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***SADC-LA DESK RESEARCH REPORT  
ON THE STATE OF PRO BONO  
LEGAL WORK IN THE SADC REGION***  
March 2018

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## LIST OF ACRONYMS

|        |  |
|--------|--|
| A4ID   | Advocates for International Development  |
| DRC    | Democratic Republic of Congo             |
| CLS    | Cape Law Society                         |
| CSO    | Civic Society                            |
| IAJ    | Institute for Access to Justice          |
| ISLP   | International Senior Lawyers Project     |
| NGO    | Non-Governmental Organisations           |
| PILnet | Public Interest Law Network              |
| SADC   | Southern African Development Community   |
| SADCLA | SADC-Lawyers' Association                |
| LAZ    | Law Association of Zambia                |
| LSB    | Law Society of Botswana                  |
| LSN    | Law Society of Namibia                   |
| LSNP   | Law society of the Northern Provinces    |
| LSL    | Law Society of Lesotho                   |
| LSSA   | Law Society of South Africa              |
| LSZ    | Law Society of Zimbabwe                  |
| MLS    | Malawi Law Society                       |
| OAA    | <i>Ordem dos Advogados de Angola</i>     |
| OAM    | <i>Ordem dos Advogados de Mocambique</i> |
| SLS    | Swaziland Law Society                    |
| TLS    | Tanganyika Law Society                   |

## 1. Background

The SADC Lawyers' Association (SADCLA) is an independent and voluntary association made up of law societies, bar associations and individual lawyers from the 15 member- states making up the Southern African Development Community (SADC). Its mandate is to advance and promote human rights, respect for the rule of law and the promotion of democracy and good governance in the SADC.

In pursuit of this mandate, the SADCLA wishes to promote access to justice in the region and encourage the practice of pro bono by legal practitioners both regionally and in national jurisdictions. SADCLA has undertaken a range of international pro bono and legal aid research in recent years. In its AGM held in Tanzania in the year 2016, SADC-LA adopted a pro bono law. This study is aimed at developing an understanding of the legislation, policies and practices regulating pro bono and legal aid in the region as a prelude to implementing a formalised regional structure for pro bono in the SADC Region under the SADC-LA.

## 2. Introduction

### 2.1. International Law and Commitments

Access to justice is a basic principle of the rule of law. The Declaration of the High-level Meeting on the Rule of Law emphasizes the right of equal access to justice for all, including members of vulnerable groups.<sup>1</sup> Member States to the United Nations have committed to taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid.<sup>2</sup>

The UN Universal Declaration on Human Rights<sup>3</sup> and the International Covenant on Civil and Political Rights underscore the right to access to legal defense in criminal matters. Such legal defense is to be provided, without payment by the accused if the accused does not have sufficient means to pay for it.<sup>4</sup> The African Charter on

<sup>1</sup> Paragraph 12 of the 67/1 Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, 2012.

<sup>2</sup> Paragraph 14 of the 67/1 Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, 2012.

<sup>3</sup> Article 11(1) of the Universal Declaration on Human Rights, "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense."

<sup>4</sup> Section 14(3)(d) of the International Covenant on Civil and Political Rights, "to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."



Human and Peoples' Rights also guarantees that an accused has the right to defense, including the right to be defended by counsel of his choice.<sup>5</sup> The SADC Treaty provides that the SADC and its Member States shall act in accordance with the principles of human rights, democracy and the rule of law.<sup>6</sup>

International and regional law places emphasis on the right to state assisted defense in criminal matters. There is limited emphasis on the right to counsel in respect of civil matters. A few national constitutions include the right to access to justice by ensuring a right of access to courts. However, no international or regional treaty guarantees a right to counsel in civil matters.

Legal aid is generally used to refer to obligations by the State to provide legal representation to indigents. The State will usually pay legal practitioners for the legal work undertaken.

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (Principles and Guidelines) defines "legal aid" to include legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected of, accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no costs for those without sufficient means or when the interests of justice so require. Further, "legal aid" is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.<sup>7</sup>

"Legal aid providers" refer to lawyers, non-government organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations and academia.<sup>8</sup> States employ different models for the provision of legal aid which may involve public defenders, private lawyers, contract lawyers, pro bono schemes, bar associations, paralegals and others.<sup>9</sup> Legal aid in this reference document refers to state funded legal representation.

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<sup>5</sup> Article 7(1) of the African Charter on Human and Peoples' Rights, "Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal."

<sup>6</sup> Article 4(c) of the SADC Treaty, 1992.

<sup>7</sup> Paragraph 8 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

<sup>8</sup> Paragraph 9 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

<sup>9</sup> Paragraph 10 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.



Most States throughout the SADC have a legal aid system whereby the State funds legal representation in both civil and criminal cases. This is either through staff attorneys of a legal aid institution or paying a fee to private attorneys.

The concept of pro bono is used internationally and refers to work or actions carried out for the public good.<sup>10</sup> In the context of law, pro bono legal services is work by a legal professional without remuneration or expectation of remuneration, and principally to benefit poor, underprivileged and indigent persons or communities. Legal services can include legal education, legal advice, representation in court, legal drafting i.e. contracts and pleadings and negotiation. The provision of legal services on a pro bono basis is often viewed in line with a legal practitioners professional calling and ethical duty.<sup>11</sup>

Pro bono is not a legally enforceable and is generally encouraged on a voluntarily basis through law societies/bar associations and non-governmental organizations. The Principles and Guidelines provide that States should take measures to encourage legal and bar associations to support the provision of legal aid by offering a range of services, including those that are free (pro bono).<sup>12</sup> There are international and national initiatives encouraging pro bono services amongst legal professions. It is often noted that the culture of pro bono is underdeveloped in Africa.<sup>13</sup> There is currently no initiative at the SADC level encouraging and regulating pro bono services amongst legal professionals in the region.

### 3. Global Initiatives

#### 3.1. PILnet

PILnet is the Global Network for Public Interest Law and is an independent non-profit organization based in New York, in the United States. PILnet works with any non-profit or charitable organization that is independent and works for the public interest or for social good.<sup>14</sup> It has also assisted governments in security pro bono services from international lawyers.<sup>15</sup>

<sup>10</sup> Paragraph I of the IBA Pro Bono Declaration, 2008.

<sup>11</sup> Paragraph 56(a) of the Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

<sup>12</sup> Paragraph 56(a) of the Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

<sup>13</sup> Garth Meintjies, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.

<sup>14</sup> [http://www.probonomanual.org/doku.php?id=establishing\\_and\\_running\\_a\\_pro\\_bono\\_clearinghouse](http://www.probonomanual.org/doku.php?id=establishing_and_running_a_pro_bono_clearinghouse) (Accessed 26 February 2018).

<sup>15</sup> Garth Meintjies, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.



One of the objects of PILnet is to develop pro bono legal practice around the world. PILnet has developed pro bono clearinghouses in Hungary, Russia, China and its cross-border Global Pro Bono Clearinghouses serve to bridge the gap between lawyers seeking opportunities to provide free legal help and those who need it.<sup>16</sup> These clearinghouses are described as free-of-charge “matchmaking” services to secure pro bono assistance for non-profit organizations. Lawyers who wish to volunteer their legal expertise sign up to PILnet’s list of available pro bono matters. Organizations in need of legal assistance register with PILnet to be connected with lawyers offering their services pro bono. PILnet also offers a cross-border clearing house.<sup>17</sup>

PILnet has developed an Online Pro Bono Clearinghouse Manual which offers practical tools, advice and templates for establishing and maintaining a clearinghouse.<sup>18</sup> Guidelines include how to set criteria and overall assessment of clients whether this includes assessing the objectives of the organization, the financial position or governance.<sup>19</sup> In respect of individuals this may include whether the individual has had legal advice before and a financial means test.

### **3.2. International Senior Lawyers’ Project**

The ISLP is based in London and the United Kingdom and provides pro bono legal assistance to low-income country governments, CSOs and marginalized communities, supporting transparent stakeholder engagement and community-inclusive development.<sup>20</sup> The ISLP offers high-level legal expertise to address regulatory, contractual, investment and trade structures within the context of large-scale development, helping governments and civil societies build just and accountable legal and regulatory frameworks. These include issues such as tax competition, base erosion and profit shifting.

### **3.3. Advocates for International Development (A4ID)**

A4ID is a global charity-based in London, the United Kingdom and acts as a broker by matching international legal expertise with local need in more than 100 jurisdictions.<sup>21</sup> It selects its clients on the basis of whether the organization in some way seeks to eradicate poverty and further the UN Sustainable Development Goals.<sup>22</sup> In addition to brokering pro bono advice for A4ID’s

<sup>16</sup> <http://www.pilnet.org/public-interest-law.html> (Accessed 26 February 2018).

<sup>17</sup> <http://www.probonomanual.org/doku.php?id=start> (26 February 2018).

<sup>18</sup> <http://www.probonomanual.org/doku.php?id=start> (26 February 2018).

<sup>19</sup> [http://www.probonomanual.org/doku.php?id=establishing\\_and\\_running\\_a\\_pro\\_bono\\_clearinghouse](http://www.probonomanual.org/doku.php?id=establishing_and_running_a_pro_bono_clearinghouse) (26 February 2018).

<sup>20</sup> <http://islp.org/our-story/#what-we-do> (26 February 2018).

<sup>21</sup> <http://www.a4id.org/about-us/> (26 February 2018).

<sup>22</sup> <http://www.a4id.org/about-us/> (26 February 2018).



development partners, it also provides a range of training programmes on subjects such as project financing to environmental law and tax justice.<sup>23</sup>

### 3.4. International Law Firms

Large international law firms have set up pro bono departments within their offices to undertake and manage pro bono work. This is either through legal practitioners offering pro bono services in the country of the international office or providing pro bono legal assistance in under-served regions around the world.<sup>24</sup> Other initiatives by international law firms include funding of charitable organizations which provide legal services such as litigation in human rights abuses.<sup>25</sup>

### 3.5. ROLE UK

Provides funds for organisations seeking experts in a wide range of matters including legal support and capacity building for NGOs involved with rule of law work.

### 3.6. General Comments

The model of the above organizations is to connect either non-governmental organizations, governments or individuals with financial or capacity constraints with lawyers who are offering legal services pro bono. Legal services are not only offered by domestic legal practitioners but also by legal practitioners practicing in foreign jurisdictions. There appears to be a dominance of western law firms offering pro bono services to non-governmental organizations, governments or individuals either living or running projects in the developing world.

Major firms like DLA Piper, Baker & McKenzie and Clifford Chance support these organizations through providing pro bono lawyers and funding to the brokering organizations. These organizations also receive funding from donors and international development agencies of various Western governments.

The International Bar Association has a Pro Bono Committee<sup>26</sup> which actively encourages lawyers, judges, law firms, bar associations, law schools and governmental and non-governmental organizations to participate in pro bono legal

<sup>23</sup> <http://www.a4id.org/about-us/> (26 February 2018).

<sup>24</sup> See DLA Piper <https://www.dlapiper.com/en/southafrica/focus/probono/pro-bono> (5 March 2018).

<sup>25</sup> See Clifford Chance [https://www.cliffordchance.com/about\\_us/our-responsibilities/community-pro-bono/the-clifford-chance-foundation.html](https://www.cliffordchance.com/about_us/our-responsibilities/community-pro-bono/the-clifford-chance-foundation.html) (5 March 2018).

<sup>26</sup> [https://www.ibanet.org/PPID/Constituent/ProBono\\_Accs\\_Justice/Default.aspx](https://www.ibanet.org/PPID/Constituent/ProBono_Accs_Justice/Default.aspx) (26 February 2018).





service. In 2008, it published its Pro Bono Declaration which encourages the offering of pro bono amongst its members.

There is no regional organization at the SADC level which is connecting or brokering pro bono legal services between lawyers in the region and organizations, governments or individuals in need. There is a case for such a regional coordinating organization especially in cases relating to cross-border disputes and promoting access to resources for marginalized communities; issues relating to immigration and cross border trading. Support for entry level start-ups in regional economic enterprise is also critical.

#### **4. Overview of the Pro Bono legal system in the SADC REGION**

Below is an outline of pro bono practices within the individual members states of the SADC. This will include an analysis of constitutional measures which guarantee legal representation and access to courts; the legal aid framework, regulation of the legal profession and other initiatives. The legal aid framework focuses on state sponsored legal aid.

##### **4.1. Angola**

###### **Constitutional Framework**

The Constitution guarantees that everyone shall have access to the law and the courts in order to defend their legally protected rights and interests, and justice shall not be denied to anyone due to lack of financial means.<sup>27</sup> The Constitution further provides that everyone shall have the right to legal information, to legal advice and to be accompanied by a lawyer before any authority.<sup>28</sup>

The Constitution also provides for persons who are detained and imprisoned to choose a lawyer whom they trust to accompany them to police and legal inquiries and to consult their lawyer before making a statement.<sup>29</sup> Furthermore, Article 67 provides that every defendant shall have the right to choose a defense of his choice and be assisted throughout legal proceedings. Defendants who do not have the financial means to be afforded a lawyer must be guaranteed legal assistance.<sup>30</sup>

<sup>27</sup> Article 29(1) of the Constitution, 2010.

<sup>28</sup> Article 29(2) of the Constitution, 2010.

<sup>29</sup> Article 63(d) and (e) of the Constitution, 2010.

<sup>30</sup> Article 67(6) of the Constitution, 2010.



Article 196 places the responsibility on the State to regulate the organization and functioning of a public defense system.

### Legal Aid Framework

The Angolan Constitution is clear regarding the right to legal representation and this right is supported by Decree-Law 15/95 which created the Law of Judicial Assistance. The Decree places the responsibility on the State and the Bar Association to ensure free legal assistance to those in need. The State requests assistance from the Bar Association, and the Bar Association will allocate a legal practitioner to the indigent. Such legal assistance will either be provided with the total or partial waiver of costs and the legal practitioner will be compensated. A means test is used to determine whether persons are eligible for legal assistance. All financial resources available to the Bar Association is funded directly by the Angolan government. No separate institution has been set up to provide legal aid.

### Regulation of the Profession

In 2014, the OAA estimated that there were 1000 lawyers in Angola out of a population of about 21 million people.<sup>31</sup> There continues to be a severe shortage of legal practitioners in Angola. The legal profession is regulated by the Bar Association known as the *Ordem dos Advogados de Angola* (OAA) under the Lei da Advocacia no. 8/17 (Advocacy Law). The law provides that law can only be practiced by persons who are registered with the OAA.<sup>32</sup> Registration with the OAA is only reserved to Angolan nationals.<sup>33</sup> Only foreign nationals, with a local law degree, can apply for registration/qualification with the OAA. However, such registration/qualification is subject to the general principle of reciprocity with other countries.

The Advocacy Law does not place any obligation on legal practitioners to undertake pro bono work. However, as members of the OAA, legal practitioners may be contacted by the OAA to take on a state legal aid client if a case arises.<sup>34</sup>

There is a collaboration between government and the Bar with the state paying the Bar Association which then appoints the lawyer required. There is other legislation such as the law of advocacy, the law of judicial assistance the ethics code and the Bar Act which impose the duty to accept pro bono work under the conditions provided by law. The Angolan project allows lawyers to meet people everywhere to give free legal assistance.

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<sup>31</sup> Latham & Watkins LLP, "A Survey of Pro Bono practice and Opportunities in 84 Jurisdictions" March 2016.

<sup>32</sup> Article 3 of Act No. 8/17.

<sup>33</sup> Article 11 of Act No. 8/17.

<sup>34</sup> Latham & Watkins LLP, "A Survey of Pro Bono practice and Opportunities in 84 Jurisdictions" March 2016: 24.



The budget is \$50 000 and this is hardly enough and there is a commission in the Bar Association negotiating for a bigger budget with government.

## Other Initiatives

There are a limited number of non-governmental organizations rendering pro bono services. *Maõs Livres* is one such an organization and employs lawyers and journalists. Its main activity is to assist people who cannot afford legal representation. In 2012, *Maõs Livres* employed two senior lawyers, 18 trainee lawyers, two journalists and 25 paralegals. Since 2000 it has assisted between 10 000 and 15 000 people per year and operates in nine provinces, being Luanda, Huambo, Kwanza Sul, Benguela, Muchico, Huila, Cunene, Cabinda and Lunda Sul.<sup>35</sup>

NGOs in Angola are being assisted under pro bono and the Faculty of Law at the University of Agostinho Neto established an inaugural legal aid clinic offering free legal advice in Cacuaco to micro businesses.<sup>36</sup>

## 4.2. Botswana

### Constitutional Framework

The Constitution of Botswana, 1966 provides that every person who is charged with a criminal offence shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice.<sup>37</sup>

### Legal Aid Framework

The Legal Aid Act<sup>38</sup> introduced Legal Aid in Botswana in 2015. Legal Aid is funded by the state and covers family law including divorce, custody, maintenance, family violence, land issues and alternative dispute resolution (ADR). It is only available to citizens of Botswana, who cannot afford legal representation and the applicant must have reasonable prospects of success.<sup>39</sup> It excludes criminal trials, money claims covered by the Small Claims Court, customary court representation, defamation, infringement of privacy, breach of promise to marry, adultery and seduction.<sup>40</sup>

<sup>35</sup> <http://acjr.org.za/resource-centre/newsletter-8-the-right-to-legal-representation-in-mozambique-and-angola-kenya-by-law-arrests-african-commission-pre-trial-guidelines-in-angola-and-mozambique-south-africa-commission-of-inquiry-pre-trial-findings-and-recommendations> (26 February 2018).

<sup>36</sup> Latham & Watkins LLP, "A Survey of Pro Bono practice and Opportunities in 84 Jurisdictions" March 2016: 24.

<sup>37</sup> Section 10(2)(d) of Constitution, 1996.

<sup>38</sup> 2015.

<sup>39</sup> <http://www.labbw.net> (27 February 2018).

<sup>40</sup> <http://www.labbw.net/what-is-not-covered/> (27 February 2018).



Botswana has a system of *in forma pauperis* under which the Registrar of the High Court will provide a legal practitioner to a litigant who has no money. In respect of capital offences, the Registrar of the High Court will direct a legal practitioner to represent an indigent client on a *pro deo* basis.<sup>41</sup>

## Regulation of the Profession

The Legal Practitioners' Act<sup>42</sup> regulates the legal profession and establishes the Law Society of Botswana. Pro bono in Botswana is encouraged as membership to the Law Society consists of "any person who holds a practicing certificate, has paid any prescribed subscription and undertakes to do *pro deo* or *pro bono* work."<sup>43</sup> Law firms have also incorporated pro bono as part of their corporate social responsibility.<sup>44</sup> In order to get a practicing certificate, a legal practitioner must undertake 25 hours of pro bono per year.<sup>45</sup>

Lawyers in Botswana are required to undergo a mandatory 25 hours of pro bono that does not include pro deo. The Registrar administers the roster for allocating cases to lawyers. Legal Aid exists and where capacity problems arise the legal aid department refers cases to the LSB, a small fee to cover disbursements is given to lawyers.

The LSB has engaged NGOs in public education and they use the customary gathering and the quota system. Attorneys attend and give public education and consultations alongside the public education events.

## Other Initiatives

There are various non-governmental organizations such as the Botswana Network on Ethics, Law and HIV/AIDS (BONELA), WAR (Women Against Rape), Ditshwanelo and Emang Basadi offering free legal services to members of the public. They especially undertaking public interest litigation in areas such as the death penalty, gender equality and HIV/AIDS. Law firms have also incorporated pro bono as part of their corporate social responsibility.<sup>46</sup>

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<sup>41</sup> Botswana Law Society, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.

<sup>42</sup> Chapter 61:01.

<sup>43</sup> Section 55 of the Law Society of Botswana.

<sup>44</sup> See [www.armstrongs.bw/corporate-social-responsibility/](http://www.armstrongs.bw/corporate-social-responsibility/) (27 February 2018).

<sup>45</sup> Botswana Law Society, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.

<sup>46</sup> See [www.armstrongs.bw/corporate-social-responsibility/](http://www.armstrongs.bw/corporate-social-responsibility/) (27 February 2018).



### 4.3. Mozambique

#### Constitutional Framework

Article 62(2) of the Mozambique Constitution of 2004 provides that accused persons have the right to choose their defense counsel to assist them in all stages of proceedings, and that adequate legal assistance and aid must be given to accused persons who for economic reasons are unable to engage their own lawyer.

#### Legal Aid Framework

In Mozambique the state institution assisting indigent persons is the Institute of Legal Aid (*Instituto Patrocínio Assistência Jurídica* (IPAJ)), created by Law 6/94 to provide juridical and legal assistance. Legal assistance is guaranteed to all people that provide a Certificate of Poverty (*Atestado de Pobreza*) which is issued by the municipality and certifies the poverty of the person. It costs 100 Meticaís to issue the Certificate. It has been found that the cost to issuing this affidavit limits access to justice as the population of Mozambique lives in extreme poverty and may not be able to afford issuing the certificate.<sup>47</sup>

The IPAJ has its own staff complement of legal practitioners and paralegals. In 2011, there were 38 legal practitioners and 85 paralegals working for IPAJ. IPAJ assists vast numbers of people annually and in 2010 it was operating in 114 municipalities and assisted indigent persons in 53184 cases (both civil and criminal matters). This equates to eight matters per week per paralegal or lawyer.

Although IPAJ faces significant challenges (such as the insufficient number of lawyers and other human resources; inadequate salaries and lack of sufficient partnerships with other institutions), IPAJ covers almost all municipalities in the country and the institute is increasing the number of paralegals with whom it works through the partnership with university-based legal aid clinics and a new legal framework will soon be in place to further more strengthen its role, as provincial and district delegations of IPAJ have been approved. Legal assistance is guaranteed to all people that provide an affidavit of poverty (*Atestado de Pobreza*) which is issued by municipality authorities and certify the poverty of the person. The Certificate of Poverty is released by the Chief of the Block or the District in which the person lives. It costs between US\$1.5 and \$3 (50 and 100 Meticaís).

<sup>47</sup> [http://www.dpu.def.br/images/stories/arquivos/ass\\_internacional/ripaj/n1/7-o-patrocinio-e-a-assistencia-juridica-e-judiciaria-aos-cidadaos.pdf](http://www.dpu.def.br/images/stories/arquivos/ass_internacional/ripaj/n1/7-o-patrocinio-e-a-assistencia-juridica-e-judiciaria-aos-cidadaos.pdf) (13 March 2018).

State assistance is given to litigants and the Commission of Human rights is at the forefront of defending the right to land and resettlement, human rights, criminal law and prisoners rights as well as the right to health and sanitation.

### Regulation of the Profession

The legal profession is regulated by the Ordem dos Advogados de Moçambique (OAM) under the Estatuto da Ordem dos Advogados<sup>48</sup> (Law Society Act). One of the objectives of the of the OAM is to promote access to justice in terms of the Constitution and legislation.<sup>49</sup>

The Act also introduced greater co-operation between the IPAJ and the OAM. One of the initiatives is the training of candidate legal practitioners. Once their 16 months of training at the IPAJ<sup>50</sup> is complete then they would have served their training period and be qualified practitioners.

In 2014, the Ordem dos Advogados de Moçambique (Bar Association) established the Instituto de Acesso a Justiça (IAJ) (Institute for Access to Justice) with the mission to promote access to justice to citizens in financial need. The IAJ provides legal advice, information, counselling, ADR and any other legal assistance free of charge to qualifying persons. The areas of focus include family law, law of succession, labour law and criminal law.<sup>51</sup> The IAJ only has an office in Maputo which operates out of the Bar Association's offices however it does carry out work in other areas such as Beira through a "Caravana Da Justiça" (mobile legal clinic) and they have a presence in Beira Nampula, Gaza. The IAJ works with candidate attorney to provide legal assistance and has a challenge in that it is not yet decentralised but a plan is there to expand. The OAM has also recently provided legal representation to communities who had been displaced by an oil company.<sup>52</sup>

### Other Initiatives

OAM is working together with the Judiciary and the Prosecutor General's office to decongest prisons as part of justice sector wide effort to provide legal assistance.

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<sup>48</sup> Lei no. 28/2009.

<sup>49</sup> Artigo 4(b) Lei no. 28/2009.

<sup>50</sup> [http://www.dpu.def.br/images/stories/arquivos/ass\\_internacional/ripaj/n1/7-o-patrocinio-e-a-assistencia-juridica-e-judiciaria-aos-cidadaos.pdf](http://www.dpu.def.br/images/stories/arquivos/ass_internacional/ripaj/n1/7-o-patrocinio-e-a-assistencia-juridica-e-judiciaria-aos-cidadaos.pdf) (13 March 2018).

<sup>51</sup> <http://www.oam.org.mz/iaj/>

<sup>52</sup> Bar Association of Mozambique, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.



#### 4.4. Malawi

##### Constitutional Framework

Malawi currently has a total of 447 of which 123 are working for companies, the rest are in private practice across five districts. For population of over 1 million people this underscores a huge and practically insurmountable legal aid and access to justice provision capacity deficit. This is further exacerbated by the fact that the HRC, MLS, Legal Aid bureau are all only located in four out of 28 districts.

The Constitution of Malawi provides for access to justice and an effective remedy by a court of law or tribunal.<sup>53</sup> It also provides for the right of detained persons to consult confidentially with a legal practitioner of his or her choice and where the interests of justice so require, to be provided with the services of a legal practitioner by the State.<sup>54</sup>

##### Legal Aid Framework

The Legal Aid Act created the Legal Aid Bureau which provides legal aid for poor persons for free and for a small contribution for those whose financial situation allows for such a contribution. The Legal Aid Bureau is part of Malawi's Justice Ministry whose core functions are performed by paralegals, advocates and law clerks.

Due to budgetary constraints there are no offices at a district level and the main offices are in Lilongwe, Blantyre and Mzuzu. This exacerbates the problem as the need for such services are by people in the rural areas, who now find it hard to access these services. This illustrates the need for the decentralisation of these services. The Chief Legal Advocate is responsible for granting and refusing legal aid in all matters, as well as general management of the Department. In Malawi the average wage is approximately \$1 per day, legal representation is very seldom afforded, thereby making the demand for legal representation very high in that country.

The Legal Aid Bureau is the government department administering legal aid. It is in four districts only leaving out the other 28 districts. The Human Rights Commission is limited to human rights issues and is only found in three districts out of twenty-eight and it has only one lawyer working for it to cover the whole country.

In Malawi there are 3 types of legal aid schemes

<sup>53</sup> Article 41 of the Constitution, 1994.

<sup>54</sup> Section 42 of the Constitution, 1994.





- i. Firm based - law firms provide legal services for free
- ii. Outreach by lawyers in to the field, clinics, workshops etc
- iii. secondment

## Regulation of the Profession

Legal practitioners are regulated by the Legal Education and Legal Practitioners Act<sup>55</sup> and the Law Society of Malawi Act. The Act does not directly stipulate a requirement for pro bono by legal practitioners. The Law Society has 400 registered members which demonstrates the severe shortage of legal practitioners in the country.

There exists no definition of pro bono but the MLS is working on a manual guide for provision of pro bono services in Malawi. So far there is no law compelling pro bono but review of the Legal Education and Legal Practitioners Acts is now under way and a requirement for compulsory pro bono work may be in place by the end of the the year.

The MLS takes individual cases but most are referred to the Legal Aid bureau. MLS conducts public lectures on how to draft a will etc The presentation to the RPCM revealed that there are wrong perceptions about the standard of pro bono amongst lawyers. A question was posed as to how pro bono is pro bono and this underscored the need for bench marking on international standards to allow lawyers to cultivate a culture of volunteerism within widely accepted standards and criteria.

## Other Initiatives

There are various local and international organizations providing pro bono legal services. Citizens for Justice (CFJ) facilitates the timely conclusion of cases, provide legal recourse to vulnerable defendants, and reduces court congestion for all. The program specifically targeted Malawi's criminal justice system in Lilongwe and Ntchisi and has recently expanded to cover ten districts.

In order to address court congestion and the lengthy duration of cases, CFJ chose to bypass formal justice procedures by working with lawyers, paralegals, police, and prison personnel to conduct camp courts on the prison grounds. 'Camp courts' are specialized, ad hoc courts designed to bring justice to accused persons held in pre-trial detention. Camp courts are not trial courts per se, as the public and witnesses are not present. The camp courts organized by CFJ provided affordable, timely, and accessible justice to hundreds of detainees, most of whom were being held in illegal detention as their remand periods had lapsed.

<sup>55</sup> Act 20 of 1965.





The Paralegal Advisory Service Institute runs a nation-wide initiative, deploying trained paralegals to provide legal education, advice and assistance throughout the criminal justice processes, from arrest to appeal, which complement the work of legal practitioners.<sup>56</sup>

The Directorate of Public Prosecution, Legal Aid Bureau, Paralegal Services international has paralegals doing most of the work in Malawi. They are limited to criminal matters and rarely do civil cases. The challenge has been how to regulate paralegals and there is need to collaborate at this level with technical support from regional level.

## 4.5 South Africa

### Constitutional Framework

The Constitution provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court, or where appropriate, another independent and impartial tribunal or forum.<sup>57</sup> The Constitution also provides that everyone who is detained, including every sentenced prisoner, has the right to choose, and to consult with, a legal practitioner, and to be informed of this right promptly.<sup>58</sup> Further, to have a legal practitioner assigned to the detained person by the state at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly.<sup>59</sup>

There is no guarantee to legal representation in civil matters, however the Constitution does provide that every child has the right to have a legal practitioner assigned to them by the state, and at state expense in civil proceedings affecting the child, if substantial injustice would otherwise result.<sup>60</sup>

### Legal Aid Framework

South Africa has a system of legal aid that uses public funds to assist those unable to afford legal services. Effective March 1, 2015 state-funded legal aid came to be governed by the Act, which replaced the Legal Aid Act 22 of 1969. The Act established Legal Aid South Africa (“LASA”) as the national public entity responsible for rendering and providing access to legal aid, advice and representation. LASA’s purpose is “to ensure access to justice and the realization of the right of a person

<sup>56</sup> <http://www.pasimalawi.org/#> (28 February 2018).

<sup>57</sup> S34 of the Constitution, 1996.

<sup>58</sup> S35(2)(b) of the Constitution, 1996.

<sup>59</sup> S35(2)(c) of the Constitution, 1996.

<sup>60</sup> S28(1)(g) of the Constitution, 1996.



to have legal representation as envisaged in the Constitution and to render or make legal aid. LASA employs its own legal practitioners, candidate attorneys and paralegals to provide legal services, representation and advice.<sup>61</sup> LASA also procures the services of legal practitioners in private practice by entering into contracts or agreement with them and other entities.<sup>62</sup> LASA has offices in all the provinces in South Africa.

## Regulation of the Profession

Attorneys are required to provide 24 hours per year of pro bono legal assistance to indigent members of the public on a compulsory basis. Pro bono is administered by the 4 provincial law societies where attorneys are registered.<sup>63</sup> Eligible members of the public can apply for assistance with the Law Societies under the Pro Bono Scheme.<sup>64</sup> In most cases, refusing to perform pro bono services without good cause amounts to unprofessional conduct. The Law Societies also operate a pro bono help desk at the High Courts in Gauteng, conducts legal aid visits in prisons and hosts a Wills Week where indigents can get assistance in drafting a will.<sup>65</sup>

### 4.5.1. Law Society of the Northern Province<sup>66</sup>

In SA there is a Legal Aid act and structures. All regional law societies operate pro bono structures under one pro bono rule so systems in terms of operation are similar with occasional exceptions. The LSNP is present in Gauteng, Limpopo, Mpumalanga and north west. Most members in SA adopt unique structures as there is higher demand. For example, pro bono help desks have been introduced within the court system to create accessibility at the courts. The LSNP sends out a roster for attendance at the help desks to attorneys on a monthly basis and this an initiative by the Hon. Justice Dunstan Mlambo. There is also a portion of work dedicated to advocates in the bar and there is are practitioners assigned to deal with urgent matters in the courts.

The LSNP has gone into partnership with the legal aid department. They work with recognised structures like organisations advancing pro bono to reinforce and complement each other's work. Other means of providing pro bono include information sessions and legal education is done working closely with community educators. In terms of operations - Five Legal clinics are conducted across the province over a full week. They have set up office in the same structure as the court

<sup>61</sup> S 4(a)(i) and (ii) of the Legal Aid Act, 2014.

<sup>62</sup> S 4(b) of the Legal Aid Act, 2014.

<sup>63</sup> <http://www.lssa.org.za/public/getting-legal-assistance>. (13 March 2018).

<sup>64</sup> <http://www.northernlaw.co.za/Public/ProBono?section=public> (13 March 2018).

<sup>65</sup> Law Society of the Northern Provinces, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.

<sup>66</sup> As presented by LSNP Pro bono Manager Humphrey at the SADC-LA Regional Pro bono consultative meeting March, 2018, Johannesburg



clinics. In the communities they work with qualified paralegals while Small claims commissioners are recognised as pro bono service providers. More has to be done with recognition of paralegals they are a critical source of demand for legal assistance. Community legal advice centers are key and enable regulation and dissemination of information at community.

#### 4.5.2. Cape Law Society

Pro bono under the CLS is rendered by attorneys in private practice in accordance with rule 25, there is a pro bono committee. The ambit of cases excludes claims for damages for delictual claims, claims or actions that may be brought in a small claims court and criminal matters that can be handled by the legal aid SA. The CLS endeavors to offer expeditious legal assistance but the Office of public protector can investigate and intervene where malpractice claims arise against the CLS pro bono project.

Demand has increased over time and impact on staff, resources and profession itself has been hard hitting. The demand far outweighs the resources available to the profession and the need escalates at the end of the year as other legal aid institutes close down or do not accept cases during this period. Small businesses not yet generating any income are getting help and CLS has recognised the provision of mediation services as pro bono work. There is an ADR committee dealing with mechanics in relation to implementation of mediation on pro bono basis and discussions are yet to be finalised.

According to Sub rule 25 (9) disbursements incurred in case of pro bono matters shall be borne by pro bono applicants but most applicants cannot afford especially in registration of deceased estates and transfer of immovable property. Attorneys need cover of disbursements and this is prohibitive to the successful delivery of pro bono services by attorneys. This points to the need for regional pro bono fund to motivate and cover minimum disbursements across regional chapters in each country. The Cape Law Society has established a disbursement fund to cater for scenarios where pro bono client is unable to afford the necessary and reasonable disbursements. The fund can be capitalised from successful recovery of costs for administration of the fund and to advance the pro bono project. The discretion to fund a disbursement rests with the society and is assessed based on the prospects of success and proportionality with the expected order in relation to quantum, it is available as the last resort

## Other Initiatives

There has been significant growth in the number of legal NGOs offering services especially in the respect of assisting asylum seekers and refugees and constitutional matters involving the right to education, health care and housing.<sup>67</sup>

Probono.Org facilitates the provision of free legal services for the poor by volunteer private legal practitioners.<sup>68</sup> Probono.Org screens, matches and refers clients. Some specific initiatives include the drafting of wills for indigent persons and running a Legal Aid Clinic at the Master's Office to assist clients in respect of winding up of deceased estates, the validity of will and invalid transfers of property amongst other issues.

The South African Society for Labour Law (SASLAW) runs a pro bono project at the four Labour Courts in Johannesburg, Durban, Cape Town and Port Elizabeth. Private legal practitioners donate their time at pro bono offices established at the Labour Courts.<sup>69</sup>

Large private law firms have also developed pro bono departments or dedicated offices. For example, ENS Africa has established two dedicated offices located within underserved and poor communities (Mitchells Plain, in Cape Town and Alexandra Township in Johannesburg) providing legal advice as well as rights education programs.<sup>70</sup> These offices are served by some permanent staff together with attorneys from the firm's other offices. The law firm Webber Wentzel (in alliance with Linklaters) has a permanent pro bono partner to coordinate that firm's pro bono practice. According to the firm's 2012 pro bono report, Webber Wentzel attorneys provided 10,596 hours of pro bono services—valued at over ZAR10 million.<sup>71</sup>

Norton Rose Fulbright - Works with NGOs and start up black businesses. Attorneys in the firm are expected to do pro bono hours and they encourage volunteerism. To them, the penalty approach does not work and they have identified the need to use incentives. The firm also works with the commission for gender equality and human rights communities. It has been noted that there is a great need for legal aid in business due to high failure rate to start a business and there is need to help them start right.

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<sup>67</sup> See Lawyers for Human Rights, the Legal Resources Centre, Section 27 and the Socio-Economic Rights Institute.

<sup>68</sup> <http://www.probono.org.za/about-our-services/> (13 March 2018).

<sup>69</sup> <https://www.saslaw.org.za/index.php/pro-bono> (13 March 2018).

<sup>70</sup> <https://www.ensafrica.com/legal-experts/pro-bono?departmentId=647&SearchTerm=pro%20bono&type=areas> (13 March 2018).

<sup>71</sup> <http://www.webberwentzel.com/wwb/content/en/ww-pro-bono-overview> (13 March 2018).



## 4.6. NAMIBIA

### Constitutional Framework

The Constitution provides that in the determination of civil rights and obligation or any criminal charges against them, all persons will be entitled to a fair and public hearing by an independent, impartial and competent Court or Tribunal established by law.<sup>72</sup> It further provides that all persons charged with an offence shall be entitled to be defended by a legal practitioner of their choice.<sup>73</sup> The Constitution further provides that no persons who have been arrested as illegal immigrants shall be denied the right to consult confidentially with legal practitioners of their choice.<sup>74</sup> The Constitution does not provide for state sponsored legal aid during criminal trials or of offences relating to immigration.

### Legal Aid Framework

Despite, no constitutional guarantee to State-funded legal representation, the Legal Aid Act<sup>75</sup> provides for the granting of legal aid in civil and criminal matters to persons whose means are inadequate to enable them to engage practitioners to assist and represent them. The Director of Legal Aid may allocate to any practitioner any matter in respect of which legal aid has been granted by the Director of Legal Aid and such practitioner shall be entitled to the appropriate prescribed fees for his or her services.<sup>76</sup>

In recent times the Legal Aid department has not paid legal practitioners who have now stopped working for the department. The Legal Aid department is now appealing for resumption of work by lawyers and they have engaged the LSN for a way forward. In Namibia, the Ministry of Justice has requested proposals for pro bono work and the LSN is working on this with a view to giving incentives rather than penalties for participation by lawyers. The Minister of Justice is however persuaded that a compulsory scheme may be better than incentives.

### Regulation of the profession

Nothing in the LSN act mandates pro bono. There is not a well-established pro bono tradition in Namibia, although some individual legal practitioners do undertake pro bono work.<sup>77</sup> The profession is regulated by the Legal Practitioners Act<sup>78</sup> and does

<sup>72</sup> Article 12(1)(a) of the Constitution, 1990.

<sup>73</sup> Article 12(1)(e) of the Constitution, 1990.

<sup>74</sup> Article 11(11)(4) of the Constitution, 1990.

<sup>75</sup> Act 29 of 1990.

<sup>76</sup> Section 6 of the Legal Aid Act, 29 of 1990.

<sup>77</sup> <https://www.namibian.com.na/160809/archive-read/Pro-Bono-Work-by-Legal-Practitioners> (28 February 2018).

<sup>78</sup> Act 15 of 1995.



not have any provisions relating to pro bono work by legal practitioners. The Law Society of Namibia does however have an “Access to the Law and Social Responsibility Committee” with the aim to encourage and develop a pro bono model for the legal profession, to enhance access to justice, to engage with relevant role players/ministries. Another focus area of the committee is consumer protection.<sup>79</sup> The Law Society arranges with its members to host free legal advice days and specifically address issues of domestic violence and labour matters.<sup>80</sup> The Law Society also hosts a talk show “Good Morning Namibia” which addresses legal issues.<sup>81</sup>

The Judge JP Karuaihe Trust, in consultation with the Law Society of Namibia, gives annual legal excellence awards which include an award for social responsibility. Pro bono is one of the criteria for the award.<sup>82</sup>

The Society of Advocates, a voluntary association of legal practitioners who practice as advocates, has taken a decision to amend its rules to require a certain amount of pro bono work by its members.<sup>83</sup>

Proposals for the amendment of the Legal practitioner’s act were reported to be under consideration at the time of compilation of this report in early 2018. There is a proposal for a voluntary pro bono scheme with aspirational targets and backed by a clearing house and indemnity insurance for pro bono. Recommendations to the High Court to allow cost recovery and or introduce IFP.

## Other initiatives

The Law Faculty of the University of Namibia runs a legal aid clinic to provide legal services to the indigent members of the community. The one-year service is compulsory to all final year students.<sup>84</sup>

There are also a number of non-governmental organizations such as the Legal Assistance Centre in the country taking up public interest cases on issues such as HIV/AIDS, gender equality and land issues at no cost.<sup>85</sup>

<sup>79</sup> <http://www.lawsocietynamibia.org/content/about-the-law-society/the-committee-system> (28 February 2018).

<sup>80</sup> Law Society of Namibia, Presentation at the “SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network”, 19 March 2018.

<sup>81</sup> Law Society of Namibia, Presentation at the “SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network”, 19 March 2018.

<sup>82</sup> <https://www.namibian.com.na/160809/archive-read/Pro-Bono-Work-by-Legal-Practitioners> (28 February 2018).

<sup>83</sup> <https://www.namibian.com.na/160809/archive-read/Pro-Bono-Work-by-Legal-Practitioners> (28 February 2018).

<sup>84</sup> <http://www.unam.edu.na/faculty-of-law> (28 February 2018).

<sup>85</sup> <http://www.lac.org.na/about/default.html> (28 February 2018).



18 years ago there was established the Rule of Law Trust to fundraise to assist the indigent through a fund in Namibia. The LSN has joined forces with an independent trust awarding legal excellence awards every year to encourage uptake of pro bono.

The University of Namibia was also reported to have a legal aid initiative during a feedback session by the CEO of the LSN. There is also a free legal advice day in conducted in five regions only as there are not enough resources to reach out to all regions. and needs to expand. Every three weeks the LSN seconds an expert to appear on national TV with a topic of public interest to inform and educate the public in how to better access justice in that area of law. A multi-sectorial justice taskforce has been established to create uniform awareness of access to justice and prompting same, facilitating the input of all stakeholders, monitoring and evaluation of access and building capacity.

#### 4.7. ZAMBIA

##### Constitutional Framework

A new Constitution came into effect in 2016. However, the new Bill of Rights required a referendum before becoming a part of the Constitution.<sup>86</sup> In August 2016, a referendum was held and it failed to reach the threshold of 50% of eligible voters required for the result to be valid. This has the result that the current Bill of Rights remains in effect.<sup>87</sup>

The Constitution of Zambia provides that every person who is charged with a criminal offence shall unless legal aid is granted to him in accordance with the law enacted by Parliament for such purpose be permitted to defend himself before the court in person, or at his own expense by a legal representative of his own choice.<sup>88</sup> Paralegals as a form of legal aid are accepted but not legally recognized in the country's constitution or any subsidiary legislation

##### Legal Aid Framework

The Legal Aid Act<sup>89</sup> provides for the assistance to indigent persons of a practitioner including all such assistance as is usually given by a practitioner in the steps preliminary or incidental to any proceedings or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings; and representation in any

<sup>86</sup> <http://www.times.co.zm/?p=78531> (13 March 2018).

<sup>87</sup> <http://www.constitutionnet.org/news/zambias-failed-constitutional-referendum-what-next> (13 March 2018).

<sup>88</sup> S18(2)(d) of the Constitution, Zambia.

<sup>89</sup> Act 30 of 1967.





court.<sup>90</sup> Over the last years, the Legal Aid Board has largely focused on the provision of legal aid on criminal and civil cases at the High Court and Subordinate Courts.

Clients are required to pay a minimal consultation fee of K20.00 and then establish whether they are eligible for legal aid. Once legal aid is granted, the client is asked to pay either K150.00 for criminal cases and K160.00 for civil cases. The consultation fee and the contribution fee may be waived by the Legal Aid Board, by reason of poverty, unable to pay, or that a good cause for inability to remit payments exists. Citizens, established resident, asylum seekers and transit visitors are eligible to apply.<sup>91</sup>

The Legal Aid Board is based in Lusaka with branches throughout the country.<sup>92</sup> Legal aid is mainly provided by legal practitioners in full-time employment of the Legal Aid Board, further assisted by legal aid assistants that are law graduates attached to the Legal Aid Board and granted limited right of audience as per the provisions of the Act.

In 2013, the Legal Aid Board developed an innovative scheme to expand the delivery of legal aid at Subordinate Court level, namely the Legal Services Unit. It takes the form of a permanent unit based and operating from the court premises, with daily outreach to remandees appearing in court and other parties in criminal and civil cases, providing them with the whole range of legal aid services. It is run jointly by paralegals affiliated to Civil Society Organizations (CSOs) and legal aid assistants attached to the Legal Aid Board, all of them operating under the supervision of a Legal Aid Board legal practitioner. Where necessary and for specific cases, the Legal Aid Board engages legal practitioners in private practice under the Judicare system to take up cases at prescribed fees.

The Law Association of Zambia (LAZ) and the Zambian Ministry of Justice (MOJ) are jointly developing the legal aid policy to recognise paralegals and coordinating legal aid services for harmonisation and effective coordination of available resources. The Legal Aid board under government handles criminal and civil cases but they major on criminal cases due to overwhelming demand. IN that constituency of cases private practitioners are paid an amount of \$ 400 a case when they volunteer through the Legal Services Unit.

## Regulation of the Profession

The legal profession is regulated by the Law Association of Zambia Act<sup>93</sup> through the Law Association of Zambia (LAZ). One of the objects of LAZ it to consider the

<sup>90</sup> Section 3(1)(a) and (b) Legal Aid Act, 30 of 1967.

<sup>91</sup> <http://www.legalaidboard.org.zm/how-it-works.php> (28 February 2018).

<sup>92</sup> Branches are in Chipata, Livingstone, Kitwe, Ndola, Kabwe, Mongu, Mansa, Solwezi and Kasama.

<sup>93</sup> Law Association of Zambia Act, 31 of 1973.





legislation relating to legal aid and other ways of security representation for persons who for any reason are unable to secure it, and to make recommendations to the Government thereon; and to establish machinery for the provision of legal aid in addition to that provided by the Government.<sup>94</sup>

There are over 1 500 registered legal practitioners registered at the Law Association of Zambia against the population of more than 17 million, which makes a ratio of 1 legal practitioner to 17 000 persons. Most legal practitioners that are in private practice are concentrated in Lusaka and in a few other major towns in Zambia, focusing on court work and providing legal services that most citizens in Zambia cannot afford.

LAZ has a clinic for women and children cases that has been running for over thirteen years. While it runs on donor support, each lawyer contributes \$10 a year through subscriptions and the clinic is situated in the major provinces, copper belt, Lusaka and Ndola. Private practitioners also support the work of the clinic by taking on cases for no payment. LAZ has a voluntary legal AID committee of members whose work is facilitated by the Secretariat of LAZ.

Some legal practitioners in private practice engage in pro bono legal aid and CSOs have established linkages with the legal profession, whereby cases that require legal representation may be referred by CSOs either directly to legal practitioners, or through the Legal Aid Committee of the Law Association of Zambia. The development and implementation of a pro bono scheme is part of the Law Association of Zambia Strategic Plan 2013-2018.

### Other Initiatives

There are over 30 Civil Society Organizations ('CSOs') which provide legal aid to indigent persons and vulnerable groups in Zambia. Services are mainly provided by paralegals and range from legal education in communities and correctional facilities, to legal information, advice and mediation in individual cases. Depending on their level of qualification and experience, paralegals also provide some forms of legal assistance. Some paralegals work with backing from legal practitioners, whereas others are supervised by their affiliate CSOs. Some CSOs and paralegals have specialized in the provision of legal aid in the criminal justice system, operating at Subordinate Court, correctional facility and police station levels. Others focus on communities working primarily on family law and property matters, land matters, gender-based violence and women's and children's rights. The current number of active paralegals is estimated between 750 and 900 country-wide.

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<sup>94</sup> Section 4 of the Law Association of Zambia Act, 31 of 1973.

Paralegals play a vital role in Zambia as they assist indigent persons and vulnerable groups to engage with the legal environment and justice system, empowering them to understand and claim their rights. They also play an essential bridging role. With an in-depth knowledge of the community within which they live and work, paralegals are able to provide targeted legal education and advice. They can identify problems and bottlenecks; through linkages with CSOs, legal practitioners, institutions and authorities, paralegals provide simple and proximate solutions. Overall, they support increased confidence of the public in the justice system. Similarly, paralegals in the criminal justice system have outreach to inmates in correctional facilities, police stations and police posts and at courts.

However, the role of CSOs as legal aid service providers is not formally recognised in any piece of legislation, similarly for services delivered by paralegals, which makes the delivery of legal aid unregulated if not provided by the Legal Aid Board or legal practitioners in private practice. In addition, no standardised regime is in place to ensure the competence and accountability of paralegals when providing legal aid. CSOs working with paralegals face additional challenges in terms of institutional funding and technical weaknesses that further affect their capacity to adequately supervise, monitor and support their paralegals. There is a paralegal network of 15 organisations coordinating all training paralegals in Zambia.

No university law clinic is presently up and running, though the University of Zambia is engaged in establishing a clinic that would operate from Lusaka. LAZ has also introduced an annual Legal AID week, where lawyers go to communities to provide legal aid.

#### **4.8. PRO BONO TANZANIA**

##### **Constitutional Framework**

The Constitution does not make provision for legal representation of accused persons either of their own choice or at the expense of the State.

##### **Legal Aid Framework**

The Legal Aid Act<sup>95</sup> was recently introduced in 2017 and repealed the former Legal Aid (Criminal Proceedings) Act. The Act regulates and co-ordinates the provision of legal aid services to indigent persons in criminal and civil matters. The Act provides for a Register of legal aid providers which shall be available to the public at police

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<sup>95</sup> No. 1 of 2017.

stations, courts, prisons and other public places.<sup>96</sup> Legal Aid providers can be made up of advocates, lawyers, paralegals and any combination thereof.<sup>97</sup>

The Act also recognizes paralegals and provides the criteria for their qualifications along three main lines of specialization including Community level and Corporate sector. The Law Society is currently running a project which aims at developing a standardized curriculum for paralegal training.<sup>98</sup>

A compulsory pro bono Programme exists under the legal aid. Tanzania has 10 legal aid centers through chapters from Dar es Salaam. Wherever there is a high court division there is a chapter that constitutes a legal aid unit applying the means tests and these are not manned by registered lawyers but people with a degree. Training and public awareness comes as pro bono work in publications, physical training and collaboration with paralegal units. The Legal Aid Act formalises paralegal collaboration.

The Judiciary grants legal aid certificates and assigns lawyers cases of pro bono work through the dock brief and the legal aid NGOs

It was noted by the CEO of Tanganyika Law Society at the final Regional Pro bono Consultative Meeting (RPCM) by SADC-LA that legal aid by the Law Society is in criminal matters only.

The Registrar of the courts also plays a role in allocating pro bono cases to lawyers. In Tanzania the TLS works with the registrar to push up cases once demand is created. The government of Tanzania has committed to establish a fund to support paralegals in the country.

## Regulation of the Profession

Legal practitioners are regulated by the Tanganyika Law Society Act<sup>99</sup> One of the objectives of the Law Society is to protect and assist the public in Tanzania in all matters touching, ancillary or incidental to the law.<sup>100</sup> To realize this objective, the Law Society keeps and maintains a database of advocates willing to take up pro bono work. The Law Society pays advocates a transport disbursement and awards continuous legal education points for undertaking pro bono work.<sup>101</sup>

<sup>96</sup> Section 9(1) and (2) of the Legal Aid Act 1 of 2017.

<sup>97</sup> Section 10 of the Legal Aid Act 1 of 2017.

<sup>98</sup> <http://tls.or.tz/projects> (28 February 2018).

<sup>99</sup> Act No. 42 of 1961.

<sup>100</sup> Section 4(e) of the Tanganyika Law Society Act.

<sup>101</sup> <http://tls.or.tz/wp-content/uploads/2016/02/CALL-FOR-PRO-BONO-ADVOCATE-magda-2.pdf> (28 February 2018).



## Other initiatives

The Tanzania Network of Legal Aid Providers (TANLAP) is a national network working in the legal sector. It is a membership network comprised of Non-Governmental Organizations (NGOs), Community -Based Organizations (CBOs), Faith Based Organizations (FBOs) and other institutions providing legal aid in Tanzania. TANLAP is an umbrella organization established to enhance the best practice and capacity of its members for provision of quality legal aid services.

Civil society organisations were noted to have adopted a model whereby they employ a qualified lawyer and include in their constitutions a provision allowing conduct of pro bono work. The law society in such cases is involved from a quality assurance perspective. It was noted that some law firms also have pro bono divisions but these are not monitored and hence no statistics have been compiled in that area. The national promotional pro bono week started in 2007 and it is now recognised in the legal aid act for the first week of December throughout all the chapters.

One of the identified functions of paralegals in Tanzania is to connect the public to the law society and its wider membership, and pro bono cases are part of what paralegal activity naturally brings to the doorstep of lawyers. It was reported that criminal cases are going unattended to so the detention facilities are flooded by people on remand. Very few NGOs work with the criminal aspect. Labour, matrimonial and inheritance cases pose a huge problem in the African context and many such cases exist. An issue of note in the Regional Pro Bono Consultative Meeting (RPCM) is that Pro bono cases against government sometimes lead to victimisation and there is a need to mitigate the risk factor.

## 4.9. SWAZILAND

### Constitutional Framework

The Constitution of Swaziland provides that where a person is arrested or detained a legal representative will be allowed reasonable access and confidentiality of that person.<sup>102</sup> It further provides that a person who is charged with a criminal offence will be entitled to legal representation at the expense of the Government in the case of any offence which carries a sentence of death or imprisonment for life.<sup>103</sup> Such person is also permitted to present a defense before the court either directly or through a legal representative chosen by that person.<sup>104</sup> There is no

<sup>102</sup> S16(6)(b) of the Constitution, 2005.

<sup>103</sup> S21(2)(c) of the Constitution, 2005.

<sup>104</sup> S21(2)(e) of the Constitution, 2005.



constitutional guarantee to state funded legal aid for accused persons.

There is also no constitutional guarantee to state funding of Legal Aid in civil matters. Furthermore, in matters which are determined in a Court under customary law, then no legal representation is allowed.<sup>105</sup>

In the RCPM it was submitted that Swaziland has a dual legal system with common law alongside the traditional law as part of the justice system. Legal Aid or pro bono are not provided for in the framework of the constitution. Only Capital punishment is accorded *pro deo* services for accused and this excludes all other classes of accused.

### Legal Aid Framework

Swaziland does not have a body regulating or providing legal aid in either criminal or civil matters. Legal representation in matters carrying the death sentence or life imprisonment are provided by legal practitioners on a pro deo basis.<sup>106</sup> A Legal Aid Bill is under compilation as part of ongoing law reform.

### Regulation of the Profession

Legal practitioners are regulated under the Legal Practitioners Act<sup>107</sup> and the Law Society of Swaziland. The Act does not compel legal practitioners to undertake pro bono work. Pro bono is discouraged in Swaziland as it is unethical to provide legal representation without charging a fee.<sup>108</sup> The Law Society has undertaken to change this by engaging in a project with the University of Swaziland to promote pro bono as from the first year of law school.<sup>109</sup> The Legal Practitioners Act actually discourages pro bono work and there is no formal structure or mechanism for pro bono.

### Other Initiatives

There are a number of NGOs providing some form of legal aid to indigent persons. This is mostly done in matters relating to maintenance, inheritance and domestic or sexual abuse. However, these NGOs are usually funded by Western donors and their

<sup>105</sup> [http://www.nyulawglobal.org/globalex/Swaziland.html#\\_Legal\\_aid](http://www.nyulawglobal.org/globalex/Swaziland.html#_Legal_aid) (13 March 2018).

<sup>106</sup> [http://www.nyulawglobal.org/globalex/Swaziland.html#\\_Legal\\_aid](http://www.nyulawglobal.org/globalex/Swaziland.html#_Legal_aid) (13 March 2018).

<sup>107</sup> 1964.

<sup>108</sup> Law Society of Swaziland, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.

<sup>109</sup> Law Society of Swaziland, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.



work is limited by donor preferences and scarcity of funds.<sup>110</sup> The Law Society has engaged University of Swaziland to ensure pro bono starts with law schools

Chiefs have powers of ejectment and can be used to deal with offenders of government - SLS is helping in such cases in conjunction with other CSO's. SLS is motivating lawyers to volunteer with about 600 attorneys for 1.3 million people with about 100 working for government while others work in commerce and the rest are in practice.

#### 4.10. PRO BONO LESOTHO

##### Constitutional Framework

The Constitution of Lesotho enshrines the right to a fair trial<sup>111</sup> and a person's rights to be defended by a legal representative of his own choice.<sup>112</sup> However, the Constitution is silent on the provision of state-funded legal aid in criminal or civil cases.

##### Legal Aid Framework

A Legal Aid Board was established under the Legal Aid Act. The criteria for state funded legal aid is whether it is in the interests of justice that such person should have legal aid at the person's trial and whether such person has insufficient means to obtain the services of a legal practitioner.<sup>113</sup> It is reported that there is a back log of cases at the Legal Aid Board as a result of there being no systematic manner of handling cases.<sup>114</sup> There is an informal arrangement between the Legal Aid Board and the Law Society wherein the Legal Aid Board may refer matters to the Law Society to allocate a legal practitioner to an indigent client.<sup>115</sup> If an indigent is charged with a capital offence then the Registrar of the High Court will appoint a legal practitioner on their behalf.<sup>116</sup>

##### Regulation of the Profession

<sup>110</sup> [http://www.nyulawglobal.org/globalex/Swaziland.html#\\_Legal\\_aid](http://www.nyulawglobal.org/globalex/Swaziland.html#_Legal_aid) (13 March 2018).

<sup>111</sup> Section 12 of the Constitution, 1993 amended in 1998.

<sup>112</sup> Section 12(2)(d).

<sup>113</sup> Section 4(1) and (2) of the Legal Aid Act.

<sup>114</sup> [http://www.nyulawglobal.org/globalex/Lesotho.html#\\_Civil\\_and\\_criminal](http://www.nyulawglobal.org/globalex/Lesotho.html#_Civil_and_criminal).

<sup>115</sup> Law Society of Lesotho, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.

<sup>116</sup> Law Society of Lesotho, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.



The Legal Practitioners Act, 1983<sup>117</sup> governs the admission and practice of attorneys and advocates in the Kingdom. The Law Society Act, 1983<sup>118</sup> governs the operation of the Law Society and provides for the sound legal learning and practice and discipline of attorneys and advocates in the Kingdom.

Both pieces of legislation do not encourage or mandate legal professionals to undertake pro bono work. There is no formal structure encouraging or facilitating pro bono work in Lesotho. Legal professionals, of their own accord, do render services to members of the public on a pro bono basis.<sup>119</sup> The legal defense of the well-publicized arrest and charge of members of the Lesotho Defence Force in allegations of a mutiny was conducted on a pro bono basis. However, many legal practitioners are reluctant to undertake pro bono work due to the severe delays in the court system.<sup>120</sup>

The Secretariat of the Law Society gives free legal advice and parcels out work to lawyers in private practice. The Legal aid board provides cases on a bilateral arrangement with a small stipend, this is an informal arrangement that needs to be formalized and better packaged to international standards. The Law Society also gives a stipend but this is too little and this is a challenge. Once a month, the law society facilitates a three-hour presentation.

Currently the Law Society Act and Legal Practitioners Act are undergoing reform and there is resistance to the introduction of pro bono. The main reason is that the court system is so slow and pro bono cases in addition to paid work that is already delayed may take more time than necessary and so it is not affordable. Thoughts have been shared around the possible use of mediation as an alternative and the need to explore the possibility of introducing transactional work.

## Other Initiatives

There are a few NGOs providing legal aid to indigent persons especially in relation to domestic and sexual abuse. The Law Society has partnered with a number of NGOs such as the Transformation Resource Centre to address the relocation of communities as a result of the Lesotho Highlands Water Project Phase II.<sup>121</sup> These NGOs are mainly donor funded and their interventions are usually limited by donor

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<sup>117</sup> Act No. 11 of 1983.

<sup>118</sup> Act No. 13 of 1983.

<sup>119</sup> <https://southernafricalitigationcentre.org/wp-content/uploads/2017/03/Raekoai.pdf> (23 February 2018).

<sup>120</sup> Law Society of Lesotho, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.

<sup>121</sup> Law Society of Lesotho, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.





preferences and scarcity of funds.<sup>122</sup>

#### 4.11. DEMOCRATIC REPUBLIC OF THE CONGO

##### Constitutional Framework

The Constitution provides that the right to defense is organized and guaranteed.<sup>123</sup> All persons have the right to defend themselves or to be assisted by counsel of their choice at all stages of the criminal procedure, including the police investigation and the pre-trial enquiry.<sup>124</sup>

##### Legal Aid Framework

There is no system of state sponsored legal aid. There is no distinction between pro deo or pro bono. The former comes from government in criminal cases. The challenge is that only a budget of \$10 000 is provided for the whole country where there are eleven Bar Associations. The amount is grossly insufficient but more worrisome is that is currently not accounted for. Lawyers have to pay disbursements out of their pockets. It was noted that the UNDP has given \$18 0000 in Lubumbashi Bar Association with 1320 lawyers and that is a start.

There is accordingly minimal government intervention when it comes to legal aid due to lack of resources due to endemic corruption, a further hindrance in the legal system is the direct interference of the state in civil and criminal matters therefore compromising the judiciary's independence, as a result of this a weak judicial system prevails and therefore confidence in such a system is excruciatingly low and as most people live below the property line they do not have access to their extremely limited legal system.

##### Regulation of the Profession

There is an overarching structure called the *Ordre national des avocats* (National Bar) which brings together all 13 bars in the DRC. The Bar Association is governed by Ordinance-Law No. 79-028 of 1979.

The Bar Rules require that all legal practitioners in training provide a minimum of 7 days of free legal aid through the Bureau de Consultation Gratuite to the indigent

<sup>122</sup> [http://www.nyulawglobal.org/globalex/Lesotho.html#\\_Civil\\_and\\_criminal](http://www.nyulawglobal.org/globalex/Lesotho.html#_Civil_and_criminal) (13 March 2018).

<sup>123</sup> Article 19 of the Constitution, 2005.

<sup>124</sup> Article 19 of the Constitution, 2005.





and 4 pro bono cases over the course of their training.<sup>125</sup> The trainees are supervised by senior legal practitioners.<sup>126</sup> However, the Rules do not require members of the Bar Association to carry out pro bono work.<sup>127</sup>

The Ordinance-Law No. 79-028 of 1979 places the responsibility on the Bar Association to establish legal aid offices for indigents.<sup>128</sup> In order to access the legal aid offices, individuals need to obtain a certificate of indigence issued by the municipality. Indigents need to pay for the certificate, which many cannot afford.<sup>129</sup> The State provides insufficient funding to the Bar Association to administer legal aid and therefore the programme is ineffective.<sup>130</sup>

## Other Initiatives

Due to the lack of practicing legal practitioners, the Government has authorized certain knowledgeable individuals to represent citizens in court. These are persons holding a lower degree of law (*graduat* degree instead of a Masters degree) or persons who have professional experience such as former court clerks. They are not members of the Bar Association.<sup>131</sup>

There are a number of small legal clinics organized by NGOs and civil society.<sup>132</sup> There are also other internationally-sponsored initiatives such as the American Bar Association's Rule of Law Initiative which provides legal counselling to survivors of sexual and gender-based violence.<sup>133</sup>

As a result of lack of legal aid provision international organizations such as International Bar Association of Human Rights (IBAHRI), International Legal Aid Consortium (ILAC) as well as the American Bar Association (ABA) are the primary providers of pro bono legal services in the DRC.

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<sup>125</sup> International Bar Association, *"Rebuilding courts and trust: An assessment of the needs of the justice system in the Democratic Republic of the Congo"*, August 2009: 32.

<sup>126</sup> Bar Association of the Democratic Republic of the Congo, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.

<sup>127</sup> International Bar Association, *"Rebuilding courts and trust: An assessment of the needs of the justice system in the Democratic Republic of the Congo"*, August 2009: 34.

<sup>128</sup> Article 43, Ordinance Law No. 79-028 of 1979.

<sup>129</sup> International Bar Association, *"Rebuilding courts and trust: An assessment of the needs of the justice system in the Democratic Republic of the Congo"*, August 2009: 34.

<sup>130</sup> Bar Association of the DRC, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.

<sup>131</sup> International Bar Association, *"Rebuilding courts and trust: An assessment of the needs of the justice system in the Democratic Republic of the Congo"*, August 2009: 32.

<sup>132</sup> International Bar Association, *"Rebuilding courts and trust: An assessment of the needs of the justice system in the Democratic Republic of the Congo"*, August 2009: 34.

<sup>133</sup>

[https://www.americanbar.org/advocacy/rule\\_of\\_law/where\\_we\\_work/africa/democratic\\_republic\\_congo/background.html](https://www.americanbar.org/advocacy/rule_of_law/where_we_work/africa/democratic_republic_congo/background.html) (14 March 2018).



Upon conducting a survey in the DRC to examine and highlight the aforementioned challenges facing the DRC's legal system, IBAHRI and ILAC together issued the following recommendations: Government to allocate more funds or resources to the judiciary, develop a stronger legislative process and a standardized court management system to regulate case flow administration, must recruit and train judicial staff, government should continue to engage support of international donor community to strengthen operation of justice system and judiciary, government should further efforts to train recruits through securing salary payments to judiciary members and magistrates in order to attract suitable qualified members of the Congolese legal profession to the bench, Government is to revive and to give enough resources to the existing inspection judiciatiare to serve as a national oversight mechanism, to fight corruption and to deal with disciplinary issues within the judiciary, further more government is to exercise better control over and improve access to legal aid by implementing with sufficient funding the Bureau Consultation Gratuite and giving increased support to bars in organized legal aid services. Very importantly the government and the military should not interfere adversely in civil and criminal matters before the courts. The state should also encourage support to regional Bar programs in order to improve and construct continuing legal education. (CLE) programs and to strengthen the capacity of bars and legal secretaries, this increase in funding to such CLEs should lead to training primarily on the following key areas affecting DRC: international criminal justice, human rights and gender justice and expansive training on constitutional issues.

Another such organization is the ABA, which has a Rule of Law initiative (ABA ROL) which gives technical assistance on prison systems reform and works with the Congolese government and civil society organisations to better protect the rights of prisoners and detainees by affording them such pro bono legal advice amongst other legal services, the ABA initiative is also focusing on implementing a case law data base in three provinces in the eastern DRC in conjunction with the country's Ministry of justice in order to provide and easier access of legal principles to the population as a whole.

The aforementioned highlights the severe shortcomings within the national legal and judicial structures of the DRC and also highlights the primary role of such international NGOs in providing pro bono legal services to the desperate and needy in that country.

## 4.12. PRO BONO MAURITIUS

### Constitutional Framework

The Constitution provides that where a person is detained then the person will be afforded reasonable facilities to consult a legal representative of his or her own choice.<sup>134</sup> However, the Constitution is clear in that the right to legal representative does not entitle a person to legal representation at public expense.<sup>135</sup>

### Legal Aid Framework

Legal Aid is regulated by the Legal Aid and Legal Assistance Act<sup>136</sup> which provides for legal assistance in criminal and civil proceedings.<sup>137</sup> The Legal Aid Authority will assign a barrister or an attorney or both to assist any person who is granted legal aid or legal assistance.<sup>138</sup> The barrister or attorney will be paid out of the Consolidated Fund and he is not bound to make any disbursement out of his own money.<sup>139</sup>

In Mauritius, the system of legal aid has been in existence since the introduction of the Legal Aid Act 1973. However, the scope of legal aid funding was very limited and the rates of pay derisory. In 2012, the government introduced the Legal Aid (Amendment) Act 2012 which brought some well overdue reforms to the previous system. Budget allocation to legal aid has been increased from Rs2.5m in 2011 to Rs10m in 2012 of which it has been said will still not be enough to offer the majority who need it legal assistance.

The Legal Aid Amendment Act deals with the introduction of the concept of legal assistance to a prisoner during police investigation, it also simplifies methods for requesting legal assistance. A prisoner accused or suspected of having committed serious offences such as murder, rape, assault, among others is to be told of his right to ask for legal assistance.

The magistrate will then decide whether to grant legal assistance or whether to initiate an investigation before agreeing to provide legal assistance.

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<sup>134</sup> Article 5(c) of the Constitution, 1968.

<sup>135</sup> Article 19(2) of Constitution, 1968.

<sup>136</sup> 1974.

<sup>137</sup> Section 4 of the Legal Aid and Legal Assistance Act, 1974.

<sup>138</sup> Section 9(1)

of the Legal Aid and Legal Assistance Act, 1974.

<sup>139</sup> Section 9(2)(b) and (c) of the Legal Aid and Legal Assistance Act, 1974.



## Regulation of the Profession

The Law Practitioners Act<sup>140</sup> and the Law Society of Mauritius Act<sup>141</sup> regulate the legal profession. The Acts do not provide that legal practitioners must perform pro bono work.

## Other Initiatives

Legal practitioners do voluntarily engage in pro bono services to both individuals and communities.<sup>142</sup>

### 4.13. Zimbabwe

## Constitutional Framework

The Constitution of Zimbabwe provides that The State must take all practical measures, within the limits of the resources available to it, to provide legal representation in civil and criminal cases for people who need it and are unable to afford legal practitioners of their choice.<sup>143</sup>

## Legal Aid Framework

Legal Aid is regulated by the Legal Aid Act.<sup>144</sup> It provides a broad definition of legal aid which includes the “doing of anything that may properly be done by a legal practitioner for or in the interests of his client.”<sup>145</sup> The Directorate has its own law officers which provide legal services. The Director of the Legal Aid Directorate may engage the services of a legal practitioner in private practice if it is in the interests of justice to do so.<sup>146</sup> Such legal practitioner will be paid for services rendered out of the Legal Aid Fund.

The Magistrate’s Court Act and the High Court Act allow a litigant to apply for free legal assistance to the court under the system of *in forma pauperis*. However, it is noted by the Law Society that this system is underutilized by members of the

<sup>140</sup> 1984.

<sup>141</sup> Law Society Act No. 33 of 2005.

<sup>142</sup> <http://www.mardemootoo.com/pro-bono/> (14 March 2018).

<sup>143</sup> S31 of the Constitution, 2013

<sup>144</sup> Chapter 07:16 Legal Aid Act, 2003.

<sup>145</sup> Section 11 of the Legal Aid Act, 2003.

<sup>146</sup> Section 12(1)(a) of the Legal Aid Act, 2003.



public.<sup>147</sup> In cases where the accused is charged with a capital offence, then the Registrar of the High Court will call on a legal practitioner to assist an unrepresented indigent accused *pro deo*.<sup>148</sup>

### Regulation of the Profession

The Law Society of Zimbabwe regulates legal practitioners. The Law Society runs open days where lawyers meet at a public place to provide free legal advice. This is done in connection with members of the Correctional Services, Police, Judicial Service Commission to address all law related issues.<sup>149</sup>

### Other Initiatives

There are a number of NGOs offering pro bono legal services especially in the fields of public interest litigation to enforce civil and political rights and socio-economic rights. Zimbabwe Lawyers for Human Rights conducts mobile legal clinics in low-income communities in peri-urban and rural areas.<sup>150</sup> The Legal Resources Foundation also has permanent offices, mobile legal aid clinics and help desks at Magistrates' courts providing legal assistance to the marginalized and vulnerable.<sup>151</sup>

## 5. Lessons learnt for the SADC region

There is no regional organization or network at the SADC level which is connecting or brokering pro bono legal services between lawyers in the region and non-governmental organizations, governments or individuals in need. There is a need for a regional coordinating organization to either connect parties within the country or across borders.

Although a network or clearinghouse will require financial resources and staff, the use of technology through websites or applications can reduce costs.<sup>152</sup> Technology can be used for clients to register their needs and for legal practitioners to register their pro bono services. Technology will also make it easier for legal practitioners to communicate with clients and update them on the progress of their case.

<sup>147</sup> Law Society of Zimbabwe, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.

<sup>148</sup> Law Society of Zimbabwe, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.

<sup>149</sup> Law Society of Zimbabwe, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.

<sup>150</sup> [https://www.zlhr.org.zw/?page\\_id=71](https://www.zlhr.org.zw/?page_id=71) (14 March 2018).

<sup>151</sup> <http://www.lrfzim.com/legal-services/> (14 March 2018).

<sup>152</sup> Erica Emdon, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.



The development of a network or clearinghouse, especially if supported by the Law Societies and Bar Associations, will require the development of common rules to ensure the harmonization and promotion of pro bono services in the region.<sup>153</sup> Networks and clearinghouses have also encouraged pro bono by hosting award ceremonies and recognizing significant cases or hours of pro bono work.<sup>154</sup>

Many countries in the SADC share borders with one another and can lend cross border assistance especially in issues relating to border disputes, shared natural resources, immigration, cross border trading and extradition. Greater co-operation between legal practitioners, law societies and bar associations with communities and individuals in need will also enhance the SADC objective of regional integration.

Legal practitioners can also assist in matters relating to international law such as using the mechanisms provided for by the African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights and UN Treaty mechanisms such as the Human Rights Committee and the Committee on Economic, Social and Cultural Rights.

One of the challenges in cross border legal advice is that most legislation in the SADC requires that only legal practitioners who are registered with the Law Societies or Bar Associations may practice law in many SADC countries. This entails certain rules regarding qualifications and citizenship or residency. As a result, there are limitations in place to the extent of work that can be done by foreign lawyers. However, Lesotho<sup>155</sup> does allow for the admission of attorneys and solicitors, advocates and barristers from other countries including South Africa, Namibia and Zimbabwe. It is also imperative that any foreign legal practitioners work closely with local legal practitioners in order to transfer skills and knowledge.<sup>156</sup>

## 6. Recommendations and Proposals

The meeting held on 19 March 2018 by members of the Bar Associations and Law Societies in the SADC clearly demonstrated the demand for a pro bono network in the region. Even though there are already strong pro bono initiatives in some jurisdictions, pro bono can be improved through co-ordination at the regional level and working with partners at the international level.

<sup>153</sup> Erica Emdon, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.

<sup>154</sup> Erica Emdon, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.

<sup>155</sup> Section 6 and 8 of the Lesotho Legal Practitioners Act, 1983.

<sup>156</sup> Garth Meintjies, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.



It is envisaged that the pro bono network will be responsible for sourcing technical expertise from international partners, training and pairing expertise in the region. It will also be responsible for sourcing funding and getting the support of legal practitioners. The network will create a pro bono database at the regional level which will tie into technology solutions.

The road forward is that the SADCLA will develop a plan of action and it will be formally shared with the SADCLA members at the Annual General Meeting in Mozambique in August 2018.<sup>157</sup>



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<sup>157</sup> Stanley Nyamanhindi, Presentation at the "SADCLA Regional Consultative Meeting for the Establishment of a Regional Pro Bono Network", 19 March 2018.

