



## Pro Bono Practices and Opportunities in Ghana

### INTRODUCTION

Pro bono is a new concept in Ghana. This chapter describes the Ghanaian legal system, pro bono and legal aid work and what has been done to increase access to justice.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The Ghanaian legal system is based on a number of different sources, including (i) the 1992 Constitution of Ghana, (ii) enactments made by or under the authority of the Parliament of Ghana, (iii) any orders, rules and regulations made by any person or authority under a power conferred by the Constitution, (iv) existing law (the written and unwritten laws of Ghana as they existed immediately before the Constitution), (v) any act, decree, law or statutory instrument issued or made before that date, which came into force on or after that date, and (vi) the common law.<sup>1</sup>

Ghana's Constitution came into force on April 28, 1992, and states that "justice emanates from the people and shall be administered in the name of the Republic by the Judiciary, which shall be independent and subject only to the constitution."<sup>2</sup> The Judiciary has jurisdiction in all matters both civil and criminal, including matters relating to the Constitution, as well as any other jurisdiction that Parliament may by law confer upon it.<sup>3</sup>

##### The Courts

##### Levels, relevant types and locations

The Chief Justice is the head of the Judiciary in Ghana and is responsible for its administration and supervision. The Ghanaian judicial system is made up of the Superior Courts (Supreme Court, the Court of Appeal, the High Court and the Regional Tribunals) and the Lower Courts (Circuit Court and the District Courts).<sup>4</sup>

The Supreme Court is the final court of appeal in Ghana. It has appellate jurisdiction and exclusive original jurisdiction in all matters relating to the enforcement or interpretation of the Constitution, including matters relating to whether an enactment was made in excess of powers conferred under the Constitution. The Supreme Court also has supervisory jurisdiction over all courts and over any adjudicating authority. There are also specialized courts, including family tribunals, Gender courts and juvenile courts. District and circuit courts hear all cases.

##### Appointed vs. Elected Judges

In Ghana, judges are appointed. In order to be appointed, applicants, who are qualified lawyers, are required to write an examination and also attend an interview.

##### The Practice of Law

##### Education

Ghana has a formal legal education system which lasts between two to four years at the undergraduate level (depending on the background of the student). Currently there are 11 law faculties in Ghana. These

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<sup>1</sup> Article 11 of the 1992 Constitution of Ghana.

<sup>2</sup> Article 125(1) of the 1992 Constitution of Ghana.

<sup>3</sup> Article 125(5) of the 1992 Constitution of Ghana.

<sup>4</sup> See the Courts Act, 1993(Act 459).



are attached to the various universities in the country, including the University of Ghana School of Law, Kwame Nkrumah University of Science and Technology (KNUST), and the Ghana Institute of Management and Public Administration (GIMPA).

To be qualified as a lawyer one can enroll in any of the 11 faculties and go through the Bachelor of Laws (LL.B) program for two years to four years. After completion of an LL.B course, students are required to enroll at the Ghana School of Law for their professional Law Course.

### Licensure

The legal profession allows a qualified lawyer to practice as both a solicitor<sup>5</sup> and a barrister in all courts in Ghana.<sup>6</sup> Foreign trained lawyers are required to do a "Post Call" Law Course to enable them to practice in Ghana. There are no specific rules and requirements incorporated in the Ghanaian legal education program for pro bono work at this time.

### Demographics: number of lawyers per capita; number of legal aid lawyers per capita

According to the General Council of the Ghana Bar Association, as of April 10, 2015, there were 6,759 lawyers in good standing in Ghana<sup>7</sup> for a population of over 24 million.<sup>8</sup> Most of these lawyers are concentrated in the main cities, namely Accra-Tema, Kumasi, Takoradi and the other capital towns.

### Legal Regulation of Lawyers

Activities of lawyers are governed by the Legal Profession Act of 1960 (Act 30). The General Legal Council of Ghana is mandated by law to regulate and discipline the activities of lawyers in the country.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

Ghana's Justice system does not guarantee free legal services for the poor and less privileged. However, some legal resources are made available for those who cannot afford the services of a lawyer in the form of legal aid. This is different from pro bono work, which is provided by private legal practitioners, but does include representation by a lawyer, including all such assistance as is given by a lawyer, in the steps preliminary or incidental to any proceedings or arriving at or giving effect to a compromise to avoid or to bring to an end any proceedings.<sup>9</sup>

The Legal Aid Board oversees the operations of the officials of the Legal Aid Board. The Legal Aid Board was established by Act 542 in 1987.<sup>10</sup> It is state-funded. There are Regional Offices in all ten regions of Ghana, located in the regional capitals as well as a few district offices in some regions. The Legal Aid Board may rely on its own discretion when deciding to take on cases.

### In Civil Proceedings

The Legal Aid Board works through the Legal Aid Scheme.<sup>11</sup> Their cases include enforcing provisions of the Constitution, family related issues including child paternity issues, child maintenance, divorce cases,

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<sup>5</sup> To practice as a solicitor in Ghana, you must hold a valid annual licence issued by the General Legal Council pursuant to section 8 of the Legal Profession Act, 1960 (Act 32) known as "Practising Certificate".

<sup>6</sup> Section 2 of the Legal Profession Act, 1960(Act 32).

<sup>7</sup> See <http://www.ghanabar.org/members/index.html> (last visited on September 4, 2015).

<sup>8</sup> See <http://www.statsghana.gov.gh/> (last visited on September 4, 2015).

<sup>9</sup> Article 294(4) of the Constitution.

<sup>10</sup> Article 294 of the 1992 Constitution of Ghana and section 2 of the Legal Aid Scheme Act, 1997 (542).

<sup>11</sup> See <http://www.legalaidghana.org/web/index.php/about-us/cases-we-work-on> (last visited on September 4, 2015).



inheritance and property sharing disputes, landlord and tenant issues, insurance disputes and debt recovery issues.

### In Criminal Proceedings

Some of the criminal cases accepted by the Legal Aid Board include stealing, assault (rape, child molestation), robbery, burglary, manslaughter, murder and nuisance (disturbing the public peace). It is not clear if a person who has been charged with an offence such as treason can benefit from legal aid.

## State-Subsidized Legal Aid

### Eligibility Criteria

A person is entitled to legal aid in Ghana for the purposes of enforcing any provision of the Constitution,

- if he earns the Government minimum wage or less and desires legal representation in any criminal matter; or civil matter relating to landlord and tenant, insurance, inheritance with particular reference to the Intestate Succession Law, 1985 (P. N. D. C. L. 111), maintenance of children and such other civil matters as may from time to time be prescribed by Parliament; or
- if in the opinion of the Legal Aid Board the person requires legal aid.

Section one of the Legal Aid Scheme Act, 1997(Act 542) establishes the Legal Aid Scheme. The purpose of the Legal Aid Scheme is to develop a comprehensive legal aid program and policy to be carried out throughout Ghana, to supervise the general administration of the Legal Aid program, and to approve the selection of lawyers for participation in the Legal Aid program.<sup>12</sup>

Under the Legal Aid Scheme Act (§24), apart from an applicant who has been indicted for an offence punishable by death or life imprisonment, any other person who wishes to apply for legal aid under the Scheme must complete the prescribed form and pay the requisite fee. The application must be approved by the Selection Committee appointed under the Act.

If an applicant's application for legal aid is rejected by the Selection Committee, there is a limited appeal process, first to the Regional Committee and then by appeal from the decision of the Regional Committee to the Board of Legal Aid Scheme.

An applicant whose application is approved (or who successfully appeals) is exempted from paying the prescribed fee in respect of the filing of relevant court documents and the cost of preparing appeal records. The Board of the Legal Aid Scheme may also instruct the Director of the Legal Aid Scheme to pay on behalf of the applicant all or part of the expenses of the applicant's case, at the Board's discretion. Where an award is made in favour of the applicant, the Board may however recover from the applicant at its discretion, some or all of the costs and expenses funded by the Legal Aid Scheme in relation to the application.<sup>13</sup> According to the Western Region Director of the Legal Aid Board, the Legal Aid Board does not consider this to be a commission. Rather, it is a way of raising funds internally to help in its activities. Per section 26(1) of the Legal Aid Scheme Act, 1997 (Act 542), the funds for the operation of the Scheme include, (i) money provided by Parliament, (ii) donations, (iii) gifts, and (iv) fees paid by applicants.

Gifts and donations are accepted from different sources, individuals and organizations as well as local and foreign sources.

## Mandatory Assignments to Legal Aid Matters

Sometimes cases are assigned to lawyers by judges. It is considered an honor to be assigned a case by a judge and so lawyers rarely turn down such a request. Unfortunately, lawyers are not compensated for such assigned matters. During court proceedings, when a client has been unable to secure his/her own lawyer, and the judge realizes that the case merits legal help, he calls one of the lawyers present in his

<sup>12</sup> Section 5 of the Legal Aid Scheme Act, 1997 (542).

<sup>13</sup> Section 25 of Act 54.



court and requests that they take the case pro bono and help the client. Normally, a lawyer does not turn down a request from a judge. The judge is careful in making such a request. The judge does not request just any lawyer to take up a case pro bono. He gives it to a lawyer who he has determined, from past experiences in the court room, will provide adequate representation.

## Unmet Needs and Access Analysis

The Legal Aid Scheme is underfunded, understaffed and over-reliant on the goodwill of lawyers, and other benevolent persons and organizations. This means that the level of funding at any particular time is unpredictable, which stifles the ability of the Legal Aid Scheme to discharge its constitutional mandate effectively.<sup>14</sup>

According to an article on the Legal Aid Scheme website, manning regional offices is one of the biggest difficulties for the Legal Aid Scheme in Ghana. There is inadequate equipment and infrastructure and just a few personnel made up of 11 lawyers handling cases in the regional offices. Some regions in Ghana are without any lawyers. Some attorneys who have previously done work for the Legal Aid Scheme are threatening lawsuits because they have yet to be remunerated.<sup>15</sup> As a result, the majority of Ghanaians are denied access to legal representation and many suspects languish in cells and jails—some for long as ten years for lack of representation.

## Alternative Dispute Resolution

The Alternative Dispute Resolution Act 2010<sup>16</sup> can be traced as far back as 1998 when the Ghanaian government established a task force on alternative dispute resolution, motivated in part by concerns that the case load of the Ghanaian courts was reaching unmanageable levels. The Act recognizes and upholds the general principle of party autonomy. It allows parties to choose arbitration and to determine how such arbitration will be conducted. The Act provides for the courts of Ghana to play a significant role in relation to arbitrations, both in upholding the right to arbitrate and in facilitating the just and effective conduct of the arbitration itself. The Act is expected to support the needs of the domestic and international construction industry in Ghana.

### Ombudsmen

The office of the Ombudsman in Ghana has been replaced by The Commission on Human Rights and Administrative Justice.

### Commission on Human Rights and Administrative Justice

The Commission on Human rights and Administrative Justice (“**CHRAJ**”)<sup>17</sup> was established under the 1992 Constitution of Ghana by the CHRAJ Act, 1993 [Act 456]. It has three broad mandates; human rights, administrative justice and anti-corruption. CHRAJ serves as the National Human Rights Institution of Ghana, The Ombudsman of Ghana, and an anti-Corruption Agency & Ethics Office for the Public Service of Ghana. All its work is further documented in the section on pro bono assistance.

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<sup>14</sup> See <http://www.modernghana.com/news/241178/1/bar-association-committed-to-efficient-legal-aid-s.html> (last visited on September 4, 2015).

<sup>15</sup> See <http://www.legalaidghana.org/web/index.php/news/latest-news> (last visited on September 4, 2015).

<sup>16</sup> See [https://m.mayerbrown.com/Files/Publication/5ee12231-1295-4559-8167-89d93cdf2a06/Presentation/PublicationAttachment/91e048fe-67d4-4e3f-9d10-8bbf9861e753/ArbitrationGhana\\_Sarkodie.pdf](https://m.mayerbrown.com/Files/Publication/5ee12231-1295-4559-8167-89d93cdf2a06/Presentation/PublicationAttachment/91e048fe-67d4-4e3f-9d10-8bbf9861e753/ArbitrationGhana_Sarkodie.pdf) (last visited on September 4, 2015).

<sup>17</sup> See [www.chrajghana.org](http://www.chrajghana.org) - Human Right Mandate (last visited on September 4, 2015).



## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

There are numerous opportunities for attorneys to take on pro bono work in Ghana, although few do. While most lawyers offer voluntary services to their families, friends and acquaintances, there is no formalized system of pro bono work.

The Ghana Bar Association is encouraging lawyers to offer pro bono services. In 2013, a number of lawyers were honored by the Ghana Bar Association at its Annual Conference at Ho, in the Volta Region, for providing pro bono services.<sup>18</sup> The lawyers were Mr. Sam Okudzeto, Nana Adjei Ampofo and Mr. Ahuma Ocansey.

Mr. Sam Okudzeto was honored for instituting in his name an action at the high court of justice against the Attorney General challenging the powers of the President to abolish all boards including the board of the Bank of Ghana on the assumption of office as President. The judgment delivered upheld his claim that the Bank of Ghana was independent from the President and Ministry of Finance, and the President could not dissolve the board of the bank of Ghana at his pleasure. Mr. Okudzeto was honored and recognized for his outstanding performance and contribution to the Jurisprudence in the Area of Constitutionalism and public law. Nana Adjei Ampofo was honored for instituting two actions in the Supreme Court in his name. One for a declaration that the continuous use and employing of Ghanaian citizens to carry human excreta in pans on their heads is an affront to the dignity of such persons, cruel, inhuman and degrading and should be abolished. The second, striking down as unconstitutional, the criminal sanctions prescribed for refusal to heed to the call of a chief. The Supreme Court in both cases upheld his submissions and gave an ultimatum to the Metropolitan authorities to replace pan latrines and abolish their use in all homes and further struck down the legislation in the chieftaincy Act as unconstitutional. He was commended and congratulated by Sophia Akuffo Justice of the Supreme Court for instituting at his own expense, the instant action, seeking the interest of the general public. Mr. Ahuma Ocansey was honored for instituting an action in his name and inviting the Supreme Court to determine the question of violation of remand conditions and a convicted persons' right to vote. The Lady Chief Justice who presided over the case commended Mr. Ocansey for taking up this constitutional case on behalf of prisoners and for this work that was done pro bono in a legal regime where pro bono is virtually non-existent. Hopefully the honor conveyed on these people will encourage other lawyers to offer and undertake pro bono services.

#### Current State of Pro Bono Including Barriers and Other Considerations

##### **Laws and Regulations Impacting Pro Bono Work**

The Accessibility of Legal Aid resources is a significant problem facing citizens of Ghana. This has a disproportionate effect on the lower socio-economic classes. In addition to a lack of money, there is a lack of lawyers to provide representation in the more rural areas of Ghana and an absence of a formal requirement for lawyers to do pro bono work. With the exception of services provided through the work of NGOs, as set out below under Pro bono Resources, there is not an established formal structure under which lawyers can elect to provide pro bono services. The Legal Aid Scheme Act (§22) requires that the legal personnel providing legal services under the Legal Aid Scheme consist of selected and approved legal practitioners. Further, the National Service Board is required to assign to the Board a certain number of lawyers liable to do national service as the Board may request. This is supplemented by the fact that the Ghana Bar Association of each Region is supposed to, with the approval of the General Council of the Bar, select legal practitioners who shall, subject to the approval of the Board, make their services available to the Scheme. In practice, it does not appear that the above combination of strategies results in a significant number of lawyers providing pro bono legal services.

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<sup>18</sup> Ghana Bar Association Citations of Honour-2012-2013.



### **Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System**

The Culture of providing free legal service is still developing in Ghana. Although most lawyers may from time to time provide some free legal service, this is not a priority for many.

### **Pro Bono Resources**

Local and International Non-governmental organizations (“NGOs”) provide some resources and support for pro bono work in Ghana. Some of the key NGOs are HelpLaw Ghana, the Legal Resource Centre, Women’s Initiative for Self-Empowerment, FIDA, CHIRAJ, The Ark Foundation and the Pro Bono Lawyer Network (PBLN)

#### **Help Law Ghana**

HelpLaw Ghana provides free legal and related services to the poor and the less-privileged in Ghanaian society. It focuses on representing indigent criminal defendants in criminal proceedings.

#### **Legal Resource Center**

The Legal Resource Center seeks to ensure human rights for all. It works towards the promotion and protection of the rights to health, education, housing, work, participatory democracy, personal liberty and criminal/civil justice. These are carried out through public human rights education, community mobilization activities, legal aid, alternative dispute resolution services, action research, advocacy and publication. Central to the Legal Resource Center’s work are the campaigns and projects for the promotion and protection of human rights through innovative community mobilization strategies, public interactive human rights education, lawyering techniques and research and advocacy at the local, national and international levels.

#### **Women's Initiative for Self-Empowerment ("WISE")**

WISE provides support services, including legal aid, to women and children who have suffered violence of any kind. WISE provides individual and group counseling services for survivors of violence, as well as training in counseling and support for direct service providers. WISE set up the WISE Wellness Centre in Accra to provide survivors of violence with counseling, medical, legal and other socio-economic support services.

#### **International Federations of Women and Lawyers ("FIDA")**

FIDA has a free legal aid program for women and children who cannot afford legal services of any kind. The scope of their legal aid includes counseling, settlement, mediation and court representation. Although services are free, the recipients of the legal aid are usually required to pay filing fees involved in prosecuting their cases before the courts.

#### **Commission on Human Rights and Administrative Justice ("CHIRAJ")**

CHRAJ was established pursuant to the Commission on Human Rights and Administrative Justice Act, 1993 (Act 456). The functions of the CHRAJ are:

- (a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public officer in the exercise of his official duties;
- (b) to investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the offices of the Regional Co-ordinating Council and the District Assembly, the Armed Forces, the Police Service and the Prisons Service in so far as the complaints relate to the failure to achieve a balanced structuring of those services or fair administration in relation to those services;
- (c) to investigate complaints concerning practices and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under the Constitution;
- (d) to take appropriate action to call for the remedying, correction and reversal of instances specified in paragraphs (a), (b) and (c) through such means as are fair, proper and effective, including: (i) negotiation and compromise between the parties concerned, (ii) causing the complaint and its finding on it to be reported to the superior of an offending person, (iii) bringing proceedings in a competent court for a remedy to secure the termination of the offending action or conduct, or the abandonment



or alteration of the offending procedures; and (iv) bringing proceedings to restrain the enforcement of such legislation or regulation by challenging its validity if the offending action or conduct is sought to be justified by subordinate legislation or regulation which is unreasonable or otherwise ultra vires;

(e) to investigate allegations that a public officer has contravened or has not complied with a provision of the Code of Conduct for Public Officers of the Constitution; and

(f) to investigate all instances of alleged or suspected corruption and the misappropriate steps, including reports to the Attorney-General and the Auditor-General, resulting from such investigation.

CHRAJ bears all costs and expenses related to the investigations it conducts into a complaint. CHRAJ has branches in all ten regions of Ghana and about 100 district capitals of the country.

#### **The Ark Foundation (The Ark)**

The Ark was established in 1994, registered in 1995 and began full operation in February 1999. It was founded by Angela Dwamen-Aboagye, a Ghanaian lawyer. It is an independent human rights, advocacy based non-governmental, not-for-profit organization. The Ark was founded to increase the awareness of the Ghanaian public, decision makers and Government on the human rights of women, children and other disadvantaged groups and to actively promote these rights through advocacy, training, public education and service delivery to the identified beneficiaries.

#### **Pro Bono Lawyer Network (PBLN)**

The PBLN was launched in December 2010. Its primary objective is to provide free legal representation to the survivors of human rights abuses in Ghana. The PBLN gives the poor and vulnerable victims of human rights violations and other abuses the opportunity to seek justice without any barriers.

## CONCLUSION

Slowly, pro bono is finding its feet in Ghana. While some attorneys provide voluntary services for family, church members and friends, pro bono is not formalized and must be encouraged by the various legal bodies in Ghana and should not be left solely in the hands of NGOs. Law firms should encourage and reward lawyers who offer pro bono services. The pro bono culture has to be introduced and formally included in legal education in Ghana to create an awareness of giving back to society while still in law school. By the time these law students are done with law school they will be more willing to provide voluntary services. The Ghana Bar Association indicated its intention to continue to give out annual awards to deserving lawyers as a way of motivating them to do more pro bono work.

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