



Meeting of Senior Officials of Commonwealth Law Ministries

Marlborough House, London, 18-20 October 2010

Provisional Agenda Item 2(a)(ii)

SOLM(10)5

ACCESS TO JUSTICE – INTERNATIONAL PRO BONO LEGAL ASSISTANCE

**Paper prepared by Mr John Corker
Director, National Pro Bono Resource Centre, UNSW, Sydney**

Introduction

1. 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.
2. Pro bono legal work has undergone a profound transformation in the past 25 years. For much of legal history, pro bono was ad hoc and individualised, dispensed informally as professional charity, but it has become centralised and streamlined, distributed through institutional structures by private lawyers acting out of a professional duty.
3. Pro bono's institutionalisation has depended critically on the rise of the large corporate law firm. Although small-scale practitioners 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.
4. Since the mid 2000s there has been a trend towards internationalisation of pro bono legal work particularly out of the United States and the United Kingdom.

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.¹

¹ Steinitz, M, *Internationalized Pro Bono and a New Global Role for Lawyers in the 21st Century: Lessons from Nation Building in Southern Sudan*, Yale Human Rights and Development Law Journal, 1 January 2009. Viewed at: http://works.bepress.com/maya_steinitz/1

5. The increasing globalisation of law firms has been a factor in this trend. United States firms who opened offices in London in the past 10 years brought a strong pro bono culture with them. These large firms have increasingly had a focus on doing work for large corporate clients who operate in a number of overseas 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 e.g. 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.

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.²

6. This trend in pro bono activity has not gone unnoticed by government or legal professional organisations. The UK Attorney-General's International Pro Bono Committee was established in January 2007. The Council of the International Bar Association (IBA) made its first Pro Bono Declaration in October 2008³. In Australia, the Attorney-General's International Pro Bono Advisory Group was set up in July 2009.

7. The IBA Pro Bono Declaration calls on governments to:

promote and support the pro bono efforts of the legal profession in their countries and to desist from in any way deterring the provision of such service. Further, governments should assist and encourage pro bono legal service, through measures such as treating it as not being subject to tax, and where such service is presently taxed, such taxes should be rescinded⁴.

8. Importantly a number of brokers, matchmakers and clearing houses for international pro bono legal work have become established during this period and have developed knowledge and expertise. The answer to the question, "What role can Commonwealth Law Ministers usefully play in assisting international pro bono legal work?" should be arrived at after gaining an understanding of how and where these organisations operate.

9. Separately, and perhaps due to an increased focus on human rights laws and policies internationally and the Rule-of-Law movement, counsel have increasingly appeared pro bono in international courts and tribunals and the appeal courts of overseas countries, particularly in 'public interest' cases e.g. cases involving Australians facing the death penalty in a foreign court or an issue of constitutional law in the European Court of Human Rights. Counsel have also provided important verbal and written legal advice as part of pro bono projects and programmes. It is important to acknowledge that counsel 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 their firm.

10. International pro bono work is generally considered to be legal work that is focussed outside of the country where the lawyer is based. However 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 is on programmes in developing countries but which are often based in the same country as the lawyer.

² Ibid..

³ International Bar Association Pro Bono Declaration Approved by the IBA Council October 2008

⁴ Ibid , paragraph 8

Law Firm Activity

11. Large law firms are distinct from their partners and possess corporate identity. Their pro bono programmes are carefully planned and managed and are an integral part of the overall operation and identity of the firm.

12. Most pro bono practices of large firms are managed by a full time pro bono co-ordinator who may be a partner of the firm. Some firms also have a pro bono committee that oversees the firm's pro bono practice and sets the policy in relation to areas of focus for the practice and may decide whether the firm will take on a particular matter.

13. The development of large-firm pro bono programmes over the past 15 years has reflected the dual imperatives of public service and professional interests. A recent United States study finds that pro bono programmes in practice are profoundly shaped by the interests of law firm lawyers, evident in the emphasis placed on the satisfaction of lawyers rather than clients, and the focus on quantity over quality or social impact. In addition, the study finds that pro bono participation is increasingly adapted to the economic needs of the firms through efforts to enhance training, reduce costs, and promote fee-generating work⁵.

Criteria

14. Criteria that may be applied in deciding whether a firm agrees to take on a pro bono matter vary from firm to firm. Some firms have particular areas of focus and matters falling outside those areas are unlikely to be taken on.

An example of one large Australian firm's criteria for accepting a matter are as follows⁶:

- (a) The work must either:
 - (i) establish or preserve the rights of those who cannot afford professional legal advice without subsidy (other than in respect of purely -commercial disputes), the disadvantaged or marginalised, or classes of persons who otherwise deserve public support; or
 - (ii) seek to further a particular public good, correct a perceived injustice or otherwise address issues which are of broad community concern; or
 - (iii) assist non-profit organisations having objects for the benefit of the public, sections of the public or the natural world; or
 - (iv) improve the laws or the administration of the legal system from the perspectives of availability, efficacy, equity or justice (including through law reform participation and legal education).
- (b) The work must be in the form of providing legal advice, representation or using legal skills. For example, community service is not regarded as being of a pro bono nature for this purpose but time spent by members of the firm where our legal skills and training are used other than for a specific matter will generally be recorded by the firm.
- (c) The matter does not create a legal conflict of interest with another existing or former client of the firm. Commercial conflicts may impact on the decision to act if the nature of the matter or the identity of any current client or the pro bono client is such as to warrant the firm not acting. The committee will consider whether commercial conflicts can be dealt with by receiving the consent of the fee paying client.

⁵ Cummings Scott L and Rhode, Deborah, *Managing Pro Bono: Doing Well by Doing Better*, Fordham Law Review, Vol 78 (2010) found at <http://www.escholarship.org/uc/item/8c99w341>

⁶ Anderson J, *The Australian Pro Bono Manual, A practice guide and resource kit for law firms*, National Pro Bono Resource Centre 2005 at p. 137 available at <http://www.nationalprobono.org.au/probonomanual/page.asp?sid=3&pid=33>

(d) The matter falls within the professional expertise of the partner who will be responsible for it.

In complex matters additional criteria may be applied such as means and merits tests and, when considering litigious matters regard may be had to future staffing availability. In controversial or difficult decisions, managing partner sign off may be sought and where the matter is sizeable then executive or deputy executive partner sign off will be sought to confirm firm capacity.

Types of pro bono work

15. There is a diverse range of international pro bono work. Clients may be individuals, charities, development or aid organisations, other NGOs or governments.

16. Legal work might include training, preparation of legal information/summaries of legislation, legal research, advising, negotiation, drafting, representation or advocacy. The UK Statement of Principles on International Pro Bono Work includes advocacy training, judicial assistance, and lectures on key areas of law and legal development within the definition of international pro bono work.

17. International "mega law firms," as well as other sections of the Anglo-American private law sector, are increasingly undertaking ambitious and cutting-edge pro bono legal representations in post-conflict situations, emerging democracies, and emerging markets⁷. Much of this work can be broadly described as rule-of-law development.

18. National disasters have also mobilised lawyers to provide co-ordinated pro bono legal responses such as the current response to the Haiti earthquakes or the Victorian bushfires in Australia in 2009. Co-ordination of these efforts is essential and has been done well by existing agencies. With disasters, lawyers are motivated to help by the clear and immediate demonstration of unmet legal need and an assessment that they possess the requisite skills to be able to help.

19. International pro bono also includes in-country volunteering programmes where individual lawyers take on opportunities to provide pro bono legal work with a government or NGO in a particular country for period of months. This work is also usually co-ordinated by an intermediary agency.

Need and Capacity in Commonwealth Nations

20. The Commonwealth consists of 54 independent sovereign states comprised mainly of developing and emerging nations, with over 94 per cent of its population living in Asia and Africa. There is considerable unmet legal need in many, if not all, of these countries. However this need will be diverse depending on the client, who may be the government of a developing country, an individual facing injustice or an NGO with a specific mission.

21. Like all successful pro bono legal work it must be client-focussed, respond to local need, and be carefully matched with an appropriate pro bono provider to obtain the best outcome. In developing countries some legal need is met by law firms paid through aid programmes. Aid funds (particularly to governments) may be used to pay for legal work as part of country development and assistance programmes and firms are aware of this.

⁷ Note 2 above [*211] International pro bono in context

22. To the best knowledge of the author, the only Commonwealth countries that have some form of developed legal pro bono culture are the United Kingdom, Australia, New Zealand, Canada and South Africa with most of the international pro bono legal work being done by law firms based in the United Kingdom.

23. For lawyers in small Commonwealth countries specialisation in an area of law is not possible as evidenced by the lawyer/citizen ratio in some countries. For example there is a lawyer for every 130 people in the UK compared to Samoa, where there is one for every 2000 people⁸. Lawyers have to handle a full range of matters. These lawyers could perhaps be supported in specialist areas by large firm pro bono but this takes time and co-ordination.

24. It is a common experience of many pro bono providers that developing nations find it difficult to put together any substantial pro bono projects and rather rely on external organisations to create projects.

Existing Co-ordination

25. Pro bono service delivery depends on an infrastructure to connect firms with opportunities, a network of organisations that support and facilitate pro bono programmes, and an intra-firm co-ordinating system to take in and distribute cases to lawyers.

26. With the recent interest and growth in international pro bono, some existing pro bono brokers and matchmakers have expanded their vision and function to embrace cross-border work and new organisations, committees and Advisory Groups have been established with the sole purpose of facilitating international pro bono legal work.

27. A detailed understanding by the Commonwealth of the role, structure, aims and operations of the non-government entities is crucial in order for it to play a constructive role in facilitating international pro bono legal work.

28. This is recognised in the UK Statement of Principles as follows⁹:

- C1 International Pro Bono Legal Work will often be more effectively delivered through coordinating the relationships between the judiciary, lawyers, pro bono organisations, government, professional bodies, and not-for-profit agencies.
- C2 The coordination referred to at C1 includes coordination with International Pro Bono Legal Work contributed by other countries and by international organisations and agencies.

29. What follows is a short brief on these key international organisations, and agencies arranged in order of United States, United Kingdom, Europe and then Australian based organisations.

⁸ Rt Hon. Don McKinnon, Commonwealth Secretary-General, *Opening Speech, Meeting of Law Ministers and Attorneys General of small Commonwealth jurisdictions* (London, October 4, 2007).

⁹ Found at http://www.internationalprobono.com/declarations/item.1254-UK_Attorney_Generals_Pro_Bono_Declaration

U.S based organisations

American Bar Association (ABA) Rule of Law Initiative (ROLI)¹⁰

30. The ABA ROLI is a public service project of the American Bar Association dedicated to promoting the rule of law around the world. Now in its 20th year, it operates in Africa, Asia, Europe and Eurasia, Latin America and the Caribbean, and the Middle East and North Africa. It has operated in Commonwealth countries such as Rwanda and Nigeria. It is a programme of individual volunteering - judges, attorneys, law professors and legal specialists. The programme “only considers professionals with a minimum of five years of relevant experience, a high level of energy and initiative, strong interpersonal skills, and relevant substantive legal expertise. International experience and foreign language skills are preferred, but not always required.”¹¹

31. All volunteer participants serving over 90 days receive a generous support package that covers travel, housing and general living and business expenses. In-country foreign language training and medical evacuation are also included. Participants serving for shorter periods will receive a similar, but less comprehensive, package.

32. Legal Specialists reside in host countries for varying periods of time, and work closely with legal professionals, local governments, non-governmental organisations, law schools, and other institutions to identify legal reform priorities and implement technical assistance projects.

33. The ABA ROLI works in seven major programme areas: access to justice and human rights; anti-corruption and public integrity; criminal law reform and anti-human trafficking; judicial reform; legal education reform and civic education; legal profession reform and women’s rights.

Lawyers Without Borders (LWOB)¹²

34. LWOB is a US-based organisation which claims the world’s largest number of volunteer lawyers from around the world who are interested in international pro bono projects and initiatives. LWOB was established in January 2000 to create a global association of lawyers committed to pro bono service, both at home and abroad, with large numbers of lawyers from the United States, Canada and the United Kingdom. At any given time up to 100 lawyers from around the world have been involved in one aspect or another of LWOB or its international programming.

35. LWOB’s goal is to provide support to rule-of-law projects and initiatives in human rights and global capacity building through the use of individual pro bono lawyers. They bring together pro bono lawyers from large firms, the private bar, in-house counsel and NGOs from around the world. Although having a global focus LWOB has a history of helping many Commonwealth nations especially in the African region.

Lex Mundi¹³

36. The Lex Mundi Pro Bono Foundation was created in 2006 in the United States. Its mission is to provide social entrepreneurs with access to first class legal advice and to strengthen the rule of law. It is a “matchmaker” and does not practice law. Drawing upon its global network of 160 top-tier business law firms in 100 countries and 560 offices, the

¹⁰ See <http://www.abanet.org/rol/> for detail

¹¹ Ibid.

¹² <http://www.lawyerswithoutborders.org/Pages/Default.aspx>, last visited 10 May 2010

¹³ <http://www.lexmundiprobono.org/lexmundiprobono/Default.asp>, last visited 10 May 2010

Foundation finds experienced lawyers willing to provide pro bono legal services to social entrepreneurs and fields teams of experts to work on selected legal reform projects. It is the Foundation's belief that supporting social entrepreneurship has an enormous positive impact on the poor and disenfranchised. Lex Mundi's website indicates that more than 200 social entrepreneurs have been matched with Lex Mundi law firms and lawyers around the globe since inception. Some of these projects are in Commonwealth countries, such as India and South Africa.

*New Perimeter*¹⁴

37. New Perimeter is a non-profit subsidiary established by the international firm DLA Piper and is dedicated exclusively to long-term international pro bono work. It represents a strategic approach by this firm. New Perimeter gives DLA Piper lawyers the chance to take part in challenging projects such as developing compliance systems for a non-profit that fights HIV/AIDS, tuberculosis and malaria around the world; developing a worldwide system of food banks; and setting up a human rights centre in South Africa.

38. An example of the work carried out by the subsidiary includes working closely with a Kosovar advisory group to successfully structure and draft new laws to introduce an independent judiciary and system of prosecution in Kosovo and working with the interim government to approve the legislation they helped draft and provide technical assistance directly to the new Ministry of Justice regarding the implementation of these laws.

UK based organisations

International Bar Association

39. The International Bar Association ('IBA') brings together local and international professionals involved in pro bono. It was formed in 1947 in New York with 34 bar associations, inspired by the United Nations and with the aim of supporting the establishment of law and administration of justice worldwide. The International Bar Association has gained recognition as the global representative of the legal profession. Current membership is over 30,000 individual lawyers and 198 bar associations and law societies from across the globe with offices in London, Sao Paulo, Brazil, Dubai and the UAE.

40. The IBA developed a website dedicated to international pro bono information and co-ordination in 2009 managed by the IBA London office. It provides resources such as guidelines, projects and training materials to assist those interested in participating in pro bono. It also provides news and regular updates of what other professionals are doing both internationally and locally as well as providing an extensive directory of links to various pro bono websites¹⁵. This site contains a full set of declarations and definitions of pro bono from around the world.

41. The IBA drafted the IBA Pro Bono Declaration approved by the IBA Council in October 2008. The Declaration "reaffirms the legal profession's commitment to pro bono legal service, as an integral part of the profession" and "calls on lawyers, law firms and bar associations to provide pro bono legal service, which is work by a lawyer of a quality equal to that afforded to paying clients, without remuneration or expectation of remuneration, and principally to benefit poor, underprivileged or marginalized persons or communities or the organizations that assist them."¹⁶

¹⁴ See <http://www.newperimeter.com/home.aspx> for details

¹⁵ <http://www.internationalprobono.com/>, last visited 9 May 2010

¹⁶ <http://www.internationalprobono.com/declarations/> numbered paras 1 and 2.

42. The Declaration encourages "... governmental and non governmental organizations to participate in pro bono legal service, and invites them to *use and contribute* content to the information resources developed by the IBA in this field, notably the web sites www.internationalprobono.com, www.ibaprobono.com and www.roldirectory.org."¹⁷

43. Through www.ibaprobono.com the IBA conducts an online matchmaking service where IBA Member Bar Associations and Soros Foundations¹⁸ 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 this site to view and respond to requests from Member Bar Associations and Soros Foundations. Portions of this site are password protected and the author is not aware of the success or otherwise of this facility in making successful matches.

*Advocates for International Development (A4ID)*¹⁹

44. A4ID is a UK-based international development charity established in 2006 which aims to further the United Nations Millennium Development Goals²⁰.

45. 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 (125 projects brokered in 2008-2009) and a Newly Qualified Lawyer's Programme that places junior lawyers in developing countries during their qualification leave.

46. A4ID works through Development Partners (145 in 2008-2009) that include local and international NGOs, inter-governmental organisations, social enterprises, bar associations and law societies and developing country governments. A4ID receives requests for legal advice and assistance and matches them with lawyers who are able to assist. These 'Legal Partners' (19 in 2008-2009) include a wide range of leading law firms and chambers in the UK and partnership is also available for in-house legal teams and legal academic institutions. Legal Partners pay membership fees. Commonwealth countries benefiting from A4ID's work include Bangladesh, Botswana, Cameroon, Ghana, India, Kenya, South Africa and Sri Lanka.

*International Lawyers Project (ILP)*²¹

47. ILP is a legal pro bono initiative aimed at matching the willingness and availability of senior lawyers to pro bono opportunities, usually in an international context. Based in London it operates in association with International Senior Lawyers Project of the United States. One of its first tasks has been to set up a register of practising and retired lawyers. Volunteers' reasonable travel and accommodation costs are paid by ILP. Its founding sponsors include the London Magic Circle law firms.

*TrustLaw*²²

48. TrustLaw is a new international vehicle for pro bono legal support and a hub of legal information, run by Thomson Reuters Foundation, the charitable arm of the world's leading provider of news and information. TrustLaw's goal is to spread the culture of pro bono globally, taking it to countries where it is not common practice. It is managed from London.

¹⁷ Ibid. numbered para. 7

¹⁸ Soros Foundations are autonomous institutions established in particular countries or regions to initiate and support open society activities. See <http://www.soros.org/about/foundations> for more detail.

¹⁹ <http://www.a4id.org/>, last visited 10 May 2010

²⁰ These goals are sought to be achieved by 2015. See <http://www.un.org/millenniumgoals/> for details.

²¹ See <http://www.internationallawyersproject.org/> for details

²² See <http://www.trust.org/trustlaw/membership/trustlaw.html> for details

The Thomson Reuters Foundation is a registered charity in Britain and the United States established in 1982 that developed the trust.org portal in 2009 that brings together international pro bono with an emergency information service to get critical information to survivors of natural catastrophes and a journalism and media training programme for journalists in developing countries.

49. TrustLaw Connect was launched in April 2010 and provides a matchmaking service between NGOs, social entrepreneurs (and possibly government agencies) seeking pro bono help and law firm members willing to provide pro bono legal services. Membership is free and Trust Law will vet all participants, both pro bono seeker and provider. The service will provide a case handler who collects information and ensures that requests are expressed in a correct way so as to seek legal advice. These opportunities will be placed on a website and notified to members in a weekly email.

50. TrustLaw will initially focus on good governance and anti-corruption issues, pulling together a variety of initiatives. The full TrustLaw website, a hub of news and information on anti-corruption, good governance and women's rights, is proposed to be launched in June 2010. It will feature a growing repository of information around anti-corruption and governance issues, including national legislation, international conventions, news, country profiles and law reviews, as well as from international institutions, law firms, governments, NGOs and others.

Australian Organisations

51. Although small in terms of facilitating international pro bono, within Australia there are a number of Public Interest Law Clearing Houses (PILCH)²³ whose members are mainly law firms that provide brokering services for both domestic and international matters and Australian Volunteers International, an agency that established Lawyers Beyond Borders²⁴ in 2009 to facilitate individual lawyers to volunteer to work in developing countries.

European organisations

Public Interest Law Institute (PILI)²⁵

52. The Public Interest Law Institute (PILI) is an international NGO that advances human rights around the world by stimulating public interest advocacy and developing the institutions necessary to sustain it. PILI was founded in 1997 with the support of the Ford Foundation at Columbia University but now has its head office in Budapest, Hungary as its main focus is Europe. One of its core programmes is promoting pro bono and for the past three years it has hosted the European Pro Bono Forum²⁶.

53. PILI has an advisory council led by its Honorary President, Lord Andrew Phillips of Sudbury and is co-chaired by Stephen Denyer (International Development Partner, Allen & Overy), Stuart Popham (Senior Partner, Clifford Chance) and Hugh Verrier (Chairman, White & Case). PILI has created a number of clearinghouses (in Hungary, Russia and China) that match up lawyers with NGOs that have legal challenges.

54. In 2006 it created the Global Clearinghouse that partners law firms in one country with NGOs in another. Lists of available matters are distributed monthly to its law firm partners.

²³ See www.pilch.org.au, www.qpilch.org.au and www.pilchsw.org.au for details.

²⁴ See <http://www.lawyersbeyondborders.com/> for details.

²⁵ See <http://www.pili.org/> for details

²⁶ The European Pro Bono Forum is the only platform of its kind providing an international comparative perspective on pro bono practice in Europe. Now in its fourth year it will be held in Paris from 18-19 November 2010.

Existing Government Initiatives

UK Attorney-General's International Pro Bono Committee

55. The UK Attorney General's International Pro Bono Committee was set up in January 2007. The Committee determined a Statement of Principles for International Pro Bono Legal Work in March 2009²⁷. The statement has been endorsed by the Bar Council, the Institute of Legal Executives, the International Bar Association and the Law Society of England & Wales.

56. The Committee's objectives are to promote the co-ordination of work in overseas countries to improve access to justice, to build capacity and capability in legal systems and to help to meet legal need. The Committee recognises that:

This will be achieved by improved coordination, both within the private sector and between the private and public sectors; by strategic mapping and matching of need, assistance, funding and capacity; by developing links with the governments and other relevant organisations of the recipient countries to reach better understanding of the context of the provision of assistance; and by promoting training and the sharing of practical support amongst the relevant groups and organisations²⁸.

Australian Attorney-General's International Pro Bono Advisory Group²⁹

57. The Advisory Group was established in July 2009 by the Commonwealth Attorney-General and the Minister for Foreign Affairs, to promote international pro bono work by Australia's legal profession, and identify linkages with the Government's international development assistance programmes. The Advisory Group brings together a range of private sector lawyers, Government and non-government agencies with expertise in international pro bono and development assistance work.

58. The Advisory Group has agreed to focus on three key priorities to promote and enhance international pro bono work:

- publicising international pro bono opportunities to the Australian legal community;
- supporting practitioners interested in international pro bono work; and
- promoting links between international pro bono providers, governments and NGOs.

These priorities will be pursued by:

- developing fact sheets on key issues and 'lessons learnt' templates to report on international pro bono projects;
- creating a website portal to provide reference resources and links to brokers and clearing houses providing details of pro bono opportunities; and
- disseminating relevant information and 'showcasing' successful international pro bono projects through law societies and bar councils.

²⁷ Ibid n10.

²⁸ ProBonoUK.net/International accessed 14 May 2010 at <http://www.probonouk.net/index.php?id=resources&rid=30>

²⁹ http://www.ag.gov.au/www/agd/agd.nsf/page/International_Pro_Bono_Advisory_Group

Conclusion

59. The phenomenon of international pro bono legal work is relatively new. It is mainly driven by large law firms but also by human rights advocates. A common theme of existing programmes is building country capacity and improving access to justice and the rule of law in developing countries.

60. Pro bono is a limited resource. Its aim should be to address the greatest unmet need, an objective that can only be met through efficient information sharing and brokering between pro bono seekers and providers. Leveraging the pro bono contribution of private lawyers involves identifying cases of clear unmet legal need that match the skills sets and interests of pro bono providers and promises tangible outcomes. This is what attracts lawyers to do this work.

61. Lawyers and law firm's capacity to help varies considerably from time to time and across areas of law and practice. Brokering between pro bono seekers and providers is a skilled and can be a complex activity. This is not a role for government.

62. Existing programmes that support and co-ordinate international pro bono legal work fall into two broad categories, those that place individual lawyers into programmes overseas and those that broker between pro bono seekers and pro bono providers being mainly large firms, many of them based in the United Kingdom or the United States. Some organisations (such as A4ID) run both categories of programme. Others do not. Governments should support both but be aware of the quite different services delivered by these programmes. There are already quite a number of these organisations that have gathered expertise and knowledge in the few years they have existed.

63. It is suggested that the approach of the Commonwealth to facilitating international pro bono work should be done in close co-operation with these existing co-ordinators and brokers.

64. Awareness across the legal profession of pro bono legal work needs to continue to be fostered. Commonwealth countries with a developed legal profession can play a role in raising awareness amongst members of the profession and acknowledging and thanking them for this work. The UK and Australian Attorney-General's have already been successfully doing this.

65. Possible roles for the Commonwealth include:

- identifying instances of unmet legal need in developing Commonwealth countries that might reasonably be met by pro bono legal service providers;
- raising awareness in developing Commonwealth countries of how to seek pro bono legal services and the important role they can play in particular cases;
- an information sharing and awareness raising role which could involve establishing a website that guides pro bono seekers to organisations and programmes that may assist them to obtain pro bono legal assistance and highlights successful pro bono legal work. Such a website should provide links and be linked to all other pro bono facilitation websites;
- generally supporting members of the legal profession in their desire to undertake pro bono legal work. One practical idea that has arisen in Australia is for government to provide a disbursements assistance fund which helps offset the disbursements

associated with overseas travel, accommodation and insurance costs incurred in carrying out international pro bono legal work.

66. The UK Attorney General's International Pro Bono Committee and the Australian Attorney-General's International Pro Bono Advisory Group have already both devised strategies to further some of these aims. The Commonwealth should build on the work of these groups.

Commonwealth Secretariat
Marlborough House
Pall Mall
London SW1Y 5HX

June 2010