



## Pro Bono Practices and Opportunities in Israel<sup>1</sup>

### INTRODUCTION

Traditionally, the public obligation of the legal profession in Israel was seen as corresponding to the project of nation-building and contributing to national institutions. There was no sense that the provision of free legal services was required to fulfill any social obligation that the profession might have, or to uphold the legitimacy or exclusivity of the profession with respect to legal services. Issues such as access to justice, legal representation of the poor and protection of human rights were generally absent from the discourse and practices of the Bar.<sup>2</sup>

Since the 1990s, however, both the traditional concept of lawyering, as well as the Bar Association's hegemony in this area, have eroded. Several factors have contributed to this erosion: the entry of new social groups into the profession due to changes in legal education; the sharp rise in competition between attorneys; new leadership of the Bar Association; the emergence of public interest and community-based lawyering; and a stronger inclination by the Israeli Supreme Court to scrutinize the Bar's practices under Israel's new constitutional framework.<sup>3</sup>

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

Israel does not have a formal Constitution.<sup>4</sup> The Knesset, the governing legislative body in Israel, has the power to enact "Basic Laws" – statutes - which serve as the basis of judicial review of legislation and as constitutional norms in lieu of a full Constitution.<sup>5</sup>

There are three main sources of law in Israel: Turkish and British antecedents, and religious law.<sup>6</sup> The legislature has produced an original corpus of law separate from its Turkish and British antecedents, but religious courts representing and servicing Israel's recognized religious communities continue to determine and govern marriage, divorce, and family law in general.<sup>7</sup>

Procedurally, Israel has adopted an adversarial system based on common law and without a jury system. Case law is formed by binding and guiding precedents supplementing legislation to create a full system of

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<sup>1</sup> This chapter was drafted with the support of the law firm of Yigal Arnon and Co.

<sup>2</sup> N. Ziv, *The Legal Profession: Looking Backward: Combining Professionalism, Nation Building and Public Service: The Professional Project of the Israeli Bar 1928 – 2002*, 71 *FORDHAM L. REV.* 1621, 1623 (2003).

<sup>3</sup> *Id.*

<sup>4</sup> Y. Efron and N. Ebner, *Legal Education in Israel: Developments and Challenges in Legal Education in Asia*, at 91-115 (2014).

<sup>5</sup> See the Supreme Court of Israel's analysis of the judicial review process according to the 'Basic Laws' at *Bank Mizrahi v. Migdal Cooperative Village*, 49(4) P.D. 221 (Sup.Ct. 1995). An English translation can be found at [http://elyon1.court.gov.il/files\\_eng/93/210/068/z01/93068210.z01.pdf](http://elyon1.court.gov.il/files_eng/93/210/068/z01/93068210.z01.pdf) (last visited on September 4, 2015).

<sup>6</sup> SYMPOSIUM: A GLOBAL LEGAL ODYSSEY: A Brief Introduction to the Legal System and Legal Education in Israel and the Curriculum at Haifa Faculty of Law, 43 *S. Tex. L. Rev.* 343, 343.

<sup>7</sup> Y. Efron and N. Ebner, *Legal Education in Israel: Developments and Challenged*, in *Legal Education in Asia*, at 91-115 (2014).



legal norms. Substantively, Israel has adopted a civil law system influenced by European legal approaches, as well as Anglo-American law, Jewish legal tradition, religious law and original legislation.<sup>8</sup>

## The Courts

Israel has an independent judiciary, which constitutes a separate unit within the Ministry of Justice. The judicial system consists of general law courts, known as civil or regular courts, and courts of more limited jurisdiction, such as tribunals and other authorities with judicial powers. The civil courts are divided among three levels: magistrates' courts, district courts and the Supreme Court.<sup>9</sup>

- There are 29 magistrates' courts, and cases before these courts are presided over, at the discretion of the President of the applicable Magistrates' Court, either by a single judge or a panel of three judges, depending on the election of the President of the applicable Magistrates' Court. These courts have jurisdiction in criminal matters (with offenses punishable by up to seven years' imprisonment), civil matters (with judgments up to approximately US\$650,000) and real property, as well as acting as traffic courts, municipal courts, family courts and small claims courts. The jurisdiction of a magistrate's court is the locality in which it sits and the whole district in which it is situated.
- There are six district courts in Israel, and these courts have original jurisdiction for specific matters such as certain administrative petitions and economic affairs, including cases dealing with companies and partnership, arbitration, prisoners' petitions, certain administrative matters, and appeals on tax matters and the Knesset elections register, as well as appeals from judgments of the magistrates' courts. In addition, the Jerusalem district court has jurisdiction over appeals regarding Knesset election results, the Haifa district court also serves as a Maritime Court, and district court judges, duly appointed, may also serve as presiding judges of Standard Contract Tribunals and Anti-Trust Tribunals. Generally, a single judge presides, unless the court hears an appeal of a magistrates' court's decision, when the accused is charged with an offense punishable by imprisonment of ten or more years, or when the President or Deputy President of the District Court so directs.
- The Supreme Court acts predominantly as a court of appeal to hear criminal and civil appeals from judgments of the district courts, but also exercises special jurisdiction to hear appeals in matters of Knesset elections, rulings of the Civil Service Commission, disciplinary rulings of the Israel Bar Association, administrative detentions and prisoners' petitions. The number of justices on the Court is fixed by Knesset resolution. By convention, the most senior justice is the President (Chief Justice) of the Court and the next senior justice is the Deputy President. The President of the Court is the head of the entire judicial system in Israel. Though the Supreme Court generally sits in panels of three justices, the size of the panel may expand to an uneven number of justices at the election of the President or Deputy President. The Supreme Court also serves a unique function as the High Court of Justice, wherein the Supreme Court acts as the court of first and last instance, a role the Supreme Court serves over 1,000 times a year, "in matters in which it considers it necessary to grant relief in the interests of justice and which are not within the jurisdiction of any other court or tribunal." Supreme Court Justices are appointed by the Judicial Selection Committee, which is composed of nine members: three Supreme Court Justices (including the President of the Supreme Court), two cabinet ministers (one of them being

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<sup>8</sup> S. Goldstein, *The Odd Couple: Common Law Procedure and Civilian Substantive Law*, 78 *TULANE LAW REVIEW* 291, 306; Y. Efron and N. Ebner, *Legal Education in Israel: Developments and Challenges*, in *Legal Education in Asia*, at 91-115 (2014).

<sup>9</sup> THE ISRAEL MINISTRY OF FOREIGN AFFAIRS, *The Judiciary: The Court System*, (May 16, 2012), <http://www.mfa.gov.il/MFA/Government/Branches+of+Government/Judicial/The+Judiciary-+The+Court+System.htm> (last visited on September 4, 2015).



the Minister of Justice), two Knesset members, and two representatives of the Israel Bar Association.<sup>10</sup> The committee is chaired by the Minister of Justice.

## The Practice of Law

Only members of the Israeli Bar Association can practice Israeli law in Israel. Israeli law requires licensure to practice as an attorney, and acquiring such a license requires (i) an academic legal education, (ii) a period of apprenticeship and (iii) passing an examination.<sup>11</sup> The academic requisite is studied through an undergraduate program, i.e. a bachelor's level education, at the end of which an LL.B degree is awarded.<sup>12</sup> For purposes of acceptance to the Israeli Bar, degrees comparable with the Israeli bachelor of law (LL.B), offered by a recognized university outside of Israel, can substitute for an Israeli degree provided the applicant pass a special exam on the laws of Israel.

In order to be accepted to the Israeli Bar, a law student must continue his or her legal education beyond the LL.B degree by undertaking a one-year internship (a "stage") under the training of an experienced attorney (i.e. an attorney who has practiced law for at least five years) or a judge.<sup>13</sup> Public service legal internships are valid.

After completing their internship, candidates are eligible to sit for the Bar exam after which they become members of the Israeli bar and licensed to practice law.

Historically, all attorneys were licensed to practice law by the Israel Bar Association; however, as of the summer of 2012, restrictions against attorneys licensed in foreign jurisdictions attorneys were lifted.<sup>14</sup> According to the amendment, attorneys licensed to practice in non-Israeli jurisdictions are permitted to practice in Israel regarding the laws which apply in the jurisdiction in which they are licensed to practice. The amendment also extended to the establishment of foreign law firms.

Israel has the largest number of attorneys per capita in the world, with the number of attorneys per capita in 2005 more than double the ratio found in either the United States or the United Kingdom.<sup>15</sup> Consistent with the trend that began as early as 1968,<sup>16</sup> more recent statistics document that the increase in the number of attorneys in Israel has continued to outpace population growth.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Israel Bar Association Act provides that "the Bar Association is entitled, *inter alia*, to provide legal relief to those of limited means."<sup>17</sup> Pro Bono practice is, in other words, permissible but not mandatory. Though not required, pro bono is increasingly being viewed as essential for the fulfillment of the right of legal representation. This dramatic change in pro bono culture and practice is perhaps best illustrated by

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<sup>10</sup> Israel Ministry of Foreign Affairs, The Judiciary: The Court System, <http://www.mfa.gov.il/mfa/aboutisrael/state/democracy/pages/the%20judiciary-%20the%20court%20system.aspx> (last visited on September 4, 2015).

<sup>11</sup> Section 24, Bar Association Law, 1961.

<sup>12</sup> Section 25(1), Bar Association Law, 1961.

<sup>13</sup> Section 29, Bar Association Law, 1961.

<sup>14</sup> Israel Bar Association Law Amendment (5709-2009), which stipulates that the Bar Association may register foreign attorneys and law firms operating in Israel on the basis of their law license at a foreign bar association.

<sup>15</sup> T. Zarchin, Israel First in World for Lawyers per Capita, Study Finds, Haaretz (Aug. 3, 2011) (approximately 585 attorneys per 100,000 residents); G. Barzilai, The Ambivalent Language of Lawyers in Israel: Liberal Politics, Economic Liberalism, Silence and Dissent in FIGHTING FOR POLITICAL FREEDOM: COMPARATIVE STUDIES OF THE LEGAL COMPLEX AND POLITICAL LIBERALISM, 247-279 (T. C. Halliday, L. Karpik and M.M. Feeley eds. 2007).

<sup>16</sup> Id.; T. Zarchin, Israel First in World for Lawyers per Capita, Study Finds, Haaretz (Aug. 3, 2011) (approximately 585 attorneys per 100,000 residents); D. Combs, The Global Legal Market: By the Numbers, The American Lawyer (Oct. 24, 2014).

<sup>17</sup> Israel Bar Association Act, Section 3(2) (1961).



the 2002 launch of the Bar Association's first pro bono program, Schar Mitzvah, described below. This move was preceded by a two-year struggle within the Bar Association's internal institutions, as critics feared that the initiative would encroach upon the livelihoods of practitioners who currently provided legal services for a fee to many of the same individuals who would become eligible for pro bono services.<sup>18</sup>

### Civil Legal Aid

Civil legal aid is governed by the Legal Aid Act and the Legal Aid Regulations.<sup>19</sup> The law stipulates that any resident of Israel may receive legal assistance in the form of legal services provided by government attorneys, so long as he or she qualifies under the economic criteria. In order to qualify for legal aid, a petitioner must fulfill three conditions:<sup>20</sup>

- The legal issue must pertain to one of the following areas of law: matters of personal status; prosecution or defense of suits related to rights to dwelling-places; fiscal matters (e.g., bankruptcy); civil torts; matters in the competence of the Labor Courts; suits filed in accordance with amendments concerning pension rights, grants, rehabilitation and other rights of the disabled; all suits involving the rights of demobilized soldiers; suits involving Holocaust survivors with respect to their rights as such; suits involving the Law of Return and Citizenship and Population Registry Laws; representation before forced hospitalization committees under the Treatment of Mental Patients Law (Amend. No. 5); representation of victims of human trafficking; and registration of businesses, trades or professions.<sup>21</sup> The Ministry of Justice also provides legal aid for social security benefits under the National Insurance Act, a category that includes general disability benefits, employment disability benefits, unemployment benefits, benefits for children, compensation for reserve service, old-age welfare rights, minimum wage, compensation for victims of terror and hostilities, national medical insurance, and maternity insurance.<sup>22</sup>
- The petitioner must meet two economic criteria: (a) an income threshold – total pre-tax earnings may not exceed 2/3 of the average income for a family of three, with increases of 6% for each additional family member; and (b) a property ownership threshold – available funds from property may not exceed three times the average income mentioned above, with an exclusion for one private residence. In social security or family matters, economic eligibility criteria are modified or waived.
- The claim must have legal merit, i.e. there is a reasonable prospect in law of succeeding in the claim.<sup>23</sup>

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<sup>18</sup> The struggle to reform the Bar Association and the profession can be traced through a series of Supreme Court cases that challenged the legality and even constitutionality of some of the established rules and regulations, most notably the prohibitions on advertising and on holding certain additional occupations. In 2001, the total ban on advertising by attorneys was replaced with a regulatory scheme that allows attorneys to advertise their services under certain conditions. Israel Bar Association Rules (Advertising) 2001; Israel Bar Association Rules (Additional Practices) 2002, respectively.

<sup>19</sup> Legal Aid Act 1972 and Legal Aid Regulation 1973, respectively.

<sup>20</sup> Legal Aid Act 1972 and Legal Aid Regulation 1973.

<sup>21</sup> MINISTRY OF JUSTICE, ISRAEL, What are the Conditions for Granting Legal Aid?, available at <http://www.justice.gov.il/MOJEng/Siuamishpati/Resources+Center/TnaimLekabaltSiyua.htm> (last visited on September 4, 2015).

<sup>22</sup> National Insurance Act (Consolidated Version) 1995; National Insurance Regulations (Legal Aid) 1973. Further, pursuant to a May 1977 amendment to the National Insurance Act (NIA), any (non-corporate) applicant will receive legal assistance in proceedings before the Labor Court in which the National Insurance Institute (NII), either under the NIA or some other legislation mandating payments by the NII. This assistance is provided at the expense of the NII and through the Legal Aid Bureaus, regardless of the applicant's ability to pay. Thus, while the general right to legal aid in connection to labor law is protected by the Legal Aid Act, the NIA provides further legal guaranties in specific labor law-related issues specified therein.

<sup>23</sup> Legal Aid Law of 1972, Section 4, 5732-1972.



### The Israel Bar Association Pro Bono Project (*Schar Mitzvah*)

In addition to the state-sponsored civil legal aid system, the Bar Association, as part of its reform in recent years, has taken a leadership position with respect to the promotion of a pro bono culture. In 1999, shortly after a change in the Bar Association's elected leadership, a special task force was appointed by the Bar Association's chair to prepare a platform for a comprehensive pro bono initiative. The plan met with opposition from certain members of the Bar Association's Central Committee, which argued that pro bono work might constitute unfair competition. Despite these objections, in April of 2002 the Central Committee approved the *Schar Mitzvah* program. The mission of *Schar Mitzvah* was to "substantially expand accessibility to the justice system and provide legal aid to those who cannot afford to pay for legal services."<sup>24</sup>

Two kinds of legal aid are provided under the program. One consists of initial counseling and guidance offered in 70 help centers located throughout the country. The primary aim of the centers is to guide petitioners and empower them to independently pursue their claims and assert their rights *pro se*. This service is provided at no cost to the petitioner and with no eligibility threshold. The other form of assistance provides legal representation before judicial tribunals. In order to be eligible for this form of assistance, the petitioner must meet a set of eligibility requirements.

While run exclusively by the Bar Association, the eligibility threshold of the *Schar Mitzvah* for representation before judicial tribunals is designed to complement the Ministry of Justice legal aid program. As such, the Bar Association will not provide legal aid to a petitioner who is eligible for state-sponsored legal aid, other than in emergency situations. The *Schar Mitzvah* eligibility test consists of two components: economic eligibility and substantive eligibility. The economic threshold allows a petitioner to earn 18% more than the levels allowed by the Ministry of Justice described above. This means a family of up to three persons whose earnings total 67%-85% of the national average will be eligible for legal aid provided by the Bar Association, whereas families with earnings of less than 67% will be referred to the Ministry of Justice program. There is also a property ownership threshold: in order to qualify for legal aid, the petitioner must not own more than one private residence and one car. In addition, the petitioner must not have available funds exceeding six times the national average income.

### Public Defense Reform

In 1995, comprehensive legislation was passed establishing the Office of the Public Defender (the "OPD") and expanding the right to counsel in criminal cases. The Public Defender Act expanded the right of public defense to indigent defendants when the likely outcome of the legal proceeding will have grave and fateful consequences for that person (for example, prolonged detention until conclusion of the proceedings, a sentence of actual imprisonment, psychiatric hospitalization and extradition). In addition, the Public Defender Act entitles persons suffering from a personal disability that adversely impacts upon their basic ability to defend themselves (for example, a defendant who is mute, blind or deaf, a fear as to mental illness or a defect in his intellectual capacity, and minors with no legal capacity) to public defense. Further, a person is entitled to representation by a public defender when exceptional rules of procedure and evidence are being applied in a trial (for example, a preliminary hearing, evidence given by video, hearsay evidence through a special investigator, and so forth) or when such representation is necessary to ensure due process and prevent a perversion of the law.<sup>25</sup> Like the Bar Association's civil initiative, this reform also met with objections from members who feared that the public defender would dominate the market for criminal defense.<sup>26</sup>

Nonetheless, the legislation passed and the resulting Public Defense Act gave the OPD the responsibility of ensuring effective assistance of counsel for all suspects and defendants who were entitled to legal aid.

<sup>24</sup> "Schar Mitzvah" supra n. 12, [http://www.israelbar.org.il/english\\_inner.asp?pgld=75176&catld=372](http://www.israelbar.org.il/english_inner.asp?pgld=75176&catld=372) (last visited on September 4, 2015).

<sup>25</sup> Section 18 of the Public Defense Act, 1995.

<sup>26</sup> On the right to counsel prior to 1992, the development of the right to state-funded defense counsel, and the establishment of the OPD, see K. Mann and D. Weiner, Creating A Public Defender System In The Shadow Of The Israeli-Palestinian Conflict, 48 N.Y.L. SCH. L. REV. 91 (2003).





Currently, the public defense system includes six district offices covering all criminal courts; state expenditures for criminal legal aid have grown tenfold. There are now approximately 100 attorneys employed by the OPD and approximately 70 other workers, including administrative staff, students and interns. The OPD also retains approximately 900 private bar attorneys to assist with its caseload.<sup>27</sup> In addition to attorneys affiliated with or commissioned by the OPD, some private criminal defense attorneys provide ad hoc pro bono services at their discretion.<sup>28</sup>

### Unmet Needs and Access Analysis

Approximately 152,000 illegal immigrants currently live in Israel, of which approximately 106,000 entered Israel legally and have over-stayed their work or tourist visa with which they have entered, and approximately 46,000 entered Israel illegally, and, in each case, are commonly referred to as "infiltrators"<sup>29</sup> The state policy towards infiltrators is one of temporary non-deportation, officially referred to as "group protection." Infiltrators in Israel are denied basic rights provided to residents, including free non-emergency healthcare, and have limited or no access to basic state-sponsored services, including pro bono services, other than representation by the OPD.<sup>30</sup>

## PRO BONO ASSISTANCE IN ISRAEL

### Pro Bono Opportunities

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

- State-sponsored legal aid, which exists in two forms. One is the Legal Aid Bureau of the Ministry of Justice, which is charged with the administration of legal aid in civil matters, such as family and labor law and social benefit litigation.<sup>31</sup> The other is the Office of the Public Defender (the "OPD"), which is charged with providing legal aid in criminal cases.
- Legal aid provided by non-profit organizations and NGOs.<sup>32</sup> Examples of leading NGOs that provide legal aid include ACRI (the Association for Civil Rights in Israel); *Adalah* (the Legal

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<sup>27</sup> Office of the Public Defender 2013 Annual Report, published August 2014, available at <http://index.justice.gov.il/Units/SanegoriaZiborit/News/Documents/%D7%93%D7%95%D7%97%20%D7%A9%D7%A0%D7%AA%D7%99%202013%20-%20%D7%A1%D7%95%D7%A4%D7%99.pdf> (last visited on September 4, 2015).

<sup>28</sup> No official numbers are available to ascertain the scope of this type of pro bono criminal defense.

<sup>29</sup> Statistical data with respect to foreign persons in Israel, published by the Population and Immigration Authority in Israel, April 2015. Available at <http://www.piba.gov.il/PublicationAndTender/ForeignWorkersStat/Documents/april2015.pdf> (last visited on September 4, 2015).

E. Cooper, Israel's Illegal Immigration Problem, available at [http://www.americanthinker.com/articles/2015/05/israels\\_illegal\\_immigration\\_problem.html](http://www.americanthinker.com/articles/2015/05/israels_illegal_immigration_problem.html) (May 2, 2015) (last visited on September 4, 2015); The OECD Expert Group on Migration (Sopemi), Immigration in Israel 2011-2012; available at <http://www.knesset.gov.il/mmm/data/pdf/me03131.pdf> (last visited on September 4, 2015).

<sup>30</sup> African Refugee Development Center, Refugees in Israel, <http://www.ardc-israel.org/ar/node/53> (last visited on September 4, 2015).

<sup>31</sup> Legal Aid Act 1972 and Legal Aid Regulation 1973. In 2011, the Legal Aid Department at the Ministry of Justice provided legal representation in approximately 200,000 legal proceedings. MINISTRY OF JUSTICE, ISRAEL, Functions of the Legal Aid Department, available at <http://www.justice.gov.il/NR/exeres/0DE80AAC-B813-4C41-80E6-4235922F02BE.frameless.htm?NRMODE=Published> (last visited on September 4, 2015).

<sup>32</sup> This includes cause-lawyering. In this chapter the term "cause-lawyering" refers to legal aid provided by attorneys who are paid, albeit not by a client, such as staff attorneys at NGOs.



Center for Arab Minority Rights in Israel); Kav LaOved (Worker's Hotline); Yedid (the Association for Community Empowerment) and Naamat (Israel's Working Women's Organization).

- Legal services provided by private sector attorneys. The more than 2,000 attorneys who participate in the Israeli Bar Association's pro bono project<sup>33</sup> and over 1,100 outside attorneys who provide services in the courts and other legal forums where fees are paid by the state<sup>34</sup> are an indication of the private sector's capacity and willingness to provide legal aid. These opportunities are available to all private sector attorneys, including in-house counsel, seeking to provide pro bono services.

### Nonprofit Legal Aid Initiatives

Since 1998, there has been a surge in the provision of legal aid. This increase is attributed to the 20% rise in the general population resulting from the vast wave of immigration from the former Soviet Union and Ethiopia in the early 1990s and is also seen as a response to Israel's severe economic downturn in recent years. During the same period, however, public funding has constantly dwindled. These and other factors create a growing need for legal aid services that exceed the capacities of both the private and the public sectors.<sup>35</sup>

Following is a description of legal aid initiatives. The list aims to capture the diversity of legal aid work currently taking place, including universal issues such as refugee rights and issues unique to Israel like access to Rabbinical courts.

- *ISLA – Israeli Society for Legal Aid* provides referrals for professional legal aid, provides legal counseling regarding civil rights, and participates in petitions to the Supreme Court.
- *Naamat* (Israel's Working Women's Organization) operates bureaus providing legal counseling on issues such as divorce and violence against women, assists in representation in divorce proceedings and advocates for legislation promoting women's rights.
- The Association for the Support and Defense of Bedouin Rights in Israel provides initial legal advice and participates in petitions to the High Court of Justice on issues pertaining to "unrecognized villages" and the right to education.
- Legal clinic programs in almost all law faculties in Israel today, both in universities and colleges, offer clinics on the topics of human rights, criminal justice, social welfare law, refugee rights, environmental justice, family law, international criminal law, workers' rights, among others.
- The Israel Union for Environmental Defense provides legal guidance on environmental issues, advice on environmental planning and assistance to community groups to structure legal responses to environmental threats.
- The Israel Religious Action Center is the public and legal advocacy arm of the Reform Movement in Israel and promotes religious tolerance, equality, and social justice through legislative advocacy and petitions to the High Court of Justice on issues such as conversion, medicine, *halacha* (Jewish law), rabbinical courts and the right to marry.

### Private Sector Legal Aid Initiatives

Multinational law firms, to this point, generally have not engaged in pro bono initiatives in Israel ("multinational law firms" in this context excludes Israeli law firms with offices or affiliates overseas), though this may change in the coming years now that foreign attorneys have been cleared to practice in Israel. The firm of Kelley Drye & Warren represented an elderly American now living in Israel after his Retirement Insurance Benefits were reduced by the Social Security Administration on the basis of his

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<sup>33</sup> THE ISRAEL BAR ASSOCIATION, "Schar Mitzvah," The Israel Bar Association Pro Bono Program, (May 20, 2010), [http://www.israelbar.org.il/english\\_inner.asp?pgId=75176&catId=372](http://www.israelbar.org.il/english_inner.asp?pgId=75176&catId=372) (last visited on September 4, 2015).

<sup>34</sup> Functions of the Legal Aid Department, *supra* n.5.

<sup>35</sup> See M. Hacoen, Building a Rights-Based Framework for Legal Aid in Israel in JUSTICE INITIATIVES 51 (a publication of the Open Justice Initiative 2004) available at [http://www.soros.org/sites/default/files/justice\\_initiatives\\_20040225\\_2.pdf](http://www.soros.org/sites/default/files/justice_initiatives_20040225_2.pdf) (last visited on September 4, 2015).



receipt of an Old Age Allowance from Israel.<sup>36</sup> However, this might better be seen as an American pro bono case, whose recipient happened to be living in Israel. The firm Mintz Levin Cohn Ferris Glovsky & Popeo provides pro bono legal services to Tmura, a not-for-profit organization focused on education and other youth initiatives and established by Israeli venture capital and high tech leaders. Mintz Levin offers, on behalf of Tmura, pro bono legal support to U.S.-registered companies that are interested in becoming donors to Tmura, helping them through whatever legal difficulties may arise in the donation process.<sup>37</sup> However, this initiative might not be seen as truly Israeli pro bono either, as the direct recipients are American companies. In recent years a number of private law firms have increased their involvement in community projects. The law firm of Yigal Arnon & Co. provides weekly legal services at a local *Schar Mitzva* center. The firm also offers pro bono legal services to a number of NGO's and charities, including, Heznek Le'atid, an organization providing educational assistance to youth from poorer communities across Israel, Ilan – the Israeli Foundation for Handicapped Children, the Human Rights Clinic run by the Law Faculty of the University of Tel Aviv, and Eliya – the Association for Blind and Visually Impaired Children.

### State-Sponsored Legal Aid

#### **The Legal Aid Bureau of the Ministry of Justice**

The Legal Aid Department of the Ministry of Justice operates five Legal Aid Bureaus across Israel, all of which provide legal in civil matters to eligible applicants. The Legal Aid staff consists of around 220 employees, including attorneys, management, and national service members. In addition, the Department collaborates with approximately 1,100 external, non-governmental attorneys, whose fees are paid for by the State Treasury.<sup>38</sup>

#### **The Israel Bar Association Pro Bono Project (*Schar Mitzvah*), *supra***

As part of the *Schar Mitzvah* program, the Bar Association appealed to all members of the Bar to join the program. It launched a media campaign aimed at fostering public awareness of the new initiative. It also created a database of volunteer attorneys, classified by geographical area, type of voluntary work and area of specialization. To date, the pool of volunteers includes approximately 3,910 attorneys, in addition to 180 law students nationwide. During 2014, the program received 23,286 requests for assistance, of which 4,691 people received counseling and representation by the program's volunteers.<sup>39</sup>

### Cause Lawyering

Cause lawyering developed as a distinct specialization some 20 years prior to the 2002 Bar Association initiative. The first issues tackled by practitioners focusing on social causes were focused almost exclusively on human rights: freedom of expression, freedom of movement, and freedom of religion and conscience. Gradually, the scope of these interests extended to include the areas of gender equality and discrimination on the basis of sexual orientation, disability and nationality. Today it includes many additional areas, such as poverty law, social and economic rights and environmental justice.<sup>40</sup>

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<sup>36</sup> Press Release, KDW Obtains Social Security Benefits for Pro Bono Client in Israel (Aug. 1, 2004), available at [http://www.kelleydrye.com/news/pro\\_bono/0015](http://www.kelleydrye.com/news/pro_bono/0015) (last visited on September 4, 2015).

<sup>37</sup> See generally Mintz Levin, Commitment to the Community, ISRAEL BUSINESS PRACTICES, available at [http://www.mintz.com/practices/17/Israel\\_Business](http://www.mintz.com/practices/17/Israel_Business) (last visited on September 4, 2015).

<sup>38</sup> MINISTRY OF JUSTICE, ISRAEL, Functions of the Legal Aid Department, available at [http://www.justice.gov.il/NR/exeres/0DE80AAC-B813-4C41-80E6-4235922F02BE\\_frameless.htm?NRMODE=Published](http://www.justice.gov.il/NR/exeres/0DE80AAC-B813-4C41-80E6-4235922F02BE_frameless.htm?NRMODE=Published) (last visited on September 4, 2015).

<sup>39</sup> Information provided to Yigal Arnon and Co. upon request from Adv. Ariel Schwarz, Tel Aviv District *Schar Mitzva* program coordinator, on August 4, 2015.

<sup>40</sup> See N. Ziv, Hanging by the Cloak – Advocates for Social Change in Israel: Between the Legal and the Political, ADALAH'S NEWSLETTER (June 2004).





Pro bono work in the Arab community, as well as Palestinian cause lawyering, are also relatively under-documented developments, particularly as they lie outside the realm of state sponsored legal aid.<sup>41</sup> In particular, it is difficult to assess the extent to which private sector attorneys provide free legal services in the Arab community. There are, however, a growing number of nonprofit organizations and NGOs that provide legal aid. Among them is *Adalah*, The Legal Center for Arab Minority Rights in Israel, which was established in 1996. *Adalah* symbolizes the emergence of all-Arab cause lawyering.

The Arab population is disadvantaged with respect to access to the rights and benefits provided by the state-sponsored legal aid system largely because legal aid agencies and organizations are located in major urban centers, while a high percentage of the Arab population is impoverished and rural. In addition, some social benefits and services are contingent upon military service from which Arab and other non-Jewish populations are typically excluded. The Bedouin population, too, faces distinct legal challenges, most commonly related to residential planning and construction laws.<sup>42</sup>

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

## Pro Bono Resources

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

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

## CONCLUSION

Despite recent reforms and developments in Israel's legal aid system, there are entire areas of need that are largely unaddressed by the state, most notably legal protections to non-residents, other than OPD services.<sup>43</sup> Local nonprofit organizations and local governments, however, provide services to some of these underrepresented groups to fill the gaps in the State's legal services.<sup>44</sup> In addition, even in areas in which the state or the public and private sectors do provide legal aid, resources are scarce and legal needs are not fully met. Given the success of the Bar Association's attempts to create a systematic operational scheme for pro bono on the national level, one possible way to establish a pro bono presence

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<sup>41</sup> See R. Shamir & S. Chinski, Destruction of Houses and Construction of a Cause: Lawyers and Bedouins in the Israeli Court, in *CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES* 227 (A. Sarat & S. Scheingold eds., 1998) (regarding cause lawyering in the representation of Bedouins); G. Bisharat, Attorneys for the People, Attorneys for the Land: The Emergence of Cause Lawyering in the Israeli-Occupied Territories, in *CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES* 453 (A. Sarat & S. Scheingold eds., 1998) (regarding Palestinian cause lawyering).

<sup>42</sup> See *id.*

<sup>43</sup> This group includes foreign workers (legal and illegal migrant workers), noncitizen Palestinians and Palestinians who are Israeli citizens but lack proper identification documents.

<sup>44</sup> See, e.g., Hotline for Migrant Workers, Kav LaOved, and the Mesila Aid & Information Center, operated by the Tel Aviv Municipality.



in Israel might be to approach the Bar Association's Pro Bono Committee seeking partnership on pro bono initiatives.

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Pro Bono Practices and Opportunities in Israel

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