



# Pro Bono Practices and Opportunities in the Dominican Republic

## INTRODUCTION

The legal community in the Dominican Republic is increasingly recognizing the value of a pro bono culture and the significant positive impact that pro bono work can have on democracy and justice. The Pro Bono Declaration for the Americas (the “**PBDA**”) is the founding document that is helping to institutionalize pro bono activities by Dominican Republic lawyers, alongside the Pro Bono Foundation RD, which coordinates and enables the pro bono efforts.

## OVERVIEW OF THE LEGAL SYSTEM

### The Justice System

#### Constitution and Governing Laws

Since gaining its independence from Haiti in 1844, the Dominican Republic has had 38 versions of its constitution. The current constitution was adopted and entered into force on January 26, 2010 (*Constitución de la República Dominicana*) (the “**Constitution**”) and is the fundamental and supreme law of the Dominican Republic. It has two primary functions: (i) to establish the government and its powers; and (ii) to recognize the fundamental human rights of individuals and the constitutional procedure to enforce them.

In accordance with the principle of separation of powers there are three governmental branches - the executive, legislative and judiciary. The executive branch has long been the dominant branch in the Dominican governmental system. It is composed of the President and the Vice President of the Dominican Republic (who are elected on the same ticket by popular vote). The president is the Head of State, the Head of Government and Commander in Chief of the armed forces. The Council of Ministers is charged with the administration of the State, ensuring that laws are duly executed and enforced.

The legislative power is exercised by a bicameral National Congress (*Congreso de la República*). The upper house is the Senate (*Senado*) with 32 members, elected for a four-year term in single-seat constituencies. The lower house is the Chamber of Deputies (*Cámara de Diputados*) with 178 members, elected for a four-year term by proportional representation in accordance with each province. One deputy is elected for every 50,000 inhabitants and there are never fewer than two. The legislative branch has the authority to make, amend and repeal laws.

#### The Courts

##### Levels, relevant types and locations

The judicial system consists of the Supreme Court of Justice, the Court of Appeals, the Courts of First Instance, and the Justices of the Peace. Other special courts include the Courts for Minors, Labor Courts, Land Courts and the Tax Court, better known as the *Tribunal Contencioso Tributario*.<sup>1</sup>

The judiciary is charged with administering justice in order to ensure the respect, protection and supervision of rights recognized under the constitution and laws. Its highest organ is the Supreme Court of Justice, which ensures the independence of the judicial branch.

The Supreme Court hears appeals from the lower courts (as a Court of Cassation) and has sole jurisdiction over actions against the President, designated members of his cabinet and members of Congress. It has administrative and financial autonomy. In addition to working as an appeals court for all judgments rendered by judicial courts, the Supreme Court also supervises all judges in the Dominican Republic.

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<sup>1</sup> See [http://www.nyulawglobal.org/globalex/Dominican\\_Republic.htm](http://www.nyulawglobal.org/globalex/Dominican_Republic.htm) (last visited on September 4, 2015).



### Appointed vs. Elected Judges

The Supreme Court is composed of 16 judges appointed by the National Council of Magistrates, which in turn, chooses members of the lower courts.

### The Practice of Law

#### Education

The only legal requirements to become an attorney in the Dominican Republic are holding a degree in law and being a member of the Bar Association (as set out in Laws No. 821 and 91 of the Judicial Organization).<sup>2</sup>

#### Licensure

the legal regulation of attorneys is established in Law No. 821 of November 21, 1927 of the Judicial Organization and its modifications (*Ley de Organización Judicial, y sus modificaciones*). Article 73 sets out the requirements to practice as a lawyer in the Dominican Republic. These requirements include being a Dominican national and being a member of the Dominican Republic Bar Association (*Colegio de Abogados*).

The Dominican Republic Bar Association is regulated by Law No. 91 (*Ley que crea el Colegio de Abogados*). Law No. 91 establishes the Bar's functions, which include among others, overseeing the attorneys' professional conduct, adopting a professional ethics code and defending attorneys' rights.

#### The Role of Foreign Lawyers

Non-Dominican nationals may practice as attorneys in the Dominican Republic. A foreign lawyer may become a member of the Bar (i) by obtaining a law degree in the Dominican Republic; (ii) by obtaining revalidation of a law degree issued in a foreign country; or (iii) if the government of a jurisdiction in which the foreign national has a license to practice law has an agreement with the Dominican Republic establishing reciprocal treatment for Dominican lawyers.

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The obligation to provide legal aid is established in the Constitution in Articles 176 and 177. The former states:

"The Public Defense Service is an organ of the justice system endowed with administrative and functional autonomy, which aims to ensure the effective protection of the fundamental right to defense in the various areas of its competence. The Public Defender is available throughout the national territory according to the criteria of free, easy access, equity, efficiency and quality, for the accused persons who, for whatever reason, are not assisted by a lawyer. The Public Defender Act governs the functioning of this institution."

Article 177 sets out the obligation of the state to provide free legal assistance, in the following terms:

"The State is responsible for organizing programs and services for free legal assistance for people who lack the financial resources to obtain legal representation of their interests, particularly for the protection of the rights of the victim, without prejudice to the powers that correspond to the Public Ministry in the field of criminal proceedings."<sup>3</sup>

The Draft Law of Public Defense was passed on August 12, 2004 with the approval of Act No. 277. This act created the National Public Defender Service and provides for the functional, administrative and financial autonomy of the institution within the judiciary. In 2009, the Public Defender obtained full independence from the judiciary.

Public Defenders provide free advice and guidance before and during judicial proceedings in criminal and civil matters. Their role consists of providing legal representation or legal advice, granting the right of access to justice. Although the main aim is to provide services to individuals who lack sufficient financial

<sup>2</sup> See Article 73 of Law No. 821 and Article 4 paragraphs I and II of Law No. 91.

<sup>3</sup> See <http://republica-dominicana.justia.com/nacionales/constitucion-de-la-republica-dominicana/titulo-v/capitulo-vi/> (last visited on September 4, 2015).



resources, the service is not limited to such individuals. Public Defenders are also available for individuals who for whatever reason do not have an attorney.

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

The PBDA, spearheaded by the Cyrus R. Vance Center for International Justice of the New York Bar, was launched at a congress in January 2008 by a committee of leading practitioners in Latin America and the United States. The congress was attended by representatives from prestigious law firms, law schools, bar associations and NGOs. Signatories, including the Dominican Republic, 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 PBDA calls for each signatory to promote an average of at least 20 hours of annual pro bono work per practicing attorney.<sup>4</sup>

The Pro Bono Foundation RD (*Fundación Pro Bono RD, Inc*) (the “**Foundation**”)<sup>5</sup> is the Dominican Republic’s leading clearinghouse for pro bono work and focuses on finding and distributing pro bono opportunities to private attorneys. Founded in 2011, the Foundation has two employees and is otherwise staffed by volunteers. In 2013, 11 law firms were members of the Foundation alongside approximately 78 independent practitioners. The volunteers, who are mainly independent practitioners, cover a wide range of legal services, from the defense of human rights to providing legal assistance in criminal, civil, and public law matters.

The Dominican Republic’s pro bono community has begun to engage with its counterparts across the region. On the October 1, 2014 the Foundation organized a two-day conference designed to raise awareness in the country . That conference led to two local firms signing the PBDA. Some firms are very committed to pro bono, however, the practice could be more widespread and the number of hours being completed is low compared to other countries in Latin America. While the practice does not currently appear to be widely institutionalized in firms, all firms acknowledge pro bono when evaluating lawyers. Pro bono cases are mostly sourced from the Foundation or non-profit organisations.

Furthermore, the Foundation, alongside law faculties across the Dominican Republic, is determined to bring the culture of pro bono to law schools, so that at the end of their studies and when practicing as lawyers, graduates use pro bono as a tool for social change and ethical commitment to the community. To this end the Foundation, in collaboration with the Universities, sets up periodic talks and conferences at Law Schools in which they promote the culture of pro bono.

Jiménez Cruz Peña (“**JCP**”), one of the 11 law firms who signed the PDBA in 2013 and one of the main contributors to pro bono in the Dominican Republic, provides legal services and advice, free of charge or at low cost, to individuals, communities and organizations with limited resources.

In August 2014, the Foundation and Russin, Vecchi & Heredia Bonetti, S.R.L. (“**RVHB**”), signed a collaboration agreement to promote access to justice for individuals, communities or groups in a vulnerable situation in public interest cases. By virtue of the collaboration agreement, RVHB, is now part of the Advisory Council of the Foundation, and will work alongside the Foundation on all processes vindicating fundamental rights as part of the contribution to corporate social responsibility by the Dominican Republic’s legal community.

### Historic Development and Current State of Pro Bono

Historically, most pro bono services were performed by attorneys on a purely altruistic and sporadic basis, rather than as part of structured programs within law firms. This has changed in recent years, especially due to the fact that the Latin American legal community as a whole has placed an increasing emphasis on

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

<sup>5</sup> See <https://comisionprobono.wordpress.com/> (last visited on September 4, 2015).



pro bono services. This emphasis is evidenced by the implementation of the PBDA, whereby signatories commit to providing an average of at least 20 pro bono hours annually per practicing attorney. The creation of the Foundation has helped to establish a pro bono culture in the Dominican Republic, providing a 'matchmaking' service for lawyers and those in need of free legal services.

JCP and Headrick Rizik Álvarez & Fernández Abogados y Consultores estimate that between 25-30% and 51-75% of their lawyers, respectively, participated in pro bono cases in 2013. They also estimate that each lawyer invested between 20 to 30 hours to such cases. Although there are no national statistics, this gives an approximate picture of the pro bono efforts law firms in the Dominican Republic are making.

Nevertheless, there are still many challenges and key obstacles to overcome. The principal barrier to pro bono services in the Dominican Republic is a lack of explicit legal regulations and a lack of public cooperation. This has slowed the progress of creating new pro bono organizations and it may be one of the key reasons why only a small number of law firms are signatories to the PBDA and are therefore not actively investing in pro bono cases.

In addition, the Decree on Professional Fees for Legal Services (a government regulation), requires that lawyers providing legal services in court proceedings charge a fee for their services. The Decree contains an express prohibition against reducing or eliminating such fees. However, and as mentioned above, the State is obliged to provide free legal assistance for people who lack the financial resources to obtain legal representation. This limits, to a certain extent, the type of legal aid that can be provided on a pro bono basis.

### Pro Bono Resources

As noted above, the Foundation is the Dominican Republic's leading clearinghouse for pro bono work and focuses on finding and distributing pro bono opportunities to private attorneys. It was founded in 2011 and over 11 law firms currently participate in this initiative, as well as an important number of independent practitioners (see <http://www.probonord.org/>).

Two of the Dominican Republic's main law firms are committed providers of pro bono in the Dominican Republic, RVHB and JCP (as described above)

## CONCLUSION

Pro bono services in the Dominican Republic are steadily increasing, although the pro bono movement is not yet fully developed, despite having a legal system that recognizes a right of free access to justice for all citizens. Through the Pro Bono Foundation RD, there is a clearinghouse to distribute pro bono cases and many of the top law firms in the nation have publicly committed themselves to devoting a percentage of their time to providing pro bono services, and have established programs for doing so. Despite these advances, much work remains to be done, including the challenge of developing a pro bono culture in firms, the financial sustainability of clearinghouses and clarity on how pro bono work should be rewarded.<sup>6</sup>

September 2015

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<sup>6</sup> See <http://latinlawyer.com/news/article/47497/challenges-remain-pro-bono-latin-america/> (last visited on September 4, 2015) and <http://www.vancecenter.org/vancecenter/images/stories/vancecenter/pro%20bono%20survey%202014.pdf> (last visited on September 4, 2015).