



Poverty, Justice *and the* Rule of Law

the Report of the Second Phase of the
IBA Presidential Taskforce on the Global Financial Crisis

Edited by
Peter D Maynard, PhD and Neil Gold, LSM, LLM



the global voice of
the legal profession

POVERTY, JUSTICE AND THE RULE OF LAW: the Report of the Second Phase of the IBA Presidential Taskforce on the Global Financial Crisis



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‘Despite appearances, deep inside of every human being lies a precious treasure of initiative and creativity waiting to be discovered, to be unleashed, to change life for the better.’

Muhammad Yunus

Nobel Laureate, from his chapter ‘Lawyers Can Help Us to Win the War Against Poverty’

‘When people across the world agitate to get more global justice, they are not clamouring for some kind of “minimal humanitarianism”.’

Amartya Sen

Nobel Laureate, from his chapter ‘Global Justice’

‘Rights that improve the lot of all or most in society should be distinguished from rights that benefit some at the expense of many.’

Joseph Heckman

Nobel Laureate, from his chapter ‘The Viability of the Welfare State’

‘Growth in the United States and Europe today is anaemic. It’s too low even to provide jobs for the normal new entrants into the labour force.’

Joseph Stiglitz

Nobel Laureate, whose keynote address is summarised in the Report of the IBA Dublin Presidential Priority Sessions.

‘We must be the change we wish to see.’

Gandhi

‘Injustice anywhere is a threat to justice everywhere.’

Martin Luther King, Jr

Nobel Laureate

'We must find ways to link the Rule of Law with real progress in improving the condition of human kind. We must have some measures to assure that the vast aid, the work of the NGOs, the work of this association has some immediate visible tangible return, so that we can make the case... For us, law is a liberating force. It's a promise. It's a covenant. It says you can hope, you can dream, you can dare, you can plan, you have joy in your existence.'

Justice Anthony M Kennedy

US Supreme Court, opening address, annual meeting of the American Bar Association, 2006.

'Events in Tahrir Square and beyond have sparked optimism about a global democratic resurgence. But at the same time, there is fear of instability and lawlessness. Let us not forget that in 2015, 1 billion people will still be living in extreme poverty. A hard road still lies ahead. Strengthening the rule of law is more important than ever. A legally empowered citizenry is both the guarantor and lifeblood of democracy. Poverty will only be defeated when the law works for everyone.'

George Soros

Founder, Open Society Foundations and Fazle Hasan Abed, chairman, BRAC, a civil society group,
Financial Times, Opinion page, 26 September 2012.

Chapter 3

The Role for International Pro Bono Work by Lawyers in Addressing the Social Impact of the Global Financial Crisis

John Corker¹

Background

The task of the IBA's PPID Taskforce on the Global Financial Crisis, Law and Poverty (the 'Taskforce') is to examine the role lawyers can play 'post-global financial crisis', particularly with regard to the social impact of the crisis.

The Taskforce is looking at the impact of the GFC. Post GFC there are new financial safeguards and rules that have come into force. New social issues have emerged that have a global impact and affect people's lives – especially those from poorer countries.

Examples of pertinent regulatory provisions might include laws surrounding food distribution, land acquisition, the implementation of financial safeguards, austerity programmes, and the impact of conflict. The Taskforce is preparing a report focusing on what role the legal profession should or could play in this new environment and the positive response, improvements and changes in the law that the legal profession could promote.

This paper traces the development of the international pro bono legal movement, the way in which it works and some of the key agencies involved. It analyses a sample of 100 current or recent international pro bono legal projects to identify trends and draw conclusions about the way that international pro bono legal movement works in the context of addressing the social impact in developing countries post-GFC.

History/development

The use of the term 'pro bono' comes from the latin phrase '*pro bono publico*', which means for the public good. It generally means the provision of legal services on a free or significantly reduced fee basis. The phrase is being used increasingly by other professions.

Pro bono legal work has undergone a profound transformation in the past 25 years. For the most part, pro bono has been ad hoc and individualised, dispensed informally as charity; increasingly it has become coordinated and structured, particularly within large law firms. The key rationale for pro bono is that private lawyers act out of a professional ethical duty to improve access to justice.

The institutionalisation of pro bono has depended notably on the rise of the large, mostly corporately

¹ John Corker, Director of Australia's National Pro Bono Resource Centre, University of New South Wales Law School, Sydney, Australia.

orientated law firm. Although small-scale law firms have been important actors in the pro bono system, it has been the large firms that have provided the resources and prestige to promote pro bono as a central professional goal. In addition, because large firms are highly leveraged, they can generally absorb the costs associated with pro bono more readily than their smaller counterparts. Large firms play a leadership role within the pro bono field.

Separately, perhaps due to an increased focus on human rights laws and policies internationally, as well as the rule of law movement, counsel have increasingly appeared pro bono in international courts and tribunals and in the appeal courts of overseas countries, particularly in ‘public interest’ cases. Such instances include Australian lawyers appearing in cases involving Australians facing the death penalty in a foreign court or lawyers taking on an issue of constitutional law in the European Court of Human Rights. Counsel who practise single-handedly have also provided important oral and written legal advice as part of pro bono projects and programmes. English and Australian barristers, among others, are self-employed and so, in doing work on a pro bono basis, bear the opportunity and associated costs personally, unlike a law firm lawyer who continues to be paid by his or her firm.

Since the mid 2000s, there has been a trend towards internationalisation of pro bono legal work, particularly emanating from the US and the UK. This is now spreading to other countries such as Australia, where a number of large firms have recently joined with international firms.

‘In small but increasing numbers, private law firms have begun to take on pro bono projects with global significance – assisting governments and civil society in post-conflict countries to deal on an even footing with foreign investors, for instance, or working with international criminal courts to prepare indictments of war criminals. This development within the legal community is connected to changes in the scope and ambition of the “corporate responsibility” initiatives of many multinational corporations that are clients of the firms leading the internationalization of pro bono services.’²

The increasing globalisation of law firms has been a factor in this trend. US firms that opened offices in London post-2000 brought a strong pro bono culture with them. It was said in 2007:

‘The concept of international pro bono work was born in the US when the American Bar Association set up the Central and Eastern European Law Initiative in 1990 to provide assistance in former communist countries. Since then, a number of organisations – such as the Solicitors International Human Rights Group, LawWorks and the IBA – have brought together individual solicitors and barristers who have taken the time and initiative to do international pro bono work.’³

The large firms have increasingly focused on doing work for large corporate clients that operate in multiple countries. The internationalisation of pro bono has followed this trend in general practice. Some firms have sought pro bono work that matches their lawyers’ legal skills, for example, looking for pro bono projects that require expertise in areas of cross-border transactions and agreements, joint venture negotiations, advice on corporate restructuring and international trade agreements. Others have chosen human rights issues such as human trafficking or alleviation of poverty. Each law firm, brokering organisation, or initiative will often have distinct areas of focus for its pro bono work either geographically, by area of social need or area of law, or a combination of these factors.

This trend has been under way since before 2000:

‘Corporations have in past years taken on more and more ambitious projects in areas previously considered the exclusive domain of the public sector, laying the groundwork for... international law firms, to enter into... the domestic public sphere of post-conflict societies and developing countries. Both of these converging trends, it should be noted, are part not only of globalization generally, but specifically of the erosion of the distinction between the private and the public spheres in international affairs.’⁴

2 Maya Steinitz, ‘Internationalized Pro Bono and a New Global Role of Lawyers in the 21st Century: Lessons from Nation Building in Southern Sudan’ (2000) 12 *Yale Human Rights and Development Law Journal* 205.

3 The Law Society (UK), ‘A helping hand’ (2 August 2007), *The Law Gazette* www.lawgazette.co.uk/features/a-helping-hand-1 accessed 1 October 2012.

4 See n 1, above.

International pro bono work is therefore generally considered to be legal work that is focused on meeting legal need outside the countries where a law firm has an office. This still means that much of the legal work is carried out in the country where the lawyer is based, as is the legal work done for organisations whose focus may be on programmes in developing countries but the organisations are often based in the same country as the lawyer doing the work.

Pro bono development and enthusiasm has sometimes been driven by the legal assistance required in the aftermath of disasters or emergencies. In May 2005, following the Asian Tsunami of 2004, Oxfam and other charities initiated the '1,000 City Lawyers project' in London, which sought to recruit at least 1,000 lawyers from the City of London to take action by signing the 'Make Poverty History' declaration and taking legal action to help rebuild the communities affected. Lawyers considered the implications and consequences of debt, international trade treaties and aid in the developing world and their long-term impact on communities. In part, they responded by defending lawsuits by 'vulture funds' over the repayment of debt, and assessed case studies of courts refusing to enforce debts incurred by dictators – odious and *ultra vires* debt.⁵

In 2006, this initiative led to the creation of Advocates for International Development (A4ID), a UK-based international development charity, which was set up to better coordinate law firms' efforts to assist in furthering the eight UN Millennium Development Goals agreed by world leaders at the UN Millennium Summit in 2000. The eight millennium development goals are to:

- eradicate extreme poverty and hunger;
- achieve universal primary education;
- promote gender equality and empower women;
- reduce child mortality;
- improve maternal health;
- combat HIV/AIDS, malaria and other diseases;
- ensure environmental sustainability; and
- global partnership for development.

A4ID's work focuses on three distinct areas: international pro bono; education; and awareness-raising. The international pro bono area provides an international broker function and a newly qualified lawyers' programme that places junior lawyers in developing countries during their qualification leave. A4ID works through many development partners that include local and international NGOs, inter-governmental organisations, social enterprises, bar associations, law societies and developing countries.

A4ID receives requests for legal advice and assistance and matches them with lawyers who are able to assist. Since 2006, they have offered 800 pro bono opportunities to lawyers based in 89 countries and undertaken legal projects in 114 countries around the world.⁶ These 'legal partners' (now over 34,000 experts) include a wide range of leading law firms and barristers' chambers in the UK. Partnership with A4ID is also available for in-house legal teams and legal academic institutions. Legal partners pay membership fees.

In the US, the American Bar Association Rule of Law Initiative (ABA ROLI) was established in 2007 to consolidate its five overseas rule of law programmes, including the Central European and Eurasian Law Initiative (CEELI), which it created in 1990 after the fall of the Berlin Wall. Working with in-country partners in a highly consultative manner to build sustainable institutions (both government and NGOs) is a hallmark of the ABA ROLI programmes.⁷

In 2012, ABA ROLI was implementing legal reform programmes in more than 40 countries in Africa, Asia, Europe and Eurasia, Latin America and the Caribbean, and the Middle East and North Africa. ABA ROLI has more than 400 professional staff working in the US and abroad, including a cadre of short-term and long-term expatriate volunteers who, since the programme's inception, have contributed more than US\$200m worth in pro bono technical legal assistance.

Recognition of international pro bono legal work by governments and professional bodies came in the form of declarations of support that outlined principles for the way in which the work

5 DLA Piper, '1000 city lawyers make poverty history' (17 May 2005), DLA Piper UK News <http://dlapiper.com/uk/news/detail.aspx?news=71>; Lorraine Cushnie, 'Joss Saunders: Oxfam' (22 August 2005) *The Lawyer*: www.thelawyer.com/joss-saunders-oxfam/116494 accessed 1 October 2012.

6 A4ID, 'Brochure (English)' http://a4id.org/sites/default/files/user/brochure_engl_141111_final_lowres.pdf.

7 ABA ROLI website at www.americanbar.org/advocacy/rule_of_law/about/origin_principles.html accessed 24 October 2012.

should be done. The Council of the IBA made its first Pro Bono Declaration in October 2008,⁸ two years after it had renamed its Access to Justice Committee as the Pro Bono and Access to Justice Committee to emphasise its accelerated efforts to further a culture of pro bono work by lawyers, law firms and organisations of lawyers.⁹ Other countries also made pro bono declarations or statements of principles.¹⁰ The UK Attorney-General's International Pro Bono Committee was established in January 2007 and in Australia, the Attorney-General's International Pro Bono Advisory Group was set up in July 2009. International pro bono was considered at a meeting of Senior Officials of Commonwealth Law Ministries in 2010.¹¹

In 2008, the IBA developed a website¹² dedicated to international pro bono information and coordination and managed by the IBA London office. Through a separate IBA Pro Bono site (**internationalprobono.com**), the IBA conducts an online matchmaking service where IBA member bar associations and Open Society Foundations registered with the IBA may use this site to submit requests for pro bono assistance from IBA group member firms around the world and these firms may use the site to view and respond to requests from member bar associations and Open Society Foundations.

The IBA Pro Bono Declaration calls for the provision of pro bono legal service,¹³ principally to benefit poor, underprivileged or marginalised persons or communities, or the organisations that assist them, and indicates that it may involve:

- providing advice to or representation of persons, communities or organisations, who otherwise could not exercise or assert their rights or obtain access to justice activities supporting the administration of justice, institution-building or strengthening;
- assisting bar associations and civic, cultural, educational and other non-governmental institutions serving the public interest that otherwise cannot obtain effective advice or representation;
- assisting with the drafting of legislation or participating in trial observations, election monitoring and similar processes where public confidence in legislative, judicial and electoral systems may be at risk;
- providing legal training and support through mentoring, project management and exchanging information resources; and
- other similar activities to preserve the rule of law.

A number of other brokers and organisations have grown up over the past 15 years (most since 2005) to better coordinate and facilitate the development and provision of pro bono legal services internationally. A list of brokers and clearing houses can be found at the IBA pro bono website and the Australian Attorney-General's Department's website.¹⁴

Three examples perhaps demonstrate the unique nature of these organisations. The first is PILnet, established in 1997 as the Public Interest Law Initiative in Transitional Societies (PILI) at Columbia University, New York. It has facilitated pro bono development in Europe through the development of clearing houses in Hungary, Russia and China and conducting an annual European Pro Bono Forum every year since 2007.¹⁵ PILnet is unique in its endeavours in seeking to develop the pro bono culture across Europe.

The second example is unique as it involves the integration of a news provider with the coordination and delivery of pro bono legal services. The charitable arm of one of the world's largest providers of news and information, the Thomson Reuters Foundation, became involved in international pro bono in 2010 when it established TrustLaw, and TrustLaw Connect, a broker that aims to bring together legal teams to provide free legal advice for NGOs and social enterprises in any jurisdiction in the world (and

8 IBA Pro Bono Declaration Approved by the IBA Council October 2008.

9 IBA Pro Bono and Access to Justice Committee, www.ibanet.org/PPID/Constituent/ProBono_Accs_Justice/Overview.aspx accessed 24 October 2012.

10 Israel in 2010, Nigeria in 2009, Poland in 2007, the Americas in 2008 and the UK in 2008.

11 John Corker, 'Access to Justice: International Pro Bono Legal Assistance' (Paper presented at Meeting of Senior Officials of Commonwealth Law Ministries, Marlborough House, London) https://wic041u.server-secure.com/vs155205_secure/CMS/files_cms/SOLM-AccessToJustice-IntProBonoLegalAssistance.pdf accessed 1 October 2012.

12 www.internationalprobono.com accessed 24 October 2012.

13 IBA Pro Bono Declaration 16 October 2008, Clause 1.

14 Pro Bono Net, 'Pro Bono Clearing House', IBA, <http://internationalprobono.com/clearinghouse>; Attorney-General's Department, 'International pro bono brokers and clearing houses', www.ag.gov.au/LegalSystem/InternationalProBonoAdvisory/Pages/Internationalprobonolawyers.aspx accessed 23 December 2012.

15 www.internationalprobono.com/clearinghouse accessed 24 October 2012.

governments on a case-by-case basis).¹⁶ TrustLaw Connect is just one part of the Foundation's **trust.org** initiative, which brings together news and information services, journalism and media training, and free legal assistance to carry out the charitable aims of the Foundation. TrustLaw Connect was launched in July 2010 and by July 2013 had 1,200 members in 145 countries.¹⁷

The third example is the International Senior Lawyers Project (ISLP) that started initially in the US in 2001 but now has affiliate offices for the UK (in London) and Europe (in Paris). Its uniqueness relates to the use of highly experienced attorneys, near or at retirement, who want to stay professionally active. It has three broad areas of focus: human rights; equitable and sustainable economic development; and rule of law. In 2011, ISLP deployed 80 volunteers to work on 121 projects in 25 countries from Afghanistan to Zambia – but mostly African countries.¹⁸

Approaches of law firms and lawyers' organisations

All of the above clearing houses, programmes, projects and initiatives have two things in common. First, law firms, lawyers and lawyers' organisations have been behind the development of nearly all of them and now sit on their boards or committees of management. Secondly, all have grown significantly since their inception in response to the vast need for highly skilled legal assistance throughout the developing and post-conflict world.

Typically, law firms will belong to a number of member-based organisations and consider opportunities to become involved as they arise. However, the best-practice firms will also actively pursue and develop their own international pro bono projects based on their programme's areas of focus or unmet needs, perhaps building on relationships with existing clients, or developing new projects with new clients.

Lawyers have built upon existing lawyer networks to create specific pro bono entities such as the Lex Mundi Pro Bono Foundation, created in 2006 as an affiliate of the Lex Mundi network of 160 top-tier business law firms in 100 countries, with 560 offices. The focus of the Lex Mundi Pro Bono Foundation is supporting social entrepreneurship.¹⁹

However, one new entity devoted to providing international pro bono was established by a single global law firm. New Perimeter, a separate entity created in 2005 by law firm DLA Piper, was set up specifically to provide long-term, high-impact pro bono legal support to qualifying non-profit organisations, governments and academic institutions primarily in developing and post-conflict regions. More than 4,000 DLA lawyers globally compete internally to be able to work on pro bono projects developed by New Perimeter. Guided by a broad Advisory Board, whose members have international legal, business and development experience, New Perimeter has developed a strong strategic direction for its programme, focusing its work on legal education, women's and children's rights, access to justice and law reform, environmental protection, economic development and food security. DLA Piper allocates 13,000–15,000 attorney hours per year to New Perimeter, which translates to US\$6-7m in donated legal services annually.²⁰

Type of work

The following comments are based on 100 international pro bono projects, many of which are current or have been completed in the past few years. A description of each project has been obtained from material published by law firms, in hard copy or online, from brokers such as A4ID or ABA ROLI, and from organisations such as New Perimeter, PILnet, TrustLaw and Lawyers Without Borders (LWOB). This has been done in an attempt to identify trends in the types of legal work done, the types of problems to which the legal work has been directed and the types of clients assisted.

This paper organises the 100 projects into seven categories with some projects undertaking activity

16 See, www.trust.org/trustlaw/connect accessed 23 December 2012.

17 See, www.trust.org/item/20130409151703-w145b.

18 See, www.islp.org accessed 20 March 2013.

19 See, www.lexmundiprobono.org/lexmundiprobono/WHO_WE_ARE.asp accessed 23 December 2012.

20 See, www.newperimeter.org/about/index.html accessed 23 December 2012.

in more than one category. The categories also overlap to some degree but seek to provide a framework for the reader to better understand the nature of the work being done. Common themes are building country capacity, improving access to justice and strengthening the rule of law in developing countries. A description and some examples of the work being done is as follows:

Building and strengthening legal systems and institutions

Much of this work is legal education, where teams of lawyers teach everything from drafting to trial advocacy skills. It is usually provided to lawyers and law officers, including police, judges²¹ and magistrates,²² to strengthen the rule of law,²³ and the effectiveness of legal professional associations, but also to improve the professional skills of lawyers and law officers. More fundamental work is also being done such as drafting laws for the creation of a court system and a prosecutorial system²⁴ or advising prosecutors in relation to procedures for pursuing action for crimes against humanity.²⁵ Projects under this heading also include directly addressing a critical lack of resources in a law school in a developing country.²⁶

Improving access to justice and law reform

There is a broad range of matters that fall under the heading of improving access to justice and law reform. A subset of these projects is aimed at anti-corruption and better public integrity. Examples include: assisting an NGO with UN shadow reporting;²⁷ a constitutional challenge to South Africa's voting law, which failed to provide for absentee voting;²⁸ advising on whether an international tribunal could be set up in Chad/Senegal to try the former president for crimes against humanity;²⁹ a comparative analysis of freedom of information laws across multiple countries to present a perspective on draft freedom of information law in Yemen;³⁰ and crafting model legislation designed to protect women from socio-economic and sexual exploitation in Nepal.³¹

Other examples include: a group of law firms that have assisted an NGO to investigate and prepare a major report about the treatment of unaccompanied minors in detention after being returned to Mexico after seeking to cross the US/Mexico border;³² preparation of a report on the issues surrounding the forced rescue of street children;³³ and advising an NGO on the intellectual property risks associated with their campaign calling for an end to child trafficking into the cocoa production industry in Africa.³⁴

21 Garrigues partners and associates developed and taught an online accounting course over a two-month period to Latin American judges from commercial courts.

22 The Africa Law Initiative Council (a public service project of the ABA) provides legal expertise, advice and training to judges, lawyers and government officials throughout Africa. Activities also included plans to develop a Legal Aid Clinic and Victim Service Centre in Liberia.

23 The ABA ROLI supported programmes to increase Chinese lawyers' capacity to advocate for citizens' rights. It aimed to strengthen the Chinese Bar so as to enhance the rule of law.

24 A New Perimeter project focused on restoring Kosovo's judicial and prosecutorial systems.

25 Mayer Brown assisted Human Rights Watch with international criminal law matters.

26 A New Perimeter project at the Addis Ababa Law School where lawyers from DLA Piper provided training and a significant grant to the Law School to purchase texts and new technology, provide research grants and underwrite a publication.

27 Ashurst Australia is assisting Transparency International (anti-corruption organisation) to draft a UN Shadow Report in Papua New Guinea.

28 Davis Polk initiated and led a successful constitutional challenge to South Africa's voting law, which failed to allow for absentee voting by South African citizens residing overseas.

29 Mayer Brown assisted Human Rights Watch (Paris office) on international criminal law matters including crimes against humanity cases, such as the Duvalier case (Haiti) and the Hissene Habre case (Chad/Senegal).

30 Baker & McKenzie, working with in-house counsel from The New York Times, represented the International Research and Exchanges Board to present international perspectives on a draft freedom of information law for Yemen.

31 Lawyers from Baker & McKenzie, as well as others from Accenture and Caterpillar, created and presented Nepalese legislators with model legislation designed to protect women from socio-economic and sexual abuse.

32 Mayer Brown assisting not-for-profit organisations investigating the treatment of these minors. The project and its report (compiled by the not-for-profits) received first place honours from UNICEF Mexico in March 2012.

33 Allens acted for Bahay Tuluyan (a grassroots Filipino organisation) in preparing a report for UNICEF about the rights of street children.

34 N I Jacobs & Associates provided assistance to Stop the Traffik, allowing the organisation to continue to push for new laws to bring an end to child trafficking in the chocolate industry.

Community legal education

There are many projects where law firms have developed handbooks, guides and toolkits about laws and their implications and then followed this by delivering training courses for NGOs, government employees, lawyers, law schools, policy-makers and others. The subject matter for these include good governance practices for NGOs,³⁵ strengthening responses to people living with HIV/AIDS,³⁶ best practice in use of paralegals, human rights litigation³⁷ and legal skills. Often this work is referred to as capacity-building and some examples might be considered nation-building.

Nation-building and economic development

Projects in nation-building and economic development seem to fall into three categories: legislative drafting projects; a broad range of work for governments in developing countries; and legal work supporting NGOs, charities and aid agencies, many of which work globally. Some of this rebuilding work has been done in the wake of natural disasters or political upheavals.

Law firms have drafted legislation for developing countries and NGOs seeking to implement model laws. Some examples of this are: legislation to address corporate criminal liability for environmental offences;³⁸ drafting a country's constitution;³⁹ decriminalisation of sex work;⁴⁰ the review and update of all commercial laws with the aim of helping a country attract foreign capital; harmonised model legislation on disaster response;⁴¹ and protecting workers' rights in unregulated industries.⁴²

Law firms have also worked closely with governments of developing countries advising on bilateral agreements with other countries,⁴³ assisting with energy and resource projects (for example, advising on the risks and benefits of establishing a Special Economic Zone),⁴⁴ advising on the establishment of a national bank⁴⁵ or assisting to re-establish a property register.⁴⁶

However, much of the work done by law firms in this area is done for NGOs, aid agencies and charities, particularly global organisations. This work can consist of legal assistance with the establishment, governance and structuring of an organisation, a new initiative or existing project being run by an NGO, charity or aid agency. Examples include: advising a non-profit leader in microfinance on labour law;⁴⁷ assisting with compiling a detailed report on the major regulatory obstacles to microcredit;⁴⁸ helping with a loan agreement to finance a social business in an African country;⁴⁹ advising an NGO supporting social entrepreneurs by providing comparative international perspectives on laws relating to employment and diversity, intellectual property, the use of social media and data privacy, anti-corruption and governance, corporate structures and tax-exempt status;⁵⁰ or creating a series of simple template agreements between small businesses and financiers and an international charity so

35 King & Wood Mallesons, in association with CARE, developed a handbook for NGOs in Papua New Guinea, which aims to enhance NGOs' legal knowledge and backed this up with a series of training sessions.

36 HWL Ebsworth assisted in formulating a legislative proposal for the decriminalisation of sex work and male homosexual sexual intercourse in PNG as part of PNG's HIV response (funded by AusAID).

37 New Perimeter created a paralegal resource manual to assist the Namibia Paralegal Association.

38 Shearman & Sterling assisted Progressio (charity focusing on sustainable development) to develop laws relating to illegally sourced timber in the EU and UK. The law was ratified by the EU in 2010.

39 DLA Phillips Fox assisted the Nepalese Government with the constitution drafting process.

40 See n 24 above.

41 Baker & McKenzie worked with lawyers from Microsoft to represent the ICRC to draft uniform model legislation on disaster relief.

42 Baker & McKenzie worked with lawyers from Vodafone to develop legal mechanisms in an attempt to stop bonded labour practices in Nepal.

43 DLA Phillips Fox assisted the Timorese Government in relation to agreements with Indonesia.

44 New Perimeter undertook a comprehensive study on Special Economic Zones which discussed the risks and benefits of a Special Economic Zone in Timor Leste.

45 DLA Phillips Fox advised the Government of the Democratic Republic of Timor-Leste regarding the establishment of a national bank.

46 Ashurst Australia provided a secondee to the Government of the Democratic Republic of Timor-Leste to help create a property register.

47 Mayer Brown provided labour law advice for Planet Finance's (NGO) microfinance initiatives.

48 Led by Orrick and Latham & Watkins, as well as many other law firms, the consortium compiled a country-by-country report outlining regulatory obstacles to microcredit across the EU's 27 Member States in 2011.

49 Mayer Brown also advised in relation to a loan agreement to finance a social business in Ghana.

50 Baker & McKenzie gave assistance to Ashoka's Global Fellows, as they work to empower communities.

as to facilitate credit to support agricultural groups grow their businesses.⁵¹ Work for charities or aid agencies⁵² might include advice on tax, incorporation, registration, risk and insurance issues but also advice on relevant laws in particular jurisdictions such as competition or occupational health and safety laws.⁵³

Environmental protection

Issues addressed under the heading of environmental protection include illegal logging,⁵⁴ encouraging take up of solar powered devices⁵⁵ and raising awareness of climate change.⁵⁶ Law firms have established relationships with local counsel to assess pertinent legislation, customary law and actual practice, providing advice on current law and supported NGOs variously, to become commercially stable (via trademarks, contracts and trade agreements) and to provide briefs for NGOs to support their advocacy for law reform and enforcement.

Gender equality

Gender equality is a recurring theme in international pro bono work in African and Asian countries, including China; there is also an example from Peru. Work includes documenting human rights abuses against women and preparing affidavits and a report outlining the abuse,⁵⁷ designing an agenda and securing appropriate speakers for a summit meeting⁵⁸ and providing technical drafting assistance to a group of congresswomen in Peru as they developed legislation against domestic violence.⁵⁹ Work has also been done in evaluating legal and regulatory schemes and policy strategies in some African countries to assess how they impact women's ability to access savings and credit services.⁶⁰

Hunger and food security

Work in the area of hunger and food security area includes: advising an NGO on the current pastoral rights of nomadic herders being forced into permanent settlements, based on customs and the Rural Code of Niger, and on measures to improve their rights;⁶¹ supporting the creation and operation of a multinational hunger relief non-profit, including corporate formation and governance, tax work and assistance with various contracts;⁶² and advice on patent protection laws to another NGO to improve access to medicine.⁶³

51 Simmons & Simmons helped create simple template agreements between Oxfam and the bank /monetary financial institution (MFI), or between the enterprise and bank/MFI.

52 Herbert Smith Freehills indicated in 2011 that it had assisted, over the previous 18 months, 30 clients with an international focus, most of which were international aid agencies.

53 DLA Piper provided information on legal and risk issues to World Vision Australia (Kenya operation), governance advice to Optometry Giving Sight and competition law advice to Oxfam.

54 New Perimeter focused efforts in Colombia and Peru where it established relationships with local counsel and developed strategies for legal developments.

55 Work done by A4ID's legal partners provided advice on trademark, brand protection and contracts.

56 Clayton Utz acted for Oxfam and the World Wildlife Fund's Legal Resource Initiative, which involved real time legal advice to delegates during the climate negotiations in Barcelona and Copenhagen.

57 New Perimeter, in association with AIDS-Free World, documented human rights abuses against Zimbabwean women. DLA Piper lawyers also interviewed women who were abused because of their political viewpoints.

58 New Perimeter assisted Vital Voices Global Partnership in planning and implementing a programme on female political empowerment at the Vital Voices of Asia Summit.

59 New Perimeter sent lawyers to Peru help congresswomen draft new legislation against domestic violence.

60 A team of New Perimeter lawyers evaluated legal and regulatory schemes in Malawi and assessed how these impacted women's abilities to access savings.

61 Project in Niger with local organisation JEMED (Youth with a Mission), international NGO Tearfund, A4ID and law firm Weil, Gotshal and Manges.

62 New Perimeter lawyers supported the creation and operation of a multinational hunger relief non-profit, the Global Food Banking Network.

63 A4ID brokered project finding intellectual property lawyers to work for MSF.

Observations, trends and patterns

This scan of international pro bono work displays some trends and patterns. The first is that large law firms have strong corporate law skills and a number of the projects and initiatives can be seen to utilise these skills successfully. These tend to be projects for larger, well-organised NGOs and charities that have a track record of delivering outcomes in the countries where they operate. These organisations can benefit considerably from good governance, structuring, tax, intellectual property and general commercial law advice. The legal support helps them to successfully implement significant initiatives by providing the necessary contractual and commercial arrangements that underpin their operation or a particular project, and help troubleshoot other issues that may arise, such as regulatory issues. Pro bono legal support for these organisations makes good sense as the core skills of large law firms are well matched to the need of these organisations and are utilised to deliver outcomes that potentially affect the lives of many.

A second observation is that, consistent with the ethos of pro bono work of prioritising a limited resource towards the greatest unmet social need, much international pro bono work is directed towards significant and apparent injustices, and towards egregious breaches of human rights. Issues such as the following are often difficult issues to tackle: for example, the treatment of people living with HIV/AIDS; human trafficking; the plight of refugees; the lack of inheritance for women and women's rights generally; gender-based violence; and the treatment of minors. In some countries, relevant laws may already exist to address these issues and the problem lies with implementation and enforcement. In other countries, the laws may be non-existent or inadequate. The pro bono project will vary accordingly.

Importantly, pro bono legal work addressing these issues is most effectively carried out when it is in partnership with organisations that are on the ground and working with the community, and when the legal brief is developed in consultation with these organisations.

The sources or points of referral for this work vary widely. Clients may self-refer, be referred by a staff member in a firm who has a connection to the organisation or by an existing pro bono or fee-paying client. Some of the large NGOs, charities and aid agencies are long-term clients of law firms and have been assisted over a number of years to address a broad range of legal issues that have helped them to stabilise, grow and better achieve their mission. Pro bono clearing houses have become more sophisticated and skilled at brokering projects to law firms and increasingly provide a source of opportunities where law firms can find appropriate projects with which to become involved.

Projects vary considerably in their size, strategic direction and desired outcomes. For example, an ABA ROLI project aiming to stop the trafficking of women in Nepal⁶⁴ employed a number of different strategies over a two-year period, including to:

- raise awareness of and empower potential victims;
- build the competence of key anti-human trafficking-related institutions to improve the quality of criminal investigations; and
- facilitate better systemic coordination between governmental and civil society stakeholders.

Each component of this programme fills discrete gaps and seeks the broad outcome of decreasing the incidence of trafficking in women, while improving investigative effectiveness, and increasing prosecutions and convictions.

On the other hand, a law firm may undertake discrete tasks, such as undertaking the legal work associated with the opening of eye hospitals⁶⁵ as part of a long-term relationship with an NGO.

Law firms generally provide legal services but a number have their own foundations that are used from time to time to provide funds to financially support a pro bono project or client, usually for a specific initiative rather than for operational funds.

64 Training and consultancies provided by ABA ROLI in relation to trafficking in Nepal aim to raise awareness, empower potential victims and build competence of anti-trafficking institutions.

65 DLA Phillips Fox undertook all the legal work associated with the opening of two eye hospitals in Fiji and Timor-Leste.

Social impact of legal services may be indirect

Legal services, unlike the provision of food or medical services, are one or more steps removed from the outcome in achieving social change. The upshot of legal support may not be seen for some time but is nevertheless important. For example, training delivered to women about the importance of registering the birth of their child may not have a direct effect until 18 years later, when a child is required to prove his or her age to obtain a driving licence. The effect may be significant in that a driving licence may be vital to that person being able to earn a living.⁶⁶ On the other hand, the drafting of a patent licence agreement between a research institution and Médecins Sans Frontières (MSF) facilitates MSF being able to support the development of new diagnostic tests, and makes them accessible and affordable to many people in developing countries from the moment the agreement is executed.⁶⁷

Social impact of the GFC

It is not the goal of this paper to provide an analysis of the needs of countries in a post-GFC world. However, a few excerpts from key reports reproduced below provide a context for drawing some conclusions about how international pro bono might better assist countries affected by the GFC. The first comments concern the East Asian financial crisis in 1998:

‘Widespread economic hardships are tearing at the fabric of society: it is essential to ensure that food markets work, to augment the purchasing power of vulnerable households, to cushion the impact of price increases, and to preserve the poor’s access to health and education. Strengthening public and private institutions responsible for service delivery is also crucial in both the short and longer-term.’⁶⁸

‘Too often in the Latin American crises, policy makers’ energy was devoted to restoring macroeconomic stability and implementing structural reform. East Asia has the opportunity to avoid this mistake by putting social issues at the forefront. Drops in income, employment, and public services have widespread and complex social consequences. Therefore, it is important to take action on a wide range of fronts, and make every effort to anticipate these consequences. Targeting is crucial. Special funds set up in Latin America, designed to cushion the social costs of economic adjustment measures, had mixed success, largely due to poor targeting.’⁶⁹

In terms of lessons for the future following the more recent GFC, the following actions were suggested:⁷⁰

- Plan for crises before they occur: governments need both to invest in prevention (for example via adequate regulation of finance) and to stress test their economic policy, state institutions and social policies against the response to and management of possible future crises.
- Monitor the impact and talk to people: the best responses have involved on-the-ground, real-time monitoring of the impact of the crisis, and genuine dialogue with affected communities about the best way to respond.
- Support local-level coping mechanisms: governments should build the capacity of families, local civil society and faith-based organisations to respond to crises.
- Access to information: support during crises can also include providing information on sources of help, and even supporting connectedness and ‘moral messaging’ – for example, respected local figures calling on citizens to check on the welfare of their neighbours.
- Gender matters: one near-universal characteristic of responses to date is gender blindness. Governments have responded to job losses in textiles and garments industries, largely of women, by channelling fiscal stimuli into construction, which largely employs men. Attempts to inject credit into cash-starved economies too often end up being pounced upon by large enterprises,

66 Example from Christina Storm, Founder of Lawyers without Borders in video interview found at www.youtube.com/watch?v=f9EF68RxXKQ&feature=related (<http://bit.ly/13pivAQ>).

67 A4ID brokered project finding intellectual property lawyers to work for MSF.

68 Tamar Manuelyan Atinc and Michael Walton, *Social Consequences of the East Asian Financial Crisis* (World Bank Group, 1998).

69 Nora Lustig and Michael Walton, ‘East Asia Can Learn From Latin America’s Travails’ *International Herald Tribune* (New York), 29 May 1998.

70 Duncan Green, Richard King, May Miller-Dawkins, ‘The Global Economic Crisis and Developing Countries’ Research Report, Oxfam GB, 28 May 2010 6.

which employ relatively few workers, rather than benefiting small, labour-intensive firms, or people working in the vast informal economies of the South.

- After a crisis, replenish resilience: each crisis depletes the coping capacities, both physical and psychological, of poor people and communities. After the crisis has passed, there is an urgent need to replenish those sources of resilience before the next shock arrives.

And as to the timing of action required:

‘The crisis has highlighted social protection as a development issue, and the importance of managing risk and volatility at all levels. It is not enough to pursue economic growth now, and social welfare later – the two must come together in pursuit of improved well-being.’⁷¹

And as to the need for concerted action:

‘The global economy is passing through a period of profound change. The immediate concern is with the financial crisis, originating in the Northern Hemisphere. The Southern Hemisphere is affected via reduced demand and lower prices for their exports, reduced private financial flows, and falling remittances. This is the first crisis. Simultaneously, climate change remains unchecked, with the growth in greenhouse gas emissions exceeding previous estimates. This is the second crisis. Finally, malnutrition and hunger are on the rise, propelled by the recent inflation in global food prices. This constitutes the third crisis. These three crises interact to undermine the prosperity of present and future generations. Each has implications for international aid and underline the need for concerted action.’⁷²

Conclusion

There are a number of messages and themes that emerge from the above statements about appropriate action in a post-GFC world that resonate with the way international pro bono legal work is already operating and the kind of projects that are being undertaken. These messages also serve as an important reminder for those involved in international pro bono legal work of the elements that are vital in order to achieve meaningful outcomes.

This paper has demonstrated the wealth of international pro bono projects that have been undertaken to help *strengthen institutions to build resilience*, those who undertake this work are also good at understanding and managing risk – vital skills when developing and implementing new initiatives. Some law firms and lawyers already have a strong interest in addressing gender and other human rights issues, and are currently working with organisations that conduct real-time monitoring of the impact of a crisis. These organisations are *partaking in genuine dialogue with affected communities about the best way to respond*, and law firms need to continue to partner with these organisations to ensure that their pro bono work is effectively addressing the need.

The greatest impact that international pro bono can make in the post-GFC world is possibly also the key thing that law firms do well, that is, to provide the broad range of non-litigious legal work that supports and stabilises organisations. It is this stabilisation that can help developing countries be more resilient and grow. However, as significant outcomes are often only achieved by sustained effort over time, law firms need to develop strong relationships and work closely with governments of developing countries, and established aid or charity organisations or other NGOs, particularly those that have a good history of working on the ground in that country.

Law firms also have the knowledge and skills to draft laws, prepare guides, toolkits and other legal materials and to deliver training and represent individuals or groups of individuals whether it be, for example, to assist persons to seek compensation, or in relation to immigration laws. These services can perhaps be part of a more immediate response to a crisis. Also, by coordinating lawyers across a number of firms and in-house corporate lawyers, detailed comparative studies of the law and its implementation across multiple countries can be prepared, to be used as an important advocacy tool. Law firms and barristers can also pursue public interest litigation that, on its own or as part of a campaign for change, can lead to a significant outcome of social change.

⁷¹ *Ibid* 7.

⁷² Tony Addison, Channing Arndt, and Finn Tarp, ‘The Triple Crisis and the Global Aid Architecture’ (2010), UN University Working Paper No 2010/01.

For those wanting to work with lawyers and law firms, organisations like New Perimeter, or initiatives like the ABA ROLI, it is important that they understand the way in which lawyers and law firms operate in order to leverage the most useful services from the available international pro bono legal providers. Individual firms have quite different pro bono cultures and interests that can change as the structure of the firm, or the key persons involved, change. Spending time understanding a firm's culture or identifying the firm to approach that is likely to be the best match for a project or initiative is well worthwhile. Pro bono coordinators in law firms, brokers and pro bono clearing houses are all good starting points. Above all, good personal relationships are vital for success in pro bono projects.

There is however no doubt: through a myriad of institutional, agency and law firm initiatives, pro bono legal services have supported important responses to support communities and individuals as they face the challenges of financial crises and poverty.

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