

SUBMISSION TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS ON THE PROMISE OF LEGAL EMPOWERMENT TO INFORM AND TRANSFORM ACCESS TO JUSTICE¹

iProbono submits this document in response to the call for inputs issued by the United Nations Special Rapporteur on the Independence of Judges and Lawyers to inform their thematic report on the promise of legal empowerment to inform and transform access to justice to be presented at the 78th session of the General Assembly in October/November 2023. This submission highlights the status of legal empowerment and access to justice in South Asia, the need for pro bono legal interventions, and shares challenges and best practices based on iProbono's experience promoting a culture of pro bono lawyering and leveraging the commitment of pro bono lawyers to achieve access to justice for vulnerable communities across South Asia.

INTRODUCTION

iProbono was born out of the recognition that legal professionals have a responsibility to use their skills to serve and empower individuals and communities who require support. Our mission is to enable people to access their rights in pursuit of a just society. By promoting active citizenship and engaging in a holistic model, we provide counsel with a strong, lean team that delivers strategic direction and execution while leveraging the expertise and commitment of a wide community of pro bono lawyers. In doing so, we advance justice for all by representing people in need, strengthening civil society's impact and advocating for policies that promote social equity and end discrimination.

A global organisation established in 2009 in the United Kingdom, we took our program to India in 2011 and expanded our geographic presence to Bangladesh, Nepal, Sri Lanka, and Pakistan. We ensure access to justice by providing pro bono and affordable representation at court, direct legal support to civil society, research and policy advocacy, capacity building, comprehensive care, and storytelling.

Our thematic areas cross-cut equality law in the region, and our team has expertise in child rights, housing rights, disability rights, gender equality, trafficking in persons, street law, LGBT+ rights, sexual and reproductive health rights, migrant rights, refugee rights, and economic, social, and cultural rights.

iProbono also runs two flagship fellowships in India and Nepal to promote human rights and pro bono lawyering among early to mid-career legal professionals: [The Justice Leila Seth Fellowship](#) and the Economic, Social, and Cultural Rights Fellowship.

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LEGAL EMPOWERMENT AND ACCESS TO JUSTICE IN SOUTH ASIA

The Constitutions of all South Asian nations include access to justice as one of the state's promises to its citizens.² As part of this commitment, independent human rights institutions have been established to protect the human rights of citizens at the local level,³ in addition to several national and provincial laws providing free legal aid.⁴ But the reality is that these institutions are inadequate in comparison to the requirements of the public at large. Despite the numerous initiatives taken to improve access to justice in South Asian nations,⁵ vulnerable and minority populations cannot utilise these facilities due to a lack of legal awareness⁶ and the arduous processes entailing access.⁷ Apart from the state, various not-for-profit development organisations work to provide free legal services. Still, citizens need more information to access these benefits.

² Article 27 & 31 of Bangladesh Constitution, 1972 available at <http://bdlaws.minlaw.gov.bd/act-367.html>, Article 14 of Indian Constitution, 1950 available at <https://www.iitk.ac.in/wc/data/coi-4March2016.pdf>, Article 9 & 10 of Pakistan Constitution, 1973 available at https://na.gov.pk/uploads/documents/1333523681_951.pdf, Article 18 of Nepal Constitution, 2015; <https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/100061/119815/F-1676948026/NPL100061%20Eng.pdf> Article 12 of Sri Lanka Constitution, 1978 available at <https://www.parliament.lk/files/pdf/constitution.pdf>

³ Section 3 of National Human Rights Commission Act, 2009, Bangladesh available at <http://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/npfblock/NHRC%20Act%20English.pdf>, Section 3 of Protection of Human Rights Act, 1993, India available at https://nhrc.nic.in/sites/default/files/PHRA_Bilingual_2018.pdf, Section 3 of National Commission for Human Rights Act, 2012, Pakistan available at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/92178/107218/F-1462672885/PAK92178.pdf>, National Human Rights Commission Act, 2012, Nepal available at <https://www.nhrcnepal.org/uploads/law/National+Human+Rights+Commission+Act.pdf> Section 2 of Human Rights Commission Act, 1996, Sri Lanka available at <https://www.hrcsl.lk/wp-content/uploads/2020/01/HRC-Act.pdf>

⁴ Legal Aid Services Act, 2000, Bangladesh available at http://www.nlaso.gov.bd/sites/default/files/files/nlaso.portal.gov.bd/law/bda36638_49da_4803_9845_6917dc0d64ab/Legal%20Aid%20Law%20-English.pdf, Legal Aid & Justice Authority Act-2020, Pakistan available at https://senate.gov.pk/uploads/documents/1598591762_273.pdf, Punjab Legal Aid Act, 2018, Punjab Province, Pakistan available at <http://nasirlawsite.com/laws/plaa.htm>, Khyber Pakhtunkhwa Legal Aid Act, 2019, Khyber Pakhtunkhwa Province, Pakistan available at https://kp.gov.pk/uploads/2022/03/The_Khyber_Pakhtunkhwa_Legal_Aid_Act_2019.pdf

⁵ One such example is from Bangladesh: The Government of Bangladesh, in collaboration with the German Agency for International Cooperation, has conducted a Justice Audit to monitor the extant legal situation in Bangladesh and determine what can be done to resolve legal complications since 2014; the report was released in 2018. Based on this, the Bangladeshi government is presently implementing a "Rule of Law" project aimed at decreasing caseload, prioritising alternative dispute resolution and providing pro bono and low bono support. Through the National Legal Aid Organization, the government is also conducting a number of nationwide awareness campaigns. (Justice Audit Report: <https://bangladesh.justiceaudit.org/> ; for more details about National Legal Aid Services Organisation: <http://www.nlaso.gov.bd/>)

⁶ Arafat Reza Jaan, *What makes access to justice elusive in Bangladesh?* May 1, 2023, available at <https://blogs.lse.ac.uk/southasia/2023/05/01/what-makes-access-to-justice-elusive-in-bangladesh/>;

⁷ United Nations Development Programme & Government of Nepal, *Enhancing Access to Justice through Institutional Reform Project, 2018 – 2020 (A2J Project)* -UNDP Nepal noted the need to simplify court processes and services to improve access to justice in the country, report available at - <https://www.undp.org/sites/g/files/zskgke326/files/migration/np/87e225b1741b68c7bee5ad80547d5340d70e88c8a6374dac182517be7e72d9b2.pdf>;

The existing legal systems in the South Asian region are complex.⁸ Justice resolution mechanisms face many challenges like high caseloads and lengthy trials,⁹ shaking public confidence in access to justice.

Although individuals from vulnerable communities are entitled to free legal aid,¹⁰ the process to access them is often complex, and the quality is lacking,¹¹ among other factors.¹² Also, individuals lack a comprehensive understanding of the laws protecting their rights. Therefore, more than purely court-based, gratis legal services are required in the current circumstances. This is where pro bono legal interventions come into play. Pro bono lawyering depends on the time and expertise of lawyers keen to provide free legal support in the broader public interest and promotes access to justice and legal empowerment.¹³ Despite the promise of pro bono interventions, it is not fully recognised or regulated in South Asia.

iProbono is one of the organisations pioneering the pro bono movement in South Asia. We conduct our litigation work through a panel of competitively selected lawyers. iProbono receives cases from individuals, partner organisations and government stakeholders. When we are alerted to a case, the iProbono team identifies a suitable panel lawyer with relevant legal expertise to work on the case. Each case is assigned to an iProbono Officer who provides holistic support ranging from client care & liaison to legal research and case oversight. Our support is crucial since panel lawyers seldom have the time and skills to provide psychosocial support and day-to-day handholding to clients, which we provide through our social workers and in-house legal team. In addition, iProbono also harnesses the strength of corporate lawyers, legal professionals working in-house, law students, and others willing to volunteer their services to social justice organisations.

⁸ The justice systems in many South Asian countries include various kinds of processes (whether legally recognised or not) like fatwas, panchayats, khap panchayats, etc.

⁹ In Justice Audit Bangladesh-2018, the survey asked people, "Do you think you'll be able to get justice?" In response to this question, 6% said Not at all, 27% said chance is limited, 41% said possibly, and only 27% said Definitely. The mentioned audit report also shows that only 4% of people go to Police stations for justice, and 9% go to district courts. The rest of the 87% of people seek justice in the informal justice system, like UP Chairman, Village Court, Shalish, and Family. The report also shows that getting justice from a formal justice system is a lengthy procedure rather than an informal approach. The report is available at <https://bangladesh.justiceaudit.org/national-data/system-overview/justice-system-in-practice/>

¹⁰ India, Bangladesh, Afghanistan, Pakistan, Nepal and Sri Lanka all make provisions for free legal aid. Afghanistan's Taliban takeover has resulted in the upheaval of the legal system in the country. Although Taliban leadership consistently emphasise governing on the basis of Sharia law, they have not provided specific details about their interpretation and definition of Sharia. Their laws are not formalised or uniformly applied across Afghanistan and are interpreted differently in different regions. For more information on legal systems in Afghanistan, please see our [factsheet](#).

¹¹ It has been well documented that legal aid lawyers in the region are often burdened with more cases than they can handle, paid very little by the state and don't provide quality services. Ram Kumar Kamat, *Free Legal Aid Inadequate, Ineffective*, April 2021, available at - <https://thehimalayantimes.com/nepal/free-legal-aid-inadequate-ineffective>; Suryanshi Pandey, *Why quality of free legal aid remains poor in India*, 25 December 2022, available at - <https://scroll.in/article/1040169/why-quality-of-free-legal-aid-remains-poor-in-india>; Farzana Akter, *Legal Aid for Ensuring Access to Justice in Bangladesh: A Paradox?*, 4 AsianJLS (2017) at Pg. 260

¹² Ummar Ziauddin, *Legal Aid In Pakistan*, Daily Times, 6 May 2019, available at - <https://dailytimes.com.pk/388951/legal-aid-in-pakistan/>

¹³ Pro bono is both a strategy and an opportunity to promote a justice system that is fair and accessible to everyone, regardless of their income or circumstances, full article is available at <https://www.thomsonreuters.com/en-us/posts/our-purpose/bridging-the-access-to-justice-gap-with-legal-pro-bono/>

PRO BONO LEGAL INTERVENTIONS TO PROMOTE ACCESS TO JUSTICE

This section describes iProbono's work and impact in India, Nepal, Sri Lanka, Bangladesh, Afghanistan and Pakistan.

1. INDIA¹⁴

In India, the Constitution guarantees every person the fundamental right to legal aid and imposes on the State the duty to provide free legal aid services to all persons. However, less than 15 million out of roughly 80 per cent of India's 1.25 billion population eligible for legal aid support have accessed these services.¹⁵ The lack of popularity of state-provided legal aid can be attributed to poor awareness and accessibility,¹⁶ a shortage of dedicated and competent lawyers empanelled with state legal aid services, and an overburdened legal aid system that does not provide nuanced attention to each case.¹⁷

To address this critical gap in the justice infrastructure, iProbono India pioneered a panel advocate model in 2015 that promotes quality pro bono legal representation. We have panels in six cities in India consisting of over 100 early and mid-career litigating professionals who provide legal representation to vulnerable individuals in courts across the country. These litigating professionals often have successful legal careers and can offer their services pro bono. To date, our panel model has helped child survivors of sexual abuse, children in conflict with the law, survivors of trafficking, residents of informal settlements, ethnic and religious minorities, and those with disabilities.

The strength of our model was evident during the pandemic when the need for legal support surged. iProbono's lawyers became front-line defenders, securing orders against evictions, filing compensation applications on behalf of children, and opposing bail petitions of the accused in Protection of Children from Sexual Offences Act cases. We ensured that justice was accessible even during the most challenging times.

We also foster a culture of conscientious lawyering within the legal community in India through our capacity-building and training programs for lawyers, helping those new to rights-based work.

Through its network of over 1,000 such professionals, iProbono India facilitates free legal advice on a range of legal queries ranging from tax disputes to intellectual property concerns, providing

¹⁴ In India, iProbono is incorporated as a Section 8 Company

¹⁵ Rintu Mariam Biju, *India Justice Report 2019: Only 15 million out of 1 billion eligible Indians provided legal aid services in last 14 years*, Bar & Bench, 11 November 2019, available at - <https://www.barandbench.com/columns/india-justice-report-2019-15-million-out-of-1-billion-eligible-indians-provided-legal-aid-services>

¹⁶ 'India Justice Report: Ranking States on Police, Judiciary, Prisons and Legal Aid (2022)', Pg 117 available at - https://indiajusticereport.org/files/IJR%202022_Full_Report1.pdf

¹⁷ *Supra* note 12

critical support to civil society organisations that cannot bear the debilitating costs of legal advice and representation.

2. NEPAL

After a decade-long internal conflict, the people of Nepal gave themselves the Constitution of Nepal in 2015. This Constitution was unique because it considered Nepalese people as sovereign for the first time¹⁸ and because Economic, Social and Cultural rights (ESCR) became justiciable.¹⁹ Against this backdrop, iProbono formed a partnership with the Law and Policy Forum for Social Justice (LAPSOJ) in Nepal to secure ESCR through pro bono strategic litigation. We achieve this primarily through our ESCR Fellowship, which supports and mentors early to mid-career lawyers and promotes pro bono lawyering. Through this fellowship, we petitioned Nepal's Supreme Court to [decriminalise abortion](#). Our current cohort of fellows is developing strategic litigations and advocacy interventions with the support of their mentor and advisor. We also work closely with LAPSOJ to advance the rights of [migrant workers](#).

3. SRI LANKA

Despite the Constitution of Sri Lanka guaranteeing the [right to equality](#) and legal representation,²⁰ iProbono identified that vulnerable communities were subjected to various forms of discrimination and had insufficient access to proper legal representation. This led to human rights violations when members of vulnerable groups came in contact with the criminal justice system and were denied access to justice. As a remedy, iProbono provides pro bono legal support to members of vulnerable communities, including LGBT+ persons, women and children in Sri Lanka.

Through our Access to Justice Program, we have trained over 20 lawyers and human rights defenders to respond to cases of discrimination and violence against marginalised groups. The program has led to precedent-setting orders protecting the rights of LGBT+ persons, women and children. For the first time in Sri Lanka, the Court recognised that [homosexuality was not a mental illness](#) and awarded an [interim protection order to a lesbian woman](#) whose parents wrongfully confined her. Since 2021, iProbono has supported over 12 cases dealing with sexual harassment, online gender-based violence, discrimination of LGBT+ persons and child abuse.

iProbono Sri Lanka hopes to continue strengthening access to justice for vulnerable communities in Sri Lanka by expanding the Access to Justice Program. The upcoming programs will include a new cohort of young lawyers and specialised training for Police Officers on working with victims, particularly victims from the LGBT+ community.

¹⁸ The previous Constitutions - with the exception of the Interim Constitution 2007, an ad-hoc Constitution till a new Constitution was promulgated, considered the monarch i.e. the King as the sovereign.

¹⁹ Part 3 of the new Constitution (Arts. 16-47) sets out 31 key fundamental rights' guarantees, including core ESCR

²⁰ *Supra* note 4

4. BANGLADESH

In Bangladesh, despite the constitution guaranteeing equal protection of the law and access to justice,²¹ people face considerable obstacles in receiving legal support and representation.²² The enactment of the Legal Aid Services Act, 2000 and Legal Aid Services Regulation, 2001 and the establishment of the National Legal Aid Service Organization (NLASO) to implement Court-Annexed Legal Aid Services,²³ along with pro bono legal services provided by NGOs,²⁴ have effectively helped indigent individuals and marginalised communities to obtain pro bono legal support and representation before the court.

iProbono has been working in Bangladesh since 2016, primarily focusing on legal empowerment through community-based approaches like [street law](#),²⁵ providing pro bono [direct legal support](#) to civil society,²⁶ [capacity building of lawyers](#),²⁷ and [law students](#),²⁸ and research and policy [advocacy](#).²⁹ Very recently, we have also started extending pro bono litigation support to persons who cannot afford legal services or navigate legal mechanisms.

In contrast to the legal aid programs administered by the government and NGOs, which impose a predetermined annual income threshold, iProbono in Bangladesh has adopted a holistic approach in providing legal support and representation to not only people of marginalised and economically backward communities but also individuals who cannot navigate legal institutions to seek redressal; thus ensuring access to justice for people of all strata. So far, iProbono has provided pre-litigation and litigation support to 7 individuals in Bangladesh through legal guidance,

²¹ *Supra* note 4

²² The most common challenges are people's lack of awareness about legal rights and pro bono legal services, resource scarcity stemming from an underfunded and understaffed government-operated legal aid system, language obstacles restricting access to justice for non-native Bengali speakers, government undue interference and non-cooperation to the NGOs' providing pro bono legal interventions, lawyers and judges lack adequate sensitivity, training, and acquaintance with the legal issues and acuties faced by Bangladesh's marginalised and economically backward communities, the backlog of cases and undue delay in the administration of justice.

²³ The National Legal Aid Services Organisation (NLASO) governs the legal aid offices constituted by the Legal Aid Services Act, 2000, at the district, upazila, and union levels. These offices are staffed with officers to coordinate with other offices and pro bono lawyers at various levels and provide legal aid services to the marginalised and indigent people.

²⁴ Bangladesh Legal Aid and Services Trust (BLAST), Ain o Salish Kendra (ASK), Bangladesh Rural Advancement Committee (BRAC), Dhaka Ahsania Mission (DAM), Bangladesh Environmental Lawyers Association (BELA, Manusher Jonno Foundation (MJF), and Odhikar, are the most prominent NGOs and CSOs in Bangladesh that provide pro bono legal assistance. Since 2022, iProbono, Bangladesh initiated providing pro bono litigation assistance to people in need,

²⁵ We have so far conducted three street law programs on child labour, negligence and mental health rights.

²⁶ We have a long-standing culture of providing pro bono support to civil society organisations in Bangladesh. We also prepared a toolkit on the [registration of social enterprises in Bangladesh](#).

²⁷ iProbono and Winrock International (WI) collaborated to strengthen the capacity of prospective pro bono lawyers at the district level and establish a referral network at the regional level by providing technical support to prepare and deliver training on the legal framework of anti-human trafficking in Bangladesh.

²⁸ iProbono collaborated with the Global Action against Trafficking in Persons and the Smuggling of Migrants – Bangladesh (GLO.ACT – Bangladesh) project of the United Nations Office of Drugs and Crime (UNODC) in Bangladesh to design an experiential learning workshop on laws against Trafficking in Persons (TIP) in December 2022.

²⁹ iProbono had the opportunity to make a submission to and meet with Ms. Siobhan Mullay, the United Nations Special Rapporteur on Trafficking in Persons, Especially Women and Children, in October 2022.

alternate dispute resolution mechanisms and court representation on issues related to human trafficking, domestic violence, forced labour, rape and adoption.

5. AFGHANISTAN-PAKISTAN

Our work in Pakistan largely focuses on securing the rights of the transgender community. We regularly conduct [capacity-building sessions with stakeholders](#). We are developing a research study to map the rights of community members and support a civil society organisation in defending the Transgender Persons (Protection of Rights) Act, 2018, before the Federal Shariat Court.

In the aftermath of the Taliban's takeover of Afghanistan, we provided comprehensive care to [150 Afghans](#), helping evacuate and resettle them through Pakistan to various countries across the globe. We are currently studying the legal support that Afghans in Pakistan have access to.

CHALLENGES AND BEST PRACTICES

Despite provisions for legal aid, socio-economic and geopolitical considerations, and lack of a formal structure that empowers lawyers, legal empowerment and pro bono lawyering become particularly difficult in South Asia. It is challenging to impose mandatory pro bono requirements without exceptions, as most countries in the region are developing nations, with high-income disparity, even among lawyers. As evidenced by this submission, there is a growing need to encourage and nurture pro bono lawyering in the region. However, without inherent motivation, the quality of services offered may suffer. There is no doubt that a gap exists between those that want to do pro bono work and the beneficiaries who need support. But without understanding the full extent of pro bono³⁰ and a commitment from legal stakeholders, this remains largely unfulfilled, shouldered only by civil society organisations like iProbono.

Some challenges to legal empowerment, pro bono lawyering, and access to justice that iProbono has faced in the region are:

- Poor funding commitments to pro bono lawyering and access to justice initiatives.
- Apathy among law enforcement agencies³¹ towards legal procedures, human rights developments, and the needs of survivors of violence/discrimination.
- Lack of regulatory guidance on the scope and mechanism to engage in pro bono lawyering.
- Inadequate knowledge or lack of awareness among legal stakeholders of the full extent of work possible pro bono.
- A lack of legal awareness among the larger public on their rights and entitlements.

³⁰ Asia Pro Bono Conference & Access to Justice Exchange, What Is Pro Bono?, available at - <https://www.probonoconference.org/about/what-is-pro-bono/>

³¹ Evidenced from our work in Sri Lanka, we noted that the police need education on working with vulnerable communities. We noted a high number of human rights violations, such as [torture, discrimination, and forced anal and vaginal examinations](#) at the hands of state actors.

In our experience, we have noticed a positive response from the public to community-based initiatives like street law. These, coupled with pro-bono legal interventions, have gone a long way in transforming access to justice for vulnerable populations in the region. Our experience also demonstrates the need to provide wrap-around pro bono support. Legal representation is often not enough on its own. iProbono's lawyers and social workers act as an intermediary between the panel lawyer and the beneficiary - this ensures that the client receives wraparound support, and the panel lawyer is not overwhelmed trying to meet all the ancillary needs of the client, engaging in fact-finding, etc. We have also experienced the benefits of working collaboratively and in close coordination with the various state and private stakeholders involved.

CONCLUSION AND RECOMMENDATIONS

Pro bono lawyering can promote legal empowerment and advance access to justice for the most vulnerable communities. However, the lack of commitment to and understanding of pro bono is a significant barrier. We recommend a dedicated approach to centre pro bono lawyering among legal stakeholders. Additionally, integrating pro bono lawyering into law school curriculums will significantly encourage and hopefully institutionalise it. We also recommend incentivising pro bono lawyering, such as by making it a criterion for elevation to any posts,³² designations, recognition, or award.³³

³² Elevation to the judiciary or other posts such as Attorney General, Public Prosecutor, etc.

³³ This is already a practice in India. Pro bono hours/cases are accounted for when the Supreme Court designates Senior Advocates (Indira Jaising v. Supreme Court of India and Ors., AIR 2017 SC 5017)