



## Pro Bono Practices and Opportunities in Ecuador<sup>1</sup>

### INTRODUCTION

The legal community in Ecuador historically has not been involved in pro bono, nor are attorneys required to do pro bono work once they are admitted to practice. However, the Ecuadorian government has recently made great strides in ensuring that persons deprived of financial resources or otherwise unable to retain legal counsel may receive free legal assistance.

The enhanced role of the Public Defenders' Office has been particularly noteworthy, as is the obligation imposed on law schools to maintain a legal clinic providing services to the general public. However, the Ecuadorian government requires the Public Defenders' Office to authorize and oversee the activity of organizations rendering free advice to the general public, which may discourage the ability of certain entities interested in enhancing pro bono work in Ecuador, such as NGOs and pro bono clearinghouses, to develop further. There are encouraging signs that law firms are taking more interest in pro bono, such as the commitment of certain leading law firms to adhere to the goals set by the Pro Bono Declaration for the Americas sponsored by the Cyrus R.Vance Center for International Justice of the New York City Bar Association.

### OVERVIEW OF LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

The Ecuadorian constitution, enacted in 2008 (the “**Constitution**”), states that Ecuador is a decentralized republic organized in regions, provinces, cantons and rural parishes with a national administration.<sup>2</sup> Ecuador has a legislative, executive and a judicial branch of government (which includes justice for indigenous persons), and two autonomous branches. One oversees elections (*Función Electoral*), to ensure political transparency and the other is concerned with social development (*Función de Transparencia y Control Social*).<sup>3</sup>

##### The Courts

The judicial power is exercised mainly by the National Court of Justice, the highest appellate court of civil, criminal, labor, public, tax, commercial and family law matters in Ecuador.<sup>4</sup> There are lower courts of law with jurisdiction on such matters within each province. The Constitutional Court is the sole court having jurisdiction on constitutional-related matters.<sup>5</sup> The Constitution acknowledges the ability of indigenous communities to set up their own courts (which belong to the judicial branch) which enforce such communities' own laws within their territory, which must not be contrary to the Constitution or to human rights protected by international conventions.<sup>6</sup>

---

<sup>1</sup> This chapter was drafted with the support of Mr. Roberth Puertas from Fundación Fabián Ponce Ordóñez, a foundation set up by the law firm Pérez Bustamante & Ponce in 1987 to render pro bono services to the general public. Fundación Fabián Ponce Ordóñez is involved in an average of 1000 cases and devotes more than 5,000 hours of pro bono work per year. More information about it may be found at [www.fundacionfpo.org](http://www.fundacionfpo.org) (last visited on September 4, 2015).

<sup>2</sup> Ecuadorian constitution, articles 1 and 242.

<sup>3</sup> Ecuadorian constitution, articles 118, 141, 167, 204 and 217.

<sup>4</sup> Ecuadorian constitution, article 177.

<sup>5</sup> Ecuadorian constitution, article 429.

<sup>6</sup> Ecuadorian constitution, article 177.



Judges of all courts of law in the country are appointed by the Judiciary Council, a body in charge of the administration of the Ecuadorian courts, based on their merits and following a public competition procedure.<sup>7</sup> The Public Defenders' Office is a separate office belonging to the judicial branch, formed by public servants<sup>8</sup>, entrusted with the role of ensuring that persons of limited resources and those unable to retain their own legal counsel have full and equal access to the judicial system.<sup>9</sup>

## The Practice of Law

### Education

To practice law in Ecuador, an attorney must hold a law degree from a licensed Ecuadorian university and have worked with either a public body or an indigenous community with its own court of law for one year providing free legal advice. This one year period mandatory public service requirement may be waived if a law graduate is able to evidence a minimum two-year period working at a free legal clinic (*consultorio jurídico*) sponsored by a university, or an equivalent period working as a law clerk in a judicial body. Law schools are required to maintain a legal clinic to provide free legal advice to persons that cannot retain their own legal counsel, subject to a prior authorization from the Public Defenders' Office.<sup>10</sup>

### Licensure

In order to represent a client before a court of law, an attorney must also be registered with the Judiciary Council.<sup>11</sup> However, a law graduate is not required to be a member of a local Bar Association in order to practice law.<sup>12</sup> There is no minimum pro bono work requirement imposed on licensed attorneys or special professional credits available for the performance of pro bono work.

A holder of a law degree from a foreign law school may be admitted into practice in Ecuador to the extent that such degree is duly recognised by the Ecuadorian authorities and the mandatory one-year public service requirement has been fulfilled. Foreign attorneys cannot work on pro bono cases, unless they are able to meet the requirements to be admitted to practice in Ecuador. There are no rules allowing foreign attorneys to practice law in Ecuador on an extraordinary basis (e.g. in connection with a specific pro bono case).

### Demographics

As per the last demographic statistics available, there are 37,373 attorneys in Ecuador, averaging approximately 2.6 attorneys per 1,000 inhabitants.<sup>13</sup>

---

<sup>7</sup> Ecuadorian constitution, articles 170, 176 and 178.

<sup>8</sup> The attorneys working at the Public Defenders' Office are admitted in the public service after passing a public exam (oposiciones).

<sup>9</sup> Ecuadorian constitution, articles 178 and 191. The Public Defenders' Office currently has 166 branches in the 24 Ecuadorian provinces. It is expected that the Public Defenders' Office will have branches in each canton of Ecuador (221) by 2018.

<sup>10</sup> Ecuadorian constitution, article 193. Organic Code of the Judicial Branch (Código Orgánico de la Función Judicial), article 292. See <http://www.defensoria.gob.ec/index.php/component/k2/item/109-directorio-cj> (last visited on September 4, 2015) for a list of the universities authorized to have a legal clinic.

<sup>11</sup> Organic Code of the Judicial Branch (Código Orgánico de la Función Judicial), article 324.

<sup>12</sup> In that regard, Ecuadorian laws required registration at a Bar Association as a pre-condition to practice law. The Ecuadorian Supreme Court has ruled such requirement contrary to the constitution in 2007, though. After the enactment of the Organic Code of the Judicial Branch (Código Orgánico de la Función Judicial) in 2009, such requirement was formally derogated from Ecuadorian laws.

<sup>13</sup> 2010 Census authored by the Ecuadorian Institute of Statistics and Census (Instituto Ecuatoriano de Estadísticas y Censos – INEC). The total population of Ecuador in 2010 has 14,483,499. According to recent forecasts, the population of Ecuador is expected to reach 16,278,844 in 2015.



## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### The Right to Legal Assistance

The Constitution ensures that any individual is entitled to receive legal assistance in judicial proceedings. Where a person cannot secure their own legal representation due to economic, social or cultural handicaps, a public defender (*defensor público*) shall be appointed by a court or through an application filed directly before the Public Defenders' Office.<sup>14</sup> A court can only appoint public defenders to act for such persons.

There is no limitation on the type of matters public defenders may work on, however, they are required to prioritise lawsuits relating to alimony payments (even when a private attorney has been involved in an early stage of the lawsuit), family law matters, labor law, criminal law (including criminal lawsuits related to family violence) and real estate (such as the recognition of ownership rights over land not unlawfully occupied, and advice to tenants).<sup>15</sup>

The Public Defenders' Office is required to give priority of legal representation to, among others, the following groups of individuals: (i) children and teenagers; (ii) pregnant women and mothers of children under two years old; (iii) disabled persons; (iv) senior citizens; (v) persons belonging to Indian or African communities; (vi) illiterate persons; (vii) persons resident in rural areas; and (viii) exiles.<sup>16</sup>

### Alternative Dispute Resolution

Ecuador's constitution acknowledges the possibility of applying arbitration, mediation and other alternative conflict resolution procedures in transactional matters.<sup>17</sup>

Public Defenders may be involved in arbitration procedures, and the Public Defenders' Office has a mediation center that specializes in mediation cases. Private attorneys may also engage in mediation and arbitration proceedings.

Certain legal work may also be done by the Public Ombudsman's Office (a body within the Transparency and Social Development branch of government) in specific cases. In particular, the Ombudsmen may sponsor collective lawsuits, *habeas corpus* request, lawsuits requesting access to public information or *habeas data* and other complaints generally related to unlawful or defective performance of private or public services before the Ecuadorian courts. In addition, the Ombudsmen are empowered to act in cases where due process of law is jeopardized, and where violation of human and civil rights has occurred.<sup>18</sup>

---

<sup>14</sup> Ecuadorian constitution, articles 76 and 191. Organic Code of the Judicial Branch (Código Orgánico de la Función Judicial), articles 285 to 292.

<sup>15</sup> Additional information on the role of the Public Defenders' Office may be found (in Spanish) at <http://www.defensoria.gob.ec/index.php/defensoria-publica/que-hacemos> (last visited on September 4, 2015).

<sup>16</sup> See 2012 Circular issued by the Public Defenders' Office <http://biblioteca.defensoria.gob.ec/bitstream/37000/839/1/Patrocinio%20Social%20-%20Registro%20Oficial%20812.pdf> (last visited on September 4, 2015).

<sup>17</sup> Ecuadorian constitution, article 190. In particular, it is accepted that controversies arising under contracts with public administration bodies may be solved by means of an arbitration procedure, provided that recourse to arbitration is previously approved by the State Attorney's Office (Procuraduría General del Estado).

<sup>18</sup> Ecuadorian constitution, articles 214 and 215.



## PRO BONO ASSISTANCE

### Pro Bono Opportunities

Attorneys and law firms in Ecuador are not required to perform pro bono and nor has such a pro bono culture been prevalent to date. Certain features of local laws are conducive to the expansion of pro bono services among the Ecuadorian legal profession, such as the absence of a “loser-pays” statute (except in case of frivolous or baseless litigation), the ability of lawyers to render free legal services or the fact that there is no limitation on advertising or soliciting pro bono work. Nonetheless, local law firms have generally tended to perform pro bono services on a sporadic (and limited) basis, predominately focusing on the supply of corporate services for the benefit of non-profit entities.

There are some noteworthy exceptions. The law firm Pérez Bustamante & Ponce is a pioneer of pro bono in Ecuador, which set up a foundation in 1987 (*Fundación Fabián Ponce Ordóñez*) devoted exclusively to pro bono projects. Among such projects is a mediation center that solves more than 300 cases a year, and the supply of psychological assistance to abused persons.<sup>19</sup>

Certain prestigious Ecuadorian law firms have signed the Pro Bono Declaration for the Americas sponsored by the Cyrus R. Vance Center for International Justice of the New York City Bar Association.<sup>20</sup> Signatories to the Pro Bono Declaration for the Americas agree that its practicing attorneys shall perform an average of 20 hours of pro bono work on an annual basis, and collaborate with the Cyrus R. Vance Center and with certain prestigious legal magazines (such as *Latin Lawyer*) in surveys that attempt to monitor the status of pro bono in Ecuador.<sup>21</sup>

### Historic Development and Current State of Pro Bono

As noted above, there is no legal requirement imposed on law firms or Ecuadorian attorneys to render pro bono services. However, the legal infrastructure exists to provide legal assistance to those unable to access private legal assistance through law school legal clinics and the Public Defenders’ Office, and some law firms have been active in this respect.

While Ecuador has taken great strides to allow persons in need of legal assistance to retain legal counsel for free through its government sanctioned programs, the current regulations are more limited with respect to pro bono activities undertaken by other entities such as NGOs.

According to the regulations on the role of the Public Defenders’ Office (*Reglamento de Funcionamiento de los Consultorios Jurídicos Gratuitos de la Defensoría Pública*), every organization belonging or sponsored by universities, public bodies, community organizations, corporations, associations, foundations and non-for-profit organizations that render free legal services to the general public must obtain an authorization from the Public Defenders’ Office to take part in pro bono activities, and their legal services should be supervised by the Public Defenders’ Office (which must also evaluate the quality of such services).<sup>22</sup> Authorizations must be renewed on an annual basis.

---

<sup>19</sup> More information and statistics of cases undertaken by the Fabián Ponce Ordóñez foundation may be found at [www.fundacionfpo.org](http://www.fundacionfpo.org) (last visited on September 4, 2015).

<sup>20</sup> Such Ecuadorian law firms are the following: Andrade Veloz & Asociados, Bustamante y Bustamante, Consulegis Abogados, Corral y Rosales, Pérez Bustamante & Ponce Abogados and Vivanco & Vivanco. An updated list of such law firms may be found at [http://www.vancecenter.org/vancecenter/images/stories/pdfs/signatarios\\_july-30-2014.pdf](http://www.vancecenter.org/vancecenter/images/stories/pdfs/signatarios_july-30-2014.pdf) (last visited on September 4, 2015).

<sup>21</sup> The most recent edition of such survey may be found at <http://latinlawyer.com/features/article/47540/latin-lawyer-vance-center-2014-pro-bono-survey/> (last visited on September 4, 2015).

<sup>22</sup> Ecuadorian constitution, article 193. Organic Code of the Judicial Branch (Código Orgánico de la Función Judicial), article 286.



In practice, the need for prior authorization and ongoing oversight by the Public Defenders' Office has been regarded as troublesome by some NGOs. As of July 2015, only one NGO has been registered as an authorized free legal services supplier before the Public Defenders' Office.

## CONCLUSION

Recent years have seen an increase in pro bono legal services in Ecuador, mainly due to the increased role of the Public Defenders' Office and to university-sponsored legal clinics. However, the current level of regulation imposed on pro bono, which requires prior approval and ongoing supervision of pro bono services by the Public Defenders' Office is regarded as a limiting factor in the set-up of local pro bono clearinghouses or NGOs. While some top law firms in Ecuador have publicly committed themselves to devoting a percentage of their time to providing pro bono services, much work remains to be done and more flexibility on the regulation of pro bono services rendered by NGOs would be welcome. Nonetheless, there is reason for optimism given the recent trajectory of pro bono services in Ecuador.

September 2015

Pro Bono Practices and Opportunities in Ecuador

This memorandum was prepared by **Latham & Watkins LLP** for the **Pro Bono Institute**. This memorandum and the information it contains is not legal advice and does not create an attorney-client relationship. While great care was taken to provide current and accurate information, the Pro Bono Institute and Latham & Watkins LLP are not responsible for inaccuracies in the text.