

# ***Pro Bono Practices and Opportunities in Israel***

## ***Excerpt from: A Survey of Pro Bono Practices and Opportunities in Selected Jurisdictions***

September 2010

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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.<sup>1</sup>

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.<sup>2</sup>

## I. *Legal Services and the Legal Profession in Israel*

The Israel Bar Association Act provides that "the Bar Association is entitled, *inter alia*, to provide legal relief to those of limited means."<sup>3</sup> *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.<sup>4</sup>

### A. Legal Aid

Today the term "legal aid" is more prevalent in Israeli legal discourse than the term "*pro bono*." Lawyers usually refer to one of three categories of no-fee or reduced-fee services as falling under the concept of legal aid:

1. State-sponsored legal aid, which exists in two forms. One is the Legal Aid Bureau of the Ministry of Justice, which is charged with the administration of legal aid in civil matters, such as family and labor law and social benefit litigation.<sup>5</sup> The other

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<sup>1</sup> N. Ziv, *The Legal Profession: Looking Backward: Combining Professionalism, Nation Building and Public Service: The Professional Project of the Israeli Bar 1928 – 2002*, 71 Fordham L. Rev. 1621 at 1623 (2003).

<sup>2</sup> *Id.*

<sup>3</sup> Israel Bar Association Act 1961 section 3(2).

<sup>4</sup> 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.

<sup>5</sup> Legal Aid Act 1972 and Legal Aid Regulation 1973. In 2009, more than 60,000 people applied to the Legal Aid Department at the Ministry of Justice, which provided legal representation in more than 180,000 legal proceedings. Ministry of Justice, Israel, *Functions of the Legal Aid Department*, <http://www.justice.gov.il/NR/exeres/0DE80AAC-B813-4C41-80E6-4235922F02BE,frameless.htm?NRMODE=Published> (last visited Sept. 28, 2010).

is the Office of the Public Defender (OPD), which is charged with providing legal aid in criminal cases;

2. Legal aid provided by non-profit organizations and NGOs.<sup>6</sup> Examples of leading NGOs that provide legal aid include ACRI (the Association for Civil Rights in Israel); *Adalah* (the Legal Center for Arab Minority Rights in Israel); *Kav LaOved* (Worker's Hotline); and *Naamat* (Israel's Working Women's Organization); or
3. Legal services provided by private-sector attorneys. The more than 2,000 attorneys who participate in the Israeli Bar Association's *pro bono* project<sup>7</sup> and over 900 registered with the OPD<sup>8</sup> are an indication of the private sector's capacity and willingness to provide legal aid.

Civil legal aid is governed by the Legal Aid Act and the Legal Aid Regulations.<sup>9</sup> 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:<sup>10</sup>

1. The legal issue must pertain to one of the following areas of law: matters of personal status; prosecution or defense of suits related to rights to dwelling-places; fiscal matters (*e.g.*, bankruptcy); civil torts; matters in the competence of the Labor Courts; suits filed in accordance with amendments concerning pension rights, grants, rehabilitation, and other rights of the disabled and Holocaust survivors; all suits involving the rights of demobilized soldiers; suits involving the Law of Return and Citizenship and Population Registry Laws; representation before forced hospitalization committees under the Treatment of Mental Patients Law (Amend. No. 5); representation of victims of human trafficking; and registration of businesses, trades, or professions.<sup>11</sup> 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.<sup>12</sup>

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<sup>6</sup> 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.

<sup>7</sup> 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](http://www.israelbar.org.il/english_inner.asp?pgId=75176&catId=372) (last visited Oct. 4, 2010).

<sup>8</sup> Ministry of Justice, Israel, *Functions of the Legal Aid Department*, *supra* note 5.

<sup>9</sup> Legal Aid Act 1972 and Legal Aid Regulation 1973, respectively.

<sup>10</sup> Legal Aid Act 1972 and Legal Aid Regulation 1973.

<sup>11</sup> Ministry of Justice, Israel, *What are the Conditions for Granting Legal Aid?*, <http://www.justice.gov.il/MOJEng/Siuamishpati/Resources+Center/TnaimLekabaltSiyua.htm> (last visited Oct. 4, 2010).

<sup>12</sup> 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

2. The petitioner must meet two economic criteria: (a) an income threshold—total pre-tax earnings may not exceed 2/3 of the average income for a family of three, with increases of 6% for each additional family member; and (b) a property ownership threshold—available funds from property may not exceed three times the average income mentioned above, with an exclusion for one private residence. In social security or family matters, economic eligibility criteria are modified or waived.
  3. The claim must have legal merit.<sup>13</sup>
- B. The Israel Bar Association *Pro Bono* Project (Sahar Mitzvah)

In addition to the state-sponsored civil legal aid system, the Bar Association, as part of its reform in recent years, has taken a leadership position with respect to the promotion of a *pro bono* culture. In 1999, shortly after a change in the Bar Association's elected leadership, a special task force was appointed by the Bar Association's chair to prepare a platform for a comprehensive *pro bono* initiative. The plan met with opposition from the Bar Association's Central Committee, which argued that *pro bono* work might constitute unfair competition. Despite these objections, in April of 2002 the Central Committee approved the *Sahar Mitzvah* program. The mission of *Sahar Mitzvah* was to "substantially expand accessibility to the justice system and provide legal aid to those who cannot afford to pay for legal services."<sup>14</sup>

As part of the *Sahar Mitzvah* program, the Bar Association appealed to all members of the Bar to join the program. It launched a media campaign aimed at fostering public awareness of the new initiative. It also created a database of volunteer lawyers, classified by geographical area, type of voluntary work, and area of specialization. To date, the pool of volunteers includes approximately 2,000 lawyers in addition to law students nationwide.

Two kinds of legal aid are provided under the program. One consists of initial counseling and guidance offered in 43 help centers located throughout the country. The primary aim of the centers is to guide petitioners and empower them to independently pursue their claims and assert their rights *pro se*. This service is provided at no cost to the petitioner and with no eligibility threshold. The other form of assistance provides legal representation before judicial tribunals. In order to be eligible for this form of assistance, the petitioner must meet a set of eligibility requirements.

While run exclusively by the Bar Association, the eligibility threshold of the *Sahar Mitzvah* for representation before judicial tribunals is designed to complement the Ministry of Justice legal aid program. As such, the Bar Association will not provide legal aid to a petitioner who is eligible for state-sponsored legal aid, other than in emergency situations. The *Sahar Mitzvah* eligibility test consists of two components: economic eligibility and substantive eligibility. The economic threshold allows a petitioner to earn 18% more than the levels allowed by the Ministry of Justice described above. This means a family of up to 3 persons whose earnings total 67%-85% of the national average will be eligible for legal aid provided by the Bar

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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.

<sup>13</sup> Legal Aid Law of 1972, Section 4.

<sup>14</sup> 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](http://www.israelbar.org.il/english_inner.asp?pgId=75176&catId=372) (last visited Oct. 4, 2010).

Association, whereas earnings of less than 67% mean a petitioner will be referred to the Ministry of Justice program. There is also a property ownership threshold: in order to qualify for legal aid, the petitioner must not own more than one private residence and one car. In addition, the petitioner must not have available funds exceeding ten times the national average income.

### C. Public Defense Reform

In 1995, comprehensive legislation was passed establishing the Office of the Public Defender (“OPD”) and expanding the right to counsel in criminal cases. The Public Defender Act expanded the right of public defense to indigent defendants charged with crimes carrying a maximum prison term of five or more years. The law also extended the right of a publicly funded defense counsel to indigent detainees at bail hearings. Like the Bar Association’s civil initiative, this reform also met with objections from members who feared that the public defender would dominate the market for criminal defense.<sup>15</sup>

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.<sup>16</sup> In addition to attorneys affiliated with or commissioned by the OPD, some private criminal defense attorneys provide *ad hoc pro bono* services at their discretion.<sup>17</sup>

### D. Non-Profit and Private Sector Legal Aid Initiatives

Since 1998, there has been a surge in the provision of legal aid. This increase is attributed to the 20% rise in the general population resulting from the vast wave of immigration from the former Soviet Union and Ethiopia in the early 1990s and is also seen as a response to Israel’s severe economic downturn in recent years. During the same period, however, public funding has constantly dwindled. These and other factors create a growing need for legal aid services that exceed the capacities of both the private and the public sectors.<sup>18</sup>

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.

1. *Naamat* (Israel’s Working Women’s Organization) operates bureaus providing legal counseling on issues such as divorce and violence against women, assists in

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<sup>15</sup> 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).

<sup>16</sup> Ministry of Justice, Israel, *A Little History*, <http://www.justice.gov.il/MOJHeb/SanegoriaZiborit/Odot/History.htm> (last visited Oct. 10, 2010) (in Hebrew).

<sup>17</sup> No official numbers are available to ascertain the scope of this type of *pro bono* criminal defense.

<sup>18</sup> See M. Hacoen, “Building a Rights-Based Framework for Legal Aid in Israel” in *Justice Initiatives* 51 (a publication of the Open Justice Initiative) (2004) available at: [http://www.soros.org/initiatives/justice/focus/criminal\\_justice/articles\\_publications/publications/justice\\_20040225](http://www.soros.org/initiatives/justice/focus/criminal_justice/articles_publications/publications/justice_20040225)

representation in divorce proceedings, and advocates for legislation promoting women's rights.

2. The Association for Support and Defense of Bedouin Rights in Israel provides initial legal advice and participates in petitions to the High Court of Justice on issues pertaining to "unrecognized villages" and the right to education.
3. The Clinical Legal Education Programs of Tel Aviv University Faculty of Law offer clinics on the topics of human rights, criminal justice, social welfare law, refugee rights, environmental justice, Jaffa community law, and street law.
4. *Al Haq* provides legal consultations on human rights violations such as restrictions on travel, confiscation of identity cards, and withholding of licenses and other permits, as well as liaisons with Israeli authorities in the Palestinian territories.
5. The Israel Union for Environmental Defense provides legal guidance on environmental issues, advice on environmental planning, and assistance to community groups to structure legal responses to environmental threats.
6. The Israel Religious Action Center is the public and legal advocacy arm of the Reform Movement in Israel and promotes religious tolerance, equality, and social justice through legislative advocacy and petitions to the High Court of Justice on issues such as conversion, medicine, *halacha* (Jewish law), rabbinical courts, and the right to marry.

Multinational law firms, to this point, generally have not engaged in *pro bono* initiatives in Israel ("multinational law firms" in this context excludes Israeli law firms with offices or affiliates overseas). The firm of Kelley Drye & Warren represented an elderly American now living in Israel after his Retirement Insurance Benefits were reduced by the Social Security Administration on the basis of his receipt of an Old Age Allowance from Israel.<sup>19</sup> However, this might better be seen as an American *pro bono* case, whose recipient happened to be living in Israel. The firm Mintz Levin Cohn Ferris Glovsky & Popeo provides *pro bono* legal services to Tmura, a not-for-profit organization focused on education and other youth initiatives and established by Israeli venture capital and high tech leaders. Mintz Levin offers, on behalf of Tmura, *pro bono* legal support to U.S.-registered companies that are interested in becoming donors to Tmura, helping them through whatever legal difficulties may arise in the donation process.<sup>20</sup> However, this initiative might not be seen as truly Israeli *pro bono* either, as the direct recipients are American companies.

#### E. Cause Lawyering

Cause lawyering developed as a distinct specialization some twenty years prior to the 2002 Bar Association initiative. The first issues tackled by practitioners focusing on social causes were focused almost exclusively on human rights: freedom of expression, freedom of movement, and 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

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<sup>19</sup> *KDW Obtains Social Security Benefits for Pro Bono Client in Israel*, Press Release, August 1, 2004, available at: [http://www.kelleydrye.com/news/pro\\_bono/0015](http://www.kelleydrye.com/news/pro_bono/0015).

<sup>20</sup> See, generally Mintz Levin, Israel Business Practices, *Commitment to the Community*, [http://www.mintz.com/practices/17/Israel\\_Business](http://www.mintz.com/practices/17/Israel_Business).

nationality. Today it includes many additional areas, such as poverty law, social and economic rights, and environmental justice.<sup>21</sup>

*Pro bono* work in the Arab community, as well as Palestinian cause lawyering, are also relatively under-documented developments.<sup>22</sup> In particular, it is difficult to assess the extent to which private-sector attorneys provide free legal services in the Arab community. There is, however, a growing number of non-profit organizations and NGOs that provide legal aid. Among them is *Adalah*, The Legal Center for Arab Minority Rights in Israel, which was established in 1996. *Adalah* symbolizes the emergence of all-Arab cause lawyering.

The Arab population is disadvantaged with respect to access to the rights and benefits provided by the state-sponsored legal aid system largely because legal aid agencies and organizations are located in major urban centers, while a high percentage of the Arab population is impoverished and rural. In addition, some social benefits and services are contingent upon military service from which Arab and other non-Jewish populations are typically excluded. The Bedouin population, too, faces distinct legal challenges, most commonly related to residential planning and construction laws.<sup>23</sup>

The changes in the legal profession and in legal aid particularly must be viewed as part of larger social processes. Until the 1980s, Israel was, by and large, a socialist welfare state. At that time, Israel began its transformation into a full market economy, a process completed by an accelerated privatization process that took place in the 1990s. The Arab community, in turn, has become more politicized during the first and second *Intifadas*, contributing to a general awakening of activism in the all-Israeli public sphere.

## II. *Pro Bono Opportunities in Israel*

The Justice Haim Cohen Center for Legal Defense of Human Rights is a non-profit organization founded in 2002 for the sole purpose of providing *pro bono* services. By virtue of its function and relationships with lawyers at Israeli law firms, it can also provide an inroad to the Israeli private-sector *pro bono* network for non-Israeli firms.

The New Israel Fund (NIF), a philanthropic organization with branch offices in Israel, North America, and Europe, is dedicated to providing financial and technical assistance to grassroots organizations while aiding with coalition and capacity-building. Its subsidiary, *Shatil*, works directly with NGOs to assist with organizational and training issues, complementing the NIF's financial support. Having worked with more than 800 organizations since its founding in 1979, the NIF could provide a gateway to the Israeli public sector.

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<sup>21</sup> See N. Ziv, *Hanging by the Cloak – Advocates for Social Change in Israel: Between the Legal and the Political*, *Adalah's Newsletter* (June 2004).

<sup>22</sup> 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).

<sup>23</sup> See *id.*

### III. Conclusion

Despite recent reforms and developments in Israel's legal aid system, there are entire areas of need that are largely unaddressed by the state, most notably legal protections for non-residents.<sup>24</sup> Local non-profit organizations and local governments, however, provide services to some of these underrepresented groups to fill in gaps in the State's legal services.<sup>25</sup> 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.

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<sup>24</sup> This group includes foreign workers (legal and illegal migrant workers), non-citizen Palestinians, and Palestinians who are Israeli citizens but lack proper identification documents.

<sup>25</sup> See, e.g., Hotline for Migrant Workers, Kav LaOved, and the Mesila Aid & Information Center, operated by the Tel Aviv Municipality.