

Sterrenwachttlaan 11
2311 GW Leiden
Postbus 778
2300 AT Leiden
Email: njcm@law.leidenuniv.nl

Project Plan for the Establishment of a Dutch Pro Bono Clearinghouse

Floris van Hees
Sophie van Dijken

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Executive Summary

In this report we propose that the NJCM set up a clearinghouse in the Netherlands (i) to enable participating NGOs to receive pro bono legal advice from participating law firms and (ii) to encourage and assist participating law firms to (further) develop their internal pro bono culture.

The clearinghouse will be run by a Project Coordinator and, to the extent possible, supported by secondees from participating law firms or (student) interns. The Project Coordinator will receive guidance from a Project Board. The Project Coordinator and Project Board may rely on advice provided by an Advisory Committee composed of representatives of participating law firms and participating NGOs, completed by some independent members. During a pilot phase of three years, the clearinghouse will fall under the ultimate responsibility of the NJCM board. During the pilot phase, the clearinghouse will be financed by contributions from law firms and possibly from third-party funds.

The clearinghouse will be accessible to all Founding Members and to other law firms with a good reputation acceptable to the Board. No minimum commitment will be asked from the law firms, although they will be encouraged to take up to at least one assignment a year. In-house legal departments of companies and potential other pro bono legal assistance providers will not be actively invited to participate during the pilot phase.

Recipients of pro bono legal assistance will be NGOs based in The Netherlands that strive for the furtherance of public interest matters, especially human rights (in a broad sense), and that are acceptable to the Project Board.

The clearinghouse will focus on requests from participating NGOs which are in the public interest, e.g. because these requests contribute to that NGO's strategic goals or have substantial impact, either on society as a whole or on a group of people. The Project Coordinator will screen the requests and where necessary include value added services to the request. The Project Coordinator may for example assist the NGO in drafting the request. Subsequently, the clearinghouse will contact a participating law firm with the suitable expertise to handle the subject matter on behalf of that NGO. The clearinghouse will seek feedback from NGOs and law firms on their cooperation and, if necessary, it may advise regarding the advice process or content of the work products.

Participating law firms may be identified on the clearinghouse's website and law firms may consider their participation in the clearinghouse as part of their CSR strategy. Law firms may publicize the nature of the advice or support given and identify the NGO and/or the case in consultation with the relevant NGO.

The clearinghouse will be launched with a small event at which law firms and NGOs will be invited at the end of 2015. A larger, more public, event will be organised after the clearinghouse has been running for six to twelve months. For that event the media and appropriate politicians may be invited.

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1. Introduction

Background

In May 2014, the Dutch Section of the International Commission of Jurists (*Nederlands Juristen Comité voor de Mensenrechten, NJCM*) launched the Public Interest Litigation Project (*PILP*) to investigate, initiate and coordinate human rights litigation in the Netherlands. The PILP-coordinator, Jelle Klaas, soon identified a need among non-governmental organisations (*NGOs*) for assistance with legal questions also beyond litigation. The idea was born to establish a clearinghouse in the Netherlands that would broker between NGOs and legal professionals for pro bono legal advice.

In short, a clearinghouse facilitates the efficient provision of pro bono legal advice. It acts as an intermediary between people or organisations needing legal assistance and lawyers prepared and able to assist. By acting as a hub for the skills and expertise of the legal world, a pro bono clearinghouse provides NGOs and/or individuals with an identifiable mechanism through which they can find legal support. It provides access to a service that is otherwise not easily accessible and in that sense aims to promote and improve access to justice.¹

The NJCM asked a former Clifford Chance Amsterdam lawyer (Floris van Hees) to investigate the possibilities for establishing a clearinghouse in the Netherlands. The NJCM then invited 20 of the largest law firms based in the Netherlands to a presentation and roundtable discussion on the establishment of such a clearinghouse. On 13 May 2015, representatives of 11 of these law firms attended the roundtable discussion, which was held at DLA Piper's offices in Amsterdam. On 19 May 2015, the NJCM asked the 20 law firms whether they would be willing to contribute to a study that seeks to identify the best structure of the clearinghouse, both monetarily and by taking a survey. The letter of the NJCM can be found in Appendix 1 to this Project Plan. 14 law firms (the "Founding Members", listed in Appendix 2) confirmed their support of the clearinghouse. One of them, De Brauw Blackstone Westbroek, contributed by making an associate (Sophie van Dijken) available to assist with the research, while the others contributed financially to the research. The survey and the responses to the questions can be found in Appendix 3 to this report.

The researchers, Sophie and Floris, interviewed representatives of 11 NGOs (listed in Appendix 2) to hear their views on the need for, and the possible structure of, a clearinghouse. Floris attended a European Pro Bono Alliance meeting in Budapest in July 2015, during which representatives from existing clearinghouses in Europe shared experiences and best practices. At the meeting and in subsequent telephone conferences, Sophie and Floris interviewed representatives from several European clearinghouses (listed in Appendix 2) to collect best practices and ideas for establishing a clearinghouse in the Netherlands. Sophie and Floris also interviewed David Hillard, Pro Bono

¹ This description of a clearinghouse is derived from The Global Network for Public Interest Law and Advocates for International Development "Pro Bono Clearinghouse Manual", 2011.

Partner at Clayton Utz, one of Australia's largest law firms and a leading firm in pro bono work in Australia, and Fiona McLeay, CEO of Australia's most eminent clearinghouse Justice Connect.

Stakeholders

This Project Plan takes into account the different stakeholders of a clearinghouse. In addition to the NJCM, the stakeholders are: participating law firms and their lawyers (as providers of pro bono legal assistance), NGOs and possibly individuals (as recipients of pro bono legal assistance).

Lawyers and law firms play a critical role in achieving the clearinghouse's objectives. The clearinghouse stands or falls with their participation: it cannot function effectively without them participating in the clearinghouse and providing the actual pro bono service. The clearinghouse can serve to bridge the gap between lawyers seeking opportunities to provide free legal help and those who need it. Where necessary, the clearinghouse can assist with establishing a pro bono culture at participating law firms and among Dutch law firms in general. As such, lawyers can benefit from the services of the clearinghouse: it can give them access to interesting and meaningful opportunities for legal work in the public interest that have been screened and, where necessary, edited by the clearinghouse. Lawyers get the personal and professional satisfaction of empowering an organisation to use the law to create systemic change.

NGOs gain access to high quality legal advice, which they otherwise could not afford or which would otherwise be inaccessible to them, while the clearinghouse also depends on the participation of NGOs for their supply of legal questions to the clearinghouse.

The structure of the clearinghouse will reflect these dynamics. In this Project Plan, the authors have sought to accommodate and balance the interests of the NJCM, law firms, lawyers and NGOs. Where interests were not aligned, the authors have chosen for the option which they expect will provide the most efficient and successful clearinghouse.

Reading Guide

This Project Plan outlines a blue print for the clearinghouse's three-year pilot phase from 1 November 2015 – 31 October 2017. For ease of reference, the Project Plan roughly follows the structure of the survey. In addition, an appendix has been prepared which summarises the Project Plan and outlines the envisaged tasks of the Project Coordinator, Board and Advisory Committee (please see chapter 6 (Governance) for an elaboration of the Project Coordinator, Board and Advisory Committee). The Founding Members are requested to endorse this appendix. It is attached as Appendix 4.

2. Pro Bono Legal Assistance Providers

2.1. Law Firms

Criteria for Participation

All except one of the law firms participating in the survey agree that law firms must meet certain criteria to participate in the clearinghouse. Quality and reputation were mentioned as important factors in deciding whether a law firm should be admitted.

NGOs echo this as being important. While recognising that it will be challenging to determine meaningful objective criteria in this regard, it was nevertheless proposed that access to the clearinghouse would be restricted to law firms with a good reputation regarding the quality of their work product and expertise.

Our proposal is that law firms that contributed to the establishment of the clearinghouse (the Founding Members) are deemed to meet these criteria and may be admitted if they wish to participate. Other law firms will be assessed for admission by the Project Coordinator on a case-by-case basis, preferably on the basis of clear guidelines (to be drafted in consultation with the Board). Should there be a doubt about a law firm's admission to the clearinghouse, the Board may seek advice from the clearinghouse's Advisory Committee.

Despite the desire by some law firms to keep clearinghouse membership exclusive to the Founding Members, the authors of this Project Plan propose not to limit the amount of law firms, but to seek the participation of additional law firms if such need arises (e.g. because of funding needs or because a request cannot be allocated to a Founding Member). This will ensure that the clearinghouse offers access to a variety of legal experts and fields of law. Also, if law firms participate, more NGOs can be assisted (resulting in more diverse types of legal questions). Allowing a larger number of law firms, as well as a mix of larger commercial law firms and smaller (niche) firms to participate is a well-proven concept at other clearinghouses across Europe and in Australia. David Hillard, pro bono partner at a large commercial law firm in Australia, has also pointed out that involving only large commercial law firms could lead to problems when allocating requests, as these law firms generally have the same conflict questions or concerns.

Building relations

The clearinghouse will actively seek to build the supply of pro bono legal services. To that end, it will aim to raise awareness and seek the support of the local bar or law societies and all sectors of the legal profession, from law students to (retired) jurists.

Commitment

While some form of commitment is expected from participating law firms, no strict conditions will be imposed, such as requiring a number of hours of pro bono work per law firm or lawyer per year, or minimum years of commitment. The clearinghouse will, however, encourage participating law firms to institutionalise pro bono internally and, where possible and necessary, assist them in building a pro bono culture.

Monitoring

The clearinghouse will monitor whether participating law firms respond to requests and deliver quality work. If a law firm does not respond to requests over a certain period of time, the Project Coordinator may seek an explanation from the firm. If a law firm fails to answer to any requests or delivers work of inferior quality, the Board may request the Advisory Committee to advise on the exclusion of the law firm from the clearinghouse.

Fields of Expertise

Law firms may identify the fields of law in which they would like to provide pro bono legal advice. Requests received from NGOs will be sent to the law firms that have identified the field of law to which the request relates (except if a list is used, as described below in paragraph 5.2).

2.2. Companies

There was no consensus among the law firms whether companies (or their in-house legal departments) should also be able to become providers of pro bono legal aid through the clearinghouse, although many were in favour.

NGOs, on the other hand, were very ambivalent in this regard. Some did not mind the involvement of in-house legal departments of companies, while others expressed concerns about the lack of independence of in-house legal counsel. Also, they feared being associated with companies against which they may campaign. Even if they did not receive pro bono advice from specific companies, being part of the same clearinghouse raised concerns with respect to possible conflicts of interest arising among several of the NGOs interviewed. As some NGOs do not accept any corporate donations (to remain free to campaign against them and avoid being susceptible to criticism), they are very careful to not be perceived as depending on companies' aid in kind. Another concern related to the fact that, in general, in-house counsel are not subject to the same supervision as lawyers are and, as such, are not subject to the same code of conduct.

These concerns led us to propose that, at least in the pilot period, no in-house legal departments of companies be admitted to participate in the clearinghouse in a formal way. Most foreign clearinghouses that were interviewed do not work with companies either. The proposed approach

ensures that the clearinghouse first builds a solid foundation while working with law firms before it takes on new activities such as involving companies. A well-established clearinghouse will also be easier to sell to companies. In the meantime, however, law firms may reach out to their clients and offer them to contribute to pro bono legal advice in cases where this is suitable and provided the recipient of the legal advice agrees.

3. Pro Bono Legal Assistance Recipients

3.1. NGOs

Assessment Criteria for Selection of NGOs

A vast majority of law firms and NGOs interviewed agreed that NGOs have to meet certain criteria before being able to benefit from the services of the clearinghouse. The criteria may relate to the NGO's mission (for example, excluding political groups) or its long-term goals. Also, some (aspiring) NGOs may need to be asked to first get better organised (governance structure, mission statement) before their request may be accepted. Criteria may also assist in excluding NGOs that conflict with the values of the clearinghouse (for example, an NGO that engages in or promotes hate speech, discrimination or racism). A public interest mission may serve as a broad overarching eligibility criterion, not just in relation to the NGO, but also its request. The improvement of human rights may be an additional benchmark, while the criteria should not exclude organisations that promote animal rights or environmental conservation.

A common mechanism used by clearinghouses to assess NGO clients is the "Three Ms"— mission, matter, means.²

- Mission - Does the NGO have a "public benefit" mission?
- Matter - If they are not a public benefit or human rights NGO, do they still qualify because the particular matter they need help with would benefit the public?
- Means - Despite having neither a public benefit mission nor matter, does the NGO still qualify because neither it nor its members have the means to afford a lawyer?

We recommend that the Project Coordinator draft assessment criteria that are subject to approval by the Board. Once adopted, the criteria should be made public. They should guide the Project Coordinator's decision-making about the acceptance of requests from NGOs. The vast majority of law firms agreed that NGOs should be subject to an approval process. If the Project Coordinator has doubts about the eligibility of an NGO, the Board (possibly with advice from the Advisory Committee) can ultimately decide whether an NGO will be admitted or not.

² Derived from The Global Network for Public Interest Law and Advocates for International Development "Pro Bono Clearinghouse Manual", 2011.

At the same time, some NGO-like organisations, such as grassroots organisations or interest groups, may not meet the criteria for a host of reasons (for example, because they are not yet incorporated or well-established), while their strategies and long-term goals are worth supporting. If their requests have merit, these (aspiring) NGOs should also be able to access pro bono services via the clearinghouse. Therefore, the criteria should be seen as guidelines which do not have to be adhered to rigidly. Requests should be evaluated on a case-by-case basis on their merit. In cases of doubt, the Project Coordinator may ask the Board for advice.

An NGO whose request the clearinghouse refers to a law firm will become a client of the law firm. It will have a regular lawyer-client relationship with the lawyer handling the case. As a consequence, law firms will likely have to perform Know-Your-Client and conflict checks based on corporate or personal documents. This also means that it is the law firm's decision whether or not to provide legal advice to NGOs, while it is the NGO's decision whether or not it accepts the law firm as its legal advisor. Law firms may enter into an agreement with the NGO to describe and define the terms and conditions of the pro bono service between them.

Legal Aid

Special care should be taken to ensure that the clearinghouse and the pro bono advice rendered by law firms do not become a substitute for state-funded or subsidised legal aid. Only requests that do not qualify for such legal aid will be eligible for reference through the clearinghouse. As NGOs will not be eligible for legal aid in most cases, this is not expected to be problematic. However, this should be maintained as a strict criterion and NGOs should be requested to confirm that they do not qualify for such legal aid in relation to their request.

Screening and vetting

Often, clearinghouses require NGOs to fill out some sort of preliminary intake form that solicits basic information from the NGO, or otherwise conducts basic background research on the organisation. The clearinghouse should carefully screen each NGO seeking pro bono services through its clearinghouses for infrastructure quality, good business practices, open communication, accountability standards, trustees, directors and/or staff (for example, to ensure there is no association with terrorism or other criminal activity) and professionalism. When a new client is being considered, it is considered good practice by foreign clearinghouses to conduct basic background research on the NGO's website, donors, annual reports, active projects and partners. It is proposed that the clearinghouse performs these kinds of checks.

Building relationships

The clearinghouse should work actively to identify the demand for pro bono legal services. To that end, its Board should work with NGOs to understand their needs, and let them know what pro bono legal services may be available to assist them in achieving their goals.

3.2. Other: Grassroots / Interest Groups

None of the NGOs and law firms interviewed was against interest groups gaining access to the clearinghouse. Some NGOs pointed out that it was often these groups that needed help getting organised, and they did not yet have contacts with legal providers, standard contracts, etc. At the same time, there was some concern about whether the clearinghouse could be overwhelmed by loosely organised groups in need of all kinds of assistance. In deciding whether to accept these groups, the clearinghouse should review whether the group is pursuing a viable goal that is in the general public interest. In cases of doubt, the Board could seek advice from the Advisory Committee.

3.3. Individuals

Law firms and NGOs were more divided on the question of whether the clearinghouse should also facilitate legal support for individuals. It was noted that individuals who cannot afford a lawyer are eligible for state-subsidised legal aid. Granting them access to pro bono legal advice through the clearinghouse could be a detriment to the existence of the legal aid system, leading to it to being further reduced. As stated above, overlap between the clearinghouse and the state-subsidised legal aid system must be avoided.

Criticism regarding the facilitation of pro bono legal advice to individuals could also potentially relate to taking away work from smaller law firms. Nevertheless, there may be situations in which an individual is not eligible for state-subsidised legal aid, but has a legal issue that could severely impact his or her human rights. Moreover, the legal issue could raise systemic questions that would be in the public interest to resolve. In that regard, individuals may be better suited for “test cases” (human rights litigation) than NGOs as the latter may not have standing in court.

Most of the European clearinghouses interviewed did not work with individuals and limited themselves to providing legal advice for NGOs. Several of the clearinghouses indicated that they occasionally provided legal advice via NGOs (for example, to support a collaboration between an NGO with a legal advice service for asylum seekers by linking them to a law firm that provided pro bono legal representation to individual applicants). Such partnerships could provide a valuable way to address the unmet legal needs of individuals.

We propose that individuals should thus not be categorically denied access to the clearinghouse. Rather, requests by individuals should be assessed on their merits on a case-by-case basis by the

clearinghouse and accepted, under the conditions that the individual: (i) does not qualify for legal aid and (ii) has a legal problem that could have a severe impact on his or her human rights or (iii) the case itself is in the public interest. Furthermore, it is proposed that individuals are primarily assisted through collaboration with an NGO, which should check that the individual is ineligible for legal aid unable to pay for legal assistance. In cases of doubt whether an individual should be assisted, the Project Coordinator should ask the Board for guidance. The clearinghouse may develop a process to ensure that individuals eligible to receive state-funded legal aid are directed to the appropriate state services.

4. Scope and Type of Matters in which the Clearinghouse Can Assist

Legal Requests

There was no consensus as to the type of requests that NGOs could submit. Most law firms and NGOs expressed a preference for limiting the role of the clearinghouse to referring legal questions, although none of the law firms indicated that an NGO's request should necessarily relate to human rights. Other topics law firms demonstrated interest in were animal rights, environmental law, housing as well as corporate housekeeping.

The NJCM is a human rights association and the furtherance of human rights is at the core of its organisation. As initiator of the clearinghouse a human rights aspect to NGOs' requests would therefore seem appropriate. Nevertheless, NGOs may in some instances best be helped by receiving advice on their incorporation, structure, by-laws, intellectual property rights, employment law and contracts. These fields of law are often within the expertise of large law firms (such as the Founding Members), so offering this type of work to them would provide a low barrier to accepting requests and developing or enhancing a pro bono culture. Of course, law firms may specify that they prefer to receive requests related to human rights.

While some European clearinghouses limit eligible requests to strategic human rights litigation, many clearinghouses stress the value of not focusing solely on human rights issues or litigation, but also accepting requests for help with day-to-day legal issues and general legal advice and assistance.

Therefore, the type of requests which NGOs may submit to the clearinghouse should not be limited to human rights, but rather extend to all sorts of legal questions. It is envisioned that the clearinghouse facilitates pro bono legal advice in two ways:

- Legal advice in conjunction with an organisation's policy and campaign work, for example, advice on legislative proposals, strategic litigation or legal clarification for a national campaign.

- Legal advice on organisational issues, such as a governance "health-check", a data protection policy, employment law or property issues.

Nevertheless, the Project Coordinator should encourage NGOs to submit requests relating to strategic projects, that is, projects that relate to the goals of the NGO in question. It may receive such requests also through PILP, which focuses on strategic litigation. Where necessary, the Project Coordinator could assist the NGOs in formulating their requests. Also, pushing for strategic projects will ensure that the clearinghouse is not used as a replacement for in-house counsel or as a helpdesk for all sorts of legal questions for which they would normally be willing and able to pay.

Focusing on strategic project implies that the clearinghouse defines the strategic goals it wishes to support, such as human rights and environmental conservation. It is proposed that this is done in consultation with the NJCM, the Advisory Committee and the law firms.

Non-legal Requests

The survey included one question on whether all types of requests from NGOs should be eligible. In essence the question was whether the clearinghouse should also seek and engage service providers outside the legal realm. For example, a marketing company could be asked to assist an NGO with a marketing campaign on a pro bono basis.

The answers and comments provided demonstrate that the question was not entirely clear. Nevertheless, the law firms were generally of the view that the clearinghouse should limit itself to referring legal questions.

NGOs agreed with this and generally expressed that the NJCM (as initiator of the clearinghouse) should stay within the legal realm. The foreign clearinghouses we interviewed also focus on legal requests. An extension of services to also cover pro bono services outside of legal advice may be contemplated after the pilot phase (when companies that provide such services may get involved in the clearinghouse).

5. Profile of the Clearinghouse

5.1. Pro Bono

All interviewees agreed on one topic: pro bono means that the law firm does the work free of charge. It is therefore important to have clarity about what is meant when referring to "pro bono" in the context of this Project Plan and the clearinghouse. The term "pro bono" derives from the Latin phrase *pro bono publico*, which means "for the public good." The term is used within the legal profession to refer to lawyers' provision of free legal services to those in need, but otherwise without access to such services. While the kind of work that is considered to be "pro bono" may

vary depending on local legal traditions, cultures or social backgrounds, and there is an on-going discussion among clearinghouses as to the exact definition of “pro bono”, the term can generally be defined as having certain of the following characteristics:³

- legal work done by lawyers;
- for the public good, rather than for commercial interests;
- voluntary and uncompensated for the lawyer;
- free for the client; and
- delivered with the same professional standard as paid legal work.

Court fees will in principle not be covered by the term “pro bono” and will have to be paid by the NGO. As NGOs will seek to receive free legal advice through the clearinghouse, they will be asked to refrain – at least for a certain period of time – from submitting the same request to other law firms (whether as pro bono or a paid service). This will prevent the clearinghouse from using its efforts in vain and the law firms from declining requests in the hope that they will later receive the same request for payment.

5.2. Posting and Allocating Requests

Method for Posting and Allocating Requests

Law firms and NGOs were divided on the method of how the clearinghouse should offer NGO requests to law firms. There are many ways in which the clearinghouse can submit requests for legal assistance to participating lawyers. Different models for communicating requests include:

- circulating all requests selected by the clearinghouse to all lawyers/firms on a circulation list on a weekly/monthly basis;
- posting all requests selected by the clearinghouse on a website for lawyers to review whenever convenient;
- circulating requests selected by the clearinghouse only to a sub-group of lawyers based on their relevant expertise;
- selecting lawyers from a database based on how recently they have taken on a pro bono matter;
- contacting individual lawyers/firms directly regarding a particular request.

Several foreign clearinghouses indicated the use of an e-mail list to distribute cases and requests. The clearinghouse collects requests over a certain period of time, draws up a list containing summaries of the requests and periodically sends out the list to participating law firms. This approach has the advantage that the requests come to the attention of all participating law firms at the same time, creating less work for the clearinghouse, but more

³ This definition is derived from The Global Network for Public Interest Law and Advocates for International Development "Pro Bono Clearinghouse Manual", 2011.

work for the participating law firms. It does, however, raise questions concerning confidentiality. Also, the approach is more anonymous, which could conceivably make it easier for law firms to pass on requests.

A more personalised approach would involve the clearinghouse contacting individual law firms based on expertise and pre-expressed preferences and match these with the preferences of the NGO involved. The clearinghouse can inquire whether that firm would be willing and able to take up the assignment. This would keep the assignment confidential and give the clearinghouse a tool to fairly distribute the requests among the law firms. In addition, the dialogue between the clearinghouse and a law firm that is part of this approach can lead to the allocation of more controversial or politically sensitive request to be taken up which may be left unanswered if put on a list. Justice Connect in Australia stated that this approach was a key to its success and one that separated them from other clearinghouses. Potential disadvantages of this approach are a higher workload for the clearinghouse and less visibility and awareness among law firms of the available requests and assignments. Therefore, participating law firms must put some trust in the clearinghouse for this approach to work.

As the clearinghouse needs to build good relationships with both NGOs and law firms from the start, it is proposed that the clearinghouse use this personalised approach, meaning that it contacts law firms on an individual basis for requests that fit with that law firm's expertise and preferences. The clearinghouse will select the law firm in consultation with the NGO, also taking into account a fair distribution of requests. If that law firm declines or has a conflict, the clearinghouse will contact another law firm based on the same criteria. All law firms approached in this manner will be asked to treat the request confidentially. The final match is made only if and when both the provider and the recipient of the legal services agree: both the NGO and the law firms may decline to work together.

We embrace the advice of one of the foreign clearinghouses that was consulted, PILnet, which stated that *"it is important that the method chosen is kept under review and discussed regularly with participating lawyers. It is also important to manage the expectations of participating lawyers as to how often they can undertake a pro bono project."*

For the individualised approach to work, it is necessary for the clearinghouse ensures that it receives and deserves the necessary level of trust from its stakeholders. On the administrative side, it needs to build and maintain a database with the law firms' preferences, fields of expertise and the type of assignments they have taken up.

Communication with law firms regarding distribution of assignments

Law firms will be asked to provide the names of contact persons at their law firms. This may be one person, a group e-mail address or a number of individuals. The law firms, as a group, expressed no clear preference in this regard, so each law firm should indicate how they wish to be contacted. More contacts will allow the requests to be dealt with more quickly.

5.3. Quality Control

Ensuring High Standards

An important topic raised during the roundtable discussion in May 2015 concerns quality control. The law firms participating in the clearinghouse attach great value to their reputation. Thus, their involvement in the clearinghouse must not in any event have adverse consequences for their reputation. Proper screening of clients and the vetting of requests will be important in establishing the clearinghouse's legitimacy. Lawyers and law firms that agree to take on pro bono matters must be able to rely on the clearinghouse's screening function. Potential risks in this respect are of the clearinghouse not properly performing its tasks, law firms providing inferior legal advice or delivering legal advice too late or not at all. Such incidents would reflect badly on the clearinghouse and, by extension, to all participating stakeholders. A quality control mechanism to prevent these types of incidents may be implemented by various means, most notably by helping NGOs with the request and, if necessary, reviewing work products.

Assistance with Requests

With regard to legal aid recipients, the clearinghouse can assist NGOs in formulating their requests. Law firms overwhelmingly support this proposal and NGOs also see this as the added value *par excellence* of the clearinghouse. Experienced NGOs can be expected to submit well-drafted requests and should be encouraged to do so to minimise the clearinghouse's workload. Others can be assisted in phrasing the legal request and summarising the facts and evidence. A standard form to summarise the details of the request (parties, facts, legal question(s), contact person, deadline) to be completed by the NGOs (with help from the clearinghouse if necessary) will assist all stakeholders.

Monitoring Progress and Deadlines

While a majority of law firms support the proposal that the clearinghouse be kept informed of the progress of the law firm's services (or had no preference), only a minority saw a role for the clearinghouse in ensuring that deadlines were met. The clearinghouse should communicate with the NGO about whether they are receiving progress reports or e-mails and encourage them to liaise directly with the law firms. The clearinghouse can take note of deadlines set for requests and, if it does not receive a copy of the legal advice by that date, encourage the NGO to send

reminders to the law firm involved. The burden to monitor progress and deadlines should lie with the NGO, with the clearinghouse merely acting as facilitator. This is also a well-established approach that clearinghouses abroad often take, so it is proposed that the Dutch clearinghouse operate accordingly.

Review of Work Product

Law firms disagreed when it came to whether the clearinghouse should review work products of the law firms. Some stated that the quality of the final work product was a matter between the law firm and the NGO. Others expressed concern that it would be too time-consuming. Some law firms suggested that the work product should be reviewed to some extent. The NGOs echoed the views stated above.

We believe that an important part of ensuring the quality of the work facilitated by the clearinghouse – and by extension the quality of the clearinghouse itself – is having some form of review mechanism in place. At the same time, the main responsibility for reviewing the quality of the law firm's work lies with the NGOs. They should do so and notify the clearinghouse if they have doubts regarding the level of quality and do not feel comfortable raising this with the law firm in question. The clearinghouse can then do its own review and make a rough assessment whether the work delivered by the law firm responds to the request, and whether it is written in a structured and understandable fashion. Such a review mechanism aims to ensure that law firms deliver work products of the same quality as work performed for paying clients, while it also allows the clearinghouse to identify inferior work products. In such cases, the clearinghouse can liaise with the law firm to discuss and ask them to improve the quality.

As stated, this review-on-demand does not diminish in any way the law firm's responsibility to provide top quality legal advice or the NGO's responsibility to check whether they have received sound advice and discuss it with the law firm if they did not. In this respect, the law firm and the NGO have a lawyer-client relationship in every sense. Yet, as some NGOs commented, an NGO may feel a barrier to raise quality concerns with the law firm. They may not feel comfortable or may feel it is not appropriate for them to criticise the work product because they received it free of charge. Here lies a role for the clearinghouse to keep in touch with both the client (NGO) and the law firm/lawyer to ensure the matter is completed and that both parties are satisfied. As a short term remedy, in such instances the clearinghouse may act as intermediary between the parties involved and speak to its contacts at the law firm. In the long term, NGOs should be encouraged and, where necessary, should feel free to directly address issues of quality with the law firms.

Feedback

All interviewees agreed that the clearinghouse should seek feedback from NGOs and law firms after the pro bono work has been completed to evaluate completed projects. This will help the clearinghouse to assess the impact of the pro bono work and whether the clearinghouse is meeting its aims. It may also assist law firms and NGOs to evaluate their pro bono projects. Collecting feedback on the pro bono work can also encourage more lawyers to get involved. It is proposed that feedback is obtained informally during the pilot period e.g. by phone calls or in-person meetings with NGOs or law firms, depending on the nature of the clients and projects. At a later stage, a standard form or survey may be used. This is a proven concept at foreign clearinghouses.

Involvement of Universities

In cases where academic research is required or helpful, the clearinghouse can also seek assistance from universities. A large majority of law firms agreed with this proposal. The NJCM (itself embedded in Leyden University) has long standing contacts with all law faculties in the Netherlands, in particular with human rights experts and coordinators of university law clinics. Once the clearinghouse is up and running, it is proposed that the clearinghouse use the NJCM and PILP to involve universities in cases where this is useful and appropriate.

5.4. Publicity

Disclosure of Participation in Clearinghouse - Website and CSR

An overwhelming majority of law firms agreed with the propositions regarding publicising their participation in the clearinghouse. To address this, clearinghouse stakeholders will be identified on the clearinghouse website if so desired. NGOs agreed with this proposal.

Furthermore, the majority of law firms indicated that they wish to publicise their clearinghouse membership as being part of their CSR strategy. We recognise that the clearinghouse will quite probably serve as an important tool for law firms to fulfil their CSR commitments. At the same time, law firms that choose to publicise their participation in the clearinghouse will be expected to respond to requests from NGOs. In other words, mere participation (on paper) in the clearinghouse structure should not be considered sufficient to justify a law firm advertising its participation. If a law firm advertises its participation in the clearinghouse, but does not respond to requests, the clearinghouse should engage in a dialogue with such firm.

Law firms may also want to use their access to interesting pro bono matters through the clearinghouse as a way of allowing young lawyers to gain experience and satisfy their wishes to work in the public interest.

Disclosure of Specific Projects

Several law firms indicated that they may wish to disclose or publicise specific assignments they have completed for NGOs. NGOs emphasised that this should only be done with the consent of the NGO. The clearinghouse may include a line in the standard request form where NGOs can indicate whether they object to the assignment being made public and how they would like their relationship to be (e.g. anonymous, general description). As all stakeholders will agree, disclosure of assignments undertaken by law firms may only take place with the consent of the NGO.

6. Governance

Project Coordinator

In accordance with the law firms' preferences, the clearinghouse should be led by a Project Coordinator. The Project Coordinator would be in charge of the day-to-day business of the clearinghouse. He or she could be supported by an administrative staff member if such support is needed and financially possible. Whether there is such a need will depend on how intensively the NGOs use the clearinghouse and how much time and effort it will take to allocate requests. This will be evaluated after three months and again after six months. If such need arises, support could be arranged from universities (students doing an internship) or from participating law firms (seconded junior lawyers, as set out below).

Board

If the Project Coordinator needs assistance or guidance, it would be useful if the Project Coordinator could draw on the judgment and knowledge of experts. PILP uses a structure whereby three members of the board of the NJCM act as executive members of the project board of PILP. These executive board members are, together with the NJCM's executive director and the PILP Coordinator, responsible for the management of PILP. They shape the project and maintain close contacts among each other. This setup has worked well, so it is proposed that the clearinghouse put in place a similar body. The Board, consisting of three (current or former) NJCM board members can act as sounding board for the Project Coordinator. The Project Coordinator can approach the Board informally and as frequently as necessary for questions regarding the admission of NGOs and requests. The Board may also be asked to assist when quality issues arise or a law firm is unresponsive.

Secondees

Law firms either agreed or had no preference with respect to the possibility of the clearinghouse being supported by secondees from law firms. The idea of this concept is threefold: (i) it keeps the

clearinghouse's running costs low; (ii) it creates a close connection between the participating law firms and the clearinghouse; and (iii) it gives the secondees an opportunity to acquire new, inspiring experience by giving them insight into the legal problems faced by NGOs, their resolution and the management of a clearinghouse.

Junior lawyers bear heavy and time-consuming responsibilities from the start of their professional education. It is thus proposed that the secondments be in no way mandatory and depend on availability. Also, their duration and intensity (how many days a week) should be kept flexible.⁴

Advisory Committee

Law firms and NGOs overwhelmingly support the idea of establishing an Advisory Committee to advise on requests, membership and finances. Having an Advisory Committee serves multiple goals. It will be a sounding board for questions or deliberations posed by the Board (for example, if the Board has doubts on whether a request should be admitted; whether an interest group or individual should be assisted, etc.). In addition, it will have a representative function. Having experienced and reputable individuals on the Advisory Committee will reflect the seriousness and professionalism of the clearinghouse and give it weight. Finally, having the various stakeholders involved in the clearinghouse via the Advisory Committee will build a stronger relationship between them and contribute to building a pro bono culture at law firms and NGOs. This is also why in our view both law firms and NGOs should be represented on the Advisory Committee. If the clearinghouse does not receive requests from NGOs, the clearinghouse has no function, so NGOs need to be made aware of and get involved with the clearinghouse. Representation on the Advisory Committee is one of the ways to involve them.

To ensure that the Advisory Committee functions efficiently, the committee should consist of nine committee members: three law firm members, three NGO members, and three independent members (for example, human rights experts, university professors, academics, etc.).

Both law firms and NGOs express concerns about whether representatives of NGOs and law firms should be eligible to sit on the Advisory Committee. These concerns mainly relate to independence and conflict of interests. To address this concern, it may be prescribed that representatives of NGOs or law firms do not take part in deliberations about their own NGO/law firm.

As not all law firms and NGOs that participate in the clearinghouse can be represented on the Advisory Committee, membership of each law firm is limited to two years. After two years,

⁴ It is expected that the Project Coordinator will be quite busy in the first few months after the launch. The experience of other clearinghouses is that the clearinghouse will have to establish personal contacts with law firms and NGOs from the start to build relationships, keep the momentum and generate requests. During this time, it will be useful to have the assistance of a secondee. Law firms will be encouraged to make a secondee available to assist with the start-up of the clearinghouse. The concept of assistance from a law firm's secondee proved very successful in the research for and the drafting of this Project Plan.

membership rotates to other law firms and NGOs. The Board could ask law firms and NGOs to put forward names of prospective representatives. If more than three law firms or NGOs put names forward, priority could be given to law firms or NGOs which were not represented in the previous two years. If this does not lead to a resolution, a decision may be made by drawing lots.

In addition to the representatives of law firms and NGOs, an NCJM representatives and two independent advisors of high moral character and good reputation (such as legal experts (academics), the former National Ombudsman, a former Minister of Justice, retired lawyers or judges, etc.) should sit on the Advisory Committee. To ensure continuity and to avoid frequently having to search for suitable candidates, independent members should be appointed for three years.

Yearly Roundtable

Law firms will be invited to an annual meeting where the clearinghouse reports on its work, presents the latest developments and discusses matters of budget, strategy, sponsoring, participation, etc. All law firms supported the idea of an annual meeting.

Role of NJCM

A majority of law firms agreed that the clearinghouse should be established and remain under the supervision of the NJCM (a few law firms expressed no preference). No law firm was against the NJCM being represented on the Advisory Committee or Board, and only one law firm was opposed to the idea that the NJCM should appoint and dismiss the Project Coordinator. NGOs largely supported the proposals concerning the NJCM's role in the clearinghouse.

The outcome of the survey leads to the following proposal. The NJCM will establish the clearinghouse. This means that it will take the necessary steps to launch it, have law firms sign up, and search and select the first Project Coordinator and Board member(s). As set out above, the NJCM will also make a representative available to sit on the Advisory Committee. This representative should be the chairman of the Advisory Committee. With regard to the dismissal and appointment of the Project Coordinator, this authority should be vested in the Board, although the Board will commit to implement advice from the Advisory Committee in this regard.

Legal Structure and Evaluation

A majority of the law firms stated that the clearinghouse should be evaluated *before* the end of the pilot phase, including the legal structure. At the same time, a majority law of the firms also indicated that the legal structure of the clearinghouse should be decided *after* the pilot period. Nothing conclusive can thus be said about the preference of the law firms with regard to the moment at which the legal structure should be decided.

It is clear that some form of legal structure is needed for the clearinghouse to operate from as of the start of the pilot phase. Possible legal structures could be a “project” of the NJCM (which itself is an association – *vereniging* – under Dutch law), or a foundation (*stichting*) or an association that exists independently of the NJCM.

A project provides flexibility during the pilot phase, but this flexibility also means that there is less control over or legal certainty about the responsibilities of (corporate organs of) the clearinghouse, its ability to enter into agreements, etc. Foundations and associations are established legal concepts under Dutch law. This has as an advantage that they have legal personality and organs with distinct responsibilities and obligations. The envisaged structure of the clearinghouse with a Board, Advisory Committee and services to its participants would fit very well within a foundation or an association. However, the association brings with it additional obligations for a board as compared to a foundation (notably with regard to financial reporting). As flexibility in the pilot period is considered important, it is proposed that the clearinghouse be set up as a project of the NJCM, similar to PILP. The Project Coordinator would receive regular advice from the Board and be supervised by an Advisory Committee composed of law firms, NGO and NJCM representatives and independent members (as described above). The law firms and NGOs would be regarded as participants (*deelnemers*) in the project.

In view of the time consuming process of ensuring third-party funding, it is proposed that the pilot phase last three years. This will give the clearinghouse ample time to establish itself and evaluate results, while it also allows participating law firms to gain experience with the clearinghouse. This does not mean that the clearinghouse will only be evaluated after three years. Evaluations will take place in any event each year at the annual roundtable.

7. Funding / Financial Sustainability

Funding

One of the most important issues to consider before establishing the clearinghouse is how to ensure its funding. As the clearinghouse will generally operate as an NGO, the classic non-profit fundraising strategies will apply. The aim of the clearinghouse will be to obtain both core funding as well as project-based funding.

The foreign clearinghouses involved in the research have different funding structures. One clearinghouse – that is also active globally – established a successful sponsorship structure and uses annual sponsorship packages, which entails major contributors gaining access to more strategic or high-profile projects. Sponsorship by participating law firms is on a voluntary basis, and the clearinghouse in question indicated that a majority of law firms contributed even though it was on a voluntary basis. A small minority of the clearinghouses depend completely on third-

party grants. Several clearinghouses have a combined funding structure and are financed in part by grants of different kind of funds as well as by donations or fairly symbolic membership fees by law firms (for example, completely voluntary based or based on the number of associates in the firm). A drawback of the dependence on grants may be the constant struggle to raise new funds – as most grants are awarded for a limited time – leading to an uncertain basis for ensuring the continuity of the clearinghouse.

Guidance by Funding Needs

The law firms were unanimous in their opinion that the clearinghouse should not be guided by its financing needs when it comes to allocating requests to law firms. The clearinghouse will not treat any law firms differently (giving preferential treatment to law firms that have contributed the most), but will always seek the best match between the NGO's requests and a law firm's expertise and availability.

Nominal Fee by NGOs

Only two of the law firms indicated that NGOs should pay a nominal fee to use the clearinghouse's services. Some NGOs stated that such a fee, even if it were nominal, would deter small NGOs from using the clearinghouse's services. As this would be contrary to the goal and purpose of the clearinghouse, the NGOs should not be asked to make any financial payments to the clearinghouse. That way, the clearinghouse can truly provide free-of-charge matchmaking services to secure pro bono assistance for NGOs.

Financing by Law Firms

Law firms overwhelmingly indicated that the participating law firms should collectively cover the costs of the clearinghouse. No law firm opposed this proposition. This corresponds with the idea that the clearinghouse would provide a service of value to the law firms and the lawyers employed by the firms. In their comments, law firms did state that the clearinghouse should seek additional funds or sponsors and that their support depended on the amount involved. The amount of the contribution by law firms would also be relevant for getting smaller law firms to participate in the clearinghouse: the (financial) hurdle should not be too high.

Based on the law firms' answers, the contribution to be paid remains to be decided. A majority of the law firms indicated that the payment should not be a nominal fee. Thus, the law firms should collectively finance a part of the clearinghouse's budget. In addition, the clearinghouse will seek contributions from public interest funds, such as foundations that support access to justice, human rights causes or environmental causes.

The contributions of the law firms should be proportional to their size, meaning that large law firms (law firms with more than 60 lawyers or fiscal advisors) will be asked to contribute more

than medium-sized law firms (firms between 20 – 60 lawyers) and small law firms (fewer than 20 lawyers). Law firms will also be invited to make a voluntary contribution to enable those law firms that wish to contribute more than their contribution fee to do so.

Payment for Mediation Services

The law firms rejected the proposition that the clearinghouse should charge fees for referring specific cases, meaning that it would charge each law firm depending on the services supplied to that law firm. Therefore, the clearinghouse should not do so, and should be financed solely through annual contributions.

Evaluation of the Funding Structure

Whether the proposed financing structure will work depends on the willingness of the law firms to contribute on an annual basis; the number of participating law firms and the availability of other funds. All law firms agreed that the funding structure should be evaluated before the end of the pilot phase. A draft budget for the pilot phase is attached as Appendix 5. It takes into account the different tasks that the clearinghouse could perform. It will serve as basis of the evaluation at the end of the pilot phase.

8. Launch

High Profile Event

Most law firms agreed with the idea of having a high profile launch event, although some law firms also propose that this should take place after the pilot phase. We agree that there is something to say about hosting an event if the concept has proven successful, so a public launch event after the clearinghouse has been in operation (e.g. after six to twelve months) makes sense. At the same time, we would like to generate momentum at the start of the pilot, give publicity to the clearinghouse and give NGOs and law firms a chance to meet informally. We believe this would be useful, as the clearinghouse will need some “presence” for it to be contacted by NGOs and supported by a good number of law firms.

Therefore, it is proposed to have a small (soft launch) event at the start of the clearinghouse, with only the NJCM, law firms and some NGOs present. After a few months of successfully matching requests with lawyers, a more public, high profile (hard launch) event may be organised. At such event case studies may be presented to the media.

Media

The Project Coordinator, Board and NJCM will do what they can to promote the clearinghouse and make sure it becomes known among lawyers, NGOs, academics, etc. Keeping an updated website, sending out newsletters and communicating through social media will help grow both the clearinghouse and pro bono throughout the Netherlands. Nevertheless, it would be useful if a national newspaper wrote an article about the clearinghouse in its initial phase. Ideally, the clearinghouse would already be able to showcase some successful projects. The hard launch event would be an opportunity par excellence to showcase the support and ambitions of the clearinghouse. The Board should prepare a press release to promote the event. Most law firms supported inviting the media.

Invitees

A majority of law firms are in favour of inviting both NGOs and politicians to a public hard launch event. It is equally important to gain NGO support at the outset to generate volume of requests, as well as to gain support from the legal community. Therefore, NGOs should be invited to both the soft launch and hard launch. We propose using the hard launch to establish relationships with the Bar and Law Society. The Board and NJCM can compile a list of NGOs and suitable politicians to invite to the launch events.

9. A Vision for the Future

The enthusiasm displayed during our interviews with law firms and NGOs give us confidence that the clearinghouse meets a demand and that it will be a success. Furthermore, the experiences of clearinghouses abroad predict that the clearinghouse can grow beyond being a broker between NGOs and law firms for pro bono legal advice. Below are some of the ideas, experiences and good practices that paint a picture of the direction in which the clearinghouse may develop over time.

Promoting a Pro Bono Culture

The clearinghouse may promote the creation of a pro bono culture in the Dutch legal community and inspire lawyers to consider pro bono work as part of their professional duty. The clearinghouse may have a role in entrenching a structured approach to pro bono advice in the Dutch legal landscape, not just among law firms but also companies. To give an indication of how engrained pro bono work is in the legal communities of some countries: prestigious law firms in Australia incorporate pro bono targets in their bonus system. The clearinghouse could fulfil a role in stimulating law firms to make pro bono work a regular part of their endeavours.

The clearinghouse could play a major role in engaging the legal profession to take up pro bono assignments. To appreciate and recognise the pro bono community, the clearinghouse could

organise pro bono dinners and other events to express its thanks to lawyers who dedicated their time and effort to pro bono and to encourage them to continue to do so.

Equipping Lawyers to Advance the Public Interest

The clearinghouse can only fulfil its potential and goals (improving access to justice) with the help of a passionate and dedicated cadre of advocates. That is why one of the clearinghouse's primary goals should be to inspire lawyers to advance the public interest and equip them with the necessary knowledge, skills and opportunities to do so.

The clearinghouse may help law firms to further develop their pro bono practice. Several international law firms have pro bono departments headed by a pro bono partner. They may focus on certain topics or areas, such as the marginalised, homeless or stateless and provide advice on these topics, sometimes after providing training to their lawyers in those sectors. In the Netherlands, pro bono culture is not (yet) very developed and law firms may first wish to give pro bono advice on topics they are familiar with. The clearinghouse could encourage law firms to stretch beyond “safe” topics and incite them to move towards more human rights or environmental legal advice. Ultimately, the clearinghouse may be able to bring about lasting close relationships between law firms (and key lawyers) and NGOs to which the law firms provide pro bono advice on a regular basis or even second a lawyer to assist an NGO for a few months. Conversely, NGOs can assist law firms, e.g. to formulate CSR goals or manage waste and energy use.

To that end, the clearinghouse could provide or facilitate trainings or seminars for lawyers to ensure that they are equipped to take on cases concerning areas of law they are not yet familiar with (for example, refugee law). The clearinghouse may also serve as provider (and possibly supervisor) of cases for young lawyers to fulfil the litigation requirements of the Dutch bar association.

Empowering NGOs to Use Legal Expertise to Advance Their Goals

The clearinghouse could go beyond matching existing unmet legal requests of NGOs with the expertise and preference of law firms. Several foreign clearinghouses not only provide access to lawyers willing to take on cases, but also arrange for pro bono lawyers to deliver legal training sessions or workshops in their area of expertise to NGO staff. This better equips organisations to advocate for their clients and goals.

The clearinghouse could organise workshops for pro bono and legal clinics on certain topics. It could organise a pro bono day on which legal experts are available to meet NGOs and learn about their legal challenges.

Finally, the clearinghouse could in the future act as a knowledge sharing centre, meaning that it collects legal advice. If the advice requested is something that other organisations could benefit from, the clearinghouse could ask that the advice can be shared with others (with consent of the law firm and NGO concerned).

Appendix 1: Project Proposal to Law Firms

Amsterdam, 19 May 2015

Project proposal

Clearing the way for a Pro Bono Clearinghouse in the Netherlands

Background

The Dutch section of the International Commission of Jurists (Nederlands Juristen Comité voor de Mensenrechten, NJCM) has identified a need and demand for the establishment of a clearinghouse for human rights related questions in the Netherlands. This became evident in the starting phase of NJCM's Public Interest Litigation Project (PILP) and from the roundtable discussion with major Dutch law firms on 13 May 2015, which NJCM organized to introduce the idea of a clearinghouse, to meet their pro bono contacts and to generate enthusiasm and support for the clearinghouse.

NJCM wishes to research the most appropriate setup for such a clearinghouse (CH) in the Netherlands. With this research the following questions will be answered: who are the key stakeholders (NGOs, law firms, universities, etc.), which tasks should the CH perform, which value-added services could the CH provide to stakeholders, how should the CH be organized, how can it be financed, and what does NJCM(-PILP) bring to the table?

Aim of this proposal

This project proposal is aimed at realizing the research on a Pro Bono Clearinghouse in the Netherlands.

With the necessary financial support NJCM will undertake this research, including: (i) inquiring into the tasks and structure of existing CHs abroad (such as PILnet), (ii) liaising with these CHs and consulting them on their 'lessons learned', (iii) investigating the functioning and experiences of similar initiatives or organisations that are active in this field in the Netherlands, (iv) determining the possible stakeholders of a CH in the Netherlands, (v) investigating the needs and wishes of these stakeholders through a survey and interviews, and (vi) drafting a project plan for a two-year pilot of a CH in the Netherlands.

The outcome of the research will be presented to the stakeholders to obtain their final input and feedback, and to obtain further (financial and/or pro bono) support for the CH from participating law firms and/or in-house legal counsel departments.

General idea of a CH in the Netherlands

Although the details of the CH will depend on the outcome of the research and feedback from stakeholders, the general idea is that the CH would function as a pro-active broker between law firms, in-house legal counsel departments, NGOs, universities, law clinics and academic experts. It would be the first point of contact for NGOs with requests for legal advice and connect those who seek legal advice with those who can provide it. The CH would screen NGOs, review and discuss requests, summarize the cases, formulate legal questions, and liaise with law firms, in-house legal counsel and academics for pro bono legal advice. The CH would thus enrich the legal questions submitted by stakeholders and propose them to selected law firms.

By virtue of its ties with PILP, through NJCM, the CH will also submit public interest litigation cases to participating law firms. Law firms may thus get access to a variety of interesting legal questions from which they may select matters they wish to take up: from requests for general assistance and smaller cases for the law firms' trainees (e.g. to be used to fulfill the Netherlands Bar education requirements) to more high profile public interest cases. The liaison between law firms and the CH will fit within their corporate social responsibility strategies and benefit their reputations.

NJCM as initiator

NJCM is an independent and specialized association with a reputation of being ideally placed to defend human rights in the Netherlands. NJCM has approximately 1,000 members who are jurists and many of them are active in the fields of law that are relevant to a CH. NJCM maintains close contacts with all relevant civil society NGOs concerned with human rights in the Netherlands and plays a leading role in aligning NGOs in lobbying activities (e.g. via organizing an efficient combined input for periodic reviews of United Nations treaty obligations, the so-called 'shadow reporting', and as chair of the Broad Coalition on Human Rights – The Netherlands). NJCM has a lean staff consisting of 1.5 FTE (plus 0.8 FTE for PILP) and a bureau embedded in Leiden University. It holds close contacts with law schools in the Netherlands, individual academics and law clinics. We believe NJCM as such is the pre-eminent organization to take the lead in undertaking the feasibility study with regard to a CH in the Netherlands and thereafter set up the CH with participating law firms.

How?

NJCM intends to achieve the deliverables with the assistance of a dedicated coordinator, the support of an existing clearinghouse (PILnet) and various Dutch law firms that have already expressed their interest and willingness to actively participate.

Deliverables

A project plan will be presented for the setup of the CH. Based on current best practices, the project plan will include the proposed functions of the CH, its financing, membership structure, staff, housing and recommended next steps.

Following the agreement by the stakeholders on a structure for the CH, it could be kicked off with a public launch event that involves various actors from the civil rights community, such as civil society organisations, academics, lawyers and public officials.

Timing

Research: three to four months; June - September 2015

Presentation of the project plan: September/October 2015

Resources needed

- A CH coordinator to conduct the follow-up research. Floris van Hees, a former Clifford Chance senior associate with 9+ years experience as a litigator has been selected to be the coordinator (CV attached).
- Optional: a secondee from a participating law firm (e.g. 0.5 fte) for the duration of the research (three to four months). The secondee (e.g. a junior lawyer) would assist the coordinator of the CH with the research, interviews and drafting of the project plan.
- Financial contribution to cover expenses of the research of approximately Euro 14,000 to cover the salary of the CH coordinator (Euro 11,000 incl. taxes), travel costs and office costs (Euro 3,000).

Exclusivity / timing

Some of the largest law firms in the Netherlands will be asked to contribute and thereby become "Founding Members" of the Clearinghouse. Founding Members will be listed as such on the website of the CH. Depending on the structure of the CH, the Founding Members may also be eligible to sit on the CH's advisory board (or similar body). By participating in the setup of the CH, these firms would ensure that their wishes are taken into account and that the CH is tailored to their needs.

To become a Founding Member, we ask you to inform us by **8 June 2015** whether you wish to financially contribute to the research on the establishment of a CH in the Netherlands. If your firm decides to contribute, please let us know for what amount it intends to support the research, and whether a junior lawyer from your firm would be available to assist with the research.

We look forward to hearing from you and hope that you will participate in this exciting project.

If you have any questions, please do not hesitate to contact us.

Kind regards

Herman Veerbeek, board member NJCM (herman.veerbeek@ing.nl)

Jelle Klaas, project coordinator PILP (jklaas@pilpnjcm.nl)

Floris van Hees, member NJCM (fvan_hees@yahoo.com; 06 28 15 01 71)

For more information about NJCM, see www.njcm.nl

For more information about PILP, see www.pilpnjcm.nl

For more information about PILnet, see www.pilnet.org

Appendix 2: List of Founding Members, Interviewed NGOs and Clearinghouses

Law Firms that contributed to the research (Founding Members of the clearinghouse):

- AKD
- Baker & McKenzie
- Clifford Chance
- CMS Derks Star Busmann
- De Brauw Blackstone Westbroek
- DLA Piper
- Freshfields Bruckhaus Deringer
- Houthoff Buruma
- Holland Van Gijzen
- Kennedy Van der Laan
- Loyens & Loeff
- Nauta Dutilh
- Simmons & Simmons
- Stibbe

NGOs interviewed for the research:

- Amnesty International
- Bits of Freedom
- Friends of the Earth Europe
- Greenpeace International
- Human Rights Watch
- Justice & Peace
- OCAN
- Platform Bescherming Burgerrechten
- Privacy First Foundation
- UNHCR
- Vluchtelingenwerk

Foreign clearinghouses interviewed for the research:

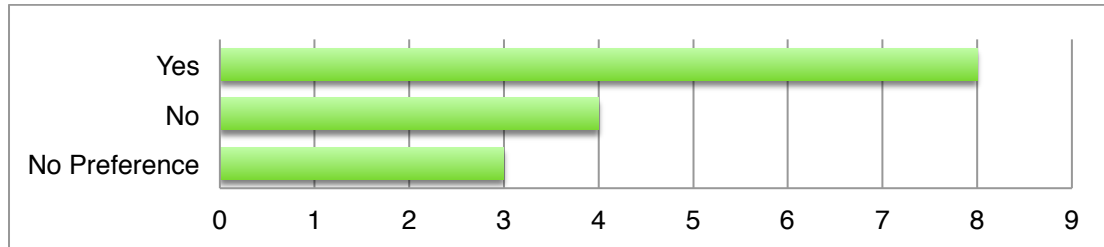
- PILnet (Hungary, Russia, China and global clearinghouse)
<http://www.pilnet.org>
- Justice Connect (Australia)
<https://www.justiceconnect.org.au>
- Public Interest Law Alliance (Ireland)
<http://www.pila.ie>
- Actedo (Romania)
<http://actedo.org/en>
- Pontis (Slovakia)
<http://www.nadaciapontis.sk>
- Pro Bono Alliance (Czech Republic)
<http://www.probonocentrum.cz>

Appendix 3: Research on the Establishment of a Dutch Pro Bono Clearinghouse

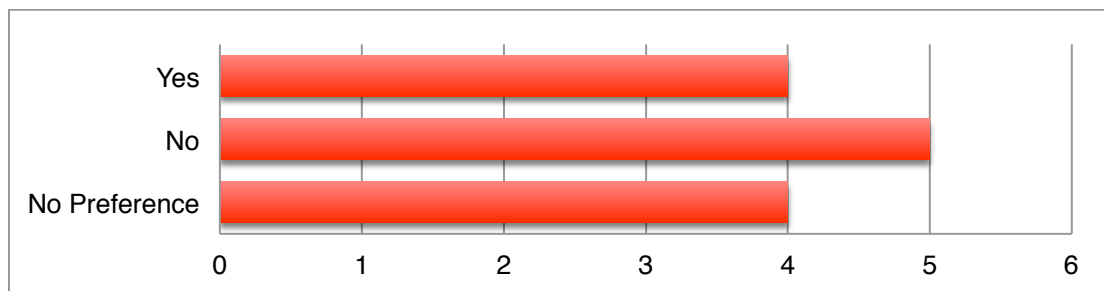
Survey Results

1 LAW FIRMS AS SUPPLIERS OF PRO BONO LEGAL AID

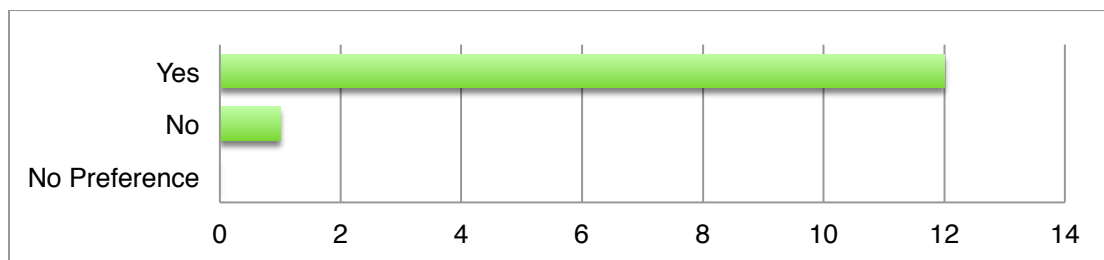
1.1 Law firms should meet certain criteria to become suppliers of Pro Bono legal aid through the CH.



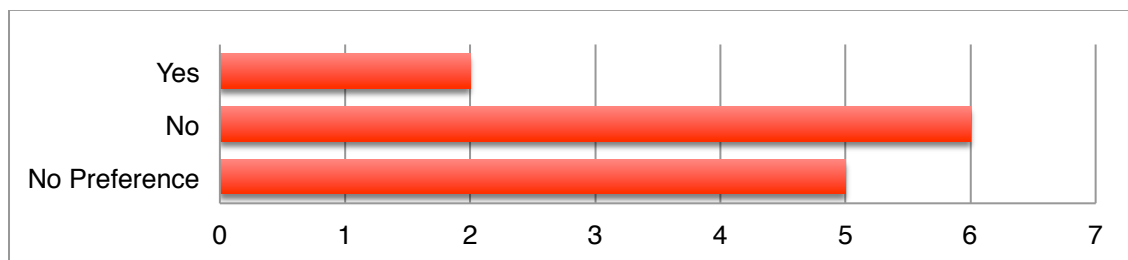
1.2 Law firms should be required to answer to a certain minimum number of requests per year.



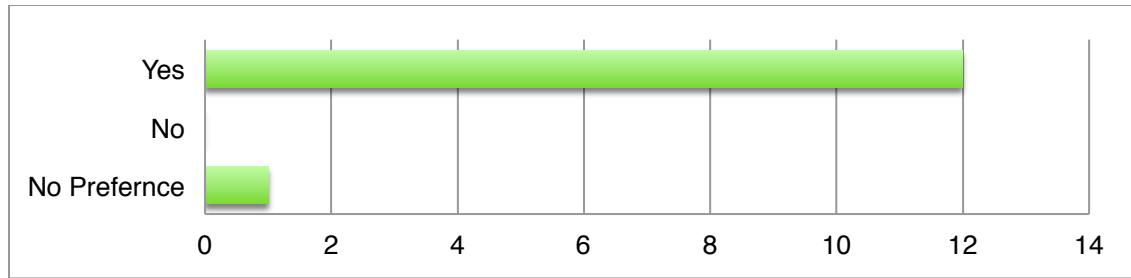
1.3 Law firms should lose the possibility to supply legal aid through the CH, e.g. if they do not answer to any requests, deliver work of inferior quality or upon advice by an advisory committee.



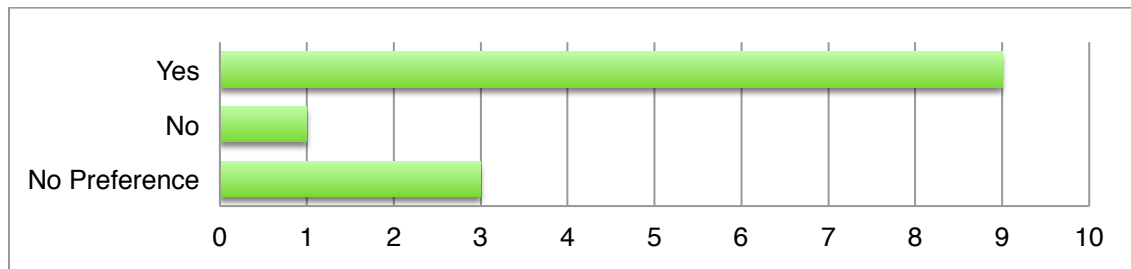
1.4 Law firms should commit to supply legal aid for a period of 3 years.



- 1.5 Law firms should be able to specify the fields of law they wish to work in and the types of NGO to which they wish to supply their legal services.**

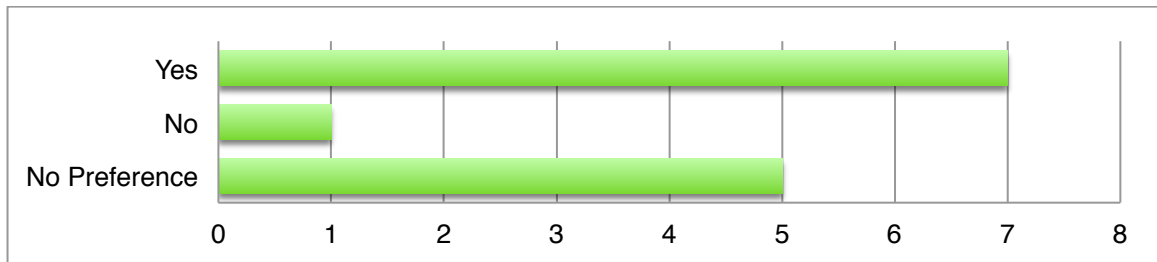


- 1.6 In the pilot phase the services of the CH should be exclusively available to the founding members (from the supplier's side).**

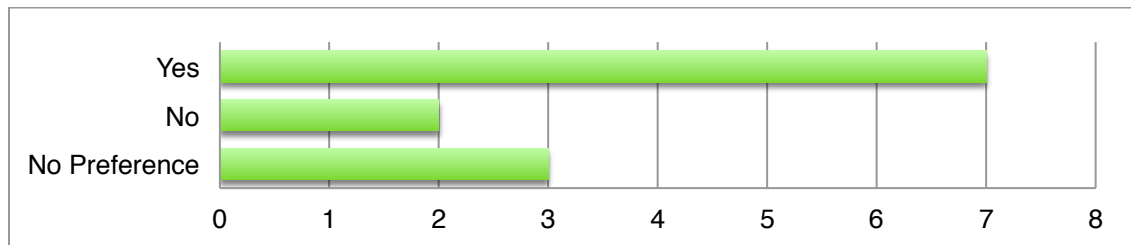


2 COMPANIES / INHOUSE LEGAL DEPARTMENTS AS SUPPLIERS OF PRO BONO LEGAL AID

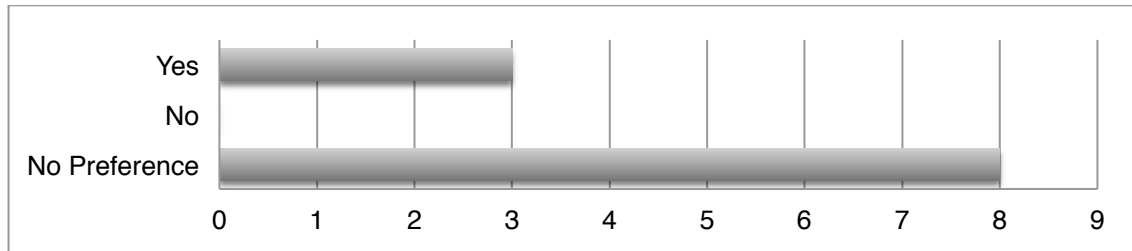
- 2.1 Companies / inhouse Legal Departments should be able to become suppliers of Pro Bono legal aid through the CH.**



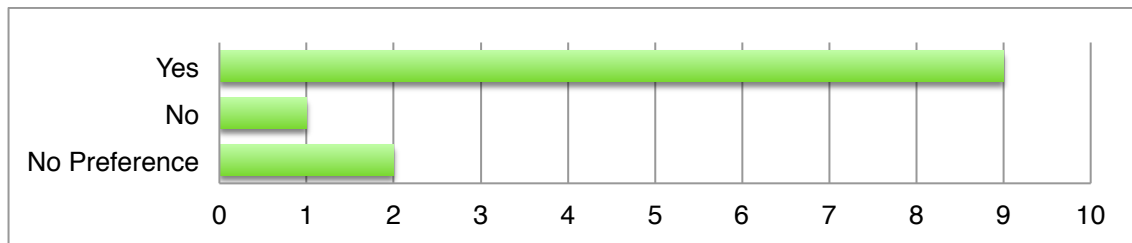
- 2.2 Companies should meet certain criteria (such as CSR criteria) to become suppliers of Pro Bono legal aid through the CH.**



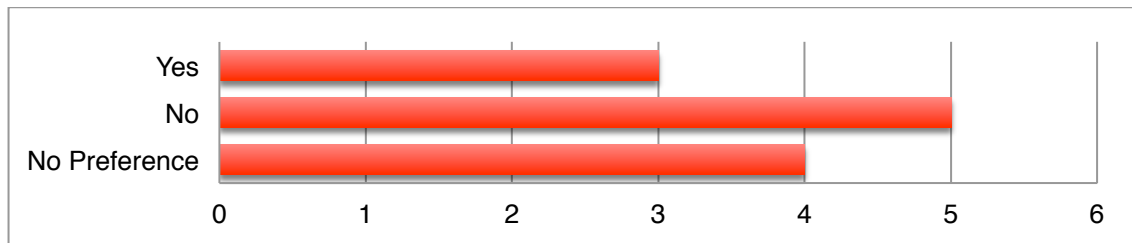
2.3 Requests to companies should only relate to legal aid.



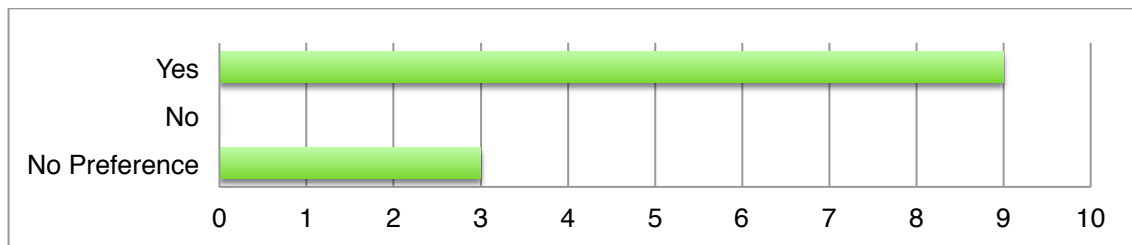
2.4 Companies should lose the possibility to supply legal aid through the CH, e.g. if they do not answer to any requests, deliver work of inferior quality or upon advice by the advisory committee.



2.5 Companies should commit to supply legal aid for a period of 3 years.

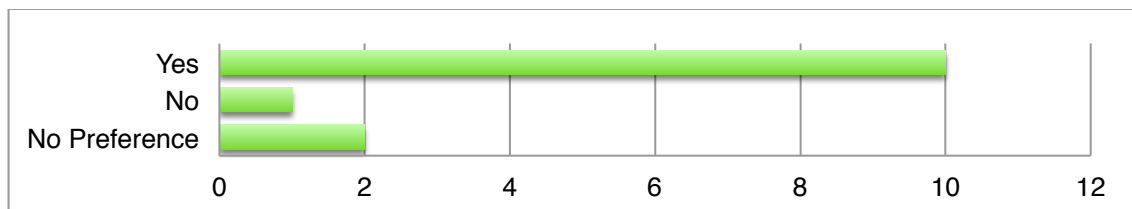


2.6 Companies should be able to specify the fields of law they wish to work in and the types of NGO to which they wish to supply their legal services.

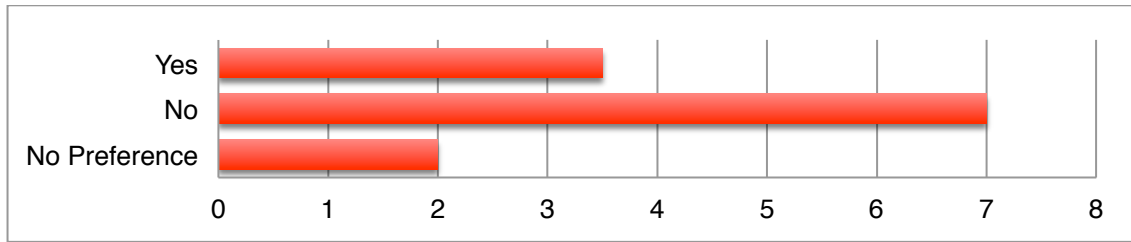


3 NGOS AS PRO BONO LEGAL AID RECIPIENTS

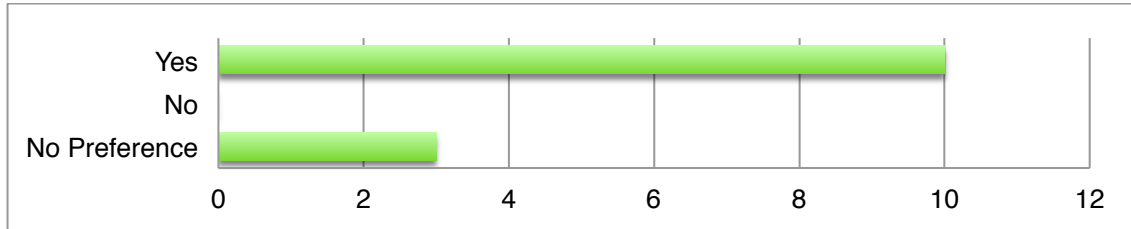
3.1 Only NGOs that meet certain criteria (e.g. relating to its mission, financial means, origin) should receive legal aid through the CH.



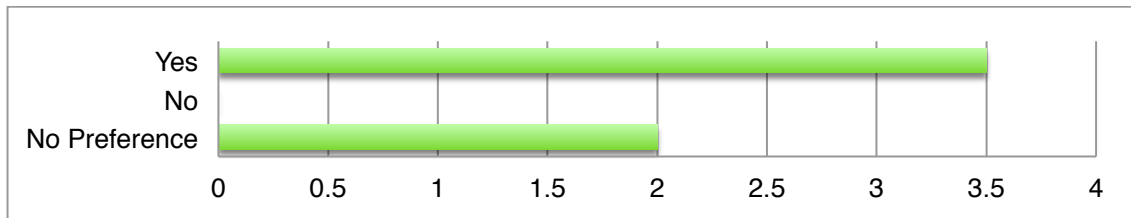
3.2 There should be a limit to the number of support requests an NGO may submit per year.



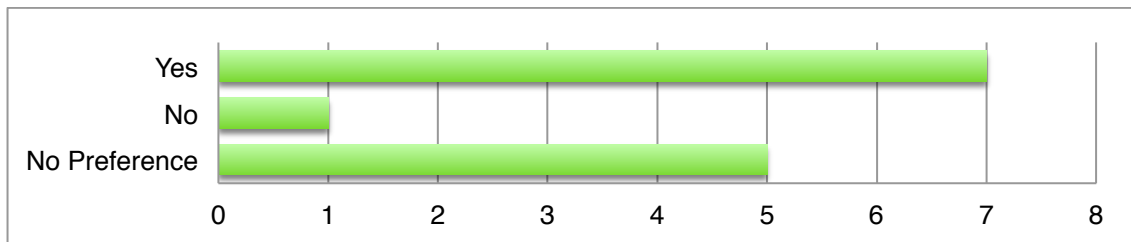
3.3 NGOs should be subject to approval of an advisory committee before they can receive legal aid through the CH.



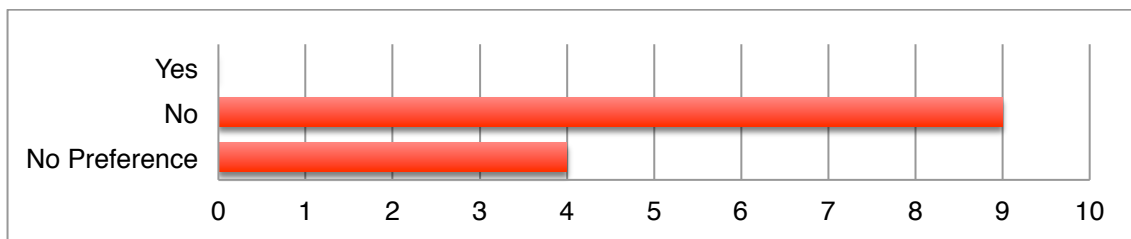
3.4 NGOs should be excluded upon advice of an advisory committee.

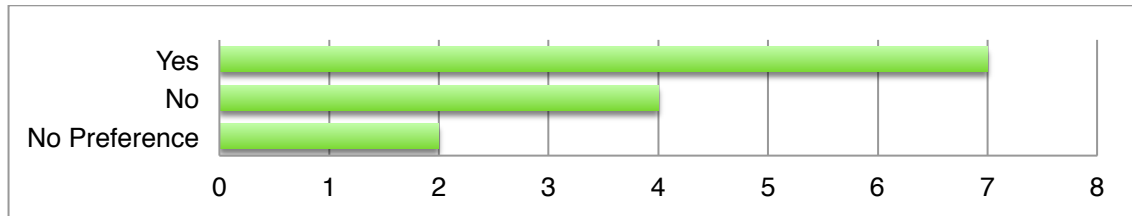
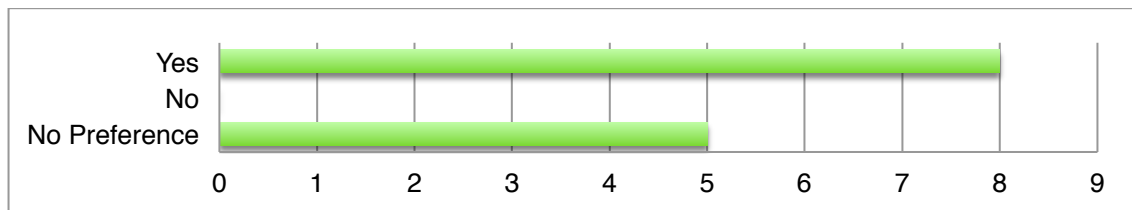
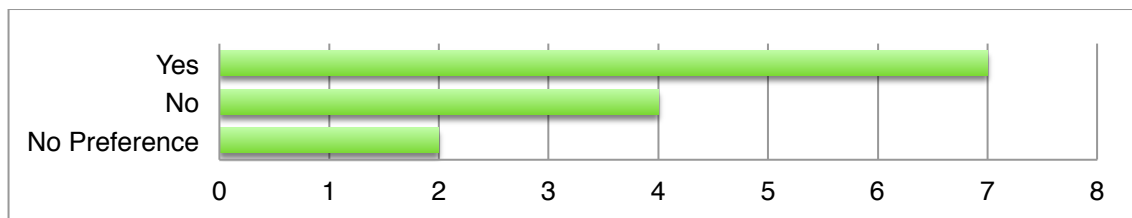
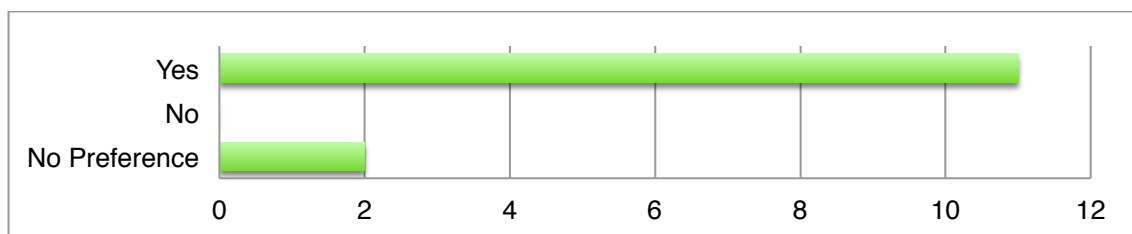
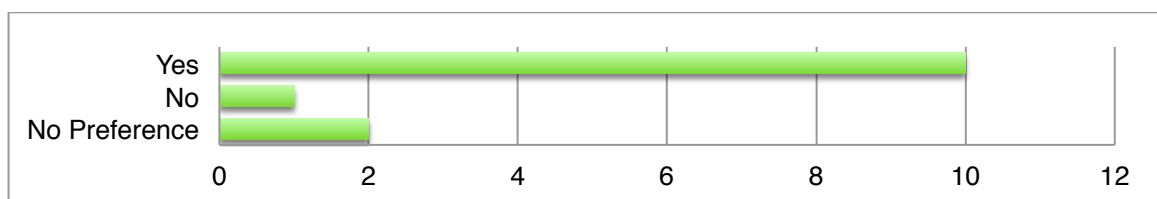


3.5 An NGO's request should relate to legal aid.

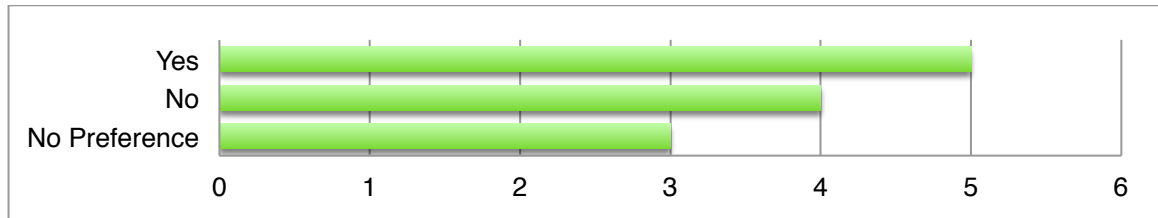


3.6 An NGO's request should relate to human rights.

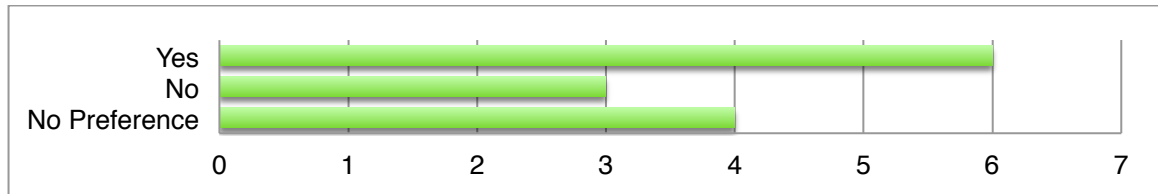


3.7 Any work of the NGO is eligible for reference through the CH.**4 OTHER LEGAL AID RECIPIENTS****4.1 Interest groups (not being NGOs) should be able to access the CH to receive legal aid.****4.2 Individuals should be able to access the CH to receive legal aid.****5 QUALITY CONTROL****5.1 The CH should “enrich” the requests from NGOs before submitting them to suppliers of legal aid, e.g. by summarizing the facts, formulating the legal question(s), identifying the legal field(s) involved and putting the request into a standard format.****5.2 The CH should seek and maintain relationships with universities, student groups and experts to support the supplier of legal aid.**

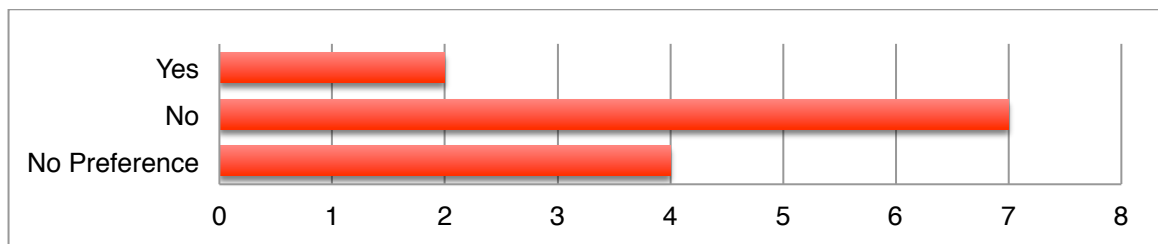
5.3 The CH should review the work products of the legal aid suppliers.



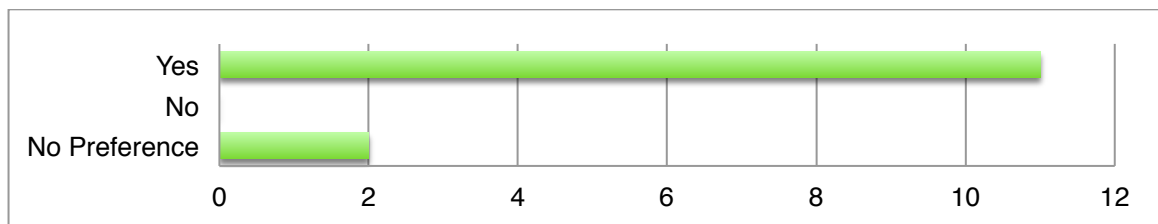
5.4 The CH should be kept informed of the progress of the supplier's services.



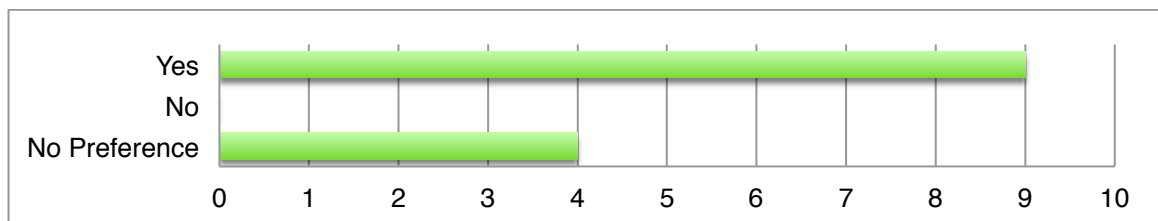
5.5 The CH should ensure that deadlines are met.



5.6 The CH should seek feedback from NGOs on the work products from and cooperation with legal aid suppliers.

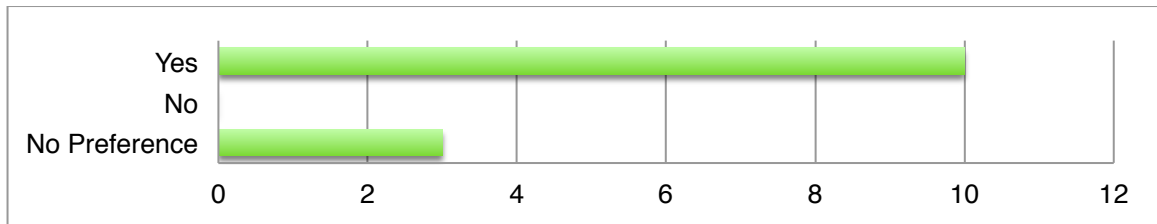


5.7 Suppliers and recipients of legal aid should be able to give feedback by using a standard form.

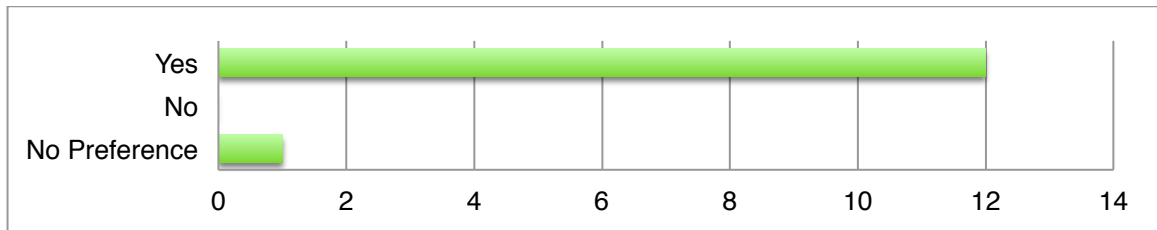


6 PUBLICITY

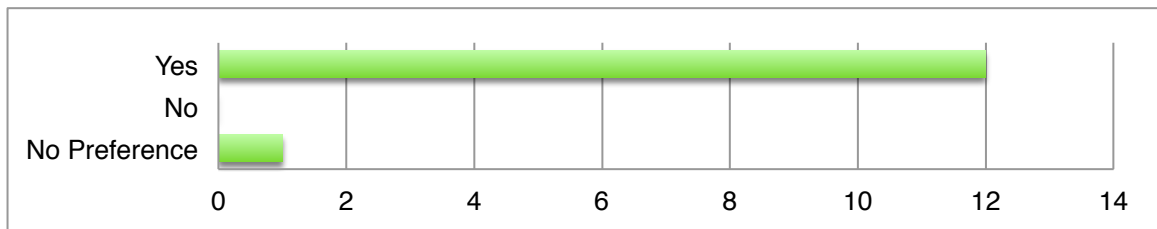
6.1 Suppliers and recipients of legal aid should be identified on the CH website if they wish.



6.2 Suppliers of legal aid should be allowed to publicize their membership of the CH as being part of their CSR strategy.

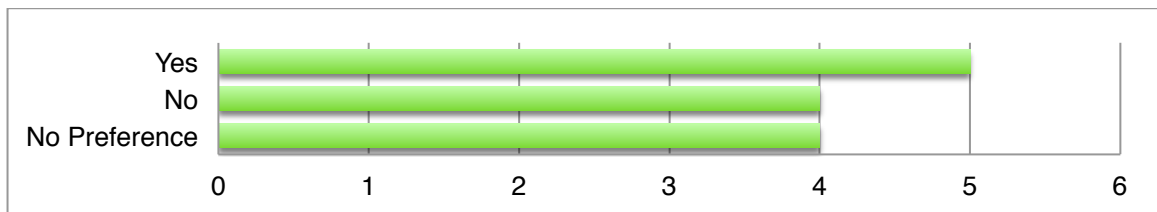


6.3 Legal aid suppliers should be allowed to publicize the nature of the work performed for an NGO on an anonymized basis (unless agreed otherwise with the NGO).

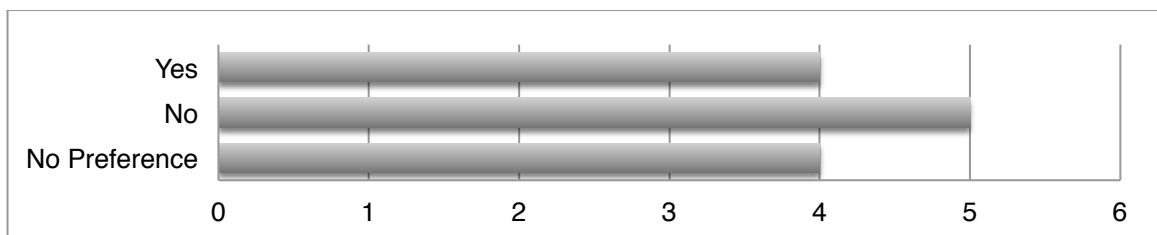


7 WORK ALLOCATION

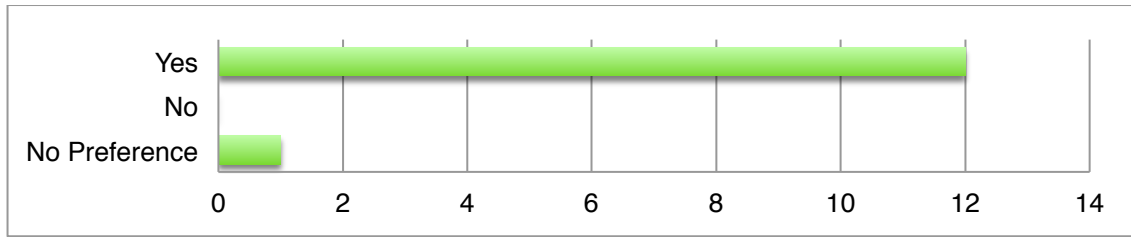
7.1 The CH should select the legal aid supplier to which a request is submitted.



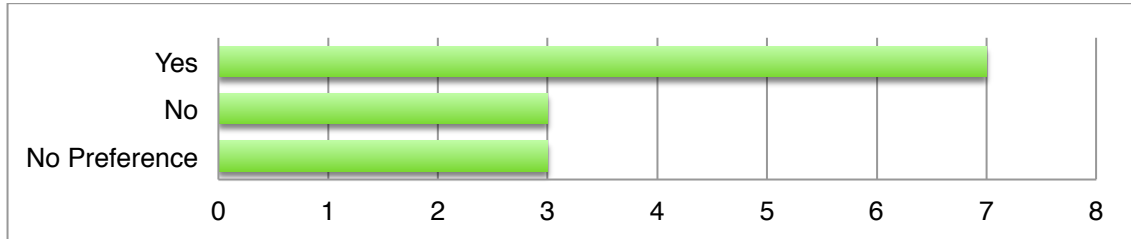
7.2 The CH should submit requests to all law firms and companies and ask them to sign up.



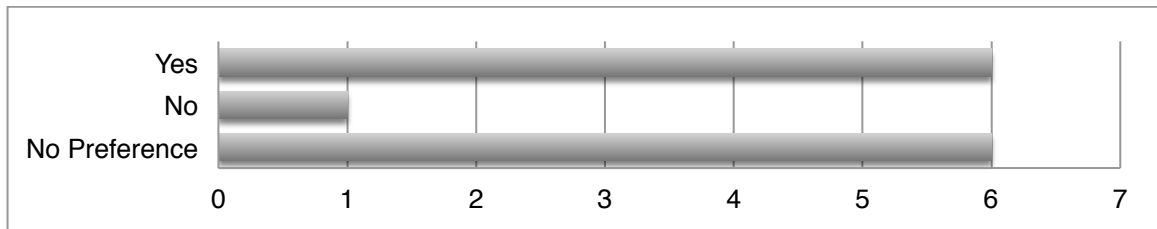
7.3 The CH should submit requests only to suppliers that have specified fields of expertise that match the request.



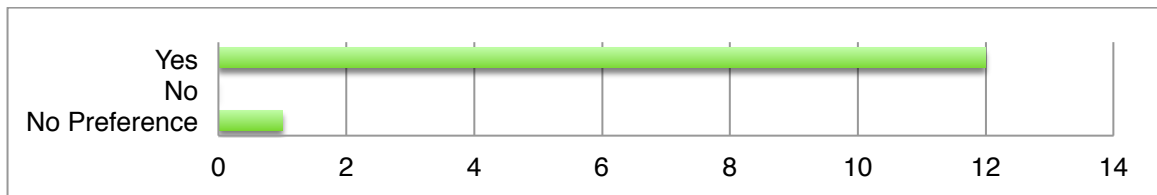
7.4 Work allocation should be done confidentially.



7.5 The CH should have one single contact person (or group e-mail address) per legal aid supplier and recipient.

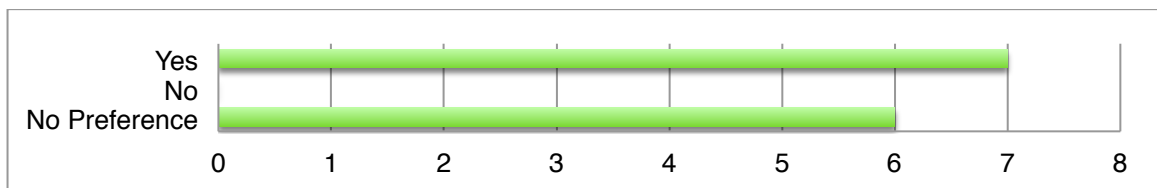


7.6 Pro Bono means that the legal aid supplier does the work free of any charge.

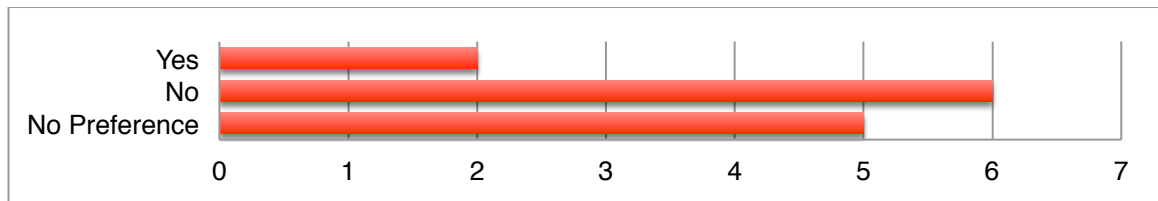


8 FUNDING

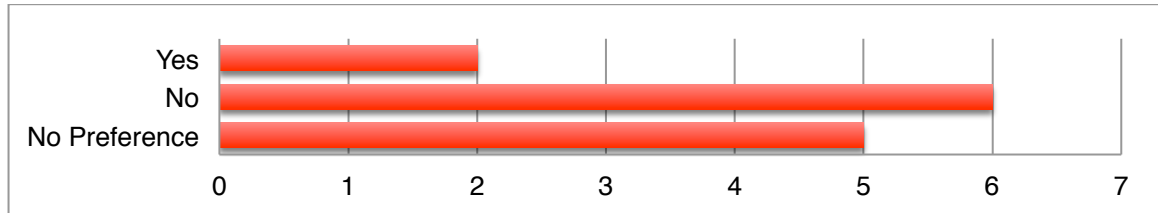
8.1 Legal aid suppliers should pay an annual fee to collectively cover the costs of the CH.



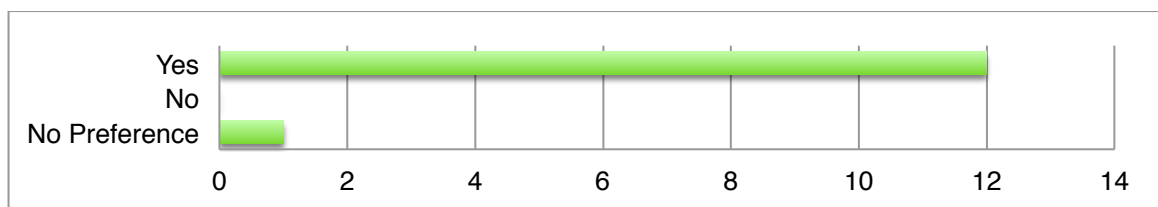
8.2 Legal aid suppliers should pay a nominal fee per year as a way of limiting the number of legal aid suppliers.



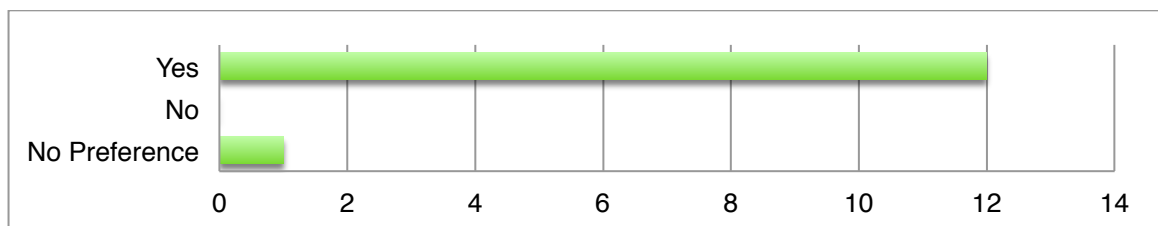
8.3 NGOs should pay a nominal fee to use the services of the CH.



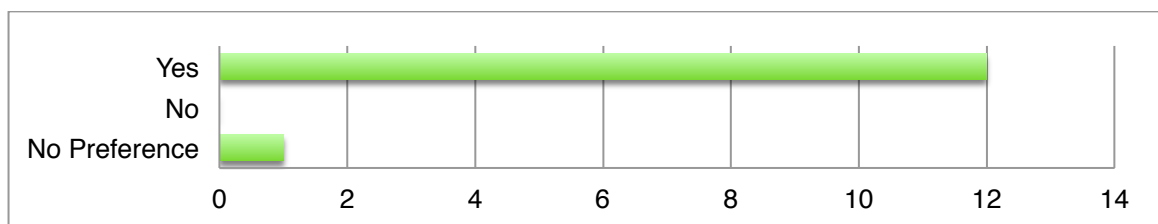
8.4 The funding structure for the pilot phase of the CH should be determined with the founding members and evaluated prior to the end of the pilot phase.



8.5 The CH should not have the its funding needs influence the allocation process, e.g. award the case to the highest bidder or largest donor.

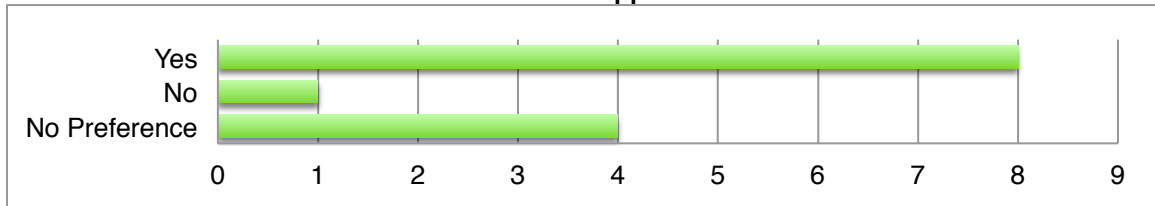


8.6 The CH should not be dependent on charging fees for the mediation of specific cases to the relevant supplier.

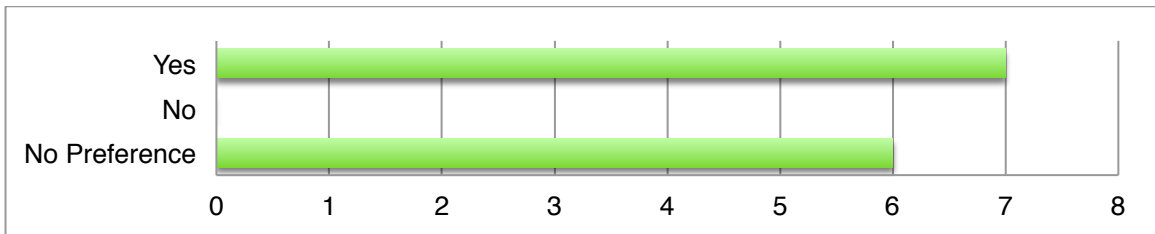


9 **GOVERNANCE**

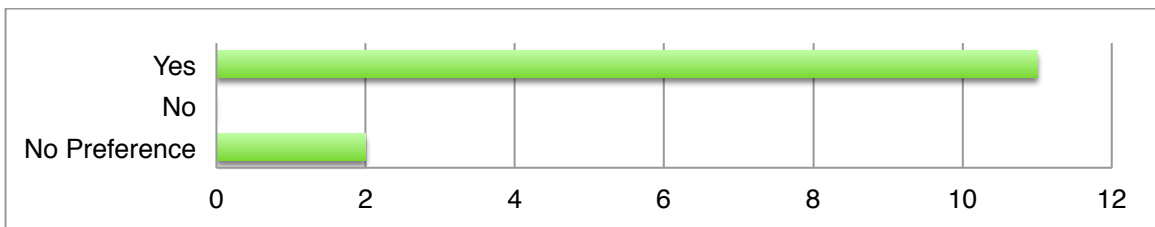
9.1 **The CH should have a director and one or two support staff members.**



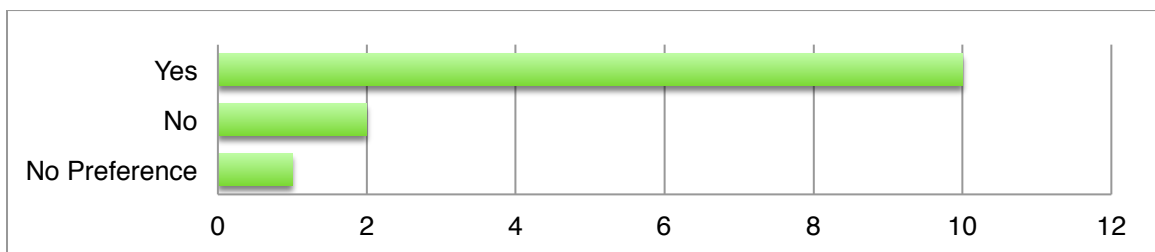
9.2 **Support could be given by junior lawyers from legal aid suppliers, e.g. on a rotating basis of 3-6 months ("secondments").**



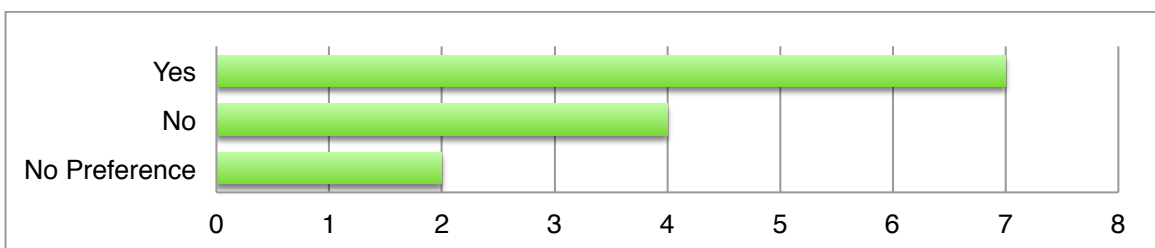
9.3 **The CH should have an advisory committee composed of members to advise on requests, membership and finances.**



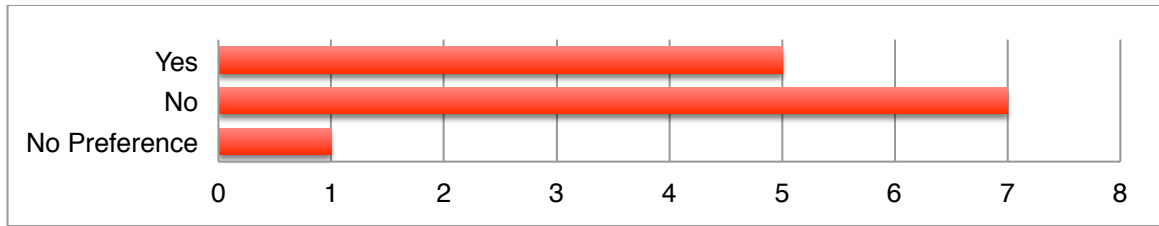
9.4 **Law firm representatives should be eligible to sit on the board or advisory committee of the CH.**



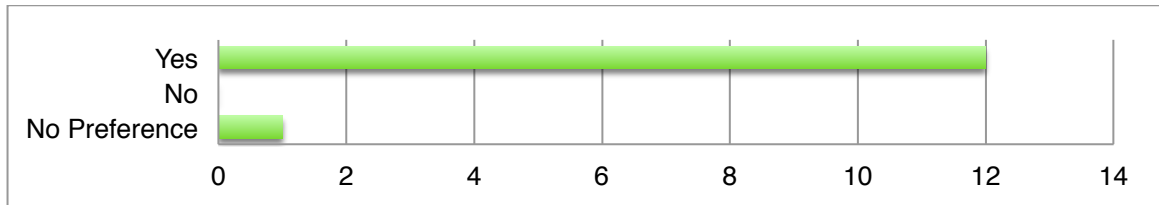
9.5 **Company representatives should be eligible to sit on the board or advisory committee of the CH.**



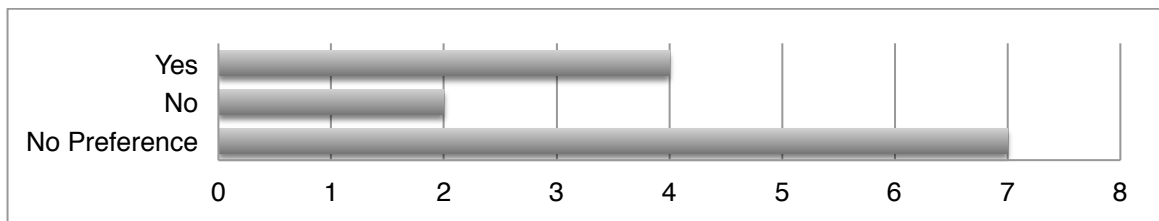
9.6 Representatives of NGOs should be eligible to sit on the board or advisory committee of the CH.



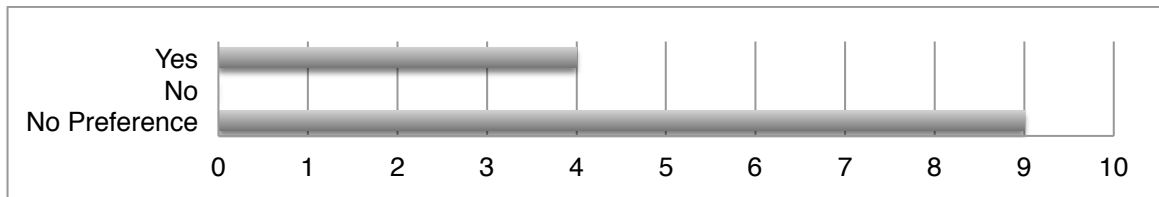
9.7 Suppliers of legal aid should be invited to at least one roundtable or membership meeting per year.



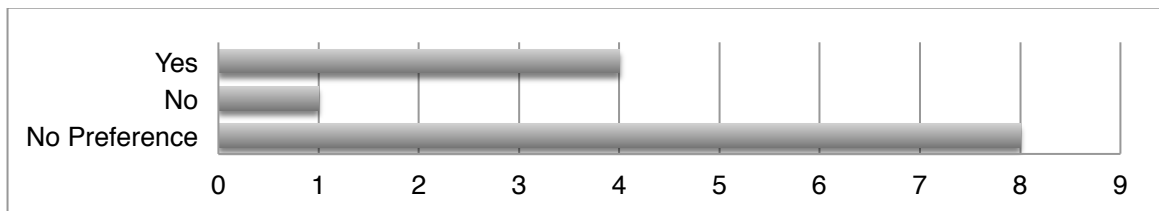
9.8 The CH should be set up and remain under the supervision of the NJCM.



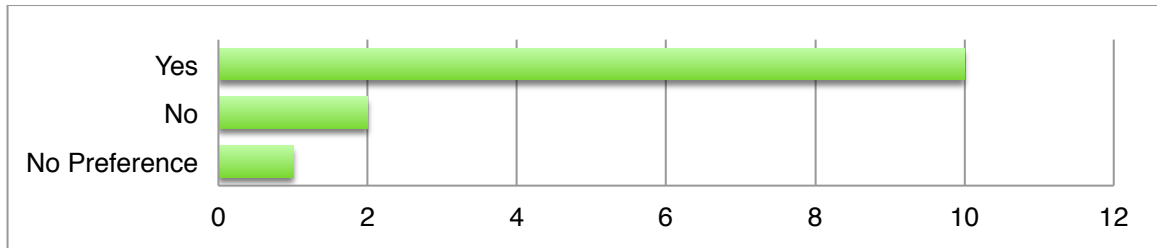
9.9 The NJCM should be represented on the advisory committee or board.



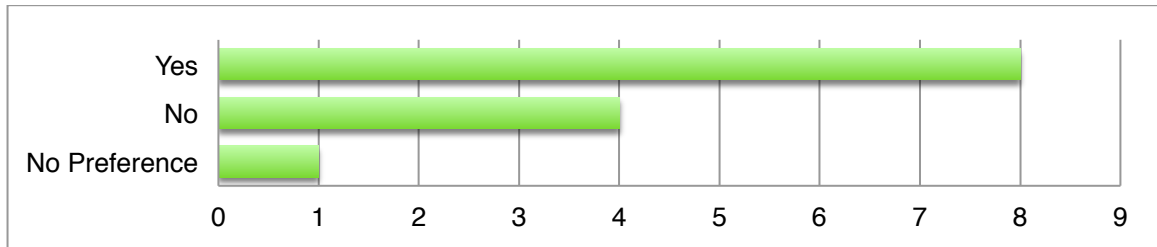
9.10 The NJCM should appoint and dismiss the director.



9.11 The legal structure for the pilot phase of the CH should be determined with the founding members and evaluated prior to the end of the pilot phase.

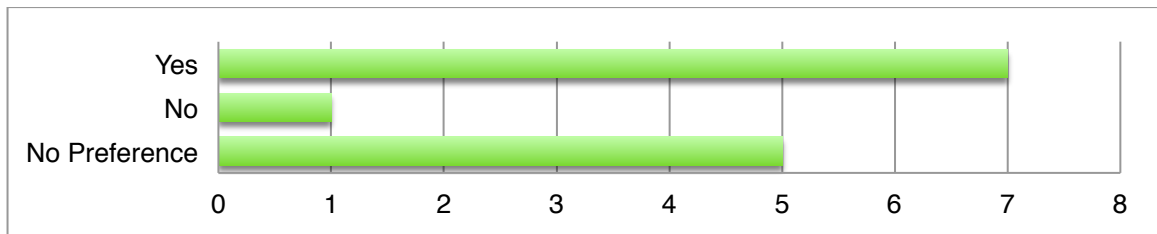


9.12 The legal structure of the CH should be decided after the pilot period.

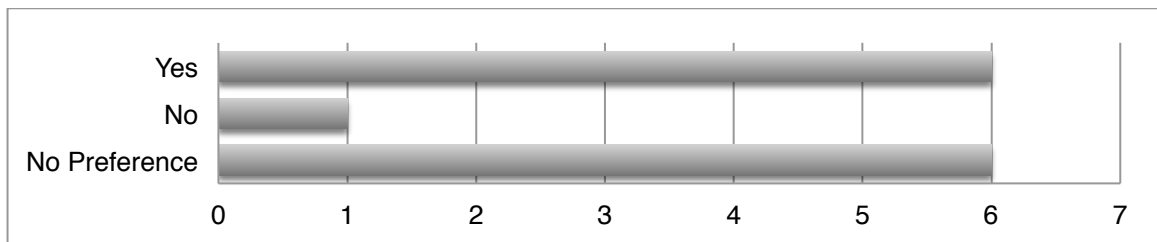


10 LAUNCH

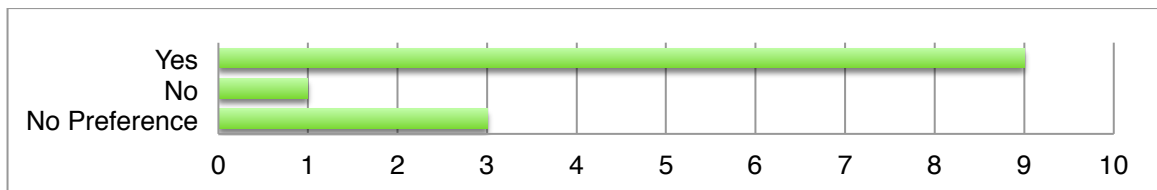
10.1 There should be a public high profile event to launch the CH.



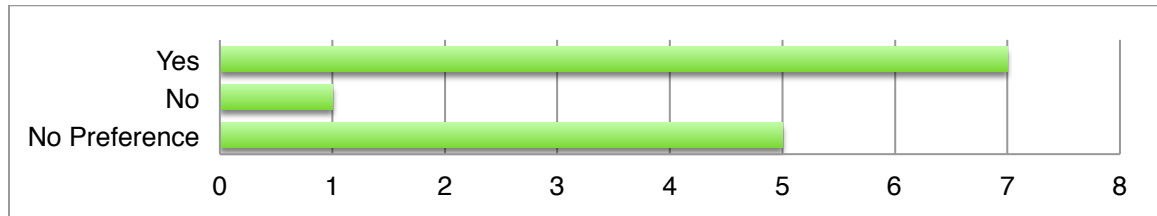
10.2 The media should be invited to the launching event.



10.3 NGOs should be invited to the launching event.



10.4 Politicians should be invited to the launching event.



Appendix 4: Blueprint of the Clearinghouse during the Pilot Phase

I. Principles and Goals

- a. The clearinghouse acts as intermediary between non-governmental organizations (NGOs) in need of legal advice and lawyers who wish to dedicate their expertise and time to provide pro bono legal services.
- b. The clearinghouse facilitates access to justice for NGOs that aim to improve human rights (in the broad sense of the word) and promote the public interest.
- c. The clearinghouse and its participants are committed to safeguarding the confidentiality of the requests and cases the clearinghouse receives.

II. Governance

- a. In the three-year pilot phase, the clearinghouse will be run as a project under the NJCM umbrella.
- b. The clearinghouse is led by a Project Coordinator responsible for the day-to-day management.
- c. The clearinghouse has a Board consisting of three (current or former) members of the NJCM Board. Together with the Project Coordinator, the Board acts as management of the clearinghouse. It also functions as a sounding board for the Project Coordinator.
- d. The clearinghouse has an Advisory Committee consisting of nine members: three members from law firms (on a rotating basis), three members from NGOs (on a rotating basis) and three independent members. The Advisory Committee functions as a sounding board for strategic or complex matters.
- e. Participating law firms will be invited to a yearly roundtable to discuss the achievements, strategy and development of the clearinghouse.

III. Pro Bono Providers

- a. Pro bono providers are lawyers and law firms participating in the clearinghouse. In-house legal departments of companies will not be invited to participate in the clearinghouse for now.
- b. Participation in the clearinghouse is reserved for law firms with a good reputation regarding the quality of their work products and expertise (as assessed by the Board).
- c. No formal commitment with respect to an annual number of accepted requests is expected from participating law firms. Law firms will be encouraged to actively participate and promote the clearinghouse to the lawyers it employs.
- d. To accommodate the interests of law firms and match NGOs' requests with law firms' expertise, the clearinghouse will make an inventory of the expertise and preferences of law firms.
- e. Law firms may be excluded from the clearinghouse if they deliver poor quality work or fail to respond to requests over a longer period.

IV. Pro Bono Recipients

- a. Recipients of pro bono legal advice are NGOs that fulfill the eligibility criteria (as approved by the Advisory Committee). A public interest mission will serve as a broad overarching eligibility criterion.
- b. Individuals will not be pro bono recipients of the clearinghouse. If they have an unmet legal need and a request with merit, they should engage an NGO to use the services of the clearinghouse.
- c. Those eligible for state-funded legal aid will in no case be eligible to use the services of the clearinghouse.
- d. The clearinghouse will set up a standard screening process for applicant NGOs (and, if necessary, individuals) and conduct background checks.
- a. The clearinghouse will actively engage with NGOs to understand their needs and establish how pro bono legal services may assist them in achieving their goals.

V. Types of Requests

- a. The clearinghouse facilitates a broad range of legal advice for NGOs, both concerning daily organizational issues and in relation to its strategic goals or campaign work. The clearinghouse will encourage NGOs to submit requests that assist them in achieving their strategic goals.

- b. The clearinghouse will analyze requests in terms of eligibility, using criteria approved by the Board. The clearinghouse can reject a request for justified reasons.

VI. Profile of the Clearinghouse

Client-lawyer relationship

- a. Legal services rendered through the clearinghouse by lawyers will be pro bono, meaning free of charge (except court fees) and delivered with the same professional standard as paid work.
- b. Once a request is accepted by a law firm, the NGO and the lawyer handling the case will have a client-lawyer relationship. Law firms and NGOs may formalize this relationship through an agreement to describe and define the terms and conditions of the pro bono service between them.
- c. After a matter is placed, communication about the matters should take place exclusively between the client and the law firm.

Allocation of requests

- a. The clearinghouse will determine the best match between the request and law firms' preferences and expertise. It will distribute requests by selecting and contacting the most suitable law firms on an individual basis to offer the request.
- b. The clearinghouse will set up a database with the law firms' pre-expressed preferences, interests and fields of expertise, as well as a record of cases handled per law firm.
- c. The clearinghouse is committed to distributing cases fairly between law firms.
- d. The method of allocating request will be kept under review and discussed regularly with participating law firms and lawyers.

Quality control

- a. The clearinghouse will assist NGOs in formulating their requests and ensure that requests are complete and clear. Requests will be made on a standard intake form.
- b. The clearinghouse will encourage NGOs to liaise directly with lawyers regarding the progress of a case.
- c. In view of the client-lawyer relationship between NGOs and lawyers involved, the clearinghouse will only review work products on request of an NGO.
- d. In case of disagreement, the law firm and pro bono recipient can turn to the clearinghouse to act as an intermediary and clarify or resolve misunderstandings amicably in the best interests of both parties.
- e. The clearinghouse will seek feedback from NGOs and law firms after completion of the pro bono legal service to evaluate the work and services of the clearinghouse.

Confidentiality and publicity

- a. If they wish, participating pro bono providers and recipients may be identified on the clearinghouse's website.
- b. Participating pro bono providers may publicize their participation in the clearinghouse, taking into account their professional confidentiality obligations and the wishes of their clients when it comes to specific matters.

VII. Funding

- a. Participating law firms will make a financial contribution to the clearinghouse. In the pilot phase NGOs are not expected to financially contribute to the clearinghouse.
- b. The clearinghouse undertakes to use every effort to obtain additional third-party funding.
- c. The budget and funding structure will be assessed at the yearly roundtables.

VIII. Pilot Phase

- a. The pilot phase will last three years: from 1 November 2015 to 31 October 2018.
- b. Participation will in principle be limited to the Founding Members, unless the quantity of requests, difficulties in allocating requests or budget needs warrant more participating law firms.
- c. After the pilot phase, the funding, governance, strategy and general functioning of the clearinghouse will be evaluated.

Appendix 5: Draft Budget

Clearinghouse pilot phase, November 2015 - 2018

| <i>Budget item</i> | <i>Price / unit</i> | <i>Quantity</i> | <i>Total budget €</i> |
|------------------------------|--|-----------------|---------------------------|
| INCOME | | | |
| Contributions | 70,000 | 3 years | 210,000 |
| | (based on 5,000 per law firm and 14 law firms) | | |
| <i>Total Income</i> | | | 210,000 |
| | | | |
| EXPENSES | | | |
| <i>STAFF (gross amounts)</i> | | | |
| project coordinator | (24hrs) 4,500 | 36 | 97,200 (.6 x 4,500 x 36) |
| executive director | (4hrs) 4,500 | 36 | 16,200 (.1 x 4,500 x 36) |
| administrative assistant | (2hrs) 2,100 | 36 | 3,780 (0.05 x 2,100 x 36) |
| intern | 100 | 36 | 3,600 |
| | | | |
| <i>OFFICE EXPENSES</i> | | | |
| rent | 1,300 | 36 | 46,800 |
| computers | 1,000 | 2 | 2,000 |
| cellphone | 50 | 36 | 1,800 |
| accountancy | 1,500 | 3 | 4,500 |
| office supplies | 50 | 36 | 1,800 |
| | | | |
| <i>TRAVEL</i> | | | |
| project coordinator | 350 | 36 | 12,600 |
| intern | 300 | 36 | 10,800 |
| | | | |
| <i>PROMOTION</i> | | | |
| design logo | 1,000 | 1 | 1,000 |
| website | 5,000 | 1 | 5,000 |
| launching event | 1,000 | 1 | 1,000 |
| 2016 PILNet Event | pm | 1 | pm |
| | | | |
| <i>OTHER COSTS</i> | | | |
| meeting space | 300 | 6 | 1,800 |
| unexpected | pm | 1 | pm |
| <i>Total Expenses</i> | | | 209,880 |

Note: NJCM commits itself for the duration of the pilot phase to (i) monitor project costs, (ii) strive for other sources of income, (iii) stretch the pilot stage or increase volume processed if income and expenses allow for that, (iv) account for the realisation of the budget in Advisory Committee, and (v) investigate sustainable funding after the pilot phase.