



Pro Bono Practices and Opportunities in Costa Rica

INTRODUCTION

The legal community, based in the capital city of San José, is increasingly recognising the value of a pro bono culture and the significant impact pro bono work can have on democracy and justice. The Pro Bono Declaration for the Americas is the founding document that is helping to institutionalise altruistic and other pro bono activities by lawyers in Costa Rica.

OVERVIEW OF THE LEGAL SYSTEM

The Justice System

Constitution and Governing Laws

Costa Rica is governed by the Constitution of 1949 (*Constitución Política de la República de Costa Rica*, the “**Constitution**”). The Constitution is the fundamental and supreme law of Costa Rica. It has two primary functions: (i) to establish the government and its powers; and (ii) to recognise the fundamental human rights of individuals and the constitutional procedure to enforce them.

There are three governmental branches, in accordance with the principle of separation of powers, which are the Executive, Legislative and Judicial branches. The Executive branch, composed of the President of the Republic of Costa Rica and the Council of Ministers, is charged with the administration of the State, ensuring that laws are duly executed and enforced. The Legislative branch, which resides in the unicameral Legislative Assembly (*Asamblea Legislativa*), has the authority to make, amend and repeal laws. Finally, the Judicial branch, through the court system, administers and enforces the laws, and is expressly bound by the Constitution to adhere to the principle of due process of law.

The Courts

The Supreme Court of Justice of Costa Rica is the highest court of the Judiciary. According to Article 157 of the Constitution, the Supreme Court shall be composed of the number of judges deemed necessary to handle the system’s requirements. Currently, the Judiciary is comprised of around 1,120 judges who are each elected by the Legislative Assembly.¹ In 1989, the Constitution was amended to create a Constitutional branch within the Supreme Court. This fourth chamber (*Sala IV*) has specific jurisdiction over matters that involve the Constitution and violation of constitutional rights.

The administrative rules for the Judiciary are set forth in the Law on Judiciary Power (*Ley Orgánica del Poder Judicial*). The Costa Rican Court system is comprised of the Supreme Court, the Superior Courts (Courts of Appeal), the Trial Judges and, at the lowest level, the Justices of the Peace (*Jueces de Paz*).²

The Practice of Law

Education

Until recently, a lawyer only had to obtain a law degree from one of the 28 universities in Costa Rica that offer law studies (only one is a public university and the others are private) to join the Costa Rica Bar Association and, thus, become a qualified lawyer. However, in May 2015, the Costa Rica Bar Association introduced a compulsory bar exam for law graduates that aims to raise the standard of lawyers in the country. As a result Costa Rica has joined Brazil as the only other Latin American country with a mandatory bar examination. The first exams took place in June 2015 and tested candidates on seven

¹ See <http://redprobono.org/wp-content/uploads/2013/10/Costa-Rica-Esp.pdf> (last visited on September 4, 2015).

² See http://www.nyulawglobal.org/globalex/Costa_Rica1.htm#_Toc414085161 (last visited on September 4, 2015).



types of law, designated as core areas by the Bar: commercial, civil, constitutional, criminal, labor, family and administrative law.³

Licensure

The legal profession in Costa Rica is regulated by the Costa Rica Bar Association (*Colegio de Abogados de Costa Rica*) with which each lawyer is required to register. Lawyers in Costa Rica must comply with a Code of Conduct (*Código de Deberes Jurídicos, Morales y Éticos del Profesional en Derecho*) and the rules of the Bar Association (*Ley Orgánica; Reglamento Interior del Colegio de Abogados*)⁴. Lawyers in Costa Rica must at all times preserve absolute independence, comply with confidentiality rules, serve the clients' interests diligently, conscientiously and promptly, and cannot act in situations where a conflict of interest exists.

Foreign lawyers can advise in Costa Rica only on international law and the laws of the jurisdiction in which they are qualified. In order to obtain a full licence to practise law in Costa Rica, foreign lawyers must apply to the University of Costa Rica to have their law degree assessed as being equivalent to a Costa Rican law degree. Foreign lawyers also need to sit the Bar Association's legal ethics exam. Once in receipt of all this documentation (including proof of residency), the foreign lawyer can apply for a licence from the Bar Association.⁵

Demographics: Number of Lawyers Per Capita; Number of Legal Aid Lawyers Per Capita

According to the Costa Rica Bar Association, the number of lawyers per capita is around 22,785 practicing lawyers, reflecting an increasing trend in comparison to previous years, with about 1,350 lawyers joining each year. There is one lawyer for every 200 inhabitants, making Costa Rica one of the highest ratios in Latin America.⁶

Legal Regulation of Lawyers

Legal regulation of lawyers is established in Law No. 13, of October 28, 1941, of the Bar Association of Costa Rica (*Ley Orgánica del Colegio de Abogados y Abogadas de Costa Rica*) that requires every practicing lawyer to be affiliated with the Costa Rica Bar Association (*Colegio de Abogados de Costa Rica*), which, among other functions, oversees their professional conduct.

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

The obligation to provide legal aid is not established as such in the Constitution. However, the right of access to justice is stipulated in Article 41 of the Constitution: *"Everyone shall be entitled to receive reparation for injury or damage caused to themselves or to their property or moral interests, through recourse to the laws. Justice shall be prompt, effective, not denied, and in strict accordance with the laws"*.

The same right of access to justice is also established for criminal proceedings (Article 39 of the Constitution): *"No one shall be made to suffer a penalty except for a crime, unintentional tort or misdemeanour punishable by previous law, and by virtue of a final judgment handed down by a competent authority, after the defendant has been given an opportunity to plead his defence, and upon the necessary proof of guilt."*

³ See <http://latinlawyer.com/features/article/48025/costa-rica-sparks-debate-compulsory-bar-exam/> (last visited on September 4, 2015).

⁴ See http://www.abogados.or.cr/uploads/CMS/Articulo/19_0Reglamento-interior-del-Colegio-de-Abogados-y-Abogadas-de-Costa-Rica.pdf (last visited on September 4, 2015).

⁵ See http://www.ibanet.org/PPID/Constituent/Bar_Issues_Commission/ITILS_Costa_Rica.aspx (last visited on September 4, 2015).

⁶ See https://www.larepublica.net/app/cms/www/index.php?pk_articulo=533327273 (last visited on September 4, 2015).



State-Subsidised Legal Aid

State-subsidised legal aid is provided by the Public Defender of Costa Rica (*Defensa Pública*).⁷ The Public Defender is a subsidiary body of the Administration of Justice, within the Judiciary and is dependent on the Superior Council of the Judiciary (*Consejo Superior del Poder Judicial*) with respect to administrative aspects. The institution's legal basis and rules are set out in Articles 149 to 159 in the Law on Judiciary Power (*Ley Orgánica del Poder Judicial*).

Eligibility Criteria

Financial Means

Public Defenders provide free representation in criminal and family law matters for Costa Rican citizens who lack sufficient financial resources to hire a private defence lawyer. Although the main aim is to provide services to low-income people, the service is also available to paying clients.

Legal Issues/Case Type

The Public Defenders' role consists of providing legal representation or advice and granting the right of access to justice for Costa Rican citizens.

The Public Defender has 38 offices throughout the country, in addition to being present in all of the circuit courts of Costa Rica. Public Defenders provide legal services in the following areas of law: adult criminal law; juvenile criminal law; maintenance payments; execution of the sentences; administrative and disciplinary proceedings against judicial officers; agricultural law; penalisation of violence against women; and misdemeanour matters.

Alternative Legal Aid - Social Defence

Apart from state-sponsored legal aid, an inter-institutional body was established in 2008, the Social Defence (*Defensoría Social*),⁸ that pursues the effective legal defence of people in vulnerable conditions, in accordance with the definition provided by the Brasilia Regulations Regarding Access to Justice for Vulnerable People:

"Vulnerable people are defined as those who, due to reasons of age, gender, physical or mental state, or due to social, economic, ethnic and/or cultural circumstances, find it especially difficult to fully exercise their rights before the justice system as recognized to them by law."⁹

On April 24, 2008, an inter-agency coordination, led by the Ibero-American Union of Bars and Law Societies (UIBA), Costa Rica's Bar Association,¹⁰ the University of Costa Rica, the Ministry of Justice and the Judiciary of Costa Rica agreed to establish social defence in order to grant access to justice and legal assistance to Costa Rican citizens in a vulnerable condition.

PRO BONO ASSISTANCE

Pro Bono Opportunities

The Pro Bono Declaration for the Americas, spearheaded by the Cyrus R. Vance Center for International Justice of the New York Bar, was launched in January 2008 by a committee of leading practitioners in

⁷ See <http://www.poder-judicial.go.cr/defensapublica/> (last visited on September 4, 2015).

⁸ See http://www.uiba.org/index.php?option=com_content&view=article&id=70:la-uiba-y-el-acceso-a-la-justicia-en-iberoamerica&catid=63:general&Itemid=78 (last visited on September 4, 2015).

⁹ See Section 2.1, Brasilia Regulations Regarding Access to Justice for Vulnerable People. Regulation, available at <http://www.osce.org/odihr/68082?download=true> (last visited on September 4, 2015).

¹⁰ Further information available at <http://www.uiba.org/> (last visited on September 4, 2015).



Latin America and the United States. The Congress was attended by representatives from prestigious law firms, law schools, bar associations and NGOs. Signatories, including Costa Rica, endorsed the principle that it is the duty of the legal profession to promote a fair and equitable legal system and respect for human and constitutional rights. The Declaration calls for each signatory to promote an average of at least 20 hours of annual pro bono work per practicing lawyer.¹¹

Bar Association Pro Bono Programs

The Pro Bono Commission of the Bar (*Comisión Pro Bono del Colegio de Abogados*)¹² is Costa Rica's leading clearinghouse for pro bono work and focuses on finding and distributing pro bono opportunities to private lawyers. Founded in 2010, it does not provide direct services to clients but rather serves as a clearinghouse, referring matters to private firms and individual lawyers and developing new pro bono programs for the benefit of non-profit entities, NGOs and private citizens. About 35 law firms currently participate in this initiative.¹³

Law Firm Pro Bono Programs

BLP Abogados was the first Costa Rican signatory of the Pro Bono Declaration for the Americas and has been recognized by Latin Lawyer as a leading light in pro bono work because of the firm's continued efforts to raise the profile of pro bono work and for being a generous provider of free legal services to those in need. The firm handles most of its pro bono work through the BLP Abogados Pro Bono Foundation, which it established in 2008. BLP Abogados advises over 95 NGOs and charitable organizations. BLP Abogados also works closely with the Costa Rica Bar, helping the Pro Bono Commission to encourage more firms in the country to offer pro bono services.¹⁴

University Legal Clinics and Law Students

University Legal Clinics (*Consultorios Jurídicos*) are aimed at providing legal assistance to people with limited financial resources. University Legal Clinics are offered in a few law degrees as an optional subject (except in the case of the University of Costa Rica explained below), although they are neither a degree requirement nor a condition to join the Bar Association. However, in order to obtain a university degree in any field, not just related to law, students must complete 150 hours of College Community Service (*Trabajo Comunal Universitario*).¹⁵

As an exception, the Faculty of Law of the University of Costa Rica, which is the state university, requires its students to provide, in addition to 300 hours of College Community Service, 208 additional hours of University Legal Clinics. At University Legal Clinics, students provide free assistance to the community, four hours per week for a 13-month period, bringing the total number to 208 hours. The University of Costa Rica has currently 22 University Legal Clinics assigned to the Social Action Area (*Área de Acción Social*), some of which maintain a criterion of exclusivity in relation to the conflicts solved, such as the University Legal Clinic that has an agreement with the National Institute for Women (INAMU) and the Environmental Law Clinic, which mainly deal with women's and environmental issues, respectively.¹⁶

¹¹ See <http://www.vancecenter.org/vancecenter/images/stories/vancecenter/111811pbda.pdf> (last visited on September 4, 2015).

¹² See <https://comisionprobono.wordpress.com/> (last visited on September 4, 2015).

¹³ Some of the member firms: Aguilar Castillo Love, Arias & Muñoz, Batalla Asociados, BLP Abogados, CIS Love Group, Consortium Laclé & Gutiérrez, Facio & Cañas, Fragomen, Global Legal Group, Jurisis, Oller Abogados, Pacheco Coto, Pacheco, Odio & Alfaro, Quirós & Asociados Reyes Consultores, Tompson, Barrientos, Obando y Asociados, Víquez Jara y Asociados, Zurcher, Odio & Raven y Esquivel y Asociados.

¹⁴ See <http://latinlawyer.com/firms/93/ll250/> (last visited on September 4, 2015).

¹⁵ See <http://redprobono.org/wp-content/uploads/2013/10/Costa-Rica-Esp.pdf> (last visited on September 4, 2015).

¹⁶ See <http://www.inamu.go.cr/web/inamu/inicio> (last visited on September 4, 2015).



Historic Development and Current State of Pro Bono

Historically, most pro bono services were performed by lawyers on a purely altruistic and sporadic basis, rather than as part of structured programs within law firms. This has changed in recent years, especially because the Latin American legal community as a whole has placed an increasing emphasis on pro bono services. This emphasis is evidenced by the implementation of the Pro Bono Declaration for the Americas, pursuant to which, as noted above, signatories commit to provide an average of at least 20 pro bono hours annually per practicing lawyer. As a result of this initiative, the Costa Rica Bar founded the Pro Bono Commission (please see paragraph a. above).

According to a recent survey,¹⁷ 83% of Costa Rican lawyers have done pro bono work as part of their practice, which shows the emerging importance of pro bono in Costa Rica. Nevertheless, there are still many challenges and key obstacles to overcome.

The principal barrier to pro bono services proliferating in Costa Rica is a lack of explicit legal regulations and public cooperation. Additionally, minimum fees for legal services are regulated by the Government in the Decree on Professional Fees for Legal Services¹⁸ which requires those providing legal services to charge fees for their services with an express prohibition against reducing or eliminating such fees. However, the Bar's Professional Ethics Code (*Código de Deberes Jurídicos, Morales y Éticos del Profesional en Derecho*) provides for an exception to this minimum fee rule in respect of pro bono matters allocated to private lawyers by either the Bar or the Social Defence (*Defensoría Social*).¹⁹ However, 'private' pro bono initiatives are not covered under this exception. This slows the creation of new pro bono organisations and opportunities, and may also be the key reason why the majority of pro bono services currently provided by Costa Rican law firms are corporate services to non-profit entities, rather than to individuals.

CONCLUSION

Pro bono services in Costa Rica are steadily increasing and although the pro bono movement is not yet fully developed, recent years have seen great strides in the promotion of pro bono activities in Costa Rica. The Pro Bono Commission of the Bar was founded in 2010 and many of the top Costa Rican law firms have committed themselves publicly to devoting a percentage of their time to providing pro bono services, and have established programs for doing so. In spite of these advances, much work remains to be done, including the challenge of developing a greater pro bono culture in private firms.²⁰

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¹⁷ See http://www.ulacit.ac.cr/files/revista/articulos/esp/resumen/80_art.elissasttofellistoenmachote.pdf (last visited on September 4, 2015).

¹⁸ Arancel de Honorarios por Servicios Profesionales de Abogacía y Notariado, Decreto N 36562-JP de 18 de mayo de 2011. Available at <http://costarica.eregulations.org/media/Decreto%2036562-JP%20sobre%20honorarios%20profesionales%20de%20abogados.pdf> (last visited on September 4, 2015).

¹⁹ See Article 68 in the Código de Deberes Profesionales del Colegio de Abogados, available at http://colegiodeabogados.cr/index.php?option=com_content&view=article&id=59&Itemid=69 (last visited on September 4, 2015).

²⁰ See <http://latinlawyer.com/news/article/47497/challenges-remain-pro-bono-latin-america/> (last visited on September 4, 2015).