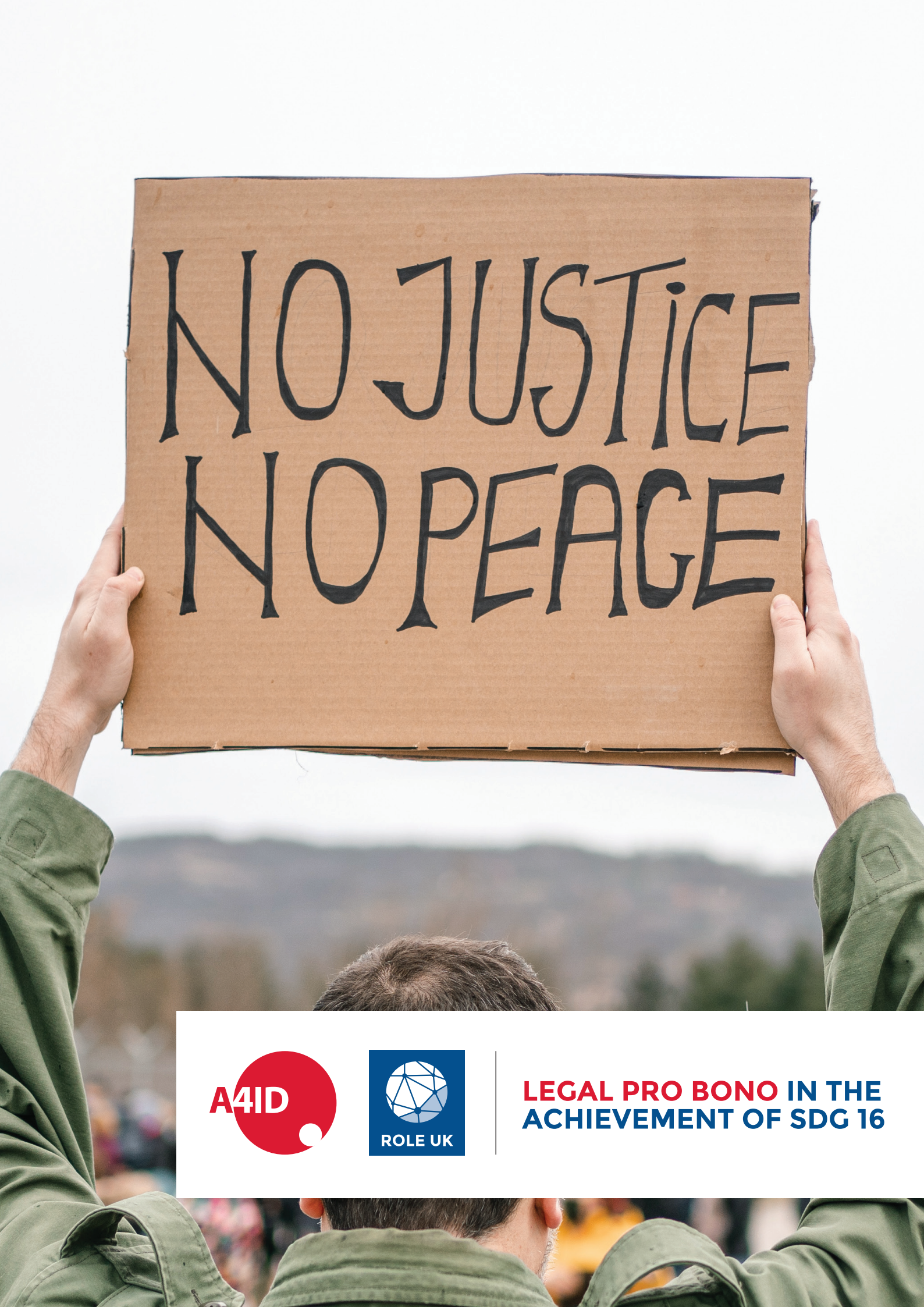


A4ID

ROLE UK

LEGAL PRO BONO IN THE ACHIEVEMENT OF SDG 16

ABOUT ADVOCATES FOR INTERNATIONAL DEVELOPMENT

Advocates for International Development (A4ID), founded in 2006, is a global charity that believes the law can and should be used more effectively to advance fair and sustainable development. A4ID aims to inspire and enable lawyers to join the global fight to eradicate poverty by advancing the UN Sustainable Development Goals (SDGs). Through A4ID, the world's top lawyers provide free legal support to organisations, working to advance human dignity, equality and justice. Its work has so far impacted in over 130 countries.

A4ID's Rule of Law Expertise (ROLE UK) Programme is funded by the Foreign, Commonwealth and Development Office. It supports partnerships to provide pro bono legal and judicial expertise with the aim to strengthen the rule of law in official development assistance (ODA)-eligible countries. The Programme's Knowledge Hub provides the pro bono legal sector with access to targeted and relevant information to inform and improve their technical assistance in development contexts.

www.roleuk.org.uk | roleuk@a4id.org

ACKNOWLEDGEMENTS

We thank Kersty McCourt for undertaking the research and drafting the paper. Additional thanks are due to Neha Bhansali for layout and design.

CONTENTS

03 Introduction and Methodology

04 Sustainable Development Goal 16

08 UK Pro Bono Support for SDG 16

10 Understanding the Nexus between Pro Bono and SDG 16

19 The Benefits, Challenges and Success Factors Related to SDG 16

30 Recommendations

32 Notes

FOREWORD

There are now less than ten years left to achieve the UN Sustainable Development Goals (SDGs), with their target date of 2030. Aware of the challenge, Advocates for International Development (A4ID) has continued its innovative work towards meeting these targets, by harnessing the power of the law and the work of lawyers to work towards their achievement, to raise their profile within the global legal community and developed the **SDG Legal Initiative** to bring about impact.

Since the adoption of the SDGs in 2015, A4ID has fully embraced this agenda. Its pro bono broker service is geared towards garnering pro bono legal support from the world's leading international law firms to work with development organisations fighting to achieve the SDGs. For each project brokered, A4ID tracks its impact on the SDG targets.

Launched this year, the **SDG Legal Initiative** is a call to action to every legal professional worldwide to contribute their talents to work on the 2030 agenda by providing them with the knowledge and opportunities to amplify the role of the legal sector in achieving the SDGs.

Given its direct links with access to justice and legal frameworks, SDG 16 on *Peace, Justice and Strong Institutions* has always had a special importance for the legal and judicial communities worldwide. Amongst the pro bono projects brokered by A4ID, SDG 16 is the most commonly addressed SDG. Similarly, A4ID's ROLE UK Programme, with its focus on the

strengthening of the rule of law, reflects the centrality of SDG 16 for the legal world.

There is a robust tradition in the UK of legal and judicial professionals providing pro bono services to individuals and organisations who are not able to access legal services or expertise through other means. As part of its mission to generate and share knowledge and best practice, A4ID wants to enhance its understanding of how these pro bono efforts contribute to the achievement of SDG 16.

As part of its mission to generate and share knowledge and best practice, A4ID wants to enhance its understanding of how these pro bono efforts contribute to the achievement of SDG 16.

Through quantitative analysis of data and case studies, drawn from work supported by A4ID as well as other organisations, this paper illustrates the contribution of the UK pro bono sector to SDG 16. It also assesses the benefits and challenges of framing pro bono efforts as contributions to SDG 16.

As leaders in the legal community, we must lead the way in championing SDG 16 and work tirelessly to achieve its targets by 2030. It is our hope that this paper offers pro bono providers, and those who support them, innovative ideas and practical guidance as to how best to link their efforts with the SDG agenda.

Finally, if the **SDG Legal Initiative** inspires you, join us.

YASMIN BATLIWALA

Chief Executive

INTRODUCTION & METHODOLOGY

This paper explores the role of pro bono legal services in the achievement of the Agenda 2030 and in particular of Sustainable Development Goal 16 (SDG 16) on Peace, Justice and Strong Institutions.

Adopted by all UN Member States in 2015, the UN Sustainable Development Goals are a universal call to action to end poverty, protect the planet, and ensure that all people can enjoy peace and prosperity. The achievement of these 17 interconnected goals would result in significant progress towards a sustainable development that leaves no one behind.

This paper focuses on SDG 16 'Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions', which is of special interest for the legal and judicial communities worldwide.

Equally important is the final goal, SDG 17 'Partnerships for the Goals', which recognises that the SDGs will only be realised through strong partnerships and cooperation. One important partnership for the legal sector is forged through pro bono support and is thus the impetus for this paper and for A4ID to explore its own work, and that of similar organisations, to:

- Examine how pro bono work meaningfully contributes to the achievement of SDG 16.
- Assess the benefits and challenges of framing pro bono efforts in relation to the SDGs.
- Draw lessons on how pro bono providers can best link their efforts to achieving the SDGs.

The paper first draws on a quantitative scan of A4ID's projects to examine the type of pro bono support involved and the degree to which it focuses on SDG 16.

The paper then focuses on a number of illustrative examples drawn from interviews within the UK pro bono sector, including projects supported by A4ID, as well as other organisations. The examples aim to cover different pro bono practitioners, from members of the judiciary to lawyers in large corporate firms, and to look at varied approaches, including peer-to-peer support, operational advice and comparative legal research.

Information was gathered from project documents provided by A4ID and a select number of interviews with pro bono lawyers, in-country partners and intermediaries.

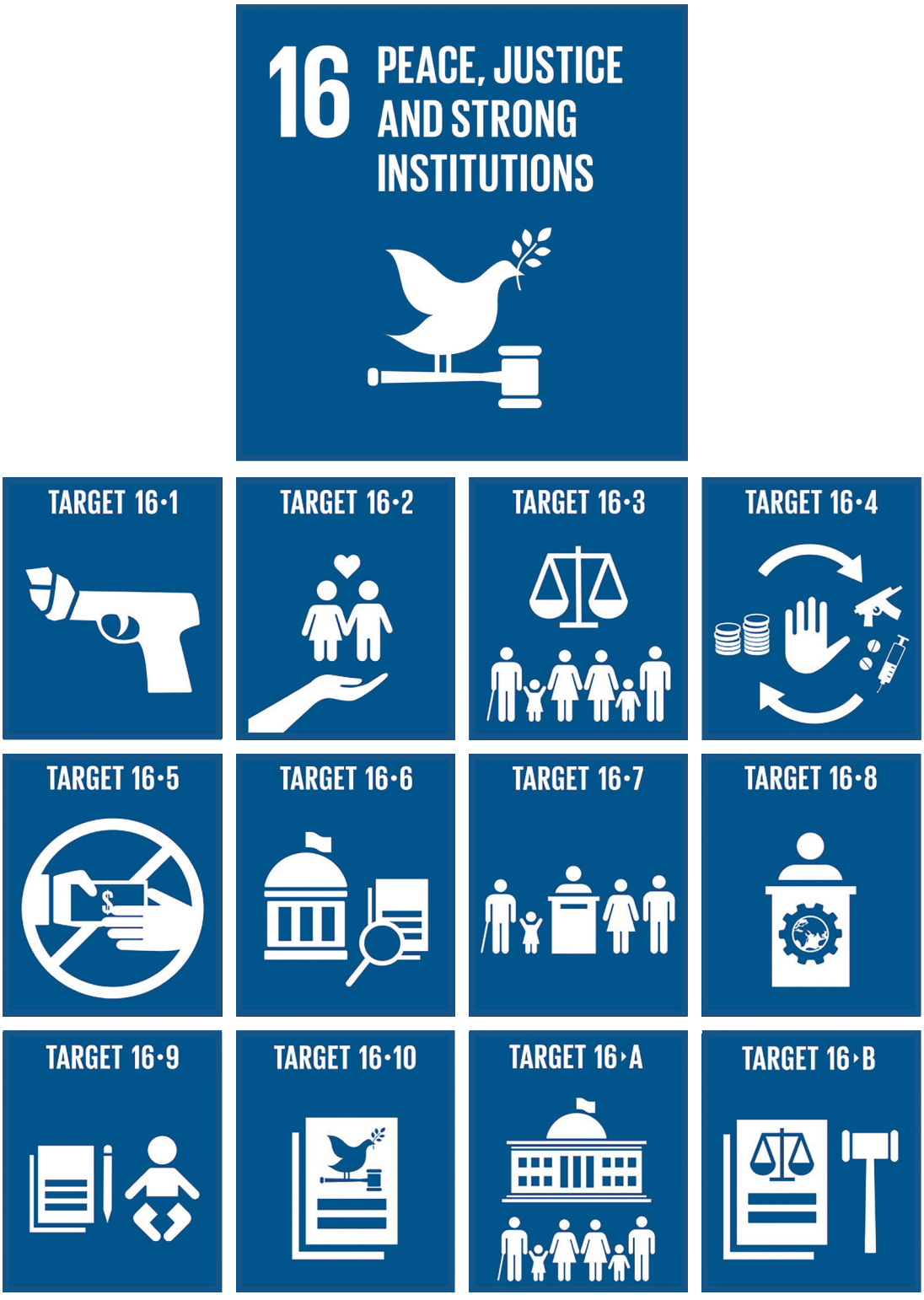
SUSTAINABLE DEVELOPMENT GOAL 16

SDG 16 focuses on Peace, Justice, and Strong Institutions. Through its inclusion in the 2030 Agenda, governments recognised the intrinsic link between justice, governance, and sustainable development – a link that was missing from the purely development focused Millennium Development Goals (MDGs).

SDG 16 is an ambitious goal comprising of 12 targets and 23 indicators that combine broad-based targets, such as ensuring access to basic legal services for all, promoting the rule of law, and fighting bribery and corruption, with a number of quite precise targets around legal identity and public access to information.

Progress on SDG 16 will inevitably impact all other goals. Broadening access to information about health and environmental issues will help activists' work and increase authorities' accountability on these issues. Similarly, through access to legal services and the ability to use the courts, people will be better equipped to assert their rights. Thus SDG 16 is both a goal in itself and an enabler of other goals.

SDG 16 is both a goal in itself and an enabler of other goals.


16 PEACE, JUSTICE AND STRONG INSTITUTIONS
TARGET 16·1
TARGET 16·2
TARGET 16·3
TARGET 16·4
TARGET 16·5
TARGET 16·6
TARGET 16·7
TARGET 16·8
TARGET 16·9
TARGET 16·10
TARGET 16·A
TARGET 16·B

GOAL 16: PROMOTE PEACEFUL AND INCLUSIVE SOCIETIES FOR SUSTAINABLE DEVELOPMENT, PROVIDE ACCESS TO JUSTICE FOR ALL AND BUILD EFFECTIVE, ACCOUNTABLE AND INCLUSIVE INSTITUTIONS AT ALL LEVELS.

16.1 Significantly reduce all forms of violence and related death rates everywhere

16.2 End abuse, exploitation, trafficking and all forms of violence against and torture of children

16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all,

16.4 By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime

16.5 Substantially reduce corruption and bribery in all their forms

16.6 Develop effective, accountable and transparent institutions at all levels

16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels

16.8 Broaden and strengthen the participation of developing countries in the institutions of global governance

16.9 By 2030, provide legal identity for all, including birth registration

16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements

16.A Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime

16.B Promote and enforce non-discriminatory laws and policies for sustainable development

Nearly half-way to the target end date of 2030, progress towards SDG 16 is behind schedule and the impacts of COVID-19 have further slowed the progress.[1] In fact, in many countries, the disproportionate use of emergency measures to address the pandemic has led to a backsliding in the rule of law and accelerated negative trends. For example, around the use of surveillance and limits on the right to protest.[2]

Already in 2019, in preparation for the High-Level Political Forum (HLPF), mandated to review progress towards Agenda 2030, civil society organisations called for greater action towards the implementation of SDG 16.[3] For example, there has been no significant change in the number of prisoners held in pre-trial detention and, according to the most recent data, only 45% of children in sub-Saharan Africa had their births registered. The number of killings of human rights defenders and journalists increased in 2020.[4]

As the pandemic has put into sharp focus social and economic inequalities, and the fact that good governance is a pre-requisite for sustainable post-pandemic recovery, the re-doubling of efforts to achieve SDG 16 is more important than ever.

UK PRO BONO SUPPORT FOR SDG 16

In re-focusing efforts over the next years on the implementation of SDG 16, strong partnerships and diverse expertise are crucial. All efforts will be needed to reach the targets by 2030 and the contribution of pro bono lawyers is an important component to ensure the level of support and work needed.

The UK pro bono sector is diverse and experienced, as detailed in A4ID's 2019 publication 'Improving the rule of law: mapping the UK legal pro bono sector'.[5] Pro bono practitioners include judges and prosecutors, government lawyers, individual barristers and lawyers working for a variety of law firms.

Over time, different models and partnerships have evolved – from working with direct counterparts in other countries, to supporting non-government organisations (NGOs), or projects set up through dedicated pro bono organisations such as A4ID, PILnet or the International Lawyers Project.

Over the last 20 years, the sector has increased both in size and professionalism, with experience gained from diverse projects and the evolution of long-standing partnerships.

Over the last 20 years, the UK pro bono sector has increased both in size and professionalism.

Some large law firms have whole teams dedicated to pro bono support and both large and small firms are able to rely on the support and brokerage services of organisations such as A4ID. Table 1 draws on the abovementioned report and summarises some of the key areas of pro bono support.

TABLE 1: THE SCOPE OF INTERNATIONAL PRO BONO SUPPORT

CORE CATEGORIES OF SUPPORT	EXAMPLES OF TYPES OF WORK
Organisational support / advice	Governance and corporate advice to organisations on a range of themes including incorporation and registration, employment law, data protection, tax and accounting.
Training and capacity building	Design and implementation of training seminars, modules, and development of tools and manuals. Including peer-to-peer support and mentoring.
Targeted legal advice / representation	Including legal research, legal opinions, advice on strategic litigation, representing individuals and support to legal clinics.
Advising governments, intergovernmental organisations, UN bodies etc.	Including specific legal advice, comparative research, advice on international negotiations and implementation of treaties.
Institutional development	Peer-to-peer support to build the capacities of law societies, bar associations, judicial offices, oversight bodies etc.

UNDERSTANDING THE NEXUS BETWEEN PRO BONO AND SDG 16

Working within the framework of the SDGs is new for most pro bono practitioners but it reflects the desire to ensure a more coordinated and strategic approach to pro bono services.

Organisations like A4ID have carried out research and provided guidance on how pro bono practitioners can support the implementation of the SDGs. (see textbox)

SDG LEGAL INITIATIVE

A4ID is leading the SDG Legal Initiative, which aims to reach every legal professional in the world and provide them with the knowledge and opportunities to take practical action to end poverty, protect the planet and ensure that all people enjoy peace and prosperity. The Initiative aims to achieve four objectives:

- Building awareness of the SDGs in the legal sector.
- Increasing the motivation of legal practitioners to take action aligned to the SDGs.
- Establishing pathways of action by building partnerships across the legal, private, public, knowledge and development sectors to support the achievement of the SDGs.
- Aligning the legal sector to the SDGs by supporting firms and companies to embed and mainstream \ the SDGs within their businesses and operations at every level.

A4ID has established the SDG Legal Initiative Steering Committee, comprising of 13 leading international law firms and corporations to provide governance, decision-making and support for the Initiative.

A4ID is developing the Legal Guide to the Sustainable Development Goals, as a unique resource that provides a foundational analysis of the role the law can and should play in the achievement of the SDGs. This Guide is made up of 17 chapters specific to each of the 17 goals. Each chapter provides an overview of the relevant regional, national and international legal frameworks that highlight how the law can be applied to promote the implementation of the SDGs. The chapter on SDG 16 is available at: https://www.a4id.org/sdgs/sdg-16-peace-justice-and-strong-institutions/

To better understand the scope and nature of pro bono support related to the implementation of SDG 16, this section first draws on a short quantitative analysis of A4ID's projects and then focuses on a number of case studies drawn from different regions and different types of pro bono support.

A. HOW DOES PRO BONO WORK CONTRIBUTE TO SDG 16? A QUANTITATIVE ANALYSIS

To gain a better understanding of the scope of pro bono support to SDG 16, the quantitative analysis draws from two key programmes of A4ID, recognising that these programmes only form one part of the UK's overall pro bono support:

- A4ID's ROLE UK Programme, supported by the Foreign, Commonwealth and Development Office (FCDO), works with organisations over the medium- to long-term to strengthen the rule of law, contributing to the attainment of the SDGs and in particular of SDG 16.3.
- A4ID's Pro Bono Legal Service (PBLS) which matches short- to medium-term pro bono services provided by legal partners (law firms, barristers, in-house counsel) with the legal needs of over 900 development organisations that, in a variety of ways, contribute to the implementation of the SDGs.

Over the course of 2020, A4ID brokered or supported 407 projects either through its Pro Bono Legal Service or the ROLE UK programme. For each project, A4ID identified a main SDG the project is contributing to.

In the initial assessment, three categories were distinguished:

- Projects that explicitly refer to SDG 16 as their primary focus. It requires an explicit

mention by the partners involved of SDG 16 or of one of its targets in the project documents.

- Projects that implicitly contribute to the achievement of SDG 16. Even though there might not be a specific reference to SDG 16, the project can be directly or indirectly linked with SDG 16 or one of its targets. There is a direct link with SDG 16 when the project substantially contributes to progress sought with SDG 16. There is an indirect link when the project benefits an organisation whose mission contributes to the achievement of SDG 16.
- All other projects that contribute directly or indirectly, implicitly or explicitly to SDGs 1 to 15 and 17.

Amongst the 377 projects brokered by the PBLS in 2020:

- 13 projects include SDG 16 as an important and explicit part of the project. These include projects to provide training on anti-bribery legislation and advice on specific pieces of legislation such as environmental law, sanctions or international humanitarian law.
- 87 projects had an important but implicit focus on SDG 16. This includes projects where the beneficiary organisation as a whole focused on SDG 16, but the pro bono advice was operational – for example on employment contracts. Thus, in the broader picture, the pro bono advice, through operational support, helped the organization work towards the implementation of SDG 16.
- The other 277 projects contributed directly or indirectly to another SDG.

A4ID's ROLE UK Programme seeks to improve the rule of law in countries eligible for Official Development Assistance (ODA). Accordingly, all assignments supported by the Programme address specific rule of law issues in these countries, hence contribute to SDG 16 and specifically its target 16.3 on promoting the rule of law. In calendar year 2020, the Programme conducted 29 assignments (some involving multiple activities) across 16 partnerships which all fall within the second category: even though supported organisations did not explicitly mention SDG 16 in the forms describing the assignment, activities can directly be linked to one or more SDG 16 targets. While most of these assignments consist of joint activities by the UK legal sector and legal actors in developing countries to strengthen the rule of law, the Programme also conducted one activity which could be constructed as organisational support to a 'rule of law' stakeholder, i.e. supporting the international law firm DLA Piper to improve their internal monitoring & evaluation processes for their pro bono managers.

TABLE 2: THE EXPLICIT AND IMPLICIT FOCUS OF PROJECTS RELATED TO SDG 16

CLASSIFICATION OF PROJECTS BASED ON THEIR RELATION WITH SDG 16	NUMBER OF PROJECTS IN 2020 (PBLS AND ROLE UK PROGRAMME'S PROJECTS COMBINED)
Include SDG 16 as an important and explicit part of the project	13 (3.2%)
Implicitly focus on SDG 16 (including through organisational support to an SDG 16-focused stakeholder)	116 (28.5%)
The project doesn't include an implicit or explicit focus on SDG 16 but focuses on another SDG	278 (68.3%)
TOTAL PROJECTS	407 (100%)

The second strand of assessment looked at the types of pro bono support. The majority of pro bono advice was operational support ranging from employment law to support in establishing a new legal entity, intellectual property law and organisational re-structuring. Over 40 projects provided legal advice to the substance of the partner organisation's projects. A number of others provided specific support such as defamation reviews of forthcoming publications.

TABLE 3: PROJECTS BY THE TYPE OF PRO BONO SUPPORT

TYPE OF PRO BONO SUPPORT	NUMBER OF PROJECTS
Operational support	325
Legal advice – related to the substance of organisation's projects	41
Legal advice – related to litigation	2
Defamation reviews	5
Capacity building/ training on a specific area of law or legal skills including institutional support	21
Comparative legal review or development of legislative/ constitutional text	5
Needs assessment/ problem identification (including scoping)	4
Peer-to-peer experience sharing	4
TOTAL PROJECTS	407

B. WHICH SDG TARGETS ARE THE FOCUS OF PRO BONO SUPPORT?

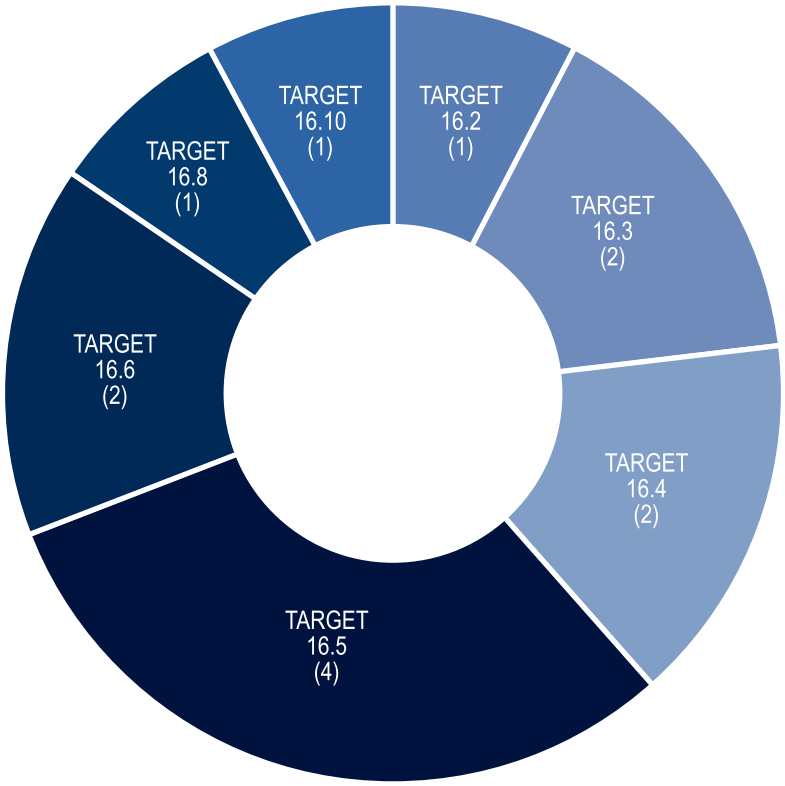
Whilst pro bono can potentially contribute to all targets within SDG 16, a number of targets emerged as predominant, namely target 16.3 on the rule of law and access to justice, target 16.5 on addressing corruption, and target 16.6 on developing transparent and accountable institutions. Table 4 reflects on these three targets that were also the main focus of the examples chosen in the case studies.

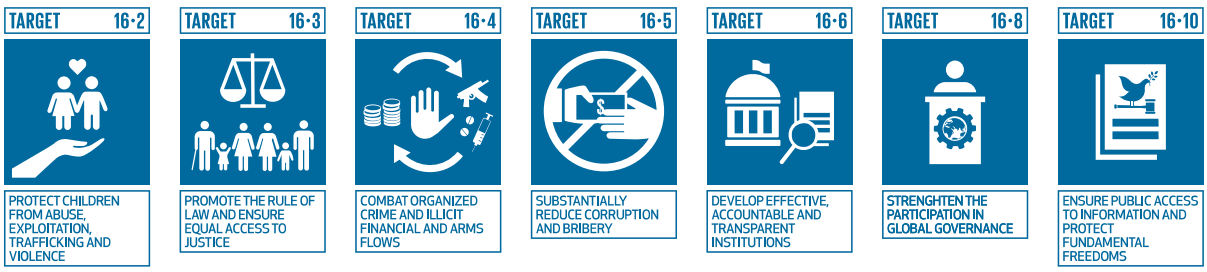
TABLE 4: SDG 16 TARGETS WHICH WERE THE MAIN FOCUS OF PROJECTS CHOSEN FOR THE CASE STUDIES

SDG 16 TARGETS	COMMENT
TARGET 16.3: PROMOTE THE RULE OF LAW AT THE NATIONAL AND INTERNATIONAL LEVELS AND ENSURE EQUAL ACCESS TO JUSTICE FOR ALL	This target covers a huge range of interventions along the justice chain and in all areas from criminal to commercial law. Therefore, a wide number of projects contribute in some way to improving access to justice and the rule of law.
TARGET 16.5: SUBSTANTIALLY REDUCE CORRUPTION AND BRIBERY IN ALL THEIR FORMS	A focus on corruption is likely a reflection of the case studies chosen and the fact that a number of organisations have chosen to specialise in fighting corruption. However, it is probably also the case that there is an additional impetus through the spotlight placed on anti-corruption by the UK government – through the 2016 Anti-Corruption Summit and the entry into force and increasing prosecutions under the 2010 UK Bribery Act.
16.6: DEVELOP EFFECTIVE, ACCOUNTABLE AND TRANSPARENT INSTITUTIONS AT ALL LEVELS	This is a cross-cutting target and therefore relevant for many projects, often in concert with another target.

Looking at the projects brokered by A4ID in 2020, considering the 13 projects that had an explicit and important focus on SDG 16, the most common targets were targets 16.4 and 16.5 on organised crime and corruption – see for example the case study below on support to the Ethical Tea Partnership. The next most relevant targets were the broad-based targets around access to justice and strong institutions (targets 16.3 and 16.6).

KEY TARGETS OF PROJECTS THAT INCLUDE SDG 16 AS AN IMPORTANT AND EXPLICIT FOCUS





CASE STUDY: ASSISTANCE TO THE ETHICAL TEA PARTNERSHIP REGARDING BRIBERY AND CORRUPTION

PRO BONO PROVIDER: Reed Smith

RECIPIENT: Ethical Tea Partnership

INTERMEDIARY / BROKER: A4ID Pro Bono Legal Service

LINK TO SDG 16: *Target 16.5: Substantially reduce corruption and bribery in all their forms*

PROJECT: The Ethical Tea Partnership (ETP) works with tea workers and smallholder farmers as well as with tea companies to build a tea industry that is socially just and environmentally sustainable.

Conscious of the threats of bribery and corruption across different jurisdictions where they work (the UK, Kenya, Malawi, Rwanda, India, Sri Lanka, China, and Indonesia) they requested A4ID to provide support to train their staff and help develop organisational policies.

PRO BONO SUPPORT: Lawyers at Reed Smith worked collaboratively with ETP to design an anti-bribery and money laundering training for staff across different offices and to develop related organisational policies.

The online training took place in August 2020 and used case studies from ETP's work. It prompted a lot of questions which gives an indication of the relevance of the training for staff across different offices – and the usefulness of basing the training on recent examples from ETP's work.

The development of the organisational policies has been a more iterative process - but again closely collaborative. It focused initially on the development of an anti-bribery policy and a gifts and hospitality policy and continues through the update of existing policies.

Advice from lawyers to NGOs on risk management is seen as a really key area for pro bono support given the stress and complexity in this area and the implications for partners.

CONTRIBUTION TOWARDS SDG 16: Greater awareness of the risks of bribery and corruption and the implementation of strong organisational policies clearly contributes to SDG target 16.5 to reduce corruption and bribery. Whilst ETP has an overall focus on the SDGs, this particular project was conceived together with the lawyers from a compliance perspective, recognising the importance of compliance with anti-corruption legislation and cognisant of the growing impact of the 2010 UK Bribery Act.

There is, however, potential for pro bono support to contribute to any of the SDG 16 targets depending on the specialisation of organisations. For example, supporting an organisation working to prevent trafficking would contribute to target 16.2 to end abuse, exploitation, trafficking and all forms of violence against and torture of children.

Moreover, law firms with larger pro bono practices and a focus on SDG 16 undertake pro bono work that covers most of the targets. DLA Piper, which has a global pro bono team of around 40 lawyers, have developed work that, in varying ways, relate to all targets under SDG 16 – ranging from support to the European Network on Statelessness (target 16.9 to provide legal identity for all, including birth registration), to work with UNICEF to support the reform of juvenile justice systems in Bangladesh and The Gambia (target 16.2 to end abuse, exploitation, trafficking and all forms of violence against and torture of children and 16.6 to develop effective, accountable and transparent institutions).[6]

THE BENEFITS, CHALLENGES AND SUCCESS FACTORS RELATED TO SDG 16

A variety of factors influence the choices of those working in the pro bono sector and the degree to which they engage with and centre their work around the implementation of the SDGs.

A. THE BENEFITS OF FOCUSING ON SDG 16

As a broad reaching global framework, large law firms with significant pro bono practices have been among the first to engage with the SDGs. For firms that have the aim and capacity to build their pro bono work around a multi-year strategy, a number of factors explain this choice:

- The targets and indicators set out under SDG 16 (and the other goals) provide a framework that enables pro bono providers to collect and analyse data in a way that feeds into a broader monitoring system – facilitating a degree of uniformity and shared analysis.
- Working within such a framework allows pro bono providers to better understand how their resource and capacity can be organised and their contribution measured.
- Exchange with other providers allows for collective learning, guidance and shared best practices.
- The coordination afforded through the SDGs allows pro bono providers to better identify opportunities and potential partnerships with other organisations.
- From an internal perspective, working within the framework of the SDGs provides a structured way to present and communicate work – which can encourage further support from donors, clients and investors.

In 2018, Clifford Chance LLP worked with A4ID to develop a guide for international law firms working with NGOs to support the implementation of the SDGs. They identified a shift from pro bono work that was 'assumed to be doing good' to support that was aimed at 'achieving specific change in the wider world' – necessitating a more strategic and collaborative approach.[7]

Clifford Chance identified SDG 4 Quality Education, SDG 8 Decent Work and Economic Growth, SDG 16 Peace, Justice and Strong Institutions and SDG 17 Global Partnerships as focus goals. They estimate that their pro bono work amounts to over 9,000 days of work per year, facilitated primarily through 18 long-term strategic partnerships. Clifford Chance's theory of change relies on three types of complimentary inputs: grants from the Clifford Chance Foundation to fund projects; pro bono expertise to support these projects; and pro bono expertise to support the operations of their NGO partners.

'Over time the inputs that have had the highest impacts are when they are provided within a strategic, longterm relationship with NGOs'.

TOM DUNN
PRO BONO PARTNER
CLIFFORD CHANCE

SUPPORT TO ASYLUM ACCESS

Over a period of more than ten years, Clifford Chance has worked with Asylum Access, a San Francisco-based NGO that supports refugees and asylum seekers. Pro bono support has spanned the range of inputs highlighted above – from support through the Clifford Chance Foundation, to operational support, legal research and country of origin information carried out through lawyers from across Clifford Chance's offices. The three-pronged support has allowed Asylum Access to develop their model of support and open offices in new jurisdictions reaching over 60,000 asylum seekers annually (a 16-fold increase from 2011).[8]

The possibility for SDG 16 to facilitate planning and better contribute to the prioritisation of justice sector needs in a particular country is also important. The targets and indicators reflect these needs and the advocacy of justice sector experts during the drafting of the SDGs. For example, a number of foundational or gateway issues, issues that facilitate the implementation of other targets or stand at the gateway to the justice system, are included as SDG 16 targets, facilitating a sequential approach to improving access to justice (see textbox below). These include targets 16.3 on access to justice, 16.9 on legal identity and 16.10 on access to information.

Whilst large law firms were among the first to explore the potential of SDG 16, the SDGs offer a framework that is useful for many pro bono providers as they explore and identify projects.

ADDRESSING THE OVER-USE OF PRETRIAL DETENTION

Under target 16.3 on access to justice, indicator 16.3.2 measures the percentage of detainees in pretrial detention, motivating governments to address the overuse of pretrial detention – a problem that reverberates and multiplies along the justice chain. Pretrial detention should be used as a measure of exceptional and last resort, to ensure that as few people as possible are detained and exposed to the potentially pernicious and harmful impacts of detention. Statistically, suspects who are released on bail are less likely to receive a custodial sentence and the health and socio-economic impacts of pretrial detention on suspects and their families are far-reaching.[9] Therefore, addressing the over-use of pretrial detention minimises health and social problems and reduces the number of detained people, and possible problems, at subsequent steps along the criminal justice chain. Therefore, when resources and capacity are limited and countries face a problem with the over-use of pretrial detention, focusing pro bono efforts at the pre-trial stage makes sense from an overall planning and results perspective.

B. THE CHALLENGES OF FOCUSING ON SDG 16

The above quantitative analysis shows that, while a small number of projects explicitly focus on SDG 16, a significant number include it as an implicit focus. Thus, the projects are clearly linked to SDG 16 in some way, but the framework of the SDGs was not part of the project design or thinking. In many cases these projects could be missing key opportunities linked to the elements identified above around planning, monitoring and prioritisation.

A number of factors likely influence the more implicit focus on SDG 16:

- Many pro bono programmes pre-date the adoption of the SDGs in 2015. Thus, firms and organisations may have already established approaches to their pro bono work and their long-term goals.
- Traditionally lawyers have seen access to justice and the development of sound legal institutions as a natural focal point for their pro bono support. Whilst these are clearly key components of the SDGs, the overall development approach of the SDGs may mean that lawyers are less likely to see them as a primary framing or entry point.
- Relatedly there is limited awareness of the SDGs and the strengths they offer among the legal community. Lawyers may be working directly with other lawyers and be less likely to link up with the United Nations and other development organisations who take a lead in coordinating and promoting the implementation of the SDGs.
- Another factor is the disconnect between targeted and generalist approaches and the difficulties some pro bono providers might face in identifying how their work contributes to the SDGs. For some pro bono providers, the SDG targets seem quite high-level and distant from the more operational support that they provide. In other cases, pro bono providers may be responding to a very specific request, to provide legal advice on a niche area of law, that might not directly relate to one of the SDG targets.

C. POSSIBLE MISSED OPPORTUNITIES?

Where these challenges arise, what is potentially being missed? As discussed above, all of the possibilities around planning, data collection and exchange of experience are less likely to be taken up where pro bono support is more ad hoc and availing of opportunities afforded through a framework such as the SDGs.

Other possibilities may also be missed. For example, a number of global campaigns might benefit from targeted pro bono support. Global or regional campaigns that clearly feed into the implementation of the SDGs, such as the 'I Belong' campaign to end statelessness or a regional campaign in Africa to decriminalise petty offences, could benefit from pro bono support across different jurisdictions.[10] Equally, pro bono support, particularly if accompanied by some seed funding, can be used to explore an issue, produce a publication or comparative legal review and then use that knowledge and research product to build a larger project and seek sustained funding.

Another strength of the SDGs, compared to the previous MDGs, is their global/universal nature. Thus, whilst this paper looks specifically into the delivery of international pro bono support, the lessons learnt from implementing the SDGs in other countries could be useful in implementation domestically in the UK, and vice versa.

D. SUCCESS FACTORS FOR PRO BONO WORK TO MEANINGFULLY CONTRIBUTE TO SDG 16

A number of common experiences emerge across all case studies collected for this paper:

TRUSTED PARTNERSHIPS: nearly all interviewees commented on the potential and importance of building trusted partnerships and the validity and confidence that came from working with peers in the legal profession. Some relationships thrived because of the peer-to-peer nature and the mutual understanding of each other's work. Others emerged through respect for very different areas of expertise and the complementary element that was built through exchange and specialised legal knowledge – for example a corporate law firm bringing knowledge and application of anti-bribery legislation to NGOs who have a deep knowledge of the challenges facing community groups.

The below example of the support to The Gambian judiciary provides a useful example where trusted peer-to-peer partnerships were developed.

CASE STUDY: TECHNICAL ASSISTANCE TO THE GAMBIAN JUDICIARY

PRO BONO PROVIDER: The Judiciary of England and Wales

RECIPIENT: The Gambian Judiciary

INTERMEDIARY / BROKER: A4ID's ROLE UK Programme

LINK TO SDG 16: *Target 16.3: Promote the rule of law at the national and international levels and ensure equal access to justice for all.*

Target 16.6: Develop effective, accountable and transparent institutions at all levels

PROJECT & PRO BONO SUPPORT: Elections in The Gambia in 2016 saw momentous change and the end of President Jammeh's 22-year rule. As institutions started to reform, the Chief Justice of The Gambia approached representatives of the Judiciary of England and Wales to seek support. Following a scoping visit in 2018 a programme was agreed including:

- Training for magistrates on a number of areas including legal drafting and case management.
- The development of draft sentencing guidelines.
- The design and roll out of an induction course for magistrates.

Four judges from England and Wales have worked together and built a trusted relationship with core members of The Gambian Judiciary. The project achieved results in key areas and prompted ideas for future initiatives. Some elements remain to be completed, in part due to challenges resulting from COVID-19, but also related to the need for broader systemic changes – for example the institutionalisation of induction courses for magistrates and a move to digitisation of the court process.

"All judges involved in the partnership – from both judiciaries – have remained together as a unit throughout the project. This has been key to building the relationships. Peer-to-peer trust is crucial to this endeavour." - MR. JUSTICE ROBIN KNOWLES

The peer-to-peer support has been crucial in building informal but strong and trusted relationships. There is a degree of flexibility afforded through the commitment of the individual judges. Of key importance is the strength of the relationship that allows for follow up support and brainstorming regarding further areas for development.

Overall, the Judiciary of England and Wales works with over 70 judges who have experience working with judicial partners and are open to contributing in their areas of expertise. In many cases, the Judiciary will respond to requests from the FCDO and collaborate in country.

A4ID's ROLE UK Programme has facilitated this partnership between the Judiciary of England and Wales and the Judiciary of The Gambia since 2018. The Programme's support includes development advice, logistical assistance, and a financial contribution to enable the mobilisation of UK pro bono expertise.[11]

CONTRIBUTION TOWARDS SDG 16: This project clearly contributes to SDG 16 and in particular targets 16.3 and 16.6 on access to justice and the development of effective institutions. The project is broadly aligned with the FCDO's work and commitment to the SDGs but was not framed in relation to particular goals or targets or to The Gambia's own plan for achieving progress on the SDGs.

TARGETED EXPERTISE: in general, all engaged in pro bono work felt that it was most beneficial when it drew on the core areas of expertise of the practitioner – so applying the knowledge and acumen developed with fee-paying clients to pro bono work. Learning a new area of law 'on the job' was seen as less effective despite the highly transferrable soft skills developed through complex legal practice. Increasingly, NGOs are having to address legal issues outside of the spheres, for example, of international human rights law, and long-standing expertise from lawyers specialised in tax or data protection is invaluable. This is reflected in the quantitative analysis, showing that one of the most practical and useful forms of pro bono support can be to the operations of an organisation.

One of the most practical and useful forms of pro bono support can be to the operations of an organisation.

Some pro bono organisations such as the International Lawyers Project have developed expertise in particular areas which helps potential recipients of support identify organisations and lawyers with relevant expertise.

CASE STUDY: INTERNATIONAL LAWYERS PROJECT

PRO BONO PROVIDER: Experts within the International Lawyers Project in partnership with a network of specialised lawyers

RECIPIENT: Variety of organisations ranging from NGOs to governments

INTERMEDIARY / BROKER: International Lawyers Project

LINK TO SDG 16: *Target 16.5: Substantially reduce corruption and bribery in all their forms*

PRO BONO SUPPORT: ILP experts worked with specialised lawyers to support civil society and investigative media to push for accountability and raise awareness of how professional enablers launder illicit funds. Examples of support include:

- Advice to coalitions of NGOs on international best practices to restrict corruption in trade agreements.
- Support to civil society groups seeking the repatriation of stolen assets – including best practice examples and advice on how to structure a repatriation so that citizens benefit.
- Support to a coalition of NGOs on how to advocate the extension of the UK's human rights sanctions regime to include serious corruption and tax evasion.
- Trainings for civil society organisations on tax laws and how to advocate inclusive, pro-poor tax laws and policies.

CONTRIBUTION TOWARDS SDG 16: ILP is focused on promoting transparency and accountability in public and private institutions to minimise the impacts of corruption, which ILP recognises as one of the key barriers to sustainable development.

Thus, ILP's work clearly aligns with SDG 16 even if not articulated in all projects and by all partners and pro bono lawyers.

MULTI-JURISDICTION EXPERIENCE: where large law firms, with offices across the globe, are working on a pro bono project, being able to draw on the expertise of lawyers across different jurisdictions can be very useful – either for NGOs who similarly work in multiple countries or because the expertise of a particular office may be more relevant to the project.

BUILDING ON OPPORTUNITIES: being able to identify and respond to opportunities and challenges was reflected in a number of the case studies. Established expertise and the existence of organisations such as A4ID allow for quick contacts to be made when an opportunity arises. For example, when there was a transition of power in The Gambia, the judiciary were able to reach out to their counterparts in England and Wales and ask for support. Similarly, where organisations such as the International Lawyers Project have developed established expertise on corruption, it is easy for groups to get in touch or re-ignite prior contacts if, for example, there is a new legislative reform process.

CROSS-POLLINATION OF IDEAS AND EXPERTISE: the current models of pro bono support provide limited scope to ensure the cross-pollination of expertise despite many opportunities. The case study that looked at the development of the standing rules before the Mauritian Environmental Tribunal (below) provides a strong example of the type of expertise and material developed that would be highly applicable to similar challenges faced in many other emerging legal systems. Linking up that expertise and building an up-to-date repository of best practice and case law could be useful.

CASE STUDY: ADVICE TO THE SEA USERS ASSOCIATION REGARDING THE STANDING OF NGOS IN ENVIRONMENTAL CASES

PRO BONO PROVIDERS: Shearman & Sterling lawyers in London and Singapore
Anne-Sophie Jullienne, barrister at Afralaw Chambers in Mauritius

RECIPIENT: Sea Users Association Mauritius

INTERMEDIARY / BROKER: A4ID Pro Bono Legal Service

LINK TO SDG 16: *Target 16.3: Promote the rule of law at the national and international levels and ensure equal access to justice for all.*

The project also links to a range of other SDGs predominantly SDG 14 on Life below Water.

PROJECT: This case study focuses on who has standing before the environmental courts in Mauritius – thus who is able to bring a case and who is able to access to justice.

The long-term goal of the Sea Users Association is to persuade the Mauritius Government to consider more sustainable fishing policies and abandon the development of fish farms that have a detrimental impact on the environment and on the safety of other sea users.

The initial challenge was to broaden access to the courts and allow NGOs to bring cases. The litigation strategy aimed to promote a more liberal interpretation of the standing rules to allow wider access to justice as under the current narrow test for environmental cases, the applicant has to be the aggrieved person and had to be able to demonstrate a likelihood of personal prejudice.

In 2019, the Environment Appeal Tribunal decided that the Sea Users Association (and other applicants) had sufficient standing to initiate a challenge before the tribunal – based on a broader interpretation of the aggrieved person test.

The Sea Users Association was able to demonstrate aggrieved status, because, as a membership-based organisation, their projects were directly impacted by the fish farms. Thus, they became the first environmental NGO to bring an action in their own name. Lawyers are now working to further develop the standing rules, in line with the sufficient interest test – and to ensure they set a precedent that is binding on future cases. Similarly, lawyers are also working to develop legislation around class action cases – also of key importance in environmental litigation.

PRO BONO SUPPORT: In this case Anne Sophie Jullienne worked, pro bono, to support the Sea Users Association. She developed a litigation strategy and led the litigation both on the standing rules and the substantive case.

Shearman & Stirling provided a legal opinion on the development of locus standi in the English courts, assessing the case law and highlighting how the standing rules evolved. Mauritius has a hybrid legal system with procedural law largely following the English common law system. The final court of appeal is the Judicial Committee of the Privy Council in London. Therefore, the development of the standing rules in England was likely to have had a persuasive impact on the Mauritian courts.

CONTRIBUTION TOWARDS SDG 16: The organisations and lawyers involved in this work were clearly focused on expanding access to justice and developing the legal system to further that goal. They did not frame their work in terms of the SDGs but there is clearly a very strong link and, if the lawyers are successful in creating precedent around the standing rules, this will have far reaching positive implications for access to justice and thus progress towards target 16.3 to ensure access to justice for all.

TIME SENSITIVITY: whilst occasionally teams can come together to respond to an urgent request, for example on a piece of legislation that is being pushed through with limited consultation, the current models of pro bono support are not well suited to providing a strong and rapid response. As partnerships develop and organisations specialise in particular areas – a rapid response becomes more feasible.

RECOMMENDATIONS

The above analysis and case studies show that SDG 16 can provide a very useful and, in some ways, flexible framework to support the development of more targeted and coordinated pro bono support. From broad-based access to justice to more specific targets, SDG 16 is wide enough to encompass a variety of projects without necessitating a straight-jacket approach. A number of approaches could help align pro bono work and maximise the synergies with SDG 16:

SDG 16 can provide a very useful and, in some ways, flexible framework to support the development of more targeted and coordinated pro bono support.

PLANNING AND PRIORITISATION: aligning with the SDG framework provides an easy entry point for pro bono providers to think about how their support contributes to broader justice sector developments and prioritisation along the justice chain – for example through a focus on reducing the over-use of pretrial detention. Knowing where other providers are contributing can also help facilitate coordination and, at the planning stage of projects, pro bono support, including legal research and seed funding, can help explore a new area providing a basis for longer-term work.

COLLECTIVE LEARNING AND GUIDANCE: working within the same framework helps pro bono providers share information and lessons learnt within a set of agreed parameters. This can be useful for both large pro bono providers in designing and assessing their work and for smaller providers to draw on a broader pool of experience.

DEVELOPING A REPOSITORY OF KNOWLEDGE: as some of the examples highlight, similar challenges are faced across jurisdictions. Being able to draw from the

experiences of different pro bono providers for similar cases would be useful – as highlighted through the example of the work on the standing rules in Mauritius.

BUILDING TRUSTED PARTNERSHIPS AND EXPERTISE: all organisations and pro bono providers agreed that building trusted long-term partnerships facilitated the achievement of longer-term goals and allowed partner organisations to evolve and build on accumulated expertise. Particularly as the legal challenges facing organisations become more complex, the highly specialised and refined expertise of lawyers with access to global networks was seen as increasingly useful – if the right partnerships and timing could be forged.

NOTES

[1] SDG 16+ Putting SDG 16 Front and Centre at the HPLF through an annual thematic review https://bit.ly/2YNZQ7w

High level political forum – discussion on SDG 16 background paper July 2019 https://bit.ly/3lGsQ9L

[2] ICNL Civic Space and Covid-19 https://bit.ly/3BC0Klz

[3] Rome civil society declaration on SDG 16 June 2019 https://gppac.net/news/rome-civil-society-declaration-sdg16

[4] UN Department of Economic and Social Affairs SDGs accessed July 2021 https://sdgs.un.org/goals/goal16

[5] ROLE UK Improving the rule of law: mapping the UK legal pro bono sector https://bit.ly/2YMVQUe

[6] DLA Piper, DLA's Commitment to Sustainable Development Goal 16, 2021, https://www.dlapiper.com/en/global/insights/publications/2018/07/sustainable-development-goal/

[7] A4ID, 2018, Pro Bono and the Sustainable Development Goals https://bit.ly/3p3dbDE

[8] Clifford Chance, Adopting a theory of change to drive impact in pro bono and philanthropy, 2021, https://bit.ly/3p1PTxZ

[9] Open Society Justice Initiative, The Socio-Economic Impact of Pre-Trial Detention, 2011, https://bit.ly/3j3KPFg

[10] I Belong Campaign https://www.unhcr.org/ibelong/ Campaign to decriminalize petty offences https://pettyoffences.org/

[11] ROLE UK, Improving the Rule of Law in The Gambia: https://www.roleuk.org.uk/cases/improving-rule-law-gambia

A4ID

UKaid
from the British people