



Pro Bono Practices and Opportunities in Venezuela¹

INTRODUCTION

There is a significant need for pro bono legal services in Venezuela due to the large social and economic gap that exists. Venezuelan lawyers have always done pro bono work for people close to them without such work being quantified or reported. However, the institutionalization of pro bono work outside of NGOs is a relatively recent development.

The main obstacle for the institutionalization of pro bono work is that there are no governmental policies or bar associations in Venezuela that require Venezuelan lawyers to perform professional volunteer work for people with limited resources. Pro bono has not been a priority for law firms in Venezuela. However, in recent years, law firms and practitioners have become more mindful of their role in helping people with limited resources gain access to justice through the provision of pro bono support.

OVERVIEW OF THE LEGAL SYSTEM

The Justice System

Constitution and Governing Laws

The Constitution of Venezuela grants all citizens the right of free access to the country's judicial systems and institutions to defend their rights and to obtain a judgment resolving their controversy. Such judicial access includes a right to free justice for all citizens, such that all Venezuelan citizens have the right to defend their interests in court, even if they have limited economic resources. This right to free justice has a significant impact in Venezuela, where approximately 27.5% of the population lives below the poverty level and cannot afford to pay for legal services.

The *Defensa Pública*, a public institution created under the control of the judiciary, has the primary purpose of ensuring effective legal protection for persons in Venezuela and the application of the constitutional right to free access to the legal system. The services granted by *Defensa Pública* are limited to certain matters, including criminal, civil, commercial, military, agrarian, labor, family, administrative law and constitutional proceedings. With regard to civil matters, Venezuelan citizens are also typically allowed to represent and defend themselves, without the support of public institutions.

The Courts

Civil, municipal and family courts are the most relevant for pro bono beneficiaries, given that the main legal problems that they face are related to these matters. These courts have given to the clearing house Fundación Pro Bono Venezuela ("**ProVene**") and to Venezuelan legal clinics (*Clinicas Jurídicas*), the possibility of conducting legal proceedings in such courts without the assistance of a lawyer. This benefits pro bono beneficiaries that now have the opportunity to appear before a court with documents drafted by ProVene or legal clinics and to carry out all the required judicial procedures without the need to appear with a lawyer. ProVene and the legal clinics in turn are able to assist more people as they do not need to appear before a court with pro bono beneficiaries.

In Venezuela, judges are not elected. Judges are appointed by the Executive Administrative Direction of the Judicial System (*Dirección Ejecutiva de la Administración*).

Sometimes the Supreme Tribunal of Justice by way of the National School for the Judiciary (*Escuela Nacional de la Magistratura*) organizes judicial contests for the selection of judges.

¹ This chapter was drafted with the support of Fundación Pro Bono Venezuela (ProVene)



The Practice of Law

Education

The practice of law in Venezuela requires a legal degree obtained from either a local university or a foreign university, provided such foreign degree is validated by a local university in accordance with Venezuelan law. A key component of a legal education in Venezuela is the professional traineeship requirement. To fulfill this requirement, law students must devote a specified number of hours (as determined by each university) to nonprofit legal matters. To assist students in fulfilling this requirement, Venezuelan Universities have created legal clinics through which law students provide pro bono legal services.

In addition, Venezuelan law students, as well as students of any other professional degrees in Venezuela, are required to perform a minimum of 120 hours of Community Services (*Servicio Comunitario*) in order to graduate. Community Services consist on volunteering in resource-poor areas surrounding the university. However, such volunteering does not oblige students to carry out professional works, *i.e.*, law students do not necessarily have to perform legal works (although work at legal clinics would qualify towards this requirement).

Licensure

In order to practice law in Venezuela, a person with a legal degree must register with their regional bar association and the Lawyer Social Security Institute (*Instituto de Previsión Social del Abogado*). Venezuela does not have multiple license schemes or multiple levels of practitioners.

Foreign lawyers cannot practice as lawyers before any court or public institution if they have not validated their degree in Venezuela and if they are not registered with the Lawyer Social Security Institute (*Instituto de Previsión Social del Abogado*). However, there are no restrictions on international lawyers legally advising on a case or working on international cases in Venezuela.

Demographics:

There are approximately 200,000 lawyers registered within the Venezuelan bar associations out of an overall population of roughly 30 million. In Caracas, there around 90,000 registered lawyers.

Legal Regulation of Lawyers

Registration with one of the various bar associations existing in Venezuela is required to practice law, as well as registration with the Lawyer Social Security Institute (*Instituto de Previsión Social del Abogado*), a specific social security for lawyers. There are 23 different bar associations, one for each Venezuelan region, and each one is governed by its own regulations. All of these bar associations fall under the federal bar association (*Federación de Colegios de Abogados*). Venezuelan lawyers must also comply with the Lawyers Ethics Code (*Código de Ética del Abogado*) whose main purpose is to regulate the lawyers' activities to serve justice, freedom and law.

Upon a lawyer's registration with their regional bar association and the Lawyer Social Security Institute (*Instituto de Previsión Social del Abogado*) they are granted a registration number that allows them to both litigate and carry out any action as a lawyer in any practice of law in Venezuela.

Other than as noted above, there are no rules and requirements to carry out pro bono work in Venezuela.

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

Pursuant to the Organic Law of Public Defense (*Ley Orgánica de la Defensa Pública*) enacted in 1999, the Government created the Public Defense Office (*Defensa Pública*), a government entity that offers free advice, representation and guidance in civil, commercial, military, agrarian, labor, family, administrative law and constitutional proceedings. the Public Defense Office also offers free advice in criminal proceedings.



State-Subsidized Legal Aid

There are no eligibility criteria for state-subsidized legal aid. The law only mentions the word 'person' to define its scope. Eligibility criteria based on financial means are expressly prohibited pursuant to article two of the Organic Law of Public Defense. In practice, however, the access is severely restricted due to the limited resources of the Public Defense Office (on which see paragraph (d) below).

Mandatory assignments to Legal Aid Matters

Private attorneys are not required to accept matters assigned to them by a court or legal aid scheme.

Unmet Needs and Access Analysis

The Public Defense Office is understaffed and works with limited resources. Accordingly, there remains a significant need for additional legal assistance for the indigent population of Venezuela.

Alternative Dispute Resolution

Mediation, Arbitration, Etc.

State subsidized legal aid is only applicable for judicial and administrative proceedings.

Ombudsman

Pursuant to the Constitution and the Organic Law of the Venezuelan Ombudsman, the Venezuelan Ombudsman has the authority to promote, defend and monitor compliance with constitutional rights in Venezuela and abroad, when applicable, free of charge.

PRO BONO ASSISTANCE

Pro Bono Opportunities

Pro bono services are limited in Venezuela as a result of the political and social climate. There are great pro bono opportunities in Venezuela due to the high percentage of the population with limited financial resources that have no opportunities to be assisted or advised by a lawyer. Given that there are a lot of lawyers per capita in Venezuela, if every registered lawyer works a few hours each year on pro bono matters, this would cover a large proportion of the population.

Venezuelan organizations are working on the institutionalization of pro bono work among Venezuelan law firms and independent lawyers. Venezuelan lawyers are starting to be conscious of the fact that they can help their country via pro bono, improving the right of free access to justice for all Venezuelan citizens.

In addition, the current political and social climate in Venezuela makes it extremely difficult for NGOs to provide services to Venezuelan citizens efficiently or effectively. For example, although the Constitution recognizes and protects the development of humanitarian activities throughout the country, the government approved an amendment to the International Cooperation Law in December 2010 (*Ley de Cooperación Internacional*) that created new barriers for NGOs. Specifically, it requires NGOs to register under a controlling public authority and also permits public authorities to collect any funds that the NGOs receive from a variety of sources, including "*inheritances, donations, transfers and other resources received from other governments, international entities, cooperating sources and national or foreign public and private institutions for purposes of supporting cooperation*" and to redirect such funds "*in accordance with national priorities as determined by the State*".



Private Attorneys

There is no obligation on private attorneys to do pro bono work in Venezuela. However, ProVene is making efforts to make law firms in Caracas achieve certain goals of pro bono hours per year, taking as its reference the Americas Declaration of Pro Bono (*Declaración Pro Bono de las Américas*) that requires law firms that are subscribed to it to work 20 hours per lawyer each year pro bono. In Venezuela, such a requirement could amount to approximately four million pro bono hours per year.

There is no obligation to report pro bono in Venezuela. ProVene is, however, making efforts to improve this by requiring law firms to report to the clearing house every six months the hours and pro bono cases they are working on. Following such reporting, ProVene informs law firms if the cases they are actually working on could be considered as pro bono pursuant to international standards and national standards established by ProVene.

Law Firm Pro Bono Programs

Some law firms in Venezuela already have pro bono programs in which their lawyers are requested or suggested to work on pro bono cases sent by ProVene or by NGOs or other organizations founded by, or with relationships to, the partners of such law firms.

Legal Department Pro Bono Programs

Venezuelan companies carry out different activities during the year that allow their employees, including lawyers in their legal departments, to work as a volunteer with different NGOs, following the guidelines of the company's Corporate Social Responsibility program (*Responsabilidad Social Empresarial*).

Non-Governmental Organizations (NGOs)

ProVene is the clearing house in Venezuela, and is also the first and only organization in Venezuela dedicated to promoting access to justice and pro bono work.

There is a strong connection in Venezuela between law firms and NGOs that need legal assistance, sometimes because the founders of such NGOs are clients or partners of a law firm.

Bar Association Pro Bono Programs

Bar Associations organize their own pro bono programs. For example, the Bar Association of Caracas provides free legal advice to the low income population of Caracas.

University Legal Clinics and Law Students

As noted above, there is a legal requirement in Venezuela that students carry out 120 hours of community service before they can graduate into any profession. The volunteer work does not have to be strictly related to the professional career of the graduate but, nevertheless, this legal requirement has encouraged universities without legal clinics to institutionalize the creation of a space for law students to assist people with limited resources.

There are two universities in Caracas, Andrés Bello Catholic University and Central University of Venezuela, both of which have very successful and well known *Clínicas Jurídicas* programs that periodically assist the neighbors of the communities close to such universities. These clinics are directly coordinated by the law school of each university which appoints one or two teachers, who are lawyers, to supervise the work of the students and sign any required legal document. However, law students are in charge of the cases, being responsible for providing legal advice and for drafting the legal paperwork.

Historic Development and Current State of Pro Bono

In Venezuela the biggest obstacle for the institutionalization of pro bono work is the ignorance of what is and what can be done as a pro bono work. This problem is being overcome by explaining to law firms and independent lawyers the need for pro bono work in their communities, and how the lives of people with limited resources can change with their assistance. In addition, the increase of pro bono internationally has made Venezuelan lawyers more interested in pro bono cases.



One of the key problems in the current state of pro bono work is the lack of information available to low income communities. Furthermore, the main obstacle for the institutionalization of pro bono work is that there are no governmental policies or bar associations in Venezuela that require Venezuelan lawyers to perform professional volunteer work for people with limited resources.

Laws and Regulations Impacting Pro Bono

“Loser Pays” Statute

In Venezuela, the losing party of a civil or commercial trial will be required to pay the legal fees. In a labor trial, an employee whose salary is less than three times the minimum national salary, as decreed by the National Executive, does not have to pay the legal costs of a labor proceeding.

Statutorily Mandated Minimum Legal Fee Schedule

The Federation of Bar Associations of Venezuela issued a regulation establishing the minimum amounts to be charged by Venezuelan lawyers for their services. However, we understand that this regulation applies only to cases where the lawyer is charging for their work, and accordingly, it is not applicable to pro bono work.

Practice Restrictions on Foreign-Qualified Lawyers

Lawyers that are not registered at the Lawyer Social Security Institute (*Instituto de Previsión Social del Abogado*) cannot practice as lawyers before any court or public institution in Venezuela. However, there are no restrictions for international lawyers to advise on a case or to work on international cases from Venezuela.

Availability of Professional Indemnity Legal Insurance Covering pro bono activities by Attorneys

Even though not specifically provided for under Venezuelan law, professional indemnity insurance covering pro bono activities by attorneys is available in Venezuela.

Availability of Legal Insurance for Clients

Even though not specifically provided for under Venezuelan law, professional indemnity insurance for the protection of moderate income individuals not eligible for legal aid but unable to afford full-cost legal fees is available in Venezuela.

Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

The right of free access to justice in Venezuela is frequently violated for several reasons. It can be impossible for people to access Venezuelan legal institutions, not only because they do not have enough information on the relevant procedures, but also because they may have had bad experiences in the past and have lost confidence in the system. This lack of confidence is a direct consequence of the corruption and inefficiency of institutions in recent years. In addition, the State does not provide enough information on the system of justice, the legal procedures, courts or judges that allow citizens to address their legal needs. There is also no effective legal protection available for persons in Venezuela due to the severely limited resources of the *Defensa Pública*.

Pro Bono Resources

The clearing house ProVene can provide accurate information on pro bono cases, at least in Caracas, due to its communication with pro bono beneficiaries and with different organizations and NGOs that require legal assistance. ProVene has been encouraging pro bono work in Venezuela assisting, directly and with allied law firms, more than 1,100 cases during 2015.

ProVene is working to attend to the legal needs of pro bono beneficiaries and to develop projects to overcome the institutional crisis faced by Venezuela and to assist the judiciary system to fill the legal aid needs of Venezuelan citizens. ProVene has been working to promote the right of free access to justice in Venezuela as a human right providing free legal advice in pro bono cases, through workshops on human rights and other basic legal topics as well as via cases of public interest in defense of discriminated minorities. Every particular project has been carried out with the assistance of lawyers specialized in different areas of law, carrying out legal research, drafting and workshops.



In addition, ProVene is currently drafting a report gathering all the information on pro bono cases carried out by Venezuelan law firms. ProVene has been asked by several organizations to provide information on Venezuelan pro bono cases and to serve as a certified organization to confirm the nature of the pro bono cases that Venezuelan law firms report to international organizations and to confirm if the quality of their pro bono work is equal to the quality of the work done for non-pro bono clients. This encourages law firms to be more disciplined and engaged in pro bono cases. ProVene’s contact details are as follows:

- Fundación Pro Bono Venezuela (ProVene):
<http://www.provene.org/> (last visited on September 4, 2015)
 Email: gbello@provene.org

Other contact details applicable to Pro Bono activities in Venezuela are as follows:

- Colegio de Abogados de Caracas :
<http://www.ilustrecolegiodeabogadosdecaracas.com/> (last visited on September 4, 2015). The Caracas Bar Association can assist Venezuelan citizens with obtaining a lawyer that can assist them with their matters.
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- Defensa Pública:
www.defensapublica.gob.ve (last visited on September 4, 2015)
 Email: lopna@defensapublica.gob.ve

CONCLUSION

The pro bono movement is not yet fully developed in Venezuela, despite having a legal system that recognizes a right of free access to justice for all citizens.

Pro bono work in Venezuela has been a growing initiative during the past few years, thanks to, amongst others, organizations like ProVene which has encouraged Venezuelan lawyers to assist in pro bono cases and has also worked on an increasing number of pro bono projects.

Developments in the field of free access to justice and the creation of a network of local and international law firms established in Venezuela that are committed to pro bono services are positive indications that further growth in pro bono services will be forthcoming in the future. Individuals or organizations interested in getting involved with pro bono services in Venezuela are encouraged to contact ProVene for information or assistance.

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