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# GLOBAL DUE DILIGENCE MANUAL

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NAVIGATING THE WORLD OF PRO BONO

## Pro Bono Institute

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Founded in 1996, Pro Bono Institute (PBI) is a Washington, D.C.-based nonprofit organization. With an unparalleled depth of knowledge, resources, and expertise, PBI is the respected resource for all things pro bono. Through our work with law firms, legal departments, the courts, and public interest organizations, PBI is the global thought leader in exploring, identifying, evaluating, catalyzing, and taking to scale new approaches and resources for the provision of legal services to the poor, disadvantaged, and other individuals or groups unable to secure legal assistance to address critical problems.

Our rigorous empirical research and analysis; white papers and reports; and advice and support allow us to reach a wide variety of audiences and transform the concept and practice of pro bono. By providing expert, confidential consultative services, educational programming, and local, national, and global pro bono convenings, our goal is to continually improve and enrich pro bono service.

We count among our members, supporters, and partners the most respected law firms and legal departments in the world, as well as the most effective and cutting-edge public interest organizations.

## The Law Firm Pro Bono Project

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The Law Firm Pro Bono Project is the only global effort designed to support and enhance the pro bono culture and performance of major law firms in the United States and around the world. The Project's goal is to fully integrate pro bono into the practice, philosophy, and culture of firms so that large law firms provide the institutional support, infrastructure, and encouragement essential to fostering a climate supportive of pro bono service and promoting partner and associate participation.

## Corporate Pro Bono

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Corporate Pro Bono, a global partnership project of Pro Bono Institute and the Association of Corporate Counsel (ACC), is designed to substantially increase the amount of pro bono work performed by in-house counsel and to enhance the pro bono culture of in-house legal departments through technical assistance to the in-house community, targeted research and publications, online information and services, and outreach and educational programming. Corporate Pro Bono also works closely with ACC chapters to focus their resources and agendas on pro bono service.

## Global Pro Bono

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Through its Global Pro Bono Project, PBI works to strengthen pro bono culture, policy, and practice in the legal profession around the world. In partnership with local and global leaders, PBI identifies impediments and implements solutions, develops resources, and promotes global pro bono service through research, consultative services, training, and thought leadership.

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# Introduction

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## Growth of Pro Bono

The legal world has witnessed an enormous spike of interest and engagement in global pro bono. Over the past several decades, major law firms have significantly expanded their global pro bono projects in number, scale, geographic breadth, innovativeness, and use of partnerships and collaborations, such as with legal departments, nonprofits, governmental and media actors, and law schools.

In addition, the number of formal, organized pro bono efforts at in-house legal departments and the participation of in-house lawyers and legal staff in pro bono matters has increased dramatically. According to Corporate Pro Bono, a global partnership project of Pro Bono Institute and the Association of Corporate Counsel, in-house counsel in more than 40 countries are engaged in pro bono opportunities supported by their companies' legal departments.

## Global Pro Bono

The current growth in global pro bono can be divided into at least two categories of pro bono engagement:

- **Transnational pro bono**, that is, pro bono undertaken by law firms and legal departments from countries with an established pro bono tradition, in areas where the firms and departments may not have a presence or where there has traditionally been little or no pro bono; and,
- **Local pro bono** — the development of pro bono culture in areas that may not have had an established tradition of pro bono service.

This increase can be attributed to a number of factors, including the globalization of law practice, the expansion of corporate social responsibility, the growth of emerging democracies based on the rule of law, and heightened international consensus about access to justice and fundamental human rights.

For law firms, the overall picture in recent years is one of increased globalization, with lawyers and offices located in a diverse variety of countries and cultures. This geographic expansion has occurred through a combination of mergers, referral alliances, and organic growth.<sup>1</sup> In addition, although the AmLaw Global 100 “Most Lawyers” list continues to be dominated by firms whose largest contingent of lawyers are in the U.S. or U.K., nearly a quarter are elsewhere — namely China, Australia, Spain, France, Brazil, Germany, South Korea, the Netherlands, Canada, and India.<sup>2</sup> Further, of the AmLaw Global 100 “Most Global” list (123 firms ranked by number of countries in which they have offices), 33 firms have offices in at least 10 countries.<sup>3</sup>

This continued expansion of large international law firms into a variety of markets, particularly emerging and developing markets, parallels such regions having experienced double or triple the economic growth rates of advanced economies in recent years.<sup>4</sup> Commensurate with this expansion is an increased opportunity to exchange pro bono from offices with a history of pro bono projects to offices just beginning their experience.

Moreover, the broad acceptance of corporate social responsibility (CSR) as a business imperative, particularly among multinational companies, has significant potential to drive increased global pro bono activity.

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<sup>1</sup> See Leigh Jones, *International Law Firm Mergers Bring Rebound*, National Law Journal, June 9, 2014, <http://www.nationallawjournal.com/id=1401987883053/International+Law+Firm+Mergers+Bring+Rebound%3Fmcode=0&curindex=0&curpage=ALL>. See also Drew Combs, *The Global 100: Outward Bound*, The American Lawyer, October 22, 2014, <http://www.americanlawyer.com/id=1202671388512>.

<sup>2</sup> *The Global 100: Most Lawyers*, The American Lawyer, September 28, 2015, <http://www.americanlawyer.com/id=1202738251710>.

<sup>3</sup> *The Global 100: Most Global*, The American Lawyer, September 28, 2015, <http://www.americanlawyer.com/id=1202738118370>.

<sup>4</sup> *World Economic Outlook — Uneven Growth: Short- and Long-Term Factors*, International Monetary Fund, April 2015, <http://www.imf.org/external/pubs/ft/weo/2015/01/pdf/text.pdf>, at 170.

This potential is particularly compelling when pro bono vision is aligned with the powerful financial resources of existing CSR programs.

Social consciousness may be another driver of global pro bono growth for firms and legal departments. Recent years have seen increasing awareness of disparities in economic and political power between a global elite and the “99%,” the rise of social media-based movements demanding justice such as the Arab Spring and #blacklivesmatter, sectarian conflict and the rise of ISIS in the Middle East, social unrest over austerity budgets and persistent unemployment, and the growing power of anti-immigrant political discourse in Europe, the U.S., and beyond. These challenges have instilled a sense of urgency around the rule of law, unmet legal needs, protection for the rights of women and marginalized groups, and access to justice throughout the world.

As law firms and legal departments become increasingly global, the utility of “pro bono glue” becomes even more relevant. Using pro bono service as a shared value and activity brings the firm’s or department’s lawyers together and enhances teamwork, employee engagement, loyalty, and productivity. As noted in Corporate Pro Bono’s (CPBO) 2014 Benchmarking Report, 23% of legal departments surveyed have engaged in global pro bono; of these, half involved attorneys and legal staff in the U.S. and outside the U.S. working jointly.<sup>5</sup>

Heeding the call to respond to the “justice gap” left by the waning of the social welfare state means firms and legal departments must consider more robust pro bono programs. The trend toward austerity budgets has reduced funding for legal aid and access to justice infrastructure in nations that traditionally had the highest levels of public funding. While pro bono is not and should not be considered an adequate replacement for a well-financed system of government-provided legal aid, many lawyers recognize the increased responsibility to contribute in the wake of cuts to legal aid.

Despite this great interest and momentum, the scale of global pro bono – either transnational or local – is still modest relative to the need, and research on the pro bono picture around the world reveals deep national differences in capacity and maturity.<sup>6</sup> This disparity results from a number of obstacles to global pro bono, including:

- An absence of the foundational elements necessary for the creation of a vibrant pro bono culture and functional access to justice in some emerging democracies and post-conflict nations. For example, such nations may lack a legal aid system or infrastructure, have weaknesses in legal education, lack a critical mass of practicing lawyers, or lack an independent judiciary.
- Professional or societal norms that are inconsistent with pro bono or voluntary service, such as mandatory minimum fees.
- Practice rules and ethical norms that restrict the scope or capacity of pro bono service or limit or foreclose the opportunity for certain categories of lawyers, such as non-locally admitted law firm attorneys or in-house counsel, to provide pro bono service.
- A strong national norm that the provision of legal services to the poor and disadvantaged is a public responsibility, often coupled with a lack of evidence-based data on unmet legal needs.
- A lack of “global readiness,” *i.e.*, insufficient preparation to handle the logistical, cultural, and other challenges of working in the developing world.
- A limited number of legal professionals within a particular office. Even the largest global law firms and legal departments may have small offices in certain jurisdictions, which can limit the capacity to take on more sizable pro bono projects.
- A lack of familiarity with pro bono legal services among individuals and nonprofit organizations that may qualify.

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<sup>5</sup> 2014 Benchmarking Report: An Overview of In-House Pro Bono, Corporate Pro Bono (CPBO), March 2015, at 14, <http://www.cpbo.org/2014br>.

<sup>6</sup> A Survey of Pro Bono Practices and Opportunities in 84 Jurisdictions, Latham & Watkins for Pro Bono Institute, 2016, [www.probonoinst.org/globalsurvey](http://www.probonoinst.org/globalsurvey), [hereinafter Global Survey 2016].

- Concern that, in a climate of government cost-cutting, increased reliance on pro bono will strengthen the trend toward reductions in legal aid funding.

One other fundamental obstacle to global pro bono service repeatedly identified by legal departments and major law firms is the lack of easy access to readily available global pro bono opportunities, and the absence of clear guidelines and leading practices on how to locate, assess, and vet potential pro bono opportunities. Legal departments and law firms often report difficulty in identifying transnational pro bono opportunities that match their capacities and interests. They also experience frustration that initially promising pro bono projects sometimes become unwieldy or, once completed, are found to be duplicative of other efforts. Research or rule of law matters are sometimes not fully utilized or executed, often because of a lack of local capacity.

This challenge was the inspiration for this manual, developed by Pro Bono Institute, with invaluable guidance and assistance from four major law firms that have successfully pioneered global pro bono service, as well as editorial input and review from Pro Bono Institute's Corporate Task Force on Global Pro Bono, which focuses on identifying obstacles and best practices regarding in-house pro bono around the world. The manual is designed to provide an overview of clearinghouses, major NGO clients, research projects, and broader engagements. Subsequent chapters caution against conflicts that may arise, but consider the rewards of aligning pro bono with existing CSR initiatives, practice strengths, and an organization's overall strategic plan.

Future iterations of this project will include a chapter on partnerships and other mechanisms for enhancing a global pro bono practice.

## Acknowledgements

Pro Bono Institute and Corporate Pro Bono are immensely grateful to the following law firms and the Corporate Task Force on Global Pro Bono; their work in researching, drafting, and reviewing made this manual possible:

### Law Firms

DLA Piper<sup>\*†</sup>  
Freshfields Bruckhaus Deringer<sup>†</sup>  
Latham & Watkins<sup>\*†</sup>  
White & Case<sup>\*†</sup>

### Corporate Task Force on Global Pro Bono

The Bank of New York Mellon Corporation<sup>\*\*</sup>  
Caterpillar Inc.<sup>\*\*</sup>  
General Electric Company<sup>\*\*</sup>  
Hewlett Packard Enterprise Company<sup>\*\*</sup>  
Intel Corporation<sup>\*\*</sup>  
LexisNexis Group<sup>\*\*</sup>  
Merck & Co., Inc.<sup>\*\*</sup>  
Pfizer Inc.<sup>\*\*</sup>  
Starbucks Corporation<sup>\*\*</sup>  
Syngenta  
Verizon Communications Inc.<sup>\*\*</sup>  
Wal-Mart Stores, Inc.<sup>\*\*</sup>

*\* denotes a Signatory to the Law Firm Pro Bono Challenge®*

*† denotes a Member of the Law Firm Pro Bono Project*

*\*\*denotes a Corporate Pro Bono Challenge® signatory*

# Clearinghouses

By: Latham & Watkins

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## Introduction

The last decade has seen accelerated growth in global pro bono engagement among law firms, NGOs and legal departments. Drivers of this growth include the globalization of law firms and corporations (and their in-house departments), an increased focus among firms and corporations on their corporate social responsibility (CSR) efforts, the decreased funding of state-sponsored legal aid, and outreach efforts by Pro Bono Institute, PILnet, TrustLaw, and other key thought leaders to introduce and promote greater understanding of the concept of pro bono in countries where the concept is new.

Among the biggest impediments to growth in global pro bono has been the limited supply of readily available opportunities for engagement. Specifically, while more and more lawyers are eager to undertake pro bono work, law firms and legal departments generally do not have the experience or infrastructure to identify and screen potential pro bono clients.

Compounding this is the lack of familiarity with pro bono legal services among individuals and nonprofit organizations that may qualify – *i.e.*, for the most part, potential clients across most jurisdictions remain unaware of the availability of pro bono services and how they may benefit from the same.

A key factor in addressing this disconnect has been the emergence of several pro bono clearinghouses across Europe, Asia, Africa, and Latin America in recent years.<sup>7</sup>

At their most basic level, pro bono clearinghouses act as intermediaries between lawyers seeking pro bono opportunities and individuals and nonprofits who are eligible and in need of free legal services. While

clearinghouses may vary in terms of their focus, infrastructure and procedures, most provide the following core functions:

- **Outreach:** they undertake outreach to educate potential clients about pro bono and how they may benefit from free legal services.
- **Vetting:** they screen potential pro bono clients to ensure that matters referred to law firms and legal departments are meritorious and the clients are eligible to receive free legal assistance.
- **Matchmaking:** they strive to find the best lawyers for a particular matter and ensure lawyers receive the type of pro bono work that fits their expertise and interests.
- **Follow-up:** they retain varying levels of ongoing involvement – at a minimum, they stay engaged to help facilitate the smooth and successful launch of a new engagement between the lawyer and client referred by them.

Although clearinghouses may vary in their infrastructure, focus, and geography, most share a common goal of facilitating greater access to justice.<sup>8</sup>

This chapter highlights certain factors that law firms and in-house departments should consider when engaging with clearinghouses, including the evaluation of pro bono projects offered by clearinghouses, evaluation of the clearinghouses themselves, structuring relationships with clearinghouses and certain challenges that can arise in the course of working with clearinghouses.

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<sup>7</sup> Although this chapter includes a list of example clearinghouses to locate global pro bono opportunities, it should not be considered a comprehensive directory of such intermediaries.

<sup>8</sup> PRO BONO CLEARINGHOUSE MANUAL 24, PILNET & ADVOCATES FOR INTERNATIONAL DEVELOPMENT, (2011) (describing the shared goals of pro bono clearinghouses, including “provid[ing] legal advice to all, regardless of race, background or creed,” “promot[ing] the rule of law,” and “promot[ing] the use of law as a tool to achieve social justice”), <http://www.pilnet.org/public-interest-law-resources/52-pro-bono-clearinghouse-manual-resources-for-developing-pro.html> [hereinafter Pro Bono Clearinghouse Manual].



## Evaluating Projects

Various factors come into play when evaluating a potential global pro bono project, regardless of source or location. In addition to the basic interest level in a project, other factors to consider include:

### Licensure/qualification

When considering a new pro bono matter, lawyers should review the local practice rules to ensure they are qualified to practice within the relevant jurisdiction. Many countries do not permit attorneys qualified in other jurisdictions to practice within their borders. Others permit limited representation, but require oversight from a locally qualified lawyer. The nature of the pro bono assistance and whether the attorney will be representing a client in court typically affect whether the lawyer may engage without being locally qualified.

### Regulatory prohibitions

Understanding the laws and legal culture surrounding pro bono is also important. For example, it may be illegal in some countries to represent an individual client without compensation.<sup>9</sup> There are also prohibitions on legal advertising and solicitations in many jurisdictions.

### Capacity and costs

Pro bono matters can vary significantly in terms of time commitment and costs. Both factors should be evaluated prior to engagement. Clearinghouses typically provide a matter summary that describes the type of work requested by the potential client. While this is sometimes sufficient to assess the scope of work and potential costs, it is often the case that additional information is required to make these assessments, and the clearinghouse should be able to provide supplemental information on request. Out-of-pocket costs may include travel, research database, printing, telephone and postal charges, and engagement of experts, among others. Where costs will be incurred, it is important to establish what the pro bono firm or in-house department can and cannot pay for and discuss

the same with the clearinghouse and potential client in advance. Agreed-upon terms for covering the fees should ultimately be set out in the engagement letter entered into between the legal team and the client.

### Subject matter and skill set

Most lawyers have a basic skill set acquired through law school and on-the-job training that enables them to engage responsibly and add value to a wide variety of pro bono clients even where the matters do not neatly overlap with the matters they handle in their day-to-day practices for paying clients. At the same time, however, lawyers should be cautious when evaluating matters in which they have no substantive knowledge of the applicable law or do not understand the nature of the legal work required. Working on matters without the requisite skill set can be more detrimental than helpful to a pro bono client and expose the lawyer and his or her organization to malpractice or bar complaints. These risks are often mitigated by participating in trainings, obtaining training materials and/or collaborating with experienced co-counsel or experts on the representation.

### Geography, language, and culture

It is important to consider where the client is based, whether travel will be required and/or whether “remote representation” via telephone calls, video conference and emails will suffice. Connected to this consideration is evaluating whether there are any cultural or language barriers that could hinder effective legal representation.

### Quality of/need for the project

In order to ensure that resources are used efficiently and effectively, it is worthwhile to speak with the client prior to committing to a new project to ensure that the client is clear on what they are looking for and to find out more about how they intend to use the work product. Based on these discussions, it sometimes emerges that a prospective pro bono client may not yet be ready to effectively utilize legal counsel.

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<sup>9</sup> For example, until June 17, 2013, the Brazilian Bar Association had prohibited lawyers from representing individual clients on a pro bono basis. *Conectas Commends Lifting of Ban on Pro Bono Legal Counsel*, Conectas Human Rights, June 26, 2013, <http://www.conectas.org/en/actions/justice/news/conectas-commends-lifting-of-ban-on-pro-bono-legal-counsel>.



## Potential for collaboration

Not all pro bono projects are amenable to collaborations between multiple firms or between a firm and in-house counsel. To the extent a team desires to co-counsel, they should consider whether a particular project is a good fit, including the level of resources reasonably required, whether the work can be divided up or worked on collaboratively, and whether there may be sensitivity on the client side regarding the sharing of information and interaction within a larger group.

Undertaking basic due diligence at the outset can significantly reduce the likelihood of encountering difficulties down the road.

## Evaluating Clearinghouses

Legal clearinghouses can vary greatly in their structure and case referral systems. When evaluating a clearinghouse, speaking with counterparts at firms and legal departments about their experiences is often the best starting point in addition to reaching out directly to the clearinghouses. Issues to explore include the following:

### Period of operation, geographic coverage, and types of matters

In evaluating a clearinghouse, it's helpful to gather basic information, including how long the clearinghouse has been operating, the law firms and legal departments it works with, where it operates, and the types of clients and matters it refers. Whereas some clearinghouses have a singular focus on certain issues, others have a broader platform where they refer a variety of qualified clients with diverse needs. Likewise, where some clearinghouses are local and refer matters to locally-qualified lawyers, others refer regional and international matters that may require the engagement of a multinational, cross-border team of attorneys.

### Client screening

Law firms and in-house departments typically depend on legal aid organizations and clearinghouses to screen prospective pro bono clients to ensure that the clients

and individual matters qualify for pro bono support and are an appropriate use of resources. It is therefore important to explore a clearinghouse's screening criteria and approach. While criteria may vary by jurisdiction, the baseline expectation is that matters referred will have been screened to determine that the matter is meritorious and well-defined; the client will be an efficient user of legal services; and the client cannot afford to pay legal fees or that payment of legal fees would be inappropriate.<sup>10</sup>

### Free or fee-based clearinghouses

Another important up-front consideration is whether a clearinghouse is fee-based or free of charge to its members. Legal clearinghouses generally operate as nonprofit organizations. Whereas free clearinghouses seek funding from various sources, fee-based clearinghouses cover some or all of their operating costs through membership fees. Membership fees vary among clearinghouses and are sometimes based on the size of the participating firm or legal department.

### Matter dissemination and allocation

Lawyers should also consider how matters are disseminated and ultimately assigned by clearinghouses to attorneys. With regard to dissemination, it's helpful to understand how frequently and regularly new matters are circulated to interested lawyers – *i.e.*, whether the “opportunity lists” are circulated by email and how dependable these distributions are in terms of timing and volume. When it comes to allocation, some clearinghouses operate on a first come, first served basis. Others assign matters with a view to spreading the work equitably among firms and legal departments. TrustLaw, a multi-jurisdictional clearinghouse, has adopted yet another model whereby attorneys pitch their services for a particular matter and the prospective client is given an opportunity to choose among those who have expressed interest. Each of these approaches has its pros and cons, and all require managing the expectations of the lawyers who may not end up representing the client/matter they requested.

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<sup>10</sup> [PRO BONO CLEARINGHOUSE MANUAL](#), *supra* note 8, at 27–28 (describing ways for clearinghouses to evaluate client matters for referral).

## Infrastructure

It is helpful to understand how a clearinghouse operates and whether they have a formal infrastructure in place to facilitate clearinghouse operations. Questions include whether the clearinghouse has an individual or team in place to perform client outreach, screen clients, circulate opportunities, and serve as an ongoing point of contact and resource.

## Ongoing involvement

It's helpful to understand the level of ongoing engagement by the clearinghouse once a connection to the client is facilitated. It is sometimes the case that further involvement by the clearinghouse in the early stages of engagement is helpful to ensure that a matter launches successfully, particularly where a client is inexperienced in working with counsel. Likewise, it's good to establish whether the clearinghouse follows up with clients once a matter is completed to establish whether the attorney work product is ultimately put to good use.

## Developing Effective Internal Infrastructure and Procedures

While the quality and attributes of a pro bono clearinghouse may factor into their efficacy, law firms and legal departments should also position themselves to work with clearinghouses by thoughtfully and deliberately structuring these relationships at the outset. The starting point is establishing clear internal processes for liaising with the clearinghouse and facilitating the organized intake and oversight of new pro bono matters. There are many ways to organize these processes depending on the firm or legal department's size, geographic spread and preference.

For example, some departments and firms opt for a “centralized approach” where there is a primary person or group that is responsible for managing the relationship between the firm/department and the clearinghouse, applying for new opportunities and generally serving as a liaison between the department/firm and the clearinghouse. Others establish a more “decentralized approach” whereby individual attorneys each establish their own relationship with the clearinghouse and

act independently in seeking work directly from the clearinghouse. In either case, establishing some form of central tracking mechanism is advisable in order to maintain oversight and visibility into the volume, quality, staffing, and lifecycle of work sourced from a particular clearinghouse.

## Challenges

Most challenges that arise when working with clearinghouses are common to all legal services organizations that screen and refer matters to private practitioners. These challenges may include:

### Allocation of matters

As described above, clearinghouses take various approaches when allocating pro bono opportunities and it is sometimes the case that a lawyer applying for a particular matter will not be assigned to that matter. Most clearinghouses cast a wide net among volunteers when disseminating pro bono opportunity lists. While this approach may increase the likelihood of finding a match, it also can result in multiple volunteers vying for the same opportunity. Managing the expectations (and, sometimes, disappointment) of volunteer attorneys at the outset can help ensure their continued interest in future solicitations. In addition, where a volunteer attorney is particularly passionate about an opportunity or would bring special skills to the table, it is helpful to communicate this to the clearinghouse as this may affect how a matter is allocated.

### Matters failing to materialize

A primary function of clearinghouses is to identify and screen pro bono clients before referring them to volunteer lawyers. From time to time, referred matters may not materialize. This can occur for a variety of reasons – for example, the client may fall out of communication, the nature or timing of the work required may turn out to be different than originally described or the client may decide to go in another direction or not move forward with counsel. Unless it happens with some frequency, these occurrences are not necessarily a testament to the quality of the clearinghouse's screening process.

However, where the issue is recurrent, it may frustrate and discourage volunteers from further engagement with the referring clearinghouse.

### **Continued limited supply/variety**

Whereas pro bono opportunities of nearly every variety are available anytime and in abundance in certain jurisdictions, the same is not yet true in many countries. Specifically, even with the emergence of new pro bono clearinghouses and referral organizations in recent years, the variety, supply and geographic spread of pro bono matters remains limited. For example, there is little opportunity to engage on behalf of individual clients in many jurisdictions, and the frequency with which pro bono opportunity lists are circulated is not always consistent or predictable.

### **No expertise/training**

In the U.S., legal services organizations that refer pro bono matters tend to have subject matter experts who can provide training and mentorship to pro bono attorneys. In contrast, most clearinghouses outside the U.S. do not provide training and mentorship. As a result, attorneys may be reluctant to pursue work falling outside their commercial practices and decline to pursue pro bono engagements.

The foregoing challenges are either intrinsic to the clearinghouse structure or attributable to the nascent state of pro bono in many jurisdictions and do not necessarily attest to the quality and efficacy of a clearinghouse. Understanding these issues is key to managing them and managing the expectations of participating attorneys at a firm or in-house department.

## **Conclusion**

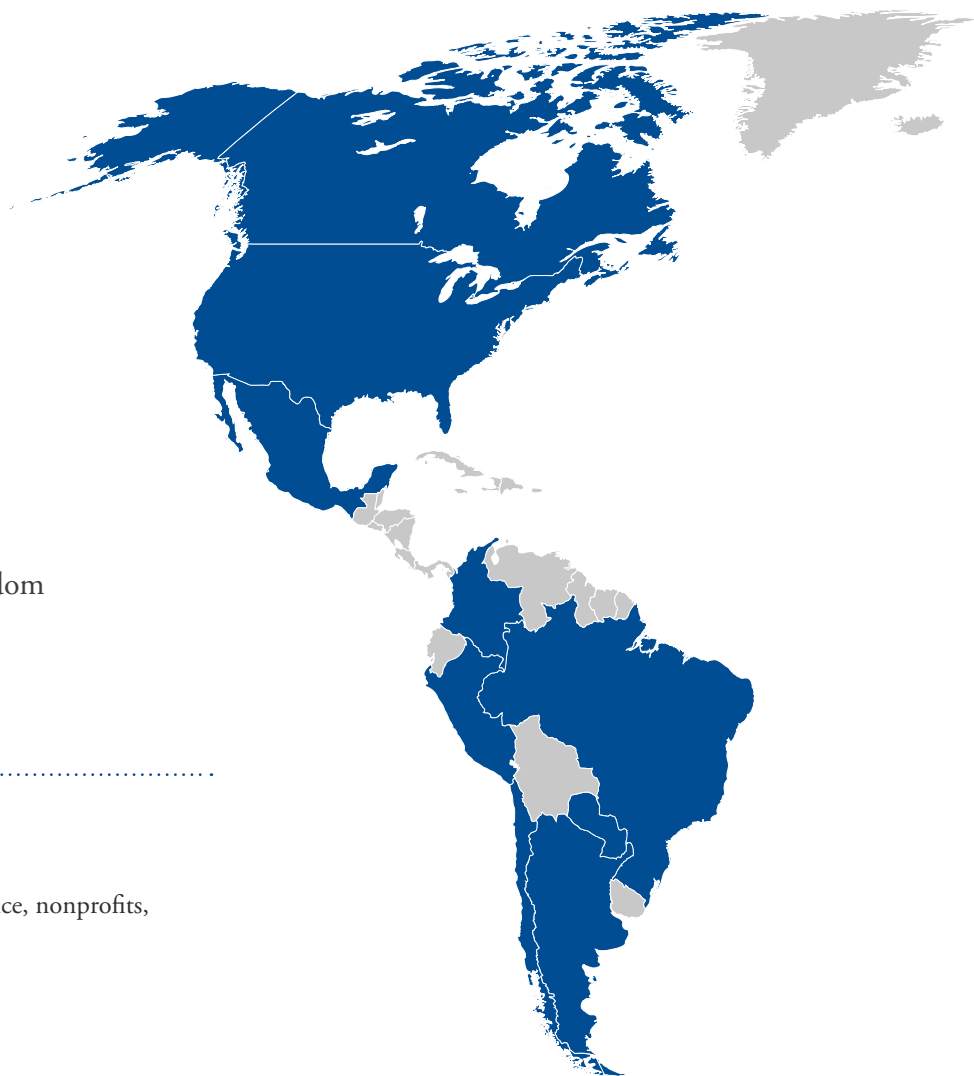
The emergence of several new clearinghouses across Europe, Asia, Africa, and Latin America in recent years has galvanized law firm and legal department pro bono programs by sourcing and proliferating pro bono opportunities and bridging the gulf between the supply and demand for free legal services across many jurisdictions.

Clearinghouses can vary greatly in terms of their geographic reach, screening, substantive focus, volume and frequency of new matter offerings, and level of ongoing support following referrals. Exploring clearinghouse attributes at the outset can empower law firms and legal departments to make more informed choices and lead to productive, longer-term relationships with compatible clearinghouses.

# Select List of Pro Bono Clearinghouses

Current as of March 14, 2016

Argentina	Ireland
Australia	Mexico
Brazil	Paraguay
Canada	Peru
Chile	Poland
China	Romania
Colombia	Russia
Czech Republic	Slovakia
France	Slovenia
Hong Kong	South Africa
Hungary	Turkey
India	United Kingdom
International	



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## Argentina

### La Comisión Pro Bono

Primarily works on disability law, microfinance, nonprofits, children, and criminal law

📍 Buenos Aires  
☎ +54.9.11.5486.6904  
✉ [probono@colabogados.org.ar](mailto:probono@colabogados.org.ar)  
🌐 [www.probono.org.ar](http://www.probono.org.ar)

### Poder Ciudadano

#### (Advisory Centre & Citizen Action)

Free legal advice to citizens & organizations who are potential victims of government corruption

📍 Buenos Aires  
☎ +54.11.4331.4925, ext. 225  
✉ [comunicacion@poderciudadano.org](mailto:comunicacion@poderciudadano.org)  
🌐 <http://poderciudadano.org/>

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## Australia

### ACT Law Society Pro Bono Clearing House

Public interest and private law matters that have “reasonable prospects of success”

📍 Canberra  
☎ +61.2.6274.0300  
✉ [mail@actlawsociety.asn.au](mailto:mail@actlawsociety.asn.au)  
🌐 [www.actlawsociety.asn.au/public-information/act-pro-bono-clearing-house](http://www.actlawsociety.asn.au/public-information/act-pro-bono-clearing-house)

### Adelaide Legal Outreach Service (ALOS)

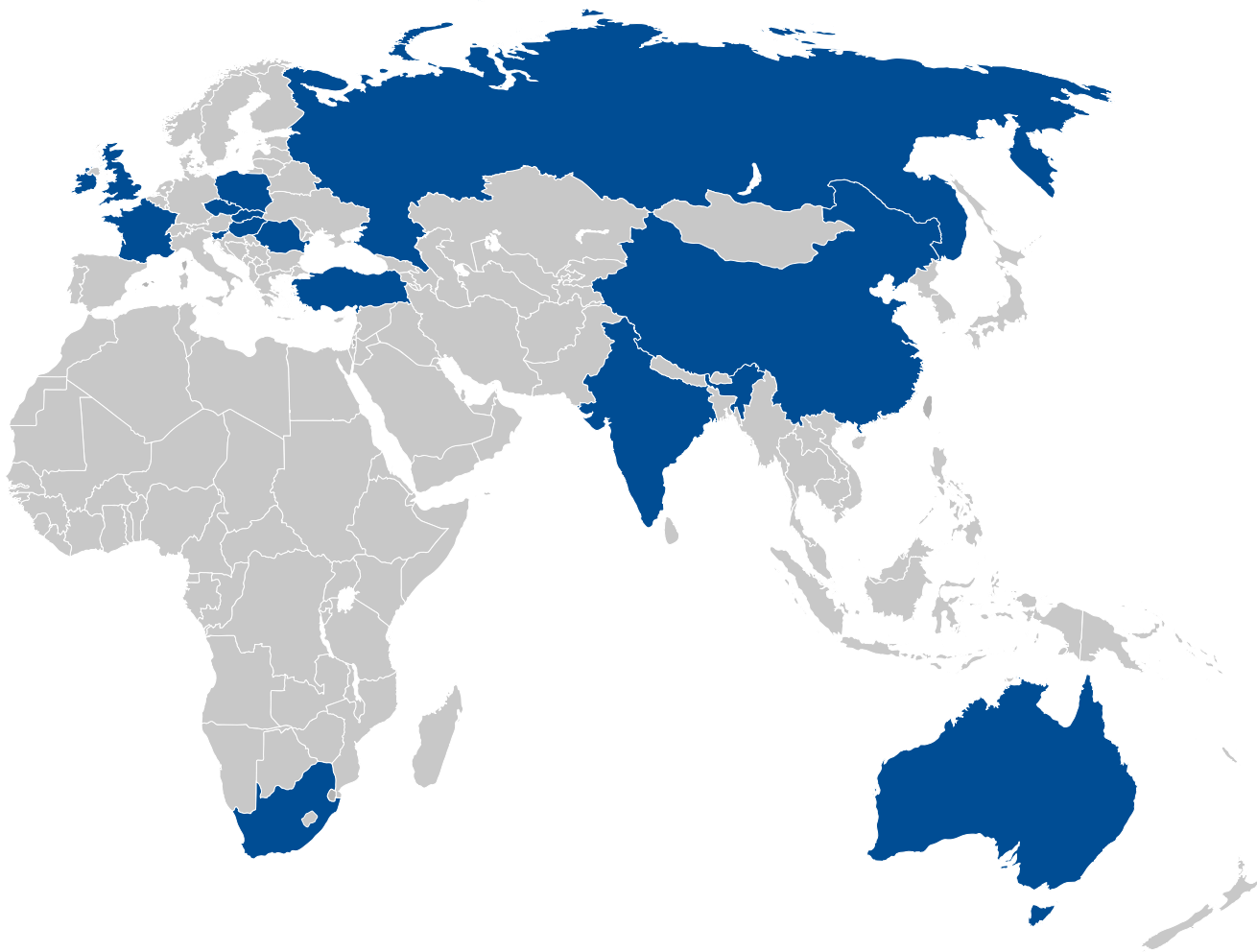
Preliminary advice and legal support for the homeless & disadvantaged individuals by upper-level law students under the supervision of volunteer lawyers (run by the University of Adelaide Law School)

📍 Adelaide  
☎ +61.8.8118.5200  
✉ [alos@adelaide.edu.au](mailto:alos@adelaide.edu.au)  
🌐 [www.law.adelaide.edu.au/alos/](http://www.law.adelaide.edu.au/alos/)

### Cancer Council NSW Legal Referral Service

Free legal assistance to those suffering from cancer (wills & trusts, powers of attorney, employment, and discrimination)

📍 Woolloomooloo  
☎ +61.2.9334.1845  
🌐 [www.cancercouncil.com.au/31192/get-support/practical-support-services-get-support/legal-financial-support/pac/](http://www.cancercouncil.com.au/31192/get-support/practical-support-services-get-support/legal-financial-support/pac/)



## Australia (*continued*)

### Homeless Persons' Legal Service

Free legal assistance to homeless individuals or those at risk of homelessness

📍 Sydney

☎ +61.2.8898.6500

🌐 [www.piac.asn.au/projects/homeless-persons-legal-service/introduction](http://www.piac.asn.au/projects/homeless-persons-legal-service/introduction)

### Justice Connect

Elder law, homelessness, migrant outreach services, not-for-profit law, individual referrals (on a case-by-case basis evaluating need, merits, etc.)

📍 Melbourne | 📍 Sydney

☎ +61.3.8636.4400 | ☎ +61.2.8599.2100

✉ [admin@justiceconnect.org.au](mailto:admin@justiceconnect.org.au)

🌐 [www.justiceconnect.org.au](http://www.justiceconnect.org.au)

### JusticeNet SA

Civil law matters (refugees, nonprofits, etc.)

📍 Adelaide

☎ +61.8.8313.5005

✉ [admin@justicenet.org.au](mailto:admin@justicenet.org.au)

🌐 [www.justicenet.org.au](http://www.justicenet.org.au)

### Law Society of New South Wales

Administrative law, bankruptcy, divorce, employment law, family law matters regarding children, wills & estates, etc.

📍 Sydney

☎ +61.2.9926.0364

✉ [lawsociety@lawsociety.com.au](mailto:lawsociety@lawsociety.com.au)

🌐 [www.lawsociety.com.au/community/findingalawyer/probono/](http://www.lawsociety.com.au/community/findingalawyer/probono/)

### Law Society Northern Territory

Public interest and private law matters that have “a reasonable prospect of success”

📍 Darwin

☎ +61.8.8981.5104

🌐 [www.lawsocietynt.asn.au/for-the-community/pro-bono-clearing-house-2.html](http://www.lawsocietynt.asn.au/for-the-community/pro-bono-clearing-house-2.html)

### Law Society of Tasmania

Public and private law where failure to assist can result in injustice

📍 Hobart

☎ +61.3.6234.4133

✉ [info@lst.org.au](mailto:info@lst.org.au)

🌐 [www.lst.org.au/public-info/pro-bono-clearing-house/](http://www.lst.org.au/public-info/pro-bono-clearing-house/)

## Australia (*continued*)

### Law Society of Western Australia (Law Access Referral)

Animal welfare, employment law, family law, immigration, etc.  
(public interest matters are given priority)

📍 Perth  
☎ +61.8.9324.8600  
✉ [info@lawsocietywa.asn.au](mailto:info@lawsocietywa.asn.au)  
🌐 <https://www.lawsocietywa.asn.au/law-access/>

### LawHelp

Legal assistance to not-for-profit Aboriginal and Torres Strait  
Islander corporations

📍 Woden  
☎ +61.1800.622.431  
✉ [info@oric.gov.au](mailto:info@oric.gov.au)  
🌐 [www.oric.gov.au/free-services-through-oric/lawhelp](http://www.oric.gov.au/free-services-through-oric/lawhelp)

### PILCH New South Wales (Clearinghouse)

Public interest matters (tax, contracts, etc.)

📍 Woolloowin  
☎ +61.7.3857.3333  
✉ [support@pilchnsw.org.au](mailto:support@pilchnsw.org.au)  
🌐 [www.pilchnsw.org.au](http://www.pilchnsw.org.au)

### Queensland Public Interest Law Clearinghouse (QPILCH)

Promotes access to justice in Alberta by creating and promoting  
opportunities for lawyers to provide pro bono legal services to  
persons of limited means

📍 South Brisbane  
☎ +61.7.3846.6317  
✉ [admin@qpilch.org.au](mailto:admin@qpilch.org.au)  
🌐 [www.qpilch.org.au](http://www.qpilch.org.au)

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## Brazil

### Connectas Direitos Humanos

Public interest matters

📍 São Paulo  
☎ +55.11.3884.7440  
🌐 [www.conectas.org](http://www.conectas.org)

### Instituto Pro Bono

Legal support for nonprofits

📍 São Paulo  
☎ +55.11.3889.9070  
✉ [faleconosco@institutoprobono.org.br](mailto:faleconosco@institutoprobono.org.br)  
🌐 [www.probono.org.br](http://www.probono.org.br)

## Canada

### Access Pro Bono British Columbia (Roster Program)

Legal assistance to low-income individuals through a variety  
of programs, including family law program, federal court of  
appeal program, and wills & estates

📍 Vancouver  
☎ +1.604.482.3195  
✉ [help@accessprobono.ca](mailto:help@accessprobono.ca)  
🌐 [www.accessprobono.ca](http://www.accessprobono.ca)

### Pro Bono Law Alberta

📍 Calgary  
☎ +1.403.541.4804  
✉ [info@pbla.ca](mailto:info@pbla.ca)  
🌐 [www.pbla.ca](http://www.pbla.ca)

### Pro Bono Law Ontario

Legal advice for charities and nonprofits, low-income people  
suing or being sued, and children's law matters

📍 Toronto  
☎ +1.416.977.4448 | +1.866.466.PBLO  
🌐 [www.pblo.org](http://www.pblo.org)

### Pro Bono Law Saskatchewan

Pro bono legal assistance to individuals and nonprofits

📍 Regina  
☎ +1.306.569.3098 | +1.855.833.7257  
✉ [info@pblsask.ca](mailto:info@pblsask.ca)  
🌐 [www.pblsask.ca](http://www.pblsask.ca)

### Pro Bono Quebec

Provides free legal assistance in certain qualifying matters in  
Quebec for the public interest, clients of nonprofits, and court  
referrals

📍 Montréal  
☎ +1.514.954.1076  
✉ [info@probonoquebec.ca](mailto:info@probonoquebec.ca)  
🌐 [www.probonoquebec.ca](http://www.probonoquebec.ca)

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## Chile

### Fundación Pro Bono

NGOs, disability, micro-entrepreneurs, domestic violence, etc.

📍 Santiago  
☎ +56.2.2381.5660  
✉ [probono@probono.cl](mailto:probono@probono.cl)  
🌐 [www.probono.cl](http://www.probono.cl)



## China

### PILnet Beijing Clearinghouse

Access to justice, developing civil society

📍 Beijing  
☎ +86.10.8526.1453 or .1454  
📧 [www.pilnet.org](mailto:www.pilnet.org)

## Colombia

### Fundación Probono Colombia

Constitutional matters, legislative reform, private cases based on volunteer lawyers' specialties

📍 Bogota  
☎ +57.312.505.7897  
📧 [probono@probono.org.co](mailto:probono@probono.org.co)  
📧 [www.probono.org.co](http://www.probono.org.co)

## Czech Republic

### Pro Bono Alliance (PBA)

Nonprofits and clients of NGOs (asylum, domestic violence, children's rights, etc.)

📍 Prague  
☎ +420.774.887.792 (Clearinghouse coordinator)  
📧 [probono@probonoalliance.cz](mailto:probono@probonoalliance.cz)  
📧 [www.probonoalliance.cz/cz/](http://www.probonoalliance.cz/cz/)

## France

### Alliance des Avocats Pour Les Droits de L'Homme

Human and children's rights, legal support for NGOs, legal training, and research

📍 Paris  
☎ +33.6.24.37.45.39  
📧 [info@aadh.fr](mailto:info@aadh.fr)  
📧 [www.aadh.fr](http://www.aadh.fr)

## Hong Kong

### Justice Center Hong Kong (Corporate Pro Bono Programme)

Law firms and in-house counsel partner with Justice Center Hong Kong to provide legal services to refugees and protection claimants

📍 Hong Kong  
☎ +852.3109.7359  
📧 [info@justicecentre.org.hk](mailto:info@justicecentre.org.hk)  
📧 [www.justicecentre.org.hk](http://www.justicecentre.org.hk)

## Hungary

See PILnet-Hungarian Clearinghouse in "International"

## India

See iProBono in "International"

## International

### Advocates for International Development (A4ID)

Legal aid to development organizations, civil society groups, bar associations, developing governments, and social enterprises on a global scale

📍 London, United Kingdom  
☎ +44.20.7006.4591  
📧 [probono@a4id.org](mailto:probono@a4id.org)  
📧 [www.a4id.org](http://www.a4id.org)

### iProBono

Legal advice to groups such as NGOs, charities, & social enterprises. Operates globally, with a primary focus on India.

📍 London, United Kingdom  
📧 [admin@i-probono.com](mailto:admin@i-probono.com)  
📧 [www.i-probono.com](http://www.i-probono.com)  
  
📍 New Delhi, India  
☎ +91.11.4601.0611  
📧 [swathi.sukumar@i-probono.com](mailto:swathi.sukumar@i-probono.com)  
📧 [www.i-probono.com](http://www.i-probono.com)

### International Senior Lawyers Project (ISLP)

Free legal advice to NGOs and developing country governments on a wide range of legal matters

📍 New York, United States  
☎ +1.646.798.3289  
📧 [www.islp.org](http://www.islp.org)

### PILnet Global Clearinghouse | PILnet-Hungarian Clearinghouse

Access to justice, developing civil society

📍 Budapest, Hungary  
☎ +36.1.461.5700  
📧 [www.pilnet.org](http://www.pilnet.org)

### TrustLaw

Legal support for NGOs and social enterprises

📍 London, United Kingdom  
☎ +44.20.7542.0240  
📧 [trustlaw@thomsonreuters.com](mailto:trustlaw@thomsonreuters.com)  
📧 [www.trust.org/trustlaw/](http://www.trust.org/trustlaw/)

### Vance Center

Legal representation to international human rights bodies in: (1) human rights; (2) environmental; (3) free expression, media, & information; and (4) health and development

📍 New York, United States  
☎ +1.212.382.6680  
📧 [vance@nycbar.org](mailto:vance@nycbar.org)  
📧 [www.vancecenter.org/vancecenter](http://www.vancecenter.org/vancecenter)

## Ireland

### Public Interest Law Alliance (Pro Bono Referral Scheme)

Free legal advice to NGOs, law centers, and legal organizations

📍 Dublin  
☎ +353.1.872.8048  
✉ [info@pila.ie](mailto:info@pila.ie)  
🌐 [www.pila.ie](http://www.pila.ie)

## Mexico

### Fundación Appleseed México (The Mexico Pro Bono Network)

Legal assistance to NGOs on public interest matters, including children's rights and human rights matters

📍 Ciudad de México  
☎ +52.55.8421.5898  
✉ [admin@appleseedmexico.org](mailto:admin@appleseedmexico.org)  
🌐 [www.appleseedmexico.org](http://www.appleseedmexico.org)

## Paraguay

### CIDSEP (Interdisciplinary Center for Social Law and Political Economy)

Public interest matters (training, research, public awareness of pro bono work, etc.)

📍 Asunción  
☎ +595.21.445.429  
✉ [info@cidsep.org.py](mailto:info@cidsep.org.py)  
✉ [coordinación@cidsep.org.py](mailto:coordinación@cidsep.org.py)  
🌐 [www.cidsep.org.py](http://www.cidsep.org.py)

## Peru

### Fundación Pro Bono

Provides legal support to nonprofits with qualifying matters which benefit children and young adults, women, the elderly, social entrepreneurs, people with disabilities, ethnic groups, and the environment.

📍 Lima  
✉ [info@probono.org.pe](mailto:info@probono.org.pe)  
🌐 [www.probono.org.pe](http://www.probono.org.pe)

## Poland

### Centrum Pro Bono

Legal advice to NGOs (tax, civil and commercial issues, labor law, etc.)

📍 Warszawa  
☎ +48.505.690.408 | +48.572.440.150  
✉ [biuro@centrumprobono.pl](mailto:biuro@centrumprobono.pl)  
🌐 [www.centrumprobono.pl](http://www.centrumprobono.pl)

## Romania

### FDSC (Fundatia pentru Dezvoltarea Societatii Civile)

Clearinghouse services to Romanian NGOs

📍 Bucharest  
☎ +40.21.310.01.81 or .82 or .83  
✉ [office@fdsc.ro](mailto:office@fdsc.ro)  
🌐 [www.fdsc.ro](http://www.fdsc.ro)

## Russia

### PILnet (Moscow Clearinghouse)

Access to justice, developing civil society

📍 Moscow  
☎ +7.495.628.0020  
🌐 [www.pilnet.org/](http://www.pilnet.org/)

## Slovakia

### Nadácia Pontis

Legal advice to NGOs and nonprofits

📍 Bratislava  
☎ +421.2.5710.8111 or .8117  
✉ [pontis@nadaciapontis.sk](mailto:pontis@nadaciapontis.sk)  
🌐 [www.nadaciapontis.sk](http://www.nadaciapontis.sk)

## Slovenia

### The Slovenian Clearinghouse (Peace Institute and PIC)

Legal advice for NGOs and individuals referred by NGOs (particularly for discrimination & domestic violence issues)

📍 Ljubljana  
☎ +386.1.234.7720  
✉ [info@mirovni-institut.si](mailto:info@mirovni-institut.si)  
🌐 [www.mirovni-institut.si/en/](http://www.mirovni-institut.si/en/)

## South Africa

### ProBono.org

Family law, AIDS, land law, refugees, etc.

📍 Johannesburg  
☎ +27.11.339.6080  
✉ [info@probono.org.za](mailto:info@probono.org.za)  
🌐 [www.probono.org.za](http://www.probono.org.za)

## Turkey

### PILnet (Bilgi Clearinghouse – Human Rights Law Research Center)

Legal advice to NGOs

📍 Istanbul  
☎ +90.212.253.8742  
✉ [insanhaklarimerkezi@bilgi.edu.tr](mailto:insanhaklarimerkezi@bilgi.edu.tr)  
🌐 <http://insanhaklarimerkezi.bilgi.edu.tr/en///>

## United Kingdom

### National Pro Bono Centre (NPBC)

Most areas of law covered

📍 London

🌐 [www.nationalprobonocentre.org.uk/npbc-charities](http://www.nationalprobonocentre.org.uk/npbc-charities)

Several organizations housed in NPBC:

#### **For Barristers**

Bar Pro Bono Unit

📞 +44.20.7092.3940 or .3960

✉️ [enquiries@barprobono.org.uk](mailto:enquiries@barprobono.org.uk)

🌐 [www.nationalprobonocentre.org.uk/npbc-charities](http://www.nationalprobonocentre.org.uk/npbc-charities)

#### **For Solicitors**

Law Works

🌐 [www.lawworks.org.uk/solicitors-and-volunteers/get-involved](http://www.lawworks.org.uk/solicitors-and-volunteers/get-involved)

#### **For Either**

PILnet

📞 +44.20.7092.3976

🌐 [www.pilnet.org](http://www.pilnet.org)

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# Major NGO Clients

By: Freshfields Bruckhaus Deringer

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## Introduction

### Background and Definitions

This chapter offers a practical guide to sourcing pro bono work from major non-governmental organization (NGO) clients. Depending on the jurisdiction of operation, this might mean a large charity, or another form of non-profit entity, whose sheer size of operations and income means it has a significantly different type of legal need and way of working than a small NGO or community group (let alone an indigent individual) – and therefore benefits from a different approach to pro bono service. Obviously, there is no bright-line separating small from “major” NGOs; there is a spectrum. The NGO examples cited in this chapter each have an annual income over \$50,000,000.

An important distinction of working with major NGOs is the ability to deal directly with the client in an ongoing relationship, as contrasted with sourcing smaller matters through a clearinghouse or other intermediary; the latter may involve cycling through a variety of smaller pro bono clients with short-term relationships limited to the life of individual projects.

### Why give pro bono advice to a major NGO?

There are several key potential advantages to representing a major NGO client over other sources of pro bono work:

- Because of their size and reach, major NGOs often have legal needs in highly specialized areas, which may offer a better fit for some lawyers – often those who are hardest to engage through more traditional pro bono models.
- The NGO may have a brand with wide recognition which resonates with and engages your staff.
- The NGO may tackle social issues other than access to justice which engages a different section of your staff, or which fit with your organization’s values, business and/or corporate social responsibility (CSR) objectives.

- Often, a major NGO will be a sophisticated user of legal services, with its own General Counsel and often a legal team who are more familiar with instructing external lawyers. There may therefore be a higher proportion of requests which have been thoroughly vetted prior to seeking outside counsel. This can diminish the time one would need to spend scoping the potential mandate and ensuring that the time of staff is being sensibly used.
- It may offer the chance to build an ongoing relationship with a pro bono client, and to develop a deeper understanding of their business and mission. This can be rewarding for your staff, who can follow the relationship with the NGO over several years, and also, in time, gives them a chance to offer more pro-active advice rather than simply responding to requests for assistance.

Many of the potential advantages listed above are couched in terms of ‘engagement’, but are perhaps more properly seen as an index of the impact which the pro bono work will have. A better fit for your lawyers’ expertise, or the chance to get closer to an ongoing client, will mean that the impact on the public good of their time will be greater than if they were venturing into new areas of legal practice, or acting on a string of unrelated mandates for different clients. Similarly, sometimes the weight and gravitas of a major NGO – or their reach on the ground, or expertise – make them an essential player in moving the needle on an important social issue, whether at home or abroad.

### Common challenges

In addition to the suggested benefits of working with a major NGO on pro bono matters, there are also challenges.

One challenge stems from the risk of writing a “blank cheque.” Unlike work sourced from a [clearinghouse](#), where projects are often well-defined in scope, an ongoing understanding that your organization will provide free

advice to a major NGO client needs to be managed carefully so that you retain the right amount of control over the level of your commitment. Relatedly, because your advice is free, you will need to work together with the NGO to ensure your staff's time is being effectively and efficiently deployed.

Another challenge lies in the question, "Does it count?" Under PBI's definition of law firm pro bono, work for a major NGO client would count provided:

- the mandate itself is "designed primarily to address the needs of persons of limited means";
- the organization's mission involves "civil rights, civil liberties or public rights"; or
- charging for the advice could be said to "significantly deplete the organization's economic resources or would be otherwise inappropriate."<sup>11</sup>

It could of course be argued that, for a major NGO tackling global poverty, for example, any depletion of its resources on legal fees could be termed "significant." It could equally be considered "inappropriate" to charge fees where the resources of the NGO could be better spent pursuing their charitable objectives. But law firms considering developing work in this area should be aware of this potential controversy, particularly in the U.S., and the potential pressure to report using different criteria.

### Range of models

As with any other area of pro bono, there are a number of different models for structuring a project in this area. Some of the key questions to ask from the outset are listed below, and are explored in greater detail in the following section.

- Do you want to advise the NGO on matters relating directly to its charitable mission / programming? Or do you want to act as corporate counsel, as it were, to advise the NGO on its institutional legal issues? Or some combination of the two? Relevant factors will be the expertise of your lawyers and how well this fits with the legal need in each area.
- Do you want to collaborate with other law firms and/ or legal departments as part of a panel to support the

NGO? Such a panel might arrange a division of labor according to complementary areas of expertise.

- In which jurisdictions will you advise? Do you want to involve your overseas offices in advising on cross-border work, or introduce them to the local entity which is part of the NGO's "group"? Often such entities do not share a legal structure, but form part of a global alliance or movement, perhaps governed by a memorandum of understanding (MOU).
- How will you find a major NGO to work for? You may have been approached already, perhaps through your own lawyers' contacts, and need to evaluate whether and how to proceed. Or you may want to be proactive and make your own shortlist of major NGOs to approach. Or you might pick up a discrete piece of work for a major NGO through a clearinghouse, and use this as a way of testing how well you work together, and seek to develop a deeper relationship from there.
- For legal departments in particular, there may also be a decision as to whether to advise the NGO directly, or to channel your help through a law firm or other third party.

### CASE STUDY: SAVE THE CHILDREN

In 2009, Save the Children International (SCI) issued a Request for Proposal (RFP) in the U.K. to find pro bono help for their international restructuring. Freshfields was appointed and over the following two years drew on assistance from 10 offices and all practice groups in drafting and negotiating the framework which was agreed between the 29 national members of Save the Children. Today Save the Children's global revenue is \$1.9 billion\* and SCI has a total headcount of over 14,000 staff across more than 50 country offices, reporting into a central office in London.

*\*figures from 2013*

The rest of this chapter sets out some of the practical steps law firms and legal departments should consider when trying to develop pro bono work with major NGOs.

<sup>11</sup> *Law Firm Pro Bono Challenge*, Principle 7, Pro Bono Institute, <http://www.probonoinst.org/wpps/wp-content/uploads/Law-Firm-Challenge-2015.pdf>.

## Internal Evaluation

Let us say, having considered the advantages and challenges listed above, that you have decided to try to develop pro bono work for a major NGO. You may have a blank sheet of paper, or you may be evaluating a specific opportunity – from an NGO which has approached you, from someone in your business or from a third party. Before going further, it is often very helpful to think through and record at the outset your internal goals and resources. This is of course also true for pro bono work from other sources; but this section provides a tailored guide to working through your internal goals before working for a major NGO.

As in all other areas of pro bono, social impact should be at the heart of your model. In a way, the various criteria below are really a more detailed way of scoping out a source of pro bono work which will have the greatest impact on society – benefits to your staff and your business will flow naturally from that.

### Internal drivers

#### *Corporate Social Responsibility (CSR)*

Consider your organization's CSR goals. Is there a particular social mission or theme which ties in with your organization's CSR program? It might be a focus on homelessness, for example, or the environment, or social mobility – or it might be a focus on a particular jurisdiction or region, such as Africa. For a corporate legal department, there might be an opportunity to tie in with a specific pre-existing initiative within your business. Not only could such alignment bring wider networking and exposure benefits to your team; there can also be synergies from joining up different parts of your business which will in turn boost the impact of your work and the engagement of your staff.

#### *Business Drivers*

Also consider the wider business drivers within your organization. Are there particular causes (even specific NGOs) which are dear to the heart of your clients, customers, or other key stakeholders? Is there a particular region in which your business has a focus or footprint?

Again, the benefits to your business's brand of developing pro bono work in such an area will drive the internal level of support you will get for your project, the level of recognition you will receive, and therefore the engagement of your lawyers and ultimately the impact of your work.

#### *Staff*

Perhaps staff engagement is a key priority in your team; if so, you should consult on which cause or causes most motivate your lawyers. Or perhaps training is an important driver; if so, think through what type of NGO might offer the kind of experience you are seeking (whether legal or otherwise).

### Internal resources

Once you have a clear picture of your internal drivers, it is equally important to carefully consider your staffing-related resources and constraints:

- How many lawyers in your business do you think would want to get involved, and how much of their time do you think each would realistically be able to commit?
- What are their areas of legal expertise?
- Do you want to involve lawyers in several jurisdictions?
- Are there practice rule restrictions in any of these jurisdictions, and, if so, how many of your lawyers are appropriately qualified and/or insured to give legal advice?
- Would you be interested in seconding a member of staff to the NGO and, if so, at what level?
- Who is going to lead the project and/or manage the teams?

Map out which areas you would like to involve, how many lawyers you have in each, and who might be available. To research such internal questions, reach out to PBI and CPBO, as a law firm or legal department, respectively, for pro bono interest survey samples.

There may be different rules for advising on local law. See the [Global Pro Bono Survey](#) as a first step to researching a particular jurisdiction.<sup>12</sup>

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<sup>12</sup> [Global Survey 2016](#), *supra* note 6.



Even if collaborating with others, it is essential to factor in from the start adequate resources to lead and manage the new relationship – and, if the relationship becomes ongoing, to serve as a single contact point for the NGO, to triage and analyze new requests for assistance, to run the relevant internal checks and then to disseminate them to the relevant people internally. Law firms often appoint a senior “relationship partner” to head up the firm’s relationship team, as they would with a commercial client, with more junior lawyers tasked with managing the day-to-day requests. The global shape of your team may point you towards particular areas of work or even particular NGOs which have a matching or at least overlapping footprint.

Such an assessment of your “capacity” to assist is an important step in evaluating any potential pro bono project. It is particularly important to get as clear a picture as possible before developing work with a major NGO because of the sheer scale of the potential resources which could be involved. Big organizations often have great legal need, and if your partnership develops well your involvement could be ongoing for some time.

Being armed with a clear idea of what you have to offer will help you identify:

- which NGOs (or types of NGO) are likely to be a good fit for your pro bono practice;
- what sort of relationship and projects you will look to develop; and
- whether or not you should look to collaborate with others, either to bolster the volume of what can be delivered, or to complement your technical or geographical reach.

## External Evaluation

Being so equipped with a clear sense of internal drivers and resources will place you in a much stronger position to evaluate potential opportunities to work for major NGOs – whether those opportunities come through a clearinghouse, a direct request from an NGO, or a proactive approach you are considering making yourself. One interesting type of direct request is when a major NGO issues a Request For Proposal (RFP). For example, in the U.K., Save the Children International ([mentioned on page 16](#)) and National Society for the Prevention of

Cruelty to Children (NSPCC) both used an RFP process to identify law firms to assist them on a pro bono basis.

The reverse is also possible – you could draw up your own shortlist of major NGOs to offer your pro bono services, and then ask them each to pitch to you. DLA Piper, for example, undertook a comprehensive review and due diligence process to identify an international NGO it could partner with globally. Shortlisted NGOs were asked to tender a partnership proposal which demonstrated relevance of the partnership to DLA; opportunity for high impact pro bono work; appropriate division of pro bono, community engagement and financial contribution; and client collaboration opportunities. In April 2013, DLA Piper and UNICEF announced “a ground-breaking new partnership aimed at strengthening the protection of children around the world.” Unsuccessful NGO participants were given a donation to compensate them for the time invested in the tender process.

### Gauging “fit” with the NGO

Whatever the source of the opportunity, a key consideration for you will be “fit.”

- Does the NGO work in an area which fits with your social mission and/or the interests of your staff? For example, if you have surveyed your staff you may have uncovered a particular engaging theme which your staff can unite behind (like child rights or domestic violence), or your business may already have a broader CSR focus (for example, on environmental protection or access to finance).
- Does the NGO operate in jurisdictions which fit with the global shape of your team? Your business work may focus in particular places, or your staff may be physically based in particular locations around the world. If so, consider whether this geographical footprint is a good match for either the office network or the frontline work of particular NGOs.
- Does the NGO have legal need in areas of law that fit with the expertise of your staff? For example, if a large part of your legal team are intellectual property (IP) lawyers, then you may find a good fit with an NGO whose work requires a substantial amount of IP advice around the world (either through frequent sponsorship arrangements or directly through its frontline work).

Also consider any potential [conflicts](#) of interest and reputational concerns. Whether or not a true conflict arises from an initial mandate is relatively straightforward to ascertain, perhaps especially for law firms, which will all have systems for running such checks against all new work. Many legal departments do not have such systems but those with developing pro bono practices will need to consider how best to ensure they can accurately track potential conflicts when taking on new clients and mandates.

Law firms will also have processes for checking for regulatory and reputational issues, such as sanctions, human rights violations, and corruption. For example, less well-known NGOs in some developing countries may be well-connected to public officials, which may introduce concerns about corruption or at least the appearance of corruption. Regulatory and reputational issues are harder to deal with unless you already have systems in place – if not, consider out-sourcing such due diligence to a third-party provider.

“Positional conflicts” as they are sometimes known, can also be harder to spot. Here are a few examples which are not uncommon in the world of major NGO pro bono.

- An NGO asks you to act for them on an employment law matter. There is no technical conflict, but the same NGO is litigating in a separate matter against:
  - in the law firm context, a commercial client of your firm, even though you are not representing the commercial client in the litigation; or
  - in the legal department context, a different entity within your corporate group.
- An NGO asks you to provide pro bono help with a governance issue. As the advice is internal, there is no conflict for your legal department. However, the NGO concerned recently published a report which was critical of an important business partner.

- An NGO asks you for pro bono help with a small supplier dispute. Although the NGO has never campaigned against a specific client/ business partner, it nevertheless does actively campaign in a way which could be seen as hostile to an industry in which your business has an interest generally. For example, it campaigns against “big oil” and:
  - in the law firm context, your firm acts for one of the major oil companies; or
  - in the legal department context, your business has interests in the oil sector.

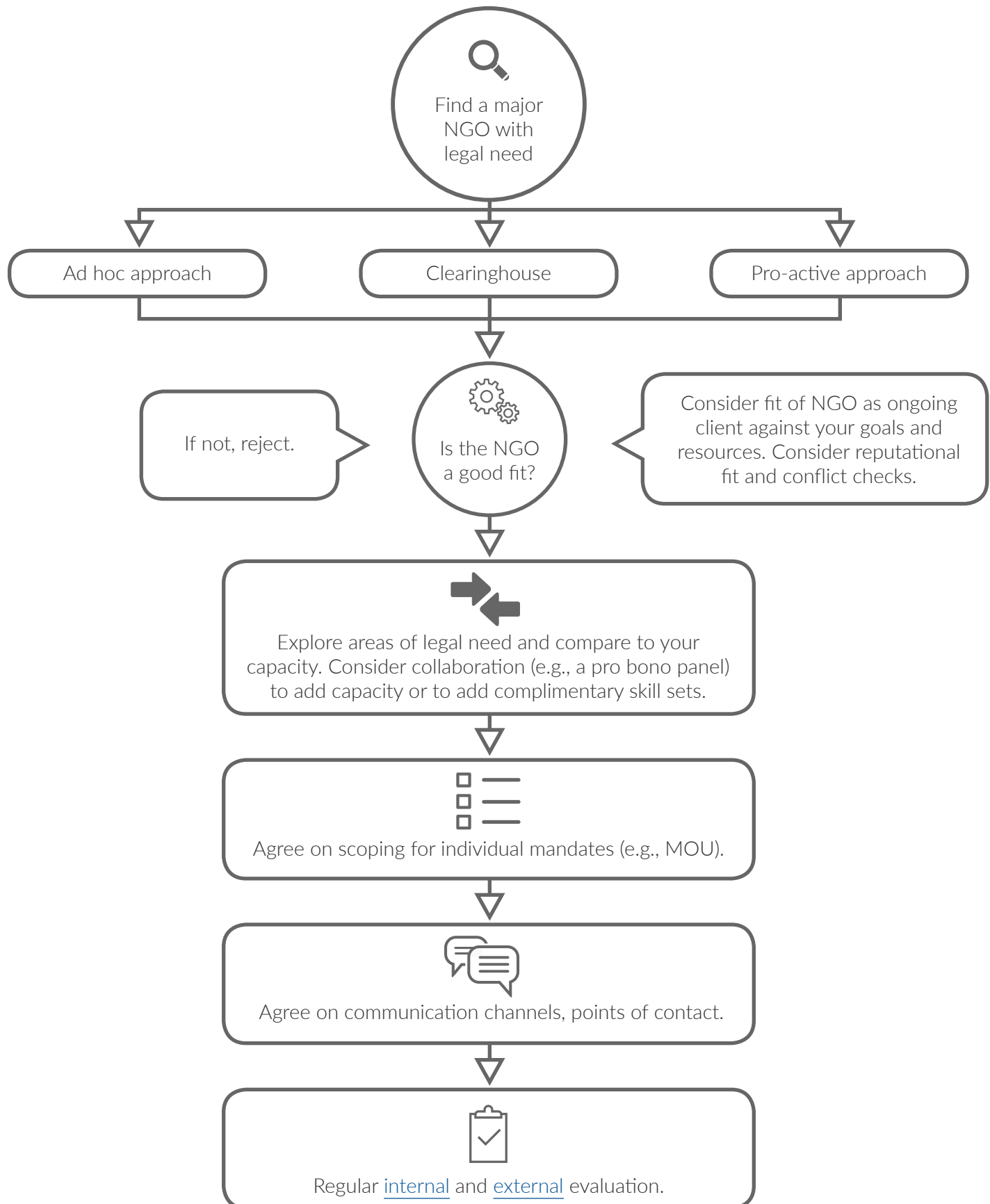
In each of these cases, ascertain whether there is a commercial risk to your business relationship by supporting this NGO, and, if so, whom to speak with to gauge whether the risk is one your business is willing to take.

Each of the cases also illustrates the type of due diligence you should be considering before starting any new relationship with a major NGO:

- Checking against current and previous mandates for conflicts of interest and confidentiality issues;
- Reviewing the NGO’s website to understand their mission and areas of work;
- Reviewing the NGO’s research and publications;
- Running press searches against the NGO’s name, and so on.

Assuming there are no conflicts or reputational concerns, you are now in a position to look at the “fit” of the specific opportunity against your own internal aims and resources, and make an informed decision whether or not to start developing the relationship. See [Conflicts](#) for a more detailed discussion.

## Developing Your Partnership



## Scope – overall terms

Once you have decided to develop an ongoing relationship with a particular NGO, the next step is defining the terms of overall engagement. Documentation can have a variety of names such as: MOU, letter of engagement, client engagement letter, or scope of representation agreement. Scoping both each individual project (referred to as a “mandate” in the U.K. context and throughout this chapter) and the ambit of your ongoing relationship more generally will be the key to creating a sustainable and mutually beneficial ongoing relationship. The NGO must understand up front that each individual mandate will need to be checked and approved. In turn, the NGO must identify up front the expected audience for your work product, and consequently whether it should be presented in a technical legal format or in a short, plain-English format.

Clarity on scope – particularly for major NGO pro bono – is important for two key reasons: first, to control and manage the sheer volume of your effort, as major NGOs often have major legal need; and, second, to manage the way in which your resources are deployed by your client. Careful scoping is key to ensuring your time is used sensibly – and with a direct relationship with a major NGO, one does not have the infrastructure of a clearinghouse to rely on to scope each request as it comes in, nor the expectation that after the initial mandate is completed, one’s relationship will be over.

There are different models used to further control commitment, which can be built in to the overall engagement terms or MOU. One example is a fee cap: you can write into your overall engagement terms (or MOU) that, subject to accepting individual mandates on a case-by-case basis, you will act pro bono up to a maximum number of hours, or chargeable cost equivalent amount. This may leave open the question of what to do if and when you hit that cap: would you cease your pro bono work (with possible ethical and regulatory complications) or start charging or simply increase the cap? In any event, the existence of a cap will help to focus minds on how to use a limited resource to the best effect.

## Scoping mandates

Whichever model is used to manage your overall contribution, it obviously remains vital to scope each mandate carefully before committing. Here are some key questions to consider.

- Does the request make sense? Have you run it past a subject matter expert internally? Sometimes the nature of a request changes radically when the client sits down with a specialist lawyer to work through exactly what needs to be done – this should happen up front before committing to the mandate, so you and your client are clear on your expected work product.
- Does your client have the required internal approvals to commence the proposed mandate? Do they have the background information, documents and internal buy-in for you to hit the ground running and to be sure the project will be effective?
- Have you checked whether the proposed project duplicates work done for other NGOs recently? It could be a piece of research, in which case you need to ensure you are not reinventing the wheel, or it could be a transactional piece of advice which would benefit from the lessons learnt (and even precedents) from a similar project. NGOs are generally very open to sharing such knowledge.
- If the project is a research request for policy purposes, are you and your client clear on how it will be used? This is important to ascertain for two reasons: first, to flush out any reputational risks, and second, to gauge the likely impact of the work. Nothing is so dispiriting for pro bono lawyers than seeing all their hard work on a research task turned into a paper which gathers dust (see [Research Projects](#)).
- Has the question been asked: if we don’t act pro bono, what will you do? Again, this helps to understand the impact of your work if you decide to take it on.

## Mandate engagement terms

As mentioned previously, engagement terms will be needed for each mandate. Most pro bono practices will have standard terms. Rather than include all terms in each mandate, you may wish to use broader engagement terms which work with shorter subsequent mandate-specific “top-ups”. If so, the broader terms should be drafted accordingly – not to apply to a particular mandate, but rather to future mandates to be specified in separate short-form engagement terms.

The minimum requirements for the mandate-specific terms will vary by jurisdiction but, at a minimum, will typically include:

- Details of key contacts (both parties);
- Scope of the mandate (what areas of law are covered and not covered);
- Timing;
- Arrangements for contact (regular catch-up calls?);
- Limit of liability;
- Who pays disbursements; and
- Complaints procedure.

In some cases, extra issues will have to be covered – for example, contentious matters may need to address the risk of adverse costs.

## Deepening the relationships

If the new relationship takes off, consider different ways of getting closer to the new client. For instance, consider seconding someone from your team: such people make great volunteers when they return, with a real understanding of the NGO. Consider hosting events and even “internal” meetings for the NGO if you have such space free; if appropriate, consider also asking whether someone from your team can sit in on the relevant meeting to broaden understanding of the NGO’s business and mission.

Even if going it alone at first, as your relationship develops, you or your client may at some point wish to consider adding further firms or legal departments to the “panel.” As discussed above, this might be simply to add capacity, to add new areas of expertise, to add

lawyers who can deal with extra jurisdictions, or to deal with mandates from which you are conflicted out. Whatever the main driver, such collaborations can work extremely well.

### CASE STUDY: OXFAM

Oxfam is a global confederation made up of 17 national affiliates. The global confederation generally uses Freshfields as its global counsel, and individual affiliates have their own panels. This can help if one firm is conflicted from acting. Freshfields and sometimes other international law firms are used to advise a number of different affiliates in their work in different territories, depending on where they have offices or relationship firms, as well as language capacity. Panel firms at the national level include Wragge Lawrence Graham in the U.K., Goulston & Storrs in the U.S., and Latham and Watkins in Spain.

## Internal Systems and Evaluation

In addition to recording external arrangements (in engagement terms), it may also be useful to capture, at the outset, proposed internal systems. This can be set out in an internal document and a point person can be held responsible for ensuring these processes are followed. The key points to consider recording are:

- Your internal “business plan” for taking on the new client – how does it fit with your business aims and social goals; which internal benefits do you hope to secure;
- Who is responsible for what – in particular, who is your relationship “lead” and who is there to support them in project managing the relationship and ensuring others feed in to keep them updated;
- Who is responsible for dealing with incoming requests, running conflict and reputational risk checks, finding suitable volunteers and ensuring engagement terms are in place;
- How will documents and emails be stored and shared internally so that everyone who needs to can access all work for this client; and
- How regularly will you set up relationship meetings with your client to discuss work to date and future possible work?



Finally, it can be very useful to record upfront how you propose to evaluate your work. The challenges of impact measurement are notorious. It is enough to note that, with major NGO work, you might have, first, an internal governance project and, second, some research on a legal issue for use in a policy campaign affecting the frontline operations of the NGO. The social impact of these two contrasting projects cannot be “measured” in any meaningful sense, such that their social impact could be directly compared; nevertheless, a detailed consideration of impact is absolutely essential to ensure your time is being used effectively and to ensure your staff are engaged.

There are some inputs and outputs that can and should be measured, and it may be worth setting out what these are and what metrics you foresee for the relationship as a whole. This will allow you to look back and judge whether you took on more or less work than hoped for at the start of the relationship. Examples include:

- Total pro bono hours per year you hope to do for this client;
- Number of mandates you hope to take per year;
- Number of lawyers per year you hope to involve;
- Number of offices/jurisdictions you hope to involve;
- Potential impact of proposed work.

In terms of impact, the most useful approach is often to spell out, at the outset, what your goals are for each mandate. This will vary depending on the particular project. Your goal for a governance review might be to help the NGO become more effective: think about how this could be measured – a reduction in their annual resources spent on governance, for example. For a research project, consider setting out in advance how you understand the research will be used – published as a report, perhaps, or featured in a campaign which is hoped to lead to a particular policy change. Recording this at the outset will clarify internally what impact you hope to see from each project, and will equally help you assess success against these criteria during and after each mandate.

## INPUTS/OUTPUTS

- ☐ 1,000 hours per year
- ☐ 8 mandates per year
- ☐ 40 lawyers in 4 offices engaged

## IMPACTS

- ☐ Spending on governance down 10% from 2015 levels by 2018
- ☐ Policy change XYZ to be achieved by 2019
- ☐ Research on XYZ to be cited by government by 2018

A key resource in evaluating how the broader relationship is developing will be meetings with the NGO itself. Consider asking for direct feedback on how your lawyers have performed, what they could do better, and what the impact of their work has been from the NGO client’s perspective. Regular check-ins with your team members to ensure their experiences are positive are also crucial to maintaining an on-going relationship with the NGO.

This takes us to the final piece of the jigsaw: communicating your work, internally and/or externally. This is obviously something common to all pro bono work. But with major NGO pro bono, you are often on your own, without a clearinghouse to gather feedback on your work or its impact, or to put out a press release – so this is worth considering at the outset. With transactional or non-contentious pro bono, you may have the additional challenge of not seeing a direct connection between the work done by your lawyers and its ultimate social impact via the frontline work of the NGO. This gap can be bridged, but you may need to be proactive in doing so – getting it right can make all the difference in terms of recognition and staff engagement. You might, for example, organize a visit for your lawyers to see the frontline operations of the NGO. Or, if that is not practical, send one of your pro bono volunteers to visit and ask them to write an internal article for your newsletter or make a simple video about the experience.



## CASE STUDY: SAVE THE CHILDREN

While Freshfields was working on a global restructuring for Save the Children, we invited the head of their field office in Afghanistan to give a lunchtime talk to staff about how their work translated into improved help on the ground in saving children.



## Conclusion

Working for major NGOs is usually a great experience. While making a positive difference for society will be a primary motivator, the association of your business with an NGO that has an important brand, whose integrity is widely respected, and whose impact is widely understood, can have important ancillary benefits for your organization's reputation, recruitment, and morale.

# Research Projects

By: White & Case

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## Introduction

### Background and Definition

Increasingly, non-governmental organizations (NGOs), legal-service providers, and other organizations are recognizing the capacity and breadth of knowledge that law firms and legal departments can bring to bear to improve access to justice and enhance the rule of law globally. These organizations are thus increasingly calling upon law firms and legal departments to provide legal research on a variety of topics critical to their missions. Such projects are proving to be an important tool for these organizations and pro bono attorneys more broadly. They can be tailored, both in scope and in content, to fit the abilities and interests of both sets of collaborators and to meet general or project-specific client needs.

Law firms and legal departments are doing global research projects in a variety of interesting ways. For example, Starbucks' European legal team collaborated with an NGO partner, the Public International Law and Policy Group, and lawyers from Baker & McKenzie to research international best practices in order to ensure independent truth and reconciliation mechanisms in Uganda. Latham & Watkins, in partnership with Pro Bono Institute, surveyed the pro bono practices, opportunities and existence of publicly funded legal aid programs in over 70 jurisdictions worldwide. And in its largest international research project yet, White & Case reviewed legal protections for children in 172 countries on behalf of the Child Rights International Network (CRIN) and compiled a comprehensive report.

### Range of Opportunities Available

As a rough-cut, such research projects can be divided into “non-contentious” and “adversarial” efforts. “Non-contentious” projects generally do not involve the direct application of the findings to a specific case or controversy. Rather, they seek to deepen knowledge and expertise within the pro bono client to help it

advance its general mission, to review policy or legislation, and often to disseminate the newly obtained knowledge to the outside world. “Adversarial” research projects can be used, among other things, to support a particular case, identify inconsistent laws among jurisdictions and promote efforts to harmonize them, or to assist other practitioners in advocating for reform or consistency. Each client will have different needs and goals for a research project, but regardless of the type, a good research project does not just sit on the shelf after completion – it leads to education, and hopefully, action.

Although the structure of each research project may vary depending on the client's needs and goals, certain common elements exist.

### Operational Details

#### *Finding a Research Project*

Legal research projects may be identified through referral organizations, such as [clearinghouses](#), or from a direct relationship with the pro bono client, such as an [NGO](#). Sometimes, a client or referral organization may have a modest request for research which a firm may seek to broaden thanks to its having additional capacity and jurisdictional presence. Conversely, a request may be too large for one firm or legal department and may either be parceled out among various entities, or reduced in scope as appropriate. A small-scale research project is often a discrete way for a firm or legal department to work with a pro bono client or to test the waters with respect to the compatibility between the firm or department and the client before committing to larger pro bono efforts.

#### *Structuring the Project*

At the outset of crafting a research project, it can be helpful to consider how to divide it into smaller sections. Breaking it down allows multiple members of the team to work on the project in parallel without duplicating each other's work. For the majority of projects, the

most appropriate way to divide the work will be clear, based on the scope. For example, a partnership with a pro bono client whose focus is on access to justice for a certain population may seek a report that covers laws in jurisdictions relevant to its mission. A partnership with a client that provides direct legal services in a particular area of the law (say, housing or family law) may seek a survey of cases or best practices over time.

Thus, in many cases, it may make sense to break the research project down by jurisdiction, as the laws will vary among countries or states. For example, in White & Case's work for CRIN, mentioned above, each lawyer or small team researched a particular country's laws, allowing dozens of lawyers to work on the project simultaneously around the world. Another project, on behalf of the United Nations Office on Drugs and Crime, called for a survey of case law related to human trafficking worldwide. Again, the project was broken down by the jurisdiction in which the cases were brought, which prevented duplication of efforts.

Other projects might be broken down by theme, topic, geographic area, or time period. The firm or department should work with the pro bono partner to develop a clear goal of the project and identify potential ways to divide the work, so that it can be accomplished in a timely and efficient manner.

#### *Division of Responsibilities*

The allocation of responsibilities is an important consideration, particularly with regard to research projects that touch jurisdictions where a firm or legal department may not have expertise or admitted attorneys. Again, there are many ways to divide the work. For example, the firm or department may do the entirety of the research, consulting with the client on the content and form, and presenting it with a finished product at the end. Alternatively, the firm or department may opt to work alongside the pro bono client, researching some segments of the project while the organization completes others. The firm may decide to partner with an in-house department and work together on the research. Certain large projects, such as treatises, or projects requiring local expertise across multiple jurisdictions, may be divided among multiple firms and may include local counsel in less familiar jurisdictions working on a pro bono or even

paid basis. Regardless of the division of labor selected, it should be clearly spelled out in the memorandum of understanding or letter of engagement executed between the firm and the pro bono partner, as described more fully below.

## Evaluation of the Project

### Quality of the Project

#### *Scope of the Project*

To assist the law firm or department in evaluating whether it wishes to undertake a research project, the pro bono client should provide a clear mandate with respect to the scope and timing of the project, preferably in the form of a detailed project memo. The memo should include a list of desired topics to be covered (*e.g.*, jurisdictions to be researched, cases to be summarized, etc.) or clear research questions, along with a research template or sample document to be completed by each researcher, in order to ensure consistency among the many parts of the project. If possible, the client point person and counterpart at the law firm or department should draft this document in coordination, allowing the pro bono client to specify its needs and goals and the law firm or department an opportunity to intervene to ensure that the requests are clear, reasonable and complete. Any such document should contain a clear deadline and information on whether the work product should be provided on a rolling basis (usually preferable) or all at once. For particularly extensive research projects or those covering many jurisdictions, the client should be apprised of the need for flexibility on deadlines.

#### *Evaluation of Need*

It is important from the start that the law firm or department work closely with the pro bono client (and, if applicable, other players such as the pro bono clearinghouse, scholars, NGOs, or governmental agencies) that will ultimately use the research project to ensure that the project's intended output is necessary, useful, properly structured, and not duplicative of existing work. To do this most efficiently, it is often necessary to conduct preliminary research on the given topic, to properly consider what learning already exists on the subject, and to consider in what format it may be found.

If the subject the pro bono client hopes to cover is already available in some format, consider whether it is worth the firm or legal department's time to synthesize it for the client, particularly if doing so would be a more administrative task better handled by the client itself or other non-legal volunteers. If the information is entirely unavailable, or difficult to access (whether because it is not online, because it is not in English and internal translators or lawyers with the appropriate language skills are unavailable, or because special permission is required), the research project may be impractical as formulated.

Frequent and iterative communication with the client is important, to ensure that the project has clear and ongoing utility, and that changes of approach, policy, or circumstances have not made the proposed work less valuable or even unnecessary. Consider the present and future goals of the client, and how this project will help it achieve or support those goals. If the research project is intended to reach third-party clients of the pro bono client itself, ensure that the final work product will be in a form useful and accessible to that audience as well. Work with the pro bono client to envision the life cycle of the project. The client should have a clear goal of how the project will be used in the future, how frequently the project will need to be updated to continue being useful, and how it will be updated when the information it provides becomes dated or obsolete. Ideally, the pro bono client itself will be able to keep the project current without requiring outside assistance. If updating the project would essentially require starting over from scratch, consider restructuring the project so updates can be made more efficiently and regularly.

In exceptional circumstances, where the project may appear to explore an unusual aspect of a legal question or the law firm or department is not sure it agrees with the proposed structure or scope, it may be useful to consult informally with experts in the field to better understand the topics in question. This is particularly true if the subject matter is one in which the law firm or department does not regularly practice.

## Resources Needed

In order to assess the kinds of resources that are required to complete the research project, consider the firm or department's existing geographical reach, roster of attorneys licensed in various jurisdictions, its contacts, and ability to connect with NGOs, governmental organizations, scholars, foreign lawyers, embassies, experts, local law firms, or others.

Large research projects benefit from early and thoughtful organization, particularly with respect to administrative structure and staffing. With few exceptions, the technological resources needed should already exist at the law firm or department, requiring only minimal implementation time or costs. One major cost can take the form of engaging local counsel in jurisdictions where the law firm or department does not have licensed attorneys and in which relevant information is not readily accessible. While such local counsel can sometimes be engaged on a pro bono basis, particularly in developing jurisdictions, the notion of pro bono work has not always fully taken root. Misunderstandings can arise about what "pro bono" means. For example, some local-counsel firms – even in Western Europe – have stated that "pro bono" means doing work outside one's specialty, but fully with the expectation of being paid. Thus, it is imperative at the start, if resources not under your control are going to be needed, that all costs be at least estimated before the work begins.

It will likely be helpful to have a centralized database or shared drive for organizing the work product, and an organized way of tracking progress and responsibilities (usually a spreadsheet), particularly when the project is expected to last a long time, or involves many lawyers or many offices. A shared calendar, with scheduled team calls, should be circulated; if the size of the team precludes regular conference calls, the agreed-upon project manager or point person should be appointed and should send regular emails to check on the team's progress.

The law firm or department should also have a solid understanding of important internal or external deadlines that might exist for the client (*e.g.*, a public launch event, court case, or legislative hearing for which the research project is needed; other work that the NGO wishes to do that will build on the findings), and be able



to assess whether the project can be completed in its entirety by that date. These points should be captured in the project description memo, as well as articulated in discussions with the pro bono client and all law firm or department team members.

## Common Challenges

While anticipating all the challenges that can arise during the course of research projects is impossible, certain problems are common to all projects, regardless of scope or topic, and are discussed below.

### *Structure*

- For projects divided by jurisdiction, less-developed countries are likely to have less information readily available online and in professional databases, and the information that is available may be incomplete or out-of-date. Moreover, the information sought by the pro bono organization may not exist at all for smaller jurisdictions, but verifying definitively that it does not exist may be impossible or extremely onerous and time-consuming. There is, however, likely to be a greater need for research with respect to these jurisdictions, meaning that the law firm or department's impact by successfully conducting the research will be great. It is precisely this kind of research in problematic jurisdictions that can be so difficult for the pro bono client.
- When the law firm or department is not authorized to practice in the relevant jurisdiction, particularly where it does not have local lawyers, it will typically be limited to commenting on the consequences of various actions rather than advising a course of action. Legal research projects do not usually implicate unauthorized practice of law in another jurisdiction, but practitioners and pro bono teams should always be mindful of where the limits lie and be careful not to cross them.
- While many associates may work together on the project, a smaller group must be charged with synthesizing their work product into a coherent whole. This "editorial team" must ensure that any gaps in consistency are filled in by the researchers, and that the final project has a unified voice.

### *Scope*

- The firm or department needs to retain the right to decline to cover a given jurisdiction. There may be capacity, jurisdictional, [conflicts](#) or political issues, and it is wise to review all jurisdictions included in the project before agreeing to take it on.
- If there is a hard deadline for the project, extra time must be built into the schedule for inevitable delays, including missing information, inconsistent formatting or re-staffing of attorneys. In larger firms, the potential for attorney turn-over must be taken into account. In legal departments, the many demands on small teams can also lead to a lack of capacity.

### *Management*

- A project that drags on may sap the enthusiasm of lawyer volunteers, potentially compromising their willingness to take on new segments of the project. Similarly, if individual sections are too burdensome for the number of lawyers assigned, they may burn out mid-way and fail to complete their work. Likewise, if a given jurisdiction proves impossible to crack, the attorneys researching it should be given the option of documenting their efforts and stopping after a reasonable point. There must also be a "salvage plan" in effect when lawyers leave the law firm or department prior to completing their assigned sections.
- Although some flexibility with respect to deadlines is likely to be necessary, there must also exist consequences for repeatedly missing deadlines (likely through the oversight of a supervising partner to whom the lawyer or associate reports).

### *Assessing Challenges*

- Coordinate the law firm or department's resources before the start of the project: contact firm or department alumni, NGOs, experts, and local counsel, among others.
- Target particular lawyers: those with language skills, relevant work history or other expertise, or with beneficial relationships or interest in the subject matter. Consider involving law students if the law firm or department has relationships with particular schools.

- Time the staffing of lawyer volunteers with influxes of junior lawyers into the firm: for example, summer associates, new associate classes, laterals.
- Maintain enthusiasm: recirculate the matter regularly to recruit new volunteers, send status updates to the team, and measure progress tangibly.

## Monitoring and Evaluation

A research project is successful when all relevant jurisdictions or areas have been covered, and all questions have been answered. However, the original goal may have to be revised due to factors unforeseeable at the time of the project's creation.

If there are repeated problems across multiple jurisdictions, such as an area of the research template that cannot be answered with certainty in multiple jurisdictions, it may be necessary to discuss with the pro bono partner whether to modify it or remove it from the template. Recurring language problems may necessitate a discussion with the pro bono partner of whether those jurisdictions are better handled by another organization.

## Evaluation of the Partners/Client

### Capacity and Quality

Vetting and evaluating a potential pro bono client prior to committing to a research project will help ensure a successful collaboration. Consider the capacity of the potential pro bono client: can it support and use the project effectively? Review its experience in the field, its reputation, and relationships it enjoys. The project should fulfill a compelling need of the organization or make a critical part of its work easier. Though much of this information can be obtained through conversations with the client, gather reputational information from pro bono clearinghouses, news coverage, and peers who have relationships with the potential pro bono partner. It will be helpful to run a “background check” on the client through conflicts and news article searches, with assistance, for example, from the firm's new business department and/or librarians.

## Necessary Elements

Recurring problems related to research projects often arise from unclear or unrealistic expectations. At the debut of the project, it is necessary that the client provide the law firm or department with a detailed memo describing the project. This project-description memo should indicate with specificity what work product will be produced, how it will be gathered, and any important deadlines. With such a memo in place, surprises related to the scope of the project and the responsibility of the lawyers can be (mostly) avoided. Having a detailed project-description memo in place will help the law firm or department avoid overbroad project mandates, unreasonable expectations with respect to deadlines, and curtail changing desires as to the project's content and scope.

Just as the law firm or department does, the pro bono client should designate an internal point person who is dedicated to the project and responsive to the lawyers doing the work. There should be a schedule of regular communication, linked to the deadlines envisioned at the start of the project. Rolling deadlines will likely be beneficial to all parties, unless for some good reason there is a hard deadline. A rolling deadline allows the pro bono client to review the work product and ensure that the format is satisfactory, and to suggest any changes as necessary for future installments. The law firm or department, however, must ensure that rolling deadlines do not result in an inconsistent work product. Throughout the effort, the pro bono contact and the project manager within the firm or department should ensure that the project remains beneficial to the pro bono client.

## Evaluation of Internal Resources

### Human Resources

Staffing needs will vary based on the scope and size of the project. Even small research projects can involve lawyers across multiple practice areas and offices, particularly when lawyers with special skills (*e.g.*, foreign language capacity) would be beneficial.



However, a strong core team should be in place to effectively manage what can easily become an expansive project. A research project needs (i) a supervisory level (for the overall effort, and possibly also for each individual subpart of the project), (ii) a management level, and (iii) a research level.

To ensure that there is accountability between the pro bono client and the law firm or department, there should be one or two project managers tasked with relaying expectations and goals to the client, clarifying the scope of the project, setting major deadlines, and assisting in publicizing the work within the firm or department. This role might best be filled by a senior lawyer with a relationship with the client and the ability to staff the project if volunteerism is low.

A more junior lawyer looking for leadership experience would be a good fit to handle the day-to-day management of the team, performing such tasks as monitoring completion of the subparts of the project, answering questions from researchers, ensuring that best practices for the project are followed consistently, or communicating with the client.

To the extent that the project creates a significant amount of administrative work, a member of the firm or department's administrative team, such as a paralegal or a practice assistant, could help by maintaining a database of the status of the individual parts of the project, formatting documents for consistency, and other tasks that help the project run smoothly. The addition of an administrative team member also avoids the possibility that the team manager will become burdened by paperwork and filing; losing sight of the project as a whole. Members of the library staff, if available, as well as employees of outside companies commonly used for legal research are extremely important and will facilitate better, more efficient, and consistent results.

The majority of the team members will be at the research level, doing the actual research and completing the individual sections of work product as contemplated by the pro bono client and the project memo. This research will be largely self-directed within the guidelines and deadlines provided, giving the individual attorneys autonomy in how they get their work done, and such "desk-based" pro bono projects are often popular

with busy attorneys. Depending on the complexity of the topic or the breadth of the project, a supervisory or editorial level may be necessary after this stage to ensure consistency of work product. This might involve checking that all questions posed by the client have been answered as fully as possible for the jurisdiction, that the research has been appropriately cited, and that the format is appropriate and consistent with the standards defined for the project.

When speaking with third parties, such as experts or local counsel, consult with your conflicts department or general counsel's office to determine whether conflicts checks, co-counsel agreements or engagement letters are needed. Confidentiality issues must also always be considered, particularly in "adversarial" research projects.

## Financial Resources

For the most part, research projects should be a cost-efficient way for the law firm or department to participate in important pro bono work. Research project costs tend to be general "soft" office costs: printing, use of existing technology such as shared drives and email systems, internal phone calls, and the like. There is unlikely to be a significant amount of travel or overtime and generally expenses related to the project should remain predictable and constant throughout. The largest cost is likely to be for research; consider whether resources are available for free online, or whether a paid research source (*e.g.*, Lexis, Westlaw) is necessary, and if so, whether a "pro bono password" can appropriately be used on the project.

## Pro Bono Department Support

Those involved with running firm or legal department pro bono practices, while unlikely to take on management or supervision duties in a research project, still have a role to play. Often the project will have originated with them, and so they may know all the key players and be able to step in to resolve problems and facilitate good communication. They can further cultivate the project with the pro bono client (*e.g.*, design the research template, enumerate the jurisdictions covered, set up a rolling deadline schedule, etc.). They may also play a role in determining the division of labor (*e.g.*, how many lawyers per segment, how many supervisors will be necessary), particularly since they will likely have a

view of which members of the legal staff are available. The dedicated pro bono team can assist with internal recruiting, by circulating (and recirculating) the matter and recruiting new lawyers. In the case of multi-jurisdictional projects, they can coordinate with the conflicts department and reach out to other offices to discuss perceived conflicts or potentially sensitive issues or relationships.

**Relationship with Firm or Department Pro Bono Efforts**

Large research projects on topical issues can be an important piece of a law firm or department’s “signature project” and the organization’s expertise on the issue may become more widely known if the work product is publicized. Signature projects are ongoing, firm-wide or department-wide pro bono initiatives that harness the full power of the organization to address a major need. They focus on a single theme, issue, client group, or community, addressing it with multiple approaches over time in an effort to “move the needle.”

Research projects should be viewed through the lens of the pro bono program’s mission. The pro bono department and other stakeholders should define the program’s focus areas, and consider what message the research project sends with respect to that focus. Does it match the pro bono program’s (and the firm’s) strategic interests and goals?

Both the pro bono management team and the legal team should view the research project as a possible stepping stone to more direct involvement in a particular area of law. The broad scope of research projects allows numerous lawyers of different levels and interests to collaborate and become exposed to a new topic. The lawyers’ research experience in the area may spark a deeper interest in the subject matter and may form the basis of further – and more advanced – work with the given client, or with others in the field. The synergistic potential of a good research project can lead to numerous requests from other leaders in the field and can even result in the development of new sub-practices in areas of interest to the firm or legal department.

**Sample Documents**

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# Broader Engagements

By: DLA Piper

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## Introduction

Global pro bono projects can provide a variety of options for law firms and legal departments. For example, a popular option is the desk-based comparative [research project](#), which can be well-suited to dividing work among multiple offices. This chapter, however, focuses on a subset of global pro bono which may be called “broader engagements”: larger scale projects designed to help a country or region build capacity and achieve systemic change, particularly in underserved areas of the world. Such projects may be carried out in collaboration with governments, nonprofits, or academic institutions; may involve travel for the lawyers involved; and likely necessitate a broader and lengthier engagement than projects involving a one-time deliverable.

Examples of broader global pro bono engagements include:

- [advising an under-resourced government or nonprofit organization on legislative or policy reform;](#)
- [providing governments or non-governmental organizations \(NGOs\) with representation before an international court or body;](#)
- [assisting a human rights organization gather and analyze evidence of human rights violations;](#)
- [providing transactional assistance in areas such as microfinance and microcredit;](#)
- [assisting with impact litigation;](#)
- [helping an under-resourced government carry out international negotiations;](#)
- [helping to establish and advise on the management of an international charity focused on a humanitarian goal and supporting their broader expansion; and](#)
- [providing significant and longer-term legal or programmatic advice to an international organization.](#)

Broader engagements can also be strengthened by partnerships between law firms and legal departments. Where law firms often have a larger staff of legal professionals and specialized practice area expertise,

in-house counsel can offer their own specialized value to global pro bono projects, including industry-specific knowledge and contacts and an understanding of doing business across a region (*e.g.*, an experienced government affairs department of a company). Depending on the circumstances, partnering with a law firm or legal department may enhance global reach, as you may find that the partner has offices in countries or regions where your own organization does not have a presence.

Even with the expanded global reach of such a partnership, you may have situations where you lack a local office in the relevant country or region. This may have implications for the type of work that can be accomplished without engaging in the unauthorized practice of law, which will be examined below.

As noted in this Manual’s [Introduction](#), global pro bono work can be divided into at least two categories: (a) transnational and (b) local, but in areas without an established tradition of pro bono service. While pro bono attorneys everywhere struggle with challenges such as conflicts, appropriate skills, funding, and time constraints, global pro bono work can present its own unique set of issues.

For example, a lawyer engaging in transnational pro bono and working outside of his or her home jurisdiction can face hurdles such as physical distance, an unfamiliar legal system, and potentially a different language. Another challenge is a potential lack of understanding of history, traditions, values, and the political, socioeconomic and cultural context of the country or region in which the work will take place. Lawyers must be sensitive to the domestic realities of the countries in which they are operating, and ensure that they do not expose themselves or their departments or firms to accusations of furthering their own hidden agenda. We will discuss later in this chapter the importance of having a local partner to mitigate some of these issues.

Lawyers engaged in local pro bono work in countries without an established pro bono tradition may be familiar with local culture, language, socioeconomic context, and so on. But they may still face hurdles such as practice rule restrictions on pro bono, lack of local familiarity with pro bono, or limited availability of “feeder organizations,” (e.g., NGOs) to identify opportunities.

## Examples of Projects

The following are some examples of the types of broader global pro bono engagements that law firms and in-house counsel have undertaken. Additional examples of projects that have been carried out by private sector lawyers are included at the end of this chapter.

### Legislative and Policy Reform

Lawyers may provide pro bono assistance to NGOs and governments in under-resourced regions by drafting new laws and regulations, recommending policy changes, and advising on strategies for successful implementation.

#### EXAMPLE: REFORM

In 2005, DLA Piper created New Perimeter, a unique nonprofit affiliate which harnesses the skills of DLA Piper lawyers to provide long-term pro bono legal assistance in underserved regions around the world. It is dedicated to supporting access to justice, social and economic development, and sound legal institutions. Its projects last an average of three to five years and frequently involve travel to developing regions. In 2005, New Perimeter began law reform work in Kosovo, which continued in the form of a USAID-funded project with The National Center for State Courts, a development organization. The team of DLA Piper lawyers traveled regularly to Kosovo to help local lawyers draft legislation creating Kosovo’s system of courts and public prosecution. DLA Piper has more recently worked with the Kosovo Bar Association to revise laws affecting the legal profession, and to help develop strategies to increase the number of women and minority lawyers in Kosovo.

### Promoting Human Rights and Access to Justice

Lawyers can provide valuable assistance to human rights organizations as well as to groups seeking to ensure that all citizens are able to access the justice

system. The assistance may include helping an NGO to collect testimony of human rights abuses, assisting on strategic litigation strategies to help citizens secure a constitutional right, working to improve the court system in a particular country, and assisting organizations focused on informing the public about their legal rights and available avenues of recourse.

#### EXAMPLE: BUILDING CAPACITY

A New Perimeter team helped build the capacity of a local paralegal organization in Namibia, in an effort to increase access to justice. The organization provides a wide range of services to rural Namibians who would otherwise have no means to learn about their rights. In collaboration with local lawyers and the University of Maryland Law School, the team undertook a needs assessment and helped research and draft an updated Access to Justice Paralegal Manual. The team also delivered a “train the trainers” program in Namibia on the methodology and substance of the manual as well as select access to justice strategies.

### Promoting Economic Development

Lawyers can help spur economic development in less developed regions by undertaking activities such as assisting social entrepreneurs with their legal needs, providing transactional and other assistance to microfinance organizations seeking to increase poor people’s access to financial services, helping organizations seeking to encourage direct investment in a particular country or region, and advising governments on strategies to attract businesses and investment.

#### EXAMPLE: SOCIAL ENTREPRENEURSHIP

White & Case provides pro bono legal and business advice to social entrepreneurs and the organizations that support them. For example, its lawyers helped Acumen structure its first social investment in Ethiopia — a poultry farm — a project intended to enhance the productivity of small-hold farmers and improve meat quality. In Tanzania, also for Acumen, a team has reviewed transaction and project documents for an equity investment in small-scale biomass power plants, which are intended to provide renewable and reliable energy to poor communities throughout the country.

## Building Governmental Capacity

Government lawyers and officials in less developed regions often welcome the expertise and advice of private sector lawyers in areas such as contract drafting and negotiations, international arbitration, and other specific areas of law such as the regulation of natural resources.

### EXAMPLE: NEGOTIATION

Hogan Lovells has teamed with the International Senior Lawyers Project (ISLP) to assist the Government of Liberia in the negotiation and renegotiation of natural resource concession agreements, mineral development agreements, and investment contracts; development of a Model Mineral Development agreement; and review and revision of Liberian procurement laws. Hogan Lovells also has worked with ISLP and the Liberian Ministry of Health and Social Welfare in developing a legal framework for the delivery of health services, including recommendations on the Public Health Law. The Hogan Lovells-ISLP team has advised on the development of the law that created the Liberian Medicines and Health Products Regulatory Agency and on provisions addressing mental health, reproductive health, communicable diseases and other issues. Current projects also include work on development of a special economic zone law, tax policy issues, and concession agreement enforcement.

## Providing Governments or NGOs with Representation before an International Court or Body

Lawyers may choose to provide pro bono assistance to NGOs or governments of under-resourced countries to help them understand and comply with the requirements of international institutions such as the United Nations and its various agencies, engage in processes such as multi-lateral negotiations, or represent them before international tribunals.

### EXAMPLE: NEGOTIATION

New Perimeter is providing pro bono assistance to Georgia's Ministry of Environment and Natural Resources Protection to support the country's participation at various on-going international climate change negotiations. This assistance includes both international legal expertise, to better understand complex legal and treaty texts, and personnel, to more effectively navigate the landscape of United Nations climate negotiations. DLA Piper lawyers have attended UN-sponsored climate change negotiations to advise Georgia and help negotiate on its behalf.

## Advising on Impact Litigation Strategies

Rules against the unauthorized practice of law generally prohibit lawyers from directly representing clients in lawsuits in jurisdictions where the lawyers are not certified to practice law. However, lawyers can share their skills by advising local lawyers on general and case-specific litigation strategies and sharing international best practices, particularly in the area of strategic impact litigation.

### EXAMPLE: IMPACT LITIGATION

New Perimeter worked with the Southern Africa Litigation Centre (SALC), a joint venture of the International Bar Association and the Open Society Institute of Southern Africa, which provides support to under-resourced human rights lawyers in nine southern African countries on high-impact human rights cases. Lawyers visited South Africa to assist SALC, and helped create a nuts-and-bolts manual on constitutional and human rights litigation in Southern Africa.



## Project Development

There is no simple blueprint for developing larger scale international projects. Developing these projects can be a lengthy and time-consuming endeavor, often taking up to a year for the projects to materialize fully. Ideas for projects can come from a number of sources. They may be generated internally by firm or legal department lawyers with an interest in a particular cause and/or a strong connection to an organization or country. Global pro bono clearinghouses like [PILnet](#), [A4ID](#), [The International Senior Lawyer's Project](#), [Lawyers Without Borders](#), [Avocats sans Frontières](#), and [Trustlaw](#) may offer opportunities for lawyers to participate in a global pro bono project. Many organizations also have specific global pro bono websites, including [Pro Bono Institute](#), the [International Bar Association](#), and the [American Bar Association](#), which can provide resources to assist in the development of global pro bono projects. Project opportunities may also be generated by direct contact from organizations that reach out to law firms and legal departments requesting assistance. At larger international firms that have a sizeable team of full-time pro bono lawyers, projects may be generated internally by direct outreach of pro bono staff. These initial conversations are often followed by a trip to visit the potential client in the country in which the firm is considering working.

### Identifying the Client

As with any pro bono engagement, it is critically important to determine at the outset who is the client. Is it an organization or an individual? A government? This is important both for [conflicts](#) purposes and for making sure the scope of representation is clear at the outset. Clients outside of the jurisdiction in which a firm or company operates can present a challenge for conflicts clearance. Regular automated conflicts checks procedures may not be sufficient. Aside from the regular clearance channels, it may be necessary to reach out directly to senior management or to lawyers working in the relevant region or area of expertise to ensure that the project does not compromise a company objective or client relationship.

### Identifying Project Partners

Because of the logistical and cultural challenges of working in foreign jurisdictions, it is often helpful to have one or

more project partners. It is very important to have at least one local project partner with a presence in the jurisdiction and relevant regional expertise. Whether a local law firm or organization, local assistance and guidance is an invaluable component of a project in a jurisdiction outside of a company's normal operational boundaries.

### Undertaking Due Diligence

Due to the potential for international projects to involve politically sensitive or controversial issues and the fact that they may take place in unfamiliar regions or with unfamiliar organizations, it is extremely important to undertake significant due diligence on the client, the proposed project, and potential project partner(s). This is discussed further in the next section.

### Drafting a Project Proposal

At all stages of project development, it is helpful to have a working draft of a project proposal. The proposal should be a project roadmap, including information about all involved parties, the need for the project, goals and expected outcome, a detailed description of the work that will be performed, a timeline, anticipated resources needed and a proposed budget. The proposal may be used for internal purposes to garner support and buy-in for the project. It may also be used to recruit additional external project partners.

### Memorializing the Scope of Representation/Partnership

It is necessary to set clear expectations with all parties at the outset regarding what the commitment will and will not entail and who will be responsible for carrying out which aspect of the project. The agreement between pro bono counsel and the client should set out unambiguously the terms of the engagement, including:

- Clear identification of the client and lawyers and a statement regarding the existence of an attorney-client relationship;
- A detailed description of the legal services that will be provided;
- Clear identification of what will be covered on a pro bono basis. (For example, if there are travel costs, who will cover them? Additional costs such as filing or court fees?);



- Applicable law in the event of a disagreement;
- Expectations regarding communications between the client and the lawyer(s) (e.g., frequency and principal point of contact);
- Anticipated duration of the engagement;
- Grounds for termination of the attorney-client relationship; and
- Agreed approach to publicity and possible media attention.

If there are additional project partners involved, it is helpful to draft a multi-party agreement, such as a Memorandum of Understanding (MOU) prior to the commencement of the project. The MOU may take the place of a client engagement agreement, or it may supplement a separate client engagement agreement entered into directly between the lawyer(s) and client. A MOU may include (in addition to the information listed above):

- Identification of the participating partners;
- Detailed explanation of the roles and responsibilities of each partner;
- Clear statement of the project client;
- Clear statement of project goals;
- Timeframe;
- Personnel commitment;
- Budget/costs – who will cover what;
- Clarification of IP rights for work product;
- Expectations for dealing with press coverage/media outreach;
- Expectations surrounding communications between project partners;
- Effective date, duration and termination of partnership; and
- Assignment of project management oversight including a clear delineation of roles and duties of each project partner.

## Evaluation of the Project Proposal

What are the elements of a global pro bono project that warrant the dedication of a firm's or company's resources? How can one evaluate whether it makes sense to take on a broader scale international engagement? To answer these questions, one should undertake both internal and external due diligence processes.

### Due Diligence

#### *1. Due Diligence on Client and Potential Partners*

It is highly advisable to obtain detailed information about potential client and project partners prior to committing to a significant pro bono engagement. Understanding a client's focus and capacity is critical. This involves examining projects they have worked on in the past, who have they partnered with, and who supports them with funding or other resources. Start with general Internet research on an organization's website. Look to see who is on the organization's Board of Directors. For U.S.-based charities, check to see if the organization is listed on [Guidestar](#) or [Charity Navigator](#), both of which include all publicly available information and rank organizations on effectiveness and transparency.<sup>13</sup> In the UK, try [Guidestar UK](#), which has partner sites in [Israel](#), [Belgium](#), and [India](#). In Canada, take a look at [Charity Intelligence Canada](#). For Australia-based charities, check the government's [Australian Charities and Not-for-profits Commission \(ACNC\)](#) and the independent organization [ChangePath](#). Other countries of interest may or may not have similar websites for evaluating charities. In addition, smaller organizations may require additional research. Speak to others who have worked with the organization to get a sense of their reputation. Determine how long the organization has been in operation, what their budget is, and how many people they employ, including in the office of the country or region in which the work will take place. If the organization is very small, it may raise concerns that managing the project will be unduly burdensome for them. Ask what their experience is in working with lawyers — both for a fee and on a pro bono basis. Organizations that are not accustomed to working with

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<sup>13</sup> Both organizations, together with the BBB Wise Giving Alliance, wrote an open letter to donors to end what they call the "Overhead Myth." The letter discourages donors from using this metric, namely the ratio of overhead to program costs, as the sole indicator for evaluating a charity. <http://overheadmyth.com/letter-to-the-donors-of-america/>.

lawyers may not understand the role that lawyers can play in providing assistance. Try to ascertain who will be the primary point of contact and who will manage the relationship. If this person is unresponsive or difficult to work with during the project development phase, it does not bode well for the success of the project.

Similarly, assess the capacity of potential project partners and their ability to support the project. Aside from general Internet research, reach out to others who have worked with them in the past. Understand in advance exactly what they bring to the table in terms of financial resources, expertise and available personnel.

## *2. Feasibility*

It is necessary to ascertain at the outset of a proposed project whether it involves specific, tangible, and potentially achievable goals. The following questions may assist in making this determination:

- Are the project goals achievable within the specified time period?
- Do participating lawyers have the skills, expertise and experience necessary to undertake the proposed project? If not, will there be access to sufficient training resources to enable them to take on the required tasks?
- Are there sufficient internal resources at the law firm or legal department to provide the requested assistance?
- Would the potential project create actual or likely conflicts? Could involvement adversely impact the firm or company's reputation?
- Is the level of commitment expressed by the project client and partner(s) sufficient to achieve the project's goals?
- Is there requisite internal interest and support?

## *3. Anticipated Impact*

Appropriate thought at the outset should be given to measuring project impact and results. What is the client's stated goal? Will you be able to measure the number of persons positively impacted by the results of your efforts? Also consider sustainability. Is the project intended to outlast the firm or department's involvement? Are there resources in place to ensure its viability following that involvement?

## *4. Fit*

Does the project align with the firm or company's interests and pro bono and corporate responsibility goals? If not, could there be adjustments to the project so it would align? If not, could it be referred to another firm or department which would be a better fit?

## *5. Need/Uniqueness*

Assessing the need for the project can be far more difficult than actually handling the project. Assess the need based on information provided by the client and your own due diligence and background research. Try to determine whether this will allow your firm or department to make a unique contribution or whether it will be duplicative of existing efforts by others. One way to make this assessment is to ask: "But for our involvement, will the desired results be achieved?"

## **Resources Needed**

### *1. Staffing*

Determine how many and what types of lawyers will be needed to carry out the project. If there is a specialized area of expertise not already possessed by your volunteering attorneys, determine whether such expertise can be acquired through a partnership or additional training. Think through in advance what type of training and support the project volunteers will likely need. It may be important to secure volunteers from a particular jurisdiction given the requirements of the legal assistance. Also consider whether it will be possible to incorporate non-lawyers into the project. Assistance may be needed from IT staff or administrative support. In addition, other departments of a company, such as government affairs specialists, may be able to add value to a project.

Another consideration is the solicitation and selection of participating lawyers. Will they be selected on a first-come, first-served basis or specifically targeted? Depending on the level of interest among potential volunteers, consider having participants apply on a competitive basis. To field the best qualified team, it is helpful to have access to information about potential volunteers, including their expertise with the subject matter involved, experience working in the region targeted, past travel experience, relevant language skills, and importantly, their level of interest and enthusiasm for the project.

Aside from assessing the number of volunteers necessary to carry out the project, determine who will provide internal project management, including task allocation to individual volunteers, and external management of the relationship with the client and project partners.

## *2. Joint Staffing*

When staffing a project jointly with lawyers from both a law firm and a legal department, each group should think through and communicate in advance the skill sets and resources they are able to contribute to the project. This includes responsibility for overall project management, often done by the law firm. It may make sense to split the staffing equally so that the law firm lawyers and in-house counsel can pair up to complement each other's skills and strengths. If equal staffing is not possible, law firms are generally flexible in accommodating other arrangements, including having the firm contribute a greater number of volunteers.

## *3. Funding Requirements*

When assembling a proposed budget for the project, consideration should be given to the following costs:

- Lawyer time (donation of pro bono resources) – calculate the anticipated number of hours committed and the projected value of those hours.
- Potential travel expenses – determine whether the client or a project partner can help defray travel costs in the event that travel is required. If the client or project partner receives funding from an international aid agency such as USAID, there may be funding available to assist with travel costs.
- Out of pocket expenses – there may be additional costs that arise during the life of the project, such as research expenses (including services such as Lexis Nexis and Westlaw) and expenses related to printing or publication of materials.
- Client expenses – establish whether the client expects to be reimbursed for some of its costs, such as staff time.

## **Issues Related to the Unauthorized Practice of Law**

Global pro bono projects can raise concerns about the unauthorized practice of law, because the lawyers working on a project may not be licensed in the jurisdiction in which they are providing pro bono services. For this reason, it is advisable to review carefully the policies relating to unauthorized practice in the countries the project will involve. As a first step, review the relevant chapter of the Global Pro Bono Survey.<sup>14</sup> Information about a location's policies can also generally be found through the relevant bar association. It is likely that there are restrictions on the types of services unlicensed lawyers can provide. For example, most jurisdictions prohibit lawyers from appearing in court if they are not licensed in the jurisdiction where the court sits. They usually will prohibit foreign lawyers from providing legal counsel related to local laws.

The high likelihood of restrictions on unlicensed practice underscores the importance of either working directly with or having access to local counsel if necessary. When evaluating the legal needs of a particular project, always keep in mind whether the requested tasks might constitute unauthorized practice. There are many ways an outside lawyer can add value to a project without violating these rules, drawing upon international best practices and legal norms of the jurisdiction in which they are licensed.

## **Necessary Elements for a Successful Project**

Although each project may raise different issues and involve new considerations, there are some consistent elements that will help to achieve success across topics and regions. They include:

- A strong and engaged local partner with resources on the ground;
- A strong understanding among all participating lawyers of the culture and legal tradition of the relevant region/country;
- A detailed agreement with the project client and any partners that clearly assigns responsibilities and lays out expectations;

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<sup>14</sup> [Global Survey 2016](#), *supra* note 6.

- The establishment of concrete and realistic goals at the outset;
- A detailed plan and timeframe for achieving the project goals;
- Sufficient staffing and monetary resources;
- Frequent and open communication between the project partners and with the client;
- A clear exit strategy that establishes expectations for when and how the project will conclude; and
- A plan for how to ensure the project or project results are sustainable at the end of the commitment.

## Managing the Project

### Project Management Challenges

Managing a project for a client in a foreign country that may involve travel to a distant region presents a number of challenges that are not common on a pro bono project in one's home country. Of the challenges identified below, some apply mainly to this sort of cross-cultural scenario, whereas others (*e.g.*, unpredictability) may also apply to local lawyers familiar with the relevant culture and language.

Common challenges may include:

#### 1. Cultural Differences

The work may take place in, or with people from, a cultural background that is radically different from your own. Adjustment of personal style and/or expectations to ensure successful communication may be necessary. For example, some cultures are not as direct in asking for what they want or providing honest feedback, because such assertiveness would be seen as impolite. Some cultures are very slow to respond to emails and calls are preferable. In some cultures formality in a professional setting is prized and the casual nature of your communication style may be seen as disrespectful.

Learning about the local culture as much as possible up front and sharing this knowledge with the lawyers who will be working on the project will greatly improve the experience for everyone involved. Speak

to others who have worked in the country or region. There are also websites dedicated to analyzing cultural differences (*e.g.*, [Culture Crossing](#)). It will not be possible to learn everything about a culture at the outset, but approaching interactions with sensitivity to differences in communication style, gestures, notions of time, etc., will serve you well. Also be sensitive to the fact that the persons with whom you are communicating may not speak your language as their first language. Your preferred language may, in fact, be their third or fourth language which will raise more issues of which to be aware.

#### 2. Differences in Legal Systems

The project may require operating in a legal system that is different from your own. Many jurisdictions operate as a hybrid of different legal systems (civil and common) and also may incorporate customary (traditional or tribal) law as well as religious law, like Shari'ah. A good understanding of the legal system in which you will be working will prove essential. It should inform staffing choices (*i.e.*, selecting a lawyer from a common law jurisdiction for a project involving common law). As discussed previously, it is advisable to partner with or have access to a local lawyer should issues involving local law arise. Identify and adhere to the applicable local rules and regulations relating to the unauthorized practice of law.

#### 3. Unpredictability

Global pro bono work is inherently unpredictable. The government for which you are working may get overthrown. There may be a deadly virus outbreak in the region of work. You may start working on the project only to discover that your efforts would be better expended pursuing different goals. A balance must be struck between the competing concerns of avoiding "mission creep" – getting sidetracked from your original goal by new requests – with flexibility to adjust project goals mid-course if circumstances change significantly. It is always advisable at the outset to have as part of the agreement with the client a way to end the relationship if unexpected circumstances make carrying out the project or continuing the relationship untenable.



#### *4. Working with Nonprofit Clients or Partners*

There may be challenges associated with working with or for a client in the nonprofit or government sectors. For example, the organization or group may have scant experience in working with lawyers and may need help to understand the value that lawyers can add and how to work with them. The project may involve programmatic staff who use unfamiliar industry jargon or have a different understanding of how to approach a problem. If the organization is small, it may not have adequate resources to manage the relationship with you, and may be overwhelmed by the assistance.

This underscores the importance of up-front communication and due diligence prior to committing to a project. If possible, it may be valuable to take a project development trip to meet local partners and assess capabilities firsthand. During the project, frequent communication with the participating lawyers and project client/partners will be required to ensure the project is on-track to meet goals and assess whether all participating parties are satisfied with project developments.

#### *5. Travel Issues*

There are a number of concerns involved in sending lawyers from developed countries to a developing region of the world, particularly lawyers who have little prior experience in such regions. It is important to inform travelers of the risks inherent in their travel well in advance. First and foremost is the issue of safety. Check travel advisories or recommendations concerning country conditions. The U.S. State Department (and other equivalent ministries in the U.K. and elsewhere) maintains travel information on its website. Concerns could range from petty theft to acts of terrorism. There is also the issue of health. Lawyers may encounter differing standards of hygiene and sanitation and may be exposed to foreign bacteria, diseases, or pollution which could result in illness. All lawyers traveling to a less developed country should visit a travel medicine doctor well in advance of travel to consider whether inoculations or other prophylactic medications are warranted. Understand and make sure all lawyers are aware of the company's insurance coverage in the target region, including emergency evacuation coverage.

#### *6. Ensuring Sustainability*

A significant concern in working on projects in regions where your firm or department might not have a presence is ensuring sustainability of the project or the gains made after your staff has completed its work. Ensuring that you are helping to build local capacity as part of the project is one way to try to achieve this goal. Think about sustainability when designing the project. For example, consider including in the project deliverables the task of assisting the client to apply for funds to continue the work after your staff completes its work.

### **Monitoring and Evaluation**

#### *1. Evaluating Project Progress and Success*

Continually monitor the progress of the project to ensure it is on track to meet project goals and that the client is satisfied with the work. Determine at the outset the indicators of success. Timely delivery of a particular work product? A target number of beneficiaries assisted? A certain level of capacity built?

Ongoing evaluation throughout the life of the project should include: regular communication with the client to ascertain whether project goals are being met and whether improvements could be made, and frequent communication with participating lawyers, beneficiaries and other stakeholders. Keep a careful record of all deliverables completed and milestones achieved.

#### *2. Post-Project Evaluation*

Consideration should be given to undertaking a comprehensive project review at the end of the engagement. Such a review allows one to take a step back, understand what went well, what might not have gone as well, and what lessons can be drawn for future projects. When undertaking a review, consider involving outsiders who were not involved in the project. For example, DLA Piper's New Perimeter post-project evaluation process involves one or more outside evaluators who engage in a comprehensive review to assess the overall success of the project and its impact on intended beneficiaries. Generally, the evaluators are partners at the firm who did not work on the project. The evaluation process includes a detailed examination of each project component, as

well as anticipated goals and actual outcomes. The evaluators solicit feedback from the client, participating lawyers, beneficiaries, and other relevant stakeholders. Based on the responses, evaluators draft a written report on the project, summarizing feedback and highlighting key takeaways and lessons learned for future projects.

## Additional Examples

The following are additional examples of broader pro bono engagements:

### Legislative and Policy Reform:

- Baker & McKenzie has worked with Microsoft Corporation's Latin America and Europe-based lawyers to represent the International Federation of the Red Cross and Red Crescent Societies to draft harmonized model legislation on disaster response.<sup>15</sup> Baker & McKenzie also worked with more than 40 in-house counsel at Accenture, Caterpillar, and Merck in a dozen countries to represent PILnet, crafting model legislation designed to protect women from socio-economic and sexual exploitation in Nepal. Members of the pro bono team from Accenture, Caterpillar, and Baker & McKenzie presented to Nepali legislators and others in Kathmandu.<sup>16</sup>

### Human Rights and Access to Justice:

- In the area of human rights, New Perimeter assisted an international human rights organization to document and publicize instances of politically motivated sexual abuse of Zimbabwean women by Robert Mugabe's regime. The women were all systematically tortured solely because of their support for the opposition political party. A team of DLA Piper lawyers traveled to Southern Africa on several occasions along with lawyers from the human rights organization to take testimony from rape survivors and draft affidavits on their behalf. The lawyers then helped the organization

draft and publicize a report documenting the atrocities, and provided advice on potential litigation strategies.<sup>17</sup>

- Following the devastating earthquake in Haiti, Reed Smith organized and led a team of nine doctors and lawyers on an eight-day mission to Port-au-Prince to help qualified Haitians apply for humanitarian parole to the United States. To qualify, a Haitian needed to be one of the most compelling victims of the quake: orphaned or having urgent medical needs that could not be met in Haiti. Reed Smith identified over 20 individuals it determined should qualify for humanitarian parole or some other form of immigration relief. Reed Smith lawyers are working on these cases and, to date, have helped four families successfully relocate to the United States.<sup>18</sup>

### Promoting Economic Development:

- New Perimeter advised the government of East Timor on the feasibility of creating a special economic zone (SEZ) to spur economic development in the country.<sup>19</sup> An international team of DLA Piper lawyers analyzed SEZ successes and failures and identified best practices in existing global SEZs. The team provided the government background information about SEZs, an overview of 10 potential "model" zones for East Timor, and an assessment of the risks and benefits relating to the creation of an SEZ in East Timor. The team traveled to East Timor on several occasions to present their findings to the Minister and other high-level government officials.
- Dechert provides pro bono assistance to a foundation that supports social entrepreneurs who are addressing extreme poverty in the developing world. Dechert lawyers are advising the foundation on investment-related law and structuring of funds. For example, they helped to negotiate an equity investment in a startup that provides easily accessible supplemental education materials to students in rural Kenya.<sup>20</sup>

<sup>15</sup> Baker and McKenzie, *Achieving More Together: The Power of Teaming*, <http://www.bakermckenzie.com/files/Uploads/Documents/Baker%20&%20McKenzie%20Pro%20Bono%20Teaming-1178384-v1-NYCDMS.PDF>.

<sup>16</sup> *Id.*

<sup>17</sup> New Perimeter, *Zimbabwean Women's Rights*, <http://www.newperimeter.org/our-work/womens-rights/zimbabwean-womens-rights.html>.

<sup>18</sup> Reed Smith, *Our Haiti Pro Bono Successes*, [http://www.reedsmith.com/haiti\\_earthquake\\_relief/](http://www.reedsmith.com/haiti_earthquake_relief/).

<sup>19</sup> New Perimeter, *East Timor Economic Development*, <http://www.newperimeter.org/our-work/economic-development/east-timor-economic-empowerment.html>.

<sup>20</sup> *Global Legal Awards: Global Citizenship Awards of the Year*, The American Lawyer, Sep. 2, 2014.



### Building Government Capacity:

- In 2011, Herbert Smith Freehills launched a partnership with the Government of Sierra Leone. The partnership takes the form of a free legal assistance facility that can be accessed by Sierra Leone government officials, particularly those involved in attracting and supporting inward investment into the country, and was facilitated by the Africa Governance Initiative (AGI), an NGO operating in the region. The facility is designed to offer support where the government could not otherwise afford its legal advice.<sup>21</sup>

### Providing Governments or NGOs with Representation before an International Court or Body:

- White & Case was involved in the first case before the World Bank arising out of the recent global economic crisis. Spanish infrastructure companies filed contract and treaty cases against the Republic of Peru. Advised by White & Case, Peru won the first case, diminished the second, and filed a pioneering third case that was the first-ever registered by a Latin American state at the World Bank. White & Case resolved the entire trio of cases through a unique Acuerdo Integral approved by the Peruvian Council of Ministers.<sup>22</sup>

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<sup>21</sup> *Herbert Smith launches pioneering free legal assistance facility for the Government of Sierra Leone*, Herbert Smith Freehills, <http://www.herbertsmithfreehills.com/news/news20111201-hs-launches-free-legal-assistance-facility-for-the-government-of-sierra-leone>.

<sup>22</sup> Jonathan C. Hamilton, *Truth and reconciliation in Latin America*, White & Case, <http://srreview.whitecase.com/latinamerica.htm>.

# Managing Pro Bono Conflicts

By: White & Case

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## Assessing and Managing Conflicts

For ethical, professional-responsibility, and business reasons, a conflict-free pro bono practice is a must. Whatever entity is taking on a pro bono matter – be it a one-office law firm, an international giant or the legal department of a listed company – assessing and managing conflicts needs to be both the first stop and an ongoing concern of pro bono management and the attorneys doing the work.

Many law firms have a conflict management system, and often have professionals dedicated to identifying conflicts and clearing them whenever possible. In-house professionals may need to establish a process to review positional and political conflicts which can arise in a larger or diverse pro bono program. Those managing the pro bono practice must be looped into whatever vetting process is in place, so that they can best understand the range of the firm's clients (or the company's areas of interest for in-house professionals), the kinds of matters that may present problems, any sensitivities around waivers by clients of conflicts, and areas that should simply be avoided.

Not all conflicts – particularly those related to business development, partner concerns, or certain organizational interests and sensitivities – are immediately visible on a conflicts report generated on the basis of previous work. To expertly handle the task of managing and assessing conflicts, the pro bono vetters (be it a pro bono committee or some other structure) must have a deep understanding of their firm (and its clients) or legal department (and its overall company) and develop a sense not just of what matters have been done, but the kinds of matters, directions and business to be developed in the future.

This knowledge comes over time, by being an active member of the firm or company community, sharing and requesting information and being acutely attuned to the goals, preferences, strategy, and sensitivities of the organization. There are many ways to structure a

pro bono practice to deal with conflicts (some will be discussed below), but each organization needs to balance speed and completeness, voice and veto, to ensure that ethical obligations are met, client interests are respected and pro bono matters are appropriately selected and staffed.

Conflicts come in a variety of types, and each is explored below.

## True Conflicts

True conflicts are what people generally have in mind when they think of a lawyer's "conflict of interest." They are perhaps the easiest to deal with – if they are identified early and appropriately addressed. True conflicts are typically described as being in the same or related matter or where professionally it appears inappropriate for the lawyer or her firm to act. True conflicts are far more likely to arise for law firms, which may have thousands of clients, as compared to legal departments, which typically have one on-going client, the company.

In all U.S. jurisdictions (except Texas) and in Canada, true conflicts arise when a lawyer's representation of one client causes the lawyer to oppose another existing client, or to be in a position to share the first client's confidential information. This is consistent with the American Bar Association's (ABA) Model Rules of Professional Conduct pertaining to conflicts, whose guidance applies to both law firms and legal departments. Under this general North American approach, the problem inherent in the first half of that equation – opposing an existing client – is obvious from common sense: you cannot act for and against two parties to the same or related case or cases. A classic example would be representing one entity, say a non-governmental organization, in litigation against a firm client, even if the firm acts for the client on corporate matters and not the particular litigation in question. A lawyer or firm must never allow itself to be placed in this position and it is a professional responsibility to ensure that it does not happen.

The second half of the true conflicts equation concerns confidential client information, which may almost never be shared. An example of this conflict situation might be where an individual pro bono client or non-governmental organization sues some third party, but needs confidential information from your existing commercial client. As one can see, this situation can be more difficult to anticipate, as the future needs of litigation or other matters can evolve over time. Some firms deal with this problem by simply avoiding work in a certain area. For example, firms that represent a wide range of financial institutions need to be careful when taking on pro bono litigation against banks, as pro bono client-debtors may often be opposite the firm's clients.

Lawyers must always do their utmost to prevent themselves from being in a conflicted situation. The general rule is that where one lawyer is prevented from acting for a client due to a conflict, all others in his or her firm or department are as well. Conflicts violations can lead, for example, to client harm, ethics sanctions and mandatory withdrawal from a matter, including quite possibly, the commercial matter. While legal departments are relatively less exposed to true conflicts, they are not immune. If they provide professional services, even as a branch of the company, then they too need to undertake precisely the same vetting process as law firms. If they do not provide professional services, they still may have active litigation or deals going that create the danger of conflicts from their pro bono work.

The good news is that true conflicts should be fairly readily revealed by a conflicts check where lawyers or pro bono professionals review potential new matters against existing work using the firm's or department's matter management system. In a smaller organization, a firm's or corporation's general counsel might be consulted. Also, certain jurisdictions' ethical rules allow for a more flexible walling-off of conflicts for those in law firms, but those are beyond the scope of this chapter. Two other kinds of conflicts are also beyond the scope of this chapter, but important to watch for: (i) conflicts created by lateral movements of lawyers both formerly in private and governmental practice and (ii) "personal interest conflicts" where a lawyer's personal interests, including business matters, are involved.

While some conflicts are unwaivable – for example, where existing non-crime-preventing client confidences would need to be shared for the new matter to move forward – sometimes one can obtain a waiver from the existing client (in the case of a firm) to take on the new pro bono matter. For example, let's say your new pro bono client is an environmental conservation organization that is negotiating the financing of a new nature preserve in Africa with your existing client or its subsidiary (whom you represent on many matters, but not on this one). In such a case, the existing client may be comfortable signing a waiver to allow you to represent the nature organization in negotiations against it or its subsidiary. The likelihood of success in obtaining such a waiver is greatly enhanced when no client confidences will be at risk of being revealed. Whenever considering requesting such a waiver, it is imperative to consult with any relevant relationship partners, understand the ramifications of asking a commercial client to grant a waiver, and be sensitive to the other equities and considerations when faced with such a situation. For those in-house, a conflict with the corporation's interest is generally not permissible. In-house lawyers are basically on retainer to one client, the corporation, and owe a duty of loyalty to that corporation.

## Positional Conflicts

Positional conflicts differ from true conflicts in that they involve a lawyer, firm, or department taking a posture or position on one matter that is or could be considered inconsistent with its position or posture on another matter, or harmful to the first client's broader interests. While the risk of true conflicts is quite limited for legal departments, positional conflicts are a more relevant risk.

As an example of an inconsistent *posture*, consider a situation where a longstanding commercial client of the firm is contemplating the acquisition of a gun manufacturer, while the firm's disputes lawyers are drafting a pro bono amicus brief in support of wide-reaching gun-control legislation. While the direct interests of the firm's commercial client on the matter may not be contradicted, and the commercial client's confidential information may not be at risk of exposure on the matter, it is important to reflect on whether

the firm has an inconsistent posture with regard to the commercial client. It is likely that the relationship partners handling the commercial matter would consider that such an inconsistency exists and should be avoided. In such a case the pro bono matter should be declined.

Similarly, an in-house team reviewing pro bono activity in support of an issue should make sure that the corporation is not advocating a different approach to the issue in any of its public relations or governmental affairs communications. This review might be extended to include key customers, dealers, or suppliers of the corporation.

An inconsistent position may arise where a lawyer, firm, or department has regularly taken a particular view on an area of jurisprudence, but where zealous advocacy on another matter would require it to take an opposite or contradictory view.<sup>23</sup> In the U.S., the American Bar Association's Standing Committee on Ethics and Professional Responsibility's Formal Opinion 93-377 (1993) states that such a positional difference is only a conflict if the position is asserted in a court in the same jurisdiction. It is not a conflict if the positions are taken in different jurisdictions.

That said, many relationship partners and practice-group leaders believe that taking inconsistent positions even across jurisdictions should be avoided by law firms for reputational and business reasons. For example, a firm may be known for defending against class-action certification for mass tort claims. It could be seen as inconsistent to take on a pro bono matter in this context, and perhaps any context, in which the firm would argue vigorously for class certification. Such positional dangers can be exacerbated where the firm or department's lawyers have published popular or scholarly works on the "usual" position and are known widely as experts or "go-to" people on the issue. In addition, those in-house are on retainer to one corporate client and regardless of where they have asserted a position for that corporate client, they cannot advocate adversely without calling into question their duty of loyalty to the client, unless

the client approaches the issue differently in various locations. Great care should be used when considering whether to take a position that might later undercut a reputational and commercial advantage of the law firm, company, or either's commercial clients and partners.

Such inconsistent positions and postures, moreover, can be difficult to catch as they often will not be readily apparent from the typical conflicts report. Consequently, the pro bono committee, relevant attorneys, and pro bono administrators need to develop a deep knowledge of the firm or legal department's matters, expertise, partner specialties, and the interests and publically stated positions of their clients. They must then use that knowledge when reviewing each new matter for such postural or positional conflicts. Running a proposed pro bono representation past partners with relevant expertise in the field can be very helpful to push any possible problems to the surface early on in a law firm. Likewise, having a process on the in-house side that incorporates input from public affairs, marketing, and purchasing representatives, as well as legal department management, can surface issues in a corporation and ensure that the company's interests are consistently represented. It is much better to decline a matter early (and pro bono clients, clearinghouses, and legal-service providers with whom you work will be very grateful for this) than to begin working on it and later be forced to withdraw due to a conflict. And, in certain areas of the law, withdrawal will not be easy or even possible, putting real stress on both the commercial and pro bono teams. This is *not* a situation where it is "better to apologize later than to ask permission first!"

Waivers are somewhat more difficult to obtain in postural - or positional - conflict situations because the ability to waive does not as clearly reside with the client, as it does in the true-conflict circumstance. There really is no professionally correct way to ask a client to allow you to take a legal position opposite one that either you have taken for that client in the past or that is a specialty of

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<sup>23</sup> The International Bar Association notes that an international law firm should examine whether its entire organization complies with conflict of interest rules in each jurisdiction in which it is established and engaged in providing legal services, even as it acknowledges that a universally accepted framework for proper conduct in the event of conflicting or incompatible rules has yet to be developed. Certain jurisdictions apply conflict of laws principles to identify which rules of professional conduct should apply in cross-border practice. See Principle 3.3 of the "IBA International Principles on Conduct for the Legal Profession", adopted on 28 May 2011 by the International Bar Association, [http://www.ibanet.org/Publications/publications\\_IBA\\_guides\\_and\\_free\\_materials.aspx](http://www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx).

your firm or one of its practices. Indeed, seeking to operate inconsistently in this manner can have serious intellectual and professional repercussions and could possibly cause reputational damage to the firm, department, or client. The worst possible situation is to fall into a postural or positional conflict because no one caught it early in the matter-vetting process. The key to avoiding such an outcome is to think about these kinds of conflicts with every new pro bono matter that is considered, on the basis of a deep knowledge of your firm's partners, practices, areas of expertise, and key clients. In the case of a legal department, this applies to the interests and stated public positions of your employing corporation and its customers, dealers, and suppliers.

## **“Values” or “Political” Conflicts**

It is likely that every firm or legal department, regardless of size or reach, will encounter issues or areas of law in which it prefers not to take pro bono engagements. Such “no-go” areas can reflect, among many other things, values preferences; sensitivities of a law firm partner, client, or other stakeholder; a wish to keep a low profile; or internal political differences on important issues of the day. For example, an international law firm may have offices in a country whose government would take a dim view of the firm handling certain kinds of cases on its sovereign territory. Or the partnership may prefer not to handle some types of criminal cases, such as corruption investigations or sexually charged matters. Or partners may take differing positions on questions relating to immigration or other kinds of reforms.

Pro bono lawyers and professionals in firms need to understand where such sensitivities lie as part of their risk-management and administrative responsibilities. On the in-house side, those responsibilities require consideration of both internal constituents (such as marketing and supplier management groups, their executive office, their foundation, and their own legal department) as well as key external constituents, such as dealer organizations. Such knowledge takes time to accrue and only comes through a deep familiarity with the nature of the firm or department's practice, the particularities of influential individuals' preferences and a sensitivity to internal politics and, at times, domestic politics or international affairs. There may be a bright-

line rule that the firm or department “never” takes on a certain kind of matter, but more likely there will be an opportunity for open and constructive discussion as to why a particular pro bono matter should or should not be accepted. Law firms, as a general rule, are better served by taking on “cases and not causes.” This means that there should be an articulable, non-political reason for taking on a given case (justice has been denied, there is a good legal argument to be made, the matter offers excellent training, the venue is important and can set precedent, existing law can be extended, and the like). By contrast, legal departments may lean toward working on broader causes, particularly those aligned with the company's values and corporate social responsibility (CSR) goals, even as they stay true to the company's business interests.

Law firms and legal departments do not have the same posture as legal-service providers or advocacy organizations and this difference can and should be reflected in the way that pro bono matters are vetted and advanced. It is also possible to restrict certain kinds of cases from sensitive jurisdictions. For example, a case advancing certain kinds of equal protection arguments may be perfectly appropriate in one country where the firm or company operates and quite problematic in another. Common sense and constant evaluation are a must.

The size of the firm or in-house department matters a great deal. In a small partnership, it may be quite easy to both determine where sensitivities lie and to garner consensus on appropriate pro bono matters. It's quite a different thing in an international firm with hundreds of partners or a global corporation's legal department that is spread over 50 countries. In the law firm context in such situations, it is important to know ahead of time – before a possibly controversial pro bono matter comes in the door – how partner discomfort with or dislike of certain matters will be handled. While it is necessary that all voices be listened to and respected, it can also be problematic in a large partnership to give each partner a veto over every matter. Having a senior partner or other senior administrator with good diplomatic skills act as pro bono practice leader or head of the pro bono committee can go a long way to smoothing over differences and developing a sensitive, respectful, but ultimately efficient,



pro bono practice. A larger in-house group can benefit from a pro bono steering committee, since it can access input from various corporate constituencies and provide regional perspectives in vetting projects. This can go a long way toward aligning pro bono commitments with corporate interests and maximizing benefits for all concerned. Involving senior legal management in this committee is also beneficial for assuring access to corporate decision-makers and signaling support for pro bono “from the top.”

## The Conflicts Process for Pro Bono Matters

In the law firm context, every firm will have a conflict review process in place for evaluating its new commercial matters, and some or all aspects of that process can be deployed to evaluate potential pro bono conflicts as well. Depending on how the system for commercial matters is structured, one may find that it is perfectly suitable for the pro bono practice, or that it requires some fine-tuning or substantial modification. Questions to be asked include:

- Can you use the commercial-matter opening entry form or do you need to devise a customized entry form for pro bono matters?
- Who can submit a pro bono matter for conflicts check, and what process is used to pre-screen matters?
- What path to approval will the information on the new matter take once it is inputted, and how should it be different or similar for pro bono matters?
- Who receives the conflict report among the pro bono team? One point person? Certain committee members?
- Is the process different for domestic versus international matters?
- In some countries a nonprofit organization may be well connected to a public official, though this may not be obvious. Corruption, the appearance of corruption, or liability for corrupt practices are potential issues to be cleared.
- What checks and balances are built into the system to deal with the less-obvious conflicts questions noted above?

The approach can be modified in the in-house context to suit the department and the corporation. Since in-house counsel are less likely to have a conflicts checks template from which to start, the following is a longer list of questions to consider about a proposed pro bono project:

- What is the scope of the proposed project? Outline the subject and geographic scope.
- Is the subject matter controversial?
- Are there cultural sensitivity issues to be mindful of, especially given the geographic scope?
- Will the project likely create political/culturally sensitive or other issues for our dealers and offices in certain locations?
- Is the representation consistent with the company's values and CSR initiatives?
- Is the project in line with the foundation's focus areas?
- Is this a one-off project or will it lead to ongoing work?
- What kind of entity is the client?
- Verify the status of the client as a nonprofit organization. Check that appropriate filings have been completed and confirm that client is in good standing.
- Review the need for a reputational search, including litigation and general internet searching.
- Is the client or a shareholder of the client or their spouse or immediate family member an employee or retiree of the company or any of its affiliates?
- Has the client or its shareholder or their spouse or immediate family member ever asserted or been involved with a claim action or proceeding adverse to the company? Do our volunteers have the competency to do the work? If not, what assistance is required?
- Are there sufficient resources available to do a competent job including lawyer and staff time and expenses?
- Are there other sources of volunteers or funding to include?



## One Approach

When White & Case launched its Global Pro Bono Practice Group in May 2010, we immediately developed our own matter control process which would feed directly into the firm's established conflict clearance system. We created a firm-wide New Pro Bono Matter Request Form that became the mandatory first step whenever an attorney in any of the firm's 40 offices wished to present a pro bono matter for consideration. The form was a significantly streamlined version of the existing commercial matter opening-entry electronic paperwork, and typically takes no more than five minutes to complete. Besides providing a description of the matter, reasons for taking it on, referral source, and attorneys who will be involved, the New Pro Bono Matter Request Form contains detailed information about the direct and interested parties to the matter.

Each time a New Pro Bono Matter Request Form is submitted, the core pro bono team is copied. This represents the first formal stage of risk management for the practice, and offers the opportunity to shape potential matters or nip problematic ones in the bud. In practice, attorneys wishing to submit a new pro bono matter often consult with the pro bono team before filling out the form, but this is not required. At this stage, the core team discusses the 10-20 percent of matters that may be non-routine, or not fully described in the form, or require some other clarification. Edits are made to the form, which becomes a handy record of the practice's matters, and the matter data is entered directly into the firm's conflicts system.

Shortly thereafter, a conflict report is generated and sent to the firm's pro bono counsel. The report shows numerous permutations of previous representations that might be related to the new pro bono matter in question and provides the second opportunity to review and manage risk – before the prospective matter goes on to the other required approvers, including interested partners, the head of the conflicts department, and the firm's general counsel. At this stage, approvals from partners who may have related representations are obtained, any client waivers that may be needed are requested, and any remaining persons who may have equity in the proposed matter are looped in.

Finally, once all other approvals have been obtained, final pro bono sign-off is solicited, after which the matter will be activated. This third opportunity to review the matter and manage risk is important because circumstances may have changed or new information may have come to light during the course of the vetting process. But as a general rule, by the third review, the matter has been examined by all relevant stake-holders and should be fine.

## Conclusion

Regardless of the size and nature of the firm or legal department, it is imperative to bring in different voices and perspectives when considering each potential pro bono matter. Early and frequent information sharing will help unearth potential conflicts and sensitivities that might otherwise go unaddressed, and help prevent subsequent painful or embarrassing situations, which could undermine the confidence in, and reputation of, the pro bono practice.

Besides all the well-known benefits of a pro bono practice, it can also help develop business for a law firm, but care must be taken not to harm the commercial practice by inadvertently conflicting out commercial matters through pro bono ones. A firm may decide that as a policy matter, it will make a conscious choice to forego certain commercial work when its loss is outweighed by the compelling nature of the pro bono matter to be handled. This should always be a decision made on full information and with support from the highest levels of the firm, and should not be presented as a *fait accompli* due to defects in the vetting and conflicts processes.

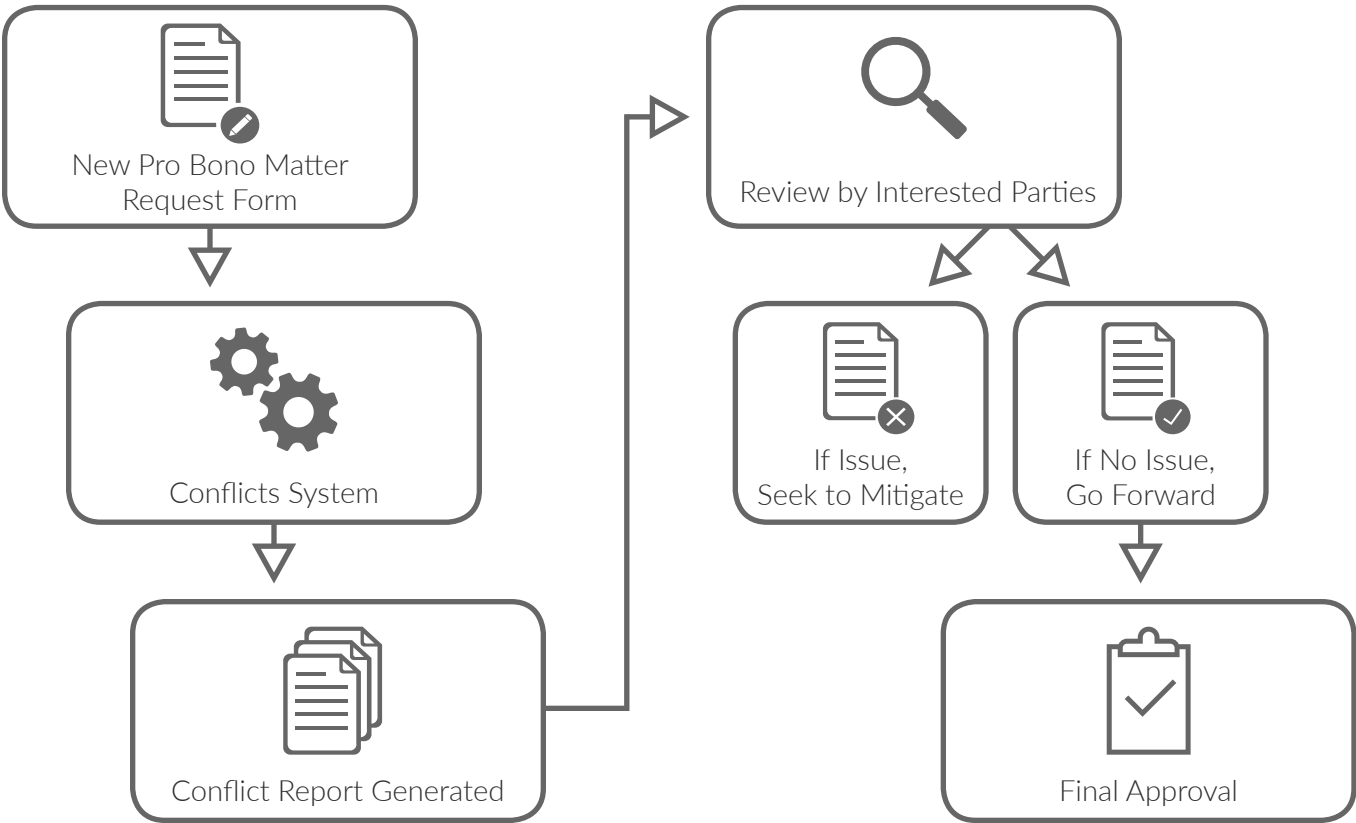
On the in-house side, a pro bono practice can enhance the corporation's social responsibility initiatives and public profile. It can drive engagement, help develop new skills and provide leadership opportunities that may be harder to come by in an organization with a pyramid management structure. However, in-house professionals must remember that they work for one client; they have both a duty of loyalty and duty of care to protect this client's interests from direct or indirect harm by pro bono work.

Pro bono work should generally fit into a core strategy so that pro bono activity aligns with the interests of the law firm, or in the legal department context, with the overall company. That strategy can be very broad (for example, providing access to justice to the poor) or quite narrow (working only on matters that enhance aspects of the firm’s core commercial work such as intellectual property or housing law). There can and will appear projects that “conflict” with the strategy and may have to be declined. These could include, for example, “pet projects” of partners, matter requests by employees, and cold-calls that come over the transom without filtering by a clearinghouse or legal service organization. One can adopt bright-line clarity and simply decline to entertain such matters, or one can take a case-by-case approach,

on the theory that some portion of these opportunities will be appropriate, interesting and consonant with the firm or department’s larger pro bono strategy.

While there is a general sentiment that everyone – particularly those facing financial and other disadvantages – deserves a lawyer, your firm or department is not obliged to be that lawyer. Careful vetting and conflicts processes can help determine when and how you should act. Consistent and methodical approaches to reviewing matters will ensure that you maximize the return on your pro bono efforts for the community, your firm or company, your pro bono volunteers, and other stakeholders.

### One Firm’s Approach to Conflicts



### Sample Document

Appendix A. New pro bono matter request form . . . . . 55

# Creating Synergies Across Your Organization

By: White & Case

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## Corporate Social Responsibility

Corporate social responsibility (CSR) programs have long been common in multinational corporations, and there is growing awareness of the enhanced impact employees can make by contributing not only their volunteer time through such programs, but their specialized skills. Skills-based volunteering can include a number of areas such as accounting, finance, human resources, information technology, and of course, legal, through pro bono service. Alignment of a legal department's pro bono program with an existing CSR program can provide a number of benefits. It can enhance company-wide morale and feelings of teamwork when legal department professionals work on the legal aspects of an existing CSR initiative, such as a focus on children or the environment, which is already engaging other employees at the company. Alignment can reinforce the company's CSR values with its legal department employees. It can also unify best practices across a company when it comes to volunteerism, charitable giving, and pro bono service. Finally, alignment can tap into the significant budgetary resources of CSR programs, some of which include large foundations, to enhance the impact of a legal department's pro bono program.

CSR programs are becoming increasingly common in major law firms as well. Whereas CSR alignment in legal departments may involve shaping the parameters of the pro bono practice to fit within the corporation's overall CSR strategy, law firms might generally start from the opposite direction — the strengths of the pro bono practice itself can often inform how a given firm thinks about and shapes its approach to corporate social responsibility. For example, a firm may specialize or excel in immigration representation and that expertise may naturally guide and form the core around which the firm builds its non-legal CSR elements, perhaps focusing on social justice, reform, resettlement, or job-training efforts. The pro bono practice and broader CSR objectives can and should be mutually instructive and mutually reinforcing, to help create firm-wide synergies,

secure resources and institutional buy-in, and harmonize the different CSR components across the institution.

As an example, White & Case has defined its social responsibility initiative as having five mutually reinforcing elements, which encompass the ways in which White & Case seeks to be a positive influence on society and the natural environment, outside of our commercial practice. The centerpiece is our global pro bono practice, which in turn focuses on three areas: providing access to justice; enhancing the rule of law and good governance around the world; and serving organizations with a social justice or environmental mission. The other four elements are legal education, charitable giving, volunteerism, and the environmental sustainability of our operations. This approach is but one way to pursue a formal CSR strategy, and each organization's history, expertise, preferences, geographic location, and objectives will guide it in developing a corporate social responsibility strategy that works for it.

## Tapping Practice Strengths

It not only makes strategic sense but can enhance positive impact to select pro bono matters that align with a firm or legal department's expertise and capacity across commercial practice areas. There is also a business case for such alignment, including a deeper understanding of issues facing one's commercial clients and partners, enhanced skills and opportunities to publish, reputational benefits, and improved excitement about work and overall morale. There are numerous ways that a sophisticated, integrated, and well-managed pro bono practice can make for a better world, better lawyers, and better business. The following are examples in a few practice areas:

### Natural Resources

Pro bono projects related to the ways that standards for resource extraction are set by international bodies, or that indigenous people's rights are respected, or that explain how sanctions in a given jurisdiction work, can

all generate expertise that is highly valuable to both pro bono and commercial clients. This is particularly true for research projects related to the evolution of international standards and development of enforcement mechanisms, as commercial clients certainly want their outside counsel to be properly informed about the latest developments of international norms.

### **Finance**

Advising microfinance groups on a pro bono basis can, for example, develop skills and critical thinking relevant to commercial transactional work and securities law. Pro bono work on novel types of finance – such as crowd-funding, whose regulation is very much in development – can provide a firm or legal department’s attorneys with expertise that may be at the cutting edge of practice and may not exist among its commercial competitors.

### **Litigation**

Using pro bono matters to build litigation skills among associates – client interviews, discovery, depositions, oral argument, research, and cross-examination – is a well-established and successful paradigm. But specific cases can also develop or enhance expertise that has substantive commercial cross-over potential. For example, research on the contours of corporate liability for human rights abuses under international law is something that can be of interest to commercial clients as well as pro bono ones.

### **International Arbitration**

With the steady expansion of the New York Convention, new jurisdictions are often setting up arbitration regimes. This development allows for pro bono projects that provide training in emerging markets, support for new institutions, and opportunities to serve as pro bono arbitrators in small disputes. The advantages to a commercial arbitration practice are enormous.

### **Mergers and Acquisitions**

There is a good deal of nonprofit M&A activity, along with frequent instances of nonprofit dissolutions. While the legal regimes are quite different for nonprofit organizations and commercial entities, the concepts in this area of law are similar and pro bono M&A projects can allow lawyers to stretch themselves.

### **Environmental**

There are highly complex pro bono environmental protection projects available today, such as “debt-for-nature swaps” under the federal U.S. Tropical Forest Conservation Act. These projects can help lawyers develop deal skills and deep understanding of legal issues in environmental protection. And developing expertise on specific environmental regulations and enforcement mechanisms is always helpful to a commercial regulatory practice in this area.

### **Elder Law**

This is an increasingly important field, as so many baby-boomers retire each year. Relevant expertise generated from pro bono elder-law projects can range from housing to estate planning to a deeper understanding of the new federal health care regulations.

## **The Business Case**

Pro bono work brings to a law firm or legal department a whole range of long-term benefits, with relatively few downsides. Some of the proven benefits are outlined below.

### **Training Lawyers**

Pro bono projects can provide excellent vehicles for training junior or mid-level lawyers and allowing them to move to new levels of responsibility. They can and will take on matters for pro bono clients that only more senior lawyers would typically handle in a commercial context. In this way, pro bono can provide a coveted path “outside the pyramid” of management hierarchy to develop leadership skills. Such experience is invaluable for both the organization and the professional development of the attorneys in question. For example, externships with local legal service providers force lawyers to “dive in” and take responsibility for their own case load from day one. Such externships can be arranged as part-time – with the associate remaining physically based at the firm but spending perhaps 30 percent of his time on externship work – or full-time, where a clean break is made for some period of time, often three to six months. Training through pro bono comes in many other forms discussed above in the section on Tapping Practice Strengths, but some common examples include assisting NGOs with

employment law to develop deeper expertise, working on intellectual property (IP) and contractual matters that mirror commercial transactions, and assisting nonprofits with tax issues, where appropriate.

### **Collaborating on Pro Bono**

Firms and legal departments can develop deeper relationships by working together on pro bono matters. These efforts can be mutually beneficial as often legal departments have lawyers interested in doing pro bono but lack the administrative infrastructure and flow of matters needed, whereas firms may have all these elements but can sometimes use extra help and new perspectives on pro bono projects. Pro bono can enhance feelings of teamwork and morale within each law firm and legal department; collaborations can extend such feelings across such organizational boundaries. Collaborations can include the following models:

- **Research Model:** a law firm and legal department collaborate on a research project in order to expand the global reach of each partner and increase the available pool of volunteers;
- **Clinic Model:** a discrete collaboration, usually a day or even several hours in duration, where a law firm and legal department work together to serve appropriate clients who have been identified through a legal services organization;
- **Joint Project Model:** a more ambitious approach, the joint project model requires building a pro bono effort from scratch or jointly bidding for a matter through a clearinghouse and collaborating from the start. These sorts of collaborations can require the most work, but also can be extremely rewarding.

### **Developing a New Area of Substantive Expertise**

Pro bono can be used to go beyond the tapping of existing practice strengths, discussed above, to actually develop new substantive areas of expertise. As pro bono becomes increasingly sophisticated and ever more global, new and challenging areas of law are opened up. Sanctions questions, migration law, the Alien Tort Statute, and sovereign representations are all examples of areas in which firms have done pro bono work, but which also may have strong commercial application.

### **Understanding New Markets**

The globalization of pro bono also means that firms and legal departments can garner a small taste or a very deep understanding of new legal systems and markets through their volunteer legal work. For example, in East Timor, DLA Piper's not-for-profit affiliate, New Perimeter, undertook a comprehensive study and prepared a report analyzing the best practices governing Special Economic Zones, which were being contemplated. DLA's lawyers frequently traveled to the country to present their findings to the Finance Minister and other high-level government officials and to conduct workshops on special economic zones. Thanks to this pro bono work, DLA Piper is viewed as an expert resource on the legal landscape in East Timor. Other firms have done extensive pro bono work in various emerging markets and have similarly gained deep local knowledge, contacts, and legal fluency. This kind of market intelligence can also help inform decisions on whether to expand, either for the law firm itself or in advising its corporate clients on opportunities and risks around the world.

### **Diversity**

Pro bono can enhance engagement with diverse employees or employees passionate about issues of particular significance for certain communities or affinity groups. Global pro bono provides added opportunities for such engagement, as well as the opportunity for non-local staff and leadership within a law firm or legal department to better understand the needs and issues of locally-recruited staff in other countries.

### **Enhanced Recruiting and Retention**

Young lawyers understand that firms and companies make their living thanks to a functioning rule of law and that international commercial organizations benefit greatly from globalization. From this comes a responsibility to give back. When law students and recent graduates see these notions backed up with action through a strong CSR and pro bono program, it provides a strong draw. Likewise, an emphasis on legal education across a firm or legal department's CSR priority areas can give the firm or company an "early look" at talented young lawyers, and present young lawyers with a positive impression of the organization at a formative stage in their careers. In



addition, pro bono work can engage employees' hearts with cases that can offer the tangible satisfaction of directly helping individuals or non-profit organizations with the legal issues they face. This can lead to a deeper, more satisfied engagement with the workplace that can improve employee retention. Improved retention is a critical business benefit, as it avoids the high costs of employee turnover.

### **Reputation and Improved Commercial Pitches**

Pro bono enhances a law firm or company's reputation among consumers, regulators, shareholders, and other key stakeholders in the countries where the organization operates. Increasingly, having a comprehensive CSR program with a developed pro bono practice is a requirement for winning new commercial business, whether competing for individual matters or to serve on "panels" of preferred law firms for large corporations.

And a real commitment to pro bono and giving back is being demanded not just by companies in "traditional" pro bono jurisdictions, but among multinationals based in Continental Europe as well. A lack of pro bono work and a comprehensive CSR program should never be the reason a law firm loses commercial business.

### **Conclusion**

Law firms and legal departments can benefit strongly from synergy — the efficiencies, resources, and institutional buy-in that are unlocked when pro bono activities, whether transnational or local, are aligned with one's corporate social responsibility program — particularly when this augments a larger business strategy. A well-run pro bono practice can pay for itself many times over by enhancing firm or department expertise, prestige, recruiting, retention, and morale.



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## PRO BONO

ABC Spelling...

\* indicates a required field

Attorney Name \*

Submitting Office/Location

Supervising Partner \*

Other Attorneys Involved

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Nature of Representation \*

[Click for help about adding HTML formatting.](#)

Source of Representation

- ☐ White & Case lawyer
- ☐ Nonprofit organization/NGO
- ☐ Pro bono clearinghouse
- ☐ Other

Source of Representation Detail

Party Involved #1 \*

Please enter the name of the party.

Party Involved #1 Position \*

Party Involved #1 Relationship \*

Party Involved #2

Please enter the name of the party.

Party Involved #2 Position

Party Involved #2 Relationship

Party Involved #3

Please enter the name of the party.

Party Involved #3 Position

Party Involved #3 Relationship

Party Involved #4

Party Involved #4 Position

Party Involved #4 Relationship

Additional Parties

[Click for help about adding basic HTML formatting.](#)

Please be sure to include position and relationship information.

Client Address \*

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Select Matter Focus Area

## Pro Bono Matter Request - New Item

Other Matter Focus Area

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Does this matter apply to any of the following categories? \*

- ☐ Provides access to justice for an individual of limited means
- ☐ High impact/high profile litigation
- ☐ Involves a top-tier international tribunal or legal venue
- ☐ Pro bono advice to a sovereign government
- ☐ Legal research
- ☐ Provides assistance to a nonprofit/NGO
- ☐ Cross-border and/or innovative corporate/transactional matter
- ☐ Multi-office matter
- ☐ Partnership with a commercial client
- ☐ Other

Other Applicable Categories

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Rationale for taking on this matter \*

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Additional Information/Comments

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Submit For Consideration

No - Save as Draft ▼

Final Submit Date

Country	Associate Name	Partner Supervisor	Office	Comments/ Special Deadlines	Date Questionnaire Received	Editor	Date Uploaded to FTP Site
Albania			Los Angeles				
Andorra			Washington DC				
Angola			New York				
Antigua and Barbuda			Washington DC				
Argentina			Miami				
Armenia			London				
Australia			Beijing				
Austria			New York				
Azerbaijan			New York				
Bahamas			Beijing				
Barbados			Los Angeles				
Belarus			London				
Belgium			Brussels				
Belize			Los Angeles				
Benin			London				
Bhutan			Tokyo				
Bolivia			Los Angeles				
Bosnia and Herzegovina			Los Angeles				

Country	Associate Name	Partner Supervisor	Office	Comments/ Special Deadlines	Date Questionnaire Received	Editor	Date Uploaded to FTP Site
Botswana			New York				
Brazil			New York				
Brunei			Paris				
Bulgaria			Paris				
Burkina Faso			Paris				
Burma			Palo Alto				
Burundi			Paris				
Cambodia			New York				
Cameroon			Paris				
Canada			Hong Kong				
Cape Verde			New York				
Central African Republic			London				
Chad			London				
Chile			London				
China			Shanghai				
Colombia			Brussels				
Comoros			New York				
Costa Rica			Mexico City				



Country	Associate Name	Partner Supervisor	Office	Comments/ Special Deadlines	Date Questionnaire Received	Editor	Date Uploaded to FTP Site
Cote d'Ivoire			Silicon Valley				
Croatia			Los Angeles				
Cuba			Miami				
Cyprus			Brussels				
Czech Republic			Prague				
Democratic Republic of Congo			Beijing				
Denmark			New York				
Djibouti			Miami				
Dominica			Miami				
Dominican Republic			Mexico City				
Ecuador			London				
El Salvador			Mexico City				
Equatorial Guinea			Johannesburg				
Eritrea			New York				
Estonia			Washington DC				
Ethiopia			Los Angeles				
Fiji			New York				
Finald			Helsinki				

Country	Associate Name	Partner Supervisor	Office	Comments/ Special Deadlines	Date Questionnaire Received	Editor	Date Uploaded to FTP Site
France			Miami				
Gabon			Miami				
Gambia			Miami				
Georgia							
Germany			Frankfurt				
Ghana			Los Angeles				
Greece			Paris				
Grenada			Washington DC				
Guatemala			London				
Guinea			Paris				
Guinea-Bissau			New York				
Guyana			Los Angeles				
Haiti			Los Angeles				
Honduras			Mexico City				
Hungary			Budapest				
Iceland			New York				
Indonesia			Jakarta				
Ireland			Los Angeles				

Country	Associate Name	Partner Supervisor	Office	Comments/ Special Deadlines	Date Questionnaire Received	Editor	Date Uploaded to FTP Site
Israel							
Italy			London				
Jamaica			Los Angeles				
Japan			London				
Kazakhstan			Almaty				
Kiribati			New York				
Korea, North			Miami				
Korea, South			London				
Kosovo			Washington DC				
Kyrgyzstan							
Laos			Singapore				
Latvia			Washington DC				
Lesotho			Los Angeles				
Liberia			Washington DC				
Liechtenstein			Palo Alto				
Lithuania			Washington DC				
Luxembourg			Tokyo				
Macedonia			Brussels				

Country	Associate Name	Partner Supervisor	Office	Comments/ Special Deadlines	Date Questionnaire Received	Editor	Date Uploaded to FTP Site
Madagascar			New York Summer Associate				
Malawi			Los Angeles				
Malaysia			Singapore				
Maldives			Beijing				
Mali			New York				
Malta			New York				
Marshall Islands			New York				
Mauritania			New York				
Mauritius			Washington DC				
Mexico			Monterey				
Micronesia			New York Summer Associate				
Moldova			New York				
Monaco			New York				
Mongolia			Miami				
Montenegro			London				
Mozambique							
Namibia			London				
Nauru			New York				

Country	Associate Name	Partner Supervisor	Office	Comments/ Special Deadlines	Date Questionnaire Received	Editor	Date Uploaded to FTP Site
Netherlands			London				
New Zealand			Abu Dhabi				
Nicaragua			Miami				
Niger			New York				
Nigeria			London				
Northern Ireland			London				
Norway			Miami				
Palau			Los Angeles				
Panama			Mexico City				
Papua New Guinea			Singapore				
Paraguay			Mexico City				
Peru			Mexico City				
Philippines			Beijing				
Poland			Brussels				
Portugal			Miami				
Republic of Congo			Los Angeles				
Romania			Bucharest				
Russian Federation			Miami				



Country	Associate Name	Partner Supervisor	Office	Comments/ Special Deadlines	Date Questionnaire Received	Editor	Date Uploaded to FTP Site
Rwanda			New York				
Saint Kitts and Nevis			Miami				
Saint Lucia			Miami				
Saint Vincent and the Grenadines			Washington DC				
Samoa			London				
San Marino			New York				
Sao Tome and Principe			New York				
Scotland			Tokyo				
Senegal			Washington DC				
Serbia			Washington DC				
Seychelles			Washington DC				
Sierra Leone			Washington DC				
Singapore			Abu Dhabi				
Slovakia			Los Angeles				
Slovenia			Brussels				
Solomon Islands			New York				
Somalia			Los Angeles				
South Africa			Miami				

Country	Associate Name	Partner Supervisor	Office	Comments/ Special Deadlines	Date Questionnaire Received	Editor	Date Uploaded to FTP Site
South Sudan			Los Angeles				
Spain			Mexico City				
Sri Lanka			Washington DC				
Sudan			New York				
Suriname			Washington DC				
Swaziland			Hamburg				
Sweden							
Tajikistan			Geneva				
Tanzania			Singapore				
Thailand			Los Angeles				
Timor - Leste			Washington DC				
Togo			Miami Summer Associate				
Tonga			London				
Trinidad and Tobago			Beijing				
Turkey			Ankara				
Turkmenistan			New York				
Tuvalu			New York				
Uganda			London				

Country	Associate Name	Partner Supervisor	Office	Comments/ Special Deadlines	Date Questionnaire Received	Editor	Date Uploaded to FTP Site
Ukraine			Washington DC				
United States			Miami				
Uruguay			Mexico City				
Uzbekistan			Silicon Valley Summer Associate				
Vanuatu			Tokyo				
Venezuela			Mexico City				
Vietnam			New York Summer Associate				
Zambia			New York				
Zimbabwe			New York				

## **ACCESS TO JUSTICE FOR CHILDREN: ALBANIA**

*This report was produced by White & Case LLP in February 2014 but may have been subsequently edited by Child Rights International Network (CRIN). CRIN takes full responsibility for any errors or inaccuracies in the report.*

### **I. What is the legal status of the Convention on the Rights of the Child (CRC)?**

#### **A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?**

The Republic of Albania ratified the CRC in February 1992 through Law No. 7531 dated 11 December 1991.<sup>1</sup> The CRC entered into force on 28 March 1992. Article 122 of the Constitution of Albania provides that ratified international agreements, such as the CRC, constitute part of domestic law after they are published in the Official Gazette of the Republic of Albania.<sup>2</sup>

Albania has also signed and ratified the Optional Protocols to the CRC on the Involvement of Children in Armed Conflict, on the Sale of Children, Child Prostitution and Child Pornography, and on a Communications Procedure (see part III.A below).<sup>3</sup>

#### **B. Does the CRC take precedence over national law?**

The CRC takes precedence over national law. According to Albanian law, an international agreement ratified by law, such as the CRC, overrides the national laws that are not compatible with it.<sup>4</sup>

#### **C. Has the CRC been incorporated into national law?**

The CRC was incorporated into national law following ratification.<sup>5</sup>

Furthermore, Albania has specifically incorporated various provisions of the CRC into national law, including with respect to the best interests of the child in matters of family

<sup>1</sup> Combined second, third and fourth periodic report of Albania to the UN Committee on the Rights of the Child, CRC/C/ALB/2-4, 8 December 2011, para. 1. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fALB%2f2-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fALB%2f2-4&Lang=en).

<sup>2</sup> Initial report of Albania to the UN Committee on the Rights of the Child, CRC/C/11/Add.27, 5 July 2004, para. 2. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f11%2fAdd.27&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f11%2fAdd.27&Lang=en).

<sup>3</sup> See UN Committee on the Rights of the Child, *Concluding Observations on Albania's Initial Report*, CRC/C/15/Add.249, 31 March 2005. Available at <http://crin.org/docs/Albania%20COs.doc>; UN Committee on the Rights of the Child, *Concluding Observations on Albania's 2nd to 4th Periodic Report*, CRC/C/ALB/CO/2-4, 5 October 2012. Available at: [http://crin.org/docs/CRC-C-ALB-CO-2-4\\_en.pdf](http://crin.org/docs/CRC-C-ALB-CO-2-4_en.pdf).

<sup>4</sup> Ibid.

<sup>5</sup> Combined second, third and fourth periodic report of Albania to the UN Committee on the Rights of the Child, para. 8.

law.<sup>6</sup> In addition, to ensure compliance of the national legislation with the CRC, Albania has adopted a number of individual laws directly or indirectly affecting the improvement of the implementation of the rights of the child.<sup>7</sup>

**D. Can the CRC be directly enforced in the courts?**

Directly applicable treaties can be applied by the courts, but international agreements that are not self-executing require national legislation to be passed to give them effect. Only certain provisions of the CRC are considered to be sufficiently defined to be applied directly.<sup>8</sup> However, due to major enforcement problems within the Albanian legal system and the lack of training on the implementation of these rights, it is unlikely that a court will directly enforce the CRC (see part V below).

**E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?**

There is no publicly available Albanian case law applying the CRC or other relevant international instruments.

**II. What is the legal status of the child?**

**A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?**

Children through their representatives can bring cases to court challenging violations of their rights in a number of different settings. For example, acts and omissions by public administrative bodies, as well as private bodies exercising functions serving the public interests, can be subject to internal administrative review and judicial review in order to protect the constitutional and legal rights of individuals (see part III.A). Albanian jurists indicate that they place a special emphasis on the best interests of the child in every case challenging a violation of the rights of a child.<sup>9</sup>

Furthermore, children can make complaints about violations of their rights by the unlawful or improper actions or failures to act of public administrative bodies to the Sub-Section for Children's Rights at the People's Advocate (Ombudsperson) of Albania.<sup>10</sup> The mandate of the Sub-Section for Children's Rights is "to serve as an advocate, catalyst and monitoring entity of children's rights as prescribed in the Convention on the Rights of the Child".<sup>11</sup> Its functions include: (1) monitoring the actions of the public administration and other organisations; (2) reviewing and investigating complaints and claims related to violations of

<sup>6</sup> Ibid.

<sup>7</sup> See *Initial report of Albania to the UN Committee on the Rights of the Child*, para. 7.

<sup>8</sup> Children's Human Rights Centre of Albania—CRCA's Alternative Report, August 2004, available at: [http://crin.org/docs/resources/treaties/crc.38/Albania\\_ngo\\_report.pdf](http://crin.org/docs/resources/treaties/crc.38/Albania_ngo_report.pdf).

<sup>9</sup> Ibid.

<sup>10</sup> Albanian Constitution, Article 60, available at: [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=224105](http://www.wipo.int/wipolex/en/text.jsp?file_id=224105); The Law on the People's Advocate, Article 12, available at: [http://www.avokatipopullit.gov.al/?page\\_id=871&lang=en](http://www.avokatipopullit.gov.al/?page_id=871&lang=en).

<sup>11</sup> *Combined second, third and fourth periodic report of Albania to the UN Committee on the Rights of the Child*.



children's rights; (3) initiating proceedings on behalf of a person whose rights have been violated; and (4) submitting recommendations to improve existing legislation on children's rights.<sup>12</sup>

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

A child is considered to have limited legal capacity, and is generally therefore not permitted to bring a case to challenge a violation of his or her rights without an adult legal representative. The Albanian Civil Code provides that citizens do not attain the full legal capacity to act independently until they reach the age of 18.<sup>13</sup> The Albanian Code of Civil Procedure provides that persons who have the capacity to act in a civil trial may perform all procedural actions themselves and those who do not have the capacity must be represented according to the provisions of their ability.<sup>14</sup>

There are, however, certain exceptions:

- A child under the age of 14 must be represented by their legal representative (i.e. their parent or guardian) in all legal actions, except for those that, according to the law, can be performed by the child themselves.<sup>15</sup> For example, a child under 14 may perform legal transactions that are suitable to their age and are fulfilled at instance, as well as legal transactions that bring benefits without any compensation.<sup>16</sup>
- A child aged 14 or over may perform all legal actions personally only with the previous consent of their legal representative (i.e. their parent or guardian), with the exception of those that, according to the law, can be performed by the child themselves.<sup>17</sup> For example, a child aged 14 or over may be a member of social organisations, dispose of earnings from their work, deposit savings, and dispose and control these deposits themselves.<sup>18</sup>
- A child aged 16 or over has the right to petition the court in relation to procedures on their custody.<sup>19</sup>
- A child aged 14 or over has the right to petition the court in relation to their guardianship.<sup>20</sup>

C. In the case of infants and young children, how would cases typically be brought?

<sup>12</sup> Ibid.; People's Advocate in Albania, 10 Years Activity, available at:

<http://www.avokatipopullit.gov.al/English/AP2009En.pdf>.

<sup>13</sup> Albanian Civil Code, Article 6, available at:

<http://www.celibashiconsulting.com/wp-content/uploads/law/The-Albanian-Civil-Code.pdf>.

<sup>14</sup> Albanian Code of Civil Procedure, Articles 90-92, available at:

[http://www.wipo.int/wipolex/en/text.jsp?file\\_id=224039#LinkTarget\\_1487](http://www.wipo.int/wipolex/en/text.jsp?file_id=224039#LinkTarget_1487).

<sup>15</sup> Family Code, Article 232.

<sup>16</sup> Civil Code, Article 8.

<sup>17</sup> Family Code, Article 232; Ibid., Article 7.

<sup>18</sup> Civil Code, Article 7.

<sup>19</sup> Code of Civil Procedure. *Combined second, third and fourth periodic report of Albania to the UN Committee on the Rights of the Child*, para. 157.

<sup>20</sup> Family Code, Article 264. Ibid., paras 154, 349.

For infants and children under 14, while the exact handling of such cases is unclear, cases would be brought on their behalf by their legal representative.<sup>21</sup>

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

Children or their representatives may be eligible for free legal assistance through the Law on Legal Aid,<sup>22</sup> which entered into force in April 2009. The Law on Legal Aid provides eligibility criteria for free legal aid in civil and administrative cases (see part IV.B below). Under the Law on Legal Aid and the Code of Penal Procedure, children in conflict with the law are entitled to free legal aid in every stage of criminal proceedings (investigation, adjudication, execution of the sentence) when they or their relatives cannot afford to pay for legal defence.<sup>23</sup>

The Legal Aid Commission, which was established under the Law on Legal Aid, is responsible for implementing the state-funded legal aid system, and has called on lawyers to apply to be listed as free legal aid lawyers.<sup>24</sup> An advocate of the Albanian Bar Association, which was established on the basis of a 1990 reform,<sup>25</sup> must assist a defendant who is a child or is incapable of defending themselves because of physical or mental disabilities.<sup>26</sup>

Some recent efforts have been made to increase access to free legal assistance to certain vulnerable groups. In May 2013, the Law on Legal Aid was amended to introduce possible exemptions from judicial fees for victims of trafficking and domestic violence. The Domestic Violence Law guarantees free legal aid for victims of domestic violence, but there are only a very few lawyers with knowledge in this field and the quality of their services are poor. The Legal Aid Commission and the Commissioner for Protection against Discrimination have signed an agreement on providing legal aid and assistance to people who have suffered discrimination.<sup>27</sup> Furthermore, in 2014 the Albanian government promised to provide free civil legal assistance to individuals with disabilities.<sup>28</sup>

Despite these efforts, implementation of the Law on Legal Aid has been slow, and the

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<sup>21</sup> Ibid.

<sup>22</sup> Available at:

<http://www.tlas.org.al/sites/default/files/file/Ligji%20Ndihmes%20Juridike-Versioni%20i%20miratuar%20nga%20Parlamenti.pdf>.

<sup>23</sup> Law on Legal Aid, Article 13; Code of Penal Procedure, Article 35; *Combined second to fourth periodic report of Albania to the UN Committee on the Rights of the Child*, paras 648-9.

<sup>24</sup> European Commission, 'Albania: 2013 progress report', available at:

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/brochures/albania\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/albania_2013.pdf)

<sup>25</sup> Law no. 7382, date 8.5.1990 For the Advocacy in the People's Socialist Republic of Albania, and amendment of article 9, 10 and 14 of the Code of Penal Procedure, by law no. 7387, 8.5.1990.

<sup>26</sup> HG, 'Albanian Bar Associations', available at: <http://www.hg.org/bar-associations-albania.asp>.

<sup>27</sup> Civil Rights Defenders, 'Human rights in Albania', October 2012, available at:

<http://www.civilrightsdefenders.org/country-reports/human-rights-in-albania/>.

<sup>28</sup> Business Standard, 'Albania offers free legal aid for disabled', February 2014, available at:

[http://www.business-standard.com/article/news-ians/albania-offers-free-legal-aid-for-disabled-114021800042\\_1.htm](http://www.business-standard.com/article/news-ians/albania-offers-free-legal-aid-for-disabled-114021800042_1.htm).

overall enforcement of the legal aid system remains weak. The functionality of the Legal Aid Commission remains questionable, since no subsidiary legislation has been adopted and the allocated budget is insufficient for the establishment of local legal aid offices and the proper implementation and functioning of legal aid and assistance. Access to justice remains hampered by high judicial fees. Applicants requesting free legal aid still need to submit many documents from various state institutions.<sup>29</sup>

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

As stated in part II.B above, the Civil Code provides that a child over the age of 14 can only perform legal actions with the previous consent of their legal representative.<sup>30</sup> No other such conditions or limits on children or their representatives bringing cases could be found.

### **III. How can children's rights violations be challenged before national courts?**

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Issues of domestic law, all ratified international instruments, and most civil cases must be brought in the first instance in a District Court within Albania's general courts (see part IV.A below).

Under the Administrative Procedure Code, a child through their representative has the right to submit an appeal against an administrative act or omission.<sup>31</sup> Administrative appeal suspends the implementation of the administrative act, and allows for the legitimacy of the administrative act to be reviewed, and revoked, repealed or amended as necessary.<sup>32</sup>

Under the Law on Administrative Justice, a child whose rights or lawful interests are affected by an administrative act can lodge an appeal with the administrative court for judicial review. The Law provides for a wide scope of judicial review including administrative acts, other administrative actions (real acts) and normative acts (excluding statutory laws).<sup>33</sup> The plaintiff must exhaust all administrative legal remedies before going to the court.

An individual can also request review by the Constitutional Court of a law or act that violates their rights. The Constitutional Court has the power to decide on, amongst other things: the compatibility of a law with the Constitution or with international agreements; the compatibility of normative acts of the central and local organs with the Constitution and international agreements; and the final adjudication of the complaints of individuals for the

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<sup>29</sup> Civil Rights Defenders, 'Human rights in Albania'; European Commission.

<sup>30</sup> Civil Code, Article 7.

<sup>31</sup> Administrative Procedure Code Art. 137.

<sup>32</sup> Ibid.

<sup>33</sup> Sigma, 'Assessment: Albania April 2013', available at: [www.sigmaxweb.org/publicationsdocuments/AlbaniaAssessment\\_2013.pdf](http://www.sigmaxweb.org/publicationsdocuments/AlbaniaAssessment_2013.pdf).

violation of their constitutional rights to due process of law, after all legal remedies for the protection of those rights have been exhausted.<sup>34</sup> When constitutional issues arise during lower court proceedings, the Constitutional Court accepts interlocutory appeals to determine the constitutionality of that issue.

### *Regional and international mechanisms*

The European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.<sup>35</sup> Any individual, group of individuals or an NGO who is a victim of a violation of one of these rights may submit a complaint to the Court,<sup>36</sup> but the complaint will be admissible only if all domestic remedies have been exhausted.<sup>37</sup> Anonymous complaints are not permitted.<sup>38</sup> The procedural rules for the Court do not make any child-specific provisions. Persons may initially present an application themselves or through a representative, however, all applicants must be represented at hearings thereafter.<sup>39</sup> After examining the case, the Court renders a judgment which is binding on the State<sup>40</sup> and also has powers to award monetary compensation to the victims of human rights abuses.<sup>41</sup> It is also worth noting that the Court has an established practice of referring to other international human rights instruments, including the CRC, as guides to interpretation of the European Convention.

Finally, once all domestic remedies have been exhausted, complaints against violations of children's rights may be submitted to the UN Committee on the Rights of the Child under the third Optional Protocol to the CRC,<sup>42</sup> which Albania has ratified. Complaints can be made directly by both an individual child or a group of children, or indirectly, on their behalf by an adult or an organisation.<sup>43</sup> The violations must concern a right granted by either the CRC, the Optional Protocol on the sale of children or the Optional Protocol on the involvement of children in armed conflict<sup>44</sup> and must have occurred after the entry into force of the Protocol on 14 April 2014.<sup>45</sup> Anonymous complaints are inadmissible and so are complaints not made in writing.<sup>46</sup> In addition, only complaints made in one of the working languages of the UN will be accepted.<sup>47</sup> After examining the complaint, the

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<sup>34</sup> Constitution, Article 131.

<sup>35</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights"), 1950, Articles 19 and 32, available at: <https://www.crin.org/en/library/legal-database/european-convention-protection-human-rights-and-fundamental-freedoms>.

<sup>36</sup> Ibid., Article 34.

<sup>37</sup> Ibid., Article 35.

<sup>38</sup> Ibid.

<sup>39</sup> Rules of Court, July 2014, Rule 36, available at: [http://www.echr.coe.int/documents/rules\\_court\\_eng.pdf](http://www.echr.coe.int/documents/rules_court_eng.pdf).

<sup>40</sup> European Convention on Human Rights, Article 46.

<sup>41</sup> Ibid., Article 41.

<sup>42</sup> Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 2013, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en).

<sup>43</sup> Ibid., Article 5.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid., Article 7(g).

<sup>46</sup> Ibid.

<sup>47</sup> Office of the United Nations High Commissioner for Human Rights, '23 FAQ about Treaty Body complaints

Committee can make recommendations to the State, which are not legally binding.<sup>48</sup>

B. What powers would courts have to review these violations, and what remedies could they offer?

District Courts have the power to review disputes related to the CRC in the first instance. This includes the removal of custody of children where their rights are violated.<sup>49</sup>

The Constitution provides that everyone has the right to be rehabilitated and/or indemnified in compliance with law if they have been damaged because of an unlawful act or omission of the state organs.<sup>50</sup>

Following administrative review, an administrative body has the power to abrogate, revoke or modify the administrative act.<sup>51</sup> Following judicial review, an administrative court can annul or confirm the administrative act, or impose certain actions on the administrative body. It can also issue injunctions or other provisional remedies preventing potentially harmful administrative acts. The court's decision is binding on the administrative body.<sup>52</sup>

The Constitutional Court has the power to invalidate the acts it reviews.<sup>53</sup>

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

Based on the Code of Civil Procedure, in civil cases, proceedings must commence on a petition that, amongst other requirements, must give the names of the parties.<sup>54</sup>

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Civil proceedings may be jointly instituted by multiple claimants if they have common rights or obligations on the subject of the claim, and the rights and obligations in terms of fact or of law have the same basis.<sup>55</sup> It is possible for the court to consolidate two sets of proceedings when they have connected subjects.<sup>56</sup>

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

Article 48 of the Albanian Constitution provides: "Everyone, by himself *or together with*

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procedures', available at: <http://www2.ohchr.org/english/bodies/petitions/individual.htm#contact>.

<sup>48</sup> Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Article 10.

<sup>49</sup> Code of Civil Procedure, Article 349.

<sup>50</sup> Constitution, Article 44.

<sup>51</sup> Administrative Procedure Code, Article 146.

<sup>52</sup> Law on Administrative Justice; Sigma, p. 6.

<sup>53</sup> Constitution, Article 132.

<sup>54</sup> Code of Civil Procedure, Article 154.

<sup>55</sup> Ibid., Article 161.

<sup>56</sup> Code of Civil Procedure, Article 57.



*others* may direct requests, complaints or comments to the public organs, which are obliged to answer in the time periods and conditions set by law” (emphasis added).

Under the Law on Administrative Justice, any association and/or interest group whose collective or diffused interests are affected by an administrative act can lodge an appeal with the administrative court for judicial review.<sup>57</sup>

The Law on Environmental Protection ensures that any organisation may initiate legal proceedings in a court for environment-related cases.<sup>58</sup> Specifically, Article 81 provides: “In case of a threat to, or damage or pollution of the environment, individuals, the general public and non-profit organisations are entitled to: (a) the right to make an administrative complaint, (b) start legal proceedings in a court of law.” At least one NGO has initiated legal proceedings in a court of law for an environment-related matter.<sup>59</sup>

Under the Code of Civil Procedure, any person who has a legal, actual and direct interest may file a lawsuit with the court.<sup>60</sup> Anyone can intervene in legal proceedings as a third party when they have an interest in supporting one of the parties and joins the proceedings to support them.<sup>61</sup> It is unclear whether these provisions grant legal standing to NGOs. According to Albania’s response to the 2009 European Commission Questionnaire, the Code of Civil Procedure is currently under revision to add amendments to facilitate organisations’ participation in the court system.<sup>62</sup>

**IV. Practical considerations.** Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

**A. Venue.** In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

Issues of domestic law, all ratified international instruments, and most civil cases must be brought in the first instance in a District Court within Albania’s general courts. The court with proper jurisdiction to hear such cases is the court in whose area of jurisdiction the child or the child’s legal representative has permanent residence.<sup>63</sup>

The Code of Civil Procedure sets forth the guidelines to file a case in Albania. The initial application to an Albanian court must be made in writing in the Albanian language.<sup>64</sup> A

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<sup>57</sup> Sigma.

<sup>58</sup> Republic of Albania, Council of Ministers, ‘Albania’s answers to EC questionnaire’, April 2010, available at: [http://arkiva.mash.gov.al/File/Integrimi/ALBANIA-ANSWERS\\_TO\\_EC\\_QUESTIONNAIRE.pdf](http://arkiva.mash.gov.al/File/Integrimi/ALBANIA-ANSWERS_TO_EC_QUESTIONNAIRE.pdf).

<sup>59</sup> Ibid.

<sup>60</sup> Boga & Associates, ‘Albania chapter: litigation and dispute resolution 2014’, International Comparative Legal Guides, available at:

<http://www.iclg.co.uk/practice-areas/litigation-and-dispute-resolution/litigation-and-dispute-resolution-2014/albania>

<sup>61</sup> Code of Civil Procedure, Article 191.

<sup>62</sup> Republic of Albania, Council of Ministers.

<sup>63</sup> Code of Civil Procedure, Articles 43-44.

<sup>64</sup> Ibid., Article 154.

civil complaint must generally state the following: (1) the parties and their contact information; (2) the scope of the claim; (3) the facts, circumstances, and documents upon which the claim is based; (4) the plaintiff's legal demands and conclusions; (5) the value of the claim; and (6) the date of preparation.<sup>65</sup>

An individual can initiate an administrative appeal in writing to the body which issued the administrative act. The appeal must include the following details: (1) the name and address of the appellant; (2) the administrative act or omission which is contested; (3) the causes of appeal; and (4) any other document deemed important by the appellant.<sup>66</sup>

Administrative courts dealing only with administrative disputes have recently been established by law. Under the new law, administrative cases for judicial review can be initiated in one of six administrative courts of first instance (Tirana, Durrës, Shkodër, Vlora, Korça and Gjirokastra).<sup>67</sup> The administrative courts started operating in November 2013.<sup>68</sup>

- B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

See part II.D above.

Under the Law on Legal Aid, a person may be eligible for legal aid: (1) in criminal proceedings in all its phases if they lack financial resources; (2) if they need legal assistance in civil or administrative matters but do not have sufficient means to pay for it; and (3) if they are a child for whom protection in criminal proceedings and the trial is required by law.<sup>69</sup>

The provision of legal aid in civil and administrative matters must take into account: (1) the relative value of the appeal or property involved; (2) the merits of the claim and the legal arguments; (3) the probability of success of the appeal or defence; (4) the complexity of the case; and (5) the capacity of the applicant or recipient to be self-represented.<sup>70</sup>

If, at the end of the hearing, the recipient of legal aid receives reimbursement of the court costs, they must return these costs to the Legal Aid Commission for providing legal assistance in the matter.<sup>71</sup>

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<sup>65</sup> Ibid., Articles 117 and 156.

<sup>66</sup> Administrative Procedure Code, Article 143.

<sup>67</sup> Law No. 49/2012 on the organisation and functioning of administrative courts and adjudication of administrative dispute; Decree No. 7878 of 16 November 2012; Sigma.

<sup>68</sup> KPMG, 'Administrative courts become operational', November 2013, available at: <http://www.kpmg.com/AL/en/IssuesAndInsights/ArticlesPublications/Newsletters/Legal/Documents/2013-11-04-Administrative-courts.htm>.

<sup>69</sup> Law on Legal Aid, Article 13.

<sup>70</sup> Ibid., Article 15(1).

<sup>71</sup> Ibid., Article 14.

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practicing lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

It is reported that most free legal aid in Albania is provided by civil society.<sup>72</sup> For example, organisations such as the Tirana Legal Aid Society, Civil Rights Defenders, the Albanian Disability Rights Foundation, and the Albanian Helsinki Committee provide free legal services to individuals belonging to vulnerable and marginalised groups including children,<sup>73</sup> persons with disabilities,<sup>74</sup> arrested, pre-trial detained and convicted persons,<sup>75</sup> the Roma,<sup>76</sup> and other minorities.<sup>77</sup>

The law does not specifically regulate contingency or conditional fees, but permits the lawyer and the client to define the fee in mutual agreement. Under the provisions of Law No. 9109 dated 17 July 2003, “On the Attorney profession in the Republic of Albania”, remuneration for legal services is defined: in an agreement between the client and the lawyer; by the court and the prosecutor’s office when the lawyer is nominated *ex officio*; and by law.<sup>78</sup>

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

The Civil Code provides various limitation terms according to the types of claims, and a general limitation term of 10 years for claims. Under the Civil Code the limitation term starts from the day when the subject acquires the right to file the claim.<sup>79</sup>

Administrative appeals must be submitted: (a) within one month from the day the appellant was notified of the act or non-issuance of it or the act was published; or (b) in case of omission, within three months from the day the initial request concerning the issuance of the administrative act is submitted.<sup>80</sup>

Under the Code of Civil Procedure, the deadline for filing a lawsuit for judicial review of an administrative act is 30 days from the date of declaration or notice of the decision of the

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<sup>72</sup> European Commission.

<sup>73</sup> TLAS, ‘Projects’, available at: <http://www.tlas.org.al/en/node/65>.

<sup>74</sup> Civil Rights Defenders, ‘Strengthening the rights of people with disabilities in Albania’, February 2010, available at:

<https://www.civilrightsdefenders.org/news/strengthening-the-rights-of-people-with-disabilities-in-albania/>.

<sup>75</sup> Civil Rights Defenders, ‘Legal clinic supports the most disadvantaged’, April 2011, available at:

<http://www.civilrightsdefenders.org/news/legal-clinic-supports-the-most-disadvantaged/>.

<sup>76</sup> Ibid.

<sup>77</sup> Civil Rights Defenders, ‘Legal services for marginalised groups’, July 2011, available at:

<http://www.civilrightsdefenders.org/news/legal-services-for-marginalized-groups/>.

<sup>78</sup> Boga & Associates.

<sup>79</sup> Ibid.

<sup>80</sup> Administrative Procedure Code, Article 140.

highest administrative body.<sup>81</sup> Deadlines for filing in the new administrative courts could not be located.

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

The Albanian Code of Civil Procedure generally allows parties to prove the facts on which they base their claims by presenting evidence necessary and related to matters at issue in trial.<sup>82</sup>

Special privacy provisions exist to protect the identities of children involved in court proceedings. The law forbids the publication of personal data or pictures of child defendants, witnesses, or victims. The court may allow publication only when it is in the best interest of the child, or when the child has attained 16 years. The court may decide that proceedings should take place behind closed doors when this is in the best interest of the child.<sup>83</sup>

According to the Code of Penal Procedure, children under 14 years should not testify. Before interrogation commences, the court chairperson warns the witness of their obligation and legal responsibility to tell the truth, except when the witness is a child under 14. In addition, the child may be questioned by the chair judge with regard to the claims and allegations of the parties. The chair judge may be assisted by a relative of the child, or by a specialist in the field of children's education. When it is deemed that direct questioning would not harm the child's psychological state, the judge may order the continuation of the questioning. This order may, however, be revoked during the session.<sup>84</sup>

Article 6 of the Family Code provides that in all proceedings concerning children, they have the right to be heard, in accordance with their age and capacity to understand, and the right to the protection of their rights as granted in particular provisions which guarantee their intervention and consent. The Family Code sets the minimum threshold of the age of 10 for when a child's opinion is sought and the age of 12 for having the right to give consent to certain procedures such as adoption or placement in custody.<sup>85</sup> In cases when a child requests to be heard, their request cannot be rejected, except for serious reasons that are based on a well founded decision of the court. The child can be heard alone, through a lawyer, or through another person chosen by the child. In every procedure concerning a child, the presence of a psychologist is mandatory to assess their expressions, in accordance with their mental development and social situation.<sup>86</sup>

Despite these legal guarantees, the right of the child to be heard in all proceedings

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<sup>81</sup> Code of Civil Procedure, Article 328.

<sup>82</sup> Ibid., Article 213.

<sup>83</sup> *Combined second to fourth periodic report of Albania to the UN Committee on the Rights of the Child*, para. 651.

<sup>84</sup> Ibid., paras 652, 654.

<sup>85</sup> Children's Alliance Alternative Report.

<sup>86</sup> Ibid.

concerning them is rarely respected in practice. Indeed, certain traditional and cultural attitudes about children limit the full implementation of rights guaranteed by the CRC, and children generally feel that their views are not taken into account in courts, schools, alternative care institutions, and at home.<sup>87</sup>

- F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

Trials are required to be concluded within a reasonable period of time, in accordance with Articles 41 and 42 of the Constitution on the right to fair trial, and Article 6 of the European Convention of Human Rights.

Decisions in administrative appeals must be issued within a month from the date the appeal is submitted.<sup>88</sup> Judicial review of lawsuits against administrative decisions must be completed within 30 days from the date of filing in court.<sup>89</sup> Time limits for the new administrative courts could not be located.

Secondary sources claim the Albanian court system is rather efficient. For example, secondary sources estimate that the duration of a simple case before a: Court of First Instance is six months to one year from the date of the filing of the claim; Court of Appeals is 12 months from the date of filing the appeal claim; and Supreme Court is 16 to 24 months from the date of filing the request.<sup>90</sup>

- G. Appeal. What are the possibilities for appealing a decision to a higher court?

There are three levels of courts in Albania: the Courts of First Instance (District Courts), the Court of Appeals, and the Supreme Court. Matters can be appealed to higher courts for review.<sup>91</sup> As a general principle, all decisions issued by a District Court may be challenged in the Courts of Appeal. An appeal request may only be denied when the appeal is presented after the deadline provided by law, the appeal is made against a decision where an appeal is not permitted, or the appeal is made by a party that is not legally entitled to file an appeal.<sup>92</sup> The Albanian Code of Civil Procedure requires a party to file an appeal within 30 days of the District Court's decision.<sup>93</sup>

In judicial review cases, based on the new law on administrative courts, decisions of administrative courts of first instance can be appealed to a court of second instance - the

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<sup>87</sup> UN Committee on the Rights of the Child, *Concluding Observations on Albania's 2nd to 4th Periodic Report*.

<sup>88</sup> Administrative Procedure Code, Article 141.

<sup>89</sup> Code of Civil Procedure, Article 327.

<sup>90</sup> Wolf Theiss, 'The Wolf Theiss Guide to: Dispute Resolution in Central, Eastern & Southeastern Europe', January 2011, available at: [http://www.wolftheiss.com/tl\\_files/wolftheiss/CSC/Guides/The\\_Wolf\\_Theiss\\_Guide\\_to\\_Dispute\\_Resolution\\_in\\_Central\\_Eastern\\_and\\_Southeastern\\_Europe\\_edition2.pdf](http://www.wolftheiss.com/tl_files/wolftheiss/CSC/Guides/The_Wolf_Theiss_Guide_to_Dispute_Resolution_in_Central_Eastern_and_Southeastern_Europe_edition2.pdf).

<sup>91</sup> Ibid.; see also Mbarena Velešnja Gentry, 'A Guide to Researching the Albanian Legal System', Hauser Global Law School Program, available at: [http://www.nyulawglobal.org/globalex/albania.htm#\\_Albanian\\_Body\\_of\\_Law](http://www.nyulawglobal.org/globalex/albania.htm#_Albanian_Body_of_Law).

<sup>92</sup> Wolf Theiss.

<sup>93</sup> Code of Civil Procedure, Article 443.

Administrative Court of Appeal in Tirana. Final decisions will rest with the administrative chamber of the Supreme Court.<sup>94</sup>

When constitutional issues arise during lower court proceedings, the Constitutional Court can accept interlocutory appeals to determine the constitutionality of those issues. The Constitutional Court is the final court of appeal for individual complaints of violations of constitutional rights to due process of law, after all legal remedies for the protection of those rights have been exhausted. The Court's decisions are final and binding.<sup>95</sup>

- H. **Impact.** What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

The Albanian legal system is based on codified principles of civil law. Judicial precedents are taken into consideration by courts, but without having a binding effect, except for unifying decisions issued by the Joint Colleges of the Supreme Court.<sup>96</sup>

- I. **Follow up.** What other concerns or challenges might be anticipated in enforcing a positive decision?

As explained in part V, the biggest challenge to a positive decision is the lack of training and knowledge about children's rights among the Albanian police and other enforcement authorities. In addition, the lack of a clear legal framework to properly challenge a potential violation coupled with the overall fears children have of repercussions relating to complaints prevents violations from being reported in the first instance.

- V. **Additional factors.** Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

Although Albania has ratified the CRC and its Optional Protocols, the government has been criticised for not properly publicising the rights and legal guarantees of these treaties for its citizens.<sup>97</sup> Furthermore, although some authorities have been trained on the implementation and protection of children's rights, the Committee on the Rights of the Child has expressed concern about the general implementation of the legal guarantees of these treaties.<sup>98</sup>

After ratification of the CRC, Albania passed many laws and resolutions on the protection of children's rights to bring national laws into greater conformity with human rights treaties. However, many of these are not implemented, are not accepted by Albanian society, and are unknown to the Albanian police, creating an enforcement problem.<sup>99</sup> For

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<sup>94</sup> Hoxha Memi Hoxha, 'Albania new courts', December 2013, available at: <http://www.legal500.com/developments/24382>.

<sup>95</sup> Constitution, Article 131.

<sup>96</sup> Wolf Theiss.

<sup>97</sup> See UN Committee on the Rights of the Child, *Concluding Observations on Albania's 2nd to 4th Periodic Report*.

<sup>98</sup> Ibid.

<sup>99</sup> CRCA's Alternative Report; see also CRIN, 'Children's Rights Wiki: Albania', available at: <http://wiki.crin.org/mediawiki/index.php?title=Albania>.



example, under the Albanian Constitution, children enjoy special protection from violence, abuse, exploitation, and hard labor. They are entitled to protection of their health, morale, and normal development.<sup>100</sup> However, numerous reports indicate that a culture of violence against children is largely accepted within Albanian families, schools, and society.<sup>101</sup>

In its 2012 report, the Children's Human Rights Centre of Albania stated that the Albanian government lacked a legal framework to address children's rights violations,<sup>102</sup> and reiterated the need to fully adopt mechanisms to report all forms of violence against children. Suggested mechanisms included: (1) providing appropriate information to facilitate the making of complaints; (2) the Albanian government's active participation in investigations and court proceedings; (3) developing protocols which are appropriate for different circumstances and made widely known to children and the general public; (4) establishing related support services for children and families; and (5) training and providing ongoing support for personnel to receive and advance the information received through reporting systems.<sup>103</sup>

Access to justice for vulnerable groups is a big problem due to weaknesses in the judiciary, the poor implementation of the national free legal aid system, and a generally low understanding of what constitute human rights violations among Albanian citizens.<sup>104</sup>

*This report is provided for educational and informational purposes only and should not be construed as legal advice.*

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<sup>100</sup> Children's Alliance Alternative Report on the UN Convention on the Rights of a Child, April 2009, available at: [http://www.crin.org/docs/Albania\\_ACA\\_CRC%20Report.doc](http://www.crin.org/docs/Albania_ACA_CRC%20Report.doc).

<sup>101</sup> Children Human Rights Centre of Albania Alternative Report to the Convention on the Rights of the Child, 17 January 2012, available at: [http://www2.ohchr.org/english/bodies/crc/docs/ngos/Albania\\_ChildrensHumanRightsCentreofAlbania\\_CRC.doc](http://www2.ohchr.org/english/bodies/crc/docs/ngos/Albania_ChildrensHumanRightsCentreofAlbania_CRC.doc).

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid.



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