



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

### INTRODUCTION

The provision of pro bono services in El Salvador has been increasing in the recent years with both NGOs and private law firms providing pro bono services to individuals and other organizations. Nevertheless, underfunding, lack of information and lack of legislation promoting pro bono practices are the major reasons for the unavailability, lack of use and under-exploitation of this resource.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

El Salvador is a Civil Law jurisdiction with each of its bills and regulations subordinate to the precepts established by its Constitution. The Supreme Court of Justice (*Corte Suprema de Justicia*) is the institution responsible for the administration of Justice.

##### Courts

The Courts and Jurisdictions for litigation in El Salvador are divided into: the Constitutional Court, the Administrative Court, the Criminal Court, the Labor Court, the Civil/Commercial Court, the Transit Court, the Environmental Court and the Family Court. In this regard, the Supreme Court is authorized to rule over any matter in its corresponding division.

##### The practice of law

The Supreme Court of Justice is responsible for the granting of licenses to practice law in El Salvador. Such a license grants the individual the title of advocate or attorney (*abogado*). The requirements to obtain a license include having a bachelor's degree in law and a completion of legal practice.

The practices and representation of Salvadoran attorneys at court is currently governed by the Organic Law of the Judicial Branch (*Ley Orgánica Judicial*). The legal profession is subject to mandatory regulation under different governmental institutions that are subordinated to the judicial branch, such as the Professional Investigation Section (*Sección de Investigación Profesional*) and the Notarial Section (*Sección de Notariado*).

### LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

#### The right to legal assistance

Under Salvadoran constitutional principles, access to justice must be free and everyone has the right to be represented by an attorney and to be granted an attorney chosen by the relevant court when no other attorney has been appointed.<sup>2</sup> Accordingly, regardless of the nature of the case and the economic status of the victim or citizen, the State of El Salvador must grant access to justice with no cost to the interested party.

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<sup>1</sup> This chapter was drafted with the support of Rafael Medina and Marcela Deras at Arias & Muñoz

<sup>2</sup> For more information, refer to Constitución de la República de El Salvador, available at <http://www.asamblea.gob.sv/eparlamento/indice-legislativo/buscador-de-documentos-legislativos/constitucion-de-la-republica> (last visited on September 4, 2015).



## State-subsidized legal aid

The Office of Public Defense (*Procuraduría General de la República*) is the institution responsible for the representation of any indigent Salvadoran citizen or resident that requires legal representation in any type of procedure.

## Unmet needs and access analysis

While the Office of Public Defense is an effective institution, the need for additional public defenders is rising with the current workload of the public defenders exceeding capacity, affecting the quality of the legal representation provided.<sup>3</sup>

## NGOs and Legal Aid

There are NGOs throughout El Salvador that concentrate on providing the impoverished with legal representation in different kinds of legal proceedings. Certain NGOs provide legal assistance in obtaining the required documentation to proceed and represent the victims through the whole process. The more prominent NGOs in this area are outlined below.

According to the Constitution, any civil or commercial dispute can be resolved through arbitration or other alternative dispute resolution such as mediation or conciliation. However, a practical and significant barrier to pursuing alternative dispute resolution is that the costs involved are payable by the parties and legal aid does not extend to cover these costs. Everyone that does not have enough financial capacity has the right to be represented in the Salvadoran Courts through the Office of Public Defense (*Procuraduría General de la República*).

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

Under Salvadoran law, all law students must provide pro bono legal assistance<sup>4</sup> as a requirement for being admitted as attorneys by the Salvadoran Supreme Court. Accordingly, most universities in El Salvador have created legal offices or clinics for the provision of legal assistance. All pro bono assistance provided at such offices or clinics is supervised and executed by a qualified attorney.

Certain State institutions also run their own pro bono programs on various issues.

Most of the major private law firms in El Salvador have established their own pro bono programs and many NGOs in the country run different pro bono programs focused on their particular sphere of activity.

### Barriers to Pro Bono

The exercise of legal representation in El Salvador is limited only to those who have a valid license as an attorney (except for university legal clinics, where advice is provided by law students under the supervision of an attorney). Otherwise, there are no laws that restrict an attorney from providing pro bono assistance. In particular, there is no mandatory or minimum fee schedule applicable in El Salvador.

One barrier to pro bono practices is the lack of advertising for available options. While every private attorney, private law firm and NGO that provides these services advertises the pro bono program on their own website, there is no official site or entity in charge of gathering and making information available to interested parties.

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<sup>3</sup> For more information, refer to the webpage of Procuraduría General de la República, available at <http://www.pgr.gob.sv/> (last visited on September 4, 2015).

<sup>4</sup> The pro bono legal assistance may be also executed working in a Governmental institution.



Finally, the greatest barrier that pro bono practices in El Salvador face is the lack of financial aid or funding for pro bono organizations. The underfunding of NGOs and the compromised funding of private law firms severely limits the volume of pro bono services that can be undertaken, placing greater strain on the State's legal aid provision.

## CONCLUSION

The practice of pro bono is very likely to continue developing over the next few years. The amount of hours provided as pro bono by private lawyers and law firms is rapidly increasing, while the regional NGOs are consistently becoming more visible in El Salvador. The problems of underfunding and lack of legislation promoting pro bono practices still remain, but more pro bono initiatives have been developing and the focus in providing free access to quality justice remains a priority.

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