

Pro Bono Practices and Opportunities in Ecuador¹

I. 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. Recent years have seen an increase in free legal services in Ecuador, with (i) the enhanced role of the Public Defenders’ Office in providing legal assistance to persons deprived of financial resources or are otherwise unable to retain legal counsel, (ii) the obligation imposed on universities to maintain free legal clinics and (iii) the requirement for law graduates to perform one compulsory school year of legal service to the community before being able to be admitted as lawyers being particularly noteworthy. There are also encouraging signs that Ecuadorian local law firms are taking more interest in providing pro bono legal services, such as the commitment by certain leading law firms, through signing the Pro Bono Declaration for the Americas, that their practicing attorneys shall perform an average of 20 hours of pro bono work annually. There is reason for optimism given the features of Ecuadorian laws that are conducive to the expansion of pro bono legal services among the Ecuadorian legal profession (such as the ability of lawyers to render free legal services) as well as the recent trajectory of pro bono legal services in Ecuador.

II. Overview of Pro Bono Practices

(a)	Professional Regulation	
	<p>1. Describe the laws/rules that regulate the provision of legal services?</p>	<p>The Organic Code of the Judicial Branch (<i>Código Orgánico de la Función Judicial</i>), in particular Title VII – Attorneys and Lawyers (<i>Título VII – Abogadas y Abogados</i>) therein, regulates the provision of legal services in Ecuador by attorneys and lawyers.</p> <p>Among others, the Organic Code of the Judicial Branch provides:</p> <p>(1) that the duties of attorneys and lawyers in the sponsorship of the causes in Ecuador include, but are not limited to, the following:²</p> <ul style="list-style-type: none"> • Act in the service of justice and for this purpose collaborate with judges and courts; • Sponsor under the principles of loyalty, probity, truthfulness, honesty and good faith; • Defend in accordance with law, the truth as underlined by facts, and the norms as set out in the Code of Conduct in Professional Practice (<i>Código de Conducta en el Ejercicio Professoinal</i>) that the Council of

¹ 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.

² Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), article 330.

		<p>the Judiciary (<i>Consejo de la Judicatura</i>) dictates;</p> <ul style="list-style-type: none"> • Instruct and exhort their clients to comply with the instructions of the courts and judges, as well as to pay due respect to them and to all people that are involved in the judicial processes; • Faithfully perform their obligations towards their clients; • Refrain from promoting the public dissemination of reserved aspects of the unresolved judicial processes in which they are involved; • Record in all the original documents that they present in judicial processes their names (in legible characters), their registration numbers in the Forum (<i>Foro</i>) and their signatures; • Report the people in the legal profession who have performed illegal acts; • Act in accordance with law and with due respect to the judicial authorities; and • Others as determined by law. <p>(2) that attorneys and lawyers are prohibited from, among others, the following when sponsoring causes:³</p> <ul style="list-style-type: none"> • Reveal the secrecy of their clients, their documents or instructions; • Abandon, without just reason, the causes that they are defending; • Assure their clients of the triumph of the trial; • Defend one party after defending the other in related processes; • Authorize with their signatures writings or minutes prepared by another person; • Defend cases in which they are the judge;
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³ Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), article 335.

		<ul style="list-style-type: none"> • Intervene in cases in a manner that causes the recusal of the judge; • Meet with the judge to deal with matters inherent to the case being defended, without prior notice being given in advance to the counterparty or their defense counsel so that they can be present if they wish; • Exercise the right of action or defense in an abusive, malicious or reckless manner, violating the principles of good faith and loyalty, through practices such as the presentation of distorted evidence, the use of trickery and the use of procedures to unduly delay the progress of the litigation in bad faith; • To be absent from any hearing or judicial proceeding, in which their presence is necessary for the development of the trial, except due to fortuitous event or force majeure duly verified • Others as determined by the Organic Code of the Judicial Branch
	<p>2. Describe any licensure requirements governing the provision of legal services.</p>	<p>To be able to sponsor as a lawyer in Ecuador, one must:⁴</p> <ul style="list-style-type: none"> • hold a law degree granted by a faculty of jurisprudence, law or legal science within a legally recognized university that is registered with the Higher Education Council (<i>Consejo de Educación Superior</i>). In the circumstance where one holds a degree obtained outside of Ecuador, he or she must provide proof of prior approval and registration; and • be in enjoyment of political participation rights in Ecuador, or alternatively, if he or she is not an Ecuadorian citizen, be in enjoyment of civil rights. <p>To be able to sponsor as a lawyer in Ecuador, one must also be part of the Forum, through his or her inclusion into the register that the Council of the Judiciary keeps through the Regional Offices (<i>direcciones regionales</i>).⁵</p>

⁴ Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), article 324.

⁵ *ibid.*

		<ul style="list-style-type: none"> • The regional offices of the Council of the Judiciary keep a book. The names of all the lawyers who have joined the Forum are registered in the book in chronological order, with the book also noting down the dates on which the registered lawyers have obtained their respective degree, and the faculty of jurisprudence, law or legal science that has awarded that degree.⁶ • The professional registration number of each registered lawyer is also inscribed in the book, and a card with the same number incorporated will serve as proof of the professional qualification of that lawyer before the jurisdictional bodies and other organizations of the public and private sector in Ecuador.⁷ • In the courts and tribunals in Ecuador, written submissions that are not signed by a lawyer registered with the Forum will not be admitted, except in cases related to jurisdictional guarantees and the causes known to the judges of the peace. When a lawyer appears for the first time in a process sponsoring one of the parties, the actuary will verify the original registration card, and a copy of the same is also required.⁸ <p>Please also refer to section (b)(3) below on the requirement to perform legal assistance to the community, which is another prerequisite to becoming a lawyer in Ecuador. The registration card will not be issued to the person applying for registration with the Forum without proof of him or her having completed the year of pre-professional practice.⁹</p> <p>Despite the foregoing, a law graduate is not required to be a member of a local Bar Association in order to practice law.¹⁰</p>
(b)	Pro Bono Practice and Culture	

⁶ Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), article 325.

⁷ Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), article 326.

⁸ Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), article 327.

⁹ Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), article 326.

¹⁰ Ecuadorian laws used to require registration at a Bar Association as a pre-condition to practice law in Ecuador. In 2007, the Ecuadorian Supreme Court has ruled such requirement to be contrary to the Ecuadorian Constitution at the time. After the enactment of the Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*) in 2009, such requirement was formally removed from Ecuadorian laws.

<p>1. Describe the rules that regulate the provision of pro bono legal services e.g. any explicit regulation or limitation on providing free legal services in some or all contexts, details of any mandatory or minimum fees imposed on provision of legal services.</p>	<p>The term “pro bono” does not exist in Ecuadorian legislations and there are not rules that specifically regulate the provision of pro bono legal services in Ecuador. However, Ecuadorian laws, among others, provide for the following:</p> <ul style="list-style-type: none"> • In all judicial proceedings, it is necessary for lawyers to intervene in the sponsorship of the parties, except in constitutional processes, mediation processes, cases related to the maintenance payment for children and adolescents and those that are brought before the judges of peace, without prejudice to the right to self-defense contemplated in the Code of Criminal Procedure (<i>Código de Procedimiento Penal</i>). Those who are financially unable to hire the services of a lawyer will have the right to be sponsored by public defenders (<i>defensor público</i>).¹¹ Please refer to section (d)(1) below for more information on the Public Defenders’ Office (<i>Defensoría Pública</i>). • It is within the rights of the lawyer who sponsors in cause to arrange freely his or her professional fees.¹² • The faculties of jurisprudence, law or legal science within the universities in Ecuador are not permitted to function without organizing and maintaining free legal clinics.¹³ Please refer to section (d)(2) below for more information. <p>Ecuadorian laws further provide that universities and other organizations in Ecuador have to obtain authorization from the Public Defenders’ Office before being able to operate free legal clinics. Please refer to section (c)(1) below for more information.</p>
<p>2. Are lawyers required by such rules to work a minimum number of pro bono hours? If so, how many?</p>	<ul style="list-style-type: none"> • Attorneys and law firms in Ecuador are not required by law to perform pro bono work, and hence there is no minimum pro bono hour requirement imposed on licensed attorneys. • However, some Ecuadorian law firms have undertaken, by signing the Pro Bono Declaration for the Americas, that their

¹¹ Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), article 327.

¹² Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), article 331.

¹³ Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), article 292.

	<p>practicing attorneys shall perform an average of 20 hours of pro bono work on an annual basis. Please refer to section (b)(5) below for more information.</p>
<p>3. Are aspiring lawyers required to complete a minimum number of hours of pro bono legal services in order to become licensed lawyers?</p>	<ul style="list-style-type: none"> • Graduates in law or legal science in Ecuador must perform one compulsory school year of legal service to the community by providing legal assistance in the National Assembly (<i>Asamblea Nacional</i>), the Public Defenders' Office, the State Attorney General's Office (<i>Fiscalía General del Estado</i>), jurisdictional bodies, free legal offices of the universities, public institutions in the rural, marginal urban sectors, entities that make up decentralized autonomous governments, any other institution in the public sector, or indigenous communities, populations and nationalities exercising jurisdictional functions. Providing the aforementioned legal service to the citizens will be a prerequisite for a graduate to obtain the professional lawyer title.¹⁴ • During the year of pre-professional practice, each graduate has to perform at least two hours per day, 40 hours per month and altogether 500 hours of pro bono legal services.¹⁵ • During the year of pre-professional practice, graduates may not request nor receive any money, goods, services or benefit in return; the breach of which will be reported to the respective Regional Office which will in turn notify the Council of the Judiciary which will proceed to suspend the internship period of the graduate, who will not be able to obtain a certificate of having performed his or her pre-professional practice within the next two years.¹⁶ • At the end of the year of pre-professional practice, the Council of the Judiciary will, based on the evaluation given by the institution where the graduate attended, issue the Certificate of Professional Aptitude (<i>Certificado de Aptitud Profesional</i>), which is

¹⁴ Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), article 339.

¹⁵ Rules on Pre-Professional Practice for Graduates of the Faculty of Law (*Reglamento Prácticas Pre Profesionales a Egresados Facultad Derecho*), article 18.

¹⁶ Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), article 340.

	<p>an indispensable requirement to practice law in Ecuador.¹⁷</p> <ul style="list-style-type: none"> • A graduate may exempt himself or herself from having to perform the year of pre-professional practice, if he or she can prove that he or she has previously provided services for at least two years in a free legal office of a university, or has completed an internship for the same period of time in a judicial unit.¹⁸
<p>4. What are the main areas of law which require or present opportunities for the provision of pro bono legal services? What are the major unmet legal needs?</p>	<p>From the experience of Fundación Fabián Ponce Ordóñez, which is in line with the statistics released by the Public Defenders’ Office¹⁹, the main areas of law which require or present opportunities for the provision of pro bono legal services in Ecuador are criminal law, family law and laws relating to children and teenagers.</p>
<p>5. Who are the main providers of pro bono legal services? e.g., NGOs, governmental or other public services, schools and universities, private law firms (local or international) or corporate organizations?</p>	<p><u>Governmental or other public services:</u> Please refer to section (d)(1) below for more information on the Public Defenders’ Office.</p> <p><u>Schools and universities:</u> Please refer to section (d)(2) below for more information on the operation of legal clinics by universities.</p> <p><u>NGOs and corporate organizations:</u> Please refer to section (c)(1) below for more information on the requirement of authorization from the Public Defenders’ Office for the operation of free legal clinics by organizations in Ecuador. As of April 2019, only one NGO has been registered as an authorized free legal services supplier with the Public Defenders’ Office.²⁰</p> <p><u>Private local law firms:</u></p> <ul style="list-style-type: none"> • The pro bono culture in Ecuador has not been prevalent to date. Although certain features of local laws are conducive to the expansion of pro bono legal 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

¹⁷ Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), article 341.

¹⁸ Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), article 342.

¹⁹ Information from the official website of the Public Defenders’ Office at http://www.defensoria.gob.ec/wp-content/uploads/2019/01/informe_asambleanacional.pdf at pages 22-24 (last visited on May 1, 2019).

²⁰ Information from the official website of the Public Defenders’ Office at http://www.defensoria.gob.ec/wp-content/uploads/2019/01/Directorio_CJG.pdf (last visited on May 1, 2019).

		<p>services and the fact that there is no limitation on advertising or soliciting pro bono work, local law firms have generally tended to perform pro bono legal services on a sporadic (and limited) basis, predominately focusing on the supply of corporate services for the benefit of non-profit entities.</p> <ul style="list-style-type: none"> • There are some noteworthy exceptions. The Ecuadorian law firm Pérez Bustamante & Ponce set up a foundation in 1987 (Fundación Fabián Ponce Ordóñez) devoted exclusively to pro bono projects. The foundation has four areas of focus, namely (i) protection of rights through the Inter-Disciplinary Clinic, which provides both legal and psychological support, and advises and legally represents vulnerable and/or at-risk persons or groups, (ii) alternative dispute resolution provided by the Mediation Center, (iii) training and information on relevant legal and social matters, and (iv) legal advisory services to NGOs and the community. The foundation has completed more than 5000 hours of pro bono work per year, more than 1000 cases per year were handled by the Inter-Disciplinary Clinic, and more than 300 cases per year were handled by the Mediation Center, with a more than 90% effectiveness rate. In recognition of their pro bono efforts, Pérez Bustamante & Ponce and Fundación Fabián Ponce Ordóñez were awarded, among others, the Institutional Medal of Honour by the Mayor’s Office, Quito in 2012, the Dr. Vincente Rocafuerte Social Award by the National Assembly of the Republic of Ecuador in 2016, the Pro Bono Leading Firm award by Who’s Who Legal in 2017 and the Solidarity Project Award by Club de Abogados Iberoamérica in 2018.²¹ • Certain prestigious Ecuadorian law firms have signed the Pro Bono Declaration for the Americas facilitated by the Cyrus R. Vance Center for International Justice of
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²¹ Information from the official website of Pérez Bustamante & Ponce at <https://www.pbplaw.com/en/responsabilidad-social/> (last visited on May 1, 2019).

		<p>the New York City Bar.²² Signatories to the Pro Bono Declaration for the Americas undertake that their 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.²³</p>
<p>(c) Obstacles to Provision of Pro Bono Legal Services</p>		
	<p>1. Do lawyers require a license to provide pro bono legal services?</p>	<ul style="list-style-type: none"> • Lawyers in Ecuador are able to provide free legal services. There is no need for them to obtain a specific license before providing pro bono legal services. • On the contrary, every other organization (including without limitation organizations belonging to or sponsored by universities, branch organizations, community and grassroots organizations, and non-profit associations or foundations) organizing and maintaining free legal clinics to provide defense and legal counseling services in Ecuador to persons of limited economic resources and groups which require priority attention must apply to the Public Defenders’ Office (providing the list of legal professionals that comprise the organization, legal assistance that the organization seeks to provide, etc.) and be accredited by the Public Defenders’ Office. Authorizations for such organizations must be renewed on an annual basis. Their provision of legal services are also to be supervised by the Public Defenders’ Office (with the quality of such services also evaluated). If serious anomalies are found within the operation of an organization, and the organization does not rectify the anomalies within a reasonable period

²² Such Ecuadorian law firms are Andrade Veloz & Asociados, Bustamante y Bustamante, Consulegis Abogados, Corral y Rosales, Estudio Jurídico Cervantes (Sunklen Services S.A.), Perez Bustamante & Ponce Abogados and Vivanco & Vivanco. An updated list of such law firms may be found at https://www.vancecenter.org/wp-content/uploads/2019/01/Signatarios_1-17-18.pdf (last visited on May 1, 2019).

²³ The most recent edition of such survey may be found at <https://www.vancecenter.org/wp-content/uploads/2019/01/Pro-bono-compressed.pdf> (last visited on May 1, 2019).

		of time, the Public Defenders’ Office can prohibit its further operation. ²⁴
	2. Do foreign lawyers require any additional license(s) to provide pro bono legal services?	<ul style="list-style-type: none"> • Lawyers graduated outside of Ecuador may practice law in Ecuador, provided they meet the requirements set forth in the international treaties and agreements signed by Ecuador. Their titles will be recognized in the form and under the conditions that the law prescribes and in observance of the principle of reciprocity. Prior to joining the Forum, they will have to carry out the year of pre-professional practice as aforementioned in section (b)(3).²⁵ • Foreign attorneys cannot work on pro bono cases, unless they are able to meet the requirements to be admitted to practice law 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).
	3. Do lawyers require professional indemnity legal insurance cover for any pro bono legal services that they provide? If so, are they prohibited from working under the cover of another pro bono provider, such as a private law firm or organization working on the same pro bono project?	Lawyers in Ecuador do not require professional indemnity legal insurance cover for any pro bono legal services that they provide.
	4. Are there any rules that prohibit advertising of pro bono successes or soliciting new pro bono clients?	Other than the general constitutional provisions on free choice of services and accurate contents in advertisement, there are no specific rules on the advertisement of legal services in Ecuador including advertising of pro bono successes or soliciting new pro bono clients.
	5. Do lawyers receive any “Continuing Legal Education” or equivalent credit for pro bono hours worked?	There is no special professional credit available for the performance of pro bono work in Ecuador.
(d)	Sources of Pro Bono Opportunities and Key Contacts	

²⁴ Ecuadorian Constitution (*Constitución de la República del Ecuador*), article 193; Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), articles 286 & 293-294.

²⁵ Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), article 332.

<p>1. Describe any governmental sources of pro bono and/or other legal services in Ecuador.</p>	<p>The Ecuadorian Constitution (<i>Constitución de la República del Ecuador</i>) provides that the right of persons to defense shall include the guarantee to be assisted, in court procedures, by an attorney of the person’s choice or by a court-appointed defense attorney.²⁶ When a person cannot hire legal defense services for the protection of his or her rights due to his or her situation of defenselessness or economic, social or cultural status, a public defender shall be appointed.²⁷</p> <p>The principal functions of the Public Defenders’ Office include, but are not limited to:²⁸</p> <ul style="list-style-type: none"> • Direct, organize and implement a system of public defense in Ecuador, with national coverage in all matters but prioritizing fields relating to criminal law, labor law and children and adolescents; • Guarantee the right to competent and uninterrupted defense; • Process and deliver in a free, technical and timely manner in accordance with law legal advice, guidance, assistance, mediation and judicial representation services to people in the public who cannot hire legal defense services due to their situation of defensiveness or economic, social or cultural status; • Guarantee specialized public defense for women, children and adolescents and victims of violence; and • Promote public defense services to people in situation of defenselessness, in order to ensure their timely access to justice.
<p>2. Describe the main non-governmental sources of pro bono and/or other pro bono resources in Ecuador.</p>	<ul style="list-style-type: none"> • The faculties of jurisprudence, law or legal science within the universities in Ecuador are required to organize and maintain free legal clinics to provide sponsorship, defense and legal advice services to persons of limited economic resources and groups which require

²⁶ Ecuadorian Constitution (*Constitución de la República del Ecuador*), article 76.

²⁷ Ecuadorian Constitution (*Constitución de la República del Ecuador*), article 191; Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), article 286.

²⁸ Information from the official website of the Public Defenders’ Office at http://www.defensoria.gob.ec/?page_id=256 (last visited on May 1, 2019).

		<p>priority attention²⁹, subject to prior authorization from the Public Defenders’ Office as discussed in section (c)(1) above.</p> <ul style="list-style-type: none"> • Please also refer to section (b)(5) above for more information on the provision of pro bono legal services by local law firms in Ecuador.
	<p>3. Is there any public or private organization with which a local or foreign attorney can register in order to be made aware of pro bono opportunities?</p>	<p>Ecuador Pro Bono Directory (Refugee Legal Aid Information for Lawyers Representing Refugees Globally):³⁰</p> <ul style="list-style-type: none"> • For instance: Asylum Access Ecuador, with the assistance of its Volunteer Legal Advocates, provides individualized legal advice and representation to refugees, helps refugees assert rights protected by Ecuadorian laws, engages in policy advocacy and strategic litigation for the promotion of greater fairness in the refugee status determination process, etc. <p>Ecuador Public Defenders’ Office Directory.³¹</p>

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²⁹ Ecuadorian Constitution (*Constitución de la República del Ecuador*), article 193; Organic Code of the Judicial Branch (*Código Orgánico de la Función Judicial*), article 292.

³⁰ See <http://www.refugeelegalaidinformation.org/ecuador-pro-bono-directory> (last visited on May 1, 2019).

³¹ See http://www.defensoria.gob.ec/wp-content/uploads/2019/01/Directorio_CJG.pdf (last visited on May 1, 2019).