NGO may engage in free legal representation of individuals in cases involving human rights (e.g., the Association for European Integration and Human Rights), or on free legal consultations for civic organizations (e.g., the Bulgarian Center for Not-for-Profit Law). On the other hand, a "social services" NGO, such as one focused on women's rights, may carry out a range of activities aimed at promoting women's rights: lobby the legislature, provide medical and psychological support to victims of domestic violence, and offer free legal services to these victims (e.g., the Gender Alternatives Foundation). Notably, however, these NGOs do not serve as referral organizations or clearing houses; rather, the *pro bono* services are provided by their own staff attorneys.
- (2) *Pro bono law clinics at higher education institutions.* The law faculties of many universities in Bulgaria have law clinics where law students provide legal services on a *pro bono* basis.¹⁴
- (3) *Private practitioners offering pro bono services as part of their general practice.* This is the least common approach. While it appears that some law firms have "*pro bono*" practice areas, these tend to be firms whose practitioners have either studied or worked abroad and have, in essence, imported the concept of organized *pro bono* services. In this respect, it is worth noting that because the *pro bono* culture in Bulgaria is generally underdeveloped, there is no pressure among private, commercial practitioners to demonstrate a commitment to *pro bono*, and, as a result, dedicating time and resources to *pro bono* in a systematic way is the exception rather than the rule.
- (4) *Practitioners offering free legal representation to friends and family.* Finally, while not "*pro bono*" in the traditional sense, in practice, most free legal representation is provided to friends or family by practicing attorneys. This option is specifically provided for in the Attorney's Code of Ethics, which permits attorneys to provide their services free of charge to relatives or other attorneys.

¹⁴ See, e.g., <http://www.uni-ruse.bg/faculties/law/sait/legalcl.htm>.

B. Barriers To *Pro Bono* Work And Other Considerations

In Bulgaria, there are no regulatory impediments to providing *pro bono* legal services. While there are regulations governing the minimum remuneration for legal service, these regulations specifically permit attorneys to provide free legal assistance to: (i) indigent persons; (ii) persons eligible for State aid; and (iii) relatives or other lawyers.¹⁵ Nevertheless, some practitioners may have a financial disincentive to provide *pro bono* services since the Value Added Tax Act¹⁶ requires attorneys whose income in the latest fiscal year exceeds BGN 50,000 (US\$31,800) to register to pay VAT. VAT is then owed to the State for any services provided by these attorneys, regardless of whether they were provided free of charge.

The most critical barrier for *pro bono* work in Bulgaria, however, remains the lack of awareness among both practitioners and potential clients, and the resulting lack of a *pro bono* “infrastructure,” including referral organizations or clearing houses. Going forward, the key for developing *pro bono* legal services will likely be the establishment of a network of referral organizations to promote the *pro bono* culture on the one hand, and on the other, to serve as intermediaries between practitioners wishing to offer free legal services and the individuals seeking them.

C. *Pro Bono* Resources

The following NGOs provide *pro bono* legal services, either to individuals or NGOs, though they do not serve as clearing houses or referral organizations:

- The Gender Alternatives Foundation, focused on the promotion of women’s rights (<http://www.genderalternatives.org/index.php/en/news/101-dynamic-start-for-gender-alternatives-foundation>)
- The Horizon Foundation, focused on equal rights and opportunities for disabled individuals (<http://www.horizonti.bg/>)
- The Association for European Integration and Human Rights, focused on the legal protection of human rights (www.eurorights-bg.org)
- The Bulgarian Center for Not-for-Profit Law, focused on providing legal advice to civic organizations (<http://www.bcnl.org/en/index.html>).

III. CONCLUSION

While formal free legal representation in Bulgaria came into existence in 2006 and *pro bono* legal representation exists in principle, there is no organized effort to provide *pro bono* services. In recent years, there is a trend among young professionals educated and trained abroad to return to Bulgaria, bringing with them cultural awareness of best practices, including a commitment to *pro bono* legal services. Thus, the expectation is that over the next decade, the *pro bono* culture in Bulgaria will grow and develop further.

In the immediate term, it is key to increase awareness of *pro bono* services and work towards the establishment of referral organizations and clearing houses; for example, by working with NGOs (that provide some legal representation) to expand their function to serving as intermediaries between individuals in need of representation and practitioners, other than the NGOs’ staff attorneys, who wish to provide such services on a *pro bono* basis.

July 2012

Pro Bono Practices and Opportunities in Bulgaria

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¹⁵ Attorney Act of 2004, art. 38; Ordinance No. 1 of Jul. 9, 2004 on the Minimum Size of Attorneys’ Fees, art. 5 (last suppl. SG 31/15.04.2011).

¹⁶ SG 63/04.08.2006, last amended SG 95/01.12.2009.

PRO BONO PRACTICES AND OPPORTUNITIES IN CANADA¹

Canada has a rich tradition of promoting access to justice through, among other things, legal aid and *pro bono* legal assistance. Over recent years there has been an emergence of support for active coordination of *pro bono* opportunities and, particularly as a result of the efforts of professional bodies, such as the Canadian Bar Association, various *pro bono* organizations and initiatives have been put in place to promote, simplify and encourage *pro bono* participation across Canada. While *pro bono* legal services and legal aid are available across Canada, several factors affect the availability of such services, including underfunding, uneven coverage, fragmented approaches, discretionary eligibility criteria and a lack of information. Notwithstanding these factors, lawyers and law students across Canada increasingly continue to provide *pro bono* services.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN CANADA

A. The Legal Profession

Canada is a federation with jurisdiction over governance divided between a federal government that governs matters of a national interest and ten provincial governments that are responsible for matters of a more local nature.² Although common law is applied throughout the Canadian legal system, a civil law system is applied for all matters of a private law nature within the province of Quebec.³

Lawyers in Canada, and paralegals and notaries in certain provinces, are governed by law societies established at the provincial or territorial level,⁴ which are responsible for setting the standards for, *inter alia*, admission to the profession and the conduct of its members.⁵ Each of these law societies also belongs to a national umbrella organization, the Federation of Law Societies of Canada, which leads initiatives to introduce common standards in, *inter alia*, admissions,⁶ rules on fighting money laundering,⁷ codes of conduct,⁸ and complaints and discipline across all provinces and territories.⁹ With the exception of certain interprovincial initiatives regarding mobility of lawyers,¹⁰ membership in a particular law society is mandatory to practice in that province/territory.

In 2010, there were approximately 108,000 lawyers registered with the law societies of Canada, with the majority of them working as either sole practitioners or in small firms of up to ten lawyers.¹¹ Most lawyers in Canada practice in large urban centers¹² and recently, particularly outside the larger metropolitan areas, concerns have been expressed over the “greying of the bar” phenomenon resulting from the limited articling opportunities available for graduates in sole practices and small firms.¹³

¹ This chapter was drafted with the support of Andrew Matheson, Shane C. D’Souza and Diego Beltran of McCarthy Tétrault LLP, and a contribution from the Canadian Bar Association.

² *The Constitutional Distribution of Legislative Powers*, online at <http://www.pco-bcp.gc.ca/aia/index.asp?lang=eng&page=federal&sub=legis&doc=legis-eng.htm>. Canada has also designated three territories that have less extensive legislative powers, see *Difference between Canadian Provinces and Territories*, online at <http://www.pco-bcp.gc.ca/aia/index.asp?lang=eng&page=provterr&sub=difference&doc=difference-eng.htm>.

³ *Where Our Legal System Comes From*, DEPARTMENT OF JUSTICE, online at <http://www.justice.gc.ca/eng/dept-min/pub/just/03.html>.

⁴ For a general discussion on the regulation of lawyers in Canada, see, Woolley, Alice, *Rhetoric and Realities: What independence of the bar requires of lawyer regulation*, 45(1) UBC LAW REVIEW 145 (2012), online at <http://ssrn.com/abstract=1877884>.

⁵ *Canada’s Law Societies*, online at <http://www.flsc.ca/en/canadas-law-societies/>.

⁶ *National Admission Standards*, online at <http://www.flsc.ca/en/national-admission-standards/>.

⁷ *Model Rules to Fight Money Laundering and Terrorist Financing*, online at <http://www.flsc.ca/en/model-rules-to-fight-money-laundering-and-terrorist-financing/>.

⁸ *Model Code of Professional Conduct*, online at <http://www.flsc.ca/en/federation-model-code-of-professional-conduct/>.

⁹ *National Complaints and Discipline Standards*, online at <http://www.flsc.ca/en/national-complaints-and-discipline-standards/>.

¹⁰ *National Mobility of the Legal Profession*, online at

¹¹ *2010 Statistical Report*, FEDERATION OF LAW SOCIETIES OF CANADA, online at <http://www.flsc.ca/documents/2010-Statistical-Report.pdf>.

¹² *Id.* and *Population and dwelling counts, for population centres, 2011 and 2006 censuses*, STATISTICS CANADA, online at <http://www12.statcan.ca/census-recensement/index-eng.cfm>; <http://www12.statcan.ca/census-recensement/2011/dp-pd/hltfst/pd-pl/Table-Tableau.cfm?LANG=Eng&T=801&PR=0&RPP=25&SR=1&S=11&O=A>

¹³ THE LAW SOCIETY OF UPPER CANADA, *Articling Task Force, Consultation Report* (Dec., 2011), online at <http://www.lsuc.on.ca/articling-task-force-consultation-report/>.

Generally speaking, Canada's court system is based on a four-tier hierarchy and is divided into federal and provincial/territorial courts organized by levels of superiority.¹⁴ As the provinces/territories have jurisdiction over the administration of justice in their territory,¹⁵ most court cases are initiated in the provincial/territorial courts, whereas federal courts hear matters that are under exclusive federal control, such as federal taxation, federal administrative agencies, intellectual property, immigration and refugee appeals, and certain aspects of national security. The Supreme Court of Canada serves as the final court of appeal regardless of the subject matter or the court where the matter originated, and answers important questions concerning the Canadian constitution. Apart from courts, matters are also adjudicated by hundreds of specialized administrative tribunals which are independent from the government and may be subject to judicial review by the courts.¹⁶

B. Legal Aid

The administration of legal aid services in Canada, as part of the wider administration of justice, falls mainly within the constitutional responsibility of the provincial/territorial governments. Legal aid in Canada can be traced back to 1951 when the Ontario government enacted legislation to create the country's first structured legal aid program, with other provinces following suit in the 1960s and 1970s.¹⁷ Since the 1970s, the federal government has been providing contributions to the funding of the provincial/territorial criminal and civil legal aid plans;¹⁸ however, cuts to criminal legal aid funding have led some provinces to accuse the federal government of 'shirking' its responsibilities¹⁹ and, together with the decision to incorporate civil legal aid funding within a general, unallocated transfer of funds to the provinces, has been associated with recent shortcomings of certain legal aid programs.²⁰

Although it appears generally accepted that the Canadian constitution does not provide an automatic right to state-funded counsel, some lower Canadian courts have held that an individual's right to legal aid can exist in certain circumstances, such as ensuring that deprivation of liberty is in accordance with the principles of fundamental justice and civil cases involving a government-initiated challenge to child custody.²¹

In the absence of national coordination, each province/territory has established a different legal aid plan,²² utilizing different delivery mechanisms and employing varying levels of financial eligibility and coverage provisions.²³ Each province has adopted different financial eligibility criteria which are generally based on income levels, with varying rules regarding the rate of client contributions towards the fees. As eligibility levels are generally set lower than the low-income levels measured by Statistics Canada Low Income Cut-Off, many low-income individuals, who may be unable to retain a lawyer,

¹⁴ For more details, see DEPARTMENT OF JUSTICE, *Canada's Court System*, online at <http://www.justice.gc.ca/eng/dept-min/pub/ccs-ajc/>.

¹⁵ Although the provincial/territorial governments have jurisdiction over the administration of justice, the federal government is responsible for appointing judges to the Superior Courts and maintains exclusive authority over criminal law and procedure, see *The Canadian Judicial System*, SUPREME COURT OF CANADA, online at <http://www.scc-csc.gc.ca/court-cour/sys/index-eng.asp>.

¹⁶ Some examples of administrative tribunals are: Immigration and Refugee Board of Canada, Workers' Compensation Appeals Tribunal, Human Rights Tribunal, Occupational Health and Safety Tribunal, Financial Services Commission of Ontario and Ontario Securities Commission.

¹⁷ Robert Todd, *Legal Aid: A system in Peril*, CANADIAN LAWYER (October 2010), online at <http://www.canadianlawyermag.com/Legal-aid-a-system-in-peril.html>.

¹⁸ CANADIAN BAR ASSOCIATION, *A short history of Federal funding for Legal Aid*, online at <http://www.cba.org/cba/advocacy/legalaid/history.aspx>.

¹⁹ *Province accuses feds of shirking responsibilities for Legal Aid*, WINNIPEG FREE PRESS, online at <http://www.winnipegfreepress.com/local/province-accuses-feds-of-shirking-responsibilities-for-legal-aid-149786905.html>.

²⁰ See, e.g., Leonard T. Doust, QC, , *Foundation for Change*, REPORT OF THE PUBLIC COMMISSION ON LEGAL AID IN BRITISH COLUMBIA (Mar. 2011), online at [http://www.lawsociety.bc.ca/docs/publications/reports/pcla_report_03_08_11_1_\[1\].pdf](http://www.lawsociety.bc.ca/docs/publications/reports/pcla_report_03_08_11_1_[1].pdf).

²¹ Vicki Schmolka, *Making the Case: The Right to Publicly-Funded Legal Representation in Canada*, CANADIAN BAR ASSOCIATION (Feb. 2002), online at http://www.cba.org/cba/pdf/2002-02-15_case.pdf.

²² *Provincial Legal Aid Plans Contact Information*, CANADIAN BAR ASSOCIATION, online at <http://www.cba.org/cba/advocacy/PDF/Canadian%20Legal%20Aid%20Plans.pdf>.

²³ For a discussion of the provincial legal aid plans, *Legal Aid Eligibility and Coverage in Canada*, DEPARTMENT OF JUSTICE CANADA (Oct. 2002), online at http://www.justice.gc.ca/eng/pi/rs/rep-rap/2003/rr03_la5-rr03_aj5/rr03_la5.pdf.

may fail to qualify for legal aid services.²⁴ This denial of legal representation to low-income individuals may result in self-represented individuals, charged with a minor criminal offense defending themselves even though they possess vulnerable or disadvantageous personal characteristics, such as low levels of education and literacy.²⁵ A 2003 study by Justice Canada found that “fairly large percentages of accused are convicted without the benefit of counsel. Even more troubling, up to 27 per cent of unrepresented accused receive jail sentences.”²⁶

For criminal matters, subject to the satisfaction of financial eligibility requirements, legal representation is generally provided for indictable offences and for certain summary offences if there is a likelihood of imprisonment or, for some plans, loss of livelihood, if convicted. For civil matters, subject to the financial eligibility thresholds, most plans provide legal representation for disputes involving child protection/welfare matters, and some also cover child custody and immigration/refugee law matters.

Beyond this, each provincial/territorial legal aid plan exercises discretion in: (a) determining the legal aid coverage provided for criminal offences of a less serious nature and other civil law matters, including divorces, benefit claims, housing disputes and employment disputes; and (b) the nature of the legal assistance provided, such as duty counsel services, summary advice, community legal aid clinics, community outreach programs and information centers.

Given the disparities, inconsistencies and shortcomings of legal aid access across Canada, certain professional bodies, such as the Canadian Bar Association (“CBA”), have taken an active role in trying to initiate change in the legal aid system, calling for national standards of legal aid coverage and eligibility, increased public funding, a revitalized commitment from the federal government and even (unsuccessfully) attempting to establish a constitutional right to legal aid in British Columbia through the courts.²⁷

II. **PRO BONO IN CANADA: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. **Pro Bono Opportunities**

The provision of *pro bono* legal services has existed in Canada in various forms for many years, with the current legal aid system developing from the modest *pro bono* arrangements that prevailed in the provinces up to the mid-1960s.²⁸ Although there is no obligation on Canadian lawyers to provide *pro bono* legal services, lawyers are encouraged by their regulatory bodies and professional associations to provide *pro bono* representation to persons who would otherwise be self-represented.²⁹ The CBA’s Pro Bono Committee suggests that all members of the legal profession should aim to contribute 50 hours or 3% of billings per year on a *pro bono* basis.³⁰ Some law firms, such as McCarthy Tétrault LLP, encourage *pro bono* initiatives by mandating a minimum number of nonbillable hours per year and by treating hours spent on *pro bono* matters as the equivalent of billable hours, up to a threshold, for the purposes of internal measurement and recognition.

²⁴ *Id.* See also, *Financial Eligibility Levels for Legal Aid Ontario*, online at <http://www.legalaid.on.ca/en/getting/certificateservices.asp>. The maximum gross income amount for a family of one is \$10,800, contrasted with the poverty line of approximately \$22,000 discussed in *Minimum Wages: Issues and Options for Ontario*, Ontario Ministry of Finance, (Feb. 2007), online at: <http://www.fin.gov.on.ca/en/publications/2007/Gunderson/index.html>.

²⁵ See, e.g., *id.* and Melina Buckley, *Moving Forward on Legal Aid* (Jun. 2010), online at <http://www.cba.org/CBA/Advocacy/PDF/CBA%20Legal%20Aid%20Renewal%20Paper.pdf>.

²⁶ *The Unmet Need For Criminal Legal Aid: A Summary Of Research Results*, DEPARTMENT OF JUSTICE CANADA (2003), online at http://www.justice.gc.ca/eng/pi/rs/rep-rap/2003/rr03_la9-rr03_aj9/p1.html.

²⁷ See, e.g., *Legal Aid in Canada*, online at http://www.cba.org/cba/advocacy/Additional_Information/Legal_Aid_in_Canada.aspx. *Litigation for Better Legal Aid*, online at: <http://www.cba.org/cba/advocacy/legalaid/Litigation.aspx>; and *Real Justice means Fair Access*, online at: <http://www.weneedlegalaid.com/thechallenge/>.

²⁸ Ab Currie, *Expanding Horizons: Rethinking Access to Justice in Canada*, DEPARTMENT OF JUSTICE CANADA (Feb. 2000), online at http://www.justice.gc.ca/eng/pi/rs/rep-rap/2000/op00_2-po00_2/b3.html.

²⁹ CANADIAN JUDICIAL COUNCIL, *Statement of Principles on Self-Represented Litigants and Accused Persons*, (September 2006), online at http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_other_PrinciplesStatement_2006_en.pdf.

³⁰ CANADIAN BAR ASSOCIATION, *Pro Bono Working Group Report*, <http://www.cba.org/CBA/resolutions/2003res/03-04-M.aspx>.

Pro bono legal services are increasingly seen as a significant component of access to justice.³¹ Over the last 10-15 years there has been concerted effort in the legal profession to coordinate and encourage active participation in *pro bono* activities, principally through the establishment and consolidation of centralized referral organizations. Five province-wide *pro bono* organizations have so far been established (Pro Bono Law Ontario, Pro Bono Law Alberta, Pro Bono Law Saskatchewan, Pro Bono Law Quebec and Access Pro Bono - British Columbia)³² to create and facilitate opportunities for lawyers to provide *pro bono* legal services. These *pro bono* organizations have played an influential role in increasing awareness of *pro bono* opportunities and services, which in turn has encouraged some national law firms³³ to review their *pro bono* policies and commit additional resources to *pro bono* initiatives.³⁴

There are a wide variety of volunteer opportunities available to legal professionals across Canada to address the unmet needs of low-income and/or disadvantaged individuals, and nonprofit organizations,³⁵ with a large proportion of lawyers participating in *pro bono* activities, even in provinces/territories without a central *pro bono* organization.³⁶ Canadian law schools have also shown a strong commitment to social justice, for example, Osgoode Hall Law School has instituted a public interest requirement that demands students complete 40 hours of unpaid public interest law related work as a requirement of graduation.³⁷

B. Barriers To *Pro Bono* Work And Other Considerations

In order to practice in Canada, lawyers must typically maintain both adequate insurance and membership to the appropriate law societies for their scope of practice.³⁸ Although private practice lawyers in Canada are required to maintain insurance to provide legal services, most provinces provide an exemption from maintaining insurance for certain groups of lawyers, such as in-house, government/public, nonpracticing and retired.³⁹ Although some such lawyers still maintain indemnity insurance, some do not, therefore rendering them unable to provide *pro bono* legal services. Although some provincial law societies and insurance providers have made arrangements for such uninsured members to benefit from extended indemnity insurance coverage when providing *pro bono* services, this is currently only available in a small number of provinces and is subject to limitations, such as only extending protection for certain “approved” services and programs.⁴⁰ The CBA, however, passed a

³¹ Sossin Lorne, *The Public Interest, Professionalism, and Pro Bono Publico*, 46 OSGOODE HALL LAW JOURNAL 131 (2008), online at <http://ssrn.com/abstract=1205162> and Ab Currie, *Expanding Horizons: Rethinking Access to Justice in Canada*. DEPARTMENT OF JUSTICE CANADA (Feb. 2000), online at http://www.justice.gc.ca/eng/pi/rs/rep-rap/2000/op00_2-po00_2/b3.html.

³² PRO BONO LAW ONTARIO, online at <http://www.pblo.org/>, PRO BONO LAW ALBERTA, online at <http://www.pbla.ca/>, PRO BONO LAW SASKATCHEWAN, online at <http://www.pblsask.ca/>, PRO BONO LAW QUEBEC, online at <http://www.probonoquebec.ca/en> and Access Pro Bono, online at <http://www.accessprobono.ca/>.

³³ THE LAW SOCIETY OF BRITISH COLUMBIA, *The future of pro bono in Canadian law firms*, online at <http://www.lawsociety.bc.ca/page.cfm?cid=1450&t=The-future-of-pro-bono-in-Canadian-law-firms>.

³⁴ MCCARTHY TÉTRAULT, *Making a Difference Together - Our Commitment to the Community*, online at http://www.mccarthy.ca/community_and_pro_bono_work.aspx, BORDEN LADNER GERVAIS, *BLG Pro Bono*, online at <http://www.blg.com/en/home/about/community/Pages/pro-bono-services.aspx>, BLAKES, *Pro Bono*, online at <http://www.blakes.com/english/probono.asp> and GOWLINGS, *Pro Bono & Community Service*, online at <http://www.gowlings.com/Firm/communityService.asp>.

³⁵ See, e.g., the volunteer opportunities offered by Pro Bono Alberta, online at <http://www.pbla.ca/volunteer/> and Access Pro Bono (BC), online at <http://accessprobono.ca/information-lawyers>, and Pro Bono in Nova Scotia: Current practice and future opportunities, online at: <http://nsbs.org/sites/default/files/ftp/NovaScotiaProBonoStudy.pdf>, for an illustration of the opportunities available in Nova Scotia (which does not currently benefit from a provincial pro bono organization).

³⁶ For example, in Nova Scotia, 77% of lawyers provided some form of *pro bono* service in 2009, *id.* at 6.

³⁷ *Osgoode Public Interest Requirement (“OPIR”)*, online at <http://www.osgoode.yorku.ca/alumni/opir>.

³⁸ With the exception of certain interprovincial initiatives regarding mobility of lawyers mentioned previously.

³⁹ See e.g., *the insurance provisions of Alberta*, online at <http://www.lawsociety.ab.ca/membership/status/insurance/exemption.aspx>, *British Columbia*, online at <http://www.lawsociety.bc.ca/page.cfm?cid=203&t=Exemptions> and *Ontario*, online at http://www.lawpro.ca/Insurance/Practice_Type/Practice_Type.asp.

⁴⁰ *See the insurance extension provisions for Ontario*, online at <http://www.practicepro.ca/information/probono.asp>, *Saskatchewan*, online at <http://www.pblsask.ca/pdf/insurancecircular.pdf>, *British Columbia*, online at <http://www.lawsociety.bc.ca/page.cfm?cid=209&t=Coverage-for-pro-bono-legal-services> and *Alberta*, online at http://www.lawsociety.ab.ca/advisory_2010/advisory_volume_8_issue_5_dec2010/news/pro_bono_insurance.aspx.

resolution urging all law societies to arrange for an extension of insurance coverage in order to facilitate the participation of all lawyers in *pro bono*.⁴¹ However, the lack of insurance remains a major barrier to in-house participation in pro-bono, which remains very limited and is only just starting to appear.

Although some provincial *pro bono* organizations have been successful in setting up disbursement funds to assist with the costs incurred in relation to *pro bono* litigation matters,⁴² this is not common practice across Canada and may sometimes result in clients and/or *pro bono* providers having to cover the costs.

Finally, the absence of coordinated *pro bono* organizations in the majority of provinces/territories can make it more difficult and onerous to locate appropriate information and opportunities. Furthermore, the decreased visibility of *pro bono* needs in such jurisdictions, as well as the absence of the lobbying benefit of such an organization, means that it is less likely that private law firms in such provinces or territories will have adopted a *pro bono* policy that rewards and encourages its employees to participate in *pro bono* projects.

C. *Pro Bono* Resources

1. Provincial Organizations

As previously mentioned, lawyers in the provinces of Alberta, British Columbia, Ontario, Quebec and Saskatchewan have access to provincial *pro bono* organizations.⁴³ These organizations increase access to justice by creating and promoting opportunities for lawyers to provide *pro bono* legal services, particularly through referral programs that match the needs of individuals and nonprofit organizations with the expertise and availability of volunteer lawyers, as well as providing information and resources on other volunteer opportunities and on issues such as insurance coverage.

2. Pro Bono Students Canada

A significant contribution to *pro bono* legal services is provided by law students through the Pro Bono Students Canada (“PBSC”) initiative, which relies on volunteer lawyers supervising its various projects.⁴⁴ PBSC has a national office in Toronto and a chapter in each of the 21 law schools across Canada, with approximately 1,500 law students volunteering 120,000 hours of free legal services annually to 400-500 public interest groups, community organizations, courts and tribunals across the country.⁴⁵

3. Other Resources

Although each province/territory benefits from an established organization providing legal education and information to its residents,⁴⁶ the absence of a *pro bono* referral organization in several provinces/territories makes it difficult to identify *pro bono* opportunities. To this end, lawyers may seek opportunities by approaching their law society,⁴⁷ the closest chapter of PBSC and/or Bar association.⁴⁸ A selection of resources can also be found on the websites of the CBA,⁴⁹ Law Central Canada⁵⁰ and through the various Law Foundations.⁵¹

⁴¹ *Insurance Coverage for Pro Bono Legal Services*, online at <http://www.cba.org/cba/groups/pdf/07-04-A.pdf>.

⁴² See PRO BONO LAW SASKATCHEWAN, *CBA Disbursement Fund*, online at <http://www.pblsask.ca/cbafund.shtml> and ACCESS PRO BONO, *Disbursement Coverage*, online at <http://accessprobono.ca/node/131>.

⁴³ PRO BONO LAW ALBERTA, online at <http://www.pbla.ca/>, ACCESS PRO BONO BRITISH COLUMBIA, online at <http://accessprobono.ca/>, PRO BONO LAW ONTARIO, online at <http://www.pblo.org/>, PRO BONO QUEBEC, online at <http://www.probonoquebec.ca/en/> and PRO BONO LAW SASKATCHEWAN, online at <http://www.pblsask.ca/>.

⁴⁴ PRO BONO STUDENTS CANADA, online at <http://www.probonostudents.ca/>.

⁴⁵ PRO BONO STUDENTS CANADA, *History*, online at <http://www.probonostudents.ca/about-pbhc/history>.

⁴⁶ DEPARTMENT OF JUSTICE CANADA, *Public Legal Education and Information (PLEI)*, online at <http://www.justice.gc.ca/eng/pi/pb-dgp/prog/plei-pvij.html>.

⁴⁷ *Canada's Law Societies*, online at <http://www.flsc.ca/en/canadas-law-societies/>.

⁴⁸ CANADIAN BAR ASSOCIATION, *Provincial/Territorial Branches*, online at <http://www.cba.org/CBA/branches/main/>.

⁴⁹ CANADIAN BAR ASSOCIATION, *CBA Pro Bono – Resources*, online at <http://www.cba.org/cba/groups/probono/resources.aspx>.

⁵⁰ *Legal Clinics and Services*, LAW CENTRAL CANADA, online at <http://www.lawcentralcanada.ca/LawServices/clinics.aspx>.

⁵¹ *Law Foundations Across Canada*, online at <http://www.lawfoundation.on.ca/otherlf.php>.

III. CONCLUSION

Canada has a long history of encouraging access to justice through both legal aid programs and *pro bono* assistance. At present, with funding concerns and policy issues reshaping the legal aid landscape, the Canadian legal profession continues to provide *pro bono* assistance and, through important contributions by regulatory bodies and professional organizations, there is a growing recognition that *pro bono* legal services form a significant component of access to justice. The legal industry's increased emphasis on the importance of contributing to *pro bono* initiatives and the establishment of some provincial *pro bono* organizations has significantly increased the awareness of and access to *pro bono* opportunities in certain provinces, however the absence of coordinated *pro bono* organizations in some provinces/territories has resulted in some disparate *pro bono* opportunities across Canada.

July 2012

Pro Bono Practices and Opportunities in Canada

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PRO BONO PRACTICES AND OPPORTUNITIES IN CHILE¹

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN CHILE

Chile was one of the first Latin American countries leading the *pro bono* movement through foundations, NGO's and private law firms. It has extended the *pro bono* culture all over Latin America and has helped to establish many *pro bono* foundations in other countries. Pro bono work in Chile fosters access to free justice for low income individuals and groups at risk of social exclusion, through volunteer work and *pro bono* services of attorneys. This brief report provides a summary of the Chilean legal system, and the *pro bono* movement.

A. The Legal Profession

The Supreme Court grants licenses to practice law in Chile, and such a license bestows upon an individual the title of lawyer or “*Abogado*.” Obtaining a license to practice requires obtaining a law degree from a Chilean university and successfully completing a six-month postgraduate professional practice period in a Legal Assistance Corporation (*Corporación de Asistencia Judicial*), which is a branch of government overseen by the Ministry of Justice.² Only Chilean-qualified attorneys may represent clients in court. However, attorneys qualified in other jurisdictions may, and often do, practice law in Chile, generally focusing on transactional matters rather than litigation. Prior to practicing law in Chile, non-Chilean attorneys must comply with applicable registration requirements.³

The legal profession in Chile is subject to limited regulatory oversight. Neither membership with a local bar association nor postgraduate education is required. Furthermore, disqualification from the practice of law is very rare, and malpractice insurance is not common among Chilean lawyers.

The mandatory professional practice period with a *Corporación de Asistencia Judicial*⁴ is focused on providing services to low-income individuals. Recent law school graduates work in the areas of labor, family and civil law under the supervision of practicing attorneys. 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.

B. Legal Aid

1. Criminal Proceedings and the Right to Legal Assistance

Under the current criminal system, the National Prosecution Agency (*Ministerio Público*) is responsible for prosecuting crimes, and the Office of Public Defense (*Defensoría Penal Pública*), a government agency overseen by the Ministry of Justice, is responsible for defending individuals against such criminal charges. Criminal cases are decided by an independent tribunal (*Juzgado de Juicio Oral*) in an oral trial, and no appeal as to the facts is allowed, except in exceptional circumstances. An independent judge (*Juez de Garantía*) is responsible for overseeing and protecting the fundamental rights of the accused. Both the *Juzgados de Juicio Oral* and the *Juez de Garantía* are subject to the oversight of the Supreme Court.

The Chilean Constitution guarantees all defendants the right to be represented by an attorney.⁵ While the Office of Public Defense has the responsibility of representing all criminal defendants, regardless of financial means, it may require a nonimpoverished defendant to contribute a copayment for services up to the entire cost of the representation, depending on the defendant's financial means. In practice, over 90% percent of the defendants are impoverished and, therefore, are represented free of charge.⁶ The Office of Public Defense is viewed

¹ This chapter was drafted with the support of Mr. Sergio Díez of the law firm, Cariola Diez Perez-Cotapos.

² Ley Orgánica Constitucional 7421, arts. 523, 526.

³ *Revalidation and recognition of non-Chilean attorneys*: <http://www.uchile.cl/portal/presentacion/relaciones-internacionales/revalidacion-de-titulos-extranjeros/9884/informativo-sobre-tramites-de-revalidacion>.

⁴ Ley No. 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.

⁵ CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE CHILE (CONST. CHILE) art. 19(3).

⁶ 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 Feb. 24-26, 2005).

favorably by the public and is seen as providing high-quality defense to defendants who otherwise could not afford such services.

Although criminal procedure is of the highest standard in Chile, prison conditions are generally poor, with prisons often overcrowded and antiquated, with substandard living conditions.⁷ Although policies are being implemented to improve inmate conditions, this remains an area where there is substantial opportunity for *pro bono* work.

2. NGOs and Legal Aid

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 directly. For example, *Corporación de Promoción y Defensa de los Derechos del Pueblo* (CODEPU) is an NGO focusing its efforts on the defense of human rights.⁸ CODEPU offers social, legal and psychiatric assistance to individuals and groups that are victims of human rights violations, assisting close to 1,000 victims per year. CODEPU also disseminates information relating to human rights and conducts trainings for social organizations and schools.

3. Other Branches of Government

Other branches of government, such as the Consumer Protection Agency (SERNAC)⁹ and the Citizens Defence Commission, among others, have the power to provide legal assistance to citizens as well, subject to the restrictions imposed by law on such governmental bodies. SERNAC is focused on assisting citizens with commercial and consumer information, legal assistance and protection, and education about consumer rights and duties. SERNAC is a branch of the Ministry of Commerce, Development and Tourism (*Ministerio de Empleo, Fomento y Turismo*) and provides free legal advice, within its related fields, to citizens that contact them requesting such assistance.

II. **PRO BONO IN CHILE: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. ***Pro Bono* Opportunities**

1. *Fundación Pro Bono*

Fundación Pro Bono is Chile's leading clearinghouse for *pro bono* work and focuses on finding and distributing *pro bono* opportunities to private attorneys.¹⁰ Founded in 2000, it was based on the American *pro bono* model and was later adapted to accommodate the specific needs and circumstances of Chile, based on extensive feedback from leading Chilean law firms.

Fundación Pro Bono does not provide direct services to clients. Rather, it serves solely as a clearinghouse, referring matters to private firms and individual attorneys and developing new *pro bono* programs serving nonprofit entities, NGOs and private citizens. As of early 2008, *Fundación Pro Bono* received approximately 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. According to its annual report in 2010, affiliated attorneys reported a total of 13,673 hours of *pro bono* services that year. This reflects an increase of nearly 40% over the previous year. *Fundación Pro Bono* has been regarded 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 micro entrepreneurs, and legal assistance to victims of violent crimes. *Fundación Pro Bono* has entered into a collaboration agreement with the national government pursuant to which private attorneys provide free legal assistance to victims of crime. In 2010, for example,

⁷ U.S. DEPARTMENT OF STATE, HUMAN RIGHTS REPORT, CHILE (2010).

⁸ <http://www.codepu.cl/>.

⁹ <http://www.sernac.cl/sernac2011/>

¹⁰ <http://www.probono.cl>.

members represented individuals in 175 criminal cases.¹¹ Its primary goal is developing the overall *pro bono* practice and placing *pro bono* matters with private attorneys. Furthermore, in 2010 lawyers from Concepción, the third largest city in the country, and the second largest in importance for the legal community, founded a branch of *Fundación Pro Bono*. Overall, *Fundación Pro Bono* (through its affiliated lawyers) has served in over 500 family and civil cases and has provided assistance to 46 micro entrepreneurs and 108 social organizations.¹²

2. International Pro Bono Network

In April 2011, *Fundación Pro Bono Chile* and the Cyrus R. Vance Center of the Bar Association of the City of New York convened the International Conference, “The Legal Profession & Pro Bono: Strengthening Access to Justice,” which brought together representatives from bar associations, law firms, law school clinics, corporate legal departments, *pro bono* referral programs, and many other organizations in 13 countries throughout America, including Argentina, Brazil, the United States and Venezuela. The purpose of this conference was to promote the practice of *pro bono* in Latin America, building on the success of the *Pro Bono Declaration for the Americas*. More specifically, its objectives are, *inter alia*, (i) to spread international human rights law to support local *pro bono* referral programs and organizations, (ii) to encourage cross-border cooperation of *pro bono* attorneys, (iii) to provide legal support to civil society initiatives that advance the rule of law and support vulnerable sectors of society, and (iv) to implement know-your-rights (“street law”) projects.

3. Other Opportunities

Although Chile is a country where the protection of fundamental rights is constitutionally recognized and the principle of nondiscrimination is undisputed, there remain many areas of legislation where discrimination is pervasive. Minorities are often subject to discrimination not only as a matter of fact, but also in law. Since Chile is a signatory to various international treaties, it is bound to prevent and correct these injustices. Pro bono work has the potential to make a difference in this area.

Additionally, it has long been expected by the legal community that special tribunals would be created to address tax and administrative law issues. Both of these practice areas are of particular importance to citizens. Many controversies between individuals and the national government are based in these areas of law, where the government is both *party and judge* concurrently. Additionally, as a result of increased regulation, many small entrepreneurs struggle to understand and properly address their tax burdens or to effectively address the increasing regulatory requirements imposed by the government in areas such as environmental matters and product safety. This knowledge imbalance puts such individuals at a disadvantage vis à vis large corporations. Pro bono has the potential to make a difference in this area as well.

Consumer protection (in particular with regard to financial services) is another area in which claims are anticipated to soar, and where *pro bono* work has the potential to have an impact.

B. Barriers To Pro Bono Work And Other Considerations

1. No Significant Barriers

There are no significant barriers to providing *pro bono* legal assistance in Chile. However, as noted above, representation in courts is limited solely to *Abogados*, whose license to practice is granted by the Supreme Court.

There are no mandatory or minimum fees imposed on legal services. The fee structure of lawyers is not regulated, except for the (nonobligatory) guidance provided by the local bar in the Code of Ethics. Furthermore, articles 44 and 45 of the Code of Ethics (2011)¹³ of the *Colegio de Abogados de Chile* regulate the provisioning of *pro bono* services. It states that the duty of care of lawyers providing *pro bono* services is the same as that owed to any other client. Additionally, it states that the provision of *pro bono* services cannot be used for any

¹¹ FUNDACIÓN PRO BONO ANNUAL REPORT, 2010.

¹² FUNDACIÓN PRO BONO ANNUAL REPORT, 2010.

¹³ <http://www.colegioabogados.cl>.

purpose other than providing access to justice, an effective legal representation or the respect of the rule of law. In fact, the Code of Ethics provides that attorneys have an obligation to provide legal defense services to citizens with limited resources.

2. Advertisement of Pro Bono Legal Services

Chilean attorneys face no impediment to publishing or advertising accounts of their *pro bono* activities, *provided* 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. Notwithstanding, the *Colegio de Abogados de Chile*, the main Chilean voluntary bar association, discourages the advertisement of all legal services, including *pro bono* legal services. Currently, however, twenty-eight law firms are members of *Fundación Pro Bono*, and several mention their membership on their websites.

3. Pro Bono Resources

(a) Fundación Pro Bono

Phone: +56.2.381.5660
 Website: <http://www.probono.cl/>
 Email: ccontreras@probono.cl
 Contact: Carolina Contreras

One of the most important *pro bono* institutes in Chile is the *Pro Bono* Foundation, a nonprofit foundation with a mission to help and organize the practice of *pro bono* for lawyers and law firms. This foundation was created in 2000, and since then has implemented work programs addressed to provide opportunities for *pro bono* lawyers. The foundation organizes *pro bono* work across various matters including corporate advice, disputes advice, legal reports and judicial representation, with the goal of improving access to free justice in Chile.¹⁴

(b) Colegio de Abogados de Chile (local bar association)

Address: Ahumada 341, 2nd floor, Santiago, Chile
 Phone: +56.2.639.6175 – 633.6720 – 639.7945
 Website: <http://www.colegioabogados.cl/>
 Email: secretaria@colegioabogados.cl

(c) Defensoría Penal Pública

Address: Av. Bernardo O'Higgins 1449, 5th and 8th floors, Santiago, Chile
 Phone: +56.2.439.6800 – 439.6890
 Website: <http://www.dpp.cl/>

The *Defensoría Penal Pública* is a public service created by law 19.718, on February 16, 2001, as a result of the reform of the Procedural Criminal Law. The *Defensoría Penal Pública* provides free legal representation for those having limited income who cannot afford private legal representation in criminal proceedings before the *Juzgado de Garantía*, Courts of Appeal or Supreme Court.

(d) Additional Resources

Red *Pro Bono* International and the Cyrus Vance Center are also organizations that address the provision of *pro bono* services in Chile and other Latin American countries.¹⁵

¹⁴ <http://www.probono.cl/fundacion/>.

¹⁵ <http://redprobono.org/historia/>.

III. CONCLUSION

The Chilean bar is a Latin American leader in providing *pro bono* legal services. In fact, many attorneys already perform more than the twenty hours per year in accordance with the *Pro Bono* Declaration for the Americas commitment.¹⁶ The practice of *pro bono* is likely to continue to increase and become further institutionalized in the coming years.

July 2012

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.

¹⁶ Pilar Aspillaga and Pablo Guerrero, *Chile: Fundación Pro Bono. Orígenes y Evolución de su Trabajo (Parte II)*, available at <http://www.probono.cl/index.php?s=Declaration+for+the+Americas>

PRO BONO PRACTICES AND OPPORTUNITIES IN CHINA¹

The People's Republic of China (the "PRC" or "China") is a single-party state² composed of 22 provinces, four municipalities, five autonomous regions and two special administrative regions.³ The National People's Congress (the "NPC") is China's law-making body.⁴ Under the legal system in China, all lawyers are required to engage in state-operated legal aid services, and only few independent organizations exist to provide *pro bono* legal assistance. This chapter discusses the legal profession, the legal aid system and *pro bono* opportunities and considerations in China.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN THE PRC

The legal system in China has grown rapidly in the past few decades. One of the major developments in the PRC legal system was the establishment of legal aid in the mid-1990s. The PRC legal aid system seeks to provide free legal services to those who are unable to afford increasingly expensive legal services. Through support from lawyers and other legal professionals, as well as various sources of funding, the provision of legal aid services has expanded in recent years.

A. The Legal Profession

China revived its legal system in 1978, after the practice of law had been nearly reduced to nonexistence during the Chinese Cultural Revolution.⁵ As part of the reestablishment of China's legal regime, a national judiciary⁶ and the Ministry of Justice (the "MOJ")⁷ were established. Since its inception, the judiciary has maintained a four-tier system: the Supreme People's Court at the national level, the Higher Level People's Courts at the provincial level and the Intermediate Level and Basic Level People's Courts at the more local level.⁸ In addition, formal legal education was also implemented afresh in 1979 with approximately 2,000 law students being enrolled in two law schools in that year.⁹

The legal profession in China has expanded rapidly.¹⁰ As of December 2011, there were over 200,000 PRC lawyers and 17,000 law firms in China.¹¹ The vast majority of these law firms were small law firms with fewer than 30 lawyers.¹² While only two law schools existed in 1979, by the end of 2008 there were over 600 law schools and departments offering legal education to more than 580,000 students.¹³

In addition, the regulation of lawyers in China has changed significantly. Prior to 1997, lawyers were considered "functionaries of the State,"¹⁴ and law firms were considered public institutions.¹⁵ In 1997, the NPC promulgated the Law on Lawyers, the first comprehensive law governing the legal

¹ This chapter was drafted with the support of PILnet: THE GLOBAL NETWORK FOR PUBLIC INTEREST LAW.

² *White Paper on China's Political Party System*, <http://www.china.org.cn/english/news/231852.htm> (last visited Jun. 10, 2012).

³ Map of China Showing Self-Governed Municipalities, Autonomous Regions, Provinces and Special Administrative Regions (S.A.R.), http://www.nationsonline.org/oneworld/china_administrative_map.htm (last visited Jun. 10, 2012).

⁴ *Functions and Powers of the National People's Congress*, http://www.npc.gov.cn/englishnpc/Organization/2007-11/15/content_1373013.htm (last visited Jun. 10, 2012).

⁵ Gerard J. Clark, *An Introduction to the Legal Profession in China in the Year 2008*, 41 SUFFOLK U. L. REV. 833 (2008).
⁶ *Id.* at 835.

⁷ *Id.* at 838.

⁸ *Id.* at 835. The PRC court system is now comprised of more than 3,000 Basic Level People's Courts, 376 Intermediate People's Courts and 31 Higher People's Courts. See *A Brief Introduction to China*, <http://www.lawinfochina.com/Legal/index.shtm> (last visited Jun. 10, 2012).

⁹ *LEGISLATING, THE JUDICIARY, AND LAWYERS IN CHINA* IN CHINA LAW DESKBOOK, 72 (2010), <http://www.chinalawdeskbook.com/pdf/CLD%20Ch3.pdf>.

¹⁰ RANDALL PEERENBOOM, *CHINA'S LONG MARCH TOWARD RULE OF LAW* 14 (2002).

¹¹ *Licensed Lawyers Number 200,000 in China*, http://www.china.org.cn/wap/2011-12/26/content_24250896.htm (last visited Jun. 10, 2012).

¹² *The Legal Profession of the People's Republic of China*, 3, available at http://www.law.harvard.edu/programs/plp/pdf/Chinese_Legal_Profession.pdf.

¹³ Ji XIANGDE, *LEGAL EDUCATION*, <http://www.iolaw.org.cn/global/EN/showNews.asp?id=29328> (last visited Jun. 12, 2012).

These law students included 300,000 undergraduate students, 220,000 students in junior colleges majoring in law and 60,000 graduate students.

¹⁴ CHINA LAW DESKBOOK, *supra* n.9 at 73.

¹⁵ *Id.*

profession.¹⁶ Since then, PRC lawyers are no longer “functionaries of the State,”¹⁷ and the formation of independent law firms is encouraged.¹⁸ Besides providing substantive rules governing lawyers, the Law on Lawyers established a framework of professional regulation.¹⁹ By granting the MOJ the authority to control a lawyer’s license to practice, the Law on Lawyers gives the MOJ significant power over the regulation of lawyers.²⁰ The Law on Lawyers also requires all lawyers to join their local lawyers associations, which in turn subject them to regulation of the All-China Lawyers Association.²¹ As such, PRC lawyers are subject to regulation by both the MOJ and lawyers associations.²²

The PRC legal system and legal profession have undergone significant transformation, and amidst this recent development is the establishment of legal aid.

B. Legal Aid

China’s legal aid system was established in 1996 in response to a growing concern that the disadvantaged were unable to afford legal services, particularly in view of increasing legal fees accompanying economic development in China.²³ For example, during the year before legal aid was established in China, litigants did not have legal representation by licensed lawyers in about 88 percent of all civil cases.²⁴

Legal aid services in China are provided for in several bodies of PRC laws, including the Law on Lawyers and the Regulations on Legal Aid. In general, the Law on Lawyers provides that “[a] citizen who needs the assistance of lawyers, . . . but cannot afford lawyers fees, may obtain legal aid in accordance with State regulations.”²⁵ The Regulations on Legal Aid sets up the framework and general principles of the PRC legal aid system.²⁶

Under the Regulations on Legal Aid, the PRC legal aid system has four levels.²⁷ At the national level, the Legal Aid Center (the “LAC”) was created to supervise and coordinate legal assistance across the country.²⁸ At the provincial level, legal aid centers have been established to supervise and coordinate legal aid work in their respective jurisdictions.²⁹ The next level is prefectures and cities where legal aid centers are charged with both administering and implementing legal aid programs in their areas.³⁰ At the county level, legal aid centers are responsible for accepting and examining legal aid applications and arranging for the provision of legal aid services to eligible applicants.³¹

The PRC legal aid system covers a wide range of legal matters. According to the Notice Regarding Development of Legal Aid Work issued by the MOJ in 1997, the scope of legal aid includes: (1) criminal cases; (2) claims for elderly support, child support, and orphan support; (3) compensation

¹⁶ *Id.*

¹⁷ *Id.* at 73-74.

¹⁸ Clark, *supra* n.5, at 839.

¹⁹ Judith A. McMorrow, *Professional Responsibility in an Uncertain Profession: Legal Ethics in China*, 43 AKRON L. REV. 1081, 1099 (2010).

²⁰ Law on Lawyers, art. 6 (“The qualification as a lawyer shall be granted by the judicial administration department under the State Council to a person who . . .”). As part of the State Council, the MOJ is responsible for the nationwide justice administration. See *General Introduction of the Ministry of Justice of People’s Republic of China*, <http://www.legalinfo.gov.cn/english/AboutMOJ/aboutmoj.htm> (last visited Jun. 12, 2012); see also McMorrow, *supra* n.19, at 1099 (noting that the judicial administration department is sometimes referred to as the MOJ).

²¹ Law on Lawyers, *supra* n.20, arts. 39 & 40(4). (“Lawyers’ associations shall . . . conduct[] education in, inspection of, and supervision over, the professional ethics and practice discipline of lawyers.”).

²² McMorrow, *supra* n.19, at 1099 (describing the PRC lawyer regulation system as a “dual management structure”).

²³ Wong Kai-Shing, *CHINA: Legal Aid in China*, <http://www.hrsolidarity.net/mainfile.php/1999vol09no11/1949/> (last visited Jun. 10, 2012).

²⁴ Allen C. Choate, *Legal Aid in China* in 12 THE ASIA FOUNDATION WORKING PAPER SERIES (Apr. 2000), available at <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan017813.pdf>.

²⁵ Law of the People’s Republic of China on Lawyers, *supra* n.20, art. 41, available at <http://en.chinacourt.org/public/detail.php?id=100>.

²⁶ *China: The National Report, 2*, available at http://www.ilagnet.org/jscripits/tiny_mce/plugins/filemanager/files/Helsinki_2011/national_reports/China_National_Report_I_LAG_2011.pdf.

²⁷ *China’s Judiciary — Legal Assistance*, <http://www.china.org.cn/english/Judiciary/31005.htm> (last visited Jun. 10, 2012).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *China: The National Report*, *supra* n.26, at 3.

for work accidents except liability accidents; (4) claims by minors, the elderly, the blind, the deaf, the mute and the disabled for compensation for infringed rights; (5) claims for compensation from the government; (6) claims for disability pensions; and (7) other legal matters that “truly require legal aid.”³² Moreover, local governments may opt to provide additional legal aid coverage; the majority of the provinces have included legal aid coverage for traffic accidents, medical negligence, domestic violence, and others.³³

To be eligible for legal aid in China, an applicant must fall into one of the following five categories: (1) PRC citizens who are under financial hardship³⁴ and have demonstrated that assistance is necessary to safeguard one’s legal rights and interests; (2) blind, deaf, mute, or underage criminal defendants or suspects without legal representation; (3) other disabled or elderly criminal defendants or suspects unable to obtain legal representation because of financial hardship; (4) criminal defendants without legal representation and likely to be sentenced to the death penalty; and (5) non-PRC criminal defendants with court-appointed legal representation.³⁵ Upon approval, applicants may obtain legal services free of charge. Even if ineligible for legal aid, an applicant may nonetheless have access to free legal advice through a legal aid hotline.³⁶

The PRC legal aid system relies on both professional and financial support in order to meet the demand for legal services.³⁷ Although legal aid centers have their own staff attorneys, much of the caseload is handled by outside lawyers who work on a subsidy basis.³⁸ Under the Law on Lawyers, PRC lawyers “must undertake the duty of legal aid in accordance with State regulations[.]”³⁹ Specifically, once a case is assigned to a lawyer, the lawyer may not decline to accept the case.⁴⁰ Besides lawyers, other legal professionals, such as notary clerks and paralegals, also provide legal services through legal counseling, document drafting, and other nonprocedural assistance.⁴¹ Adequate funding is also crucial to the operation of the PRC legal aid system in order to subsidize the assigned private lawyers who render services.⁴² The major source of funding is the PRC government’s allocation, and legal aid expenses are included in the government’s budget every year.⁴³ Private donations are another source of financial support for legal aid in China.⁴⁴

The provision of legal aid services has expanded in recent years. Legal aid expenditure increased from RMB682.50 million in 2008 to RMB1022.10 million in 2010.⁴⁵ During the same period, the number of legal aid cases handled in China also increased from 546,859 to 727,401, representing an annual growth of more than 30 percent.⁴⁶ By 2010, there were more than 3,200 governmental legal aid institutions in charge of administering all aspects of legal aid services, and more than 50,000 community stations had been set up to accept legal aid applications.⁴⁷

II. *PRO BONO* IN THE PRC: OPPORTUNITIES AND OTHER CONSIDERATIONS

Pro bono legal work is a new and poorly understood concept in China, and China presents a challenging landscape for the provision of *pro bono* legal services. Legal matters could be politically sensitive in China, and

³² MINISTRY OF JUSTICE, *Notice Regarding Development of Legal Aid Work* (May 10, 1997), included in Choate, *supra* n.24, at 31-36.

³³ *Legal Aid in China*, http://www.legalinfo.gov.cn/english/Legal-Aid/content/2010-01/25/content_2035688.htm?node=7619 (last visited Jun. 12, 2012).

³⁴ *Notice Regarding Development of Legal Aid Work*, *supra* n.32. Because economic development is uneven across China, there is no unified standard for “financial hardship” in China. Under the Regulations on Legal Aid, local governments are empowered formulate their own financial standards. See REGULATIONS ON LEGAL AID, art. 13, available at <http://www.cecc.gov/pages/selectLaws/ResidencySocWelfare/regsLegalAid.php>.

³⁵ *Legal Aid in China*, *supra* n.33.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* As of May 2012, lawyers received an average of RMB1,100 for a civil case and RMB900 for a criminal case assigned to them. See *Legal Aid Helps Most Vulnerable Among Us*, http://www.china.org.cn/china/2012-05/16/content_25395743.htm.

³⁹ Law on Lawyers, *supra* n.20, art. 42.

⁴⁰ See Choate, *supra* n.24, at 9.

⁴¹ *Legal Aid in China*, *supra* n.33; *Notice Regarding Development of Legal Aid Work*, *supra* n.32.

⁴² *Id.*

⁴³ *Legal Aid in China*, *supra* n.33.

⁴⁴ *Id.*

⁴⁵ *China: The National Report*, *supra* n.26, at 10.

⁴⁶ *Id.*

⁴⁷ *Legal Aid in China*, *supra* n.33.

various limits have been placed on foreign lawyers and law firms. Despite these obstacles, a number of domestic and international organizations have been established to engage in, and to facilitate the provision of, *pro bono* services in China. Moreover, by carefully working within the boundaries of regulatory restrictions, foreign lawyers and foreign law firms in China may find opportunities to render *pro bono* services.

A. *Pro Bono* Opportunities

Aside from the government-run legal aid programs described above, there are a small number of independent organizations that provide *pro bono* legal services in China.⁴⁸ Although the PRC government has allowed certain organizations to become involved in areas traditionally reserved for the government, such as legal aid, commentators have noted that these organizations are far from flourishing in China.⁴⁹ Among the few *pro bono* entities in China are legal clinics in universities.⁵⁰ For example, the Beijing University Legal Aid Society was founded to provide legal services in the community.⁵¹ Since its inception, it has organized a number of events that primarily focus on consumer protection and employee protection.⁵² Foreign entities also provide some *pro bono* services in China.⁵³ For example, the American Bar Association Rule of Law Initiative has supported programs to improve the advocacy for citizens' rights in China.⁵⁴ These programs include online skills training courses for criminal defense lawyers in China, a training base in Hubei Province focused on national environmental litigation, and partnership with lawyer's associations in China in setting up workshops on women's rights protection, among others.⁵⁵ However, the great majority of legal aid in China is administered through governmental legal aid programs such as those coordinated and administered by the LAC.

B. Barriers To *Pro Bono* Work And Other Considerations

A major challenge for lawyers rendering *pro bono* service is that legal matters could be politically sensitive in China.⁵⁶ This could create "a difficult field to navigate,"⁵⁷ as one commentator noted. Indeed, some nongovernmental organizations ("NGOs") have faced difficulties while operating in China.

Foreign lawyers and foreign law firms face an additional obstacle in rendering *pro bono* legal services. In China, only PRC-qualified lawyers may appear in court and advise on questions of PRC law.⁵⁸ Foreign lawyers cannot qualify to practice PRC law, and foreign law firms are not allowed to form joint ventures with PRC lawyers.⁵⁹ Under this system, it is difficult for foreign lawyers and foreign law firms in China to engage in *pro bono* services that involve any legal matters related to PRC law.

C. *Pro Bono* Resources

Despite the challenging environment for lawyers engaging in *pro bono* work in China, clearinghouses have been established to facilitate the provision of *pro bono* services. An example is PILnet: The Global Network for Public Interest Law (the "PILnet").⁶⁰ Through its Beijing office, the PILnet has

⁴⁸ Benjamin L. Liebman, *Legal Aid and Public Interest Law in China*, 34 TEX. INT'L L. J. 211, 269 (1999).

⁴⁹ See *id.* See also *Lawyers in China Struggle to Define Pro Bono*, <http://www.trust.org/trustlaw/news/lawyers-in-china-struggle-to-define-pro-bono/> (last visited Jun. 10, 2012).

⁵⁰ 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; 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>.

⁵¹ *Goal of the Beijing University Legal Aid Society*, <http://laa.lawpku.org/xhzd/协会的性质、宗旨和任务.htm> (last visited Jun. 10, 2012).

⁵² *Summary of Beijing University's Consumer Protection and Legal Support Working Station on March 15*, <http://laa.lawpku.org/xhlc/315gzzj.htm> (last visited Jun. 10, 2012); see also *Discussion on Protection of Employee Interests of Female Workers*, <http://laa.lawpku.org/xhlc/qhsh.htm> (last visited Jun. 10, 2012).

⁵³ See, e.g., *American Bar Association — China Programs*, http://www.americanbar.org/advocacy/rule_of_law/where_we_work/asia/china/programs.html (last visited Jun. 10, 2012).

⁵⁴ See *id.*

⁵⁵ See *id.*

⁵⁶ *Lawyers in China Struggle to Define Pro Bono*, *supra* n.49.

⁵⁷ *Id.*

⁵⁸ CHINA BUSINESS LAW HANDBOOK, USA International Business Publication 68 (2007).

⁵⁹ THE LAW SOCIETY OF ENGLAND AND WALES, *How to Practice in China*, available at <http://www.international.lawsociety.org.uk/ip/asia/586/practise>.

⁶⁰ See generally PILnet: THE GLOBAL NETWORK FOR PUBLIC INTEREST LAW, <http://www.pilnet.org/> (last visited Jul. 2, 2012).

developed a clearinghouse that matches *pro bono* opportunities with law firms.⁶¹ In 2009, over 1200 hours of legal services were rendered in China through the PILnet, a modest amount compared to the PILnet's clearinghouses in other countries.⁶² Nonetheless, the PILnet's Beijing clearinghouse has experienced a growth in its *pro bono* work in China, and this is a good indication of the potential growth in *pro bono* work in the future.⁶³ In addition, although the Chinese government has been cautious in permitting international and foreign NGOs to enter the country,⁶⁴ many international NGOs, such as Greenpeace and the Red Cross, have successfully opened branches in China.⁶⁵

Moreover, foreign lawyers and law firms can still be valuable resources for *pro bono* services notwithstanding the limits placed on their law practice in China. Although PRC law prohibits foreign lawyers from representing organizations directly, a foreign law firm may partner with local counsel to advise NGOs on legal issues they might face that have a foreign or an international dimension, such as multinational contracts and intellectual property issues. Foreign firms may also advise NGOs in countries where they are allowed to practice or before an international tribunal. Finally, foreign firms are valuable resources to Chinese law students who are interested in foreign and international practice.

III. CONCLUSION

China presents a difficult environment for the provision of *pro bono* legal services.

Successful *pro bono* work in China requires resourcefulness. By carefully navigating through the various restrictions imposed by the PRC government, lawyers may be able to find *pro bono* opportunities in China. Indeed, a number of organizations and programs have already been established either to provide, or to facilitate the provision of, legal assistance services in China. In view of the rapidly changing PRC legal landscape, lawyers may have more opportunities rendering *pro bono* services to those in need in the future and there is hope that the environment should improve in this regard.

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Pro Bono Practices and Opportunities in the People's Republic of China

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⁶¹ *Public Interest Law Initiative — 2010 Pro Bono Report*, available at http://www.pilnet.org/component/docman/doc_download/2-2010-pilnet-pro-bono-report.html.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ See generally, Deyong Yin, *China's Attitude Toward Foreign NGOs*, 8 WASH. U. GLOBAL STUD. L. REV. 521 (2009).

⁶⁵ See *Greenpeace East Asia — Contact Us*, <http://www.greenpeace.org/eastasia/about/contact/> (last visited Jun. 12, 2012); *Red Cross Society of China*, <http://www.redcross.org.cn/ywzd/> (last visited Jun. 12, 2012).

PRO BONO PRACTICES AND OPPORTUNITIES IN COLOMBIA¹

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* services, this is changing significantly. This change comes as a result of both the concerted efforts of a younger generation of attorneys and an 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 only to increase in the coming years. This section provides a brief overview of the Colombian legal system, reviews different avenues of free legal aid available to persons without means and introduces a number of organizations currently providing *pro bono* services in Colombia.

I. LEGAL SERVICES AND LEGAL PROFESSION IN COLOMBIA

A. The Legal Profession

The current Colombian Constitution was enacted in 1991, replacing the Constitution of 1866.² The Constitution 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 equal supreme judicial branches. 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, adjudicating actions that seek to uphold fundamental rights or attack unconstitutional laws and regulations.

There are direct and indirect methods for disputing the constitutionality of the laws, which can either be a post or a previous control. Direct mechanisms are divided into three different actions: (i) public action of unconstitutionality (*Acción pública de inconstitucionalidad*), a faculty given to all Colombians to question the validity of certain acts, such as acts amending the Constitution and decree laws; (ii) public action of annulment (*Acción Pública de nulidad*), which can be brought by any Colombian Citizen contesting administrative acts, and (iii) action of guardianship (*Acción de Tutela*), which any person may claim to protect his or her fundamental rights enshrined in the Constitution. Similarly, indirect mechanisms are divided into three different actions as well: (i) previous control of project laws objected by the President (*Control Previo de Proyectos de Ley Objetados por el Presidente*); (ii) previous control of statutory project laws (*Control Previo de Proyecto de Ley Estatutaria*); and (iii) previous control of treaties and laws approving such treaties (*Control Previo de Tratados y Leyes Aprobatorias*).

The Constitution includes a number of rights for indigent and underprivileged citizens to access the justice system. The 1991 Constitution institutionalized the *Acción de Tutela*, an efficient mechanism for the rapid and effective protection of fundamental rights of citizens that are being seriously threatened by an act of the State or by an individual. This is the basis from which the *pro bono* culture has evolved with regard to lawyers and large law firms. As a result, actions before the Constitutional Court have become an important way to safeguard the legal, social and human rights of the Colombian population.

To practice law in Colombia, an attorney must be registered with the *Consejo Superior de la Judicatura*.³ 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 (i) their degree is evaluated and determined by the authorities to be the equivalent of a Colombian degree, and (ii) 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 other jurisdictions, such as the United States, are unlikely to be so regarded. This difference is a result of the differences between civil law, practiced in Latin American countries, and common law, practiced in the United States. As such, attorneys trained in the

¹ This chapter was drafted with the support of Gómez Pinzón Zuleta Abogados.

² Andrade and de Castro, 956 T.M., BUSINESS OPERATIONS IN COLOMBIA, A-2.

³ MARTINDALE-HUBBELL LAW DIGEST 2007, COL-11.

United States generally must associate themselves with a licensed Colombian attorney if they desire to provide legal services in Colombia.

B. Legal Aid

All criminal defendants in Colombia are entitled to the assistance of counsel. Indigent criminal defendants have the constitutional right to be represented by counsel free of charge.⁴ Such assistance is provided by the *Defensoría del Pueblo*, an entity created by the Constitution of 1991 and charged with providing free services to 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 some other reason, to obtain competent legal representation.⁵

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.⁶ These *defensores de oficio*, as they are known, 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.⁷ Although *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.⁸ Disciplinary sanctions include censure, fines, suspension and expulsion from the profession.⁹

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 only in certain types of criminal cases.¹⁰ 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 binding mediations.

II. PRO BONO IN COLOMBIA: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. Pro Bono Opportunities

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 recent years, in part because a new generation of attorneys, active in providing direct services in the *consultorios jurídicos* during their legal education, 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 the Declaration, thereby committing themselves to provide an average of at least twenty *pro bono* hours annually per practicing attorney.

It should be noted that the bulk of *pro bono* services currently provided by Colombian law firms are corporate services to nonprofit entities. For various reasons, including security concerns, many law

⁴ CONSTITUCIÓN POLÍTICA DE COLOMBIA, art. 29; Ley 1123 de 2007, lib. II, tit. I, cap. I, § art. 21; <http://www.defensoria.org.co/? es=0& s=ojc& palabra=Constitución& a=0& b=1756>

⁵ Ley 941 de 2005, art. 43.

⁶ Constitutional Court Decision C-075 of 1995 (“CONST. COLOMBIA”) (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.)

⁷ Ley 1123 de 2007, lib. II, tit. I, cap. I § 21 (the national disciplinary code of attorneys).

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

⁹ *Id.* at lib. II, tit. II, cap. I art. 40.

¹⁰ Ley 941 de 2005, art. 17; Constitutional Court Decision C-075 of 1995.

firms and attorneys do not currently provide direct representation in controversies concerning political matters or human rights. However, this situation has been changing in recent years as firms have committed to representing individuals in defense of human rights. Today many Colombian law firms, including Gómez Pinzón Zuleta, advance the construction of a joint initiative with the Vance Center and the Pro Bono Colombia and Chile Foundation to advance representation in cases before the Inter-American Court of Human Rights as well as certain commissions of the United Nations.

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.¹¹

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.

B. Barriers To *Pro Bono* Work And Other Considerations

There are two main barriers to pro bono work in Colombia, which are: (i) there is no clear criteria for determining whether particular services qualify as “*pro bono*,” and (ii) large law firms are still in the process of recognizing the benefit and utility of providing *pro bono* services, and as such, there does not yet exist a strong infrastructure within law firms to support providing *pro bono* services. Some other barriers that sometimes impede the provision of *pro bono* services in Colombia and other Latin American countries are language barriers, time constraints, excessive regulation and control, lack of financial resources, and lack of suitable opportunities. When a law firm does render *pro bono* services, the Colombian legislation does not require them to pay any VAT or minimum tariffs for such services.

C. *Pro Bono* Resources

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 de Los Andes¹² has a number of these groups including the *grupo de derecho publico* (“**G-DIP**”), run by Professor Daniel Bonilla, and PAIIS (*Progama de Acción por la Igualdad y la Inclusión Social*), which focuses on disability rights. *Universidad del Rosario* also has a similar group: *Grupo de Acciones Públicas*,¹³ as does *Universidad Sergio Arboleda*.

Fundación Pro Bono Colombia is a *pro bono* clearinghouse.¹⁴ Officially launched in 2008, its members include over twenty law firms. The foundation runs legal seminars for the underprivileged and researches human rights issues. It also offers legal training in human rights issues, family law and administrative law for attorneys from law firms providing *pro bono* services.

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 nonprofit groups dedicated to humanitarian causes, in particular in the areas of health, education, environment, disability and children’s law. 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 now also provide representation in controversies concerning public interest.

¹¹ <http://www.nycbar.org/media-aamp-publications/press-releases/press-archives-2012/1438-vance-center-and-city-bar-file-amicus-brief-on-freedom-of-information-in-chile>

¹² <http://www.uniandes.edu.co/>.

¹³ <http://www.urosario.edu.co/guia-ur/escuelas-y-facultades/Facultad-de-Jurisprudencia/ur/GAP>.

¹⁴ <http://probono.org.co>.

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.¹⁵ *Compartamos con Colombia* provides subsidized institutional support to (i) nonprofit organizations, (ii) projects that seek to efficiently channel resources or projects that promote social entrepreneurship, and (iii) 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 nonprofit organizations operating in the areas of sustainable development, children's rights, education, health and microfinance, among others.¹⁶

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 representation in high-impact litigation aimed at preserving and safeguarding human rights.¹⁷ It represents clients in cases both before the Constitutional Court (and other Colombian bodies) and before the Inter-American Commission on Human Rights ("CIDH").

III. CONCLUSION

Recent years have seen great strides in the field of *pro bono* legal services in Colombia. A *pro bono* clearinghouse was founded and 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. However, such safeguards 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, and family law and children's rights, among others.¹⁸ Nonetheless, there is still much reason for optimism given the recent trajectory of *pro bono* services in Colombia

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¹⁵ <http://www.compartamos.org>.

¹⁶ <http://www.compartamos.org/en/convocatoria>.

¹⁷ <http://www.coljuristas.org>.

¹⁸ Paula Samper Salazar, *Pro Bono en Colombia*: <http://www.trust.org/trustlaw/country-profiles/pro-bono.dot?id=dc0c1e66-f4b1-4ca9-addf-edd49d4287a6>.

PRO BONO PRACTICES AND OPPORTUNITIES IN THE CZECH REPUBLIC¹

The return of democracy to the Czech Republic has brought with it a variety of legislation governing legal aid. The legal regulation of the procedures for granting legal aid has not been unified in a comprehensive legal aid act; however, the Draft Law on Free Legal Aid has been presented to the government and is currently being discussed among both experts and the public. The number of requests for granting legal aid is increasing and public knowledge of the possibility of free legal aid has widened. Indeed, 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 the European Union (the “EU”) and other international obligations, legal aid reform efforts have made headway. Improvements have been made towards streamlining and standardizing the processes through which parties may request legal aid from the courts and the bar association. Additionally, several NGOs have become firmly established in the country, providing free legal assistance, particularly in the areas of asylum and immigration. However, the Czech Republic lacks an entrenched *pro bono* culture. While attorneys may undertake an occasional *pro bono* case, such activities are not widely systematized.

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.² The Czech Republic joined NATO in 1999 and the EU in May 2004, developments which have brought new international influences and obligations to the legal structure.³

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 85 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.⁴

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 as of January 1, 2012, there are 9,679 registered practicing attorneys.⁵ The Czech legal profession is regulated by the Law on the Legal Profession, passed in 1996.⁶ 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.⁷

Foreign lawyers may become members of the Bar 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 European attorneys. Guest attorneys need not register with the Bar but may only provide legal services temporarily.⁸

B. Legal Aid

There are several Czech charters and codes that have a 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. There are certain criteria stipulated in the relevant codes that must be met before free legal aid may be granted; however, in addition to checking whether these criteria apply in

¹ This chapter was drafted with the support and assistance of Kinstellar.

² ÚSTAVNÍ ZÁKON ČESKÉ REPUBLIKY (CONSTITUTION OF THE CZECH REPUBLIC) (“Czech Const.”).

³ See, e.g., MARTINDALE-HUBBELL LAW DIGEST, CZECH REPUBLIC LAW DIGEST 1 (LexisNexis Martindale-Hubbell 2007).

⁴ *Id.* at 7. See also zákon č. 6/2002 or Michal Bobek, *An Introduction to the Czech Legal System and Legal Resources Online*, (Aug. 2006), available at http://www.nyulawglobal.org/globalex/czech_republic.htm.

⁵ According to the Czech Bar Association, see <http://www.cak.cz/scripts/detail.php?id=158>.

⁶ Zákon č. 85/1996 Sb. (Law No. 85/1996 Coll., Law on the Legal Profession, also known as the Advocacy Act, as amended); Czech version available at <http://portal.gov.cz/app/zakon/zakonPar.jsp?idBiblio=44102&nr=85~2F1996&rpp=15#local-content>.

⁷ CZECH REPUBLIC LAW DIGEST, *supra* n.3 at 15-16.

⁸ *Id.*

each case, the courts consider on an individual basis the actual need for free legal aid. 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.⁹

Attempts to adopt a comprehensive legal aid law have not yet been successful, although the concept of the granting legal aid in the form of the Draft Law on Free Legal Aid has been discussed several times at the governmental level. The Draft Law on Free Legal Aid 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 the courts in determining the financial status of a party requesting legal aid. However, the only section of the Draft Law on Free Legal Aid submitted to and finally approved by Parliament was the narrow section pertaining to cross-border disputes.¹⁰ 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.¹¹

The Pro Bono Alliance, an organization which develops *pro bono* activities in the Czech Republic, was a member of a working group within the Ministry of Justice developing the text of the Draft Law on Free Legal Aid. The Pro Bono Alliance also ensured the consultation and participation of civil society during the drafting process. Due to a change of government and the economic crisis, the rest of the Draft Law on Free Legal Aid has not been presented to Parliament yet; however, work on the Draft Law on Free Legal Aid still continues and the Pro Bono Alliance continues to lobby for its adoption.¹² Some progress in the Draft Law on Free Legal Aid has been seen. While the legislative process had to start again after The Draft Law on Free Legal Aid was originally presented to Parliament in 2003, it has recently been discussed with the Czech Legislative Council.¹³

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.¹⁴ The Charter also guarantees the right to free court-appointed counsel in criminal proceedings.¹⁵ 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 [the] protection of [his] interests.”¹⁶

The Law on the Legal Profession further stipulates that a disadvantaged party may apply “to have his lawyer appointed by the Bar.”¹⁷ The Czech Bar Association, if it feels the case is warranted, may appoint an attorney to work for free or at a reduced rate. 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.¹⁸ The individual must also provide proof that at least two

⁹ See Veronika Kristková and the Public Interest Law Institute (“PIL”), *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) (*hereinafter referred to as*: “Kristková and PIL”).

¹⁰ 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).

¹¹ See, e.g., zákon č. 629/2004 Sb.; or 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://ec.europa.eu/justice/doc_centre/rights/charter/docs/network_commentary_final%20_180706.pdf.

¹² See: <http://www.probonoalliance.cz/en/access-to-legal-help/law-on-legal-aid-scheme>.

¹³ See: <http://www.miroslavantl.cz/aktuality/777-konference-qsystem-pravni-pomoci-v-r-obti-trestnych-in-mediace-a-legislativaq>; <http://www.ceskatelevize.cz/ct24/domaci/179920-zakon-o-bezplatne-pravni-pomoci-brzdi-spor-kdo-ji-ma-poskytovat/> for more information.

¹⁴ Charter on Fundamental Rights and Freedoms art. 37(2), http://www.concourt.cz/view/czech_charter; Czech version available at .

¹⁵ Charter on Fundamental Rights and Freedoms art. 40(3).

¹⁶ Zákon č. 99/1963 Sb. (Law No. 99/1963 Coll., Civil Procedure Code) §§30, 138, available at <http://www.trust.org/trustlaw/country-profiles/pro-bono.dot?id=707f5511-3046-46e8-859d-a5bf0c4b6e85>. 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.”

¹⁷ Zákon č. 85/1996 Sb. §18(2).

¹⁸ *Id.*

lawyers have also refused to provide legal services.¹⁹ 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.”²⁰ Public awareness of the opportunity to apply to the Bar for legal aid is low, and the Bar Association does not advertise it widely.²¹

Other legal aid provisions may also be found in the Criminal Procedure Code,²² the Administrative Procedure Code²³ and the Law on the Constitutional Court.²⁴ Of particular interest are the 2004 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 prove a lack of financial means.²⁵ 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.²⁶

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.²⁷ 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. The amendment allows the court, upon granting legal aid, to immediately appoint an attorney for the defendant at his or her request.²⁸

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.

II. *PRO BONO* OPPORTUNITIES IN THE CZECH REPUBLIC AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

Section 18 of the Law on Advocacy stipulates that the Czech Bar Association appoints attorneys for free legal aid purposes.²⁹ The Ministry of Justice and the Czech Bar Association have not kept track of decisions to grant legal aid in the past, nor have they had an obligation to. The Czech Bar Association

¹⁹ See 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 9.

²⁰ Zákon č. 85/1996 Sb. §§18(2), 19. The amendments also dictate that only one attorney may be assigned to each case.

²¹ See Kristková and PILI. 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 http://www.cak.cz/pages/index_en.html.

²² Zákon č. 141/1961 Sb. (Law No. 141/1961 Coll., Criminal Procedure Code).

²³ 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.”

²⁴ 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.

²⁵ Zákon č. 150/2002 Sb. §35 **Error! Hyperlink reference not valid.**, *Czech version of zákon č. 150/2002 Sb.*, available at <http://portal.gov.cz/app/zakony/zakonPar.jsp?idBiblio=53360&nr=150~2F2002&rpp=15#local-content>.

²⁶ 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 Karabec, Diblicová, and Zeman, NATIONAL CRIMINAL JUSTICE PROFILES: CZECH REPUBLIC, 43-44 (2002), available at <http://www.heuni.fi/uploads/gok8etje.pdf>.

²⁷ Zákon č. 283/2004 Sb. (Law No. 283/2004 Coll., Amendment of the Criminal Procedure Code).

²⁸ Zákon č. 539/2004 Sb. (Law No. 539/2004 Coll., Amendment of the Criminal Procedure Code); *Czech version available at* <http://portal.gov.cz/app/zakony/zakonPar.jsp?idBiblio=30139&nr=141~2F1961&rpp=15#local-content>.

²⁹ See: <http://portal.gov.cz/app/zakony/zakonPar.jsp?page=2&idBiblio=44102&recShow=38&fulltext=&nr=85~2F1996&part=&name=&rpp=15#parCnt>.

has, however, decided to publish information about legal aid on its website going forward. However, at the time of writing, information on legal aid will not be available until autumn 2012. 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.³⁰

Nevertheless, several Czech NGOs that provide free legal services have become established over the last twenty years. Most of these NGOs limit their legal assistance to counseling, without providing actual legal representation. The exceptions are asylum and immigration cases, which NGO lawyers have brought into administrative courts. The 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.”³¹ The funding for such legal aid may be provided by the Ministry of Interior.³² Prominent NGOs include the Organization for Aid to Refugees, the Counselling Center for Refugees and the Society of Citizens Assisting Migrants.³³ The Organization for Aid to Refugees runs legal clinics for asylum seekers, including one affiliated with the Charles University Law School.³⁴ It has also partnered with large international law firms on various *pro bono* projects.³⁵

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.³⁶ 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. Organizations like League of Human Rights focus on aspects of citizens’ rights, such as health care, education, and international human rights.³⁷ In the past many of these NGOs have also worked heavily on issues of discrimination, particularly against Czech Roma.³⁸ Finally, international law firms interested in engaging in *pro bono* work in the Czech Republic should contact the Pro Bono Alliance (formerly the Public Interest Lawyers Association (“PILA”)), which assists law firms in establishing *pro bono* programs.³⁹

More recently, the Pro Bono Centrum, a project of the Pro Bono Alliance, has been created to support the development of *pro bono* legal services. Through this organization, *pro bono* legal aid is provided to clients of NGOs and not-for-profit organizations. So far, the Pro Bono Centrum has established cooperation with more than 30 attorneys and law firms and over 60 not-for-profit organizations, and has met more than 100 requests for *pro bono* legal services from non-for-profit organizations and their clients.⁴⁰

B. Barriers To *Pro Bono* Work And Other Considerations

The Act on the Legal Profession distinguishes among “Czech attorneys,” “Visiting European attorneys,” “settled European attorneys” and “foreign attorneys.”⁴¹ While lawyers in the first three

³⁰ See Kristková and PILI.

³¹ Zákon č. 325/1999 Sb. §21(1) (Law No. 325/1999 Coll., Asylum Act), *Czech version available at* <http://portal.gov.cz/app/zakony/zakonPar.jsp?idBiblio=48224&nr=325~2F1999&rpp=15#local-content>.

³² *Id.*

³³ See ORGANIZATION FOR AID TO REFUGEES, <http://www.opu.cz/en/>; COUNSELLING CENTER FOR REFUGEES, <http://www.migrace.com/en/mission/assistance>; SOCIETY OF CITIZENS ASSISTING MIGRANTS, <http://www.soze.cz/>.

³⁴ See ORGANIZATION FOR AID TO REFUGEES; *Refugee Law Clinic Resources: Prague*, **Error! Hyperlink reference not valid.** <http://www.opu.cz/>

³⁵ *Id.*

³⁶ See COUNSELLING CENTER OF CITIZENSHIP, CIVIL AND HUMAN RIGHTS, http://poradna-prava.cz/poradna/documents_comments_convention.htm; Open Fund Society. **Error! Hyperlink reference not valid.**

³⁷ See LEAGUE OF HUMAN RIGHTS, http://ec.europa.eu/justice_home/daphnetoolkit/html/organisations/dpt_org_cz_54193_en.html; see also, e.g., CZECH HELSINKI COMMITTEE, <http://www.helcom.cz/en/>. The League of Human Rights has partnered with international law firms before, see interview with Kristková.

³⁸ See, e.g., LEAGUE OF HUMAN RIGHTS; MULTICULTURAL CENTER PRAGUE, <http://www.mkc.cz/en/home.html>.

³⁹ See PRO BONO ALLIANCE, <http://www.probonoalliance.cz/>.

⁴⁰ See: <http://www.probonoalliance.cz/en/access-to-legal-help/pro-bono>.

⁴¹ Zákon č. 85/1996 Sb.

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 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.⁴² 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, recent 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**, <http://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/en/> (Czech Helsinki Committee) Provides legal counseling and legal representation.
- **Iuridicum Remedium**, <http://www.iure.org> Provides legal services, including legal representation, to the socially disadvantaged.
- **Liga lidských práv**, <http://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**, <http://www.eps.cz> Provides legal aid in environmental cases, employment discrimination, and consumer protection.
- **IQ Roma Servis**, <http://iqrz.cz/> Provides legal aid to socially disadvantaged, mainly Roma clients.
- **Organizace pro pomoc uprchlíkům**, <http://www.opu.cz> Provides legal services to refugees/asylum applicants.
- **Pro bono Aliance**, <http://www.probonoaliance.cz/cz/> Assists international law firms in implementing *pro bono* programs in the Czech Republic.
- **Poradna pro uprchlíky**, <http://www.forcedmigration.org/organisations/poradna-pro-uprchliky-ppu-counselling-centre-for> Provides legal services to refugees/asylum applicants.
- **Poradna pro občanství, občanská a lidská práva**, <http://www.poradna-prava.cz> Provides legal services to the victims of discrimination.

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. <http://www.elsa.cz/page/3323/first-legal-aid.htm>

⁴² See *id.*

- **Refugee Legal Clinic - Faculty of Law, Charles University Prague (in cooperation with Organization for Aid to Refugees)** The clinic's aim is to provide both theoretical and practical training to students interested in the field of refugee law. http://ppp.prf.cuni.cz/viewpage.php?page_id=11
- **Refugee Law Clinic - Faculty of Law, Palackeho University in Olomouc** Law students provide free legal aid to disadvantaged clients, under supervision of the faculty. <http://www.pf.upol.cz/menu/struktura-pf/centra/centrum-pro-klinicke-pravni-vzdelavani/pravni-klinika-uprchlickeho-a-cizineckeho-prava/>
- **Refugee Clinic - Faculty of Law, Masaryk University Brno** Under its "Refugee Clinic" program, the Faculty of Law of the Masaryk University Brno cooperates with NGOs. Students attend asylum facilities and participate in the provision of legal advice to refugees. <http://is.muni.cz/predmety/?exppar=a&hledv=naz&hledv=kod&hledret=pr%C3%A1vn%C3%AD+klinika&fak=1422>

July 2012

Pro Bono Practices and Opportunities in the Czech Republic

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PRO BONO PRACTICES AND OPPORTUNITIES IN DENMARK¹

There are not, as in many European Union states, any civil codes in Denmark. Rather, civil law rules, including those with respect to legal aid, 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. Pro bono opportunities exist for individuals and law firms to participate in the legal aid institutions described below (which are dependent on volunteer lawyers), and increasingly, to partner with various national and international NGOs. However, there are also certain barriers to *pro bono* work, as discussed herein.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN DENMARK

A. The Legal Profession

There are approximately 5,300 lawyers registered with the Danish Bar and Law Society (*Advokatsamfundet*).² Lawyers in Denmark may practice either as solo practitioners, in-house lawyers or in groupings of lawyers, usually in established law firms. In order to become a lawyer in Denmark, you must fulfill the educational requirements (a Danish Bachelor's and Master's degree in Law), complete the practical requirements (three years of practical legal work experience), and pass the state-sponsored exam.³ After meeting these requirements and submitting to a hearing with the Danish Bar and Law Society, an individual may then apply to the Minister of Justice for admission to practice law and gain the title "*advokat*."⁴

Only *advokats* are able to practice law in the Danish courts. The court system in Denmark has three basic levels: the district courts, the high courts and the Supreme Court (the court of last instance).⁵ In most instances the Danish legal system provides for a two-tiered justice system, whereby the ruling of one court may be appealed to a higher court.⁶ Most often a case will be brought first in one of the country's 24 district courts and then, if appealed, to one of the two regional high courts.⁷ In special instances, and if the Appeals Permission Board so decides, a case from the high court may be appealed to the Supreme Court, thus providing a third tier of justice in limited instances.⁸ The Supreme Court also hears appeals from Denmark's specialized court, the Maritime and Commercial Court.⁹ There are approximately 380 judges within the Danish courts.¹⁰

The Danish Bar and Law Society (the "**Danish Bar**"), an organization fully independent from the state, was established in 1919 to "supervise that lawyers adhere to the legal and ethical rules regulating the legal profession."¹¹ To this end, the Danish Bar adopted a Professional Code of Conduct (*Advokatetiske regler*), which applies to all lawyers and which largely mirrors the provisions of the Code of Conduct for Lawyers in the European Union provided by the Council of Bars and Law

¹ This chapter was drafted with the support of Malene Frost Larsen (of Bech-Bruun).

² DANISH BAR AND LAW SOCIETY, *The Danish Bar and Law Society*, Sec. 1 (Feb. 2009), <http://www.advokatsamfundet.dk/Service/English/Organisation/Presentation>, (hereinafter "Danish Bar and Law Society").

³ DANISH BAR AND LAW SOCIETY, *Rules of the Danish Bar and Law Society* (Translating Relevant Sections of the Administration of Justice Act), Sec. 119 (Jan. 1, 2008), <http://www.advokatsamfundet.dk/Service/English/Rules/Byelaws.aspx> (hereinafter "Danish Bar Rules").

⁴ DANISH BAR AND LAW SOCIETY, Sec. 5.

⁵ THE DANISH COURT ADMINISTRATION, *A Closer Look at the Courts of Denmark 5-6*, Version 1.0 (Jul. 2, 2010), <http://www.domstol.dk/om/publikationer/HtmlPublikationer/Profil/A%20Closer%20Look%20at%20the%20Courts%20of%20Denmark/978-87-92551-14-6.pdf>.

⁶ *See id.*

⁷ *See id.*

⁸ *See id.*

⁹ *See id.* There are two specialized courts in Denmark, the Maritime and Commercial Court and the Land Registration Court. Only cases from the Maritime and Commercial Court may be appealed to the Supreme Court. The Maritime and Commercial Court hears international commercial cases and bankruptcy cases. The Land Registration Court hears matters relating to the registration of real estate. In addition to Denmark's two specialized courts, there also exist the Court of the Faroe Islands (rulings of which may be appealed to a high court) and the Courts of Greenland (appeals from which may be brought before the Supreme Court with the permission of the Appeals Permission Board).

¹⁰ *See id.*

¹¹ DANISH BAR AND LAW SOCIETY, Sec. 1.

Societies of the European Union (the “CCBE”).¹² The General Council of the Bar supervises compliance with the Code of Conduct, and a 21-person Disciplinary Board (*Advokatnævnet*) hears complaints about attorneys pursuant to the provisions of the Administration of Justice Act.¹³ The Disciplinary Board is chaired by a Supreme Court judge and the members are representatives of the public and the legal profession.¹⁴ The chairman and the vice-chairmen are appointed by the president of the Supreme Court.¹⁵

Under the Danish Bar’s Code of Conduct, attorneys must 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.¹⁶ Furthermore, 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.¹⁷ 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.¹⁸ Accordingly, payments for legal services rendered on a contingency (i.e., “no win no fee”) basis are not permitted.

B. Legal Aid

In Denmark there are a number of different circumstances where a person will be entitled to some form of legal aid, including: (i) free in-court legal aid provided by the state, (ii) public legal aid in the form of advice and limited administrative services and (iii) assistance in redressing disputes against public authorities.

1. Free Legal Aid

In certain circumstances an individual may be eligible for state-sponsored legal aid for in-court proceedings (*fri process*).¹⁹ Legal aid for in-court proceedings covers court costs, an appointed attorney, costs of expert opinions and witnesses (if appropriate), and exemption from paying the legal fees of the opponent if the case is lost.²⁰ This type of legal aid is available most often in matrimonial or custody cases, as well as in cases where the person seeking aid is a tenant, an employee or the injured party.²¹ 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. Before granting aid for in-court proceedings, it must be established that you have good reason to pursue the case and a good chance of succeeding. This decision is made by the Civil Law Agency (*Civilstyrelsen*) under the Ministry of Justice and, if denied, may be appealed to the Board of Appeal Permission (*Procesbevillingsnævnet*), whose decision is final.²² Free legal aid for appellate proceedings is granted by the appeal court, whose decision can be appealed to the Supreme Court, if permitted by the Appeals Permission Board. 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 Appeals Permission Board as the competent instance of recourse.

To be eligible for free legal aid in court proceedings, a party must have an annual gross income that is below a certain limit (DKK 289,000 for unmarried individuals, DKK 357,000 for

¹² See DANISH BAR AND LAW SOCIETY, § 1 (Feb. 2009); *Code of Conduct for the Danish Bar and Law Society* (Oct. 1, 2011), <http://www.advokatsamfundet.dk/Service/English/Rules/Code%20of%20Conduct%20as%20of%201st%20October%202011.aspx>, (hereinafter “Code of Conduct”).

¹³ Code of Conduct, Sec. 1.2

¹⁴ Danish Bar Rules, Sec. 144.

¹⁵ *See id.*

¹⁶ Code of Conduct, Sec. 2.

¹⁷ Danish Bar Rules, Sec. 126(2).

¹⁸ Code of Conduct, Sec. 3.3.1.

¹⁹ DANISH BAR AND LAW SOCIETY, *Public Legal Aid* (2009), <http://www.advokatsamfundet.dk/Service/English/Organisation/Presentation.aspx>.

²⁰ *See id.*; *see also* DANISH BAR AND LAW SOCIETY, Sec. 4.4.

²¹ *See id.*

²² *See id.*; *See also* THE DANISH COURT ADMINISTRATION, *The Appeals Permission Board*, <http://www.domstol.dk/om/otherlanguages/english/thedanishjudicialsystem/appealspermissionboard/Pages/default.aspx> (last visited Jun. 15, 2012).

married couples, with an increase limited to DKK 50,000 per child under 18 years of age).²³ Furthermore, persons who hold private legal costs insurance are ineligible for legal aid.²⁴

2. Public Legal Aid

In addition to free legal aid for in court proceedings, a legal aid regime established under Section 323(1) of the Administration of Justice Act sets forth three different “steps” in the provision of legal aid. “Step 1” is made up of free legal advisory clinics (*Advokatvagten*), established by the Danish Legal Aid Society, which are open to all people and are not subject to any income limitations.²⁵ In these clinics, volunteer lawyers make themselves available to offer free, anonymous legal advice on everyday legal issues.²⁶ Denmark has 88 of these legal aid bureaus.²⁷ While the clinics have been successful and are used by many, they have faced challenges in maintaining enough volunteer lawyers to sustain the system.²⁸

“Steps 2 and 3” in the legal aid regime involve access to oral legal consultation, counseling in regard to negotiation of disputes, and assistance with basic written communications. These services are available at a nominal fee, with the government subsidizing the remainder of this cost.²⁹ For example, in 2008 Level 2 assistance would require an individual to pay a fee of DKK 210 (VAT included) and the government would then pay a subsidy of DKK 672. These private legal aid institutions (*Retshjaelpen*) can be found in Denmark’s larger towns and most of these institutions will require a person to meet the same financial eligibility requirements as applicants for full legal representation (see above).³⁰ Many legal aid clinics 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, however most of the legal advisory clinics (*Advokatvagten*), offer advice on such matters free of charge and without regard to income.

Additionally, under Steps 2 and 3, a lawyer may provide free legal aid directly. A number of lawyers are affiliated with each court and are appointed in cases where free legal aid has been granted.³¹ A recipient of free legal aid can request the appointment of a specific lawyer to the case.³² As a result of 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 *advokat* training commitments.

3. Danish Ombudsman

If a Danish citizen seeks redress against acts of public authorities, they may be entitled to legal support through the Danish Ombudsman (*Folketingets Ombudsmand*). The Danish Ombudsman can initiate actions based on complaints about decisions of authorities or the treatment of citizens in specific cases. 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.

II. **PRO BONO IN DENMARK: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. **Pro Bono Opportunities**

The provision of *pro bono* legal services in Denmark is not as established or widespread as in the United States and the United Kingdom.

²³ COPENHAGEN LEGAL AID, *Who Can We Help*, <http://www.retshjaelpen.dk/eng/who-can-we-help> (last visited Jun. 15, 2012).

²⁴ DANISH BAR AND LAW SOCIETY, *Public Legal Aid* (2009), <http://www.advokatsamfundet.dk/Service/English/Organisation/Presentation.aspx>.

²⁵ *See id.*

²⁶ *See id.*

²⁷ *See id.*

²⁸ *See id.*

²⁹ THE DANISH COURT ADMINISTRATION, *Free Legal Aid* (Jun. 18, 2008) <http://www.domstol.dk/KobenhavnsByret/The%20City%20Court%20of%20Copenhagen/Pages/Freelegalaid.aspx>, (hereinafter “Danish Court Administration, *Free Legal Aid*”).

³⁰ DANISH COURT ADMINISTRATION, *Free Legal Aid*.

³¹ DANISH COURT ADMINISTRATION, *Free Legal Aid*.

³² *See id.*

Both *Advokatvagten* and *Retshjaelpen* legal aid institutions described above depend on volunteer lawyers to subsist. These institutions can be found throughout Denmark and *pro bono* opportunities at these institutions exist both for individuals and law firms. By way of example, Copenhagen Legal Aid received 15,000 inquiries from clients in 2010 and sent two to three cases per week to law firms that cooperated with legal aid. In addition, individual lawyers and law students provide more than 40 volunteer hours per day.³³

The majority of *pro bono* work is provided through these legal aid clinics. There has, however, been a decrease in the number of such cases in recent years and an increase in *pro bono* work for NGOs and similar organizations, as is more common in the United States and the United Kingdom. This trend is particularly noticeable in the case of attorneys at large firms in larger cities. The Association of Danish Law Firms has been moving this trend forward by encouraging Danish law firms to join the United Nations Global Compact (“UNGC”).³⁴ While the UNGC does not directly advise its members to undertake *pro bono* work, it does encourage them to undertake partnerships with other stakeholders in order to advance UN goals.³⁵ To this end, many law firms have undertaken partnerships with NGOs, both local and international, with the aim of strengthening their commitment to the ten principles underlying the UNGC.³⁶

In the Spring of 2010, the Minister of Justice established a 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 should recommend or require lawyers and primarily law firms to provide free legal services through the existing system of legal aid clinics³⁷ or whether 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 Section 323(1) of the Administration of Justice Act, pursuant to which all persons have the right to free legal aid.

B. Barriers To *Pro Bono* Work And Other Considerations

In addition to the barriers discussed above, another consideration that affects the need for *pro bono* services in Denmark is the fact that household insurance policies typically include coverage for certain legal expenses.³⁸ The majority of people in Denmark have such insurance policies, and therefore, within certain limits, many are covered for legal expenses relating to matters arising in one’s private life (business-related disputes are typically not covered).³⁹ Furthermore, trade unions will often take employment related cases to court for their members.⁴⁰ Thus, legal costs in Denmark are spread across various institutions, making the country’s legal aid institutions most useful as a first-stop resource for people contemplating legal action and for those who are most in need.

C. *Pro Bono* Resources

- List of *Advokatvagten* offices throughout Denmark:
<http://www.advokatsamfundet.dk/Default.aspx?ID=11780> (Danish)
- *Retshjaelpen* legal aid institutions in Denmark:

³³ COPENHAGEN LEGAL AID, *Statistics*, <http://www.retshjaelpen.dk/eng/statistics> (last visited Jun. 15, 2012).

³⁴ DANSKE ADVOKATER (The Association of Danish Law Firms), *Communications on Progress: Implementing UN Global Compact Principles in The Association of Danish Law Firms* 2010
[http://www.unglobalcompact.org/system/attachments/13471/original/COP - Danske Advokater.pdf?1324289661](http://www.unglobalcompact.org/system/attachments/13471/original/COP_-_Danske_Advokater.pdf?1324289661)

³⁵ UNITED NATIONS GLOBAL COMPACT, *The Inspirational Guide to Implementing the Global Compact* (Jul. 2007),
http://www.unglobalcompact.org/docs/news_events/8.1/Inspirational_Guide.pdf.

³⁶ BECH-BRUUN, *A Driving Force Behind Responsibility: Corporate Social Responsibility 2012*,
<http://www.bechbruun.com/resources/Corporate%20Responsibility/Maj%202012/En/index.html>.

³⁷ 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.”*)

³⁸ THE DANISH COURT ADMINISTRATION, *Free Legal Aid*.

³⁹ *See id.*

⁴⁰ *See id.*

- Copenhagen: <http://www.retshjaelpen.dk/eng/>
- Odense: <http://www.retshjaelpenivestergade.dk/> (Danish)
- Aarhus: <http://www.aarhusretshjaelp.dk/> (Danish)
- Esbjerg: [http://www.advokathuset-esbjerg.dk/a-22,Retshjaelp - hvad er det.html](http://www.advokathuset-esbjerg.dk/a-22,Retshjaelp-hvad-er-det.html) (Danish)

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; (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; and (iii) *pro bono* partnerships between Danish law firms and various national and international NGOs.

The future of legal aid in Denmark is being discussed at the level of the Danish Bar and Law Society. There are individuals 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. However, the outcome of this debate is uncertain.

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Pro Bono Practices and Opportunities in Denmark

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PRO BONO PRACTICES AND OPPORTUNITIES IN EGYPT¹

Egypt has a long and vibrant legal tradition, with a developed body of case law and judicial institutions that have served as a model for legal reforms in other Arab countries. Though the country does not have an established practice with respect to *pro bono* services, several groups are engaged in providing legal representation to indigent people, and large- to medium-sized Egyptian law firms are beginning to establish *pro bono* programs.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN EGYPT

A. The Legal Profession

There are between 420,000 and 620,000 lawyers in Egypt out of a population of 82 million, giving Egypt a lawyer per capita ratio of between 549 to 756 per 100,000 inhabitants which is significantly higher than most Western European nations.² The majority of lawyers work as solo practitioners or in small firms, although there are a handful of large law firms ranging between three dozen or more in Cairo, both domestic and foreign-affiliated, that assist predominantly Arab and foreign clients on inbound and outbound matters.³ Several Egyptian law firms have established *pro bono* practices that require their lawyers to dedicate a certain portion of their time to counseling or litigation support in partnership with nongovernmental organizations (“NGOs”) or legal assistance groups.

The legal profession is self-regulated by the Egyptian Bar Association (the “EBA”), one of the oldest legal associations in the Arab world that was formed in 1956, uniting three bar associations that previously represented lawyers with rights of audience before secular, religious and mixed courts, respectively. Under Article 56 of the 1971 Constitution, the EBA, along with other recognized trade unions and professional syndicates, is tasked with regulating its membership and defending the rights and liberties accorded to the profession by law.⁴ Membership in the EBA is compulsory for all lawyers. The Advocates Law of 1983 (the “Advocates Law”) provides a basis for establishing the duties of the legal profession centered on ideals such as duties of confidentiality, the duty to avoid conflicts of interest and requirements of ethics and integrity; however, it is vague and has not been properly implemented.⁵ Furthermore, there is no defined ethical code of conduct that covers, *inter alia*, conflicts of interest, handling of client funds and the fiduciary duties of lawyers.⁶ Investigation or prosecution of lawyers for misconduct is virtually unknown in Egypt.⁷

Egypt’s judiciary is bifurcated: on the one hand, there is an independent state judiciary and, on the other hand, there is a judiciary of military and emergency courts.⁸ Emergency rule has been in effect in Egypt since 1967, save for an 18-month hiatus ending in 1981. Emergency rule permits enlarged police powers, reduced or suspended constitutional rights and robust censorship.⁹

There are approximately 17,000 sitting judges, the vast majority of whom began work as public prosecutors.¹⁰ Egyptian law does not recognize a system of binding precedent and as is typical in certain civil law countries, litigation proceedings are lengthy and largely adjudicated based upon written submissions rather than oral pleadings. The state judiciary is composed of four branches: regular courts, constitutional courts, administrative courts and family courts with jurisdiction over matters of divorce and inheritance. The state judiciary is governed by the Constitution with the most senior judges

¹ The author gratefully acknowledges the support and assistance of Aly El Shalakany, Partner, Shalakany Law Office, Cairo. Dalia Abdel Ghany, Pro Bono Counsel; and Lamiaa Youssef, Of Counsel, Sharkawy & Sarhan, Cairo.

² IBA, Justice at a Crossroads: The Legal Profession and the Rule of Law in the New Egypt 37 Nov. (2011).

³ *Id.* at 34.

⁴ CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 1971, available at Egypt State Information Service, http://www.sis.gov.eg/En/LastPage.aspx?Category_ID=208. Accessed May 14, 2012.

⁵ IBA, *supra* n.2 at 33.

⁶ IBA, *supra* n.2 at 32.

⁷ *Id.*

⁸ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, *Mission to Egypt*, U.N. Doc. A/HRC/13/37/Add. 2 (Oct. 14, 2009).

⁹ Sadiq Reza, *Endless Emergency: the Case of Egypt*, 10 NEW CRIM. L. REV. 532 (2007).

¹⁰ IBA, *supra* n.2 at 19.

being named by the President, in consultation with senior judges.¹¹ Within the state judiciary, there are three levels of courts.¹² At the first level are the Summary Tribunals (*Mahakim Guz'iyā*) that hear and decide minor criminal charges, small claims in civil and commercial areas as well as labor and minor personal status issues. The second level consists of Summary Tribunals of First Instance (*Mahakim Kulliya*) that are divided into civil and commercial chambers and decide appeals from Summary Tribunals as well as civil and commercial cases in which the value of the claim exceeds 250 Egyptian pounds as well as significant personal status matters. The third level consists of several regional High Courts of Appeal (*Mahkamat al-Ist'naḥ*) that decide appeals from Summary Tribunals of First Instance and the Supreme Court, also called the Court of Cassation, which serves as the final appellate court of the nation.

The military and emergency judiciary consists of courts with mixed military and civilian judges appointed by the President and the Supreme Council of the Armed Forces. Military courts have jurisdiction over terrorist acts, acts committed by members of the security forces and all other acts committed at military facilities or involving military equipment. Emergency courts have jurisdiction over such crimes as sabotage, dissemination of false news and incitement to violence.

B. Legal Aid

The Advocates Law requires that each regional branch of the EBA form a legal assistance committee to coordinate the efforts of the membership and that lawyers provide *pro bono* legal aid to those who are unable to afford such representation. The Ministry of Justice also has limited programs of legal aid that are financed through government and donor funds, with a focus on representing parties in family law proceedings. However, in practice, legal services are rarely given for free by private practitioners. Egypt does have a passionate human rights bar with several NGOs and legal aid groups providing legal assistance. Several law firms offer transactional and counseling *pro bono* assistance. Sources agree that *pro bono* is nascent among commercial law firms, but it is a growing trend.

II. PRO BONO IN EGYPT: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. Pro Bono Opportunities

The culture of *pro bono* is not developed in Egypt. Private practitioners do not typically engage in free legal representation. Much of the *pro bono* assistance provided by law firms takes the form of transactional or consultative representation; litigation is largely the preserve of legal aid civil companies (a distinct legal form in Egypt) and certain NGOs. Opportunities for *pro bono* are available in the fields of refugee assistance (to non-Egyptian nationals who are claiming asylum in Egypt or seeking relocation to third countries) and training and capacity building to lawyers and nonlawyers (“legal awareness”) in diverse areas.

B. Barriers To Pro Bono Work And Other Considerations

The barriers to *pro bono* work include regulatory and licensing considerations as well as procedural impediments related to the current Egyptian framework that governs NGOs.

With respect to regulatory and licensing considerations, only Egyptian lawyers can advise on Egyptian law matters and only foreign lawyers who are established in Egypt may advise on international law or the law of their home jurisdiction in Egypt. In addition, due to the legal structure of many legal aid groups that provide advice with respect to litigation, financial donations are generally prohibited. Furthermore, in-kind donations (such as services, software, books, etc.) to legal aid groups by foreigners or foreign entities are generally prohibited absent a permit from the Egyptian authorities. In practice, such permits are rarely given. Many outside groups have provided assistance to such organizations through the form of a service agreement entered into between the two parties for consideration. With respect to NGOs, Egyptian NGO Law 84 of 2002 regulates the establishment and conduct of such organizations.¹³ NGOs must be registered with the Egyptian Ministry of Social

¹¹ Nabil Abdel Fattah, *The Political Role of the Egyptian Judiciary*, in JUDGES AND POLITICAL REFORM IN EGYPT 71 (Nathalie Bernard-Maugiron ed., 2008).

¹² Programme on Governance in the Arab Region, *Egypt: the Judiciary*.
<http://www.undp-pogar.org/countries/theme.aspx?cid=5&t=9>.

¹³ Program on Governance in the Arab Region, *Egypt: Law on Non-Governmental Organizations*.
<http://www.pogar.org/publications/other/laws/associations/law-nongov-egy-02-e.pdf>.

Solidarity. The NGO Law 84 Article 17 restricts NGOs from receiving cash or in-kind donations from foreigners, foreign entities and Egyptians resident abroad absent an authorization by the Ministry of Social Solidarity.¹⁴

C. *Pro Bono* Resources

Several organizations are involved in providing legal assistance or working in the field of legal awareness in Egypt. They include the Hisham Mubarak Law Center, the Center for Egyptian Women's Legal Assistance, the Egyptian Center for Economic and Social Rights, The Egyptian Association for Disseminating and Developing of Legal Awareness and the Cairo Institute for Human Rights Studies.

III. CONCLUSION

Egypt is a country undergoing a democratic transition and one with a growing commitment to *pro bono* by certain private practitioners. Though the country does not have an established practice with respect to *pro bono*/legal assistance services, several groups are engaged in providing legal representation to indigent people and large- to medium-sized Egyptian law firms are beginning to establish *pro bono* programs.

July 2012

Pro Bono Practices and Opportunities in Egypt

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¹⁴ *Id.*

PRO BONO PRACTICES AND OPPORTUNITIES IN ENGLAND & WALES

Pro bono legal services are of increasing importance for attorneys and law firms within England and Wales. Although such efforts are not yet as widespread or prevalent as in the United States, there has been a growing commitment by the legal profession to the importance of *pro bono* legal services, and various organizations and institutions within England and Wales continue to work to foster and develop *pro bono* legal activity. The estimated value of *pro bono* work provided by private practice attorneys over the 12 months prior to Spring 2010 was £475 million. This was an increase of 19.1 per cent from 2009 and represents approximately 2.3 per cent of the total gross fee income for private practice in 2010.¹ While individual attorneys provide *pro bono* legal services at least in part because of a personal desire to help people, law firms in England and Wales are also becoming increasingly aware of the value their existing and prospective clients may place on a firm's *pro bono* activities.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN ENGLAND AND WALES**A. The Legal Profession**

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 Solicitors Regulatory Authority (“SRA”) and provide advice on everyday matters, from drafting wills through property conveyancing to completing commercial transactions.² Solicitors may work in private practice, in-house or in the public sector. In private practice they may work in firms of all sizes, either specializing in a particular area of law or as full-service practitioners providing advice to individuals, companies, or both. Solicitors may also work in-house in corporations or organizations, including in the charitable and nonprofit sector or within the government. The number of solicitors qualified to work in England and Wales is nearly 118,000, the majority are based in Greater London (43,788), with 20,245 in the City of London.³ All solicitors are governed by the SRA Practice Framework Rules 2011, which specify professional duties in carrying out all types of work, including *pro bono*.

Barristers, who are governed by the Bar Council, are less likely to provide generalist legal advice and are generally more specialized. They act as and are primarily advocates in litigation, and other 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.

The court system in England and Wales is divided into criminal and civil divisions and is established under Acts of the Parliament of the UK. The subordinate courts include the Magistrates' Court (which hears minor criminal cases), the Family Proceedings Court, the Youth Court and the County Courts (which have a purely civil jurisdiction). There is also a small claims court that has jurisdiction of private disputes in which large amounts of money are not at stake. The routine collection of small debts forms a large portion of the cases brought to small-claims courts, as well as evictions and other disputes between landlords and tenants.

The Crown Court is a criminal court of both original and appellate jurisdiction that in addition handles a limited amount of civil business both at first instance and on appeal. The High Court of Justice functions both as a civil court of first instance and a criminal and civil appellate court for cases from the subordinate courts. It consists of three divisions: the Queen's Bench, the Chancery and the Family divisions.

The Court of Appeal, which deals only with appeals from other courts or tribunals, is divided into two divisions, the Civil Division, which hears appeals from the High Court and County Court and the Criminal Division, which only hears appeals from the Crown Court connected with a trial of indictment. The Supreme Court (formerly the House of Lords) is the highest appeal court.

¹ THE LAW SOCIETY, *Solicitors' pro bono work: Law society annual individual omnibus survey 2010*, Report 5.

² See *Using a Solicitor*, THE LAW SOCIETY, available at <http://www.lawsociety.org.uk/choosingandusing/usingsolicitor.page>.

³ See *How many solicitors are there in England and Wales? And who are they?*, THE GUARDIAN available at <http://www.guardian.co.uk/news/datablog/2011/apr/04/solicitors-number-england-wales-ethnicity>.

B. Legal Aid

One of the reasons why England and Wales have a less robust *pro bono* system than the U.S. is because of the availability of a system of legal aid that uses public funds to help those in need of legal services. Legal aid is available for both civil and criminal matters. If a person is on a low income or receiving benefits, he or she may be eligible for legal aid. He or she can find this out by contacting the nearest citizens' advice bureau or law center (see below for descriptions).

The legal aid system was first established under the Legal Aid and Advice Act of 1949.⁴ 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.⁵ 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. Solicitors that do legal aid work can be found on the CLS website.⁶ The LSC is responsible for coordinating the resources and funds available for civil legal assistance in accordance with the Funding Code.⁷ The Funding Code is a set of rules used to decide what individual cases the LSC will fund. These rules are updated according to changes in the law and policy developments.

In civil cases, legal aid is available for certain disputes with individuals, companies or government departments or agencies, depending on the type of legal problem, a person's income and capital and whether there is a reasonable chance of winning the case and whether it is worth the time and money needed to win. It is unavailable, however for certain tribunals including the Employment and Lands Tribunals, as well as personal injury, negligent damage, conveyancing, wills, defamation and company or partnership law or matters arising out of carrying on a business.⁸

In criminal cases, legal aid might pay a solicitor or barrister to represent someone who has been charged with a crime. In this situation eligibility is determined on the basis of whether the case meets the "Interests of Justice" Test (broadly, how serious are the consequences of conviction) and whether the applicant passes a "means" test based on financial situation.⁹

Changes introduced in 2011 include a revised costs assessment guidance, which is applicable to work governed by the 2010 Standard Civil Contract. The Standard Civil Contract came into force on November 15, 2010, for all nonfamily publicly funded services and as a result providers now need to apply for and be awarded a contract in order to carry out legal aid services on nonfamily matters. This development has therefore decreased the number of professionals able to deliver these services.¹⁰

Demand for civil legal aid has risen sharply as a result of the current economic crisis.¹¹ It is therefore becoming increasingly apparent that the public legal aid system does not adequately meet the demand for legal services. Furthermore, legal aid in England and Wales is only available to individuals. Legal

⁴ See LEGAL SERVICES COMMISSION, *The Story of Legal Aid*, available at http://www.legalservices.gov.uk/public/the_story_of_legal_aid.asp.

⁵ See LEGAL SERVICES COMMISSION, *About our legal aid schemes*, available at http://www.legalservices.gov.uk/public/about_our_schemes.asp.

⁶ Available at: http://www.direct.gov.uk/en/D11/Directorys/UsefulContactsByCategory/Governmentcitizensandrightscontacts/DG_195356

⁷ See LEGAL SERVICES COMMISSION, *Can I get Legal Aid?*, available at http://www.legalservices.gov.uk/public/can_i_get_legal_aid.asp And LEGAL SERVICES COMMISSION, *What cases do we fund?* available at http://www.legalservices.gov.uk/civil/funding_code.asp.

⁸ For more information concerning eligibility and other factors, see LEGAL SERVICES COMMISSION: *A Step-by-Step Guide to Legal Aid*, or go to <http://www.legalservices.gov.uk/>.

⁹ For more information concerning eligibility and other factors, see the DirectGov website at: http://www.direct.gov.uk/en/Governmentcitizensandrights/GettingLegalAdvice/Legalaidincriminalcases/DG_196366.

¹⁰ See LEGAL SERVICES COMMISSION, *2010 Standard Civil Contract*, available at http://www.legalservices.gov.uk/civil/2010_civil_contract.asp#About.

¹¹ 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.

advice to charitable organizations must be delivered by the legal profession *pro bono* and on an ad hoc basis.

II. *PRO BONO* IN ENGLAND AND WALES: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

Barristers have always provided *pro bono* legal services, 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.”¹² 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.

1. LawWorks

LawWorks is the operating name of SPBG. LawWorks was originally a joint operation between SPBG and Law Centres (see below for details). The aim was to connect those solicitors wanting to provide *pro bono* legal services with clinics or agencies offering such services.¹³ LawWorks also runs the LawWorks for Community Groups project that acts as a direct clearinghouse for legal projects, matching those in need of legal services (generally nonprofit organizations) with law firms or larger companies’ in-house legal departments.¹⁴ 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 Individuals. This offers three types of free services: legal advice clinics, mediation and casework assistance. 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.¹⁵

2. 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, while being supervised by qualified solicitors and/or barristers. BPP Law School is one example, having set up five centers within England and Wales providing legal information, advice and assistance to members of the public.¹⁶

LawWorks’ student initiative provides information for students on *pro bono* opportunities and seeks to encourage involvement by offering guidance on *pro bono* projects.¹⁷ Several English law firms assist in managing this initiative. Other organizations, such as FRU, also provide students with *pro bono* opportunities (see below for more details).

3. 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. There are over 2,000 barristers who offer *pro bono* services through PBU, encompassing virtually every area of the law. Besides advising on the law, PBU provides representation in any court or tribunal in England or Wales and assists with mediation. 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

¹² LAWWORKS SOLICITORS PRO BONO GROUP, *Introduction*, available at <http://www.lawworks.org.uk/>.

¹³ LAWWORKS SOLICITORS PRO BONO GROUP, *Law Works Clinics*, available at <http://www.lawworks.org.uk/index.php?cID=10296>.

¹⁴ LAWWORKS SOLICITORS PRO BONO GROUP, *LawWorks for Community Groups*, available at <http://lawworks.org.uk/community-groups>.

¹⁵ LAWWORKS SOLICITORS PRO BONO GROUP, *Mediation Introduction*, available at http://lawworks.org.uk/lw_mediation.

¹⁶ Further information is available at <http://www.bpp.com/bpp-university-college/l/pro-bono>.

¹⁷ Further information is available at <http://www.lawworks.org.uk/students>.

applicant can reasonably obtain legal services elsewhere (such as legal aid or paying privately), and whether the work will take longer than three days.¹⁸

Barristers wishing to volunteer for PBU must be willing to assist with cases for a minimum of three days per year, including preparation time for hearings on an individual piece of work within a case. The Unit provides assistance on a step-by-step basis, however, and therefore it may help with several pieces of work within a case that together add up to more than the three-day total. 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.¹⁹ 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.²⁰

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.

4. Free Representation Unit

The Free Representation Unit ("FRU") is a registered charity providing *pro bono* legal advice. 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 is based in London and now also has a pilot scheme running in Nottingham, with a view to rolling the scheme out nationally.

5. National Pro Bono Centre

Since 2010, the National Pro Bono Centre has housed LawWorks, the Bar Pro Bono Unit and ILEX Pro Bono (the *pro bono* organization staffed by legal executives). It now also provided space for the Access to Justice Foundation, London Legal Support Trust and i-ProBono (*pro bono* charities). The Centre therefore offers end-to-end service for clients through *pro bono* assistance and referral to a network of partner agencies.²¹

In 2011, the first legal executives worked with barrister colleagues through the Joint ILEX Pro Bono and Bar Pro Bono Unit (JIB) scheme. The Centre is a valuable resource for lawyers who are able to refer clients they are unable to directly assist, rather than leaving them with nowhere to turn. For *pro bono* charities, the Centre offers meeting facilities in the heart of the legal community free of charge.

B. **Barriers To *Pro Bono* Work And Other Considerations**

1. Barriers to *Pro Bono* Work

As well as the fees and registration required for many *pro bono* societies, there are also practical barriers for solicitors engaging in *pro bono* work. These include a lack of time when also trying to balance fee-paying client work and the pressure to meet the hourly billing targets of their firm. Some firms however, include *pro bono* hours of work within these billing targets, thus encouraging their lawyers to participate.

¹⁸ See BAR PRO BONO UNIT, *Advice Agencies & Solicitors: Applying for help*, available at <http://www.barprobono.org.uk/?CID=6>.

¹⁹ See PRO BONO UNIT at: <http://www.barprobono.org.uk/criteria.html>.

²⁰ See PRO BONO UNIT, *How to Help* available at <http://www.barprobono.org.uk/donations.html>.

²¹ See NATIONAL PRO BONO CENTRE, *Yearbook of England and Wales 2011*, available at <http://probonouk.net/yearbook2011.pdf>.

Another issue that may be encountered by solicitors who volunteer to carry out *pro bono* work is that the cases referred to them may not be in their area of experience. For example, corporate law firms (who house a great many of the profession's solicitors) may not necessarily have lawyers experienced in dealing with individuals as clients, or in the types of matters that affect individuals, including employment and housing/tenancy issues.

2. VAT on Pro Bono Work

In England and Wales, there is no minimum fee level that lawyers are required to charge, therefore services may be provided completely free of any charges to the client. VAT must be charged for work, done within the formal Legal Aid scheme, but not for *pro bono* work, so long as no fees are charged to the client.

3. In-house Lawyers

Lawyers practicing in-house are also able to participate in *pro bono* work. They are governed, as are other solicitors, by the SRA Practice Framework Rules 2011. As an in-house lawyer, however, there are also other factors to be considered, including the fact that in-house lawyers are barred from acting for clients other than their employer. There is an exception in the rules for *pro bono* work, *provided that* the work is covered by indemnity insurance and that fees are not charged. Lawyers must also not carry out a regulated activity.

The Legal Services Act also applies to in-house *pro bono* practice, restricting the practice of certain reserved activities, including rights of audience, conducting litigation, reserved instrument activities, probate activities, notary activities, and the administration of oaths. There are some exemptions to these restrictions, but advice relating to these would be best sought from the SRA.

In-house legal teams may opt to join LawWorks, as LawWorks will provide professional indemnity insurance coverage, enabling in-house lawyers to work on LawWorks programmes. Companies may also set up internal *pro bono* programmes. In such case, however, it is important to consider issues such as regulatory and compliance requirements, costs agreements (strictly controlled for *pro bono* under s. 194 Legal Services Act 2007), ensuring that correspondence with clients is tailored correctly and with appropriate letterhead and compliance with the SRA accounting rules, which must be observed when dealing with client money.²²

C. **Pro Bono Resources**

1. 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.²³ CABx's bureaux, located throughout England and Wales, are able to give advice to the public on where to obtain legal services and may often provide legal advice themselves. CABx is funded mainly by government and local authority grants, with contributions from 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.²⁴ There are 56 Law Centres in England, Wales and Northern Ireland, which provide free legal advice to needy

²² See DLA PIPER, *The England and Wales in-house Legal Counsel Pro Bono Guide*, available at <http://www.dlapiper.com/global/publications/Detail.aspx?pub=6996&RSS=true> .

²³ CITIZENS ADVICE BUREAU, *About Us Citizens Advice Service*, available at <http://www.citizensadvice.org.uk/index/aboutus.htm> .

²⁴ The Law Centres Federation is a registered charity and a Company Limited by Guarantee and registered in England and Wales. See LAW CENTRES FEDERATION, *What Does the Law Centres Federation Do?*, available at <http://www.lawcentres.org.uk/lawcentres/detail/what-do-law-centres-do/> .

individuals within each centre's coverage area. These services are targeted at 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 other sources.

2. Bar Pro Bono Unit and Bar Council Programs

PBU, as discussed above, enables barristers to provide *pro bono* legal advice and representation to individuals who are unable to obtain it privately or through legal aid.

3. Free Representation Unit

FRU is staffed by volunteers who tend to be junior lawyers, who possess the minimum qualifications of being an LLB graduate, an LLM student, or a GDL student. 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.²⁵ 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 provided representation for 950 clients in the year to March 31, 2011, with some 479 volunteers involved.²⁶

4. Business in the Community

Business in the Community (“BITC”) is a business-led charity with over 850 member companies with a combined workforce of 17.8 million employed worldwide, including many of the top London law firms. In addition, a 10,700 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.²⁷ This is generally not a forum for providing free legal services but focuses on ancillary support in other areas. Law firms often get involved in ways other than providing legal advice, such as offering mentoring services, helping out in schools or community centers or partaking in local urban regeneration programs. ProHelp, the employee volunteering section of BITC, is “a national network of over 400 professional firms committed to making a difference in their local community by providing free advice and professional support.” The programs offered by ProHelp afford member firms' employees the opportunity to aid those in need within their community as well as to gain valuable experience.

5. Other Organizations and Opportunities

There are also other organizations that offer *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.²⁸

²⁵ For further information see: <http://www.thefru.org.uk/>.

²⁶ See FRU's *Annual Report 2011*, available at <http://www.thefru.org.uk/annual-reports>.

²⁷ BITC, *About*, available at http://www.bitc.org.uk/about_bitc/index.html.

²⁸ Further information is available at <http://www.probonouk.net/index.php?id=about>.

III. CONCLUSION

Pro bono legal work continues to gain importance in England and Wales. In 2007, in acknowledgment of National Pro Bono Week, both 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. More recently, high profile *pro bono* work has involved a Riot Help *pro bono* helpline, established to support victims of the riots and the appointment of a Pro Bono Panel for the 2012 Olympics.

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. National Pro Bono Week, a week celebrating free legal advice and representation by solicitors barristers and legal executives, celebrated its tenth year in 2011.

July 2012

Pro Bono Practices and Opportunities in England & Wales

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PRO BONO PRACTICES AND OPPORTUNITIES IN FINLAND¹

When Finland declared independence from the Russian empire 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 structures and legal systems, including with respect to the provision of legal aid. In large part due to Finland’s comprehensive state system, *pro bono* work is not widespread or a significant part of the legal culture in Finland.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN FINLAND

A. The Legal Profession

Finland has a dual court system, which includes general courts overseeing civil and criminal law, and administrative courts overseeing disputes between private persons and public authorities. General courts are divided into three tiers. District Courts operate as the courts of first instance, with jurisdiction over all civil and criminal cases within their territorially limited districts. There are twenty-seven District Courts.² At the appellate level, there are six Courts of Appeal.³ The Supreme Court in Helsinki acts as the court of final appeal.⁴ Administrative courts operate on two tiers. Eight regional Administrative Courts deal with claims against administrative acts of public authorities, and the judgments of these courts may be appealed to the Supreme Administrative Court in Helsinki.⁵

In Finland, people who advise on and assist with legal matters can be divided into two categories: members of the Finnish Bar Association (advocates) and nonmembers of the Bar (jurists). The Finnish Bar Association is regulated by the Advocates Act of 1958,⁶ and only its members are entitled to use the professional title “advocate.”⁷ In contrast to most legal systems in the European Union, a party to a court proceeding in Finland is not obligated to employ an advocate, and may be represented by a jurist – a person with a Master’s degree in law or, in certain cases, any person who is honest and otherwise suitable and competent.⁸

There are approximately 15,300 lawyers in Finland, and about 75% of Finnish lawyers (or approximately 11,695 lawyers) are members of the Association of Finnish Lawyers.⁹ The Association of Finnish Lawyers is the general professional organization of most lawyers in Finland, not only those admitted to the Finnish Bar Association. Finnish lawyers may practice as sole practitioners, in partnerships or in limited companies.¹⁰

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.¹¹ 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.

¹ This chapter was drafted with the support of Juha-Pekka Mutanen of Dittmar & Indrenius.

² The judicial districts of the District Courts generally follow regional boundaries and the names of the District Courts correspond to the names of the regions. See <http://www.oikeus.fi/48728.htm>.

³ The six Courts of Appeal – Eastern Finland (located in Kuopio), Helsinki, Kouvola, Rovaniemi, Turku and Vaasa – hear appeals against the decisions of the district courts in their region. See <http://www.oikeus.fi/17312.htm>.

⁴ The Supreme Court’s case law is available on its website, <http://www.kko.fi/>.

⁵ Administrative Judicial Procedure Act (*Hallintolainkäyttölaki*, 586/1996), § 7. The Supreme Administrative Court’s decisions are available on its website, <http://www.kho.fi/en/index.htm>.

⁶ Advocates Act 1958/496, § 1.

⁷ The Finnish Bar Association’s website, <http://www.asianajajat.fi/english>, provides further information about membership in the Finnish Bar Association, as well as a “Find A Lawyer” search function.

⁸ CODE OF JUDICIAL PROCEDURE, ch. 15, §§ 1-2.

⁹ According to the Association of Finnish Lawyers’ website, <http://www.lakimiesliitto.fi/>, the number of male and female lawyers in Finland is roughly equivalent, and the number of female lawyers is rising.

¹⁰ Practicing lawyers may not form partnerships or companies with non-lawyers, unless the Board of the Association of Finnish Lawyers grants a specific permit. See Advocates Act 1958/496, § 5.

¹¹ Rules of Proper Professional Conduct for Advocates (*Hyvää asianajajatapaa koskevat ohjeet/Vägledande regler om god advokatsed*), Introduction.

An advocate's fee for each matter is commensurate with the nature of the task and the amount of work required, and must be reasonable. For example, the degree of difficulty or the urgency of the matter may be reasons for a fee increase.¹² Disadvantaged citizens may be granted legal aid, whereby expenses are covered by public funds (see 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, predefined end result is achieved (*pactum de palmario*) are allowed under special circumstances, and must be agreed upon in writing.¹³ However, it follows from the Code of Conduct for Lawyers in the European Union (CCBE) that *pactum de quota litis* may not be used when an assignment involves cross-border activities of a Finnish lawyer in other Member States of the EU and the European Economic Area.¹⁴

B. Legal Aid

The Constitution of Finland provides a right to be heard in a competent court of law.¹⁵ 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, 2002/257 (*Oikeusapulaki/Rättshjälpslagen*), the Act on State Legal Aid Offices, 2002/258 (*Laki valtion oikeusaputoimistoista/Lag om statliga rättshjälpsbyråer*) and various government decrees that have been issued based on these acts.¹⁶

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 EU or the European Economic Area.¹⁷ 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.¹⁸ 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.¹⁹

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 jurists subject to certain exceptions as described above.

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 pretrial 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

¹² Fee Guideline (*Palkkio-ohje/Anvisning om advokatarvoden*), § 1.

¹³ *Id.* at § 1.5 (Jan. 15, 2009, amended as of Jun. 11, 2010).

¹⁴ Code of Conduct for Lawyers in the European Union, § 3.3.

¹⁵ FINLAND CONST. 1999/731, § 21.

¹⁶ For example Government Decree on Legal Aid 388/2002 (*Valtioneuvoston asetus oikeusavusta /Statsrådets förordning om rättshjälp*); Government Decree on Legal Aid Fee Criteria 290/2008 (*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 sivutoimistojen ja sivuvastaanottojen sijainnista/Justitieministeriets förordning om förläggningkommunerna för de statliga rättshjälpsbyråerna samt deras filialbyråer och filialmottagningar*) and Decree 1089/2011 of the Ministry of Justice on legal aid districts and their relevant districts and the location of legal aid offices (*Oikeusministeriön asetus oikeusapupiireistä sekä oikeusaputoimistojen toimipaikoista ja edunvalvontapiireistä/Justitieministeriets förordning om rättshjälpsdistrikten samt om rättshjälpsbyråernas verksamhetsställen och intressebevakningsområden*).

¹⁷ Legal Aid Act, § 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. *Id.*, § 7.

¹⁸ 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>.

¹⁹ Legal Aid Act, § 3(b).

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.²⁰ If, however, the means of 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.²¹

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.²² In 2010, approximately 71,600 applications for public legal aid were filed with the legal aid offices in Finland. These numbers are not comparable with the previous years as the statistical methods for measuring legal aid applications have changed. In 2009, the amount and type of legal aid remained more or less the same as in the preceding years. Most of the legal aid provided was in criminal cases, marriage and family law matters and inheritance cases.

Furthermore, following the Swedish model, the Finnish government has established Ombudsman Offices and agencies where individuals can bring complaints against private companies and authorities. There are numerous ombudsmen, most prominent of which is the Parliamentary Ombudsman,²³ who ensures that authorities and officials observe the law and fulfill their duties. Anyone, regardless of citizenship, is entitled to turn to the Parliamentary Ombudsman should the complainant believe that an authority, public official or public body has acted in a manner that violates his rights. Other Ombudsman offices monitor compliance with specific laws or policies, such as laws protecting the rights of minorities, women, children and consumers. Furthermore, other agencies are empowered to settle disputes between private persons and undertakings. For example, the Consumer Complaint Board represents consumers and businesses and issues recommendations concerning disputes involving consumer and housing transactions.

The services of the Parliamentary Ombudsman and the various Ombudsman offices and agencies are generally free of charge to the complainant. Although many of these offices/agencies issue nonbinding 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.

II. **PRO BONO IN FINLAND: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. **Pro Bono Opportunities**

Due to the fulsome, well-developed and broad system of public welfare services, the need for *pro bono* services 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, the Bar urged law firms and advocates, within the limits of their practice areas and available resources, to offer legal assistance to victims and their relatives free of charge.²⁴

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

²⁰ Criminal Procedure Act 1997/689, ch. 2, §§ 10-11.

²¹ *Id.* §§ 1a, 10.

²² This is compared to approximately 44% prior to the change in the law that occurred in 2002. See Government Bill for a new Legal Aid Act and certain related legislation (HE 82/2001), § 3.2.2.

²³ Details about the Parliamentary Ombudsman program are available at <http://www.oikeusasiamies.fi/>.

²⁴ 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.

advocates with relevant experience and/or competent authorities where further advice is required. Currently, *Asianajajapäivystys* operates in 11 locations in Finland for a few hours at a time once or twice a week. In 2011, free advice was given to some 1,100 persons.²⁵ 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.²⁶

Medium-sized and large Finnish law firms also engage in some *pro bono* or charitable work, particularly as the influence of American and English firms continues to grow. Apart from the *Asianajajapäivystys*, *pro bono* work often involves assisting different charity organizations, foundations and other nongovernmental organizations, 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. Finnish law firms have also established *pro bono* partnerships that have become more publicly known during the past few years.

B. Barriers To *Pro Bono* Work And Other Considerations

As noted above, due to Finland's well-developed and broad system of public welfare services, including state-funded legal services, Ombudsman offices and other agencies, the need for *pro bono* services in Finland is limited, and therefore so are the opportunities.

However, there are few barriers to *pro bono* work from a statutory perspective or under the Rules of Proper Professional Conduct; accordingly, there is room for Finnish law firms to continue to develop more initiatives to encourage participation in *pro bono* work outside of the state-sponsored volunteer opportunities.

C. *Pro Bono* Resources

- Directory of legal aid offices: <http://www.oikeus.fi/>
- Finnish Bar Association's on-call legal assistance program: <http://www.asianajajaliitto.fi/asianajotoiminta/asianajajapaiivystys/>
- Finnish Refugee Advice Centre (*Pakolaisneuvonta/Flyktrådgivningen*), advising asylum seekers, refugees and other foreigners with regard to their legal rights: <http://www.pakolaisneuvonta.fi/>
- Finnish League for Human Rights (*Ihmisoikeusliitto/Förbundet för mänskliga rättigheter*), providing wide-ranging advice in relation to human rights in general: <http://www.ihmisoikeusliitto.fi/>
- Feminist Association Union (*Naisasialiitto Unioni/Kvinnosaksförbundet Unionen*), advising on issues related to women's rights: <http://www.naisunioni.fi/>

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 volunteering to provide legal assistance through the *Asianajajapäivystys*, or assisting nonprofit foundations and charity organizations in achieving their objectives.

July 2012
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.

²⁵ *Id.*

²⁶ More information about the Bar Association's *pro bono* initiatives is available at <http://www.asianajajaliitto.fi>.

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. For many centuries, the French *bâtonnier* (Chairman of the Bar) 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 Chairman of the Bar to serve those indigent clients who asked for legal assistance.

The American terminology of *pro bono* 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, while *pro bono* practice in the United States generally consists of partnerships among a multitude of legal referral services. 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

A. The Legal Profession

As of January 1, 2011, there were 53,744 lawyers identified in France, a 41% increase from the 38,140 lawyers identified a decade earlier.¹ With 22,133 lawyers, the Paris Bar comprises 41% of the total lawyer population. One in two lawyers is domiciled in Ile-de-France. Nationwide, there are 80 lawyers per 100,000 inhabitants (up from 60 lawyers per 100,000 inhabitants in 1999), with the highest rate in Paris (954).² The attorney workforce has been rising since the early 2000s at an average rate of 3.6% per year. The number of female attorneys has progressed at a faster pace of 4.5%, foreign lawyers at 5%, and 6% for lawyers from the European Union. Foreigners account for 3% of the total workforce of France.³ The percentage of French lawyers enrolled in a foreign bar (4.2%) has nearly tripled over the past ten years. Most of the lawyers provide legal services as a member of a professional commercial company with shares (*société d'exercice libérale*) or a *société civile professionnelle*. Some lawyers provide legal services as part of an association or AARPI (*Association d'Avocats à Responsabilité Professionnelle Individuelle*). Very few lawyers work as salaried employees.⁴

The French judicial system consists of several categories of courts, organized in two major orders, the judicial order and the administrative order, dealing with cases of different types, scale and significance. Administrative courts have general jurisdiction over all litigation in which one of the administrative organs of the French State is a party. All other litigation must be brought before one of the judicial courts (which in turn are divided into criminal and civil courts). The administrative court system and the judicial court system each has its own supreme court: the *Conseil d'Etat* for administrative courts and the *Cour de cassation* for judicial courts.

French lawyers are subject to strict rules of professional conduct primarily governed by the Law of December 31, 1971, the Decree of November 27, 1991, and the Decree of July 12, 2005, as well as by internal rules.⁵

B. Legal Aid

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 indigents the necessary resources to have equal access to legal

¹ Observatoire du CONSEIL NATIONAL DES BARREAUX (CNB), *Avocats: évolutions et tendances de la profession, année 2011* available at http://cnb.avocat.fr/L-Observatoire-du-Conseil-national-des-barreaux-publie-1-edition-2011-de-son-cahier-statistique-Avocats-evolutions-et_a1177.html.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See Paris Bar website available at <http://www.avocatparis.org/principaux-textes-sur-la-profession.html>.

information. Both systems grew out of a legislative initiative to systematize the legal assistance program in France, beginning with the law of January 3, 1972,⁶ and then the law of July 10, 1991.⁷

1. Aide Juridictionnelle

The first category of legal aid, the *aide juridictionnelle*, allows indigents to receive legal representation from a qualified attorney who is paid by the state.⁸ 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 form of representation. *Aide juridictionnelle* is generally available to several groups: French or European Union citizens, foreign citizens habitually and lawfully residing in France, and foreign citizens appearing in refugee cases. The aid is also available to foreigners in other special circumstances: minors, witnesses, and foreigners placed under formal examination, charged, accused, convicted or who have joined a civil action to a criminal prosecution. In exceptional circumstances, aid can also be granted to French associations with insufficient resources.⁹ 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.¹⁰

The essential criterion for receiving *aide juridictionnelle* is financial need. The system distinguishes between total and partial aid, depending on one's financial situation.¹¹ In 2012, applicants with total resources (excluding family allowances and certain welfare benefits) under €29 per month qualify for total aid, whereas applicants with less than €1,393 per month qualify for partial aid.¹² In both cases, the limit is raised by €67 for the first two dependents of the household and by €06 for the third and subsequent dependents. If the resources of the applicant exceed the limits, the applicant may still be eligible to receive legal aid if his action is particularly worthy of interest given its subject-matter and the likely cost.¹³ The resources statement is not required if the applicant is entitled to benefits from the National Solidarity Fund or to the Occupational Integration Minimum Income,¹⁴ or if he is entitled to a war veteran's or victims pension, or if he is a victim or the right-holder of a victim of the most serious criminal offenses (e.g., murder, torture, barbarism, rape).¹⁵

Legal aid is given to claimants and defendants in contested and noncontested matters in all courts. Aid can be given for all or part of the proceedings and to assist with settlement proceedings before trial. Legal aid is given if the action is not manifestly inadmissible or devoid of substance. This condition does not apply to defendants, to persons liable civilly, to witnesses, to persons under examination, charged or accused, or to persons convicted.

In order to receive legal aid, each petitioner must fill out a request for *aide juridictionnelle*, along with proof of income. Once accepted, the petitioner may choose a lawyer. 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.¹⁶

If total legal aid is granted, this will cover all the costs of the proceedings, including the fees paid directly to the lawyers or other practitioners (bailiff, notary, etc.). These fees are calculated on a fixed scale depending on the type of procedure. If partial aid is granted, this will cover from 15% to 85% of the costs, depending on the resources of the applicant. The

⁶ See Law of Jan. 3, 1972, No. 72-11.

⁷ See Law of Jul. 10, 1991, No. 91-647.

⁸ The Law of Jan. 3, 1972 has instituted the *aide juridictionnelle*, involving the state in the remuneration of the lawyers. As this system was still insufficient, the Law of Jul. 10, 1991, modified it.

⁹ See Law of Jul. 10, 1991, art. 3.

¹⁰ *Id.* at art. 10.

¹¹ *Id.* at art. 4.

¹² See *Circulaire relative au montant des plafonds de ressources, des correctifs pour charge familiales et des tranches de ressources pour l'admission à l'aide juridictionnelle* of 19 Jan. 2012, NOR: JUST1201824C.

¹³ See Law of Jul. 10, 1991, art. 6.

¹⁴ *Id.* at art. 4.

¹⁵ *Id.* at art. 9-2.

¹⁶ *Id.* at art. 25.

applicant will have to pay a supplementary fee, not on fixed scale but agreed between the applicant and the lawyer, reviewable by the Chairman of the Bar in the event of a dispute.

Under the system of *aide juridictionnelle*, lawyers who donate their time receive payment from the Bar according to a level set by the state.¹⁷ 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.¹⁸ This payment, however, is insignificant in comparison to what many lawyers in Paris typically receive.¹⁹ 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.

In 2010, 912,191 matters were referred to the *aide juridictionnelle* in France (+1.2% compared to 2009) and 811,024 for total aid.²⁰ This number is expected to rise to 948,000 in 2012.²¹ According to many practitioners, the *aide juridictionnelle* system is “breathless” and does not respond to the needs of a large fringe of the population, because the conditions for access to aid are too strict and the system suffers from a lack of financial and material means.²²

2. Accès au Droit

The second category of legal aid, the *accès au droit*, serves as the corollary to *aide juridictionnelle*. It provides clients in need with consultations and assistance to help them make informed legal decisions.²³ For several years now the French Bar has provided free anonymous and confidential consultations by volunteer lawyers, regardless of the client’s financial situation, intended to guarantee equal access to legal information.²⁴ 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.²⁵

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.

Within the framework of the *accès au droit*, an initiative of the Paris Bar is the *Barreau de Paris Solidarité*.²⁶ To provide legal services to the most destitute, the Paris Bar has developed partnerships with public interest aid groups. Starting in March 2003 with the association

¹⁷ *Id.* at art. 27.

¹⁸ See Decree of Dec. 19, 1991, No. 91-1266. For example, the unit value is €22.50 (VAT excluded) since 2007, and the coefficient for a divorce proceeding is 36 (2009/2010), so the lawyer would be paid €765.

¹⁹ See Alain Balsan, GUIDE PRATIQUE DE L’AIDE JURIDICTIONNELLE. 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.

²⁰ MINISTERE DE LA JUSTICE ET DES LIBERTES, Sous-direction de la Statistique et des Etudes, *Les chiffres clés de la Justice 2011* available at http://www.justice.gouv.fr/art_pix/1_chiffres_cles_2011_20111125.pdf. At our best knowledge, figures for 2011 are not available at the time we drafted this section.

²¹ Edmond Hervé, *Programme 101 accès au droit et à la justice*, available at <http://www.senat.fr/commission/fin/pjlf2012/np/np16/np164.html>.

²² *Rapport d’information* No.3319, filed by M. Philippe Gosselin and Ms George Pau-Langevin at the National Assembly on Apr. 6, 2011, available at http://dl.avocatparis.org/Conseil/rap_officiels/GosselinPauLangevinaccesdroit110406.pdf

²³ See Law of Jul. 10, 1991, art. 53.

²⁴ See Paris Bar website, available at <http://www.avocatparis.org/acces-au-droit-et-a-la-justice-2/consultations-gratuites.html>.

²⁵ *Id.*

²⁶ See Paris Bar website, available at <http://www.avocatparis.org/presentation-fonds-barreau-de-paris-solidarite.html>.

Droits d'Urgence,²⁷ the *Barreau de Paris Solidarité* provides an effective comprehensive service for those in extreme difficulty. Today, the scope of the activities undertaken by the *Barreau de Paris Solidarité* through its various partnerships is vast, including employment, housing, health, education, citizenship, asylum, entrepreneurial law, and microfinance. 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 (*Paris Bar Solidarity Bus*),²⁸ and partnerships with various humanitarian organizations (such as *Médecins du Monde*, *Restaurants du Coeur*, *l'Adie*, *PlaNet Finance*, and *Horizons*). Consultations are also available in *Maisons des Entreprises et de l'Emploi* ("MdEE"), and *Espaces Insertions*, both in partnership with the Paris City Hall. In 2010, 25,215 hours of free consultations were provided, and 3,119 hours through the *Barreau de Paris Solidarité*²⁹ and 2,088 hours through the *Paris Bar Solidarity Bus*. Since 2003, 22,793 persons have been provided with legal services in the *Paris Bar Solidarity Bus*.³⁰

On February 1, 2012, the Paris Bar officially launched the Solidarity Endowment Fund of the Paris Bar (*Fonds de dotation Barreau de Paris Solidarité*). The Fund's purpose is to centralize, strengthen and improve the structure of existing actions (such as the *Paris Bar Solidarity Bus*), to encourage members of the Paris Bar and NGOs to participate in financial, legal and logistical operations of humanitarian and social works, and to ensure the promotion of these works. The Fund is endowed with €1 million and the Paris Bar hopes that it will be endowed with €5 million by the end of 2013. The Fund focuses on the development of *accès au droit*, legal culture, human rights, and the environment in France and abroad. New projects can be submitted by lawyers and NGOs to a sponsoring committee that will select the best projects. Furthermore, the Paris Bar has also launched the *congé de solidarité libéral* (lawyer solidarity leave) in partnership with the association *Planète Urgence*. This will allow all Paris lawyers who wish to leave during their annual leaves to implement social, educational or legal projects for the poorest populations in France and abroad. Finally, in January 2012, the Paris Bar set up a Pro Bono Commission, which is primarily aimed at being a place of exchange of information and best practices on *pro bono*.³¹

II. PRO BONO IN FRANCE: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. Pro Bono Opportunities

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 type of work has not 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 nonstate 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)³² 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

²⁷ See *Droits d'Urgence* website: <http://www.droitsdurgence.org>.

²⁸ See Paris Bar website, available at <http://www.avocatparis.org/acces-au-droit-et-a-la-justice-2/consultations-gratuites/125-particulier/acces-au-droit-et-a-la-justice/324.html>. The Paris Bar Solidarity Bus project received a special mention by the European Union in Oct. 2008 (see http://www.coe.int/t/dghl/cooperation/cepej/events/EDCJ/Cristal/Cristal2008projets4_en.asp).

²⁹ *Id.*

³⁰ See <http://www.avocatparis.org/actualite/929-le-barreau-de-paris-solidarite-toujours-plus-present-aupres-des-parisiensactu.html>.

³¹ See Paris Bar website, available at http://dl.avocatparis.org/Bulletins/2012/special_Bulletin_BPS.pdf.

³² See FIDH website, available at <http://www.fidh.org/>.

participation within specific *accès au droit* programs, such as by offering a rotation for young lawyers through an already established consultation agency. While advertising constraints (discussed below) 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 to address a need 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 Cambodian regime with lawyers around the world, is one example of this form of partnership.³³

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 solely 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 that 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.

B. Barriers To *Pro Bono* Work And Other Considerations

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.³⁴ It is also illegal to advertise the names of past and current clients. This form of advertising is nevertheless permitted in promotional brochures if the client consents and the advertising is inaccessible from French territory. Moreover, listing the name of customers has been legal since 2007 within the framework of public and private tenders and public procurement.³⁵ Despite the advertising restrictions, in practice, more and more lawyers mention the names of their clients in the press and on their websites.

Because 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.

Another challenge is that there is no specific tax regime for *pro bono* hours or *aide juridictionnelle*. In France, a lawyer's fees are increased by the VAT (currently 19.6%). Although access to law and justice is a fundamental right, citizens who defend themselves or get legal advice pay the VAT at a full rate. Through the end of 2010, a reduced rate of 5.5% VAT was applicable to attorneys' fees when provided as part of *aide juridictionnelle*. However, the French legislator³⁶ increased the VAT rate to 19.6% for these services following a condemnation by the Court of Justice on June 17, 2010.³⁷

Finally, another issue in France is the inability for lawyers offering free consultations within the *accès au droit* framework to perform a conflict-of-interest check for each individual client and the absence,

³³ See Justice for Cambodia, available at <http://www.justicepourlecambodge.org/>.

³⁴ Règlement Intérieur du Barreau de Paris, art. 10.2.

³⁵ *Id.* at art. 2.2.

³⁶ See Law of 29 Dec. 2010, No. 2010-1658.

³⁷ C-492/08 Court of Justice, *Commission v French Republic*, [2010] I-5471.

contrary to the U.S., of a general exemption from the conflict-of-interest check rules if the participating lawyer is not aware of any conflict.³⁸

C. *Pro Bono* Resources

Information on legal aid and *pro bono* opportunities in France can be found on the following websites, mostly in French:

- Paris Bar: <http://www.avocatparis.org/>
- Conseil National des Barreaux: http://cnb.avocat.fr/Access-au-droit-et-a-la-justice_a135.html
- Ministry of Justice: <http://www.vos-droits.justice.gouv.fr/aide-a-laccess-au-droit-11952/aide-juridictionnelle-20262.html>
- Paris City Hall:
www.paris.fr/pratique/aides-allocations-demarches/aide-juridique-gratuite/p6918;
www.v2asp.paris.fr/commun/pdf/acces_en.pdf (brochure in English)
- Fonds de dotation Barreau de Paris Solidarité: www.facebook.com/#!/Fonds.BPS
- NGO:
 - Droits d'urgence: www.droitsdurgence.org
 - Médecins du Monde: www.medecinsdumonde.org
 - Adie: www.adie.org
 - Restaurants du Coeur: www.restosducoeur.org
 - PlaNet Finance: www.planetfinancegroup.org
 - Planète Urgence: www.planete-urgence.org

III. 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 consultations 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.

July 2012

Pro Bono Practices and Opportunities in France

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³⁸ See <http://www.nycourts.gov/attorneys/probono/Rule6.5.pdf>

PRO BONO PRACTICES AND OPPORTUNITIES IN GERMANY

Pro bono work continues to become more and more common in Germany. The latest surveys indicate that nearly two-thirds of the German lawyers work on *pro bono* mandates. Nevertheless (and although a comprehensive and well-developed legal aid system exists in particular for in-court legal assistance), there is still an extensive need for *pro bono* work in Germany. The following chapter provides a brief overview of legal services and describes the practice and culture of *pro bono* in Germany as well as preconditions, limits and opportunities.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN GERMANY

A. The Legal Profession¹

In Germany, the compensation of lawyers is regulated by a set of federal laws² and professional rules issued by the German Bars.³ The system is generally based on a statutory fee scale annexed to the Federal Attorneys-At-Law Remuneration Act (*Rechtsanwaltsvergütungsgesetz*) (“RVG”) 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, i.e., out-of-court. Since June of 2008, a negotiable success fee is also (under certain conditions) 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.⁴ 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.⁵ However, in December 2006, the German Federal Constitutional Court ruled that the prohibition of success fees without any exceptions violated the German Constitution.⁶ Thus, the German legislature 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 4a and 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 abovementioned 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*.

¹ In Germany the median number of attorneys per capita is roughly 1 per 533 residents (data of 2010) and the number of licensed lawyers keeps increasing each year.

http://www.brak.de/w/files/04_fuer_journalisten/statistiken/statistiken2012/entwicklungraebis2012.pdf;
<https://www-genesis.destatis.de/>

² See the Federal Attorneys-At-Law Remuneration Act (*Rechtsanwaltsvergütungsgesetz* (“RVG”)) and the Legal Services Act (*Rechtsdienstleistungsgesetz* (“RDG”)).

³ 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”)).

⁴ *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.

⁵ See Kleiner-Cosack, *Bundesrechtsanwaltsordnung mit Berufs- und Fachanwaltsordnung, Kommentar*, paragraph 49b, marginal no. 13; Henssler/Prütting, *Bundesrechtsanwaltsordnung, Kommentar*, marginal number 58 et seq.

⁶ See Judgment of the German Federal Constitutional Court (*Bundesverfassungsgericht* (“BVerfGE,” file no. 1 BvR 2576/04), Dec. 12, 2006, BVerfGE at 117, 163 et seq.

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 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.⁷ 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.”⁸ 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. 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.

B. Legal Aid

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 nongovernmental 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 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

⁷ See RVG § 4 (2).

⁸ BRAO § 49 (b) (1) 2. 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, BVerfGE, 76, 171; NJW 1988, 191)).

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

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 (ZPO § 121).

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.

II. *PRO BONO* IN GERMANY: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities And Barriers To *Pro Bono* Work

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."
- 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 have been 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 significantly 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. According to a recent survey,¹³ two-thirds of German lawyers provide *pro bono* legal services and an active *pro bono* lawyer handles on average nine mandates per year without charge. Following the results of the survey, *pro bono* in Germany is particularly common in small local law firms as well as in big international law firms. German lawyers therefore 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 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 The Global Network for Public Interest Law (PILnet, (formerly known as the Public Interest Law Institute or PILI)) is scheduled to take place in Madrid, Spain in October 2012. Charity organizations and law firms meet at the forum to discuss the possibilities of *pro bono* work throughout Europe.¹⁴

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 2006¹⁵ recognized that the legal aid system in

¹² See, e.g., Westenberger, BRAKMagazin, 6/2009, 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*).

¹³ SOLDAN INSTITUTE, 17.11.2011, <http://www.soldaninstitut.de/index.php?id=2871>; Kilian, *AnwBl* 2012, 45.

¹⁴ <http://probonoforum.eu/>.

¹⁵ See BVerfGE, *supra* n.6.

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 (*Rechtberatungsgesetz* (“**RBerG**”), which generally prohibited free legal advice, with the RDG. According to Section 6 of the RDG, free legal services can be provided by nonlawyers who must be instructed by a professional lawyer, if they are not associated with a paid legal service given by a professional (*unentgeltliche Rechtsdienstleistungen*).¹⁶ If nonprofessionals 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.

However, 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. 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 might not be 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* representation in litigation cases will therefore necessarily remain occasional, unless the German practice or regulations on this subject change.

B. Pro Bono Resources

Many law firms, including the largest German law firms as well as international law firms with a presence in Germany, have ongoing *pro bono* projects. Some large law firms have founded the “*Pro Bono Deutschland e.V.*,”¹⁷ a registered German association, to achieve greater recognition and more widespread implementation of the concept of *pro bono* legal advice among lawyers in private practice in Germany. For this purpose, the association’s aim is to improve the framework conditions under general statutory law as well as under professional code of conduct and advocate engagement in the area of *pro bono* legal advice. The association does not itself render any legal services and does not coordinate the *pro bono* activities or solicit *pro bono* mandates for its members.

In addition, further sources for *pro bono* work are student initiatives organized by universities and law schools. Several law schools have established *pro bono* centers and clinics where students have the opportunity to participate directly in *pro bono* work.¹⁸ Similar to those concepts, the private corporation called “Student litigators”¹⁹ gives *pro bono* legal advice supported by licensed lawyers.

A relatively new but nevertheless much promising development is that internationally well-established clearing houses start to list *pro bono* opportunities in Germany, thereby making *pro bono* needs in Germany much more transparent.

¹⁶ Legal services according to RDG § 2(1) are all legal activities specifically being of others’ concern.

¹⁷ http://www.upj.de/fileadmin/user_upload/MAIN-dateien/Aktuelles/Nachrichten/probono_flyer_2011.pdf

¹⁸ See, e.g., <http://www.paralegal.uni-jena.de/>; <http://www.lawandlegal.de/de/>; <http://www.jura.hhu.de/hilfe/>; <http://www.lto.de/recht/studium-referendariat/s/iuratio-und-student-litigators-der-nachwuchs-foerdert-sich-selbst/>.

¹⁹ <http://www.student-litigators.de/index.html>.

III. CONCLUSION

Today, out-of-court, *pro bono* work in Germany is permissible without any restrictions in the fields of representation of nonprofit associations, charitable foundations or individuals who or whose matters qualify for *pro bono*.

With respect to *pro bono* activities in the litigation context, the Legal Services Act, which entered into force on July 1, 2008, and the revised Legal Fees Act (“RVG”) have amended German fee rules in the litigation context already “in the right direction.” 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.

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Pro Bono Practices and Opportunities in Germany

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PRO BONO PRACTICES AND OPPORTUNITIES IN GHANA

This chapter describes the Ghanaian legal system, its challenges and what has been done to increase access to justice.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN GHANA

A. The Legal Profession

The Ghanaian legal system is based on a number of different platforms, including: (i) the 1992 Constitution of Ghana; (ii) enactments made by or under the authority of the Parliament of Ghana; (iii) any orders, rules and regulations made by any person or authority under a power conferred by the Constitution; (iv) the existing law (the written and unwritten laws of Ghana as they existed immediately before the coming into force of the Constitution); (v) any Act, Decree, Law or statutory instrument issued or made before that date, which came into force on or after that date; and (vi) the common law (the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law (the rules of law which by custom are applicable to particular communities in Ghana), including those determined by the Superior Court of Judicature).¹

Ghana's Constitution came into force on April 28, 1992, and states that "justice emanates from the people and shall be administered in the name of the Republic by the Judiciary, which shall be independent and subject only to the constitution."² The Judiciary has jurisdiction in all matters both civil and criminal, including matters relating to the constitution, as well as any other jurisdiction that Parliament may by law confer upon it.³

The Chief Justice is the head of the Judiciary in Ghana and is responsible for its administration and supervision. The Ghanaian judicial system is made up of the Superior Courts (Supreme Court, the Court of Appeal, the High Court and the Regional Tribunals) and the Lower Courts (Circuit Court and the District Courts).⁴

The Supreme Court is the final court of appeal in Ghana. It has appellate jurisdiction, exclusive original jurisdiction in all matters relating to the enforcement or interpretation of the Constitution, and all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under the Constitution and has supervisory jurisdiction over all courts and over any adjudicating authority.

The legal profession allows a qualified lawyer to practice as a solicitor,⁵ a barrister or both and they can practice in all the courts in Ghana.⁶ From the list of Lawyers in Good Standing published by the General Council of the Ghana Bar Association on June 12, 2012, there are currently about 1,573 lawyers in good standing in Ghana⁷ for a population of over 24 million.⁸ Most of these lawyers are concentrated in the main cities.

B. Legal Aid

Legal aid involves the representation by a lawyer, including all such assistance as is given by a lawyer, in the steps preliminary or incidental to any proceedings or arriving at or giving effect to a compromise to avoid or to bring to an end any proceedings.⁹

A person is entitled to legal aid in Ghana:¹⁰

- For the purposes of enforcing any provision of the Constitution

¹ GHANA CONST. art. 11 (1992).

² *Id.* at art. 125(1) (1992).

³ *Id.* at art. 125(5) (1992).

⁴ *See* the Courts Act, Act 459 (1993).

⁵ To practice as a solicitor in Ghana, you must hold a valid annual licence issued by the General Legal Council pursuant to section 8 of the Legal Profession Act, Act 32 (1960) known as "Practising Certificate."

⁶ *Id.* at § 2 (1960).

⁷ <http://www.ghanabar.org/members/index.html>.

⁸ <http://www.statsghana.gov.gh/>.

⁹ GHANA CONST. art. 294(4).

¹⁰ *Id.* at art. 294; Legal Aid Scheme Act No. 542, § 2 (1997).

- If he earns the Government minimum wage or less and desires legal representation in any criminal matter, or civil matter relating to landlord and tenant, insurance, inheritance with particular reference to the Intestate Succession Law, 1985 (P. N. D. C. L. 111), maintenance of children and such other civil matters as may from time to time be prescribed by Parliament
- If in the opinion of the Legal Aid Board the person requires legal aid

Section 1 of the Legal Aid Scheme Act, 1997(Act 542) establishes the Legal Aid Scheme. The purpose of the Legal Aid Scheme is to develop a comprehensive legal aid programme and policy to be carried out throughout Ghana, to supervise the general administration of the legal aid program and to approve the selection of lawyers for participation in the legal aid programme.¹¹

Under the Legal Aid Scheme Act (§24), apart from an applicant who has been indicted for an offence punishable by death or life imprisonment, any other person who wishes to apply for legal aid under the Scheme must complete the prescribed form and pay the requisite fee for the purpose. The application must be approved by the Selection Committee appointed under the Act.

If an applicant's application for legal aid is rejected by the Selection Committee, there is a limited appeal process, first to the Regional Committee and then by appeal from the decision of the Regional Committee to the Board of Legal Aid Scheme.

An applicant whose application is approved (or who successfully appeals) is exempted from paying the prescribed fee in respect of the filing of relevant court documents and the cost of preparing appeal records. The Board of the Legal Aid Scheme may also instruct the Director of the Legal Aid Scheme to pay, on behalf of the applicant, all or part of the expenses of the applicant's case, at the Board's discretion. Where an award is made in favor of the applicant, the Board may, however, recover from the applicant, at its discretion, some or all of the costs and expenses funded by the Legal Aid Scheme in relation to the application.¹²

Per section 26(1) of the Legal Aid Scheme Act, 1997 (Act 542), the funds for the operation of the Scheme include: (i) money provided by Parliament; (ii) donations; (iii) gifts; and (iv) fees paid by applicants.

Gifts and donations are accepted from different sources, individuals and organizations, as well as local and foreign sources. For instance, in June 2011, Fordham Law students and James Leitner, a 1982 graduate of Fordham, made a donation of \$4,150 to the Legal Aid Scheme.¹³

The Legal Aid Scheme is underfunded, understaffed and over-reliant on the goodwill of lawyers and other benevolent persons and organizations. This means that the level of funding at any particular time is unpredictable, which stifles the ability of the Legal Aid Scheme to discharge its constitutional mandate effectively.¹⁴

II. **PRO BONO IN GHANA: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. **Pro Bono Opportunities**

Accessibility of Legal Aid resources is a significant problem facing the citizens of Ghana. This has a disproportionate effect on the lower socio-economic classes. With the exception of services provided through the work of NGOs, as set out below under *Pro Bono* Resources, there is not an established formal structure under which lawyers can elect to provide *pro bono* services. The Legal Aid Scheme Act (§22) requires that the legal personnel providing legal services under the Legal Aid Scheme consist of selected and approved legal practitioners. Further, the National Service Board is required to assign to the Board a certain number of lawyers liable to do national service as the Board may request. This is supplemented by the fact that the Ghana Bar Association of each region is supposed to, with the approval of the General Council of the Bar, select legal practitioners who shall, subject to the approval of the Board, make their services available to the Scheme. In practice, it does not appear

¹¹ Legal Aid Scheme Act No. 542, § 5.

¹² Act 54, § 25.

¹³ <http://law.clearadmit.com/2011/07/fordham-law-makes-donation-to-ghanas-legal-aid-scheme/>.

¹⁴ <http://www.modernghana.com/news/241178/1/bar-association-committed-to-efficient-legal-aid-s.html>.

that the above combination of strategies results in a material number of lawyers providing *pro bono* legal services.

In an article entitled “*Waiting for Justice. Life In and After Remand*” published on the Daily Guide’s (a local newspaper) website on September 17, 2011, it was reported that the Legal Aid Scheme employed only 14 legal practitioners in the whole of Ghana. This consisted of three each in the major cities Kumasi and Accra, respectively, and two each in Ho, Sunyani and Tamale. Koforidua and Cape Coast each had only one legal practitioner assigned.¹⁵ With a population of 24 million, and in the context of over 1,500 registered lawyers, this represents a very small number of lawyers available to assist on a *pro bono* basis.

B. Barriers To *Pro Bono* Work And Other Considerations

In addition to lack of money, as in many countries, there is also a lack of lawyers to provide representation in the more rural areas and an absence of a formal requirement for lawyers to do *pro bono* work.¹⁶

Legal services in Ghana, as in any part of the world are expensive. Though the law does not prescribe the fees lawyers are to charge for their services, the Ghana Bar Association has in place a scale of fees that serve as a guide to lawyers on the fees to charge for their services.

The culture of providing free legal service is still developing in Ghana. Although most lawyers may from time to time provide some free legal service, this is not a priority for many, and in practice, as set forth above, this is not happening.

C. *Pro Bono* Resources

Local and international nongovernmental organizations (“NGOs”) provide some resources and support for *pro bono* work in Ghana. Some of the key NGOs are FIDA, HelpLaw Ghana, the Legal Resource Centre and Women’s Initiative for Self-Empowerment.

1. HelpLaw Ghana

HelpLaw Ghana provides free legal and related services to the poor and the less-privileged in Ghanaian society. It focuses on representing indigent criminal defendants in criminal proceedings.

2. Legal Resource Center

The Legal Resource Center seeks to ensure human rights for all. It works towards the promotion and protection of the rights to health, education, housing, work, participatory democracy, personal liberty and criminal/civil justice. These are carried out through public human rights education, community mobilization activities, legal aid, alternative dispute resolution services, action research, advocacy and publication. Central to the Legal Resource Center’s work are the campaigns and projects for the promotion and protection of human rights through innovative community mobilization strategies, public interactive human rights education, lawyering techniques and research and advocacy at the local, national and international levels.

3. Women’s Initiative for Self-Empowerment (“WISE”)

WISE provides support services, including legal aid, to women and children who have suffered violence of any kind. WISE provides individual and group counseling services for survivors of violence, as well as providing training in counseling and support for direct service providers. WISE set up the WISE Wellness Centre in Accra to provide survivors of violence with counseling, medical, legal and other socio-economic support services.

¹⁵ <http://www.dailyguideghana.com/?p=27073>.

¹⁶ <http://afrimap.org>.

4. International Federation of Women Lawyers (“FIDA”)

FIDA has a free legal aid program, particularly for women and children who cannot afford legal services of any kind. The scope of their legal aid includes counseling, settlement, mediation and court representation. Although services are free, the recipients of the legal aid are usually required to pay filing fees involved in prosecuting their cases before the courts.

5. Commission on Human Rights and Administrative Justice (“CHRAJ”)

CHRAJ was established pursuant to the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456). The functions of the CHRAJ include:

- (i) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;
- (ii) to investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the offices of the Regional Co-ordinating Council and the District Assembly, the Armed Forces, the Police Service and the Prisons Service insofar as the complaints relate to the failure to achieve a balanced structuring of those services or fair administration in relation to those services;
- (iii) to investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under the Constitution;
- (iv) to take appropriate action to call for the remedying, correction and reversal of instances specified in paragraphs (i), (ii) and (iii) through such means as are fair, proper and effective, including: (A) negotiation and compromise between the parties concerned; (B) causing the complaint and its finding on it to be reported to the superior of an offending person; (C) bringing proceedings in a competent court for a remedy to secure the termination of the offending action or conduct, or the abandonment or alteration of the offending procedures; and (D) bringing proceedings to restrain the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is unreasonable or otherwise *ultra vires*;
- (v) to investigate allegations that a public officer has contravened or has not complied with a provision of the Code of Conduct for Public Officers of the Constitution; and
- (vi) to investigate all instances of alleged or suspected corruption and the misappropriate steps, including reports to the Attorney General and the Auditor General, resulting from such investigation.

CHRAJ bears all costs and expenses related to the investigations it conducted into a complaint. CHRAJ has branches in all ten regions of Ghana and about 100 district capitals of the country.

6. Other Pro Bono Resources

The NGOs described in (1) through (4) above also engage in human rights promotion campaigns to complement educational programs conducted by CHRAJ and the National Commission for Civic Education (“NCCE”).

The NCCE is an independent, nonpartisan governance institution set up pursuant to Article 231 of the Constitution of Ghana. NCCE works to promote and sustain democracy and instill in the Ghanaian citizenry through civic education, an awareness of their civic rights and responsibilities in Ghana.¹⁷ It has 180 offices across Ghana.

¹⁷ <http://nccegh.org>.

III. CONCLUSION

Pro bono exists in Ghana in the form of legal aid, including under a basic statutory scheme; however, this is hugely under-resourced and lacks geographic reach. The rural areas are particularly under-served, and as discussed above, there are almost no lawyers allocated by the state to provide formal legal services to citizens under the Legal Aid Scheme. Although a lot of effort is being put into improving this system, including by the efforts of NGOs, there is a need for more, and more predictable, external funding and more local and international nongovernmental organizations to join in providing more resources and support to make legal aid more accessible.

July 2012 *Pro Bono* Practices and Opportunities in Ghana

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PRO BONO PRACTICES AND OPPORTUNITIES IN GREECE

Greece does not have a strong tradition in providing *pro bono* legal services. There is, however, a legal aid scheme in place which assists people that cannot afford legal costs. Legal aid is available before all courts: civil, criminal and administrative. In recent years, following the wave of immigrants and refugees arriving in Greece, legal aid services have developed to assist refugees seeking asylum and in the protection of their human rights.

Modern 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 was revised three times: in 1986, 2001 and 2008. Article 28 of the Constitution formally integrates international law and international conventions into Greek law. These laws and conventions take precedence over any provision of national law that contradicts them. 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 by the Government 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 nonexistent.

Unlike the Common law 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 legal profession in Greece is regulated by numerous Bar Associations. A lawyer has to register with one of the country’s Bar Associations. In early 2011, there were approximately 41,000 lawyers registered in the Greek Bar Associations.¹ The provision of legal services in Greece is subject to the Lawyer’s 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, later to the courts of appeal and finally to the Supreme Court, depending on how long they have been in practice and the type of cases they accept to represent.

Presidential Order 152/2000 regulates the practice of foreign lawyers in Greece who have obtained their qualification in another Member State of the EU (Directive 98/5/EC). Such lawyers may practice on a permanent basis in Greece, in either a self-employed or a salaried capacity. They must register with the relevant Greek bar association and keep chambers in the area in which they practice.

Once their application for registration is accepted, these lawyers 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 with 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.

¹ See http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/2010_table_of_lawyer1_1337839511.pdf.

According to Article 175 of the Lawyers Code, an attorney is prohibited from providing 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 (paid by the attorney) and is a prerequisite 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, respectively, provide 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 are eligible for legal aid:

- (1) 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 that are in the public interest or nonprofit-making and groups of persons who 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 noncontentious 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) First Instance court; or (c) the president of the competent court where the proceedings are to be instituted or are pending. For 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. The attorney does not have the right to provide an objection to the representation.

Legal aid is available if, as a result of paying the costs of the case, the applicant cannot 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 nonprofit-making corporate body, the attestation should prove that if it were to pay for the legal costs, 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 the applicant's 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; and
- (3) in the case of a foreign national, an attestation from the Ministry of Justice certifying that there are reciprocal arrangements with the country of origin of the applicant.

The request for legal aid should be presented 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 the court's 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, the applicant will still have to pay some or all of the costs of the winning party as soon as their 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 8,500 complaints in 2011.²

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, and 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 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.

According to UNHCR statistics for 2010, 1,444 refugees and individuals in refugee-like situations were resident in Greece.³

² See <http://www.synigoros.gr/resources/docs/oi-drasthriothtes-ths-xronias.pdf> (in Greek).

The following are examples of foundations/programs active in providing legal aid to refugees:

- The Marangopoulos Foundation for Human Rights (“**MFHR**”)⁴ 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 and who are unable to pay for legal counsel. MFHR has accepted many different types of cases, including the following:
 - 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.
 - Supporting detainees and prisoners by providing legal aid and defending them before the court.
 - 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.
 - 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.
 - 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.
 - Offering assistance to the homeless and those outside of the social security system.
 - Assisting individuals to resolve problems with the Greek public authorities by taking the necessary steps.
- The Ecumenical Refugee Program (“**ERP**”)⁵ is a special service of the Holy Synod of the Orthodox Church of Greece that assists refugees, asylum seekers and migrants. ERP runs different projects that have been funded by various sources, including the European Commission, UNHCR, ERF and the Greek Ministry of Health. The ERP provides primarily legal and social assistance, translation facilities and legal representation to asylum seekers in the Athens area and is one of the main organizations in this field in Greece. Advocacy is also a primary goal of the organization. Since March 2011, ERP is an implemented partner of UNHCR within the Asylum Reform Project in Greece in the areas of legal assistance and representation of asylum seekers in Greece. ERP is a member of legal, social, national and European networks in the field of refugee protection and advocacy.
- The NGO AITIMA⁶ (Greek word for “Request”) was founded in December 2008 to defend human rights and protect the environment through the following objectives: providing free legal advice and consultation to vulnerable groups, including refugees, minority and newly arrived communities; delivering training, education and cultural events and conferences; conducting research; and appealing to the judiciary system.

Moreover, various groups of lawyers have been constituted in an effort to provide help to migrants and refugees and ensure respect of their rights. One example is the “Group of lawyers for the Rights of Migrants and Refugees” (*Ομάδα Δικηγόρων για τα δικαιώματα προσφύγων και μεταναστών*).⁷

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 minors and socially vulnerable target groups of young

³ See <http://www.frlan.org/node/606>.

⁴ See <http://www.mfhr.gr/?ln=1>.

⁵ See <http://www.unhcr.org/4ea917d211.html>.

⁶ See <http://www.aitima.gr/>.

⁷ See <http://omadadikigorwn.blogspot.com/>.

citizens (up to 30 years old). 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 and isolation often experienced by the program's target groups; and (ii) to encourage and support young lawyers to undertake similar cases.⁸

The program deals with the following cases: criminal-law related cases (abuse, intra-family violence, human trafficking, drug-related offences); civil cases; administrative cases; and labour law-related cases. This program, focusing on youth, can be supplementary to the general legal aid system in place, but cannot replace it.

III. CONCLUSION

The number of applicants requesting legal services free of charge has increased in recent years, due mainly to the number of immigrants and refugees arriving in Greece and the recent severe economic crisis. Although legal aid and some limited free legal advice is available, there seems to be no established *pro bono* culture.

July 2012

Pro Bono Practices and Opportunities in Greece

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⁸ See <http://www.neagenia.gr/frontoffice/portal.asp?cpage=RESOURCE&resrc=1287&cnode=1>; <http://www.neagenia.gr/frontoffice/portal.asp?cpage=RESOURCE&resrc=140&cnode=48&cuser=E22A303F-23CE-49EC-A3A4-92096D4D24A0>.

PRO BONO PRACTICES AND OPPORTUNITIES IN HONG KONG¹

The provision of *pro bono* services is often seen as secondary to the government-funded legal aid system in Hong Kong. However, the term *pro bono* has become very “topical” in recent years and there is increasing recognition within Hong Kong’s legal fraternity that legitimate legal needs are not always being addressed through traditional legal aid. Over the past few years, many international law firms have expanded their *pro bono* practices in the region. This chapter discusses the legal profession, the legal aid system and *pro bono* opportunities and considerations in Hong Kong.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN HONG KONG

The legal profession in Hong Kong consists of barristers and solicitors in practice, judges serving at different levels of the court system, lawyers in government and quasi-government organizations, and arbitrators and mediators providing alternative dispute resolution services.² In addition, foreign lawyers practice laws of foreign jurisdictions in Hong Kong.³ Because of high legal fees in Hong Kong, the Hong Kong Government has established programs, such as legal aid services by the Hong Kong Legal Aid Department (the “**Legal Aid Department**”)⁴ and the Duty Lawyer Service,⁵ in order to provide legal assistance to those individuals who lack financial means.

A. The Legal Profession

The legal profession in Hong Kong is a self-governing system, where lawyers either practice as barristers or solicitors, but not both.⁶ Barristers are legal practitioners, expert in advocacy and litigation.⁷ As of May 2012, there were more than 1,100 barristers in Hong Kong out of a total civilian population of approximately seven million.⁸ Generally, only barristers have the right of audience⁹ in the Court of Appeal and the Court of Final Appeal.¹⁰ Access to barristers is normally granted through solicitors, the Department of Justice, or members of professional bodies recognized by the Hong Kong Bar Association.¹¹

In contrast to barristers, solicitors may offer a variety of legal services ranging from land and property, personal and family, to commercial and criminal matters. There were more than 7,000 solicitors¹² working in about 800 solicitor law firms¹³ in Hong Kong as of May 2012. A solicitor’s right of audience is traditionally limited to the lower courts.

In addition to Hong Kong solicitors, there were about 1,500 registered foreign lawyers in Hong Kong as of May 2012.¹⁴ Registered foreign lawyers may only practice the law of their jurisdictions and are prohibited from practicing Hong Kong law.¹⁵

¹ This chapter was drafted with the support of Latham & Watkins.

² THE DEPARTMENT OF JUSTICE OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, *Consultancy Study on the Demand for and Supply of Legal and Related Services—Supply Study Report 2 (2008)* [hereinafter *Supply Study Report*], available at <http://www.doj.gov.hk/eng/public/pdf/2008/reports/essupply.pdf>.

³ *Id.*

⁴ See generally LEGAL AID DEPARTMENT OF THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, *Homepage*, <http://www.lad.gov.hk/eng/home/home.html>.

⁵ See THE DUTY LAWYER SERVICE, HONG KONG SPECIAL ADMINISTRATIVE REGION, *Our Aim*, <http://www.dutylawyer.org.hk/en/about/aim.asp> (last visited Jun. 2, 2012).

⁶ THE DEPARTMENT OF JUSTICE OF HONG KONG SPECIAL ADMINISTRATIVE REGION, *The Legal System in Hong Kong*, <http://www.doj.gov.hk/eng/legal/> (last visited Jun. 2, 2012).

⁷ HONG KONG BAR ASSOCIATION, *About Us*, <http://www.hkba.org/the-bar/aboutus/index.html> (last visited Jun. 2, 2012).

⁸ HONG KONG BAR ASSOCIATION, *Bar List*, <http://www.hkba.org/the-bar/bar-list/index-new-eng.html> (last visited Jun. 2, 2012).

⁹ A right of audience is a right of a lawyers to appear and conduct proceedings in court on behalf of their client.

¹⁰ HONG KONG BAR ASSOCIATION, *About Us*, *supra* n.7.

¹¹ HONG KONG BAR ASSOCIATION’S CODE OF CONDUCT, paragraph 50(a), available at <http://www.hkba.org/the-bar/code-of-conduct/code-of-conduct.html>.

¹² THE LAW SOCIETY OF HONG KONG, *Members with Practising Certificate*, http://www.hklawsoc.org.hk/pub_e/memberlawlist/mem_withcert.asp (last visited Jun. 2, 2012).

¹³ THE LAW SOCIETY OF HONG KONG, *Hong Kong Solicitors’ Firms*, http://www.hklawsoc.org.hk/pub_e/memberlawlist/mem_firm.asp (last visited Jun. 2, 2012).

¹⁴ THE LAW SOCIETY OF HONG KONG, *Registered Foreign Lawyers*, http://www.hklawsoc.org.hk/pub_e/memberlawlist/mem_foreignlawyers.asp (last visited Jun. 2, 2012).

¹⁵ Foreign Lawyers Registration rules, paragraph 12, available at http://www.hklawsoc.org.hk/pub_e/professionalguide/volume2/default.asp?cap=8.

Finally, as of May 2012, there were over 160 judges and magistrates serving at different levels of the court and tribunal system in Hong Kong.¹⁶ The Magistrates' Courts hear a wide range of criminal offenses, both summary and indictable.¹⁷ The District Court has both a criminal and civil jurisdiction.¹⁸ The High Court comprises the Court of Appeal and the Court of First Instance, and both courts have appellate and original jurisdiction.¹⁹ The Court of Final Appeal is the highest appellate court in Hong Kong.²⁰ In addition to the courts, there are a large number of tribunals that adjudicate disputes relating to specific subject matters, such as the Lands Tribunal, the Labor Tribunal and the Small Claims Tribunal.

Despite increasing competition within the legal profession, legal expenses are still considered high and unaffordable to a large segment of the Hong Kong community.²¹ For example, hourly rates for high quality legal professionals in Hong Kong can be as high as, if not higher than, those for equivalent professionals in London.²² To ensure proper representation of those individuals who do not have the financial means to access legal services, the Hong Kong Government has established and sponsored a number of legal aid programs.

B. Legal Aid

Established by the Legal Aid Ordinance,²³ the Legal Aid Department is a separate administrative department of the Hong Kong Government that provides legal representation to eligible applicants in civil and criminal proceedings.²⁴ The mission of the Legal Aid Department is to ensure that no person is denied access to justice because of lack of financial means. However, even when an application for legal aid is accepted, the applicant may be required to contribute towards the costs and expenses incurred by the Department, depending on the financial capability of each applicant.²⁵

Legal aid may be provided under three different schemes: (1) Ordinary Legal Aid, (2) Supplementary Legal Aid and (3) Criminal Legal Aid.²⁶ All three schemes are open to applicants who pass the means test and the merits test, regardless of whether they are Hong Kong residents.²⁷ The purpose of the means test is to ensure that the applicant does not otherwise have access to affordable legal services. The standard for the means test differs for each legal aid scheme, as explained further below.²⁸ The purpose of the merits test is to determine whether an applicant has a reasonable claim or defense in the matter in question and whether the grant of legal aid to an applicant is justified.²⁹ To pass the merits test, the applicant's case or defense must have a reasonable chance of success. The three legal aid schemes operate differently in significant ways.

Ordinary Legal Aid provides assisted legal services in civil matters, including family and matrimonial disputes, personal injury claims, employment disputes, contractual disputes, immigration matters and professional negligence claims. Ordinary Legal Aid is not available for defamation claims, Small Claims Tribunal matters, Labor Tribunal matters, money claims in derivatives of securities, currency futures or other futures contracts, and certain election petitions. To qualify for Ordinary Legal Aid, an applicant must pass the merits test and the means test. Under the means test, applicants with financial

¹⁶ THE JUDICIARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, *List of Judge and Judicial Officers*, <http://www.judiciary.gov.hk/en/organization/judges.htm> (last visited Jun. 2, 2012).

¹⁷ THE JUDICIARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, *Magistrates' Courts*, http://www.judiciary.gov.hk/en/crt_services/pphlt/html/mag.htm (last visited Jun. 2, 2012).

¹⁸ THE JUDICIARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, *The District Court*, http://www.judiciary.gov.hk/en/crt_services/pphlt/html/dc.htm (last visited Jun. 2, 2012).

¹⁹ THE JUDICIARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, *High Court*, http://www.judiciary.gov.hk/en/crt_services/pphlt/html/hc.htm (last visited Jun. 2, 2012).

²⁰ THE JUDICIARY OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, *Court of Final Appeal*, http://www.judiciary.gov.hk/en/crt_services/pphlt/html/cfa.htm (last visited Jun. 2, 2012).

²¹ *Supply Study Report*, *supra* n.2, at 3.

²² *Id.*

²³ The Legal Aid Ordinance § 3, available at <http://www.hkllii.hk/eng/hk/legis/ord/91/s3.html>.

²⁴ GUIDE TO LEGAL AID SERVICES IN HONG KONG at 5, available at [http://www.lad.gov.hk/eng/documents/ppr/publication/guide_to_legal_aid_services_in_hongkong\(e\)_lowr.pdf](http://www.lad.gov.hk/eng/documents/ppr/publication/guide_to_legal_aid_services_in_hongkong(e)_lowr.pdf).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 4.

²⁸ LEGAL AID DEPARTMENT OF THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, *FAQ*, <http://www.lad.gov.hk/eng/las/faq.html> (last visited Jul. 2, 2012).

²⁹ GUIDE, *supra* n.24, at 13.

resources exceeding HK\$260,000 are not eligible for Ordinary Legal Aid.³⁰ Applicants may be required to pay a contribution towards their legal fees, which is calculated in accordance with their financial resources.

Supplementary Legal Aid covers cases involving personal injury or death, as well as medical, dental or legal professional negligence, where the claim for damages is likely to exceed HK\$60,000.³¹ It also covers claims under the Employee's Compensation Ordinance. Supplementary Legal Aid requires the applicant to pass the merits test and the means test. Unlike Ordinary Legal Aid, the means test for Supplementary Legal Aid requires the applicant to have financial resources that exceed HK\$260,000 but which are lower than HK\$1,300,000. Since Supplementary Legal Aid is a self-financing scheme funded by contributions paid and compensation recovered, applicants must pay an initial application fee of HK\$1,000 plus an interim contribution of HK\$65,000 once their application has been accepted.

Criminal Legal Aid provides legal services to an accused person in committal proceedings³² in the Magistrates' Court, cases tried in the District Court and the Court of First Instance and in all criminal appeals. Under the merits test for Criminal Legal Aid, legal representation will be provided to an accused for committal proceedings and for trials in the District Court and the Court of First Instance if it is in the interests of justice to do so.³³ In criminal appeals, legal representation will be provided if there are meritorious grounds for appeal, except for cases involving a charge of murder, treason or piracy with violence, where legal aid must be granted even if there are no meritorious grounds for appeal.³⁴ The means test for Criminal Legal Aid has a financial eligibility limit of HK\$260,000.³⁵ If an applicant's financial resources exceed the limit, the Director of Legal Aid may waive the limit if he determines that it is in the interests of justice to do so.³⁶

To complement Legal Aid, the Duty Lawyer Service was established in 1978 as an independent organization fully subsidized by the Hong Kong Government.³⁷ Managed by the Hong Kong Bar Association and the Law Society of Hong Kong, the Duty Lawyer Service provides legal assistance through four schemes: (1) the Duty Lawyer Scheme, (2) the Free Legal Advice Scheme, (3) the Tel-Law Scheme and (4) the Convention Against Torture Scheme.

The Duty Lawyer Scheme provides legal representation to persons brought before the Magistrates' Courts, Juvenile Courts and Coroner's Courts. The Scheme also assigns lawyers to defendants facing extradition and hawkers (street sellers) with respect to their appeals to the Municipal Services Appeals Board. Like the Legal Aid schemes, in order to qualify for the Scheme, an applicant has to pass a merits test and a means test and pay a fixed handling charge of HK\$460, which may be waived in cases of genuine hardship.³⁸ In 2011, 31,347 defendants were represented via the Duty Lawyer Scheme.³⁹

Under the Free Legal Advice Scheme, volunteer lawyers provide members of the public with preliminary advice on their legal problems. The Scheme has nine district offices located throughout Hong Kong. Much of the advice sought falls into areas including matrimonial, landlord and tenant, employment, estate administration, commercial and property disputes, criminal, personal injuries, bankruptcy and debts. The Scheme does not offer any follow-up services or ongoing representation of

³⁰ LEGAL AID DEPARTMENT OF THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION, *Financial Eligibility*, <http://www.lad.gov.hk/eng/las/fe.html> (last visited Jun. 2, 2012). Financial resources refer to the applicant's monthly disposable income multiplied by 12, plus disposable capital. Monthly disposable income is the net monthly income after various allowable deductions have been made from gross income. Disposable capital consists of all assets of a capital nature, such as cash, bank savings, jewelry, antiques, stocks and shares and property.

³¹ GUIDE, *supra* n.24, at 9.

³² Committal proceedings are proceedings before a Magistrate for determining whether or not there is enough evidence against a defendant for a criminal case to be transferred to the High Court for trial or sentence.

³³ GUIDE, *supra* n.24, at 18.

³⁴ *Id.* at 19.

³⁵ *Id.* at 18-19.

³⁶ *Id.* at 19.

³⁷ *Our Aim*, *supra* n.5.

³⁸ DUTY LAWYER SCHEME, *Annual Report 2011*, http://www.dutylawyer.org.hk/en/annual_11/scheme.asp (last visited Jun. 2 2012). The means test for the Duty Lawyer Scheme requires the applicant to have a gross annual income of not more than HK\$131,860.

³⁹ *Id.*

clients. There is no means test and the service is provided free of charge.⁴⁰ In 2011, 753 volunteer lawyers advised 6,675 persons seeking free legal advice.⁴¹

The Tel-Law Scheme is a 24-hour fully computerized system that provides the general public with free pre-taped legal information over the telephone. There are 78 topics available which fall into eight main categories: (1) family law; (2) land law; (3) criminal law; (4) employment law; (5) commercial, banking and sales of goods law; (6) administration and constitutional law; (7) environmental and tort law; and (8) general legal information. The tapes are available in Cantonese, Mandarin and English.⁴² In 2011, the Tel-Law Scheme recorded a total of 19,464 calls.⁴³

The Convention Against Torture (“CAT”) Scheme is a pilot program that provides legal services to claimants who have made a petition to the Immigration Department under Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Specifically, the CAT scheme provides advice to the claimant regarding procedures, legal rights and merits of the claimant’s petition. Volunteer lawyers assist claimants in completing relevant questionnaires, accompany claimants during interviews and represent claimants at oral hearings.⁴⁴ In 2011, the CAT Scheme processed 2,022 cases.⁴⁵

II. *PRO BONO* IN HONG KONG: OPPORTUNITIES AND CONSIDERATIONS

In addition to government-funded legal schemes, there are a variety of *pro bono* opportunities in Hong Kong organized by private organizations. However, for a variety of reasons, many lawyers in Hong Kong do not provide any *pro bono* services to the public. This section surveys a number of *pro bono* resources that facilitate the provision of *pro bono* services in Hong Kong.

A. *Pro Bono* Opportunities

According to a 2008 study conducted by the Hong Kong Department of Justice, about one-half of barristers and one-third of solicitors provided *pro bono* services to the public in the six months prior to the date of the study.⁴⁶ Of those lawyers who provided *pro bono* services during that period, more than 10% of barristers and close to 40% of solicitors spent more than 10 hours per month on *pro bono* work.⁴⁷ Of the *pro bono* opportunities available in Hong Kong, the most popular program among barristers and solicitors is the Free Legal Advice Scheme provided by the Duty Lawyer Service.⁴⁸

Many Hong Kong lawyers participate in programs organized by nongovernmental organizations (“NGOs”). These programs range from the rendering of free legal advice to members of the public, the provision of community legal education and advising NGOs.⁴⁹ The Hong Kong Refugee Advice Centre is an example of an NGO that provides *pro bono* legal services. As a nonprofit organization, the refugee center aims to provide high-quality, *pro bono* legal advice to refugees in Hong Kong and to ensure that they have access to fair refugee status determination procedures. The center is currently partnered with six of Hong Kong’s international law firms, and it continues to look to partner with additional law firms for assistance with their casework.⁵⁰

Lawyers in Hong Kong can also participate in free legal services schemes organized by the Hong Kong Bar Association and the Hong Kong Law Society. For example, the Bar Free Legal Service Scheme, a program sponsored by the Hong Kong Bar Association, is the second most popular program among

⁴⁰ THE DUTY LAWYER SERVICE, *Free Legal Advice Scheme*, <http://www.dutylawyer.org.hk/en/free/free.asp> (last visited Jun. 2, 2012).

⁴¹ *Free Legal Advice Scheme, Annual Report 2011*, http://www.dutylawyer.org.hk/en/annual_11/advice.asp (last visited Jun. 2, 2012).

⁴² THE DUTY LAWYER SERVICE, *Tel-Law Scheme*, http://www.dutylawyer.org.hk/en/tellaw/tel_law.asp (last visited Jun. 2, 2012).

⁴³ *Tel-Law Scheme, Annual Report 2011*, http://www.dutylawyer.org.hk/en/annual_11/tel-law.asp (last visited Jun. 2, 2012).

⁴⁴ *Convention Against Torture Scheme*, <http://www.dutylawyer.org.hk/en/torture/torture.asp>.

⁴⁵ *Convention Against Torture Scheme, Annual Report 2011*, http://www.dutylawyer.org.hk/en/annual_11/torture.asp (last visited Jun. 2, 2012).

⁴⁶ *Supply Study Report*, *supra* n.2, at 22, 47.

⁴⁷ *Id.* at 23, 48.

⁴⁸ *Id.* at 22, 47.

⁴⁹ *Id.* at 23, 48.

⁵⁰ THE HONG KONG REFUGEE ADVICE CENTER, *Law firm partners*, <http://www.hkrac.org/who-we-are/law-firm-partners> (last visited Jun. 2, 2012). For another example of an NGO in Hong Kong, see Helpers for Domestic Helpers, <http://www.stjohnscathedral.org.hk/domestic.html> (last visited Jun. 2, 2012).

barristers. Through the program, barristers provide legal advice and representation where Legal Aid assistance is unavailable.

B. Barriers To *Pro Bono* Work And Other Considerations

The Hong Kong Bar Association and the Hong Kong Law Society impose few barriers on *pro bono* work for Hong Kong lawyers. Generally, there is “no objection to a barrister giving advice free on legal matters . . . on a charitable basis.”⁵¹ The only restriction found in the Hong Kong Bar Association’s Code of Conduct is that barristers may only give free legal advice in a scheme or program established to the satisfaction of the Hong Kong Bar Council to further the purpose of promoting the objectives of the Hong Kong Bar Association.⁵² No similar limit exists in the Hong Kong Law Society’s professional guide. Lawyers are not required to charge minimum tariffs or VAT on services that they provide for free.

However, despite the few barriers to participation, a large proportion of lawyers in Hong Kong do not participate in *pro bono* activities. According to the Supply Study Report, for the 48% of the barristers and 63% of the solicitors who did not participate in any *pro bono* work, the main reasons provided were that they had no time, or no interest in participating.⁵³ Only about 11% of solicitor law firms in Hong Kong had a company-wide policy on *pro bono* work. For the vast majority of those firms that did not have a *pro bono* policy, the main reason given was that there were insufficient resources to dedicate to *pro bono* work.

Foreign lawyers and foreign law firms, including the Hong Kong offices of many U.S. firms, face an additional obstacle to the provision of *pro bono* services that do not exist for local firms. Because foreign lawyers and foreign law firms are not allowed to advise on Hong Kong law, they are unable to provide legal representation in Hong Kong courts on a *pro bono* basis, which is where the need for *pro bono* assistance is greatest.⁵⁴

C. *Pro Bono* Resources

Many referral organizations exist in Hong Kong to facilitate the provision of *pro bono* legal services. The Hong Kong Law Society is an example of a successful referral organization. In January 2010, the Law Society established the Pro Bono Committee to coordinate *pro bono* services.⁵⁵ Within that year, the committee set up the Manila Helpline immediately after the tragic shooting in August 2010, formed panels of volunteers to the SME Advisory Centre of the Hong Kong Trade and Development Council and participated in the SCOLAR Volunteering Program to teach English to primary students.⁵⁶ The *pro bono* web page on the Hong Kong Law Society’s website contains a list of other *pro bono* opportunities and resources.⁵⁷

Listed below is contact information for the Hong Kong Law Society, the Hong Kong Bar Association and a selection of certain other organizations offering *pro bono* programs in Hong Kong:

- The Hong Kong Law Society
 - Address: 3/F, Wing On House, 71 Des Voeux Road Central
Hong Kong
Phone: +852.2846.0500
Fax: +852.2845.0387
Website: http://www.hklawsoc.org.hk/pub_e/probono/public/
- The Hong Kong Bar Association

⁵¹ HONG KONG BAR ASSOCIATION’S CODE OF CONDUCT, *supra* n.11.

⁵² THE BAR ASSOCIATION CODE OF CONDUCT, ¶ 22(7), available at http://www.hkba.org/the-bar/code-of-conduct/code_of_conduct5.htm.

⁵³ *Supply Study Report*, *supra* n.2, at 25, 50.

⁵⁴ See Naomi Rovnick and Barclay Crawford, *HK Law Firms Fall Short on Pro Bono*, SOUTH CHINA MORNING POST, Apr. 5, 2010, available at <http://www.legco.gov.hk/yr09-10/chinese/panels/ajls/papers/aj0426cb2-1417-1-ec.pdf>.

⁵⁵ THE LAW SOCIETY OF HONG KONG, *Pro Bono, Introduction*, http://www.hklawsoc.org.hk/pub_e/probono/public/pbs_ls.asp (last visited Jun. 2, 2012).

⁵⁶ *Id.*

⁵⁷ *Id.*

- Phone: +852.2869.0210
Fax: +852.2869.0189
Website: <http://www.hkba.org/the-bar/free-legal-service/index.html>
- Hong Kong Refugee Advice Centre
 - Address: Hong Kong Refugee Advice Centre
Flat B, 10th Floor, Comfort Building
86-88A Nathan Road
Hong Kong
Phone: +852.3109.7359
Fax: +852.3422.3019
Website: <http://www.hkrac.org/>
Email: info@hkrac.org
- Free Legal Advice Clinic at the Hong Kong Federation of Women's Centres
 - Address: 305-309, Lai Lan House, Lai Kok Estate, Cheung Sha Wan, Kowloon
Phone: +852.2386.6256
Fax: +852.2728.0617
Website: <http://womenscentre.org.hk/en/services/70-counselling-and-legal-support/20-lac>
Email: hkfwc@womenscentre.org.hk

III. CONCLUSION

“The practice of law cannot be treated merely as business,” said former Chief Justice Andrew Kwok Nang Li.⁵⁸ For the lawyers who do not participate in *pro bono* services, the main reasons provided are that they have no interest, resources or time. Li’s words should serve as a reminder that a lawyer’s interest should extend beyond the office and that what distinguishes lawyers from other professions is that lawyers play an important role in society in promoting the rule of law and enhancing easy access to justice for all.⁵⁹ Given the variety of nonprofit organizations that provide *pro bono* services in Hong Kong, the concern for the lack of *pro bono* resources may be, to some extent, more perceived than real.

Although long working hours and stressful working environments in many of the large commercial law firms may prevent lawyers from engaging in *pro bono* services, some law firms are beginning to pay greater attention to *pro bono* activities, by, for example, forming partnerships with NGOs, providing employee lawyers with time off billable work to participate in community legal services and requiring participation in community projects as part of the staff performance appraisal criteria.⁶⁰

September 2012

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.

⁵⁸ *HK Law Firms Fall Short*, see *supra* n.54.

⁵⁹ HONG KONG LAWYER, *President’s Message* (Apr. 2012), available at <http://www.hk-lawyer.com/innerpages/0/0/2010/2/President%27s%20Message>.

⁶⁰ HONG KONG LAWYER, *President’s Message* (Jan. 2011), available at <http://www.hk-lawyer.com/innerpages/0/0/2011/1/President%27s%20Message>.

PRO BONO PRACTICES AND OPPORTUNITIES IN HUNGARY¹

In the aftermath of the fall of communism in the late 1980s, Hungary went through an important transition period. Now, Hungary has a society with a well-established and democratically enforced rule of law. The country also joined the European Union in 2004.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN HUNGARY

A. The Legal Profession

Approximately 30,000 people work in the legal profession in Hungary, generally as attorneys, judges, prosecutors, public notaries, public servants or legal counsels.² Although detailed databases are not available, it is estimated that 15,500 legal practitioners work at law firms,³ approximately 3,500 are employed by courts,⁴ and about 750 people work at public notary offices.⁵ The Budapest Bar Association is by far the largest regional bar association in Hungary representing about 60% of all the attorneys in Hungary.⁶

The vast majority of Hungarian lawyers work either individually or in small law firms. However, an increasing number of lawyers work in firms with between 20 to 30 members.⁷ These law firms are mostly international and active in the corporate sector.⁸

The judicial system has several levels, namely, the local courts, the county courts, the Court of Appeal and the Supreme Court. Local courts are qualified to hear civil, commercial and criminal cases. County courts are qualified to hear administrative cases, cases involving amounts over 20,000 euros, some specific criminal cases (e.g., terrorism) and appeals lodged against the decisions of local courts.

The provision of legal services is regulated by separate acts applicable to the different branches of the legal profession, such as the Act on Attorneys, the Act on Legal Councils and the Act on the Legal Status of Judges.⁹ The Act on Attorneys does not fix legal fees, which should be negotiated between lawyer and client.

B. Legal Aid

The Hungarian Constitution provides an individual with the right to representation at any time during a judicial or criminal proceeding.¹⁰ 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.¹¹

¹ This chapter was drafted with the support of Szecskay Attorneys at Law, Budapest, Hungary.

² Since no written database is available on this subject, the above estimation was obtained orally from the Hungarian Lawyers Association.

³ The 15,500 legal practitioners who work at law firms is estimated to include: attorneys: 12,384; trainees: 2,612; employed (salaried) attorneys: 424; European Community lawyers: 134 (oral information from the Hungarian Bar Association, effective as of Nov. 30, 2011).

⁴ Judges: 2,889; secretaries: 312; trainees: 291 (oral information from the National Office for the Judiciary, effective as of Mar. 30, 2012).

⁵ Public notaries, vice-notaries and trainees: 747 (HUNGARIAN CHAMBER OF CIVIL LAW NOTARIES (Dec. 31, 2012).

⁶ Márta Pardavi, *The Legal Profession in Hungary*, ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (“OSCE”) Paper (October 2008), available at <http://www.osce.org/odihr/36305>.

⁷ BUDAPEST BAR ASSOCIATION, http://www.bpugyvedikamara.hu/main_page/ (last visited Jun. 15, 2012).

⁸ See Pardavi, *supra* n.6.

⁹ The following acts shall apply regarding lawyers: Act 11 of 1998 on attorneys; Act CLXI of 2011 on the judicial system; Act CLXII of 2011 on the legal status of the judges; Act CLXIII of 2011 on public prosecutors; Act XLI of 1991 on public notaries; Decree No. 3 of 1983 on legal councils.

¹⁰ Committee Takes Up Hungary’s Fourth Periodic Report: Experts Praise Reforms, Express Concern Over Minorities, Human Rights, U.N. Press Release Doc. HR/CT/618 (Mar. 22, 2002), www.un.org/news/Press/docs/2002/hrct618.doc.htm.

¹¹ *Id.*

Legal aid services may be provided by the following persons specified by the Act on Legal Aid: nongovernmental organizations, foundations, minority local governments, universities offering legal education and lawyers (including European Community lawyers permanently working in Hungary).¹²

In out-of-court proceedings, all registered legal service providers may provide legal aid.¹³ However, in court proceedings, only attorneys, law firms and certain other entities (nongovernmental organizations, foundations) may provide legal aid. These organizations must have concluded fixed-term agency contracts with attorneys under which the attorneys will provide legal services on behalf of the organization.¹⁴ Hungary offers legal aid in both civil and criminal proceedings. People can also obtain aid when seeking legal advice or drafting legal documents.¹⁵ If a person needs legal services during court-administered judicial proceedings, the court will administer such services.¹⁶ If a person qualifies for legal aid during such proceedings, the aid will cover the entirety of the person's involvement in the legal process, including any appellate work and the enforcement of the court's decision.¹⁷

Hungarian courts look at numerous factors when deciding whether a person qualifies for legal aid, including the person's financial status and his or her need for trained legal services in the given legal proceeding.¹⁸ A person seeking legal aid must submit: (1) a statement of personal data on the applicant and any dependent(s); (2) a statement of the financial situation of the applicant and any dependent(s); (3) 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 applicant receives a pension, the last postal certificate indicating the amount of the pension; and (6) if the applicant or any dependent receives unemployment benefits or other continuous social aid, the certificate stating the period of eligibility and the amount received.¹⁹ In addition, a person seeking legal aid from the Hungarian state must be one of the following: (1) a Hungarian national; (2) a 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.²⁰

The application form shall be submitted to the County Office of Justice. The Office makes its decision no later than 5 days in the case of applications made in person, or 10 working days in the case of written applications.²¹

If the Office approves the application, the applicants might choose under certain conditions a legal aid provider from the Register.²²

Depending on the material status of the applicant, the State either pays or advances the fee and costs of the lawyer providing legal aid services, i.e., the legal aid fee and expenses (e.g., phone calls, traveling, parking and copying documents).²³

¹² Section 66 of the Act LXXX of 2003 on Legal Aid was adopted in order to encourage the creation of institutions for the socially disadvantaged in which they will be able to receive professional legal advice and representation in court in the course of asserting their rights and resolving legal disputes.

¹³ *Id.* § 68.

¹⁴ *Id.* § 68.

¹⁵ EUROPEAN JUDICIAL NETWORK IN CIVIL AND COMMERCIAL MATTERS, https://e-justice.europa.eu/content_rights_of_victims_of_crime_in_criminal_proceedings-171-HU-en.do?clang=en&idSubpage=4 .

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Act LXXX of 2003, *supra* n.12, § 4.

²¹ *Id.* § 23.

²² For legal aid for cases heard by a court, the legal representative is chosen by the court. Conversely, for legal aid for cases not heard by a court, the applicants may choose their representative from the registry kept by the Central Justice Office. *See* EUROPEAN JUDICIAL NETWORK IN CIVIL AND COMMERCIAL MATTERS, http://ec.europa.eu/civiljustice/legal_aid/legal_aid_hun_en.htm.

²³ Act LXXX of 2003, *supra* n.12, § 1.

II. *PRO BONO* IN HUNGARY: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

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.²⁴ An entity's registration can note what types of legal services it provides legal aid for, as well as the quantity of legal aid it is able to provide.²⁵ Based on this registration, the Ministry of Justice will contract with an entity to provide legal aid when the need arises.

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 less-favored. 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.²⁶ Several of these law firms have also drafted and signed a declaration in which they affirm their commitment to advancing the public good by working for more clients who cannot afford to pay. In effect, since 2002, law firms that would like to provide *pro bono* services in Hungary should contact the Public Interest Law Institute (PILI),²⁷ which promotes *pro bono* practice by involving the legal community in *pro bono* matters in Hungary.²⁸ 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.²⁹

B. Barriers To *Pro Bono* Work And Other Considerations

Hungarian *pro bono* culture is at the beginning of its development. In practice, mainly international law firms have sufficient capacity to contact NGOs and to provide legal assistance free of charge. However, the communication opportunities between medium-sized law firms and NGOs could be enhanced, which would have a great impact on the development of Hungarian *pro bono* culture. According to the Act on Legal Aid, the legal aid provider must meet several requirements, including registration by the competent authority.³⁰

Decree No 7/2002 of the Ministry of Justice regulates the fees to be paid to lawyers who provide legal aid services in judicial cases. Such lawyers are entitled to legal aid fees and costs. The legal aid fee is calculated on the basis of the hourly fee of advocates, as set forth by the Central Budget Act, which is currently 3,000 Hungarian forints (approx. 10 euros). This amount has not changed since 2007.³¹ The Decree does not provide for the reimbursement of VAT. Therefore, the lawyer should inform the court, the prosecutor or the investigating authority defining legal aid fees and costs, whether he or she is obliged to pay VAT (currently 27%).

C. *Pro Bono* Resources

Law firms that would like to provide *pro bono* services in Hungary should contact PILI. PILI assists lawyers who seek opportunities to provide legal assistance, and organizations that need such help, to find each other. It also strengthens these relationships. PILnet has organized several skill-building workshops since its establishment in Hungary (for further details, please see <http://pilnet.org/>).

Currently, approximately twenty law firms have a long-term relationship with PILnet, on the basis of which they can communicate with NGOs. In practice, lawyers assisting via PILnet usually provide

²⁴ *Id.* §§ 66-67.

²⁵ *Id.* § 65.

²⁶ Various international law firms committed to offering Pro Bono services in Hungary signed the Pro Bono Declaration, developed with the assistance of PILI's pro bono project. Among others, Allen & Overy Iroda, Köver Clifford Chance, Siegler Law Office/Weil, Gotshal & Manges thus affirmed publicly their commitment to advancing the public good.

²⁷ <http://www.pili-law.org/>.

²⁸ PRO BONO PROGRAM OF PUBLIC INTEREST LAW INSTITUTE, *HUNGARIAN PRO BONO CLEARINGHOUSE*, http://www.probonocentrum.cz/files/file/podklady%20pro%20kulat%C3%BD%20st%C5%AFI/Promoting%20Pro%20Bono%20in%20Hungary%20and%20World%20wide_PILI.pdf.

²⁹ *Id.*

³⁰ Please refer to section I.B.

³¹ Act LXXX of 2003, *supra* n.12, § 1; Act CLXXXVIII (Central Budget Act of Hungary in 2012) § 58 (4).

legal assistance in the fields of civil law, family law, criminal law, employment law and environmental law.

III. CONCLUSION

The *pro bono* culture in Hungary has been developing more efficiently since the beginning of the 21st century. Most Hungarian attorneys provide legal aid services under the Act on Legal Aid, in the course of which the Hungarian state finances the accrued costs and fees of the attorney. A smaller but growing number of attorneys provide legal assistance as a *pro bono* service outside of the scope of the Act on Legal Aid, in the course of which they do not request any fee from the represented persons.

July 2012

Pro Bono Practices and Opportunities in Hungary

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PRO BONO PRACTICES AND OPPORTUNITIES IN INDIA¹

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 *pro bono* opportunities for foreign-qualified attorneys.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN INDIA

A. Overview of the Legal Profession

It is estimated that there are approximately 1.2 million registered lawyers in India, with about 60,000 to 80,000 new lawyers joining the profession every year.² While this is similar to the absolute number of lawyers in the U.S., the per capita number of lawyers in India is around 10.2 for every 10,000 residents as compared to around 38.5 lawyers per 10,000 residents in the U.S.³ Most Indian lawyers work in litigation-related fields, with likely only around 5,000 to 10,000 corporate or transactional lawyers in India, including in-house lawyers.⁴ Approximately 1,000 lawyers work for 5 national law firms consisting of around 200 lawyers each, with an estimated additional 1,000 lawyers working in mid-size firms, each consisting of 20 or more lawyers.⁵ The remaining lawyers consist of sole proprietorships and attorneys employed by smaller law firms.

Indian lawyers are certainly not limited to Indian law firms and employers. There are various opportunities for Indian lawyers abroad, although the size of this market has been equally hard to pinpoint.⁶ At one top Indian law school, 3 out of 43 students applying for on-campus placements in 2012 were extended offers by foreign law firms.⁷ In general, Indian law graduates are able to benefit from their training in a common-law system (largely inherited from the British) and proficiency in English.

B. Structure of the Indian Judiciary

The highest court in the Indian judiciary is the Supreme Court of India (hereinafter the “**Supreme Court**”), followed by High Courts, which exercise both original and appellate jurisdiction, and lower or subordinate courts.⁸ There are a total of 21 High Courts representing 28 states and several union territories, since some states and union territories share High Courts.⁹ There are also 640 administrative districts in India below the state level, each of which has a district court.¹⁰ In addition to the district

¹ This chapter was drafted with the support of Luthra & Luthra Law Offices and ALMT Legal.

² See BAR COUNCIL OF INDIA, *Vision Statement 2011-2013*, <http://www.barcouncilofindia.org/about/about-the-bar-council-of-india/vision-statement-2011-13/> (last visited Jun. 29, 2012); see also Luigi Benetton, *Few law firms in Canada are outsourcing legal work to India*, *The Lawyers Weekly*, Nov. 23, 2007, available at <http://www.lawyersweekly.ca/index.php?section=article&articleid=580>.

³ See AMERICAN BAR ASSOCIATION, *Lawyer Demographics* (2011), available at http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2011.authcheckdam.pdf; see Law School Tuition Bubble, *Lawyers Per Capita by State*, <http://lawschooltuitionbubble.wordpress.com/original-research-updated/lawyers-per-capita-by-state/> (last visited Jun. 28, 2012). Assuming populations of 311,591,917 per the U.S. Census Bureau in July of 2011 and 1,170,938,000 per the World Bank for India in 2010.

⁴ See *India Watch: the forbidden land of “approximately” 1.2 million lawyers*, *THE LAWYER* (Oct. 20, 2011), <http://www.thelawyer.com/india-watch-the-forbidden-land-of-%E2%80%98approximately%E2%80%99-12-million-lawyers/1009874.article>.

⁵ See *id.*

⁶ See Navin Kumar, *Careers in Law: Opportunities abroad*, Rediff.com (Mar. 6, 2008), <http://www.rediff.com/getahead/2008/mar/06law.htm> (last visited Jun. 29, 2012).

⁷ See Prachi Shrivastava, *Nalsar RCC Maintains Score with Jobs for All 43 2012 Participants, Bar Aspirants Lead Non-Participants*, LEGALLY INDIA, May 17, 2012, <http://www.legallyindia.com/201205172824/Law-schools/nalsar-rcc-maintains-score-with-jobs-for-all-43-2012-participants-bar-aspirants-lead-non-participants> (last visited Jun. 29, 2012).

⁸ See *Indian Judicial System*, Lawyersclubindia.com (Feb. 13, 2011), <http://www.lawyersclubindia.com/articles/Indian-Judicial-System-3492.asp>.

⁹ See Arun Prabhudesai, *Doing Business in India – The Legal Environment – Part 1* (Feb. 12, 2008), <http://trak.in/tags/business/2008/02/12/doing-business-in-india-legal-environment-part1/>; see also GOVERNMENT OF INDIA, *National Portal of India*, (2011), http://india.gov.in/knowindia/state_uts.php.

¹⁰ *Id.* See also Census of India (2011), *Provisional Population Totals*, available at http://www.censusindia.gov.in/2011-prov-results/paper2/data_files/india/paper2_4.pdf.

courts, there are several judicial tribunals that are set up to address distinct areas of law.¹¹ Though they are supervised by the state High Courts, some of these tribunals allow appeals directly to the Supreme Court.¹² A unique feature of the Indian judicial system is that although there are central and state laws with distinct (and sometimes overlapping) jurisdictions, the court system is integrated in that courts administer both central and state laws.¹³

One of the biggest problems plaguing the Indian judicial system has been pendency. It is estimated that, as of January 2012, there were more than 27 million cases pending in the judicial system.¹⁴ Further, as noted by the Supreme Court itself, there are around 300 judicial vacancies just at the High Court level pending confirmation and appointment, which compounds the problem.¹⁵ Lawyers, activists and even Supreme Court judges have focused on this issue, which is central to an understanding of not just how legal services are provided and regulated in India, but also the real opportunities and obstacles facing lawyers interested in providing *pro bono* services in India.¹⁶

C. Regulation of Lawyers and Legal Services

The legal profession in India is primarily governed by Bar Councils as set up by the Advocates Act in 1961 (hereinafter “**Advocates Act**”).¹⁷ The stated purpose of the Advocates Act was to “consolidate the law relating to legal practitioners and to provide for the constitution of the Bar Councils and an All-India Bar.”¹⁸ The Advocates Act set up Bar Councils for each state composed of attorneys elected by other attorneys.¹⁹ The functions of Bar Councils include admitting attorneys to the bar, preparing and maintaining the register of attorneys, hearing cases of misconduct against admitted attorneys and “organiz[ing] legal aid to the poor,” including by constituting legal aid committees.²⁰ These Bar Councils served as self-regulatory organizations, and the Bar Council of India has been tasked with establishing the rules and standards of professional conduct for attorneys and disciplinary procedures.²¹ These rules and standards, which are set out in detail on the website of the Bar Council of India, prescribe a lawyer’s duties towards the court, clients, opponents and fellow lawyers.²²

In 2011, the Law Ministry of the central government introduced a proposal to create a Legal Services Board that would act as an additional regulator of attorneys, in addition to state Bar Councils and the Bar Council of India.²³ The proposed bill would make it mandatory for lawyers to provide free legal services to the poor.²⁴ This bill has been vigorously opposed by the legal community as an usurpation of the powers of Bar Councils and has yet to be introduced in parliament.²⁵

¹¹ Some examples of these tribunals include the Company Law Board, the Competition Commission of India, the Securities Appellate Tribunal, the Consumer Protection Forum and the Tax Tribunal. *See* Prabhudesai, *supra* n.10.

¹² *Id.*

¹³ *See* Navoneel Dayanand, Overview of Legal Systems in the Asia-Pacific Region: India (Apr. 10, 2004), available at http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1001&context=lps_lsapr.

¹⁴ *See* Dhananjay Mahapatra, *Supreme Court chides itself, govt for judicial backlog*, THE TIMES OF INDIA, Jan. 12, 2012, http://articles.timesofindia.indiatimes.com/2012-01-12/india/30619133_1_hc-judges-trial-courts-ad-hoc-judges (last visited Jun. 29, 2012).

¹⁵ *See id.*

¹⁶ *See, e.g., id.; see also High pendency of cases biggest challenge: Justice Bhandari*, IBN (May 24, 2012) <http://ibnlive.in.com/generalnewsfeed/news/high-pendency-of-cases-biggest-challenge-justice-bhandari/1003099.html>.

¹⁷ Advocates Act, No. 25 of 1961, INDIA CODE, available at <http://www.barcouncilofindia.org/wp-content/uploads/2010/05/Advocates-Act1961.pdf> [hereinafter “Advocates Act”].

¹⁸ *Id.*

¹⁹ *See id.* § 3.

²⁰ *See id.* § 6, § 6(eee), § 9A.

²¹ *See id.* § 7.

²² *See* THE BAR COUNCIL OF INDIA, *Rules on Professional Standards* (2012), available at <http://www.barcouncilofindia.org/about/professional-standards/rules-on-professional-standards/>

²³ *See Does India need a legal super-regulator?*, THE FIRM: CORPORATE LAW IN INDIA (Nov. 20, 2010), http://thefirm.moneycontrol.com/news_details.php?autono=500328.

²⁴ *See* Proposed Legal Practitioners Act, 2010, § 27, available at <http://enactments.blogspot.com/2010/12/legal-practitioners-act-2010.html> (last visited Jun. 29, 2012).

²⁵ *See Lawyers snub legal practitioners Act, to boycott courts on Mar 24*, THE TIMES OF INDIA, Mar. 13, 2011, http://articles.timesofindia.indiatimes.com/2011-03-13/jaipur/28685769_1_bar-councils-bci-boycott-courts; *see also Lawyers oppose draft bill on Legal Practitioners Act*, THE HINDU, Jun. 6, 2011, <http://www.thehindu.com/news/cities/Vijayawada/article2081158.ece>; *Lawyers wear black ribbons, oppose legal*

D. Legal Aid

India's laws strongly support the provision of *pro bono* legal services. The Constitution of India (hereinafter "**Constitution**"), national legislation and Supreme Court jurisprudence together articulate an aspiration for broadly accessible legal aid.²⁶ 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 nongovernmental organizations (hereinafter "**NGOs**") providing legal services face significant resource constraints.²⁷

First, the Constitution 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."²⁸ The 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.²⁹

Second, the Legal Services Authorities Act, as amended by the Legal Services Authorities (Amendment) Act, 2002 (hereinafter "**LSA Act**") describes a hierarchy of state, district and taluk³⁰ legal services authorities intended to give effect to the Constitutional promise of equal access to justice. The LSA 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 LSA Act establish National, State and District Legal Aid Funds respectively, which collect government funding, grants and donations to finance legal services and legal literacy activities.³¹ The work of this hierarchy of legal services organizations across India has, however, fallen far short of the demand for public legal services.³²

The LSA Act also frames the work of the Lok Adalats.³³ 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 provide final settlements to disputes quickly as compared to the traditional court system. Disputes may be presented before a Lok Adalat if the parties agree to its jurisdiction or if a court refers a matter to a Lok Adalat for settlement.³⁴ Importantly, Section 21(2) of the LSA 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

practitioners Bill, *The Indian Express* (Mar. 25, 2011),

<http://www.indianexpress.com/news/lawyers-wear-black-ribbons-oppose-legal-practitioners-bill/767025/>.

²⁶ See, e.g., INDIA CONST. art. 39A; *The Legal Services Authorities Act of 1987*, S.P. Gupta v. Union of India, INDIA CODE (as amended by *The Legal Services Authorities (Amendment) Act, 2002*, No. 37, INDIA CODE), (1982) 2 S.C.R. 365.

²⁷ 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).

²⁸ INDIA CONST. art. 22(1).

²⁹ *Hussainara Khatoon (III) v. Home Sec'y*, A.I.R. 1979 S.C. (Bihar) 1377. This case pertained to the illegal detention of thousands of prisoners in jail in the State of Bihar awaiting trial for periods substantially longer than the period they would have served in jail had they been tried, convicted and given the maximum sentence. Reading a right to speedy trial as also a right to free legal aid implicit in the fundamental right to life and liberty guaranteed in Article 21 of the Constitution, the Indian Supreme Court directed the release of over 40,000 prisoners on personal or no bond.

³⁰ A taluk is a subdivision of a district much like a municipality in Western countries.

³¹ See *The Legal Services Authorities Act as amended*, *supra* n.26.

³² See Email from Swagata Raha, *supra* n.27.

³³ *The Legal Services Authorities Act as amended*, *supra* n.26, at ch. 6.

³⁴ See *Afcons Infrastructure Ltd. and Anr. v. Cherian Varkey Construction Co. (P) Ltd. and Ors.*, 8 S.C.R. 1053 (2010).

Lok Adalats had been organized, and such Lok Adalats had decided 91,178 cases.³⁵ 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 (hereinafter “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.³⁶ 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 a PIL case.³⁷

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.³⁸ As a result, PILs are often more flexible in their general approach, with courts often taking on an active and inquisitional role and sometimes granting immediate and interim remedial relief once a *prima facie* case is made. In PIL proceedings courts are also more likely to relax adherence to procedural rules and laws, such as principles of *res judicata*, laches, and standing, to permit greater protection of the rights of the disadvantaged sections of society.³⁹

Critics argue that this reliance on outside experts grants amici too much influence over judicial outcomes, that the judicial activism of the PIL mechanism violates the separation of powers in Indian government, and that PIL has invited a flood of frivolous cases that abuse the increased access to the courts provided by PIL.⁴⁰ Its critics notwithstanding, PIL 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.⁴¹ The potential for effective PIL cases is strengthened by the relative independence of India’s judiciary. 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.

³⁵ S. Arunajatesan & S. Subramanian, *Lok Adalat for Speedy Justice*, THE HINDU, Dec. 18, 2001, at *Open Page*, available at <http://www.hindu.com/thehindu/op/2001/12/18/stories/2001121800060100.htm>.

³⁶ *S.P. Gupta*, 2 S.C.R. 365 ¶¶ 1-11.

³⁷ *Id.* ¶ 17.

³⁸ 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, 689-90, 693 (2004). See Jamie Cassels, *Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?* 37 AM. J. COMP. L. 495, 498 (1989).

³⁹ For a detailed discussion on the evolution, development, nature and norms of PIL, see Clark D. Cunningham, *The World’s Most Powerful Court: Finding the Roots of India’s Public Interest Litigation Revolution*, in THE HUSSAINARA KHATOON PRISONERS CASE, LIBERTY, EQUALITY AND JUSTICE: STRUGGLES FOR A NEW SOCIAL ORDER (S.P. Sathe ed., 2003); Aman Hingorani, *Indian Public Interest Litigation: Locating Justice in State Law*, XVII DLR 159 (1995); Upendra Baxi, *Supreme Court under Trial: Undertrials and the Supreme Court* 35 S.C.C. (1980); C.D. Cunningham, *Public Interest Litigation in the Indian Supreme Court: A Study in Light of the American Experience*, 29 JOURNAL OF THE INDIAN LAW INSTITUTE, 494 (1987); and Parmanand Singh, *Protecting the Rights of the Disadvantaged Groups through Public Interest Litigation* in HUMAN RIGHTS AND BASIC NEEDS: THEORY AND PRACTICE, (M.P. Singh et al. eds. 2008).

⁴⁰ Sood, *supra* n.38, at 28-30; Agarwal, *supra* n.38, at 696, 700; see also V.S. Vadivel, *Public Interest Litigation (PIL) A Boon or Bane?*, <http://www.legalserviceindia.com/articles/pil.htm> (last visited Jun. 28, 2012).

⁴¹ 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).

E. Eligibility for Legal Services

Section 12 of the LSA Act lays out the criteria for eligibility for legal services under the LSA 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 in accordance with the LSA Act.⁴² 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.⁴³ At the same time, the expansive entitlement provided in the LSA Act remains an unfulfilled promise.⁴⁴

II. PRO BONO IN INDIA: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. Pro Bono Opportunities

The major organizations which provide *pro bono* services in India are the Lawyers Collective (hereinafter “LC”), the Human Rights Law Network (hereinafter “HRLN”), and the Alternative Law Forum (hereinafter “ALF”).⁴⁵ The LC comprises lawyers, law students and human rights activist members and consists of a women’s rights initiative as well as a focus on domestic violence, sexual harassment, HIV, access to medicine and vulnerable community issues.⁴⁶ 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.⁴⁷ Finally, ALF provides legal support to groups and people marginalized on the basis of class, caste, disability, gender or sexuality.⁴⁸

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;⁴⁹ in Kolkata, *Swayam* focuses on women’s rights,⁵⁰ and *Manabadhikar Suraksha Mancha* focuses on civil and political rights;⁵¹ in Bangalore, human rights organization SICHREM⁵² and the National Law School’s Legal Services Clinic;⁵³ in Mumbai, the Society for Service to Voluntary Agencies, supporting nonprofits;⁵⁴ in Uttaranchal, Rural Litigation and Entitlement Kendra, an NGO serving indigenous populations and women and children;⁵⁵ and with offices across Tamil Nadu, People’s Watch Tamil Nadu, which focuses on human rights litigation.⁵⁶

⁴² The Legal Services Authorities Act as amended, *supra* n.26, at § 12.

⁴³ See *infra* text accompanying nn. 17-30.

⁴⁴ See Email from Swagata Raha, *supra* n.27.

⁴⁵ Email from Swagata Raha, *supra* n.27.

⁴⁶ LAWYERS COLLECTIVE, <http://www.lawyerscollective.org> (last visited Jun. 28, 2012).

⁴⁷ HUMAN RIGHTS LAW NETWORK, <http://www.hrln.org> (last visited Jun. 28, 2012).

⁴⁸ ALTERNATIVE LAW FORUM, <http://www.altlawforum.org> (last visited Jun. 28, 2012).

⁴⁹ PILSARC, <http://www.pilsarc.org> (last visited Jun. 28, 2012).

⁵⁰ Swayam, <http://www.swayam.info> (last visited Jun. 28, 2012).

⁵¹ *Manabadhikar Suraksha Mancha*, <http://www.masum.org.in/> (last visited Jun. 28, 2012).

⁵² SOUTH INDIA CELL FOR HUMAN RIGHTS EDUCATION AND MONITORING (“SICHREM”), <http://www.sichrem.org> (last visited Jun. 28, 2012). SICHREM seeks to empower disempowered groups in India to “protect their individual and collective rights for a dignified life, through education, monitoring and mobilizing civil society for concerted action.” *Id.*

⁵³ NATIONAL LAW SCHOOL OF INDIA UNIVERSITY—LEGAL SERVICES CLINIC, <http://www.nls-lsc.org/> (last visited Jun. 28, 2012). The Legal Services Clinic provides free legal services to economically backward members of Indian society, promotes alternate methods of dispute resolution and undertakes research projects at the request of other organizations. See *id.*

⁵⁴ SOCIETY FOR SERVICE TO VOLUNTARY AGENCIES, <http://www.sosva.org/> (last visited Jun. 28, 2012).

⁵⁵ RURAL LITIGATION AND ENTITLEMENT KENDRA, <http://www.rlek.org> (last visited Jun. 28, 2012).

⁵⁶ PEOPLE’S WATCH, <http://pwttn.org> (last visited Jun. 28, 2012).

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.⁵⁷ Women's rights organizations include the Center for Social Research,⁵⁸ SAKSHI and WomenPowerConnect.

In general, Indian law firms do not have organized *pro bono* practices.⁵⁹ However, when invited, firms such as Amarchand Mangalga, Trilegal and Luthra & Luthra Law Offices have contributed 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 may deter 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.

B. Barriers To *Pro Bono* Work And Other Considerations

Although Indian law prevents foreign-qualified lawyers from directly representing *pro bono* clients,⁶⁰ the opportunity for such lawyers to contribute to the legal services market in India more broadly is immense.

1. General Restrictions on Foreign-Qualified Lawyers

To qualify as an "advocate" under the Advocates Act, a lawyer must be admitted to the rolls of an Indian Bar.⁶¹ The Advocates Act further specifies that only advocates, as defined under that Act, are entitled to practice law in India,⁶² and only advocates may practice in any Indian court or before any Indian authority.⁶³ 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.⁶⁴ Litigation is currently ongoing in relation to the entry of foreign-qualified lawyers into practice in India.⁶⁵

2. 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 cannot 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. Lawyers are not required to charge a value-added tax on legal

⁵⁷ CENTRE FOR CIVIL SOCIETY, <http://www.ccsindia.org> (last visited Jun. 28, 2012).

⁵⁸ CENTRE FOR SOCIAL RESEARCH, <http://www.csrindia.org> (last visited Jun. 28, 2012).

⁵⁹ Email from Mohit Abraham to author (Nov. 26, 2007) (on file with author).

⁶⁰ Advocates Act, *supra* n.17.

⁶¹ *Id.* § 2, cl. 1(a).

⁶² *Id.* § 29.

⁶³ *Id.* § 33.

⁶⁴ Email from Swagata Raha, *supra* n.27.

⁶⁵ In 2009, the Bombay High Court barred foreign lawyers and foreign law firms from practicing in India. In 2012, the Madras High Court held that foreign lawyers and foreign law firms could not practice law in India except under the terms of the Advocate Act and Bar Council of India rules, but held that they may visit India temporarily on a "fly in and fly out" basis for the purpose of providing certain legal advice to their Indian clients. This ruling has been challenged via petition to the Indian Supreme Court. See *BCI Petition in Foreign Law Firm Case: Grounds and Prayers*, Bar & Bench New Network (May 30, 2012), <http://barandbench.com/brief/2/2445/bci-petition-in-foreign-law-firm-case-grounds-and-prayers> (last visited Jun. 29, 2012).

services, nor are there regulations that require lawyers to charge minimum tariffs for their services.⁶⁶

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 also 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 generally in legal literacy, policy and advocacy efforts.⁶⁷

Foreign-qualified lawyers can also assist with reviews of the implementation of specific laws and research on pendency problems in the judicial system. For example, the Right to Information Act passed in 2005 was aimed at increasing transparency and reducing corruption, in part by establishing commissions to help ensure that Indian citizens are able to access public records. However, the commissions are often in need of further legal resources to read and categorize cases and reduce pendency. In addition to assisting legal services and quasi-judicial 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. Given the dire need for *pro bono* services in India and the wide variety of organizations focused on these needs, the opportunities for foreign-qualified lawyers are effectively limited only by their creativity and interest.

C. *Pro Bono Resources*

Below is a nonexhaustive list of organizations that provide *pro bono* services in India through which foreign-qualified lawyers may seek opportunities to participate:

- Lawyers Collective (<http://www.lawyerscollective.org/>)
- Human Rights Law Network (<http://www.hrln.org/hrln/>)
- Alternative Law Forum (<http://www.altlawforum.org/>)
- i-Probono (<http://www.i-probono.com/>)
- National Campaign for the People's Right to Information (<http://righttoinformation.info/>)
- Public Interest Legal Support and Research Center (<http://pilsarc.org/>)
- Swayam (<http://www.swayam.info/>)
- Manabadhikar Suraksha Mancha (<http://www.masum.org.in/>)
- Mahila Sarvangeen Utakarsh Mandal (<http://www.escr-net.org/docs/i/838915>)
- SICHREM (<http://www.sichrem.org/>)
- National Law School's Legal Services Clinic (<http://www.nls-lsc.org/>)
- National Legal Services Authority (<http://nalsa.gov.in/legalservices.html>)
- Rural Litigation and Entitlement Kendra (<http://www.rlek.org/>)
- People's Watch (<http://www.peopleswatch.org/index.php>)
- Centre for Civil Society (<http://ccsindia.org/ccsindia/index.asp>)
- Centre for Social Research (<http://www.csrindia.org/>)
- SAKSHI (<http://www.sakshingo.org/>)
- WomenPowerConnect (<http://www.womenpowerconnect.org/>)

⁶⁶ Email from Arvind Kamath, Partner, ALMT Legal, Advocates & Solicitors to author (June 14, 2012) and Shweta Hingorani, Partner, Luthra & Luthra Law offices to author (Jun. 22, 2012) (on file with author).

⁶⁷ Telephone interview with Linda McGill, *supra* n.27.

- Indian Institute of Legal and Professional Development (no website available)

III. 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, often relying 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. The demand for *pro bono* legal services in India far exceeds the supply, and interested foreign-qualified lawyers should be able to find meaningful opportunities to contribute by contacting the organizations listed above or other legal service organizations in India.

July 2012

Pro Bono Practices and Opportunities in India

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PRO BONO PRACTICES AND OPPORTUNITIES IN INDONESIA

The provision of legal services to persons of limited means has historically been delegated to lawyers in Indonesia, with little oversight or financial support from the central or regional governments. Practicing lawyers have a legal obligation to provide *pro bono* services, but compliance is poorly monitored. Consequently, the provision of *pro bono* services and legal aid (outside of legal aid-focused NGOs) has historically been limited. The government of Indonesia has, however, recently enacted laws to establish a legal aid scheme with government funding. While the new law is a positive step towards improving access to legal services, it remains to be seen whether it will be effective, as the relevant implementing regulations have not yet been promulgated.

In addition, access to legal services is hampered by Indonesia's geography. Indonesia has a population of 240 million spread over an extremely vast archipelago of more than 17,000 islands. Many of its citizens live in remote areas, without any access to legal services (paid or unpaid). Although there are a large number of NGOs working with Indonesia's underprivileged in urban areas, there are few services available outside of these urban centers.

Overall, outside of the legal aid-focused NGOs, Indonesia's *pro bono* culture is slowly emerging, but requires further active support from lawyers working at law firms and in other legal roles.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN INDONESIA

A. The Legal System

Indonesia is a republic comprised of 33 provinces. It has two main levels of government: (i) the central government, in which power is concentrated; and (ii) regional governments, which in turn are subdivided into provincial and district governments. Indonesia has a civil law system based, at independence in 1945, on the codes inherited from the Dutch.

In addition, each ethnic group has developed its own customary law, officially called *adat law* (*hukum adat*), which has been influenced by Hinduism, Buddhism and Islam. Islamic law is also a parallel independent legal system and generally applies to certain aspects of family and inheritance law.

B. Legal Profession

1. Make-up of the Legal Profession

Indonesia has approximately 34,500 practicing lawyers.^{1,2} Lawyers may work in law firms, as in-house counsel in government organizations and private companies and as solo practitioners in Indonesia. Most lawyers, however, work in law firms in major cities.

Indonesian lawyers obtain undergraduate degrees in law. There is a national curriculum which is taught at over 200 accredited law faculties across the country. Legal education at the university level tends to have an academic rather than practical focus.³

2. Bar Association

Indonesian lawyers are regulated pursuant to Law No.18/2003 on Advocates (“**Advocate Law**”). The Advocate Law, passed in 2003, provides that Indonesia's eight bar organizations were to be replaced by a single, unified professional association of lawyers. Following this, an organization called Perhimpunan Advokat Indonesia,⁴ or Indonesian Advocate Association (“**PERADI**”), was established.⁵ However, in 2008, a number of prominent Indonesian lawyers

¹ According to the Indonesian Advocates Association (Perhimpunan Advokat Indonesia), known as PERADI, its membership as at May 2012 was 17,500.

² KAI claims to have 17,000 members (*see* ANTARA NEWS (Jakarta), *Konflik KAI dan PERADI Sampai ke Pimpinan MPR* (Jan. 24, 2011), www.antaraneews.com).

³ THE LAW SOCIETY OF ENGLAND AND WALES, 2011, *Indonesia: Legal Services Market Report*, Dec. 2010.

⁴ www.peradi.or.id

⁵ PERADI was established in 2005 as a combination of eight existing bar associations. The move fulfilled provisions of the Advocate law that required the establishment of a single non-governmental advocate organization to test and certify Indonesia's lawyers. The Constitutional Court in 2006 upheld PERADI's status as the official organization to issue certifications for the country's lawyers. (Melissa Crouch, *Cause Lawyers, the Legal Profession and the Courts in Indonesia: the Bar Association Controversy*, LAWASIA JOURNAL (2011).

set up a competing association, the Kongres Advokat Indonesia (“KAI”), as they considered PERADI to have been improperly formed. After an extended dispute, on March 23, 2011, the Supreme Court of Indonesia declared that it did not matter which organization an advocate was registered with for the purpose of representing clients in Indonesian courts.⁶ Accordingly, the division between PERADI and KAI remains, and no unified body has been established in accordance with the aims of the Advocate Law.

C. Judicial System and Appointment of Judges

1. Judicial System

Two key institutions comprise the judicial branch of the government: the Supreme Court and Constitutional Court.⁷

- The Supreme Court (Mahkamah Agung Republik Indonesia) is the highest judicial institution and the final court of appeal in Indonesia with regard to criminal, civil, religious, military and state administrative courts and other special courts established by laws enacted by the legislative arm of the central government (Dewan Perwakilan Rakyat or DPR).⁸ The Supreme Court has the power of judicial review over legislative products or legislation, other than constitutional matters (which are outside the jurisdiction of the Supreme Court); and
- The Constitutional Court has the power to determine whether laws promulgated by the DPR are constitutional.

The structure of the judicial system is summarized in the diagram below.

Tier	Court ⁹				
1	Supreme Court (No Right of Appeal)				Constitutional Court (No Right of Appeal)
2	Courts of Appeal (High Courts)				
	High	Religious	Administrative	Military	
3	Courts of First Instance				
	District	Religious ¹⁰	Administrative ¹¹	Military	
Jurisdiction ¹²	National civil (or Adat) and criminal law	Family Law (e.g., marriage and divorce), Inheritance, Wakaf and Shadaqah (applicable to members of Islamic religion)	Decisions of Executive Branch of Government (includes Tax Court)	Certain matters applicable to members of military	Constitutionality of laws

The Law on Judicial Powers sets out the scope of the Supreme Court and the Constitutional Court.¹³

⁶ Letter No., 052/KMA/HK.01/III/2011 concerning the Letter of the Supreme Court No089/KMA/VI/2010.
⁷ Alamo D. Laiman, Dewi Savitri Reni, Ronald Lengkong, and Sigit Ardiyanto, *The Indonesian Legal System and Legal Research* (Sep. 2009); (Updated by Tom Kimbrough, Jul. 2011), <http://www.nyulawglobal.org/globalex/Indonesia.htm#hierarchy> as at Jun. 25, 2012.
⁸ Elaborating the 1945 Constitution, Law No. 14/1985 as amended by Law No. 5/2004 and Law No. 3/2009 state the powers and organization of the Supreme Court (*see id.*, 2011).
⁹ *Id.*, 2011.
¹⁰ Law No. 7/1989 on Court of Religion, as amended by Law No. 3/2006.
¹¹ Law No. 8/1986 on State Administrative Court, as amended by Law No. 5/2002.
¹² There are also additional specialist courts such as the Fisheries Court (*see* Law No. 31/2004).

The Supreme Court has oversight over the Courts of Appeal (also referred to as high courts) of which there are approximately 20 located throughout Indonesia. There are four types of Courts of Appeal (also referred to as High Courts):

- High Court (Pengadilan Tinggi) – there is one in each province and special region;
- Religious High Court (Mahkamah Islam Tinggi) – there are 30 Religious High Courts;¹⁴
- Administrative High Court (Pengadilan Tinggi Tata Usaha Negara) – as at January 2012, there are four; one each in Jakarta Special Region, Eastern Java, Southern Sulawesi and North Sumatra; and
- Military High Court (Pengadilan Militer Tinggi) - there is only one Military High Court. It is located in Jakarta.¹⁵

As noted above, the Courts of Appeal hear appeals from the Courts of First Instance.

The District Courts have jurisdiction to hear civil and criminal matters. There are approximately 250 District Courts located throughout Indonesia.¹⁶ Also, within a District Court's jurisdiction, there are specialist courts that hear cases based on the particularity of the area or issue of law, and a specialist court that hears cases based on the age of the defendant in a criminal case (i.e., a Commercial Court, Labor Court, Human Rights Court, Court for the Crime of Corruption and a Children's Court).

D. Regulation of Legal Profession

1. Indonesian Lawyers

The Indonesian legal profession is regulated under the Advocate Law. To be registered as an advocate in Indonesia, in accordance with the Advocate Law, Indonesian lawyers must be Indonesian nationals residing in Indonesia, must not be civil servants or public officers, must be at least 25 years of age, and must meet a number of other educational, training and character requirements as well as passing the bar exam (administered by either PERADI or KAI, depending on the association with which the individual seeks registration).¹⁷

Each lawyer admitted pursuant to the Advocate Law is required to comply with a code of ethics (“**Code of Ethics**”), which was established in 2002 by a group of bar associations and affirmed by the Advocate Law. The Code of Ethics sets out the minimum standard of conduct that lawyers should observe. According to the Advocate Law, the Honorary Council (or Disciplinary Committee) of the single advocates organization, is responsible for enforcement of the Code of Ethics.¹⁸ The Honorary Council is also responsible for elaborating matters under the Code of Ethics.¹⁹

As Indonesia lacks a single advocates' organization, the implementation and enforcement of the Advocate Law and the Code of Ethics is at times unclear and often ineffective.²⁰ PERADI has, however, established and implemented an Honorary Council that is responsible for the discipline of its members and also imposes sanctions on its members.²¹ In addition to the

¹³ Each court is described in Law No. 48/2009 on Judicial Powers (*Undang-undang Kekuasaan Kehakiman tahun 2009*) (*Law on Judicial Powers*).

¹⁴ Website of Directorate General of Religious Courts Body (Badilag) at <http://www.badilag.net/english/profile/hrd.html> as at Jun. 28, 2012.

¹⁵ Laiman et al., 2011, *supra* n.7.

¹⁶ *Id.*

¹⁷ Advocates Law art. 3.

¹⁸ *Id.* at art. 8(1). Note, however, Article 1(e) of the Code of Ethics defines the “Honorary Council” as a body or body established by professional organizations of advocates who serve and oversee the implementation of the code of ethics properly by the Advocates and [has] the right to receive and examine complaints against an Advocate who violates the Code of Ethics. Note, further, at the time of establishment the transitional rules under the Code of Ethics *provided that* the professional organizations that established the Code of Ethics would form the Honorary Council (*see Id.* at art. 22).

¹⁹ Code of Ethics, art. 20.

²⁰ Melissa Crouch, *supra* n.5.

²¹ <http://www.peradi.or.id> as at Jun. 25, 2012.

Advocate Law and the Code of Ethics, Indonesian lawyers are also directly supervised by the Minister of Law and Human Rights and the Supreme Court of the Republic of Indonesia.²²

In response to criticism that Indonesian lawyers were not providing sufficient *pro bono* services, PERADI issued Rule No. 1/2010, stipulating that advocates are recommended to provide at least 50 hours of *pro bono* legal assistance every year. PERADI requires that this *pro bono* requirement be satisfied to obtain or to renew the Advocate Identity Card (“KTPA”).²³

2. Foreign Lawyers

Foreign lawyers practicing in Indonesia are not permitted to: (i) appear before any court; or (ii) set up law firms or branches of their overseas law firms in Indonesia. They are only allowed to work in Indonesia if they are employed by a local advocate/law firm as an employee or an expert in foreign laws of their home country.²⁴

The Ministry of Law and Human Rights regulates foreign lawyers.²⁵ Foreign lawyers are also required to comply with the Code of Ethics applicable to Indonesian lawyers.²⁶ Foreign lawyers are required to provide ten hours of *pro bono* services per month in the areas of legal education, legal research or government legal service.²⁷

Foreign lawyers wishing to work in Indonesia must submit relevant documentation to the Ministry for a permit. This documentation includes: curriculum vitae, certified copies of degrees, clarification letters on practicing status, proof of membership of the bar in the country of origin, immigration documentation, and the tax number of the sponsoring law firm and the foreign lawyer. Once granted, the licence is valid for one year. Indonesian law firms seeking to employ foreign lawyers are also required to submit regular documentation to the Ministry, setting out the need for the foreign lawyer, the lawyer’s particular skills and the *pro bono* work undertaken by the lawyer.²⁸

E. Legal Aid

Up until 2011, state-provided legal aid was not generally available, despite certain laws purporting to require such legal aid. Technically, the provision of legal assistance to indigent persons within the formal legal system had been assured under both the Law of Criminal Procedure (Law No. 8/1981) and the Advocate Law. The Advocate Law provides that an advocate has an obligation to provide legal assistance to those incapable of seeking justice (Article 22(1)), with “legal assistance” defined as a legal service that an advocate provides for free to a client (Article 1(9)). The Advocate Law further provides that in performing his or her duty, an advocate must not discriminate against potential clients based on gender, political interest, ethnicity, race and cultural or social background (Article 18(1)).

Under the Law of Criminal Procedure, legal aid is generally guaranteed only to those facing more than five years’ imprisonment.²⁹ In other cases, access to legal counsel as guaranteed under the Advocate Law depended on the goodwill of members of the legal profession and was not a strictly enforced requirement.³⁰ The Advocate Law was described in a United Nations Development Program

²² THE INDONESIAN ADVOCATES ASSOCIATION COUNTRY REPORT 2010 (author unknown), p. 1. http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=EFFBDCC6-0D0C-50DF-971E-F5FC3382F95B&siteName=lca as at 23 May 2012; see also *Joint Statement Letter of Head of the Supreme Court and Minister of Justice No.KMA/005/SKKB/VII/1987*.

²³ Laiman et al., *supra* n.7.

²⁴ *Id.*

²⁵ Advocates Law at art. 23(4).

²⁶ *Id.* at art. 24.

²⁷ Article 23(3) of the Advocates Law states that foreign advocates are required to provide legal services free of charge for a certain time to education and legal research.

²⁸ *INDONESIA, supra* n.3.

²⁹ Law No. 8/1981 regarding the Law of Criminal Procedure, art. 56(1).

³⁰ Indonesian Legal Aid Foundation (“YLBHI”) with support by the United Nations Development Programme (“UNDP”) & Commission on Leagl Empowerment of the Poor (“CLEP”), *Legal Empowerment of the Poor: lessons Learned from Indonesia*, Report from national consultation of Commission on Legal Empowerment of the Poor in Jakarta on 24 – 25 Nov. (2007).

publication as setting up an ideal, rather than implementing a full legal aid system.³¹ Further regulations were put into effect in 2008, but this did not alleviate the problem because primary responsibility to provide access to legal aid continued to be delegated to private practitioners.³²

On October 4, 2011, the DPR passed a law concerning legal aid (Undang-undang tentang Bantuan Hukum or Law No 16/2011) (“**Legal Aid Law**”). Under the Legal Aid Law, legal counsel will be made available to every qualifying defendant at each step of the legal process in civil, criminal or administrative cases, and also in certain nonlitigation matters.³³ To qualify a person must, amongst other things, be considered “poor.” The Legal Aid Law defines “poor” as any person or group of people who cannot adequately satisfy their “basic rights” independently. The Legal Aid Law defines “basic rights” to include the right to food, clothing, health services, education services, employment and housing.³⁴

The Legal Aid Law provides for the establishment of standards by the Minister of Justice and Human Rights that must be satisfied by legal aid providers. Organizations that meet the standards are eligible to receive state funding. Verification of eligibility and accreditation of legal aid providers under the Legal Aid Law will be conducted by a committee comprised of: (i) members of those government departments that govern affairs in the field of law and human rights, (ii) academics, (iii) community leaders, and (iv) members of institutions that provide legal aid.³⁵ Payments will be handled by the Ministry of Justice and Human Rights, and derived from government monies. Legal aid providers are not restricted to being solely dependent on public funding and are also permitted to receive grants and donations from private sources.³⁶ The provision of legal aid pursuant to the Legal Aid Law is not intended to relieve or reduce the obligation of Advocates to provide legal assistance under the Advocate Law and pursuant to the Law of Criminal Procedure.³⁷

The Legal Aid Law has come under criticism from certain prominent providers of *pro bono* legal services, including the Director of the Jakarta Legal Aid Foundation (“**LBH**”), Nurkholis Hidayat, who expressed his disappointment that the new law did not introduce wider changes in Indonesia’s legal system.³⁸ Notably, for a person to qualify for legal aid that person (i) must have an identity card; and (ii) have approval from low level government officials (such as village head or equivalent official at the applicant’s place of residence). Consequently, undocumented persons or those without relevant community support will not be eligible for legal aid. As a result, some of the most vulnerable members of Indonesian society may be excluded from coverage.³⁹

The practical effect of the Legal Aid Law remains to be seen, however, because substantial detail will be contained in implementing regulations, which, at the time of this writing, have not yet been promulgated. In addition, it will likely take some time following the implementation of such regulations in order to assess the effectiveness of the Legal Aid Law at fulfilling its stated purposes.

II. *PRO BONO* IN INDONESIA: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

There is an urgent need for additional *pro bono* legal services in Indonesia. Human rights violations and corruption remain persistent problems in pockets of Indonesia’s developing economy. A leading Indonesian legal information service has described the “phenomenon of Indonesian lawyers doing *pro*

³¹ *Id.*

³² Constance Johnson, *Indonesia: Legal Aid Law Passed*, Oct. 7, 2011, http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402844_text as at 24 May 2012.

³³ Legal Aid Law, art. 4(3).

³⁴ *Id.* at arts. 4 and 5.

³⁵ *Id.* at arts. 6 and 7.

³⁶ Johnson, *supra* n.38. (See also: Ezra Syarief & Ulma Haryanto, *Indonesia to Provide Lawyers for Accused in Courts*, THE JAKARTA GLOBE, Oct. 5, 2011, and Haryanto Suharman, *Legal Aid Bill Passed into Law*, INDONESIA TODAY, Oct. 4, 2011, as at 25 May 2012.

³⁷ Explanation of Legal Aid Law, art. 6, ¶ II.

³⁸ Johnson, *supra* n.38. Mr. Hidayat stated that the new law “overlooked the larger purpose of legal aid institutions, which is to work for the interests of justice. It does not only mean the poor – it means women, children, people criminalized by the system, minority groups and transsexuals. They all need legal aid.” *Id.*

³⁹ Legal Aid Law, art. 14.

bono work in the community as almost unheard of, [yet] the story of suspended rights and forced confessions in police interrogation rooms is commonplace.”⁴⁰ Other NGOs working in the area of human rights have indicated that few lawyers in law firms participate in the provision of *pro bono* legal services.⁴¹

Despite poor participation rates of lawyers from law firms, there are numerous legal aid focused NGOs in Indonesia.⁴² LBH has the highest profile of such NGOs, particularly in cases concerning human rights violations and political activism/persecution in Indonesia. LBH is central to the provision of legal aid services in Indonesia and has become a key facilitator as well as a direct provider of services. It is common for LBH to work in cooperation with other organizations such as the Indonesian Corruption Watch, Wahid Institute, Setara Institute (Institute for Democracy and Peace), KontraS (The Commission for the Disappeared and Victims of Violence), TIFA Foundation, and other human rights and pro-democracy NGOs that have arisen since the transition to democracy in Indonesia, although in certain high profile cases LBH is still often the primary organization providing legal representation. LBH promotes a broad concept of legal aid, which, in addition to traditional legal aid representation, includes non-litigation matters, legal and political criticism, research, publications and community education.

LBH and its regional legal aid provider, the Indonesian Legal Aid Foundation (Yayasan Lembaga Bantuan Hukum Indonesia or YLBHI), are often able to provide referrals and opportunities for lawyers wishing to participate in the provision of community legal aid.⁴³ Additional referral organizations are also listed below.

B. Barriers To *Pro Bono* Work And Other Considerations

There are no direct regulatory limitations on the provision of *pro bono* legal services in Indonesia. Advocates are not required to charge VAT on services that they provide for free and local regulations do not require lawyers to charge minimum tariffs. Indirect and practical restrictions and barriers to provisions of *pro bono* legal services include:

- Many of Indonesia’s poor are located in remote villages where trained legal advisors are not available and clients must travel long distances to cities to access formal legal advice.⁴⁴ For example, the NGO, PEKKA, notes that in the 18 provinces in which it works only two have legal aid centers (which in each case are located in the provincial capital).
- Lack of interest by local lawyers to work in remote locations and to provide *pro bono* legal services generally due to a weakly-established *pro bono* legal culture.
- Regulatory restrictions on foreign lawyers’ ability to provide Indonesian legal advice.
- Limited access to government officials to promote legal aid matters (especially including those related to human rights abuses).
- Poor knowledge of laws and rights, particularly human rights, amongst potential *pro bono* clients.

C. *Pro Bono* Resources

The following organizations may provide *pro bono* referrals and opportunities for lawyers, including foreign lawyers, to participate in education and research activities:

- Jakarta Legal Aid Institute or LBH – www.bantuanhukum.or.id

⁴⁰ Eli Moselle, *Legal Aid’s Dramatic Start with Teenager Forced to Confess Drug Possession* (Jul. 20, 2010), at <http://en.hukumonline.com/pages/t4c4557f768d69/legal-aid-s-dramatic-start-with-teenager-forced-to-confess-drug-possession> as at 22 Jun. 2012.

⁴¹ PEKKA (www.pekka.or.id/8/index.php), ELSAM (www.elsam.or.id) and ILRC (mitrahukum.org/EN/)

⁴² Australian Academic, Melissa Crouch has stated that “since Soeharto’s fall there are now literally thousands of legal NGOs in Indonesia” (Crouch, *supra* n.5).

⁴³ *Id.*

⁴⁴ For example, ELSAM has indicated that there are no providers of *pro bono* legal services that regularly visit or are permanently located in Kalimantan, apart from ELSAM. In response to the shortage of legal aid providers in remote areas shortage another NGO, PEKKA, trains paralegals in remote communities.

- Indonesian Legal Aid Foundation or YLBHI – <http://www.ylbhi.or.id/>
- Indonesian Women’s Association for Justice and Legal Aid Institute (LBH-APIK) – <http://www.lbh-apik.or.id>
- Indonesian Legal Resource Centre (ILRC) – www.mitrahukum.org
- Institute for Policy Research and Advocacy (ELSAM) – www.elsam.or.id
- Program for Women-Headed Households in Indonesia (PEKKA) – www.pekka.or.id
- PERADI (through its Legal Aid Centre) – <http://www.peradi.or.id/in/>

III. CONCLUSION

Overall, the *pro bono* environment in Indonesia is developing but remains in need of greater central leadership to create a more extensive culture of broad provision of *pro bono* legal services. Apart from the new Legal Aid Law, which has not yet been implemented, and a limited number of NGOs, *pro bono* needs in Indonesia remain largely underserved. This is partially due to the disproportionately small size of the legal profession compared to the general population, and the number of Indonesian citizens that live far away from urban centers, and thus far from available legal aid providers. Furthermore, foreign lawyers wishing to participate in *pro bono* work face a number of obstacles, including regulations significantly limiting the types of law foreign lawyers may practice in Indonesia, and heavy documentation and permit requirements. Efforts are needed to build a more supportive *pro bono* culture and infrastructure, particularly among practicing lawyers in Indonesia, and to provide a way for legal services providers to reach those who may live outside of densely populated areas, both to inform them of their rights and the potential availability of legal services, and to provide such services when needed.

July 2012

Pro Bono Practices and Opportunities in Indonesia

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***PRO BONO* PRACTICES AND OPPORTUNITIES IN THE REPUBLIC OF IRELAND¹**

Although *pro bono* in Ireland is slowly becoming an established part of the legal practice of solicitors and barristers, it remains somewhat underdeveloped.

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.² 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 whereas the Law Society of Ireland governs solicitors.

A. The Legal Profession

1. The Role of Barristers

There are approximately 2,000 – 2,500 barristers in the Republic of Ireland, with over 2,000 of those practicing in Dublin.⁴ Members of the Bar are split into the categories of junior and senior counsel.⁵ The difference is largely a formal one: the Irish Government appoints barristers 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 in Ireland traditionally operate what is known as an Independent Referral Bar which means that they practice before the courts and do not deal directly with the public, instead relying on referrals from solicitors and, to a lesser extent, other professional bodies and organizations.⁷ This system invariably limits the types of *pro bono* matters in which barristers are involved as they work independently and concentrate on “providing an advisory and/or advocacy service for which they are ‘briefed’ by a solicitor or other body having direct professional access.”⁸ As such, the extent of voluntary services provided by barristers is very much dependent on the work passed on to them by solicitors.

In September 2005, the Irish Bar Council enacted a “voluntary assistance” scheme (“VAS”) whereby barristers provide their services to nongovernmental 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 NGOs and charities approach VAS directly and VAS then seeks to match the piece of work with a suitable barrister. There is no direct contact between VAS and the client. The NGOs brief the barristers directly, who in turn provide advocacy and advisory representation to clients.¹¹ All

¹ This chapter was drafted with the support of the Free Legal Advice Centres (FLAC) and the Public Interest Alliance Centre (PILA).

² Currently the Legal Services Bill 2011 establishes a new legal services authority which will advise the Government on how to implement the possible future introduction of legal services such as legal partnerships or multi-disciplinary partnerships which would pave the way for a merger of the two professions. Concerns about the proposed structures and changes have been expressed by international bar associations and *pro bono* organizations such as FLAC.

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 *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See *The Irish Bar Council’s Voluntary Assistance Scheme, Annual Report 2011*, available at http://www.lawlibrary.ie/docs/The_Bar_Councils_Voluntary_Assistance_Scheme/542.htm.

¹⁰ *Id.*

¹¹ *Id.*

areas of the law except family law are eligible for assistance,¹² such as housing issues, landlord and tenant issues, prison-related issues, social welfare appeals and debt related issues.¹³

In 2009 the Public Interest Law Alliance (“PILA”) was established by the independent human rights organization Free Legal Advice Centre (“FLAC”).¹⁴ PILA operates a *pro bono* referral scheme that matches expertise in the legal profession (both barristers and solicitors) with specific legal need in NGOs, community groups and law centers (the “PILA Pro Bono Referral Scheme”). PILA has a public interest law focus, and currently works with organizations seeking to effect social change for marginalized and disadvantaged people. PILA’s *Pro Bono* Referral Scheme is the primary *pro bono* matching service in Ireland and has facilitated over 100 referrals since 2009. More detailed information on this scheme can be found under the section “*Pro Bono* opportunities in Ireland.”

2. The Role of Solicitors

There are more than 12,000 solicitors in Ireland.¹⁵ Solicitors’ professional conduct and practice is governed by the standards established by the Law Society of Ireland.¹⁶ 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 of the courts.¹⁷ Solicitors deal directly with the public, but do not have a regulatory obligation to provide volunteer services.¹⁸

There are no statutory restrictions on providing *pro bono* services contained in the laws regulating solicitors¹⁹ and the profession’s ethical regulations do not contain the mandated fee schedules that have frustrated *pro bono* development in other EU countries.²⁰ Furthermore, the regulations governing advertising by Irish solicitors do not bar the publication of information regarding prices or free services.²¹

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 providing legal services free of charge to registered charities. This group, widely acknowledged as serving important, but otherwise unmet, needs for legal services by disadvantaged groups of people, is discussed below.

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,²² these efforts are still slow and *pro bono* work among solicitors is not systematic.²³ While the Irish Bar promotes nonmandatory 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 1990s, after members of the Law

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 the Bar Council VAS Annual Report available at http://www.lawlibrary.ie/documents/news_events/VASAnnualReport2011.pdf.

¹⁴ See PILA’s Progress Report (2009-2012) which is available at <http://pila.ie/key-issues/pila-progress-report-2009-2012/>.

¹⁵ See Law Society of Ireland Overview, available at <http://www.lawsociety.ie/Pages/About-Us/>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See generally LAW SOCIETY OF IRELAND, A GUIDE TO PROFESSIONAL CONDUCT OF SOLICITORS IN IRELAND (2d ed. 2002) available at <http://www.lawsociety.ie/Documents/committees/conduct2.pdf>

¹⁹ See generally, The Solicitor Acts, 1954-2002, available at <http://www.irishstatutebook.ie/2002/en/si/0377.html>.

²⁰ See A GUIDE TO PROFESSIONAL CONDUCT OF SOLICITORS IN IRELAND, *supra* n. [597].

²¹ The Solicitors Acts, 1954-2002, Solicitors (Advertising) Regulations, S.I. No. 518 § 4(b)(iv) (2002).

²² See LAW SOCIETY OF IRELAND, Report of Law Society Council meeting held on 10 March 2006, LAW SOCIETY GAZETTE, 47 (Jun. 2006), 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).

²³ See LAW SOCIETY OF IRELAND, News Report, LAW SOCIETY GAZETTE, 19 (Dec. 2000), available at <http://www.lawsociety.ie/Documents/Gazette/Gazette%202000/december2000.pdf>

Society of Ireland campaigned heavily to create a formal *pro bono* scheme inspired, in part, by other common law countries, such as the U.K.²⁴

However, the PILA *Pro Bono* Referral Scheme provides a service that matches expertise in the legal profession, i.e., for both barristers and solicitors and with specific legal need in NGOs, community groups and law centers. PILA is currently the only way that solicitors can engage in structured *pro bono* in Ireland. The PILA *Pro Bono* Referral Scheme is largely credited with creating an appetite among practitioners for *pro bono* work. Law firms which have provided *pro bono* assistance through PILA range from Ireland's leading commercial law firms to general practice firms and smaller law firms with niche expertise. More detailed information on the PILA Scheme can be found below under the section "*Pro Bono* opportunities in Ireland."

B. Legal Aid

There are two separate legal aid regimes in Ireland: one for criminal law and another for civil law. 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 offer.

Criminal legal aid, pursuant to the Criminal Justice (Legal Aid) Act 1962, 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.²⁵ 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 1996 and uses a far more complicated analysis to determine eligibility.²⁶ 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 €8,000 annually and disposable capital of less than €320,000.²⁷ 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 benefit to the applicant if he/she is successful in the proceedings.*"²⁸ The merits test is modified in cases involving the welfare of a child, such as custody and access issues.²⁹ 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.³⁰

The existence of legal aid has hindered the development of *pro bono* services in Ireland. The overstretched legal aid program has created an impression that the legal needs of Ireland's indigent population are being met. Many commentators agree, however, that Irish legal aid has been inadequate to meet the needs of many clients.³¹ Some critics have gone so far as to hold that a formal *pro bono* scheme would only be a stop-gap solution that would further obscure the failings of a troubled legal aid

²⁴ See LAW SOCIETY OF IRELAND, *Report of the Law Society Council Meeting*, LAW SOCIETY GAZETTE, 40 (Dec. 2001), available at <http://www.lawsociety.ie/Documents/Gazette/Gazette%202001/december2001.pdf>

²⁵ Criminal Justice (Legal Aid) Act, 1962; LEGAL AID BOARD, *Home page*, available at <http://www.legalaidboard.ie>.

²⁶ 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>.

²⁷ See CITIZENS INFORMATION ONLINE, *Eligibility for Legal Aid*, available at http://www.citizensinformation.ie/categories/justice/legal-aid-and-advice/legal_aid_eligibility.

²⁸ *Id.*

²⁹ *Id.*

³⁰ See *The Irish Bar Council's Voluntary Assistance Scheme*, *supra* n.9.

³¹ See, e.g., *Can't Refuse*, LAW SOCIETY GAZETTE, 17 (Dec. 2003).

regime, encouraging the Government to continue to underfund the existing programs.³² Although this viewpoint has hindered progress in the past, this 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* IN IRELAND: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities In Ireland

As noted above, the PILA *Pro Bono* Referral Scheme is currently the primary way that barristers and solicitors can engage in *pro bono* activities. Under this Scheme, PILA is the main point of contact for both the legal practitioner and the *pro bono* client. PILA matches *pro bono* requests with solicitors and barristers with relevant expertise. Legal assistance provided has included: (i) advice in relation to organizational need; (ii) advice on legislation; (iii) law reform working groups providing comparative research from other jurisdictions; (iv) legal education sessions for NGO staff on substantive areas of law; and (v) drafting and advocacy skills. PILA supports a wide range of issues that NGOs work on, including, but not limited to, children's rights, debt, housing, immigration, mental health, prisoners' rights, social welfare, and travelers' rights.

Promisingly, PILA's efforts to implement structured *pro bono* in Ireland are beginning to bear fruit: as of May 2012 PILA has facilitated over 100 advice and litigation referrals, 13 law reform working groups and 24 legal education sessions given by practitioners to NGOs. Law firms which have provided *pro bono* assistance through PILA range from Ireland's leading commercial law firms to general practice firms and smaller law firms with niche expertise. Three of Ireland's top five commercial firms are on PILA's *pro bono* register. Furthermore, a number of barristers both junior and senior, with varying areas of expertise, provide assistance through PILA.³³

By current standards, the Irish legal aid regime otherwise fails to meet the demand for *pro bono* legal services in Ireland. There are a small number of associations which provide specific legal advice on a voluntary basis, such as in relation to debt-related issues; these would include the nationwide FLAC³⁴ and New Beginnings, which provides aid explicitly for these financial problems. There are also a number of special law centers around the country, for example, the Dublin-based Northside and Ballymun Community Law Centres. These groups provide limited basic legal advice directly from volunteering solicitors and students, but also make use of barristers' services for voluntary work. Currently, these organizations are 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 in 2003, Irish litigants must either pay their own representation costs or find a solicitor (often through FLAC) willing to represent them on a *pro bono* basis.³⁵ Law centers specifically tailored to meet the needs of Ireland's immigrants in conjunction with the Immigrant Council of Ireland and the Irish Refugee Council Independent Centre help to alleviate the legal problems related to refugees and asylum-seekers. 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 second area of need relates to Ireland's "travelers," the nomadic people who roam the country's roadways living in caravans. The Irish Traveller Movement ("ITM") has an established legal unit to provide representation to these marginalized people. Travelers, 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.³⁶

³² See LAW SOCIETY OF IRELAND, *Report of Law Society Council Meeting (held on Jul. 6, 2001)*, LAW SOCIETY GAZETTE, 39 (Aug./Sep. 2001) (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).

³³ See PILA's *Progress Report (2009-2012)* available at <http://www.pila.ie/key-issues/pila-progress-report-2009-2012/>.

³⁴ See <http://www.flac.ie>.

³⁵ See LAW SOCIETY OF IRELAND, *An Unconventional Approach*, LAW SOCIETY GAZETTE, 28 (Jan./Feb. 2003).

³⁶ See LAW SOCIETY OF IRELAND, *Remember When You Wanted to Make a Difference?*, LAW SOCIETY GAZETTE, 10-11 (Mar. 2004).

B. Barriers To *Pro Bono* Work And Other Considerations

The primary obstacle to structured *pro bono* legal services has been the legal profession's lack of familiarity with the concept, as opposed to any regulatory impediments. Although conceptually it has long been a part of Irish legal culture, efforts to undertake *pro bono* work were typically piecemeal and ad hoc, most often as a result of personal relationships, or as the outgrowth of an individual lawyer's strong sense of civic duty.³⁷ However, the success of *pro bono* in other jurisdictions and the increasing awareness of corporate social responsibility have helped PILA's *Pro Bono* Referral Scheme and the Bar Council's VAS get an increasingly positive response from both barristers and solicitors for structured *pro bono* opportunities.

C. *Pro Bono* Resources

- The Bar Council of Ireland, law library; www.lawlibrary.ie
- Citizens Information; www.citizensinformation.ie
- FLAC; www.flac.ie
- Irish Statute Book – Legislation Directory; http://www.irishstatutebook.ie/legislation_directory_acts.html
- Law Society of Ireland; www.lawsociety.ie
- Legal Aid Board; <http://www.legalaidboard.ie/lab/publishing.nsf/Content/Home>
- PILA; www.pila.ie
- TrustLaw's *pro bono* links; <http://www.trust.org/trustlaw/pro-bono/>

III. CONCLUSION

Pro bono legal work is developing in the Republic of Ireland, with no real foreseeable legal impediments to its continued development. *Pro bono* legal services are in great demand and a demand for PILA's matching services continues to grow among practitioners. 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. In addition to PILA, the "voluntary assistance" program instituted by the Irish Bar Council presents another concrete opportunity, especially for barristers, to participate in community law projects.

In this context, mid-sized 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. The participation by a number of these firms in the PILA *Pro Bono* Referral Scheme indicates their growing commitment to *pro bono* practice.

July 2012

Pro Bono Practices and Opportunities in the Republic of 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.

³⁷ See, e.g., *What Counts? A Compilation of Queries and Answers*, THE LAW FIRM PRO BONO PROJECT, 6 (2003); cf. John Costello, *Why we need a solicitor's pro bono scheme*, LAW SOCIETY GAZETTE, 5-6 (Aug./Sep. 1998), 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 nonprofit making organizations").

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, legal aid from the voluntary sector such as from charities, advice agencies or Not for Profit organizations, or through the services provided by the Northern Ireland Lawyers' Pro Bono Group.

The Northern Ireland Legal Services Commission (the "NILSC") assumed responsibility on November 1, 2003, for the provision of publicly funded legal aid services in Northern Ireland and is still in the process of implementing radical changes in the provision of community legal services. Currently, changes to Civil and Criminal legal aid are still subject to various consultation processes, conducted by both the NILSC and the Department of Justice for Northern Ireland ("DOJNI").¹

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN NORTHERN IRELAND

The legal profession in Northern Ireland is divided into two distinct branches, the Bar Council of Northern Ireland (which comprises barristers) and the Law Society of Northern Ireland (which comprises solicitors). Both branches have their own code of conduct.² At present, there are approximately 649 barristers in independent practice, 79 Queen's Counsel³ and approximately 2,300 solicitors practicing in Northern Ireland.⁴

A. The Legal Profession

Northern Ireland's legal system is similar to that of England and Wales and jury trials have almost the exact 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 law in force at the time by Lord Kenneth Diplock and have been a source of controversy ever since. Human rights groups, in particular, 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 retained for "exceptional" cases where juries could still be intimidated. The Director of Public Prosecutions is currently 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 Higher courts and Lower courts; the former comprising the Court of Appeal, the High Court and the Crown Court, and the latter comprising county courts and magistrates' courts.

Higher courts: All matters relating to the Court of Appeal, the High Court and the Crown Court are under the jurisdiction of the DOJNI and judges are appointed by the Northern Ireland Judicial Appointments Commission. Magistrates' courts deal with minor local criminal cases, while civil matters are covered in the county court. Issues regarding Policing and Justice have been transferred by the UK Parliament to the devolved government of Northern Ireland.

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 United Kingdom Supreme Court.

¹ See www.nilsc.org.uk/consultations.asp?on=consultations and <http://www.courtsni.gov.uk/en-GB/AboutUs/Pages/default.aspx>.

² See Barristers' Code of Conduct, available at http://www.lawlibrary.ie/viewdoc.asp?fn=/documents/barristers_profession/codeofconduct.htm&m=3. 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 BAR COUNCIL OF IRELAND LAW LIBRARY website, available at <http://www.lawlibrary.ie/viewdoc.asp?fn=/documents/links/linksireland.asp&m=2>.

⁴ See LAW SOCIETY FOR NORTHERN IRELAND website, available at <http://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.

Lower courts: The Lower 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 "Recorders." 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 addition, if a party wants to appeal the decision of the County Court on a point of law, that is an appeal by way of "Case Stated." Case Stated appeals are transferred directly to the jurisdiction of the NI Court of Appeal.

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 may also deal with actions involving title to land or the recovery of land, equity matters, such as trusts and estates, mortgage repossession and the sale of land.

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 many matters relating to Policing and Justice have been transferred to the devolved government of Northern Ireland. The DOJNI is responsible for the Northern Ireland Courts' and Tribunals Service ("NICTS") who administer the Courts in this jurisdiction. Policy and legislation are decided upon by the Justice Minister in the Northern Ireland Executive and the Northern Ireland Assembly. Legal aid, advice and assistance have also been transferred to the Justice Minister. The Director of Public Prosecutions for Northern Ireland, who is answerable to the Attorney General for Northern Ireland, prosecutes all offences tried on indictment, and may do so in other summary cases. Nearly all public prosecutions are now conducted by the Public Prosecution Service for Northern Ireland. However, there is a very small category of offences where the PSNI (Police Service of Northern Ireland) remains the prosecuting authority. Such prosecutions involve making an application for a Sexual Offences Prevention Order or similar orders under the Sexual Offences Act 2003, or making an application for what used to be called an ASBO (Anti-Social Behavior Order).

B. Legal Aid

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 such as bail, family matters, injunctions, judicial review, negligence and personal injury cases. Within Civil legal aid there are three main stages: (i) legal advice and assistance referred to as "The Green Form Scheme"; (ii) Assistance By Way of Representation ("ABWOR"); and (iii) legal aid, referred to as "Civil 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 ABWOR for court proceedings in very specific cases such that if someone is being advised under legal advice and assistance and it becomes necessary for a solicitor to represent that person at Court, the solicitor can make a claim for legal aid for that advocacy work under Advice by Way of Representation.

Legal aid provides for assistance, including, where required, all preparatory work undertaken by a Solicitor, the costs of obtaining expert evidence and representation at Court. It can also cover the costs of instructing a Barrister in a case, although sometimes an application to the NILSC must be made to seek permission to instruct a Barrister in order to have those costs covered. 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 NILSC is currently undertaking a substantial reform program which it is hoped will result in the introduction of Community Legal Services as adopted in England and Wales under the Access to Justice Order (Northern Ireland) 2003 (“**AJO**”).⁶

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, referred to as “Criminal 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, should have free legal aid.

Currently, there is free legal aid in all criminal proceedings in Northern Ireland. To date, 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.⁷

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 have been about £100 million per annum in 2010-11.⁸

2. Voluntary Legal Aid from the Voluntary Sector

The main organizations within the voluntary sector that provide legal services for the public include the Citizens’ Advice Bureau, Law Centre (NI), Children’s Law Centre and Housing Rights Services.

Within the framework of voluntary legal aid, Law Centre (NI) provides legal services to other advice agencies in Northern Ireland. It is a nonprofit charity which 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 the local Citizen Advice Bureau, independent advice agencies, local solicitors, trade unions, social services, probation offices, constituency associations of local political parties, libraries and other civic organizations.

The PILS Project⁹ was established in 2009. It is a project of Ireland’s Free Legal Advice Centres. The PILS Project aims to increase awareness of human rights and equality issues in Northern Ireland by: (i) providing financial and legal support for public interest cases; (ii) enhancing communication and coordination between NGOs on the use of public interest litigation; and (iii) raising awareness of and tackling barriers to public interest litigation and promoting access to justice for those most in need.¹⁰

Some of the above organizations operate under a waiver agreement with the Law Society of Northern Ireland, allowing them to employ solicitors.

C. **The NILSC**

The NILSC assumed responsibility on November 1, 2003 for the provision of publicly funded legal aid services in Northern Ireland.

The NILSC is an executive Non-Departmental Public Body that is sponsored by the NICTS, which is part of the DOJNI. The NILSC’s aim is to promote fair and equal access to justice in Northern Ireland

⁶ See www.nilsc.org.uk/consultations.asp?on=consultations.

⁷ See commentary on “legal aid” on Northern Ireland Court website, available at <http://www.courtsni.gov.uk>.

⁸ See http://www.nilsc.org.uk/uploads/press/documents/Press%20Release_May%202011.pdf.

⁹ See <http://www.pilsni.org>.

¹⁰ See <http://www.pilsni.org/about-us.html>.

in its provision of publicly funded legal services. It operates within the powers set out in Article 7 of the AJO.

The NILSC has published several consultation papers,¹¹ such as the report in November 2011 which set out the reforms to the current legal aid system, which the NILSC intends to implement through the AJO. These include the introduction of the following financial reforms: (i) a new funding code called 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 £8,560.¹²

II. *PRO BONO* IN NORTHERN IRELAND: OPPORTUNITIES AND OTHER CONSIDERATIONS

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* 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. Because the Unit is a charity, it relies on donations and covenants to meet all of its running costs.

Advice and representation are provided by barristers and solicitors who have volunteered to join the panel and who cover the full range of legal specializations. 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,¹³ have volunteered for this scheme, which formalizes and complements a tradition of barristers individually acting without a fee in deserving cases. Although such a culture does exist, there are concerns over how embedded this culture is in the legal profession at present. Such concerns relate to the extent to which the *pro bono* culture guides the current activities of the legal profession as well as the role allocated to a *pro bono* system of work in the formal education and training of Solicitors and Barristers. However, it is one of the main aims of organizations such as the PILS Project to establish a deeper and more profound commitment to *pro bono* work within all levels of the legal profession in order to uphold and protect human and equality rights.

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.¹⁴ The 1976 Solicitors (Northern Ireland) Order does not 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.¹⁵

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: (i) the merits of the case; (ii) whether the applicant or members of his or her family can reasonably afford legal aid; and (iii) 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).¹⁶ The cases most likely to meet the eligibility criterion of the Unit will be appeals, applications for leave to

¹¹ See “A Strategy for the Development of Community Legal Services” available at <http://www.nilsc.org.uk/uploads/consultation/documents/Community%20Legal%20Services%20Strategy%20Document.pdf> and “Draft Equality Impact Assessment: Financial Eligibility for legal aid,” available at <http://www.nilsc.org.uk/uploads/consultation/documents/DRAFT%20EQUALITY%20IMPACT%20ASSESSMENT.pdf>.

¹² See http://www.nilsc.org.uk/faq_view.asp?faq_catid=20&on=faqs.

¹³ See the figures in “NI Pro Bono Group,” available at www.barlibrary.com.

¹⁴ See Barristers’ Code of Conduct, § 26.06 available at http://www.lawlibrary.ie/viewdoc.asp?fn=/documents/barristers_profession/codeofconduct.htm&m=3.

¹⁵ See the figures in “NI Pro Bono Group,” available at www.barlibrary.com.

¹⁶ See pdf entitled *Further Information about the Lawyers’ Pro Bono Unit*, available at www.barlibrary.com.

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. Consideration is given by those who are part of the Unit to the potential time it might take to resolve a matter which may result in the dealing of matters by way of “one off” advice instead of a Solicitor or Barrister assuming full carriage of a case. These cases are currently decided by a senior member of the Unit’s management committee and the barrister who is willing to act.

A. Barriers To *Pro Bono* Work And Other Considerations

Opportunities for legal practitioners to become involved in *pro bono* legal work are sometimes lacking. Furthermore, publicity for and awareness of the *pro bono* initiatives that exist in the profession mean those willing to share their expertise on a *pro bono* basis are not always aware of how the benefits of that expertise can be maximized.

B. *Pro Bono* Resources

- www.courtsni.gov.uk.
- www.barlibrary.com
- www.nilsc.org.uk/.
- www.pilsni.org

III. CONCLUSION

The culture of *pro bono* assistance in Northern Ireland is growing and will continue to do so with support from governmental bodies, NGOs and members of the legal profession.

July 2012

Pro Bono Practices and Opportunities in Northern Ireland

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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

A. The Legal Profession

Israel has the largest number of lawyers per capita in the world, with the number of citizens per lawyer in 2005 more than double the ratio found in either the United States or the United Kingdom.³ Consistent with the trend that began as early as 1968,⁴ more recent statistics document that the increase in the number of lawyers in Israel has continued to outpace population growth. Historically, all these lawyers were licensed to practice law by the Israel Bar Association; however, effective summer of 2012, the restrictions against foreign lawyers is lifted.⁵ Israel's Minister of Finance Dr. Yuval Steinitz approved of this reform, noting that "[t]he entry of global law firms to Israel will strengthen the sector's international standards, will enable more comprehensive service to Israeli clients and companies, and will create interesting collaborations."⁶

Israel enjoys an independent judiciary, which constitutes a separate unit within the Ministry of Justice. The judicial system consists of general law courts, known as civil or regular courts, and courts of more limited jurisdiction, such as tribunals and other authorities with judicial powers. The civil courts are divided among three levels: magistrates' courts, district courts and the Supreme Court.⁷

- There are 29 magistrates' courts, and cases before these courts are presided over by either a single judge or panel of three judges, depending on the election of the President of the Magistrates' Courts. These courts have jurisdiction in criminal matters (with offenses punishable by up to seven years, imprisonment), civil matters (with judgments up to approximately US\$300,000) and real property, as well as acting as traffic courts, municipal courts, family courts and small claims courts. The jurisdiction of a magistrate's court is the locality in which it sits and the whole district in which it is situated.
- There are five district courts in Israel, and these courts have original jurisdiction for any matter not within the sole jurisdiction of another court, cases dealing with companies and partnership, arbitration, prisoners' petitions and appeals on tax matters, as well as appeals of judgments of

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, 1623 (2003).

² *Id.*

³ G. Barzilai, *The Ambivalent Language of Lawyers in Israel: Liberal Politics, Economic Liberalism, Silence and Dissent in FIGHTING FOR POLITICAL FREEDOM: COMPARATIVE STUDIES OF THE LEGAL COMPLEX AND POLITICAL LIBERALISM*, 247-279 (T. C. Halliday, L. Karpik and M.M. Feeley eds. 2007).

⁴ *Id.*

⁵ Israel Bar Association Law Amendment (5709-2009), which stipulates that the Bar Association may register foreign lawyers and law firms operating in Israel on the basis of their law license at a foreign bar association.

⁶ *Minister of Finance signs order regulating the activity of foreign lawyers in Israel*, THE MINISTRY OF FINANCE, <http://www.marylandisrael.org/news/minister-finance-signs-order-regulating-activity-foreign-lawyers-israel> (last visited June 24, 2012).

⁷ THE ISRAELI MINISTRY OF FOREIGN AFFAIRS, *The Judiciary: The Court System*, (May 16, 2012). <http://www.mfa.gov.il/MFA/Government/Branches+of+Government/Judicial/The+Judiciary+-+The+Court+System.htm> (last visited Jun. 24, 2012).

the magistrates' courts. Generally, a single judge presides, unless the court hears an appeal of a magistrates' court, when the accused is charged with an offense punishable by imprisonment of ten or more years, or when the President or Deputy President of the District Court so directs.

- The Supreme Court acts predominantly as a court of appeals to hear criminal and civil appeals from judgments of the district courts, though the Supreme Court also exercises special jurisdiction to hear appeals in matters of Knesset elections, rulings of the Civil Service Commission, disciplinary rulings of the Israel Bar Association, administrative detentions and prisoners' petitions appealed from the district court. The number of justices on the Court is fixed by Knesset resolution. By convention, the most senior justice is the President (Chief Justice) of the Court and the next senior justice is the Deputy President. The President of the Court is the head of the entire judicial system in Israel. Though the Supreme Court generally sits in panels of three justices, the size of the panel may expand to an uneven number of justices at the election of the President or Deputy President. The Supreme Court also serves a unique function as the High Court of Justice, wherein the Supreme Court acts as the court of first and last instance, a role the Supreme Court serves over one thousand times a year, "in matters in which it considers it necessary to grant relief in the interests of justice and which are not within the jurisdiction of any other court or tribunal."

B. Legal Aid

The Israel Bar Association Act provides that "the Bar Association is entitled, *inter alia*, to provide legal relief to those of limited means."⁸ *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.⁹

II. PRO BONO OPPORTUNITIES IN ISRAEL AND OTHER CONSIDERATIONS

A. Pro Bono Opportunities

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:

- 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.¹⁰ The other is the Office of the Public Defender (the "OPD"), which is charged with providing legal aid in criminal cases.
- Legal aid provided by nonprofit organizations and NGOs.¹¹ 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).

⁸ Israel Bar Association Act, Section 3(2) (1961).

⁹ 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.

¹⁰ Legal Aid Act 1972 and Legal Aid Regulation 1973. In 2011, the Legal Aid Department at the Ministry of Justice provided legal representation in approximately 200,000 legal proceedings. MINISTRY OF JUSTICE, ISRAEL, *Functions of the Legal Aid Department*, <http://www.justice.gov.il/NR/exeres/0DE80AAC-B813-4C41-80E6-4235922F02BE.frameless.htm?NRMODE=Published> (last visited Jun. 23, 2012).

¹¹ 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.

- Legal services provided by private sector attorneys. The more than 2,000 attorneys who participate in the Israeli Bar Association's *pro bono* project¹² and over 1,100 outside lawyers who provide services in the courts and other legal forums where fees are paid by the state¹³ are an indication of the private sector's capacity and willingness to provide legal aid.

1. Civil Legal Aid

Civil legal aid is governed by the Legal Aid Act and the Legal Aid Regulations.¹⁴ 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:¹⁵

- 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.¹⁶ 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.¹⁷
- 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.
- The claim must have legal merit.¹⁸

2. 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*

¹² 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 June 23, 2012).

¹³ *Functions of the Legal Aid Department*, *supra* n.5.

¹⁴ Legal Aid Act 1972 and Legal Aid Regulation 1973, respectively.

¹⁵ Legal Aid Act 1972 and Legal Aid Regulation 1973.

¹⁶ MINISTRY OF JUSTICE, ISRAEL, *What are the Conditions for Granting Legal Aid?*, <http://www.justice.gov.il/MOJEng/SiuMishpati/Resources+Center/TnaimLekabaltSiyua.htm> (last Jun. 23, 2012).

¹⁷ 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), 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.

¹⁸ Legal Aid Law of 1972, Section 4.

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.”¹⁹

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. Between May 2010 and May 2011, the program received over 10,000 requests for assistance, an increase of approximately 36% from the same period the previous year.²⁰

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 by the Ministry of Justice described above. This means a family of up to three 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.

3. Public Defense Reform

In 1995, comprehensive legislation was passed establishing the 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.²¹

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.²² In addition to attorneys affiliated with or

¹⁹ “*Schar Mitzvah*” *supra* n. 12, http://www.israelbar.org.il/english_inner.asp?pgId=75176&catId=372 (last visited Jun. 23, 2012).

²⁰ N. Roth, *Signs of the Crisis: Requests for Legal Aid by the Needy up by 36% in One Year*, THE MARKER (May 26, 2011) (in Hebrew).

²¹ 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).

²² *A Little History*, MINISTRY OF JUSTICE, ISRAEL, <http://www.justice.gov.il/MOJHeb/SanegoriaZiborit/Odot/History.htm> (last visited Oct. 10, 2010) (in Hebrew).

commissioned by the OPD, some private criminal defense attorneys provide ad hoc *pro bono* services at their discretion.²³

4. Nonprofit 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.²⁴

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.

- *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.
- 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.
- 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.
- *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.
- 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.
- 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), though this may change in the coming years now that foreign lawyers have been cleared to practice in Israel. 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.²⁵ 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

²³ No official numbers are available to ascertain the scope of this type of *pro bono* criminal defense.

²⁴ 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/sites/default/files/justice_initiatives_20040225_2.pdf.

²⁵ Press Release, KDW Obtains Social Security Benefits for Pro Bono Client in Israel (Aug. 1, 2004), available at http://www.kelleydrye.com/news/pro_bono/0015.

arise in the donation process.²⁶ However, this initiative might not be seen as truly Israeli *pro bono* either, as the direct recipients are American companies.

5. 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 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.²⁷

Pro bono work in the Arab community, as well as Palestinian cause lawyering, are also relatively under-documented developments.²⁸ 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 nonprofit 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.²⁹

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.

B. *Pro Bono Resources*

The Justice Haim Cohen Center for Legal Defense of Human Rights is a nonprofit 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.

²⁶ See generally Mintz Levin, *Commitment to the Community*, ISRAEL BUSINESS PRACTICES, http://www.mintz.com/practices/17/Israel_Business.

²⁷ See N. Ziv, *Hanging by the Cloak – Advocates for Social Change in Israel: Between the Legal and the Political*, ADALAH'S NEWSLETTER (June 2004).

²⁸ 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).

²⁹ 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 nonresidents.³⁰ Local nonprofit organizations and local governments, however, provide services to some of these underrepresented groups to fill in gaps in the State's legal services.³¹ 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.

July 2012

Pro Bono Practices and Opportunities in Israel

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³⁰ This group includes foreign workers (legal and illegal migrant workers), noncitizen Palestinians and Palestinians who are Israeli citizens but lack proper identification documents.

³¹ 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* public legal services does not exist. Moreover, *pro bono* work is not a common practice, notwithstanding that large global law firms have recently started 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 primarily 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 nonprofit 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

A. The Legal Profession

In Italy the number of lawyers (approximately 210,000) is impressively high with respect to the total population of the country (approximately 60 million). Lawyers are largely located in the main Italian business centers, such as Rome, Milan and Turin and also in industrial cities located in northern Italy.

Traditionally, Italian lawyers worked as sole practitioners or in small-size or family-based firms providing legal services in various areas of law (i.e., both criminal and civil law). Nowadays, large Italian and international law firms have entered into the Italian legal market providing specific legal services, mainly focused on business law to banks, funds and corporations, and are mainly located in Milan and Rome. However, generally speaking, the Italian legal market is still mainly composed of sole practitioners or small-size firms.

With reference to the Italian judicial system, there are different categories of jurisdiction: (i) the constitutional court; (ii) ordinary courts; and (iii) special courts. Each of these courts has different competences and functions:

- The constitutional Court is competent for: (a) the constitutionality of legal provisions; (b) disputes in relation to the division of powers of the state bodies; and (c) procedures against the President of the Republic.
- The ordinary courts are composed by judges competent for general civil and criminal matters (save for some matters reserved to the jurisdiction of special judges, as briefly listed under point (iii) below). The ordinary courts are structured into three levels:
 - The Court of First Instance (*Tribunale*)
 - The Court of Appeal (*Corte di Appello*), having competence over appeals against the decisions of the Courts of First Instance
 - Court of Cassation (*Corte di Cassazione*), located in Rome, which is the highest court in Italy, having competence over appeals solely on issues of law concerning the judgments of the Courts of Appeal and challenges over the jurisdiction raised in any procedure carried out in any Italian court
- Special courts have jurisdiction in the following matters:
 - Regional Administrative Courts for the administrative matters (*Tribunali Amministrativi Regionali*) whose decisions can be appealed before the Council of State (*Consiglio di Stato*)
 - State Auditors' Department (*Corte dei Conti*) for matters regarding public accounts
 - Provincial Fiscal Commissions (*Commissioni Tributarie Provinciali*) for tax-related matters

Under Italian law, legal services carried out by lawyers are considered to be intellectual activities and, therefore, such legal services are regulated by the provisions of articles 2229 and following of the Italian Civil Code (“ICC”). In particular, the ICC states that: (i) the amount of remuneration shall be commensurate with the importance of the services and with the dignity of the profession; and (ii) if the activity involves technical difficulties, the professional is liable for such activity only in a case of willing misconduct or serious negligence.

In addition, lawyers' activity shall be carried out in compliance with the provisions of the Italian Code of Professional Conduct and Ethics (“**Professional Rules**”), which, *inter alia*, provides for the duties of integrity, dignity, honesty and fairness, as well as the prohibition of poaching of clients and requesting compensation not comparable with the legal assistance effectively rendered.

The Professional Rules were issued by the National Bar Association (*Consiglio Nazionale Forense*), which is the national institution representing lawyers in Italy. In addition, the National Bar Association is competent over appeals from the disciplinary decisions against lawyers issued by local Bar Associations.

The above-mentioned local Bar Associations are located in any city where a Court of First Instance is present and are competent, *inter alia*, for access to the Bar and for disciplinary actions against attorneys not acting in compliance with the Professional Rules. In addition, local Bar Associations manage and organize seminars and courses to update attorneys in their profession.

B. Legal Aid

Section 24(3) of the Italian Constitution guarantees the fundamental right to proper representation in court.¹ 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*).² When called upon by a specific commission or the president of the competent court, attorneys were required to provide free legal services to indigents who had meritorious claims.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*.

Legal aid is available only in litigation. Aid is available in all phases of litigation and before any court, and is available to Italian citizens, non-Italian citizens, and stateless individuals who satisfy specific objective requirements of the law.⁴ In criminal cases, legal aid is available to noncitizens regardless of whether they are regularly present in Italy; in civil and administrative cases, residency in the country is required.⁵ Nonprofit 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 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 with the Court of Appeals in the district in which the

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 Dec. 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 Judgment No. 219 of Jun. 1, 1995 of the Constitutional Court.

⁵ See Judgments No. 2684 of Mar. 10, 2003 of the Supreme Civil Court and No. 144 of May 14, 2004 of the Constitutional Court.

⁶ Section 77 of the Decree of the President of the Republic No. 115 of May 30, 2002.

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.

II. *PRO BONO* IN ITALY: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

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 or working for global or local law firms that offer *pro bono* legal services (such as, *inter alios*, Latham & Watkins, Linklaters, Clifford Chance and Gianni Origoni Grippo Capelli).

Pro bono legal services can also be offered to nonprofit associations pursuing social objectives, nongovernmental 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.

B. Barriers To *Pro Bono* Work And Other Considerations

There are several barriers to, and other considerations regarding, *pro bono* work under Italian law and Professional Rules.

On August 2, 2006, Law decree No. 223 (the so-called "**Bersani Decree**") became law. The *Bersani Decree* was designed to address competition concerns within the Italian legal market.

Specifically, the *Bersani Decree*: (1) abolished statutorily fixed and minimum attorneys' 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 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 this law did trigger controversy in Italy, the removal of minimum attorneys' fees had no effect on the level of *pro bono* services in Italy – that is, *pro bono* legal services still did not become part of the Italian legal culture.¹¹

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 Feb. 24, 2005.

⁸ The *Bersani Decree* also abrogated the third paragraph of section 2233 of the ICC and *provided that* legal fee agreements between lawyers and their clients must be in writing, or 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), price for services, 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 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 Mar. 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 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 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. *See* European Parliament Resolution, *Market Regulations and Competition Rules for the Liberal Professions*, Dec. 16, 2003; *see also* the conclusion of the General Advocate of the European Court of Justice delivered on Feb. 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

In January 2012, Italian legislators enacted Law Decree no. 1/2012 (the so-called “*Liberalizzazioni Decree*”), as amended by the Law No. 27/2012, to further remove barriers preventing the free competition in the Italian legal services market and ensure transparency regarding the chargeable fees to clients. In particular, the *Liberalizzazioni Decree*: (1) entirely abolished the statutory attorneys’ fees; and (2) expressly stated the principle of freedom of the parties in determining the applicable fees on legal services. However, the details of such fees have to be provided in writing to the client in advance – generally in the engagement letter – in order to avoid unexpected costs for the services to be provided. Failing to indicate such costs, it should be pointed out that any different agreement regarding the applicable fees is null and void.

The *Liberalizzazioni Decree* does not expressly mention *pro bono* work. Until there are concrete applications of the abolition of statutory attorneys’ fees towards the legal framework and principles governing the *pro bono* services, it is unclear what effect the *Liberalizzazioni Decree* will have on *pro bono* work.

Furthermore, under the principles governing the legal activity in Italy provided by the Professional Rules, lawyers cannot carry out any conduct directly 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 breach of principle connected to the fair competition among attorneys).

Scholars and case law have interpreted the Professional Rules to allow the provision of free legal services if they are ethically or socially motivated (because the Professional Rules do not allow attorneys to provide free legal services with the purpose of achieving business through the unlawful poaching of clients). Accordingly, *pro bono* work in Italy is currently limited 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 Italy, services supplied by professionals (such as lawyers) without consideration are not taxable under Italian VAT law.¹² This law has been interpreted to exclude tax services provided by professionals free of charge from the VAT. This conclusion (free legal services are not subject to VAT) is shared by Italian scholars and is consistent with the European Court of Justice jurisprudence, according to which it is necessary to have a direct link between the service supplied and the consideration received.

It should be noted that, if *pro bono* legal assistance is provided on the basis of a symbolic fee or it is recognized by the attorney to be a mere reimbursement of expenses, the service supplied by the lawyer should be considered in principle as taxable. However, if the lawyer requests a reimbursement of expenses incurred in the name and on behalf of the customer (i.e., the NGO), this payment is not relevant for VAT purposes.

Taken together, national laws and the Professional Rules do not set forth clear or detailed rules for *pro bono* legal services. As a consequence, traditionally, Italian lawyers do not consider *pro bono* services to be part of practicing law.

Despite the above, more recently, international and local large law firms offer *pro bono* services. However, such services have to be offered in compliance with the applicable legislation and Professional Rules setting forth *inter alia* limits for advertising the activity of attorneys, which accordingly restrain the size of *pro bono* work carried out in Italy.

Finally, 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.

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.

¹² See Article 3 of the Presidential Decree 26 Oct. 1972, No. 633.

C. *Pro Bono Resources*

- Italian Bar Association (www.consiglionazionaleforense.it); and for cities where legal services are mostly provided:
- Milan Bar Association
 - Address: Via Carlo Freguglia 1
20122 Milan, Italy
Phone: +2.54.92.92
Website: www.ordineavvocatimilano.it
- Rome Bar Association
 - Website: www.ordineavvocati.roma.it
Email: consiglio@ordineavvocatiroma.org
- Turin Bar Association
 - Website: www.ordineavvocatorino.it

III. CONCLUSION

Italian attorneys generally do not engage in *pro bono* legal services, as it is not part of the Italian legal culture. However, some global and large local firms as well as individual attorneys provide free legal services to indigent persons (not always being 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 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 the legal framework and professional rules governing legal activity in Italy do not clearly support/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.

July 2012

Pro Bono Practices and Opportunities in Italy

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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 and certain other countries, 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

According to a survey conducted by Japan Federation of Bar Associations (the “JFBA”)³, as of March 2011, there were 30,485 lawyers (*bengoshi*) in Japan, 5,115 of which are female. Geographical distribution of lawyers is skewed: 15,076 lawyers are registered in Tokyo, making it one attorney for 908 residents, while 26 out of 47 prefectures have one lawyer for more than 10,000 residents; and 2,158 lawyers work in Japan’s 10 biggest law firms, while 8,114 are solo practitioners. The number of in-house lawyers has sharply increased over the past several years, from 122 in 2005 to 588 in 2011. Other than the lawyers (*bengoshi*) described above, there are 359 registered foreign lawyers (*gaikokuho-jimu-bengoshi*),⁴ 2,850 judges and 1,816 prosecutors employed by national, prefectural or other governmental subdivisions.

At the most basic level, the Japanese Constitution, which was adopted in 1946, guarantees the protection of certain fundamental human rights, such as freedom of expression and freedom of religious belief. In addition, the Attorney Act, enacted in 1949, provides that the mission of lawyers (*bengoshi*) in Japan must include the protection of fundamental human rights and the realization of social justice. The JFBA was established in 1949 pursuant to the Attorney Act as 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.⁵ As the national bar association, the JFBA has self-regulatory powers, such as the ability to formulate its own rules and regulations and the power to discipline its members.⁶ This autonomy enables the JFBA to achieve its two-fold objectives of governing matters related to the supervision and guidance of its members,⁷ and acting “as a source of protection of fundamental human rights and the realization of social justice.”⁸

The independence of the JFBA, 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

Currently, state-sponsored legal aid is provided through Japan Legal Support Center (“JLSC”), which was established in 2004 under the Comprehensive Legal Support Act, which was also enacted in 2004.⁹

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 White Paper on Attorneys issued by JFBA, <http://www.nichibenren.or.jp/library/en/about/data/WhitePaper2011.pdf> (last visited Jun. 27, 2012)

⁴ Registered foreign lawyers (*gaikokuho-jimu-bengoshi*) are lawyers qualified outside Japan who have practiced for three or more years outside Japan and have satisfied additional conditions, including registration with the JFBA.

⁵ See JAPAN FEDERATION OF BAR ASSOCIATIONS, <http://www.nichibenren.or.jp/en/about/us.html> (last visited Jun. 10, 2012).

⁶ See JAPAN FEDERATION OF BAR ASSOCIATIONS, http://www.nichibenren.or.jp/en/about/judicial_system.html (last visited Jun. 10, 2012). Members of the Bar include all licensed attorneys from any of the 52 local bar associations throughout the country.

⁷ 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>.

⁸ *Articles of Association*, JAPAN FEDERATION OF BAR ASSOCIATIONS, available at <http://www.nichibenren.or.jp/library/en/about/data/articles.pdf>.

⁹ See JAPAN LEGAL SUPPORT CENTER, http://www.houterasu.or.jp/en/about_jlsc/history.html (last visited Jun. 27, 2012).

The objective of legal aid under the Comprehensive Legal Support Act is to create a society in which the provision of information and support necessary to settle civil and criminal disputes can be received nationwide, through (i) improved access to information, (ii) development of civil legal aid, (iii) securing systems of court-appointed defense counsel and court-appointed attorneys for victims, (iv) improvement of assistance to victims, and (v) strengthening coordination between, *inter alia*, the national government, local governments, local bar associations, JFBA and lawyers.¹⁰ The Comprehensive Legal Support Act stipulates that it is the responsibility of the national government to establish and implement comprehensive measures for the implementation of legal support and systems, observing the objectives thereof, and to provide capital to the JLSC.¹¹ The Comprehensive Legal Support Act provides rules and regulations for the administration of the JLSC, and delegates to the Japanese Minister of Justice the responsibility for appointing the president of JLSC. 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.¹²

As to civil legal aid, the JLSC 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 JLSC 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.¹³

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 request the appointment of court-appointed defense counsel.¹⁴ If indicted, regardless of the gravity of the alleged offence, the defendant is entitled to court-appointed defense counsel if he/she is indigent.¹⁵ A defense counsel appointed prior to indictment will generally be reappointed as trial counsel.¹⁶ If a defendant is indicted for an offence punishable by death, life imprisonment or imprisonment for a term longer than three years and there is no defense counsel, a court will appoint a defense counsel, regardless of whether it is requested by the defendant.¹⁷ In each of the foregoing cases, all legal fees and expenses for the court-appointed defense counsel are paid from public funds through the JLSC. Foreign nationals may also receive assistance through the criminal legal aid system regardless of their status of residence.¹⁸

According to a report published by the JLSC in 2011, the number of civil legal aid cases has consistently increased and the figure has doubled during the last 5 years.¹⁹ Because the requirements for asking for court-appointed counsel prior to indictment were relaxed in 2009, appointment of court-appointed counsel prior to indictment has also increased.²⁰

C. Additional Aid Provided by JFBA and Local Bar Associations

Certain types of legal services for the indigent are not covered by the JLSC. Thus, JFBA 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 JFBA and the local bar associations. This system was created to protect the rights of criminal suspects prior to indictment, who are detained

¹⁰ See Comprehensive Legal Support Act, arts. 2-7, English translation of which is available at <http://www.houterasu.or.jp/cont/100167450.pdf> (last visited Jun. 27, 2012)

¹¹ *Id.* at art. 8.

¹² See http://www.houterasu.or.jp/en/about_jlsc/operations.html (last visited Jun. 27, 2012)

¹³ See *supra* n.9 (in Japanese only),

http://www.houterasu.or.jp/houterasu_gaiyou/mokuteki_gyoumu/minjihouritsufujo/index.html (last visited Jun. 27, 2012)

¹⁴ See CODE OF CRIMINAL PROCEDURE art. 37-2 (in Japanese only), <http://law.e-gov.go.jp/htmldata/S23/S23HO131.html> (last visited Jun. 27, 2012)

¹⁵ *Id.* at art. 36.

¹⁶ See JAPAN LEGAL SUPPORT CENTER (in Japanese only), <http://www.houterasu.or.jp/cont/100180054.pdf> (last visited Jun. 27, 2012)

¹⁷ See *supra* n.14.

¹⁸ See JAPAN LEGAL SUPPORT CENTER (in Japanese only),

http://www.houterasu.or.jp/houterasu_gaiyou/mokuteki_gyoumu/kokusenbengo/index.html (last visited June 27, 2012)

¹⁹ See JAPAN LEGAL SUPPORT CENTER, *Operation report*, (in Japanese only), <http://www.houterasu.or.jp/cont/100184333.pdf> (last visited Jun. 27, 2012)

²⁰ *Id.*

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. JFBA 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.²¹ 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.²²

There are some areas of Japan where the number of attorneys is extremely low relative to the population. While the JLSC provides services in some of these areas, the JFBA, local bar associations, and regional federations of bar associations also operate JFBA and bar-funded law offices in rural areas that may not otherwise be covered. In addition, in June 2008, JFBA began providing economic support aimed at encouraging attorneys to settle in areas with a shortage of attorneys.²³

II. *PRO BONO* IN JAPAN: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

Although the term *pro bono* is not yet widely used in Japan, it has been Japanese legal tradition to value activities towards public interest, including legal assistance to the indigent. Practicing attorneys in Japan traditionally provided *pro bono* work such as duty attorney, free legal counseling, activities to protect children's rights, activities to promote equality of both sexes and activities to promote foreigners' rights.²⁴

The primary channels through which *pro bono* (whether or not so called) opportunities can be found in Japan are the local bar associations. The 52 local bar associations in Japan typically have committees in charge of various areas of *pro bono* work. Practicing attorneys are required to register with one of the local bar associations,²⁵ and the local bar associations usually encourage practicing attorneys to participate in *pro bono* work. 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.²⁶ In other regions, practicing attorneys typically voluntarily participate in *pro bono* activities under arrangement by local bar associations.²⁷

For instance, the Daini Tokyo Bar Association, one of the three local bar associations in Tokyo, with some 4,000 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. If the attorney does not comply, he or she can face consequences, including admonition, publication of their names as noncompliers, and paying up to ¥50,000 in penalties per year.²⁸

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

²¹ JFBA 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/justice.html> (last visited Jun. 10, 2012).

²² See JAPAN FEDERATION OF BAR ASSOCIATIONS (in Japanese only), http://www.nichibenren.or.jp/activity/criminal/reforming/kokusen_touban.html (last visited Jun. 27, 2012).

²³ See *supra* n.21.

²⁴ See *Brochure* (in Japanese only), <http://www.moj.go.jp/content/000077622.pdf> (last visited Jun. 27, 2012)

²⁵ See JFBA Attorney Act, art.8, <http://www.japaneselawtranslation.go.jp/law/detail/?ft=1&re=01&dn=1&co=01&x=0&y=0&ky=%E5%BC%81%E8%AD%B7%E5%A3%AB%E6%B3%95&page=14> (last visited Jun. 27, 2012).

²⁶ For examples, see DAINI TOKYO BAR ASSOCIATION (in Japanese only), <http://niben.jp/admission/public.html> (last visited Jun. 27, 2012) and TOKYO BAR ASSOCIATION (in Japanese only), http://www.toben.or.jp/message/libra/pdf/2004_05/2004_05_04.pdf (last visited Jun. 27, 2012).

²⁷ See, e.g., OKINAWA BAR ASSOCIATION, http://www.okiben.org/modules/public/index.php?content_id=27 (last visited Jun. 27, 2012).

²⁸ See DAINI TOKYO BAR ASSOCIATION, *Rules regarding Public Interest Activities of Members* (in Japanese only), <http://niben.jp/admission/public/kisoku2.pdf> (last visited Jun. 27, 2012).

payment.” For example, the Daini Tokyo Bar Association 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.²⁹ Activities at committees of local bar associations are also commonly regarded as public interest activities,³⁰ although some bar associations weigh such committee activities more heavily than public interest activities in general.³¹ In effect, the range of the activities considered as public interest activities in Japan is often broader in scope than activities understood to be “*pro bono* activities” in the United States and certain other countries.

The JFBA 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.³²

In addition to local bar association activity, a number of law firms have also contributed their services to the community on a *pro bono* basis. Because there are still many cases that fall outside of local bar association activities and JLSC-provided services, *pro bono* services by private law firms are generally aimed at filling this gap. For example, some multinational Western law firms with local branch offices in Japan have also engaged in public interest and *pro bono* services, including fundraising campaigns for charitable causes, working with humanitarian organizations, such as Not For Sale and Ashoka,³³ and supporting families affected by natural disasters.³⁴

B. Barriers To *Pro Bono* Work And Other Considerations

Providing *pro bono* work in Japan is generally unregulated. For example, lawyers who provide services for free are not required to pay consumption taxes. Similarly, there is no requirement for a lawyer to charge minimum tariffs.

However, there are certain barriers to *pro bono* work in Japan. Firstly, although a few *pro bono* clearinghouses were recently established in Japan (such as Service Grant,³⁵ Probonet,³⁶ and *Nimaime-no-Meishi*³⁷), currently none of them match law firms and lawyers with *pro bono* clients. This seems to be because *pro bono* work has been traditionally arranged by JFBA and local bar associations, and demand for such a match was relatively low. As a result, compared to certain other countries it may often be difficult for practicing attorneys and law firms to find *pro bono* opportunities in Japan outside of arrangements by JFBA and local bar associations.

Secondly, only lawyers admitted in Japan may practice law in Japan (with the exception of registered foreign lawyers who may practice the law of their home jurisdiction). Because *pro bono* work in Japan usually involves Japanese law, it is generally difficult for the registered foreign lawyers, not to mention unregistered attorneys, to participate in *pro bono* work in Japan.

C. *Pro Bono* Resources

JFBA and local bar associations are currently the biggest sources for *pro bono* opportunities. Although a few *pro bono* clearinghouses were recently established in Japan, they currently focus on matching nonlawyers with *pro bono* clients.

A list of organizations that interested attorneys and nongovernmental organizations may contact to become involved includes the following:

²⁹ *Id.* at art. 2.

³⁰ *Id.*

³¹ See TOKYO BAR ASSOCIATION (in Japanese only), http://www.toben.or.jp/message/libra/pdf/2006_09/p24p25_kouekikatudou.pdf (last visited Jun. 28, 2012)

³² See, e.g., Nagashima Ohno & Tsunematsu, <http://www.noandt.com/en/practice/probono.php> (last visited Jun. 10, 2012) and Mori Hamada & Matsumoto, <http://www.mhmjapan.com/en/probono/index.html> (last visited Jun. 10, 2012).

³³ <http://www.lw.com/admin/Upload/Documents/2011-Pro-Bono-Annual-Review.pdf> (last visited Jun. 10, 2012).

³⁴ *Id.*

³⁵ <http://www.servicegrant.or.jp/>

³⁶ <http://www.probonet.jp/>

³⁷ <http://nimaime.com/>

- Japan Federation of Bar Associations
 - Address: 1-1-3 Kasumigaseki, Chiyoda-ku, Tokyo, Japan
Phone: +81.3.3580.9741 Fax: +81.3.3580.9840
Website: <http://www.nichibenren.or.jp/en/>
- Tokyo Bar Association
 - Address: 6F Bar Association Bldg., 1-1-3 Kasumigaseki, Chiyoda-ku, Tokyo, Japan 100-0013 Phone: +81.3.3581.2201
Fax: +81.3.3581.0865
Website: <http://www.toben.or.jp/english/>
- Dai-ichi Tokyo Bar Association (Japanese only)
 - Website: <http://www.ichiben.or.jp/>
- Daini Tokyo Bar Association
 - Address: 9F, 1-1-3 Kasumigaseki, Chiyoda-ku, Tokyo, Japan 100-0013 Phone: +81.3.3581.3338
Website: <http://niben.jp/english/index.html>
- Osaka Bar Association
 - Phone: +81.6.6364.0251
Website: <http://www.osakaben.or.jp/web/english/index.php>
- Aichi Bar Association (Japanese only): <http://www.aiben.jp/>
- Japan Association for Refugees
 - Phone: +81.3.5379.6001 Fax: +81.3.5379.6002
Website: <http://www.refugee.or.jp/en/>
Email: info@refugee.or.jp
- Service Grant (Japanese only): <http://www.servicegrant.or.jp/>
- Probonet (Japanese only): <http://www.probonet.jp/>
- *Nimai-me-no-Meishi* (Japanese only): <http://nimai-me.com/>

III. CONCLUSION

The legal aid and other public interest activities led by JFBA and local bar associations function as the primary drivers of *pro bono* activities in Japan, and meet the need for free legal services for a substantial portion of Japan's indigent population. However, there are many matters falling outside of the areas covered by JFBA, JLSC and local bar associations where law firms can meaningfully contribute through their *pro bono* efforts to fill the gap. In addition, the recently established *pro bono* clearinghouses may eventually expand their coverage to matching lawyers with *pro bono* clients. While regulations on foreign lawyers restrict the conduct of *pro bono* activities which involve Japanese law to lawyers qualified in Japan, there are many ways that foreign lawyers and nonlawyers can become involved in *pro bono* work in Japan and have a meaningful and positive impact.

July 2012
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.

PRO BONO PRACTICES AND OPPORTUNITIES IN JORDAN¹

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

A. The Legal Profession

The Jordanian judicial system consists of three categories of courts: civil courts, religious courts and special courts.² The civil courts are courts of general jurisdiction and hear civil and criminal cases that are not reserved by law for other courts.³ The religious courts, which consist of *Shari’a* (Islamic law) courts and tribunals of other religious communities, have jurisdiction over personal status matters, such as marriage and inheritance.⁴ 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 cases relating to state security and drug offences.⁵

As of May 2012, Jordan has 9,563 practicing lawyers.⁶ The legal profession in Jordan is governed by the 1972 Bar Association Law (the “**Bar Association Law**”).⁷ Under the Bar Association Law, all practicing lawyers in Jordan are required to join the Jordanian Bar Association (the “**Bar Association**”).⁸ In addition, lawyers must undergo a period of training before being allowed to plead cases before the courts.

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 the basis of reciprocity. Foreign-qualified lawyers are permitted to advise Jordanian clients on matters of foreign or international law. A small number international law firms operate in Jordan in association with Jordanian law firms.⁹

B. Legal Aid

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.¹⁰ However, the Bar Association, has no established mechanisms to organize and encourage *pro bono* efforts by its members and there is no specific governmental body regulating *pro bono* work in Jordan. Under the Bar Association Law, the President of the Bar Association may assign any Jordanian lawyer, once per year, to represent an individual lacking the means to hire a lawyer on a *pro bono* basis.¹¹ In practice, accepting a *pro bono* assignment is not mandatory, and the lawyer may refuse to provide the representation.¹² Moreover, there are no guidelines regarding who is

¹ This chapter was drafted with the support of Mizan Law Group for Human Rights.

² Nathan J. Brown, *Arab Judicial Structures*, UNITED NATIONS DEVELOPMENT PROGRAM, available at <http://www.undp-pogar.org/publications/judiciary/nbrown/jordan.html> (last visited May 31, 2012); Email from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (May 28, 2012) (on file with author).

³ Nathan J. Brown, *Arab Judicial Structures*, UNITED NATIONS DEVELOPMENT PROGRAM, available at <http://www.undp-pogar.org/publications/judiciary/nbrown/jordan.html> (last visited May 31, 2012).

⁴ *Id.*

⁵ *Id.*; U.S. DEP’T OF STATE BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, 2009 HUMAN RIGHTS REPORT: JORDAN, (2010), available at <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136071.htm>.

⁶ Telephone interview with Abdelrahman Nafesh at the Jordan Bar Association.

⁷ Bar Association Law No. 11 (1972), at http://www.lob.gov.jo/ui/laws/search_no.jsp?no=11&year=1972.

⁸ *Id.* at art. 7.

⁹ The Sanad Law Group recently merged with Eversheds LLP’s Middle East network in 2011 to become Sanad Law Group in association with Eversheds KSLG. This became only the fourth international law firm to have an official platform in Jordan, joining Safwan Moubaydeen Law Firm in association with SNR Denton, Al Tamimi & Company and Abdul Karim Al Fauri & Associates, which retains a close relationship with UK-headquartered Trowers & Hamblins LLP.

¹⁰ Bar Association Law No. 11 of 1972, art. (5).5, available at Jordanian Bar Association.

¹¹ *Id.* at art. 100, at http://www.lob.gov.jo/ui/laws/search_no.jsp?no=11&year=1972.

¹² Email 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).

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.¹³

The Jordanian government provides free legal representation to defendants in need, in certain criminal cases. Under the Jordanian Criminal Procedure Law, a 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.¹⁴ 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.¹⁵ 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.¹⁶ In such a case, the president of the court appoints a private lawyer to represent the defendant.¹⁷ 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.¹⁸ These fees are modest relative to the fees that would ordinarily be charged by a lawyer for such a case.¹⁹

Defendants generally must pay court fees in order to appeal verdicts in criminal cases.²⁰ It is not possible to have such fees waived or postponed.²¹ 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-defense before courts of different levels.”²² However, verdicts resulting in a penalty of life imprisonment or death are automatically appealed and no court fees are charged for such appeals.²³ In addition, defendants in need are entitled to a government-provided lawyer for such appeals.²⁴

Litigants in civil cases before the civil courts of first instance, courts of conciliation in cases exceeding 1000 Jordanian Dinars (approximately US\$1,412) and in appeal proceedings must be represented by lawyers.²⁵ 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.²⁶ Litigants must also pay verdict and implementation fees, which may be equal to the initial trial fees.²⁷ These court fees are intended to reduce the burden on the court system by ensuring that only serious cases are brought before it.²⁸ Yet, the NCHR has observed that this has often resulted in people being prevented from resorting to the judiciary due to an inability to afford the costs of litigation.²⁹

Under the court fee regulations, the president of the court or the presiding judge can postpone the payment of court fees by a litigant, if a financial inability to pay is demonstrated.³⁰ In order to obtain a

¹³ Email from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 15, 2008) (on file with author).

¹⁴ JORDAN CONST., art. 6.1, at http://www.kinghussein.gov.jo/constitution_jo.html.

¹⁵ Criminal Procedure Law No. 9, art. 208 (1961); email from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 15, 2008) (on file with author).

¹⁶ Email from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 15, 2008) (on file with author).

¹⁷ Criminal Procedure Law No. 9, *supra* n.15.

¹⁸ Criminal Procedure Law No. 9, *supra* n.15 available at http://www.lob.gov.jo/ui/laws/search_no.jsp?year=1961&no=9; email from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 15, 2008) (on file with author).

¹⁹ Email from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 15, 2008) (on file with author).

²⁰ See THE NATIONAL CENTRE FOR HUMAN RIGHTS, *State of Human Rights in the Hashemite Kingdom of Jordan* (2008), ¶ 24 (2009). <http://www.asiapacificforum.net/members/full-members/jordan/downloads/annual-reports/2008/view>

²¹ Email from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 22, 2008) (on file with author).

²² *State of Human Rights* (2008), *supra* n.20.

²³ Email from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 24, 2008) (on file with author).

²⁴ *Id.*

²⁵ *Id.*

²⁶ THE NATIONAL CENTRE FOR HUMAN RIGHTS, *State of Human Rights in the Hashemite Kingdom of Jordan During the Period (June 1, 2003 –December 31, 2004)*, 28 (May 31, 2005).

²⁷ *Id.*

²⁸ *Id.* at 29.

²⁹ *Id.* at 28; *State of Human Rights* (2008), *supra* n.20 at ¶ 24.

³⁰ Email from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 15, 2008) (on file with author).

postponement of fees, the litigant must submit a petition to the president of the court stating that the litigant is unable to pay the court fees.³¹ The petition must include a statement from the land and survey department, stating that the litigant does not own any property and must be accompanied by the testimony of two witnesses regarding the litigant's financial status.³² Petitions for postponement of fees are generally granted.³³

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.³⁴

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.³⁵ 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.

II. *PRO BONO* IN JORDAN: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

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, operating under the Ministry of Public Sector Development, to receive and investigate complaints by citizens regarding actions by public agencies or their employees. In 2010 the Ombudsman Bureau received a total of 1,572 complaints. Of these, 32 were resolved through conciliation, 82 were resolved through proceedings, 41 resulted in a recommendation being referred to the relevant government entity, 652 applications were dismissed as outside of the mandate of the Ombudsman Bureau, 504 were dismissed on grounds that no irregularity had occurred, 221 remained under investigation, and 40 applications were abandoned by the complainant.³⁶ The Ombudsman Bureau has recently signed a memorandum of understanding with the Justice Centre for Legal Aid ("JCLA") to enhance the legal services both entities extend to the public. The memorandum stipulates that the bureau will refer all grievances lodged by citizens that lie outside its jurisdiction to the JCLA which will provide legal advice to the complainants and direct them to the proper legal channels.³⁷

The National Center for Human Rights ("NCHR") is a government-supported human rights body that, among other activities, provides free legal services to victims of human rights violations.³⁸ The NCHR was established by law in 2002 to promote an awareness of human rights, improve the human rights situation in Jordan and assist victims of human rights violations.³⁹ The Complaints & Legal Services unit of the NCHR, which employs several lawyers, receives and addresses complaints of human rights violations, often pursuing judicial remedies where appropriate.⁴⁰ The NCHR operates a hotline for

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *State of Human Rights* (2008), *supra* n.20, at ¶ 25.

³⁵ Email from Yousef Khalilieh, Rajai K. W. Dajani & Associates Law Office (Jan. 22, 2008) (on file with author).

³⁶ OMBUDSMAN BUREAU, *report for 2010*, available at <http://www.ombudsman.org.jo/Arabic/ReportsStudy/Reports/Documents/mathlm2010cover.pdf>.

³⁷ The *Jordan Times* article by Hani Hazaimah published on Feb. 28, 2012, available at <http://jordantimes.com/ombudsman-bureau-legal-aid-centre-to-cooperate-in-addressing-public-complaints>

³⁸ THE NATIONAL CENTER FOR HUMAN RIGHTS, *Introduction*, available at <http://www.nchr.org.jo/english/Aboutus>.

³⁹ *Id.*

⁴⁰ THE NATIONAL CENTER FOR HUMAN RIGHTS, *Monitoring & Complaints*, available at http://www.nchr.org.jo/english/Aboutus/OrganizationalStructure/Monitoring_Complaints_unit.aspx.

complaints of human rights violations, and complaints may also be submitted via its website.⁴¹ In 2011, the NCHR received 596 complaints and 156 requests for assistance.⁴²

Mizan Law Group for Human Rights (“**MIZAN**”) is an NGO that engages in human rights education campaigns and provides free legal counseling and representation to vulnerable individuals and victims of human rights violations.⁴³ MIZAN focuses in particular on providing legal assistance to juveniles, women, prisoners, laborers, refugees, asylum seekers and victims of torture. MIZAN provides a range of free legal services, including providing legal advice, interfacing with government agencies on behalf of its clients and representing clients in court. MIZAN has offices in three cities and operates a mobile legal clinic that travels to other areas to offer walk-in legal consultations. MIZAN also operates a 24-hour telephone helpline that provides free legal advice. In addition, MIZAN receives case referrals from over 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 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 Since its establishment in 2008, the JCLA had provided legal counseling to 2,300 individuals and legal representation to 1,450 individuals.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**”) is an NGO, providing free legal services and counseling to journalists.⁵² MELAD employs four full time lawyers who are involved primarily in defending journalists entangled in publication and free expression proceedings, such as character defamation. In addition to representing journalists in litigation, MELAD operates a hotline offering free legal advice to journalists.⁵³ 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.⁵⁴

Tamkeen Centre for Legal Aid and Human Rights (“**Tamkeen**”) was founded in 2007 and works in partnership with other service providers, lawyers, consultants and advocates and a network of volunteer

⁴¹ THE NATIONAL CENTER FOR HUMAN RIGHTS, *Contact Us*, available at <http://www.nchr.org.jo/english/ContactUs>; The National Center for Human Rights, Human Rights Violation Complaints.

⁴² Telephone Interview with Atef Al Majali, NCHR Jordan; *State of Human Rights* (2008), *supra* n.20 at ¶¶ 214-15, available at <http://www.asiapacificforum.net/members/full-members/jordan/downloads/annual-reports/2008/view>

⁴³ MIZAN – Law Group for Human Rights, available at http://www.mizangroup.jo/index_en.php; interview with Eva Abu Halaweh, Executive Director, MIZAN – Law Group for Human Rights (Jan. 16, 2008).

⁴⁴ Email from Jocelyn Knight, MIZAN Law Group for Human Rights (Sept. 13, 2010) (on file with author).

⁴⁵ MIZAN – Law Group for Human Rights, The Annual Report for 2010 available at <http://www.mizangroup.jo/files/2010.pdf> (Jan. 8th, 2012).

⁴⁶ *Id.*

⁴⁷ JUSTICE CENTER FOR LEGAL AID, *About Us*, available at <http://www.jcla-org.com/#/en-about-us>.

⁴⁸ JUSTICE CENTER FOR LEGAL AID, *Legal Aid Clinics*, available at <http://www.jcla-org.com/#/en-legal-and-clinics>.

⁴⁹ JUSTICE CENTER FOR LEGAL AID, *Pro Bono Legal Network*, available at <http://www.jcla-org.com/#/en-pro-bono-legal-network>.

⁵⁰ *Id.*

⁵¹ JUSTICE CENTER FOR LEGAL AID, *Our Supporters*, available at .

⁵² CENTER FOR DEFENDING FREEDOM OF JOURNALISTS, *Media Legal Aid Unit*, at http://www.mfd-forum.com/english/?page_id=78 (last visited Jun. 4, 2012).

⁵³ *Id.*

⁵⁴ *Id.*

lawyers and activists who advocate and defend the rights of underprivileged people, through the provision of legal services and consultations, human rights education, advocacy and training programs, research and analytical studies, media campaigns and raising awareness activities and development of specialized programs that support human rights efforts and improve legal services. Tamkeen's Legal Unit provides services including: legal aid, court representation, one on one counseling, escort services to official institutions, referrals for victims in need for health or psychological help and assisting with labor disputes outside the judiciary system through arbitration, mediation and re-conciliation efforts.

Other organizations providing legal counseling services include:

- *United Nations High Commissioner for Refugees (“UNHCR”)* works closely with ministries, international and national NGOs and UN agencies to provide services and assistance to refugees, including holding workshops for lawmakers, providing financial assistance and providing social and legal counseling for refugees.
- *Women in Danger*, supports detained women by providing shelter and free legal aid services in civil and criminal matters, working in partnership with the Public Security Department and the Ministry of Social Development.
- *Legal Van*, collaborates with other NGOs, allowing lawyers to travel across the country and provide legal advice and assistance to those in need, as well as lecture and raise awareness in rural communities.
- *The Hotline*, arranges for lawyers to give free legal advice over the phone.
- *The Jordanian Women's Union*, focuses on defending and protecting women's rights. It provides legal and social counseling, and operates a 24-hour counseling hotline.
- *The Jordanian Society for Human Rights*, covers a wide range of human rights issues and works on monitoring human rights violations and assisting victims.
- *The Arab Organization for Human Rights*, founded in 1990, provides free legal aid services, upon request, to people who are either suffering from human rights violations or are at risk of suffering human rights violations .

B. Barriers To *Pro Bono* Work And Other Considerations

Although the Jordanian constitution guarantees the equality of citizens before the law and access to justice for all, it does not contain an explicit right to defense or guaranteed access to courts and counsel.⁵⁵ 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 As a result there are problems of access limiting an individual's ability to exercise their legal rights affecting the most impoverished sections of Jordanian society, which include the unemployed (the unemployment rate is as high as 13%), a refugee population of 450,915 (as of January 2011, consisting mainly of Palestinian and Iraqi refugees and not taking into account the recent influx of Syrian refugees),⁵⁷ juveniles and women (as Jordan remains a predominantly patriarchal society).

In 2010 the NCHR noted that despite repeated recommendations to reduce litigation costs, the cost of litigation remained one of the main the impediments to access to justice for Jordanian citizens. The NCHR observed that in 2010 there had been an increase in fees for lawyers' powers of attorney and this had been a continuing trend from the year 2008, when higher fees were imposed on citizens under the

⁵⁵ JORDAN CONST. art. 6(1), available at http://www.kinghussein.gov.jo/constitution_jo.html.

⁵⁶ *State of Human Rights* (2008), *supra* n. 20 at ¶ 15, available at <http://www.asiapacificforum.net/members/full-members/jordan/downloads/annual-reports/2008/view>; THE NATIONAL CENTRE FOR HUMAN RIGHTS, *Status Report of Human Rights; The Hashemite Kingdom of Jordan*; 2006, 21 (2007), available at <http://www.asiapacificforum.net/members/full-members/jordan/downloads/annual-reports/2006/view>.

⁵⁷ Albawaba, *Jordan's unemployment rate hits 13.1 percent* (published Jan. 8th, 2012), available at <http://www.albawaba.com/business/jordans-unemployment-rate-hits-131-percent-408083>; UNHCR Jordan 2012 Country Profile, available at .

amended court fees system. It was added that this constituted an additional burden on litigants and limited their ability to resort to the judiciary.⁵⁸

Individual Jordanian lawyers have the ability to become involved in *pro bono* legal work either through volunteering 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 and assist in providing free legal representation to individuals on MIZAN's or JCLA's behalf.

Although 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 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 US law firms may work with MIZAN to assist such individuals. Additional examples include law firms with offices in the UAE working with the Center for Justice and Legal Aid in coordinating a *pro bono* project in Jordan to help break down barriers to access to justice under Jordanian law⁶⁰ and working with USAID in conducting a comprehensive assessment of Jordan's media laws.⁶¹

III. CONCLUSION

The provision of *pro bono* legal services is not common in Jordan, however there exist a number of organizations 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 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 can join. Despite this, there is a lack of provision of legal representation for non-human-rights related cases.

As for the availability of *pro bono* opportunities for foreign-qualified lawyers in Jordan; whilst there exist restrictions on the practice of law by foreign-qualified lawyers, there is some scope for international law firms to assist nonprofit organizations and needy individuals on matters involving foreign and international law.

July 2012

Pro Bono Practices and Opportunities in Jordan

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⁵⁸ *State of Human Rights* (2008), *supra* n.20 at ¶ 15 (Apr. 2009), at **Error! Hyperlink reference not valid.**<http://www.asiapacificforum.net/members/full-members/jordan/downloads/annual-reports/2008/view>;

http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e4865660s0ctexts/PO3JOR1123_945.pdf; THE NATIONAL CENTRE FOR HUMAN RIGHTS, *Status Report of Human Rights; The Hashemite Kingdom of Jordan* (2010), available at <http://www.nchr.org.jo/english/Publications/AnnualReports.aspx>.

⁵⁹ Interview with Eva Abu Halaweh, Executive Director, MIZAN – Law Group for Human Rights (Jan. 16, 2008).

⁶⁰ REED SMITH, *Pro Bono*, at <http://m.reedsmith.com/pro-bono-eme-practices/> (last visited Jun. 4, 2012).

⁶¹ COVINGTON & BURLING, *Public Service Activities 2006 Report*, at <http://www.cov.com/files/Publication/6c55323f-0a16-4c89-9993-059ab19e42cc/Presentation/PublicationAttachment/7c7c8536-8eae-47a0-ba2c-0b51146c2f6d/Public%20Service%20Activities%202006.pdf>.

PRO BONO PRACTICES AND OPPORTUNITIES IN KENYA

Equal access to justice remains a challenge for most people in Kenya. The Kenyan government provides legal aid to individuals accused of capital crimes before the High Court and to child offenders who do not have access to legal representation, leaving a large number of Kenyans in need of legal aid with limited options for accessing the judicial system. The majority of legal aid services are provided by nongovernmental 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. Kenya faces significant challenges in implementing a legal aid system that adequately serves its population, but it is making strides in the right direction.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN KENYA

A. The Legal Profession

According to the Law Society of Kenya (the regulatory body for lawyers in Kenya) there are more than 8,000 practicing lawyers in the country.¹ These lawyers work for law firms, companies, the government, nonprofit organizations, academic institutions and as solo practitioners. However, most lawyers reside in cities and major towns, leaving the rural population without access to legal services.² In addition, the ratio of lawyers to the general population is approximately one lawyer for every 5,500 people, far below the internationally recommended ratio of one lawyer to 600 people.

Kenya’s legal system contains elements of English common law, customary law and religious law (mainly Islamic law).³ The country has both formal courts and customary village courts. There are two categories of formal courts. The first category consists of the Supreme Court, the Court of Appeal and the High Court. The second category consists of special courts that have the same status as a High Court and have jurisdiction over matters relating to employment and labor relations, environmental laws and land rights. In addition to the formal courts, there are subordinate courts, such as magistrate and tribal courts. The tribal 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.⁴

Lawyers in Kenya are primarily monitored and regulated by the Law Society of Kenya. The Law Society was established by an act of Parliament in 1948 to maintain and improve the standards of conduct and learning among the members of the Kenyan legal profession. The Law Society provides continuing legal education to practicing attorneys and assists the Government and the courts in matters affecting the legislation, administration and practice of law in the country. The Advocates Act also governs legal practice in Kenya through the establishment of the Advocates Complaints Commission, which has the power to investigate complaints against lawyers and provide redress when appropriate, and the Disciplinary Committee, which has wide-ranging powers to investigate and discipline professional misconduct.

B. Legal Aid

Kenya’s new constitution proclaims that “the State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.”⁵ Despite this constitutionally mandated right to equal access to justice, many Kenyans cannot access the country’s justice system because they are unaware of their basic rights, the courts are structured in a way that does not facilitate equal access to all, and legal services are unaffordable to most of the country’s population.⁶

¹ THE LAW SOCIETY OF KENYA, *Strategic Plan 2012-2016*, Apr. 2012, available at <http://www.lsk.or.ke/images/downloads/lsk%20strategic%20plan%202012-2016.pdf>.

² Patricia Kameri Mbote and Migai Akech. *Kenya: Justice Sector and the Rule of Law*, 114, Mar. 2011, available at <http://www.ielrc.org/content/a1104.pdf>.

³ *Id.* at 42.

⁴ *Crime and Society: A Comparative Criminology Tour of the World*, available at <http://www-rohan.sdsu.edu/faculty/rwinslow/africa/kenya.html>.

⁵ KENYA CONST., § 48.

⁶ Mbote, *supra* n.2 at 157.

The Kenyan government currently provides legal aid to individuals accused of capital crimes before the High Court and to child offenders who do not have access to legal representation.⁷ The Country's Civil Procedure Act also allows indigent people access to the courts by filing a pauper brief; however, those people are dependent upon the availability of lawyers to file the brief on their behalf.⁸ While some lawyers and paralegals offer *pro bono* legal advice, most of the free legal aid in Kenya is provided to disadvantaged groups of people, especially the poor, women and children, by NGOs.

There is growing interest in issues related to human rights and the rule of law in Kenya, as well as throughout many other African countries. Since 2003, Kenya has made significant strides in improving equal access to justice by establishing (i) the Kenya National Human Rights and Equality Commission, which is charged with enhancing the promotion and protection of human rights, (ii) the National Commission on Gender and Development, which promotes gender equality throughout society, and (iii) the National Cohesion and Integration Commission, of which one of the objectives is facilitating and promoting equal opportunity and acceptance of diversity. Several organizations have called for the establishment of a national legal aid scheme to enable more Kenyans to access the justice system. In 2007, the government created the National Legal Aid (and Awareness) Steering Committee to oversee, coordinate, monitor and provide policy direction regarding a legal aid program under the auspices of the Ministry of Justice.⁹ In addition, one of the key components of the Law Society's strategic plan is to increase the availability and quality of legal services and generally improve access to justice in the country.¹⁰ There have also been steps to establish small claims courts and provide for alternative forms of dispute resolution in order to reduce the backlog of cases in courts and the costs of accessing those courts. Nonetheless, significant hurdles remain to ensure equal access to justice for all in Kenya.

II. **PRO BONO IN KENYA: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. **Pro Bono Opportunities**

The majority of legal aid in Kenya is provided by NGOs that offer assistance to marginalized groups of people. These organizations include the Federation of Women Lawyers ("**FIDA Kenya**"),¹¹ The CRADLE,¹² the International Commission of Jurists in Kenya ("**ICJ-Kenya**"),¹³ Kituo Cha Sheria¹⁴ and the Public Law Institute ("**PLI**"). However, many of these NGOs lack the resources and capacity to provide legal aid on a national scale.¹⁵

1. Federation of Women Lawyers

FIDA Kenya is a nonprofit, nonpartisan membership-based NGO committed to the creation of a society that is free from all forms of discrimination against women. They address their mission by providing legal aid to indigent women, engaging in legal, policy and legislative reform, monitoring the implementation of treaties, researching issues related to women's rights, and educating women about their rights. FIDA Kenya has assisted women through various programs and initiatives, including training women to represent themselves in court. The primary areas of law that they cover are succession and inheritance, family law, employment cases and land disputes involving discrimination on the basis of sex, cases involving gender-based violence and other public interest cases. FIDA Kenya has established a country-wide *pro bono* lawyer's scheme and engages in legal awareness activities and alternative dispute resolution.¹⁶

⁷ U.S. DEP'T OF STATE, *Country Reports on Human Rights Practices, Kenya* 7 (2006), available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78740.htm>.

⁸ Mbote, *supra* n.2 at 159.

⁹ *Id.*

¹⁰ THE LAW SOCIETY OF KENYA, STRATEGIC PLAN 2012-2016.

¹¹ <http://www.fidakenya.org>.

¹² <http://www.thecradle.or.ke>.

¹³ <http://www.icj-kenya.org>.

¹⁴ <http://www.kituochasheria.or.ke>.

¹⁵ OPEN SOCIETY INITIATIVE FOR EAST AFRICA, *Ensuring Justice for Vulnerable Communities in Kenya: A Review of HIV and AIDS-related Legal Services* (Apr. 2007), 8, available at <http://www.soros.org/reports/ensuring-justice-vulnerable-communities-kenya>.

¹⁶ Mbote, *supra* n.2, at 162.

2. The CRADLE

The CRADLE is a nonprofit NGO committed to the protection, promotion and enhancement of the rights of children, especially girls. The organization was started by a group of Christian lawyers to respond to the need for the provision of legal assistance to children and works to enhance children's access to justice. Their activities include running a legal aid program, advocating for policy and legislative enactments protecting children's rights, researching, monitoring and documenting issues related to children's rights and building awareness of children's rights.¹⁷

3. International Commission of Jurists in Kenya

ICJ-Kenya is a nonprofit, nonpartisan membership-based NGO with over 300 members who are dedicated to the legal protection of human rights in Kenya. The organization has a permanent secretariat with a team of full-time lawyers charged with running its programs. ICJ-Kenya's objectives include improving access to justice and protection of human rights, increasing citizen empowerment, investing in the development and involvement of key stakeholders and increasing awareness of human rights.¹⁸

4. Kituo Cha Sheria

Kituo Cha Sheria is a national membership-based NGO founded by lawyers committed to helping disadvantaged and poor people who cannot afford the cost of legal services. Established in 1973, it was the first legal aid center in Kenya and focuses on empowering marginalized and poor people to access justice through legal aid education, advocating for equitable access to justice, establishing community partnerships and undertaking public interest litigation. The organization provides legal advice regarding family law, land disputes, employment and labor disputes, landlord and tenant issues, criminal offences, accident claims, rape cases, women's rights issues and refugee issues.¹⁹ Kituo Cha Sheria is largely dependent on donors and lawyers who volunteer their services, which can make its ability to provide consistent levels of service unpredictable. The organization has offices in Nairobi and Mombasa and an established network of volunteer lawyers in major towns throughout the country.²⁰

5. Public Law Institute

PLI is an NGO that was created by the National Council of Churches of Kenya and the Law Society of Kenya to promote human rights and the rule of law in Kenya. PLI's activities include providing legal representation and services to the poor and disadvantaged and protecting consumer and environmental rights. PLI also provides legal education through publications, workshops, seminars and paralegal training programs. The organization has twelve lawyers on staff and relies heavily on volunteers.²¹

In addition to NGOs, international organizations and local law schools also provide legal aid to those in need. Kenyan universities have established legal aid clinics that allow students to advocate in court. For example, fourth year students at Moi University's legal clinic plead cases to the High Court with the permission of the Attorney General.²²

B. Barriers To *Pro Bono* Work And Other Considerations

Despite the progress that has been made towards ensuring equal access to justice, organizations that provide legal assistance in Kenya are restricted by the fact that many of them do not have a presence

¹⁷ <http://www.thecradle.or.ke>.

¹⁸ <http://www.icj-kenya.org>.

¹⁹ Clement Nwankwo, *The Status of Human Rights Organizations in Sub-Saharan Africa*, available at <http://www1.umn.edu/humanrts/africa/kenya.htm>.

²⁰ <http://www.kituochasheria.or.ke>.

²¹ Nwankwo, *supra* n.19.

²² OPEN SOCIETY JUSTICE INITIATIVE, *Combining Learning and Legal Aid: CLE in Africa*, available at <http://www.justiceinitiative.org/activities/lcd/cle/durban2003>.

throughout the country and a lack of public spirited lawyers.²³ The Court system also presents a formidable barrier to the provision of *pro bono* services. According to research by the Kenya AIDS NGO Consortium in 2004, it takes between two to six years to obtain a final judgment in a civil matter.²⁴

There are also procedural challenges to the provision of public interest litigation. Courts have frequently used the doctrine of *locus standi* to defeat a number of initiatives aimed at securing the public interest through litigation. In addition, the government often withholds certain evidence from defense lawyers prior to trial by declaring that the evidence is protected by the State Security Secrets Law and local officials often classify certain documents to protect corrupt government officials.²⁵

Based on Schedule 3 of the V.A.T. Act of 2009, social welfare services provided by registered charitable organizations or nongovernmental organizations whose income is exempt from taxation are exempt from the application of value added taxes for the provision of legal assistance.²⁶

C. *Pro Bono* Resources

NGOs such as FIDA Kenya, Kituo Cha Sheria and PLI are the best resources for the lawyers interested in representing Kenyans on a *pro bono* basis. These organizations play a central role in increasing awareness of legal rights and appear to provide the broadest range of legal aid in the country.

III. CONCLUSION

While Kenya currently lacks a substantial legal aid system, there have been noticeable improvements in the past few years. Individuals without adequate legal representation often lack a knowledge of the system, face insurmountable costs and extensive procedural delays. The Kenyan government only provides legal aid to individuals accused of capital crimes before the High Court and to child offenders who do not have access to legal representation. NGOs attempt to fill the need for legal representation, but often face resource and capacity constraints. In order for Kenyans to truly have equal access to justice, the government will need to increase its commitment to providing legal aid, provide financial support to legal aid organizations and make systematic and procedural changes to reduce the barriers to accessing justice.

July 2012

Pro Bono Practices and Opportunities in Kenya

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²³ Mbote, *supra* n.2, at 165.

²⁴ K. Kalla and J. Cohen, "Ensuring Justice for Vulnerable Communities in Kenya: A Review of HIV and AIDS-related Legal Services 29, LAW AND HEALTH INITIATIVE, OSI'S PUBLIC HEALTH PROGRAMME, OPEN SOCIETY INITIATIVE FOR EAST AFRICA (2007).

²⁵ U.S. DEP'T OF STATE, *Country Reports on Human Rights Practices, Kenya 7* (2006), available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78740.htm>.

²⁶ <http://www.revenue.go.ke/vat/pdf/VATAct2009.pdf> at 66.

PRO BONO PRACTICES AND OPPORTUNITIES IN LATVIA¹

There are a number of opportunities for *pro bono* legal assistance in Latvia, involving aid to both individuals and nongovernmental organizations (“NGOs”). Although Latvia has institutionalized State-funded legal assistance, certain problems persist. As such, international and domestic law firms are encouraged to provide *pro bono* services in Latvia.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN LATVIA

A. The Legal Profession

The Latvian legal profession is comprised of State-licensed attorneys referred to as “advocates” or sworn attorneys (*zvērīnāts advokāts – in Latvian*), unlicensed lawyers which are referred to as “jurists” or lawyers and assistants to sworn attorneys.² Jurists have received a legal education and can therefore practice law. However, jurists cannot represent clients in criminal matters. Advocates, on the other hand, may represent clients in criminal matters, but are subject to certain mandatory requirements. In order to qualify as an advocate, one must be a Latvian citizen, fluent in Latvian, have completed a legal education and necessary examination, and have attained certain specified work experience.³ Assistants to sworn attorneys have limited rights to represent clients in court and practice under the supervision of the particular sworn attorneys who are their patrons.

As of 2008, the number of sworn attorneys is approaching 1,000, while the number of assistants to sworn attorneys is approximately 150.⁴ Statistical information about individually practicing lawyers is not available.

The legal practice of advocates is regulated by the Latvian Council of Sworn Advocates, the Code of Ethics of Latvian Sworn Advocates, the Law “On the Bar” and the Statutes of the Latvian Collegium of Sworn Advocates.⁵ The legal practice of jurists is not subject to any regulations.

The Latvian court system comprises district (municipal) courts, regional courts, the Supreme Court and the Constitutional Court or “Satversmes tiesa.” District courts are courts of first instance for criminal, civil and administrative matters, while regional courts hear appeals from district courts and cases specifically assigned to regional courts by law.⁶ The Supreme Court hears appeals from regional courts as well as certain other cases, while the Constitutional Court reviews the compliance of laws and international agreements with the Latvian Constitution.⁷

B. Legal Aid

State-funded legal aid in Latvia is provided for by the Act on State Legal Aid (the “Act”). Legal aid may be provided in civil, administrative and criminal cases. The Act authorizes the Legal Aid Administration to administer legal aid in cases mandated by law. In order to receive legal aid, a person must apply for legal aid with the Legal Aid Administration. If a person is approved for such aid, Legal Aid Administration officials contact legal aid providers and arrange for the provision of legal aid.⁸

Persons are only entitled to State-funded legal aid if: (i) they have been declared a person of low-income according to procedures specified by law; (ii) they have become subject to circumstances

¹ This chapter was drafted with the support of the law firm, SORAINEN.

² The term “jurists” refers both to legal practitioners and legal professionals such as judges, public notaries, prosecutors, in-house lawyers, attorneys, bailiffs, etc.

³ See LATVIAN COUNCIL OF SWORN ADVOCATES, *Law On the Bar*, ch. 2, available at <http://www.advokatura.lv/?open=eng&it=bar&lang=eng>.

⁴ See D. Rone, *Latvijas advokatūras sistēmas darbības izvērtējums, tās loma juridiskās palīdzības sniegšanā un attīstības perspektīvas* (Study on the system of the Latvian Bar, its role in providing legal aid and perspectives of development), available at <http://www.tm.gov.lv/lv/ministrija/imateriali/petijumi.html>.

⁵ See LATVIAN COUNCIL OF SWORN ADVOCATES, *Code of Ethics of the Latvian Sworn Advocates*, available at <http://www.advokatura.lv/?open=eng&it=etika&lang=eng>.

⁶ Administrative courts are separate from general jurisdiction courts. Administrative courts monitor the activities of the executive branch, which involves review of administrative acts or specific acts of institutions, as well as determination of public law duties and rights of individuals.

⁷ See EUROPEAN JUDICIAL NETWORK IN CIVIL AND COMMERCIAL MATTERS, *Organisation of justice - Latvia*, available at http://ec.europa.eu/civiljustice/org_justice/org_justice_lat_en.htm.

⁸ See *id.*, *Legal Aid – Latvia*, available at http://ec.europa.eu/civiljustice/legal_aid/legal_aid_lat_en.htm#3.

that prevent them from protecting their own rights; or (iii) they are under full maintenance by government or local authorities.⁹

According to recent amendments to the Act, legal aid providers are now liable for losses suffered by persons receiving legal aid, which were incurred as a result of the providers' professional actions. This and other provisions were introduced with the aim of improving the quality of State-funded legal aid.

Since the establishment of the Legal Aid Administration in 2005, the number of persons receiving legal aid has increased threefold, reaching more than 3,000 cases per year in 2011. This is considered to be due to a greater awareness among the general population about services provided by the Legal Aid Administration and the successful cooperation between the Legal Aid Administration and other State and municipal institutions.¹⁰

In addition to the Legal Aid Administration, State-funded legal aid is also provided by the Ombudsman of the Republic of Latvia. The Ombudsman is an official elected by the Latvian Parliament for a term of five years tasked with encouraging the protection of human rights and promotion of a legal and expedient State authority, which observes the principle of good administration. Persons may apply to the Ombudsman with a complaint or request in regards to a violation of human rights or good governance. If a breach is detected, and if it is necessary for the benefit of society, the Ombudsman may represent the rights and interests of a private individual in an administrative court.¹¹

II. **PRO BONO IN LATVIA: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. **Pro Bono Opportunities In Latvia**

Pro bono opportunities for international law firms located in Latvia are largely limited to consulting individuals and NGOs on an ad hoc basis. Direct representation of individuals in criminal cases is not common, because individuals generally receive sufficient legal aid from State-funded sources and because many of the international law firms that operate in Latvia focus on business law and not criminal law.

Numerous NGOs have appeared in Latvia since its independence. As of 2010, there are approximately 13,617 NGOs. Although registration of NGOs is simple and inexpensive, certain administrative obstacles continue to occur. There are only a few State-supported lawyers available to consult on NGO issues and those who provide NGO legal advice are self-trained.¹² Many NGOs are self-sufficient in terms of legal expertise, but still require legal aid from outside sources in regards to high profile cases, such as those involving international courts. As such, NGOs are in need of free legal aid.

B. **Barriers To Pro Bono Work And Other Considerations**

Local regulations do not require charging minimum tariffs for *pro bono* work. Advocates and jurists are also not required to charge VAT on services that they provide free of charge.

There are several barriers to providing *pro bono* legal aid in Latvia:¹³

- Lack of deep-rooted *pro bono* traditions.
- Lack of information about the legal needs of individuals and lack of information about *pro bono* providers.
- Accessibility to legal services, including *pro bono* aid, is limited in areas with low economic activity, since lawyers are mostly concentrated in large cities.
- Smaller law firms and individually practicing lawyers can devote less financial resources to *pro bono* work than large law firms. As such, smaller law firms and individually practicing

⁹ See LEGAL AID ADMINISTRATION, *Legal aid provided by the state*, available at <http://www.jpa.gov.lv/valsts-nodrosinata-juridiska-palidziba-eng59>.

¹⁰ See *Demand for state-funded legal aid is rising*, available at <http://www.jpa.gov.lv/informacija-presei/pieaug-pieprasi-jums-pec-valsts-nodrosinatas-juridiskas-palidzibas>.

¹¹ See *Ombudsman of the Republic of Latvia*, available at <http://www.tiesibsargs.lv/eng/ombudsman/>.

¹² See LATVIA, 2010 NGO SUSTAINABILITY INDEX FOR CENTRAL AND EASTERN EUROPE AND EURASIA (14th ed., Nov. 2011), available at <http://www.usaid.gov/news-information/press-releases/usaaid-releases-2010-ngo-sustainability-index-ngosi-central-and>.

¹³ Telephone interview with NGOs: Soros Foundation – Latvia, Delna (Jun. 28, 2012).

lawyers mostly engage in *pro bono* work if they are personally interested in a specific case rather than as routine work.

- Sometimes NGOs view law firms as competitors and are not keen to involve outside counsel in problem solving.
- Due to the small size of Latvia and its legal market, large law firms are exposed to the potential risk of a conflict of interest.
- Since *pro bono* work is often regarded as a means for publicity, law firms may not be interested in carrying out *pro bono* work which does not show potential to attract public attention.

C. *Pro Bono* Resources

While some firms and individually practicing attorneys in Latvia provide free legal aid on an ad hoc basis, the following are examples of organized *pro bono* services:

1. Pro Bono Legal Support Center

The Pro Bono Legal Support Center was founded on December 17, 2010, and is a Partner in Ideas Fund program (supported by the Soros Foundation Latvia), which helps Latvian NGOs receive free legal advice from Latvian lawyers. Its first supporters and original signatories of the Pro Bono Declaration were the major Latvian law firms. The organization acts to study the needs of NGOs, to coordinate the work of NGOs with the legal aid providers, to inform the public about ongoing cases, and to organize training seminars for NGOs on relevant legal issues.¹⁴

2. Latvian Bar Association Day

Every year since 2010, during Latvian Bar Association day, major law offices provide free-of-charge legal consultations. This event has become a tradition among many law firms and provides an opportunity for both international and domestic law firms to participate.¹⁵ On March 15-16, 2012, *pro bono* advice was offered by almost 180 attorneys across 16 different cities.¹⁶

3. Legal Aid Provided by Law Faculty

In 1999, the Law Faculty of the University of Latvia established the Center of Legal Practice and Aid. In the Center, students provide *pro bono* advice to individuals on various matters, while being supervised by qualified attorneys. A similar center has also been opened at the Business University “Turība.”

III. CONCLUSION

Latvia possesses a functioning State-funded legal aid system, but legal aid is still needed by NGOs and those individuals that do not qualify for free legal aid. Therefore, *pro bono* services provided by international and domestic law firms can be very helpful in ensuring the proper administration of justice.

July 2012
Pro Bono Practices and Opportunities in Latvia

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¹⁴ See PRO BONO LEGAL SUPPORT CENTER, available at <http://probono.lv/>.

¹⁵ See SORAINEN to participate in *pro bono* consultation days, available at <http://www.sorainen.com/en/News/2805/sorainen-to-participate-in-pro-bono-consultation-days>.

¹⁶ See *id.* at Big interest in *pro bono* legal advice, available at <http://www.sorainen.com/en/News/1737/big-interest-in-pro-bono-legal-advice>.

PRO BONO PRACTICES AND OPPORTUNITIES IN LIECHTENSTEIN¹

The legal framework in Liechtenstein does not raise any barriers to *pro bono* work. Lawyer's fees are freely negotiable and there is no obligation to charge minimum fees. However, it appears that Liechtenstein currently lacks a culture of providing *pro bono* legal services. This may be due to the extraordinary wealth that Liechtenstein and most of its inhabitants enjoy. Furthermore, the well-established system of legal aid arguably minimizes the need for such efforts.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN LIECHTENSTEIN

A. The Legal Profession

As Liechtenstein is the fourth smallest country in Europe (around 36,000 inhabitants), there are very few lawyers. The Liechtenstein bar association only names 153 Liechtenstein lawyers and 19 established European lawyers.²

Civil and criminal matters are dealt with in the first instance by the regional court (*Landgericht*), in the second instance by the high court (*Obergericht*), and in the third and final instance by the supreme court (*Oberster Gerichtshof*). Public law courts are the administrative court (*Verwaltungsgerichtshof*) and the constitutional court (*Staatsgerichtshof*). All courts are located in the capital, Vaduz.³

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 can offer legal services in Liechtenstein upon notifying the mandate to the bar association.⁴ In Liechtenstein, lawyers' fees are freely negotiable.⁵ 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 "value of the dispute" (*Streitwert*), e.g., the amount of the damages claim or the consideration in a transaction, the degree of difficulty, as well as the nature and the amount of the necessary legal services.

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. In respect of litigation, separate fees are paid for consultation, drafting and filing a complaint, trial, settlement or adjudication, appeals and so forth.

These statutory fees apply to 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.

B. Legal Aid

Access to legal services by those who are unable to fully afford them is ensured by a system of legal aid (*Verfahrenshilfe*).⁶ General legal advice can be obtained by governmental and - to a certain degree - private organizations, such as insurance companies, banks or trustees. In respect of litigation, legal aid is granted by the court of first instance, even if it becomes necessary when the case reaches a higher court.

All natural persons are eligible for legal aid, which is granted provided two requirements are fulfilled: (i) the party has to prove its indigence, i.e., the applicant must disclose his income and assets to determine whether full or partial aid or a deferment of fees (payment in installments) may be granted;

¹ This chapter was drafted with the support of Marxer & Partner Rechtsanwälte/Attorneys at Law, Vaduz (LI).

² See <http://www.lirak.li/>, menu "Anwaltsverzeichnis" (last visited May 30, 2012).

³ See <http://www.gerichte.li/> (last visited May 30, 2012).

⁴ See Code on Lawyers (*Rechtsanwaltsgesetz*) §§ 45 et seq. 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.

⁵ Id., §§ 22 et seq.

⁶ See Code of Civil Procedure (*Zivilprozessordnung*) §§ 63 et seq.

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 court 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 scope of the aid and may 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 attorney and court fees. However, if the applicant loses, he will bear the costs of his opponent (and his counsel). Such costs are not covered by the Liechtenstein legal aid system.

Court decisions involving legal aid matters are published by the Liechtenstein bar association on its website.⁷

II. *PRO BONO* IN LIECHTENSTEIN: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

It appears that there is no *pro bono* work in Liechtenstein at the moment. Indeed, it seems that Liechtenstein lacks a culture of providing *pro bono* legal services. This may be due to the extraordinary wealth that Liechtenstein and most of its inhabitants enjoy.

B. Barriers To *Pro Bono* Work And Other Considerations

There are no legal barriers to *pro bono* work in Liechtenstein. As explained above, lawyer's fees are freely negotiable. There are no regulations requiring lawyers to charge minimum fees. A lawyer may therefore provide his services for free. In such circumstances, he will not be required to charge VAT on his services. However, it has to be noted that this does not appear to be a common practice in Liechtenstein. In most cases, lawyers will only agree not to charge for their services if the client is personally known to them.

C. *Pro Bono* Resources

It appears that there are no referral organizations, nongovernmental organizations ("NGOs") or clearing houses that are sources for *pro bono* opportunities. Further information on legal practice in Liechtenstein may be provided by the Liechtenstein Chamber of Lawyers,⁸ and by Marxer & Partner Rechtsanwälte/Attorneys at Law.⁹

III. CONCLUSION

It appears that there is no *pro bono* work in Liechtenstein at present. However, Liechtenstein is an extraordinarily wealthy country, so there may not be any demand for *pro bono* work as far as indigent natural persons are concerned. Furthermore, the well-established system of legal aid arguably minimizes the need for such efforts. The legal framework, especially the fact that lawyers' fees are freely negotiable, does, however allow for *pro bono* representations.

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Pro Bono Practices and Opportunities in Liechtenstein

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⁷ See *Rechtsprechung, Verfahrenshilfe*, at <http://www.lirak.li/> (last visited May 30, 2012).

⁸ See www.lirak.li.

⁹ See www.marxerpartner.com.

PRO BONO PRACTICES AND OPPORTUNITIES IN LITHUANIA

During the last decade the system of free legal aid in Lithuania has evolved extensively. One of the main reasons for this is Lithuania's accession to the EU in 2004 and the transposition of the EU's requirements for the provision of legal aid into legislation in Lithuania. The cornerstone of this process was the adoption of the State-guaranteed Legal Aid Law (the "SGLAL") by the Seimas (the Parliament of the Republic of Lithuania) in 2000 which was further amended in 2005.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN LITHUANIA

A. General Framework Of The Legal Profession In Lithuania

The legal profession in Lithuania encompasses judges, prosecutors, advocates, jurists, notaries and bailiffs. The difference between "advocates" and "jurists" lies in admission to the Lithuanian Bar Association (the "Bar").

Advocates are admitted to the Bar. Admission to the Bar is contingent upon five or more years of practice (or at least two years of practice as an advocate's assistant) and passing the bar exam.¹ Advocates have the right to provide legal advice and represent in courts any person or entity that applied for their legal services. The number of advocates is not limited and there are over 1,700 practicing advocates in Lithuania at present.

Conversely, jurists are not admitted to the Bar, but they can still practice law by working as in-house counsel at state/municipal institutions or privately owned companies. This means that jurists can give legal advice to and only represent the institution/company they work for in courts.

The court system in Lithuania is made up of courts of general and special jurisdiction. The Supreme Court of Lithuania, the Court of Appeal of Lithuania, five regional courts and 54 district courts are courts of general jurisdiction dealing with civil and criminal cases. District courts also hear cases of administrative offences coming under their jurisdiction by law.

The Supreme Administrative Court of Lithuania and regional administrative courts are courts of special jurisdiction hearing disputes arising out of administrative legal relations.²

The Constitutional Court of Lithuania is an independent judicial body with the authority to determine whether the laws and other legal acts adopted by the Seimas are in conformity with the Constitution, and whether the legal acts adopted by the President and the Government conform to the Constitution or laws in force in Lithuania.³

B. Legal Aid

Until the SGLAL came into force on January 1, 2001, state legal aid in Lithuania was guaranteed only in connection with criminal *ex officio* mandatory defense cases. This state-guaranteed legal representation was an ineffective defense instrument with a lot of formalities and obstacles both for advocates and defendants. As a result, it was not popular with the public. Currently, in accordance with the SGLAL, state legal aid covers all criminal, civil and administrative matters and can be provided for the following groups of people:

- Citizens of Lithuania
- Citizens of EU member states
- Other natural persons lawfully residing in Lithuania
- Other natural persons lawfully residing in the EU member states

The SGLAL defines two types of state legal aid: *primary* and *secondary*. Primary and secondary legal aid can only be provided to natural persons, i.e., legal entities are not entitled to such aid.

¹ See <http://jurist.law.pitt.edu/world/lithu.htm>.

² See <http://www.teismai.lt/en/courts/judicial-system/>.

³ See <http://www.vrm.lt/index.php?id=808&lang=2>.

C. Primary Legal Aid

Primary legal aid is out-of-court aid which includes provision of legal information, legal consulting and drafting of legal documents (with the exception of any procedural documents) to be submitted to state or municipal institutions.⁴ This type of legal aid must be provided immediately (or by scheduling an appointment not later than after 5 days) upon the application (the request may be either oral or in writing) of a person to a municipal executive authority, irrespective of the applicant's financial status. However, upon each application, an individual is only allowed up to one hour of free legal advice or information in relation to a particular matter. An extension of time may be granted by a decision of the municipal executive authority or its officer. Primary legal aid can be exercised by municipal officers or public institutions as well as advocates on the basis of an agreement with the municipal authority.⁵ However, in practice primary legal aid is provided mainly by municipal officers.⁶

D. Secondary Legal Aid

Secondary legal aid covers drafting of legal documents, defense and representation in court, as well as representation in out-of-court dispute settlements if mandated by law or court.⁷ Provision of this type of legal aid is subject to the following conditions:

- **Financial Criteria:** In order to prove one's financial situation, all persons requesting secondary legal aid must submit their property declaration and income tax return to local tax authorities. On the basis of a person's financial status they will either be granted aid covering 100% of the expenses incurred (both legal aid expenses and litigation expenses) or 50%. It should be noted that the financial test is not applicable for "mandatory defense criminal cases," i.e., state-guaranteed legal aid is granted irrespective of financial status of a person once it is held that participation of an advocate in a criminal case is mandatory.⁸
- **Merit Criteria:** The SGLAL stipulates that secondary legal aid cannot be provided where: (a) the applicant's claim is clearly ungrounded; (b) representation in a lawsuit has no reasonable prospects of success; (c) the applicant brings an action for non-pecuniary damage related to the defense of his/her honor and dignity unless monetary damage is incurred; (d) the claim is related to a requirement arising directly from commercial or professional activities of the applicant; (e) the applicant could receive necessary legal services without using the state legal aid; (f) the applicant is not applying because of a violation of his or her own rights, except for cases of representation according to the law; (g) possible costs of secondary legal aid would significantly exceed the claimed amount; (h) a requirement (for which an application for secondary legal aid is filed) has been transferred to the applicant in order to receive state guaranteed legal aid; and (i) the applicant does not agree to pay 50% of secondary legal aid costs if the second level of property and income was determined.⁹ It should be noted that the abovementioned requirements do not apply for provision of secondary legal aid in criminal and administrative cases, with the exception of applications for the renewal of proceedings, appeals or statements in accordance with the procedure of private prosecution.¹⁰

Refusal to provide secondary legal aid can be appealed in accordance with the procedure stipulated in the Law on Administrative Proceedings of the Republic of Lithuania (1999).

Secondary legal aid is mainly provided by full-time legal aid advocates, who receive budget-funded monthly remuneration. If necessary, individually practicing advocates can also provide secondary legal aid. Their fees will depend on the complexity of the case, the stage at which they are involved and various other factors. These advocates are selected following a selection process defined in respective regulations approved by the order of the Minister of Justice.

⁴ SGLAL, art. 2, ¶ 2.

⁵ SGLAL, art. 15, ¶¶ 2, 3, 4, 5, 9.

⁶ HUMAN RIGHTS MONITORING INSTITUTE OF LITHUANIA, *Access to state-guaranteed legal aid: primary and secondary legal aid*, 5 (2011) (only in Lithuanian).

⁷ SGLAL, art. 2, ¶ 1.

⁸ CODE OF CRIMINAL PROCEDURE OF THE REPUBLIC OF LITHUANIA (2002), art. 51.

⁹ SGLAL, art. 11, ¶ 6.

¹⁰ SGLAL, art. 11, ¶ 8.

E. Legal Aid Administration

Legal aid is administered in Lithuania by the following bodies: (a) State Guaranteed Legal Aid Services (the “**Services**”) which are five governmental agencies administered by the Ministry of Justice and allocated within five regional courts districts;¹¹ (b) the Council for Coordination of State-guaranteed Legal Aid (the “**Coordination Council**”);¹² and (c) the Board for State-guaranteed Legal Aid (the “**Board**”).¹³

The Services supervise the provision of legal aid on a daily basis. Their role involves, *inter alia*, determining eligibility for aid, recruiting public defenders, data collection and submitting reports to the Ministry of Justice.

The Coordination Council is responsible for advising on state legal aid policy. It is a collegial advisory body consisting of representatives of the Committees on Legal Affairs and on Human Rights in the Seimas, the Ministry of Justice, the Ministry of Finance, the Lithuanian Association of Local Authorities, the Bar, the Association of Lithuanian Lawyers, the Judicial Council and other institutions working in the field of human rights and legal aid.

The Board is responsible for promoting secondary legal aid and ensuring cooperation between advocates and the Services. Like the Coordination Council, the Board is a collegial advisory body.

The Bar is also involved in the administration of legal aid, for example, it cooperates with the Ministry of Justice in ensuring the quality of legal aid services.¹⁴

II. PRO BONO WORK IN LITHUANIA

A. Pro Bono Opportunities In Lithuania

The first Services were founded in Šiauliai City (2000) and in Vilnius (2002) by a joint initiative of the Open Society Fund, the Ministry of Justice and the Bar. Today there are five Services in all major cities (Vilnius, Kaunas, Klaipėda, Panevėžys and Šiauliai).¹⁵ Initially the Services were established as nongovernmental organizations. The Services consisted of public advocates providing legal aid services on a full-time basis and other personnel. Public advocates were paid the standard hourly fees of an *ex officio* lawyer plus a payment provided by the Open Society Fund which increased their earnings by approximately 50% (up to 3,000 Litass, equivalent to about EUR 870). The remuneration of public advocates was thus roughly equivalent to the salaries of prosecutors. Public advocates were subject to the corporate regulations of the Bar Association (such as the Ethical Code, the Statute of the Bar, regulations and decisions of the Council of the Bar), which safeguard their independence and ensure adherence to ethical principles of the legal profession, as well as the ethical rules of the public defender office.¹⁶

In 2011, primary legal aid was provided for 44,415 applicants, in 2010 – for 43,413 applicants, in 2009 – for 43,944 applicants, in 2008 – for 39,884 applicants and in 2007 – for 36,365 applicants. A total of 1,910,000 litass (approximately EUR 553,174) was allocated from the state budget for primary legal aid in 2011, while in 2010 it received 1,869,225 litass (approximately EUR 541,365), in 2009 - 2,182,950 litass (approximately EUR 632,226), in 2008 - 2,682,000 litass (approximately EUR 776,760), and in 2007 it received 2,624,000 litass (approximately EUR 759,963).¹⁷

In 2011, secondary legal aid was provided for 48,092 people, in 2010 – for 47,142 people, in 2009 – for 41,883 people, in 2008 – for 44,154 people and in 2007 – for 43,063 people. A total of 14,487,000 litass (approximately EUR 4,195,725) was allocated from the state budget for secondary legal aid in 2011, while in 2010 the allocated amount was 13,487,000 litass (approximately EUR 3,906,105), in

¹¹ SGLAL, art. 9.

¹² SGLAL, art. 7, ¶¶ 2-4.

¹³ SGLAL, art. 9, ¶¶ 5-7.

¹⁴ SGLAL, art. 10.

¹⁵ See <http://www.teisinepagalba.lt/en/>.

¹⁶ PUBLIC INTEREST LAW INSTITUTE, MAKING LEGAL AID A REALITY, 114 (2009).

¹⁷ MINISTRY OF JUSTICE OF THE REPUBLIC OF LITHUANIA, REPORT ON ORGANIZATION AND PROVISION OF PRIMARY LEGAL AID (2010).

2009 - 13,245,000 litas (approximately EUR 3,836,017), in 2008 - 15,555,300 litas (approximately EUR 4,505,126), and in 2007 it was 12,312,200 litas (approximately EUR 3,565,860).¹⁸

B. Barriers To *Pro Bono* Work In Lithuania

Despite the rapid and extensive development of *pro bono* work in Lithuania in recent years, obstacles do persist. For example:

- There is a lack of comprehensive legislative regulation.
- The fees paid to public advocates are low.
- The quality of legal aid services are low (though this barrier was partially eliminated by the introduction of such initiatives as the creation of Legal Aid Services and the vesting of some control functions to the Lithuanian Bar Association).¹⁹
- The level of public awareness is low due to unspent allocated budget-funds (approximately only 1% out of a recommended 3% of funds is used every year).²⁰

C. *Pro Bono* Resources

There is an opportunity to receive free legal aid from certain NGOs, for example, from the Lithuanian Association for Human Rights²¹ within its competence and from the Legal Clinic²² (a public institution) established by the Vilnius University Faculty of Law with other founders in 1998, etc. Some private law firms also offer and promote *pro bono* services on a case-by-case basis.

III. CONCLUSION

Lithuania has long been in need of a legal aid system that can serve its indigent citizens and recent legislative amendments have undoubtedly had a positive influence on the *pro bono* activities in the country. According to statistics, the majority of people questioned, who received legal aid, are satisfied with its quality, and they would recommend using legal aid to others.²³ However, a lot remains to be done as Lithuania seeks to further develop its *pro bono* culture, private *pro bono* initiative, common awareness of the existing *pro bono* opportunities and administrative mechanisms for the provision of legal aid.

July 2012

Pro Bono Practices and Opportunities in Lithuania

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¹⁸ MINISTRY OF JUSTICE OF THE REPUBLIC OF LITHUANIA, REPORT ON ORGANIZATION AND PROVISION OF SECONDARY LEGAL AID (2010).

¹⁹ PUBLIC INTEREST LAW INSTITUTE, ACCESS TO JUSTICE IN CEE COUNTRY REPORTS, 327 (2003).

²⁰ HUMAN RIGHTS MONITORING INSTITUTE OF LITHUANIA, ACCESS TO STATE-GUARANTEED LEGAL AID: PRIMARY AND SECONDARY LEGAL AID, 9 (2011).

²¹ See <http://www.lzta.lt/>.

²² See <http://www.teisesklinika.lt/?lang=lt>.

²³ Human Rights Monitoring Institute, *supra* n.20.

PRO BONO PRACTICES AND OPPORTUNITIES IN LUXEMBOURG¹

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 511,840 inhabitants, it seems unnecessary for law firms based in Luxembourg to do any local *pro bono* work.² Moreover, Luxembourg has an expansive and well-implemented legal aid system that uses public funds to help those in need of legal services, which is managed nationally by the Luxembourg Bar Association (*Conseil de l'Ordre*). This efficient state-run legal aid system also reduces the need for *pro bono* work in Luxembourg.

Finally, the Luxembourg Bar Association and its internal regulations strictly limit advertising in the legal profession. 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 prevent 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

A. The Legal Profession

Luxembourg is the smallest independent state in the European Union, and as such, the Luxembourg Bar does not count more than 2,000 members.³ However, this is quite a high number when you consider that is 1 lawyer per 255 inhabitants. Attorneys work in large national and international firms (more than 50 lawyers), as well as in smaller firms or individually. 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. 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.⁴

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 judicial organ of the Court of Justice of the European Union, which is comprised of (i) the Court of Justice, (ii) the General Court and (iii) the Civil Service Tribunal.

The conditions for exercising the legal profession in Luxembourg are, to a large extent, regulated by internal rules (*Règlements intérieurs*) adopted by the Bars.⁵ The Bars enjoy broad discretion to regulate the profession pursuant to the Act of 10 August 1991 on the profession of lawyer.

B. Legal Aid

1. *Assistance Judiciaire*

The Act of 18 August 1995 on legal aid (which modified the Act of 10 August 1991) considerably extended the number of persons who are eligible for legal aid. The State bears the costs of providing legal aid (*assistance judiciaire*).

It is the Bar Association's mission 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 The decision whether or not to grant legal aid rests with the Chairman of the Bar in the applicant's

¹ This chapter was drafted with the support of Stibbe.

² Population statistics as of Jan. 2011. See www.statistiques.public.lu.

³ According to the Luxembourg Bar Association. Members of the Luxembourg Bar are divided between the attorneys-at-law, attorneys and lawyers practicing under their home-title. It is now also possible for attorneys-at-law and lawyers practicing under their home-title to exercise their activity in a corporate form. According to the STATEC, there are 1,851 lawyers registered on the roll of lawyers in Luxembourg in 2011, including 335 lawyers registered on the roll of Lawyers IV who are European lawyers entitled to practice under their home country professional title (www.statistiques.public.lu).

⁴ Case C-193/05 *Commission v Grand-Duché de Luxembourg* ECR [2006] I-8673.

⁵ There is a Bar of Lawyers in Luxembourg and a Bar of Lawyers in Diekirch.

⁶ Act of 10 Aug. 1991, art. 37 (1).

district of residence. In the case of nonresidents, it is the Chairman of the Luxembourg Bar Council who decides.⁷

Beneficiaries of legal aid are entitled to the assistance of a lawyer and any law official whose collaboration is necessitated by the cause, the action, or its enforcement. Legal aid will generally cover the entirety of the costs relating to the court proceedings, procedures, or actions for which it was granted (including lawyer's fees and emoluments, stamp and registration duty, costs incurred by the clerk's office, cost and fees of experts, bailiffs, translators, interpreters, notaries, allowances to witnesses, travel expenses, and publication costs).⁸ Contribution or partial payment is not a common practice in Luxembourg. With regard to criminal proceedings, legal aid does not cover the costs and penalties pronounced in the event of conviction. Furthermore, legal aid does not cover procedural indemnities or indemnities for abuse of process and vexatious proceedings in civil cases.⁹

A person's ability to pay for legal services is determined by assessing his or her gross income and capital, and the gross income and capital of any other member of the household.¹⁰ 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. The decision to grant legal aid is based on complex calculation methods and made on a case-by-case basis, taking into account, in particular, monthly earnings, personal wealth, and the number of persons in the household.¹¹

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. In June 2009, the availability of legal aid was extended to minors involved in legal proceedings, irrespective of the financial resources of their parents or other persons in the household. In those cases, the State retains the right to a refund from parents who have sufficient means.

Pursuant to directive 2003/8/CE of January 27, 2003, in civil and commercial matters, persons having their domicile or continually residing in Luxembourg may be entitled to legal aid, including for the preparation of a legal aid request to be filed in another member state of the European Union. According to the same directive, in civil and commercial matters, persons having their domicile or regular residence in another member state of the European Union, excluding Denmark, may receive Luxembourg legal aid for cross-border litigation.¹²

Legal aid in Luxembourg is, therefore, available to a large population because there are few geographic and financial limitations on receiving such aid. The scope of work covered by legal aid is also very diverse. Legal aid can be granted to both plaintiffs and defendants, in contested or noncontested 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.¹³

Still, legal aid is not available in all situations: legal aid is not available to persons who bring an action that seems *a priori* unreasonable or unlikely to succeed, or whose subject matter

⁷ *Id.* at art. 37-1 (5).

⁸ Grand-Ducal Regulation of 18 Sep. 1995 (on legal aid), art. 8.

⁹ Act of 10 Aug. 1991, art. 37-1 (2).

¹⁰ *Id.* at art. 37-1 (1). However, the means of other people living in the household are not taken into consideration if the proceeding opposes spouses or persons usually living together in the same home, or where there is a conflict of interest between them regarding the subject matter of the dispute, making a separate evaluation of financial means necessary.

¹¹ *Id.*; Grand-Ducal Regulation, *supra* n.8, at art. 1.

¹² Act of 10 Aug. 1991, art. 37-1 (1).

¹³ *Id.* at art. 37-1 (2).

seems disproportionate to the costs involved.¹⁴ There are three other situations in which legal aid is not available (except in cases of cross-border litigations under specific circumstances): (i) owners or drivers of motor vehicles for disputes resulting from the use of such motor vehicles; (ii) traders, manufacturers, artisans, or professional persons involved in disputes relating to their commercial or professional activity, except in duly motivated cases; (iii) persons involved in disputes arising from speculative activity, such as disputes pertaining to losses in connection with the trading of securities.¹⁵

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 typically automatically appoints the lawyer chosen by the applicant. Where the applicant has not chosen a lawyer, or the Chairman of the Bar considers the applicant's choice inappropriate, the Chairman of the Bar appoints the lawyer of his choice. Once appointed, legal counsel cannot refuse this appointment, except for reasons of impediment or conflicts of interest.¹⁶ 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.

Legal aid may be withdrawn by the Chairman of the Bar, even after the matter for which it was granted has been closed, if it was granted on the basis of false declarations and/or documents provided by the beneficiary of such aid. Legal aid may also be withdrawn if, during its performance, or as a result thereof, the beneficiary's financial situation improves in a way that the beneficiary would not have been entitled to legal aid, had the situation existed at the time of the request for such aid.¹⁷ Applicants may appeal against the Chairman's decision to reject or withdraw legal aid to the Disciplinary and Administrative Council. The decision of the Disciplinary and Administrative Council can also be subject to an appeal before the Disciplinary and Administrative Appeal Council whose decision will be final.¹⁸

As legal aid is dispatched by the Bar Association, and as it forms part of the training requirements of the trainee-lawyers (see below), there are enough attorneys who are at all times available to handle the workload. As the State is funding the system, and as requests for legal aid are increasing, attorneys are, however, required to charge fixed rates, which are substantially lower than the standard rates usually charged to regular clients.

C. Training Requirements in Luxembourg and "*Commissions d'office*"

The Luxembourg educational system offers a full legal education, and its legal studies system is adapted to neighbor countries' university programs. During a three-year bachelor program offered by the University of Luxembourg, Luxembourg's law students have to spend at least one semester abroad for completing their initial legal studies.¹⁹ 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 involvement in charitable work commences, since the Bar requires that each applicant complete a yearly quota of "*commissions d'office*" during his or her two-year traineeship. "*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,²⁰ a large part of individual *pro bono* work is done by trainee lawyers seeking to fulfill the bar requirements.

¹⁴ *Id.* at art. 37-1 (3).

¹⁵ *Id.* at art. 37-1 (2).

¹⁶ *Id.* at art. 37-1 (5); Rules of procedure of the Luxembourg Bar Association, art. 2.6 (*Commissions et désignations d'office*).

¹⁷ *Id.* at art. 37-1 (6).

¹⁸ *Id.* at art. 37-1 (7).

¹⁹ For students holding a bachelor's degree, the University of Luxembourg offers a range of Master programs. As the Bachelor/Master system is relatively new and as the University of Luxembourg has started to offer a full legal education cycle only recently, a majority of the Luxembourg qualified attorneys hold university degrees from Belgian or French institutions, and a large number of current Luxembourg law students decide to extend their studies abroad well beyond the mandatory one-semester term.

²⁰ *Réglement intérieur de l'Ordre des avocats du Barreau de Luxembourg*, art. 2.9 (*Obligations du stage judiciaire*).

Other mandatory requirements for trainee lawyers in Luxembourg include: providing free legal advice on behalf of the Luxembourg Bar (*aide juridique*),²¹ 24-hour legal advice and consultation in police stations, and the “*cabinet d’instruction*” (Judicial Investigations Department, which investigates crimes, interrogates witnesses and suspects, and may decide upon the provisional detention of suspects) in the Luxembourgish courts.

As shown 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, who are fresh out of law school and eager to gain as much experience as possible by offering legal services to those most in need.

II. **PRO BONO IN LUXEMBOURG: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. **Pro Bono Opportunities**

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 *pro bono* legal counsel for, Luxembourgish nonprofit organizations, charity groups, or other public interest organizations. Some law firms regularly provide their services either on a purely *pro bono* basis or at substantially lower rates (there are no mandatory minimum tariffs) in the emerging sector of microfinance – where Luxembourg has developed into a premier actor.

The extensive legal aid system raises the question as to whether there is a large role to be played by *pro bono* work on a private basis in Luxembourg. However, 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 the norm in most EU countries, where the legal aid systems occupy the entire market for free legal services.

B. **Barriers To Pro Bono Work And Other Considerations**

Pursuant to Clause 6 of the Luxembourg Bar’s internal regulations, canvassing is forbidden, and legal 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 Bar Association or the Chairman of the Bar, the regulatory authorities of the Luxembourg Bar.

Since it is prohibited, 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, or on their external website. However, the lawyer or firm must have obtained prior informed consent from the clients in order to do so.

C. **Pro Bono Resources**

Information on legal aid in Luxembourg can be found on the following websites:

- Luxembourg Bar Association (only in French)
 - Address: 1-7, rue St. Ulric, B.P. 361, L-2013
Luxembourg

²¹ Art. 189 of the Act of 7 Mar. 1980 has created a legal advice service. This service, established in the courts, is under the authority of the state attorney general (*Procureur général d’Etat*). Its mission is to welcome individuals and to provide general information on the extent of their rights and on ways and means to implement in order to preserve them.

Phone: +352.72.72.1

Website: <http://www.barreau.lu/le-barreau/assistance-judiciaire/presentation>

Email: info@barreau.lu

- Legal Information Services (*Service d'accueil et d'information juridique*) (no websites)

Luxembourg

- Address: Cité Judiciaire, Bâtiment BC, L-2080, Luxembourg
Phone: +352.22.18.46

Diekirch

- Address: Place Joseph Bech, L-9211 Diekirch
Phone: +352.80.23.15

Esch-sur-Alzette

- Address: place de la Résistance, L-4041 Esch/Alzette
Phone: +352.54.15.52
- Ministry of Justice of Luxembourg (only in French)
 - Address: 13, rue Erasme, L-2934, Luxembourg
Phone: +352.247.84537
Fax: +352.26.68.48.61
Website: http://www.mj.public.lu/services_citoyens/assistance_judiciaire/index.html
- The European Commission
 - Address: Maison de l'Europe, L-2920, Luxembourg
Phone: +352.4301.34925
Fax: +352.4301.34433
Website: http://ec.europa.eu/luxembourg/index_fr.htm
Email: comm-rep-lux@ec.europa.eu
- European Justice
 - Website: https://e-justice.europa.eu/content_costs_of_proceedings-37-lu-en.do?member=1

III. 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.

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Pro Bono Practices and Opportunities in Luxembourg

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PRO BONO PRACTICES AND OPPORTUNITIES IN MALTA¹

The provision of *pro bono* legal services by large law firms is less common in Malta than it is in the United States. There is, however, a publicly funded legal aid scheme for those unable to afford a lawyer such that they may be represented in civil, administrative or criminal proceedings. Before engaging in a detailed analysis of legal services and *pro bono* opportunities in Malta, a brief overview of the Maltese legal system is necessary.

The Maltese legal system has seen a good deal of change throughout its history. Maltese law has been influenced by Roman law, particularly since it spent several centuries under Roman rule.² Under the rule of the Knights of St. John and until 1964, Malta relied on the *Codice delle due Sicilie* as the basis for its laws. Eventually, after the Knights left, Napoleon took over Malta for a brief time (between 1798 and 1800), during which he enforced the Code Napoleon, which was also heavily influenced by Roman law, until 1964 when Malta eventually became a British colony and adopted the British Empire's colonial laws. After 1964, Malta gained its independence while retaining a Constitution acknowledging the Queen of England as head of state. In 1974, Malta adopted a new constitution declaring itself as a Republic with a President as its head of state. It has since developed into a legal order utilizing elements from both common law and continental law. The latter effectively is Roman law as developed through the Code Napoleon. With Malta's accession to the European Union in 2004, the legal system has further developed to incorporate the principles emanating from European Union law.³

Malta has a written constitution unlike the United Kingdom from which it derives a good deal of its constitutional principles.⁴ This is the supreme law of the State defining, among other things, the organs of the State and their functions together with a set of fundamental human rights recognized by the State.⁵ These are influenced by the European Convention for Human Rights to which Malta is a signatory.⁶ All laws are passed by Parliament which is comprised of the President of the Republic and the House of Representatives.⁷ As a hierarchy, the 519 chapters (to date) of the Laws of Malta emanate from and are subject to the Constitution.⁸ Each chapter tackles a specific area and is often supplemented by "subsidiary legislation" containing rules or regulations in respect of the more specific sectors. The main reason for this is that Parliament may delegate the power to Ministers to make regulations, allowing them to pass subsidiary legislation which is subject to Parliamentary review for the sake of adhering to or creating policies issued by the Executive as a whole.⁹ This system has proven invaluable for the purpose of harmonization with certain European Union directives and regulations. The Maltese judiciary doesn't apply the doctrine of precedent which exists under the Common Law system. In practice however, previous judgments have persuasive power but are not binding.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN MALTA

A. The Legal Profession

The legal profession in Malta is regulated by a single bar association which is known as the Chamber of Advocates. Currently, there are 522 lawyers registered with the Maltese Chamber of Advocates.¹⁰ While this number provides a general idea of the number of lawyers in Malta, it is by no means accurate

¹ This chapter was drafted with the support of Zammit & Associates Advocates, The Penthouse, Tower Business Centre, Tower Street, Swatar, BKR 4013, Malta, EU (www.zammit-law.com).

² See generally J. J. Cremona, *THE MALTESE CONSTITUTION AND CONSTITUTIONAL HISTORY SINCE 1813* (Malta Publishers Enterprises Group) (1994).

³ Treaty of Accession, Apr. 16, 2003, available at http://www.europarl.europa.eu/enlargement_new/treaty/default_en.htm (entered into force on May 1, 2004).

⁴ MALTA CONST., Sept. 21, 1964, available at <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566&l=1>.

⁵ See *id.* at ch. IV-VIII.

⁶ See *Convention for the Protection of Human Rights and Fundamental Freedoms*, COUNCIL OF EUROPE, for a list of signatory countries, available at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=ENG> (last visited Jul. 16, 2012).

⁷ *Composition of Parliament*, OFFICIAL WEBSITE OF THE MALTESE PARLIAMENT, <http://www.parliament.mt/compositionofparliament?!=1> (last visited Jul. 16, 2012).

⁸ CONST., *supra* n.4 at art. 6 ("...., if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall, to the extent of the inconsistency, be void.")

⁹ *Id.*

¹⁰ See *Lawyer Search*, MALTA CHAMBER OF ADVOCATES, http://www.avukati.org/chamberofadvocates/lawyer_search.aspx (last visited Jul. 16, 2012), for a complete list of lawyers.

as membership with the Chamber of Advocates is optional.¹¹ More than ten years ago, law firms were predominantly family-owned operations. Modern trends, however, have brought considerable changes to this area due primarily to the surge in the number of law graduates during the last decade, secondly, by some smaller firms merging into larger ones, and thirdly, due to the increase in areas of technical specialization. Although there are no international law firms in Malta, international firms tend to have a corresponding local firm. The larger-sized and medium-sized local firms often provide services to foreign clients, particularly in maritime law and the corporate and financial services sectors.¹²

The Maltese Judiciary is comprised of the Law Courts of Malta and operates in a hierarchical manner.¹³ The courts are mainly divided between the civil jurisdiction and the criminal jurisdiction with the former holding jurisdiction over commercial matters as well.¹⁴ These two jurisdictions, in turn, are divided into different tiers of courts. In all cases, persons may either represent themselves¹⁵ or have a lawyer appear and litigate on their behalf. The civil jurisdiction is comprised of both superior and inferior jurisdictions.¹⁶ The superior jurisdiction comprises the Constitutional Court, Court of Appeal and the Civil Court while the inferior jurisdiction comprises the Court of Magistrates (in Malta or in Gozo) and the Small Claims Tribunal.¹⁷ The Small Claims Tribunal hears cases pertaining to issues or property holding a value of less than EUR 3,494.06;¹⁸ the Magistrates' Court hears cases pertaining to issues or property holding a value of less than EUR 11,646.87; while the First Hall Civil Court hears cases pertaining to issues or property holding a value in excess of EUR 11,646.87.¹⁹ The criminal courts are comprised of the Criminal Court addressing criminal matters where punishment or sanction exceeds certain thresholds, while the Court of Magistrates is responsible for addressing the inquiry stage of criminal cases as well as trying cases below a certain threshold of punishment as provided by law.²⁰ The prosecution in such cases is conducted by the police and the office of the Attorney General.²¹

Lawyers in Malta and the services they provide are regulated by various sources. First and foremost, a person can only practice in the Law Courts after successfully attaining the academic title of LL.D (Doctor of Laws) and then sitting for the public warrant examination successfully.²² In Malta, warranted lawyers are permitted to plead before the courts, including the Superior Courts. Although one is technically a lawyer in Malta after attaining the LL.D, the law requires that the person possess the government-issued Warrant in order to attain the Right of Audience in the Law Courts and to represent clients.²³ Furthermore, the Maltese 'Chamber of Advocates' has issued an extensive *Code of Ethics*²⁴ to guide lawyers in their practice and in the pursuit of their practice. Further, lawyers are

¹¹ Malta Chamber of Advocates represents a fraction of the advocates admitted to the Bar of Malta. It is a voluntary non-political non-governmental organization funded by the fees payable by members and by funds raised from the activities it organizes, and it is recognized as the consultative and participatory representative of advocates in matters related to the organization and administration of justice. See MALTA CHAMBER OF ADVOCATES, *About Us*, <http://www.avukati.org/chamberofadvocates/content.aspx?id=29020> (last visited Jul. 16, 2012), for a description of services.

¹² See Malta: *Legal market overview*, LEGAL 500 for a legal market overview, available at <http://www.legal500.com/c/malta/legal-market-overview> (last visited Jul. 16, 2012).

¹³ EUROPEAN JUDICIAL NETWORK, *Legal Professions: Malta*, http://ec.europa.eu/civiljustice/legal_prof/legal_prof_mlt_en.htm#4 last updated Jul. 29, 2004).

¹⁴ See PORTAL OF THE JUDICIARY OF MALTA, *The Courts*, , for an overview of the Maltese judiciary, <http://www.judiciarymalta.gov.mt/the-courts> (last visited Jul. 16, 2012).

¹⁵ This practice is heavily discouraged but still allowed by procedures both in civil and criminal courts.

¹⁶ CODE OF ORGANIZATION AND CIVIL PROCEDURE [CCOP], ch. 12.

¹⁷ *Id.*

¹⁸ Small Claims Tribunal Act, ch. 380 (Malta).

¹⁹ CCOP, ch. 12.

²⁰ CRIMINAL CODE, ch. 9 (Malta).

²¹ *Id.*

²² CCOP, ch. 12.

²³ *Id.*

²⁴ CODE OF ETHICS AND CONDUCT FOR ADVOCATES, available at <http://www.snapadministration.com/snapdatafiles/files/chamberofadvocates/633057714342187500.pdf> (last visited Jul. 16, 2012).

subject to the Commission for the Administration of Justice – Committee for Advocates and Legal Procurators when it is felt that the actions of a lawyer require investigation or disciplinary action.²⁵

The fees payable to legal practitioners for the purpose of activities carried out in the Law Courts are provided for in the Code of Organization and Civil Procedure (hereinafter “COCP” - Chapter 12 of the Laws of Malta) in its Schedule A, Tariff E.²⁶ These values are exclusive of Value Added Tax (“VAT”). VAT at 18% applies to all legal services as stipulated in the Value Added Tax Act, Chapter 406 of the Laws of Malta.²⁷ It should be noted that these fees are limited to Court expenses and do not include compensation for, among others things, the preparation of a case or the research involved. Furthermore, the Chamber of Advocates has issued guidelines for legal fees as a general indication of tariffs charged for out-of-court services.²⁸ A lawyer and client may, however, agree to other rates if they wish to do so.

B. Legal Aid

Currently, legal aid is funded by the State and provided through the Legal Aid Office situated at the Law Courts in Valletta. The right to legal aid is provided for in the Constitution of Malta under Article 39, stipulating the right to “Provision of Secure Protection of the Law.” This is regulated in more detail in the COCP; however, in order to provide legal aid, a warranted lawyer must first be added to the Register of Legal Aid. The salary for legal aid lawyers is set out in Chapter 497 of the Public Administration Act as salary scale 10.²⁹

Article 911 of the COCP provides that a person wishing to benefit from Legal Aid is required to apply to the First Hall of the Civil Court. The COCP, in this respect, refers to this office as the “Advocate for Legal Aid.”³⁰ The COCP also provides that a request for a legal aid lawyer may be done verbally to the Advocate for Legal Aid, at the legal aid office in the courts.³¹

Article 570 of the Criminal Code provides for the same protection to be afforded in criminal cases as in civil cases and cross-references to Article 911 of the COCP in this regard (as the COCP is more comprehensive in respect of the conditions and appointment of legal aid lawyers). It remains the prerogative of the First Hall of the Civil Court to approve the application for legal aid. The same prerogative is vested in the Court of Magistrates when the case falls under the criminal jurisdiction.³²

According to Article 912 of the COCP, a person may gain access to legal aid by means of a:

- Declaration on oath that the person applying for legal aid genuinely believes that he or she has juridical interest in the case whether as plaintiff or defendant.
- Confirmation on oath that the applicant for legal aid does not possess any property with a value of €6,988.12 or any value in excess of this amount. Furthermore, the applicant must not be earning more than the minimum wage. The Minister of Justice reserves the right to change the property value from time to time as he may deem necessary. Furthermore, the calculation

²⁵ See PORTAL OF THE JUDICIARY OF MALTA, *Commission for the Administration of Justice*, for further information on the Commission for the Administration of Justice, <http://www.judiciarymalta.gov.mt/commission-for-the> (last visited Jul. 16, 2012).

²⁶ EUROPEAN E-JUSTICE, *Regulatory Framework Governing Fees of Legal Professions: Malta*, available at https://e-justice.europa.eu/content_costs_of_proceedings-37-mt-en.do?member=1 (last visited Jul. 16, 2012).

²⁷ Value Added Tax Act, available at <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8872&l=> (last visited Jul. 16, 2012).

²⁸ *Guidelines on Fees to be Charged by Advocates for Services Rendered*, MALTA CHAMBER OF ADVOCATES, http://www.avukati.org/chamberofadvocates/common/file_provider.aspx?id=633509679584440000 (last visited Jun. 28, 2012).

²⁹ Government salary scales are updated every five years and issued by the Government of Malta. Currently, an Advocate for Legal Aid qualifies for a scale 10 salary under the Third Schedule of Chapter 487 (Public Administration Act). This schedule expands on Article 27 of the Act. See Public Administration Act, ch. 487.

³⁰ COCP, art. 911(6) (“In this Code or in any other law includes any other lawyer, officer or public officer designated by the Minister responsible for justice to perform, under the guidance of the Advocate for Legal Aid, any function pertaining to the Advocate of Legal Aid or to the administration of the benefit of legal aid.”).

³¹ COCP, art. 911(2).

³² CRIMINAL CODE, art. 570(4).

process does not consider the principal residence of the applicant or any property, immovable or movable, which forms part of the subject matter of the court proceedings.

The Criminal Code does not make reference to how one may be granted access to a legal aid lawyer. However, reference is made to the application to the Advocate for Legal Aid, which is regulated by the COCP.³³ This effectively means that the same tests applied in the COCP are also applied in the same way in cases falling under the Criminal jurisdiction.

Maltese law specifically states that a company registered under the Companies Act is not entitled to legal aid under any circumstance.³⁴ Under the system of legal aid, there is no distinction between a Maltese or a foreign national, as long as the case is being heard in the Maltese courts, and there is no further distinction in respect of nonprofit organizations and NGOs. Therefore, it is possible for a director or a member of an NGO to ask for legal aid personally and in their sole interests. It is to be noted that a person applying will never be able to select which lawyer from the Register for Legal Aid may represent them. This decision remains in the hands of the civil courts as the legal aid lawyers work on a rotation system on a fixed roster.

II. *PRO BONO* IN MALTA: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

While not entirely absent from the Maltese legal practice, *pro bono* work is not a very pervasive activity. The most common example of *pro bono* legal services offered in Malta is that offered to asylum seekers, who are numerous, given the particular geographic location of Malta.³⁵ This service is offered through nongovernment organizations, such as the Jesuit Refugee Service (JRS)³⁶ and the UN Refugee Agency's refugee services,³⁷ but also by the Agency for the Welfare of Asylum Seekers - a department of the Ministry of Home Affairs - which acts as facilitator with all public entities responsible for providing services to ensure that national obligations to refugees and asylum seekers are accessible.³⁸ Also, some law firms have been known to perform *pro bono* work, including, but not limited to, research as a contribution to publications.³⁹ This practice is more common for law firms rather than individual lawyers who are sole practitioners. There are currently no main clearinghouses dealing in *pro bono* work in Malta and no information has been published in regard to the *pro bono* work of law firms in Malta or the degree of frequency that such activities are engaged in.

B. Barriers To *Pro Bono* Work And Other Considerations

The main issue regarding *pro bono* work in Malta is that it is more often done on a purely voluntary basis through NGOs. Referral is not so much of an issue in that these organizations are dedicated to picking up *pro bono* work in their specific areas. The Chamber of Advocates could arguably adopt a more pro-active stance in the promotion of *pro bono* activities.

As mentioned above, there can be no agreement giving a lawyer a percentage of the amount won when a case has been pleaded successfully under Maltese law. Any such agreement would fall within the ambit of an agreement *quotae litis* under Maltese law which is explicitly prohibited by the COCP.⁴⁰ This ban could be considered a barrier to the provision of *pro bono* services. On the other hand, when a

³³ *Id.*

³⁴ CCOP, art. 926.

³⁵ As of Jan. 2012, according to the UNHCR representation in Malta, there were 6,952 refugees, and 1,457 asylum-seekers residing in Malta. See 2012 *Regional Operations Profile*, THE UN REFUGEE AGENCY IN MALTA, <http://www.unhcr.org/pages/49e48eba6.html> #MTAVA (last visited Jul. 16, 2012).

³⁶ See generally JESUIT REFUGEE SERVICE, <http://jrsusa.org/> (last visited Jul. 16, 2012).

³⁷ See generally THE UN REFUGEE AGENCY IN MALTA, <http://www.unhcr.org/mt/> (last visited Jul. 16, 2012).

³⁸ See generally AGENCY FOR THE WELFARE OF ASYLUM SEEKERS, <http://www.mjha.gov.mt/page.aspx?pageid=161> (last visited Jul. 16, 2012).

³⁹ By way of example, Zammit & Associates has contributed to, among others, the International Masters on Gaming Law Publication in respect of European Jurisdictions, the World Bank 'Doing Business' Surveys in respect of Tax Computations, Enforcing Contracts, Employment Law and Starting Business, among others, and the European Micro Finance Network in conjunction with Latham & Watkins 18 EU Member States.

⁴⁰ COCP, art. 83 ("Advocates shall not, either directly or indirectly, enter into or make any agreement or stipulation *quotae litis*.").

lawyer performs *pro bono* work, it is by definition done for free and, therefore, no VAT is charged. VAT in Malta is charged on the applicable fee and, therefore, if the amount is nil, no VAT is payable.

C. *Pro Bono* Resources

Currently, there are no such resources other than those mentioned above. Moreover, there is no public statistic available with respect to the successful pleas by legal aid lawyers, nor in respect to what kind of disputes are handled by legal aid lawyers.

III. CONCLUSION

In Malta, because of the characteristics of the legal market and the absence of a well-established *pro bono* culture, there is limited *pro bono* activity. Nevertheless, in view of Malta's particular geographic position, the legal aid scheme tends to be systematically operated to assist the numerous immigrants and/or asylum-seekers Malta receives. *Pro bono* nonprofit organizations are, therefore, active in these fields and do offer considerable legal assistance. Moreover, a significant part of *pro bono* work is provided on a voluntary and individual basis by lawyers, while larger law firms are given no particular incentives to engage in *pro bono* services. In that regard, there is still significant room for developing corporate initiatives and enhancing the provision of free legal services to those in need.

July 2012

Pro Bono Practices and Opportunities in Malta

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PRO BONO PRACTICES AND OPPORTUNITIES IN MEXICO¹

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 1990s, 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, a *pro bono* culture has not yet permeated the entire gamut of the legal profession. Most of the *pro bono* work is still performed by nongovernmental organizations (“NGOs”) and legal clinics at universities. *Pro bono* work is becoming a greater point of emphasis at law firms and in-house legal departments. However, economic realities, particularly in a country of such disparate wealth demographics, and a long-standing tradition of resolving conflicts in less formal manners, create a substantial barrier for further development. Although the *pro bono* culture has achieved significant growth in recent years, it is a slowly emerging movement, and one that is mainly concentrated in the larger cities of the country.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN MEXICO

A. The Legal Profession

Mexico is a federal republic composed of 31 states, with an elected president and bicameral legislature.² 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.³

In Mexico, one becomes a lawyer by obtaining a specialized undergraduate degree in law, most commonly known as a *Licenciatura en Derecho* (LED).⁴ Upon graduation, one need only file his or her diploma and sign paperwork to become licensed to practice in Mexico.⁵ Anywhere between 20,000 and 40,000 new lawyers apply for licenses each year upon graduation. However, “big” firms typically have only about 50 attorneys, and very rarely have more than 100 attorneys.⁶ Others will work with the government or as in-house counsel. Many students choose to pursue an LED without intending to practice law, though there is still a surplus of aspiring lawyers, given the relative scarcity of available positions.⁷

The Mexican legal profession is generally regulated by the laws of the various states. In the national capital, which is also the largest metropolitan area in Mexico, the federal government regulates the profession.⁸ Affiliation with the Mexican Bar Association (the *Barra Mexicana Colegio de Abogados*, A.C.), 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 nonbinding ethical regulations as guidance for legal professionals. Among these regulations is the obligation of each member to promote and provide *pro bono* legal assistance. However, the nonbinding nature of these regulations has resulted in limited and sporadic compliance at best.⁹

B. Legal Aid

Judicial corruption and inefficiency are significant problems in the Mexican legal system. The conviction rate hovers around 1 to 2 percent, and, as recently as August 2009, a poll found that 68

¹ This chapter was drafted with the support of Francisco Escutia, director at *Red Pro Bono México*, of Appleseed México.

² U.S. DEP’T OF STATE HUMAN RIGHTS REPORT: MEXICO, 2011, 1, 5 (2012), available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186528>

³ U.S. DEP’T OF STATE HUMAN RIGHTS REPORT: MEXICO, 2009, 7 (Mar. 11, 2010), available at <http://www.state.gov/g/drl/rls/hrrpt/2009/wha/136119.htm>.

⁴ HARVARD LAW SCHOOL, THE MEXICAN LEGAL PROFESSION – 3 (2011), available at http://www.law.harvard.edu/programs/plp/pdf/Mexican_Legal_Profession.pdf.

⁵ *Id.* at 5.

⁶ *Id.* at 6.

⁷ *Id.*

⁸ Constitución Política de los Estados Unidos Mexicanos [CONST.], *as amended*, art. 5, Diario Oficial de la Federación [D.O.], 26 de Mayo de 1945.]

⁹ LATIN LAWYER, *Pro Bono – More Important Now Than Ever* (Oct. 15, 2008), available at <http://www.latinlawyer.com/news/article/25818/pro-bono-important-ever/>

percent of respondents had little or no trust in the judiciary.¹⁰ This is among the principal reasons why underprivileged individuals have traditionally preferred to resolve conflicts in less formal manners. However, certain recent reforms, including amendments to the national constitution, have increased access to the courts and fairness in legal proceedings.

Notable progress has been made in reforming procedures in criminal trials, which may help increase confidence in the judicial system in general. Twelve states have passed legislation transitioning their judicial systems from inquisitorial to adversarial systems, and one recent constitutional amendment now affords criminal defendants with a presumption of innocence.¹¹ Other measures have been taken to increase access in civil trials as well. Though a party must have legal counsel before being granted an appearance before a judge, all costs associated with appearing in court are absorbed by the government.¹² In order to increase access to legal counsel, Article 17 of the Constitution of Mexico was amended to require a strong system of *defensores de oficio*, or public defenders, to act as counsel for the poor and indigent in certain situations.¹³ Further, the Federal Public Defense Law was enacted in 1998, guaranteeing that, in matters of federal jurisdiction, underprivileged individuals are appointed a public defender to assist in their criminal and, in limited circumstances, civil cases.¹⁴

However, these reforms do not address all legal proceedings or cover all parties in need of legal assistance. Many underprivileged individuals with legal needs, such as those facing custody disputes, discrimination suits or employment/disability pension issues, do not fall within the coverage offered by these protections. If such individuals seek legal recourse, they are forced to rely on free legal assistance provided through alternative channels. The most well-known of these alternative channels are the *Asociación de Servicios Legales, A.C.* (“ASL”), administered by the Mexican Bar Association, and the independent legal aid programs in two of the nation’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.

Though the *pro bono* culture is still not fully ingrained in the Mexican legal community, notable efforts have been made to raise awareness of the need for *pro bono* services and to increase the frequency with which such services are provided. For example, the *Pro Bono Declaration for the Americas*, a project driven by the Cyrus R. Vance Center for International Justice of the New York City Bar, was launched in March 2008 and endorsed by Margarita Zavala de Calderón, an attorney and former legislator who was also the wife of the then-serving Mexican president Felipe Calderón.¹⁵ The Declaration was 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. It calls for all sponsoring firms and departments to make a specific commitment of 20 *pro bono* hours per lawyer per year.¹⁶ A recently announced survey to commemorate the five-year anniversary of the declaration in 2013 will provide even greater detail about the increase in *pro bono* services being donated in Mexico by both law firms and in-house legal departments.¹⁷

II. PRO BONO IN MEXICO: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. Pro Bono Opportunities

There are several long-standing and reputable organizations that already have well-established *pro bono* practices in Mexico, including the university-run clinics and the ASL. Each has an established infrastructure, runs much like legal aid centers in the United States and welcomes the assistance of lawyers, law firms and companies that want to get involved in *pro bono* activities.

¹⁰ 2009 HUMAN RIGHTS REPORT: MEXICO, *supra* n.3, at 7.

¹¹ 2011 HUMAN RIGHTS REPORT: MEXICO, *supra* n.2, at 12.

¹² *See* CONST., *supra* n.8, at art. 17.

¹³ *Id.*

¹⁴ *See* Ley Federal de Defensoría Pública (May 28, 1998), arts. 1-4.

¹⁵ LATIN LAWYER, *Mexican First Lady Launches Pro Bono Declaration* (Mar. 3, 2008), available at <http://www.latinlawyer.com/news/article/24854/mexican-first-lady-launches-pro-bono-declaration/>.

¹⁶ *See* <http://www2.nycbar.org/vancecenter/images/stories/pdfs/English.pdf>.

¹⁷ *See* Rosie Cresswell, *Latin Lawyer and Vance Center to Conduct Pro Bono Survey*, LATIN LAWYER (Mar. 15, 2012), available at www.latinlawyer.com/news/article/43169/latin-lawyer-vance-center-conduct-pro-bono-survey/.

1. University Clinics

In the early 1990s, even before the need for *pro bono* services in Mexico became a well-known issue, *pro bono* services were being donated at the university level, as students sought to gain practical experience and to fulfill government-imposed requirements relating to social service.¹⁸ As interest grew among the students, alumni and professors of the universities, these clinical education programs became full-time *pro bono* legal aid centers.

The first law school to set up a *pro bono* center was the *Universidad Panamericana Bonaterra*, School of Law (“UP”). Its *Bufete Jurídico Gratuito Social, A.C.* began operations in 1992. It is staffed primarily by law professors who are lawyers and by law students who chose the clinic as their means of meeting government-imposed social service requirements. They accept cases at any point in the litigation process, from trial courts to constitutional appeals. They litigate cases before almost all courts, including civil court, family court, commercial court, real estate court and criminal court. The decision whether to accept a case depends on several factors, including the socioeconomic status of the individual, the jurisdiction of the case, the viability of the claim and the ethical repercussions of representation.

The second school to establish a center 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, adoption, civil contracts, intellectual property, property rights and wills and estates.

2. The ASL

The Mexican Bar Association created the ASL in 2000 to provide a channel for its members to meet the recommended levels of *pro bono* work. This nonprofit entity is run by lawyers and support staff retained by the Mexican Bar Association. The purpose of the ASL is to act as a clearinghouse for *pro bono* cases. This includes identifying underprivileged groups most in need of legal services, 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 individuals and groups who lack equal access to justice. The ASL identifies these individuals and groups and performs field research on the NGOs that serve them. Those receiving assistance from the ASL typically fall within one of the following categories: (i) people facing extreme poverty or illiteracy; (ii) people afflicted with a physical or mental disability; or (iii) minorities or victims of discrimination. If the ASL believes the individual or group needing legal services is within the scope of the mission of the ASL, it applies to the ASL Board of Directors for approval. Once approved, the ASL and the NGO or individual begin working together, but the attorney-client relationship between the ASL-provided lawyer and those receiving the services is based solely on verbal agreements. Typical cases that are referred to ASL members include: (i) family law issues, especially violence against women; (ii) issues involving minor children; (iii) employment actions; (iv) mental and physical discrimination claims; and (v) wills for indigent people. The services of both the ASL and the lawyer who takes the case are provided on a *pro bono* basis.

3. Fundación Appleseed México

More recently, Project Appleseed, a network of public interest justice centers based in the United States, expanded its operations beyond American borders. In 2003, Project Appleseed started its Mexican chapter, *Fundación Appleseed México, A.C.* (“FAM”). The purpose of FAM is to offer free legal services to those sectors and social groups that represent a collective interest and whose sole purpose is achieving the greater good, without any ideological or political affiliation.¹⁹ In furtherance of its efforts, FAM focuses on strengthening the *Red Pro Bono México*, or Mexican *Pro Bono* Network, an existing network of affiliated law firms, lawyers and

¹⁸ See, e.g., CONST. *supra* n.8, at arts. 9 and 55.

¹⁹ See <http://www.appleseednetwork.org/mexico/>

legal clinics that assist as needed.²⁰ FAM also added leaders in the legal and business community as members of its board of directors to strengthen its ongoing growth efforts. Some of its most notable projects include the repatriation of minors who were deported from the United States, and financial education programs for low-income families who receive remittances from relatives living abroad.²¹

B. Barriers To *Pro Bono* Work And Other Considerations

At a national level, Mexico imposes its version of a VAT, an *impuesto al valor agregado* (“IVA”), on nearly all goods made or services provided throughout the country.²² An IVA of 16 percent is generally imposed, with a reduced rate of 11 percent applying in the border regions of Mexico.²³ Legal services fall within the IVA, but, as services being rendered for free, *pro bono* legal services are among the otherwise taxable goods or services subjected to a zero-percent rate.²⁴ However, while the IVA may not present a barrier for *pro bono* work, certain tariffs may be imposed at a state level and could provide a disincentive to lawyers interested in providing *pro bono* services.

Even if *pro bono* work is not being disincentivized by taxes and tariffs, significant systemic barriers to *pro bono* work in Mexico remain, primarily because of (i) a deep-rooted apprehension of the legal system and a cultural bias against resorting to the legal system, and (ii) a lack of available *pro bono* services through practicing attorneys. As to the former, a longstanding and ongoing mistrust of law enforcement officials and judicial proceedings has created an environment in which many people prefer to rely on informal agreements and resolutions when faced with a dispute, even where more formal remedies are available. While reforms have been made in the last 15 years aimed at increasing the public’s faith in the judicial system, such a trust will take time to develop after decades of corruption and inefficiency. Further, people living in more rural areas have typically shown even less willingness to utilize formal legal procedures.

With regard to the lack of available *pro bono* services, involvement in *pro bono* work has traditionally not been a point of emphasis within law firms or in-house legal departments because of economic realities. Though this conflict between the provision of *pro bono* legal services and business realities is present even in first-world nations, it is particularly true in Mexico. Mexico may represent one of the world’s largest economies, but it also encompasses one of the greatest wealth disparities among its citizens, particularly in rural areas.²⁵

C. *Pro Bono* Resources

As discussed above, there are a number of organizations that are heavily involved in the growth of *pro bono* services in Mexico. At university clinics, both professors and students handle a multitude of matters, including criminal, civil, and family law issues. For more information on the universities discussed within this article, please see www.up.edu.mx for UP and www.itam.mx for ITAM. There are also clearinghouses such as ASL and FAM that are devoted solely to identifying groups of people whose legal needs will not be met without the provision of free legal services. These organizations employ the services of practicing attorneys to assist underprivileged individuals with their legal needs. For more information on ASL, visit the website of the Mexican Bar Association, at <http://www.bma.org.mx>. Information about FAM is available at <http://www.appleseednetwork.org/mexico/>

III. CONCLUSION

Although there remains vast opportunity for improvement, *pro bono* services in Mexico are becoming more prevalent. International exposure and awareness have started to illuminate the current deficiencies and future

²⁰ *Id.*

²¹ <http://www.appleseednetwork.org/mexico/>

²² See ERNST & YOUNG, THE 2011 WORLDWIDE VAT, GST AND SALES TAX GUIDE 409 (2011), available at [http://www.ey.com/Publication/vwLUAssets/VAT_GST_sales_tax_guide_2011/\\$FILE/VAT_GST_sales_tax_guide_2011.pdf](http://www.ey.com/Publication/vwLUAssets/VAT_GST_sales_tax_guide_2011/$FILE/VAT_GST_sales_tax_guide_2011.pdf)

²³ *Id.* at 410.

²⁴ See KPMG INTERNATIONAL COOPERATIVE, MEXICO: COUNTRY VAT/GST ESSENTIALS 4 (2012), available at <http://www.kpmg.com/Global/en/WhatWeDo/Tax/GlobalIndirectTax/Documents/vat-gst-essentials-2012/mexico-2011-vat-gst-essentials.pdf>.

²⁵ Andrew Walner, *Development and Migration in Rural Mexico*, 3 BREAD FOR THE WORLD INSTITUTE, No. 11 (Jan. 2011), available at <http://www.bread.org/institute/papers/briefing-paper-11.pdf>.

possibilities of *pro bono* work in Mexico. 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 lawyers and law firms. The signing of the *Pro Bono* Declaration for the Americas by sole practitioners, members of the judiciary and key law firms is a good indicator that the movement is growing. Additionally, although *pro bono* services are not fully ingrained in the law firm culture yet, student exposure to *pro bono* services through the law school clinics has created a wave of young professionals with a keen sense of *pro bono* service, who are pushing for new structures in their firms with positive results.

This increased focus on, and appreciation for, *pro bono* services is evidenced by the Mexican Bar Association recognizing both domestic and foreign firms for their exceptional *pro bono* work in 2011.²⁶ The matters for which free counsel was provided ranged from representing individuals in employment matters, to assisting NGOs in obtaining and renewing tax authorizations, to advising on larger initiatives involving educational institutions.²⁷

While great strides have been made, the availability of *pro bono* services remains concentrated in its most affluent cities, leaving many in the country without adequate access to justice. Lawyers interested in providing *pro bono* services can work with one of the established and growing efforts, whether at a university clinic or other private organization, to reach individuals and groups who still have an unmet need for legal services.

July 2012

Pro Bono Practices and Opportunities in Mexico

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²⁶ See Rosie Cresswell, *Pro Bono 2011: The Survey*, LATIN LAWYER (Sep. 19, 2011), available at <http://www.latinlawyer.com/lawfirms/article/42431/pro-bono-2011/>.

²⁷ *Id.*

PRO BONO PRACTICES AND OPPORTUNITIES IN MONTENEGRO¹

Montenegro's legal system is currently undergoing a period of extensive reform and restructuring, and practitioners should be aware that the legal profession and *pro bono* culture in Montenegro are still developing. Because legal aid in Montenegro is still a relatively new development, *pro bono* opportunities come from individual organizations rather than from national clearinghouses, which do not appear to exist at this time. Nonetheless, Montenegro's laws against anti-domestic violence and the general development of its legal sector bode well for the future prospects of *pro bono* work in the country.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN MONTENEGRO

A. The Legal Profession

1. Demographics

The legal community in Montenegro is relatively small. Although the Bar Association of Montenegro was established over 100 years ago, its membership includes only about 500 lawyers and a few hundred trainees.² Membership in the Bar Association is for lawyers who practice before the courts (as in Britain, these members are considered barristers).³ Solicitors, on the other hand, are members of the Lawyers Association of Montenegro.⁴ Because the law student population consists of several thousand students,⁵ the solicitor community in Montenegro is likely much larger than the several hundred barristers practicing before the courts. Most lawyers appear to be employed either in private practice or in government, but there is no detailed breakdown of lawyers by industry, business sector or practice type.⁶

Other parts of the legal community are similarly small in number. There are only a few hundred judges and less than 100 prosecutors in Montenegro.⁷

2. The Judiciary

The government of Montenegro is based on the principle of separation of powers, whereby the judicial, legislative, and executive branches, at least in theory, are independent of each other.⁸ Montenegro, like other continental European countries, adheres generally to a civil law model of jurisprudence.⁹

The judiciary of Montenegro is in flux. Montenegro only recently became fully independent, in 2006, prior to which it was in a union with neighboring Serbia.¹⁰ Beginning in 2000 and accelerating in 2006, in preparation for Montenegro's application to join the European Union, the judiciary underwent a number of structural and institutional reforms.¹¹ As of 2009, Montenegro had established 15 Basic Courts, two High Courts, two Commercial Courts, the Court of Appeals, the Administrative Court, the Supreme Court, and the Constitutional Court.¹²

The court system in Montenegro provides for judicial review in both criminal and civil matters and divides such jurisdiction among several different types of courts.

¹ This chapter was drafted with the support of Local Counsel Vuk Maraš, Director, Monitoring Programme, MANS, www.mans.co.me

² U.S. AGENCY FOR INT'L DEVELOPMENT, CORRUPTION ASSESSMENT: MONTENEGRO 27 (Jul. 9, 2009), available at <http://serbia.usaid.gov/upload/documents/Corruption%20Assessment%20-%20Montenegro.pdf> [hereinafter USAID MONTENEGRO REPORT].

³ *Id.*

⁴ USAID MONTENEGRO REPORT, *supra* n.2, at 27.

⁵ *Id.*

⁶ *See id.*; EMBASSY OF THE UNITED STATES PODGORICA, MONTENEGRO, *List of Attorneys*, <http://podgorica.usembassy.gov/attorneylist.html> (last visited Jul. 5, 2012).

⁷ Branka Lakočević, JUDICIAL REFORM IN MONTENEGRO IN THE SCOPE OF THE EUROPEAN UNION INTEGRATION PROCESS 3 (Jun. 17, 2009), [europeandcis.undp.org/uploads/public1/files/Montenegrin_judiciary_and_the_EU_Bratislava_conference\[1\].ppt](http://europeandcis.undp.org/uploads/public1/files/Montenegrin_judiciary_and_the_EU_Bratislava_conference[1].ppt) [hereinafter JUDICIAL REFORM IN MONTENEGRO].

⁸ USAID MONTENEGRO REPORT, *supra* n.2, at 15; U.S. DEP'T OF STATE BUREAU OF DEMOCRACY, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: MONTENEGRO 1 (2011), available at <http://www.state.gov/documents/organization/186596.pdf>.

⁹ JUDICIAL REFORM IN MONTENEGRO, *supra* n.7, at 3.

¹⁰ *Id.* at 2.

¹¹ *Id.* at 4-6.

¹² *Id.* at 3.

- The Basic Court is the court of first instance for certain criminal charges and civil matters.¹³
- The High Courts act as courts of first instance for more serious criminal charges, as well as appellate courts to review decisions made by the Basic Courts.¹⁴
- The Commercial Courts hear disputes involving local and foreign business entities, registration of business entities, bankruptcy and liquidation, copyright and intellectual property, etc.¹⁵
- The Court of Appeals acts as an appellate court for decisions made by the High Courts and Commercial Courts.¹⁶
- The Administrative Court has jurisdiction to hear disputes regarding the legality of final administrative acts.¹⁷
- The Supreme Court can provide relief against the decisions of any lower court and the Judicial Council and can decide on fundamental issues of jurisdiction in certain circumstances.¹⁸
- The Constitutional Court decides on matters regarding compliance with the Montenegro Constitution, international treaties, other constitutional complaints, electoral disputes, government actions during a state of war and emergency, etc.¹⁹

In addition, the Judicial Council oversees the administration of the court system.²⁰ The Judicial Council is a ten-member body composed of the President of the Supreme Court (who is selected by Parliament), four judges selected by the Conference of Judges, the Minister of Justice, two Members of Parliament (also selected by Parliament), and two “distinguished lawyers” appointed by the President of Montenegro.²¹

3. Regulation of Lawyers and the Provision of Legal Aid

Lawyers and the provision of legal aid are regulated generally by the Advocacy Act.²² The Advocacy Act outlines the responsibilities of lawyers practicing in Montenegro, as well as requirements for qualification to practice.²³ Lawyers must also abide by a code of ethics.²⁴ The Advocacy Fees Act details restrictions and requirements for lawyer compensation.²⁵ While the Advocacy Fees Act does not appear to be exclusive to analogous fees-related laws of the client’s nation or of the jurisdiction in which the lawyer is performing work when working for a foreign client or in a foreign jurisdiction, the Act does appear to apply exclusively to work performed for a Montenegrin citizen in Montenegro.²⁶

¹³ Government of Montenegro Directorate for Anti Corruption Initiative, *Integrity and Capacity Assessments of the Judiciary in Montenegro* 8-9 (Oct. 2008), <http://www.undp.org.me/files/reports/ijr/Report%20Judiciary%20ENG.pdf> [hereinafter *Judiciary in Montenegro*].

¹⁴ *Id.* at 9.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ LAW ON THE CONSTITUTIONAL COURT OF MONTENEGRO, art. 20, available at <http://www.ustavnisudcg.co.me/engleska/PDF/Law%20on%20the%20Constitutional%20Court%20of%20Montenegro%20.pdf>.

²⁰ USAID MONTENEGRO REPORT, *supra* n.2, at 26.

²¹ *Id.* at 23.

²² COUNCIL OF EUROPE, *Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism, Montenegro* 27 (Mar. 17, 2009), [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL\(2009\)10Rep-MNE_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL(2009)10Rep-MNE_en.pdf) [hereinafter *Moneyval Report*].

²³ ADVOCACY ACT (Official Gazette of the Republic of Montenegro, No. 79/06 Dec. 26, 2006), available at http://www.advokatskakomora.me/zakon_o_ad.html.

²⁴ ADVOCACY PROFESSIONAL CODE OF ETHICS (Jan. 1999), <http://www.advokatskakomora.me/kodeks1.html>.

²⁵ ADVOCACY FEES ACT (Official Gazette of the Republic of Montenegro, No. 79/05 25 Feb. 2005), available at http://www.advokatskakomora.me/advokatska_tarifa.html.

²⁶ *Id.* art. 2.

B. Legal Aid

As noted above, the judiciary in Montenegro in its current form is in flux and, consequently, provision of legal aid in Montenegro is similarly in flux. The obligation to receive and provide legal aid nominally stems from the Constitution²⁷ and legislation.²⁸ But as recently as 2008 and 2009, “there [was] no organized system of legal aid in place[,]”²⁹ and, in practice, free legal aid did not exist, even for criminal defendants who could not afford legal representation (such defendants were still expected to pay 50% of the official rate).³⁰

Montenegro has been working to create an organized framework for legal aid. For example, the Law on Legal Aid, which took effect January 1, 2012, created a formal structure for the provision of legal aid for indigent individuals, special needs individuals, children without parental care or victims of domestic violence and human trafficking.³¹ The Law on Legal Aid defines an indigent individual as a person owning no property³² and whose monthly income³³ does not exceed €10 for the leading income earner and €5 for any subsequent income earners.³⁴ Under this law, only lawyers listed by the Bar Association may provide legal aid.³⁵ These lawyers will be referred to potential clients by the court legal aid service.³⁶ Although legal aid recipients may not be charged for the time spent on work, lawyers are still entitled to 50% of tariffs and reimbursements of necessary expenditures.³⁷

Free legal aid in Montenegro appears to be becoming more accessible. Montenegro’s first official legal aid office began operations in January 2012, with several additional offices planned.³⁸ Montenegro has also been involved in governance reform efforts (the success of which are still under evaluation),³⁹ and leading judicial institutions in Montenegro appear to be willing to continue further efforts, which may involve strengthening the underlying incentives and structural support for the provision of legal aid, both in general and in regards to low-cost or free legal aid for indigent individuals.⁴⁰ Furthermore, Montenegro’s new Constitution, European Union standards, and U.N. Conventions to which Montenegro is a party all provide for a right to a speedy trial for criminal defendants,⁴¹ which may provide additional institutional structure for increased demand and supply of *pro bono* legal aid in the future.

II. PRO BONO IN MONTENEGRO: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. Pro Bono Opportunities

Montenegro appears to have a fledgling *pro bono* culture traditionally limited to the context of providing free legal assistance to family and extended family members.⁴² But as noted above, Montenegro is been undertaking reforms to provide for a more robust framework for the provision of legal aid.

Montenegro’s recent judicial reforms provide opportunities for *pro bono* legal aid in the context of indigent defense⁴³ and combating violence against women.⁴⁴ In addition, there are opportunities for *pro*

²⁷ MONTENEGRO CONST. arts. 20-21, 37, available at http://www.comparativeconstitutionsproject.org/files/Montenegro_2007.pdf.

²⁸ See generally GOV’T OF MONTENEGRO MINISTRY OF JUSTICE, *Status Analysis for the Purpose of Introduction of a Legal Aid System in Montenegro* (Sept. 2008) (describing various Montenegrin legal authorities for provision of legal aid), available at http://www.undp.org.me/dg/projects/Rule%20of%20Law%20and%20Human%20Rights%20Programme/Reform%20of%20Legal%20Aid%20System%20in%20Montenegro/Status_Analysis_for_Legal_Aid_System_in_Montenegro_English.pdf [hereinafter MINISTRY OF JUSTICE LEGAL AID REPORT].

²⁹ *Id.* at 2.

³⁰ USAID MONTENEGRO REPORT, *supra* n.2, at 27; see also ADVOCACY FEES ACT art. 4.

³¹ LAW ON LEGAL AID arts. 12-13, available at http://www.pravnapomoc.me/images/stories/zakon/Law_on_Legal_Aid.pdf.

³² *Id.* art. 15.

³³ *Id.* art. 16.

³⁴ *Id.* art. 14.

³⁵ *Id.* art. 30.

³⁶ *Id.* arts. 28-34.

³⁷ *Id.* art. 31; ADVOCACY FEES ACT arts. 5-6.

³⁸ Press Release, U.N. Development Programme, First Legal Aid Office in Montenegro: Equal access to justice for all (Nov. 25, 2011), available at <http://www.undp.org.me/home/2011/legal/index.html>.

³⁹ See, e.g., JUDICIAL REFORM IN MONTENEGRO, *supra* n.7, at 7.

⁴⁰ USAID MONTENEGRO REPORT, *supra* n.2, at 30.

⁴¹ *Id.* at 27.

⁴² *Id.*

⁴³ See *supra* nn.38-41 and accompanying text.

bono legal work regarding refugee and other human rights issues, including work with prominent international organizations such as the Red Cross.⁴⁵ Other potential opportunities for *pro bono* work include matters regarding fighting corruption, promoting government transparency and other governance issues.⁴⁶ Because legal aid in Montenegro is still a relatively new development, it is likely easier to find *pro bono* opportunities from individual organizations rather than from a national clearinghouse or referral organization. For example, Red Cross Montenegro has its own programs relating to international human rights, but does not appear to act as a referral organization for other NGOs.⁴⁷

Lawyers in partnerships in Montenegro also provide *pro bono* work for local NGOs.⁴⁸ In addition, NGOs cooperate with lawyers to provide citizens with free legal aid regarding corruption and organized crime matters, domestic violence matters, human rights violations⁴⁹ and LGBT rights.⁵⁰

B. Barriers To *Pro Bono* Work And Other Considerations

There are many regulatory and practical barriers to engaging in *pro bono* work in Montenegro. Regulatory barriers relate primarily to licensing restrictions and uncertainty regarding the structure of the legal system. The Montenegrin Constitution established the right to legal aid only as far as it is provided by members of the Bar Association, but other services or institutions may also provide legal aid if permitted by other legal authority.⁵¹

Practical barriers relate mostly to the relative nascence of much of Montenegro's judicial system. As noted above, there are relatively few licensed lawyers admitted to practice in front of Montenegro courts. As of June 2012, there are approximately 600 licensed lawyers for Montenegro's population of approximately 630,000 people, a ratio similar in scale to India's and well below the number of lawyers per capita in Germany and the United Kingdom.⁵² In addition, law students do not have the right to appear in court, and although the University of Montenegro has programs in mediation and alternative dispute resolution, there appears to be relatively little use of these programs in practice.⁵³

In addition, Montenegro law has relatively specific requirements for compensation, as described above regarding the Advocacy Fees Act. Although lawyers have some discretion on how much to charge clients for legal services, the Advocacy Fees Act limits the discretion to charge reduced fees to not less than 50% than what is prescribed by the Act.⁵⁴ Montenegrin law provides separately for the provision of free legal work, such as who is eligible, what type of work may be given as part of free legal aid and what fees and other charges that the lawyer is entitled to when providing legal aid.⁵⁵

C. *Pro Bono* Resources

MANS is the "pre-eminent"⁵⁶ Montenegrin NGO that focuses on fighting corruption and organized crime affecting Montenegro and provides free legal aid to victims of corruption, organized crime and institutional wrongdoing. Its website is <http://www.mans.co.me/>.

⁴⁴ See, e.g., U.N. WOMEN, *Draft Law on Free Legal Advice*, <http://sgdatabse.unwomen.org/searchDetail.action?measureId=2621&baseHREF=country&baseHREFId=899> (last visited Jun. 21, 2012).

⁴⁵ See, e.g., FAHAMU REFUGEE LEGAL AID, *Pro Bono Legal Aid*, <http://www.frlan.org/node/837> (last visited Jun. 21, 2012).

⁴⁶ USAID MONTENEGRO REPORT, *supra* n.2, at 47-48, 52.

⁴⁷ See MONTENEGRO RED CROSS, *Dissemination of the Fundamental Principles of Red Cross and International Humanitarian Law*, http://www.nndesignstudio.com/krst/index.php?option=com_content&view=article&id=125&Itemid=76&lang=en (last visited Jul. 5, 2012).

⁴⁸ See, e.g., PRELEVIC LAW FIRM, *Human Rights*, http://www.prelevic.com/human_rights.htm (last visited Jun. 21, 2012); VUJACIC LAW OFFICES, *Pro Bono Work*, <http://www.lawoffice-vujacic.com/pro-bono.html> (last visited Jun. 21, 2012).

⁴⁹ See, e.g., HUMAN RIGHTS ACTION MONTENEGRO, *Action*, <http://www.hraction.org/> (last visited Jun. 29, 2012); CIVIC ALLIANCE, *About Us*, <http://www.gamn.org/aboutus.html> (last visited Jun. 29, 2012).

⁵⁰ See, e.g., LGBT FORUM PROGRES, *About Us*, <http://lgbtprogres.me/en/o-nama-2/> (last visited Jun. 29, 2012).

⁵¹ MINISTRY OF JUSTICE LEGAL AID REPORT, *supra* n.28, at 4, 7.

⁵² HARVARD LAW SCHOOL PROGRAM ON THE LEGAL PROFESSION, LICENSED LAWYERS PER 1000 PEOPLE (2011), http://www.law.harvard.edu/programs/plp/pdf/Licensed_Lawyers_per_1000_People.pdf.

⁵³ USAID MONTENEGRO REPORT, *supra* n.2, at 27.

⁵⁴ ADVOCACY FEES ACT arts. 4, 8.

⁵⁵ See, e.g., LAW ON LEGAL AID art. 31 ("For the provision of legal aid, lawyers are entitled to 50% of the fee envisaged by the Lawyer Tariffs and the reimbursement of necessary expenditures."); U.N. WOMEN, *Draft Law on Free Legal Advice*, *supra* n.45.

⁵⁶ USAID MONTENEGRO REPORT, *supra* n.2, at 48.

Other prominent NGO activity and NGOs that may present opportunity for *pro bono* work in Montenegro include:

- Human Rights Action: <http://www.hraction.org>
- Shelter for Women and Children
 - Address: Ulica Ivana Crnojevica br.89, 81000 Podgorica, Montenegro
 - Phone: +382.20.232.352
 - Website: <http://www.szkm.me>
 - Email: shelter@t-com.me
- SOS Hotline for Women and Children Victims of Violence: <http://www.sosnk.org>
- Civic Alliance (formerly Youth Initiative for Human Rights)
 - Address: Vukice Mitrovic 16, 81000 Podgorica, Montenegro
 - Phone: +382.20.655/175
 - Website: <http://www.gamn.org>
 - Email: office@gamn.org
- Center for the Development of Non-Governmental Organisation (free legal aid to other NGOs)
 - Address: CRNVO, Dalmatinska 78, 20 000 Podgorica, Crna Gora, Montenegro
 - Phone: +382.20.219.120 Fax: +382.20.219.121
 - Website: <http://www.crnvo.me/>
 - Email: crnvo@crnvo.me

The following NGOs do not provide free legal aid, but support various projects that may provide free legal aid:

- U.S. Agency for International Development Montenegro Program
 - Address: American Embassy, John B. Jackson, 81000 Podgorica, Montenegro
 - Phone: +382.20.410.500
 - Website: <http://montenegro.usaid.gov/program-updates/latest-news-and-events.95.html>
 - Email: comments-Podgorica@usaid.gov
- The Fahamu Refugee Programme (“FRP”)
 - Address: Legal Center Podgorica, 4/1 Balsica Street, 81000 Podgorica, Montenegro
 - Phone: +382.20.230.913
 - Website: <http://www.frlan.org/node/837>
 - Email: pravnicentar@t-com.me

III. CONCLUSION

Practitioners who seek to engage in *pro bono* work in Montenegro might first try to locate *pro bono* opportunities, likely relating to anti-corruption, anti-domestic violence, refugee or rule of law matters, through established international or local NGOs (e.g., MANS, noted above). Alternatively, association with local counsel may be another viable option. Otherwise, practitioners should monitor the development of the legal sector in Montenegro; as the legal sector further develops, increased opportunity for *pro bono* work should follow.

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Pro Bono Practices and Opportunities in Montenegro

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PRO BONO PRACTICES AND OPPORTUNITIES IN MOROCCO

The Moroccan legal system has long provided for judicial assistance to the indigent. However, this mechanism suffers from structural loopholes, while support for voluntary *pro bono* work among private lawyers has not yet earnestly developed. This chapter discusses the law and regulations governing the provision of free legal services in Morocco and the specific *pro bono* opportunities available to international law firms in the Kingdom.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN MOROCCO¹

A. The Legal Profession

The principle of judicial independence is set out in Article 107 of the Constitution of the Kingdom of Morocco.² The judiciary is divided into two principal types of courts:³ general jurisdiction courts⁴ and specialized jurisdiction courts.⁵ Ultimate power of review lies with the Supreme Court.⁶

In 2003, the Legal Vice-Presidency of the World Bank issued a critical report on the functioning of the overall legal framework in the Kingdom.⁷ The law-making process was deemed weak, resulting in poorly drafted laws, and the legal dissemination was judged inadequate.⁸ The rationale of the court system, comprised of some 1,109 courts as of December 2003, was described as contradictory and in need of simplification.⁹ The judicial process was described as relatively passive and routine-driven.¹⁰ Enforcement of judicial decisions was presented as a major difficulty and a prominent hurdle to the efficiency and fairness of the Moroccan justice system.¹¹ Eventually, the small public budget for the sector would undermine the reform efforts.¹²

The lawyer's profession is regulated under the Law no. 28-08 dated October 20, 2008.¹³ Lawyers are required to obtain the equivalent of an LL.B, pass a professional examination and intern with an experienced lawyer in order to qualify.¹⁴ Lawyers are individually registered with one of the 17 bar associations.¹⁵ Each bar is managed by an elected council which is headed by the bar president. Individual bar associations are federated within a national association.¹⁶ Over the past twenty years, the number of lawyers has risen considerably, as a consequence of the increasing caseload of courts.¹⁷ Despite such considerable increase, the number of lawyers in Morocco remains less than in the Mediterranean area and the states of the Council of Europe. There are 8,700 lawyers in the Kingdom of Morocco,¹⁸ which is 32 lawyers per 100,000 inhabitants, as compared to (a) an average of 145 lawyers per 100,000 in the Mediterranean area and (b) an average of 120 lawyers in the member states of the Council of Europe.¹⁹ The majority of work undertaken by lawyers is in litigation.²⁰

¹ EUROMED JUSTICE II PROJECT, *Study on Access to Justice and Legal Aid in the Mediterranean Partner Countries* (2008-2011).

² MOROCCO CONST. art. 107. The judicial power is independent of the legislative power and of the executive power. The last amendment to the Constitution was made on Jul. 29, 2011.

³ The organization of the judiciary in Morocco is based on Law no. 1-74-338, dated Jul. 15, 1974, which was amended in 1991 to create the administrative courts and in 1997 to establish the commercial courts.

⁴ Municipal and district courts, 66 courts of first instance and 21 courts of appeal as of Jan. 1, 2008.

⁵ Seven administrative courts, two administrative courts of appeal, eight commercial courts and three commercial courts of appeals, as of Jan. 1, 2008.

⁶ "L'organisation judiciaire au Maroc," presentation by Dr. Mustapha El Baaj, Deputy public prosecutor.

⁷ MOROCCO: LEGAL AND JUDICIAL ASSESSMENT, *Legal Vice-Presidency of the World Bank* (Jun. 2003).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Dahir no. 1-08-102 of Oct. 20, 2008 enacting the Law no. 28-08, which modifies the Dahir establishing the Law no. 1-93-162 of September 10, 1993 organizing the practice of the profession of lawyer. Other texts regulating the profession of lawyer are the Dahir no. 1-08-102 of Oct. 20, 2008 enacting the Law no. 29-08 relating to the organization of the *société civile professionnelle* (a professional non-commercial law firm) and the Decree no. 2-81-276 of Feb. 1, 1982 determining the requirements in order to obtain the certificate of aptitude to practice the profession of lawyer.

¹⁴ Law no. 1-93-162 of Sep. 10, 1993 organizing the practice of the profession of attorney.

¹⁵ *Id.*

¹⁶ *Association des barreaux du Maroc.*

¹⁷ EUROMED JUSTICE II PROJECT, *supra* n.1.

¹⁸ Report of the Secretariat of the World Trade Organization, *Trade Policy Review, Kingdom of Morocco*, WT/TPR/S/217, (May 20, 2009).

¹⁹ EUROMED JUSTICE II PROJECT, *supra* n.1.

In the light of international recommendations, Morocco has launched an ambitious process of reform in order to place “justice at the service of the citizen.”²¹ In a speech, dated August 20, 2009, the King outlined the six major axes of such reform, among which is the enhancement of judicial efficiency.²² Subsequent initiatives include: a draft law on legal assistance and legal aid, a decree organizing the provision of legal assistance by lawyers, the creation of information desks in the courts of appeal and the courts of first instance, and the appointment of an ombudsman in charge of helping the citizens during their proceedings.²³

B. Legal Aid

1. Legal Aid Provisions

(a) Importance of Legal Aid

In the Kingdom of Morocco, legal representation is compulsory before the bench, with the exception of cases involving alimony.²⁴ However, as aforementioned, the number of lawyers in Morocco remains inferior to the population’s needs. In addition, lawyers’ fees are neither regulated by law, nor regulated by the Bar, but are freely negotiable.²⁵ The average lawyer’s fee ranges from 1,000 to 2,000 Dirham,²⁶ which is equal to two to four weeks of minimum wages. Therefore, the majority of the population cannot afford legal services. Legal aid is thus an important mechanism to ensure the equal access to justice required under the Constitution of the Kingdom of Morocco.²⁷

(b) Scope of the Legal Aid

Pursuant to the dahir dated November 16, 1966, establishing Law no. 514-65 on judicial assistance,²⁸ legal aid in Morocco covers the judicial assistance – defined as the assistance provided by a State to individuals who do not have sufficient financial means to defend themselves before a court – but excludes the legal counseling, i.e., consultation with legal professionals.²⁹ Legal aid is granted for the whole litigation procedure from the representation before the court up to the stage of execution of the decision.³⁰ Such aid encompasses all the legal costs the beneficiary may incur (e.g., appointment of a lawyer, experts, translators, execution costs) and excuses the beneficiary from paying any tax due in connection with the commencement of proceedings. Legal aid applies to all cases, whether criminal or otherwise.³¹

(c) Conditions in which Legal Aid is Granted or Withdrawn

Criteria under which legal aid is granted include the nationality of the applicant, the applicant’s resources and the ground on which legal aid is requested.³²

- Under Article 1 of Law no. 514-65 on judicial assistance, save specific provisions in international treaties allowing foreigners to benefit from such aid, judicial assistance is granted to Moroccan citizens, public-benefit

²⁰ MOROCCO: LEGAL AND JUDICIAL ASSESSMENT, *supra* n.7.

²¹ Leitmotiv exposed in a speech of the King dated Oct. 8, 2010.

²² MINISTRY OF JUSTICE OF MOROCCO, *Réalizations au titre du processus de la réforme globale et profonde du système de la Justice* (Aug. 2011).

²³ *Id.*

²⁴ MOROCCO: LEGAL AND JUDICIAL ASSESSMENT, *supra* n.7; CRIMINAL CODE OF MOROCCO, art. 310 et seq.

²⁵ Law no. 1-93-162 of Sep. 10, 1993 organizing the practice of the profession of attorney.

²⁶ Approximately US\$114 to US\$228.

²⁷ MOROCCO. CONST. art. 118 states that each person is guaranteed access to justice for the defense of his rights and interests protected by the law (“*L'accès à la justice est garanti à toute personne pour la défense de ses droits et de ses intérêts protégés par la loi*”) and art. 121 sets out that when provided by the law, justice is free for those who do not have the resources sufficient to bring a claim before a court (“*Dans les cas où la loi le prévoit, la justice est gratuite pour ceux qui ne disposent pas de ressources suffisantes pour ester en justice*”).

²⁸ A dahir is a rule issued by the King. Though it has the value of law, it is often translated as royal edict.

²⁹ Law no. 514-65 on judicial assistance.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

institutions and private associations with a mission of assistance and with a legal personality. Such aid shall also benefit Moroccans living outside the Kingdom.³³

- As for the assessment of resources, there are neither standard ceilings, nor tables or models with an order of priority. Decisions are taken on a case-by-case basis. The financial situation of the applicants is assessed by a local institution which issues a “certificate of poverty” to be submitted to the judge.³⁴
- In noncriminal cases, legal aid may also be refused if there are no good grounds for the case (e.g., abuse of the process).³⁵

The composition of the bureau responsible for determining the allocation of the legal aid depends on the court to be responsible for the case for which legal aid is requested. However, as a general rule, it is composed of one prosecutor (also president of the bureau) one representative of the tax department and a lawyer (or three high judges appointed by the Secretary of Justice for a case to be brought before the Supreme Court).³⁶ The bureau collects all information necessary to assess the applicant’s resources and may invite the applicant to present his or her situation in person. The bureau may also hear both litigants of the dispute for which legal aid is sought.³⁷ In such cases, it will attempt to reach an amicable settlement.³⁸ Applicants may appeal the decision of the legal aid bureau within 15 days.³⁹

Legal aid may be withdrawn in the event the aided party recovers sufficient resources (including a fruitful decision), the parties settle, the case is withdrawn or the applicant’s inaction indicates a disinterest in pursuing the case.⁴⁰

2. Legal Aid in Practice

Despite early and generous legislation, the legal aid system appears deficient.⁴¹

Since there is no special application form for requesting legal aid, legal aid procedures are fragmented and eventually become complex and ambiguous. Criteria to assess eligibility to legal aid are no more centralized and end up being opaque and discretionary.

Legal aid is in practice restricted to criminal matters.⁴² Appointment of lawyers by criminal courts takes too much time and in order not to adjourn the hearing, the judge frequently ends up asking lawyers who are present in the court to volunteer to defend the accused. In civil matters, there are no further provisions for legal aid besides the general principles expressed in the law on judicial assistance dated 1966.

The most important and the most denounced hurdle lies in the fact that lawyers are still not compensated for the legal assistance they provide to an aided party. When the legislation on judicial assistance was first issued, lawyers represented indigent defendants on a *pro bono* basis. Then, the law regulating the profession of lawyers⁴³ allowed lawyers to receive a compensation on the double condition that (i) the proceedings they had conducted would provide the aided party with a financial benefit or a profit in kind, and (ii) the fees would be

³³ MINISTÈRE CHARGE DES MAROCAINS RESIDANT A L’ÉTRANGER, <http://www.marocainsdumonde.gov.ma> (last visited Jun. 19, 2012).

³⁴ EUROMED JUSTICE II PROJECT, *supra* n.1.

³⁵ *Id.*

³⁶ Law no. 514-65 on judicial assistance.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Reda Oulamane, *L’assistance juridique ne fonctionne pas car l’avocat désigné n’est pas pay*, AUJOURD’HUI LE MAROC (May 21, 2012); *Elaboration d’un nouveau projet de loi sur l’assistance juridique et judiciaire*, AUJOURD’HUI LE MAROC (May 21, 2012).

⁴² CRIMINAL CODE OF MOROCCO, art. 312.

⁴³ Art. 41, Dahir establishing Law no. 1-93-162 of Sep. 10, 1993 organizing the practice of the profession of lawyer.

determined by the president of the bar association. In 2008,⁴⁴ a new law expressly asserted the right of the lawyer to receive financial compensation, and referred to a future decree to set out the procedures for the determination and the payment of these fees. The decree⁴⁵ did not, however, bring the expected clarifications: it only provided that legal fees with respect to legal aid should be borne by the budget of the Secretary of Justice and that the bar associations should agree on the allocation of such budget among them.⁴⁶ In practice, lawyers remain unpaid and, as a consequence, they tend not to devote the required time and effort to these cases.

In the framework of the judicial reform the Kingdom has initiated, a new draft law on judicial assistance is under discussion. It provides that amounts to be allocated to lawyers for their judicial assistance to an aided party shall be fixed on a flat-rate basis by decree and reviewed when necessary. The draft of the law is highly criticized by the bar associations, which deem it disappointing.

II. *PRO BONO* IN MOROCCO: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

The provision of *pro bono* legal services in Morocco is not well-established.

1. Current Initiatives are not Sufficient

Pro bono associations currently acting in the Kingdom of Morocco⁴⁷ are involved mainly in reception and attendance centers for women and minors who are victims of violence. They also ensure considerable support with proceedings and help distribute legal information. Their development is recent and there is no national federation of associations. But certain associations, the older ones, which are more structured and have more members, have more weight which allows them to be heard when there is consultation with civic society (other areas involved: consumption, health, etc.). However, these associations are not a sufficient alternative to legal aid or to the assistance of lawyers. They may assist in setting up the victims and providing them financial aid but they cannot provide representation in court.

2. Admission to Practice for Foreign Lawyers

Foreign lawyers may be entitled to practice within the Kingdom on equal terms with their Moroccan colleagues, *provided that* they are nationals of a country with which Morocco has an agreement containing a reciprocity clause on the right to practice.⁴⁸ Therefore, the admission to practice law in the Kingdom for foreign lawyers is restricted to nationals of a country with which Morocco has an agreement containing a reciprocity clause on the right to practice. Such recognition agreements have been signed with France⁴⁹ and Spain. To practice, a foreign lawyer shall hold a certificate of aptitude to practice law, or provide evidence that he or she has practiced law for a minimum of five years in their home country.⁵⁰ Failing that, they have to take an examination to assess their knowledge of the Arabic language and Moroccan law. They must be registered with one of the Moroccan bar associations.⁵¹

Foreign lawyers satisfying the requirements of clause (a) above, may also provide services before the Moroccan courts, without seeking their admission at one of the Moroccan bars. In such case, they are required to establish domicile at the office of a Moroccan lawyer registered in one of the Moroccan Bars, and (unless this is waived by the aforementioned agreement) be specially authorized to practice there by the Secretary of Justice.⁵² Since all pleas in Moroccan courts are made in Arabic, a high degree of fluency in the Arabic language is an additional

⁴⁴ Dahir no. 1.08.101 of Oct. 10, 2008, enacting Law no. 28.08, which modifies the Law regulating the lawyer profession.

⁴⁵ Decree no. 2-10-587 of Apr. 20, 2011 for the implementation of Law no. 28-08.

⁴⁶ *Id.*

⁴⁷ EUROMED JUSTICE II PROJECT, *supra* n.1.

⁴⁸ Art. 5 of Law no. 1-93-162

⁴⁹ Agreement dated May 20, 1965 modifying the provisions of the judicial convention dated Oct. 5, 1957 entered into between France and the Kingdom of Morocco.

⁵⁰ Art. 18 of Law no. 1-93-162.

⁵¹ Trade policy review, Kingdom of Morocco, *supra* n.8.

⁵² Art. 31 of Law no. 1-93-162.

prerequisite to practice law in Morocco. In such context, liaising with local counsels appears all the more necessary.

Other difficulties may hamper the development of *pro bono* work within the Kingdom.

B. Barriers To *Pro Bono* Work And Other Considerations

- Barriers to *pro bono* work result from the social environment of the judiciary and, more specifically, from the current law practice in the Kingdom.
- In Morocco, legal information is not adequately disseminated to the public.⁵³ In addition, the weakness of the literacy rate – 52.3% for the total population (39.6% for women)(65.7% for men)⁵⁴ – renders access to justice all the more difficult. Such population is vulnerable and may fall prey to unethical behaviors.⁵⁵ Moreover, the population has a low regard for the legal and judicial sector, and expects corruption in the judiciary.
- Indeed allegations of corruption are rife. According to the yearly report on the activities of the Legal Assistance Anti-Corruption Centre (CAJAC) dated December 2011⁵⁶, the judicial sector (administration, courts, prisons) is one of the domains where corruption is the most denounced. The Secretary of Justice has declared that the state of the judiciary is alarming: approximately 4,000 claims for bribery in the judicial sector were filed in 2011.⁵⁷
- Moroccan lawyers are predominantly generalists and solo practitioners. They focus on litigation and provide little pre-litigation counseling.⁵⁸ Consequently, they may not have the leverage necessary to provide *pro bono* services. In addition, the legal community in Morocco does not have a tradition of providing *pro bono* services.

III. CONCLUSION

In the Kingdom of Morocco, the inaccuracy of legal provisions with respect to legal aid has hindered the development of a mechanism, which however has long been asserted. Indigents may obtain free judicial assistance but the Moroccan legal community does not have a tradition of providing such services. Pro bono organizations promoting various voluntary activities are rather proactive in various fields of the society, but in the field of legal services, especially in the provision of legal advice, there is a lot of room for improvement. Nevertheless, the Kingdom of Morocco has engaged in intense reforms, including in the legal sector. For resourceful law firms and practitioners, such circumstances may be regarded as opportunities to position themselves as useful counsels to the Moroccan government or to NGOs and to foster legal reforms with respect to legal aid and the development of *pro bono* work in the legal profession.

July 2012

Pro Bono Practices and Opportunities in Morocco

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⁵³ MOROCCO: LEGAL AND JUDICIAL ASSESSMENT, *supra* n.7.

⁵⁴ U.S. DEP'T OF STATE, (CENSUS 2004) Definition: age 15 and over who can read and write, <http://www.state.gov/r/pa/ei/bgn/5431.htm> (last visited Jun. 19, 2012).

⁵⁵ MOROCCO: LEGAL AND JUDICIAL ASSESSMENT, *supra* n.7. The Bar association has great difficulty in supervising these “homeless” lawyers; up to 800 of the 3,000 lawyers registered with the Casablanca Bar Association have no fixed business address and operate with a cellular telephone from undisclosed premises. They are said to prey on the uninformed and often maintain frivolous suits in order to collect higher fees.

⁵⁶ RAPPORT ANNUEL SUR LE BILAN DES ACTIVITES DU CENTRE D'ASSISTANCE JURIDIQUE ANTI-CORRUPTION, <http://www.transparencymaroc.ma/uploads/publications/Fr/184.pdf> (last visited Jun. 19, 2012). This center was created in Dec. 2009. It receives the claims with respect to bribery acts and provides legal assistance to the victims or the witnesses.

⁵⁷ RFI, <http://www.rfi.fr/afrique/20120401-maroc-trop-corruption-pas-assez-justice> (last visited Jun. 19, 2012).

⁵⁸ MOROCCO: LEGAL AND JUDICIAL ASSESSMENT, *supra* n.7

PRO BONO PRACTICES AND OPPORTUNITIES IN THE NETHERLANDS¹

The Dutch Constitution provides for a right to access to justice and legal representation,² and there is a general belief that people with limited means seeking legal advice are well-represented by a comprehensive system of government-subsidized legal services. Accordingly, the nature of the available *pro bono* work in the Netherlands, performed primarily by large Dutch law firms, is less focused on indigents and more on interest groups and foundations serving social needs and advocating for human rights. These foundations are not entitled to receive government-subsidized legal aid and therefore have a substantial need for *pro bono* legal services. This chapter describes the system of government-subsidized legal services in the Netherlands (which are provided by both nonprofit organizations and attorneys in private practice), and the opportunities for, and barriers to, rendering *pro bono* legal services outside of this system.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN THE NETHERLANDS

A. The Legal Profession

In 2011, there were about 16,000 lawyers in the Netherlands.³ The lawyer-to-inhabitant ratio is relatively low in the Netherlands, as there are approximately 9-10 lawyers per 10,000 inhabitants. As of 2012, 2,286 law firms consist of solo practitioners, which represents slightly more than 50% of all law firms in the country;⁴ and 86% of law firms in the Netherlands have less than 6 employees, and 97% have less than 21.⁵ In 2012, almost 4,500 lawyers (or about 28% of lawyers) are working at the 50 largest law firms in the Netherlands.⁶

The judicial system of the Netherlands consists of 19 districts, each having its own court. Each District Court (*Rechtbank*) is made up of a maximum of five sectors, which always include the administrative law, civil law, criminal law sector. Appeals against judgments passed by the district court in civil and criminal law cases can be lodged at the competent Court of Appeal (*Gerechtshof*). Appeals against administrative law judgments are lodged at the competent specialised administrative law tribunal – the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*), the Central Appeals Tribunal (*Centrale Raad van Beroep*), or the Trade and Industry Appeals Tribunal (*College van Beroep voor het bedrijfsleven*), depending on the type of case. Appeals in cassation (*cassatie*) in civil, criminal and tax law cases are lodged at the Supreme Court of the Netherlands (*Hoge Raad*).

Every attorney practising in the Netherlands is a member of the Dutch Bar Association (*Nederlandse Orde van Advocaten*). Lawyers are subject to the Dutch Act on Attorneys (*Advocatenwet*), and the administrative decrees and other rules – including the general rules regulating attorney conduct (*Gedragsregels*) – issued by the Dutch Bar Association.⁷ Lawyers that do not comply with these rules are subject to disciplinary proceedings, and can be disbarred.

B. Legal Aid

Dutch civil procedure rules mandate 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*), in which representation by an attorney is not required. In addition, administrative appeals of adverse decisions in public benefits disputes also do not require legal representation. Consequently, persons with limited means are not required to retain counsel for the types of legal disputes they encounter most frequently. Instead, 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 so-called “social advisers” (*Sociaal Raadslieden*), with approximately

¹ This chapter was drafted with the support of Stibbe Amsterdam.

² WET OP DE RECHTSBIJSTAND, arts. 17 and 18.

³ See http://www.rabobank.nl/images/thema_update_advocatuur_29432700.pdf.

⁴ See http://www.advocatie.nl/page?1,5581/stand/historisch_moment_505_van_de_kantoren_bestaat_uit_eenpitters.

⁵ *Id.*

⁶ See <http://www.advocatie.nl/top50>.

⁷ All available at <http://advocaten.advocatenorde.nl/wetenregelgeving/vademecum.asp>.

80 offices across the Netherlands, that assists indigents in completing forms, writing letters and bringing administrative appeals.⁸

The Dutch government also subsidizes legal assistance provided to indigents⁹ by attorneys in private practice.¹⁰ The subsidy consists of a statutory hourly fee that is paid by the government to the attorney. In order to discourage frivolous litigation, indigents 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 ability to pay.¹¹

The Dutch Legal Aid Act (*Wet op de Rechtsbijstand*) requires attorneys to 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.¹² In order to be admitted, an 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. Under the supervision of the Legal Aid Board, legal advice to indigents, and, if necessary, help by a bar-registered lawyer are made available by two parties: (1) so-called Legal Services Counters, commonly known as the "front office" (primary help); and (2) private lawyers and mediators, registered with the Legal Aid Board, who 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 2011, the Legal Services Counters provided easily accessible, free legal services to over half a million clients.¹³ The Counters are meant as a first point of contact for receiving legal aid and, if necessary, will assist with referral to a lawyer or mediator.¹⁴

Attorneys admitted to provide legal services to indigents are required to submit specific applications for legal assistance to the Legal Aid Board before taking on new engagements.¹⁵ 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.¹⁶ 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.¹⁷

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*).¹⁸ 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."¹⁹ In addition, Article 4 of the decree directs the Council to deny subsidized legal representation if the monetary interest at stake is less than €250.²⁰ Finally, Article 8 of the decree

⁸ See SOCIAAL RAADSLIEDENWERK, available at <http://www.sociaalraadslieden.nl>.

⁹ Persons with a relatively low income – €4,000 for single persons or €3,700 for non-single persons – may qualify for funded legal assistance. See <http://www.advocatenorde.nl/579/consumentengeen-geld-voor-een-advocaat.html>.

¹⁰ 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. (Feb. 10, 1983) and *Schmautzer v. Austria*, 15523/89 Eur. Ct. H.R. (Oct. 23, 1995). The right of access to an impartial tribunal 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. (Sep. 19, 2000).

¹¹ See *Besluit eigen bijdrage rechtsbijstand*, available at <http://kenniswijzer.rvr.org/wet-en-regelgeving>.

¹² See WET OP DE RECHTSBIJSTAND, arts. 14 and 13(1) lit. a.

¹³ Legal Aid in the Netherlands, brochure available at http://www.rvr.org/nl/about_rvr.

¹⁴ *Id.*

¹⁵ See WET OP DE RECHTSBIJSTAND, arts. 24(2) and 28(1)(a).

¹⁶ *Id.* at art. 24(3) and (5).

¹⁷ *Id.* at art. 12(2)(a), (b), and (g).

¹⁸ See *Besluit Rechtsbijstand en Toevoegingscriteria*, available at <http://kenniswijzer.rvr.org/wet-en-regelgeving>.

¹⁹ *Id.* at art. 3(e).

²⁰ *Id.* at art. 4(1).

requires the Council to deny subsidized legal assistance to an immigrant seeking admission to the Netherlands, unless the immigrant seeks asylum or is threatened with imminent incarceration.²¹

II. *PRO BONO* IN THE NETHERLANDS: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

Like many other continental European jurisdictions, the Dutch regulatory regime does not generally allow attorneys to provide their services based on a contingency fee.²² 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 permitted to provide legal services free of charge.²³

Nonetheless, only a few (large commercial) law firms in the Netherlands provide *pro bono* legal services. Because, as described above, persons with limited means are not required to retain counsel for the types of legal disputes they encounter most frequently, and due to the widespread availability of alternative, government-subsidized legal services, the nature of the *pro bono* work in the Netherlands is less focused on indigents and more on interest groups and foundations serving public or social needs and human rights. These foundations are not entitled to receive government-subsidized legal aid and therefore have a substantial need for *pro bono* legal services.

Large law firms that provide *pro bono* legal services to such organizations often require that the case holds demonstrable social significance or sets a legal precedent. A recent example of a law firm offering *pro bono* services is the representation of the Clara Wichmann Test Cases Fund Trust and other social special interest groups in a lawsuit against the “SGP” political party (that denies membership to women) and the State of the Netherlands, to obtain a ruling on the value of the fundamental right to equal treatment of men and women when weighed against the right to freedom of religion or the right to freedom of association.

B. Barriers To *Pro Bono* Work And Other Considerations

There are no specific rules that provide a framework for *pro bono* representation. However, the general rules regulating attorney conduct naturally also apply to *pro bono* services. There are no additional substantial barriers to *pro bono* representation. Lawyers are not required to charge VAT on their services and there are no anti-competition regulations that require lawyers to charge minimum tariffs.

Restrictive advertising regulations, however, may discourage commercial law firms from providing *pro bono* services by limiting law firms’ ability to approach potential indigent clients. The Dutch Bar Association has 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.²⁴ Although it limits competition among attorneys and hinders their ability to search for clients, the decree does allow law firms to advertise *pro bono* efforts by distributing annual *pro bono* reports or brochures, but regulates their content.²⁵

C. *Pro Bono* Resources

- Stibbe, *Pro Bono* Committee

²¹ *Id.* at art. 8(1)(a).

²² See *Verordening op de Praktijkuitoefening (onderdeel Resultaatgerelateerde Beloning)*, available at <http://maxius.nl/verordening-op-de-praktijkuitoefening-onderdeel-resultaatgerelateerde-beloning>.

²³ See, e.g., *Nederlandse Orde van Advocaten, Verordening op de Praktijkuitoefening (onderdeel Resultaatgerelateerde Beloning)*, available at <http://advocaten.advocatenorde.nl/nova/novvade.nsf/c70ce544d407054ec12569f1004485c2/532644a53636c3d1c12574a9003112b0?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-afpraak, mits die afspraak maar niet gekoppeld is aan het in de zaak te behalen resultaat.”).

²⁴ See *VERORDENING OP DE PUBLICITEIT*, available at <http://maxius.nl/verordening-op-de-publiciteit>.

²⁵ See, e.g., STIBBE, *Pro Bono*, <http://www.stibbe.nl/stibbe/view/About/template.do?UID=8ae45a010ab71d2ebf015328>, and Nauta Dutilh, CSR, <http://www.nautadutilh.com/csr.xhtml>.

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Email: info@stibbe.nl
- *Legal Aid in the Netherlands, available at <http://www.rvr.org/binaries/about-rvr/legal-aid-in-the-netherlands-2011-05-23-ilag.pdf>*

III. CONCLUSION

In the Netherlands, people with limited means seeking legal advice are well-represented by the system of government-subsidized legal services. A variety of nonprofit organizations are available to provide legal services. Through the Dutch Legal Aid Act, the Dutch government also subsidizes legal assistance provided to indigents by attorneys in private practice.

Because of the comprehensive regime of government-subsidized legal services for indigents, *pro bono* legal services – engaged in primarily by large law firms – are more focused on interest groups and foundations serving social needs and human rights, which are not entitled to receive legal aid. Presently only a few large commercial law firms provide *pro bono* services. Lawyers in such firms looking to engage in *pro bono* work may consider, in addition to applying to practice within the Legal Aid Board, seeking opportunities for *pro bono* representation of organizations in legal matters that hold demonstrable social significance or have the potential to set new legal precedent.

July 2012

Pro Bono Practices and Opportunities in the Netherlands

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PRO BONO PRACTICES AND OPPORTUNITIES IN NEW ZEALAND

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN NEW ZEALAND

A. The Legal Profession

New Zealand's population of approximately 4.3 million residents is served by approximately 11,000 lawyers.¹ Though all legal practitioners are admitted to the High Court of New Zealand as both barristers and solicitors, in New Zealand, in contrast with Australia, it is not possible to be admitted only as a barrister or only as a solicitor. Once admitted, a lawyer may opt to practice as either a barrister and solicitor or as a 'barrister sole', the latter case meaning that the practitioner will provide only advocacy type services.² Legal practitioners in New Zealand can be classified broadly into three groups: 67% work as barristers and solicitors in private practice; 19% work in a government department, in-house, or in a professional association; and 14% work in private practice as barristers sole.³

New Zealand's government maintains a separation of powers between the Legislature, the Executive, and the Judiciary in a manner analogous to the democratic parliamentary system of the United Kingdom.⁴ New Zealand's constitutional laws (New Zealand does not possess a written constitution as such, but a number of Acts and treaties) provide that an independent judiciary shall have the power to interpret laws passed by Parliament.

The legal system is a common law system based primarily on that of the United Kingdom. There are 63 District Courts around New Zealand, which have jurisdiction over both civil and criminal matters. The Court of Appeal is New Zealand's intermediate appellate court, and the Supreme Court is its highest judicial authority.⁵ New Zealand also has a High Court with very broad jurisdiction; however, the High Court generally deals only with civil claims exceeding other courts' jurisdictions or with cases involving particularly complex legal issues, as opposed to exercising the breadth of its primary jurisdiction.⁶ Additionally, there are a number of courts in New Zealand with specialized jurisdictions, including the Family Court, the Youth Court, the Environment Court, the Employment Court, the Coroners Court and the Maori Land Court.⁷ New Zealand also has a specialized tribunal, the Waitangi Tribunal, which operates as a permanent commission of inquiry to investigate claims brought by Maori individuals under the Treaty of Waitangi. The tribunal generally has authority only to make recommendations, and has limited binding powers, and operates in an inquisitorial fashion. Many of the claims investigated by the Waitangi Tribunal relate to claims brought by indigenous New Zealanders with respect to rights to land.

B. Legal Aid

New Zealand has a legal aid system that uses public funds to provide free legal services to those in need. Individuals who qualify for legal aid can seek out the services of any practising lawyer authorized to serve as a legal aid provider. The lawyer may then file an application to receive payment from the Ministry of Justice. In both civil and criminal cases, an individual's eligibility for legal aid is dependent on a number of factors, which include: the individual's pre-tax income, the value of any property owned by the individual, whether her case involves significant personal issues such as child custody or domestic violence, the case's likelihood of success and the likely cost-benefit ratio of the

¹ NEW ZEALAND LAW SOCIETY, *Legal Practice in New Zealand*, available at http://www.lawsociety.org.nz/home/for_lawyers/regulatory/legal_practice_in_new_zealand (Jul. 6, 2012).

³ *Id.*

³ *Id.*

⁴ NEW ZEALAND MINISTRY OF JUSTICE, *The Judiciary*, available at <http://www.justice.govt.nz/courts/the-judiciary> (Jul. 6, 2012).

⁵ *Id.*

⁶ NEW ZEALAND MINISTRY OF JUSTICE, *High Court*, available at <http://www.justice.govt.nz/courts/high-court/high-court-home> (Jul. 6, 2012).

⁷ NEW ZEALAND MINISTRY OF JUSTICE, *Courts*, available at <http://www.justice.govt.nz/courts> (Jul. 6, 2012).

case overall. Individuals who qualify for a number of other forms of public benefits in New Zealand likely qualify for legal aid as well.⁸

In November 2009, the Legal Aid Review Commission published a critical report that characterized New Zealand's Legal Aid system as "facing some serious challenges" and "open to abuse."⁹ The report's publication prompted significant reforms to the Legal Aid System, which culminated in the enactment of the Legal Services Act 2011.¹⁰ The Ministry of Justice states that the reforms are intended to "improve the quality of service provided to clients, and ensure that the system is financially sustainable so it is available in future for those who need it most."¹¹

Among the Legal Services Act's most significant structural reforms was the decision to merge the Legal Services Agency into the Ministry of Justice.¹² Many legal aid services previously overseen by the Legal Services Agency are now administered by the Ministry of Justice directly. As reforms continue to be implemented, their ultimate impact remains open to question, and they have not been universally well received by providers. A 2011 survey of New Zealand's legal aid providers revealed "high levels of disagreement with the reforms and dissatisfaction with the way the changes have been implemented."¹³

The final report issued by the Legal Services Agency indicates that it processed 96,148 applications for legal aid in its final year of operation, from July 1, 2010 to June 30, 2011. This figure includes 65,370 applications involving criminal cases, 27,898 involving family law and mental health issues, 2,757 civil issues and 123 cases before the Waitangi Tribunal.¹⁴

The Ministry of Justice oversees the following legal aid programs:

- **Duty Lawyers.** A duty lawyer (also called a duty solicitor) is a lawyer on duty at the courts. They provide free legal help to individuals who have been charged with an offense and are not represented by their own lawyer, regardless of the individual's income or residency. Duty lawyers can (a) explain what offences have been charged and how serious they are; (b) determine whether a defense is possible; (c) explain the court's usual range of sentences; (d) explain the consequences of pleading guilty or not guilty; (e) enter guilty pleas; (f) inform a judge about an individual's personal circumstances or point of view when pleading guilty to a minor charge; (g) request a remand so that an individual can seek additional advice or information; (h) apply for bail in some cases; and (i) advise on eligibility for criminal legal aid and help apply for it if necessary. Duty lawyers typically cannot represent an individual after the first day of a case. To obtain subsequent representation, individuals must apply for legal aid.¹⁵
- **Criminal Legal Aid.** Criminal legal aid is available to anyone who cannot afford a lawyer and who has been charged with a criminal offence that carries a potential sentence of six months or more in prison. Some criminal matters do not qualify for legal aid because they are not serious enough, e.g., some driving offences. Criminal legal aid is available in all cases involving

⁸ MINISTRY OF JUSTICE, *Granting Legal Aid*, available at <http://www.justice.govt.nz/services/legal-aid/getting-legal-aid/civil-or-family-legal-aid/granting-legal-aid>.

⁹ LEGAL AID REVIEW COMMISSION, *Transforming the Legal Aid System: Final Report and Recommendations*, Preface i.

¹⁰ MINISTRY OF JUSTICE, *Evaluation of the Legal Aid Reforms: Response to Baseline Survey Results and Update on Legal Aid Reforms*, April 2012, available at <http://www.justice.govt.nz/publications/global-publications/1/legal-aid-evaluation-of-reforms/>.

¹¹ *Id.*

¹² *Id.*

¹³ MINISTRY OF JUSTICE, *Evaluation of the Legal Aid Reforms: Legal Aid Providers Survey, October-November 2011, Executive Summary 5*, available at <http://www.justice.govt.nz/publications/global-publications/1/legal-aid-evaluation-of-reforms/pdf-documents/Legal%20aid%20reforms%20lawyers%20survey%202011%20-%20summary%20report.pdf>.

¹⁴ LEGAL SERVICES AGENCY, *Closure Report and Final Annual Report for the 12 Months Ended 30 June 2011*, 24, available at http://www.justice.govt.nz/publications/global-publications/1/legal-services-agency-closure-and-annual-report-2010-2011/publication/at_download/file.

¹⁵ MINISTRY OF JUSTICE, *Get a Duty Lawyer*, available at <http://www.justice.govt.nz/services/legal-aid/get-a-duty-lawyer>.

assault, theft/burglary, fraud, rape and other sexual offences, drug offences, receiving stolen goods, arson, threatening to kill, murder and manslaughter.¹⁶

- **Public Defence Service.** The Ministry of Justice employs salaried criminal lawyers to take on criminal legal aid cases in the Auckland, Manukau, Waitakere, North Shore, Papakura, Pukekohe, Wellington, Lower Hutt, Porirua, Hamilton, Dunedin and Tauranga courts through its Public Defence Service (PDS). Papakura and Pukekohe PDS lawyers are based in the Manukau office but work in the Papakura and Pukekohe courts. The Wellington PDS deals with cases in the Wellington, Lower Hutt and Porirua District Courts, and in the Wellington High Court. A PDS office in Hawkes Bay is planned to open in mid-2012.¹⁷ Independent audits have shown that, in contrast to other areas of New Zealand's legal aid system, PDS provides "high-quality, independent, and cost-effective services to criminal legal aid clients."¹⁸ Accordingly, the legal aid reforms include a plan to expand PDS.¹⁹
- **Civil or Family Legal Aid.** Civil or family legal aid is available for many kinds of private disputes and noncriminal problems that may go to court. The types of family matters for which legal aid is available include: relationship property problems, child support or maintenance, care of children matters, protection orders, care and protection orders, adoption, and paternity and mental health matters (compulsory treatment orders). Civil matters for which legal aid is available include: recovering a debt, breach of contract actions, defamation, and bankruptcy or insolvency.

In addition to these programs, the Ministry of Justice provides funding for community legal services through contracts with Community Law Centres ("CLCs").²⁰ Each CLC is run independently either as a charitable trust or an independent nonprofit organization, and all are part of the national body Community Law Centres of Aotearoa ("CLCA").²¹ CLCs' operations are financed through a combination of government funding and charitable contributions. Though there are currently 26 law centres located across New Zealand, the Ministry of Justice has indicated that it intends to fund no more than 10 CLC contracts beginning in June 2013.²² The future of many CLCs is uncertain; some CLCs will likely be compelled to merge with each other and form regional Centres and others may be forced to close altogether.²³

All CLCs provide initial consultations to any individual and ongoing legal assistance to qualifying individuals. Some CLCs can provide in-court representation and mediation services as well.²⁴ Legal work may be performed by full-time CLC lawyers, paralegals and community workers or by lawyers and law students who volunteer to work on a *pro bono* basis. National Performance Standards developed by the Ministry of Justice in consultation with the CLCs serve to ensure the quality and consistency of the legal services delivered.²⁵

¹⁶ MINISTRY OF JUSTICE, *Criminal Legal Aid*, available at <http://www.justice.govt.nz/services/legal-aid/getting-legal-aid/criminal-legal-aid>.

¹⁷ MINISTRY OF JUSTICE, *Public Defence Service*, available at <http://www.justice.govt.nz/services/legal-aid/public-defence-service>.

¹⁸ *Response to Baseline Survey Results*, *supra* n.11.

¹⁹ *Id.*

²⁰ MINISTRY OF JUSTICE, *About Community Law Centres*, available at <http://www.justice.govt.nz/services/legal-aid/community-legal-services/about-community-law-centres>.

²¹ COMMUNITY LAW, *About Us*, <http://www.communitylaw.org.nz/community-law/> (Jul. 23, 2011).

²² Emma Edwards, *Law Centre Under Threat*, BAY OF PLENTY TIMES (Jul. 25, 2012).

²³ *Id.*

²⁴ *About Us*, *supra* n.22.

²⁵ MINISTRY OF JUSTICE, *National Performance Standards*, <http://www.justice.govt.nz/services/legal-aid/community-legal-services/national-performance-standards>.

II. PRO BONO IN NEW ZEALAND: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. Pro Bono Opportunities

Though no *pro bono* referral or clearing house organizations currently exist, lawyers in New Zealand are working to establish the nation's first *pro bono* clearinghouse, Community LawConnect.²⁶ The project's leaders hope to launch Community LawConnect in 2012. In the coming months and years, Community LawConnect will seek to support and extend the capacity of CLCs, and work with law firms to develop existing *pro bono* programs and establish new ones. The clearinghouse will also seek to engage segments of the legal community that may not otherwise be included in *pro bono* discussions, such as corporate lawyers, sole practitioners and small firms. Finally, Community LawConnect will work with New Zealand's law schools to help inculcate a sense of *pro bono*'s importance in the country's next generation of lawyers.²⁷

Lawyers are free to engage in *pro bono* legal work on an ad hoc basis, and many law firms in New Zealand have solid *pro bono* programs to facilitate *pro bono* work; however, few firms maintain as well-developed *pro bono* infrastructures as firms in the United States or the United Kingdom.²⁸ There are indications that the private sector's level of interest in *pro bono* legal work is rising. As firms and companies with global brands expand into New Zealand, many are bringing their existing *pro bono* programs with them.²⁹ For example, in 2010 the New Zealand Law Society recognized DLA Phillips Fox for its *pro bono* commitment, noting that the firm has instituted a *pro bono* target of 3% of its work, counts all hours spent on *pro bono* projects towards its lawyers' billable targets, and has appointed a part-time *pro bono* partner whose work focuses on New Zealand specifically.³⁰

Lawyers in New Zealand can also volunteer in any one of 26 CLCs located across the country, and it is quite common for lawyers to work with major NGOs, such as the Citizens Advice Bureau (cab.org.nz), the New Zealand Law Society (lawsociety.org.nz), and YouthLaw (youthlaw.co.nz). Information about how to volunteer at CLCs is available on CLCA's website.³¹ Several CLCs host international students, including students from Europe and the United States.³² International students with an interest in volunteering at a CLC in New Zealand are advised to reach out to the CLC directly or email a contact listed on the CLCA website.

In-house lawyers in New Zealand are active in *pro bono* as well. Each year, awards such as the CLANZ-Wigley & Company Community Contribution Award recognize the work of in-house lawyers who have made significant contributions to the communities in which they work.³³

B. Barriers To Pro Bono Work And Other Considerations

Most *pro bono* legal work in New Zealand is performed on an ad hoc basis. Though a number of organizations are currently working to build more structured *pro bono* programs, the current situation may pose problems for non-New Zealanders seeking to get involved.

Some lawyers in New Zealand report anecdotally that *pro bono* rates in New Zealand have risen in response to the implementation of legal aid reforms, though not necessarily for good reasons. Whereas lawyers may previously have agreed to take on cases and receive payment from the government at

²⁶ NZ Pro Bono, *New Zealand's Pro Bono Clearinghouse*, <http://nzprobono.wordpress.com/2012/01/20/new-zealands-pro-bono-clearinghouse/>.

²⁷ *Id.*

²⁸ Craig Sisterson, *Law Society Applauds DLA Phillips Fox for Pro Bono Approach*, NZ LAWYER MAGAZINE (Mar. 5, 2010).

²⁹ *Promoting Pro Bono*, NZ LAWYER MAGAZINE (Oct. 20, 2010).

³⁰ Sisterson, *supra* n.29.

³¹ COMMUNITY LAW, *Volunteer in Community Law*, <http://www.communitylaw.org.nz/community-law-aotearoa/volunteer-in-community-law/>.

³² *Id.*

³³ Craig Sisterson, *Passionate About Pro Bono*, NZ LAWYER MAGAZINE (Jun. 17, 2011); Craig Sisterson, *Helping Others, and Yourself*, NZ LAWYER MAGAZINE (Jun. 17, 2011).

standard legal aid rates, difficulties with the legal aid system have led some lawyers to avoid the system altogether and perform such work on a *pro bono* basis instead.³⁴

C. *Pro Bono* Resources

- CLANZ (In-House Lawyers):
 - Website: <http://www.clanzonline.org/>
- Community Law Canterbury Links
 - Website: <http://www.canlaw.org.nz/legal-links>
- Community Law Centres o Aotearoa
 - Website: <http://www.communitylaw.org.nz/>
- Community LawConnect/NZ *Pro Bono*
 - Website: <http://nzprobono.wordpress.com/>
Email:
- DLA Phillips Fox Community Matters
 - Website: <http://www.dlapf.com/node/25>
- New Zealand Law Awards
 - Website: <http://www.lawawards.co.nz/Default.aspx>
- New Zealand Law Society
 - Website: <http://www.lawsociety.org.nz/>
- New Zealand Ministry of Justice
 - Website: <http://www.justice.govt.nz/>

III. CONCLUSION

Though New Zealand's *pro bono* framework remains somewhat unstructured, many organizations and individuals are currently working to build effective programs. Opportunities exist for law students and young lawyers to get involved with projects that will have a lasting impact on New Zealand's legal system. Moreover, in light of the challenges facing legal aid reform, the legal needs of many New Zealanders remain unmet. Pro bonolegal services must continue to play an important role in ensuring access to justice.

Lawyers interested in performing *pro bono* legal work in New Zealand should contact Community LawConnect and Community Law Centres of Aotearoa, and visit any of the resources listed above.

July 2012

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.

³⁴ *Structured Approach Recommended for Pro Bono Work*, LAW TALK 785 (Nov. 18, 2011), available at http://my.lawsociety.org.nz/in_practice/practice_management/practice_trends_and_statistics/structured_approach_recommended_for_pro_bono_work.

PRO BONO PRACTICES AND OPPORTUNITIES IN NIGERIA

The Nigerian legal system has sought to address the need for *pro bono* services by requiring Nigerian Bar members to provide at least 20 hours of *pro bono* services a year. The Nigerian government has also set up the Legal Aid Council to provide free legal services for those who cannot afford a lawyer. This has been one of the primary sources for *pro bono* services in Nigeria; however, there have been problems and criticisms due to insufficient funding and organization. Recently, there have been actions to try and improve the efficiency and efficacy of the Legal Aid Council, but it remains to be seen how these improvements will work. This chapter examines legal aid in Nigeria and its development, describes the current *pro bono* system in Nigeria, including the governmental and legal infrastructure of the country and discusses *pro bono* practices and opportunities.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN NIGERIA

A. The Legal Profession

There are approximately 70,000 lawyers practicing in Nigeria, a country with a population of over 170 million.¹ The Nigerian Bar Association (“NBA”) is the professional association for lawyers.² Lawyers are automatically admitted to the NBA following satisfaction of the requirements of the members of the Body of Benchers and proficiency in the Bar Final Examination.³ Foreign lawyers are not entitled to practice law under home or other title unless they have also been called to the Nigerian Bar.⁴ The NBA is divided into three sections: business law, law practice, and public interest and development law. The NBA also recognizes the importance of *pro bono* service – requiring each member of the Bar to provide at least 20 hours of *pro bono* services per year.⁵

An individual can become a legal practitioner and a member of the legal profession in Nigeria by enrollment at the country’s Supreme Court.⁶ 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.⁷ 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 were established by the Legal Practitioners Act, Cap. 207, LFN 1990.⁸

Nigeria is a federal republic, divided into 36 states and one federal capital territory.⁹ Each state is divided local government areas; there are 774 in total.¹⁰

Nigeria has a tripartite legal system¹¹ made up of:

- Statutory law, based on English law/common law legal principles (and including judicial precedent, a constitution, and federal/state laws)¹²
- Islamic Sharia’a law in the Northern states (Muslim emirates)¹³
- Customary/traditional law in the non-Muslim areas¹⁴

¹ *International Practice: Nigeria: How to practice in Nigeria*, THE LAW SOCIETY (Sep. 27, 2007), <http://international.lawsociety.org.uk/ip/africa/564/practise>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ NIGERIAN BAR ASSOCIATION, *Pro Bono Declaration for Members of the Nigerian Bar Association*, <http://www.internationalprobono.com/resources/topics/3277/Nigeria>.

⁶ Yemisi Dina, *Update: Guide to Nigerian Legal Information*, GLOBALEX, available at <http://www.nyulawglobal.org/globalex/Nigeria1.htm#LEGALSYSTEM> (last visited Jun. 6, 2012).

⁷ *Id.*

⁸ *Id.*

⁹ WIKIPEDIA, Nigeria, <http://en.wikipedia.org/wiki/Nigeria> (last visited Jun. 6, 2012).

¹⁰ *Id.*

¹¹ CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK: NIGERIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html> (last visited Jun. 6, 2012); Yemisi Dina, *Update: Guide to Nigerian Legal Information*, GLOBALEX, available at <http://www.nyulawglobal.org/globalex/Nigeria1.htm#LEGALSYSTEM> (last visited Jun. 6, 2012).

¹² Dina, *supra* n.9.

¹³ *Id.*

The court system is comprised of federal and state trial courts, state appeals courts, the Federal Court of Appeal, the Federal Supreme Court and Sharia'a and customary courts of appeal for each state and for each federal capital territory of Abuja.¹⁵

Nigeria inherited the English common law tradition, and common law applies in the English law-based courts. It does not apply in the Islamic and customary law courts.¹⁶ 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.¹⁷ In contrast the Islamic and customary courts use an inquisitorial approach in their criminal procedures.¹⁸

B. Legal Aid

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 available.²⁰ The LAC is administered by a Council, which is headed by a Chairman and with representatives of several government agencies as members, while the day-to-day affairs are run by a Director-General, known as the Chief Executive Officer.²¹ According to the Act, prior to being granted legal aid, an applicant must complete statutorily required criminal and civil legal aid application forms. Eligibility to receive legal aid depends upon being unemployed, without an income or upon fulfilling the “means test.”²² According to the Act, legal aid shall be granted only to people whose income does not exceed ₦1,500 per annum; however, the Federal Executive Council has the discretion to authorize legal aid on a contributory basis to a person whose income exceeds this amount.²³

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 the LAC’s offices or private practitioners. If an application for legal aid is approved, the 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.²⁴ NYSC lawyers visit police stations and prisons to interview applicants for legal aid, handle minor offenses in lower courts and perform various other duties under the supervision of experienced lawyers.²⁵

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.²⁶ In 2005, only one lawyer was staffed in each state’s LAC office, which was heavily criticized by state attorney generals and judges as being inadequate.²⁷ There were plans to extend this to two per state by the end of 2005, according to the LAC’s director of Planning,

¹⁴ *Id.*

¹⁵ ENCYCLOPEDIA OF THE NATIONS, *Nigeria – Judicial System*, <http://www.nationsencyclopedia.com/Africa/Nigeria-JUDICIAL-SYSTEM.html> (last visited Jun. 6, 2012).

¹⁶ Obi N. I. Ebbe, WORLD FACTBOOK OF CRIMINAL JUSTICE SYSTEMS, *Nigeria*, <http://bjs.ojp.usdoj.gov/content/pub/ascii/WFBCJNIG.TXT> (last visited Jun. 6, 2012).

¹⁷ *Id.*; Emeka Maduewesi, *Introduction to Legal Literacy in Nigeria* 16, [http://www.nigerianlawregistry.com/Introduction to Legal Literacy in Nigeria.pdf](http://www.nigerianlawregistry.com/Introduction%20to%20Legal%20Literacy%20in%20Nigeria.pdf) (last visited Jun. 6, 2012).

¹⁸ *Id.*

¹⁹ LEGAL AID COUNCIL OF NIGERIA, <http://www.legalaidcouncilofnigeria.org/> (last visited Oct. 12, 2010). Note that the website has been down, thus updates regarding the Legal Aid Council have been limited. Some alternative sources include: http://www.nou.edu.ng/noun/NOUN_OCL/pdf/pdf2/POL%20%2020211.pdf and <http://www.docstoc.com/docs/23870876/LegalAidCouncil>.

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).

²¹ NATIONAL OPEN UNIVERSITY OF NIGERIA, Course Description at 147, available at http://www.nou.edu.ng/noun/NOUN_OCL/pdf/pdf2/POL%20%2020211.pdf.

²² *Id.* at 110.

²³ *Id.* at 147.

²⁴ McQuoid-Mason, *supra* n.26, at 112.

²⁵ LEGAL AID COUNCIL OF NIGERIA, <http://www.legalaidcouncilofnigeria.org/pages/operandi.html>

²⁶ McQuoid-Mason, *supra* n.26 at 113.

²⁷ *Id.*

Research and Statistics.²⁸ Recent surveys indicate that LACs across the country are still understaffed, with only about 100 lawyers spread across 37 offices.²⁹

The LAC also makes referrals to private lawyers, whose names are registered on panels of practitioners maintained by the LAC, in accordance with the Legal Aid Act.³⁰ These practitioners provide legal services to the LAC for a nominal fee.³¹ Lawyers who are willing to assist persons seeking legal aid are entitled to be included on the panel, unless the LAC has good reason for excluding them.³² In practice, some lawyers on the panel undertake legal aid work *pro bono* because it is not worthwhile for them to claim the nominal fee.³³

Although the federal government has sought ways to strengthen the LAC it remains a relatively ineffective system for legal aid.³⁴

Various reasons have been cited for its seeming ineffectiveness including.

- Inadequate funding³⁵
- Lack of police cooperation³⁶
- Lack of publicity and inadequate information on access to justice³⁷
- Delays in investigating crime by the police³⁸
- Prison congestion
- Delays in the administration of justice³⁹
- 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 enough⁴⁰

Lack of funding and resources directly affects the overcrowding in prisons since inmates must wait for legal assistance. The overcrowding has gotten so bad that in 2010, the Nigerian government announced it would execute death row inmates to ease prison congestion.⁴¹ The overcrowding is due, in part, to delays in trials and failure to provide enough lawyers to represent the detainees. It is believed that due to the flaws in the justice system on various levels, some, or even many, of those may be innocent, and unduly detained.⁴²

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

²⁸ *Id.*

²⁹ HUMAN RIGHTS WATCH, *Nigeria: Halt Plan to Resume Executions* (Jun. 25, 2010), <http://www.hrw.org/en/news/2010/06/25/nigeria-halt-plan-resume-executions>.

³⁰ McQuoid-Mason, *supra* n.26, at 113.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 111; HUMAN RIGHTS WATCH, *supra* n.35.

³⁶ HUMAN RIGHTS WATCH, *Rest in Pieces: Police Torture and Deaths in Custody in Nigeria*, Part IX (Jul. 27, 2005), available at <http://www.hrw.org/en/node/11630/section/10>.

³⁷ LEGAL AID COUNCIL OF NIGERIA, *supra* n.31.

³⁸ HUMAN RIGHTS WATCH, *supra* n.43.

³⁹ HUMAN RIGHTS WATCH, *supra* n.43.

⁴⁰ *Annual Report 2006*, LEGAL AID COUNCIL OF NIGERIA, at 12.

⁴¹ HUMAN RIGHTS WATCH, *supra* n.35.

⁴² *Id.*

Vision document.⁴³ The Ministry of Justice and the Attorney-General's office identified the need to examine ways of:

- Upholding the Constitution and the rule of law
- Promoting justice, fairness, and human dignity
- Incorporating and expanding community participation in the administration of justice⁴⁴

In 2003, Professor David McQuoid-Mason⁴⁵ proposed that the Legal Aid Council of Nigeria could contribute to this process by establishing a public defender network using law graduates in the NYSC, which could expand the services provided by the LAC.⁴⁶

In October 2004, in collaboration with the Open Society Justice Initiative, the Rights Enforcement & Public Law Centre (“REPLACE”) and the police, the LAC launched a Police Duty Solicitors Scheme (“PDSS”).⁴⁷ The PDSS is being implemented in six states and places volunteer lawyers at designated police stations to provide legal support to pre-trial detainees.⁴⁸ The volunteers are recent law graduates who are supervised by an experienced lawyer.⁴⁹ Duty solicitors are expected to provide ‘on-call’ legal assistance at designated police stations 24 hours a day, 7 days a week.⁵⁰ They intervene promptly in cases where a criminal suspect does not have a lawyer, providing basic legal advice and follow up.⁵¹ The project’s goal is 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, and emphasize interagency cooperation, capacity development and institutional innovation.⁵² According to one source, a total of 10,923 pre-trial detainees have been released between January 2007 and June 2011 from the six Project states.⁵³

In another initiative, the LAC collaborated with the International Federation of Women Lawyers in 2010 through an awareness project on the Child’s Rights Act in the six political zones of Nigeria.⁵⁴ Their aim was to encourage the 36 states to give effect to the Act’s contents, or to adopt the Act.

The LAC has had some notable developments in 2012. Earlier in the year, REPLACE, together with the LAC, intensified efforts to decongest Nigerian prisons.⁵⁵ The new Legal Aid Amendment Act was also passed at the end of 2011 and has been hailed as the needed impetus to help the LAC run more pro-actively and effectively.⁵⁶ President Goodluck Jonathan has assented to the Amendment Act which empowers the LAC to handle criminal, civil and fundamental rights cases brought to it by litigants,

⁴³ McQuoid-Mason, *supra* n.26.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ OPEN SOCIETY JUSTICE INITIATIVE, *Duty Solicitors and National Youth Volunteers*, available at <http://www.soros.org/sites/default/files/pretrial-replace-pilot-20120710.pdf>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Annual Report 2006*, *supra* n.49 at 29.

⁵³ REPLACE, *Police Duty Solicitor Scheme (PDSS)*, [http://www.replaceportal.com/what-we-do/police-duty-solicitor-scheme\(pdds\).html](http://www.replaceportal.com/what-we-do/police-duty-solicitor-scheme(pdds).html) (last visited Jun. 7, 2012).

⁵⁴ Abuja Olokor, *Women Lawyers Collaborate on Child Rights Act*, NBF Topics LEGAL AID COUNCIL (Aug. 31, 2010), <http://www.nigerianbestforum.com/generaltopics/?p=63979> (last visited Jun. 7, 2012); 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-geo-political-zones-that-make-up-nigeria-part-one/>).

⁵⁵ James Azania Benin, *REPLACE partners Legal Aid Council to decongest prisons*, PUNCH (Jan. 28, 2012), <http://www.punchng.com/news/replace-partners-legal-aid-council-to-decongest-prisons/>.

⁵⁶ Daniel Ehigalua, *Is the “Legal Aid Architecture” failing Nigerians?*, THE WRONGFUL CONVICTIONS BLOG (Feb. 24, 2012), <http://wrongfulconvictionsblog.org/2012/02/24/is-the-legal-aid-architecture-failing-nigerians/>.

especially those who are underprivileged.⁵⁷ Due to the recent nature of this development, it is too early to assess the impact of the Amendment Act.⁵⁸

II. *PRO BONO* IN NIGERIA: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

1. Duty Solicitor Scheme (“DSS”)

A separate Duty Solicitor Scheme was created in 2000 through a partnership between the Law Society of England and Wales and the Legal Defense and Assistance Project (“LEDAP”), a Nigerian NGO.⁵⁹ It is aimed at providing legal support for both the police and detained suspects at the point of first contact with the criminal justice system.⁶⁰

The first phase of the project focused on the implementation of the DSS in ten states from 2000 to 2003. This phase involved training lawyers to offer *pro bono* legal advice and representation to indigent criminal defendants and victims of human rights violations who could not afford legal representation.⁶¹ According to the Law Society, over 400 lawyers were recruited and trained, 10,700 cases were handled with bail granted in 85% of the cases and there was a 10% reduction in the prison population.⁶²

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.⁶³ Although the program continues to enjoy success, there is much that remains to be accomplished.⁶⁴ Thus, efforts to address the problem of pre-trial detention continue.

Since its start, the DSS has trained over 600 *pro bono* lawyers across those 15 states who have spent 65,000 *pro bono* days in court.⁶⁵

2. Indigent and Human Rights Defense

LEDAP’s Indigent and Human rights Defense program aims to provide free legal assistance to indigent remand prisoners.⁶⁶ It also provides legal assistance to indigent victims of human rights violations, other than those caused by the prison remand system.⁶⁷ Through this, the project aims to reform state-level criminal justice administration. 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.⁶⁸

B. Barriers To *Pro Bono* Work And Other Considerations

The barriers to *pro bono* work in Nigeria include widespread corruption, underfunding, lack of resources and lack of inter-agency cooperation. There are other considerations that may indirectly affect *pro bono* work as well. For example, generally civil society and the independent press are able to

⁵⁷ Adelanwa Bamgboye, *Nigeria: Legal Aid Council Empowered to Handle Criminal Cases*, DAILY TRUST (Oct. 4, 2011), <http://allafrica.com/stories/201110040683.html>.

⁵⁸ *Id.*

⁵⁹ THE LAW SOCIETY, *International Development, Promoting the rule of law worldwide*, http://www.lawsociety.org.uk/documents/downloads/intl_pamphlet.pdf. *But see*, Jon Parker, *Law Soc lends weight to Nigeria human rights pro bono scheme*, THE LAWYER (Apr. 9, 2007), <http://www.thelawyer.com/law-soc-lends-weight-to-nigeria-human-rights-pro-bono-scheme/125169.article> (regarding initiation date 1999).

⁶⁰ NIGERIAN BAR ASSOCIATION, *Blueprint for Reform: NBA Programme Strategic Plan*, <http://nba.org.ng/web/our-president.html>

⁶¹ THE LAW SOCIETY, *International Development, Promoting the rule of law worldwide*, http://www.lawsociety.org.uk/documents/downloads/intl_pamphlet.pdf

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Police Duty-Solicitor Scheme*, *supra* n. 63.

⁶⁵ THE LAW SOCIETY, *supra* n.74.

⁶⁶ LEDAP, *supra* n.71.

⁶⁷ *Id.*

⁶⁸ *Id.*

openly criticize the government, which allows for open public debate.⁶⁹ Despite this openness, there are still risks of police and political elite intimidation, which may affect *pro bono* work.⁷⁰

There remain significant needs in Nigeria that would benefit from *pro bono* services. The 2012 Human Rights Watch Report for Nigeria reports that local governments in 12 states use Sharia's law as part of their criminal justice systems, which often includes cruel and degrading punishment.⁷¹ Furthermore, serious due process concerns exist in these proceedings, while evidentiary standards often discriminate against women.⁷²

Additionally, an alarming disconnect between the average Nigerian lawyer and the most pressing legal challenges in Nigeria prevents lawyers from effectively engaging in public interest and *pro bono* activities.⁷³ However, since 2005, there has been a gradual shift towards developing and building future public interest lawyers in Nigeria through the introduction of the PDD schemes and clinical legal education programmes.⁷⁴

C. *Pro Bono* Resources

1. NGOs Providing Legal Assistance

In addition to RELIEF and LEDAP, 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 have more elaborate legal aid and law reform programs.⁷⁵

One such NGO is the Civil Liberties Organization (“CLO”). Its program called Legal Assistance Network (“LANE”), has trained over 2,500 lawyers in human rights litigation.⁷⁶ 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.⁷⁷

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.⁷⁸

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.⁷⁹

Although most NGOs provide some kind of legal advice and assistance, demand tends to far exceed supply, especially in rural regions.⁸⁰ 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

⁶⁹ HUMAN RIGHTS WATCH WORLD REPORT 2012, *Nigeria*, <http://www.hrw.org/world-report-2012/world-report-2012-nigeria> (last visited Jun. 7, 2012).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ NIGERIAN BAR ASSOCIATION, *supra* n.72.

⁷⁴ NULAI NIGERIA, PEACE & COLLABORATIVE DEVELOPMENT NETWORK, *Public Interest Lawyering and Clinical Education* (Mar. 19, 2012), http://www.internationalpeaceandconflict.org/profiles/blogs/public-interest-lawyering-and-clinical-legal-education?xg_source=activity.

⁷⁵ Bonny Ibhawoh, *Human Rights Organizations in Nigeria* at p. 56 (Jan. 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>.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Polly Botsford, *A Helping Hand*, LAW SOCIETY GAZETTE (Aug. 2, 2007), available at <http://www.lawgazette.co.uk/features/a-helping-hand-1>.

⁸⁰ *Id.* at 57.

volunteer lawyers assisting in human rights litigation; however, the success has been limited, due to the inadequate number of volunteer lawyers.⁸¹

2. Other NGOs active in the field include:

- **Human Rights Monitor (“HRM”)**, <http://hrm-nigeria.org/>
Based in Kaduna, this organization was founded in 1992 in response to the need for a human rights body to oversee the Northern part of the country.⁸² 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.⁸³
- **Institute of Human Rights and Humanitarian Law (“IHRHL”)**, <http://www.kabissa.org/directory/IHRHL> The IHRHL was set up in Port Harcourt in 1988, by a former CLO employee, and provides human rights advocacy and education on issues specific to the Port Harcourt area.⁸⁴ 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.⁸⁵
- **Social and Economic Rights Action Center (“SERAC”)**, <http://www.serac.org/>
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.⁸⁶ SERAC has adopted long-term strategies to promote these rights through projects such as the Forced Eviction Prevention Project,⁸⁷ and the Right to Health Project.⁸⁸
- **The Human Rights Law Service (“HURILAWS”)**, <http://hurilaws.org/>
HURILAWS started in 1997 and specializes in providing human rights legal services. A major part of its activity is test case litigation.⁸⁹ They have several test cases in Nigerian courts involving economic and social rights, especially regarding shelter and environmental rights.⁹⁰
- **Network of University Legal Aid Institutions (“NULAI”)**, <http://www.nulai.org/>
Promotes clinical legal education, legal education reform, legal aid and access to justice and the development of future public interest lawyers. Since NULAI was established in 2004, 14 university-based law clinics have opened in Nigeria, providing new avenues for free legal services.

In addition, some 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.⁹¹

III. CONCLUSION

The current state of *pro bono* services in Nigeria is a work in progress. More improvements are needed to help provide access and information to people who would actually need *pro bono* services; however, it is encouraging to see that affirmative steps have been taken, such as the new Amendment to the Legal Aid Act. A

⁸¹ *Id.*

⁸² 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 Jun. 7, 2012).

⁸³ *Id.*

⁸⁴ *Id.*; INSTITUTE OF HUMAN RIGHTS AND HUMANITARIAN LAW, <http://www.kabissa.org/directory/IHRHL> (last visited Jul. 2, 2012).

⁸⁵ *Id.*

⁸⁶ Ibhawoh, *supra* n.89, at 48; SERAC <http://www.serac.org/>.

⁸⁷ SERAC, www.serac.org/Publications/Resisting%20Forced%20Evictions.doc.

⁸⁸ SERAC, *Locating Health as a Human Right: The Nigerian Context*, <http://www.serac.org/Publications/LocatingHealthas%20a%20HumanRight.pdf>.

⁸⁹ HURILAWS, http://www.soawr.org/en/soawrmember/human_rights_law_service_hurilaws/.

⁹⁰ *Id.*

⁹¹ Ibhawoh, *supra* n.89, at 58.

holistic approach to legal aid and access to justice, combining several of the methods discussed above, would be beneficial to Nigeria.⁹²

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:

- 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
- Funding by the LAC of legal aid clinics and of justice centers manned by younger lawyers in NYSC, aiming at increasing access to justice

July 2012

Pro Bono Practices and Opportunities in Nigeria

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⁹² THE STATE OF HUMAN RIGHTS IN NIGERIA 2007, available at http://web.ng.undp.org/publications/governance/Humanright_electronic_2007.pdf (last visited Jun. 7, 2012).

PRO BONO PRACTICES AND OPPORTUNITIES IN NORWAY

Norwegian legal culture has promoted free legal aid for centuries dating back to the Royal Decree of September 9, 1638, an act that encouraged the provision of legal aid to all those who could not afford it.¹ Although legal assistance in litigation was historically commonplace, it was not until the 1950s that free legal assistance outside the courtroom began to take hold.² Currently, the Norwegian legal aid system is based almost entirely on *judicare* and the work of individual private attorneys. As a result, Norway does not have an established network of government-funded legal aid offices staffed with full-time attorneys. However, reforms in recent years aim to increase the availability and accessibility of legal aid for all Norwegian residents.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN NORWAY

A. The Legal Profession In Norway

More than 90% of all Norwegian attorneys are members of the Norwegian Bar Association (NBA) (*Advokatforeningen*).³ According to the NBA, its membership has increased more than 50% over the last decade from 4,764 members in 2000 to 7,169 in 2010.⁴ Of those members, 31% are women and 50% are under the age of 42.⁵ Over 75% of attorneys in Norway work in the private sector, with 31% working at firms with more than fifty employees. The remaining majority in the private sector work as either sole practitioners or as one of two to four employees in small practices.⁶ Those attorneys who are not employed in the private sector serve as legal counsel for companies and organizations, or work in the public sector.⁷

The court system in Norway consists of one Supreme Court (*Høyesterett*), six Courts of Appeal (*Lagmannsrett*), and 66 District Courts (*Tingrett*). These courts are also supplemented by specialty courts that include the Labour Court (*Arbeidsrett*) and the Land Consolidation Courts (*Jordskifetdomstolene*).⁸ Additionally, the majority of civil claims are initially heard by Conciliation Boards (*Forliksråd*). These Conciliation Boards are found in every municipality and are run by lay employees who help to mediate disputes. Conciliation Boards deal with more than 250,000 cases per year. Less than 5,000 of these cases ever proceed to the District Courts. The Conciliation Boards are authorized to enter judgments in certain cases, e.g., if both parties consent, if one party is absent and the other party requests a judgment of absence, or if the disputed amount does not exceed 125,000 kroner (NOK), roughly \$21,000.⁹

It is worth noting that, unlike other court systems, Norwegian courts actively involve lay judges in their proceedings. Lay judges are selected by municipal councils and are appointed for four-year terms. These civilian judges participate in civil and criminal cases in both the District and Appellate courts. To be selected as a lay judge, one must be between the ages of 21 and 70 with a clean criminal record and the ability to stand in municipal elections.¹⁰

Section 218 of The Courts Act of 1915 grants attorneys the right to render legal assistance. To practice as an attorney and provide legal assistance under Section 218, an attorney must be licensed through the state. Historically, this mandate has been enforced in order to protect the public from unskilled legal advice and to help regulate the legal profession. The Supervisory Council for Legal Practice (*Tilsynsrådet*) is the regulatory body authorized to issue licenses. In order to obtain a license, an applicant must have a degree in law from a Norwegian university. Additionally, the applicant must have a clean record of conduct and have practiced as an associate lawyer or assistant judge for two years. During their time as an associate lawyer, the applicant must have tried three civil cases before the courts, or one civil case and four criminal cases, or another applicable composition of cases. For

¹ STOCKHOLM INSTITUTE FOR SCANDINAVIAN LAW, *The Norwegian Bar Association*, 315 (2010).

² Jon T. Johnsen, A New Scheme for Short Legal Advice in Norway, 4 (2011).

³ *Advokatforeningen*, http://www.advokatforeningen.no/_funksjonsmeny/English/ (last visited May 29, 2012).

⁴ NORWEGIAN BAR ASSOCIATION, *Annual Report 2010*, 2 (2010).

⁵ *Id.* at 3.

⁶ *Id.* at 5.

⁷ *Id.* at 3-5.

⁸ DOMSTOL ADMINISTRASJONEN, *Courts of Norway*, 1.

⁹ *Id.* at 5.

¹⁰ *Id.* at 2.

assistant judges, it is sufficient that the applicant has practiced as a judge for two years. Finally, the applicant must participate in a special course that addresses issues facing practicing attorneys.¹¹

The Supervisory Council for Legal Practice may grant the right to render legal assistance to applicants who are not attorneys. According to Section 218 of the Courts Act, applicants who have a relevant law degree but are not licensed as an attorney or applicants who are certified as public accountants, may provide legal assistance. Additionally, other applicants may provide legal assistance if the Supervisory Council for Legal Practice finds it appropriate and gives special permission for such assistance. Special permission is often given to free legal aid organizations run by law students such as Juss-Buss (Oslo), Jussformidlingen (Bergen), Jusshjelpa i Nord-Norge (Tromsø), Jushjelpa i Midt_Norge (Trondheim) and Jurk (Legal Counseling in Oslo for Women). If approved by the Supervisory Council, foreign advocates may also be granted the right to render legal assistance on certain terms set by the Ministry of Justice in Regulation of Attorney Practice (*Advokatforskriften*).

All attorneys are subject to the code of conduct promulgated by the NBA and ratified as the Regulation of Attorney Practice by the Ministry of Justice. Disciplinary committees within the NBA are responsible for hearing all alleged violations by attorneys, both of the code and applicable Norwegian law.¹² The NBA committee's decision may be appealed to a government-appointed disciplinary committee, of which the NBA committee acts as secretariat. The Supervisory Council also assists in disciplinary matters. Upon advice of the Supervisory Council or the disciplinary committees, the Lawyer License Committee (*Avokatbevillingsnemnden*) may revoke an attorney's license.¹³

B. Legal Aid

1. Legal Aid Act and Criminal Procedure Act

Unlike other Nordic countries, Norway does not have a constitutional provision that secures legal aid for all Norwegian residents. Instead, Norway subscribes to the European Convention on Human Rights and the International Covenant on Civil and Political Rights, both of which contain articles that grant everyone the right to a fair trial within a reasonable period of time.¹⁴ These conventions are incorporated into Norwegian law and take precedent over any conflicting national legislation.¹⁵

In accordance with these foundational conventions, Norway has both a civil and criminal legislative scheme in place to implement free legal assistance. The Legal Aid Act of 1980 ("LAA") (*Rettskjelpsloven*) provides for free legal advice and representation in civil cases, while the Criminal Procedure Act of 1981 (*Straffesprossessloven*) provides free representation for defendants and victims. Legal aid in Norway is largely federally funded; however, in some cases the use of legal aid insurance contributes to a reduction in federal funding, as the private companies and their policy holders pay the costs for legal assistance.

Both the LAA and the Criminal Procedure Act place a number of restrictions on the provision of aid. The LAA lists in detail the types of civil cases that are eligible for free legal advice or representation. To receive aid for some of these cases, the applicant must meet the financial requirements of the Legal Aid Regulation of 2005 (*Forskrift til lov om fri rettskjelp*).¹⁶ Under this regulation, an applicant is eligible for free legal aid if their gross income does not exceed NOK 246,000, roughly \$41,000.¹⁷ If the applicant is married or living with someone, their

¹¹ STOCKHOLM INSTITUTE FOR SCANDINAVIAN LAW, *The Norwegian Bar Association*, 317 (2010).

¹² *Id.* at 318.

¹³ *Id.* at 318.

¹⁴ See European Convention on Human Rights, art. 6 (Nov. 4, 1950); see also International Covenant on Civil and Political Rights, art. 14 (Dec. 16, 1966).

¹⁵ Jon T. Johnsen, *Might Norway Learn From Finnish Legal Aid?: A Comparison of Legal Aid in Norway and Finland*, 8 (2009).

¹⁶ If the applicant meets the financial requirements of the LAA, they may receive free legal advice in cases involving: the Marriage Act; Children Act; Administration of Estates Act; the right to a joint residence and household goods once a household community ceases to exist; suit for damages for personal injury or loss of a provider; Tenancy Act; Working Environment Act; compensation for a violent crime; appeals to the National Insurance Service or National Insurance Administration; appeals to executive administrative bodies pursuant to National Insurance Act and Labor Market Act regarding benefits under the National Insurance Act. (Legal Aid Act, ch. 2, § 11).

¹⁷ Legal Aid Regulation, ch. 1, § 1-1.

joint gross income must not exceed NOK 369,000, approximately \$61,500.¹⁸ Despite this regulation, there are some cases where an applicant can receive free legal advice and/or representation regardless of financial status.¹⁹

Cases covered by the LAA often involve foreign nationals, child welfare, military conscription, violent crimes, forced marriage, personal injury and living/working conditions. In spite of these detailed specifications, the LAA also leaves room for discretion, permitting additional matters to be eligible for free legal aid. Specifically, sections 11 and 16 of the LAA state that free legal aid may still be granted if the applicant meets financial requirements and the case is objectively “pressing.” Moreover, the Supreme Court is given complete discretion to authorize free legal representation in civil cases where application to enter the Supreme Court is accepted and where it is reasonable based on public importance.²⁰

The provision of legal aid in criminal matters is based on the Norwegian Criminal Procedure Act. The Act allows for free representation for both defendants and victims.²¹ However, like the LAA, the Criminal Procedure Act contains certain requirements for the provision of free aid. As a general rule, a criminal defendant is entitled to legal representation. However, if that defendant has violated specific provisions of the Road Traffic Act, counsel is not mandated. Additionally, if a defendant has confessed and waived his right to a trial and the maximum sentence allowable does not exceed six months, then counsel is not provided. Finally, based on the circumstances of the case, the court may determine that it is “unobjectionable” for the defendant to proceed without counsel.²²

2. Legal Aid Administration, Providers and the 2009 Parliamentary Policy Report

Legal Aid in Norway is administered by legal and administrative bodies. The LAA provides that legal aid may be granted by either the court or administrative body hearing the case, or the Ministry of Justice.²³ Under the LAA, the Ministry may delegate approval authority to other parties. Often, County Governors are tasked with handling legal aid request applications.²⁴

Legal Aid providers vary, based on the type of assistance rendered. The Parliamentary Ombudsman, for example, serves as a supervisor of public administration agencies. Supervision is carried out on the basis of complaints from citizens concerning any maladministration or injustice on the part of a public agency. The Parliamentary Ombudsman processes complaints that apply to government, municipal or county administrations. Before the citizen files a complaint with the Ombudsman, he or she must have exhausted all local complaint procedures. Additionally, the Ombudsman may also address issues on his own initiative. Making a complaint to the Ombudsman is free of charge. Nevertheless, the Parliamentary Ombudsman does not have the authority to adopt binding decisions or to reverse decisions made by the administration agency. Nor does he have the power to issue legally binding instructions to the authorities. In practice, however, the authorities comply with the requests and recommendations of the Ombudsman. If the Norwegian Parliamentary Ombudsman recommends that an individual pursue litigation, that party is provided free legal representation under the LAA.²⁵

¹⁸ *Id.*

¹⁹ An applicant may receive free legal advice, regardless of financial status, for cases that involve: aid under the Immigration Act; child welfare proceedings; suit for wrongful prosecution; suit for damages by victims of violent crimes; initial military conscription; abuse by a close family member in connection with a criminal case; forced marriage. (Legal Aid Act, ch. 2, § 11). An applicant may receive free legal representation, regardless of financial status, if the case involves: suit for damages by victims of violent crimes; military conscription and/or conscientious objector issues; forced marriage; coercive measures under the Dispute Act; suits recommended by ombudsman for public administration; foreign nationals under the Immigration Act; parties in competency petition cases; parties in guardianship cases; parties appointed attorneys under the Children Act. (Legal Aid Act, ch. 3, § 16).

²⁰ *Id.* at ch. 3, § 18.

²¹ *See id.* at ch. 9, § 94 and ch. 9a, § 107a.

²² *See id.* at ch. 9, § 99.

²³ *Id.*, at ch. 3, § 19.

²⁴ Legal Aid Regulations, chs. 3-4, §§ 3-1 - 4-6.

²⁵ Legal Aid Act, ch. 3, § 16.

In addition to the Ombudsman, there is a network of membership and volunteer organizations that also provide individuals with *pro bono* legal advice. Membership organizations for farmers, homeowners, tenants, car owners, taxpayers, consumers and unions offer liberal advice to their members and in some cases will provide financing for private attorneys.²⁶ Volunteer organizations include student clinics and advocate organizations. Student clinic intake centers are set up in prisons and immigrant reception camps, and a “street lawyer” program (*Gatejuristen*) seeks out drug and alcohol abusers to offer assistance.²⁷

Currently there are two public legal aid offices in Norway, one in Oslo and the other in the Sami region of northern Norway. Both offices staff less than ten employees total. These offices can only assist in matters outside of court.²⁸ If the issue presented requires litigation, the client is then referred to an attorney in private practice. Both offices are able to provide recommendations for local counsel; however, clients are free to choose their own attorney within their district, regardless of the recommendation.²⁹

As mentioned in Section I A, The Supervisory Council for Legal Practice may grant applicants other than attorneys the right to render legal assistance, including matters before the court, as well as outside the court. However, this type of legal assistance is rarely utilized in place of classical legal assistance performed by authorized attorneys. As a result, private attorneys are the central providers of legal aid in Norway.³⁰ To help facilitate attorney availability, the NBA has established short legal advice services at local bar associations. Attorneys staff an office once or twice a month and receive drop-in clients for 30-minute consultations. The Oslo-based service reported that attorneys were able to solve approximately 70 percent of the problems they were presented with during the 30-minute consultation.³¹

A recent Parliamentary Policy Report published in 2009 attempts to supplement this existing system of providers as well as extend the reach of the LAA. While the plan is currently in a testing period through the end of 2012, it aims to provide legal aid for a wider array of cases, liberalize financial requirements for applicants and improve quality assurance measures.³² Most importantly, the plan has put in place a free first line service across the country. Roughly 24 municipalities are voluntarily participating in the plan, setting up Municipality Service Centers (MSCs) and contracting with local attorneys to provide legal advice for matters both inside and outside the court system.³³ The MSCs provide one-hour consultations for all clients. The government is currently in the process of collecting data on the systematic development of these services in order to make a final decision at the end of 2012 on whether or not to implement the system countrywide.³⁴

The 2009 Parliamentary Policy Report has renewed the government’s focus on expanding legal aid in Norway. However, there has yet to be an indication that the country’s budget will increase along with proposed changes. One of the central issues for the NBA continues to be the low hourly rate that attorneys are paid by the government when taking on legal aid cases.³⁵

Despite this fee dispute, Norway is still one of the top countries in Europe, in terms of legal aid funding per inhabitant. According to the 2010 report of the European Commission for the Efficiency of Justice, Norway allocates roughly 32.5 € per inhabitant for legal aid – a rate ranked third in Europe behind only England & Wales (34.5 €) and Northern Ireland (49.5 €).³⁶

²⁶ Johnsen, *supra* n.15, at 7, 16.

²⁷ Johnsen, *supra* n.2, at 21.

²⁸ Johnsen, *supra* n.15, at 6.

²⁹ In some cases, clients may even choose an attorney outside their district if a sufficiently qualified provider cannot be found locally. See Johnsen, *supra* n.15, at 17.

³⁰ *Id.* at 22.

³¹ Johnsen, *supra* n.2, at 8 (2011).

³² *Id.* at 1, 25.

³³ *Id.* at 6.

³⁴ *Id.* at 26.

³⁵ NORWEGIAN BAR ASSOCIATION, Annual Report 2010, 13 (2010). While the NBA proposed a fee rate of NOK 1,050 per hour (approximately \$178), the government has held steadfast at NOK 905 per hour (roughly \$160).

³⁶ EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE, EUROPEAN JUDICIAL SYSTEMS: EFFICIENCY AND QUALITY OF JUSTICE, 32 (2010).

However, despite their high ranking, the Norwegian contribution dropped 8.4% in 2010 as compared to previous years.³⁷

II. *PRO BONO* IN NORWAY: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

The culture of Norwegian legal aid is rooted in the belief that access to free legal aid is a welfare benefit that should be made available only for legal problems of great personal and welfare significance to the applicant.³⁸ Cases that involve serious interventions into an individual's integrity by the government or other citizens are of particular importance in this legal aid scheme.³⁹ These cases are of such import that the government will provide free legal advice or representation to applicants regardless of their financial situation. Provision in these instances is based on the belief that anyone suffering loss of liberty or personal integrity should not have to pay for the legal costs inflicted as a result.⁴⁰ Roughly one-third of all grants provided by the Norwegian government in civil cases are given regardless of an applicant's financial standing.⁴¹

While there may be specific underlying motivations for the provision of aid in Norway, the manner in which that aid is administered is often generalized. Instead of a comprehensive aid system that contemplates multiple forms of service in order to solve any given problem, Norway's aid system focuses largely on providing access to courts and funding to hire counsel.⁴² There are some provisions in the LAA that provide financial aid for research regarding broad reforms and policy initiatives, but such provisions are rarely used.⁴³

Approximately one-third of practicing attorneys in Norway accept legal aid clients under the *judicare* system currently in place.⁴⁴ The majority of these attorneys work on a few cases per year. However, the continued and expanding presence of MSCs, as well as the progressive plans of the 2009 Parliamentary Policy Report, continue to create more opportunities for legal aid work within the country. For example, under the MSC test plan, each individual municipality is in charge of hiring attorneys to staff their MSCs. Those attorneys are paid for a set number of service hours regardless of the number of clients they assist during that time. Depending on the MSC, free legal services can be administered at MSC locations or at the individual offices of participating attorneys.⁴⁵ Moreover, the government is also contemplating the use of a legal advice hotline. Like the MSCs, a hotline program would provide another opportunity for attorneys to assist in the provision of *pro bono* services.⁴⁶

Outside of these start-up opportunities under recent reforms, attorneys can also get involved in *pro bono* matters through the Norwegian Bar Association.

B. Barriers To *Pro Bono* Work And Other Considerations

In Norway, there are a number of barriers affecting an attorney's ability to administer aid, as well as a citizen's ability to obtain aid. First, attorneys must have the right standing in order to be able to provide legal advice in cases that are likely to end up in the court system or are already in the courts. Specifically, the right standing means the attorney has obtained the necessary paperwork or certifications in order to practice legally within Norway, cf. Section I A above.

Foreign advocates practicing in countries outside the European Economic Area ("EEA") that would like to set up a permanent practice in Norway must obtain a license from the Supervisory Council for Legal Practice, insurance for their practice, make a financial contribution to the Supervisory Council for

³⁷ *Id.* at 34.

³⁸ Johnsen, *supra* n.15, at 9.

³⁹ Specifically, cases that involve criminal charges that carry a prison sentence, involuntary expulsion from the country, public child custody, involuntary health treatment, conscientious objectors to military conscription, loss of legal competence, compensation for crime victims, sexual crimes, female circumcision and forced marriage fall into this category. (Johnsen, *supra* n.15, at 14.)

⁴⁰ *Id.* at 14.

⁴¹ *Id.* at 21.

⁴² *Id.* at 9.

⁴³ *Id.* at 16.

⁴⁴ Johnsen, *supra* n.2, at 11.

⁴⁵ *Id.* at 26.

⁴⁶ *Id.* at 16.

Legal Practice and the Disciplinary Council for Advocates, and provide a willingness declaration from a registered public accountant. However, these advocates may only advise on matters related to foreign and international law.⁴⁷ Foreign advocates practicing within the EEA who wish to set up a permanent practice in Norway must submit notice to the Supervisory Council along with a completed application, obtain insurance (like every Norwegian attorney), and submit a certificate verifying attorney registration in their domiciliary state.⁴⁸ That advocate is then free to advise on matters in both foreign and international law as well as Norwegian law. Finally, foreign advocates may also serve as “guest advocates.” Guest advocates are not required to obtain a license from the Supervisory Council but may be required to submit documentation that certifies their ability to practice law abroad.⁴⁹ Guest advocates are free to advise on matters of foreign, international and Norwegian law. To perform by oneself in court, all foreign advocates must master the Norwegian language. If Norwegian language skills are not obtained by the foreign advocate, the advocate must perform jointly with a Norwegian attorney, unless the court agrees to proceed otherwise.

Second, some clients are required to pay “contributions” for the legal advice or representation they receive under the LAA. Cases where an applicant must meet certain financial requirements before receiving public aid are considered “means-tested” cases. Under the LAA, aid recipients in means-tested cases must pay a contribution to their provider for expenses incurred.⁵⁰ The amount of the contribution is calculated on a base amount equivalent to the fee rate in place at the time. For subsidized legal advice, the client’s contribution is equal to the base amount. For subsidized legal representation, the client’s contribution is 25% of all expenses paid, although that amount cannot exceed five times the base amount.⁵¹ These contributions are not required in cases where the applicant did not have to meet financial requirements in order to obtain aid. As a result, only applicants in financial need are the ones who must bear the burden of contribution.⁵² A client is not required to pay a value-added tax on top of the client’s contribution.⁵³ An attorney may choose to waive the contribution requirement. However, if an attorney does not waive the contribution in cases where such a contribution is required, a client may be denied legal assistance.

Third, not every case in need of legal aid is covered by the existing legal aid system. The LAA specifically states that it is a subsidiary act that provides aid only when such aid will not be provided by other schemes.⁵⁴ Additionally, the LAA only provides aid in specific types of cases – most of which demonstrate a bias to urban problems.⁵⁵ The same limited coverage exists in volunteer and membership organizations that operate separately from the LAA. As a result, there are problems that require legal assistance that fall outside the LAA and outside aid organizations.⁵⁶ Therefore, attorneys interested in taking on these cases must do so at their own expense without any outside assistance.

Finally, legal aid in Norway lacks a sufficient quality assurance system. While all attorneys, regardless of their membership, are subject to the ethical standards and disciplinary boards of the NBA, those standards have been deemed insufficient for legal aid purposes.⁵⁷ Moreover, the NBA has repeatedly reported that the fee rate paid by the government to attorneys taking on legal aid cases is too low and affects the quality of the work provided.⁵⁸ In its 2009 Parliamentary Policy Report, the Norwegian

⁴⁷ *Advokatforeningen*, <http://www.advokatforeningen.no/Funksjonsmeny/English/Foreign-advocates-in-Norway/> (last visited May 29, 2012).

⁴⁸ Regulations for Advocates, § 10-2.

⁴⁹ <http://www.advokatforeningen.no/Funksjonsmeny/English/Foreign-advocates-in-Norway/>

⁵⁰ Legal Aid Act, ch. 1, § 9.

⁵¹ *Id.*

⁵² However, applicants with a gross annual income below NOK 100,000 (roughly \$16,600) are not required to pay a contribution. (Legal Aid Regulations, ch. 2, § 2-2).

⁵³ *Id.* at ch. 2, §§ 2-3; ch. 3, §§ 2-3.

⁵⁴ For instance, the LAA does not provide aid to help pay for counsel in criminal cases (since the provision of counsel is governed by the Criminal Procedure Act); in matters covered by private insurance; in cases under section 36 of the Public Administration Act; in matters assisted by public service and advisory offices; or in cases covered by funding through membership organizations. (Legal Aid Act, ch. 1, § 5).

⁵⁵ Johnsen, *supra* n.15, at 11. (Examples of cases demonstrating an urban bias include dissolution of marriage and cohabitation, compensation for personal injuries, loss of provider and crime injuries, job dismissal, rental termination and complaints over social security denials).

⁵⁶ *Id.* at 10-11.

⁵⁷ Johnsen, *supra* n.2, at 11.

⁵⁸ NORWEGIAN BAR ASSOCIATION, *supra* n.4, at 1.

government proposed that a new set of standards be put in place to apply specifically to attorneys performing legal aid work.⁵⁹ The report further recommended the implementation of a system to approve permanent legal aid attorneys in order to encourage the specialization of legal aid work.⁶⁰ It does not appear that either of these recommendations have been implemented yet.

C. *Pro Bono* Resources

There are a variety of volunteer and public enterprise organizations that provide a wide array of support on a number of issues affecting Norwegian citizens. Some of the more prominent organizations include Norwegian People's Aid, Juss-Buss and Jussformidlingen. Norwegian People's Aid ("NPA") specializes in first aid and rescue services, as well as asylum and integration cases. The NPA works both domestically and internationally.⁶¹ Both Juss-Buss and Jussformidlingen are free legal aid organizations run by law students from the University of Oslo and the University of Bergen, respectively. Juss-Buss specializes in cases involving the Immigration Act, Norwegian prisoners' rights, family law and debt cases, and labor, pensions and social welfare work.⁶² Jussformidlingen handles similar cases.⁶³

In addition to these three organizations, local, free and confidential mediation boards are located throughout the country to assist individuals with disputes. There is also an online advocate program that allows users to seek out legal advice online.⁶⁴ Finally, any one of the Municipality Service Centers or NBA advice clinics can provide resources for attorneys seeking *pro bono* work.

III. CONCLUSION

Foreign attorneys interested in pursuing legal aid work in Norway should first obtain the necessary legal status. A position as a guest advocate involves the simplest process and appears to provide the most flexibility in terms of practice area. All attorneys, Norwegian and foreign alike, who are interested in assisting in *pro bono* matters should seek out their nearest Municipality Service Center. The Norwegian government has indicated that these service centers will become the new front line in legal aid administration in Norway. Experience with these centers will prove to be crucial as the legal aid system continues to evolve. Seeking out the assistance of the Norwegian Bar Association, an organization whose members make up over 90% of all practicing attorneys in the country, is also a valuable step in the path to providing free legal aid.

July 2012

Pro Bono Practices and Opportunities in Norway

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⁵⁹ Johnsen, *supra* n.12, at 13.

⁶⁰ *Id.* at 11.

⁶¹ NORWEGIAN PEOPLE'S FUND, http://www.npaid.org/en/about_us/ (last visited May 29, 2012).

⁶² *Foreninger*, <http://foreninger.uio.no/jussbuss/english/about/> (last visited May 29, 2012).

⁶³ *Jussformidlingen*, http://www.jussformidlingen.no/innhold/00a5_english.htm (last visited Jun. 25, 2012)

⁶⁴ *Advokatenhjelperdeg*, <http://www.advokatenhjelperdeg.no/artikler/advokatvakten/> (last visited May 29, 2012).

PRO BONO PRACTICES AND OPPORTUNITIES IN PAKISTAN¹

This chapter describes the legal practice in Pakistan, including major challenges to the rule of law, as well as efforts to promote the rights of marginalized communities. International and domestic human rights monitors have documented pervasive human rights abuses in Pakistan in several areas, including extra-judicial killings, gender-based discrimination and curtailed rights for refugee and displaced populations. Government-funded and nongovernmental organizations in Pakistan, as well as domestic law firms engaged in *pro bono* representation, provide free legal services to marginalized populations and rights organizations to address these issues. Those efforts are discussed below, as well as opportunities for foreign-qualified attorneys to provide assistance.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN PAKISTAN

A. The Legal Profession

The Pakistani judiciary is an independent branch² of government consisting of three broad categories of courts: the superior judiciary, subordinate courts, and special courts and tribunals.³ The Constitution of Pakistan contains detailed provisions on the composition, jurisdiction, power and function of the superior courts, which are tasked with the responsibility to “preserve, protect and defend” the Constitution.⁴

The Supreme Court is the highest court in the land, exercising original, appellate and advisory jurisdiction.⁵ The Court exercises original jurisdiction in disputes between the federal government and a provincial government, or disputes among provincial governments.⁶ The Court has appellate jurisdiction in criminal and civil matters.⁷ Unlike U.S. courts, the Supreme Court of Pakistan has jurisdiction to issue advisory opinions to the Government on questions of law.⁸ Finally, the Court has original jurisdiction (concurrent with the High Courts) over “Fundamental Rights” cases, where a question of “public importance” is involved.⁹ Given the high volume of these cases and the need for expeditious and inexpensive remedies for poor and vulnerable members of society, the Supreme Court has established a Human Rights Cell under the supervision of the Chief Justice of Pakistan.¹⁰ The Cell receives approximately 250 applications for relief per day.¹¹ Matters disposed without entering the protracted traditional litigation process have led to individual relief and major statutory reforms.¹²

Directly below the Supreme Court are the High Courts. There is a High Court in each of the four provinces and a High Court for the Islamabad Capital Territory.¹³ The High Courts exercise original jurisdiction in Fundamental Rights matters and appellate jurisdiction over civil and criminal judgments entered by the subordinate courts.¹⁴

Standing apart, the Federal Shariat Court has jurisdiction to determine, on its own motion or through petition by a citizen or the Federal or a provincial Government, whether or not a certain provision of law is repugnant to the injunctions of Islam.¹⁵ The Court also exercises appellate jurisdiction over the criminal courts deciding *Hudood* cases.¹⁶ Federal Shariat Court judgments are binding on High Courts

¹ This chapter was drafted with the support of Maria Khan, Amna Akbar, and Naureen Shah.

² Dr. Faqir Hussain, *The Judicial System of Pakistan*, SUPREME COURT OF PAKISTAN, 10 (Feb. 15, 2011), available at http://www.supremecourt.gov.pk/web/user_files/File/thejudicialsystemofPakistan.pdf (citing PAKISTAN CONST. art. 2A) (The Constitution calls for the “separation of the judiciary from the executive” and the “independence of the judiciary.”).

³ *See Id.*

⁴ PAKISTAN CONST. art. 178 & 194 read with 3rd Sched.; *Hussain, supra* n.2, at 10.

⁵ PAKISTAN CONST. art. 184, 185 & 186.

⁶ PAKISTAN CONST. art. 184 (1).

⁷ Pakistan Const. art. 185.

⁸ Pakistan Const. art. 186.

⁹ PAKISTAN CONST. art. 184 (3). Fundamental Rights are protected in Chapter II of the Constitution.

¹⁰ *Hussain, supra* n.2, at 14.

¹¹ *Id.* at 15.

¹² *Id.*

¹³ *Id.* at 16.

¹⁴ *Id.* at 18.

¹⁵ PAKISTAN CONST. art. 203-D.

¹⁶ PAKISTAN CONST. art. 203-D. In Islamic jurisprudence, the term *Hudood*, or *Hudūd*, refers to fixed and mandatory punishments for certain offenses mentioned in the Qur’ān and *sunnah*. See Rudolph Peters, *Hudūd*, THE OXFORD ENCYCLOPEDIA OF THE ISLAMIC WORLD, OXFORD ISLAMIC STUDIES ONLINE, <http://www.oxfordislamicstudies.com/article/opr/t236/e0322> (last visited Jul. 1, 2012).

and the subordinate judiciary,¹⁷ though the Court's jurisdiction has recently been curtailed with regard to *Zina* offenses.¹⁸ Appeals against Federal Shariat Court judgments are heard by the Shariat Appellate Bench of the Supreme Court.¹⁹

The subordinate judiciary is broadly made up of civil and criminal courts in the provinces set up under statute.²⁰

Finally, the Constitution allows the legislature to establish administrative courts and tribunals over federal issues.²¹ These include drug courts, loan recovery courts, tax courts, labor courts, anti-terrorism courts, and anti-corruption courts, among others. Provincial governments also set up special courts under statutes.²²

While the Constitution guarantees the functioning of an independent judiciary, it is worth noting that the Constitution itself has been suspended several times in Pakistan's short history. In the most recent bout, Pakistan's legal workers risked life and limb protesting. In 2007, in a major challenge to the independence of the judiciary, President Pervez Musharraf dismissed the Chief Justice of the Supreme Court and placed him under house arrest.²³ Weeks of protest by Pakistani lawyers ensued.²⁴ In July, the Supreme Court ruled that the President did not have the power to dismiss the Chief Justice and reinstated him.²⁵ In November of 2007, while the hearings over President Musharraf's eligibility to run for office were pending at the Court, Musharraf suspended the Constitution, imposed emergency rule, dissolved the Supreme Court and provincial High Courts and placed judges under house arrest.²⁶ Lawyers revolted and for the second time that year emerged as the vanguard of the protest movement.²⁷ Lawyers marched in black suits, white shirts, and black ties.²⁸ Police beat and arrested hundreds of protesting lawyers, including one of the country's most prominent corporate lawyers.²⁹ The rule of law was restored with elections in 2008.³⁰

The practice of law in Pakistan is primarily governed by the Legal Practitioners and Bar Councils Act, 1973 (most recently amended in 2005).³¹ The Act established the Pakistan Bar Council, as well as bar councils in each of the four provinces.³² The provincial bar councils are representative bodies consisting of the advocate general and council members elected from districts within each province.³³ Each council is elected for a five-year term, during which they nominate judges to the bench, engage in rulemaking, promote legal reform, hold examinations for the purpose of admissions, admit persons as advocates on its roll and determine cases of misconduct against advocates on its roll.³⁴ The Pakistan Bar Council lays down standards of professional conduct, accredits law schools and admits advocates to practice before the Supreme Court, among other things.³⁵

¹⁷ PAKISTAN CONST. art. 203-G. The term *zinā* is used generally to describe sexual activity that is punishable under Islamic law, including fornication and adultery. See Feryal Elif Salem, *Zinā*, THE OXFORD ENCYCLOPEDIA OF THE ISLAMIC WORLD, OXFORD ISLAMIC STUDIES ONLINE, <http://www.oxfordislamicstudies.com/article/opr/t349/e0013> (last visited Jul. 1, 2012).

¹⁸ Hussain, *supra* n.2, at 20-21.

¹⁹ PAKISTAN CONST. art. 203-F.

²⁰ Hussain, *supra* n.2, at 21. Civil courts are established under the West Pakistan Civil Courts Ordinance, W. P. Ord. II of 1962; criminal courts are established under the Code of Criminal Procedure [Pakistan], Act. V of 1898.

²¹ Hussain, *supra* n.2, at 21.

²² Hussain, *supra* n.2, at 22.

²³ Jane Perlez & David Rohde, *Pakistan Attempts to Crush Protests by Lawyers*, N.Y. TIMES, Nov. 6, 2007, available at <http://www.nytimes.com/2007/11/06/world/asia/06pakistan.html?pagewanted=all>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ U.S. STATE DEPARTMENT, *Country Reports on Human Rights Practices for 2011: Pakistan*, available at http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186473.

³¹ Legal Practitioners and Bar Councils (Amendment) Act, chs. II & III, 2005, available at http://www.pbbarcouncil.com/downloads/barcouncil_act_amended_2005.pdf.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at ch. IV.

Under the Legal Practitioners and Bar Councils Act, there are four classes of advocates: senior advocates of the Supreme Court; advocates of the Supreme Court; advocates of the High Court; and all other advocates.³⁶ The Act makes clear that “unless otherwise provided for in the Act, no person shall be entitled to practice the profession of law unless he is an advocate.”³⁷ The Act sets forth the qualifications for admission as an advocate, which include: Pakistani Citizenship, or one year of Pakistani residency and citizenship in a country that allows Pakistani citizens to qualify to practice law there; a law degree from a university recognized by the Pakistan Bar Council; bar exam; and fees.³⁸ In 2011, the Supreme Court reported that there were 74 law colleges in Pakistan located at 16 universities.³⁹ In estimating the strength of law officers and lawyers, in 2011 the Supreme Court reported that there were roughly 2,000 law officers in the federal and provincial governments (prosecutors, attorneys general, etc.), 4,118 Supreme Court advocates, 41,542 High Court Advocates and 43,964 subordinate court advocates, for a total of roughly 92,000 lawyers.⁴⁰ The Supreme Court’s numbers are broken down by seniority and province; Punjab clearly boasts the most developed legal community, while Balochistan’s legal community is just seven percent the size of Punjab’s. (However, Balochistan also has a much lower population.)

Global and domestic financial crises, as well as problems with transparency in privatization transactions, have reportedly resulted in decreased work at law firms in Pakistan.⁴¹ There are a handful of large successful multi-practice firms, but it appears that most lawyers in Pakistan practice in smaller organizations.

B. Legal Aid

Exercising rulemaking powers granted to it under the Legal Practitioners and Bar Councils Act, the Pakistan Bar Council established rules for the provision of free legal aid in 1988 and revised those rules in 1999.⁴² The 1999 Rules establish a system to provide free legal aid to “the poor, destitute, orphan[s,] widows, indigent and other deserving litigants”⁴³ needing assistance in the following categories of cases: accidents; succession certificate; family law; ejection; illegal detention; abuse of power and authority by police, law enforcing agency or Executive; neglect of duties by government or local bodies; public interest litigation; and other cases as approved by committee.⁴⁴ The 1999 Rules create Free Legal Aid Committees at the national level, in each provincial Bar Council and in each district.⁴⁵ The (national) Central Free Legal Aid Committee provides free legal aid to eligible litigants at the Supreme Court or federal tribunals.⁴⁶ Applications for legal aid are accepted at each registry of the Supreme Court.⁴⁷ Provincial committees provide representation in the High Court and any provincial-level tribunal, while the district committees provide aid at district-level proceedings.⁴⁸ The Rules provide a template application letter for those seeking legal aid to complete.⁴⁹

The 1999 Rules require that each Free Legal Aid Committee maintain a panel of advocates willing to take up these cases without a fee, and those willing to work for reduced fees.⁵⁰ The Schedule to the 1999 Rules sets forth maximum fees by court; for example, the Schedule sets a maximum fee of 5,000 Pakistani rupees (US\$53) for legal aid cases litigated at the Supreme Court.⁵¹ Lawyers providing *pro*

³⁶ *Id.* at ch. VI, § 21.

³⁷ *Id.* at ch. VI.

³⁸ *Id.* at ch. VI, § 26.

³⁹ Hussain, *supra* n.2, at 42.

⁴⁰ *Id.* at 41-42.

⁴¹ THE LEGAL 500, *Pakistan*, <http://www.legal500.com/c/Pakistan> (last visited Jul. 1, 2012).

⁴² *Pakistan Bar Council Free Legal Aid Rules*, PAKISTAN BAR COUNCIL NOTIFICATION, 139 (Sep. 8, 1999) available at http://www.pbbarcouncil.com/downloads/barcouncil_act_amended_2005.pdf.

⁴³ The criteria for eligibility is described elsewhere in the Rules as “a person who is entitled to Zakat or his financial position and income resources are not sufficient to bear the expenses for engaging an Advocate to prosecute, defend and protect his legal rights in genuine litigation.” *Id.* at § 2(2).

⁴⁴ *Id.* § 3.

⁴⁵ *Id.* § 4.

⁴⁶ *Id.* § 5.

⁴⁷ *Id.*

⁴⁸ *Id.* §§ 5-6.

⁴⁹ *Id.* sched.

⁵⁰ *Id.* § 8.

⁵¹ *Id.* sched.

bono legal services are not required to charge VAT on those services.⁵² Lawyers are also not required to charge a minimum tariff on those services.⁵³ While the 1999 Rules do not require advocates to give free legal aid as a general matter, a Committee may request any advocate to conduct one case in a year, free of charge.⁵⁴ The Free Legal Aid Committees are funded by the Pakistan Bar Council, provincial bar councils, government grants and other contributions.⁵⁵

In practice, *pro bono* work is only regularly taken on by a small number of firms.⁵⁶ Providing free legal services to indigent clients is not commonly part of firm culture in Pakistan; it is not typical for firms to set minimum *pro bono* billable hour goals; and, in some firms, taking on *pro bono* work is even discouraged.⁵⁷ However, thriving *pro bono* culture is sometimes found in Pakistani law firms that employ a high number of foreign-trained lawyers.⁵⁸

Several nongovernmental nonprofit organizations also provide free legal services to individuals in Pakistan. A few are highlighted below.

Established in 1980 by Asma Jahangir,⁵⁹ AGHS Legal Aid was the first free legal aid organization in the country.⁶⁰ AGHS focused on the rights of women, children and minorities in Pakistan.⁶¹ AGHS established a women's shelter in 1990, and has expanded its mandate to support other disadvantaged and marginalized populations.⁶² AGHS is involved in litigation, education, publication, domestic and international lobbying, organizing and abuse documentation projects.⁶³

Lawyers For Human Rights And Legal Aid (LHRLA), based in Karachi, works in the area of prevention of illegal detention, trafficking of women and children, state sanctioned torture, counseling of abused women and children and legal education of prisoners in detention.⁶⁴ LHRLA has advocated against the *Hudood* Ordinance, and has worked to build capacity within other NGOs, media and community through paralegal trainings, workshops and meetings.⁶⁵ LHRLA, in collaboration with UNICEF, set up the first crisis intervention helpline for women and children in Pakistan called Madadgaar.⁶⁶

The Human Rights Commission of Pakistan (“**HRC**P”) has been a leading voice in the struggle for human rights and democratic development in Pakistan since 1987.⁶⁷ HRCP provides legal aid and assistance to victims of human rights abuses, and engages in education, organizing and advocacy work around the ratification and implementation by Pakistan of the Universal Declaration of Human Rights and of other related internationally adopted norms.⁶⁸ HRCP also publishes comprehensive annual reports on the status of human rights in Pakistan.⁶⁹

⁵² Email from Maria Khan, Irfan & Irfan, to author (Jul. 10, 2012) (on file with author).

⁵³ *Id.*

⁵⁴ *Id.* § 8(f).

⁵⁵ *Id.* § 9(i).

⁵⁶ Email from Maria Khan, *supra* n.52.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Asma Jahangir is an internationally renowned human rights activist, a Supreme Court advocate and a critical voice against anti-democratic forces in Pakistan. She helped to establish AGHS, Women's Action Forum and the Human Rights Commission of Pakistan. She has served as U.N. Special Rapporteur on Extrajudicial Executions, U.N. Special Rapporteur on Freedom of Religion or Belief and President of the Supreme Court Bar Association of Pakistan.

⁶⁰ See AGHS LEGAL AID CELL, *About AGHS* (Jul. 6, 2007), <http://aghsblog.wordpress.com>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ See CHILD RIGHTS INTERNATIONAL NETWORK, *Lawyers For Human Rights And Legal Aid (LHRLA)*, <http://www.crin.org/organisations/vieworg.asp?id=630> (last modified May 17, 2001); WISER.ORG, *Lawyers For Human Rights And Legal Aid*, <http://wiserearth.org/organization/view/d771adace71213c1114b806f3682f857> (last modified Sep. 26, 2011).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ HUMAN RIGHTS COMMISSION OF PAKISTAN, HRCP, *About Us*, <http://www.hrcp-web.org/aboutus.html> (last visited Jul. 1, 2012).

⁶⁸ *Id.*

⁶⁹ *Id.*

II. *PRO BONO* IN PAKISTAN: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

Indigent and marginalized populations in Pakistan face real and persistent threats to their safety. Democratic rule was restored to Pakistan in 2008 after years of military rule; however, even in 2011, the military and intelligence services operated without effective civilian oversight.⁷⁰ According to the U.S. State Department, the most serious human rights abuses in 2011 were “extrajudicial killings, torture, and disappearances committed by security forces, as well as by militant, terrorist, and extremist groups” affecting thousands of citizens in nearly all areas of the country.⁷¹ Two prominent public figures, Punjab governor Salman Taseer and federal minister for minorities Shahbaz Bhatti, were assassinated over their support of revisions of the blasphemy laws that have recently resulted in death sentences for religious minorities.⁷²

Pakistan’s human rights problems also include poor prison conditions, instances of arbitrary detention, lengthy pretrial detention, a weak criminal justice system, insufficient training for prosecutors and criminal investigators, a lack of judicial independence in the lower courts, infringements on citizens’ privacy rights, harassment of journalists, discrimination against religious minorities, and abuse and exploitation of women and children.⁷³ Human trafficking, including forced labor, continues to be a serious problem.⁷⁴ Individuals face discrimination on the basis of nationality, ethnicity, race, caste, sexual orientation, gender identity and HIV status.⁷⁵ Finally, according to UNHCR, 1,900,621 refugees and individuals in refugee-like situations were living in Pakistan in 2010.⁷⁶

Given the severity of these abuses and conditions, assistance is needed and creative *pro bono* work can have important impact. Some law firms in Pakistan are engaged in *pro bono* work to address these abuses. Fundamental Rights guarantees enshrined in the Constitution give the Supreme Court original jurisdiction to hear cases and institute sweeping change.⁷⁷ Law firms have litigated appeals to blasphemy prosecutions, race and gender discrimination claims, and reform of the juvenile justice system.⁷⁸ Large corporate law firms also engage in *pro bono* by advising charitable bodies, setting up charitable corporate trust structures, helping to form nonprofit organizations and assisting organizations to navigate various local laws.⁷⁹

NGOs are also organizing *pro bono* attorneys to meet pressing needs. A year after the massive floods in 2010, more than a million victims remained internally displaced or in refugee status and vulnerable to human rights violations.⁸⁰ In 2011, Islamabad-based NGO Struggle for Change (“SACH”) organized a legal workshop to train a core of *pro bono* lawyers to serve as human rights defenders for these populations in Islamabad, Rawalpindi and Attock.⁸¹ UNHCR officials led training sessions on the 1951 U.N. Refugee Convention, the legal status of Afghan refugees in Pakistan and gender-based violence.⁸² The newly trained volunteer lawyers will provide free legal aid to individuals in need, with special emphasis on women and children in refugee communities.⁸³

While foreign lawyers cannot practice law in Pakistan without admission to the bar rolls, the organizations mentioned above may use foreign-trained lawyers in capacity building, training, organizing, public education and human rights abuse documentation projects. Foreign-trained lawyers

⁷⁰ U.S. STATE DEPARTMENT, *supra* n.30.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ UNHCR STATISTICAL ONLINE POPULATION DATABASE, *Refugees and People in Refugee-like Situations Residing in Pakistan 2010*, <http://apps.who.int/globalatlas/default.asp> (last visited Jul. 1, 2012).

⁷⁷ PAKISTAN CONST., *supra* n.9.

⁷⁸ Irfan & Irfan, for example, regularly works with World Wildlife Fund and other environmental and disaster relief NGOs, assisting with IP, tax and corporate law issues. Email from Maria Khan, *supra* n.52. *See also, e.g.,* MINTO & MIRZA, *Pro Bono Work*, <http://www.mintoandmirza.com.pk/probono.htm> (last visited Jul. 1, 2012).

⁷⁹ *See, e.g.,* HAIDERMOTA & CO., *Areas of Practice*, <http://www.hmco.com.pk/main.htm> (last visited Jul. 2, 2012).

⁸⁰ PRO BONO INSTITUTE, *Post-Flood Pro Bono in Pakistan* (Aug. 3, 2011) <http://thepbeye.probonoinst.org/2011/08/03/post-flood-pro-bono-in-pakistan/>.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

with international law, nonprofit organization, refugee law or UN experience would also be useful. Lawyers with language skills can assist with fact-gathering and documentation projects.

B. Barriers To *Pro Bono* Work And Other Considerations

There are a number of obvious barriers to foreign-trained lawyers engaging in *pro bono* work in Pakistan. As discussed above, under the Legal Practitioners and Bar Councils Act, only individuals admitted as advocates may formally practice law in Pakistan.⁸⁴ Citizenship and residency requirements make admission unworkable for the typical *pro bono* attorney.

Foreign lawyers can make an important impact outside of the courtroom. However, progressive legal reform remains controversial and can at times be dangerous. Other practical considerations include language barriers and lack of information. While much of the Pakistani legal system operates in English, client-based legal aid will likely require some linguistic and cultural fluency. Finally, many well-regarded NGOs in Pakistan have limited web presences, making initial research of available opportunities more challenging.

C. *Pro Bono* Resources

Given the nascent *pro bono* environment in Pakistan and the lack of major clearinghouse organizations for *pro bono* opportunities, finding meaningful projects requires research and building relationships with local contacts. Contacting service organizations directly is a first step. As discussed above, major nongovernmental organizations providing *pro bono* legal aid in Pakistan include AGHS Legal Aid,⁸⁵ Lawyers For Human Rights And Legal Aid (“LHRLA”),⁸⁶ and Human Rights Commission of Pakistan (“HRCP”),⁸⁷ among others.

Additionally, a number of international NGOs and governmental organizations engage in important project-based work in Pakistan. Projects are usually targeted in scope and benefit from long-standing relationships with local NGOs. Reprieve, a London-based international NGO focused on the human rights of prisoners, employs two fellows in Pakistan working on various detention issues.⁸⁸ Reprieve is currently spearheading the Pakistan Police Torture Project, a documentation and accountability effort; they are actively seeking assistance.⁸⁹ International Crisis Group is also regularly engaged in research and documentation projects in Pakistan, covering natural disasters to political unrest.⁹⁰

Finally, top-tier law firms may have a *pro bono* docket, and foreign-trained graduates might serve as an important inroad to that work. Interested attorneys can reach out to such firms to build local connections.⁹¹

III. CONCLUSION

Despite human rights abuses by government forces and widespread societal discrimination, Pakistan’s legal community remains invested in the rule of law and steadfast in its opposition to anti-democratic forces. Local NGOs, law firms and international organizations are engaged in direct representation and broader reform work. Foreign lawyers interested in *pro bono* opportunities in Pakistan have ample opportunity to assist if they are willing to think creatively about how their skills could be deployed.

July 2012

Pro Bono Practices and Opportunities in Pakistan

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⁸⁴ Legal Practitioners and Bar Councils (Amendment) Act, *supra* n.38.

⁸⁵ AGHS LEGAL AID CELL, *AGHS* (July 6, 2007), <http://aghsblog.wordpress.com>.

⁸⁶ CHILD RIGHTS INTERNATIONAL NETWORK, *supra* n.64; WISER.ORG, *supra* n.64.

⁸⁷ HUMAN RIGHTS COMMISSION OF PAKISTAN, *HRCP*, <http://www.hrcp-web.org/default.asp> (last visited Jul. 1, 2012).

⁸⁸ REPRIEVE, *About Reprieve*, <http://www.reprieve.org.uk/about/> (last visited Jul. 14, 2012).

⁸⁹ REPRIEVE, *The Pakistan Police Torture Project* (Feb. 5, 2011), <http://www.reprieve.org.uk/blog/pakistanpolicetortureproject/> (last visited Jul. 14, 2012).

⁹⁰ See INTERNATIONAL CRISIS GROUP, *Pakistan*, <http://www.crisisgroup.org/en/regions/asia/south-asia/pakistan.aspx> (last visited Jul. 14, 2012).

⁹¹ For example, IRFAN & IRFAN, <http://irfanandirfan.com> (last visited Jul. 10, 2012).

PRO BONO PRACTICES AND OPPORTUNITIES IN PARAGUAY¹**I. LEGAL SERVICES AND THE LEGAL PROFESSION IN PARAGUAY**

Paraguay has historically embodied a culture of promoting free legal assistance for citizens with limited means. This is largely due to the fact that the Ministry of Public Defense has over 200 paid attorneys who support and provide legal advice to individuals with limited economic resources. Currently, free legal aid is not only provided by the public sector, but there is also an increasing movement among private law firms providing free legal advice to indigent individuals as well. The *pro bono* culture is expanding throughout all of the local law firms and universities in Paraguay. This chapter summarizes the existing legal regime for the provision of free legal services to the disadvantaged population in Paraguay, specifically highlighting the growth of the *pro bono* movement.

A. The Legal Profession

According to the National Constitution Republic of Paraguay, in force since June 1992, the Supreme Court of Justice (*Corte Suprema de Justicia*) of Paraguay consists of (9) nine members, referred to as Ministers. The Supreme Court is the highest court in the Paraguayan judicial system and is organized into three chambers: the Constitutional Court (*Sala Constitucional*), the Commercial and Civil Division (*Sala Civil-Comercial*) and the Criminal Division (*Sala Penal*).² The President of the Supreme Court of Justice is selected annually by the Court's members. The Supreme Court of Justice, in addition to the authority to adjudicate legal matters, also has supervision and disciplinary authority over the Paraguayan Courts, Tribunals, Court officers and judiciary offices. Such supervisory power is exercised through the Courts of Appeal of Judicial Districts, Law 879 (*Ley 879*).

The requirements for practicing law in Paraguay are governed by article 87 et seq. of the Judicial Organization Code, which, among other things, regulates the legal profession. Such Code sets forth the following requirements to become a lawyer in Paraguay:

- Obtain a law degree issued by a duly acknowledged and authorized Paraguayan university (or have a foreign degree validated by the national education council)
- Be of legal age
- Demonstrate a reputation of honor and good behavior
- Take an oath before the Supreme Court of Justice
- Enroll with the Supreme Court Register of Lawyers

B. Legal Aid

The Ministry of Public Defense (*Ministerio de la Defensa Pública*) is a judicial institution made up of approximately 200 professional lawyers who are paid by the Paraguayan State to defend individuals who (i) have limited economic resources, or are absent, (ii) are legally incapacitated, or (iii) are minors in the context of civil, labor, minor-related, administrative or criminal proceedings. Furthermore, the Ministry of Public Defense functions independently from other powers of the State. Although it is part of the judicial branch, it has functional and financial autonomy and independence. The Act regulating the Ministry of Public Defense was recently amended to strengthen this Ministry to avoid situations where one party to a legal proceeding, as a result of insufficient financial resources, is disadvantaged vis-à-vis his or her counterparty in such proceeding.

Individuals seeking legal assistance from the Ministry of Public Defense must visit the public defender (*Defensor*) that is on duty in the relevant jurisdiction and constituency. Each judicial district has public defenders (*Defensores*) who may act within the limits of such district. The legal assistance provided by the Ministry of Public Defense is free and the defendants are exempt from court fees. Defendants are required to pay only those legal fees, notices and/or edicts that are specifically designated by law.

¹ This chapter was drafted with the support of local counsel, Mr. Marcos Antoni Köhn Gallardo and Mr. Valentin Sanchez Quintana, from the Paraguayan law firm Ferrere.

² CONST. PARAGUAY, art. 258.

II. *PRO BONO* IN PARAGUAY: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

1. The Interdisciplinary Centre for Social Law and Political Economy

The Interdisciplinary Center for Social Law and Political Economy (“**CIDSEP – UC**”) in association with the Paraguayan bar association is Paraguay’s leading clearinghouse for *pro bono* work. It is an agency of the Catholic University whose mission is to contribute to building the rule of law, to promote the strengthening of public institutions and civil society organizations, and to provide access to justice and democratic participation through advice, training, research and publications. The principal activities of CIDSEP - UC include:

- Strengthening democratic institutions: Training and updating operators and court officers throughout the country. Carrying out research and publications in the legal area. Strengthening local governments.
- Fostering a culture of transparency and citizen participation: Citizen monitoring of key state institutions at central and local levels. Training community leaders and civil society regarding mechanisms of social control, accountability and access to information.
- Rights promotion: Promoting rights through radio programs, newspapers, and neighborhood and cultural activities. Supporting networking among public institutions, social organizations and legal volunteer network.

In this context, CIDSEP - UC has a *pro bono* Legal Volunteer Project and a blog to discuss *pro bono* legal assistance, to make the public aware of the Statement of *Pro Bono* Work for the Americas (*Declaración de Trabajo Pro Bono para las Américas*) and every individual’s right to access justice. The Legal Volunteer Project began in 2005, when lawyers from various Latin American countries, U.S., Spain and South Africa met in New York City to discuss the role of the legal profession in democratic societies and the specific ways in which the legal profession could help facilitate access to justice for all sectors of the community.

2. The International Pro Bono Network

CIDSEP – UC is also a member of the International Pro Bono Network (“**IPBN**”), which was created in April 2011, when *Fundación Pro Bono Chile* and the Cyrus R. Vance Center of the Bar Association of the City of New York convened the International Conference, “The Legal Profession & Pro Bono: Strengthening Access to Justice.” The International Conference brought together representatives from bar associations, law firms, law school clinics, corporate legal departments, *pro bono* referral programs, and many other organizations in 13 countries throughout America including Argentina, Brazil, the U.S. and Venezuela. The purpose of this conference was to promote the practice of *pro bono* in Latin America, building on the success of the Pro Bono Declaration for the Americas. More specifically, its objectives are, *inter alia*, (i) to communicate international human rights law to support local *pro bono* referral programs and organizations, (ii) to encourage cross-border cooperation of *pro bono* attorneys, (iii) to provide legal support to civil society initiatives that advance the rule of law and support vulnerable sectors of society, and (iv) to implement know-your-rights (“**street law**”) projects.

B. Barriers To *Pro Bono* Work And Other Considerations

One barrier to providing free legal services in Paraguay is a law passed by Congress in 1998,³ pursuant to which legal fees are subject to regulation. Article 1 of such Law obligates those providing legal services to charge fees for such legal services, with an express prohibition against reducing or eliminating such fees.

However, the Professional Ethics Code of the Paraguay bar association (*Código de Ética Profesional*) recognizes the obligation to provide free judicial assistance to people with limited economic resources,

³ *Ley número 1376/1988 sobre el Arancel de honorarios de abogados y procuradores.*

provided that the criteria are defensible, if it is either requested by the defendant or by judicial designation.

C. *Pro Bono* Resources

1. International Red Pro Bono

International Red Pro Bono is a foundation that assists and organizes *pro bono* services for lawyers and law firms. The foundation was created in 2000 and since then has implemented work programs to provide opportunities for attorneys to get involved with the provision of *pro bono* legal services. The foundation facilitates *pro bono* services across various areas, including corporate advice, dispute advice, legal reports and judicial representation to improve access to free justice in Paraguay.

- Address: Mariano Sánchez Fontecilla N° 370
Las Condes – Santiago de Chile
Phone: (562 38) 156 60
Website: <http://redprobono.org/>
Email: contacto@redprobono.org

2. CISDEP – UC

CISDEP - UC is an agency of the Catholic University. Its mission is to contribute to the growth of the rule of law and the effective integration of Paraguay into the Latin American and global *pro bono* communities by promoting the strengthening of public institutions and civil society organizations, decentralization, access to justice, and democratic participation through advice, training, research and publications.

- Address: Alberdi 855 casi Piribebuy, Paraguay
Phone: (595 21) 445429
Website: <http://www.buenaspracticassuca.edu.py/cidsep.php>
Email: cidsep@uc.edu.py

3. Paraguayan Bar Association

- Address: 14 de Mayo 988 e/Manduvirá, Asuncion, Paraguay
Phone: (595 21) 441882
Website: <http://www.facebook.com/pages/Colegio-de-Abogados-del-Paraguay/266234063394042>

4. Ferrere Abogados

- Address: Acá Carayá N° 271, Asunción, Paraguay
Phone: (595 21) 227 066 or (595 21) 227 086
Website: <http://www.ferrere.com/donde-trabajamos/asuncion>
Email: ferrereparaguay@ferrere.com

III. CONCLUSION

Pro bono activities in Paraguay are increasing slowly but surely, particularly as a result of CISDEP – UC joining the IPBN. Additionally, Paraguayan society and politicians are increasingly aware of the need for all Paraguayan citizens to have access to justice and high-quality defenders.

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Pro Bono Practices and Opportunities in Paraguay

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PRO BONO PRACTICES AND OPPORTUNITIES IN PERU¹

The legal community, based in the capital city of Lima, is increasingly recognizing the value of a *pro bono* culture and the significant impact *pro bono* work can have on democracy and justice. The Pro Bono Declaration for the Americas is the founding document that is helping to institutionalize altruistic and other legal aid practices by Peruvian lawyers. This report provides an overview of the Peruvian legal system, legal aid available for low-income individuals, and the recent growth of the *pro bono* movement.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN PERU

A. The Legal Profession

According to a bill on legal education proposed by the Lima Bar Association's Dean, there were 97,000 lawyers and 82,000 law students in Peru in 2009. Approximately, 46,000 worked in the Region of Lima.² There are no currently available statistics regarding employment of attorneys. However, a 2004 report on legal education³ indicated that 36.4% of law students expected to work as lawyers in the private sector, 23.3% as defense lawyers, 11.6% as prosecutors and 11.2% as lawyers in the public sector.

The Constitution (e.g., articles 20, 107, 155, 179, 203) recognizes the importance of Bar Associations to the Peruvian legal system; and Decree No. 25873 (*Decreto No. 25873*) requires every practicing attorney to be affiliated with one. There are 30 national Bar Associations⁴ geographically distributed, which, among other functions, oversee attorneys' professional conduct (see *Colegio de Periodistas del Perú v. Peruvian Congress*⁵). To join a Bar Association, an attorney must hold a law degree from one of the 47 universities in Peru. 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 Peruvian degree.

In accordance with the Constitution (article 155), all judges are selected and appointed by the National Council of the Judiciary, an independent body composed of seven members that are elected as follows: (i) one by the Supreme Court; (ii) one by the Board of Supreme Court Prosecutors; (iii) one by the members of the country's Bar Associations; (iv) two by the country's other professional associations; (v) one by the presidents of the public universities; and (vi) one by the presidents of the private universities.

The 1993 Constitution is the fundamental and supreme law of Peru. It has two primary functions: (i) to establish the government and its powers; and (ii) to recognize the fundamental human rights of individuals and the constitutional procedure to enforce them. Accordingly, article 43 of the Constitution establishes a unitary, representative and decentralized government. There are three governmental branches, in accordance with the principle of separation of powers, which are the Executive, Legislative and Judiciary branches. The Executive branch, composed of the President of the Republic and the Council of Ministers, is charged with the administration of the State, ensuring that laws are duly executed and enforced. The Legislative branch, which resides in Congress, has the authority to make, amend and repeal laws. Finally, the Judiciary Power, through the court system, administers and enforces the laws, and is expressly bound by the Constitution to adhere to the principle of due process of law.

With regard to human rights, Peru has signed and ratified – among other Human Rights Treaties and Declarations – the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the American Convention on Human Rights, including the international jurisdiction of the Inter-American Court of Human Rights. These treaties provide remedies for a denial of justice in Peruvian courts.

The Peruvian Court System is comprised of the Supreme Court, the Superior Courts (Courts of Appeal), the Trial Judges and, at the lowest level, the Justices of the Peace (*Jueces de Paz*). The Constitutional

¹ This chapter was drafted with the support of Roxana Gayoso from the law firm Echeopar.

² <http://peru21.pe/impres/impres/noticia/sin-rodeos/2008-09-04/223669>.

³ <http://www.justiciaviva.org.pe/nuevos/2004/informefinal.pdf>.

⁴ <http://www.elperuano.pe/edicion/noticia-abogados-cuentan-nuevo-codigo-etica-43062.aspx>.

⁵ Constitutional Court STC No. 00027-2005-AI, *Colegio de Periodistas del Perú v. Peruvian Congress*, 2006 at ¶ 8.

Court is an autonomous entity, entirely distinct from the Judicial Branch, which plays a critical role in the enforcement of laws. Specifically, the Constitutional Court has two primary functions: (i) implementing procedures to enforce the Peruvian Constitution as the supreme law of the state (*the procedure of unconstitutionality and the procedure to solve conflicts between government entities*); and (ii) implementing procedures to enforce constitutional rights (*habeas corpus, proceso de amparo, habeas data*).

B. Legal Aid

The obligation to provide legal aid is stipulated in the Constitution:

“Article 139. The Justice System has the following principles and rights: (...) 16 . Free administration of justice (court fees) and free defense for low-income people and for everyone in cases stipulated by legislation.”

The 1991 Judicial Branch Organic Act provides that legal practice shall serve a social role in favor of Justice and Law (article 284), and requires all attorneys to assume at least one free defense annually. Such legal aid requirement is overseen and administered by the various Bar Associations (article 288.12). Additionally, the 1993 Code of Civil Procedure (the “Code”) promotes legal aid (*Auxilio Judicial*) providing “*Judicial assistance will be provided to individuals in order to cover procedural expenses for their subsistence and the subsistence of their dependents in danger*” (article 179). As a result of these laws, beneficiaries of free legal services are not required to pay court fees (article 182) and are entitled to a free defense provided by a lawyer of a Bar Association (article 183). This legal aid is granted by the Judge in charge of the applicable trial, and the Code states that such assistance must be requested on a special form approved by the Administrative Government of the Judiciary Branch (article 180).

In addition to the statutory requirements for lawyers to provide a free legal defense, there is also state-sponsored legal aid, which is available under the 2009 Public Defender Service Act. This service is provided by the Justice Department (*Ministerio de Justicia*) and provides free defense in criminal and family law matters for individuals who either (i) lack sufficient financial resources to hire a private defender, or (ii) are unemployed or have a salary below US\$280 (article 15). While this service is valuable, a 2008 Report found that “the public defender service suffers innumerable deficiencies.”⁶

II. PRO BONO IN PERU: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. Pro Bono Opportunities

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 2008 by a committee of leading practitioners in Latin America and the United States. The Congress was attended by representatives from prestigious law firms, law schools, bar associations and NGOs from Argentina, Brazil, Chile, Colombia, Mexico and Peru. Signatories, including Peru, endorsed the principle that it is the duty of the legal profession to promote a fair and equitable legal system and respect for human and constitutional rights. The Declaration calls for each signatory to promote an average of at least twenty hours of annual *pro bono* work per practicing attorney.

Pro Bono Foundation is a nonprofit Peruvian organization comprised of attorneys who recognize the need to provide affordable legal services to those who lack economic resources. The goal of the Foundation is to foster a *pro bono* culture through creating a network of legal professionals who contribute their time and services to increase access to justice in Peru. Such legal professionals provide voluntary and free legal services for vulnerable population groups and social organizations. The Foundation supports the attorneys and member firms by developing and implementing policies and procedures that promote and organize *pro bono* services as well as recognize significant *pro bono* contributions.

B. Barriers To Pro Bono Work And Other Considerations

Under article 32 of the Income Tax Act, Law firms are required to pay income tax on legal services provided for free, based on an imputed “market value” for such services. Additionally, Article 50 of the

⁶ http://facultad.pucp.edu.pe/derecho/images/documentos/O_Responsabilidadesocial.pdf.

Ethics Code permits lawyers and their clients to determine the tariffs that will be charged for legal services rendered, *provided* such tariffs comply with the minimum tariff requirements of the Bar Association. Specifically, article 78 of the Code of Ethics expressly provides for the possibility of providing free legal services to low-income individuals: “Access to justice service is free, without prejudice to payment of costs, costs and fines established in this Code and administrative provisions of the Judiciary.”

All attorneys are obligated to maintain ethical standards. In furtherance of this obligation, attorneys are guided by a new code of conduct, the 2012 Ethics Code for Lawyers (“**Ethics Code**”),⁷ adopted by the national Bar Associations. Each Bar Association also maintains its own specific bylaws.

C. *Pro Bono* Resources

1. Echecopar Legal

The law firm Echecopar has a *pro bono* program that provides free legal assistance to low income individuals and NGOs in need of legal assistance with regard to matters that can have a societal impact. Website: <http://www.echecopar.com.pe/>

2. Namati Foundation

The Namati Foundation is a Peruvian organization dedicated to “legal empowerment.” Legal empowerment refers to the capacity of all people to exercise their rights and to participate in governance of Peru. In partnership with civil society groups and governments, Namati implements and evaluates innovative projects spanning various topics, such as environmental justice, community land protection, and the accountability of public government. Namati also hosts a global network to foster greater collaboration among practitioners worldwide. Members of the Global Legal Empowerment Network share resources and experiences, including research, training materials, monitoring and evaluation tools, case management systems, and advocacy strategies. Website: <http://www.namati.org/organizations/fundacion-pro-bono-peru/>

3. Pro Bono Foundation Peru

Website: <http://www.probono.org.pe/servicios-probono>

III. CONCLUSION

Pro bono activities in Peru are increasing slowly but surely. Today, people, and in particular lawyers, are more conscious of the need to provide *pro bono* services in a society where there is a high percentage of individuals who do not have access to justice. In recent years, several *pro bono* foundations have been created to address rights violations of individuals with limited economic resources. Additionally, significant Peruvian law firms and universities have joined the *pro bono* movement, providing *pro bono* services alongside foundations and other NGOs.

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Pro Bono Practices and Opportunities in Peru

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⁷ http://www.cal.org.pe/pdf/etica/2012/codigo_etica_abogado.pdf.

PRO BONO PRACTICES AND OPPORTUNITIES IN THE PHILIPPINES

Due to widespread poverty and frequent human rights violations, the Philippines presents numerous opportunities for *pro bono* work.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN THE PHILIPPINES

A. The Legal Profession

The practice of law in the Philippines is primarily regulated by the Integrated Bar of the Philippines (“IBP”). The IBP is a mandatory bar association created by the Philippine Supreme Court in the 1970’s.¹ All Philippine lawyers are required to join the IBP and cannot practice law in the Philippines without doing so.² 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.”³ According to the IBP’s website, the number of attorneys having qualified for and passed the Bar examination and taken the attorney’s oath is approximately 50,000.⁴ In order to seek admission as a member of the Bar, a lawyer must be a citizen of the Philippines, at least 21 years of age, of good moral character, and a resident of the Philippines.⁵ Generally, lawyers in the Philippines are classified according to the following fields of law: civil law, commercial law, labor law, lands law, taxation law, criminal law, political law, and international law.⁶

While paralegals are not recognized as legal professionals under Philippine law, they also play an increasingly significant role in addressing immediate legal issues and disputes involving community members’ rights.⁷ Community-based paralegals are trained on the relevant laws in a particular specialization, thereby enabling them to relay that information to community members in need.⁸ Paralegals can also provide legal literacy education, refer and assist community members in accessing government and other legal services, and mobilize community support around local issues.⁹ Finally, paralegals may appear in some municipal courts on behalf of clients if there are no available lawyers and before quasi-judicial bodies.¹⁰

The Philippine legal system is unique because it combines civil law, common law, Muslim law, and indigenous law.¹¹ 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.¹² It delineates the powers granted to the nation’s Supreme Court, which, along with lower courts such as the Court of Appeals, regional trial courts, and special courts, comprise the Philippine court system.¹³ The Philippine Supreme Court is unique in that it has rule-making power in the protection and enforcement of constitutional rights, court proceedings, practice of law and legal assistance to the underprivileged under Article VIII, Section 5(5) of the Constitution.¹⁴ The two special courts are the

¹ IBP HISTORY, <http://ibp.ph/history.html> (last visited Jun. 21, 2012).

² *Id.*

³ IBP MISSION, <http://ibp.ph/mission.html> (last visited Jun. 7, 2012).

⁴ IBP HISTORY, <http://ibp.ph/history.html> (last visited Jun. 21, 2012).

⁵ ASEAN LAW ASSOCIATION, *Legal Systems in ASEAN, Philippines—Chapter 5: The Legal Profession*, 3, available at http://www.aseanlawassociation.org/papers/phil_chp5.pdf (last visited Jun. 25, 2012).

⁶ IDE-JETRO, http://d-arch.ide.go.jp/idedp/IAL/IAL000500_006.pdf (last visited Jun. 25, 2012).

⁷ AMERICAN BAR ASSOCIATION, *Access to Justice Assessment for Philippines Mindanao*, 32 (Jan. 2012), http://www.americanbar.org/content/dam/aba/directories/roli/philippines/philippines_access_to_justice_assessment_2012.aut_hcheckdam.pdf

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ TRADE CHAKRA, *Legal System in Philippines*, <http://www.tradechakra.com/economy/philippines/legal-system-in-philippines-235.php> (last visited Jun. 7, 2012).

¹² Milagros Santos-Ong, *Update: Philippine Legal Research*, § 3 (2012), <http://www.nyulawglobal.org/globalx/philippines1.htm>

¹³ *Id.* § 3.3.

¹⁴ Renato Bautista Jr., *The Philippine Legal System* (Mar. 31, 2010), <http://suite101.com/article/the-philippine-legal-system-a212057>

Court of Tax Appeals and the *Sandiganbayan*.¹⁵ The Court of Tax Appeals serves as an appellate court to review tax cases and has exclusive jurisdiction to review by appeal decisions made by the Commissioner of Internal Revenue, by regional trial courts in local tax cases, and the Secretary of Agriculture, among others.¹⁶ It also has jurisdiction over related criminal offenses in certain situations.¹⁷ The *Sandiganbayan* is the Anti-Graft Court, which was created to maintain integrity and honesty in the bureaucracy.¹⁸ The regional trial courts are second-level courts and are divided into 13 judicial regions – the Supreme Court designates certain branches to handle exclusively different types of cases, such as criminal, juvenile, domestic relations, agrarian, and urban land reform.¹⁹ Regional trial courts have jurisdiction over a variety of civil matters depending on the amount of damages at issue.²⁰

There are also a variety of first-level courts in each city and municipality, called Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts.²¹ In 2008, these courts were also granted jurisdiction to hear small claims cases.²² There are also Shari'a Courts, which are special courts created by the Code of Muslim Personal Laws.²³

The Philippines also has a system known as the *Katarungang Pambarangay*, or *Barangay* Justice System,²⁴ which 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.²⁵ It is run by appointed government officials, but has limited jurisdiction.²⁶ 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.²⁷

B. Legal Aid in the Philippines

Widespread poverty in the Philippines makes the provision of free legal aid particularly important.²⁸ 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.²⁹ 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.”³⁰ 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.³¹ In 2009, a requirement was made that all practicing lawyers provide mandatory free legal aid service in all cases involving “marginalized and poor litigants.”³² The rule requires practicing lawyers to take on a minimum of 60 hours of free legal aid work a year and

¹⁵ THE LAWPHIL PROJECT, *Philippine Court System*, available at <http://www.lawphil.net/courts/courts.html> (last visited Jun. 21, 2012).

¹⁶ Santos-Ong, *supra* n.9, at § 3.3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Stephen Golub, *Non-state Justice Systems in Bangladesh and the Philippines: Paper Prepared for the United Kingdom Department for International Development*, 12 (2003), <http://www.gsdc.org/docs/open/DS34.pdf>.

²⁵ *Id.*

²⁶ *Id.* at 12-13.

²⁷ *Id.* at 13.

²⁸ U.S. DEPARTMENT OF STATE, *Background Note: Philippines* (Jan. 17, 2012) <http://www.state.gov/r/pa/ei/bgn/2794.htm>.

²⁹ Code of Professional Responsibility, Canon 14, Rule 14.02, available at <http://www.chanrobles.com/codeofprofessionalresponsibility.html>.

³⁰ PHILIPPINES CONST. (1987), art. III, sec. 11, available at <http://www.chanrobles.com/article3.htm>.

³¹ Code, *supra* n.29.

³² Patrick Hume SJ, *Pro Bono: Still Relevant for Access to Justice* (Nov. 2009), <http://www.workingnotes.ie/index.php/item/pro-bono-still-relevant-for-access-to-justice>

continuation of the practice depends on being issued a certificate attesting to these *pro bono* service hours.³³

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 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.³⁴ The PAO, in its effort to fulfill "the constitutional mandate that 'free access to courts shall not be denied by reason of poverty,'" ³⁵ provides representation, as well as mediation and various other legal services.³⁶ Other government-based agencies provide free legal assistance regarding a specific area of the law, for example, the area of agrarian reform.³⁷ The Philippine courts may also appoint lawyers to provide free representation to indigent defendants in criminal cases.³⁸

The IBP also provides legal assistance to indigent Filipinos.³⁹ In part to meet the its third stated objective of discharging its public responsibility more effectively, the IBP's National Committee on Legal Aid runs the IBP Legal Aid Program, which includes 83 local legal aid committees throughout the Philippines.⁴⁰ This committee provides free legal counseling and advice to the those who qualify, and it also drafts necessary documentation for them.⁴¹ 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.⁴² Regarding Means, an applicant must earn less than P14,000 annually if residing in Metro Manila, and less than P10,000 if residing outside Metro Manila.⁴³ Regarding Merit, the cause of action must have a legal basis.⁴⁴ Applicants can go to National Committee on Legal Aid offices in the IBP Building in Doña Julia Vargas Avenue, Ortigas Center Pasig City during office hours from Monday to Friday or also go directly to any of the 83 local legal aid committees.⁴⁵

A variety of nongovernment entities, including private law firms, also provide free legal aid to indigent individuals and disadvantaged groups and promote certain public interest causes.⁴⁶ 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 public issues, such as the environment, gender equality and human rights.⁴⁷ ALG programs are generally aimed at promoting the pursuit of public interest, respect for human rights, and social justice. 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

³³ *Id.*

³⁴ See Carlos P. Medina, *Legal Aid Services in the Philippines*, available at <http://juniorstud.blogspot.com/2005/01/legal-aid-services-in-philis.html>; DEPARTMENT OF JUSTICE, PUBLIC ATTORNEY'S OFFICE, <http://www.chanrobles.com/legal3dojpao.html> (last visited Jun. 7, 2012).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*; DEPARTMENT OF AGRARIAN REFORM, http://www.dar.gov.ph/index.php?option=com_content&view=article&id=101&Itemid=181 (last visited Jun. 7, 2012).

³⁸ Medina, *supra* n.34.

³⁹ *Id.*

⁴⁰ NATIONAL COMMITTEE ON LEGAL AID, <http://www.ibp.ph/ncla.html> (last visited Jun. 7, 2012).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See BAKER & MCKENZIE, *Working in the Philippines*, <http://www.bakermckenzie.com/careers/philippines/> (last visited Jun. 7, 2012); CHAN ROBLES LAW FIRM, *Pro Bono*, http://www.chanrobles.com/pro_bono.php (last visited Jun. 7, 2012); Medina, *supra* n.34.

⁴⁷ THE ALTERNATIVE LAW GROUPS, <http://www.alternativelawgroups.org/about.asp?sec=index> (last visited Jun. 7, 2012); Medina, *supra* n.34.

communities and organizations that can provide legal assistance from within.⁴⁸ Member groups of the coalition often maintain relationships with law schools to carry out their objectives.⁴⁹

Law students have also played a role in providing legal aid. 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.⁵⁰ Philippine law schools, including the Ateneo de Manila Law School in Makati City and the University of Philippines College of Law, have set up clinical programs through which their students and alumni provide free legal assistance.⁵¹ Foreign law schools have also provided assistance.⁵²

II. **PRO BONO IN THE PHILIPPINES: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. **Pro Bono Opportunities**

The absence of effective access to justice by the poor and marginalized presents one of the most prominent opportunities for *pro bono* work in the Philippines.⁵³ A number of NGOs committed to empowering the poor and marginalized have emerged to help meet these legal needs.⁵⁴ For example, one such project aims to help farmers who have been falsely accused of crimes obtain access to justice.⁵⁵ Farmers who assert their land rights in accordance with government agrarian reform efforts frequently confront arbitrary criminal charges and other such injustices at the hands of wealthy landowners and elite land claimants.⁵⁶ Outdated laws, limited access to legal services, complicit participation of the authorities in the landowners' harassment, and the alienation of farmers from the legal process contribute to the problem.⁵⁷ The project, led by a Philippine lawyer, seeks to provide paralegal training to local women so that they may monitor court cases, gather evidence, write affidavits, and help farmers navigate the legal system.⁵⁸

Some of the most urgent legal issues in the field of environmental law include large-scale mining, destruction of marine resources, and indiscriminate logging due to the increasing demand for land and natural resources.⁵⁹ These practices frequently occur to the detriment of the poor and marginalized, causing community displacement, forced evictions, increasing urban migration, usurpation of indigenous people's ancestral rights, illegal land conversion, loss of traditional livelihoods, dwindling food production and depletion of freshwater resources, militarization and other human rights abuses, air and water pollution, and other environmental disasters.⁶⁰ In 2010, a *pro bono* environmental lawyer

⁴⁸ THE ALTERNATIVE LAW GROUPS, *What We Do*, <http://www.alternativelawgroups.org/whatwedo.asp?sec=index> (last visited Jun. 7, 2012).

⁴⁹ THE ALTERNATIVE LAW GROUPS, *Members of ALG*, <http://www.alternativelawgroups.org/members.asp?sec=mem> (last visited Jun. 7, 2012).

⁵⁰ Medina, *supra* n.34.

⁵¹ Paul Atienza, *Ateneo law-school alumni launch project to aid Makati jail inmates*, BUSINESS MIRROR (Aug. 29, 2011), <http://businessmirror.com.ph/home/companies/15797-due-diligencer.html>.

⁵² YFILE, *Osgoode Students Provide Pro Bono Legal Service in the Philippines*, <http://www.yorku.ca/yfile/archive/index.asp?Article=8607> (last visited Jun. 7, 2012). 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. While there, they hosted a forum addressing the legal issues regarding the Philippine's worst oil spill. *Id.*

⁵³ THE ALTERNATIVE LAW GROUPS, *Projects – Access to Justice by the Poor and Marginalized*, <http://www.alternativelawgroups.org/whatwedo.asp?sec=det&type=projects&id=125> (last visited Jun. 21, 2012).

⁵⁴ Aurora E. Bewicke, *Asian Developments in Access to Counsel: A Comparative Study*, 10 NW. U. J. INT'L HUM. RTS. 27 (2011), available at <http://www.law.northwestern.edu/journals/jihr/v10/n2/1/index.html>.

⁵⁵ *Id.* (referencing Rosselynn Jae de la Cruz, Legal Consultant, AKBAYAN Citizens Action Party).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ THE ALTERNATIVE LAW GROUPS, *Fields of Development – Environment*, <http://www.alternativelawgroups.org/whatwedo.asp?sec=det&type=fieldsofdevelopment&id=116> (last visited Jun. 21, 2012);

THE ALTERNATIVE LAW GROUPS, *Fields of Development – Land Use and Tenurial Rights*, <http://www.alternativelawgroups.org/whatwedo.asp?sec=det&type=fieldsofdevelopment&id=117> (last visited Jun. 21, 2012).

⁶⁰ *Id.*

helped Philippines climate change activists take their fight against flooding to the country's supreme court.⁶¹

Gender equality issues also present *pro bono* opportunities. While the Philippine government has passed a number of laws addressing women's development and gender equality issues, recognition of certain rights – particularly in the realm of reproductive health – is still unsettled and is an area for potential advocacy.⁶²

In addition to these opportunities, extrajudicial executions have been a significant problem in the Philippines. The Philippines has experienced an unprecedented surge in extrajudicial executions since 2005,⁶³ prompting extensive investigations since then by the United Nations, Amnesty International, and Human Rights Watch.⁶⁴

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 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 judiciary,⁶⁵ and a project to increase confidence in election results, which included creating a voter's guide and bringing in election monitors.⁶⁶ Additionally, Romeo Capulong, a prominent human rights lawyer and judge serving on the U.N. Tribunal for the Former Yugoslavia, started the nation's first public interest firm, Public Interest Law Center in the 1980s.⁶⁷

B. Barriers To *Pro Bono* Work And Other Considerations

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, 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.⁶⁸ Evidence also suggests that other lawyers and activists are currently or have previously been “blacklisted” from entering the country.⁶⁹ The government may also act to restrict freedom of speech and the press in certain situations if the potential client or clients are politically unpopular or their interests are not aligned with those of the government,⁷⁰ which may cause difficulties for attorneys in publicizing their availability to assist on a *pro bono* basis to those in need.

It is also difficult for foreign firms to offer *pro bono* services in the Philippines, since non-Filipino lawyers are not permitted to offer advice on Philippine law, and foreign law firms are not allowed to

⁶¹ Purple S. Romero, *Pro Bono Lawyer Leads Landmark Court Challenge in Philippines*, TRUSTLAW, (Jun. 29, 2010), <http://www.trust.org/trustlaw/news/pro-bono-lawyer-leads-landmark-court-challenge-in-philippines/>

⁶² THE ALTERNATIVE LAW GROUPS, *Fields of Development – Gender Equality*, <http://www.alternativelawgroups.org/whatwedo.asp?sec=det&type=fieldsofdevelopment&id=119> (last visited Jun. 21, 2012)

⁶³ Seth Mydans, *Rights Groups Say Military Is Behind Killings in Philippines*, N.Y. TIMES, Aug. 25, 2006, available at, <http://www.nytimes.com/2006/08/25/world/asia/25filip.html?pagewanted=print> (stating that there has been an increase from 2005 to 2006); See UNHCR, *Extrajudicial killings have a corrosive effect on civil society and political discourse in the Philippines*, says UN independent expert at the end of visit (Feb. 21, 2007), <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/7B6094F7150CDC99C125728A003B12B1?opendocument>.

⁶⁴ *Id.* The Human Rights Watch has released several reports in the last several years, the most recent being in 2012. The Amnesty International releases yearly reports, the most recent being in 2012.

⁶⁵ THE ASIA FOUNDATION, *Philippines Overview*, <http://www.asiafoundation.org/country/overview/Philippines> (last visited Jun. 7, 2012).

⁶⁶ *Id.*

⁶⁷ PUBLIC INTEREST LAW CENTER, <http://pilcop.org/about/>

⁶⁸ See *Philippines: Government Bans Its Critics From Entering*, HUMAN RIGHTS WATCH (Oct. 29, 2008), <http://www.hrw.org/en/news/2008/10/29/philippines-free-labor-rights-lawyer>.

⁶⁹ *Id.* However, in February of 2007, the government allowed a U.N. Special Rapporteur to enter the country to investigate the killings. See UNHCR, *supra* n.63.

⁷⁰ *12 Filipino journalists murdered under Aquino's watch*, INTERNATIONAL NEWS SAFETY INSTITUTE (May 17, 2012), http://www.newssafety.org/casualty_news.php?id=526.

have offices in the Philippines.⁷¹ Also, very few domestic law firms have associations with large foreign firms.⁷² These restrictions have been criticized, and some have argued that the country should open itself to cross-border practice, particularly in light of globalization.⁷³

Perhaps the biggest obstacle for *pro bono* service is the fact that citizens are not aware of their resources and what services are available to them. According to the American Bar Association's 2012 report on the Mindanao region in the Philippines, the cost of hiring a private lawyer – estimates range from 10,000 PhP (US\$232.56) to 50,000 PhP (US\$1,162.79), which is out of reach for most citizens who earn on average 1,403 PhP (US\$32.63) per month.⁷⁴ While the IBP obligates lawyers to render service to indigent parties, as mentioned earlier, they have not been successful in disseminating information about its legal aid programs to citizens that the programs are intended to serve.⁷⁵ Particularly, for the most marginalized who live in rural areas, these citizens are often unaware of the IBP's legal aid programs and believe that lawyers only concentrate their practice in city centers.⁷⁶ Relatedly, while the PAO also provides legal services to the poor and citizens are more aware of them, the average caseload per Public Attorney lawyer numbers is in the hundreds, so the quality of service is likely to suffer.⁷⁷

C. *Pro Bono* Resources

The following is a list of organizations providing *pro bono* services in the Philippines which those interested in becoming involved in may contact for more information:

- **The Alternative Law Groups**, <http://www.alternativelawgroups.org/about.asp?sec=index>. Provides direct legal services and litigation support, education and paralegal development programs, internship activities, policy reform work, and research and publications.
- **Sentro Ng Alternatibong Lingap Panligal (“SALIGAN”)**, <http://www.saligan.org/>. Provides litigation support, legal literacy and alternative legal education, paralegal formation, policy advocacy, research and publication, and internship for law students.
- **Justice Reform Initiatives Support Project (“JURIS”)**, <http://www.alternativelawgroups.org/whatwedo.asp?sec=det&type=projects&id=108>. Engages in efforts to improve the quality of judicial services and access to justice via judicial education, mediation/ADR strengthening, and reform advocacy.
- **Alternative Law Research and Development Center, Inc. (“ALTERLAW”)**, <http://www.alternativelawgroups.org/members.asp?sec=unique&id=7>. Provides legal services and other legal resources, conducts policy research, promotes rights awareness and provides internship for law students.
- **The Albert Schweitzer Association, Philippines, Inc. (“ASAP”)**, <http://www.alternativelawgroups.org/members.asp?sec=unique&id=6>. Provides free legal assistance to children in conflict with the law and reintegration of former child detainees into their families and society.
- **Balay Alternative Legal Advocates for Development in Mindanaw, Inc. (“BALAOD-Mindanaw”)**, <http://balaymindanaw.org>. Provides legal services to marginalized sectors and communities in Mindanao, conducts capacity-building interventions on local legislation and dispute resolution, advances legal issues of different marginalized sectors and communities.

⁷¹ *Asialaw Market Survey: Asia's Best Local Law Firms*, ASIA LAW (Jun. 2006), <http://www.asialaw.com/Article/1971349/Asialaw-Market-Survey-Asias-Best-Local-Law-Firms.html>

⁷² *Id.*

⁷³ Justice Dante O. Tinga, *From General Practice to Cross-Border Practice: The Changing Trends and Paradigms* (Apr. 27, 2008), <http://sc.judiciary.gov.ph/publications/benchmark/2008/05/050827.php>.

⁷⁴ AMERICAN BAR ASSOCIATION, *Access to Justice Assessment for Philippines Mindanao*, 2 (Jan. 2012), http://www.americanbar.org/content/dam/aba/directories/roli/philippines/philippines_access_to_justice_assessment_2012.aut_hcheckdam.pdf.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

- **Children’s Legal Bureau, Inc. (“CLB”)**,
<http://www.alternativelawgroups.org/members.asp?sec=unique&id=10>.
Provides legal assistance to abused children and children in conflict with the law, paralegal trainings to communities and children, advocacy, and networking.
 - **Free Rehabilitation, Economic, Education and Legal Assistance Volunteers Association, Inc. (“FREELAVA”)**, <http://www.alternativelawgroups.org/members.asp?sec=unique&id=12>.
Provides free legal aid, rehabilitation of offenders, and crime prevention programs.
- Kanlungan Center Foundation, Inc. (“KANLUNGAN”)**,
<http://www.alternativelawgroups.org/members.asp?sec=unique&id=25>.
Provides welfare, feminist counseling and legal services to migrant Filipino workers in distress.
- Tanggapang Panligal Ng Katutubong Pilipino (“PANLIPI”)**,
<http://www.alternativelawgroups.org/members.asp?sec=unique&id=19>.
Organization of lawyers and indigenous people’s advocates that pioneered and continues to engage in development work among indigenous peoples in the Philippines.
- **Paglilingkod Batas Pangkapatiran Foundation (“PBPF”)**,
<http://www.alternativelawgroups.org/members.asp?sec=unique&id=15>.
Provides paralegal formation, legal assistance and support through research and litigation in four main areas of work: environment, women, children, and governance.
 - **Women’s Legal Bureau (“WLB”)**,
<http://www.alternativelawgroups.org/members.asp?sec=unique&id=21>.
Provides feminist legal services and actively engages in advocacy together with other women’s groups to transform the law and the legal system.

Legal clinics providing *pro bono* services:

- **Ateneo Human Rights Center (“AHRC”)**,
<http://www.alternativelawgroups.org/members.asp?sec=unique&id=8>.
Provides legal assistance to indigent victims of human rights abuses.
- **The Office of Legal Aid (“OLA”) at the University of the Philippines, College of Law**,
http://law.upd.edu.ph/index.php?option=com_content&view=category&id=64:what-is-office-of-legal-aid-ola&Itemid=73&layout=default.
Provides free legal assistance to indigent litigants and is actively involved in public interest cases.

III. CONCLUSION

There is a great need for *pro bono* legal assistance in the Philippines and to educate the population regarding the availability of *pro bono* legal services. Because of the potential barriers to providing such assistance, the best opportunities may be found by reaching out to, and supporting, groups that are already well-established in the Philippines. A potentially promising area for near-term investment and growth could be community paralegals and law schools, as these avenues could serve as valuable resources and options for citizens in the Philippines where access to lawyers may be unavailable for one or more reasons.

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Pro Bono Practices and Opportunities in the Philippines

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PRO BONO PRACTICES AND OPPORTUNITIES IN POLAND

As a member of the European Union, Poland is bound by the EU's legal requirements and extensive jurisprudence on the right of access to justice. Although traditionally no *pro bono* culture existed in Poland before 1989, currently, as a result of the involvement of nongovernmental organizations ("NGOs") and multinational and domestic law firms, an active *pro bono* culture is emerging.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN POLAND

A. The Legal Profession¹

The Polish legal profession consists of attorneys, called "advocates," who can provide a range of legal services, and "legal advisors," who serve predominantly the business and administrative sectors and who are restricted from providing representation for criminal offenses that are more serious than petty crimes.

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. The system of appointing *ex officio* lawyers is different in criminal and noncriminal cases, including proceedings before the Constitutional Tribunal, new administrative proceedings and cross-border disputes. Legal aid is provided only in court proceedings. There is no legal framework providing for prelitigation advice or out-of-court legal aid.² Access to legal aid has been limited and difficult to obtain in Poland partly because of the shortage of practicing lawyers.

B. Legal Aid

There is no specific act that governs legal aid in Poland. Instead, relevant provisions regulating legal aid are scattered throughout various statutory codes.

C. Criminal Legal Aid

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.³ 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.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: (i) cases where a defendant is a juvenile; (2) cases where a defendant is deaf, blind, or mute; (3) cases involving reasonable doubt as to the defendant's sanity; (4) cases where the defendant has been accused of a high crime or has been deprived of liberty; and (5) when the court determines the necessity for counsel 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 obliged 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 such appointment are found to be 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.

¹ L. Bojarski, *The Role of the Nongovernmental Sector in Pursuing Reform of the Legal Aid System: The Case of Poland*, in MAKING LEGAL AID A REALITY; A RESOURCE BOOK FOR POLICY MAKERS AND CIVIL SOCIETY, by Public Interest Law Institute (2009), <http://www.pilnet.org/public-interest-law-resources/19-making-legal-aid-a-reality-a-resource-book-for-policy.html>.

² Adam Bodnar and Dominika Bychawska, *The legal profession in Poland*, ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE (Jan. 2009). See <http://www.osce.org/odihr/36308>.

³ POLAND CONST., art. 42, pt. 2.

⁴ CODE OF CRIMINAL PROCEDURE OF THE REPUBLIC OF POLAND, arts. 6 and 83.

⁵ *Id.* at art. 79, §§ 1 and 2, and art. 80.

⁶ *Id.* at art. 81.

⁷ *Id.* at art. 78, § 1.

⁸ *Id.* § 2.

All practicing attorneys are required to take on ex officio criminal cases, which are assigned by the court from an alphabetical list. Such attorneys are compensated by the State.⁹

D. Non-Criminal Legal Aid

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.¹⁰ The court determines whether the presence of counsel or legal advisor is necessary in such case.¹¹ Discretionary exemptions are granted based on the legal and factual complexity of the case, as assessed by the court, and on the vulnerability of the applicant. Once the court determines eligibility, the local Council of the Bar (*Rada Adwokacka*) or Council of Legal Advisors (*Rada Radcow Prawnych*) appoints an ex officio attorney.

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 to be false or have changed, and the applicant may be required to pay attorney's fees when an award has been granted to him.¹² An applicant for exemption from court costs is obliged 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 they are unable to pay attorney's fees without impeding their ability to support themselves and their family.¹³ As a result of severe under-funding of the judicial system, it is estimated that legal aid is granted in only about 0.18% of noncriminal cases.

II. PRO BONO IN POLAND: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. 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 State, 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, in the 1990s this attitude started changing as a result of a general ideological shift from the expectation that legal aid would be exclusively state-sponsored as it was under Communism to anticipation that other sectors, such as civil society and private actors, would become greater participants in the provision of legal services.

In recent years, many new *pro bono* programs have developed and *pro bono* activities initiated earlier in the decade have expanded and diversified. NGOs have been instrumental in establishing a long-term *pro bono* presence in Poland.

The National Council of the Bar and the National Council of Legal Advisors coordinate annual countrywide events for people who cannot afford to pay for legal services to receive free legal advice. The National Council of the Bar has hosted a "Day of Free Legal Advice" every year since 2006. This initiative has become very popular and, so far, thousands of people have received free legal assistance in various areas of law, including inheritance law, rights to alimonies, distribution of marital property, labor law, insurance law, real estate and traffic accidents. The "Blue Umbrella" is a week-long event organized by the National Council of Legal Advisors since 2009. Free legal advice is provided with respect to a selected topic, the main theme chosen for each event. In 2010, over 800 lawyers in 42 cities participated.

At the European level, Poland has also shown greater involvement. In 2009, Poland participated in the European Pro Bono Forum hosted by the Public Interest Law Institute ("PILnet"). 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.¹⁴ At the 2011 European Pro Bono Forum, HFHR

⁹ Bojarski *supra* n.1.

¹⁰ Code of Civil Procedure art. 117.

¹¹ *Id.* § 4.

¹² *Id.* at art. 120.

¹³ *Id.* at art. 117, § 6.

¹⁴ 2009 European Pro Bono Forum, available at <http://arcs.ceu.hu/event/601/2009-european-pro-bono-forum>.

was one of the recipients of the PILnet 2011 European Pro Bono Awards for its exceptional work in the public interest.¹⁵

B. Barriers To *Pro Bono* Work And Other Considerations

Although *pro bono* opportunities have increased, barriers remain. Many NGOs and advocates have lobbied for reform of the legal profession to improve accessibility and transparency, with an aim to increase legal aid activity. The Polish 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.¹⁶

As a new EU member, Poland adopted the EU Council Directive establishing minimum common rules relating to legal aid in cross-border disputes.¹⁷ On several occasions, the legal community stressed the necessity to address the issue of legal aid, emphasizing that Poland, despite its commitments as an EU member, is the only EU country that has no laws regulating legal aid.

The first draft bill on access to legal aid was introduced by the Ministry of Justice in 2004. It was widely criticized for addressing only the poorest citizens, and consequently, the bill failed. Another version of the bill, published in 2007, anticipated broader access to legal aid but was abandoned with the coming of a newly elected government. In January 2009, the Ministry of Justice introduced the most recent version of the draft bill, which, after a governmental debate, needed to be revised.¹⁸ In May 2010, following several revisions, the government decided to withdraw the draft and focus on a new, more limited initiative that aimed to provide access to free legal information instead. This draft bill on free legal information was published on February 8, 2011. It aims to create Legal Information Centers (*Ośrodki Informacji Prawnej*) where people, regardless of their financial situation, can inquire about current regulations, their rights and obligations, authorities responsible for handling specific procedures as well as opportunities to receive legal assistance.¹⁹

Additionally, a draft bill that aims to amend laws regulating certain professions (including the legal profession) was first announced on March 7, 2012. The explanatory statement of the bill acknowledges necessary amendments addressing legal aid.²⁰ Such ongoing legislative initiatives that often remain only in draft frustrate the legal community.²¹ On March 30, 2012, in a joint statement, the National Council of the Bar and the National Council of Legal Advisors expressed their major concerns regarding an unfavorable interpretation of regulations on VAT that lawyers must be paid for enumerated forms of legal assistance, including *pro bono* aid.²² Both organizations viewed that requirement as a major hurdle to providing *pro bono* assistance; they even considered canceling the “Blue Umbrella” and “Day of Free Legal Advice” annual events hosted by the National Council of the Bar and the National Council of Legal Advisors, respectively. Shortly thereafter, on May 21, 2012, the March 7, 2012, explanatory statement of the bill was updated to reflect that newly proposed regulations would resolve the VAT issue.

C. 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

¹⁵ *Winners Announced for PILnet’s 2011 European Pro Bono Awards*, Nov. 21, 2011, available at <http://pilnet.org/events/133-winners-announced-for-pilnets-2011-european-pro-bono-awards.html>.

¹⁶ *See Projekt ustawy o zmianie ustaw regulujących wykonywanie niektórych zawodów* (Draft bill amending laws regulating certain professions) (Mar. 7, 2012), <http://ms.gov.pl/pl/ogloszenia/news.3807.projekt-ustawy-o-zmianie-ustaw-regulujacych.html>.

¹⁷ *Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes*, <http://eu.vlex.com/vid/improve-cross-disputes-legal-37777065>

¹⁸ THE NATIONAL COUNCIL OF LEGAL ADVISORS (Poland), http://www.fbe.org/IMG/pdf/Marek_Wiewiorski_annexe.pdf.

¹⁹ Magdalena Hodak, *ezplatna informacja prawna. Dziś edukacja, jutro pomoc*, available at <http://nawokandzie.ms.gov.pl/pomoc-i-edukacja-prawna/news/282/bezplatna-informacja-prawna-dzis-edukacja-jutro-pomoc>

²⁰ *See* <http://ms.gov.pl/pl/ogloszenia/news.3807.projekt-ustawy-o-zmianie-ustaw-regulujacych.html>.

²¹ *See* <http://adwokatura.pl/?p=2634>.

²² *See* <http://adwokatura.pl/?p=2634> and <http://adwokatura.pl/wp-content/uploads/2012/03/Wspólne-stanowisko-przedstawicieli-prezydów-Krajowej-Rady-Radców-Prawnych-i-Naczelnej-Rady-Adwokackiej-w-sprawie-opodatkowania-prawnej-pomocy-w-Polsce-oraz-stworzenia-państwowej-o-systemu-pomocy-prawnej-dla-osób-ubogich.pdf>.

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.²³ Under the auspices of this program, HFHR litigates cases on behalf of nonnationals, and also monitors the legality of the actions of the Polish government with respect to the nonnationals. Lawyers are on call to interview and give advice to nonnationals and refugees. Lawyers also represent nonnationals and refugees at administrative proceedings, prepare opinions on legal act drafts, and educate the public about laws concerning nonnationals 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.²⁴

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 is a violation of a right to a fair trial. They investigate the facts, observe court proceedings and draft reports.²⁵

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.

D. 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.”²⁶ 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.²⁷ 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.

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.²⁸

In 2007, the Foundation, along with HFHR, PILnet and Ashoka Foundation organized a roundtable *pro bono* conference at the Polish Constitutional Tribunal in Warsaw, Poland. 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

²³ HELSINKI FOUNDATION FOR HUMAN RIGHTS, *Cost-free Legal Advice for Foreigners and Refugees*, available at <http://www.hfhrpol.waw.pl/program-10-en.html>.

²⁴ HELSINKI FOUNDATION FOR HUMAN RIGHTS, *Public Interest Law Actions*, available at <http://www.hfhrpol.waw.pl/Nprogram-2-en.html>.

²⁵ HELSINKI FOUNDATION FOR HUMAN RIGHTS, *The “Innocence” Clinic*, available at <http://www.hfhrpol.waw.pl/Nprogram-16-en.html>.

²⁶ LEGAL CLINICS FOUNDATION, *Legal Clinics Foundation*, available at http://fupp.org.pl/index_eng.php.

²⁷ LEGAL CLINICS FOUNDATION, *Polish Legal Clinics*, available at http://fupp.org.pl/index_eng.php?id=clinics.

²⁸ LEGAL CLINICS FOUNDATION, *Lawyer Pro Bono*, available at http://fupp.org.pl/index_eng.php?id=probono2004eng.

affirmation of the 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

E. 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. In 2010 the number of law firms collaborating with the Center increased from 22 to 41. 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.

F. 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.³¹ More importantly, however, a culture of *pro bono* has started to emerge in Polish domestic law firms. The Center publishes an annual report that highlights the activities of all private law firms in Poland that collaborate with the Center in the *pro bono* sector.³²

The increasing role of domestic law firms in the promulgation of *pro bono* culture in Poland is also evidenced by the fact that among the law firms that were distinguished in the annual ranking of law firms prepared by *Gazeta Prawna* (a Polish national newspaper) were two domestic firms: Casus Zarzycka & Wspólnicy Kancelaria Prawna and DeBenedetti Majewski Szcześniak.³³

III. CONCLUSION

Although *pro bono* culture in Poland is still in need of improvement, the many examples of *pro bono* activities taking place in Poland provide strong support for the conclusion that there is a rising interest in developing proper *pro bono* culture in the country. The ongoing legislation efforts are a positive indication that the legal aid system and *pro bono* culture in Poland will strengthen over time. July 2012
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.

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 For example, the Warsaw office of Weil, Gotshal & Manges provides extensive *pro bono* services to its community. In fact, in 2012, the firm was named a finalist for the Pro Bono Award. Weil’s Warsaw Office Honored for Pro Bono Service, available at <http://www.weil.com/news/newsdetail.aspx?news=41413>.

³² CENTRUM PRO BONO, *2011 Report* available at [http://www.centrumprobono.pl/uploads/File/raport_cs4\(2\).pdf](http://www.centrumprobono.pl/uploads/File/raport_cs4(2).pdf).

³³ GAZETA PRAWNA, *2011 Ranking of Law Firms*, available at http://prawo.gazetaprawna.pl/artykuly/493999,specjalne_wyroznienia_vii_rankingu_kancelarii_prawnych.html.

PRO BONO PRACTICES AND OPPORTUNITIES IN PORTUGAL

In Portugal, access to justice is a right provided by the Constitution, and attorneys have a general duty to help protect this right. The Portuguese State has increased its efforts to make legal assistance available to those who cannot afford it through a system that involves cooperation between the Portuguese social security services and the Portuguese Bar Association. In addition, several nongovernmental associations in Portugal provide legal assistance to the public, for specific subject matter issues – such as criminal law, consumer law and refugee law.

This chapter outlines *pro bono* opportunities in Portugal by providing a general overview of the organization of the legal profession in the country, of legal aid alternatives provided by the Portuguese State and of initiatives by private associations to provide legal aid to the population in need.¹

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN PORTUGAL

A. The Legal Profession

In order to permissibly practice law in Portugal, a lawyer (*advogado*) must be registered with the Portuguese Bar Association.² The Portuguese Bar Association was created with Law No. 11,715 of 12 June 1926,³ and is organized into seven districts: Lisboa, Porto, Coimbra, Évora, Faro, Açores, Madeira. Its current articles of association are set forth in Law No. 15/2005 of 15 January 2005.

In order to register with the Portuguese Bar Association, an individual must (i) have obtained a law degree from an accredited university; (ii) have followed a 24-month internship, divided in two phases: (a) a six-month training on the regulations and principles applicable to the profession, at the end of which the candidate must sit for exams in order to pass to the second training phase and be able to appear in Court, and (b) an eighteen-month practical training in a law firm, having an attorney with at least five years of professional experience as a tutor; and (iii) have been approved in a final entrance examination to the Portuguese Bar Association.⁴

Fully qualified lawyers from other member countries of the European Union are also allowed to practice law in Portugal.⁵ Moreover, lawyers qualified in Brazil may also be admitted to practice law in Portugal.⁶ Foreign citizens who obtained their degree in Portugal may be registered in the Portuguese Bar Association in the same way as Portuguese citizens if their country of nationality grants identical rights to Portuguese citizens.⁷

According to the Portuguese Bar Association, in 2008 there was one lawyer per 350 inhabitants in Portugal, which is a comparatively high rate in the European context. The reason for this high rate is that there are very few jobs for jurists in the public sector, which results in many graduates of law faculties becoming lawyers.⁸

In Portugal, legal agents (*solicitadores*) may also represent clients in certain legal matters regarding which the law does not require the intervention of a qualified lawyer. Legal representation by a qualified lawyer (Portuguese law does not distinguish between solicitors and barristers) is required in criminal cases for acts in respect of which the Criminal Procedure Code requires the appointment of a defense attorney.⁹ Furthermore, in the context of civil and commercial litigation, representation by a qualified lawyer is compulsory in legal proceedings involving potential appeals and in any cases directly brought before a court of appeal (*Tribunal da Relação*) or the Supreme Court of Justice.¹⁰ In cases where representation by a qualified lawyer is compulsory, legal agents, as well as trainee lawyers

¹ This chapter was drafted with the support of Mr. Gonçalo Machado Borges from the law firm Morais Leitão, Galvão Teles, Soares da Silva (www.mlgtts.pt).

² Articles 61 and 200 of the Statutes of the Portuguese Bar Association approved by Law No. 15/2005, of Jan. 15, 2005 (referred to hereinafter, for ease of reference, as Law No. 15/2005).

³ Available online at: <http://www.oa.pt/>

⁴ *Id.* at art. 188.

⁵ *Id.* at art. 196.

⁶ *Id.* at art. 194.

⁷ *Id.* at art. 194.

⁸ See http://www.tsf.pt/PaginaInicial/Portugal/Interior.aspx?content_id=966242&page=2.

⁹ See CRIMINAL PROCEDURE CODE, art. 64; Law No. 49/2004, of Aug. 24, 2004, art. 1(10).

¹⁰ See CIVIL PROCEDURE CODE, art. 31.

and the parties themselves, may, exceptionally, present submissions *provided* they do not involve matters of law.

Legal agents must be registered with the Chamber of Legal Agents (*Câmara dos Solicitadores*),¹¹ and a legal agent must: (i) hold a degree in Law or a diploma as legal agent; (ii) not be registered with the Portuguese Bar Association; (iii) complete a probationary period intended to make trainees familiar with the most common legal acts and terms and with the rights and duties of the profession and (iv) be a citizen of Portugal or of the European Union.¹² In addition, a legal agent may represent a client even in situations in which an attorney is required if there are no attorneys available in a given judicial district.¹³

Attorneys registered with the Portuguese Bar Association may advertise their services, as long as they comply with the general rules of ethics and professional conduct (among others, e.g., advertisement must be objective, truthful and appropriate).¹⁴ Pursuant to the applicable legislation, attorneys must not include information on the value of their services, terms of payment or gratuity in their advertising, and are also prohibited from revealing client's names (except under exceptional circumstances, with the client's consent and pursuant to a resolution by the Bar's general council).¹⁵ The applicable legislation also requires that attorney's fees reflect adequate economic compensation for the services actually rendered. When fixing fees, an attorney may factor in the difficulty and urgency of the matter, the degree of intellectual creativity of his performance, the result obtained, the time spent and the responsibilities undertaken.¹⁶ Attorneys in Portugal are generally not allowed to agree on a contingent fee with their clients.¹⁷

The organization of the Portuguese judicial system comprises two types of courts: (i) the administrative and tax courts, with jurisdiction to settle disputes arising from legal relationships of a public law nature (administrative or fiscal), and (ii) the judicial courts, whose jurisdiction covers civil, commercial and criminal law matters in general. The judicial courts are organized into three levels: (i) first instance courts (which may, according to the scope of matters with which they are entrusted, be general jurisdiction courts or specialized jurisdiction courts); (ii) the courts of appeal (*Tribunal da Relação*), seated in Lisbon, Oporto, Coimbra, Guimarães and Évora, and (iii) the Supreme Court of Justice. The precise jurisdiction of each of these judicial courts is determined on the basis of several criteria, namely: subject-matter, territorial scope, hierarchy and value of the proceedings.

B. Legal Aid

The Portuguese Constitution guarantees access to law and judicial review for everyone. Furthermore, it prohibits denying access to justice because of a lack of financial means, and it confirms that everyone has the right to legal information and counsel, as well as to legal aid.¹⁸ The legal diplomas and regulations that implement this constitutional right of access to justice in Portugal are Law No. 34/2004, of 29 July;¹⁹ Administrative Ordinances Nos. 1085-A/2004, of 31 August, No. 10/2008, of 3 January; and No. 11/2008, of 3 January (in each case, as subsequently amended); and Internal Regulation No. 1/05, approved by the general council of the Portuguese Bar Association.²⁰

¹¹ See <http://solicitador.net/>

¹² See Chamber of Legal Agents, approved by Decree-Law No. 88/2003, of April 26, 2003, as amended by Decree-Law No. 226/2008, of 20 Nov., arts. 77 and 93.

¹³ See CIVIL PROCEDURE CODE, art. 32(4).

¹⁴ Law No. 15/2005, art. 89.

¹⁵ *Id.*

¹⁶ *Id.* at art. 100.

¹⁷ *Id.* at art. 101.

¹⁸ CONSTITUIÇÃO DA REPÚBLICA, PORTUGUESA (CONST. PORT.) art. 20.

¹⁹ Law No. 34/2004 was amended by Law No. 47/2007, of Aug. 28, 2007. Law No. 34/2004 revoked Law No. 30-E/2000, of Dec. 20, 2000, which first introduced the current structure of access to justice being required through social security services. Law No. 34/2004 transposes into the Portuguese territory the European Directive No 2003/8/CE, of Jan. 27, 2003, concerning the improvement of access to justice in cross border disputes, *available online at* http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/national_law_la_por_en.pdf

²⁰ See http://www.oa.pt/CD/Conteudos/Artigos/detalhe_artigo.aspx?sidc=31834&idc=31890&idsc=30361.

According to Law No. 34/2004, no one should be prevented from being informed of, exercising or defending their rights due to their social or cultural status, or lack of financial means.²¹ Access to justice (i.e., “legal assistance” in general) includes the provision of “legal information” and “legal protection” mechanisms.²²

The Ministry of Justice is in charge of ensuring access to “legal information,” and fulfills this obligation by providing publications and other measures which contain information on legal rights and duties. In addition, the Ministry of Justice is responsible for ensuring that all individuals have a means to exercise these rights.²³

“Legal protection” involves:²⁴ (i) “legal advice or consultancy” and/or (ii) “legal aid.”

- i. Legal advice/consultancy generally includes providing an individual with guidance regarding the application of laws to certain interests. It may also include providing an individual with extra-judicial steps or informal mechanisms of reconciliation. Law firms and “legal consultancy offices” (*gabinetes de consulta jurídica*) created by the Portuguese State together with the Portuguese Bar Association may provide legal advice or consultancy.²⁵
- ii. Legal aid includes providing a total or partial exemption or a deferment of payments of court fees and other procedural charges. In addition, legal aid can include having the State pay the fees of an individual’s designated legal representative.²⁶ Legal aid may be granted for the resolution of any type of legal dispute or litigation, before any type of Court, and will include any appeals as well as enforcement of legal decisions.²⁷

Legal protection mechanisms are available for:²⁸ (i) Portuguese and European Union citizens, or foreigners legally residing in a State of the European Union, who demonstrate they have “insufficient financial means;” (ii) foreigners who do not legally reside in the European Union if legal protection would also be granted to Portuguese nationals by the laws of the respective countries of origin; and (iii) nonprofit legal entities with “insufficient financial means” (in this case, the only legal protection afforded is legal aid). Companies and other legal entities with profitable purposes are not entitled to legal protection.

“Insufficient financial means” generally includes a situation where the individual or nonprofit legal entity does not have the ability to pay, in full or in part, the normal costs of legal proceedings or the costs of legal fees.²⁹ Assessing an individual’s or entity’s financial status will include a review of the revenues, assets and usual expenses of the individual and his or her family unit, according to a formula set forth in the Annex to Law No. 34/2004 and Administrative Ordinance No. 1085-A/2004.³⁰ There can be exceptions to the application of the formula, including for example, a request based exclusively on the insufficient financial means of one individual, without regard to the corresponding family unit.³¹

An applicant for legal aid must submit proof of insufficient financial means and a request to have legal protection. Failure to provide this information may lead to the rejection of the request.³² Administrative

²¹ Law No. 34/2004, art. 1(1).

²² *Id.* at art. 1(2).

²³ *Id.* at art. 4.

²⁴ *Id.* at art. 6.

²⁵ *Id.* at arts. 14 and 15.

²⁶ *Id.* at art. 16.

²⁷ *Id.* at arts. 17 and 18.

²⁸ *Id.* at art. 7.

²⁹ *Id.* at art. 8.

³⁰ Administrative Ordinance No 1085-A/2004, of Aug. 31, 2004, covers the types of documentary evidence considered for the assessment of “insufficient financial means,” for purposes of the benefits that may be granted under Law No. 34/2004. See <http://www.dgpi.mj.pt/sections/leis-da-justica/livro-iii-leis-civis-e/leis-de-processo-civil/regime-de-acesso-ao/>.

³¹ *Supra* Law No. 34/2004 at art. 8-A.

³² *Id.* at art. 8-B (4).

Ordinance No. 1085-A/2004 exemplifies documents that may be used to demonstrate insufficient financial means.³³

Under Law No. 34/2004, an applicant himself, a Public Prosecutor on behalf of an applicant, or a lawyer who represents an applicant may all request legal assistance for the applicant.³⁴ As of January 2001, applications for legal aid must be submitted to the social security services (as opposed to being submitted, for instance, to the Portuguese Bar Association or to Judicial Courts).³⁵ Applications may be submitted at any social security office in person, by e-mail, mail or fax, following the form approved by Administrative Ordinance No. 11/2008, which is available at any social security office and also online (http://195.245.197.196/preview_formularios.asp?r=17569&m=PDF).³⁶ The applicant must specify the type(s) of access to justice needed (which may be cumulative) and whether the applicant is requesting legal advice/consultancy or legal aid.³⁷

The social security services have 30 calendar days to review the application and notify the applicant in writing with a determination.³⁸ If the request is partially or totally rejected, a hearing will be scheduled with the applicant, so that he has an opportunity to request a reconsideration of the decision.³⁹ If the social security services do not reply to the request within 30 days, the application is deemed to have been accepted. When the social security services accept the request, they notify the Portuguese Bar Association which then appoints an attorney to assist the applicant within 10 days.⁴⁰ The social security services may also notify the Chamber of Legal Agents to appoint a legal agent when appropriate. The appointed attorney or legal agent must initiate the relevant legal assistance (namely, to initiate the required court proceedings) within 30 days of the appointment.⁴¹ The applicant benefiting from legal aid may request, on due grounds, for the initially appointed attorney to be replaced and, if this request is accepted, the Bar Association will appoint a new attorney.⁴²

Both the Bar Association and the Chamber of Legal Agents maintain lists of attorneys, legal agents and trainees available to provide legal aid.⁴³ Participation on such lists is voluntary. The Portuguese Bar Association organizes an applications period twice each year for those interested in joining the lists.⁴⁴

After resorting to the network of social security offices to process legal aid requests, the number of these requests doubled from 2000 to 2001.⁴⁵ Moreover, in 2001, around 20% of the civil and labor law suits pending before the Portuguese Courts involved individuals or entities benefiting from legal assistance provided based on Law No. 34/2004.⁴⁶

The calculation and payment of attorney's fees for the services provided to beneficiaries of legal protection under Law No. 34/2004 are regulated by Administrative Ordinance No. 10/2008, of 3 January, as amended by Administrative Ordinances No. 210/2008, of 29 February; No. 654/2010, of 11

³³ See <http://www.dgpj.mj.pt/sections/leis-da-justica/livro-iii-leis-civis-e/leis-de-processo-civil/regime-de-acesso-ao/>; see also <http://195.245.197.196/app/procuradica/default.asp> (providing a calculator permitting users to estimate whether they could qualify for legal aid assistance).

³⁴ Law No. 34/2004, art. 19.

³⁵ *Id.* at arts. 20, 22.

³⁶ Administrative Ordinance No. 11/2008, of Jan. 3, 2008, which approves the request forms for legal assistance in accordance with Law No. 34/2004. Available at <http://www.dgpj.mj.pt/sections/leis-da-justica/livro-iii-leis-civis-e/leis-de-processo-civil/regime-de-acesso-ao/>.

³⁷ Law No. 34/2004, n.34 at art. 22.

³⁸ *Id.* at arts. 25 (1) and 26 (1).

³⁹ *Id.* at art. 23.

⁴⁰ *Id.* at art. 30.

⁴¹ *Id.* at art. 33.

⁴² *Id.* at art. 32.

⁴³ *Id.* at art. 45; of Administrative Ordinance No. 10/2008, arts. 10, 11 and 12; and Internal Regulation No. 5/2005 of the Portuguese Bar Association.

⁴⁴ See <http://oa.pt/faqsad.html>.

⁴⁵ João Pedroso, Catarina Trincão, João Paulo Dias *E a justiça aqui tão perto? As transformações no acesso ao direito e à justiça*, 65 REVISTA CRÍTICA DE CIÊNCIAS SOCIAIS, 77-106 (Maio 2003).

⁴⁶ *Id.*

August; and No. 319/2011, of 30 December.⁴⁷ Payment of attorney's fees must be processed by the Institute for Infrastructures and Financial Management of the Ministry of Justice ("IGFIJ") until the end of the following month to that in which the facts that trigger compensation (such as the appointment to a set number of cases, the attainment of *res judicata* status for a judicial decision issued or the attorney's presence in court) has been confirmed in the system by the court's officials.⁴⁸

The award of legal aid may be withdrawn if, among other reasons, the beneficiary acquires sufficient financial means to bear the costs of proceedings, or if the reasons why legal aid was granted were false or no longer apply.⁴⁹

The Portuguese Bar Association has a network of "Legal Consulting Offices," which are staffed by volunteer attorneys and where any individual may obtain guidance regarding legal matters.⁵⁰ Legal advice provided under this consultancy mechanism is free of charge for interested parties, although the applicable regulations limit the number and duration of consultancy requests any one person may benefit from. In addition, the Portuguese Bar Association has organized in the past an annual "Legal Consulting Day," during which attorneys remain available at a number of locations to assist the public with legal questions.⁵¹

There are also other State organizations that provide legal consulting assistance to the public concerning specific legal areas, such as the Authority for Working Conditions (*Autoridade para as Condições do Trabalho*), which provides legal advice on labor law issues.⁵²

II. **PRO BONO IN PORTUGAL: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. **Pro Bono Opportunities**

The Portuguese Bar Association requires lawyers to cooperate with access to justice within their local communities.⁵³ Portuguese attorneys may volunteer to have their names included in the list of attorneys available to provide legal assistance based on Law No. 34/2004, and to provide legal assistance in one of the Legal Consulting Offices set up by the Portuguese Bar Association.

Pro bono opportunities may also arise for attorneys willing to assist nonprofit organizations and associations in Portugal, which offer legal support services to the public. For instance, the Association of Support to Victims (*Associação de Apoio à Vítima*) ("APAV") provides support, including legal assistance, to the victims of crimes and their families, through offices spread across different locations in Portugal.⁵⁴ Another example is DECO, an association that provides support to consumers and indebted individuals, including offering legal assistance to help consumers enforce their rights and solve conflicts.⁵⁵ The Portuguese Counsel for Refugees provides assistance in relation to human rights.⁵⁶ Moreover, the Portuguese Ministry of Justice lists different associations that have organized arbitration centers (*Centros de Arbitragem de Conflitos de Consumo*) in order to solve conflicts (<http://www.gral.mj.pt/categoria/conteudo/id/11>)

B. **Barriers For Pro Bono Work And Other Considerations**

As a general rule, pursuant to the applicable legislation in Portugal, attorneys are expected to charge an adequate amount for their services (Law No. 15/2005, art. 100) and are prohibited from advertising free legal services (Law No. 15/2005, art. 89 (4)(b)). At the same time, it is a duty of attorneys registered with the Portuguese Bar Association to cooperate with access to justice (Law No. 15/2005, art. 85 (2)(f)).

⁴⁷ Available at <http://dre.pt/pdf1sdip/2011/12/25000/0553205533.pdf>.

⁴⁸ Administrative Ordinance No. 10/2008, as amended, art. 28.

⁴⁹ Law No. 34/2004, art. 10; See also <http://www.gral.mj.pt/categoria/conteudo/id/10>; http://www.oa.pt/conteudos/artigos/lista_artigos.aspx?idc=117&idsc=86358.

⁵⁰ See <http://www.gral.mj.pt/categoria/subconteudo/id/11>.

⁵¹ See http://portal.oa.pt/cd/Conteudos/Artigos/detalhe_artigo.aspx?sidc=31634&idc=8351&idsc=21852&ida=45469.

⁵² See <http://www.act.gov.pt/>

⁵³ Law 15/2005, art. 85 (2).

⁵⁴ See <http://www.apav.pt/apav.html>.

⁵⁵ See <http://www.deco.proteste.pt/associacao/>.

⁵⁶ See <http://www.cpr.pt/>.

Attorneys may receive payments by the Portuguese State if they provide services under Law No. 34/2004. Outside this scenario, however, the legislation is not clear about whether lawyers that decide not to charge for their services could be in breach of professional ethics. Although there is no formal process for such a request, it is probably advisable for attorneys wanting to engage in *pro bono* work to contact the Portuguese Bar Association to obtain prior authorization for providing the free services or confirm that no such authorization is needed.

C. *Pro Bono* Resources

When doing research for a potential *pro bono* opportunity, the best starting point might be a website naming charities and nonprofit organizations in Portugal,⁵⁷ or contacting one of the associations mentioned in section A above.

III. CONCLUSION

The system put in place by the Portuguese State to promote access to justice, involving social security services, has proven to be accessible for the population, has increased the reach of legal assistance services and ensures more expeditious feedback to legal assistance requests (within 30 days). At the same time, however, the lack of expertise by social security workers to select causes that are suitable for legal assistance has raised some issues with the Portuguese Bar Association, so further coordination is needed between both institutions in order to improve the efficiency of the legal information and legal protection services offered. Attorneys that are qualified to practice in Portugal may find good *pro bono* opportunities by volunteering to help in the access-to-justice system put in place by the Portuguese State or by offering their services to associations that currently provide legal assistance to the public.

July 2012

Pro Bono Practices and Opportunities in Portugal

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⁵⁷ As, for example, <http://www.charity-charities.org/Portugal-charities/Portugal.html>.

PRO BONO PRACTICES AND OPPORTUNITIES IN ROMANIA

In Romania, few lawyers engage in *pro bono* work.¹ The country's communist/socialist history is in part responsible for the culture of civic disengagement.² Despite the fall of socialism in 1989, Romanians still foster feelings of distrust towards unpaid community work.³ 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. The Legal Profession

1. Lawyer Demographics

As of April 2012, among a population of approximately 22 million, there were 26,278 practicing lawyers (*avocati*) in Romania.⁴ Lawyers working in a civilian professional law firm (Societate Civila Profesionala de Avocati, a local form of partnership structure requiring at least two attorneys), with or without limited liability, cannot act for clients with conflicting interests.⁵ These rules do not apply to lawyers practicing in chamber-like arrangements who have personal liability for and individual relationships with their clients.⁶ An *avocat* can also work as a local government representative, work in academia or act as an arbitrator, mediator, conciliator, negotiator, tax adviser, IP adviser, licensed translator, administrator or liquidator.⁷ An *avocat* cannot undertake paid activity practicing in another profession, undertake any activities which would compromise the independence of the lawyer's profession or undertake any material trading activity.

2. Structure of the Judiciary

The principles, structure and organization of the Romanian judicial system are established by the Romanian Constitution and Law no. 304/2004.⁸ Justice is accomplished through (a) the High Court of Cassation and Justice; (b) courts of appeal; (c) tribunals, specialized tribunals; (d) first instance courts; and (e) military courts.⁹

The High Court of Cassation and Justice is Romania's highest court. It is located in the capital Bucharest, has four sections (civil and intellectual property, criminal, commercial and fiscal and administrative), a nine judge panel and joint sections.¹⁰

The courts of appeal are at the next level.¹¹ There are currently 15 courts of appeal. Within the courts of appeal there are sections or specialized panels for, among other things, civil, criminal, commercial, family, fiscal, administrative, labor, social insurances, maritime and fluvial cases.¹²

¹ Kandis Scott, *Decollectivization and Democracy: Current Law Practice in Romania*, 36 GEO. WASH. INT'L L. REV. 817, 817 (2004).

² *Id.*

³ *Id.*

⁴ UNIUNEA NATIONALA A BAROURILOR DIN ROMANIA, 2012 Activity Report of the National Association of the Romanian Bars, http://unbr.ro/fisiere/file/CONGRES_2012/Raport_Congres_Public_webSite_Email_050612_060612_WEBSITE.pdf

⁵ Law No. 51/1995, art. 5.

⁶ THE LAW SOCIETY OF ENGLAND AND WALES, *How to practice in Romania* (Dec. 2011), <http://international.lawsociety.org.uk/ip/europe/1325/practice>.

⁷ *Id.*

⁸ ROMANIAN SUPERIOR COUNCIL OF MAGISTRACY, *Presentation of the Romanian judicial system*, <http://www.csm1909.ro/csm/index.php?cmd=9401&lb=en> (last accessed on Jul. 17, 2012).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

Tribunals are the next level of courts and are organized at the county level and in Bucharest.¹³ There are currently 42 tribunals established by law.¹⁴ Within tribunals, there are sections, or panels for civil, criminal, commercial, minors and family cases, fiscal and administrative claims, labor conflicts and social insurances, as well as maritime or fluvial cases and other matters.¹⁵ In certain areas, specialized tribunals can be established at the county level or in Bucharest.¹⁶

First instance courts are the lowest ranking courts and are organized at the county level and in the districts of Bucharest.¹⁷ There are approximately 188 first instance courts.¹⁸ Within first instance courts, sections or specialized panels can be established depending on the nature and number of cases.¹⁹

3. Regulation of Lawyers and Legal Services

The regulation of the legal profession in Romania is decentralized.²⁰ A practicing lawyer needs to be a member of one of the 41 regional bar associations in Romania.²¹ The regional bar associations hold most of the regulatory powers.²² There is a National Association of Romanian Bars (*Uniunea Nationala A Barourilor Din Romania* or *UNBR*), which consists of representatives from each of the 41 regional bar associations and has advisory jurisdiction over issues related to the regulation and discipline of Romanian lawyers.²³ In order to be allowed to practice law in Romania, one must complete a Romanian law degree and then pass a bar exam to apply for admission to one of the 41 regional bar associations in Romania as a trainee lawyer.²⁴ A trainee lawyer needs to complete a two-year professional training period under the supervision of a permanent lawyer of at least six years standing.²⁵ Following completion of the training period, a trainee lawyer can acquire the status of a permanent lawyer by either passing the bar exam for permanent lawyers or the graduation exam of the National Institute for the Training and Improvement of Lawyers (*Institutul National pentru Pregatirea si Perfectionarea Avocatilor*).²⁶ 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 or her own.²⁷ There are new rules on continuing professional training of lawyers which require a Romanian lawyer to participate in at least three seminars, conferences or debates, organized at the regional bar association every two years.²⁸ The regional bar associations are responsible for maintaining a record of lawyer participation in Continuing Professional Development and issuing a certificate to confirm that the *avocat* has met his/her participation requirements every two years.²⁹

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.³⁰ Additionally, due to the surge in the number of lawyers,

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* For example, the law provides for the organization of sections and specialized panels for minors and family cases.

²⁰ *See, supra* n.6.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ JURIST, *Romania – Constitution, Government and Legislation*, available at <http://jurist.law.pitt.edu/world/romania.htm> (last accessed on Jul. 5, 2012).

²⁵ *Id.*

²⁶ UNIUNEA NATIONALA A BAROURILOR DIN ROMANIA, Decision No. 04/2011 of the National Association of the Romanian Bars, available at <http://www.unbr.ro/index.php?id=1&lg=2>

²⁷ DREPT ONLINE, Legal Profession Career, available at http://www.dreptonline.ro/cariere/cariera_avocat.php (last accessed on Jul. 5, 2012).

²⁸ *See, supra* n.6.

²⁹ *Id.*

³⁰ *See* Scott, *supra* n.1, at 831-32.

many attorneys 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 for the right to representation by a lawyer (selected by the person or appointed by the State) during any judicial proceeding.³¹ As discussed in more detail below, legal representation is mandatory in certain cases and in such cases a lawyer will be appointed by the State if the person does not have one.³² In other cases, indigent persons may request and be granted legal aid (either in the form of legal representation or legal advice).³³ 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.³⁴ If the number of attorneys listed in the Legal Aid Registry is insufficient, the local bar may designate other lawyers to provide legal aid.³⁵

Failure to provide legal aid by an attorney who is so designated is subject to disciplinary sanctions.³⁶ Each local Bar maintains a Legal Aid Registry and has created a Legal Aid Bureau (*Serviciu de Asistentă Juridică, or SAJ*) responsible, among other things, for designating the lawyers who provide legal aid.³⁷

1. State-Sponsored Legal Aid for Criminal Proceedings

The Romanian State must ensure that a 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 point (f), only during the trial proceedings and not throughout all stages of the criminal proceedings).³⁸ 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.³⁹ 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.⁴⁰

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 herself⁴¹ (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 persons;⁴² (c) upon request, when the person being represented is (i) a victim of a serious crime

³¹ ROMANIA CONST. art. 24.

³² See Obancia, *infra* n.53.

³³ See, *supra* n.45.

³⁴ Framework Regulations regarding the organization of the Legal Aid Bureaus (*Servicii de Asistentă Juridică*) of the Romanian Bars, adopted by Decision No. 419 of Sep. 27, 2008 of the UNBR Council, as further amended (hereafter, "Legal Aid Framework Regulations"), art. 1.

³⁵ *Id.*

³⁶ Legal Aid Framework Regulations, arts. 1, 11, 70 and 71.

³⁷ *Id.* at art. 1.

³⁸ C. PROC. PEN., art. 171.

³⁹ Cozmin Obancia, Marinela Cioroaba and Andrei Savescu, *Access to Justice in Central and Eastern Europe Country Reports: Romania 423* (2003), available at

⁴⁰ http://pilnet.org/component/docman/doc_download/48-access-to-justice-in-central-and-eastern-europe-country.html.

⁴¹ 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).

⁴² C. PROC. PEN., art. 173(3).

⁴² Law No. 678/2001 on the Prevention of and Fight Against Trafficking In Persons, published in MONITORUL OFICIAL no. 783/11.12.2000, as further amended, arts. 43 and 44.

(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;⁴³ (d) during extradition proceedings, international transfer proceedings, and execution of European arrest warrants;⁴⁴ and (e) other circumstances expressly set forth by the law which require that a person be represented by an attorney.⁴⁵

2. State-Sponsored Legal Aid for Noncriminal Matters

Before 2008, State-sponsored legal aid for noncriminal matters was only available to a limited category 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").⁴⁶ 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 noncriminal matters.⁴⁷

According to the Ordinance, legal aid is provided upon request for any civil, commercial, administrative, labor or social security matter or proceeding, as well as certain 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 monthly income per household member of less than a certain threshold in the two months preceding the request (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.⁴⁸ The maximum amount of legal aid that a person may receive during the course of one year is equal to 10 national minimum net monthly salaries.⁴⁹ The threshold mentioned in (c) above is either 300 Romanian leu, in which case the State will cover the legal costs in their entirety, or 600 Romanian leu, in which case the State will cover 50% of the legal costs.⁵⁰

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 of the fees charged by an expert, translator or interpreter during a judicial proceeding; (c) payment of 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.⁵¹

⁴³ Law No. 211/2004 on Certain Measures for The Protection of Crime Victims, published in MONITORUL OFICIAL no. 505/04.06.2004, as further amended.

⁴⁴ Law No. 302/2004 on International Judicial Cooperation Regarding Criminal Proceedings, published in MONITORUL OFICIAL no. 594/01.07.2004, as further amended.

⁴⁵ *See, supra* n.53.

⁴⁶ *See, for example*, Law No. 217/2003 on the Prevention of and Fight Against Domestic Violence, published in MONITORUL OFICIAL no. 367/29.05.2003, as further amended, arts. 23 and 24; Law No. 272/2004 on the Protection and Promotion of Children's Rights, published in MONITORUL OFICIAL No. 557/23.06.2004, as further amended, arts. 37 and 57; Law No. 105/1992 on International Private Law, published in MONITORUL OFICIAL no. 245/01.10.1992, as further amended, art. 163; Ordinance, arts. 41-49; Law No. 122/2006 on Asylum, published in MONITORUL OFICIAL no. 428/18.05.2006, as further amended, art. 17; Law No. 42/1990 on 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. 198/23.08.1996, as further amended, art. 10.

⁴⁷ Emergency Ordinance No. 51/2008 on Judicial Public Help with Respect to Civil Matters, published in MONITORUL OFICIAL no. 327/25.04.2008, as amended by Law 251/2011.

⁴⁸ *Id.*

⁴⁹ *See* Ordinance, *supra* n.16, at arts. 2, 3, 4, 7 and 8.

⁵⁰ *Id.*

⁵¹ *See* Ordinance, *supra* n.16, at art. 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.⁵² The compensation is set forth in a Protocol between the Ministry of Justice and the UNBR (the “**Protocol**”),⁵³ as a flat fee for each type of legal aid service.⁵⁴ The flat 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 opportunities. As a result, and because legal aid assignments provide an opportunity to gain experience, young lawyers typically volunteer to take them on.⁵⁵ In fact, the relevant regulations state that legal aid in noncriminal matters will be primarily assigned to young lawyers.⁵⁶

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).⁵⁷ 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.⁵⁸ The lawyer’s fee is established by the court or by the prosecutor pursuant to the Protocol.⁵⁹ 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.⁶⁰

As discussed above, prior to 2008 there was no State-sponsored legal aid for noncriminal 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.⁶¹ 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).⁶² That possibility still exists but is of less importance given that the scope of State-sponsored legal aid has expanded to cover noncriminal 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.⁶³ 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.⁶⁴ If the request is granted, the dean then designates a lawyer to provide the requested legal services.⁶⁵ In practice, the dean generally only appoints lawyers with their consent and that the applicant usually indicates on the petition the name of the lawyer who will provide legal assistance.⁶⁶

⁵² Protocol between the Romanian Ministry of Justice and the National Association of the Romanian Bars No. 1/3928/2008 effective Dec. 1, 2008, available at <http://www.unbr.ro>.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ See Obancia, *supra* n.53.

⁵⁶ See Legal Aid Framework Regulations, *supra* n.7, [CHECK REFERENCE] at art. 27; *supra* n.19, art. 217.

⁵⁷ Law No. 51/1995, art. 69.

⁵⁸ Legal Aid Framework Regulations, *supra* n.48 at art. 40.

⁵⁹ Legal Aid Framework Regulations, *supra* n.48 at art. 59.

⁶⁰ Legal Aid Framework Regulations, *supra* n.48 at art. 7.

⁶¹ See, *supra* n.61.

⁶² See Legal Aid Framework Regulations, *supra* n.48 at art. 5.

⁶³ Law No. 51/1995, art. 68; UNBR REGULATIONS *supra* n.19, at arts. 156, 157 and 161.

⁶⁴ See Legal Aid Framework Regulations, *supra* n.48 at art. 10.

⁶⁵ *Id.*

⁶⁶ See Obancia, *supra* n.53.

II. *PRO BONO* IN ROMANIA: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

1. Issue-Based Organizations

There are several 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, especially in light of more recent stringent criteria for UNBR-sanctioned assistance.⁶⁷ In fact, some NGOs hire outside counsel to advise or appear in court on behalf of their beneficiaries because they lack an adequate number of in-house counsel or volunteer lawyers to meet their needs. Below is an overview of some of the issues that currently command the attention of such NGOs.

(a) Protection of Roma Rights

As in other European nations, there is widespread discrimination against Roma in Romania. According to a 2011 national census, Romania has one of the largest Roma minorities in Europe, with approximately 620,000 Roma living in Romania (more than 3% of its total population).⁶⁸ However, taking into account undeclared ethnic affiliation, other sources such as the European Commission estimate that, as of December 2011, circa 1.8 million Roma were living in Romania (approximately 8% of its total population).⁶⁹

In Romania, the Roma are vulnerable communities who face social exclusion and ethnic violence and experience a high incidence of poverty, prompting many NGOs to focus on promoting and protecting Roma rights in Romania.⁷⁰ Following Romania's accession to the European Union, many Roma left Romania and established themselves in other member states of the European Union. In May 2011, the Council of the European Union published its conclusions on Roma integration strategies, marking an unprecedented commitment by EU Member States to promote the inclusion of the Roma on their territory.⁷¹ In a report adopted in May 2012, the European Commission called on EU Member States to implement their national strategies to improve the economic and social integration of Europe's 10 to 12 million Roma.⁷²

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.⁷³ The approach of the ERRC involves strategic litigation, international advocacy, research and policy development, and human rights training of Roma activists.⁷⁴ Since its establishment in 1996, ERRC has set in motion more than 500 court cases in fifteen countries to bring to justice governmental and non-governmental bodies and individuals who have discriminated against Roma individuals or have committed violence against them.⁷⁵ The ERRC is

⁶⁷ See *supra* n.65.

⁶⁸ Press release on the provisional results of the 2011 Population and Housing Census (Feb. 2, 2012), available at <http://www.insse.ro/cms/rw/pages/index.en.do;jsessionid=aa5a277fd54868b73cf12cad661cfa74d0f09ff099f26db17e0390b1a95a529>

⁶⁹ EUROPEAN COMMISSION, *European Commission Country Factsheet : Romania*, (Dec. 16, 2011), available at http://ec.europa.eu/regional_policy/sources/docgener/informat/country2012/country_ro_en.pdf.

⁷⁰ UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP), *COUNTRY PROGRAMME ACTION PLAN 2010-2012*, AVAILABLE AT [HTTP://WWW.UNDP.RO/LIBRARIES/CORPORATE/CPAP_UNDP_ROMANIA_2010-2012_BW.PDF](http://www.undp.ro/libraries/corporate/cpap_undp_romania_2010-2012_bw.pdf).

⁷¹ EUROPEAN COMMISSION, *An EU Framework for National Roma Integration Strategies up to 2020*, available at http://ec.europa.eu/justice/policies/discrimination/docs/com_2011_173_en.pdf.

⁷² EUROPEAN COMMISSION, *Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions - National Roma Integration Strategies: a first step in the implementation of the EU Framework*, May 21, 2012, available at http://ec.europa.eu/justice/discrimination/files/com2012_226_en.pdf.

⁷³ See EUROPEAN ROMA RIGHTS CENTRE (ERRC), <http://www.errc.org>.

⁷⁴ *Id.*

⁷⁵ *Id.*

active in both domestic and international litigation.⁷⁶ The ERRC supports local lawyers in domestic legal proceedings both professionally and financially.⁷⁷ When domestic remedies are exhausted, the ERRC prepares legal submissions to international tribunals, including the European Court of Human Rights, the European Committee of Social Rights and UN treaty bodies.⁷⁸

The Roma Center for Social Intervention and Studies (Romani CRISS)⁷⁹ and the Roma Center for Public Policies (Aven Amentza)⁸⁰ 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 regulation⁸¹ forbidding segregation of Roma students.⁸²

(b) Discrimination Based on Sexual Orientation and HIV Positive Status

Romania has made important progress in protecting the rights of its lesbian, gay, bisexual, and transgender (LGBT) citizens, particularly after its accession to the European Union.⁸³ 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 2007.⁸⁴

In 2001, Romania repealed the last of its anti-gay laws, Article 200 of the Criminal Code, which criminalized public manifestations of homosexuality.⁸⁵ 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 for discrimination based on sexual orientation.⁸⁶ Nevertheless, discrimination and persecution based on sexual orientation still continue in Romania⁸⁷ and much remains to be done.⁸⁸

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.⁸⁹ The few HIV positive children who attend school are relegated to special schools with inferior resources, or

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ See <http://www.romanicriss.org>.

⁸⁰ See <http://www.romanothan.ro>.

⁸¹ Order of the Ministry of Education No. 1540/2007 on the 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. 692/11.10.2007.

⁸² See, *supra* n.106.

⁸³ See Adrian Bridge, *Gay Call to Boycott Wine from Romania Wines*, THE INDEPENDENT, Jan. 22, 1997; Bruce Benderson, *Out of Darkness – Minor Change in Romania's Sodomy Law*, THE ADVOCATE, Jun. 20, 2000.

⁸⁴ Ordinance No. 137/2000, republished in MONITORUL OFICIAL no. 99/8.2.2007, as further amended.

⁸⁵ *Romania Steps Closer to EU after Article 200 Eliminated*, THE WASHINGTON BLADE, Feb. 15, 2002.

⁸⁶ 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, Mar. 2, 2005; *Valentine's Deal 'Left Out Gay People'*, THE GUARDIAN, Mar. 1, 2005.

⁸⁷ 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, Jun. 9, 2007; *Attackers Stone Romania Gay Rights March*, THE ASSOCIATED PRESS, Jun. 9, 2007.

⁸⁸ For example, as of Oct. 1, 2011 when the New Civil Code came into force, the definition of marriage has been amended to refer to marriages "between a man and a woman" (whereas previously the reference was to "between spouses") and the New Civil Code states expressly that Romania does not recognize foreign same-sex marriages. See arts. 258 and 277 of the New Civil Code. See also "New Civil Code introduces express ban on same sex marriage," RIGHTS EQUALITY AND DIVERSITY EUROPEAN NETWORK, Oct. 1, 2011), available at <http://www.red-network.eu/?i=red-network.en.items&id=731>

⁸⁹ *Romania: Discrimination Closes Doors for Children with HIV*, HUMAN RIGHTS WATCH (2006).

barred from attending vocational programs in fields such as food service and hairdressing, for which Romanian law requires mandatory HIV testing.⁹⁰ 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.⁹¹ Such discrimination cases are difficult to litigate and may draw further attention to plaintiffs' HIV status because court documents are not private.⁹²

ACCEPT is an NGO that deals with both of these issues at a national level through awareness campaigns and advocacy.⁹³ Founded in 1994, ACCEPT was the leading advocate of the repeal of Article 200 of the Criminal Code.⁹⁴ ACCEPT provides free legal assistance to people discriminated against on account of their sexual orientation, gender, or HIV positive status.⁹⁵ ACCEPT also assists gay and gay-friendly NGOs with the legal paperwork and filings required for an organization to be registered with the State.⁹⁶

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 2010,⁹⁷ the situation is likely to worsen. Indeed, in November 2011, health officials in Romania reported a substantial increase in the number of new HIV diagnoses among injected drug users.⁹⁸

Other Romanian NGOs, such as the Romanian Association Against AIDS (ARAS),⁹⁹ are both leading an awareness-raising and prevention campaign, and providing advocacy help for vulnerable groups.¹⁰⁰

(c) Treatment of Adults with Mental Health Problems

Several NGOs have reported the involuntary placement of citizens in psychiatric hospitals for treatment (even when 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.¹⁰¹ The ESTUAR Foundation aims to combat these problems and to provide basic protection for adults with mental health problems.¹⁰² ESTUAR provides free legal advice and representation for clients

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ See <http://www.accept-romania.ro> <http://www.romanothan.ro>

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ William Lee Adams, *Eve of an HIV Epidemic in Romania*, TIME MAGAZINE, Sep. 20, 2010, available at <http://www.time.com/time/magazine/article/0,9171,2017055,00.html>.

⁹⁸ *Upsurge in HIV diagnoses among IDUs in Greece and Romania - are reduced prevention services the cause?*, AIDSMAP, Jan. 16, 2012, available at <http://www.aidsmap.com/Upsurge-in-HIV-diagnoses-among-IDUs-in-Greece-and-Romania-are-reduced-prevention-services-the-cause/page/2216164/>

⁹⁹ See <http://www.arasnet.ro>.

¹⁰⁰ *Id.*

¹⁰¹ AMNESTY INTERNATIONAL, *Bulgaria and Romania: Amnesty International's Human Rights Concerns in EU Accession Countries* (2005), available at <http://www.amnesty.org>; *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).

¹⁰² See <http://www.estuar.org>.

discriminated against because of their mental health status, and advocates for the rights of the mentally ill.¹⁰³

(d) Prison Conditions and Arrest Procedures

Several agencies and organizations have reported that prison conditions in Romania are harsh and do not meet international standards.¹⁰⁴ According to the NGOs, there is abuse of prisoners¹⁰⁵ 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 legislation and 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.¹⁰⁶ APADOR-CH also visits prisons with the Romanian government’s permission and is involved in the government’s efforts to improve prison conditions

(e) Corruption

During the country’s negotiations for accession to the European Union, corruption was one of the most debated topics.¹⁰⁷ Despite recent progress (such as the activity of the General Anticorruption Directorate), government corruption remains a widespread problem that affects all sections of Romanian society.¹⁰⁸ Transparency International (Transparency) is an NGO that promotes transparency in elections, public administration and business.¹⁰⁹ 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.¹¹⁰

(f) Microfinance

Romania had one of the fastest economic growth rates in the European Union until 2008.¹¹¹ It now faces rising unemployment and social unrest against painful spending cuts and tax increases.¹¹² Prospects of recovery are undermined by scarce direct foreign investment and a collapse in property prices.¹¹³ 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.

2. Clinical Programs

In Romania, legal education focuses to a large extent on memorizing statutes, and does not invite exploration of a problem-solving approach to education. As such, clinical programs are rare in Romanian law schools. Several international organizations, such as the Public Interest

¹⁰³ *Id.*

¹⁰⁴ 2010 Human Rights Report: Romania, U.S. DEP’T OF STATE, April 8, 2011, available at <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154446.htm>

¹⁰⁵ For more information regarding APADOR-CH, see <http://www.apador.org>.

¹⁰⁶ *Id.*

¹⁰⁷ OPEN SOCIETY FOUNDATION, *Monitoring the EU Accession Process (Romania)*, (2002), available at <http://www.soros.org/reports/monitoring-eu-accession-process-corruption-and-anti-corruption-policy>

¹⁰⁸ *Romania – Executive Summary, Country Reports on Human Rights Practices for 2011*, UNITED STATES DEP’T OF STATE, available at <http://www.state.gov/documents/organization/186606.pdf>

¹⁰⁹ See <http://www.transparency.org>.

¹¹⁰ *Id.*

¹¹¹ *Reuters Factbox – Key political risks to watch in Romania*, REUTERS, Oct. 1, 2010, available at <http://www.reuters.com/article/idUSRISKRO20101001?pageNumber=1>.

¹¹² *Id.*

¹¹³ *Id.*

Law Institute (PILI)¹¹⁴ and American Bar Association Central European and Eurasian Law Initiative (ABA-CEELI),¹¹⁵ have been involved in an effort to establish clinical education programs at Romanian law schools.¹¹⁶ 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.

3. Referral Organizations

Although there is no legislation in Romania providing for the establishment of an organization centralizing state-sponsored legal aid, as of 2011, NGOs seeking direct free legal advice may use the services of the first *pro bono* Romanian clearinghouse provided by the Civil Society Development Foundation (*Fundatia pentru Dezvoltarea Societatii Civile*) (FDSC). Established in 1994 as part of an initiative of the European Commission,¹¹⁷ as of May 2012, FDSC provides *pro bono* clearinghouse services for Romanian NGOs.¹¹⁸ This initiative received a one-year grant from the Trust for Civil Society in Central & Eastern Europe and seeks to match NGOs seeking to benefit from *pro bono* services with various legal practitioners willing and able to offer free legal services.¹¹⁹ According to the FDSC website the project has received the support of several leading Romanian law firms.¹²⁰

B. **Barriers To *Pro Bono* Work And Other Considerations**

Despite some positive developments such as the creation of the first *pro bono* Romanian clearinghouse, there continues to exist an overriding hesitation on the part of Romanian lawyers to voluntarily engage in *pro bono* work. One potential barrier to engaging in *pro bono* work in Romania is the rules and regulations of the UNBR. Outside of UNBR-assisted legal aid, there is no sanctioned referral program or ethics code to encourage *pro bono* work by Romanian bar members. One explanation for this hostile *pro bono* environment is the deterrence caused by UNBR's portrayal of *pro bono* work as veiled advertising and unfair competition.

1. Prohibition against Advertising and Unfair Competition

One of the issues 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.¹²¹ The names of past or current clients cannot be publicized, except under certain limited circumstances, if the client consents.¹²² 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.¹²³ 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.¹²⁴

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

¹¹⁴ See <http://pilnet.org/>.

¹¹⁵ See http://www.abanet.org/rol/europe_and_eurasia.

¹¹⁶ *Id.*

¹¹⁷ See <http://www.fdsc.ro/eng/>

¹¹⁸ StiriONG, See <http://www.stiriong.ro/>

¹¹⁹ *Id.*

¹²⁰ TRUST FOR CIVIL SOCIETY IN CENTRAL AND EASTERN EUROPE, see <http://www.ceetrust.org/grants-database/in-country-grants/romania.html>

¹²¹ Decision No. 523/2009 of UNBR, available http://www.fbe.org/IMG/pdf/Dominic_Gidro-4.pdf (last accessed on Jul. 5, 2012).

¹²² *Id.*, UNBR Reg, arts. 230-237.

¹²³ *Id.*

¹²⁴ Law No. 51/1995, art. 46; UNBR Reg, arts. 230-237.

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.

Another deterrent to the provision of *pro bono* legal services in Romania is the unfair competition provisions of Article 176 of the UNBR Lawyer's Statute.¹²⁵ Specifically, Article 176(1)(d) of the statute prohibits any attorney member of the UNBR from entering into agreements with a client by which legal services are provided in an "advantageous manner"—either to compete with other lawyers at decreased fees, or to motivate the client to refer additional clients.¹²⁶

These deterrents, in addition to existing overriding hesitation on the part of Romanian lawyers to voluntarily engage in *pro bono* work, is stifling the *pro bono* efforts of local law firms and others who would otherwise be interested in developing their *pro bono* practices.

2. Other Considerations

There are no minimum, maximum recommended or legal services fees that Romanian lawyers are required to charge for their services.¹²⁷ Although there are local regulations addressing fixed compensation by the state of attorneys providing UNBR-sanctioned legal aid,¹²⁸ no such rules exist for fees related to *pro bono* work unsanctioned by the UNBR. Consequently, there is no requirement for attorneys providing *pro bono* services to charge any tariffs.

C. ***Pro Bono* Resources**

FUNDATIA PENTRU DEZVOLTAREA SOCIEATATII CIVILE (FDSC)

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III. CONCLUSION

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. Prohibitions against advertising and unfair competition appear to have stifled initiatives to organize the Romanian *pro bono* community.

However, within the framework of the legal aid system 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. The creation of the first *pro bono* Romanian clearinghouse provides a promising alternative for attorneys wishing to provide *pro bono* services to a variety of NGOs in need of free legal assistance. 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 and perhaps one day soften the position of the UNBR towards nonsanctioned free legal assistance.

July 2012

Pro Bono Practices and Opportunities in Romania

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¹²⁵ Lawyers' Statute, published in OFFICIAL GAZETTE Part I, no. 45/12.10.2005, and subsequently amended), available at http://www.avocatnet.ro/UserFiles/articleFiles/statutul-profesiei-de-avocat_09151232.pdf.

¹²⁶ *Id.*

¹²⁷ Bruno Nascimbene & Elisabetta Bergamini, *The Legal Profession in the European Union*, 190 (2009).

¹²⁸ *See supra* n.69.

PRO BONO PRACTICES AND OPPORTUNITIES IN THE RUSSIAN FEDERATION¹

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 Law. 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.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN THE RUSSIAN FEDERATION

A. The Legal Profession²

The legal profession in Russia is comprised of state-licensed attorneys (called “advocates”) and unlicensed lawyers (called “jurists”). Broadly speaking, the key distinction between these two types of lawyers is that advocates are allowed to represent clients in criminal matters, as well as in any other matters, whereas jurists cannot represent clients in criminal cases. Jurists do not need to meet the same licensure requirements as advocates but may still provide a broad range of legal services to the public.³ 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 ability to practice law without obtaining advocate status, many attorneys, particularly those practicing in commercial areas, do not ultimately become licensed.

Information about all advocates must be recorded in advocate's registers maintained by regional bar chambers. As of December 31, 2011, there are 66,524 advocates practicing in Russia.⁴ The number of advocates varies dramatically in different regions: at the beginning of 2011 there were 7,734 advocates in the city of Moscow (with a population of more than 11,612,943 residents),⁵ and 18 advocates in the Chukotka Autonomous District (approximately 51,000 inhabitants).

Advocates are allowed to practice in the following four forms only: (i) solo practice; (ii) collegium of advocates; (iii) bureau of advocates; and (iv) legal consultation office.

According to the Federal Bar Chamber, as of December 31, 2011, 28.1% (18,687) of Russian advocates prefer solo practice. Where an advocate aims to provide legal services as a solo practitioner, he or she must set up an advocate parlor.

Collegia and bureaus are both collective forms of practicing law. The bureau is a partnership providing legal services on behalf of all partners who bear joint responsibility. The collegium is a loose association of individual advocates who bear individual responsibility for their own cases. Under the most recent report of the Federal Bar Chamber, 44,441 advocates joined collegia, and 3,182 advocates set up bureaus.

Legal consultation offices must be set up by regional bar chambers in court districts where the number of advocates is lower than two per one judge. Therefore, the legal consultation office is a tool designed to secure remote and sparsely populated regions with sufficient legal aid. According to official statistics, currently 81 legal consultation offices operate in Russia, and only 214 advocates are engaged in their activity.

In contrast, jurists are not subject to registration. As a result there are no official statistics on unregistered lawyers in Russia. At a rough estimate,⁶ there are over 800,000 people in Russia who have a law degree.

¹ For a more general discussion of opportunities available in public international law, 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 For more information see http://www.law.harvard.edu/programs/plp/pdf/Russian_Legal_Profession.pdf.

³ Federal Law No. 63-FZ, On Attorney's Activity and the Bar in the Russian Federation, May 31, 2002

⁴ See http://www.fparf.ru/resh/2012/spravka_o_sostoyanii.htm (in Russian).

⁵ See <http://www.fparf.ru/chambers/7.htm> (in Russian).

⁶ <http://www.mos360.ru/mneniya/98059/> (in Russian).

B. 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, criminal cases and disputes between individuals and State authorities.⁷ The regional court (the general court system's lowest level court) and magistrates' court hear more than 90% of all civil and criminal cases.⁸ The greatest need for *pro bono* assistance is at the magistrate and regional court level. Unlike courts in the United States and many European countries, which frequently encourage *pro bono* representation of *amicus curiae* at the appellate level, few such opportunities exist in the Russian Federation.

C. Regulation Of The Legal Profession And Legal Services

Advocates have an obligation under the Federal law to provide free legal aid. The mandatory legal aid provided by advocates is free to clients; however, the advocate is paid a minimal fee by the federal or regional governments in accordance with federal laws and local ordinances.⁹

Being a professional institute acting independently of the state, the advocates' society is the most significant link in a fragile chain of legal aid providers in Russia. According to the newsletter prepared by the Federal Chamber of Advocates,¹⁰ in 2011 approximately 33,285 advocates provided free legal aid to 158,805 low-income citizens.¹¹ Such *pro bono* services included legal advice on various legal issues, drafting legal documents and representation in court in civil proceedings.

Legal aid in criminal cases 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.¹² In 2011 the assigned counsels represented more than 2 million criminal suspects which represents approximately 60% of all criminal cases. While there are few formal exceptions to providing such services when called upon by the government, in practice many advocates find ways to avoid providing the required legal aid service.

The Russian advocates' society does not have the sufficient human resources needed to meet the requirements for free legal aid of Russian citizens. This is particularly the case in sparsely populated regions and remote areas of Russia. At the present time, demand for free legal aid exceeds the number of advocates, and the government struggles with such disproportion by means of an assigned-counsel system and by launching the legal consultation offices. As a result, one advocate may be involved in a few cases for minimal fees, and the quality of free legal advice frequently suffers.

D. Legal Aid

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.¹³ However, before 2012 this guarantee was not accompanied by any meaningful implementing legislation. The regulation of legal aid and the provision of free legal services in the Russian Federation were based predominantly on the Code of Criminal Procedure and the Federal Law – “On Attorney’s Activity and the Bar in the Russian Federation.” At the beginning of 2012, after 2 years of debate, the Law “On Free Legal Aid”¹⁴ came into force. This document is the first federal law dedicated specifically to regulating free legal aid across Russia.

⁷ Federal Constitutional Law No. 1-FZ, On Judicial System in the Russian Federation, Dec. 31, 1996

⁸ See *id.* (Comments to art. 21). Local justices of the peace also have jurisdiction to hear limited types of cases.

⁹ Under the Criminal Procedure Code and the Federal Law No. 63-FZ 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.

¹⁰ See: http://www.fparf.ru/resh/2012/spravka_o_sostoyanii.htm (in Russian).

¹¹ In 2010, 31,063 advocates provided free legal support to 150,016 law-income citizens.

¹² See The 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 pretrial investigations in criminal proceedings.

¹³ CONST. RUSSIAN FEDERATION art. 48.1.

¹⁴ Federal Law No. 324-FZ, On Free Legal Aid in the Russian Federation, Nov. 21, 2011.

Since the adoption of the Law “On Free Legal Aid” the list of recipients of legal aid and scope of free legal assistance in noncriminal proceedings has been significantly expanded. Free legal aid is provided at governmental (state) and nongovernmental (private) levels.

E. State (Governmental) Legal Aid System

State legal aid is administered by federal and regional executive authorities, nonbudgetary funds, state legal offices (bureaus in the form of government institutions), advocates or notaries. Under the Law “On Free Legal Aid,” local bar associations are responsible for providing lists of advocates who will participate in the free legal aid program for the next calendar year. These advocates are obliged to render free legal services on a contractual basis and each year submit free legal aid reports to the relevant state authorities.

The right to free legal assistance under the state system is available for the following recipients:

- Low income citizens
- Disabled people
- The Great Patriotic War veterans; Heroes of the Russian Federation; Heroes of the Soviet Union; Heroes of the Socialist Labour
- Disabled children, orphans, children left without parents’ care
- Elderly and disabled people who live in social establishments¹⁵
- Minors residing in state institutions with respect to child neglect and those imprisoned
- People with psychological disabilities¹⁶
- Legally incapable individuals

The above mentioned groups are entitled to oral advice and assistance with drafting legal documents, claims and petitions in the following areas of practice:

- Transactions in relation to real estate and title registration
- Consumer rights related to housing utilities provision
- Some labor and employment issues
- Damages caused by the death of a family provider, as well as death, injury or other health problems caused by working conditions
- Welfare and pension benefits, state-funded social assistance, etc.
- Maternity/paternity and alimony
- Rehabilitation of the politically repressed
- Limitation of legal capacity
- Mistreatment of psychiatric patients
- Administrative review of acts issued by governmental agencies, local self-governance bodies and public officials

F. Non-governmental (Private) Legal Aid System

Non-governmental legal aid may be performed by law clinics and nongovernmental (private) centers of free legal assistance.

The law clinics are funded by state and private universities as well as public nongovernmental organizations (“NGOs”) as part of education programs. According to the information published on the official web-site of Russian law clinics,¹⁷ more than 140 law clinics have been set up across the

¹⁵ Federal Law No. 122-FZ, On Social Services for the Elderly and Disabled People, Aug. 2, 1995.

¹⁶ Federal Law No. 3185-1-FZ, On Psychological Help for People and the Corresponding Guaranties, Jul. 2, 1992.

¹⁷ See: www.lawclinic.ru (in Russian).

country, where law students and young lawyers learn the practical skills of lawyering by offering free legal assistance to people in need.

Private centers of free legal aid have the right to independently decide on: the types of legal aid they provide, on the category of individuals to get the aid, as well as the scope of free legal aid. Still, the law emphasizes that individuals with low income and those in a difficult situation should have the priority right for free legal aid.

II. **PRO BONO IN THE RUSSIAN FEDERATION: OPPORTUNITIES AND OTHER CONSIDERATIONS**

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, as well as most other social services, was exclusively the province of the state and mostly free for individuals. Perhaps as a vestige of the former communist era and partly because of the immaturity of local business society, 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 and local firms and nongovernmental 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. One of the more significant developments in establishing *pro bono* services in Russia was the adoption of the Law "On free legal aid," which provides legal framework and key principles of both state and private legal aid systems. As a result, *pro bono* culture in Russia is slowly developing.

A. **Barriers To *Pro Bono* Work And Other Considerations**

Pro bono opportunities for international law firms located in the Russian Federation center largely around the representation of 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.¹⁸

Moreover, Russian NGO legislation is complicated and is often applied by the government unevenly, making it difficult for NGOs to navigate the legal landscape.¹⁹ As a result, most of these organizations look to foreign and private sources, such as the New Eurasia Foundation,²⁰ for financial and other support. While such organizations are growing in Russia, their resources nevertheless remain limited.

In addition, Russian laws contain a lot of gaps. The Law "On free legal aid" aims to fill some of them, in particular, in the regulation regarding free legal support of foreign citizens and people without citizenship it grants them the right to take free legal advice in certain circumstances provided for by Russian laws and in accordance with legally established procedure. Before 2012 the right to receive free legal assistance was guaranteed exclusively to citizens of the Russian Federation – to the exclusion of a significant and growing number of foreign citizens, including refugees. Although Article 2 of the

¹⁸ Jeffrey Thomas, *U.S. Says Russian NGO Law Does Not Meet Human Rights Commitments*, http://www.pressmon.com/cgi-bin/press_view.cgi?id=509090 (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).

¹⁹ 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>.

²⁰ 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>.

Law “On free legal aid” declares that foreign citizens and people without citizenship have the right to free legal support, it does not provide any specific regulation on such support.

As the Law “On free legal aid” provides only a very basic framework and the key principles on legal aid in Russia, it requires subsequent adoption of numerous laws and administrative ordinances establishing more detailed regulation on the free legal services granted.

Tax consequences of free legal services are also an issue. Until a legal services agreement defines free legal aid as charity support, NGOs are subject to VAT and income tax for free legal services. The effective Russian tax legislation does not contain any provisions in relation to *pro bono*, therefore when providing free legal aid, both the lawyers and their *pro bono* clients must be capable of proving to state bodies the charitable nature of the relationship established between them by arming themselves with solid and scrupulously prepared documentation. And even so, the risk remains that tax authorities will deem the free legal services to be taxable.

B. *Pro Bono* Resources

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,²¹ the AIDS Foundation East-West,²² Doctors Without Borders,²³ the Danish Refugee Council,²⁴ Integra,²⁵ the Humanitarian Programs Support Charitable Foundation,²⁶ the International Center for Not-for-Profit Law,²⁷ and United Way Moscow.²⁸

In December 2007, the Public Interest Law Institute (“PILnet”) launched a *pro bono* clearinghouse in Moscow.²⁹ 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. PILnet 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.³⁰ The clearinghouse also provides Russian NGOs with training and know-how on a variety of issues related to the daily operation of nonprofit organizations.³¹ A firm having expertise or an interest in a particular area can notify PILnet’s Moscow office and PILnet will then put the firm into direct contact with the relevant client. PILnet also holds quarterly meetings with participating law firms and NGOs in Moscow to discuss the clearinghouse and various topical themes

²¹ BAKER & MCKENZIE, *Pro Bono and Community Service: The Rewards of Giving* (2007).

²² AIDS Foundation East-West (“AFEW”) is an international, humanitarian, public health, nongovernmental 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>.

²³ MEDECINS SANS FRONTIERES, *homepage*, <http://www.doctorswithoutborders.org>.

²⁴ CHADBOURNE & PARKE LLP, *Pro Bono Year in Review 2005*, <http://www.chadbourne.com/files/upload/Pro%20Bono%20Year%20in%20Review%202005.pdf>.

²⁵ Integra is a nonprofit 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>.

²⁶ Humanitarian Programs Support Charitable Foundation (“HPSCF”) is a nonprofit 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>.

²⁷ 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>.

²⁸ United Way Moscow is a community based nonprofit 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>.

²⁹ *See generally*, PUBLIC INTEREST LAW INSTITUTE, *homepage*, <http://pilnet.org/>. The clearinghouse was opened with the assistance of the American Bar Association Rule of Law Initiative and several private law firms. Since 2007, PILnet’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.

³⁰ PILnet 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.

³¹ *See UNITED STATES AGENCY FOR INTERNAL DEVELOPMENT, Alliances in action: Pro Bono clearinghouse in Moscow*, <http://idea.usaid.gov/node/241>.

and issues in the sphere of Russian *pro bono* services. PILnet is currently exploring ways to replicate its Moscow-based clearinghouse in other Russian regions. Dmitry Shabelnikov is the country director for Russia at PILnet.

In addition to working 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, PILnet 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* before 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.³²

Finally, the American Bar Association (the “ABA”), through its Rule of Law Initiative program, has made significant inroads in advancing *pro bono* and developing legal infrastructure in Russia.³³ 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

Despite the recent adoption of the specific Law “On free legal aid,” the current regulatory regime, is still 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. Funding from the federal and regional budgets remains limited and the fees authorized for lawyers 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.

Thanks to PILnet, 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.

July 2012

Pro Bono Practices and Opportunities in the Russian Federation

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³² <http://www.londonmet.ac.uk/research-units/hrsj/ehrac/>. Established in January 2003, EHRAC (based at London Metropolitan University) works in Russia in partnership with the Memorial Human Rights 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.

³³ 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 the 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 SAUDI ARABIA

The provision of *pro bono* legal services is currently not as institutionalized in the Kingdom of Saudi Arabia (“Saudi Arabia”) as it is in Western Jurisdictions. Saudi Arabia does not currently regulate nor does it expressly mandate the provision of legal aid by lawyers practicing in Saudi Arabia. However, attorneys practicing in Saudi Arabia at times enter into *ad hoc* arrangements with local governmental agencies and nonprofit organizations to provide *pro bono* legal services. This chapter sets out the current state of *pro bono* practice in Saudi Arabia through a description of the regulatory framework of the legal profession and the judicial system and addresses the potential changes and opportunities in *pro bono practice*.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN SAUDI ARABIA

A. The Legal Profession

The legal profession in Saudi Arabia is regulated by the Code of Law Practice promulgated by Royal Decree no. M/38 dated 28/07/1422H. (corresponding to 15/10/2001 G.) and its implementing regulations (the “Code of Law Practice”). Under the Code of Law Practice, the practice of law in Saudi Arabia comprises the representation of third parties before the courts of law and the provision of legal consultancy services.¹ In order to practice law in Saudi Arabia any lawyer must be licensed by the Ministry of Justice (“MoJ”) or else must be supervised by an attorney licensed by the MoJ. Only Saudi nationals, holding a local degree in Sharia’a² or law (or the equivalent from a foreign university) and having a minimum number of years of relevant practical experience inside or outside of Saudi Arabia, may be licensed. The required number of years of experience is (i) three years if the candidate holds a bachelor’s degree, (ii) one year if the candidate holds a master’s degree and (iii) no experience if the candidate holds a doctorate degree. A practicing lawyer must also have a good reputation, not be convicted of any major offences under local laws and be a resident of Saudi Arabia. The Code of Law Practice provides for an exception to the above requirements, whereby a nonlawyer can litigate up to a maximum of three cases at a time when acting on behalf of three different persons and an unlimited number of cases, when acting as the official corporate representative on behalf of an entity, on behalf of close relatives (up to the fourth degree) or as guardian or trustee.³ As of the date of this chapter the unofficial number of licensed lawyers in Saudi Arabia is approximately 2000.⁴

The Code of Law Practice also provides for the possibility of setting up professional partnerships for the practice of law between two or more licensed lawyers. The legal profession in Saudi Arabia is currently regulated by the MoJ and the National Commission of Lawyers, which is the current lawyers’ association in Saudi Arabia (the “Commission”).

Non-Saudi lawyers are not able to be licensed to practice law in Saudi Arabia. However, a non-Saudi lawyer is permitted to provide legal consultation services when supervised by a licensed Saudi lawyer by virtue of an employment arrangement.

B. Structure Of The Judicial System

The judicial system in Saudi Arabia is currently undergoing a reorganization with the recent enactment of the new Judicial System Act, promulgated by Royal Decree no. M/78 dated 19/09/1428 H. (corresponding to 01/10/2007 G.) (the “Judicial System Act”). The process and period of implementing the reorganization of each specific branch of the new judicial system is detailed in the Plan for the Implementation of the Judicial System Act and the Board of Grievances Act.⁵ Pursuant to the above implementation plan the transitional implementation period shall not exceed three years from the date the Civil Procedure Law and Criminal Procedure Law are amended and become effective, and the Board of Grievances Procedure Law is enacted and becomes effective. However, the latter laws are yet to be amended and enacted.

¹ Code of Law Practice issued by the Royal Decree number m/38 dated 28/7/1422 H. (corresponding to Oct. 15, 2001 G.), art. 1.

² Sharia’a is the moral code and religious law of Islam which is the supreme law in Saudi Arabia.

³ Code of Law Practice, *supra* n.1 at art. 18.

⁴ Contact at the Ministry of Justice.

⁵ Published in the Official Gazette no. 4170 on (Oct. 12) 2007 G.

Pursuant to the new judicial system, Saudi Arabia recognizes a dual system of courts with separate administrative and nonadministrative courts. Under the new judicial system, the administrative arm of the judicial system in Saudi Arabia is regulated by the Board of Grievances Act⁶ enacted around the same time as the Judicial System Act and is comprised of the Board of Grievances which has three different levels of courts. The highest court in the Board of Grievances is the supreme administrative court, followed by the administrative appellate courts and the administrative courts. These courts have jurisdiction to hear disputes against the state and other government agencies, pertaining to administrative law.⁷ Until the full implementation of the Judicial System Act, the Board of Grievances also has jurisdiction to hear all types of commercial disputes.

As stated above, the Judicial System Act is relatively new and is yet to be fully implemented. Some of the provisions of the old act and old structures remain in force during the implementation of the Judicial System Act, including the nonadministrative functions of the Board of Grievances described above. Under the Judicial System Act, nonadministrative courts are categorized in the following order: (i) the supreme court; (ii) the appellate courts; and (iii) the courts of first instance. The courts of first instance include general courts, criminal courts, domestic relations courts, commercial courts and labor courts. The appellate courts are comprised of different legal panels including the criminal, domestic relations, commercial and labor panels each with the jurisdiction to review any appealed judgment from the first instance courts. The Judicial System Act contemplates that the supreme court's main functions will be to ensure the consistency of local laws with the Islamic principles of *Sharia'a* and to review judgments and decisions of the appellate courts.

Many specialized judicial committees will be abolished under the Judicial System Law except for the customs, commercial and banking committees.

C. Government-Provided Legal Aid

Under the current legal framework in Saudi Arabia, there are no laws that expressly provide for legal aid or that mandate the provision of legal aid by lawyers and law firms practicing in Saudi Arabia. However, we understand that a new regulation is being proposed to establish the "Attorneys' Authority" and is currently in the process of being enacted. This new regulation is expected to include mandatory provisions on legal aid that are expected to apply to all lawyers practicing in Saudi Arabia.⁸

Despite the absence of an express provision of legal aid in Saudi Arabia, the MoJ has developed an unofficial process by virtue of which the MoJ receives requests from courts on behalf of individuals unable to afford lawyers' fees and puts them in contact with lawyers willing to render free legal services from the list of practicing lawyers maintained by it.⁹ The MoJ is also often approached by the National Society for Human Rights (the "NSHR"), which is a human rights organization associated and funded by the Saudi government, and the Commission on behalf of disadvantaged groups of individuals seeking legal aid. In other instances the MoJ has developed a common practice to retain and pay lawyers to plead on behalf of Saudi individuals convicted of terrorism or state security crimes.¹⁰

Moreover, the Commission and NSHR entered into a memorandum of understanding on 13/01/1429 H. (corresponding to 22/01/2008 G.) by which the Commission has agreed to nominate a certain number of lawyers to represent and provide free legal assistance to individuals who seek the help of NSHR on human rights issues.

Pursuant to the Arab Charter on Human Rights to which Saudi Arabia is a party, state parties commit to provide adequate help to individuals without enough financial resources to defend their rights by ensuring proper legal aid.¹¹ State parties also commit to grant each person charged with a criminal offence the right to have free legal assistance through a defense lawyer, if that person cannot defend

⁶ Board of Grievances Act issued by the Royal Decree number m/78 dated 19/9/1428 H (corresponding to Sep. 30, 2007 G).

⁷ *Id.* at art. 13.

⁸ *Al-Madina* newspaper issue number 16426 on Sunday Apr. 13, 2008, and *Okaz* newspaper issue 3502 on Tuesday Jun. 18, 2011;

⁹ Email from Judge Yousuf Al-Farraj (May 20, 2012) (on file with author).

¹⁰ Contact at the Institute of Public Administration.

¹¹ Arab Charter on Human Rights dated May 23, 2004 G. which entered into force on Apr. 17, 2009 G.), art. 13.

himself or herself or if the interests of justice require so. Nevertheless, the provisions of the Arab Charter on Human Rights are yet to be fully implemented in Saudi Arabia.

Also, the Riyadh Arab Convention for Judicial Cooperation, to which a number of countries including Saudi Arabia are a member, grants foreigners of member states the right for free legal assistance within the borders of each member in the same manner as its own citizens and in accordance with law in force thereon.¹²

Saudi Arabia has also promulgated a number of bilateral treaties by virtue of which a right to legal aid is granted to the citizens of both signatory countries in civil, commercial, criminal and domestic relations cases. Among those signatory countries are Kazakhstan,¹³ Sudan¹⁴ and Yemen.¹⁵

II. **PRO BONO IN SAUDI ARABIA: OPPORTUNITIES AND OTHER CONSIDERATIONS**

While Saudi Arabia does not have an established and formalized *pro bono* culture, individual attorneys in Saudi Arabia often provide *pro bono* services on a nonformal basis.

In addition, the government has supported the provision of legal aid on a volunteer basis in a number of specific contexts. As the legal profession continues to mature in Saudi Arabia, it is expected that *pro bono* services will become more institutionalized.

III. **CONCLUSION**

The practice of providing *pro bono* legal services is not institutionalized in Saudi Arabia. However, the new expected regulations, the strong presence of international law firms and the increased interest and awareness on human rights in recent years in Saudi Arabia should help in shaping a stronger *pro bono* culture.

July 2012

Pro Bono Practices and Opportunities in Saudi Arabia

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¹² Riyadh Arab Convention for Judicial Cooperation dated Apr. 6, 1983 G (which entered into force on Oct. 30, 1985 G), art. 4.

¹³ Bilateral Treaty for Judicial Cooperation between Kazakhstan and Saudi Arabia dated Apr. 7, 2006 G, art. 3.

¹⁴ Bilateral Treaty for Judicial Cooperation between Sudan and Saudi Arabia dated Apr. 23, 2010 G, art. 5.

¹⁵ Bilateral Treaty for Judicial Cooperation between Yemen and Saudi Arabia dated Oct. 17, 2008 G, art.6.

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

A. The Legal Profession

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. There are around 10,000 solicitors in Scotland¹ and 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,² the Court of Session (the supreme civil court) and the High Court of Justiciary (the supreme criminal court). Advocates are primarily instructed directly by solicitors rather than by members of the public, although they may be instructed directly in limited circumstances, and are equivalent to Barristers in England & Wales.

The Superior Courts consist of the Court of Session and the High Court of Justiciary. The Court of Session is the supreme civil court, it sits in an appeal capacity and also as a civil court dealing with disputes between people or organizations. The High Court of Justiciary deals with criminal appeals and serious criminal cases. Trials are held before a judge and jury. Although the Court is based in Edinburgh, trials are held throughout Scotland as a means of reducing inconvenience to witnesses, jurors and court users. The Court of Session is divided in two, the Outer House is the first instance court, and the Inner House of the Court of Session is the appellate instance. In civil matters, a right of appeal exists to the UK Supreme Court (formerly the House of Lords); there is no appeal to the UK Supreme Court in criminal matters.

The lower courts in the criminal division consist of the Sheriff Courts, which operate in three capacities (i) civil, (ii) criminal and (iii) commissary. Civil business involves disputes between persons or organizations and commissary work deals mainly with the disposal of a deceased persons estate. Criminal cases are brought under either ‘solemn procedure,’ where trials are held before a sheriff sitting before a jury, or under ‘summary procedure,’ which are less serious cases where a sheriff sits without a jury.

The Court of Session, High Courts and Sheriff Courts are administered by the Scottish Court Service (“SCS”).

B. Legal Aid

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.

The modern incarnation, the ‘Legal Aid and Solicitors (Scotland) Act 1949,’ came into force in 1950 for civil matters, and in 1964 for criminal matters. Legal Aid is means-tested based on a person’s income and assets, and the overall threshold levels required for eligibility is re-assessed every year. The Scottish Government decides the legal aid policy and then the Scottish Parliament drafts the legislation. The Legal Aid system is managed by the Scottish Legal Aid Board (“SLAB”), within the scope of the governing legislation.

Legal assistance is available from private practice solicitors, law centres and solicitors employed by the Board in the Public Defence Solicitor’s Office for criminal cases and in the

¹ See THE LAW SOCIETY OF SCOTLAND, *Law in Scotland*, available at <http://www.laws Scot.org.uk/>

² See SCOTTISH COURTS, available at <http://www.scotcourts.gov.uk/index.asp>.

Civil Legal Assistance Offices for civil cases. Private practice solicitors are paid on a case by case basis from public money, whereas employed solicitors are paid a salary as employees of the SLAB. The Legal Aid Fund meets the cost of cases and is uncapped, but funded cases must relate to matters of Scottish Law.³

In 2010-2011 the SLAB provided over 400,000 grants for legal assistance (initial legal advice) and received around 120,000 requests for legal aid (for funding either actions or defenses). The cost of providing legal aid and administering the legal aid fund has risen in previous years due to increases in VAT, larger numbers of summary criminal cases being funded by legal aid and an increase in the overall cost of civil legal aid. There has been a dramatic increase in the number of applications, perhaps due to the current economic climate.

Despite the increase in both demand for services and the cost of providing legal aid, the Scottish Government's 2011-2012 budget allocation for the legal aid fund was reduced by £12.7 million from the previous year and following the Scottish Governments Strategic Spending Review the legal aid fund is facing a further cut of 7.2% over the years 2012-13 to 2014-15. Following the measures introduced to cut legal aid expenditure earlier this year, this additional cut represents a huge challenge to the sustainability of legal aid practice. The legal aid savings packages already implemented are forecast to save almost £2 million greater than originally estimated. However, due to the increase in legal aid expenditure, the legal aid budget over the coming years is showing a shortfall between estimated expenditure and budget provision.⁴

In addition to the tightening of the budget faced by the SLAB, legal aid is also not available to charities or other organizations. Therefore *pro bono* legal advice continues to be a significant resource to those individuals who do not meet the eligibility requirements to receive legal aid, or to those organizations to which legal aid is not an option.

II. **PRO BONO IN SCOTLAND: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. **Pro Bono Opportunities**

1. Advice Agencies

Within Scotland, as in England and Wales, there is a national network of advice agencies staffed primarily by volunteers who fulfill many different types of roles, including the provision of some legal advice. The most prominent is the Citizens Advice Bureau (“CAB”) Service.⁵ CAB is a charity that provides free advice to the public on topics that include legal matters. It is made up of Citizens Advice Scotland (“CAS”), which is a national umbrella body that provides essential services to Scottish citizens advice bureaux, and a network of local citizens advice bureaux, which are local independent charities that are members of CAS and provide advice and information.

CAS assists clients with the drafting of letters, the instigation of small claims, negotiating with creditors and also representing them in courts or tribunals. Services are located throughout Scotland and CAS are able to give advice on where to obtain legal services and often provide legal advice themselves. CAB is funded and supported mainly by government (through SLAB) and local authority grants but also by companies, charitable trusts and the legal professional bodies.

2. LawWorks Scotland

LawWorks is a charity that aims to promote the provision of free legal help to individuals and community groups who cannot afford to pay for it and who are unable to access legal aid. Based upon the successful model of the LawWorks organization in England and Wales, LawWorks Scotland⁶ has been introduced to coordinate, develop and encourage the provision of *pro bono* legal services by solicitors in private practice and in-house and university law

³ <http://www.slab.org.uk/about-us/>

⁴ <http://www.lawsco.org.uk/members/legal-aid--access-to-justice/civil-legal-aid>

⁵ See CITIZENS ADVICE SCOTLAND, available at <http://www.cas.org.uk/>.

⁶ See LAW WORKS SCOTLAND, available at <http://www.lawworksscotland.org.uk/who-are-we/>

schools in Scotland. Although the Scottish charity is independent, it acts with the support of LawWorks England and Wales.

This is an efficient way for volunteers to get involved with *pro bono* legal work, as LawWorks works with member firms that have volunteered to provide *pro bono* advice, to find potential opportunities. They match these firms with established advice center(s) such as those run by the CAS, law centers and university advice clinics. In this way, the volunteers are matched with the advice agencies, perhaps outside the main city centers, that would be otherwise unable to provide relevant advice for their clients.

3. Faculty of Advocates

The Faculty of Advocates' Free Legal Services Unit ("FLSU") was established to provide advice and assistance where the legal complexity of the case makes it difficult for nonlawyers to help.⁷ Advocates may volunteer to join the FLSU and then provide three days of written or verbal advice, help with mediation or appear in any court or tribunal in Scotland.

The Faculty of Advocates organizes the Free Representation Unit ("FRU") whereby 'devils' (trainee advocates) provide written advice on legal issues and representation before Employment and Social Security Tribunals. This provides much needed advice for those who could not otherwise afford it and gives trainee advocates invaluable experience and skills. The FLSU and FRU will be merged in 2012 (see below).

Cases are referred to the FLSU through more than twenty advice agencies, including: CABS, Shelter,⁸ the Ethnic Minorities Law Centre,⁹ the Scottish Child Law Centre,¹⁰ the Drumchapel Law and Money Advice Centre¹¹ and the university law clinics outlined below, therefore they are involved with a wide variety of cases.

4. Law Firms

As the profile of *pro bono* in Scotland has risen, there has also been increased awareness of CSR. As a result, many law firms in Scotland seek to fulfil their *pro bono* initiative through law centres (as discussed above) and also through interaction with the local community. This allows them to direct their skills to where they are needed most. Many large law firms also provide exclusive *pro bono* legal advice to one or more high profile charities, as charities are unable to access funds through legal aid and in many instances require assistance with matters that are in line with the firms' general offering; for instance tax considerations.

As discussed herein, there is a wide array of organizations providing *pro bono* legal services, thus many law firms may choose to 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.

5. Initiatives for Students

There are a number of student initiatives organized by universities and law schools. Several law schools and universities have established *pro bono* centres 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 Clinic¹² and the University of Edinburgh-run, Free Legal Advice Centre.¹³ Both of these bodies are staffed by students and staff and are supported by law firms.

⁷ See <http://www.advocates.org.uk/>.

⁸ <http://scotland.shelter.org.uk/> (a housing and homelessness charity).

⁹ <http://www.emlc.org.uk/Index.html> (government-funded organization that provides professional services to ethnic minorities).

¹⁰ <http://www.sclc.org.uk/>. Provides children and people who care for children with free legal advice.

<http://www.dlmac.co.uk/>. Helps individuals with debts and with legal and benefits problems by providing advice and representation at Tribunals and Courts.

¹² See <http://www.lawclinic.org.uk/>.

¹³ See <http://www.law.ed.ac.uk/probono/>.

The Strathclyde Law Clinic is the largest in Scotland and has completed over 900 cases since its inception in 2003. The clinic is intended to be complementary to existing legal services such as the CAB. It will not act for anyone who can afford professional legal services or who qualifies for legal aid, or in areas such as immigration and debt, where there are already adequate services in existence. There are currently 180 student advisors working across five projects.

B. Barriers To *Pro Bono* Work And Other Considerations

1. Barriers to *Pro Bono* Work

As well as the fees and registration required for many *pro bono* societies, there are also practical barriers for solicitors engaging in *pro bono* work. These include a lack of time when also trying to balance fee-paying client work, as well as the pressure to meet the hourly billing targets of their firm. Some firms, however, include *pro bono* hours of work within these billing targets, thus encouraging their lawyers to participate.

Another issue that may be encountered by several solicitors who volunteer to carry out *pro bono* work is that the cases referred to them may not be in their area of experience. For example, corporate law firms (who house a great many of the profession's solicitors) may not necessarily have lawyers experienced in dealing with individuals as clients, or in the types of matters that affect individuals, including employment and housing/tenancy issues.

2. VAT on *Pro Bono* Work

In Scotland, there is no minimum fee level that lawyers are required to charge for *pro bono* work; therefore, services may be provided completely free of any charges to the client. VAT is therefore not required to be charged for *pro bono* work, so long as no fees are charged to the client. As for England and Wales, if any fee is charged, VAT will also be required to be charged at the usual rate.

3. In-house Lawyers

Lawyers working in-house may also provide *pro bono* advice to clients; however, there are some barriers to the provision of this advice. Some types of work are reserved so that in-house lawyers can only act for their employers regarding certain issues, for instance, conveyancing, court work (excepting Tribunals) and probate work. These tasks can therefore not be carried out *pro bono*. If an in-house lawyer wished to perform these services on a *pro bono* basis, he or she would have to set up their own part-time private practice, with insurance coverage under the Law Society of Scotland's Master Policy, which is compulsory for all Scottish firms. In-house lawyers not covered under the Master Policy are able to provide other services, such as legal advice on any matter, or representation at Tribunals, outside of their in-house work and uninsured, *provided that* they do not do so as "solicitors."

C. *Pro Bono* Resources

As discussed above, *pro bono* legal services have long been provided by both solicitors and advocates. The *pro bono* initiatives have historically been driven by the regulatory bodies for both branches of the legal profession.

1. LawWorks Scotland

LawWorks promotes the provision of *pro bono* assistance to individuals and community groups who cannot afford to pay for legal advice, but are not eligible to receive legal aid (see above for more details). As it coordinates *pro bono* opportunities by matching the need for assistance with the appropriate volunteer, this is an important resource that helps to ensure that the established advice centers are able to provide the advice that is required by their clients.

2. 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 publish details on the amount or scope of the funding it provides.¹⁴

3. Faculty of Advocates

As of 2012, the FLSU is being merged with the FRU to provide a more effective service for people who are seeking access to justice but do not have access to legal aid. The merger aims to streamline the case-sifting process while at the same time making the organization more efficient and effective at matching the expertise of individual advocates to each case. This is significant as the organization asserts that its work is becoming increasingly important in a wide variety of cases that have merit, which would otherwise have no other means of obtaining legal assistance.¹⁵

The merged FLSU will have a panel of more than 70 volunteer Queen's Counsel, advocates and devils from the practicing Bar, who can provide up to three days of free legal advice in all areas of law, including both criminal and civil cases.

4. Initiatives for Students

The Free Legal Advice Centre (see above) offers free legal advice and support to the local community. The advice covers issues of varying severity, from property disputes, contract interpretation, succession and family issues, to cases involving employment and planning.

III. CONCLUSION

The decrease in funding available for legal aid, compounded with the continuing economic crisis, is increasing the need for the *pro bono* provision of services, in order to bridge the gap for individuals who are unable to afford legal services and those who qualify for legal aid. It will be important to see in the coming months and years how the Government will deal with the shortfall between the budget allocated for legal aid and the population's requirements. Fortunately, the growth of CSR and the increasing importance placed on *pro bono* services by corporate clients seems to be increasing the interest of law firms in the area, with some firms including *pro bono* hours as part of billable targets.

It is clear that providing *pro bono* advice is both vitally important for the individuals who benefit from the assistance, as well as allowing lawyers the opportunity to gain experience in other areas of law and to give something back to the community. *Pro bono* assistance is vital for many charities, which are not eligible for legal aid, as this means that they are able to focus their resources on the cause for which they were formed to benefit.

July 2012

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.

¹⁴ See THE LAW SOCIETY OF SCOTLAND, *Scottish Legal Services Trust*, available at <http://www.lawscot.org.uk/forthepublic/legal-fees/scottish-legal-services-trust>

¹⁵ See THE FACULTY OF ADVOCATES, *New Chapter for FLSU*, available at http://www.advocates.org.uk/news/news_newchapterforflsu.html.

PRO BONO PRACTICES AND OPPORTUNITIES IN SERBIA¹

This chapter discusses the legal aid system in Serbia, the laws and regulations governing the provision of free legal services and provides a general overview of *pro bono* practices and opportunities within the country.

Though boasting a rich history and tradition, the Republic of Serbia is a nascent independent nation, surviving the violent splintering of Yugoslavia in the early 1990s and cutting ties with Montenegro to become an independent republic as recently as June 2006.² As such, the fledgling parliamentary republic is still working to strike the ideal, functional balance – including the judiciary system, which has been fluid since its inception. With the legal system in flux, combined with the problems inherited from the previous regime and the complications inherent to a virgin country, *pro bono* legal assistance in the traditional sense has been sparse at best. Yet, spearheaded by NGOs, two of the most publicized groups needing gratuitous service (refugees and victims of human trafficking) are receiving aid. Also, legislation for a comprehensive system of Free Legal Aid has been drafted, though it must still be adopted and financed by the legislature. Furthermore, international law firms have been pitching in with *pro bono* assistance, and a select few firms and individuals based within Serbia are finally starting to follow suit.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN SERBIA

For proper context of the legal landscape in Serbia, a brief primer on the last two decades of turmoil and the current political climate is beneficial. The system of public administration in Serbia was significantly eroded in the 1990s, the decade President Slobodan Milosevic was in power. Following the surrender of Milosevic in 2000 and the subsequent assassination of Prime Minister Djindjić in 2003, Serbia continued to experience many changes in its political system. A new Constitution was adopted in 2006³ to replace the Constitution of 1990, and shortly thereafter, the Republic of Montenegro declared independence from Serbia. Additionally, in 2008, Kosovo declared its independence from Serbia, a declaration which Serbia initially rejected.⁴

Today, Serbia's keen focus on European Union-accession is the primary driving force behind economic, social and political reforms. As Serbia shifted from a post-conflict environment to one increasingly focused upon European Union integration, it became obvious that Serbia would need to build an efficient, transparent, and accountable public administration capable of governing in an impartial manner and delivering benefits to its citizens. The Judiciary in Serbia is also currently undergoing reforms as a result of a package of laws adopted by Parliament in October and December 2008.

Still, Serbia is far behind its neighbors, with a GDP only 68% of its 1989 level.⁵ Also, the current economic and social situation in Serbia is quite complex, as the official unemployment figures are among the highest in Europe – 24%. This fact implies that a number of Serbian citizens cannot afford to pay the necessary legal services, which emphasizes the need to further develop the field of legal aid and *pro bono* services.⁶

A. The Legal Profession

As for lawyer demographics, there are approximately 8,100 lawyers in Serbia, which is roughly one lawyer for each 870 citizens. Relative to other countries in Western Europe and worldwide, these figures represent a very low number of lawyers per capita; however, when compared to similarly situated Eastern European countries, the density of lawyers in Serbia is quite high.⁷ However, the

¹ This chapter was drafted with the support of the Kinstellar law firm, particularly Srdjan Vlatkovic and Branislav Maric, managing partner of Kinstellar's Belgrade office.

² See generally, CENTRAL INTELLIGENCE AGENCY ("CIA"), *The World Factbook: Serbia* (2012), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ri.html> (last updated Jun. 20, 2012). The Serbs' presence in the region dates back to the 7th century, and governance of the people cycled through many forms before the inception of Yugoslavia in 1929. Even after Croatia, Slovenia, Macedonia, and Bosnia splintered away from Yugoslavia, Serbia and Montenegro remained in federation together as two republics until Montenegro voted to secede from the union in Jun. 2006.

³ SERBIA CONST. (New Serbian Constitution of 2006), available at <http://www.wipo.int/wipolex/en/details.jsp?id=7378> (last visited Jun. 27, 2012).

⁴ Serbia rejected Kosovo's independence and sought a UN resolution to request an advisory opinion from the International Court of Justice reviewing the legality of Kosovo's declaration of independence.

⁵ Correspondence from Srdjan Vlatkovic of Kinstellar (Jun. 22, 2012).

⁶ *Id.*

⁷ The United States has roughly one active lawyer per 300 citizens. See *Analysis of the Legal Profession and Law Firms*, HARVARD LAW SCHOOL PROGRAM ON THE LEGAL PROFESSION (2007), available at <http://www.law.harvard.edu/programs/plp/pages/statistics.php> (last visited Jul. 8, 2012). While Serbia's ratio is on par with the overall statistics for lawyers per capita in Europe (approximately one lawyer per 833 citizens), the numbers are buoyed by a high density of lawyers in Western Europe, while Eastern European countries fall well below the average European ratio.

general assessment is that the legal market is currently saturated with lawyers and that the majority of them cannot claim the appropriate business/client levels, which again is one of the consequences of the current economic climate.⁸

The vast majority of attorneys work out of Belgrade, the capital and most populous city in the country. A recent search revealed 50 law firms operating in Serbia, with 43 of those headquartered in Belgrade.⁹ Practically, the Bar Association of Serbia, which sets and enforces the standards for professional conduct, is headquartered in Belgrade as well.¹⁰ Despite the number of law firms in Belgrade, the majority of lawyers in Serbia are sole practitioners.¹¹

1. Lawyer Regulation

The Legal Professional Act (“LRA”) serves as the code of professional conduct for Serbian lawyers.¹² The LRA regulates the subject, conditions for the practice of law and forms of attorneys-at-law work, rights, duties and responsibilities of attorneys-at-law and law trainees and the organization and operation of bar associations.¹³ The right to practice law is acquired by registering in the directory of attorneys-at-law and by taking the oath.¹⁴ Prerequisites include familiar requirements, such as an acceptable law passage of the Serbian bar exam, and establishment of good character, as well as some less-traditional requirements, such as the provision of convenient workspace, three years of independence from public office, and good general health and full working capacity.¹⁵ A foreign national practicing law in his state of origin may be registered in the directory of attorneys; *provided that* he meets certain requirements.¹⁶

A Serbian attorney may practice law throughout all of Serbia¹⁷ and owes four basic duties: that he “(1) really and constantly practice law; (2) provide legal aid professionally and conscientiously in accordance with the law, the statute, and the code; (3) keep a professional secret; and (4) in the professional work and the private life that is available to the public[,] he will protect the reputation of the legal profession.”¹⁸ An attorney is free to provide legal aid in most situations, is obliged to refuse legal aid in some situations, must maintain client confidentiality, and is expected to continuously acquire and improve the knowledge and skills to effectively practice law – rules familiar to lawyers in most jurisdictions.¹⁹

An attorney may be held liable for breaching the basic duties of the profession. A serious breach includes “any violation of duty and honor of legal profession under law, statute and the

See The European Commission for the Efficiency of Justice, COUNCIL OF EUROPE at fig. 20 and accompanying text, available at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2010/Synthese_en.asp (last visited Jul. 8, 2012).

⁸ Correspondence from Srdjan Vlatkovic of Kinstellar (Jun. 22, 2012).

⁹ HG.ORG GLOBAL LEGAL RESOURCES, *Serbia Lawyers, Law Firms*, <http://www.hg.org/attorneys/Serbia.html> (last visited Jun. 8, 2012). The other law firms are located in Novi Sad (5) and Nis (2). Generally, the bulk of these firms focus on international business, finance, and intellectual property.

¹⁰ HG.ORG GLOBAL LEGAL RESOURCES, *Serbia Bar Associations*, <http://www.hg.org/attorneys/Serbia.html> (last visited Jun. 8, 2012). “The contemporary bar system was introduced in Serbia by the Legal Practice Act in 1929 and then the Bar Association of Belgrade was founded, as the obligatory association of attorneys at law which decides autonomously about the inscription of new members, writes their Register, determines the norms of the professional behaviour and applies the sanctions for disregarding them, and takes care about education of future attorneys.” The official website for the Serbian Bar Association is accessible at <http://www.advokatska-komora.co.rs/> (last visited Jul. 8, 2012), but the Serbian Bar Association of America, accessible at <http://www.serbbar.org/sbaa/resources.htm> (last visited Jul. 8, 2012) may prove to be a more helpful resource, particularly for non-native speakers.

¹¹ PILNET: THE GLOBAL NETWORK FOR PUBLIC INTEREST LAW, *Against the Tide: Mira Vucetic Prsic Launches Pro Bono in Serbia*, (May 20, 2009), <http://pilnet.org/project-updates/47-against-the-tide.html> (last visited Jun. 8, 2012). Ms. Prsic notes that these sole practitioners have little or no resources for *pro bono* work, placing the onus on firms and NGOs to provide free assistance.

¹² Final Draft of the Legal Professional Act, accessible at http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/zakon_o_advokaturi_1_1302677159.pdf (last visited Jul. 8, 2012).

¹³ *Id.* at art. 1.

¹⁴ *Id.* at art. 5(1).

¹⁵ *Id.* at art. 6.

¹⁶ *Id.* at art. 14.

¹⁷ *Id.* at art. 16(1).

¹⁸ *Id.* at art. 15.

¹⁹ *Id.* at arts. 17-20.

Code, and particularly evident bad faith in the work within legal profession; providing legal aid in cases where attorney-at-law is obliged to refuse to provide legal aid; business activities that are contrary to the honor and independence of attorneys-at-law; injury of duty to keep a secret; lack of continuous professional education and training in accordance with the adopted program; and asking for compensation greater than the fees prescribed and refusing to issue a bill to the client for the amount received.”²⁰ Discipline for misconduct is initiated by the bar association, administered by the disciplinary prosecutor and disciplinary court, and can result in a warning, fine or removal from the list of attorneys-at-bar.²¹

2. Judiciary System

Much like the rest of the country, the judiciary system in Serbia is ever-changing, propelled by the National Judicial Reform Strategy (enacted by the Ministry of Justice in April 2006, two months before the adoption of Serbia’s new Constitution), which proposed a framework of judicial reform to arc from 2006-2013.²² Potentially in concert, potentially in conflict, Parliament in December 2008 likewise enacted a parcel of judicial laws, likewise targeted at judicial reform.²³ Yet, significant problems continue to plague Serbia’s court system, including chronic backlog, poor case management and lapses in due process and the right to a fair trial, judicial accountability, and the legitimacy and enforcement of court decisions.²⁴

The courts are staffed by approximately 2,400 elected judges who, under the Constitution, “shall be independent and accountable only to the Constitution and the law,” and cannot hold a political office, be a member of a political party, or even engage in any other form of compensated employment, including paid legal services.²⁵ But the reforms calling for “re-election and re-appointment” of the judiciary, designed in part to make the court system more efficient, cast doubt on the independence of the judiciary.²⁶ Many members of the judiciary are opposed to the current reforms based upon separation of powers grounds.²⁷

B. Legal Aid

The rules concerning the concept of legal aid are scattered throughout the Serbian legal system. The current lack of a single body of rules on the subject results in a legal aid mechanism lacking coherency. A draft Law on Free Legal Aid (to be discussed later in more detail) has been prepared by the Serbian Government and it is expected to be adopted by the Serbian Parliament in the course of 2012, which should hopefully result in some progress in this area.²⁸

²⁰ *Id.* at art. 75(3).

²¹ *Id.* at arts. 76-77.

²² ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE (“OSCE”), *Judicial Institutions in Serbia: September 2011 Update*, at p.1 (Sep. 2011).

²³ *Id.* This latter set of laws, effectuated on January 1, 2010, dramatically sheared the number of courts, down from 168 to 64. A hierarchy was also established, with cases moving from Basic Courts to High Courts to Appellate Courts, all the way up to the Supreme Court of Cassation. Specialty courts were also birthed: (1) Administrative Court; (2) Commercial Courts (and the Commercial Court of Appeal); and (3) Misdemeanor Courts (and the High Misdemeanor Court).

²⁴ See European Commission for Democracy Through Law, *Opinion on the Constitution of Serbia*, at ¶ 106 NO. 405/2006, CDL-AD(2007)004, 70TH Session, Venice Commission, Strasbourg (March 19, 2007). The European Commission analysis of Serbia’s new Constitution noted significant concerns with respect to the fact that individual members of Parliament are made subservient to party leaderships, and also the excessive role of members of parliament in judicial appointments (specifically the fact that the National Assembly elects, directly or indirectly, all the members of the High Judicial Council proposing judges for appointment and election of judges).

²⁵ *European Commission for Democracy Through Law, Opinion on the Draft Laws on Judges and on the Organisation of Courts of the Republic of Serbia*, no. 464/2007, CDL-AD (2008) 007, 74TH Session, Venice Commission, Strasbourg (March 19, 2008). The Venice Commission has welcomed a number of good provisions therein, but considered that on the whole the laws tended to weaken judicial independence.

²⁶ *Id.*

²⁷ United Nations Development Programme (“UNDP”), *Serbia: Terminal Outcome Evaluation of the UNDP Serbia Country Programme Document (CPD)* (2005-2009), p. 34, Final Report (February 1, 2010). For an extensive critique of the current judiciary structure, authored by the Judges Association of Serbia itself, see , Ratko Markovic, *Judiciary—The Achilles Heel of the State of Serbia*, originally published in the PECAT WEEKLY (Jul. 15, 2010), available at <http://www.sudije.rs/en/actuals/news-articles/judiciary-the-achilles-heel-of-the-state-of-serbia> (last visited Jun. 6, 2012).

²⁸ Vlatkovic *supra* n.5.

As for the concept of *pro bono*, it is not explicitly regulated by any set of rules in Serbia, including the legislation governing advocacy and previously discussed code of conduct for lawyers. Similarly, the provision of *pro bono* services by Serbian lawyers is not very well-developed. However, the concept of legal clinics started to develop several years ago at a number of Serbian law schools and, in many cases, turned into a relatively successful and efficient way of providing legal advice to those members of society who do not have sufficient funds to pay for it.²⁹

Also, as referenced earlier, a select few firms are attempting to infuse a *pro bono* culture within Serbia. The Kinstellar law firm, for example, has been involved in the “*pro bono* network for civil society organizations in Serbia.”³⁰ To the best of its knowledge, this initiative was the first initiative in Serbia aimed at assembling large domestic and international law firms in the provision of *pro bono* legal services to organizations of civil society in selected cases. The process was organized by a local NGO and was initially relatively successful.³¹ However, perhaps a byproduct of the legal system in flux, a number of logistical issues arose and many of the participants are now contemplating continuing the provision of *pro bono* services independently.³²

1. Right to Legal Aid

As a general matter, the right to legal aid is guaranteed by the Constitution of the Republic of Serbia.³³ Every natural person, regardless of need, is entitled to up to 30 minutes of primary legal aid (general legal information and initial legal advice) per matter.³⁴ The right to secondary legal aid (legal advice, drafting of documents, and representation before the courts) is realized by a gradual or partial exemption from payment of procedure-related expenses.³⁵ In practice, this concept of legal aid is achieved through the assistance of the legal profession (lawyers) and the network of local bodies which specialize in the provision of legal aid.³⁶

(a) Civil Law Proceedings

The Serbian Civil Procedure Code (“CPC”) contains provisions which allow for the exemption from payment of litigation costs under certain circumstances.³⁷ The party requesting the exemption must first submit a written motion to the acting judge that is accompanied by the relevant evidence of economic hardship.³⁸ A party that has been granted an exemption is also entitled to request to be represented by a lawyer free of charge.³⁹ If the court grants such request, an attorney will be appointed from the list of attorneys who are members of the relevant local bar association and the costs of such attorney’s services and expenses will be advanced from the court budget.⁴⁰

The above CPC rules are applicable also to a number of other proceedings, including enforcement proceedings and administrative disputes, which, although governed by separate codes, apply by reference the CPC rules on legal aid.⁴¹

(b) Criminal Law Proceedings

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* In another example of an effort to stimulate the Serbian *pro bono* culture, Mira Vucetic Prsic pioneered a *pro bono* program at her firm after attending a European Pro Bono Forum. Prsic cited a long tradition of volunteer legal work—such as aid to family and friends – but had always seen formal *pro bono* as a concept that existed only in other countries, particularly the United States. Prsic now dedicates all of her working hours to *pro bono* work, and to date has taken on more than 50 *pro bono* cases. See *Against the Tide: Mira Vucetic Prsic Launches Pro Bono in Serbia*, *supra* n.9.

³³ Vlatkovic *supra* n.5.

³⁴ *Status Analysis for the Purpose of Introduction of Legal Aid System in Montenegro*, (Sep. 2008).

³⁵ *Id.*

³⁶ Vlatkovic *supra* n.5. Legal aid offices are established by the Ministry of Justice. Citizens’ associations and legal clinics can provide legal aid if they are entered in the register of the National Committee as providers of legal aid. *Status Analysis for Montenegro*.

³⁷ Vlatkovic *supra* n.5.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

The Serbian Criminal Procedure Code (“CC”) provides for situations in which a defendant *must* have a defense lawyer (i.e., mandatory defense).⁴² This includes, among others, situations in which a defendant is mute, deaf, blind or incapable of successfully defending himself, or if the criminal proceeding is conducted in relation to a criminal offense which is punishable with a prison sentence of eight years or longer.⁴³ If the defendant has no means to pay a defense lawyer, one will be appointed and paid for by the court.⁴⁴

Also, the CC provides that a court will appoint and bear costs of a defense lawyer to a defendant who – although there are no grounds for mandatory defense – due to his overall financial position, cannot pay his defense costs, *provided that* the defendant makes the relevant written request and that the proceeding is for a criminal offense punishable with a prison sentence longer than three years or if the reasons of “righteousness” exist.⁴⁵

Additionally, the CC provides for a possibility of *pro bono* representation to a *victim* of a criminal offense who is acting in the capacity of a private prosecutor within a criminal proceeding in which the offense is punishable with a prison sentence longer than five years. As in the case of the CPC, the decision of whether to grant legal aid must be based on a written motion that will provide sufficient proof of the overall inability to cover the costs of an attorney.⁴⁶

(c) Administrative Law Proceedings

The Law on General Administrative Procedure provides for an exemption (in whole or in part) from payment of the costs of an administrative proceeding for a party in such proceeding, *provided that* the relevant authority conducting the proceeding determines that the party in question cannot bear the cost of such proceeding without damage to his or her own essential support or that of his or her family.⁴⁷

2. Establishment of a System of Free Legal Aid

A system of Free Legal Aid (“FLA”) is a requirement for European Union Accession – providing further motivation for the implementation of such a system – and supports the attainment of international human rights standards in Serbia.⁴⁸ Third parties have encouraged the Ministry of Justice (“MoJ”) to establish a working group to conduct ascertainment research and develop a strategy on FLA.⁴⁹ This has resulted in the development of a draft Strategy on FLA, a draft law on FLA, and has created a framework for the establishment of a national FLA system in Serbia. The draft strategy includes recommendations and financial forecasts for the eventual establishment of the system on FLA,⁵⁰ and is even endorsed by the Council of Europe.⁵¹

Yet, despite advancement toward the draft law and strategy, the fact remains that, as of yet, FLA is not yet established in Serbia.⁵² Until a new law is finally passed by the Parliament and a framework for implementing the law is in place, with significant funding allocated by the

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *See, e.g., European Commission Proposal on Legal Aid*, (May 16, 2006); EC progress reports citing lack of FLA in Serbia; European Human Rights directives; EU Treaty of Rome.

⁴⁹ UNDP, *supra* n.27, at 37. This project was considered groundbreaking, as it was the first time that NGOs had been represented at Working Group level for any strategy in Serbia.

⁵⁰ *Id.* The project is unique because different models of legal aid were actually tested on the ground via the establishment of a Legal Aid Fund that distributed 60 different “micro-grants” to CSOs to obtain data. The results of these pilots lead to a consensus among the Working Group as to the most appropriate model. Out of some 40+ strategies that have been drafted over the years for FLA in Serbia, this is the only one based upon consensus. *Id.* at n.75.

⁵¹ *Id.* at n.76.

⁵² Vlatkovic, *supra* n.5.

Serbian government for this purpose, a truly comprehensive system of FLA cannot be achieved. Additionally, the establishment of outreach mechanisms and a national *pro bono* clearinghouse would greatly advance the goals of the FLA.⁵³

3. Anti-Discrimination Law

Notably, again working with third parties, Serbia drafted and enacted a new Law on Prohibition of Discrimination (often referred to as the “Anti-Discrimination Law”).⁵⁴ This established the Commissioner for the Protection of Equality and created a new legislative vehicle for advancing anti-discrimination in Serbia and improving compliance with international Human Rights treaties, Serbian Constitutional Law and European norms.⁵⁵ The Anti-Discrimination Law has also produced derivatives such as the Belgrade Law Faculty’s Anti-Discrimination Clinic.⁵⁶

4. War Crimes Trials

Additionally, the Special Chamber for War Crimes Prosecutions was formed in Serbia on July 1, 2003.⁵⁷ The Special Chamber is now self-sustainable with very strong outreach.⁵⁸ In fact, with third party support and encouragement, the first case ever was transferred from the International Criminal Tribunal for the Former Yugoslavia (“ICTY”) to Serbia domestic court.⁵⁹ According to the European Commission in a recent progress report on Serbia, cooperation with ICTY has improved.⁶⁰

II. **PRO BONO IN SERBIA: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. **Pro Bono Opportunities**

As detailed above, the provision of *pro bono* services by Serbian lawyers is neither very developed nor regulated. Serbia lacks a clearinghouse, and as discussed in further detail below, local referral organizations often lack an understanding of legal rights and issues. With only a few law firms offering and driving *pro bono* practices, the need for an influx of *pro bono* assistance – whether from international law firms or NGOs – remains substantial, as do the opportunities.

While the proposed Free Legal Aid system and the current “boots on the ground” may be best equipped to handle the more routine cases of smaller scope, some larger issues would benefit from likewise larger contributions. Such opportunities are particularly prevalent in the area of human rights.

1. Establishing Human Rights Institutions

Serbia acceded to the Council of Europe on April 3, 2003, and has ratified all major human rights instruments, including the European Convention on Human Rights.⁶¹ There is a general consensus that with democratic reforms and Serbia’s orientation towards EU accession, human rights are gaining a place on the policy agenda. Recent areas of improvement include: the creation of the Ministry for Minority and Human Rights, the election of four deputy Ombudspersons and the work of the Commissioner for Free Access to Information.⁶²

Yet while awareness among judges of international human rights obligations is perceived to have recently improved, courts are still reluctant to directly enforce ratified international treaties.⁶³ Furthermore, human rights abuses, discrimination against minorities, attacks on

⁵³ UNDP, *supra* n.14, at 98.

⁵⁴ *Id.* at 3.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 38-39 and accompanying footnotes.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* The Office of the War Crimes Prosecutor was founded with the intention to detect and prosecute perpetrators of criminal offenses against humanity and international law, as well as grave breaches of the International Humanitarian Law, committed in the territory of the former Yugoslavia. The staff of the War Crimes Prosecutor’s Office includes the War Crimes Prosecutor, Deputy Prosecutors, Spokesperson, Secretary and other staff members.

⁶¹ See European Convention on Human Rights, signed Apr. 3, 2003 (ratified Mar. 3, 2004).

⁶² See EC Comm HR Report, Oct. 27, 2009; see also EC Comm HR Report, Mar. 11, 2008.

⁶³ See EC Progress Report Serbia 2009, 14.

journalists, hate speech, attacks on foreigners and intimidation of sexual minorities by extremist groups continue in Serbia largely unabated, though publically condemned.⁶⁴ International nongovernmental organizations such as the Helsinki Committee, Open Society Institute, European Commission, the UNHCHR, OSCE and Serbia's Office of the Ombudsman *all* report continuing human rights violations in Serbia.⁶⁵

Citizens also lack awareness and information on rights and remedies (basic legal forms, procedures, offices, legal aid). For example, nearly one-third of all complaints filed with the Ombudsman in 2008 related to activities of the ministries or concerned the Ministry of Interior (and most of these involved the right to identity documents, including identification cards and passports).⁶⁶

Among the general human rights abuses, certain groups are especially afflicted, particularly refugees and victims of human trafficking, and as such are in dire need of assistance.

(a) Refugees

Due to the wars in former Yugoslav republics, there was an influx of large numbers of refugees and Internally Displaced Persons (“IDPs”) into Serbia. According to the ratio of refugee population to the total population in 2007, Serbia held the 13th place in the world.⁶⁷ According to UNHCR statistics for 2010, nearly 75,000 refugees and individuals in refugee-like situations were resident in Serbia.⁶⁸ A handful of groups, particularly NGOs such as Fahamu and those listed later, have been working to assist the refugees, but ample opportunities for further *pro bono* assistance exist.

(1) Human Trafficking

Human trafficking of all forms persists in Serbia – for men, women, and children. Regrettably, the trafficking is a two-way street, with some victims conveyed into the country, while others are transported out of Serbia. While the police have made progress in deterring or intervening in such practices, the judiciary still remains a weak point in the implementation of anti-trafficking legislation.⁶⁹ Thus, help is needed in a number of areas, including assisting known victims of human trafficking, working to prevent trafficking at points of origin or destination outside of the borders of Serbia, and simply raising awareness of the issue.

B. Barriers To *Pro Bono* Work and Other Considerations

Unfortunately, many barriers to providing *pro bono* assistance stand in Serbia, from basic impediments to greater institutionalized obstacles. From a logistical standpoint, the lack of a clearinghouse hampers even the initial process of connecting client with counsel, while societal traditions and biases present over-arching roadblocks.⁷⁰

⁶⁴ See U.S. Embassy Warden message of Sep. 25, 2009, *see also* European Commission Delegation in Serbia and the Council of Europe joint statement of Sep. 21, 2009.

⁶⁵ *Id.*

⁶⁶ SERBIAN OMBUDSMAN REPORT 2008.

⁶⁷ SERBIAN OMBUDSMAN REPORT, *Serbia Pro Bono Directory*, FAHAMU REFUGEE LEGAL AID, <http://www.frlan.org/node/1153> (last visited Jun. 8, 2012).

⁶⁸ *Id.* Additionally, during the 1999-2006 time periods, around 226,000 Serbs and other non-Albanians were forced to leave Kosovo, almost all situated in Central Serbia. See Project Fiche for Phare – Pre-accession Instrument [IPA] 2005, “IPA Support to IDPs and Refugee,” http://ec.europa.eu/enlargement/pdf/serbia/ipa/support_to_refugees_and_idps_en.pdf. The declaration of Kosovo independence in February 2008, marked a new wave of uncertainty for these IDPs, especially with Serbia failing to acknowledge Kosovo’s independence. Even though “new displacement was avoided, the rate of return decreased significantly in 2008 from an already low level, as most IDPs waited to evaluate the approach of Kosovo authorities towards Kosovo Serbs and other non-Albanian communities.” INTERNAL DISPLACEMENT MONITORING CENTRE, *Serbia: Final Status for Kosovo – Towards Durable Solutions and New Displacement*.

⁶⁹ CENTRE FOR PROTECTION OF WOMEN AND CHILDREN AND LAWYERS COMMITTEE FOR HUMAN RIGHTS (“YUCOM”), *Report on Serbia*, at 189-192, ARIADNET, www.ariadnet.net/pdfs/10.Serbia.pdf (last visited Jun. 26, 2012).

⁷⁰ As a plus, however, from such an undeveloped *pro bono* system, a VAT or a tariff is not imposed on services offered free of charge.

1. Lack of a Clearinghouse

Presenting a formidable barrier, Serbia lacks a *pro bono* clearinghouse. Without a clearinghouse or centralized national call center, it is difficult for those interested in offering *pro bono* services to efficiently receive requests from citizens in need.⁷¹ Inversely, without a clearinghouse, legal clinics send private practitioners clients with no prior screening. Since the clinics are not familiar with legal terminology, they often cannot explain the issue over the phone. Counsel must therefore screen every potential client through an in-person meeting.⁷²

2. Institutional Mistrust

At a more abstract level, there lies a foundational public mistrust of the judiciary and government. Lengthy civil and criminal proceedings and difficulties in enforcing final judgments continue eroding the public's trust in the judiciary. The legal profession in Serbia is not well regulated; there exists no mandatory CLE requirement (including basic ethics training) for lawyers, and Senior Judges complain that lawyers and the judiciary lack knowledge of new laws.⁷³

Furthermore, the rulings and decisions of courts are often not followed by administration – especially in the most relevant cases of public interest – and the cooperation of state institutions is extremely limited.⁷⁴ Additionally, there is no mechanism to enforce the decisions of the Commissioner for Free Access to Information of Public Importance or to sanction violations of the Law on Free Access to Information of Public Importance by government bodies.⁷⁵ Thus, though such laws may be adopted on paper, they are simply illusory if the state does not have the teeth to enforce them. State institutions of administration in Serbia lack adequate dispute resolution mechanisms and courts still fall short of guaranteeing citizens their right to a fair trial.⁷⁶

3. Lack of Pro Bono Culture

Traditionally, many lawyers in Serbia have a somewhat rigid view of the practice of law and are not willing to introduce any change.⁷⁷ In fact, some lawyers offering *pro bono* services are resented by other lawyers, who perceive providing legal services free of charge as unfair competition.⁷⁸ Plus, as referenced throughout, many lawyers – particularly sole practitioners – are struggling for paid work, leaving little capacity to offer their services at no charge. However, this barrier also offers an opportunity, for outside lawyers and firms to educate Serbian lawyers about the true nature of *pro bono* service, that the cases are for underprivileged people on the margins of society who are unable to pay any fee.⁷⁹

C. **Pro Bono Resources**

With no national clearinghouse, resources to contact about *pro bono* opportunities are limited. Thus, contacting either the Kinstellar law firm (mentioned above), an international law firm that has had experience in Serbia, or one of the following NGOs (most of which specialize in refugee work) would be the best avenue.

⁷¹ See generally, *Against the Tide*, supra n.11.

⁷² *Id.* Prsic even reports that some individuals who are turned down (for one reason or another) nevertheless persist in coming by the office, even becoming violent after her firm refuses to take their case.

⁷³ Evaluation Team interview with the Vice President of the Belgrade Bar Association.

⁷⁴ Evaluation Team interview with Director of the Belgrade Law Faculty Anti-Discrimination Law Clinic.

⁷⁵ EC Comm HR (Mar. 11, 2008). For a more in-depth look at the problems enforcing the rights to access information, see AMERICAN BAR ASSOCIATION, *Serbia Programs: Rule of Law Initiative, Anti-Corruption and Public Integrity*, http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/serbia/programs.html (last visited Jun. 5, 2012).

⁷⁶ Serbian Ombudsman Report 2008. The Serbian Constitution provides for the right to a fair trial within a reasonable time (art. 32) and the 2005 Civil Procedure Act prescribes that a court should decide on claims and motions of the parties within a reasonable time (art. 10). Yet, of complaints filed with the Serbian Ombudsman in 2008, 9.4% involved violation of the right to a fair trial, while 6.5% involved rights of persons deprived of liberty and 8.0% involved complains of violation of the right on legal protection before administrative authorities.

⁷⁷ See generally, *Against the Tide* supra n.11.

⁷⁸ *Id.*

⁷⁹ *Id.*

- Praxis
 - Website: www.praxis.org.rs
- Initiative for Development and Cooperation (IDC) Serbia
 - Website: www.idcserbia.org
- Group 484
 - Website: www.grupa484.org.rs
- Novi Sad Humanitarian Centre
 - Website: www.nshc.org.rs
- MPDL SE EUROPE
 - Website: www.mpd.org/serbia
- International Aid Network
 - Website: www.ian.org.rs
- Civic Initiatives
 - Website: www.gradjanske.org/page/about/en.html

III. CONCLUSION

While Serbia does not have a legacy of *pro bono* culture in the traditional sense, Serbs do have a tradition of helping friends, family, and neighbors in need. Combined with a few pioneer law firms and the assistance of NGOs, the prospect for a legal community that accepts *pro bono* as part of a lawyer's role could develop. The government is also taking new steps to shoulder its burden of the yoke, commissioning the draft law on Free Legal Aid. Adoption and funding of this legislation by the end of 2012 would serve as a major boon to support citizens unable to otherwise afford legal assistance.

There is still much work to be accomplished in terms of developing the legal infrastructure in Serbia – particularly restoring faith in the judiciary – and transforming how the local legal community thinks about *pro bono*. Nonetheless, there is a growing number of *pro bono* opportunities in various disciplines available in Serbia. Critical, however, will be the establishment of a *pro bono* clearinghouse to screen potential clients and, even more importantly, connect those in need of *pro bono* assistance with the appropriate person or entity to provide such aid.

Nevertheless, for a country still enjoying its first decade of independence, Serbia is headed in the right direction. With time and effort, as well as support from the government and civilians alike, a robust *pro bono* culture can be in Serbia's future.

July 2012

Pro Bono Practices and Opportunities in Serbia

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 SINGAPORE

This chapter discusses the judicial system and the laws and regulations governing the provision of free legal services in the Republic of Singapore (“Singapore”), as well as *pro bono* opportunities available to international law firms in Singapore.¹

I. THE SINGAPOREAN LEGAL PROFESSION AND JUDICIAL SYSTEM

A. The Legal Profession In Singapore And The Regulation Of *Pro Bono* Legal Services

There are currently approximately 3,800 Singapore law qualified lawyers with a practicing certificate in Singapore.² This figure does not include local lawyers without a current practicing certificate or foreign qualified lawyers (whether working in private practice, in-house or nonlegal roles) for which data is not available. According to statistics provided by The Law Society of Singapore, as of August 31, 2011, there were over 800 law practices in Singapore, more than 700 of which comprised between one to five lawyers.³ As of August 31, 2011, there were 17 law practices in Singapore that comprised more than 31 lawyers.⁴

Singapore has two law schools that offer a law degree that is recognized under the Legal Profession Act for legal practice in Singapore.⁵ Prior to the establishment of law schools in Singapore, lawyers in Singapore were typically educated in the United Kingdom.⁶ As a result, there are 19 institutions within the United Kingdom that confer degrees on their graduates that are officially recognized under the Legal Profession Act, thus enabling their graduates to meet the educational requirement to sit for the Singapore Bar.⁷

Lawyers in Singapore are regulated under the Legal Profession Act.⁸ Among other things, this Act constitutes the Law Society of Singapore⁹ (the “**Law Society**”) and amends and consolidates the law relating to the legal profession. There is no mandatory obligation under Singapore legal professional rules or legislation to provide *pro bono* services in Singapore. In addition, there are no specific professional conduct laws and rules applicable to *pro bono* representation. The general Legal Profession (Professional Conduct) Rules under the Legal Profession Act, Chapter 161 of Singapore, remain applicable to lawyers undertaking *pro bono* representation.¹⁰

B. The Singaporean Judicial System

The Singapore judicial system is comprised of two tiers: the Supreme Court and the Subordinate Courts. The Supreme Court is constituted by the Court of Appeal and the High Court.¹¹ The Court of Appeal is the highest appellate court in Singapore. The High Court exercises original and appellate jurisdiction in civil and criminal cases, hearing both cases in the first instance, as well as cases on appeal from the Subordinate Courts. The Subordinate Courts consist of the District Courts and

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 Profile of Practitioners of The Law Society of Singapore Annual Report 2011*, p. 37, available at [http://probono.lawsociety.org.sg/Documents/Annual-Report-2011-\(V6111027\)pdf_versionv3.pdf](http://probono.lawsociety.org.sg/Documents/Annual-Report-2011-(V6111027)pdf_versionv3.pdf)

³ *See THE LAW SOCIETY OF SINGAPORE, General Statistics*, available at <http://www.lawsociety.org.sg/about/genStatistic.aspx>.

⁴ *Id.*

⁵ *See* MINISTRY OF LAW – RELEVANT LEGISLATION, *Legal Profession Act, Legal Profession (Qualified Persons) Rules*, available at <http://app2.mlaw.gov.sg/UsefulInfo/PracticeoflawinSingapore/RelevantLegislation/tabid/279/Default.aspx>.

⁶ *See* Tan Cheng Han, *Legal Education in ASEAN*, available at http://aseanlawassociation.org/9GAdocs/w2_Singapore.pdf.

⁷ *See* MINISTRY OF LAW – RELEVANT LEGISLATION, *supra* n.5.

⁸ *See* the *Legal Professional Act*, available at http://www.agc.gov.sg/lps/docs/Legal_Profession_Act.pdf.

⁹ The Law Society of Singapore was established in 1967 and is a not-for-profit corporate established under the Legal Profession Act. The Pro Bono Services Office is the administrative arm of the Law Society of Singapore’s charity, the Law Society of Singapore, Pro Bono, Learning and Support Services. *See* LAW SOCIETY OF SINGAPORE ANNUAL REPORT 2011, available at [http://probono.lawsociety.org.sg/Documents/Annual-Report-2011-\(V6111027\)pdf_versionv3.pdf](http://probono.lawsociety.org.sg/Documents/Annual-Report-2011-(V6111027)pdf_versionv3.pdf).

¹⁰ *See* the *Legal Profession (Professional Conduct) Rules under the Legal Profession Act*, ch. 161 of Singapore, available at [http://www.lawsociety.org.sg/public/you_and_your_lawyer/pdf/Professional_Conduct_Rules%20\(08072010\).pdf](http://www.lawsociety.org.sg/public/you_and_your_lawyer/pdf/Professional_Conduct_Rules%20(08072010).pdf), which state that the rules are generally applicable to “every advocate and solicitor who has in force a practicing certificate,” and would therefore be applicable in the context of a *pro bono* representation.

¹¹ *See* SUPREME COURT OF SINGAPORE, available at <http://app.supremecourt.gov.sg/default.aspx?pgID=43>.

Magistrates' Courts as well as specialized courts such as the Juvenile Court, the Family Court, the Traffic Court, the Night Courts,¹² the Coroner's Courts¹³ and the Small Claims Tribunal.

In 2009, the Supreme Court heard a total of 14,817¹⁴ civil and criminal matters, whereas the Subordinate Courts heard a total of 371,997¹⁵ civil and criminal matters. As these statistics reveal, the bulk of civil and criminal cases originate in the Subordinate Courts. While the High Court has original jurisdiction in all cases, it generally only deals with civil matters where the value of the subject matter of the claim exceeds S\$250,000 (the general pecuniary jurisdictional limit for Subordinate Courts) and criminal matters where the punishment involves the death penalty or more than 10 years of imprisonment.¹⁶ Consequently, the greatest need for *pro bono* assistance arises at the level of the Subordinate Courts.

II. LEGAL AID, *PRO BONO* OPPORTUNITIES AND OTHER CONSIDERATIONS

A. The Right To Counsel In Singapore

The Constitution of Singapore provides Singapore citizens and non-Singapore citizens the right “to consult and be defended by” counsel of their choice upon their arrest.¹⁷ While such right to counsel is entrenched in the Singapore Constitution, the application of this constitutional right has been limited by legislation and judicial decision. For instance, the Criminal Procedure Code provides that the protection applies only when an accused person has been brought before a court (not prior to the accused person's appearance at court).¹⁸ In addition, the High Court has held that there is no right to be informed of the right to legal counsel.¹⁹ Without any requirement on the arresting authority to inform an accused person of their right to legal counsel, a person in Singapore may be questioned, interrogated and held in (pre-trial) custody prior to having knowledge of the right to legal counsel in Singapore.

B. Legal Aid In Singapore And *Pro Bono* Opportunities

Various legal aid schemes are available in Singapore. The criminal legal aid schemes are comprised primarily of The Supreme Court Legal Assistance Scheme for Capital Offences (the “LASCO”), a scheme administered by the Supreme Court, and the Criminal Legal Aid Scheme (the “CLAS”), a scheme administered by the *Pro Bono* Services Office of the Law Society. The LASCO seeks to provide legal representation to defendants facing capital charges in the High Court. Any defendant who is charged with a capital offense is eligible for legal assistance under the scheme. There is no means or merit test to satisfy.²⁰ Approximately 90% of all capital cases before the High Court are defended by LASCO counsel and the remaining cases are defended either by paid counsel or by counsel from other *pro bono* schemes (e.g., the CLAS).²¹ Any lawyer seeking to participate in the LASCO must be on the

¹² See THE SUBORDINATE COURTS OF SINGAPORE, available at <http://app.subcourts.gov.sg/criminal/page.aspx?pageid=3980>. The Night Courts function for the convenience of the working public who would otherwise have to take time off from work in order to attend court. The operating hours are from 6:00 p.m. onwards on Mondays to Fridays. There are two Night Courts, each hearing a specific profile of cases. One deals with summonses and notices issued by the various government departments, while the other deals primarily with road traffic offenses brought to court by the traffic police and regulatory offenses brought to court by the Land Transport Authority.

¹³ See THE SUBORDINATE COURTS OF SINGAPORE, *supra* n.12. The Coroner's Court deals with cases that are classified by the police as Coroner's cases. The Coroner's Court will hold an inquiry when there is reason to suspect that a person has died in a sudden or unnatural manner, by violence, when the cause of death is unknown and in situations where the law requires an inquiry.

¹⁴ See 2009 Annual Report of the Supreme Court of Singapore, available at <http://app.supremecourt.gov.sg/data/doc/ManagePage/44/AnnualRpt2009/workloadStatistics.html>.

¹⁵ *Id.*

¹⁶ See SUPREME COURT OF SINGAPORE, *supra* n.11.

¹⁷ See SINGAPORE CONST. art. 9(3), 1963. The text of the Constitution of Singapore is available at the Attorney-General's Chambers – Singapore, homepage, <http://statutes.agc.gov.sg>.

¹⁸ See § Section 236, Right of Accused Person to be Defended, Criminal Procedure Code 2010 (No. 15 of 2010): “Every accused person before any court may of right be defended by an advocate.” The full text of the Criminal Procedure Code is available at the Attorney-General's Chambers – Singapore, homepage, <http://statutes.agc.gov.sg>.

¹⁹ See Michael Hor, *Singapore's Innovations to Due Process*, citing *Rajeevan Edakalavan v. PP*, [1998], available at <http://www.isrcl.org/Papers/Hor.pdf>.

²⁰ SEE LEGAL ASSISTANCE SCHEME FOR CAPITAL OFFENCES, available at <http://app.supremecourt.gov.sg/default.aspx?pgID=84>.

²¹ SEE FACTSHEET ON THE LEGAL ASSISTANCE SCHEME FOR CAPITAL OFFENCES, available at <http://app.supremecourt.gov.sg/data/doc/ManagePage/84/LASCO%20Media%20Release%2020May%202011.pdf>.

Supreme Court's Register of Counsel and qualified to practice in Singapore. In addition, to apply to the Supreme Court's Register of Counsel, a lawyer must be in good standing and reputation and have a certain level of experience in criminal trials.²²

The CLAS seeks to provide free legal counsel to impecunious persons in Singapore who are claiming innocence to noncapital criminal charges.²³ The CLAS does not limit its representation on the basis of citizenship or residency, but does require that potential clients satisfy a means test.²⁴ The CLAS is funded through a combination of public fundraising events, government funding and donations from individual lawyers. If an application for CLAS legal aid is granted, the applicant will be assigned a Singapore law qualified volunteer lawyer (usually a criminal lawyer in private practice who is volunteering their services)²⁵ to handle their case. A recipient of legal aid under the CLAS will not be charged for legal advice or representation in court, but the volunteer lawyer may request reimbursement for out-of-pocket expenses.²⁶ Although actual representation of the accused in court is limited to volunteers who are admitted to practice law in Singapore, there are volunteer opportunities with the CLAS for non-Singaporean qualified lawyers. For example, non-Singaporean qualified lawyers may conduct screening interviews of the applicants and recommend whether applicants should be granted or denied criminal legal assistance on the basis of the various eligibility criteria.

The government-funded Legal Aid Bureau (the "LAB") is the agency of the Ministry of Law responsible for administering legal aid for civil matters in Singapore.²⁷ The subject matter of cases within the LAB's mandate include divorce, adoptions, claims for maintenance, custody of children, separation, wrongful dismissals, tenancy disputes, monetary claims, motor and industrial accident claims and estate matters. The legal assistance provided by the LAB extends to legal advice, legal documentation drafting and representation in court proceedings. To be eligible for legal aid, the applicant must (i) be a Singapore citizen or permanent resident in Singapore, (ii) satisfy a means test.²⁸ and (iii) satisfy a merits test.²⁹ Approved cases are handled by LAB in-house lawyers,³⁰ as well as volunteer private lawyers. The legal aid provided by the LAB is not free, and a recipient of legal aid may be required to pay a contribution towards the costs of work done on their case.³¹ This required contribution will be determined by factoring the financial means of the recipient, the nature of the case, the amount of work done and the amount of money recovered for the recipient. Most volunteer opportunities with the LAB are open only to Singapore-qualified attorneys. However, non-Singapore

²² See *The Law Society of Singapore, 22-23 Pro Bono Guide*, available at <http://www.lawsociety.org.sg/probono/pdf/probonoguide.pdf>.

²³ See CRIMINAL LEGAL AID SCHEME, *homepage*, available at http://www.lawsociety.org.sg/public/you_and_the_law/criminal_legal_aid_scheme.aspx.

²⁴ Generally, the means test requires that the applicant have an income not greater than S\$1,300 per month for single applicants and S\$1,700 per month for married applicants, with additional allowances for dependents. Note that the mean monthly earnings of an average Singaporean was S\$4,334 per month for 2011, according to the Ministry of Manpower of Singapore. See MINISTRY OF MANPOWER homepage on income statistics, available at <http://www.mom.gov.sg/statistics-publications/national-labour-market-information/statistics/Pages/earnings-wages.aspx>.

²⁵ As of July 2011, CLAS has 306 registered volunteer lawyers. See THE LAW SOCIETY OF SINGAPORE ANNUAL REPORT 2011, available at [http://probono.lawsociety.org.sg/Documents/Annual-Report-2011-\(V6111027\)pdf_versionv3.pdf](http://probono.lawsociety.org.sg/Documents/Annual-Report-2011-(V6111027)pdf_versionv3.pdf)

²⁶ Between Sep. 2010 and Jul. 2011, 902 applications for legal aid were received by the CLAS and legal aid was granted to 223 applicants. See THE LAW SOCIETY OF SINGAPORE ANNUAL REPORT 2011, available at [http://probono.lawsociety.org.sg/Documents/Annual-Report-2011-\(V6111027\)pdf_versionv3.pdf](http://probono.lawsociety.org.sg/Documents/Annual-Report-2011-(V6111027)pdf_versionv3.pdf).

²⁷ The LAB was established in 1958 under the Legal Aid and Advice Act (Cap 160). The text of the Legal Aid and Advice is available at the Attorney-General's Chambers – Singapore, *homepage*, <http://statutes.agc.gov.sg>. The LAB is governed by the Legal Aid and Advice Regulations (rev. ed. 1996).

²⁸ The Means Test is determined by § 8(2)(b) of the Legal Aid and Advice Act. An applicant must have a disposable income not in excess of S\$10,000 (with some allowable deductions) and disposable capital not in excess of S\$10,000. See LEGAL AID BUREAU website, available at <http://app2.lab.gov.sg/ApplyingforLegalAid/WhatistheMeansTest/tabid/346/Default.aspx>.

²⁹ The Merits Test is determined pursuant to § 8(2)(a) of the Legal Aid and Advice Act. An applicant must have reasonable grounds for taking, defending, continuing or being a party to the proceedings for which they are seeking legal aid. See LEGAL AID BUREAU website, available at <http://app2.lab.gov.sg/ApplyingforLegalAid/WhatistheMeritsTest/tabid/347/Default.aspx>. The Legal Aid Bureau reserves the right to extend legal aid, at the Director of Legal Aid's absolute discretion, to an applicant who fails the Means Test but is facing "hardship" and passes the Merits Test. See The Legal Aid and Advice Act Second Schedule ¶¶ 5 and 7.

³⁰ There are currently approximately 12 staff lawyers.

³¹ See The Legal Aid and Advice Act § 9(1). Usually, the required contribution does not exceed \$750. See THE LEGAL AID BUREAU website, available at <http://app2.lab.gov.sg/LegalAidScheme/Islegalaidfree/tabid/352/Default.aspx>.

qualified lawyers may volunteer with the LAB by assisting with certain out-of-court tasks, such as interviewing applicants, drafting legal opinions and court documents and conducting legal research.³²

In addition to the LASCO, the CLAS and the LAB, the Law Society, as well as a variety of nongovernmental organizations (“NGOs”), administers a host of legal aid programs in Singapore.³³ The Law Society runs community legal clinics (the “Legal Clinics”) at two locations, four nights per week (other than on public holidays and the eve of public holidays).³⁴ The Legal Clinics provide free legal advice to Singaporean citizens and permanent residents on individual nonbusiness matters.³⁵ Volunteering at the Legal Clinics is limited to Singapore qualified lawyers.³⁶ Pursuant to the Project Law Help scheme, the Law Society coordinates the provision of free nonlitigation commercial legal advice to qualifying NGOs.³⁷ To qualify for Project Law Help, an NGO must be present in Singapore, seek to address a community need and have limited financial resources. The Law Society pairs qualifying organizations with participating law firms. To participate in the Project Law Help scheme, law firms must have a Singapore law corporate practice.³⁸

A variety of NGOs also administer legal aid programs in Singapore. The Association of Criminal Lawyers of Singapore has a *pro bono* scheme that offers representation to defendants in certain cases before the Community Court. To volunteer in this scheme, an attorney must be qualified to practice Singapore law.³⁹ Many NGOs, such as the Association of Women for Action and Research, the Catholic Lawyers Guild, Jamiyah (Muslim Missionary Society of Singapore), Lawyers’ Christian Fellowship, the Singapore Association of Women Lawyers, the Singapore Council of Women’s Organisations, the Special Needs Trust Company and the Humanitarian Organization for Migration Economics, run legal clinics on a regular basis or legal helpdesks. To participate in these legal clinics, a lawyer must be a member of the organization hosting the clinic, which may limit the pool of volunteers on religious or gender grounds. For example, the Catholic Lawyers Guild is open only to lawyers of the Catholic faith and the Singapore Association of Women Lawyers is open only to female lawyers and law students.⁴⁰ In addition, as many of the clinics seek to address local law issues, most require volunteer lawyers to be qualified to practice in Singapore.

The Kind Exchange is a platform that matches professionals (including, but not limited to, legal professionals) with community organizations seeking assistance with project-based tasks. Participating groups post tasks they need on The Kind Exchange and interested volunteers may respond to the posting and execute the posted task for free. There are often *pro bono* opportunities for attorneys on The Kind Exchange.⁴¹ The Joint International *Pro Bono* Committee (the “JIPBC”) seeks to provide international and local law firms with *pro bono* projects that facilitate the economic or social development of emerging markets. JIPBC is an initiative between a group of international and local law firms and the Law Society. For The Kind Exchange and JIPBC, lawyers do not need to be Singapore qualified to volunteer. However, given that the tasks are nonlitigation based tasks, participating attorneys ideally should have familiarity with transactional or corporate legal work.⁴²

C. *Pro Bono* Culture And Trends

The Singapore legal community has an important tradition of rendering *pro bono* work. While there have been no proposed increases or decreases in legal aid funding by the Singapore government, efforts are being made to increase participation in *pro bono* legal services by the legal community in Singapore. In 2006, the Law Society recommended that every Singapore qualified lawyer commit at least 25 hours of *pro bono* work per year. Certain Singapore law firms have entered into agreements

³² See THE LAW SOCIETY OF SINGAPORE, *Pro Bono Guide*, 11-18, 36-37, available at <http://www.lawsociety.org.sg/probono/pdf/probonoguide.pdf>.

³³ *Id.* at 29.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 40.

³⁷ *Id.* at 10, 42.

³⁸ *Id.* at 26, 39.

³⁹ *Id.* at 25, 38.

⁴⁰ *Id.* at 30-35.

⁴¹ See THE KIND EXCHANGE, *homepage*, available at <http://www.thekindexchange.com/>.

⁴² See THE LAW SOCIETY OF SINGAPORE, *supra* n.32 at 27, 29.

with the *Pro Bono* Services Office of the Law Society to commit to such a target.⁴³ A Law Society generated survey indicates that the total number of *pro bono* hours declared by Singapore qualified lawyers increased by 25% from 2010 to 2009.⁴⁴ The *Pro Bono* Services Office is also actively encouraging participation by non-Singapore qualified lawyers by meeting with international firms and reaching out to in-house counsel, retired lawyers and legally qualified persons not working in the legal industry to promote the *pro bono* volunteer opportunities available in Singapore.

The drive to expand awareness of *pro bono* services has not been confined to practitioners. In January 2012, the Chief Justice of Singapore, Chan Sek Keong, announced that Singapore law schools will pilot mandatory *pro bono* programmes⁴⁵ for undergraduate law students in collaboration with Singapore's two law schools and the Singapore Institute of Legal Education, the body which oversees professional legal training before and after qualification. While the detailed requirements for such programmes are still being developed (both as to the scope and hours requirements), trial programmes have already commenced.⁴⁶ With these recent developments initiated by the Singapore legal community, recognition and infrastructural support for *pro bono* services has accelerated and appears poised for further growth in the near future.

D. Barriers To *Pro Bono* Work And Other Considerations

While there is a great need for legal aid in Singapore, admission to practice law in Singapore is often a requirement to volunteer in the various initiatives providing legal aid to individuals in Singapore. As described in paragraph II.B. above, the vast majority of the legal aid schemes administered by the government of Singapore, the Law Society and NGOs in Singapore require volunteers to be qualified to practice in Singapore.

In addition, many volunteer lawyers have indicated that a language barrier often impedes their provision of legal aid.⁴⁷ While English is the most widely spoken language in Singapore, many Singaporeans do not speak English well. Besides English, the languages commonly spoken in Singapore include Mandarin, Hokkien, Malay, and Tamil.

Lawyers in Singapore are not required to charge VAT on services that they provide for free and local regulations do not require lawyers to charge minimum tariffs.

E. *Pro Bono* Resources

As described above, there are many organizations and agencies in Singapore actively working to provide or coordinate the provision of *pro bono* legal services. The web addresses for several of such agencies or organizations in Singapore are listed below:

- The LAB: <http://app2.lab.gov.sg/>
- The LASCO: <http://app.supremecourt.gov.sg/default.aspx?pgID=84>
- The Law Society: <http://www.lawsociety.org.sg/>
- The Association of Women for Action and Research: <http://www.aware.org.sg/>
- The Singapore Council of Women's Organisations: <http://www.scwo.org.sg/>
- The Special Needs Trust Company: <http://www.sntc.org.sg/>
- List of free legal clinics in Singapore: <http://legalclinics.sg/index.php?showall=1>

⁴³ *Law firm to support pro bono work for underprivileged*, STRAITS TIMES, Mar. 21, 2012.

⁴⁴ The total number of declared *pro bono* hours was 45,094 hours compared to 35,634 in 2009. See THE LAW SOCIETY OF SINGAPORE ANNUAL REPORT 2011 101, available at [http://probono.lawsociety.org.sg/Documents/Annual-Report-2011-\(V6111027\).pdf_versionv3.pdf](http://probono.lawsociety.org.sg/Documents/Annual-Report-2011-(V6111027).pdf_versionv3.pdf).

⁴⁵ Bruce Lasky and Sarah Shi, *Another step forward in developing pro bono culture in Singapore*, available at http://www.smu.edu.sg/news_room/smu_highlights/2012/20120412.asp.

⁴⁶ See SMU School of Law's *Pro Bono & Community*, homepage, available at http://www.law.smu.edu.sg/blaw/cs_pro_bono.asp.

⁴⁷ See THE LAW SOCIETY OF SINGAPORE, *supra* n.32 at 23, 37.

III. CONCLUSION

Singapore has a relatively narrow legislative and judicial framework for legal aid. Nonetheless, the local legal community is increasingly emphasizing the importance of *pro bono* work and the *pro bono* opportunities available to lawyers in Singapore have been growing steadily. As a result of the efforts of the Law Society and local NGOs, many of the gaps left by the government-funded legal aid schemes are being filled. Consequently, any lawyer interested in participating in the *pro bono* community in Singapore should contact the *Pro Bono* Services Office of the Law Society as an initial step.

September 2012

Pro bono Practices and Opportunities in Singapore

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PRO BONO PRACTICES AND OPPORTUNITIES IN SLOVAKIA¹

The provision of legal aid through the Legal Aid Centre, a government agency with increasing responsibilities, is becoming more and more established as the public is made aware of its existence. Private initiatives such as the *Pro Bono* Advocacy have also been launched, creating a platform for voluntary legal aid by law firms. Both state-run and privately run legal aid underwent significant changes in 2011 with an outlook for growth. In many instances, the provision of *pro bono* legal aid is not systematized, and law firms often partner for the provision of *pro bono* legal aid directly with NGOs to provide *pro bono* legal services, rather than joining a platform.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN SLOVAKIA

Similar to the Czech Republic, the Slovak legal system is a civil law system based on the Austro-Hungarian codes. Over the past 20 years, Slovakia has undergone major changes as a consequence of its transition from a totalitarian government to democracy and the accession to the European Union.

The Slovak court system consists of courts with general jurisdiction and courts with specialized jurisdiction such as the Constitutional Court or the Specialized Criminal Court.² The courts with general jurisdiction consist of district and regional courts, and decide civil, commercial, criminal and administrative cases. The courts of special jurisdiction have authority to review matters specified by statute. For example, the Specialized Criminal Court hears certain serious criminal offences. The Constitutional Court has special jurisdiction to review the conformity of legislation with the Constitution and international treaties and to decide on individual complaints of natural and legal persons alleging violation of their constitutional rights. The Supreme Court has appellate jurisdiction over appeals on points of law lodged by the parties or by the General Prosecutor and in some other matters that are referred to it by statute.³

A. The Legal Profession

There are approximately 5,500 lawyers and 2,100 trainee lawyers registered with the Slovak Bar Association.⁴ To practice as a lawyer, a person has to meet all the legal requirements of Act No. 586/2003 Coll. dated December 4, 2003 on the Legal Profession, as amended, and be admitted to the Slovak Bar Association.⁵ Lawyers' fees are governed by regulation of the Ministry of Justice.⁶

Other than lawyers (referred to as "advocates"), the Slovak legislation recognizes legal practitioners, such as European lawyers, foreign-registered lawyers and international legal practitioners, who may also practice in Slovakia in accordance with the Act on the Legal Profession.⁷ A number of international law firms operate in Slovakia.⁸

B. Legal Aid

The legal basis for provision of legal aid arises out of the Constitution, under which everyone has the right to legal aid in proceedings before courts and state agencies, subject to limitations laid down by law. The system for granting legal aid in civil, commercial, administrative and asylum matters is comprehensively regulated by the Act no. 327/2005 on Legal Aid, as amended (the "**Legal Aid Act**"). Legal aid in criminal matters is regulated by the Act no. 301/2005 Coll. Rules of Criminal Procedure, as amended. Under the Legal Aid Act, "*legal aid* means the granting of legal services to persons entitled under the Legal Aid Act in connection with the exercise of their rights, principally in the form of legal advice, assistance in out-of-court proceedings (including, without limitation, assistance in resolving the matter through mediation), the drawing up of submissions for courts, representation in court and the

¹ This chapter was drafted with the support of Kinstellar.

² See EUROPEAN E-JUSTICE, *Judicial Systems in Member States – Slovakia*, available at https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-sk-en.do?member=1

³ *Id.*

⁴ See (SLOVAK BAR ASSOCIATION), *Profile*, available at <https://www.sak.sk/blox/cms/en/sak/sak/about>.

⁵ *Id.*

⁶ See EUROPEAN E-JUSTICE, *Costs of proceedings – Slovakia*, available at https://e-justice.europa.eu/content_costs_of_proceedings-37-en.do

⁷ See THE AMERICAN BAR, available at <http://www.americanbar.com/IntlDescSearchResults.php?cvalueLegalDesc=SLOVAKIA>.

⁸ See THE LEGAL 500, *Slovakia*, available at <http://www.legal500.com/c/slovakia>.

performance of acts in connection therewith, as well as the full or partial coverage of the associated costs.”⁹

In the past, the provision of legal aid was decided upon by courts, and prior to January 1, 2012, whenever a party to a proceeding requested that a court appointed him or her a lawyer (other than in criminal matters), it was at the court’s discretion to either appoint a lawyer itself or refer the matter to the Legal Aid Centre, an agency established by the Ministry of Justice¹⁰ on the basis of the Legal Aid Act. Since January 1, 2012, the court must refer such party to the Legal Aid Centre. Therefore, the Legal Aid Centre has significantly increased in importance.

In internal disputes (i.e., disputes involving parties exclusively from Slovakia), legal aid may be granted to any natural person. In cross-border disputes, legal aid may only be granted to natural persons domiciled or resident in a Member State of the European Union.¹¹ With respect to internal disputes, legal aid may be granted in civil, commercial labor, asylum and family law cases, matters of court revision of administrative decisions and in proceedings before the Constitutional Court. Cross-border legal aid may be granted in civil, family and commercial law cases.¹² In addition, legal aid in asylum matters covers matters of administrative expulsion, the court review of such decisions and proceedings before the Constitutional Court. In most cases, when a party is assigned a representative, the state covers the costs of the trial.¹³

The Legal Aid Centre is often the first stop for obtaining legal aid services and consultation. The Legal Aid Centre may approach any lawyer registered with the Slovak Bar Association to provide free legal assistance at the Centre.¹⁴ In 2011, the Slovak Bar Association adopted a resolution imposing an obligation on lawyers to accept legal aid representation up to four times throughout a year.¹⁵

In order to qualify for legal aid, one must apply to the Legal Aid Centre;¹⁶ however, interim legal aid can be granted in emergencies before there is a decision on an application.¹⁷ The provision of legal aid is conditional upon the declaration of income. In addition, the dispute must not lack a legal basis (in particular, if the claim is barred by statute or if the party cannot muster any evidence) and the value of it (if a valuation is possible) must exceed the sum of minimum wage.¹⁸ The Legal Aid Act distinguishes between two types of legal aid, fully covered and partially covered. A person is entitled to fully covered legal aid in the event his or her income is less than 1.4 times of the minimum living standard¹⁹ and he or she cannot finance the legal aid from its assets. Partially covered legal aid applies to persons with income between 1.4 and 1.6 times of the minimum living standard. Such persons have to pay the lawyer 20% of the statutory remuneration laid down by the Decree no. 655/2004 Coll. on the Remuneration of Lawyers, as amended.

In 2011, legal aid was granted in 1,218 out of 2,068 cases, primarily in family matters. In addition, the Legal Aid Centre provided more than 40,000 consultations in 2011 (in person and by email and telephone). The Legal Aid Centre has 12 regional offices and five consultation desks. Despite the cutting of four consultation desks, the Centre’s 2011 budget was EUR 1.2 million, and the Centre itself

⁹ See EUROPEAN JUDICIAL NETWORK, *Legal aid – Slovakia*, available at http://ec.europa.eu/civiljustice/legal_aid/legal_aid_svk_en.htm.

¹⁰ See CENTRE FOR LEGAL AID, available at <http://www.legalaid.sk/>; ADVOKÁT SLOVENSKÁ KOMORA, available at <https://www.sak.sk/blox/cms/sk/sak/doc/12/45/ event/open>.

¹¹ *Id.*

¹² See *id.*; EPK, *Slovakia – Slovakia Bar Association*, at 1, available at http://www.e-p-k.at/downloads/slovakia_en_1.pdf

¹³ See EUROPEAN JUDICIAL NETWORK, *supra* n.9.

¹⁴ *Id.*; ADVOKÁT SLOVENSKÁ KOMORA, *Lukratívni právnicki budú tiež pro bono (31.10.2011)*, available at <https://www.sak.sk/blox/cms/dispatch/news/71>.

¹⁵ See SLOVAK BAR ASSOCIATION, *supra* n.4. Resolution no. 26/10/2011 of 10 Nov. 10, 2011.

¹⁶ See EUROPEAN JUDICIAL NETWORK, *supra* n.9.

¹⁷ See *id.*

¹⁸ From Jan. 1, 2012, the minimum wage is set at EUR 327.20.

¹⁹ The minimum living standard currently stands at EUR 189.83.

acknowledges that the number of clients they have is growing as people become aware of its existence. Additional information can be found in the Annual Report of the Legal Aid Centre.²⁰

II. *PRO BONO* IN SLOVAKIA: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

In May 2011, the Pro Bono Advocacy program was launched which links lawyers with nonprofit organizations in Slovakia and provides *pro bono* advice to the nonprofit sector. This program is sponsored by The Global Network for Public Interest Law, a global *pro bono* clearinghouse, and administered by Pontis Foundation.²¹ The program was developed by The Global Network for Public Interest Law in conjunction with Slovak law firms.²² As of June 2012, 68 lawyers and law firms had volunteered for the program.²³ Out of this number, there were 27 law firms and 41 individual lawyers (advocates). This program has been endorsed by the Slovak Bar Association and the Minister of Justice of the Slovak Republic.²⁴

In 2005, the number of registered nonprofit organizations providing *pro bono* services in Slovakia was 230.²⁵ In the area of asylum law, *Liga za ľudské práva* (the “**Human Rights League**”) provides free legal advice for asylum seekers. The Human Rights League not only provides legal advice, but also helps write appeals, monitors the immigration points at Bratislava Airport and accompanies asylum seekers to interviews at the Migration Office. Furthermore, the Human Rights League educates law students in the Asylum Clinic at the Faculty of Law Trnava University.²⁶ The United Nations Refugee Agency for Central Europe has also worked with the Legal Aid Centre in training lawyers with respect to asylum law.²⁷

In addition to the above, there are a few more renowned nonprofit organizations engaging in *pro bono* work, such as Via Iuris, which represents citizens before courts and agencies,²⁸ Nadácia Charty 77 (the “Charter 77 Foundation”), involved in the protection of human rights,²⁹ or Centrum Nádej (the “Centre of Hope”) an organization that deals with domestic violence.³⁰

However, it should also be noted that many of these organizations do not provide genuine *pro bono* work, as the lawyers are mostly paid through their respective organizations’ budgets. Other than the Legal Aid Centre, which is an agency established by law, the *Pro Bono* Advocacy project is the only unofficial platform with the provision of genuine *pro bono* work by law firms. The Pontis Foundation, which operates the initiative, is the only actual clearinghouse of *pro bono* services in Slovakia. Since there is no centralized platform for *pro bono* services, many law firms provide *pro bono* services through their own initiative without appointment by a court, and some firms have long-standing partners (e.g., local nonprofit organizations) to whom they provide *pro bono* services.

B. Barriers To *Pro Bono* Work And Other Considerations

Slovak legislation provides for no express limitation of *pro bono* services by law firms. There are some practical aspects that may affect the provision of *pro bono* services. For example, under the applicable VAT legislation, even if a *pro bono* service is provided for no consideration, the provider should charge VAT on it. In practice, providers sometimes evade this by charging a symbolic sum of EUR 1 for the service. On the other hand, no legislation requires that lawyers charge minimum fees for *pro bono*

²⁰ CENTRE FOR LEGAL AID, *Annual Report of the Centre for Legal Aide in 2011*, available at http://www.legalaid.sk/system/files/vyrocnna_sprava_cpp_2011.pdf.

²¹ Kinstellar, *Pro Bono Advocacy programme launched in Slovakia*, available at <http://www.kinstellar.com/publications/article/pro-bono-advocacy-programme-launched-in-slovakia-744/>

²² *Id.*

²³ See Nadácia Pontis, *Lawyers to volunteer for nonprofits*, (May 31, 2011), available at <http://www.nadaciapontis.sk/en/16231>.

²⁴ Kinstellar, *Pro Bono Advocacy programme launched in Slovakia*, available at <http://www.kinstellar.com/publications/article/pro-bono-advocacy-programme-launched-in-slovakia-744/>

²⁵ See CPF, *Non-governmental organizations and volunteerism*, at 2, available at <http://www.cpf.sk/files/File/Microsoft%20Word%20-%20chapter%20Third%20sector.pdf>.

²⁶ See FAHAMU REFUGEE LEGAL AID, *Pro Bono Legal Aid*, available at <http://www.frlan.org/node/587>.

²⁷ See UNHCR, *Operations in Slovakia*, available at <http://www.unhcr.org/pages/49c3646c206.html>

²⁸ <http://www.viaiuris.sk/index.html>.

²⁹ <http://www.charta77.sk/>.

³⁰ <http://www.centrumnadej.sk/>.

services. Some limitations may arise in the terms of particular projects. For example, the Pro Bono Advocacy platform is limited to the participation of certain lawyers (i.e., no in-house lawyers are involved in the initiative). Also, no commercial or criminal matters may be referred within the *Pro Bono* Advocacy platform. In-house lawyers also may not provide legal aid through the Legal Aid Centre.

As the largest and most complex private initiative, the Pro Bono Advocacy program appears to have been received positively among practitioners, although there was slight skepticism over the initiative initially.³¹

C. *Pro Bono* Resources

For lawyers interested in *pro bono* work in Slovakia, the first place to look is the Legal Aid Centre. The Slovak Bar Association has introduced 29 practice areas for legal aid, and lawyers can choose several areas that they are familiar with.³² The *Pro Bono* Advocacy program is generally the most comprehensive resource to link lawyers in Slovakia with nonprofit organizations in need of *pro bono* work. It may be the only actual clearinghouse for *pro bono* legal services operating in Slovakia.

As outlined above, there are a few additional nongovernmental organizations that are involved in *pro bono* legal aid on a private basis:

- Via Iuris: <http://www.viaiuris.sk/index.html>
- Nadácia Charty 77: <http://www.charta77.sk/>
- Centrum Nádej: <http://www.centrumnadej.sk/>

III. CONCLUSION

In Slovakia, there is a growing culture of providing *pro bono* services facilitated by the recent launch of a *pro bono* clearinghouse. In general, a large amount of free legal services are rendered through the Legal Aid Centres run by the Ministry of Justice. However, the recent launch of the *Pro Bono* Advocacy program provides additional opportunities for lawyers interested in providing *pro bono* services to the nonprofit sector. This initiative unites international law firms, as well as local law firms and individual practitioners. Lawyers interested in providing *pro bono* services can either enroll with the *Pro Bono* Advocacy Project or contact one of the local NGOs specializing in specific areas of law.

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Pro Bono Practices and Opportunities in Slovakia

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³¹ SLOVENSKÁ ADVOKÁT KOMORA, *BSA 6/2011*, available at https://www.sak.sk/blox/cms/sk/sak/doc/20/35/_event/open.

³² EPK, *supra* n.12.

PRO BONO PRACTICES AND OPPORTUNITIES IN SLOVENIA¹

The provision of *pro bono* legal services in the Republic of Slovenia is less common than in the United States. However, Slovenia provides robust free legal aid services, and the recent creation of a *pro bono* clearinghouse increases the opportunities for providing *pro bono* services in Slovenia. This chapter discusses the legal aid system in Slovenia, and provides a general overview of *pro bono* practices and opportunities in Slovenia.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN SLOVENIA

A. The Legal Profession

Slovenia is a parliamentary democratic republic that became independent after the disintegration of Yugoslavia in 1991.² The Slovenian judiciary is one of three branches of government, and is independent from the Parliament (the legislative branch) and the President (the executive branch).³ The Slovenian judicial system is a “unified” judicial system, consisting of courts with general and specialized jurisdiction.⁴ There are 60 courts with general jurisdiction, including 44 district courts, 11 regional courts, four higher courts and the Supreme Court.⁵ There are five specialized courts, including four labor courts, which rule on labor-related and social insurance disputes, and one Administrative Court, which provides legal protection in administrative affairs.⁶ The Administrative Court has the status of a higher court.⁷

In 2012, Slovenia had a population of just over two million, of which approximately 1,400 individuals were practicing attorneys.⁸ In order to become an attorney in Slovenia, an individual must obtain a law degree from one of the two law faculties in Slovenia.⁹ However, in order to practice as an attorney-at-law, an individual must pass the Slovenia national bar examination, must obtain specialized training by working as an “attorney at law candidate” in a legal office, must be a citizen of a European Union member state and must actively speak Slovene.¹⁰ Most attorneys in Slovenia work in private practice or for the State Attorney’s Office, which represents the interests of the State of Slovenia before courts of justice, administrative authorities and before foreign and international courts.¹¹ Further, in order to become a judge, state prosecutor or notary, an individual must be appointed by the powers provided by law.¹²

The legal profession in Slovenia is governed by Article 137 of the Constitution of the Republic of Slovenia, the Bar Act, the Code of Conduct for Lawyers, the Lawyers’ Tariff and by internal acts of the Slovenian Bar Association.¹³ All practicing attorneys in Slovenia are required to join the Slovene Bar Association, which consists of 11 regional assemblies where membership is based on territorial and functional principles, largely coinciding with the territories of the district courts.¹⁴

B. Legal Aid

The Constitution of the Republic of Slovenia specifically provides that everyone has the “right to personal liberty,” and that no individual may be “deprived of his liberty except in such cases and

¹ This chapter was drafted with the support of Dr. Neža Kogovšek Šalamon.

² SLOVENIA GOVERNMENT COMMUNICATION OFFICE, *State*, <http://www.slovenia.si/en/slovenia/state> (last visited May 29, 2012).

³ See SLOVENIA GOVERNMENT COMMUNICATION OFFICE, *The Judicial System*, <http://www.slovenia.si/en/slovenia/state/the-judicial-system/> (last visited May 29, 2011).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ ODVETNIŠKA ZBORNICA SLOVENIJE (SLOVENIAN BAR ASSOCIATION), *Lawyer Register*, <http://www.odv-zb.si/en/directory/lawyer-register> (follow “Export All” hyperlink) (last visited May 29, 2011) [hereinafter *Lawyer Register*].

⁹ Maja Čarni & Špela Košak, *A Guide to the Republic of Slovenia Legal System and Legal Research*, NYU LAW GLOBAL (2006) <http://www.nyuawglobal.org/globalex/slovenia.htm> (last visited May 29, 2011).

¹⁰ *Id.*

¹¹ REPUBLIC OF SLOVENIA STATE ATTORNEY’S OFFICE, *About the State Attorney’s Office*, http://www.dp-rs.si/en/about_the_state_attorneys_office/ (last visited May 29, 2011).

¹² Čarni & Košak, *supra* n.9.

¹³ *Lawyer Register*, *supra* n.8; STATUT ODVETNIŠKE ZBORNICE SLOVENIJE (Slovenia/Bar Act) 24-1455/2001 (Apr. 5, 2001), available at http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/en_slovenia_bar_act1_118889740.pdf

¹⁴ *Id.*

pursuant to such procedures as are provided by law.”¹⁵ (Translation.) This includes the right for the individual to have “immediate legal representation of his own free choice.”¹⁶ (Translation.) Thus, it is a Constitutional guarantee that individuals in Slovenia have access to counsel in criminal cases.¹⁷ Beyond criminal cases, however, the Slovenian courts have stressed that it would be “incompatible with the constitutional guarantee of efficient access to justice” if access to justice was “dependent on [an individual’s] economic situation.”¹⁸ Thus, the Civil Procedure Act and the Free Legal Aid Act contain provisions assuring access to justice for the impoverished in civil cases.¹⁹

C. Legal Aid In Criminal Cases

Slovenia guarantees legal aid, including legal representation, in criminal cases.²⁰ In certain situations, representation by an attorney is mandatory, and if an individual does not have his or her own counsel, the court will appoint counsel on its own motion.²¹ These situations arise where the defendant is: (1) mute, deaf or incapacitated; (2) charged with a crime punishable by imprisonment of 30 years or more; or (3) detained by police and brought before an investigating judge for questioning.²² The court-appointed counsel is chosen from the court’s list of eligible lawyers, and the representation persists until there is a final judgment.²³ If the individual is convicted, the court will order the individual to repay the costs of the counsel to the court; however, the court can exempt an individual from repaying these costs if the repayment would impoverish the individual.²⁴

Where a defendant is not obliged to have counsel, the defendant can nevertheless apply for free legal assistance.²⁵ In the application, the defendant must indicate that he or she has insufficient income or assets to pay for legal counsel.²⁶ If the court grants the application, then the court will select a lawyer from an eligible lawyer’s list, and the appointed lawyer will defend the individual throughout the criminal proceedings.²⁷ The appointed lawyer’s fees will be paid from the state budget, and the defendant does not have the obligation to repay the fees, even if convicted.²⁸ Further, a court can assign counsel to an individual served with a charge sheet, even if the individual does not otherwise meet the requirements for free legal assistance, if doing so is in the interest of fairness.²⁹

D. Legal Aid In Civil Cases

Litigants in civil cases in Slovenia do not have to be represented by attorneys.³⁰ Indeed, Article 12 of the Civil Procedure Act 1999 (amended in 2004) provides that a “party who is not represented by an attorney and who by reasons of ignorance fails to exercise their procedural rights *shall be advised by the court of the acts of procedure which they are entitled to execute.*”³¹ (emphasis added.) Thus, it is possible for a party to represent himself, and, at times, the court will advise the party of its procedural rights. While a party may represent himself in litigation, the costs associated with litigation may still be cumbersome to many litigants, and many litigants may not be able to adequately enforce their rights

¹⁵ USTAV REPUBLIKE SRPSKE (CONSTITUTION SERBIAN REPUBLIC) (“SLOVENIA CONST.”) 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (Dec. 26, 1991), art. 19.

¹⁶ *Id.*

¹⁷ *See id.*

¹⁸ EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, *Slovenia*, <http://fra.europa.eu/fraWebsite/attachments/access-to-justice-2011-country-SI.pdf> (last visited May 29, 2012) (citing Ustavnem sodišču Republike (Slovenia Constitutional Court) 376/02, Jul. 8, 2004 (Slovenia)) (hereinafter EUROPEAN UNION AGENCY).

¹⁹ *Id.*

²⁰ *See SLOVENIA CONST. supra* n.15.

²¹ EUROPEAN E-JUSTICE, *Slovenia: Getting Legal Advice*, https://e-justice.europa.eu/content_rights_of_defendants_in_criminal_proceedings_-169-SI-en.do?clang=en&idSubpage=1 (last visited May 29, 2012).

²² *Id.* Further, where an individual is served with a charge sheet accusing him or her of a criminal offense punishable by a jail sentence of eight years or more, the court will also appoint counsel if the individual does not have his or her own counsel. *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *See* ZAKON O PRAVDNEM POSTOPKU (Civil Procedure Act) 73/07, 13.8, art. 12, available at <http://sgdatabse.unwomen.org/searchDetail.action?measureId=35623&baseHREF=country&baseHREFId=1186>

³¹ *Id.*

without the assistance of an attorney. Thus, there are mechanisms to prevent this hardship under the Civil Procedure Act and the Free Legal Aid Act.

1. The Civil Procedure Act

Under the Civil Procedure Act, litigants are expected to advance the payment for costs incurred by procedural acts, such as filing fees and fees associated with discovery.³² However, the court “shall exempt from payment of the costs of proceedings a party who is not able, with respect to their pecuniary circumstances, to cover these costs without detriment to the maintenance of themselves and their family” by a “considerable” amount.³³ If the court determines that a party is exempt from payment of the costs of proceedings, then the court will pay for the “costs of witnesses, expert examinations, interpreters, inspections and announcements.”³⁴ An exempt party may also move to be represented by an attorney “when such representation is necessary for protection of their rights.”³⁵ (Translation.) If the court appoints an attorney, the party is exempt from refunding all effective costs to pay the attorney, but the attorney may request to be relieved from duty for “justified reasons.”³⁶ (Translation.) Where the costs associated with litigation would be difficult for a party to pay, but are not necessarily a “detriment to the maintenance” of the party and his or her family, the court may permit the party to pay the fees in installments or postpone the fees until the decision has passed.³⁷ (Translation.)

2. The Free Legal Aid Act

Under the Free Legal Aid Act, eligible individuals are entitled to the total or partial provision of funds necessary to cover the costs of legal assistance and are entitled to an exemption from paying the costs of judicial proceedings.³⁸ Legal aid is available to be used in all courts of general and specialized jurisdiction in Slovenia, before the Constitutional Court of Slovenia, before all authorities, institutions or persons in Slovenia authorized for out-of-court settlements and, in certain cases, for proceedings conducted before international courts or arbitration panels.³⁹ Further, free legal aid may be granted for “legal advice, legal representation and other legal services” and for “all forms of judicial protection.”⁴⁰ (Translation.)

To be eligible to receive legal aid, an individual must be a citizen of Slovenia or must meet certain other citizenship or resident requirements, such as holding a permit for permanent residence in Slovenia or being an alien subject to reciprocity based upon international treaties.⁴¹ Further, nongovernmental and nonprofit organizations may be eligible for legal aid if the dispute involves the “performance of activities in the public interest or activities for the purpose of which they were founded.”⁴² (Translation.) Legal aid will be granted to persons who, “given their financial position and the financial position of their families, are not able to meet the costs of the judicial proceeding or the costs of legal aid without jeopardizing their social situation and the social situation of their families.”⁴³ (Translation.) The term “jeopardizing their social situation” is modified to only include individuals whose monthly income does not exceed “twice the base amount of the minimum income laid down in

³² *European Union Agency, supra* n.30 (citing ZAKON O PRAVDNEM POSTOPKU 73/07, 13.8, art. 477/4).

³³ *Id.* at art. 168.

³⁴ *Id.* at art. 171.

³⁵ ZAKON O PRAVDNEM POSTOPKU, *supra* n. 20 at art. 170 (Slovenia).

³⁶ *Id.*

³⁷ *Id.* at art. 168.

³⁸ ZAKON O BREZPLAČNI PRAVNI POMOČI (Free Legal Aid Act) 96/04, 30/8, art. 1, *available at* <http://sgdatabase.unwomen.org/searchDetail.action?measureId=35743&baseHREF=country&baseHREFId=1186>

³⁹ *Id.* Legal aid is available for international proceedings and arbitrations where the international jurisdiction does not provide legal aid or where the individual does not qualify for the international legal aid.

⁴⁰ *Id.* Legal aid is not permitted in the following matters: (1) criminal offenses involving insulting behavior, libel, defamation or slander, unless the injured party proves the probability that he or she has suffered legally recognized damage due to these offenses; (2) disputes involving a reduction in maintenance when the person obliged to pay maintenance has failed to settle the due liabilities arising from maintenance, unless he or she has failed to settle these liabilities for reasons beyond his or her control; or (3) in damage disputes involving compensation for non-property and property damage caused by defamation or libel, unless the injured party provides credible evidence that this has affected his or her material, financial or social position. *Id.* at art. 8.

⁴¹ *Id.* at art. 10.

⁴² *Id.*

⁴³ *Id.*

legislation governing social aid services.”⁴⁴ (Translation.) The financial position of the applicant is determined by taking into account the applicant’s income and receipts, the income and receipts of the applicant’s family and the property owned by the applicant and the applicant’s family.⁴⁵

If an applicant is approved to receive legal advice, legal advice will be provided by attorneys who are entered into a “Directory of Attorneys,” by law firms “founded on the basis of the act governing attorneyship,” and by notaries, and may also be offered by “persons who perform not-for-profit services of free legal aid with the approval of the minister responsible for justice.”⁴⁶ (Translation.)

Applications for legal aid have been on the rise.⁴⁷ However, many indigent individuals, part of the most vulnerable social strata, are not properly informed of free legal aid possibilities.⁴⁸ In fact, some studies indicate that certain public institution employees fail to carry out their work to inform individuals about free legal advice, and are not properly sanctioned when failing to do so.⁴⁹

II. PRO BONO IN SLOVENIA: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. Pro Bono Opportunities

Pro bono is an increasingly important part of the practice of law in Slovenia, and many attorneys accept *pro bono* cases.⁵⁰ *Pro bono* services have increased recently in Slovenia, due both to the creation of the Free Legal Aid Act and the creation of the Slovenian Clearinghouse. *Pro bono* services are most likely to be administered by “candidate” attorneys, and many attorneys will agree to take on *pro bono* services several times per year.⁵¹

The Slovenian Clearinghouse, created in 2009, is jointly operated by the Global Network for Public Interest Law (“PIL”) and the Peace Institute.⁵² The Clearinghouse works with approximately 15 nongovernmental organizations (“NGOs”) with the goal of matching attorneys with individuals referred by the NGOs or by matching attorneys with the NGOs themselves.⁵³ While *pro bono* opportunities exist for nearly every type of legal issue, *pro bono* services are frequently provided in connection with discrimination, domestic violence and in providing services to impoverished individuals in rural areas.⁵⁴ Beginning in 2012, the Clearinghouse went into “hibernation,” as it was unable to find sufficient funding to continue to actively work on matters encouraging NGO involvement in legal aid.⁵⁵ However, the Clearinghouse attorneys remain able to assist individuals in need of legal aid services.⁵⁶

⁴⁴ *Id.* at art. 13.

⁴⁵ *Id.*

⁴⁶ *Id.* at art. 29. In order to obtain approval by the minister to administer legal aid, the person performing the services must: (1) be registered in the Republic of Slovenia; (2) perform the activities of providing legal advice pursuant to the regulations on the basis of which they were founded; (3) have concluded an employment contract with a university graduate lawyer who has passed the national bar examination, or the person who is in possession of such qualifications; (4) have appropriate premises and the equipment required for providing legal advice; (5) ensure adequate supervision of the provision of legal aid pursuant to this Act; and (6) carry a liability insurance contract for the possible eventuality of damage caused by their advice for at least the minimum insurance amount.

⁴⁷ REPUBLIC OF SLOVENIA, *First Annual Report On The Implementation Of The National Action Plan On Social Inclusion NAP/inclusion 2004-2006*, 20 (2005), http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/nap_inclusion04_06_report1.pdf

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Neža Kogovšek Šalomon, Aldo Milohnič & Katarina Vučko, *The Development of Pro Bono Work of Lawyers in Slovenia: Analysis Of Responses To The Web Survey On Pro Bono Work In Slovenia Lawyers* (Apr. 2009), http://translate.googleusercontent.com/translate_c?hl=en&ie=UTF8&prev=t&rurl=translate.google.com&sl=auto&tl=en&u=http://www.mirovni-institut.si/data/tinymce/Projekti/Pro%2520bono/2%2520Analysis_ProBonoSurvey-Final-SLO.pdf&usg=ALkJrhiOefHkSS0KNYD3VFI7M_YH2wCdmA (last visited May 29, 2012.)

⁵¹ *Id.*

⁵² PILNET, *The Need for Pro Bono in Slovenia: An Interview with Neža Kogovšek*, (Dec. 15, 2009), <http://pilnet.org/project-updates/48-the-need-for-pro-bono-in-slovenia-an-interview-with-nea-kogovsek.html> [hereinafter *Need for Pro Bono*].

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Interview with Dr. Neža Kogovšek Šalomon, Mirovni inštitut (Peace Institute) in Orange County, Cal. (Jun. 11, 2012).

⁵⁶ *Id.*

B. Barriers To *Pro Bono* Work And Other Considerations

The provision of *pro bono* services by NGOs and foreign entities can be quite difficult due to the requirement that legal services be provided by attorneys who have undergone training and passed the State's law exam.⁵⁷ While foreign attorneys seeking involvement in Slovenia can advise NGOs about *pro bono* services and can assist Slovenian attorneys in the administering of legal services by providing additional legal advice, many challenges remain. In particular, many large law firms in Slovenia rarely take on some of the most challenging cases *pro bono* (such as providing services to individuals in rural areas). As such, it can be very difficult for a foreign attorney to provide *pro bono* services in those situations if the foreign attorney cannot find a Slovenian practicing attorney to help advise the *pro bono* client. Further, many NGOs do not employ attorneys, and, as such, NGO involvement in the administering of *pro bono* services is "very marginal."⁵⁸ Indeed, while the Clearinghouse has significant potential in assisting NGOs, it has found it challenging to communicate to NGOs what *pro bono* services are and to understand the needs of the NGOs.⁵⁹ Lastly, many attorneys engaged in *pro bono* services in Slovenia express frustration with administering *pro bono* services due to difficulties in communicating with clients, particularly because many *pro bono* clients lack access to telephones and internet and are poorly educated.⁶⁰

Attorneys in Slovenia are required to charge a minimum tariff under the Lawyers' Tariff Act of 2003, but may provide free legal services to socially disadvantaged and impoverished individuals.⁶¹ Still, attorneys are required to charge VAT on services that they provide for free, although attorneys who provide free services to defendants in criminal cases may not have to charge VAT on their services.⁶²

C. *Pro Bono* Resources

For more information about *pro bono* opportunities in Slovenia, contact the Slovenian Clearinghouse. Information about the Clearinghouse is available at www.pilnet.org.

III. CONCLUSION

Slovenia's Constitution, Civil Procedure Act and Free Legal Aid Act provide significant services for individuals in need of legal aid. However, these services are insufficient to help all individuals requiring legal services and, in fact, there are indications that many of the most vulnerable individuals in Slovenia are not aware of these free services. Thus, there remains a need for *pro bono* services. The creation of the Clearinghouse will help to foster the provision of additional *pro bono* services, and there may be opportunities for international law firms to assist the Clearinghouse and other NGOs in an advisement role.

July 2012

Pro Bono Practices and Opportunities in Slovenia

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⁵⁷ EUROPEAN UNION AGENCY, *supra* n.18.

⁵⁸ *Id.*

⁵⁹ *Need for Pro Bono*, *supra* n.52.

⁶⁰ Šalamon, Milohnič & Katarina Vučko, *supra* n.50.

⁶¹ SLOVENIAN BAR ASSOCIATION, *Interpreting Lawyers' Fees*, <http://translate.google.com/translate?sl=auto&tl=en&js=n&prev=t&hl=en&ie=UTF-8&layout=2&eotf=1&u=http%3A%2F%2Fwww.odv-zb.si%2Fpredstavitev> (last visited May 29, 2012).

⁶² *Id.*

PRO BONO PRACTICES AND OPPORTUNITIES IN SOUTH AFRICA

The South African government and legal community have made significant strides towards improving access to justice to all in South Africa. The government operates, and continues to expand, a legal aid system that uses public funds to assist those in need of legal services. Likewise, law firms and law societies throughout the country have adopted mandatory *pro bono* requirements for attorneys. 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 challenges the country has experienced since the end of the apartheid era.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN SOUTH AFRICA

A. The Legal Profession

The South African judiciary is an independent branch of the government and consists of the Constitutional Court (the final court of appeals for all matters relating to South Africa's Constitution), the Supreme Court of Appeal (the court of last resort for all matters except for constitutional matters), the provincial divisions of the High Court, and district and magistrate courts. There are also specialty courts established to oversee various matters from land claims to tax matters.

The legal profession in South Africa is comprised of two types of lawyers: attorneys and advocates. Attorneys provide advice on matters ranging from commercial transactions to the drafting of wills. Advocates represent clients in major court proceedings, arbitrations and also provide written or oral opinions on matters involving South African law. This largely mirrors the United Kingdom's solicitor/barrister distinction. Advocates may only work on matters that are referred to them by attorneys.

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 (the “LSSA”).¹ According to the LSSA, as of June 2012, there were 21,007 attorneys practicing in South Africa.² While many of those attorneys practice at large-to medium-sized firms (firms with five or more legal professionals), 62.8% of the attorneys work at firms with four or fewer legal professionals.

Advocates are represented by the General Council of the Bar (the “GCB”), a federal body comprising 10 societies of practicing advocates. Societies are located at the seat of every provincial and local division of the High Court of South Africa.³ There are currently over 2,000 advocates practicing in South Africa.⁴

Attorneys and advocates both have a long history of pursuing equal access to justice in South Africa, dating back to the apartheid era. In recent years, the legal profession has heeded calls to increase its *pro bono* efforts as part of a new spirit of volunteerism in the country by introducing a mandatory *pro bono* initiative for attorneys and advocates. Legal professionals are now required to provide at least 24 hours of *pro bono* services per year.⁵ A number of South Africa's leading law firms have gone further and made significant efforts to develop and increase their *pro bono* activities, including the creation of ProBono.org website⁶ seeking to match firm lawyers with individuals in need of legal services. 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 legal professionals are encouraged to establish their social responsibility credentials consistent with principles embedded in the South African Constitution and with the passage of the Legal Practice Bill.⁷

B. Legal Aid

South Africa has a system of legal aid that uses public funds to assist those unable to afford legal services. The Legal Aid Board of South Africa (the “Legal Aid 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

¹ See <http://www.lssa.org.za>.

² <http://www.lssa.org.za/upload/LSSA%20LEAD%20STATSDOC%202012.pdf>.

³ See <http://www.sabar.co.za>

⁴ <http://www.advocatesa.co.za/>.

⁵ <http://www.lssa.org.za/upload/LSSA%20Annual%20Report%202012.pdf>.

⁶ <http://www.probono.org.za/>.

⁷ <http://www.lssa.org.za/upload/Legal%20Practice%20Bill.%2030%20May%202012.pdf>.

1996). Its objective is to provide every citizen with access to justice, as contemplated in the Constitution of South Africa (Act 108 of 1996), by providing legal representation to indigent persons at the State's expense.⁸ The Legal Aid 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 Legal Aid Board is particularly dedicated to providing legal advice and protecting and defending the rights of women, children and the homeless.

The Legal Aid 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. The current guidelines for the Legal Aid Board are set forth in the Legal Aid Guide – 2012.⁹

Individuals are eligible for the services provided by the Legal Aid Board based on a means test.¹⁰ The Legal Aid 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 US\$610) per month. The Legal Aid 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 such as divorce proceedings.

According to its 2009 to 2010 Annual Report,¹¹ the Legal Aid Board provided:

- Legal services through a national footprint of 64 justice centers and 63 satellite offices
- The delivery of legal services in 416,149 new legal matters
- Legal assistance in 59,266 matters involving children
- Assistance over two million South Africans over the past decade

The Legal Aid Board uses (i) justice centers, (ii) cooperation agreements with university law clinics and (iii) special litigation to fulfill its mandate of providing legal aid.

- **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.¹² The Legal Aid Board has established approximately 64 justice centers and 63 satellite offices serving mostly rural areas. Through its justice centers, the Legal Aid Board provided general legal advice to 211,874 clients in South Africa from 2009 to 2010.¹³
- **Cooperation Agreements.** The Legal Aid Board enters into cooperation agreements with certain university law clinics and nongovernmental organizations to provide additional legal assistance to the local communities. As of 2009, cooperation agreements are in place with the following universities and community advice office:

⁸ <http://www.legal-aid.co.za/images/publications/annual-reports/annualreport2010.pdf>.

⁹ <http://www.legal-aid.co.za/images/legal-services/Guide/legal-aid-guide-2012.pdf>.

¹⁰ See <http://legalaid.clickclickboom.co.za/wp-content/uploads/2012/04/Legal-Aid-SA-Annual-Report-2009-10.pdf>. 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 affect 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 nonlitigious 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.

¹¹ <http://www.legal-aid.co.za/images/publications/annual-reports/annualreport2010.pdf>.

¹² 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, as well as 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.

¹³ <http://www.legal-aid.co.za/images/legal-services/Guide/legal-aid-guide-2012.pdf>.

- Potchefstroom University for Christian Higher Education
- University of the Witwatersrand
- University of Venda
- Stellenbosch University
- University of Port Elizabeth
- National Alliance for the Development of Community Advice Offices
- **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 Legal Aid Board considers special litigation on a case-by-case basis, and the cost is covered through a dedicated fund.

The Legal Aid Board also continues to explore other effective and efficient access-to-justice models to complement the outlets outlined above. The private sector is also slowly beginning to supplement the services provided by the Legal Aid Board. While funding and capacity remain strained generally, there is generally greater interest in taking steps to ensure equal access to justice throughout the county.

II. **PRO BONO IN SOUTH AFRICA: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. **Pro Bono Opportunities**

Although *pro bono* work had been carried out by legal practitioners on an informal basis for many years,¹⁴ no formal initiative in respect to *pro bono* practice developed in South Africa until 2003, when one of the regional law societies regulating attorneys, the Cape Law Society, instituted a mandatory *pro bono* rule for its members. The Society's initiative was prompted by the recognition that the legal aid system was not adequate to address the South African public's legal needs, particularly those of the poorest members of South African society. Since then, each of the regional law societies now require their members¹⁵ to perform at least 24 hours of *pro bono* services per calendar year. In most cases, refusing to perform *pro bono* services without good cause amounts to unprofessional conduct.¹⁶ Some law societies publish a list of services that, 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 societies' *pro bono* rules.¹⁷

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 2010 Annual Report, Webber Wentzel attorneys provided 9,179 hours of *pro bono* services on a wide range of cases and issues including HIV/AIDS discrimination, land reform and housing 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. Bowman Gilfillan also implements a

¹⁴ 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."

¹⁵ Practicing members who have practiced for less than 40 years and who are less than 60 years of age.

¹⁶ Under Rule 21.16 of the Cape Rules, "[I]t 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 US\$1,500). Rule 15.9.3 of the Cape Rules.

¹⁷ Rule 21.4 of the Cape Rules.

program whereby attorneys are placed on six-month assignments with the Public Defenders' office. Additionally, in 2005, Bowman Gilfillan helped launch ProBono.org in order to match law firm attorneys interested in providing *pro bono* services with members of the public who were historically disadvantaged under the apartheid system.¹⁸

At the University of Cape Town, and an increasing number of law schools across the country, 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. The primary purpose of this compulsory requirement is to instill a sense of public service in each new lawyer.

In addition to these opportunities, legal professionals may also provide *pro bono* services through organizations such as the Tshwaranang Legal Advocacy Center¹⁹ and Section27,²⁰ among others.

B. Barriers To *Pro Bono* Work And Other Considerations

Despite the efforts that are being made to improve access to justice throughout the country, limited funding has restricted the Legal Aid Board from hiring enough staff to fully meet the demand for its services. The increasing number of attorneys and advocates in private practice who provide *pro bono* services also does not change the fact that the ratio of lawyers to the general population is approximately one lawyer for every 2,299 people, well below the internationally recommended ratio of one lawyer to 600 people. In addition, organizations providing legal services are not always able to reach people living in the rural parts of the country.

C. *Pro Bono* Resources

ProBono.org, the Legal Aid Board and the law societies throughout the country offer the best resources for lawyers interested in representing South Africans on a *pro bono* basis. These organizations play a central role in providing and coordinating the provision of legal services to those who need it the most.

III. CONCLUSION

Access to justice for the poorest in society is crucial to South Africa's ongoing development. South Africa has made significant strides towards developing a *pro bono* policy that encourages its legal professionals to engage in a new spirit of volunteerism. Mandatory *pro bono* initiatives have been introduced, a number of South African law firms have independently developed more structured *pro bono* practices and legal professionals can now engage in *pro bono* beyond the firm in efforts like ProBono.org. 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.

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Pro Bono Practices and Opportunities in South Africa

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¹⁸ See www.bowman.co.za/pro-bono.asp.

¹⁹ <http://www.tlac.org.za/>.

²⁰ <http://www.section27.org.za/>.

PRO BONO PRACTICES AND OPPORTUNITIES IN SPAIN

In Spain, legal aid to indigent clients is a long-standing tradition and a constitutional right.¹ 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. This was codified by the Spanish Constitution of 1978.

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* concept although it fulfills a similar social function. Whereas *pro bono* in the American sense implies free services provided by lawyers on a voluntary basis, the *asistencia jurídica gratuita* in Spain is a citizen's right granted by the Spanish Constitution and as such creates an obligation on the State. It is a public service and the State pays the legal fees, although these fees are significantly lower than typical legal fees.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN SPAIN

Until recently, a person was only required to hold a law degree from a Law School (*Facultad de Derecho*) in order to become a legal practitioner. However, reforms of the legal profession now require that law graduates undertake a postgraduate course and have work experience in a law firm as well as pass a final exam in order to attain a professional qualification as a Spanish *abogado* (lawyer).²

In addition to lawyers, who provide legal advice and settle disputes through the alternative systems in place (the rules and organization of the profession of lawyers are stated in the *Estatuto General de la abogacía española*, RD 658/2001, June 22nd³), the Spanish legal system also includes:

- Court lawyers (*procuradores*), who represent the parties in court.
- Court clerks (*Secretarios Judiciales*), who are responsible for documentation and for expediting legal proceedings.
- Judges (*Jueces* and *Magistrados* - *magistrados* are judges sitting in higher courts), who rule on disputes.
- Notaries, (*notarios*) who provide documentation, attestation and advisory services. As the precedent legal professions they are incorporated into the *Colegio de Notarios* presided by *Consejo Superior del Notariado*. The profession is regulated by law (May 28, 1862) and by decree (June 2, 1994).
- Property and commercial registrars (*registrador*) who keep public registers recording important legal acts that may affect third parties check that documents entered in the register conform to legal requirements and advise persons wishing to make entries in the register.

According to the General Council of Spanish Advocacy (*Consejo General de la Abogacía Española*, hereinafter, the "CGAE") there are currently about 185,639 registered *abogados* in Spain.⁴

A. Legal Aid

The Spanish system of *asistencia jurídica gratuita* is determined by law, financed by the State, organized and managed by the Spanish Bar and under the supervision of the CGAE. A distinguishing feature of legal aid in Spain, when compared with other jurisdictions is that the CGAE organizes legal aid through its general rules and regulations pertaining to the practice of law. This contrasts, for example, with the *pro bono* practice in the United States that generally consists of partnerships among several legal referral services, various bar associations, and law firms, which is another way of bringing together indigent clients and lawyers.

Furthermore, the CGAE and the bar of each territory or province have gradually developed additional services that are financed by the bars themselves, in conjunction with specific aid from regional or local

¹ SPANISH CONST. art. 119.

² Ley 34/2006, de 30 de octubre sobre el acceso a las profesiones de Abogado y Procurador de los Tribunales, which was modified by the Real Decreto-Ley 5/2012 de 5 de marzo, de mediación en asuntos civiles y mercantiles. We must note that these reforms are currently being debated in Parliament, and amendments and changes to these requirements are still possible.

³ See <http://www.cgae.es/estatuto/220601.htm> and http://www.mju.es/est_abogacia.htm.

⁴ See http://cgae.es/porta1CGAE/printPorta1.do?urlPagina=S001011003/es_ES.html.

administrations. These additional services are known as *Servicios de Orientación Jurídica Especializados*.

1. The Constitutional Right to *Asistencia Jurídica Gratuita*

The right to *asistencia jurídica gratuita* is set out in Article 119 of the Spanish Constitution and is expanded upon by Law 1/1996, of 10 January, of *asistencia jurídica gratuita*.⁵ 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*); and
- Other free services such as access to public registries and documents.⁶

Asistencia jurídica gratuita is generally available to several groups that can include Spanish or EU citizens as well as foreign citizens residing in Spain.⁷ The aid can be afforded to the plaintiff or the defendant in a proceeding in any of four areas of law: civil, criminal, administrative or labor.

The essential criterion for receiving *asistencia jurídica gratuita* is financial need.⁸ 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 2012, the threshold was frozen and set at €641 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.⁹

The system of *asistencia jurídica gratuita* is organized and monitored by the Bar of each province. Each Bar has a Committee in charge of managing the system of *asistencia jurídica gratuita* within its territory (*Comisiones de Asistencia Jurídica Gratuita*).¹⁰ In order to receive aid, a petitioner must complete a request for free legal assistance before the Bar of the province where they reside 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 if they 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.¹¹

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 2010, there were 1,700,000 cases of free legal assistance in Spain, which works out to about €160 per person assisted. By the end of December 2010 there were approximately 36,000 lawyers who were registered to provide free legal assistance. The costs of the services in 2008

⁵ Law 1/1996 of 10 Jan., 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 Sep., as modified by Royal Decree 1455/2005, of 2 Dec.

⁶ See Article 6 of Law 1/1996.

⁷ 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.

⁸ See Law 1/1996 art. 3.

⁹ See *Id.* at art. 5.

¹⁰ Created by Law 1/1996.

¹¹ See Law 1/1996 arts. 27, 28. 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 been implemented; however, in 2008 a pilot project was conducted in order to test the proposal, but it is not provided in the rest of the territories.

totaled more than €256.6 million, a 4% decrease from 2009. Cataluña is the province that invests the most in free legal assistance with 24% of the total amount of aid administered in Spain, and the Madrid Bar is the highest investing legal bar in Spain accounting for 16% of the total amount of money invested in aid in Spain.

Sixty-four percent of the cases under the *turno de oficio* concerned criminal proceedings, 20% civil proceedings, 7% administrative proceedings, and 9% social and other proceedings.¹²

2. Servicios de Orientación Jurídica Especializados

In addition to the right to *asistencia jurídica gratuita* developed by Law 1/1996, the CGAE, the different Bars, and 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).¹³

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 particular, the Regulation on Alien Persons of 2004¹⁴ 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.¹⁵

II. **PRO BONO IN SPAIN: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. **Pro Bono Opportunities**

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. 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 created the *Observatorio de la Justicia Gratuita*, a monitoring center for free legal assistance.

The Center for Lawyer's Social Responsibility (*Centro de Responsabilidad Social de la Abogacía*)¹⁶ was created in 2008 within the *Colegio de Abogados de Madrid* (Madrid's Bar Association) with the objective of tending to the social responsibility of the Association and its members, promoting for the neediest communities better access to their right of defense and to the conditions under which this right is to be exercised and to further their knowledge regarding their rights, obligations and the legal system. The Center does so by the promotion of individual and corporate *pro bono* work, as well as by other programs of social action. It has an annual call for grants, with a budget of €200,000 for financing projects. These grants are for supporting initiatives that serve to fulfill the centers' mission.

Since the beginning of 2011, the Center has started mobilizing the willingness of the Bar's associates to provide *pro bono* work. It is an intermediary between the associates and the legal needs of the NGOs, (never to individuals or in competition or replacement of legal aid). Also, the Center organizes

¹² Vº INFORME DEL OBSERVATORIO DE LA JUSTICIA GRATUITA.

¹³ OBSERVATORIO DE LA JUSTICIA GRATUITA, 13.

¹⁴ Reglamento de Extranjería, RD 2393/2004, of 30 Dec.

¹⁵ Ley Orgánica 1/2004, of 28 Dec., de Medidas de Protección Integral contra la Violencia de Género.

¹⁶ See crsa.icam.es.

seminars addressed to groups of people at risk of exclusion that allows it to reach the individuals that cannot be reached via traditional *pro bono*. Volunteer lawyers participate in seminars coordinated by the Bar to address special legal interests that concern vulnerable groups such as the elderly or immigrants.

Other initiatives in this field include the creation of an internet portal managed by the CGAE to facilitate access to *asistencia jurídica gratuita*: <http://www.justiciagratis.es/pjg/home.do>. 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. All of these initiatives are done as part of the Spanish Legal Aid system as a whole, but not all are on a *pro bono* basis.

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.

B. Barriers To *Pro Bono* Work And Other Considerations

Barriers to *pro bono* work and other considerations include:

- Onerous litigation
- Delays
- Difficulty of access to free legal aid to the most vulnerable citizens - better conditions to promote equal and free access to all
- Insufficiency of resources

C. *Pro Bono* Resources

- The foundation for Spanish lawyers that develops and promotes the protection of human rights in Spain: www.fundacionabogacia.org
- The General Council for Spanish Advocacy: <http://www.cgae.es>
- Lawyers in Spain: www.abogados.es
- Free Legal aid website: <http://www.justiciagratis.es/pjg/home.do>
- Legal news and notices: www.noticiasjuridicas.com

III. CONCLUSION

The Spanish legal aid system is overseen by the CGAE and the regional Bars with the aim of assisting 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 court, 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 court. In addition, the CGAE and the regional Bars, in conjunction with regional and local administrations, have developed additional services that 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 *pro bono* practice in Spain do exist and some of the larger law firms already have *pro bono* practices that go beyond the institutionalized system of *asistencia jurídica gratuita*.

July 2012

Pro Bono Practices and Opportunities in Spain

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PRO BONO PRACTICES AND OPPORTUNITIES IN SWEDEN¹

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.”² 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

A. The Legal Profession

Sweden has a dual court system, comprised of the general courts and administrative courts. The general courts are courts of general jurisdiction that preside over civil and criminal disputes between private parties. They are composed of three tiers: 48 district courts, six courts of appeal, and the Supreme Court.³ The general administrative courts preside over issues between individuals and the State. This administrative system also has three levels: 12 administrative courts, four administrative courts of appeal, and the Supreme Administrative Court.⁴ In addition, there are several specialized tribunals in Sweden, such as the Market Court, Labor Court and Court of Patent Appeals.⁵

Any person may practice law in Sweden, but only members of the Swedish Bar Association are entitled to use the professional title of advocate (*advokat*). There are approximately 4,700 advocates registered with the Bar Association as of January, 2011,⁶ which is roughly 50 advocates per 100,000 residents of Sweden.⁷ In order to ensure the professional independence of Swedish lawyers, in-house counsel are not permitted to join the Bar, nor may members of the Bar be employed by someone outside the Bar or form a company with a nonmember. More than half of Bar members are engaged in business law as a main practice area, less than 40% are engaged in criminal law practice, and the number specializing in family law is increasingly sparse.⁸ Approximately 23% of Bar members are women.⁹ In addition, approximately 1,900 associates not yet members of the Bar are employed in law firms.¹⁰ The two largest law firms in Sweden employ over 300 lawyers each.¹¹

Under the Swedish Code of Judicial Procedure (*Rättegångsbalken*), a lawyer is required to perform any assignment with professionalism and due care 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”).¹² 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*). The goal of the Rules is to promote a “free and independent legal profession” as a part of a “society governed by the rule of law . . . for the protection of individual freedoms and rights.”¹³ Although the Rules were originally intended to protect the public from unqualified and dishonest attorneys, they have

¹ This chapter was drafted with the support of the Swedish law firms Mannheimer Swartling, and Delphi.

² See Swedish Code of Judicial Procedure, in AMERICAN SERIES OF FOREIGN PENAL CODES, 2 (1979) SVERIGES DOMSTOLAR: *District Court* (May 16, 2012), available at <http://www.domstol.se/Funktioner/English/The-Swedish-courts/District-court/>

³ See SVERIGES DOMSTOLAR, *Courts of Sweden* (Mar. 12, 2012), available at <http://www.domstol.se/Funktioner/English/Court-Statistics-2011-Official-Statistics-of-Sweden>, Domstolsverket (2011), available at http://www.domstol.se/Publikationer/Statistik/court_statistics_2011.pdf.

⁴ *Id.* at 18.

⁵ SVERIGES DOMSTOLAR, *supra* n.3.

⁶ Available at <http://www.advokatsamfundet.se/Pressrum/Fakta-om-Advokatsamfundet/> (data as of January 2011); see also CCBE, *CCBE Lawyers’ Statistics* (2010), available at http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/2010_table_of_lawyer1_1337839511.pdf.

⁷ Available at http://www.advokatsamfundet.se/Documents/Advokaten/Advokaten_9_08_lag.pdf.

⁸ STOCKHOLM INSTITUTE FOR SCANDINAVIAN LAW, *The Swedish Bar Association*, 326 (2004), available at <http://www.scandinavianlaw.se/>.

⁹ Available at <http://www.advokatsamfundet.se/Pressrum/Fakta-om-Advokatsamfundet/> (data as of Jan. 2011).

¹⁰ *Id.*

¹¹ STOCKHOLM INSTITUTE FOR SCANDINAVIAN LAW, *supra* n.8.

¹² Ch. 8, § 4.

¹³ Code of Professional Conduct for Members of the Swedish Bar Association, § 1 (2008), available at http://www.advokatsamfundet.se/Documents/Advokatsamfundet_eng/Code_of_Professional_Conduct_with_Commentary.pdf.

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 4 of the Rules, the fee charged by an attorney “must be reasonable” for work performed.¹⁴ The reasonableness of the fee is determined by the amount and quality of the work required, the attorney’s expertise, 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, however, not to prevent attorneys from working for free.

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 Bars and Law Societies of Europe (the “CCBE”). The European Code of Conduct was adopted by the CCBE in 1988, was last amended in 2006 and is applicable to all cross-border activities of lawyers in the European Union and European Economic Area.¹⁵ According to the European Code of Conduct, 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.¹⁶ Consequently, payments for legal services rendered pursuant to *de quota litis* and “no cure no pay” or contingency fee arrangements are prohibited in the cross-border activities of Swedish attorneys, except for special cause.¹⁷

B. Legal Aid

It is a fundamental right in Sweden to have one’s case heard by a legal representative, either in or outside of court.¹⁸ Legal aid is a type of social legislation that aims to help those who cannot get legal support in any other way.¹⁹ For civil matters in Sweden, there are two types of legal assistance available: legal advice and legal aid. Both are provided by the State and are regulated by the Legal Aid Law (*Rättshjälpslagen*).²⁰

Up to two hours of legal advice is available to everyone in all legal matters and is subject to a set hourly fee.²¹ The fee may be reduced if the person seeking the advice has insufficient resources or is a minor. In such cases, the State funds the balance of the advocate’s fee. Advice is typically sought regarding the rules applicable to marriage or other forms of cohabitation; 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.

Legal aid, on the other hand, is available only to natural persons or estates of deceased individuals, and can be granted in most legal matters, except where a Public Defense Counsel, Public Counsel, or Counsel for injured parties may be appointed.²² In these latter cases, the legal representation is free and, therefore, the recipient is not entitled to legal aid.

In order for legal aid to be granted, the Legal Aid Authority, or the court hearing the dispute, must find it reasonable for the State to contribute towards the cost of legal representation. The applicant may not have an income exceeding approximately €29,000 per year, may not be covered by an insurance policy that covers legal representation, must have received at least one hour of legal advice from an attorney or trained lawyer, and the amount in controversy must be more than a threshold amount.²³ In general, the recipient is expected to contribute to the cost of legal representation to the extent the individual can afford, and legal aid is only available for the cost of representation up to 100 hours, except in special

¹⁴ *Id.* at § 4.

¹⁵ SWEDISH BAR ASSOCIATION, available at <http://www.advokatsamfundet.se/Advokatsamfundet-engelska/Rules-and-regulations/Code-of-Conduct/> see also Code of Conduct for Lawyers in the European Union, Introduction, available at http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_Code_of_conductp1_1306748215.pdf.

¹⁶ Code of Conduct for Lawyers in the European Union, § 3.3.

¹⁷ See, e.g., *id.*; Rules of Professional Conduct, § 4.2. Special cause includes situations where an advocate represents the interests of a collective action, is engaged in a cross-border mandate that requires handling outside of Sweden, or when a client without a quota agreement finds it difficult to get access to justice. See commentary to Rule 4.2.

¹⁸ SVERIGES DOMSTOLAR, *Legal Aid in Sweden*, available at http://www.domstol.se/Publikationer/Informationsmaterial/Legal_aid_in_Sweden.pdf.

¹⁹ See *id.*

²⁰ The Swedish Constitution provides that foreign nationals sojourning in Sweden have the same rights as Swedish nationals to obtain legal aid. See Instrument of Government, ch. 2, art. 22.

²¹ EUROPEAN JUDICIAL NETWORK, *Legal aid – Sweden*, available at http://ec.europa.eu/civiljustice/legal_aid/legal_aid_swe_en.htm.

²² See *id.*

²³ LEGAL AID IN SWEDEN, available at http://www.domstol.se/Publikationer/Informationsmaterial/Legal_aid_in_Sweden.pdf. This amount was roughly €1,150 in 2007.

cases.²⁴ 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.

In addition to the assistance available for civil matters, other sources of legal assistance available from the State include public defense counsel, public counsel, special representatives for children, and assistance for victims of crime. As in most EU member states, Public Defense Counsel is appointed by a court and must be made available at no charge if a person is suspected of committing a serious criminal offense. However, Public Defense Counsel is not typically provided for less serious offenses. If the accused is acquitted, he or she need not repay the State, but, if sentenced for the offense, may be responsible to pay all or part of the State's costs.²⁵

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.

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 related to a criminal case.²⁶ 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.²⁷ 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.

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 nongovernmental 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*).²⁸ This agency covers disputes such as those arising from travel, purchases of household appliances, and services provided by banks and financial institutions, where the dispute exceeds certain value thresholds.²⁹ 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.

²⁴ SVERIGES DOMSTOLAR, *Legal aid*, available at <http://www.domstol.se/Funktioner/English/Legal-assistance/Legal-aid/>

²⁵ SVERIGES DOMSTOLAR, *Defence advokat*, available at <http://www.domstol.se/Funktioner/English/Legal-assistance/If-you-need-advice/>

²⁶ SVERIGES DOMSTOLAR, *To the aggrieved party (victim of crime)*, available at <http://www.domstol.se/Funktioner/English/Legal-proceedings/To-the-victim-of-crime/>

²⁷ *See id.*

²⁸ THE NATIONAL BOARD FOR CONSUMER DISPUTES, (ARN) available at <http://www.arn.se/English/>.

²⁹ *See id.*

II. *PRO BONO* IN SWEDEN: OPPORTUNITIES AND OTHER CONSIDERATIONS

With such a comprehensive system of subsidized legal services in place, there has historically 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.

A. *Pro Bono* Opportunities

In 1998, in response to sweeping reform including cutbacks to the State's legal aid system, 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.³⁰ 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 their attorneys available to this program.³¹

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. Some provide education and training sessions or allow nonprofit organizations to borrow office space free of charge for holding meetings, classes, or conferences.³²

In 1998, a group of lawyers founded the nonprofit organization *Advokater utan Gränser* (Lawyers Without Borders), 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.³³

In the last few years some commercial law firms have also started to provide *pro bono* legal aid.³⁴ 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 nonprofit organizations, but can also cover advice in intellectual property, contracts or tax law.³⁵

For example, some large firms support charitable organizations, such as Doctors Without Borders (*Médecins Sans Frontières*), UNICEF and SOS Children's Villages, by providing free legal services and legal counseling directly to the organization.³⁶ By providing free legal services, Swedish attorneys enable charitable organizations to utilize their donations more efficiently for humanitarian efforts. In the same manner, law firms have acted as sponsors for national sports committees or for cultural events. Large law firms have also provided *pro bono* services directly to individuals by partnering with organizations like the Center for Justice (*Centrum för rättvisa*), a nonprofit organization whose purpose is to protect individuals' human rights in Sweden,³⁷ or the United Nations to further efforts related to international human rights.³⁸

³⁰ See *Advokaten* 6/98, 16.

³¹ See *Advokaten* 9/99, 18.

³² MANNHEIMER SWARTLING, *Pro Bono*, available at <http://www.mannheimer.eu/en/About/Pro-Bono/>

³³ See <http://www.advokaterutangranser.se/>

³⁴ See SVENSKA DAGBLADET (Aug. 3, 2007).

³⁵ See, e.g., DELPHI, *Pro Bono*, available at <http://www.delphi.se/?id=2255>

³⁶ MANNHEIMER SWARTLING, *Pro Bono*, available at <http://www.mannheimer.eu/en/About/Pro-Bono/>

³⁷ See, e.g., DELPHI, *Pro Bono*, available at <http://www.delphi.se/?id=2255>

³⁸ MANNHEIMER SWARTLING, *Pro Bono*, available at <http://www.mannheimer.eu/en/News/News-arcive/Michael-Karlsson-re-elected-to-the-Board-of-SOS-Childrens-Villages-International/> (SOS Children's Villages).

³⁷ <http://www.centrumforrattvisa.se/>.

³⁸ Mannheimer Swartling: *Pro Bono*, available at <http://www.mannheimer.eu/en/About/Pro-Bono/>.

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 that 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 disaster victims and their families. Law firms of all sizes participated in the project and spent many hours free of charge working on cases from various fields of law, such as foundation law; corporate law; family and estate law; and, to a great extent, insurance law.³⁹

B. Barriers To *Pro Bono* Work And Other Considerations

Due to Sweden's well-developed, broad system of public welfare services, including State-funded legal advice and representation, ombudsman offices and other services, organized *pro bono* activities by private legal professionals in the past has been limited. However, as the State has implemented cutbacks in legal assistance, the need for and interest in *pro bono* services by Swedish advocates has increased and the availability of organized *pro bono* opportunities is slowly returning.⁴⁰

There is no systematized *pro bono* clearinghouse in Sweden, however, to facilitate *pro bono* relationships. Instead, advocates and law firms engage in *pro bono* activities on a case-by-case basis, typically either when contacted directly by individuals needing assistance or by partnering with a nonprofit organization for discrete or longer-term projects.

In addition, although large law firms are increasingly more supportive of *pro bono* activity by their attorneys, the attorney engaged in providing *pro bono* legal services is generally not credited for such an engagement because the billing demands for that individual are not reduced. Thus, advocates take on these opportunities in addition to their typical workload.

C. *Pro Bono* Resources

Advokatjouren program. Further details on the program are available at the Bar Association's website: <http://www.advokatsamfundet.se/Behover-du-advokat/Advokatjouren/>

Lawyers Without Borders: *Advokater utan Gränser*. Further information, including reports on current projects, is available on the organization's website: <http://www.advokaterutangranser.se/>.

Center for Justice: *Centrum for rattvisa*. Additional information is available on the organization's website: <http://www.centrumforrattvisa.se/>.

III. CONCLUSION

In Sweden, legal advice and legal aid are largely provided by the state to its citizens as part of Sweden's comprehensive social welfare system. However, the recent underfunding of the welfare system over the last two decades suggests a gap between the supply and demand for *pro bono* legal services that programs such as *Advokatjouren*, *Advokater utan Gränser* and *Centrum for rattvisa* have stepped in to attempt to address. While attorneys at large firms have generally provided outreach and assistance to the community through nonlegal avenues in the past, there is evidence that a *pro bono* legal service culture in Sweden is developing.

Contributing to this trend is a phenomenon wherein more Swedish law firms are discovering that *pro bono* services are not only matters of humanity and responsibility but might also have positive effects on their public reputation. Some law firms have already established ongoing relationships with *pro bono* or nonprofit organizations for the purpose of providing legal services in underserved areas.

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Pro Bono Practices and Opportunities in Sweden

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³⁹ See *Sveriges Advokatsamfund Verksamhetsberättelse 2005* (Swedish Bar Association Annual Report 2005), 6-7, available at http://www.advokatsamfundet.se/Documents/Advokatsamfundetsv/Advokatsamfundet/Verksamhetsberattelse_2005.pdf.

⁴⁰ See *Advokaten 2012-3: Fokus Pro Bono på svenska*, 26, available at <http://www.advokatsamfundet.se/Advokaten/Tidningsnummer/2012/Nr-3-2012-Argang-78/Juridifiering-och-filantropi-starker-svag-pro-bono/>

PRO BONO PRACTICES AND OPPORTUNITIES IN SWITZERLAND¹

The Swiss judiciary has undergone many changes in the past decade, including comprehensive civil and criminal procedure reform and the establishment of new federal courts. Government-sponsored legal aid has supplied legal services to the needy since the Swiss Federal Supreme Court found an implicit constitutional right to legal representation in 1937. This well-established system, codified in federal (and for administrative proceedings, cantonal) statutes and administered at the cantonal level, has effectively supplanted traditional *pro bono* activity in Switzerland. This system waives court costs and may provide legal representation for those unable to pay, but it is conditioned in part upon the merits of the case at hand, and the party receiving aid is required to repay if possible within 10 years after the close of the proceeding. Owing to the low hourly rate paid to legal aid attorneys, this work may be considered equivalent to *pro bono* by some. However, in practice and in large part due to this comprehensive state system, *pro bono* work is not otherwise part of the legal culture in Switzerland.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN SWITZERLAND

A. The Legal Profession

Switzerland is a confederation of 26 cantons and half-cantons, and has a three-tiered federal structure: the Confederation (or federal state), the Cantons (or states), and the Municipalities (or local authorities).² The Federal Constitution is the legal foundation of the Swiss Confederation. The Swiss legal system is based on civil law, which as in other jurisdictions is divided into public law (governing the organization of the state, as well as the interaction between the state and private individuals or entities) and private law (governing interactions between private individuals or entities).

1. Federal Judiciary

The Swiss federal judiciary consists of the Federal Supreme Court (sometimes called the Swiss Federal Tribunal), the Federal Criminal Court, the Federal Administrative Court, and the new Federal Patent Court. Swiss federal judges are appointed to six-year terms by parliament.

The Federal Supreme Court (which sits in Lausanne and Lucerne) is the highest judicial authority of Switzerland.³ It is the court of appeal for all decisions of the cantonal courts of last instance (including cantonal supreme courts), and for most decisions of the three federal courts of first instance. The court generally sits in panels of three judges. (Five-judge panels sit to decide legal issues of basic significance, or at a judge's request). Final rulings in matters dealing with alleged violations of human rights may be referred to the European Court of Human Rights. The Federal Supreme Court lacks the authority to strike down unconstitutional laws at the federal level, although it has the power to review the constitutionality of cantonal laws.

The Federal Criminal Court (located in Bellinzona) tries those criminal cases subject to federal criminal jurisdiction (a small number, such as those involving terrorism, organized crime, and crimes against federal institutions).⁴ Since January 1, 2012, it also has an appeals chamber.⁵

The Federal Administrative Court (established in 2007 in Bern, relocation to St. Gallen in progress) reviews decisions applying federal administrative law.⁶

The Federal Patent Court (located in St. Gallen) began operations on January 1, 2012, and is the court of first instance for all civil law disputes concerning patents, including litigation over

¹ This chapter was drafted with the support of Dr. Ernst Staehelin (of Staehelin Advokatur und Notariat, in Basel), and Birgit Sambeth Glasner and Alexis Lafranchi (both of Altenburger, in Geneva).

² For this and other general reference information, see THE SWISS CONFEDERATION: A BRIEF GUIDE, available at <http://www.admin.ch/dokumentation/00104/index.html?lang=en>.

³ See FEDERAL SUPREME COURT, *Jurisprudence*, <http://www.bger.ch/index/jurisdiction/jurisdiction-inherit-template/jurisdiction-recht.htm>. Note that decisions are not published in English, although English-language press releases concerning major decisions may appear at the Federal Office of Justice website. See <http://www.bj.admin.ch/content/bj/en/home/dokumentation/medieninformationen.html>.

⁴ See BUNDESSTRAFGERICHT (FEDERAL CRIMINAL COURT), <http://www.bstger.ch/index.asp?idL=en>.

⁵ See, e.g., *supra* n.2.

⁶ See BUNDESVERWALTUNGSGERICHT (FEDERAL ADMINISTRATIVE COURT), <http://www.bvger.ch/>.

patent validity and infringement and the granting of licenses. Its decisions can be appealed to the Federal Supreme Court.⁷

2. Cantonal Judiciaries

Each of the 26 cantons also has its own constitution, parliament, and courts. The cantons exercise all sovereign rights not explicitly or implicitly assigned to the Confederation. Cantonal judiciaries are generally organized in two levels: courts of first instance, in many cases with a single judge presiding, and courts of appeals, normally with three sitting judges (though cantonal procedures vary). There may be separate courts for criminal, civil, and administrative proceedings at each level. Decisions of last instance of cantonal courts can be appealed to the Federal Supreme Court.

3. Lawyer Regulation and Demographics

Each canton has its own bar association,⁸ though the rules of professional conduct were harmonized in 2002, and further in 2005 as comprehensive “Swiss Ethical rules.”⁹ Swiss lawyers are not required to join either the Swiss Bar Association¹⁰ or the relevant cantonal bar association, although most do so.¹¹

As of January 2012, the Swiss Bar Association had 8,860 members, up 25% in a decade and double that of 20 years prior.¹² (A 2006 CCBE survey found Switzerland had 8,056 total lawyers, of whom 7,710 were active and 1,611 were women.¹³) This sharp growth has led to increased competition in the legal market and an increased emphasis on advertising. In 2002, regulations were amended to provide lawyers in Switzerland with more freedom to advertise than lawyers in many other Western European nations.¹⁴

Typical Swiss law firms are small: the largest generally employ on the order of 100 lawyers.¹⁵ The Swiss Bar Association reports that as of January 2012, a dozen firms had more than 50 attorneys, together employing roughly 10% of bar members; by contrast, roughly 8% of bar members are in solo practice.¹⁶

The Swiss legal landscape includes Swiss offices of several large global firms.¹⁷ However, on May 6, 2010, the Canton of Zurich rejected the application of a foreign incorporated law firm to open a Swiss subsidiary.¹⁸ Because a third of all Swiss lawyers practice in Zurich, this

⁷ Like its companion federal courts, it offers free access to recent decisions. See FEDERAL PATENT COURT, *Case Law*, <http://www.bpatger.ch/en/case-law.html>.

⁸ In two cantons, the bar associations are public law entities; in the remaining cantons, they are private associations.

⁹ See Ernst Staehelin, *Le projet de loi sur la profession d’avocat (Bill on the Legal Profession)* SWISS BAR ASSOCIATION PUBLICATION (Apr. 12, 2012), <http://www.bgfa.ch/scripts/getfile?id=1835>; see also Free Movement of Lawyers Act of 23 June 2000, SR 935.61, available at

http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/en_switzerland_feder1_1188890158.pdf (hereinafter FMLA). The FMLA came into effect on Jun. 1, 2002.

¹⁰ See <http://www.bgfa.ch/>. Every member of a cantonal bar association is also a member of the Swiss Bar association. See also www.sav-fsa.ch.

¹¹ It is estimated that approximately 90-95% of lawyers in Switzerland are members of a bar association. Most cantonal bar associations are private professional associations (see *supra* n.8), but are under the official supervision of the cantonal Commissions to the Bar.

¹² See Michael Hueppi, *Anwaltsberuf: Lagebeurteilung (Legal Profession: Assessment)* SWISS BAR ASSOCIATION PUBLICATION, (Apr. 12, 2012), <http://www.bgfa.ch/scripts/getfile?id=1834>.

¹³ Council of Bars and Law Societies of Europe, Number of lawyers in CCBE Member Bars – Last Update: 2006, http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/table_number_lawyers1_1179905628.pdf

¹⁴ See Hueppi, *supra* n. 12, at nn. 16-18; see also Staehelin, *supra* n.9 (discussion of advertising limitations being entirely removed); see also FMLA, *supra* n.9 at art. 12(d).

¹⁵ Lenz & Staehelin advertises 150 attorneys as “the biggest legal team in Switzerland.” See Lenz & Staehelin Firm Brochure, available at http://www.lenzstaehelin.com/en/uploads/media/100204_ls_imagebro_a4_EN_final.pdf; see also Hueppi, *supra* n.12 (identifying Lenz & Staehelin as the largest Swiss law firm in 2012).

¹⁶ See Hueppi, *supra* n. 12.

¹⁷ For example, Baker & McKenzie has had offices in Zurich since 1958, and in Geneva since 1968. See <http://www.bakermckenzie.com/firmfacts/firmhistory/>; <http://www.bakermckenzie.com/Switzerland/Geneva/>.

¹⁸ See Matthias Kilian, *New Threads, Shrinking Lawyers and More: Correspondent’s Report from Europe*, 14(1) LEGAL ETHICS 129 (Jun. 2011) at 130-31.

decision may effectively discourage (and if these views persist, effectively bar) large international law firms from opening Swiss subsidiaries.¹⁹

Switzerland has nine law faculties affiliated with cantonal universities. Legal training commences following high school with the three-year bachelor's degree. Admission to the bar requires a master's degree, which takes two years after obtaining the bachelor's degree; additionally, the graduate must apprentice in a canton, which consists of articling under the supervision of a qualified lawyer or at a cantonal court (for between 12 and 24 months).²⁰ The graduate may then sit for that canton's bar exam. It is also possible, though not required, to complete a Ph.D. in law (*Doktor der Rechtswissenschaft* or *Doctorat en droit*), the highest academic qualification in the legal field.

4. Types of Proceedings

In January 2011, new, unified federal codes of civil and criminal procedure replaced earlier, varied cantonal regulations.²¹

The revised Swiss Civil Procedure Code (“CPC”) provides for three main types of proceedings: ordinary, simplified, and summary proceedings. Ordinary proceedings²² apply in disputes where the value in dispute exceeds 30,000 francs. Simplified proceedings,²³ which are streamlined and less formal, apply where the value in dispute does not exceed 30,000 francs, as well as in certain matters in which a party requires special protection (e.g., tenancy disputes). Summary proceedings²⁴ apply to court injunctions, interim measures, and noncontentious matters, among other things.²⁵

5. Fee Arrangements

In 2004 the Federal Supreme Court held that the fundamental right of economic freedom protects litigation funding (as opposed to legal costs insurance).²⁶ It is therefore permissible for an independent third party to offer funding for litigation proceedings *provided that* the lawyer representing the funded party acts independently of the funder.

While in past fee arrangements were more restrictive,²⁷ Swiss legal fees today are almost exclusively organized as hourly rates freely agreed upon between lawyer and client; no fee schedule binds or limits attorneys in this regard.²⁸ Some forms of fee arrangements, notably true contingent fees (where the attorney waives compensation in the event of a loss), are prohibited in litigation proceedings.²⁹ However, it is possible, though unusual, to agree on reduced fees (covering the effective costs) with a premium paid for a successful outcome.

¹⁹ *Id.* In general, a foreign law firm can only incorporate in Switzerland if a two-thirds majority (and in some cantons, all) of its lawyers are registered to practice in that canton, and if majority shareholders are Swiss-registered attorneys. Accordingly, a lawyers' corporation in Switzerland cannot have a majority of foreign lawyers. International firms with Swiss offices (such as Baker & McKenzie) are not incorporated in Switzerland.

²⁰ *See* FMLA, *supra* n.9 at art. 7(b). Part of this apprenticeship (usually 6 months) can be performed in a local judicial authority, a public administration, or even abroad. Some streamlined options also exist. For instance, in January 2011 the Geneva canton established a six-month intensive course for all graduates wishing to obtain admission to the Bar. This practice-oriented school teaches procedural aspects of civil, administrative and criminal issues, courtroom practice, negotiation and ADR.

²¹ *See* Swiss Civil Procedure Code, SR 272 (Dec. 19, 2008). For non-binding English translation, *see* <http://www.admin.ch/ch/e/rs/c272.html>. *See also* Staehelin, *supra* n.9 (referencing codes' adoption).

²² *See id.* at tit. 3, arts. 219-242.

²³ *See id.* at tit. 4, arts. 243-247.

²⁴ *See id.* at tit. 5, arts. 248-270.

²⁵ *See* Richard Clark (Ed.), *THE DISPUTE RESOLUTION REVIEW* (4th Ed. 2012), at 769.

²⁶ *See* Decision of the Federal Supreme Court, Dec. 10, 2004, FTD 131 I 223 (Switz.) (interpreting art. 27 of the Federal Constitution of the Swiss Confederation of 18 Apr. 1999, Sr 101).

²⁷ *See* Peter Eggenberger, *License to Bill = License to Kill? Ethical Considerations on Lawyers' Fees (With a View to Switzerland)*, 20 PENN ST. INT'L L. REV. 505, 511-12 (2002).

²⁸ *See* *THE DISPUTE RESOLUTION REVIEW*, *supra* n.25, at 773.

²⁹ *See* FMLA, *supra* n.9 at art. 12(e).

From the would-be litigant's perspective, legal aid has been described as a substitute for the contingency fee system in Switzerland.³⁰

B. Legal Aid

Unlike the constitutions of some other Western European nations (e.g., Italy, Portugal, the Netherlands), the Swiss Constitution does not expressly provide for the right to the assistance of counsel in legal proceedings.³¹ But in 1937 the Federal Supreme Court held that indigent Swiss citizens implicitly have this right and that cantonal governments were required to provide lawyers to all civil litigants unable to afford them.³² Moreover, the Swiss Constitution does expressly provide the right to legal representation where necessary to safeguard basic rights, e.g., in guardianship proceedings.³³ Switzerland, as a member nation of the Council of Europe, also falls under the 1979 mandate to provide free legal services to indigents.³⁴

From the lawyer's perspective, participation in legal aid work in Switzerland is mandated by Article 12(g) of the Free Movement of Lawyers Act ("FMLA").³⁵ Under this section, lawyers "are obliged to accept court-assigned defence and gratuitous mandates of judiciary assistance in the canton in which they are registered."³⁶ Lawyers receive reduced fees for such court-mandated representation. FMLA Article 25 states that "[t]he rules of professional conduct according to Article 12 are applicable to Lawyers providing services *with the exception of those relating to court-assigned defence and mandates of judiciary assistance.*"³⁷ Foreign lawyers practicing in Switzerland are not required to accept these legal aid postings.³⁸

From the litigant's perspective, the CPC provides that a "person is entitled to legal aid if (a) he or she does not have sufficient financial resources; and (b) his or her case does not seem devoid of any chances of success."³⁹ If awarded, legal aid may include both an exemption from court costs and court appointment of a legal agent.⁴⁰ Legal aid may be granted for all or part of a case, but does not relieve the receiving party from paying costs to the opposing party.⁴¹ A party in need may apply for legal aid before or during an action, but must disclose relevant financial circumstances, the party's position on the merits of the case, and any evidence to be produced.⁴² The party may also name a preferred legal representative.

According to the CPC, the court decides the application for legal aid in a summary proceeding at which the opposing party may be heard.⁴³ These types of proceedings themselves incur no court costs (except

³⁰ See Eggenberger, *supra* n.27, at 527.

³¹ See Lua Kamal Yuille, Note, *No One's Perfect (Not Even Close): Reevaluating Access to Justice in the United States and Western Europe*, 42 J. COLUM. TRANSNAT'L L. 863, 880 (2003-2004); see also Earl Johnson, Jr., *Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies*, 24 FORDHAM INT'L L. J. S83, S89 (2000).

³² See Yuille, *supra* n.31, at 880. See also Decision of the Federal Supreme Court, Oct. 8, 1937, BGE 63 I 209 (Switz.); SR 101 Federal Constitution of the Swiss Confederation, art. 8.

³³ See Federal Constitution of the Swiss Confederation of 18 Apr. 1999 art. 29 § 3 (SR 101 - <http://www.admin.ch/ch/e/rs/c101.html>).

³⁴ See Yuille, *supra* n.31, at 882 (discussing the 1979 European Court of Human Rights decision finding Ireland in breach of its obligations relating to the right to a fair trial).

³⁵ FMLA, *supra* n.9 at art. 12(g).

³⁶ *Id.* This rule applies to those lawyers registered in a cantonal attorneys' register (i.e., all attorneys willing to represent parties in court). Independent lawyers who will not represent parties in court need not register and therefore are not subject to this duty.

³⁷ *Id.* at art. 25 (emphasis added).

³⁸ See Staehelin, *supra* n.9 ("*des avocats étrangers qui exercent la profession d'avocat à titre permanent en Suisse . . . ne soient pas soumis à l'obligation d'accepter des défenses d'office ou des mandats de l'assistance judiciaire . . .*").

³⁹ Swiss Civil Procedure Code, SR 272 tit. 8, ch. 4, art. 117.

⁴⁰ *Id.* at tit. 8, ch. 4, art. 118. Such appointment occurs if "necessary to protect the rights of the party concerned, and in particular if the opposing party is represented by a legal agent."

⁴¹ *Id.*

⁴² *Id.* at tit. 8, ch. 4, art. 119.

⁴³ *Id.*

in cases of bad faith). Any application for legal aid must be made anew for appellate proceedings. A court's refusal to allocate legal aid in a particular instance also can be appealed.⁴⁴

Switzerland is similar to other Western European nations in that the losing party generally pays legal fees. Where a legal aid recipient loses an action, the legal agent is paid by the canton, and the aid recipient must pay party costs to the prevailing party.⁴⁵ If a legal aid recipient prevails, the legal agent is paid by the canton only "where compensation from the opposing party is irrecoverable or likely to be irrecoverable," and by paying the agent the canton becomes entitled to enforce the claim for costs.⁴⁶ If able, a legal aid recipient must repay the legal aid within 10 years after the close of the proceedings.⁴⁷

II. **PRO BONO IN SWITZERLAND: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. **Pro Bono Opportunities**

As elsewhere in Europe, government compensation of lawyers who take on work for those who qualify for legal aid has largely replaced preexisting *pro bono* activities by members of the bar.⁴⁸ The Swiss Bar Association does not have a recognized definition of *pro bono* work, though law firms may maintain their own internal guidelines. Swiss lawyers may serve on the boards of nonprofit organizations without compensation, but other than this there is not a prevalent culture of free or reduced-fee legal work outside the established legal aid system.⁴⁹

Although several international law firms maintain offices in Switzerland, their websites do not advertise any local *pro bono* activities; the Swiss firms surveyed similarly lack such content. (This may also have to do with the mentality of Swiss attorneys, who generally do not advertise their legal aid and *pro bono* work.)

B. **Barriers To Pro Bono Work And Other Considerations**

Although it appears no regulatory barrier exists to limit lawyer flexibility with respect to fees charged, certain practical barriers to Swiss *pro bono* work exist. Chief among these is a perceived lack of need for *pro bono* representation due to the comprehensive and federally sponsored legal aid system. A related issue is the lack of *pro bono* clearinghouses or other centralized organizations. Additionally, the fact that lawyers may be called upon by their canton to undertake reduced-fee legal aid representation – and indeed that the aid recipient has some say in suggesting a lawyer to be appointed – may quench volunteerism in the legal field.

C. **Pro Bono Resources**

Switzerland does have a number of organizations that provide free legal services, although it is not clear whether all accept volunteer contributions or donations of time by lawyers:

- Swiss Refugee Council: Asylum seekers' queries are answered directly by the experts at the Swiss Refugee Council or forwarded to the appropriate authorities. This service is free. The Swiss Refugee Council also organizes training courses for lawyers and for the professional staff of legal advice centers. See <http://www.fluechtlingshilfe.ch>.
- ACOR (*L'Association Romande Contre Le Racisme*) in Lausanne provides legal aid services to victims of racism in Switzerland. See <http://www.prevention.ch/associationracisme.html>.
- International Bridges to Justice, located in Geneva, is an independent, nonprofit and nongovernmental organization founded in 2000 that strives to protect due process and achieve fair trials for the accused throughout the world. See <http://www.ibj.org/>.

⁴⁴ *Id.* at tit. 8, ch. 4, art. 121.

⁴⁵ *Id.* at tit. 8, ch. 4, art. 122.

⁴⁶ *Id.* See also Federal Act on the Federal Patent Court, SR 173.41 ch. 4, art. 34. For the legal aid scheme for administrative law appeals, see Federal Act on Administrative Procedure, SR 172.021 § 3 art. 65.

⁴⁷ Swiss Civil Procedure Code, SR 272 tit. 8, ch. 4, art. 123.

⁴⁸ See Yuille, *supra* n.31, at 908.

⁴⁹ Some commenters additionally have noted that the Swiss civil law inquisitorial system generally requires less participation by lawyers than the adversarial common law system. See Eggenberger, *supra* n.27 at 510 (citing Heinrich Gattiker, DAS ERFOLGSHONORAR DES ANWALTS: CHANCENGLEICHHEIT IM RECHTLICHEN KONFLIKT? (1975), at 134).

- *Juris Conseil Junior* (JCJ), located in Geneva, is an independent, nonprofit association created in October 1995 where minors and young adults – as well as their families and the professionals who work with them – can seek free legal advice from attorneys on a *pro bono* basis. Services are free and confidential. See <http://www.jcj.ch/www/index.php>.
- Additionally, LexMundi lists several Swiss-based partner organizations, including the Schwab Foundation for Social Entrepreneurship (Geneva; see <http://www.schwabfound.org>) and WomenChangeMakers (Geneva; see <http://www.womenchangemakers.org>).

III. CONCLUSION

While no regulatory barriers exist to providing *pro bono* legal services in Switzerland, as a practical matter, the U.S. notion of *pro bono* legal services does not exist. Swiss-based lawyers interested in *pro bono* work are most likely to find it through the state-sponsored legal aid system, and many Swiss attorneys do provide a fair amount of *de facto pro bono* legal services through these programs.

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Pro Bono Practices and Opportunities in Switzerland

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PRO BONO PRACTICES AND OPPORTUNITIES IN TAIWAN, R.O.C.

In the past decade, the Taiwanese legal community has recognized the need to develop and broaden access to legal aid by the underprivileged. In 2004, efforts in legislative reform resulted in the passage of the Legal Aids Act, which sought to provide legal assistance to the underprivileged. Although the *pro bono* culture in Taiwan is not yet pervasive, the Legal Aids Act, along with other regulations and trends, demonstrates an emerging *pro bono* culture in Taiwan that bodes well for the development of a positive environment for *pro bono* legal services.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN TAIWAN

Taiwan has a civil law system.¹ The Judicial Yuan, one of the five branches of the Taiwanese government, governs the judiciary.² The Judicial Yuan directly supervises the judicial administrative affairs of 12 institutes (including the Supreme Court). The objective of administrative supervision is to establish a sound judicial system, promote the system's performance, improve the working condition in the judiciary and enhance the quality of trials.³

During the 1990s and early 2000s, lawyers came to the forefront of a judicial reform movement. In 1994, the Judicial Reform Foundation (the "JRF") was founded by a group of lawyers, professors and social activists with the goals of achieving (1) revision of laws; (2) supervision and assessment of the judiciary; (3) legal reform education initiatives; and more broadly, (4) focusing attention on legal issues of the greatest concern to the public.⁴ In 2003, Taiwanese courts implemented an adversarial system of criminal law modeled after the Anglo-American system. The new regime aimed in part to better protect the rights of the accused and strengthen the judiciary generally.⁵ Recently, the JRF has also increased efforts to promote and support legal aid.⁶

A. The Legal Profession

Over the last two decades, the Taiwanese legal profession has undergone profound transformation. Between 1986 and 1996, the number of attorneys admitted to private practice roughly doubled,⁷ and there are currently about 7,000 admitted lawyers in Taiwan out of a population of approximately 23 million.⁸ The small number of lawyers in Taiwan means that most Taiwanese lawyers engage in general law services, and specialized legal practice is rare.⁹

¹ THE CATHOLIC UNIVERSITY OF AMERICA – COLUMBUS SCHOOL OF LAW, *The Legal System in Taiwan*, <http://www.law.edu/ComparativeLaw/Taiwan/> (last visited Jun. 4, 2012).

² The other four branches of the Taiwanese Government are the Executive Yuan, the Legislative Yuan, the Examination Yuan and the Control Yuan. See REPUBLIC OF CHINA (TAIWAN), *Government Agencies, Central Government*, <http://www.taiwan.gov.tw/ct.asp?xItem=21507&ctNode=1920&mp=1001> (last visited Jun. 4, 2012).

³ The 12 institutes are: the Supreme Court, Supreme Administrative Court, 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 (Republic of China), <http://www.judicial.gov.tw/en> (last visited Jun. 4, 2012).

⁴ JUDICIAL REFORM FOUNDATION, <http://www.jrf.org.tw/newjrf/english.htm> (last visited Jun. 4, 2012).

⁵ See Brian Kennedy, *LA Law in Taiwan?*, 52 TAIWAN REVIEW, No. 5 (2002), available at <http://taiwanreview.nat.gov.tw/site/Tr/ct.asp?xItem=722&ctNode=119>.

⁶ 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 年度成果, 財團法人民間司法改革基金會, <http://www.jrf.org.tw/newjrf/Layer2/benefit.asp> (last visited Jun. 4, 2012).

⁷ See 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., 2004), available at http://www.law.washington.edu/Directory/docs/Winn/lawyers_taiwan.pdf.

⁸ ECFA服貿協議 年底前簽署, CHINA TIMES, <http://news.chinatimes.com/politics/11050202/122012052400097.html> (Jun. 4, 2012 8:08:05 PM); THE WORLD FACTBOOK, *Taiwan*, <https://www.cia.gov/library/publications/the-world-factbook/geos/tw.html> (last visited Aug. 26, 2012).

⁹ WINKLER PARTNERS, *Number of Taiwanese Lawyers Increases*, <http://www.winklerpartners.com/?p=2397> (last visited Jul. 2, 2012).

Taiwanese lawyers are governed by the Taiwan Bar Association and various local bar associations.¹⁰ Among these associations, the most prominent is the Taipei Bar Association. It boasts a membership base of more than 4,500 attorneys as of the end of 2010, accounting for approximately 70% of all lawyers in Taiwan.¹¹

Bar associations have adopted self-regulating ethics rules that encourage attorneys to participate in legal aid work and accept *pro bono* assignments from courts. Article 22 of the Attorney Regulation Act requires attorneys to “fulfill and complete all lawful court assignments” unless excused by good cause.¹² In addition, Article 9 of the Code of Ethics of the Taipei Bar Association states that attorneys shall participate in legal aid, provide services to the people, or engage in other public interest activities, so as to make legal services widely available.¹³ Attorneys violating Article 22 of the Attorney Regulation Act, or seriously violating the codes of ethics of their respective Bar Associations, may be subject to disciplinary action, including reprimand, suspension and disbarment.¹⁴

B. Legal Aid

Before the passage of the Legal Aids Act, disadvantaged litigants in need of legal services had to seek 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, in only 4.6% of all civil lawsuits were both parties represented by counsel. In criminal cases, only 12.5% of defendants were represented at the district court level, and less than one-third were represented at the appeals court level.¹⁵

In response to the clear need for legal aid, three private groups — the JRF, the Taipei Bar Association and the Taiwan Association for Human Rights — began to draft the Legal Aids Act in the late 1990s.¹⁶ Promulgated in 2004, the Legal Aids Act states that the purpose of the Act is “[to provide] necessary legal aids to people who are indigent or are unable to receive proper legal protections for other reasons.”¹⁷

To that end, the Legal Aids Act provides for the establishment of the Legal Aid Foundation (the “LAF”) to achieve the purposes of the Legal Aids Act. Funded by the Judicial Yuan, the LAF commenced operation in July 2004. In the first few years, the LAF mainly focused on providing legal representation cases in civil, criminal and administrative proceedings, and services were provided through LAF branch offices.¹⁸ In 2006, in order to deliver one-stop services for the disadvantaged, the Taipei branch office of the LAF began to provide legal advice directly at social welfare agencies.¹⁹ Since April 2009, the LAF has expanded legal advice services to courts, city councils, household registration offices, prisons, NGOs and even universities.²⁰ This expansion resulted in an increase in the number of applications.²¹ In 2009, the LAF received a total of 83,373 applications, of which 27,071 cases were approved.²² In 2010, the LAF received 107,761 applications, 26,546 of which were approved.²³

¹⁰ See TAIPEI BAR ASSOCIATION, *Code of Ethics* art. 9, available at <http://www.tba.org.tw/index.asp>

¹¹ See TAIPEI BAR ASSOCIATION, *Team – Organization*, <http://www.tba.org.tw/english/ch2.asp> (last visited Jun. 4, 2012).

¹² See Attorney Regulation Act, art. 22, available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?Pcode=I0020006>.

¹³ See Code of Ethics, *supra* n.10, available at <http://www.tba.org.tw/about.asp?id=67&class=39&classname=公會規章>.

¹⁴ See Attorney Regulation Act, arts. 39, 44.

¹⁵ 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).

¹⁶ See LEGAL AID FOUNDATION, *Who We Are*, available at http://www.laf.org.tw/en/a1_1.php.

¹⁷ See Legal Aids Act, art. 1, available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?Pcode=A0030157>.

¹⁸ Yu-Shan Chang, *The Development of Legal Aid Foundation (LAF) and its Social Impacts in Taiwan*, available at http://www.ilagnet.org/jscripits/tiny_mce/plugins/filemanager/files/papers/The_Development_of_Legal_Aid_Foundation.pdf. Currently, there are 21 branch offices.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² LEGAL AID FOUNDATION, *2009 Annual Report* ch. 1, available at <http://www.laf.org.tw/upload/1299549194Chapter%201.pdf>.

²³ LEGAL AID FOUNDATION, *2010 Annual Report*, available at <http://www.laf.org.tw/upload/13196949882010E.PDF>.

The scope of legal aid coverage under the Legal Aids Act is very broad and extends to both litigation and nonlitigation matters. Litigation matters include civil, criminal, family and administrative cases,²⁴ and nonlitigation matters encompass negotiations, settlements, and “any other services that the LAF has resolved to provide.”²⁵ Moreover, the LAF provides assistance to applicants “regardless of any special status they may have, such as labour, women, aboriginal people, people suffering from mental or physical disability, elderly, children [and] adolescents[.]”²⁶ In addition, non-Taiwanese nationals legally residing in Taiwan may also receive legal aid.²⁷

In 2010, the five major types of civil cases which the LAF accepted were cases related to general tort claims, severance payment disputes, work payment disputes, occupational injury and wrongful discharge. Further, the five major types of criminal cases accepted by the LAF were cases related to manufacturing, trafficking and selling drugs, injury and serious injury, robbery, crime against sexual autonomy and murder.²⁸ Despite the broad coverage under the Legal Aids Act, the LAF limits the scope of legal aid and excludes certain matters, including but not limited to, arbitration, election litigation, small claims, investment activities, retrials and criminal representation in trials.²⁹ Criminal matters outside the scope of the LAF are administered by the Judicial Yuan.

Applicants lawfully residing in Taiwan may be eligible for legal aid if they pass the merit test and the means test. The merit test is satisfied if the applicant’s case is not “clearly unreasonable.” To pass the means test, the applicant must have disposable monthly income and disposable assets below a specific standard. Alternatively, applicants who qualify as “low-income” or “mid-low-income” under the Public Assistance Act may also be eligible under the means test. An applicant is exempt from the means test where (1) the minimum punishment of the criminal offense is no less than three years of imprisonment; (2) a high court has jurisdiction over the first instance, and the accused has not retained defense counsel; or (3) the accused is unable to make a complete statement due to unsound mind and has not retained defense counsel, and the presiding judge finds that a defense attorney or representative is required.³⁰

Lawyers are obliged to provide legal aid in their respective bar associations under the Legal Aids Act.³¹ In particular, attorneys chosen to provide services may not decline to do so without providing good cause.³² As at the end of 2010, 2,419 attorneys had registered to provide legal services through the LAF.³³ 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.³⁴ However, the LAF has not yet established an in-house lawyer system. Lawyers work on cases from the LAF only on a project-to-project basis, and there is no employment relationship between the volunteer lawyers and the LAF.³⁵

II. *PRO BONO* IN TAIWAN: OPPORTUNITIES AND OTHER CONSIDERATIONS

Other than legal aid, there are a variety of *pro bono* opportunities in Taiwan organized by private organizations. Nonetheless, for a variety of reasons explained below, many lawyers in Taiwan might be discouraged from

²⁴ See *Id.* at http://www.laf.org.tw/en/c3_1.php.

²⁵ Art. 2 of the Legal Aids Act states that “legal aid” includes (1) legal consultation, (2) medication 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.

²⁶ LEGAL AID FOUNDATION, *Get Legal Help*, available at http://www.laf.org.tw/en/a2_1.php.

²⁷ *Id.*

²⁸ See *Annual Report 2010 supra* n.23.

²⁹ See Can I get legal aid?, Legal Aid Foundation, available at http://www.laf.org.tw/en/a2_2_1.php. Legal aid also does not currently apply to corporations and organizations.

³⁰ Can I Get Legal Aid?, Legal Aid Foundation, http://www.laf.org.tw/en/a2_2_1.php?PHPSESSID=kbqe4a0he8v45513q81oikb0f7 (last visited Jun, 4, 2012).

³¹ Legal Aids Act, art. 25.

³² See *id.* at 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/Eng/LawClass/LawAll.aspx?PCode=A0030157>.

³³ See *Annual Report 2010, supra* n.23.

³⁴ See Legal Aids Act, art. 25, available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=A0030157>.

³⁵ See LEGAL AID FOUNDATION, *Business Features*, available at http://www.laf.org.tw/en/a1_5.php.

providing *pro bono* services to the public. This section surveys a number of *pro bono* resources that seek to facilitate the provision of *pro bono* services in Taiwan.

A. *Pro Bono Opportunities*

Aside from the LAF, various different types of private organizations provide *pro bono* opportunities in Taiwan. For example, a number of universities have set up legal counseling services available to the general public, some of which are listed below.³⁶ Both local and international law firms have also committed their services to the community on a *pro bono* basis.³⁷ Finally, nonprofit organizations, including those listed below, provide *pro bono* legal services and have presented *pro bono* opportunities. Attorneys have also provided free legal advice to, and served on the boards of, various nonprofit organizations.³⁸

B. *Barriers To Pro Bono Work And Other Considerations*

Restrictions on advertising legal services may hinder the growth of the *pro bono* culture in Taiwan. For example, under the model rules on promotion of attorney services, attorneys are prohibited from advertising through mass media such as radio broadcasting, television, film, newspaper, billboards and balloons.³⁹ Because of the restriction on attorney advertising, it could be difficult to make potential clients aware of *pro bono* legal services offered by law firms or legal professionals.

In addition, 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 with court approval.⁴⁰ Despite these apparent obstacles, foreign lawyers are unlikely to be denied approval by the Judicial Yuan.⁴¹ However, language barriers may present a real challenge. Under the Attorney Regulation Act, foreign attorneys providing legal services in Taiwan are “required to use [the] Chinese (Mandarin dialect) language.”⁴²

C. *Pro Bono Resources*

The LAF and bar associations have served to facilitate the provision of community services for lawyers in Taiwan. Attorneys interested in providing *pro bono* services can register with the LAF or local bar associations. These organizations provide a variety of avenues for both representing and counseling individuals in need of legal aid.⁴³ For example, the LAF takes on matters ranging from domestic violence cases to labor disputes. Since 2009, it has offered free services at its Legal Consultation Centers.⁴⁴ Bar associations often take on general and specific types of representations. The Taipei Bar Association, for example, holds regular office hours to provide general legal counseling and is also particularly committed to representing defendants facing the death penalty who cannot afford legal representation.⁴⁵ Moreover, the Taipei Bar Association’s webpage contains a number of different *pro bono* opportunities in which Taiwanese lawyers can participate. These service areas, ranging from judicial reform, human rights protection and labor rights to environmental protection, present excellent opportunities for lawyers who would like to perform community services.⁴⁶

³⁶ See, e.g., NATIONAL TAIWAN UNIVERSITY, available at <http://www.law.ntu.edu.tw/legalservice/index.files/Page355.htm>; FU JEN CATHOLIC UNIVERSITY, available at <http://laws.fju.edu.tw/english/legal02.html>.

³⁷ See TSAR & TSAI LAW FIRM, Taiwan, *Lex Mundi*, <http://www.lexmundi.com/assnfe/cv.asp?ID=12588> (last visited Jun. 4, 2012); Taipei – Overview, Jones Day, <http://www.jonesday.com/taipei> (last visited Jun. 4, 2012); PEPPER HAMILTON LLP, *Pro Bono News* (Spring 2008), available at <http://www.pepperlaw.com/pdfs/ProBonoNews0308.pdf>.

³⁸ See *Id.*, *Pro Bono Public Service*, JONES DAY, <http://www.jonesdayprobono.com/publicservice/ExperienceDetail.aspx?exp=21424> (last visited Jun. 4, 2012).

³⁹ See TAIPEI BAR ASSOCIATION, Attorney Business Development Rules, art. 4 (1996), available at <http://www.tba.org.tw/about.asp?id=80&class=39&classname=公會規章>.

⁴⁰ See Attorney Regulation Act, arts. 47-1 to 47-7.

⁴¹ See Interview with Marianne Chao, Partner, JONES DAY (Jan. 25, 2008).

⁴² See Attorney Regulation Act, art. 47.

⁴³ See LEGAL AID FOUNDATION, *Recruitment of Lawyers*, available at http://www.laf.org.tw/tw/c1_2.php.

⁴⁴ LAF’s Legal Consultation Center Now Offers Free Service, available at http://www.laf.org.tw/en/b1_3_1.php?idno=677.

⁴⁵ See TAIPEI BAR ASSOCIATION, available at <http://www.tba.org.tw/english/ch4.asp>

⁴⁶ See generally TAIPEI BAR ASSOCIATION, <http://www.tba.org.tw/index.asp> (last visited Jun. 4, 2012).

Listed below is contact information for the LAF, the Taipei Bar Association and certain other leading organizations involved in *pro bono* legal work in Taiwan:

- The Legal Aid Foundation
 - Phone: +886.2.2322.5255
 - Website: <http://www.laf.org.tw>
- The Taipei Bar Association
 - Phone: +886.2.2351.5071
 - Website: <http://www.tba.org.tw>
- Taiwan Association for Human Rights
 - Phone: +886.2.2596.9525
 - Website: <http://www.tahr.org.tw/>
- National Taiwan University Legal Service
 - Website: <http://www.law.ntu.edu.tw/legalservice/index.htm>
 - Email: ntulegalservice@gmail.com
- Fu Jen Catholic University Legal Service
 - Phone: +886.2.2905.2784
 - Website: <http://laws.fju.edu.tw/english/legal.html>

III. CONCLUSION

The Legal Aids Act, the Taipei Bar Association's involvement in community service 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 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 2012

Pro Bono Practices and Opportunities in Taiwan

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PRO BONO PRACTICES AND OPPORTUNITIES IN THAILAND¹

Despite the constitutional guarantee of the right to legal aid² and a strong culture of community service and volunteerism,³ Thailand's *pro bono* culture is still in its infancy stage. Overall, the level of *pro bono* activity in Thailand is quite low. Support for *pro bono* work in the private sector is particularly lacking, with only a small minority of lawyers at private law firms volunteering their time on *pro bono* projects. Nonetheless, there are limited pockets of *pro bono* opportunities in Thailand, mainly offered or referred by nonprofit organizations. Foreigners wishing to engage in *pro bono* work in Thailand face additional obstacles, including language and cultural barriers as well as barriers to practicing law in the country.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN THAILAND

A. The Legal Profession

1. Lawyer Demographics

The legal profession in Thailand is divided into three main categories, namely: judges, public prosecutors and lawyers.⁴ As of May 22, 2012, there were 63,971 licensed lawyers⁵ in Thailand, compared to the country's total population of 67 million. The majority of lawyers practice in the capital city of Bangkok and its surrounding areas.⁶ Judges and public prosecutors are highly respected professions, and entry into those professions is competitive. Foreigners are not permitted to practice law formally in Thailand. Instead, they may obtain work permits as "business consultants," typically working on corporate transactions. As a result, compared to certain other countries, such as the United States or the United Kingdom, Thailand has relatively few foreign lawyers.

Law firms range in size from solo and small practices to large firms that are part of a global network. The Legal 500 directory lists over 50 major law firms in Thailand.⁷ While the majority are domestic firms, several international law firms have opened offices in Bangkok, beginning as early as in the late 1970s. However, Bangkok still lags far behind other Asian cities such as Hong Kong, Singapore, Beijing and Shanghai with respect to the presence of foreign law firms. Notably, a handful of major international law firms have downsized or even pulled out of Bangkok entirely following the political and economic instability arising from the 1997 Asian financial crisis and the 2006 military coup that ousted then Prime Minister Thaksin Shinawatra.⁸

The study of law in Thailand is generally a four-year undergraduate level study. There are approximately 20 accredited law faculties housed in national universities, including five public universities, which are regarded among the highest. To obtain a lawyer's license, a candidate must graduate from an accredited law faculty and complete training in professional ethics and the basic principles of advocacy and the legal profession. The training course, run by the Institute of Law Practice Training of the Lawyers Council of Thailand, is divided into two terms. In the first term, the candidate is required to complete coursework in the theory of case conduct and professional ethics and pass a written examination. In the second term, he/she must practice working in a qualified law office for at least six months. After completion of the

¹ This chapter was drafted with the support of the Bangkok office of Tilleke & Gibbins.

² See THAILAND CONST., §§ 40, 81, available at <http://www.thethailaw.com/law25/lawpdf/law/5a.pdf>; see § I.B below for further discussion of the constitutional guarantee of the right to legal aid.

³ It is estimated that there were over 65,000 NGOs in Thailand working to promote education, public health, social welfare and associations' promotion in 2011 (see THE RESOURCE ALLIANCE available at <http://www.resource-alliance.org/pages/en/where-we-work-asia-pacific.html>).

⁴ For a brief overview of the legal profession and legal practice in Thailand, see Ngamnet Triamanuruck, et al., *Overview of Legal Systems in the Asia Pacific Region: Thailand* (6-7) (2004).

⁵ Telephone Interview with a representative from the Lawyers' Council of Thailand, in Bangkok, Thailand (Jun. 7, 2012).
⁶ Ngamnet Triamanuruck, et al., *supra* n.4 at 7.

⁷ THE LEGAL 500, *Thailand*, available at <http://www.legal500.com/c/thailand/directory>.

⁸ See, e.g., THE LAWYER, *White & Case Axes Bangkok Office*, available at <http://www.thelawyer.com/white-and-case-axes-bangkok-office/135675.article> (2008); LEGAL WEEK, *Coudert takes on Freshfields Bangkok Branch*, available at <http://www.legalweek.com/legal-week/news/1146597/coudert-takes-freshfields-bangkok-branch> (2004).

training course, a candidate may apply for membership in the Lawyers Council. The number of newly admitted lawyers vary year to year, averaging around 2000+ per year.⁹

2. Structure of the Judiciary

A brief background of Thailand's politics is required to understand the structure of the judiciary. Thailand is a constitutional monarchy with the King as the official head of the State with little formal powers and the Prime Minister as the head of the Government. The country has a long history of political instability, which has escalated since the violent ousting of former Prime Minister Thaksin Shinawatra in 2006 and its aftermath.

Promulgated in 2007, the present Constitution is the 18th constitution since the overthrow of absolute monarchy in 1932.¹⁰ It is widely hailed as a landmark in democratic political reform and popularly called the "People's Constitution," as it was the first constitution to be drafted by an elected assembly. It specifies that "the human dignity, right, liberty and equality of the people shall be protected. The Thai people, irrespective of their origins, sexes or religions, shall enjoy equal protection under this Constitution."

Chapter X of the Constitution governs the judiciary. It specifies four types of courts: the Constitutional Court, the Courts of Justice, the Administrative Courts and the Military Courts. While the Constitutional Court, the Administrative Courts and the Military Courts are specialized courts, the Courts of Justice have general jurisdiction with "the power to try and adjudicate all cases except those specified by this Constitution or the law to be within the jurisdiction of other Courts."

The Courts of Justice consist of three levels: (i) the Courts of First Instance, which include trial courts of general jurisdiction, family and juvenile courts, and a host of specialized courts such as tax, labor, intellectual property and international trade, and bankruptcy; (ii) the Courts of Appeals; and (iii) the Supreme Court ("**Saan Dika**"). The Supreme Court is the country's highest court and has jurisdictional power over all 77 provinces in Thailand. Judgeship is a profession which is pursued by law graduates just a few years after completion of studies and passing the Thai Bar and the Judges' exams.

Thailand has a civil law system. However, the codes are modeled on the codes of several legal systems around the world. The Courts of Appeal and the Supreme Court are not trial courts and, as a general rule, no new evidence can be introduced after a trial in a Court of First Instance has been completed unless specifically permitted by these courts. Appeals from the Courts of First Instance are based on questions of law and, to a limited extent, questions of fact.

3. Regulation of the Legal Profession

The Lawyers Council of Thailand and the Thai Bar Association are the main regulatory bodies governing the conduct of lawyers. The main duties of the Lawyers Council is to register and issue licenses to applicant lawyers. The Lawyers Council also espouses rules on legal ethics and conduct of attorneys generally. The main duties of the Thai Bar Association is to provide continuing legal education to lawyers after they graduate from law school.

Foreigners are not permitted to provide legal advice in Thailand, whether with respect to Thai or foreign law. Under the Aliens' Working Act B.E. 2551 (2008), it is a criminal offense to provide such advice, and doing so can result in imprisonment of up to five years and fines. Foreign lawyers who were practicing in Thailand in 1972 (when the law first came into effect) were "grandfathered" in, and granted lifetime work permits to act as "legal consultants." There are only a handful of these grandfathered permits outstanding.

B. **Legal Aid**

The Constitution contains a limited number of general legal aid provisions, including an explicit guarantee of a right to legal aid in certain instances. Notably, Section 40(7) of the Constitution states that each citizen has a right to "appropriate legal aid from the State" in civil cases. Section 81 further provides that "the State shall provide legal aid service to the public and support the operation of private

⁹ For further information on legal education in Thailand, see Sakda Thanitchul, *ASEAN Charter and Legal Education in Thailand*, available at <http://www.aseanlawassociation.org/10GAdocs/Thailand1.pdf>.

¹⁰ THAILAND CONST., available at <http://www.thethailaw.com/law25/lawpdf/law/5a.pdf>.

organizations rendering legal assistance to the public.” It particularly singles out domestic abuse victims as a particular class to be protected.

Much of the state-sponsored legal aid is provided by the Office of the Attorney General. In addition to its role as the principal agency responsible for criminal prosecution and the provision of legal advice to the Government and state agencies, the Office of the Attorney General is also tasked with the duty to protect civil rights and provide legal aid assistance to the needy. As stated in its statement of duties, the Office is responsible for assisting the public to take legal action, protecting the rights and freedom of the public, and “offering legal advice and assistance in drafting legal documents as appropriate under the law.”¹¹ The legal aid provided by the Office of the Attorney General includes aid in court proceedings and the conciliation process.¹²

Legal aid is also offered in certain circumstances by the Lawyers Council and various law schools. The legal aid includes representing the disadvantaged in litigation or assisting them in obtaining *pro bono* or minimal-fee representation elsewhere. Generally, an applicant wishing to obtain legal aid must establish that he or she is of low income and cannot afford a lawyer, and that he or she has suffered an alleged injustice (i.e., the underlying motivation is not commercial gain).

The Courts of Justice are required to appoint an attorney in cases where the defendant disputes the charges, is indigent, or is a minor, as well as in cases where the possible punishment is death or more than five years’ imprisonment.

In addition to Government and court-sponsored legal aid, a substantial amount of *pro bono* work is provided by private nonprofit groups and NGOs. Among these is the Women Lawyers Association, which provides legal advice and representation to women in family matters as well as civil and criminal matters.

Notwithstanding the existence of both state-sponsored and private legal aid opportunities, the legal aid system in Thailand is still lacking a number of legal aid mechanisms present in certain other jurisdictions. A U.S. State Department report states that legal aid in Thailand has often been carried out on “an intermittent, voluntary, public-service basis and was of low standard.”¹³ Some NGOs reported that legal aid lawyers pressured their clients into paying additional fees directly to them.¹⁴ There are also reports that funding for the Lawyers Council legal aid fund has decreased in recent years by as much as 15%.¹⁵

II. **PRO BONO IN THAILAND: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. **Pro Bono Opportunities**

Despite the clear guarantee of the right to legal aid services embedded in the Thai Constitution and a strong NGO presence in the country, the *pro bono* culture in Thailand is still in its infancy stage of development. Overall, the level of *pro bono* activity in Thailand is quite low, especially compared to the size and scope of the legal profession in Thailand. Support for *pro bono* work in the private sector is particularly lacking, and only a small minority of lawyers at private law firms volunteer their time on law-related *pro bono* projects.

Nonetheless, there are limited pockets of *pro bono* opportunities in Thailand, mainly offered by nonprofit organizations. For example, the Thai Volunteer Service Foundation (<http://thaivolunteer.org>) and the Human Rights Lawyers Association (<http://www.naksit.org/>) both maintain websites providing a list of volunteer opportunities for lawyers. A substantial portion of such websites is available only in Thai.

In addition, refugee rights advocacy groups in Thailand have begun to develop legal aid programs to help asylum seekers obtain free legal aid. Thailand has a particularly large refugee population.

¹¹ Statement of Duties, The Office of the Attorney General, § 23(1)-(3).

¹² JUDICIAL SYSTEM IN THAILAND: AN OUTLOOK FOR A NEW CENTURY, 57-58, available at http://www.aseanlawassociation.org/docs/Judicial_System_in_Thailand.pdf.

¹³ 2010 HUMAN RIGHTS REPORT: THAILAND, U.S. DEP’T OF STATE, Apr. 8, 2011, available at <http://www.state.gov/j/drl/rls/hrrpt/2010/eap/154403.htm>.

¹⁴ *Id.*

¹⁵ *Id.*

According to a 2011 report published by the Asia Pacific Refugee Rights Network, an estimated 143,000 refugees reside in nine camps throughout Thailand.¹⁶

A few NGOs are also developing legal aid clinics to train legal aid lawyers. Since 2003, Bridges Across Borders Southeast Asia Community Legal Education Initiative (“**BABSEA CLE**”) has been working in collaboration with universities, law students, law faculty, lawyers and other members of the legal community, and NGO partners to develop CLE and legal clinic programs throughout Southeast Asia. BABSEA CLE’s mission is to assist communities by providing training in legal aid services and, thereby helping to develop “the next generation of social justice, *pro bono* minded champions.” BABSEA CLE has organized the first-ever Southeast Asia *Pro Bono* Conference in Laos in September 2012. The conference will be focused on developing *pro bono* initiatives to strengthen access to justice in Southeast Asia.

There have been more limited *pro bono* offerings extending in rural areas. The Thongbai Thongpao Foundation, founded in 1990 by a well-known Thai human rights lawyer, is one of the few organizations focused on legal aid in rural areas. In addition to providing free legal aid, the Foundation offers “legal literacy” courses to villagers on basic laws affecting their daily life. The target audience includes village teachers, students, farmers, community leaders, and women. The courses often use theater as a teaching method, such as the dramatization of court cases.¹⁷ However, given the founder’s death in early 2011, it is unclear whether and to what extent the Foundation will continue its work.

B. Barriers To *Pro Bono* Work And Other Considerations

Several limitations to *pro bono* work in Thailand should be noted. First, apart from a few volunteer organizations, there is a lack of *pro bono* referral organizations in Thailand. Referrals are done on an ad hoc and uncoordinated manner, mainly by a network of NGOs. Second, very few law firms in Thailand (including local firms as well as Bangkok offices of international law firms) have developed *pro bono* initiatives. While some firms organize community outreach activities and donate time and money to charitable causes,¹⁸ very few appear to encourage their lawyers to provide free legal aid. In addition, there appears to be a lack of incentives for associates to engage in *pro bono* work, since it is not given billing credits or counted toward annual billable requirements. Third, foreign lawyers in Thailand face a host of obstacles. These include not only language and cultural barriers, but also legal barriers stemming from the prohibition on foreigners practicing in Thailand. Lastly, given that the legal community is concentrated mainly in Bangkok, there is a lack of lawyers catering to those living in poor rural areas who may be among the most in need of legal aid assistance.

C. *Pro Bono* Resources

Below is a nonexhaustive list of organizations offering *pro bono* opportunities in Thailand that lawyers and nonlawyers seeking to become involved in *pro bono* work in Thailand may contact.

State-sponsored Legal Aid:

- Office of the Attorney General: <http://www.ago.go.th>
- Lawyers Council of Thailand: <http://www.lawyerscouncil.or.th>
- Thai Bar Association: www.thethaibar.org

Human Rights and Justice-related Issues:

- Thai Volunteer Service Foundation: <http://thaivolunteer.org>
- Human Rights Lawyers Association: <http://www.naksit.org>

¹⁶ ASIA PACIFIC REFUGEE RIGHTS NETWORK, *2011 Annual Report*, available at <http://refugeerightsasiapacific.org/?s=2011+Annual+Report>

¹⁷ See THAILAND: THONGBAI THONGPAO FOUNDATION, *The Thongbai Thongpao Experience*, available at <http://www.hurights.or.jp/pub/hreas/3/08thongbai.pdf>.

¹⁸ See, e.g., ALLEN & OVERY, *Pro Bono & Community Affairs Report* (2009) 23, available at <http://www.allenoverly.com/news/en-gb/articles/Pages/Pro-Bono-and-Community-Affairs-Report-2009.aspx> (noting that the firm’s Bangkok office donated money and supplies to rural schools in Ratchaburi province); CLIFFORD CHANCE, *Corporate Responsibility Report* 15 (2011), available at http://www.cliffordchance.com/about_us/annual_reviews/annual_review_2011.html (highlighting the Bangkok office’s efforts in organizing a beach day and other outings for orphaned and disadvantaged boys).

- BABSEA CLE: <http://www.babseacle.org>
- Human Security Alliance: <http://www.hsa-int.net>
- Asian Forum for Human Rights and Development: <http://www.forum-asia.org>
- New Tactics: <http://www.newtactics.org>
- People's Empowerment Foundation: <http://www.peoplesempowerment.org>
- HDF Mercy Centre: <http://www.mercycentre.org>

Asylum and Refugee Assistance:

- Asia Pacific Refugee Rights Network: <http://refugeerightsasiapacific.org>
- Thai Committee for Refugee Foundation: <http://www.thaiforrefugees.org>
- Legal Assistance Center: www.theirc.org/where/thailand
- Asylum Access: www.asylumaccess.org

Women's Issues:

- Women Lawyers Association: <http://www.wlat.org>
- Foundation for Women: <http://womenthai.org>

III. CONCLUSION

Overall, the *pro bono* culture in Thailand is still in the early stages of development. Apart from intermittent and ad hoc referrals by state agencies and a limited number of nonprofit organizations, *pro bono* opportunities in Thailand remain scarce and disproportionate to the size of the legal profession. Furthermore, foreign-qualified lawyers wishing to engage in *pro bono* work face a number of significant obstacles, including regulations prohibiting the practice of law in Thailand. The growth of *pro bono* services in Thailand depends on the ability to lift the barriers to *pro bono* work. An initial and significant barrier to overcome is the general sense of apathy to *pro bono* service within both the public and private sectors. Efforts are needed to build a supportive *pro bono* culture and infrastructure, including a coordinated referral system among the Government agencies, law firms and NGOs to connect ready and willing lawyers with those in need of legal aid assistance.

July 2012

Pro Bono Practices and Opportunities in Thailand

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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” that, among other things, covers issues related to the 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

A. The Legal Profession

As of December 31, 2011, there were 74,492 lawyers registered with the Turkish Union of Bars in Turkey, representing an increase of 13,782, or approximately 23%, from December 31, 2007. Almost half of this increase is attributable to new qualifications with the Istanbul Bar, which had 28,267 members as of December 31, 2011. Only six other cities in Turkey have over 1,000 practicing lawyers, and the number of lawyers practicing in the more rural areas of Turkey is significantly lower, down to 40 - 60 in some of the eastern and south-eastern cities of Turkey. While Istanbul, Ankara (the capital of Turkey) and a few other big cities have attorneys practicing in relatively large- or medium-scale law firms, solo practice is by far the preferred choice for lawyers across Turkey.

The Turkish judicial system is primarily composed of two law courts: (i) the judicial courts, which are in charge of civil and criminal matters; and (ii) the administrative courts. The civil courts are comprised of a number of different courts, each having authority over specific civil litigation matters, including the peace courts (with specific authority over, for example, certain property and trust matters), commercial courts, labor courts, enforcement courts, family courts and cadastral courts. All other civil matters are litigated before the civil courts of first instance, which are the primary courts that are assigned all cases other than those assigned to the courts with specific authority. There is one civil court of first instance in every city and district, which is sometimes divided into several branches in a city depending on the workload and the demographics. The criminal courts consist of juvenile courts, peace courts, criminal courts of first instance (the primary courts), and high criminal courts, each with specific authority over certain criminal matters, depending on the crime. The highest court for both civil matters and criminal matters is the Court of Cassation. There is at least one criminal court in every city, which is again sometimes divided into several branches depending on the workload and the demographics.

The administrative courts include tax courts and administrative courts, which exist at the provincial level, with authority over tax and other administrative litigation matters. The highest administrative court in Turkey is the Turkish Council of State, equivalent to a supreme administrative court such as the *Conseil d'Etat* in France. The other supreme court is the Constitutional Court.

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 a “Bar” and together, the “Bars”). In 2011, 45 million TL (approximately US\$24.7 million using June 2012

¹ Turkey ratified the ECHR on May 18, 1954. Pursuant to art. 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 www.sgb.adalet.gov.tr/yrs/JudicialReformStrategy.pdf (last verified, Jun. 22, 2012). 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 Oct. 14, 2009, SEC (2009) 1334.

exchange rates) was transferred to the Bars from the central government budget for legal aid, and 30 million TL (approximately \$16.4 million) of this budget was actually spent.³ 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 sets of rules.

In 2011, in addition to the 30 million TL spent directly by the Bars, a total of approximately 150.9 million TL (US\$82.7 million) was spent for legal aid purposes, including approximately 139.4 million TL (US\$76.4 million) for criminal trials, 3.9 million TL (US\$2.1 million) for civil cases and approximately 7.6 million TL (US\$4.2 million) as lawyers' fees for defendants pleading not guilty.

B. Criminal Legal Aid

Criminal legal aid was introduced to Turkey in 1992 through amendments to the Code of Criminal Procedure then in effect.⁴ In 2004, Turkey adopted a new Code of Criminal Procedure (as amended from time to time, the "**Criminal Procedure Code**").⁵ 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 criminal legal aid.⁶ 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.⁷ 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**") that 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 an 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.⁸

Despite the increase in funds allocated to services of CCPP Units, 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 that overall the CCPP representation rate is a mere 2.8%, meaning that only one in every 35 offenders benefits from CCPP services at any stage of the criminal justice process. 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.

³ H. A. Acikgul, Legal Aid System in Turkey in respect of the European Union Requirements and the Decisions of the ECHR 6 (unpublished, presented at the International Symposium on Judicial Reform on Apr. 3, 2012).

⁴ 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 1 (Jun. 2007) (unpublished).

⁵ Published in the OFFICIAL GAZETTE, Dec. 17, 2004, no. 25673.

⁶ U. Karan, Impact of Financial Obligations on Access To Justice In Turkey, Legal Aid and Pro Bono (Jan. 2005) (unpublished).

⁷ Criminal Procedure Code arts. 150, 234, 239.

⁸ 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/2010/2010_Turquie.pdf (last verified on Jun. 22, 2012).

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; and (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 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.

C. 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**"),¹⁰ the Code of Lawyers¹¹ and the Legal Aid Regulation¹² issued by the Union of Turkish Bar Associations.

The scope of civil legal aid covers all civil, administrative and commercial disputes, temporary protection requests, 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.

The Civil Procedure Code extends legal aid to associations and foundations with public benefit status to the extent it has limited financial means.

Pursuant to Article 176 of the Code of Lawyers, legal aid covers: (i) exemption from court fees; and (ii) free legal representation by an attorney appointed by the Bar.

- (i) Under Articles 334-340 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. 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. Article 45(2) of the Regulation relating to the Civil Procedure Code¹³ provides that in matters where a civil legal aid application has been made, no court fees or similar fees shall be payable until a decision has been made on whether or not the exemption is granted.
- (ii) Requests for free legal representation, on the other hand, are made directly to the relevant legal aid bureaus that are established within the organization of the Bars (the "**Legal Aid Bureaus**"). The applicant must submit the documents proving his/her identity, cause and lack of financial means. If the request is rejected, the applicant 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

More recently, some Bars have adopted policies to facilitate the provision of legal aid to women who have been victims of violence. Two of the biggest Bars in Turkey (the Istanbul and the Izmir Bars) are

⁹ Published in the OFFICIAL GAZETTE, Mar. 2, 2007, no. 26450.

¹⁰ Published in the OFFICIAL GAZETTE, Feb. 4, 2011, no. 27836.

¹¹ Published in the OFFICIAL GAZETTE, Apr. 7, 1969, no. 13168.

¹² Published in the OFFICIAL GAZETTE, Mar. 30, 2004, no. 25418.

¹³ Published in the OFFICIAL GAZETTE, Apr. 3, 2012, no. 28253.

¹⁴ Published in the OFFICIAL GAZETTE, Dec. 21, 2011, no. 28149.

collaborating with the Women’s Rights Centers with a view to establishing centers providing legal aid services to women. These organizations work in connection with the Legal Aid Bureaus and provide legal aid through lawyers appointed from a list of lawyers specialized, and volunteered to assist, in cases focused on women rights’ issues.

D. Criticisms Of The Legal Aid System

The existing criminal and civil legal aid structure has been criticized for a number of important reasons.

First, while some progress has been made in recent years to improve citizens’ awareness of their rights in terms of access to justice as a result of increased efforts by the Bars, public awareness of legal aid is still limited, and problems still persist in rural areas and for disadvantaged groups in terms of access to justice. A large proportion of the prison inmates, including women and juveniles, have only limited access to legal aid.¹⁵ Courts do not provide the relevant parties with forms or models of petitions, have no information desks, and in domestic violence cases, the documentation requested in order to benefit from legal aid has, in practice, delayed protection of victims.¹⁶ Financial resources allocated to legal aid are not adequate, and lawyers’ fees are very low,¹⁷ disincentivizing lawyers from taking a larger role in legal aid cases.

Second, 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.¹⁸ 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.¹⁹

Third, 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.²⁰

Fourth, 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.²¹ 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.²² 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 programs or NGOs, from giving legal advice, even *pro bono* (see below “Barriers to *Pro Bono* Practice”).

II. PRO BONO IN TURKEY: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. Pro Bono Opportunities In Turkey

1. 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 two legal clinics (street law and private law). In the private law clinic, they provide

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *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, 2. See also Corey Stoughton, *A Comparative Analysis of the Turkish and American Criminal Legal Aid Systems Vol. 6, No. 1*, 1-16 ANKARA L. REV.

¹⁹ *Id.*

²⁰ *Id.*

²¹ I. Elveris, IR 708, Social Policy Final Paper: Access to Justice For the Poor In Turkey: Can legal clinics empower? 7 (unpublished).

²² *Id.*

legal information rather than legal representation before courts because, legal complications aside, as a practical matter, litigation takes too long in Turkey.²³ In addition, Ankara University, Bilkent University, and more recently Anatolia University have set up legal clinics in Turkey focusing on different subject matters.²⁴

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.

B. Barriers To *Pro Bono* Practice

1. 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.²⁵ 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.

2. 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.

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.” In addition, the Lawyers' Minimum Tariff provides that any task that 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 that 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, delineates 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.²⁶

3. Legal Barriers – Minimum Tariffs

Pursuant to Article 1 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

²³ I. Elveris, Educating and Supporting A Commitment To Public Service Lawyering, (unpublished), Fourth International GAJE Conference, Cordoba-Argentina, November 2006, Promotion of *Pro Bono* Initiatives, Presentation Notes.

²⁴ A.T.Yuruk, Law Clinics 8 (unpublished, presented at the International Symposium on Judicial Reform on Apr. 3, 2012).

²⁵ I. Elveris, Brief Statement of Pro Bono Work In Turkey 2 (unpublished).

²⁶ I. Elveris, Current Provisions Of Legal Profession and Associated Access To Justice Problems 7 (unpublished).

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.

4. Legal Barriers – Ban On Advertising

Pursuant to Article 8 of the Regulation Regarding Ban On Advertising,²⁷ 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.

5. 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 that 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, the European Court of Human Rights or the International Court of Justice.

III. 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 that 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.

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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.

²⁷ Published in the OFFICIAL GAZETTE, Nov. 21, 2003, no. 25296.

PRO BONO PRACTICES AND OPPORTUNITIES IN UGANDA¹

The need for legal aid in Uganda is increasingly severe, but there are significant challenges to implementing a national legal aid system. The Constitution of Uganda only provides legal aid for capital offences, when defendants have committed an offense punishable by a death sentence or a life imprisonment sentence. This means that a significant number of Ugandans are unable to access legal aid. This inevitably leads to lack of justice. The majority of legal aid services are provided by nongovernmental organizations (“NGOs”) which are mainly located in urban areas. They also lack the resources to implement a comprehensive national legal aid system that can be accessed throughout Uganda. A study by the Justice, Law and Order Sector notes that the growing caseload, physical distance to service institutions, technical barriers and poverty have significantly prevented access to justice. Furthermore, women are singled out as experiencing more barriers due to their higher illiteracy levels, social factors and lack of information.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN UGANDA

A. The Legal Profession²

Uganda is a former British protectorate and its legal system is therefore modeled on the English common law legal system. The supreme law in Uganda is the Constitution and the latest Constitution was enacted on October 8, 1995.³ Uganda has had an unstable political and constitutional order with several previous constitutions having been enacted between 1962 and 1995. The Judicature Act⁴ states that the applicable laws in Uganda are statutory law, common law and doctrines of equity and customary law. The other written law comprises Acts of Parliament and Statutory Instruments. All Acts of Parliament, Statutory Instruments, legal amendments and practice directions are first published in the *Uganda Gazette* every week.

The law is fundamentally statutory, although common law and doctrines of equity as well as established customs, are also applicable. Statutes take precedence over doctrines of equity and customs. Customary law must not be repugnant to good conscience, equity and natural justice. Matters of customary law are dealt with in local government courts as well as magistrate’s courts, but the higher courts are also empowered to apply customary law in cases where this is appropriate.

Tribunals and Magistrate Courts handle the majority of criminal and civil cases. The High Court is the third court of record in the hierarchy, and it can try any case of any value or magnitude. The 1995 Constitution established the Court of Appeal, giving it appellate jurisdiction from the High Court. The Supreme Court is the highest court in Uganda, and therefore the final court of appeal. A case may be decided by a single Judge (at the High Court), but if the decision is unfavorable, it can be appealed to a bench of three Justices of Appeal (at the Court of Appeal) or a bench of five Justices of Appeal (at the Supreme Court).

B. Legal Aid

1. Government Legal Aid⁵

The law concerning state government-assisted legal aid is clearly set out in the Ugandan constitution. Article 28(3)(e) reads:

Every person who is charged with a criminal offence shall be permitted to appear before the court in person or, at that person’s own expense, by a lawyer of his or her choice; (d) in the case of any offence which carries a sentence of death or imprisonment for life, be entitled to legal representation at the expense of the State.

¹ This chapter was drafted with the support of Ernest K. Wiltshire, partner at the law firm of AF Mpanga Advocates and with the support of Rachel Mwanje Musoke, partner at the law firm of MMAKS Advocates.

² <http://www.nyulawglobal.org/globalex/uganda.htm> and <http://www.cmi.no/pdf/?file=/uganda/doc/court-administration-uganda-october-05.pdf>.

³ http://www.ugandaembassy.com/Constitution_of_Uganda.pdf.

⁴ Ch. 13 at <http://www.ulii.org/ug/legislation/consolidated-act/13>.

⁵ <http://www.uls.or.ug/details.php?load=uls&id=12&Uganda%20Law%20Society>

The total prison population currently stands at 31,749 (as at August 31, 2011),⁶ more than double the official prison capacity, which is 14,334 (as at June 2011). Fifty-two percent of the prison population are in remand or awaiting trial. An audit conducted by the Ugandan Prisons Service found that over 460 prisoners⁷ had exceeded their constitutional remand period and were due for unconditional bail but were still serving time in prison.⁸ It was also found that a majority of the prison population have been deprived of effective legal representation (with the exception of those entitled to statutory legal representation for capital offences) and do not have a proper understanding of their legal rights.

2. Role of NGOs

NGOs play an integral part in offering legal aid to people that would otherwise not have access to legal services. NGOs such as the Open Society Justice Initiative's Legal Aid and Community Empowerment Clinics program, the Ford Foundation (which has started a clinical law program in Uganda) and the Open Society Initiative (which highlights the importance of establishing a national legal aid system in Uganda) are just some of the many NGOs operating in Uganda. For a full list of all NGOs operating in Uganda that offer legal aid, advice and/or representation please visit:

http://www.ugandagirectory.org/index.php?option=com_mtree&task=listcats&cat_id=4&Itemid=2.

The Legal Aid Project (“LAP”) was established by the Uganda Law Society in 1992 with assistance from the Norwegian Bar Association⁹ to provide legal assistance to indigent and vulnerable people in Uganda. LAP has its head office in Kampala and branches in Kabarole, Kabale, Masindi, Jinja, Gulu and Luzira. The LAP helps thousands of indigent men, women and children to gain access to justice and to defend their legal and human rights. Their work includes provision of legal information, dispute resolution and court representation. Representation in court is significant as paralegals do not represent defendants in court (please see below for further information).

3. Role of Paralegals¹⁰

A significant part of the role that NGOs play is training paralegals and equipping them to provide legal aid. Paralegals conduct “Paralegal Aid Clinics” on a regular basis in the main prisons across the country. These clinics are aimed primarily at prisoners awaiting trial and aim to empower prisoners to apply the law in their own cases.

Paralegals assist with various tasks including case work, community education, mobilization, advocacy, conflict resolution, police work, court work and prison work.¹¹ The Paralegal Advisory Service¹² aims to provide basic legal assistance and seeks to secure access to bail for eligible suspects. The program empowers pretrial detainees to seek justice by furnishing them with information on their rights and on the procedures and workings of the justice system. As a result of this advice, the percentage of detainees awaiting trial in Uganda has decreased from 64% in 2005 to 52% in 2012.¹³

In Uganda, paralegals from the Paralegal Advisory Service assisted 5,751 accused obtain bail at police stations in 2008 and 2009.¹⁴ The child and family protection units in police stations appear to have gained local trust and support:¹⁵

⁶ http://www.prisonstudies.org/info/worldbrief/wpb_country.php?country=51.

⁷ http://www.unodc.org/pdf/criminal_justice/Survey_Report_on_Access_to_Legal_Aid_in_Africa.pdf.

⁸ The law requires suspects to be charged within 48 hours of arrest (120 days for terrorism and 360 days for capital offences), but suspects are frequently held longer. If the case is presented to the court before the expiration of this period, there is no limit on pretrial detention).

⁹ <http://www.uls.or.ug/details.php?load=uls&id=12&Uganda%20Law%20Society>

¹⁰ <http://www.penalreform.org/publications/index-paralegal-services-africa>

¹¹ http://www.unodc.org/pdf/criminal_justice/Survey_Report_on_Access_to_Legal_Aid_in_Africa.pdf.

¹² http://www.governancejustice.org/index.php?option=com_content&task=view&id=43&Itemid=57.

¹³ <http://www.soros.org/voices/delivering-timely-justice-africa>.

¹⁴ http://www.unodc.org/pdf/criminal_justice/Survey_Report_on_Access_to_Legal_Aid_in_Africa.pdf.

A number of . . . police stations had men, women, and children from the community queuing for assistance in big numbers. . . . The kind of work done and role played by the [Child and Family Protection Unit] is more like that of legal aid clinics. [It is] a community-focused and problem-solving establishment in the police force.

Since 2005, paralegals in Uganda have empowered more than 165,000¹⁶ prisoners to be represented in criminal law proceedings. The Commissioner General of Prisons in Uganda attributes the reduction of the remand population (from 63% to 52% currently) to the work of the paralegals. Uganda now has more than 70 paralegals working in the criminal justice system. The work of paralegals is seen by the authorities to have:

- Significantly helped decongest prisons by speeding up the conclusion of long- pending cases in courts
- Helped remove bottlenecks curtailing access to justice for the poor by facilitating meetings between key criminal justice agencies
- Improved prison conditions

4. The Uganda Law Society

All practicing lawyers can subscribe to the Uganda Law Society, which is the main legal professional organization throughout Uganda. At the regional level, it is also possible to join the East African Law Society.

5. Open Society Initiative

The Open Society Initiative stresses the importance of establishing a national legal aid system in Uganda. The system requires several steps, including education, governmental and legal capacity-building, and supporting partnerships between local legal service providers and national campaigns against governmental abuses.

II. **PRO BONO IN UGANDA: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. **Pro Bono Opportunities**

There is a relatively large network of *pro bono* services available across Uganda. Pro bono centers are mainly concentrated in the major cities¹⁷ and *pro bono* services are primarily provided by Justice, law and order sector institutions and civil society organizations. They are instrumental in advancing *pro bono* services to the poor and marginalised groups.

In addition, the Legal Aid Basket Fund together with the Law Council created a *pro bono* pilot scheme in October 2008. The scheme is centrally coordinated by a *pro bono* manager based at the Uganda Law Society and administered by legal officers at the various regional LAP offices who act as regional coordinators.

The goal of the scheme was to enable indigent, vulnerable and marginalized persons access to justice. This goal has had success since its inception. Originally, the scheme made financial support available in the districts of Jinja, Gulu and Kampala and has since been rolled out to the districts of Kabarole, Kabale and Fortportal.

The need for active *pro bono* support and services in Uganda has also been recognized by the Uganda Law Society and the Law Council. Acting together, they passed The Advocates (*Pro Bono Services To Indigent Persons*) Regulations SI No. 39 of 2009 the Advocates Act,¹⁸ which made it mandatory for every lawyer to provide forty (40) hours of *pro bono* legal services per year. Section 15A of the Advocates Act provides as follows:

¹⁵ LEGAL AID SERVICE PROVIDERS' NETWORK, MAPPING REPORT: LEGAL AID SERVICE PROVISION IN UGANDA 35 (Kampala, 2009).

¹⁶ <http://www.penalreform.org/publications/index-paralegal-services-africa>

¹⁷ http://illinois.academia.edu/AnthonyKakooza/Papers/1608827/PRO_BONO_PUBLICO_AND_ITS_ADMINISTRATION_IN_UGANDA

¹⁸ http://www.uls.or.ug/uploads/PRO_BONO_REGULATIONS.pdf

“(i) That every Advocate shall provide services when required by the Law Council or pay a fee prescribed by the Law Council in lieu of such services; and

(ii) That where any Advocate does not comply with sub section (1), the Law Council shall refuse to issue or renew a practicing certificate to that Advocate under sub section 11 of this Act.”

The Advocates Act imposes an ethical and social responsibility on all lawyers (including in-house lawyers) to provide *pro bono* services.

As a result of this legislation, law firms that actively provide *pro bono* services have become more attractive places to work for newly qualified lawyers. This has enabled lawyers to give back to the community, which enhances morale, provides excellent training and allows lawyers to connect with clients and communities in ways that were not previously possible. Furthermore, it allows lawyers to gain valuable courtroom experience at an earlier stage of their career and means that commercial lawyers will gain experience by assuming responsibility for matters that they might not otherwise take on in their mainstream practice.

B. Barriers To *Pro Bono* Work And Other Considerations¹⁹

1. Insufficient Funding/Legal Representation

The biggest restriction to the provision of *pro bono* services in Uganda is inadequate funding due to the costly nature of conducting civil and criminal proceedings. Uganda also has a severe shortage of lawyers, with only 2,000 lawyers for 33 million people.²⁰

Although a large proportion of Uganda’s population live below the poverty line, the lack of statutory free legal aid makes it harder for the average citizen to gain access to justice. Legal representation is only available in a limited number of Uganda’s districts (as of 2011, it was as low as 16% of Uganda’s districts),²¹ and there is a huge backlog of cases which presents a serious structural and administrative burden.

2. The Advocates Act

As noted above, the Advocates Act made it mandatory for all lawyers to provide *pro bono* legal services. Although this guarantees the provision of legal aid by most practicing advocates, a number of legal aid and *pro bono* service providers rely heavily on donor-funding that renders their continued existence and therefore the provision of their services unpredictable.

For example, the LAP is funded by the Norwegian Agency for Development Cooperation through the Norwegian Bar Association. Its activities and administrative budget are therefore dependent on the continued backing of the Norwegian Bar Association.

3. Role of NGOs

Unfortunately, many NGOs lack the resources and capacity to provide legal aid on a widespread scale. Uganda has a population of 33 million, 87% of which live in rural areas. Although NGOs perform a crucial role in providing access to justice, many only have the resources and funding available to operate in the major cities, leaving many rural citizens with no legal recourse.

4. Other Considerations

There are a number of other factors that impede swift access to justice in Uganda, including a lack of courts and facilities (e.g., technology to render justice swiftly), and a general reluctance of clients to actively pursue cases, which has led to unnecessary adjournments and discourages lawyers handling the cases.

¹⁹ http://illinois.academia.edu/AnthonyKakooza/Papers/1608827/PRO_BONO_PUBLICO_AND_ITS_ADMINISTRATION_IN_UGANDA.

²⁰ http://www.unodc.org/pdf/criminal_justice/Survey_Report_on_Access_to_Legal_Aid_in_Africa.pdf.

²¹ ACCESS TO JUSTICE IN AFRICA AND BEYOND 14, available at www.unodc.org/pdf/criminal_justice/Survey_Report_on_Access_to_Legal_Aid_in_Africa.pdf.

C. *Pro Bono Resources*

- Uganda Law Society (“**ULS**”):
ULS engages in legal aid and *pro bono* which are its flagship projects with the aim of extending access to justice to the poor, indigent and most vulnerable across Uganda. (See <http://www.uls.or.ug/> for more information).
- The Pro Bono Scheme:
The goal of the scheme is to ensure indigent, vulnerable and marginalized persons access justice and is funded by the Democratic Governance Facility (See <http://www.uls.or.ug/details.php?load=uls&id=83&UgandaLawSociety> for more information).
- LDC Legal Aid Clinic (“**LAC**”):
The Legal Aid Clinic was established for the main purpose of improving the level of training of Bar Course students and to promote the lawyer’s role of service to the community and legal representation of needy persons. (See <http://www ldc.ac.ug/> for more information).
- Public Defender Association of Uganda (“**PDAU**”):
PDAU offers legal aid to indigent persons, particularly to persons charged with criminal offences. (See <http://humanrightshouse.org/noop/page.php?p=Articles/5063.html&d=1> for more information).
- Legal Aid Project of the Uganda Law Society (“**LAP**”):
LAP was established by the Uganda Law Society to provide legal assistance to indigent and vulnerable persons in Uganda. (See <http://www.uls.or.ug> for more information)
- Refugee Law Project (“**RLP**”):
RLP engages in the provision of free legal assistance to the refugee population and asylum seekers in Uganda. (See <http://www.refugeelawproject.org> for more information).
- The Uganda Association of Women Lawyers (“**FIDA**”):
The Uganda Association of Women Lawyers is affiliated with the *Federacion Internacional de Abogadas* (The International Federation of Women Lawyers) FIDA founded in Mexico. It mainly provides legal aid to women in Uganda. (See <http://www.fidauganda.org> for more information).
- Platform for Labour Action (“**PLA**”):
PLA promotes and protects the rights of employees in Uganda through the provision of legal aid to employees in the resolution of employment-related disputes in Uganda. (See <http://www.pla-uganda.org> for more information).
- Uganda Land Alliance (“**ULA**”):
ULA was formed to enhance access, control, and ownership of land by the poor and marginalized people in Uganda. It provides legal aid services in land matters. (See <http://www.ulaug.org> for more information).
- Uganda Network on Law, Ethics, and HIV/AIDS (“**UGANET**”):
UGANET advocates for the legal and human rights of people living with HIV/AIDS in addition to facilitating the provision of legal redress and enforcement of laws for the protection of such people. (See <http://www.uganet.org> for more information).
- Uganda Christian Lawyers’ Fraternity (“**UCLF**”):
UCLF was founded in 1987 by the Christian law students at Makerere University. The fraternity is involved in advocacy and representation of disadvantaged people in the society. (See <http://ugclf.org> for more information).

- Legal Action for Persons with Disabilities (“**LAPD**”):
LAPD focuses on ensuring that persons living with disabilities in Uganda have access to justice (See <http://www.disabilityrightsfund.org> for more information)
- World Voices Uganda (“**WVU**”):
WVU began active operations in 2005 and facilitates access to justice for the poor, and the protection and promotion of human rights, governance and accountability. (See <http://worldvoicesuganda.org> for more information).
- Justice and Rights Associates (“**JURIA**”):
JURIA advocates for justice for all through the provision of legal aid, legal education, and research and policy advocacy on behalf of the poor and vulnerable members of society. (See <http://juria.org/> for more information).
- Human Rights Awareness and Promotion Forum (“**HRAPF**”):
HRAPE promotes human rights awareness in Uganda. It is also engaged in the provision of legal aid services in the advocacy for women and minority rights. (See <http://hrapf.org> for more information).

III. CONCLUSION

Despite the best efforts of legal aid service providers in the country, access to justice for many citizens remains elusive. Most legal aid organizations are based in Kampala or other urban areas due to easy access to utilities such as electricity and water as well as the availability of security and other necessities such as banking and communication services. As a result, the vast majority of the population that lives in the country away from the more heavily populated urban areas is in an extremely vulnerable position with respect to the ability to access any legal services. In general, they either do not have easy access to local *pro bono* services or do not know where to locate them.

There is currently no Government policy to guide the effective and efficient legal aid service provision of legal aid in Uganda. However, a draft policy spearheaded by a judicial strategic investment plan has been proposed, but this is still very early in the development and implementation process.

July 2012

Pro Bono Practices and Opportunities in Uganda

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PRO BONO PRACTICES AND OPPORTUNITIES IN UKRAINE

Similar to other countries that were part of the Soviet Union, Ukraine lacks a culture of *pro bono* legal assistance, but the adoption of international standards and traditions of legal services, as well as the arrival of NGOs is beginning to change this dynamic. Additionally, Ukraine has recently seen significant legal reforms that are aimed at institutionalizing the provision of free legal aid. Today, both international and national law firms have more opportunities than ever before to provide *pro bono* services in Ukraine.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN UKRAINE

A. The Legal Profession

The Ukrainian legal profession is comprised of state-licensed attorneys referred to as “advocates,” and unlicensed lawyers who are referred to as “jurists.” The biggest difference between advocates and jurists is that as a matter of practice, in a criminal case, a client is generally represented by an advocate.¹ Additionally, advocates must receive a degree in law, accumulate two years of professional experience, show sufficient knowledge of the Ukrainian language, complete a qualifications examination, receive the advocate’s license and take an advocate’s oath. Jurists are not subject to any such requirements. Jurists are also not covered by the attorney-client privilege.²

Although Ukraine has a number of lawyer associations, no law establishes a unified bar association to regulate the admission into or practice of law in Ukraine. The entrance of advocates into the legal profession is regulated by the 27 advocates’ qualifications and disciplinary commissions and the High Qualifications Commission, which operates under the Cabinet of Ministers of Ukraine. These commissions are tasked with organizing admission into the profession and handling advocates’ disciplinary matters. The activities of advocates are governed by the Law “On Advocates,”³ the Regulations “On advocates’ disciplinary and qualifications commissions” and “On High Qualification Commission” approved by the Decree of the President, the Decree of the President “On certain measures to improve the work of advocates,” as well as by the Rules of Advocates’ Ethics.

Jurists are not subject to any mandatory requirements in order to enter the legal profession, are not regulated by any specific legislation and are not subject to any binding ethical standards.

There are currently approximately 80,000 practicing advocates and jurists in Ukraine. Ukraine boasts a number of international law firms, but most lawyers are employed in smaller offices or as solo practitioners.⁴

The Ukrainian judicial system consists of the Constitutional Court of Ukraine and courts of general jurisdiction, which include commercial, administrative and general courts. Commercial courts hear commercial disputes between legal entities, such as disputes involving contractual obligations and

¹ This issue has been one of the most controversial questions during recent years. Initially, the Code of Criminal Procedure provided that only advocates have a right to defend clients in criminal cases. However, in 2000, the Constitutional Court of Ukraine declared such provision to be in contradiction with Articles 59 and 64 of the Constitution of Ukraine. The Code of Criminal Procedure was amended accordingly (this version is still in force) in order to also grant such a right to “other legal professionals.” In 2003, the Supreme Court of Ukraine issued an explanation on the application of the said amended provision (although such explanations are not officially binding, as a matter of practice, lower courts usually follow them). In particular, the Supreme Court of Ukraine read the amended provision of the Code of Criminal Procedure as requiring further adoption of a specific law governing activities of “other legal professionals” to allow them to defend clients in criminal matters and, in the absence thereof, as only permitting advocates to do so. In 2011, the European Court of Human Rights (decisions of the European Court of Human Rights are officially binding in Ukraine and are to be applied in Ukraine as a source of law) ruled in the case of *Zagorodny v. Ukraine* (Mr. Zagorodny, in a criminal case, had chosen a lawyer who was not a licensed advocate and who was not permitted by the authorities to represent him) that, given the decision of the Constitutional Court from 2000 and the wording of the then-effective version of the Code of Criminal Procedure, the restriction of the applicant’s right to free choice of counsel constituted violation of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Notwithstanding all of the above developments, the newly adopted Code of Criminal Procedure of Ukraine, which takes effect in Nov. 2012, lists only advocates as legal representatives of clients in criminal matters. It is quite difficult to predict how this new legislation will be applied in practice and whether its conformity with the Constitution of Ukraine will be questioned again.

² V. Kukharchyk and M. Kulya, *The Legal Profession in Ukraine* (Apr. 2008), available at <http://www.osce.org/odihr/36311>.

³ It is worth mentioning that the new Law “On Advocates” was adopted by the *Verhovna Rada* (Ukraine’s parliament) in the first reading. It is expected that this law will be passed in the near future and will enter into force along with the new Code of Criminal Procedure of Ukraine.

⁴ *Id.*

corporate management issues. Administrative courts consider complaints against decisions, actions or inactivity of public authorities. Finally, general courts handle all cases that do not fall within the jurisdiction of the commercial and administrative courts. Each of the three branches has four levels of courts, which consist of local courts, courts of second instance, courts of third instance, and the Supreme Court of Ukraine (having limited accessibility).⁵

B. Legal Aid

1. The Right to Counsel in Ukraine

Article 59 of the Constitution of Ukraine provides every citizen with the right to receive legal aid. Additionally, Article 63 of the Constitution of Ukraine specifies that a suspect, an accused or a defendant has the right to a defense, while Article 129 specifies that one of the main principles of judicial proceedings shall be to ensure the right of an accused person to a defense.⁶

In certain cases envisaged by law, such aid is to be provided free of charge. Categories of people who are entitled to free legal aid include: (i) persons whose average monthly income is lower than the minimum subsistence level as calculated in accordance with the Law On the Minimum Subsistence Level; (ii) orphaned children, children whose parents have been stripped of their parental rights and children that may become or have become victims of family violence; (iii) persons to whom administrative detention has been applied; (iv) criminal suspects detained by investigation authorities; (v) persons taken into custody as a form of preventive measure; (vi) persons whose cases must be pleaded in the presence of a lawyer in accordance with provisions of the Code of Criminal Procedure of Ukraine; (vii) persons covered by the Law of Ukraine on Refugees until the decision is made on granting them refugee status or if the person appeals the decision on granting refugee status; (viii) war veterans, persons with special merits and those who have rendered special labor services to the country, and victims of Nazi persecution; (ix) persons in relation to whom the court is considering restriction of one's civil capability, recognition of the individual as incapable, or recovery of the person's civil capability; (x) persons in relation to whom the court is considering psychiatric care; (xi) persons rehabilitated in accordance with Ukrainian legislation; and (xii) stateless citizens and foreign citizens who are entitled to legal assistance in accordance with Ukraine's international agreements.⁷

In practice, free legal aid may currently only be provided in criminal cases where an attorney is appointed as a defender. Furthermore, the funding of such legal aid is limited and the fees authorized for attorneys who provide legal aid are minimal, making it difficult to attract lawyers and provide high quality legal aid. Additionally, there is a host of complicated procedures required for receiving remuneration by the attorney providing legal aid such that attorneys often do not attempt to receive remuneration.⁸ These circumstances are expected to change when recent reforms fully go into effect, subject to proper financing.

2. Legal Aid Legislation

On June 2, 2011, the Parliament of Ukraine adopted the Law "On Free Legal Aid," which became effective on July 9, 2011. This legislation regulates the provision of free legal aid in Ukraine.⁹

⁵ A. Kuznetsov, Antika Law Firm, *Legal System Overview*, prepared for The Chamber of Commerce of Ukraine, available at <http://www.chamber.ua/2012/country-profile/Legal%20System%20Overview.pdf>

⁶ See Ukraine Const., available at http://gska2.rada.gov.ua/site/const_eng/constitution_eng.htm.

⁷ THE LAW OF UKRAINE ON FREE LEGAL AID, § III, art. 14, available at <http://helsinki.org.ua/en/index.php?id=1311157859>.

⁸ O. Semiorkina, *Access to Legal Aid in Ukraine* (May 2006), prepared for the Organization for Security and Co-operation in Europe, available at <http://www.osce.org/odihr/19022>. See also Decree of the President of Ukraine No 509/2006 "On the Concept of Reforming the System of Free Legal Aid in Ukraine" (Jun. 9, 2006), available at <http://legislationline.org/documents/action/popup/id/7060>.

⁹ EXPERT ADVISORY CENTRE "LEGAL ANALYTICS," *Free legal aid in Ukraine. Legal review of the Law of Ukraine "On free legal aid,"* available at <http://legalanalytics.com.ua/en/consultacija/20-ogladzakonyprobezoplatnypravovydpomogy.html>.

Under Article 1 of the Law “On Free Legal Aid” free legal aid is defined as “the legal aid guaranteed by the state and funded in full or in part by the State Budget of Ukraine, the local budgets and other sources.”¹⁰

The law introduces the concept of primary and secondary legal aid. Primary legal aid involves informing people about: (i) their rights and freedoms; (ii) procedures for the execution and the restoration of such rights and freedoms in case of infringement; and (iii) procedures for appealing against decisions, actions or inaction of state authorities, local authorities and public officials. Secondary legal aid includes: (i) defense against prosecution; (ii) representation of interests of persons in courts, other state agencies, self-governing authorities, and versus other persons; and (iii) drafting procedural documents.

When the law became effective on July 9, 2011, the system of primary free legal aid became immediately available, while the system of free secondary legal aid will become available when centers of free secondary legal assistance are established.¹¹ According to the enacted legislation, the first such centers should open by January 1, 2013, and they should be fully established throughout Ukraine by January 2017. Free legal aid to persons in criminal matters shall be provided starting from January 1, 2013, while free legal aid to persons in civil matters shall be available starting from January 1, 2014.¹²

Currently, the Working Group for Improvement of Legislation on Free Legal Aid, which is headed by Deputy Minister of Justice, Inna Yemelianova, is working to determine further amendments to the Law “On Free Legal Aid.” One of the main issues being discussed is the establishment of a quality management system to oversee the provision of free legal aid. Other issues that are being discussed include the establishment of a coordination center that will organize the work of centers that will provide secondary legal aid and the remuneration of lawyers who will provide free secondary legal aid.¹³

In addition, the Ukrainian parliament is currently considering a bill, which will endow legal clinics with the status of entities providing free primary and secondary legal aid. The adoption of this law is required by the recommendations of the Parliamentary Assembly of the Council of Europe, stipulated in subclause 13.13 of PACE Resolution No. 1466 (2005) as of October 5, 2005, and subclause 7.2.5 of PACE Resolution No. 1755 (2010) as of October 4, 2010.¹⁴

Another important piece of legislation on providing free legal aid is the recently adopted Code of Criminal Procedure of Ukraine, which shall enter into force in November 2012. This Code of Criminal Procedure regulates in detail the cases when free legal aid shall be provided, the procedure for engaging the defender, as well as his powers and obligations, etc.

II. **PRO BONO IN UKRAINE: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. **Pro Bono Opportunities In Ukraine**

Pro bono opportunities for international law firms located in Ukraine are largely limited to representing and consulting NGOs, as well as consulting individuals on their respective matters. Direct representation of individuals in criminal cases in Ukrainian courts is not particularly feasible for many international law firms because many of the attorneys of such firms are not licensed as advocates but only hold a degree in law. As mentioned above, in practice, only advocates are permitted to represent clients in criminal cases. Even in civil cases, non-Ukrainian attorneys will find it difficult to represent Ukrainian clients that require free legal aid because representation of such clients will require an advanced knowledge of the Ukrainian language.

¹⁰ *The law of Ukraine on free legal aid* (Ukraine Const.), § I, art. 1, available at <http://helsinki.org.ua/en/index.php?id=1311157859>.

¹¹ EXPERT ADVISORY CENTRE “LEGAL ANALYTICS, *supra* n.9.

¹² *The law of Ukraine on free legal aid*, *supra* no.10, at § VI.

¹³ CENTRE FOR LEGAL REFORM AND LAW DRAFTING, *First Meeting of Working Group for Improvement of Legislation on Free Legal Aid* (Feb. 9, 2012), available at <http://legalreform.gov.ua/en/home-eng/62-meeting-of-working-group-for-improvement-of-legislation-on-free-legal-aid>.

¹⁴ The Committee on Justice supports the bill on amending several legislative acts of Ukraine (re determination of status of legal clinics as subjects providing free primary and secondary legal aid), available at http://portal.rada.gov.ua/rada/control/en/publish/article/info_left?art_id=296445&cat_id=105995.

International NGOs have appeared in Ukraine since the breakup of the Soviet Union, but many are still limited in their activities by administrative obstacles. As of 2010, there are approximately 52,000 registered associations in Ukraine and approximately 11,000 charitable organizations. The funds of NGOs remain limited. Therefore, in recent years some Ukrainian law firms have offered free legal aid to NGOs.¹⁵

Many firms in Ukraine evaluate *pro bono* opportunities on a case-by-case basis and some have been involved in notable cases. For instance, the Kiev office of Egorov, Puginsky, Afanasiev and Partners (formerly Magisters), represented plaintiffs who suffered from the 2006 Elita Center real estate scam in which 1,759 condominium buyers lost an estimated US\$80 million. Firms in Ukraine have provided various *pro bono* services to different organizations, including the United Nations High Commissioner for Refugees, the Eastern European Foundation, the International Chamber of Commerce and Ukraine's football federation.¹⁶

B. Barriers To *Pro Bono* Work And Other Considerations

Currently, there are no specific legislative or regulatory restrictions on the provision of *pro bono* legal services. In particular, there are no regulations requiring lawyers to charge minimum tariffs or regulations that mandate special requirements for legal practitioners providing *pro bono* legal services.

The main barrier is a cultural one. The Ukrainian legal system and legal profession are still in the process of development, and therefore there is no established tradition among legal practitioners of regularly providing *pro bono* services. Furthermore, a comprehensive system of free legal aid referral organizations has not yet been created. As previously mentioned (please see Section I.B.2 above), the recently adopted Law “On Free Legal Aid” does provide for the establishment of a network of centers of free secondary legal assistance, but the establishment of this network is supposed to be fully completed only by January 1, 2017.

In addition, provision of *pro bono* legal services may raise certain taxation issues. This may be viewed as a practical barrier for legal practitioners looking to engage in the provision of *pro bono* services. For example, if an entity (for instance, a law firm that operates in the form of a limited liability company (“LLC”) or an advocacy union) is registered as a VAT taxpayer,¹⁷ provision of free legal services shall be subject to VAT.

C. *Pro Bono* Resources

1. USAID Access to Justice and Legal Empowerment Project (“LEP”)

The USAID LEP is a four-year project, which is working to improve access to justice in the areas of employment, healthcare, and property rights by increasing the availability of *pro bono* legal services and the impact of legal and advocacy organizations in Ukraine. The project aims to build a *pro bono* advocacy network, which will connect law school clinics, advocacy NGOs and private attorneys to provide public consultations and legal representation. LEP also runs public information campaigns about the legal rights of citizens. By operating a referral system, the project connects private sector lawyers with clients in need of legal assistance and provides quality and timely assistance to vulnerable underrepresented groups. The LEP engages private law firms and businesses to promote a *pro bono* culture and engages judicial officials to create a more cooperative and supportive environment for student advocates and *pro bono* attorneys.¹⁸

As of present, more than 100 legal advocacy organizations and legal clinics, and 27 law firms have joined LEP networks. On January 25, 2011, the Ukrainian Bar Association, which

¹⁵ 2010 NGO Sustainability Index for Central and Eastern Europe and Eurasia, (14th ed. Nov. 2011), available at http://transition.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/reports/2011/2010complete_document.pdf

¹⁶ M. Rachkevych, *Firms encourage lawyers to do pro bono work for governments, nonprofits and low-income people* (Jun. 30, 2011), KIEV POST, available at http://www.kyivpost.com/news/business/bus_focus/detail/107794/.

¹⁷ The Tax Code of Ukraine requires persons (excluding those who are subject to the “simplified system of taxation” - a single fixed-rate tax that may be chosen under certain conditions by persons instead of a mix of different taxes) to be registered as a VAT taxpayer if total amount accrued (paid) to such person for provision of goods/services subject to VAT within the last twelve months exceeds UAH 300,000.

¹⁸ See USAID ACCESS TO JUSTICE AND LEGAL EMPOWERMENT IN UKRAINE, available at <http://ukraine.usaid.gov/programs/democracy-and-governance-en/rule-law-and-human-rights-en>

includes more than 2,000 lawyers across Ukraine and is a member of the International Bar Association, officially endorsed the Access to Justice Project and encouraged their members to demonstrate social responsibility and join LEP networks to nurture the culture of *pro bono* legal services in Ukraine.¹⁹

2. “Let’s Support Law Clinics Together”

In March 2012, the law firm Asters and the Ukrainian Bar Association (“UBA”) in cooperation with the UBA Students’ League launched the *pro bono* project “Let’s Support Law Clinics Together.” The project aims to bring together law firms and bar associations in order to create an effective system of free legal aid, in particular by supporting law clinics throughout Ukraine. As part of the project, law clinics will receive equipment while Asters attorneys will provide advice and support in processing legal requests of persons requiring legal assistance. Both Asters and the UBA are seeking law firms and bar associations to join them in this effort.²⁰

3. American Bar Association Rule of Law Initiative

The American Bar Association, through its Rule of Law Initiative program, has made significant contributions to civil society in Ukraine by supporting efforts to combat corruption, cybercrime and human trafficking, as well as efforts to reform the law enforcement system. It also trains justice sector professionals, supports local institutions that provide *pro bono* legal assistance to the poor and educates the public about their rights. From 1992 until 2010, the program supported a network of more than 40 legal advocacy NGOs throughout Ukraine, which provided *pro bono* legal services to socially vulnerable populations. Currently, one of the program’s projects is aimed at strengthening the prosecution of hate crimes, increasing the protection of victims of such crimes and raising public awareness about, and tolerance for, ethnic and minority populations.²¹

III. CONCLUSION

Since the breakup of the Soviet Union, Ukraine has seen an increase in the provision of *pro bono* services and this trend is likely to continue in the future. The provision of free legal aid is also being helped by the government, which has taken positive steps with recently enacted legislation. Today, international law firms have many opportunities to provide *pro bono* services through work with existing NGOs or on their own. Any such help that firms provide will certainly be helpful in aiding people in need of legal help and in creating a functioning civil society in Ukraine.

July 2012

Pro Bono Practices and Opportunities in Ukraine

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¹⁹ *Id.*

²⁰ A presentation of the *pro bono* project “Let’s Support Law Clinics Together” has been held, available at <http://jurliga.ligazakon.ua/news/2012/3/6/58791.htm>. Also see: http://www.asterslaw.com/news_media/news/2676/.

²¹ Some other significant projects have included the following: improving coordination among anti-corruption initiatives on anti-corruption efforts, assisting the government in drafting and enacting anti-corruption legislation, advising the courts with pre-trial reform, increasing the capacity of law enforcement to fight human trafficking, providing training to judges, supporting legal education reforms, supporting the establishment of legal clinics, and providing training to legal professionals and politicians on the conduct of elections. See also Rule of Law Initiative Ukraine’s homepage available at http://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/ukraine.html.

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 In all Emirates except Dubai and Ras al-Khaimah, the civil courts hear civil and criminal cases and 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, hear civil matters for Muslims, mostly relating to family law issues such as inheritance and divorce.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. In addition, lawyers must be graduates of a recognized law college or *Shari'a* college. Generally, non-Emirati lawyers are banned from practicing in federal courts. However, in Dubai certain expatriate lawyers are able to represent their clients in courts at all levels.⁷

According to recent Ministry of Justice statistics, there are 725 registered lawyers in the United Arab Emirates. This number includes 555 nationals⁸ but, this figure does not take into account lawyers working for foreign law firms. Foreign law firms are permitted to operate in the United Arab Emirates as legal consultancies. In order to operate as legal consultancies, foreign law firms must be licensed by the Emirate in which they operate an office.⁹ In Dubai, law firms were previously only required to register with the government and there were no set standards for training or qualifications for individual lawyers to provide legal services. However, after the introduction of a new licensing law in 2011, every lawyer must now be licensed by the Legal Affairs Department of the Government of Dubai.¹⁰

There are a number of free zones in the United Arab Emirates from which international law firms may operate. The most relevant for law firms is the Dubai International Financial Centre (the "DIFC"), a financial free zone within the Emirate of Dubai.

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.¹¹ The DIFC operates a

¹ LIBRARY OF CONGRESS – FEDERAL RESEARCH DIVISION, *Country Profile: United Arab Emirates 2* (Jul. 2007), at <http://lcweb2.loc.gov/frd/cs/profiles/UAE.pdf>. The seven Emirates are: Abu Dhabi, Dubai, Sharjah, Ajman, Umm al-Quwain, Ras al-Khaimah and Fujairah.

² *Id.* at 21; see also Essam Tamimi, *Litigation in the United Arab Emirates*, 20 INT'L LEGAL PRAC. 134, 135 (1995).

³ *United Arab Emirates*, *supra* n.1; see also Tamimi, *supra* n.2, at 134.

⁴ *Id.*

⁵ *United Arab Emirates*, *supra* n.1; see also Tamimi, *supra* n.2, at 135.

⁶ GULF-LAW.COM, *United Arab Emirates*, Chapter 3: The Judicial System, at http://gulf-law.com/uae_judicial.html (last visited Jun. 4, 2012).

⁷ Awad Mustafa, *Ruling allows expatriate lawyers in all Dubai courts*, THE NATIONAL, Jan. 10, 2011, at <http://www.thenational.ae/news/uae-news/courts/ruling-allows-expatriate-lawyers-in-all-dubai-courts>

⁸ Abdullah Rashid, *Emirati lawyers seek total emiratization of profession*, GULFNEWS.COM, Mar. 6, 2012, available at <http://gulfnews.com/news/gulf/uae/general/emirati-lawyers-seek-total-emiratization-of-profession-1.990503>

⁹ GULF-LAW.COM, *supra* n.6.

¹⁰ Kevin Brass, *Dubai lawyers to require licenses from next month*, THE NATIONAL, Jul. 8, 2011, at <http://www.thenational.ae/business/economy/dubai-lawyers-to-require-licences-from-next-month>

¹¹ See DUBAI INTERNATIONAL FINANCIAL CENTRE website, at <http://www.difc.ae/about> (last visited Jun. 4, 2012).

sophisticated regulatory regime overseen by the Dubai Financial Services Authority (the “DFSA”).¹² 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.¹³ 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. Legal Aid

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.¹⁴ The government also has discretion to provide lawyers for indigent defendants in certain other felony cases.¹⁵ 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.¹⁶ 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. However, there are no specifically designated bodies managing eligibility criteria or providing assistance for those in need of legal aid.

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.¹⁷ Workers can file labor-related complaints with the Ministry of Labor, which provides mediation services for labor disputes.¹⁸ The parties are not required, and generally are not allowed, to be represented by lawyers in such mediations, and 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.¹⁹ Domestic employees are not covered by the labor law, but may file employment-related complaints with the Ministry of Interior as an alternative to resorting to litigation.²⁰

Clients that are unhappy with legal practices in the United Arab Emirates currently have little recourse other than to file a complaint with the relevant ruler’s court. Unlike in other jurisdictions there is no equivalent in the UAE to an Ombudsman complaints service for disgruntled clients. Another option is for clients to file a complaint with a foreign lawyer’s home bar association.

The economic downturn in 2008 and the 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 clients in need in civil cases.²¹ Legal aid was introduced for people with property disputes by the Real Estate Regulatory Agency (“RERA”) in 2009.²² The Dubai Community Development Authority also announced an initiative to set up a public defenders’ office at the Dubai courts offering legal representation to defendants by 2012, and it was envisioned that this

¹² See DUBAI FINANCIAL SERVICES AUTHORITY, *A guide for firms seeking registration as an Ancillary Service Provider*, at <http://www.dfsa.ae/Documents/Applying%20for%20Registration.pdf> (last visited Jun. 4, 2012).

¹³ *Id.*

¹⁴ 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 (Mar. 11, 2010), at <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136082.htm>.

¹⁵ *Id.*

¹⁶ See Federal Law No. 23 of 1991, art. 24.

¹⁷ BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP’T OF STATE, UNITED ARAB EMIRATES (Mar. 6, 2007), at <http://www.state.gov/g/drl/rls/hrrpt/2006/78865.htm>.

¹⁸ *Id.*; see also Report of the Working Group on the Universal Periodic Review: United Arab Emirates, U.N. Human Rights Council, 10th Sess., Agenda Item 6, at 11, U.N. Doc A/HRC/10/75 (Jan. 12, 2009). http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/AE/A_HRC_10_75_United_Arab_Emirates_E.pdf.

¹⁹ BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP’T, *supra* n.17 at <http://www.state.gov/g/drl/rls/hrrpt/2006/78865.htm>.

²⁰ *Id.*

²¹ *Call to extend free legal aid to civil cases* (Aug. 9, 2009), UAE INTERACT, at http://www.uaeinteract.com/docs/Call_to_extend_free_legal_aid_to_civil_cases/37151.htm.

²² *Id.*

would extend to civil cases relating to family law issues.²³ To date, this initiative has not been implemented.

In October 2009, the DIFC Courts established a *pro bono* program, the first of its kind in the Middle East.²⁴ The *pro bono* program allows individuals who cannot afford a lawyer the ability to seek free advice from lawyers registered with the DIFC Courts. The services offered as part of the *pro bono* program range from basic advice to full case management and representation in litigation proceedings for areas of law within the DIFC Court's jurisdiction.²⁵ The services are accessible to eligible individuals approved by the DIFC Court's Registry office.²⁶ To date more than twenty leading law firms have registered to provide voluntary services under this program, including Al Tamimi & Co., Clyde & Co LLP, Clifford Chance, Norton Rose LLP, Latham & Watkins LLP, DLA Piper and a handful of applications have been filed at the DIFC Courts since the inception of the program.²⁷ Finally, the DIFC Courts are in the process of establishing a Pro Bono Legal Clinic. This Clinic will allow individuals who cannot afford a lawyer the ability to seek free advice from volunteering lawyers. The Pro Bono Legal Clinic was conceptualized in accordance with the DIFC Court's mission to provide swift, transparent and accessible justice to court users.²⁸

II. PRO BONO IN THE UNITED ARAB EMIRATES: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. Pro Bono Opportunities

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 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.²⁹ Despite this requirement, several unregistered NGOs operate in the United Arab Emirates without interference from the government.³⁰ The first human rights NGO in the United Arab Emirates, the Emirates Human Rights Association, was licensed by the government in 2006.³¹ The association is headed by a government prosecutor and focuses on human rights issues and complaints, including those relating to the rights of laborers, stateless persons and prisoners.³²

B. Barriers To Pro Bono Work And Other Considerations

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 nonlegal charitable work, such as fundraising for local charities, rather than on engaging in *pro bono* legal work.

Notwithstanding these issues, most foreign law firms provide certain *pro bono* legal consultancy services to local charities in the United Arab Emirates. Generally, these services have consisted of

²³ Awad Mustafa, *Dubai courts to provide free lawyers to poor defendants*, THE NATIONAL, Dec. 30, 2010, at <http://www.thenational.ae/news/uae-news/courts/dubai-courts-to-provide-free-lawyers-to-poor-defendants>

²⁴ AMEINFO.COM, DIFC Courts first *pro bono* case to be represented by Clyde and Co. (Nov. 9, 2009), at <http://www.ameinfo.com/215288.html>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ MEYER REUMAN & PARTNERS, *News*, available at <http://meyer-reumann.com/dubai-difc-courts-establishes-pro-bono-fund-to-support-disadvantaged/>

²⁸ Press Release, DIFC Courts Host First Pro Bono Clinic (Feb. 7, 2012), at http://difccourts.complinet.com/en/display/display_viewall.html?rbid=2725&element_id=4456&print=1.

²⁹ BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T STATE, *supra* n.14.

³⁰ *Id.* (noting that as of 2010, approximately 100 domestic NGOs were registered in the United Arab Emirates, and it was estimated that more than 20 unregistered local NGOs were in operation).

³¹ BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, *supra* n.17; *see also Program on Governance in the Arab Region*, at <http://www.pogar.org/countries/humanrights.asp?cid=21> (last visited Jun. 4, 2012).

³² BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, *supra* n.14.

advising charities and NGOs on issues involving foreign laws or local law, reviewing their documentation, drafting agreements, advising on licensing requirements and employment law issues.³³ Other examples include providing advice to a regional NGO on its microfinance program and other general corporate and finance matters; helping local charities negotiate cooperation agreements with partner organizations in other countries; participating at a board level with various educational entities as well as direct sponsorship; organizing fundraising events and donations.³⁴ 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, most foreign law firms have provided *pro bono* legal consultancy services to nonprofit organizations in the United Arab Emirates, both on matters involving foreign law and local laws. There is further scope to expand the types of services offered especially as *pro bono* work is mostly centered on the provision of assistance to NGOs and similar entities, and there is almost no provision of legal aid to individuals.

July 2012

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.

³³ *Id.*; see also *Program on Governance in the Arab Region*, at <http://www.pogar.org/countries/humanrights.asp?cid=21> (last visited Jun. 4, 2012).

³⁴ See, e.g., AL TAMIMI & CO, *Social Corporate Responsibility*, at <http://www.tamimi.com/en/section/corporate-social-responsibility> (last visited Jun. 4, 2012); TROWERS & HAMLINS, *Working with the Community*, at <http://www.trowers.com/about/working-with-the-community/> (last visited Jun. 4, 2012).

PRO BONO PRACTICES AND OPPORTUNITIES IN THE UNITED STATES OF AMERICA

The United States has a deep, longstanding and evolved system and tradition of providing pro bono legal support to those in need, and there is widespread engagement in *pro bono* among non-profit organizations, private law firms, individual practitioners and in-house counsel. Despite the breadth of participation among attorneys, the demand for critical low-cost legal services in the United States far exceeds the supply of services available. There is no shortage of opportunities – in terms of number, variety or skill level required. This section provides a brief, high-level overview of the legal system in the United States and the legal culture regarding legal aid and *pro bono* work. In addition, this section contains some resources to use as a first step in locating and identifying appropriate *pro bono* opportunities in the United States and outlines some basic considerations to keep in mind when deciding whether and what kind of *pro bono* work to undertake.

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN THE UNITED STATES

A. The Legal Profession

1. Demographics

In 2011, there were approximately 1.25 million licensed lawyers in the United States, a country with a population of approximately 314 million.¹ The number of lawyers in the U.S. has risen steadily over time, particularly during the last few decades.² Regarding specific states, New York and California have, by far, the most licensed lawyers.³ The legal profession in Texas, which has the third largest population of lawyers, is only about half the size of either New York or California.⁴

The U.S. legal profession continues to be dominated by male lawyers, but this is much less the case since 1980.⁵ The proportion of female lawyers more than tripled from 1980 to 2000 and now constitutes almost a third of the profession.⁶ Female law students have constituted almost half of the student population for the past five years.⁷

Racial diversity in the U.S. legal profession remains relatively static. In 2010, most licensed lawyers were white (88%).⁸ African American lawyers constituted almost 5% of the profession and Hispanic and Asian lawyers each comprised between 3% and 4%.⁹

In 2005, most lawyers—almost three-quarters—worked in private practice, with less than 10% in government or private industry.¹⁰ Three percent work in the judiciary and 1% in education, legal aid or public defense, and private associations.¹¹ Of the lawyers in private practice, almost half are solo practitioners.¹² Approximately 34% worked in firms with 2-100 lawyers and 16% worked at large firms with over 100 lawyers.¹³

U.S. law firms that have offices outside the United States often staff the office with a combination of U.S.-qualified and locally qualified lawyers.¹⁴ Although there appears to be a

¹ AMERICAN BAR ASSOCIATION, *LAWYER DEMOGRAPHICS* (2012), available at http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2012_revised.authcheckdam.pdf; U.S. CENSUS BUREAU, available at <http://www.census.gov/population/www/popclockus.html> (last visited Aug. 29, 2012).

² AMERICAN BAR ASSOCIATION, *LAWYER DEMOGRAPHICS* (2012), available at http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2012_revised.authcheckdam.pdf.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ John Bringardner, *Lawyers Wanted: Abroad, That Is*, N.Y. TIMES (Nov. 21, 2008), http://www.nytimes.com/2008/11/23/business/23law.html?_r=1&pagewanted=print.

developing trend towards basing in-house lawyers abroad,¹⁵ U.S. companies often engage outside counsel in the areas outside the U.S. where they operate.¹⁶

2. The Judiciary

The U.S. government is structured based on the doctrine of “separation of powers,” in which the sovereignty of the people is divided among three separate but co-equal branches: the Executive, the Legislative, and the Judiciary.¹⁷ Sovereignty is further divided between the federal government and the governments of the individual states.¹⁸ In addition, Native Americans retain a “quasi-sovereign” status in the U.S. federal system.¹⁹

The structure of the U.S. judiciary is complex.²⁰ The U.S. has a “common law” legal system with two separate and distinct judiciary systems: federal and state.²¹ Although the two systems share many similarities, federal and state courts have procedurally and substantively different rules and laws. Lawyers practicing in the United States should pay special attention to the specific court in which they are appearing and the type of law (federal or state) being applied.²² Moreover, issues of jurisdiction and federalism are highly complex and often contested in the United States, and a foreign practitioner should be cognizant of the complexity in this area.²³

The federal judiciary is administered by the U.S. Supreme Court and is comprised of the U.S. Supreme Court, 13 U.S. Courts of Appeals and 94 U.S. District Courts.²⁴ The U.S. District Courts are the federal trial courts. Decisions of the trial courts can be appealed to a U.S. Court of Appeals. A party can request the U.S. Supreme Court to review a Court of Appeals decision, but the Supreme Court is generally under no obligation to accept a case for review.

Federal courts are generally limited to hearing issues regarding federal law, but often consider and apply related state law.²⁵ The rulings of the U.S. Supreme Court are binding on all courts

¹⁵ David B. Wilkins, *Is the In-House Counsel Movement Going Global?*, 2012 WIS. L. REV. 251, 256 (2012), available at <http://wisconsinlawreview.org/wp-content/files/2-Wilkins.pdf>.

¹⁶ *How U.S. Companies Select International Counsel*, THE AMERICAN LAWYER 8 (Apr. 17, 2007), available at http://pdfserver.amlaw.com/ihc/international_research.pdf.

¹⁷ *Federal Courts in American Government*, ADMIN. OFFICE OF THE U.S. COURTS, <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/FederalCourtsInAmericanGovernment.aspx> (last visited Jun. 11, 2012).

¹⁸ *The Difference Between Federal and State Courts*, ADMIN. OFFICE OF THE U.S. COURTS, <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/Jurisdiction/DifferencebetweenFederalAndStateCourts.aspx> (last visited Jun. 11, 2012) [hereinafter *The Difference Between Federal and State Courts*].

¹⁹ Santa Clara Pueblo v. Martinez, 436 U.S. 49, 71 (1978). Many Native American tribes have tribal court systems, which must generally provide rights guaranteed by the federal and state constitutions, but operate independently and under different rules. See Nevada v. Hicks, 533 U.S. 353, 384–85 (2001); *Tribal Courts*, TRIBAL LAW & POLICY INSTITUTE.

²⁰ See *Federal Court Basics*, ADMIN. OFFICE OF THE U.S. COURTS, <http://www.uscourts.gov/EducationalResources/FederalCourtBasics.aspx> (last visited Jun. 11, 2012); *Understanding Federal and State Courts*, ADMIN. OFFICE OF THE U.S. COURTS, <http://www.uscourts.gov/EducationalResources/FederalCourtBasics/CourtStructure/UnderstandingFederalAndStateCourts.aspx> (last visited May 11, 2012) [hereinafter *Understanding Federal and State Courts*].

²¹ *The Difference Between Federal and State Courts*, *supra* n.18.

²² See *id.*

²³ See, e.g., Preeta D. Bansal, *The Supreme Court’s Federalism Revival and Reinvigorating the “Federalism Deal,”* 21 J. CIVIL RIGHTS & ECON. DEV. 447 (2012), available at <http://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=1088&context=jcred>.

²⁴ See *A Brief Overview of the Supreme Court*, SUPREME COURT OF THE UNITED STATES, <http://www.supremecourt.gov/about/briefoverview.aspx> (last visited Jun. 11, 2012); *The Difference Between Federal and State Courts*, *supra* n.18. The federal judiciary also includes specialized courts, including the U.S. Court of Claims, U.S. Court of International Trade and U.S. Bankruptcy Courts.

²⁵ See *Jurisdiction of the Federal Courts*, ADMIN. OFFICE OF THE U.S. COURTS, <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/Jurisdiction.aspx> (last visited Jun. 11, 2012); 28 U.S.C. § 1367(a).

on issues of federal law, which includes issues regarding the U.S. Constitution.²⁶ The U.S. Constitution is the “Supreme Law” of the United States.²⁷

The structure of state courts is established by the Constitution and laws of each state, and therefore vary from state to state. Most states have a state supreme court, which is typically the highest court in the state. Many also have intermediate level courts of appeal, below which are the state trial courts.²⁸

State courts may hear issues of state law and many issues of federal law.²⁹ With respect to issues of state law – including issues regarding the state constitution – state courts are bound by the rulings of the state supreme court.³⁰ Cities, counties, and other types of local municipal governments are generally considered arms of state government.³¹

The federal court system and each state court system have different procedural rules.³² In both systems, each particular court may have its own rules, and similarly, each individual judge may have his or her own rules.³³ These “Local Rules” are often available online at the particular courthouse’s website and at the particular judge’s webpage.³⁴ These rules typically include what each lawyer must do in order to qualify to appear before a particular court and for practicing law in a particular location.³⁵

Both the federal and state court systems are also intertwined to varying degrees with federal and state administrative and legislative court systems.³⁶ These administrative and legislative courts often operate like judicial courts but the rules for administrative and legislative adjudications are different.³⁷ For example, many immigration disputes are adjudicated administratively by administrative agencies.³⁸

3. Regulation of Lawyers and the Provision of Legal Services

Lawyers and the provision of legal services are generally regulated by the individual states through rules and regulations promulgated by the state’s courts, legislature and/or bar association.³⁹ These rules and regulations govern the standards for bar admission, ethics, conduct, continuing education requirements and discipline for lawyers.⁴⁰ A lawyer admitted to

²⁶ *Precedents*, ADMIN. OFFICE OF THE U.S. COURTS, <http://www.uscourts.gov/EducationalResources/ConstitutionResources/SupremeCourtDialogs/JudicialInterpretationDiscussionTopics/Precedents.aspx> (last visited Jun. 11, 2012); *The Difference Between Federal and State Courts*, *supra* n.18.

²⁷ U.S. CONST. art. IV, cl. 2.

²⁸ *The Difference Between Federal and State Courts*, *supra* n. 18. Many states also have specialized courts that handle specific legal matters including, for example, probate, juvenile and family courts. *Id.*

²⁹ *Understanding Federal and State Courts*, *supra* n.20; *Jurisdiction of State and Federal Courts*, ADMIN. OFFICE OF THE U.S. COURTS, <http://www.uscourts.gov/EducationalResources/FederalCourtBasics/CourtStructure/JurisdictionOfStateAndFederalCourts.aspx> (last visited Jun. 11, 2012).

³⁰ *The Difference Between Federal and State Courts*, *supra* n. 18.

³¹ *See, e.g.*, *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 45 (1985); *Hass v. Oregon State Bar*, 883 F.2d 1453, 1460 (9th Cir. 1989).

³² J. MICHAEL GOODSON LAW LIBRARY, DUKE UNIVERSITY SCHOOL OF LAW, RESEARCH GUIDES, COURT RULES 1 (Oct. 2011), <http://www.law.duke.edu/lib/researchguides/pdf/courtrules.pdf>.

³³ *Id.*

³⁴ *See, e.g., id.* at 3.

³⁵ *See, e.g.*, *Rules of Court*, Superior Court of California, County of San Diego, http://www.sdcourt.ca.gov/portal/page?_pageid=55,1117634&_dad=portal&_schema=PORTAL (last visited Jun. 11, 2012).

³⁶ *See Understanding Federal and State Courts*, *supra* n.20; *The Difference Between Federal and State Courts*, *supra* n.18; *See* Judith Resnick, *The Mythic Meaning of Article III Courts*, 56 U. COLO. L. REV. 581, 583 n.6 (1985), available at http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1935&context=fss_papers.

³⁷ *See The Difference Between Federal and State Courts*, *supra* n.18.

³⁸ *See About the Office*, U.S. DEP’T OF JUSTICE, <http://www.justice.gov/eoir/orginfo.htm> (last visited Jun. 11, 2012) (providing overview of the Executive Office for Immigration Review).

³⁹ *See* Judith L. Maute, *Bar Associations, Self-Regulation and Consumer Protection: Whither Thou Goest?*, 2008 J. PROF. LAW. 53, 58 (2008), available at <http://www.americanbar.org/content/dam/aba/migrated/cpr/pubs/maute.pdf>.

⁴⁰ *Id.*

practice law (i.e., admitted to the bar) in one state is not automatically authorized to practice in any other state.⁴¹

Although the requirements for admission vary from state to state, most require an applicant to have good moral character, be a resident or employed in the state, have graduated from an accredited law school and pass a bar examination for that state.⁴²

The bar associations of each state should not be confused with the American Bar Association (ABA). The ABA is a national organization that provides law school accreditation, continuing legal education, information about the law for practitioners and for the public, and initiatives to improve the legal system for the public.⁴³ The ABA also publishes “model” rules for various issues, and many states use these model rules in formulating their own standards.⁴⁴ But the ABA does not regulate the conduct of practicing lawyers, nor does it act as an umbrella organization for the individual bar associations of the states.⁴⁵ For specific information regarding the regulation of lawyers and the provision of legal services, practitioners must consult the state-specific rules.⁴⁶

B. Legal Aid

In the United States, defendants have a right to government-appointed counsel in criminal and quasi-criminal proceedings.⁴⁷ Where counsel appears, this right extends to the right to effective assistance.⁴⁸ These rights are based in the Sixth Amendment to the U.S. Constitution. States may impose broader rights to counsel through their respective state constitutions and laws.⁴⁹

Criminal defendants entitled to counsel are appointed a federal public defender in federal cases and a state public defender in state cases.⁵⁰

There is generally no right to counsel in civil matters.⁵¹

⁴¹ Some states have reciprocity agreements or offer waivers or limited exemptions. See <http://barreciprocity.com/special-admission> (last visited August 29, 2012).

⁴² See *Admission to Practice*, available at http://www.law.cornell.edu/wex/admission_to_practice (last visited Aug. 29, 2012).

⁴³ *About the ABA*, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/utility/about_the_aba.html (last visited Jun. 11, 2012).

⁴⁴ See *Model Rules of Professional Conduct*, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html (last visited Jun. 11, 2012).

⁴⁵ See *id.*

⁴⁶ See *Bar Admissions Basic Overview*, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/groups/legal_education/resources/bar_admissions/basic_overview.html (last visited Jun. 11, 2012).

⁴⁷ See *Gideon v. Wainwright*, 372 U.S. 335, 343–45 (1963); *Ake v. Oklahoma*, 470 U.S. 68, 76 (1985). Quasi-criminal proceedings generally involve some loss of liberty or other “fundamental” right, such as mental competency and commitment proceedings, extradition and certain types of family-law issues, among others. See *History of Right to Counsel*, National Legal Aid & Defender Association, http://www.nlada.org/About/About_HistoryDefender (last visited Jun. 11, 2012); ABA Task Force on Access to Civil Justice, Report to the House of Delegates 7 (Aug. 2006), [http://www.legalaidnc.org/public/participate/legal_services_community/ABA_Resolution_onehundredtwelve\[1\].pdf](http://www.legalaidnc.org/public/participate/legal_services_community/ABA_Resolution_onehundredtwelve[1].pdf).

⁴⁸ See *Strickland v. Washington*, 466 U.S. 668, 686 (1984).

⁴⁹ See *Gideon*, 372 U.S. at 343–45. Indeed, many states have established broader rights to access to legal services. For example, the State of California has, by statute, required legal counsel to be appointed to represent low-income parties in civil matters “involving critical issues affecting basic human needs[.]” See CAL. GOV’T CODE § 68651(a) (2011).

⁵⁰ In Federal matters, indigent criminal defendants may also be appointed a private attorney selected from a special “Criminal Justice Act (CJA) Panel”. The CJA was enacted in 1964, prior to the establishment of the Federal Public Defender Service, to provide counsel to criminal defendants who could not otherwise afford representation. Today, 10,000 private practitioners are “panel attorneys” who accept assignments to represent indigent defendants in federal court. Panel attorneys are compensated an hourly rate of between \$128–\$178 per hour, with maximum aggregate cap amounts set for each case. See *Appointment of Counsel*, ADMIN. OFFICE OF THE U.S. COURTS, <http://www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/Jurisdiction.aspx> (last visited Aug. 29, 2012). Many states have panel attorneys who perform the same function in criminal proceedings in state court.

⁵¹ Some states provide for a right of counsel for low income individuals in certain categories of civil matters. See NATIONAL COALITION FOR A CIVIL RIGHT TO COUNSEL, available at http://www.civilrighttocounsel.org/about_the_issue/overview/ (last visited Aug. 29, 2012).

II. *PRO BONO* IN UNITED STATES: OPPORTUNITIES AND OTHER CONSIDERATIONS

Demand for free legal services in the United States for civil matters is high, and there is a critical shortfall of pro bono capacity to meet that demand. As there is no right to counsel in civil matters, those in need of free legal support depend upon private, non-profit legal aid organizations and private practitioners to provide legal support pro bono. There is generally no mandatory requirement imposed by state bars for attorneys to provide their services pro bono. However, the American Bar Association Model Rule 6.1 provides that “Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.” Although the ABA Model Rules are not mandatory or binding, a number of state bars have adopted the model rule or variations thereof.

Free legal services in civil matters are primarily provided by private, non-profit legal aid organizations and private practitioners. Many of the non-profit legal aid organizations represent low-income individuals as well as screen clients and matters for referral to private practitioners and law firms. Many practitioners rely on these organization for all of their pro bono client referrals. The eligibility criteria for pro bono services varies among the different legal aid organizations, as it is often dependent on the particular service’s source of funding.

Legal aid organizations largely depend on federal, state and/or private funding for their operations.

The Legal Services Corporation (“LSC”), a federal government non-profit organization, is the largest funding source for civil legal aid in the United States. Approximately 95% of its funding is distributed to over 130 independent non-profit legal aid organizations with more than 900 offices across the U.S. Organizations or programs that receive LSC funding must serve clients that are at or below 125% of the federal poverty level.

The administration of state legal aid funding varies by state. In California, for example, state funding for legal services projects is only provided upon application and approval by the State Bar of California. Eligibility for representation from a state funded legal aid project is limited to clients whose household income is at or below 200% of the federal poverty level.

Many private funding sources attach similar eligibility and other restrictions to their funding.

Taking into account these various eligibility standards, LSC’s 2009 Justice Gap Report estimates that at least half of those eligible for legal aid services are turned away due to insufficient resources, and less than one in five legal problems experienced by low income individuals are addressed with the assistance of a licensed lawyer. Exacerbating the problem is the decline in federal, state and private funding to legal aid organizations in recent years due to the recent economic recession.

A. *Pro Bono Opportunities*

Despite the significant gap between supply and demand, a recent study by the ABA indicated that U.S. lawyers provide *pro bono* legal work at a rate almost three times the rate of volunteer work in the general population: 73% of lawyers do *pro bono* work whereas about 26% of the general population does volunteer work.⁵² On average, the number of hours devoted to *pro bono* work per year per lawyer was 41 hours in 2008.⁵³ Both the proportion of lawyers doing *pro bono* work and the average number of hours spent on *pro bono* work increased from 2004 to 2008.⁵⁴ Most of this *pro bono* work was provided free of charge rather than at a reduced rate.⁵⁵ And *pro bono* work is not limited to licensed practitioners – law students may engage in legal *pro bono* work under certain conditions.⁵⁶

⁵² Press Release, Nearly Three-Fourths of America’s Lawyers Do Pro Bono Work, According to a New ABA Study, American Bar Association (Feb. 18, 2009), *available at* http://apps.americanbar.org/abanet/media/release/news_release.cfm?releaseid=556 [hereinafter Nearly Three-Fourths of America’s Lawyers Do Pro Bono Work].

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ ABA STANDING COMM. ON PRO BONO & PUBLIC SERVICE, SUPPORTING JUSTICE II: A REPORT ON THE PRO BONO WORK OF AMERICA’S LAWYERS 14 (Feb. 2009), <http://apps.americanbar.org/legalservices/probono/report2.pdf> [hereinafter SUPPORTING JUSTICE II].

⁵⁶ See *Directory of Law School Public Interest and Pro Bono Programs*, AMERICAN BAR ASSOCIATION, <http://apps.americanbar.org/legalservices/probono/lawschools/> (last visited Jun. 11, 2012).

Forty percent of the *pro bono* opportunities are referred to lawyers through legal aid organizations.⁵⁷ Of lawyers who receive such referrals, almost 90% are already familiar with the referral organization.⁵⁸ Other sources for *pro bono* work include referrals from an attorney, family or friends, clients, coworkers, and the court.⁵⁹

Because virtually all civil legal aid is provided *pro bono*, the United States' decentralized system for *pro bono* referrals is the most evolved and robust in the world. As further described below, there are infinite resources for lawyers seeking to engage.

B. Barriers To *Pro Bono* Work and Other Considerations

Given the legal profession's commitment to providing *pro bono* services, there are few regulatory barriers to engaging in *pro bono* work beyond the general state licensing requirements. As with legal services in general, practitioners should take care to ensure that they are licensed to practice in the state where they seek to practice and are cognizant of the rules regarding the administration of fee agreements and duties regarding the attorney-client relationship.⁶⁰ Although *pro bono* work is typically free in the United States and many states do not require fee arrangements to be in writing,⁶¹ for practical reasons a written agreement detailing waiver or reduction of fees for *pro bono* work may still be preferable. In addition, ethical and competency standards apply equally to *pro bono* practice as they do to non-*pro bono* (paid) work.⁶² If a lawyer is properly licensed to practice in the United States, whether in solo practice, firm practice, or in-house practice, he or she will likely have little difficulty – in terms of regulatory obstacles – engaging in *pro bono* work.

Accordingly, barriers to *pro bono* work in the United States tend to be practical. A recent survey found five primary practical barriers:⁶³

- Lack of time
- Family commitments
- Competing billable hours; lack of skills; lack of information on opportunities
- Lack of administrative support; lack of desire; lack of malpractice insurance
- Employer discouragement

In-house lawyers perceive a similar set of barriers, as well as concerns that are unique to their position.⁶⁴

As indicated above, the main barrier appears to be time constraint (lack of time, family commitments, and competing billable hours), with secondary barriers in administrative and informational constraints (lack of information, lack of administrative support) and financial constraints (competing billable hours, lack of malpractice insurance).⁶⁵ There are some motivational constraints (lack of desire, employer discouragement).⁶⁶ In-house lawyers perceive a similar set of barriers, as well as concerns unique to in-house counsel, such as the location of the corporation in relation to courts, clients, or government agencies.⁶⁷

⁵⁷ SUPPORTING JUSTICE II. *supra* n.55, at 14.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See MODEL RULES OF PROF'L CONDUCT (2010), available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html.

⁶¹ See, e.g., CAL. RULES OF PROF'L CONDUCT R. 4-200 Fees for Legal Services (2012), available at <http://rules.calbar.ca.gov/Rules/RulesofProfessionalConduct.aspx>.

⁶² See Wendy P. Mazzarella, *Ethics And The Pro Bono Attorney*, CAL. BAR JOURNAL (Jan. 2010), available at http://apps.calbar.ca.gov/mcleselfstudy/mcle_home.aspx?testID=26.

⁶³ SUPPORTING JUSTICE II. *supra* n.55, at 23.

⁶⁴ *Corporate Counsel Pro Bono*, AMERICAN BAR ASSOCIATION, http://apps.americanbar.org/legalservices/probono/corporate_counsel.html#barriers (last visited Jun. 11, 2012). "For a great resource that addresses the barriers, considerations and approaches for in-house lawyers, see DAVID P. HACKETT, ET. AL., *PRO BONO SERVICE BY IN-HOUSE COUNSEL* (2010).]"

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Corporate Counsel Pro Bono*, AMERICAN BAR ASSOCIATION, http://apps.americanbar.org/legalservices/probono/corporate_counsel.html (last visited Jun. 11, 2012).

For both firm and in-house corporate lawyers another sometimes-difficult practical consideration involves adherence to ethical rules regarding client loyalty and confidentiality. Generally, lawyers owe their clients – current and past – duties of loyalty and confidentiality, among others.⁶⁸ Therefore, lawyers in the United States typically may not represent clients on opposing sides of the same matter.⁶⁹ Furthermore, lawyers are restricted in undertaking representation of a new client if such representation is adverse to the former client’s interests in a substantially related matter.⁷⁰ Lawyers working in firms face an even more complicated situation because these conflicts often transfer from one lawyer to another, and special procedures must be followed to avoid disqualification.⁷¹

Foreign practitioners who seek to engage in *pro bono* work within the United States, in addition to complying with general state licensing rules, should pay special attention to adhering to the state bar association’s rules regarding conflicts of interest. For lawyers in firm practice, this may be a painstaking process if there are not already established procedures for checking for potential conflicts of interests and, as required by state ethical rules, contacting clients to notify them of the potential conflict or to obtain permission to undertake the new representation despite the potential conflict.⁷² For lawyers practicing in-house, although dwindling public financial support for legal aid has led many corporations to push for more structured *pro bono* work for in-house counsel,⁷³ conflicts checks for in-house counsel *pro bono* work are equally necessary and may be just as complicated even though the in-house lawyer’s client is immediately accessible.⁷⁴

Finally, we note that the rules cited in this section involve the ABA’s Model Rules, and it’s important to keep in mind that each state bar has its own ethical and other rules regarding the practice of law.⁷⁵

C. *Pro Bono* Resources

There is an abundance of referral organizations throughout the United States at the national state and local level. Some useful starting points include the following:

- ABA Standing Committee on Pro Bono & Public Service, http://www.americanbar.org/groups/probono_public_service.html. The ABA is the the largest and legal professional associations in the United States.⁷⁶ This website has additional links to various national clearinghouse libraries and lists of *pro bono* programs at law schools and at the local level.⁷⁷

⁶⁸ See, e.g., MODEL RULES OF PROF’L CONDUCT R.1.6 Confidentiality of Information (2010), available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information.html. See also MODEL RULES OF PROF’L CONDUCT R. 1.7 Conflict of Interest: Current Clients (2010), available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_7_conflict_of_interest_current_clients.html.

⁶⁹ See, e.g., MODEL RULES OF PROF’L CONDUCT R. 1.7 Conflict of Interest: Current Clients (2010), available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_7_conflict_of_interest_current_clients.html.

⁷⁰ See, e.g., MODEL RULES OF PROF’L CONDUCT R. 1.9 Duties to Former Clients (2010), available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_9_duties_of_former_clients.html.

⁷¹ See MODEL RULES OF PROF’L CONDUCT R. 1.10 Imputation of Conflicts of Interest: General Rule (2010), available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_10_imputation_of_conflicts_of_interest_general_rule.html

⁷² See Terry Baynes, *Pro Bono 2010: Early Intervention*, THE AM LAW DAILY (Jul. 14, 2010), <http://amlawdaily.typepad.com/amlawdaily/2010/07/foreclosure.html>.

⁷³ See Catherine Ho, *In-house lawyers take on pro bono work*, WASH. POST (May 6, 2012), available at http://www.washingtonpost.com/business/capitalbusiness/in-house-lawyers-take-on-pro-bono-work/2012/05/04/gIQAH23N6T_story.html.

⁷⁴ See Catherine Dunn, *Stepping Stones to More In-House Pro Bono*, LAW.COM (Feb. 21, 2012), <http://www.law.com/jsp/cc/PubArticleFriendlyCC.jsp?id=1202542787591> (“In-house lawyers don’t want to take a position in a pro bono case counter to the interests of their corporate client.”).

⁷⁵ See, *ABA Model Rule 6.1 and Its Application, State-by-State*, AMERICAN BAR ASSOCIATION, <http://apps.americanbar.org/legalservices/probono/policies-rules.html> (last visited Jun. 11, 2012).

⁷⁶ See *American Bar Association*, WIKIPEDIA, http://en.wikipedia.org/wiki/American_Bar_Association (last visited Jun. 12, 2012).

⁷⁷ *Standing Committee on Pro Bono & Public Service*, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/groups/probono_public_service.html (last visited Jun. 12, 2012).

- Pro Bono Institute, Resources, <http://www.probonoinst.org/resources.html>. The Pro Bono Institute is a national-level nonprofit organization based in Washington, D.C. and provides research, consultation, analysis and assessment, training, and other services to various legal audiences in order to advance the provision of legal services to poor, disadvantaged and other individuals in need of legal assistance.⁷⁸
- Corporate Pro Bono, <http://www.cpbo.org/>. CPB is a global partnership project with the Pro Bono Institute and focuses specifically on opportunities for *pro bono* work for in-house counsel and legal departments.⁷⁹
- Legal Services Corporation, <http://www.lsc.gov/local-programs/program-profiles>. As noted above, the Legal Services Corporation is the largest single funder of legal aid programs in the United States.⁸⁰ Most of its funding is directed to approximately 130 programs, which are listed on this webpage.⁸¹
- Various state bar associations. Practitioners should also check with the state bar association for additional opportunities. The ABA has compiled and made available links to the websites of the various state bar associations at the following web address: http://www.americanbar.org/groups/bar_services/resources/state_local_bar_associations.html.
- Probono net, an online resource providing information and links to referral organizations and pro bono opportunities as well as training materials for various pro bono practice areas. Their website can be accessed at: [ww.probono.net](http://www.probono.net)

III. CONCLUSION

The is a strong, evolved system and tradition of pro bono within the U.S. legal community, where a majority of practitioners provide some level of pro bono support each year. Despite this, the gap between the demand for and supply of pro bono legal services has never been greater.

The requirement that any individual seeking to practice law in the United States be licensed by a state bar is the primary barrier for non-U.S. lawyers seeking to undertake pro bono legal services.

Foreign practitioners for whom licensing in the United States is impracticable or infeasible can still find opportunities related to pro bono work in the United States. Many organizations based in the United States

public health, economic development, and so on, and many of these organizations require localized expertise and assistance in foreign and international laws. In addition, many U.S. organizations require the assistance of foreign lawyers in aid of individuals currently in the United States. Often, these matters involve U.S. immigration laws and protections, including legal aid for refugees, asylees, and their families.

The scope of pro bono opportunities in the United States is broad enough to accommodate many different circumstances, skill sets, time commitments and interests.

July 2012

Pro Bono Practices and Opportunities in the United States of America

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⁷⁸ *About Us*, PRO BONO INSTITUTE, <http://www.probonoinst.org/about-us.html> (last visited Jun. 12, 2012).

⁷⁹ *Our Mission*, CORPORATE PRO BONO, <http://www.cpbo.org/about-us/our-mission/> (last visited Jun. 12, 2012).

⁸⁰ *See supra* page 350.

⁸¹ *Id.*

PRO BONO PRACTICES AND OPPORTUNITIES IN URUGUAY¹**I. LEGAL SERVICES AND THE LEGAL PROFESSION IN URUGUAY**

The Uruguayan Constitution provides for free legal services for indigent individuals who qualify for such services under applicable law. Historically, this assistance has been offered through public services. However, leading law firms in Uruguay are now becoming more and more committed to providing *pro bono* services. This section provides a brief description of the Uruguayan legal system, reviewing the available legal aid to individuals with limited resources and the growth of the *pro bono* movement.

A. The Legal Profession

Only five universities offer a law degree in Uruguay, of which one is state-owned and the remainder are private institutions. To practice law in Uruguay, in addition to receiving a legal degree, individuals are required to pass a comprehensive exam. Such exams are administered by the relevant authorities at each of the five universities. Additionally, law degrees issued by private universities must be validated by the Department of Education and Culture (*Ministerio de Educación y Cultura*) before an individual is officially acknowledged as a lawyer (*abogado*). Once an individual meets these requirements, he or she must also take an oath before the Supreme Court of Justice (*Suprema Corte de Justicia*), which then issues the relevant registration document (*matrícula*) for such individual to practice law, as prescribed in article no. 137 of “Law on the Organisation of the Judiciary and Courts, no. 15750” (*Ley Orgánica de la Judicatura y de organización de los tribunals*, no. 15750).

The legal profession in Uruguay is not heavily regulated. Although the Uruguay Lawyers’ Bar Association (*colegio de abogados del Uruguay*), a professional association located in Montevideo founded in 1929, exists, membership in such organization is not required to practice law in Uruguay. Furthermore, no postgraduate education is required to become a lawyer, and disqualification from the practice of law is rare. Notwithstanding, according to statistics published by the Lawyers’ Bar Association in 2007, approximately 70% of the lawyers practicing law in Uruguay were members of the Lawyers’ Bar Association.

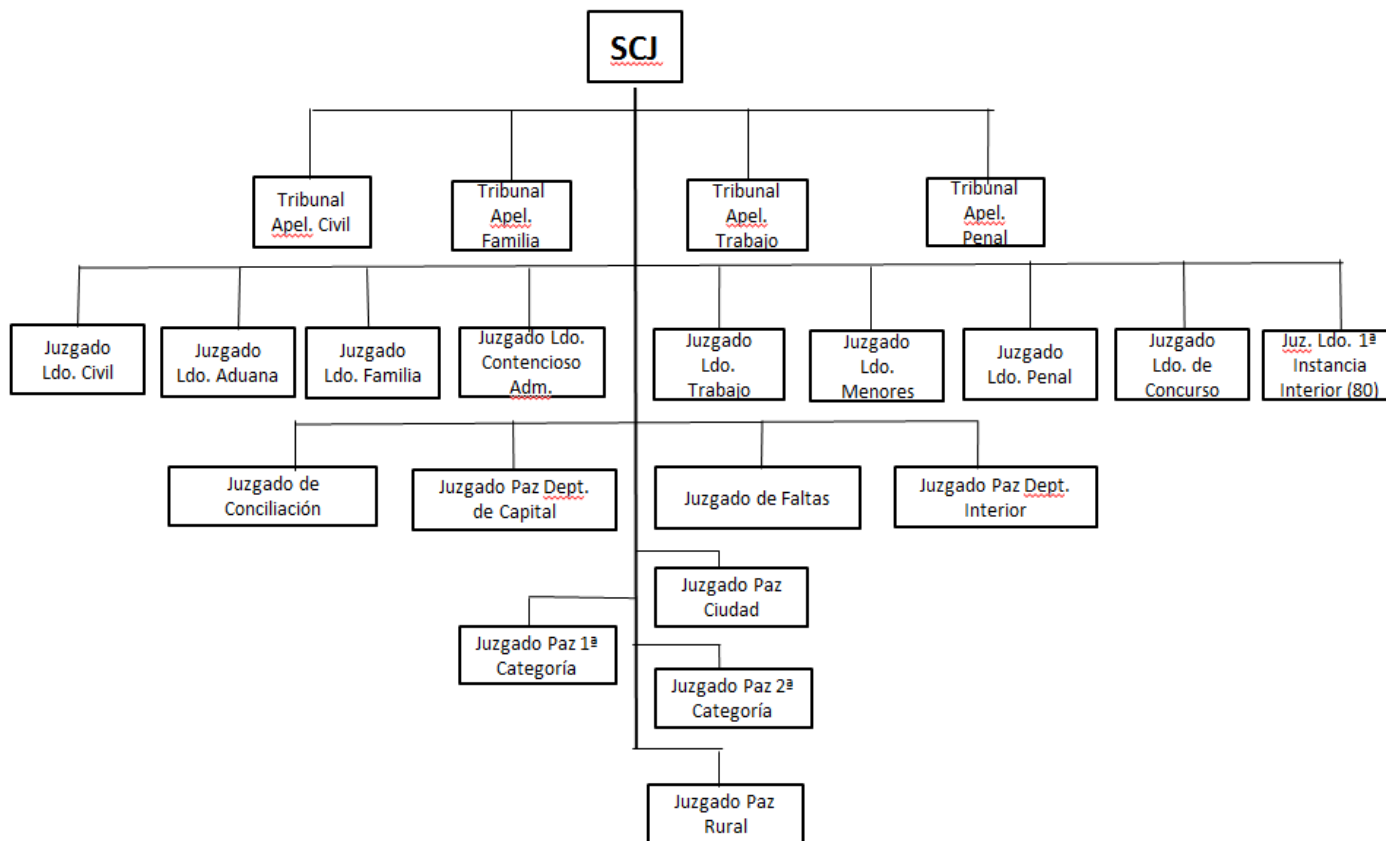
The judiciary in Uruguay, similar to many other jurisdictions, is structured as a pyramid. (See figure 1 below.) Lower courts and tribunals issue decisions, and interested parties are entitled to appeal such decisions to higher courts and tribunals. The Supreme Court of Justice is the highest court and final arbiter in the Uruguayan judicial system. Below the Supreme Court of Justice are the Appellate Tribunals (*Tribunales de Apelación*), which are divided according to the nature of the matters they resolve. Appeals Tribunals issue decisions regarding matters heard by the First Instance Courts (*Juzgados Letrados*), which are also divided in accordance with the nature of the matters being adjudicated. Prior to a matter being heard by the First Instance Courts, however, such matters must first be presented to a Peace Court (*Juzgado de Paz*) or certain other courts, which are the lowest courts in the judicial system.

¹ This chapter was drafted with the support of Picón Seguros y Servicios Financieros (Mrs. Victoria Picón <http://piconseguros.com>).

Estructura Poder Judicial – Suprema Corte de Justicia (2)

Tribunales y Juzgados

(La ubicación de los Tribunales y Juzgados no refleja niveles jerárquicos)



B. Legal Aid

Articles 7, 8 and 254 of the Uruguayan Constitution provide that all Uruguayan citizens shall have access to justice and that legal representation shall be free of charge for indigent individuals who qualify for free legal aid under applicable law. Such legal aid services fall within the guise of Technical Support Services (*Servicios de Apoyo Técnico*) of the Uruguayan judiciary, and include Public Defense services (*Defensoría de Oficio*), which are legal services provided free of charge for certain matters. Public Defense services are divided into two principal categories: (i) Capital City Public Defense Services (*Defensorías de Oficio de la Capital*), located in Montevideo; and (ii) Inland Public Defense Services (*Defensorías de Oficio de Interior*). Additionally, Capital City Public Defense Services offer legal assistance in a wide variety of matters, including (a) criminal proceedings, (b) family and minors proceedings, (c) labor-related proceedings, (d) civil matters and (e) enforcement of court rulings in criminal matters.

Legal assistance for criminal proceedings is provided free of charge regardless of an individual’s financial situation. However, free legal assistance in civil matters is only available to individuals with an income level below the thresholds set forth in Decision number 7.414 (*Acordada 7.414*). Such income thresholds, which vary based on family circumstances, are as follows:

- Any individual who is single, does not have any significant assets, and does not have any dependents, shall be granted free legal assistance if his or her income is not greater than three times the national minimum wage.

- Any individual who is married or has dependents and does not have any significant assets shall be granted free legal assistance if his or her income is not greater than five times the national minimum wage.
- Individuals may not receive free legal assistance regarding inheritance matters or divorce matters (*liquidación de la sociedad conyugal*) in the event that (i) the individual's income is higher than that set forth in paragraphs 1 and 2 above; or (ii) the estate includes assets with a total market value (*valor real en conjunto*) greater than 200 Readjustable Units (*Unidades Reajustables*),² except for inheritance matters where the estate is made up solely of a deceased's dwelling, *provided that* its market value is not greater than 300 Readjustable Units.
- The income thresholds set forth in paragraphs 1, 2 and 3 above shall not apply in the event that there are moral or social reasons that require immediate legal assistance.

Any individual whose income is only slightly above the thresholds set forth in law 7.414 (*Acordada 7.414*) will not get free legal assistance from the Public Defense Services, but is very likely to need such assistance. This becomes especially relevant considering the fact that *Acordada 7.414* sets forth very strict and straightforward rules regarding such threshold, which are not discussed with Public Defense Services' officers.

II. **PRO BONO IN URUGUAY: OPPORTUNITIES AND OTHER CONSIDERATIONS**

A. **Pro Bono Opportunities**

In addition to the Public Defense Services explained above, the Republic University (*Universidad de la República*) offers free legal assistance through its Legal Clinic (*Consultorio Jurídico*), which was established in 1950 as a mandatory internship for law students. Since its inception, the Legal Clinic has expanded to other parts of Uruguay, resulting in the foundation of several District Law Clinics (*Consultorios Jurídicos Barriales*). The University also has an agreement with the Municipality of Montevideo whereby the University supplies staff and the municipality provides the necessary infrastructure. Similar legal offices have been founded throughout other cities in Uruguay as well, including Salto, Paysandú, Bella Unión and Maldonado.

Certain law firms in Uruguay also offer *pro bono* legal assistance. For example, Ferrere Abogados provide, on average, 3,000 hours of *pro bono* services annually. Additionally, Jimenez de Aréchaga, Viana & Brause, another recognized law firm in Uruguay, as part of the firm's *pro bono* program, has added new projects to its roster, including projects for the Ronald McDonald House Charities Association and Teletón centers.

In addition, IELSUR is a nongovernmental, not-for-profit organization that was founded in July 1984 by a group of lawyers to provide litigation and other legal support with regard to human rights' violations that occurred during the civic-military dictatorship period (1973-85). Today, IELSUR continues to fight against human rights violations on a broader scale. IELSUR collaborates with various organizations, including the Children's Rights Committee, ESCR-Net, International Action Network on Small Arms, and the Latin American Coalition against Armed Violence.

B. **Barriers To Pro Bono Work And Other Considerations**

There are a number of potential barriers to *pro bono* work, including:

- Individuals in need of legal assistance (in matters other than criminal proceedings) cannot meet the strict income threshold requirements to qualify for free legal services.
- The provision of *pro bono* services, in a strict sense, is not expressly recognized or regulated by Uruguayan laws (other than Public Defense services), and the Uruguayan government does not provide incentives for further development of *pro bono* services (such as tax-exempt status for NGOs).
- There is a lack of awareness regarding *pro bono* among legal professionals.

² The value of Readjustable Units is published by the Uruguayan Mortgage Bank (*Banco Hipotecario del Uruguay*) annually. As of Jun. 2012, a Readjustable Unit equals 583.21 Uruguayan Pesos (the official currency in Uruguay).

C. *Pro Bono Resources*

1. *Servicio Paz y Justicia*

SERPAJ (*Servicio Paz y Justicia*) is a nongovernmental organization that focuses on the promotion, education and defense of human rights and peace. SERPAJ does not provide direct legal assistance, but rather, organizes conferences and maintains a referral network of attorneys that provide *pro bono* services.

- Address: Joaquín Requena 1642, 11200, Montevideo, Uruguay
Phone: +5982.408.5301
Fax: +5982.408.5701
Website: www.serpaj.org.uy
Email: serpajuy@serpaj.org.uy

2. *Ferrere Abogados*

The law firm Ferrere Abogados dedicates an average of three thousand hours per year to *pro bono* activities. The firm's lawyers assist organizations that contribute to social integration of the community, such as the Foundation Pereira Rossell, "A Roof for my Country," the Logros Foundation and the Foundation of Friends of the Teatro Solís.

- Address: Torre B – Av. Dr. Luis A. de Herrera 1248,
11300, Montevideo, Uruguay
Phone: +5982.623.0000
Website: <http://www.ferrere.com/>

3. *Universidad de la República*

In 1950, the Universidad de la República created the Legal Clinic of the Faculty. The clinic, in addition to its teaching activities, provides free legal assistance to indigent individuals, advising and assisting with court and administrative procedures.

- Address: Edificio anexo 2: Regional Norte, Salto Rivera 1350, Salto, Uruguay
Phone: +4735.9873
Fax: +4733.4816
Website: <http://www.fder.edu.uy/consultorio.html>
Email: sdecano@fder.edu.uy

III. CONCLUSION

Pro bono is still in its infancy in Uruguay but is rapidly growing due to recent international and local crises that have created new challenges and adversities for Uruguayan citizens. Each day more and more law firms and legal practitioners become aware of not only their social responsibilities but also of the positive impact that *pro bono* services can have on society.

Further research, education and funding on *pro bono* matters could provide further advancements in this area and educate legal practitioners regarding the potential social impact and personal and career advancement *pro bono* work can provide. Government support of *pro bono* services could also prove to encourage further involvement with *pro bono* work.

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Pro Bono Practices and Opportunities in Uruguay

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PRO BONO PRACTICES AND OPPORTUNITIES IN VENEZUELA¹

I. LEGAL SERVICES AND THE LEGAL PROFESSION IN VENEZUELA

Venezuela is a developing country and the provision of effective and efficient legal services is not yet fully refined. Below is a discussion of the legal requirements to practice law in Venezuela, as well as an overview of the Venezuelan judiciary and the avenues through which Venezuelan citizens may be eligible to receive free legal services or other legal aid.

A. The Legal Profession

The practice of law in Venezuela requires a legal degree obtained from either a local university or a foreign university, provided such foreign degree is validated by a local university in accordance with Venezuelan law. A key component of a legal education in Venezuela is the professional traineeship requirement. To fulfill this requirement, law students must devote a specified number of hours (as determined by each university) to nonprofit legal matters. To assist students in fulfilling this requirement, Venezuelan Universities have created legal clinics (*Clínicas Jurídicas*) through which law students provide *pro bono* legal services.

Registration with one of the various bar associations existing in Venezuela is required to practice law, as well as participation in the *Instituto de Previsión Social* of Venezuela (a specific social security for lawyers). There are 23 different bar associations, one for each Venezuelan region, and each is governed by its own regulations. All of these bar associations fall under the guise of the federal bar association (*Federación de Colegios de Abogados*).

B. Legal Aid

The Constitution of Venezuela² grants all citizens the right to access Venezuelan judicial institutions to defend their rights and to obtain a judgment resolving the controversy submitted to the court. Such judicial access includes a right to free justice³ for all citizens, which means all citizens have the right to defend their interests in court, even if they have limited economic resources. This right to free justice has a significant impact in Venezuela, where approximately 27.5% of the population lives below the poverty level,⁴ and could not afford to pay for legal services.

The foundation, *Defensa Pública*, a public institution created under the control of the judicial system, has the primary purpose of ensuring effective protection and application of Venezuelan citizens' constitutional right to free access to the legal system. However, the services of *Defensa Pública* are limited to criminal matters only, and these services do not fully cover all of the criminal matters for which its clients need assistance. Furthermore, with regard to civil matters, Venezuelan citizens are typically left to represent and defend themselves, without support from public institutions.

The current political and social climate in Venezuela renders the activities of NGOs a complex and difficult task. In the current environment, NGOs are not able to efficiently or effectively provide services to Venezuelan citizens. For example, although the Constitution of Venezuela recognizes and protects the development of humanitarian activities throughout Venezuela,⁵ the government approved an amendment to the International Cooperation Law in December 2010 (*Ley de Cooperación Internacional*) that created new barriers for NGOs. Specifically, it requires NGOs to register under a controlling public authority and also permits public authorities to collect the funds NGOs receive from a variety of sources, including "inheritances, donations, transfers and other resources received from other governments, international entities, cooperating sources and national or foreign public and private institutions for purposes of supporting cooperation," and to redirect such funds "in accordance with national priorities as determined by the State."⁶ The International Cooperation Law was denounced by

¹ This chapter was drafted with the support of the ProVene foundation.

² CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA [CONST.] published in the OFFICIAL GAZETTE OF VENEZUELA on Dec. 30, 1999.

³ *Id.* at art. 2.

⁴ INSTITUTO NACIONAL DE ESTADÍSTICA DE VENEZUELA, *2011 Poverty Report*. See http://www.ine.gov.ve/index.php?option=com_content&view=category&id=104&Itemid=45#

⁵ CONST., arts. 52, 53, 57, 61, 67 and 68 recognizing the humanitarian activities and their protection.

⁶ INTERNATIONAL CENTER FOR NOT-FOR-PROFIT LAW, <http://www.icnl.org/research/monitor/venezuela.html>.

NGOs and the international press⁷ on the basis that it was effectively diverting funds and resources from NGOs to the government.

II. *PRO BONO* IN VENEZUELA: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

Pro bono services are limited in Venezuela as a result of the political and social climate. Although the Constitution of Venezuela recognizes a right to legal assistance, none of the existing bar associations regulates nor develops *pro bono* activities. The sole organization focused on providing *pro bono* services is ProVene.⁸

ProVene was incorporated in 2009 by legal professionals. Since its inception, young law students, as part of their legal trainee studies, as well as social leaders committed to increasing access to justice for all, have joined forces with ProVene. ProVene provides free legal services to individuals with limited resources for various types of legal proceedings and also promotes a “*pro bono* culture” among Venezuelan law firms. The intent of such *pro bono* culture is to promote and create a group of legal professionals capable of providing a wide variety of free legal services of superior quality.

B. Barriers To *Pro Bono* Work And Other Considerations

The principal barrier to *pro bono* services in Venezuela is a lack of public cooperation, notwithstanding the government’s passing regulations intended to enhance the availability of free access to justice for all. Additionally, minimum fees for legal services are regulated by the government.⁹ Such regulations require prior authorization from the applicable bar association before a law firm or lawyer may provide free legal services.¹⁰ This requirement to obtain prior authorization has a chilling effect on the creation of new *pro bono* organizations, and on new law firms not yet established in Venezuela offering *pro bono* services.

C. *Pro Bono* Resources

1. *Colegio de Abogados de Caracas:* <http://www.ilustrecolegiodeabogadosdecaracas.com/> The Caracas Bar Association can assist Venezuelan citizens with obtaining a lawyer that can assist them with their matters.
2. *Defensa Pública:* www.defensapublica.gob.ve; Email: lopenna@defensapublica.gob.ve
3. *Pro bono Fundación Venezuela (ProVene):* www.provene.org; Email: gbello@provene.org ProVene is the only *pro bono* association offering services throughout Venezuela, and it can help citizens identify lawyers that could provide free legal services.

III. CONCLUSION

The *pro bono* movement is not yet fully developed in Venezuela, despite having a legal system that recognizes a right of free access to justice for all Venezuelan citizens (particularly those with limited financial resources). However, developments in the field of free access to justice and the creation of a network of local and international law firms established in Venezuela that are committed to *pro bono* services are positive indications that further growth in *pro bono* services is forthcoming in the future. Individuals or organizations interested in getting involved with *pro bono* services in Venezuela are encouraged to contact ProVene for information or assistance.

July 2012 *Pro Bono* Practices and Opportunities in Venezuela

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⁷ <http://www.guardian.co.uk/world/2010/dec/22/venezuela-chavez-ngo-foreign-funding>

⁸ <http://www.provene.org/site/>

⁹ Reglamento Interno Nacional de Honorarios Mínimos passed by the Consejo Superior de la Federación de Colegios de Abogados de Venezuela, the 10th and 11th of Nov., 2008.

¹⁰ Reglamento Interno Nacional de Honorarios Mínimos, art. 21.

PRO BONO PRACTICES AND OPPORTUNITIES IN INTERNATIONAL LAW

The scope of individual access to international justice has expanded significantly over the past four decades, transcending its beginnings in the field of human rights law. Individuals may now access international justice systems for a myriad of matters, including international trade regulation, environmental law, immigration and refugee law, and labor law. This rapid expansion and increased activity of international courts and tribunals in recent years has been largely uncoordinated.

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 nonstate actors in vindicating their rights but also to influence the formation of international law and precedent. There are also many opportunities for participating in international *pro bono* beyond litigation, including, for example, preparing research for NGOs or financing charity projects.

I. LEGAL SERVICES AND THE LEGAL PROFESSION: INTERNATIONAL LAW

A. The Legal Profession

There are a wide range of international institutions and tribunals, which can be grouped into the following categories:¹

- Regional human rights bodies (e.g., the Inter-American Court of Human Rights (“**IACHR**”));
- International criminal tribunals (e.g., the International Criminal Tribunal for Rwanda (“**ICTR**”));
- Regional economic agreement courts (e.g., the North American Free Trade Agreement (“**NAFTA**”) Arbitration Panel);
- Inspection panels of intergovernmental organizations (e.g., the World Bank Inspection Panel);
- International claims and compensation bodies (e.g., the Claims Resolution Tribunal for Dormant Accounts in Switzerland);
- International administrative tribunals (e.g., the Administrative Tribunal of the International Labor Organization); and
- Law of the sea tribunals (e.g., the International Tribunal for the Law of the Sea).

These international legal bodies can be further classified as (i) 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)², and (ii) as either treaty regimes or nontreaty regimes. These classifications refer to the instrument through which an international legal body was established and in which its mandate is defined.

An example of a nontreaty 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 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 applicable international body. Furthermore, regulations are often promulgated under such statutes and protocols. Together, these treaties, regulations, resolutions and statutes contain the substantive rights of individuals with regard to such international tribunals, and the procedures that govern the implementation of such substantive rights.

1. Qualifications for Practicing Before International Courts

Both substantive and procedural law and practices vary dramatically from court to court, making it unviable to speak generally of rules, regulations or practices regarding attorneys’

¹ 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).

² The term “international” in this chapter refers to both regional and purely international institutions.

qualifications or fee structures. As one commentator has stated, “[t]he regulation of counsel who practice before international tribunals, particularly public law tribunals, is almost a complete vacuum.”³ 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 Court of Justice of the European Union, where the qualifications required to serve as representative are determined by the national law of the advocate.

Criminal tribunals are distinct, in that the statutes of the tribunals provide for legal representation as a fundamental 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.⁴ For example the Rome Statute of International Criminal Court provides that:

[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.⁵

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 has been argued that the very legitimacy of an international criminal tribunal hinges, in part, on the employment and involvement of local attorneys.

2. Fee Structures

Similar to the 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.⁶ Generally, criminal defense attorneys’ fees are set by the courts’ Registry. The standard hourly rate at the International Criminal Tribunal for the Former Yugoslavia 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. Conversely, in civil proceedings, such as petitions to the IACHR, fees are usually not provided by the courts. Representation is often provided by NGOs or on a *pro bono* basis. The Court, in its discretion, may award payment of fees, which are typically low (between \$100 and \$2,000 per case).⁷

B. Legal Aid

Legal assistance is sometimes provided for indigent individuals to ensure the availability of a legal defense for such people. Legal aid is granted differently in the various international jurisdictions. Its amount and conditions are often regulated in the statutes of the various courts. For purposes of this

³ 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.”)

⁴ See, e.g., arts. 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.

⁵ Rule 22 of the Rules of Procedure and Evidence.

⁶ See T. Deen, *UN War Crimes Courts Embroiled in Corruption Charges*, Inter Press Service (Mar. 11, 2002).

⁷ 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.

article, the legal aid systems for the European Court of Human Rights, the Court of Justice of the European Union and the International Criminal Court are discussed.

1. The European Court of Human Rights⁸

The Council of Europe has the most extensive regional human rights system. The institutions primarily entrusted with enforcement of the European Convention on Human Rights (the “Convention”) are the the European Court of Human Rights (previously defined as “ECHR”) and the Committee of Ministers of the Council of Europe, which oversees the enforcement of the ECHR’s judgments.

The ECHR has jurisdiction over 47 contracting States (including Turkey, Russia and the Ukraine), with regard to 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 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 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.

An applicant may be represented by anyone of his or her choice approved by the Court.⁹

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, to the greatest extent possible, the situation existing before the breach. The Court may award both pecuniary and nonpecuniary damages as well as reasonable and necessary legal costs.¹⁰ Final judgments of the ECHR are binding on the respondent State. Legal aid is provided by the ECHR only in exceptional cases, leaving the burden of subsidized legal assistance to States.

2. The Court of Justice of the European Union

The Lisbon Treaty, entered into force on December 1, 2009, grants the Charter of Fundamental Rights of the European Union (the “**Charter**”) legally binding status.¹¹ The Court of Justice of the European Union has jurisdiction over all matters governed by the substantive law of the Treaties, which includes the fundamental rights guaranteed by the Charter. The Court of Justice of the European Union may grant legal aid either at the request of an applicant or on its own initiative.¹² Legal aid is based on means, and eligibility is determined based on whether an applicant would be entitled to legal aid in his or her country. The fees granted are typically minimal, and are deemed to be only a “contribution” to the costs. However, the fees usually provide for travel and out-of-pocket expenses, and if an application succeeds, the Court usually awards reasonable fees and expenses to the applicant’s lawyer as well.

3. The International Criminal Court

In accordance with regulation 83, paragraph 1, of the Regulations of the Court, legal assistance paid by the Court shall cover all costs reasonably necessary for an effective and efficient defense, as determined by the Registrar, including the remuneration of counsel, his or her

⁸ This section was drafted with the support of Vincent Berger, Jurisconsult, European Court of Human Rights of the Council of Europe.

⁹ Rule 36 of the Court.

¹⁰ The European Convention on Human Rights and Fundamental Freedoms of 1950, art. 41.

¹¹ 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.”

¹² Rule 76 and Additional Rules 4 & 5 of the Court (also specifying the means and merits tests for legal aid). The Court’s Registrar is in charge of obtaining such legal services. In preliminary ruling 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 Court of Justice, legal aid must be extended to cover the proceedings at the Court of Justice.

assistants, expenditures in relation to the gathering of evidence, administrative costs, translation and interpretation costs, travel costs and daily subsistence allowances. The Registrar then decides within one month of the submission of an application whether legal assistance should be granted, partially or fully, after having determined the applicant's means.

II. *PRO BONO* INTERNATIONALLY: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. *Pro Bono* Opportunities

Generally, *pro bono* representation before international bodies is provided in one of three capacities:

- Representation of individuals or nonstate entities, such as NGOs, before international institutions
- Representation of underdeveloped countries in disputes between States (e.g., in relation to requests for advisory opinions from the International Court of Justice or disputes brought before the World Trade Organization Arbitration Panel)
- Intervention as *amicus curiae*

Within this framework, three significant opportunities for law firms wishing to increase access to *pro bono* in international law are: (1) partnering with NGOs or other organizations such as law school clinics; (2) partnering with UN agencies; and (3) establishing working relationships with Registrars of the various international courts and tribunals. Each is described in further detail below.

1. Partnering with NGOs

Many international NGOs have well-established networks and experience with regard to representing individuals in international bodies. Still, these NGOs may be understaffed, underbudgeted or may simply lack expertise in a certain area of law, and may be happy to cooperate with law firms that 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.¹³ Often these NGOs have a legal department, and contacting the heads of such departments may be an effective first step for individuals or organizations desiring to get involved in international *pro bono*. National NGOs doing international work (such as the American ACLU and other leading civil rights organizations) can be equally fruitful partnerships to explore.

2. Partnering with UN Agencies

A number of UN agencies have corporate partner programs and NGO partner programs.¹⁴ In fact, the partnership model is familiar and encouraged. UN agencies that may be particularly relevant to law firms interested in forming partnerships for international *pro bono* legal services include the United Nations Development Program (“UNDP”), the United Nations Human Rights Commission (“UNHRC”), the United Nations International Children’s Fund (“UNICEF”) and the United Nations High Commissioner for Refugees (“UNHCR”).

3. 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 with influence over policy, regulation, and 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 attorney qualification requirements. Because Registrars also keep rosters of

¹³ 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 produce a source book on access to justice in Central and Eastern Europe, available at <http://www.interights.org/document/69/index.html>; 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://pilnet.org/component/docman/doc_download/48-access-to-justice-in-central-and-eastern-europe-country.html

¹⁴ See e.g., UNHCR’s partners/donors, <http://www.unhcr.ch/cgi-bin/tehis/vtx/partners>.

eligible attorneys, formally applying to be included on these rosters should be a first step for those wishing to volunteer their services. Similarly, to represent petitioners appearing before the ICJ, one could contact the Office of Legal Affairs at the UN Secretariat.

B. Barriers To *Pro Bono* Work And Other Considerations

There are a number of potential barriers facing lawyers who desire to work with NGOs, UN bodies and international Courts. With regard to NGOs, lawyers should be cognizant that an NGO's ability to secure public and private funding is often contingent upon achieving high-profile successes for the organization. As such, NGOs may be weary of partnering and sharing the limelight with law firms. However, this issue may be easily addressed by the lawyer or law firm permitting the NGO to be spotlighted in the applicable *pro bono* representation.

Many UN bodies are headquartered in New York. Contacting these headquarters could be time consuming, given the bureaucratic nature of the UN, and not appropriate as the needs of any given program may vary from country to country. These barriers could be overcome by contacting 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.

Finally, requirements of individual tribunals or courts may also act as an impediment for lawyers or law firms seeking international *pro bono* opportunities. For example, certain regional Courts require individuals practicing before them to be registered in a specific territory. The Rules of the European Court of Human Rights require that a representative acting on behalf of an applicant resides in, and is authorized to practice in, one of the 47 Contracting States.¹⁵ However, it is worth noting that sometimes these same tribunals and courts are flexible with such practice requirements.

C. *Pro Bono* Resources

Working closely with NGOs, law firms can undertake a wide array of interesting international work and are not limited solely to litigation matters. Various international NGOs that are active in different areas such as the environment, microfinance or human rights, are open to partnering with law firms seeking to get involved with *pro bono* work. Set forth below are some specific examples of law firms that have partnered with NGOs or other organizations to provide international *pro bono* services.

Baker & McKenzie and Covington & Burling have worked with the Public International Law & Policy Group ("PILPG")¹⁶, 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 providing assistance regarding Kosovo's independence from Serbia. In such a project, 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 to 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 evaluated 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 indigent populations, particularly women, to start or expand businesses. For example, Cleary Gottlieb Steen & Hamilton has provided counsel to the Nobel Prize-winning Grameen Foundation,¹⁷ which operates in Bangladesh. Similarly, Covington has worked with the Foundation for International Community Assistance,¹⁸ an

¹⁵ Rules of Court, art. 36 (3).

¹⁶ PILPG provides legal assistance to States involved in peace negotiations and in war crimes prosecution. See <http://publicinternationalallawandpolicygroup.org/>.

¹⁷ Grameen Foundation is a nonprofit organization providing access to microfinance and technology services. See <http://www.grameenfoundation.org/>.

¹⁸ FINCA aims at providing financial services to the world's poorest entrepreneurs to help them develop the economy locally. See <http://www.finca.org/site/c.6f1GIXMFJnJ0H/b.6088193/k.BE5D/Home.htm>.

organization that makes micro-loans to small groups of individuals, usually women, in villages in underdeveloped countries. Covington developed a plan and appropriate 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,¹⁹ 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's spending that amount on tropical forest conservation programs.

Wilson Sonsini Goodrich & Rosati advised the Medicines Patent Pool²⁰ with respect to its first-ever agreement with a pharmaceutical company to grant licenses to generic drug manufacturers for several products designed to treat HIV and Hepatitis B. The agreement, finalized in 2011, is the first voluntary license agreement between the Medicines Patent Pool and a pharmaceutical company to improve access to medicine in developing countries.

In 2009, an international team of Allen & Overy's attorneys completed research for the charity, Missing Children Europe,²¹ to find ways to prevent legal loopholes obstructing the prosecution of individuals selling child pornography on the Internet. This recent research has contributed to the launch of the European Financial Coalition, supported by the European Commission, which brings together finance companies, internet service providers, law enforcement agencies and leading NGOs, as well as Allen & Overy as an ongoing advisory member.

III. 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 provides a sense of global teamwork across offices and 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. Attorneys and organizations interested in getting involved with *pro bono* litigation or nonlitigation work should partner with Country offices of UN agencies, with NGOs and/or establish working relationships with Registrars. Additionally, the *Pro Bono* Institute and other similar associations, such as the International Bar Association,²² are also good resources for those seeking guidance regarding avenues for providing *pro bono* services at the international level.

July 2012

Pro Bono Practices and Opportunities in International Law

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¹⁹ The Nature Conservancy is a charitable environmental organization that works to preserve nature. See <http://www.nature.org/>.

²⁰ The Medicines Patent Pool's goal is to improve the health of people living in low- and middle-income countries by negotiating with patent holders to share their HIV medicines, patents with the pool. See <http://www.medicinespatentpool.org/>.

²¹ Missing Children Europe is an umbrella organization representing 28 NGOs in Europe. Each of these organizations is active in cases of missing and sexually exploited children. See <http://www.missingchildreneurope.eu/>.

²² IBA aims at bringing together the global community of professionals involved in pro bono legal work. See <http://www.internationalprobono.com/about/>.

LEGAL PROFESSIONAL PRIVILEGE IN THE EUROPEAN UNION

This chapter discusses whether and to what extent legal professional privilege (“LPP”) under European Union law is an obstacle for in-house counsel to be involved in *pro bono* work in Europe.¹ LPP is a special status recognized as correspondence exchanged with a legal advisor. A document protected by LPP cannot be seized by a government authority, and its content cannot be used as evidence in proceedings. In the now well-known *Akzo* judgment, the Court of Justice of the European Union (the “**Court of Justice**”) confirmed that in-house counsel are in a fundamentally different position from external lawyers and are not sufficiently independent for their communications to benefit from LPP.² The scope and limitations of the *Akzo* judgment are discussed in Sections I and II. For reasons explained below, this chapter also briefly touches upon the issue of LPP in the national EU Member States (Section III) and provides some practical suggestions for dealing with LPP under EU law (Section IV).

I. OUTLINE OF LEGAL PROFESSIONAL PRIVILEGE UNDER EUROPEAN UNION LAW

The main features of LPP under EU law – as set out in the judgment of the Court of Justice in *AM&S*³ and confirmed in *Akzo* – are the following:

- LPP only covers written communications exchanged between a company and an independent lawyer (“**outside lawyer**”); i.e., a lawyer, registered with the Bar of an EEA Member State, who is not bound to the client by a relationship of employment.
- LPP applies both to communications exchanged with an outside lawyer, and to internal notes circulated within a company that merely reflect the content of legal advice given by an outside lawyer,⁴ *provided that* they are for the purposes and in the interest of the exercise of the rights of defense and may have a relationship to the subject matter of any subsequent procedure under Articles 101 and 102 of the Treaty on the Functioning of the EU (“**TFEU**”).⁵
- A refusal to produce a certain document to the European Commission (the “**Commission**”) on the grounds that it is covered by LPP, must be supported by evidence demonstrating that LPP protection is actually applicable. Parties may submit their claims to the so-called Hearing Officer regarding documents requested by, but withheld from, the Commission on the basis of LPP.

II. SCOPE AND LIMITATIONS OF LEGAL PROFESSIONAL PRIVILEGE UNDER EUROPEAN LAW

It follows from the bullet points above that the scope of LPP as defined by the EU courts (“**EU LPP**”) is limited to written communications between an independent lawyer and his/her client after the initiation of a *Commission administrative procedure* – most notably: Commission antitrust investigations – and which are related to the procedure.

This means that the scope of and room for EU LPP are actually quite narrow; e.g., EU LPP is limited to Commission procedures; it has no impact on a company’s right to withhold privileged documents from private parties during litigation or other government authorities; and in-house counsel cannot be compelled to testify as to privileged matters.

Pro bono matters will typically not involve issues relating to Commission administrative procedures (such as Commission antitrust investigation), and as such the risks that work products may be seized by the Commission is not normally a problem; although admittedly it may not always be easy or sometimes possible at all to identify whether work done will become subject to a Commission investigation in the future.

¹ Although their situation regarding EU LPP may be similar to in-house counsel, this chapter does not discuss the situation of external lawyers not qualified in the EEA. For reference, the EEA consists of the following countries: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom, Iceland, Liechtenstein, and Norway.

² Case C-550/07 P, *Akzo Nobel Chemicals and Akcros Chemicals v. Commission*, 2010 E.C.R. I-8301.

³ Case 155/79, *AM&S Europe v. Commission*, 1982 E.C.R. 1575.

⁴ Case T-30/89R, *Hilti v. Commission*, 1990 E.C.R. II-163 (Order).

⁵ Articles 101 and 102 of TFEU relate to antitrust matters (cartels and abuse of dominance cases).

Given the limitations of EU LPP, *post Akzo*, national LPP rules will continue to be relevant in the majority of cases.

III. DIFFERENCES REGARDING LEGAL PROFESSIONAL PRIVILEGE IN THE NATIONAL EUROPEAN UNION MEMBER STATES

The protection of EU LPP may differ substantially from LPP in other jurisdictions.⁶ Companies and in-house counsel need to be aware of these possible differences and should understand the risks they are exposed to in their jurisdictions of operation. There are commonalities but also significant discrepancies between the scope of LPP under the EU and under national laws. In general terms, the scope of EU LPP is narrower than LPP under national legislation/regulation. This chapter focuses on two possible significant differences between EU LPP and LPP under national legislation/regulation.

A. Legal Advice From In-House Counsel

As explained above, *Akzo* reaffirmed the rule – based on the judgment of the Court of Justice in *AM&S* – that EU LPP applies only to communications exchanged with independent lawyers, i.e., legal advisers registered with the Bar of an EEA Member State and not bound to their clients by a relationship of employment. But the Court of Justice did not consider the impact of its ruling in the context of parallel investigations by Member States.⁷

While the general rule is that the LPP protection offered by Member states does not extend to in-house counsel in the case of an investigation by a national authority,⁸ there are some exceptions.⁹ In Ireland and the UK, in-house counsel benefit from the same protection as outside counsel. In that sense, the UK's system is similar to the U.S. attorney-client privilege. Countries such as Poland, Portugal and the Netherlands recognize LPP protection to communications with in-house counsel provided they are admitted to the Bar. In other countries such as Greece, in-house counsel are considered to be sufficiently independent and therefore benefit from the LPP protection.

B. Correspondence, Work Products, And Other Situations Covered

As a result of the *Akzo* judgment, the scope of EU LPP as it relates to in-house department work product is now limited to circumstances where:

- The work product was created for the exclusive purpose of seeking legal advice from an independent EEA qualified outside lawyer in relation to the company's rights of defense¹⁰ or merely reproduces the text or the content of legal advice given (in writing or orally) by an EEA qualified outside lawyer.
- The company is subject to an investigation by those national authorities which, unlike the European Commission, respect LPP as it relates to in-house generated documents.

EU LPP does not extend to preexisting documents (e.g., internal communications among executives on business matters, notes of business meetings, commercial documents) and thus does not concern original internal business documents, even if they have been selected and copied in response to a

⁶ For instance, the U.S. attorney-client privilege applies equally to in-house counsel. *See, e.g.*, J. Brady Dugan, Jordan W. Cowman & Allison Walsh Sheedy, NEGOTIATING THE PRIVILEGE MINEFIELD: SOME DIFFERENCES BETWEEN ATTORNEY-CLIENT PRIVILEGE IN THE U.S. AND EUROPE, 6 STATE BAR OF TEXAS CORPORATE COUNSEL SECTION NEWSLETTER, (2011), with a reference to *United States v. United Shoe Machinery*, 89 F. Supp. 357, 360 (D. Mass. 1950) (“On the record as it now stands, the apparent factual differences between these house counsel and outside counsel are that the former are paid annual salaries, occupy offices in the corporation's buildings, and are employees rather than independent contractors. These are not sufficient differences to distinguish the two types of counsel for purposes of the attorney-client privilege.”).

⁷ There have been cases of parallel investigations in the past; e.g., the so-called *Marine Hoses* investigation where the UK's OFT, the Commission and the U.S. DOJ have coordinated their actions, and carried out contemporaneous on-site inspections. There are likely to be more cases of this nature in the future, particularly if Member States expand the scope of criminal sanctions for infringements of antitrust laws.

⁸ Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Italy, Latvia, Luxembourg, Romania, Slovakia, Slovenia, Spain, Sweden.

⁹ Cyprus (if admitted to the Bar), Greece, Ireland, The Netherlands (if admitted to the Bar), Poland (if admitted to the Bar), Portugal (if admitted to the Bar), and the UK.

¹⁰ As long as these two conditions are met, EU LPP can be claimed for working documents, summaries of discussions or meetings, and handwritten notes, even if these documents were not sent or were not intended to be sent to an outside lawyer.

request by external counsel who require them in order to provide legal advice on matters that may have a relationship to the subject matter of a subsequent procedure. It is however unclear whether LPP also extends to collections of copies of such preexisting internal documents made for the purpose of obtaining legal advice from an independent lawyer that are attached as an integral part of “preparatory documents.” In the absence of precise indications from either the EU Courts or the Commission on this specific issue, a cautious approach should be adopted in the day-to-day approach to these issues. Indeed, the Commission’s current approach to preexisting documents that are annexed to legally privileged memoranda is not to consider them covered by LPP.

While the approach taken in a number of EU Member States is consistent with that of the EU,¹¹ this is not always the case. Some countries extend LPP protection to: (a) correspondence that is not made for the purposes and in the interests of the client’s right of defense (e.g., Ireland and the UK); (b) communications with lawyers established outside the EEA area (e.g., The Netherlands, and the UK); and (c) oral communications (e.g., Lithuania, Malta, and Portugal).¹² On the other hand, some EU Member States do not recognize LPP in certain situations at all (e.g., Austria, and Estonia in the case of national antitrust investigations).

IV. PRACTICAL SUGGESTIONS FOR DEALING WITH LEGAL PROFESSIONAL PRIVILEGE UNDER EUROPEAN UNION LAW

The *Akzo* ruling highlights the need for companies to assess the practical measures they should take to maintain confidentiality over communications, and the circumstances in which external, rather than in-house, counsel should be instructed. As noted, *pro bono* matters normally do not become subject to Commission investigations, and as such the risks that work products may be seized by the Commission is not normally a problem. This Section sets out some basic practical suggestions to deal with issues relating to LPP.

A. Increase In-House Counsel’s Awareness

The limitations on applicability of EU LPP to in-house counsel should not prevent in-house counsel from functioning and providing day-to-day legal advice to the company and its employees, or from providing assistance in *pro bono* matters in Europe. In-house counsel should simply be aware that in a Commission proceeding their written documents may be disclosed and Commission inspectors may come looking for them. As a result, when advice is required to be in writing, in-house counsel should be careful to use precise and accurate language that is difficult to misinterpret or quote out of context.

B. Identify Documents

Internal documents covered by LPP should be immediately and unambiguously identifiable as having been prepared exclusively in order to obtain legal advice from an outside lawyer in connection with matters that may have a relationship to the subject matter of a foreseeable subsequent procedure.

It should also be kept in mind that during unannounced inspections, the first port of call for officials of the Commission and Member State authorities is the place where e-mails and documents are stored on the central server, as well as the laptops and other electronic storage devices of individual executives. Electronic correspondence is therefore treated in exactly the same way as paper correspondence and will require particular attention given the extent of electronic communications in most companies and organizations today.

All legal correspondence dealing with legal-sensitive issues should be collected in separate folders and ideally kept in the office of the in-house counsel. Folders should be labeled as “*Legally Privileged – Documents used for consultation with outside lawyer.*” The same recommendation applies to e-mails and electronic folders, so that they can be omitted from an electronic search. If preexisting legally sensitive documents are organized and copied for use by outside counsel, and if a copy of that collection must remain with the company, the discussions with outside lawyers should be recorded by way of a brief note, mentioning the name of the outside lawyer involved, the date of the discussion and the topic (in general terms). This brief note should be kept in the same folder as each of the

¹¹ Following are some countries that in the case of a national antitrust investigation have an approach regarding LPP similar to the EU: Belgium, Finland, France, Hungary, Italy, Latvia, Luxembourg, Romania, Slovakia, Slovenia, and Spain.

¹² Similarly, the U.S. client-attorney privilege is also extended to oral communications.

documents/materials discussed. Finally, legal documents on sensitive issues should have limited distribution within the company.

V. CONCLUSION

The *Akzo* ruling is limited to investigations – most notably antitrust investigations – carried out by the Commission. Most *pro bono* projects will not involve issues relating to these investigations, and as such *Akzo* is not normally relevant and in fact does not generally form an obstacle to *pro bono* work in Europe. One would have to take into consideration the LPP rules in the relevant national EU Member State. Even where *pro bono* work involves some possible elements of Commission investigations this should not discourage in-house counsel from providing assistance. Awareness that correspondence and work products may possibly be seized by the Commission, and awareness of the matters for which outside counsel may need to be involved, substantially lowers any possible future problems.

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Legal Professional Privilege in the European Union

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