



**THE ROLE AND PRACTICES OF LAW SOCIETIES
IN THE ORGANISATION OF PRO BONO SERVICES
IN SOUTHERN AFRICA AND NEIGHBOUR COUNTRIES**

Comparative study

November 2017

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JUSTIFICATION

Avocats Sans Frontières (ASF) is currently implementing a project on Women's rights and Access to Justice in Zambia, funded by the European Union.

Within its current project's implementation, ASF has the opportunity to provide studies or position papers in order to produce literature which will help to promote women's rights and/or access to justice through legal aid services.

The National Legal Aid Policy being currently revised by the technical group headed by the Ministry of Justice, ASF has proposed its services to feed the policy and enable planning its implementation.

The draft LAP is based on a mixed delivery system where various legal aid delivery models are used to best suit the beneficiaries' needs and the available human capacity and material resources at legal aid provider's level. One of the mechanisms included is the Pro Bono model.

According to the LAP, the Law Association of Zambia would be charged with the management of this model, including drawing up a roster of legal practitioners in private practice volunteering to provide legal aid services on a pro bono basis, and develop a pro bono framework.

Pro-bono services are also considered as important in the Zambian context regarding the facts that:

- Access to justice is very limited.
- Pro-Bono services are part of the Law Association of Zambia strategic plan 2013-2018.
- Pro-Bono services are already offered by some lawyers without any legal framework.

As an international organization working on human rights and access to justice, ASF relies on the pro bono model for some of its own actions. In some countries where ASF intervenes, pro bono services are offered on a voluntary or legal basis.

This comparative study on existent pro-bono models is provided as a tool for the implementation of this legal aid delivery model by the Law Association of Zambia, in accordance with the Legal Aid Policy.



Avocats Sans Frontières, 2017

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INTRODUCTION

There are almost as many forms and approaches of practicing pro bono as there are lawyers and law societies involved in offering legal help free of charge. The practice takes its roots mainly in the full recognition of the right to a fair trial (even years before it was granted constitutional status in most legal system) and its corollary, the right to legal counsel through judicial appointment for accused who cannot afford their own counsel. Before the emergence of state-supported and well-managed legal aid schemes, notably in criminal law, access to legal representation depended, for the most in need, upon the goodwill and availability of legal counsel.

Its origins and later development probably contributes to the confusion between the concepts of pro bono and legal aid. We refer to pro bono as legal work and services undertaken voluntarily and without payment to those in needs or for the public good. The concept of legal aid differs slightly as the provision of legal work and services remain free of charge for the beneficiaries but the legal practitioners are generally compensated or remunerated by a third party who manages the system (such as the State). The concept of pro bono is now often regarded at the core of the right to access justice, which makes its social contribution and impact more widespread than originally.

In many countries, these two mechanisms designed to increase access to justice for the most marginalized and vulnerable people are interrelated and co-dependent. In most models, they are developed and implemented in parallel, designed to complement (rather than substitute) each other. Most often, a pro bono programme managed by a law society, a civil society organisation (CSO) or a law firm will intervene when a person's situation does not meet the often strict criteria to access legal aid services. In other models, the two services are co-dependent, as pro bono lawyers intervene in the framework of legal aid schemes and their services remain free of charge.

In Zambia, the most recent development in the legal aid reform creates a perfect opportunity to take stock of the progress made and design access to justice mechanisms which are coherent and mutually reinforcing. The current revision of the legal aid policy and its future deployment by the Ministry of justice is a rare occasion to analyse the current rules and practices and promote a practice of law which contributes to provide solutions to social and development issues.

The present paper aims at informing stakeholders involved in the reform and discussing possibilities and opportunities that are drawn from practices and frameworks implemented in Southern Africa.

The document will focus on the following analysis:

1. Overview of pro bono schemes in Southern Africa and neighbour countries. This part will analyse the legal framework, as well as policies or rules applied by law societies offering pro bono services;
2. Detailed presentation of relevant pro bono scheme. In this chapter, pro bono services from one specific country will be analysed in order to highlight the practical experiences of the chosen model;
3. Legal framework and existing pro bono practices in Zambia;
4. From the previous analysis, indications should release which could feed future reflexions and implementation of a pro bono scheme as recommended in the draft of legal aid policy.

1. OVERVIEW OF PRO BONO SCHEMES IN SOUTHERN AFRICA AND NEIGHBOUR COUNTRIES

Pro Bono has expanded widely in Southern and Eastern Africa over the past few years, both geographically and in its legal range. It is now accepted that efforts to reinforce the Rule of Law and, more specifically, access to justice can unlock the social and political potential that exists in a society and generate economic reform.

The prerequisites for making a difference through pro bono lie in its linkages with public legal institutions and its potential to enhance or complement public service delivery (such as state-funded legal aid). The present analysis shows a positive trend in this regards. Important efforts from law societies and their members are being made to find solutions to the vast needs of the populations in accessing legal services and justice mechanisms.

The analysis, based on desk review and researches, is presented on the table here under, which focuses on legal framework, policies and rules adopted by law societies in Botswana, Namibia, South Africa, Tanzania, Uganda and Zimbabwe.

State	Background	Legal Framework	Role and responsibilities of law societies/bars	Pro Bono requirements for members of law societies/bars	Sanctions
BOTSWANA ¹	<p>2012: Reform and establishment of the first legal aid system prompted by a pilot project.</p> <p>2013-2015: Adoption of the Legal Aid Act 2013, establishing Legal Aid Botswana, the involvement of the legal practitioners are expected through the implementation of their legal obligation to do pro bono and pro deo work; Amendment of the Legal Practitioners Act, to align it with the Legal Aid Act.</p>	<p>Legal Practitioners Act placed an obligation on attorneys to undertake pro deo and pro bono work when so assigned by the Registrar of the High Court; this duty does not give rise to a system organised by the Law Society yet.</p>	<p>In discussion.</p>	<p>The Act provides for a minimum of 40 hours of pro bono service before lawyers can be issued with a practitioner's certificate, which can be served at Legal Aid Botswana. Other obligations are in discussion.</p>	<p>Non delivery of the practitioner's certificate.</p>
NAMIBIA ²	<p>Pro Bono is a common practice through both private law firms and legal centres.</p> <p>The Law Society of Namibia (attorney) is in the process of implementing a comprehensive project</p>	<p>The law Society of Namibia does not yet have any binding rules on pro bono work, although it does have a standing committee on Access to the Law and Social Responsibility</p>	<p>In discussion.</p>	<p>None.</p>	<p>None.</p>

¹ Source: www.lawsociety.org.bw.

² Sources: <http://lawsocietynamibia.org>, www.namibianbar.org.

State	Background	Legal Framework	Role and responsibilities of law societies/bars	Pro Bono requirements for members of law societies/bars	Sanctions
	<p>which aims to examine the legal profession and propose reform that will make the profession accessible and responsive to society; the implementation of a pro bono scheme is currently in discussion. The Society of Advocate of Namibia (or the Namibian Bar, for advocate) shares a common objective.</p> <p>The State funded Directorate of Legal Aid, assist the indigent, mainly in criminal matters.</p>	<p>Committee, which aim is to encourage and develop a pro bono model for the legal profession, to enhance access to justice and to engage with relevant role players / ministries.</p> <p>The Legal Practitioners Act 1995 (applicable both to advocate and attorneys) recognize the practice of pro bono through the law centres, defined as a centre controlled by a non-profit making organisation / universities which provides legal services without charge.</p>			

<p>SOUTH AFRICA³</p>	<p>Services such as legal advices and representation were given on an informal basis since years. The beginning of 2000s will see the formalization of these services by private law firms.</p> <p>2003: The Cape Law Society instituted a mandatory pro bono rule for its members. Initiative prompted by the recognition that the state legal aid system was not adequate to address the public's legal needs.</p>	<p>Access to justice scheme includes :</p> <ul style="list-style-type: none"> (i) State subsidized Legal Aid (Legal Aid South Africa Act 39, 2014). (ii) Pro bono legal services by attorneys (Administered by Legal Aid South Africa, Regional Law Societies/ Bars and ProBono.org.za). (iii) The First Interview Scheme (first free interview with an attorney). 	<p>Regional Law societies (attorneys) and most regional Bars (advocates) organise and manage pro bono services delivered by their members: they propose a set of rules, a referral system and a reporting platform.</p> <p>The pro bono service that is provided by the attorneys is administered by the regional law societies and legal aid has no administrative power over the attorneys providing the service.</p> <p>The attorneys receive their instructions directly from the law society and report to the law society on the progress/outcome of the matter.</p>	<p>Obligations are provided in the Law Societies and Bars Rules and Regulations.</p> <p>Attorneys are generally bound to provide 24 hours per year of free legal assistance on a compulsory basis, to members of the public who qualify for this service in terms of a means test. The client is responsible only for the cost of disbursements (actual expenses).</p> <p>The bigger Bars have developed similar rules: Attorneys members of the Cape Bar are required to provide 20 hours of pro bono services.</p>	<p>Refusing to perform pro bono services without good cause amounts to unprofessional conduct.</p>
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³ Sources: www.lssa.org.za, *Pro Bono Practices and opportunities in South Africa*, Latham and Watkins LLP, Pro Bono Institute, www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/pro-bono-in-south-africa.pdf, Bester, Andy, *Pro Bono: A Transformation Issue*, Advocate, April 2016, www.sabar.co.za/law-journals/2016/april/2016-april-vol029-no1-pp30-33.pdf, <https://capebar.co.za/cape-bar/pro-bono>.

			This is done in parallel of the services offered by Legal Aid South Africa and ProBono.org.za.		
TANZANIA⁴	<p>A limited state-supported legal aid scheme for criminal cases (capital offences only) and a lack of formal state funded legal aid in civil cases led to the development of various forms of non-State legal aid schemes and programmes.</p> <p>2009: Creation “on paper” of the Legal Aid Secretariat (LAS), which is a temporary structure pending the adoption of the Legal Aid Act.</p> <p>2010-2016: As the LAS was not properly functioning, The Tanganyika Law Society (TLS) became a focal body for the coordination of legal aid</p>	<p>The practice of pro bono is not yet regulated by laws, rules or regulations.</p> <p>The practice is however recognized in TLS Advocates Remuneration Order⁵, in the section 9 on remuneration agreement.</p>	<p>TLS is guided by four core values; including voluntarism (members and staff will volunteer in serving the indigent of our society in the true spirit of Pro Bono).</p> <p>In the previous legal aid structure, TLS held a focal role in the organisation of legal aid services. The impact of the new Legal Aid Act on TLS role and responsibilities will be felt in the months to come, especially on the link between the legal aid policies and TLS pro bono scheme.</p>	<p>Under the pro bono scheme, advocates (especially those found in Private Law firms) are obliged to take up on cases of poor and vulnerable legal aid clients. These pro bono cases are distributed to regional chapters depending where the case occurred.</p> <p>Advocates on TLS pro bono directory may gain CLE point when taking over pro bono cases (according to the Advocates Continuing Legal Education Regulations, the CLE committee may approve and accredit</p>	<p>Consequences for an advocate for not taking up a pro bono case in a year are not clearly defined.</p>

⁴ Sources: <http://tls.or.tz>, *Baseline Survey on Tanzania Mainland and Zanzibar*, Legal Service Facility, March 2012, <http://lsftz.org/publications/LSFBaselineSurveyReportFinal.pdf>.

⁵ “A remuneration agreement between an advocate and a client sent to an advocate by an approved legal institution on a pro bono basis shall contain a clause specifying that in case the client wins the case, then the advocate’s fees due to the advocate shall be determined by the taxing officer from the compensation or monies awarded to the client by the court or tribunal.” The Advocates Act, Advocates Remuneration Order 2015, section 9.

	<p>and it operated under the Legal Sector Reform Programme (i) as one of the coordinator of legal aid providers and also (ii) managed the legal aid fund. A pro bono scheme was integrated into legal aid services with the aim of improving the quality of services offered.</p> <p>2017: Adoption of the Legal Aid Act, the bridges with TLS pro bono schemes remain to be clarified.</p>		<p>Zanzibar Law Society (ZLS) does not offer direct legal aid or pro bono legal services.</p>	<p>public services programmes⁶).</p>	
UGANDA ⁷	<p>2008: The Uganda Law Society establishes the pro bono project. In parallel, the Legal Aid Basket Fund, together with the Law Council creates a pro bono scheme, coordinated by the Uganda Law Society. This is set as a complement to the legal aid scheme in place.</p>	<p>The Law Council is mandated to enforce and regulate the provision of legal services and in pursuit of this directive, it enacted the Advocates (Pro-bono Services to Indigent Persons) Regulations SI No. 39 of 2009 under which Advocates are required to provide</p>	<p>The Scheme is managed by a Board of Trustees namely; Two members of the Law Council, one of whom shall be the chair person of the Board; The President of the Uganda Law Society; The Chief Registrar or his or her representative; and a representative of the Attorney</p>	<p>Regulations SI No. 39 (2009) under the Advocates Act made it mandatory for every attorney to provide forty (40) hours of pro bono legal services per year.</p>	<p>Every Advocate shall provide services or pay a fee prescribed by the Law Council in lieu of such services; where any Advocate does not comply with the pro bono requirement the Law Council</p>

⁶ The Tanganyika Law Society Act, Advocates (Continuing Legal Education) Regulations, 2012, section 4.

⁷ Sources : www.uls.or.ug/projects/pro-bono-project/pro-bono-project, *Pro Bono Practices and Opportunities in Uganda*, Latham & Watkins LLP, Pro Bono Institute, www.lw.com/admin/Upload/Documents/Global%20Pro%20Bono%20Survey/pro-bono-in-uganda.pdf.

	The current prominence in the provision of pro-bono services in Uganda can be largely credited to the Justice, Law and Order Sector (JLOS) institutions and the Civil Society Organizations (CSO's) which have been very instrumental in advancing pro-bono services to the poor and marginalized groups.	pro bono services. The Law Council has tasked the Uganda Law Society with carrying out pro bono in Uganda.	General.		shall refuse to issue or renew a practicing certificate to that Advocate (under sub section 11 of this Act.2).
ZIMBABWE	Pro Bono is a common practice within private law firms.	No legal framework developed to regulate the practice outside basic legal aid.	None.	None.	None.

As showed in this comparative, pro-bono scheme can be organized in various ways. Most of the pro-bono schemes were put in place in order to address a lack of legal aid services that the State should be providing to the indigents. In some models, the law societies are highly committed and started organizing pro-bono services without any national legal aid policy. In other countries, the pro-bono scheme is a part of a broader national legal aid model.

In most of the countries, providing pro-bono services is made mandatory for advocates and/or attorneys. The obligation, however, vary depending on the adopted model. Cases are sometimes distributed to chapters (Tanzanian model) as in other models; advocates can choose the cases they want to handle. Almost all of the scheme made mandatory a certain number of hours that advocates have to dedicate to pro bono cases (from 20 hours to 40 hours on a yearly basis).

While incentives are not present everywhere, sanctions for not complying with the pro bono requirement are provided by most of the models.

The second part of the study will provide a more detailed and practical analysis of the Ugandan model.

2. Detailed presentation of relevant pro bono scheme: Uganda.

2.1. The need

Uganda has a population estimated at 41 millions of habitants⁸. The Uganda Law Society has currently 2446 registered lawyers, which gives a ratio of 1 lawyer for 16.762 persons. The need of justice is, as in other countries, very high especially for indigent peoples.

Due to the abject poverty characterising a significant proportion of the Ugandan population, the Pro Bono Scheme was established with a goal to ensure that indigent, vulnerable and marginalised persons access justice through quality legal services. This was after the amendment the *Advocates Act* (Chapter 267 Laws of Uganda) in 2002, providing for a "mandatory requirement for all advocates to provide free legal services to the indigent"⁹ under Section 15(A) of the Act.

Initiation of pro bono scheme

The Law Council of Uganda is the overall Regulatory body of the Legal Profession in Uganda. It was established by Section 2 of the *Advocates Act* Chapter 267 (as amended by Act 27 of 2002)¹⁰. The Law Council in essence delegated its role to the Uganda Law Society under Regulation 5 of the *Advocates (Pro Bono Services to Indigent Persons) Regulations, 2009*¹¹ (herein Pro Bono Regulations) which specifically mandates the Law Council to establish a Pro Bono Scheme.

The pilot of the Pro Bono Scheme was undertaken by the Uganda Law Society (ULS) through a partnership with the Law Council of Uganda as the regulatory body of the legal profession. Section 3 (e) of the *Advocates Act* (Chapter 267 Laws of Uganda) provides for one of the functions of the Law Council to include exercising general supervision and control over the provision of legal aid and advice to indigent persons.

⁸ <http://countrymeters.info/en/Uganda>.

⁹ Uganda Law Society, *2016 Annual Report*, p. 14.

¹⁰ <http://lawcouncil.go.ug/index.html>.

¹¹ Statutory Instrument No. 39 of 2009.

As the National Bar Association of Uganda, the Uganda Law Society uses the Pro Bono Scheme as one of the projects to advance its mandate under the law establishing the Society, the *Uganda Law Society Act* (Chapter 276 Laws of Uganda), by among others assisting (indigent) members of the public in matters touching, ancillary or incidental to the law.¹²

Under the Scheme, pro bono is generally understood to mean professional legal aid work undertaken voluntarily and without cost to vulnerable or underprivileged persons.¹³ "Pro bono clients under the Pro Bono Scheme of the ULS are not required to pay for anything in receiving pro bono services," said the Programme Officer – Pro Bono at the ULS Secretariat. All the costs related to the case are covered by the pro bono scheme.

■ 2.2. Objective of pro bono services

Target

The main objective of pro bono services in Uganda is to ensure that indigent, vulnerable and marginalised persons access justice.

The Pro Bono Regulations specifically define an "indigent person" to mean "*a person to whom an advocate gives advice or provides representation and who has no other access to the courts and the legal system or where access is inadequate or the case raises a wider issue of public interest.*"

Under the Pro Bono Scheme of the ULS, a person seeking to be a beneficiary in the Scheme has to meet the "*means and merits*" test before their case is taken on under the Pro Bono Scheme. Such person should be one who has no means to pay for legal services of an advocate and the matter for which pro bono services are sought must be one with merit.

Objective

According to the ULS, the specific objectives of the Pro Bono Scheme implemented by the Society include;¹⁴

- (a) To promote equality in access to justice and improve delivery and standard legal services through pro bono;
- (b) Interest advocates into appreciating the provision of pro bono services;
- (c) Promote and emphasize the use of Alternative Dispute Resolution (ADR);
- (d) Promote networking and collaboration with stakeholders at local and international levels to improve the administration of justice.

Type of services

The types of services to be offered under the Pro Bono Scheme are provided for under Regulation 3 of the Pro Bono Regulations.

¹² See: The Pro-Bono Project of ULS, www.uls.or.ug/projects/pro-bono-project/pro-bono-project/ last accessed 24th August 2017.

¹³ See: The Pro-Bono Project of ULS, *What is Pro-bono?*, www.uls.or.ug/projects/pro-bono-project/pro-bono-project/ last accessed 24th August 2017.

¹⁴ Ibid, *Objectives*.

Types of Services

Giving advice or providing representation to indigent persons;

Involvement in free community legal education;

Involvement in giving free legal advice or representation to charitable or community organisation or to client of such an organisation.

(Regulation 3 (2) - Pro Bono Regulations)

Nature of Services

administrative law; business law (in relation to non profit making organisations); child care protection; criminal law; debt and credit; family and succession law; employment and industrial law; human rights; land rights; wills and estates; among others

(Regulation 3 (3) - Pro Bono Regulations)

Exempt Services

Business law in relation to profit making organisations; intractable disputes between neighbors; personal injury and professional negligence; traffic matters and motor vehicle accidents; and local government and planning issues.

(Regulation 3 (4) - Pro Bono Regulations)

Operating mode

In August 2009, the Law Council of Uganda passed the *Advocates (Pro Bono Services to Indigent Persons) Regulations, 2009* with the aim of establishing a legal framework to regulate the provision of pro bono services. Regulation 5 of the Pro Bono Regulations mandates the Law Council of Uganda to establish a Pro Bono Scheme. Regulation 3 (1) of the Pro Bono Regulations requires **every advocate to provide free of charge pro bono services of 40 hours in a calendar year to an indigent person.**

According to the ULS, this mandatory requirement for advocates is not yet in force as the Law Council of Uganda is reviewing the Pro Bono Regulations following recommendations from the ULS to address the loopholes in the initially issued Regulations. The ULS is stated to have among others recommended the replacement of the 40 hours requirement with the requirement of handling at least two pro bono files in a calendar year. The latter is considered to be more workable than the former.

It is the considered view of the ULS that the latter option is more workable than the former as the 40 hours per year on a file may sometimes be few to handle the file to completion. It was observed that in many cases matters take more than one year to be fully handled. It was recommended that focus should be had on the progress made in handling a file by an advocate.

Under the current Pro Bono Regulations, an advocate who fails to provide pro bono professional services is required to pay a fee in lieu of the provision of pro bono services for the mandatory 40 hours as per Regulation 4¹⁵ of the Pro Bono Regulations. The advocate under the Pro Bono Regulations is required to pay about \$110.944 (UGX. 400,000/- at Bank of Uganda US dollar rate UGX. 3,605.42/-) in lieu of providing

¹⁵ Regulation 4 of the Pro Bono Regulations provides thus:

- (1) An advocate who is unable to provide pro bono services as required by regulation 3 shall, for every two professional service hours, pay the equivalent of one currency point to the Law Council in lieu of the provision of the service.
- (2) The fees collected under subregulation (1) shall be paid into the pro bono scheme and shall be used for the purposes of facilitating and administering pro bono services.

professional services on pro bono basis for the 40 hours. The sanction for failure to comply with the foregoing requirements is refusal to issue the annual practising certificate under Regulation 13 of the Pro Bono Regulations.

Even though sanctions are defined, advocates are not currently penalised by the Law Council for not offering the stipulated 40 hours of pro bono service when renewing their annual practising certificates.

According to the ULS, the Pro Bono Scheme of the ULS Model is largely governed and regulated by the Pro Bono Regulations but has since developed and advanced through adoption of best practices such as strategic mapping and strengthening of stakeholder networks, encouraging voluntary enrolment of advocates into the Scheme, timely follow ups on pro bono files with advocates and beneficiaries, strengthening referral pathways, continued sensitisation of the public and members of the ULS on the relevance of the pro bono Scheme through radio, television and community sensitisations. Events such as the annual pro bono day are organized where awards are given to advocates who have successfully handled pro bono cases. Awards such as gifts and free training opportunities are offered to lawyers on merit and used as incentives in order to motivate lawyers enrolling into the pro bono scheme.

Achievements of the Pro Bono Scheme of ULS

The Scheme since its set up has achieved the following:

- A pro bono desk was set up at the Uganda Law Society Secretariat for the Scheme's focal coordination;
- Over 1589 advocates (of the 2446 members)¹⁶ have so far enrolled into the Scheme;¹⁷
- The Scheme is currently implemented in 9 districts of Uganda covering the four regions of the Country (Central, East, West and Northern Uganda);
- The Scheme continues to maintain good relations with partners and stakeholders;
- The project was at the forefront of introducing a Legal Aid & Pro Bono subject/course unit at the Law Development Centre (institution organizing the bar exam);
- The project established 4 duty counsel stations;¹⁸
- Advocates provide capacity building, sensitisation and mentoring sessions in law schools (considered as community legal education).

Legal Representation through the Pro Bono Scheme in 2016

According to the 2016 ULS Legal Aid Project Annual Report, the total number of cases handled through the Pro Bono Scheme so far was 2,143 cases. 1,313 (61%) were initiated by male clients and 830 (39%) were initiated by female clients. The overall client base of the Scheme grew by 334 clients from the 1809 clients served in 2015.¹⁹

The number of cases specifically allocated to advocates under the Scheme in 2016 totaled to 570 cases. It is worth noting that not all cases registered under the Scheme were allocated or taken up by advocates and thus the need to enroll more advocates into the Scheme and encourage advocates to take on at least two pro bono files.

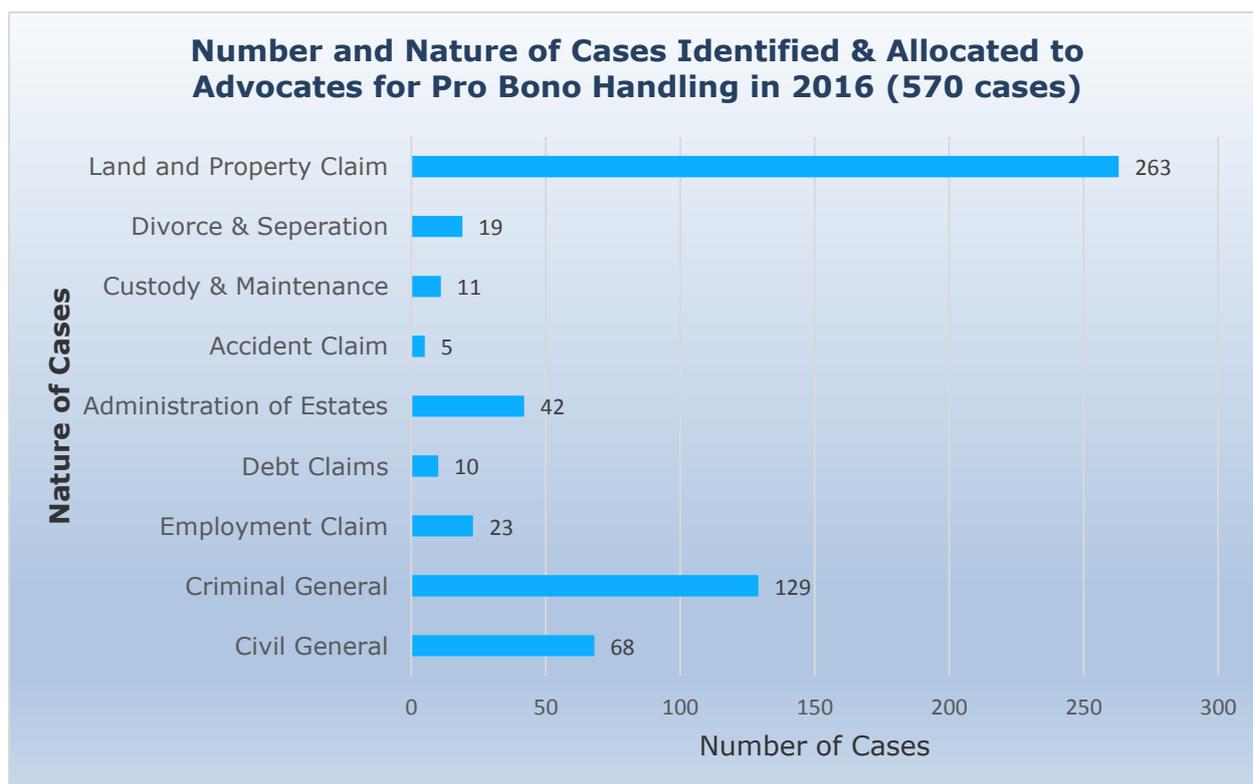
¹⁶ Uganda Law Society, *2016 Annual Report*, p. 6; copy available at

www.uls.or.ug/site/assets/files/1275/uls_annual_report-2016.pdf, last accessed 25th August 2017.

¹⁷ Uganda Law Society, *Legal Aid Project of the Uganda Law Society*, Annual Report 2016, p. 14 copy available at www.uls.or.ug/site/assets/files/1205/lap_annual_report-2016.pdf last accessed 24th August 2017.

¹⁸ Ibid, p. 17 – "Duty counsel is when an advocate goes to court or police to assist and/or represent indigent and marginalized persons who come to court with no legal Counsel, free of charge. The legal assistance includes interpretation of documents, court representation, advice on and preparation for bail applications and referrals."

¹⁹ Uganda Law Society, *Legal Aid Project of the Uganda Law Society*, Annual Report 2016, p.15.



Source: ULS – Legal Aid Project of the ULS Annual Report, 2016, p.15

2.3. Organisation and management

Finance

The Scheme was initiated as a pilot project in 2008 supported by the then Legal Aid Basket Fund (LABF – financial instrument which was put in place for the pilot phase),²⁰ it is now currently and mainly funded by the Democratic Governance Facility (DGF – the new financial instrument). The DGF is the result of a coalition of States dedicated to supporting “State and non-State partners to strengthen democratisation, protect human rights, improve access to justice and enhance accountability in Uganda.”²¹ The DGF is an initiative of Austria, Denmark, Ireland, the Netherlands, Norway, Sweden, the United Kingdom and the European Union.²² The DGF has four main areas of focus under which it partners with State and non-State actors. These are; (a) deepening democracy, (b) rights, justice and peace, (c) voice and accountability; and (d) cross-cutting themes. The ULS is one of the rights, justice and peace partners of the DGF.

The Facility funds ULS’s Pro Bono Project and Legal Aid Project.²³ The Pro Bono Scheme of the ULS also receives some meagre funds from the Justice Law and Order Sector (JLOS)²⁴.

Other legal aid stakeholders

²⁰ See: The Pro-Bono Project of ULS, www.uls.or.ug/projects/pro-bono-project/pro-bono-project/ last accessed 24th August 2017.

²¹ See: www.dgf.ug/what-dgf last accessed 24th August 2017.

²² Ibid *What is the DGF?*

²³ See: DGF, Rights, *Justice and Peace Partners*, www.dgf.ug/partner last accessed 25th August 2017.

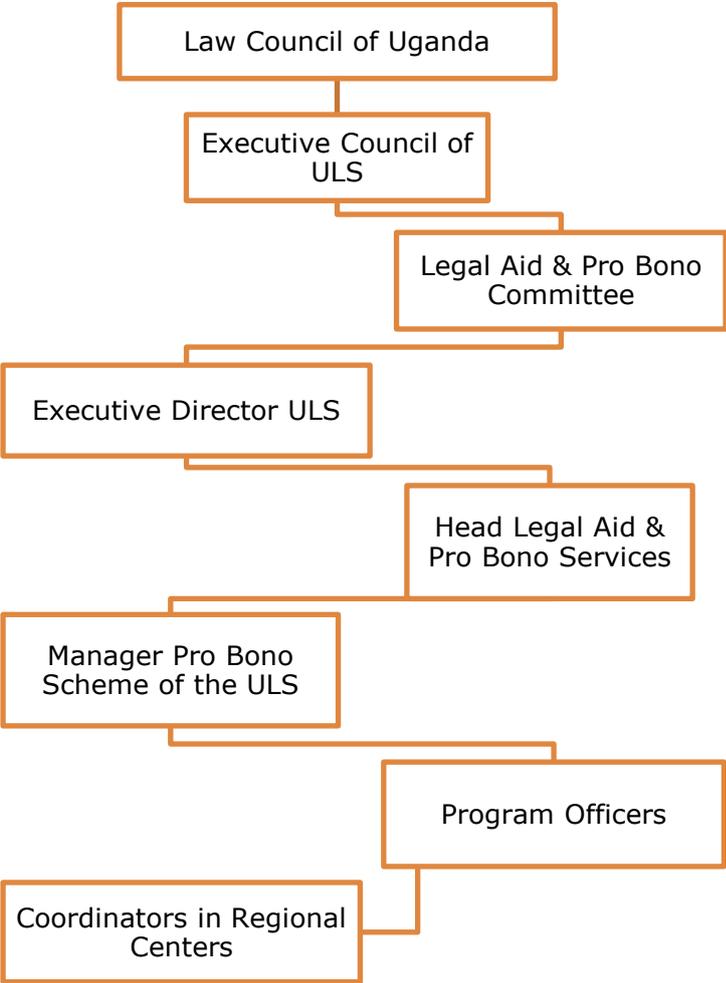
²⁴ JLOS is a sector wide approach adopted by the Government of Uganda to bring together institutions with closely linked mandates of administering justice and maintaining law and order and human rights, into developing a common vision, policy framework, unified on objectives and plan over the medium term. It focuses on a holistic approach to improving access to and administration of justice through the sector wide approach to planning, budgeting, programme implementation, monitoring and evaluation. www.judiciary.go.ug/data/smenu/104/Justice%20Law%20and%20Order%20Sector.html.

It is important to note that other legal aid service providers in Uganda do not generally provide legal aid on pro bono basis. According to the Research & Knowledge Management Officer at Legal Aid Service Providers Network (LAPSNET)²⁵, the advocates offering legal aid under such Civil Society Organizations are paid by donor funds. The legal aid to indigent persons is provided for under the *Advocates (Legal Aid to Indigent Persons) Regulations, 2007*.²⁶

Structure

The Pro Bono Scheme of the ULS is implemented under the management of the Board of Trustees established under Regulation 6 of the Pro Bono Regulations. The Board is chaired by a member of the Uganda Law Council and is comprised of 5 members. These include:

- 2 members of the Uganda Law Council,
- President of the Uganda Law Society;
- Chief Registrar or their representative; and
- A representative of the Attorney General.



According to the ULS Secretariat, the Uganda Law Council delegated its mandate to the ULS Executive Council. The ULS has internal structures for effective implementation of the Scheme.

The Legal Aid & Pro Bono Committee provides strategic direction and oversight.

The ULS Secretariat under the Executive Director ULS undertakes the day to day implementation of the Pro Bono Scheme.

The Manager Pro Bono Scheme provides further direct oversight of the project management under the direct management of the Head Legal Aid & Pro Bono Services.

The Manager Pro Bono Scheme works with Program Officers to coordinate the project with the latter being assisted by the Coordinators in Regional Centers. The Pro Bono Scheme of ULS currently covers 9 districts in Uganda (out of 112), these include: Kampala, Gulu, Jinja,

Kabale, Kabarole, Masindi, Arua, Mabarara, and Soroti. The satellite Clinics of the Legal Aid Project (LAP) of the ULS through which the Pro Bono Scheme is implemented are

²⁵ Umbrella organization of CSOs providing legal aid services: www.laspnet.org.

²⁶ Statutory Instrument No. 12 of 2007.

strategically spread to cover the four regions of the Country. These are the Central, East, West and Northern regions.

According to the Research & Knowledge Management Officer of the LAPSNET, it is for this reason that a number of matters from other member organizations of the LAPSNET are referred to the ULS.

According to the ULS, it was (and still is) possible to find advocates based in these 9 districts. The allocation of advocate's office is considered in allocating of a pro bono file to minimize transport costs. Advocates have sometimes to travel to nearby districts. In this case, the nearest advocate enrolled with the pro bono Scheme usually handles the matter.

Case flow management

- Means & Merits Test

According to the Program Officer Pro Bono at the ULS Secretariat, the Scheme only takes up matters of clients who meet the means and merits test. The client upon walking into a ULS clinic meets a paralegal for an interview to gather the facts of the client's matter, the client is further interviewed by a Legal Assistant²⁷ to ascertain whether the client meets the means and merits test. There is no official form for the means and merit test. The officers ask basic questions to establish the source of income of the client, how much they earn, and the merits of the case (whether the case falls within the pro bono eligible matters under the law).

The file is then forwarded to the Head Legal Aid & Pro Bono for the final decision as to whether the case is proper for pro bono services. If the file is approved by the Head Legal Aid & Pro Bono as fit and proper for pro bono, two copies of file are opened up. One copy is intended to be dispatched to the advocate who takes up the matter and the other copy of the file remains at the Secretariat. The allocation of files is done by the Program Manager-Pro Bono who directly contacts the advocate on behalf of the pro bono client.

- Referrals

ULS receives a number of referrals from members of the Society and other Civil Society Organizations who are members of the LAPSNET. The persons referred are subjected the means and merits test before their matters are taken up on pro bono. One of the lawyers enrolled with the Pro Bono Scheme of ULS in an interview stated that he has personally referred a number of indigent persons who have benefited from the Scheme. A number of beneficiaries of the Scheme are referred by fellow colleagues who know about the Scheme, court clerks, and some learn about the Scheme through the sensitization drives organized to raise awareness.

- Assigning of Cases & Incidental Costs

ULS has a system of assigning cases to advocates based on 3 criteria: (1) the proximity of the advocate's chambers to where the matter is to be handled, (2) the interest areas of practice of the advocate and (3) the availability of the advocate to handle the matter. The system is supported by the details gathered during registration/enrollment of the advocate into the Pro Bono Scheme.

Where a case is to be assigned to an advocate, prior notice is given and the advocate consents to taking on the file before the case is assigned to them. Advocates are not

²⁷ Paralegals and legal assistants are not defined by under the law. However these are titles of officers at the Secretariat employed in accordance with their terms of reference. The paralegals generally possess academic qualifications ranging from an Undergraduate Diploma of Law from the Law Development Centre, or a Law Degree. The Legal Assistant on the other hand is a qualified lawyer or even an enrolled advocate.

forced to take on pro bono case files. The taking on of pro bono matters is purely voluntary. The advocate is handed one copy of the file for the matter the advocate has agreed to take on, and the second copy of the file remains at the ULS Secretariat for monitoring and follow up. The advocate picks the file from the Secretariat or regional legal aid clinic and signs for the file.

The advocate is expected to handle an assigned pro bono matter professionally with strict adherence to professional standards under the Advocates Act (Chapter 267 Laws of Uganda), the Advocates (Professional Conduct) Regulations, SI 267—2, and the Pro Bono Regulations. The interviewed advocates enrolled with the Scheme stated that they voluntarily enrolled with the Pro Bono Scheme of the ULS and handle their pro bono matters with the same diligence similar to matters of paying clients.

The ULS covers incidental costs such as court filing fees and the advocate's transport disbursements. The transport disbursements are set by the Executive Council of the ULS. The last schedule of transport disbursements was set in 2012.²⁸ The disbursements cover transport costs for the advocate and/or the clerk per the distance in kilometers travelled.

- Case Follow up

The case follow up and monitoring is an initiative of the ULS Secretariat Pro Bono Desk. According to the Program Officer Pro Bono, the Pro Bono desk undertakes monthly follow ups on the progress of the files by making follow up calls to advocates and pro bono clients. The follow ups capture the steps taken on the file and pending actions. The feedback is written on the copy of the file at the Secretariat.

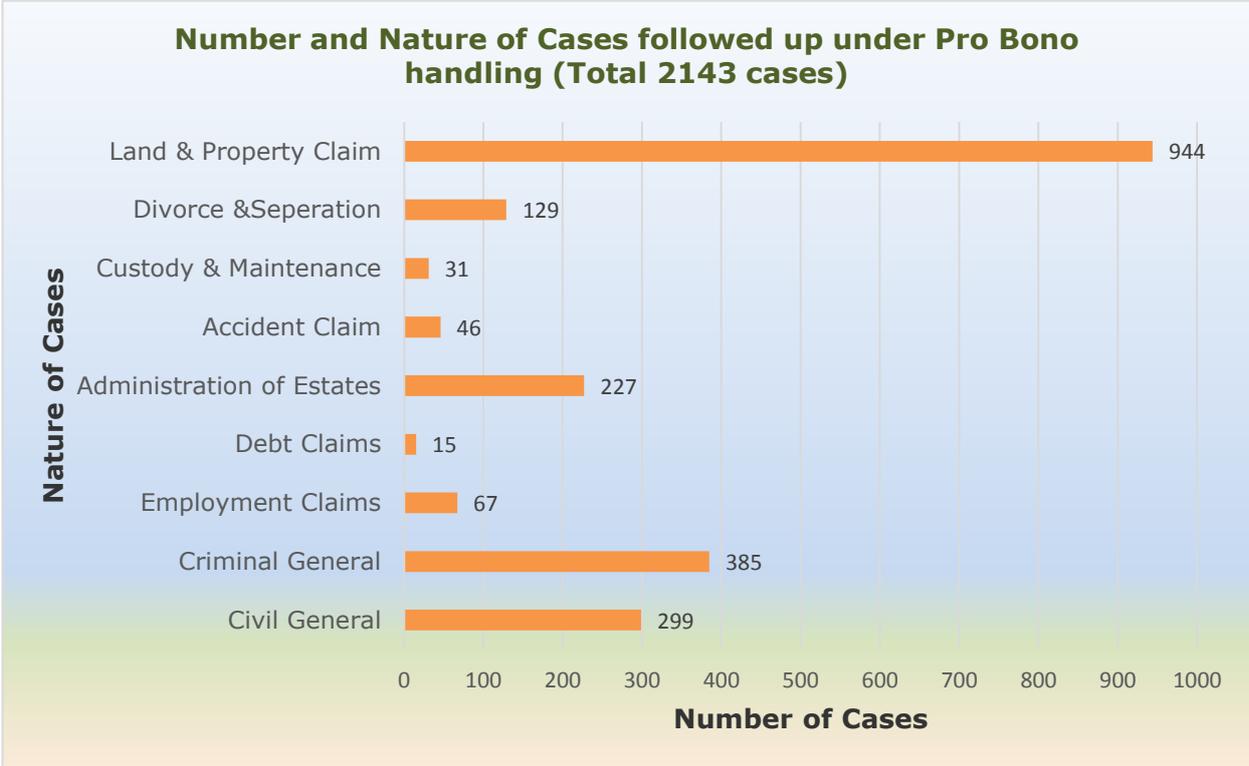
There is no "quality monitoring" per se, but the Secretariat endeavors to ensure quality legal services by holding advocates enrolled with the Pro Bono Scheme to the professional conduct requirements. The interviewed advocates enrolled with the Scheme testified to receiving follow calls on the progress of assigned pro bono files from the ULS Pro Bono desk.

Where a pro bono case has been closed, according to the ULS Program Officer Pro Bono, the advocate who handled the matter is expected to return the file to the ULS Secretariat Pro Bono Office. In the 2016 ULS Legal Aid Project Annual Report, 136 files were reported to have been closed.²⁹

²⁸ Copy of the *Pro Bono Transport Disbursement Costs for Return Journeys* available at: <https://docs.google.com/file/d/0B6VPdCaz4bNEYVFSbmhLajJkVik/edit> last accessed 24th August 2017.

²⁹ Uganda Law Society, *Legal Aid Project of the Uganda Law Society*, Annual Report 2016, p. 16.

In its 2016 Annual Report, the ULS reported the number of cases followed up under pro bono handling since the beginning of the project as follows:



Source: ULS – Legal Aid Project of the ULS Annual Report, 2016, p.15

2.4. Practical Challenges

The provision of pro bono services in Uganda is faced with a number of challenges shared by the participants in the interviews held. These include:

Needs identification and evaluation

- Some clients are untruthful about their means and therefore end up benefiting from the Scheme at the expense of actual indigent beneficiaries.
- Some potential pro bono clients lack information about the availability of the service.
- Advocates raised concerns on over expectations from pro bono clients.

Monitoring

- The manual system of tracking the progress on the pro bono files is tedious.
- Noncooperation of some clients with their assigned advocates to enable effective handling of pro bono files.
- Some clients abate their matters (lose interest without expressly withdrawing the matter) and advocates return the files to the Secretariat.
- Monitoring advocates and application of sanctions by the Law Council have been a challenge.

Finance

- Some lawyers ask for money from pro bono clients or are easily bought off by the opposite parties in highly contentious matters.

- Some pro bono clients are too poor that they sometimes cannot afford their own transport for attendance of their matters (the Scheme only covers the advocate's transport disbursement).
- The court system slowed by endless adjournments which in turn delays justice for pro bono clients and increases their transport expenses to attend Court.
- The Scheme is still currently funded by external donors. As the sanctions (notably the monetary sanction) are not yet in force, it is hard to estimate if the fund would be sustainable without external support. Over 1589 advocates (of the 2446 members) have so far enrolled into the pro-bono Scheme, which means that 857 have never handled a file on a pro-bono basis. By multiplying this number by the amount that should be paid as a fee (110 USD), it gives a figure of 94.270 USD on a yearly basis.

2.5. Recommendations based on the Ugandan pro bono scheme

The following recommendations were gathered from the key strategic interviews:

On needs identification and evaluation

- The means and merits test assessments has to be developed in an harmonized template and should be done in the presence of an advocate, or with the participation of an advocate to ensure that only indigent clients are taken on under the Scheme.
- There is need for more sensitization of the population on the subject of pro bono to increase access to pro bono services.

On resources

- The Law Association should consider the using of a consortium to raise funding of the pro bono Scheme.
- Offer incentives to advocates who participate in the pro bono scheme. These can include
 - o Annual Pro Bono Award at the Annual General Meeting,
 - o Free Continuing Legal Education (CLE) sessions (paid for by the ULS),
 - o Branded gift hampers (diaries, pens, business card holders, etc.).
- Lawyers who are yet to enroll as advocates should be given an opportunity to participate in the activities of the Pro Bono Scheme. Currently, Regulation 3 of the Pro Bono Regulations imposes the requirement on advocates. The ULS membership is for enrolled advocates.

On monitoring

- Computerize the system of tracking of pro bono matters assigned to advocates.
- Strengthen stakeholder networks with key institutions such as the judiciary and the police to ease the work of advocates providing pro bono services.
- Establish a toll free line at the Secretariat for pro bono clients.
- Strengthen referral pathways.
- The pro bono files should be assigned per advocate and not per law firm; the assigned advocate is accountable as an individual and not as the law firm. In ULS's experience, holding the individual advocate accountable makes them more effective.
- Advocates should not be forced to handle pro bono files; the files assigned should be the advocates interest areas of practice.
- A mutual and cordial relationship of the Law Association with its members (advocates) is key and essential to the success of implementation a pro bono scheme.
- Pro bono work done by advocates outside the Pro Bono Scheme of the ULS should be considered as part of the statutory pro bono statutory requirement.

3. Legal framework and existing pro bono practices in Zambia.

3.1. Current Scenario of Legal Framework of Pro bono Services

The Government of the Republic of Zambia (GRZ) is fully committed to improve governance in Zambia and it views access to justice as a priority area. The delivery of justice is essential for poverty reduction and thus is prioritized under the country's National Development Plans³⁰. With this view a Governance Department (GD) was established in the Ministry of Justice (MoJ) to oversee the direction, planning and implementation of an overall justice reform program called Access to Justice (AtoJ).³¹

In furtherance of Access to Justice, Zambia was among 150 other countries that in September 2015 adopted and implemented at the start of 2016, efforts to end all forms of poverty, fight inequalities, and tackle climate change, while ensuring that no one is left behind. The SDGs build on the work of the Millennium Development Goals (MDGs) that were emphasized from 2000 to 2015. One of the Goals that Zambia has to achieve is goal 16 which is **"Peace, Justice and strong Institutions"**³².

The need for legal aid in Zambia is enshrined in the highest law of the land, the Constitution. Part III of the Constitution provides for the Right of accused persons to protection of law. Everyone is presumed innocent until proven guilty. All accused persons have the right to be represented by a lawyer³³ based on principles of equality before the law and the presumption of innocence. These guarantees are buttressed by the protection from discrimination in article 23 and protection from inhuman treatment in article 15.

Providing and ensuring access to Justice is achieved notably by the country having an efficient legal aid policy and system. The National Legal Aid Policy is currently being work on for adoption. Pro bono is one of the 8 delivery models chosen in order to provide legal aid.

Pro bono services are understood as the provision of legal aid services, at little to no cost to the indigents by legal practitioners in private practice. Despite the existing practice of private practitioners handling cases on a voluntary basis, Zambia as a whole currently does not have a formalized pro bono policy.

The development and implementation of a pro bono scheme can only be achieved through the governing body the Law Association of Zambia (LAZ).

But, as many country, Zambia has a shortage of lawyers that are practicing. As of 2015, there were 1203 Lawyers recorded³⁴. Of these, 1002 operate in Lusaka and a few operating in Copperbelt province³⁵. The current number of practicing Lawyers of 2017 stands at 936³⁶ but the patterns of how many practitioners are in other parts of the country as opposed to Lusaka remain relatively the same.³⁷ This means that there is 1 lawyer for every 16.571 persons in the country.³⁸ In a context where legal practitioners are few, the scope of the legal profession's legal aid work remains limited as there is no

³⁰ www.mndp.gov.zm/download/7NDP.pdf.

³¹ www.accesstojustice.org.zm/index.php/about-us - written by Site Admin.

³² <https://ohorizons.org/blog/sustainable-development-goals?gclid=Cj0KCQjw557NBRC9ARIs>.

³³ Article 18 of the Constitution of Zambia, Chapter One of the Laws of Zambia.

³⁴ Law Association of Zambia Directory of Members 2015.

³⁵ Law Association of Zambia Directory of Members 2015 shows that from Advocate no. 127 to 1203 all practice in Lusaka.

³⁶ www.laz.org.zm/wp-content/uploads/2014/04/LAZ-2017-List-of-Paid-Up-Members.pdf.

³⁷ Legal Aid Board Strategic plan for the year 2013 - 2017

³⁸ https://theodora.com/wfbcurrent/zambia/zambia_people.html for the statistics of the population of Zambia

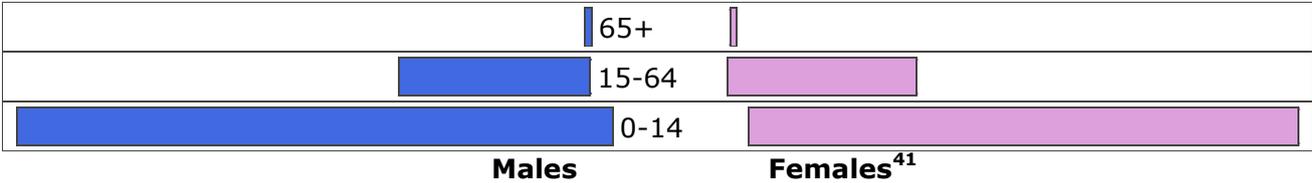
specific framework supporting the provision of pro bono services by legal practitioners in private practice.

Despite the absence of legal framework supporting the provision of pro bono services, some lawyers offer legal aid services for free. For those practitioners who do offer pro bono services, they do so primarily because of their back ground or because they have seen the needs of the indigents. For some it's the mandate given by virtue of their registration but the few lawyers that do offer pro bono services of their own volition even as they are in private practice, it is because of passion³⁹.

3.2. The Needs

Zambia’s poor, youthful population consists primarily of Bantu-speaking people representing nearly 70 different ethnicities. Zambia’s high fertility rate continues to drive rapid population growth, averaging almost 3 percent annually between 2000 and 2010. As of January 12 2017, Zambia’s population stood at 15,510,711⁴⁰.

Rural population (% of total population) in Zambia was reported at 59.08 % in 2015, according to the World Bank collection of development indicators, compiled from officially recognized sources.



It has to be noted that the biggest part of the population which is currently under 15 years olds will become, in the coming years, the active part of the population. This active population will work, buy assess, get married, get children, etc. The need for legal services should grow identically.

Further, with 64% of the population living below the poverty line and not able to afford legal fees, the rights to legal assistance and representation, to equality before the law and to a remedy as set out in the Zambian Constitution and legislation, and in Zambia’s international human rights obligations are not adequately fulfilled in practice.

As already stated, there is a shortage of practicing lawyers and lack of services that would bring justice closer to the people. There is a need to have a comprehensive pro bono scheme to reduce the shortfall of man power that is faced by the Legal Aid Board (LAB) and the National Legal Aid Clinic for Women (NLACW), the two bodies offering legal aid, as well as some lawyers in private practice.

3.3. Providers of pro bono services and criteria

The National Legal Aid Clinic for Women (NLACW)

The National Legal Aid clinic for women is a body that offers legal aid. It was established in 1990 as a project of the Women’s Rights Committee (WRC) of the Law Association of Zambia (LAZ), which is a body corporate with perpetual succession and full legal status created under Act No. 47(31) of the Laws of Zambia.

LAZ has 18 committees and the Women’s Rights Committee is the one that the Legal Clinic falls under.

³⁹ KII with private practitioners providing pro bono services and at LACW.
⁴⁰ https://theodora.com/wfbcurrent/zambia/zambia_people.html.
⁴¹ https://theodora.com/wfbcurrent/zambia/zambia_people.html.

The NLACW's offers women & children's access to justice by way of legal representation, counselling, legal and human rights education as a distinct but integral part of the women's movement.⁴² The clinic derives their work from the data and statistics in the country which shows that there is gender imbalance because of social and economic factors and through this, *"being lawyers we want to provide access to Justice to women not empowered because of social and also low income activities and high poverty levels and that because of this women have no access to low economic lawyers and so ability to pay for lawyers is limited"*.⁴³

The NLACW has practicing lawyers that get paid by the organization. These take on cases on merit depending on (i) the facts of the case and (ii) the need and the economic situation of the client.

The client's needs are assessed during the first visit. There is no official document to do so. The assessment is based on a discussion with the clients regarding their means, the kind of job they have and how much they earn. Depending on the assessment, the client will be asked for a small contribution for legal court fees and paper work or the service will be totally covered by the clinic⁴⁴. These cases are referred to the clinic from various sectors and walking in clients and other partners they work with. As the clinic is well known, people also come directly to them as walking clients. The clinic handles about 25 cases per day especially in Lusaka where it is heavily congested. The clinic has 3 offices: one in Lusaka, Ndola and Livingstone and these offices are split up to take on cases from other provinces.

In addition of lawyers being paid by the clinic, they also have lawyers from different organizations and law firms that volunteer to take up pro bono cases from the clinic. The clinic has currently nine lawyers that do take up cases on pro bono basis but most of the files end up being recalled by the office due to the slow pace of handling matters by some of the lawyers.⁴⁵ Out of a total number of 64 cases handed out for pro bono services in 2017, 15 files have been returned or recalled to the NLACW because either the lawyer does not want to take up pro bono cases anymore or because the case is slow and so the clinic had to recall the case.

Despite these obstacles, this experience shows that some lawyers are and remain interested in handling cases on a pro bono basis.

Undikumbukire Project (UP)

Undikumbukire Zambia project Zambia was born as a result of a lawyer that saw the need to help out juveniles that come in conflict with the law. The project was born as a social enterprise when the co-founders started visiting prisons to interact with the juveniles therein.

*"We formed this project after Sara one of the founding members issued a call for any people that wanted to join her to do some pro bono work. From visiting the juveniles in prison, we registered the organization and decided to morph into representing these juveniles in court. This project sought to set itself in the juvenile justice sphere. For example we're on record for all confirmations in the High Court in Lusaka on representing juveniles in the last two years."*⁴⁶

For UP Zambia, The criteria to take up pro bono cases are that every juvenile in Lusaka

⁴² KII interview with NLACW Director Mandy Manda.

⁴³ KII interview with NLACW Director Mandy Manda.

⁴⁴ KII interview with beneficiaries.

⁴⁵ KII with NLACW Director Mandy Manda.

⁴⁶ KII with Kelly Kapianga.

district will get their help. As long as a person is a Juvenile under the Juveniles Act, they will be represented by UP Zambia. But due to logistical and geographical limitations, the project focuses on juveniles in and around Lusaka although they do make clusters of cases in other districts but so far have managed to represent people in Kabwe and Chipata.

They offer legal empowerment, legal advices and legal representation when needed.

Practice practitioners on a voluntary basis

Some other lawyers working in private practice do handle cases on a pro bono basis, based on clients addressing the need to them. These are very few and they provide assistance based on volunteering. The services offered cover legal advices and legal representation when needed. Most lawyers in Zambia do offer free legal services and legal advice or even at reduced prices. But because the practice is unregulated, pro bono is seen more as a formal practice developed by big law firms. But in practice, many lawyers that work in family law or petty crimes often handle cases do not charge a lot to their clients. They do not normally view the practice as is currently pertaining as pro bono because it is unregulated.

For the lawyers that offer their services, they mostly get assigned cases from LAB or NLACW and so mostly just know that these have already been vetted and are indigents that do not have sufficient means to access a lawyer.

LAZ gets some people that drop in at the offices hoping to be referred to a lawyer that can help them in their cases. When the office gets such clients, they do not turn them away but rather get their cases and refer them to the committee that can oversee the case. There are two committees under LAZ where the cases can be taken. The cases are either passed to the Women's rights committee (which is the NLACW) and the Legal Aid Committee which then distributes to the Lawyers that are part of that committee to work on pro bono. This is the committee that Mrs. Mumbi for example heads, where people therein that provide pro bono services are grouped.

"I get cases from LAZ Secretariat. They have people that drop in at the offices asking for legal Assistance at the secretariat. These are handed down to me and I distribute to the members in my committee. I have an email setup with all the group members and I tell them the type of cases I have and they pick up the number they can deal with and the ones that remain are the ones I tackle."⁴⁷

Even if these kinds of practices remain the exception, we can see that most lawyers do provide on a random basis free or low cost legal services or advice. With the practice not being regulated, this kind of "help" is not considered as pro bono per se.

3.4. Organization and management

There are no set rules of advocates who want to apply to offer their pro bono services under LAZ. According to the secretary of the council in LAZ, lawyers that want to practice pro bono apply to LAZ under the Women's Rights Committee who is in charge of the NLACW and these are put on the roster and that is what they use to assign cases. They also use the same avenue to the Legal Aid Board (LAB) to access lawyer's services on pro bono basis.⁴⁸

The same committee also gets cases from LAB. The committee approaches Legal Aid Board and asks for cases they need help with and once given tells the other committee members in the same way. The LAB cases tend to go fast off the shelf.

⁴⁷ KII with Mrs. Pamela Mumbi.

⁴⁸ KII with LAZ Council Secretary Mrs. Sassa Kateka.

The Legal Aid Board is the only mandated institution that provides (free) legal services in the country. It only provides its services at the Subordinates Courts and above (not at Local Court Level). For Criminal cases committed to the High Court, it is mandatory for LAB to provide legal aid to persons who lack the means to pay for a lawyer. The LAB though, has a very few lawyers on the ground and are not in all the provinces yet.⁴⁹ These lawyers are paid for their services by the state, although their pay is not the same as a conventional lawyer gets paid. When private practitioners take up pro bono cases from LAB, the Legal Aid Board provides K2000 at the beginning of the case and K2000 at the end of it to cover filing fees and logistics as an incentive⁵⁰.

As explained in the above section, the Legal Aid Clinic has a database of a few lawyers that offer their services to the clinic and the clinic reimburses them mostly on filing fees. They work with individual lawyers who offer their services but as there is no law to compel one to offer their services and do it to the best of their ability, they have had to withdraw a number of cases from the lawyers.

"Zambia has no law firms that offer pro bono services but we do have a data base of individual lawyers that offer their services at no cost although the clinic bears the court charges such as filing fees and the like. But most of these lawyers have problems in handling pro bono cases and present the same before the courts because they have to manage competing interests. As cases sometimes drag out, the lawyers must choose between paying clients at their individual law firms and the non-paying clients. In the end we have had to take over some of the cases to ensure that a person gets the best possible help."⁵¹

As for Up Zambia, They are affiliated to Legal Aid Board. Because LAB does not have the capacity to handle all the cases in their jurisdiction, the project members visit prisons in Lusaka and register all the juveniles therein that require court representation or any services that the organization offers. They then register or open a file with LAB and from there they take up the matter until completion in the courts of law.

As we can see from the foregoing, based on practices, the case flow or referral pathway of pro bono cases is not regulated. Many entry points do exist. The pathway will depend on the case, the criteria for handling cases and the availability of lawyers. As some clients go directly to the NLACW, some others address their request directly to LAZ who transfers the case to the clinic, or to individual lawyers through the committees. The LAB also remains an important entry point.

It has to be noted that there is no proper monitoring of pro bono cases in place. If the case came through LAZ, they have forms to fill in on the case details and how it was handled and the outcome of it. This is given to the LAZ secretariat. But from LAB there is no reporting mechanism. It is an informal kind of reporting. They sometimes call to find out on status of a case or not at all as long as the case is completed.

Services Offered

The Legal Aid Act, as amended by Act No. 19 of 2005, establishes the Legal Aid Board (LAB). The Act however, provides for a restrictive definition of legal aid consisting in **legal assistance and representation** only, to be provided by legal practitioners in the courts of law. LAB, therefore, has largely focused on the provision of legal representation in High Court in both criminal and civil cases. This means that even cases that are given to lawyers on pro bono basis are only to do with legal representation.

The NLACW offers representation in court for both civil and criminal cases. They also

⁴⁹ Gender and Access to Justice' presentation during a workshop in March 2017 by Davis Chikalanga.

⁵⁰ Ibid 21.

⁵¹ Ibid 15.

offer mediation and provide free legal advice in cases that do not have to end up in court. They also have paralegals on the ground who they give capacity to in terms of how to handle giving advice in the areas where they have no offices.

As for Up Zambia, aside from legal representation of juveniles, they also offer trainings for legal students they work with. The practitioners that offer their services to the project train students in how to be a 'Mackenzie friend' and help the juveniles going into courts to understand the trial process and also be with them through-out the court process though cannot represent them. This was developed because of the fact that there are few qualified lawyers that work with the organization and they cannot always manage to be present with all the cases. The concept comes in from a judgment held that "The Courts in England have recognised that a party litigant presenting his case in Court may be, or may feel himself to be, at a disadvantage. For this purpose they have, as a matter of discretion, often allowed the party litigant to be assisted in Court."⁵² The organisation also works with volunteer lawyers and provides bail hearings.

They also offer legal social services like access to medical care and offer time and advices to juveniles in detention. They also take up class suits or class actions involving juveniles.

As for some in private practice, like Mrs Mumbi, she offers legal representation in court but she also offers other services like giving legal opinions and advice.

"Where I cannot represent a client in court, I prepare them on Local Court procedure and proceeding and how to give evidence. I give trainings, and have done that in the past. I have trained Local Court Justices with WLSA, Junior Parliamentarians Under Jubilee Centre and also give training to various churches that approach me in how to write a will and what happens when a member dies testate."

Thus, despite the law being restrictive on the definition of legal aid, the practice of Zambian's lawyers and advocates oversteps the theory as they offer a wider range of services.

3.5. Practical challenges

Constraints due to the legal framework

Although the Constitution provides for the rights of every person to be represented by a lawyer, it, however, does not provide any particular guidance on when legal aid should be provided but instead relegates, in article 18(2) (d), the specificities of the subject to ordinary legislation, in this case, the Legal Aid Act chapter 34 of the laws of Zambia. This only stipulates to LAB to represent someone in court but not on how to handle pro bono cases. In the Zambian climate where there are no written down laws or procedures of how pro bono practices are handled, there is a gap such that most lawyers have challenges practicing pro bono.

One of the reasons is that to offer pro bono services, a lawyer has to be part of a law firm. Without being part of law firm, lawyers can't handle cases. As a consequence, the lawyers that do not practice pro bono say they cannot find the extra time to take on cases on pro bono as they work on billable hours. Also, for a lawyer to take up a case the law firm they work for has to approve for them to take on the pro bono case. This means that where the law firm has refused they cannot take up any pro bono cases.

*"I would love to take on pro bono cases but the law firm I work for does not allow us to do so."*⁵³

⁵² MacKenzie v. MacKenzie [1971] P 33, [1970] 3 WLR 472, CAT 679/1991.

⁵³ A KII working for a named Lawfirm in Lusaka.

Some lawyers would agree to work on pro bono cases though some do not see the merit of taking up pro bono cases because there is LAB to do that. **Most lawyers, though, do agree that if pro bono was made into law, as officers of the court, they would be bound to follow the law.**⁵⁴ They contend that there is need to have rules that compel or require employers to undertake pro bono matters for a specific duration for the year or month. According to some lawyers, specific and strict reporting requirements are needed, for example if each firm can provide to the Chief Justice a list of pro bono cases showing that the minimum targets or maximum targets set by regulation have been met.⁵⁵

For lawyers in private practice who just use passion for the underprivileged and the indigents, they do not have any laws to help them weave these services. This means that they give their services from registrations and just facilitate and represent people in court.

Constraints due to the clients

Because they are not more aware of their rights, and have not understood the procedure and thus report to LAZ as a last resort after they have exhausted other means of resolution. The case comes to LAZ as a bad case because of missing information, mishandled at the beginning or is statute barred at that point. Sometimes the information needed is not given to lawyers because the client did not pay their original law firm. It comes to lawyers to give the clients the bad news after they have lost everything. This can be viewed as a consequence of the lack of legal aid services regulations.

The lack of finances for legal aid services in general has also to be highlighted, for civil cases especially, as for criminal cases, LAB is providing support to lawyers. For the civil cases there are no finances to help with filing and other fees to fund the process. As professionals the lawyers are already forgoing their legal fees in attending to the pro bono case so one cannot dip into their pockets as well to finance it.

Constraints due to the justice system in general

The justice system in Zambia is a detention centered one. Overcrowding in prisons is up by 159% and there is no legal limitation for pre-trial detention. But because of lack of representation and few lawyers offering their services, it's very difficult to give representation to all the above.

Too many adjournments and prolonged cases means that private practitioners have problems balancing the work load at their law firms and paying clients. As there are no law firms that provide pro bono services or have pro bono policies in place except a few of them on a volunteer basis, the private practitioners that offer their services do so in their own free time save for a few that are given more room by their chambers or are partners and have more room to maneuver.

Because of busy schedules and competing interests, sometimes a lawyer cannot always be available. Lawyer's time is important because they're balancing paying clients and nonpaying. This is because lawyers work on billable hours, which means they do not get paid for those hours they're working on pro bono cases. To add to that, the lawyers can only take on pro bono cases that are previously agreed to be the employers so if the firm chooses to distance itself from particular cases, then the lawyer cannot take up that pro bono case. Because of this, it would be important to have a pool of lawyers that can take

⁵⁴ A lawyer not practicing legal Aid.

⁵⁵ KII with a Lawyer not providing Pro bono services.

over cases if there is need.

The shortage of lawyers in the country, as already stated, is another challenge for the provision of legal aid services. The statistics will show you that there is about 1 lawyer for every 17,000 people and over half the population are youths. Because of this, it is also proving to be very difficult to get man power to go to the other provinces.

The fact that there is no pro bono Centre that would be in charge of monitoring pro bono cases and how they're handled is a problem. Private practitioners offer their services without guidance and there are no set down procedures. Reporting on cases differs. If the case came through LAZ, they have forms to fill in on the case details and how it was handled and the outcome of it. This is given to the LAZ secretariat. But from LAB there is no reporting mechanism. It is an informal kind of reporting. They sometimes call to find out on status of a case or not at all as long as the case is completed.

There is a hostile human rights culture in Zambia. There is a very weak system on human rights practice. The court structure has a very corporate and criminal (repressive) culture to it which means that a person who does not understand the structure can have a difficult time to access justice. This means that even if they are to have pro bono services, people have to be given specific pathways of where to register to reduce on the daunting task of court processes.

Finally, law studies and the legal education required to be admitted to LAZ are quite expensive. Young lawyers, who are in general the more sensitive to offer pro bono, have also constraints regarding earning money they have spend in order to be admitted to the bar.

4. Ways forward in Zambia

For a formal pro bono scheme or policy to be developed in Zambia, some concrete measures have been abstracted from the analysis realized in the previous sections. These measures are suggested as examples of practices that could be put in place by the Law Association of Zambia in regard of the development of a pro bono policy.

As stated in the introduction, there are almost as many forms and approaches of practicing pro bono as there are lawyers and law societies involved in offering legal help free of charge. It is to the Law Association to appreciate the relevance and the practicality of these measures in the Zambian context.

1. *Adapt the legal framework*

There needs to be amendments to existing laws and also working on new laws that recognize organizations working on pro bono basis or lawyers being able to represent a client even if the legal practitioner is not affiliated with any law firm. Currently, the law stipulates that for a practitioner to represent someone in court, they have to be registered with a law firm. But depending on the nature of the case, some law firms do not want to be affiliated with certain cases which means that that practitioner has to step down from the case for the sake of the company and instead just give legal advice to the client.

A change in such laws also would help CSO's venturing into pro bono to work in an enabling environment. Currently, the organizations have to be registered under chambers as organisations, whether having competent lawyers or not, cannot represent anyone in court unless under a duly registered chamber. For example, the Legal Resources Foundation, which is an organization that provides legal representation on pro bono basis, has registered the organization as Legal Resources Chambers to be able to meet the criteria set up by the laws. But the law should be set up in such a way that once you have been admitted to the bar and you can practice law, the courts should recognise these organisations the practitioner represents because the adequate protection of the indigents should be paramount.

As the National Legal Aid policy is currently being reviewed and that pro bono scheme is recognize as a model to provide legal aid to the population, it is also important that the adoption of the policy is coupled with some financial means from the Ministry of Justice in order to achieve access to justice for all.

2. *Development of a pro bono scheme as indicated in LAZ's strategic plan.*

As described in the first part of the study, pro bono scheme can take various forms. However, **pro bono services should be made mandatory** and the definition of pro bono services should be broad in order to include different kind of services (see the services included in the Ugandan model). This obligation could apply on advocates on an individual basis, on law firms depending on the number of lawyers they have, or on both. However, the Ugandan experience shows that holding the individual advocate accountable makes them more effective. Also, pro bono could be considered based on a number of pro bono files per year instead of a number of hours dedicated to pro bono services. This option has to be evaluated by LAZ and balanced. It is considered that a requirement of pro bono services based on a number of hours is more likely to get "buy-in" by advocates as it takes a long time to dispose of a case. Also, it depends on the definition of pro bono services, as legal education and legal advice cannot be quantified based on a number of files.

A strong monitoring system is also to be considered from the beginning, considering the monitoring system and reporting on of cases, but also to monitor advocates

and/or law firms regarding the incentives and sanctions system.

3. Develop incentives for lawyers and law firms to make it more compelling for them to handle pro bono cases.

According to lawyers, incentives could take different forms:

- Financial support to advocates or law firms that provide pro bono cases to cover the legal fees. These costs could be covered by lawyers contributions for the LAZ's admission and renewal of the practicing license, or by financial sanctions for those who don't provide pro bono services as showed in the description of the Ugandan model;
- Special recognition or award to advocates or law firms that take up pro bono cases;
- Providing time for lawyers to handle pro bono cases (for example, law firms having policies that will allow lawyers to dedicate time to pro bono cases);
- Free Continuing Legal Education (CLE) sessions (paid for by LAZ) – as suggested by the Ugandan model;
- Branded gift hampers (diaries, pens, business card holders, etc.) – as suggested by the Ugandan model.

4. Sanctions should be placed on lawyers and/or law firms.

As described in the first part of the study, sanctions may be applied in various ways. Advocates who don't comply with the pro bono requirement in some model have to pay a fee, are blamed for unprofessional conduct, or are refused the renewal of their practicing licence. This can only be done where the delivery pro bono services are made mandatory to all practitioners regardless of field of study and industry being worked in.

Financial sanctions can also be applied on lawyers and/or law firms for not providing pro bono services (if mandatory). An option is the one of sanctioning law firms. As lawyers need the law firms to agree for them to handle pro bono cases, a financial pressure on law firms might lead them to agree more easily. As shown by the Ugandan experience, the potential financial income due to these fees could help a pro bono scheme to be developed and more sustainable as the dependence on development partners would be less. However, financial sanctions are delicate to put in place and to follow as explained by the Ugandan model (the principle of financial sanctions do exist but has never been put into practice until now).

5. Students who are pursuing their practicing licenses at ZIALE and/or paralegals could be involved in the delivery of pro bono services. A part of pro bono services concerns legal empowerment. This part of "legal education" could be done by ZIALE students and/or paralegals (diploma holders recognized as legal assistant by the Legal Aid Policy).

Also, as explained in the experience of UP Zambia, law students can be involved with minor tasks, such as supporting clients in court procedures, adducing evidence in court by accompany them, explaining to them the court processes, waiting at the court to see if the matter will be handled that day or not and to keep the advocate in charge posted, etc. These "minor" tasks, if executed by students, could reduce the time an advocate has to spend on a pro bono case. Of course, the provision of legal advices and representation remain in the hand of professional advocates and supervision would be key to maintain the quality of the service provided.

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	2 Lawyers providing pro bono services	*Names withheld