



Pro Bono Practices and Opportunities in Uganda¹

INTRODUCTION

Although there is an acute unmet need for legal aid and free legal services for the indigent in Uganda, the country lacks the resources to implement a comprehensive national legal aid system. This leaves a significant number of Ugandans without government-provided legal aid or resources to afford hired counsel. Women in particular experience the greatest barriers due to their higher illiteracy levels, social factors and a lack of information.² As a result, pro bono services, while not widely available, are greatly needed. A majority of pro bono services that are provided come from NGOs which are mainly located in urban areas.

LEGAL SERVICES AND THE LEGAL PROFESSION

The Justice System³

Uganda is a former British protectorate with a legal system modeled on the English common law legal system. The supreme law in Uganda is the Constitution, the latest being enacted on October 8, 1995.⁴ Uganda has had an unstable political and constitutional order with several previous constitutions having been enacted between 1962 and 1995.

The Ugandan Judicature Act⁵ established that Ugandan legal authority can be based on statutory law, common law and doctrines of equity and customary law. However, the law is fundamentally statutory, comprised of Acts of Parliament and Statutory Instruments, with some common law and doctrines of equity and customs applying as well. Statutes take precedence over doctrines of equity and customs. Customary law must not be repugnant to good conscience, equity and natural justice and can be applied before any court.

Uganda's legal system's hierarchy includes (i) tribunals, (ii) magistrate courts, which handle the majority of criminal and civil cases, (iii) a High Court that hears appeals from the tribunals and magistrate courts and can assume original jurisdiction in any matter of its choosing, (iv) a Court of Appeals that takes appeals from the High Court and has original jurisdiction over constitutional cases, and (v) a Supreme Court that sits as the final court of appeal and exercises original jurisdiction over presidential election petitions. The President appoints all judges to the High Court, the Court of Appeals and the Supreme

¹ This chapter was drafted with the support of Phillip Karugaba, partner at the law firm of MMAKS Advocates.

² Government of Uganda, The Justice, Law, and Order Sector Program: Study on Gender and Access to Justice, THE REPUBLIC OF UGANDA MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS, JUSTICE, LAW AND ORDER SECTOR (2002), available at <http://www.gsdr.org/docs/open/SSAJ85.pdf> (last visited on September 4, 2015).

³ Lydia Matte, Uganda's Legal System and Legal Sector, HAUSER GLOBAL LAW SCHOOL PROGRAM (Mar. 2013) <http://www.nyulawglobal.org/globalex/uganda.htm> (last visited on September 4, 2015); [AUTHOR], The Legal and Institutional Context of the 2006 Elections in Uganda, CHR. MICHELSEN INSTITUTE & MAKERERE, available at <http://www.cmi.no/uganda/docs/project-presentation.pdf> (last visited on September 4, 2015). UNIVERSITY <http://www.cmi.no/pdf/?file=/uganda/doc/court-administration-uganda-october-05.pdf> (last visited on September 4, 2015).

⁴ CONSTITUTION OF THE REPUBLIC OF UGANDA (1995) available at http://www.statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf (last visited on September 4, 2015).

⁵ THE JUDICATURE ACT, Ch. 13 (2000) <http://www.ulii.org/ug/legislation/consolidated-act/13> (last visited on September 4, 2015).



Court upon the recommendation of the Judicial Services Commission and the approval of Parliament. The Judicial Services Commission appoints judges to the magistrate courts.⁶

The Practice of Law

Attorneys in Uganda are referred to as Advocates once they are certified to appear before a court.⁷ An Advocate is an attorney who is enrolled to the bar and has a right to an audience before the court; an attorney who is not an Advocate cannot appear before the court. The Law Council exercises control over and supervises professional legal education in Uganda. The Uganda Law Society is charged with maintaining and improving the standards of conduct and learning of the legal profession in Uganda according to §3(a) of the Uganda Law Society Act. To become an attorney, one must obtain a Bachelors of Laws from an approved undergraduate university. Attorneys who wish to become Advocates must pass a Bar Course offered by the Law Development Centre in Kampala. In addition, an Advocate must have completed an internship or clerkship lasting 2.5 months. Foreign attorneys must attend core subject classes at a Ugandan university and take the Bar Course before practicing in Uganda.

LEGAL RESOURCES FOR INDIGENT PERSONS

The Right to Legal Assistance⁸

The law concerning state government-provided legal aid is set out in the Constitution. Article 28(3)(e) reads:

Every person who is charged with a criminal offence shall be permitted to appear before the court in person or, at that person's own expense, by a lawyer of his or her choice; [...] (d) in the case of any offence which carries a sentence of death or imprisonment for life, be entitled to legal representation at the expense of the State.

In Uganda, every defendant in a criminal trial is entitled to an attorney. However, only defendants charged with crimes that carry a death or life imprisonment sentence are entitled to a government-provided Advocate. As such, many Ugandans are left essentially without legal aid because they cannot afford to hire an Advocate nor are they entitled to government-provided counsel except in the most extreme circumstances. Similarly, any party may retain an attorney for a civil suit, but the government does not provide free legal counsel in any civil suit.

Unmet Needs Analysis

Due to the insufficient and limited nature of government sponsored legal aid coupled with a large impoverished population, there is a severe unmet legal need in Uganda. First, Uganda has a severe shortage of attorneys, with only 2,000 attorneys for 37.5 million people.⁹ Second, because a large

⁶ JUDICIAL SERVICE COMMISSION, Our Mission, Vision and Objectives, http://www.jsc.go.ug/index.php?view=article&catid=29%3Athe-cms&id=22%3Aour-missionvision-and-objectives&format=pdf&option=com_content&Itemid=34 (last visited on September 4, 2015).

⁷ INTERNATIONAL BAR ASSOCIATION, How to Qualify as a Lawyer in Uganda, http://www.ibanet.org/PPID/Constituent/Student_Committee/qualify_lawyer_Uganda.aspx (last visited on September 4, 2015).

⁸ CONSTITUTION OF THE REPUBLIC OF UGANDA, supra n. 4 at § 28(3)(e). In limited situations involving alleged crimes before the High Court, a judge can require the government to provide free legal aid outside the confines of a capital offense if such provision is "in the interests of justice," THE POOR PERSONS DEFENCE ACT, Chap. 20 (1998).

⁹ UNITED NATIONS OFFICE ON DRUGS AND CRIME, Access to Legal Aid in Criminal Justice Systems in Africa, Survey Report (2011) available at



proportion of Uganda's population live below the poverty line, the lack of statutory free legal aid largely restricts the average citizen's access to justice. Legal representation is only available in a limited number of Uganda's districts (as of 2011, it was as low as 16% of Uganda's districts).¹⁰ Third, there is a substantial backlog of cases which presents a serious structural and administrative burden.

The Ugandan government, through the implementation of The Law Development Center Act, established a Law Development Center that, in part, is responsible for "assisting in the provision of legal aid and advice to indigent litigants and accused persons" as an attempt to address some of the obstacles to justice.¹¹ Despite this effort, however, there are still a significant number of indigent Ugandans who cannot afford legal services nor benefit from government-provided legal assistance.

The Role of NGOs and Outside Entities

The biggest restriction to government-provided legal services in Uganda is inadequate funding due to the costly nature of conducting civil and criminal proceedings. NGOs play an integral part in offering legal aid to people that would otherwise not have access to legal services. NGOs such as the Ford Foundation (which has started a clinical law program in Uganda) have committed resources to Uganda directed toward providing Ugandans with access to legal aid. All NGOs and other providers of legal aid must register as a legal aid provider before engaging in the business of assisting indigent persons.

The Legal Aid Project ("LAP") was established by the Uganda Law Society in 1992 with assistance from the Norwegian Bar Association¹² to provide legal assistance to indigent and vulnerable people in Uganda. LAP has its head office in Kampala and branches in Kabarole, Kabale, Masindi, Jinja, Gulu and Luzira. The LAP helps thousands of indigent men, women and children to gain access to justice and to defend their legal and human rights. Their work includes the provision of legal information, dispute resolution and court representation.

Other governments, such as the United States through its USAID program, also contribute to Ugandan legal aid. The USAID program recently gave a grant and worked in partnership with local groups to establish an alternative dispute resolution program.¹³ The Canadian Bar association likewise donated money to fund the Access to Justice for Children and Youth Project, a four-year initiative aimed at enhancing access to justice for children and youth in Eastern Africa.

The Role of Paralegals¹⁴

A significant part of the role that NGOs play is training paralegals and equipping them to provide legal aid. Paralegals conduct "Paralegal Aid Clinics" on a regular basis in the main prisons across the country. These clinics are aimed primarily at prisoners awaiting trial and aim to empower prisoners to apply the law in their own cases.

Paralegals assist with various tasks including case work, community education, mobilization, advocacy, conflict resolution, police work, court work and prison work.¹⁵ Though paralegals cannot represent

http://www.unodc.org/pdf/criminal_justice/Survey_Report_on_Access_to_Legal_Aid_in_Africa.pdf (last visited on September 4, 2015).

¹⁰ Id.

¹¹ THE LAW DEVELOPMENT CENTRE ACT, Ch. 132 (1970) <http://www.ulii.org/ug/legislation/consolidated-act/132> (last visited on September 4, 2015).

¹² UGANDA LAW SOCIETY, Introduction, <http://www.uls.or.ug/projects/legal-aid-project/introduction/> (last visited July 21, 2015).

¹³ UGANDA LAW SOCIETY, Annual Report 2014 at 14, available at http://www.uls.or.ug/site/assets/files/1022/uls_annual_report-2014.pdf (last visited on September 4, 2015).

¹⁴ PENAL REFORM INTERNATIONAL, Index of Paralegal Services in Africa (2012) <http://www.penalreform.org/publications/index-paralegal-services-africa> (last visited on September 4, 2015).



accused suspects in court, they work closely with inmates and accused persons to inform them of their constitutional rights, teach them how to represent themselves, and obtain bail for minor offenses.¹⁶ The Paralegal Advisory Service¹⁷ aims to provide basic legal assistance and seeks to secure access to bail for eligible individuals. The program empowers pre-trial detainees to seek justice by furnishing them with information on their rights and on the procedures and workings of the justice system. This initiation of the program in Uganda has coincided with a decrease in the percentage of detainees awaiting trial in Uganda, with the percentage of detainees awaiting trial falling from 64% in 2005 to 55% in 2015.¹⁸

The Paralegal Aid Clinics are essential because of the high number of incarcerated Ugandans who have not yet faced trial; 55% of the prison population are on remand or awaiting trial and the number of prisoners incarcerated in Uganda is more than double the official prison capacity.¹⁹ An audit conducted by the Ugandan Prisons Service found that over 460 prisoners²⁰ had exceeded their constitutional remand period and were due for unconditional bail but were still serving time in prison.²¹ The audit also found that a majority of the prison population have been deprived of effective legal representation (with the exception of those entitled to statutory legal representation for capital offences) and do not have a proper understanding of their legal rights.

Since 2005, paralegals in Uganda have supported more than 165,000²² prisoners in criminal law proceedings, and assisted 2,500 accused Ugandans obtain bail in a period of nine months.²³ The Commissioner General of Prisons in Uganda attributes the reduction of the remand population to the work of the paralegals, although the number has crept back up to 55% as of 2015. Uganda now has more than 70 paralegals working in the criminal justice system. The work of paralegals is seen by the authorities to have:

- Significantly helped decongest prisons by speeding up the conclusion of long- pending cases in courts;
- Helped remove bottlenecks curtailing access to justice for the poor by facilitating meetings between key criminal justice agencies; and
- Improved prison conditions

The Uganda Law Society

All practicing attorneys can subscribe to the Uganda Law Society, which is the main legal professional organization throughout Uganda. The Law Council has tasked the Uganda Law Society with carrying out pro bono in Uganda. The Uganda Law Society established the Pro Bono Project in 2008 and since then

¹⁵ Access to Legal Aid, supra n. 9.

¹⁶ DANISH INSTITUTE FOR HUMAN RIGHTS, Paralegal Advisory Service, http://dihf.org/legalaid/index.php?option=com_content&task=view&id=22&Itemid=35 (last visited on September 4, 2015).

¹⁷ Id.

¹⁸ INTERNATIONAL CENTRE FOR PRISON STUDIES, Uganda, <http://www.prisonstudies.org/country/uganda> (last visited on September 4, 2015); Paralegal Advisory Service, supra n. 16.

¹⁹ Id.

²⁰ Index of Paralegal Services, supra n. 14.

²¹ The law requires suspects to be charged within 48 hours of arrest (120 days for terrorism and 360 days for capital offences), but suspects are frequently held longer. If the case is presented to the court before the expiration of this period, there is no limit on pretrial detention, see UNITED STATES DEPARTMENT OF STATE, Country Reports on Human Rights Practices (Feb. 25, 2004) available at <http://www.state.gov/j/drl/rls/hrrpt/2003/27758.htm> (last visited on September 4, 2015).

²² Index of Paralegal Services, supra n. 14.

²³ Paralegal Advisory Service, supra n. 16.



13,000 attorneys have participated and offered pro bono services to the public. At the regional level, it is also possible to join the East African Law Society.

The Uganda Law Society currently boasts over 2,000 members, hosts dozens of events, and spearheads pro bono initiatives in the country.²⁴ A regional pro bono day was initiated by the Uganda Law Society to increase access to justice through the provision of free legal services by Advocates to the poor, indigent and marginalized in Uganda. At this event, Advocates provide legal aid services to walk-in clients in all the regions where the Uganda Law Society Legal Aid Offices operate: Kampala, Jinja, Soroti, Arua, Gulu, Masindi, Kabarole, Kabale and Mbarara. This year the pro bono day was on February 27, 2015.

PRO BONO ASSISTANCE

Pro Bono Opportunities

There is a relatively large network of pro bono services available across Uganda. Pro bono centers are mainly concentrated in the major cities and pro bono services are primarily provided by Justice, Law and Order Sector institutions and civil society organizations²⁵ that are instrumental in providing pro bono services to the poor and marginalised groups.

In addition, the Legal Aid Basket Fund, together with the Law Council, created a pro bono pilot scheme in October 2008. The scheme allows various donors to contribute donations to a single fund, which is then centrally coordinated by a pro bono manager based at the Uganda Law Society and administered by legal officers at the various regional LAP offices. The goal of the scheme is to combine different streams of legal aid money to a single entity that could enable indigent, vulnerable and marginalized persons access to justice more efficiently.

The need for active pro bono support and services in Uganda has also been recognized by the Uganda Law Society and the Law Council. Acting together in 2009, they passed Regulations SI No. 39 under the Advocates Act, which made it mandatory for every attorney to provide forty (40) hours of pro bono legal services per year:

- [E]very Advocate shall provide services when required by the Law Council or pay a fee prescribed by the Law Council in lieu of such services; and
- That where any Advocate does not comply with sub section (1), the Law Council shall refuse to issue or renew a practicing certificate to that Advocate under sub section 11 of this Act.²⁶

The Advocates Act imposes an ethical and social responsibility on all attorneys (including in-house attorneys) to provide pro bono services. If an Advocate does not annually perform 40 hours of pro bono work or pay the fee in lieu, he or she will not remain certified to practice law.

As a result of this legislation, law firms that actively provide pro bono services have become attractive places to work for newly qualified attorneys because they often provide support for attorneys seeking to comply with this new requirement, and oftentimes are given “credit” for pro bono hours in meeting billable hour thresholds. The Advocates Act pro bono requirement has enabled attorneys to give back to the community, which enhances morale, provides excellent training and allows attorneys to connect with clients and communities in ways that were not previously possible. Furthermore, it allows attorneys to gain valuable courtroom experience at an earlier stage of their career and means that commercial

²⁴ Annual Report 2014, supra n. 13.

²⁵ Anthony Conrad K. Kakooza, Pro Bono Publico and Its Administration in Uganda, ACADEMIA.EDU, available at http://illinois.academia.edu/AnthonyKakooza/Papers/1608827/PRO_BONO_PUBLICO_AND_ITS_ADMINISTRATION_IN_UGANDA (last visited on September 4, 2015).

²⁶ Anthony Masake, The Pro Bono Service Ensures Access to Justice for All in Society, DAILY MONITOR (Feb. 24, 2012, 12:00 AM) available at <http://www.monitor.co.ug/OpEd/Letters/-/806314/1333460/-/11d0ra6/-/index.html> (last visited on September 4, 2015); id.



attorneys will gain experience by assuming responsibility for matters that they might not otherwise take on in their mainstream practice.

Barriers To Pro Bono Work And Other Considerations²⁷

Insufficient Funding

Many NGOs and organizational groups providing free legal services receive funding from foreign groups. Since the availability of funds may fluctuate due to conditions outside the organizations' control, their provision of free legal services is unpredictable.

For example, the LAP is funded by the Norwegian Agency for Development Cooperation through the Norwegian Bar Association. Its activities and administrative budget are therefore dependent on the continued backing of the Norwegian Bar Association.

Infrastructure Problems

The Advocates Regulations,²⁸ which made it mandatory for every attorney to provide forty (40) hours of pro bono legal services per year, are not yet operational. While attorneys who do not provide 40 hours of pro bono services a year must pay a fine, the Law Council has not yet created a pro bono account to receive such funds. As a result, few attorneys provide voluntary pro bono services to members of the public.

Recently, a draft Legal Aid Policy attempting to establish a cohesive and enlarged public legal aid scheme has been circulated to the Ugandan Cabinet for approval.²⁹ The proposed reforms include recommendations to broaden the class of people who qualify for public legal aid, establish an independent legal aid body to administer funds, and create a public-private partnership to more effectively and efficiently deploy legal aid.

Opt-Out Right

As noted above, the Advocates Act made it mandatory for all attorneys to provide pro bono legal services, unless they pay a fee for an exemption. Situations could arise that too many attorneys decide to pay the opt-out fee, leaving few, more economically-disadvantaged, attorneys to provide pro bono work.

Logistical Realities

Most of the legal apparatus and aid providers are located in large cities, namely Kampala, while 87% of Ugandan citizens live in rural areas. Although NGOs perform a crucial role in providing access to justice, many only have the resources and funding available to operate in major cities, leaving many rural citizens with no legal recourse.

Pro Bono Resources

- The Uganda Law Society: engages in legal aid and pro bono which are its flagship projects with the aim of extending access to justice to the poor, indigent and most vulnerable across Uganda. (See <http://www.uls.or.ug/> (last visited on September 4, 2015) for more information).
- The LDC Legal Aid Clinic: was established for the main purpose of improving the level of training of Bar Course students and to promote the lawyer's role of service to the community and legal representation of needy persons. (See <http://www.ldc.ac.ug/> (last visited on September 4, 2015) for more information).
- The Public Defender Association of Uganda: offers legal aid to indigent persons, particularly to persons charged with criminal offences. (See

²⁷ Pro Bono Publico, supra n. 25.

²⁸ Id.; The Pro Bono Service, supra n. 26.

²⁹ JUSTICE LAW AND ORDER SECTOR, Draft National Legal Aid Policy (June 2012).



<http://humanrightshouse.org/noop/page.php?p=Articles/5063.html&d=1> (last visited on September 4, 2015) for more information).

- The Legal Aid Project of the Uganda Law Society: was established by the Uganda Law Society to provide legal assistance to indigent and vulnerable persons in Uganda. (See <http://www.uls.or.ug> (last visited on September 4, 2015) for more information)
- The Refugee Law Project: engages in the provision of free legal assistance to the refugee population and asylum seekers in Uganda. (See <http://www.refugeelawproject.org> (last visited on September 4, 2015) for more information).
- The Uganda Association of Women Lawyers: is affiliated with the *Federacion Internacional de Abogadas* (The International Federation of Women Lawyers) founded in Mexico. It mainly provides legal aid to women in Uganda. (See <http://www.fidauganda.org> for more information).
- Platform for Labour Action: promotes and protects the rights of employees in Uganda through the provision of legal aid to employees in the resolution of employment-related disputes. (See <http://www.pla-uganda.org> (last visited on September 4, 2015) for more information).
- Uganda Land Alliance: was formed to enhance access, control, and ownership of land by poor and marginalized people in Uganda. (See <http://www.ulaug.org> (last visited on September 4, 2015) for more information).
- Uganda Network on Law, Ethics, and HIV/AIDS: advocates for the legal and human rights of people living with HIV/AIDS. (See <http://www.uganet.org> (last visited on September 4, 2015) for more information).
- Uganda Christian Lawyers' Fraternity: was founded in 1987 by Christian law students at Makerere University. The fraternity is involved in advocacy and representation of disadvantaged people. (See <http://ugclf.org> (last visited on September 4, 2015) for more information).
- Justice for Children: provides free legal representation to impoverished children. The JFC is a non-profit, advocacy group protecting abused children and their families by assisting in navigating administrative processes and protecting them from their abusers. (See <http://www.crin.org/en> (last visited on September 4, 2015) for more information).
- Legal Action for Persons with Disabilities: focuses on ensuring that persons living with disabilities in Uganda have access to justice (See <http://www.disabilityrightsfund.org> (last visited on September 4, 2015) for more information).
- Platform for Labour Action: is an NGO that promotes and protects the rights of vulnerable and marginalized workers through empowerment of communities and individuals, action oriented research, policy dialogue, and legal aid in Uganda. (See <http://www.pla-uganda.org/> (last visited on September 4, 2015) for more information).
- World Voices Uganda: facilitates access to justice for the poor, and the protection and promotion of human rights, governance and accountability. (See <http://worldvoicesuganda.org> (last visited on September 4, 2015) for more information).
- Foundation for Human rights Initiative: seeks to remove impediments to democratic development and meaningful enjoyment of the fundamental freedoms enshrined in the 1995 Uganda Constitution as well as other internationally recognized human rights. Focused primarily on promoting human rights, it provides pro bono representation mainly through public interest cases. (See <http://www.fhri.or.ug/> (last visited on September 4, 2015) for more information).
- Human Rights Awareness and Promotion Forum: promotes human rights awareness in Uganda. It also provides legal aid services for the advancement of women and minority rights. (See <http://hrapf.org> (last visited on September 4, 2015) for more information).
- International Justice Mission: is a Christian Non Governmental Organization led by Human Rights professionals, which helps people suffering from injustices and oppression, who have not been able to obtain justice through local authorities. IJM investigates and documents cases of abuse and provides pro bono legal representation to vulnerable individuals. (See <https://ijm.org/> (last visited on September 4, 2015) for more information)
- Youth Justice Support Uganda: provides information, advice and legal representation to street children involved in criminal proceedings; YJSU educates street children and organizations working with them about their legal rights and the legal process. (See



<http://opencharities.org/charities/1122043#sthash.g2W8vHaN.dpuf> (last visited on September 4, 2015) for more information)

- Justice Centres Uganda: promotes the rights of vulnerable communities through basic legal aid, legal and human rights awareness, community outreach, empowerment and advocacy. (See <http://www.justicecentres.go.ug/> (last visited on September 4, 2015) for more information)

CONCLUSION

Despite the substantial efforts of pro bono service providers in the country, access to justice for many citizens remains elusive. Most legal aid organizations are based in Kampala or other urban areas due to easy access to utilities as well as the availability of security and other necessities such as banking and communication services and courts. As a result, the vast majority of the population, which lives in rural areas, remains unable to access legal services.

While the Advocates Act is a significant development in the provision of legal services to Uganda's vulnerable citizens, there is currently little government policy to provide effective and efficient legal aid services to indigent citizens in Uganda. As such, there exists a large unmet legal need for pro bono services. The government has attempted to address some of this need through a draft judicial strategic investment plan spearheaded by the Justice Law and Order Sector that endeavors to improve the performance of the judiciary and provide access to justice for all people in Uganda. This proposal is only in the development stages, leaving pro bono services as the only option for many impoverished Ugandans confronted with legal issues.

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