

Pro Bono Practices and Opportunities in Brazil

I. Introduction

Brazil, Latin America’s largest country and arguably the region’s leading economy even following slow recovery from a recession since 2017, is home to a vibrant and developed legal community. Despite the size of its economy and concentrated efforts to reduce poverty, Brazil has a large amount of economic inequality.¹ The Brazilian Federal Constitution (the “**Constitution**”) sets forth as fundamental rights the right to access to justice and the right to free state-provided legal assistance for all citizens and foreign persons living in Brazil², but in practice such fundamental rights are not yet fully accessible for a significant part of the population. While this combination would appear to present meaningful opportunities for the provision of pro bono legal services, the Brazilian legal community does not have a long-standing tradition of providing such services as a result of regulatory restrictions (including restrictions on providing pro bono legal services to individuals) that were in force until 2015 that significantly hindered the development of pro bono work in Brazil. As a result, pro bono legal services are less developed in Brazil than in other Latin American countries. Since these regulatory restrictions were removed, however, law practitioners as well as larger law firms in Brazil have been devoting increasing resources to pro bono activities and pro bono legal services are expected to continue to increase in the future.

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 key piece of legislation regulating legal services in Brazil is Law No. 8,906/1994 (Bar Association Statute).³</p> <p>The two main sets of rules governing the conduct of lawyers are:</p> <ul style="list-style-type: none"> • General Rules of the Bar Association, enacted by the Bar Federal Council; and • Ethics and Disciplinary Code of the Bar Association, which sets forth rules of professional conduct and ethics, regulating issues such as advertising, client relationships and fees. <p>Lawyers are regulated by state bar associations, which are overseen by the national bar association known as the Ordem dos Advogados do Brazil (“OAB”)⁴.</p>

¹ Brazil: Extreme Inequality in Numbers, <https://www.oxfam.org/en/even-it-brazil/brazil-extreme-inequality-numbers> (last visited on May 1, 2019).

² Constituição Federal [C.F.] [Constitution] art. 5 (Braz.), available at <http://english.tse.jus.br/arquivos/federal-constitution> (last visited on May 1, 2019).

³ Neil Montgomery and Helena Calderano, *Regulation of the Legal Profession in Brazil*, Practical Law Country Q&A, [https://uk.practicallaw.thomsonreuters.com/8-637-9911?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk#co_anchor_a51610](https://uk.practicallaw.thomsonreuters.com/8-637-9911?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk#co_anchor_a51610) (last visited on May 1, 2019).

⁴ OAB Conselho Federal, <https://www.oab.org.br/> (last visited on May 1, 2019).

		The OAB and each state bar association (26 in total) may also make binding rules.
	2. Describe any licensure requirements governing the provision of legal services.	<p>To be admitted to practice law in Brazil, an individual must:</p> <ul style="list-style-type: none"> • have a law degree from an accredited institution (which is a five-year degree); • pass the Brazilian Bar Association Examination.⁵ <p>It is not necessary to complete an internship⁶ but many prospective attorneys complete a two-year internship at a registered legal practice (usually a law firm) during their legal studies.⁷</p>
(b)	Pro Bono Practice and Culture	
	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>In 2015, the Ethics and Disciplinary Code of the Bar Association (“Ethics Code”) was amended to include a chapter that allowed attorneys to provide pro bono legal service, a practice that had previously been restricted.⁸</p> <p>In-house lawyers, who may be restricted from representing third parties are expressly allowed to provide pro bono legal services.⁹</p> <p>Pro bono legal services may not be used for political or partisan services or to gain customers.¹⁰</p>

⁵ Law No. 8906 of 4 July 1994, Article 8, available at <https://www.oab.org.br/visualizador/20/legislacao-sobre-ensino-juridico> (in Portuguese) (last visited on May 1, 2019).

⁶ Law No. 8906 of 4 July 1994, Article 9, available at <https://www.oab.org.br/visualizador/20/legislacao-sobre-ensino-juridico> (in Portuguese) (last visited on May 1, 2019).

⁷ *Id.* at 3.

⁸ Ethics Code, Art. 30, available at <https://www.oab.org.br/institucionalconselho-federal/quadroadvogados> (in Portuguese) (last visited on May 1, 2019). See Edward Soares, [Brazil: Bar Association Publishes New Code of Ethics and Discipline](http://www.loc.gov/law/foreign-news/article/brazil-bar-association-publishes-new-code-of-ethics-and-discipline/) (Nov. 10, 2015), <http://www.loc.gov/law/foreign-news/article/brazil-bar-association-publishes-new-code-of-ethics-and-discipline/> (last visited on May 1, 2019).

⁹ See OAB edita provimento que regulamenta a advocacia pro bono, <http://www.oab.org.br/noticia/29076/oab-edita-provimento-que-regulamenta-a-advocacia-pro-bono> (in Portuguese) (last visited on May 1, 2019).

¹⁰ “Article 30. In the exercise of pro bono assistance, the lawyer needs to employ the usual care and dedication, so that the beneficiary will feel duly assisted and will trust the pro bono lawyer. § 1º Pro bono assistance corresponds to the free and voluntary provision of legal services in favor of non-profit legal entities and of those that the non-profit legal entities represent, whenever they cannot afford to pay for legal assistance. § 2º Pro bono assistance may also be provided in favor of individuals who do not have enough resources to, without impairing their own subsistence, hire a lawyer. § 3º Pro bono advocacy cannot be used for political or election purposes, neither benefit institutions that have such purpose, nor be used as means of advertising to attract clients.”

	<p>Each state bar chapter sets a fee schedule containing minimum fees that a lawyer may charge for certain types of work.¹¹</p> <p>Client and lawyer are free to discuss how fees are to be charged, which can be fixed fees, hourly fees or contingent fees.</p>
<p>2. Are lawyers required by such rules to work a minimum number of pro bono hours? If so, how many?</p>	<p>There is no minimum pro bono hours requirement for lawyers in Brazil.</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>	<p>There is no minimum pro bono hours requirement for aspiring lawyers in Brazil.</p>
<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>Brazilian law proscribes that persons are entitled to legal aid:</p> <ul style="list-style-type: none"> • Public defenders are appointed to provide a broad array of legal services. However, there is a deficit of public defenders available. • Law No 1060 of February 5, 1950 ensures legal assistance to any person who alleges they are unable to bear legal costs without affecting the financial ability to support themselves or their own family.¹² • Many states, however, do not have dedicated public defenders offices, leaving gaps of access to legal services, particularly to those who cannot afford private services but do not meet low financial thresholds and try to fill gaps by working with state bar associations by providing some compensation to attorneys. This process is insufficient to meet the legal need and pro bono lawyers are needed to fill this gap.¹³ <p>In addition, due to the large level of income inequality in Brazil, there are a variety of different needs for legal pro bono legal services.</p> <ul style="list-style-type: none"> • The Instituto Pro Bono (“IPB”) serves as a clearinghouse for pro bono cases, such as those relating to public interest rights of action,

¹¹ *Id.* at 3.

¹² Law No 1060 of February 5, 1950, Article 2.

¹³ Marcos Fuchs, Expanding Access to Justice 7 (2004).

		<p>known as “interesses difusos e coletivos”, comparable to a class action. ¹⁴</p> <ul style="list-style-type: none"> • The IPB has advised NGOs in matters concerning the rights of children, women, minorities and persons with special needs, environment law, housing issues and labor disputes. • The IPB also works with lawyers from top firms to provide legal services to directly to clients in the outskirts of São Paulo. <p>There are other “third sector” NGOs that specialize in provision of social services and human rights.</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>Prior to 2015, only public officials and bar associations could provide pro bono legal services.¹⁵ As a result, NGOs such as IPB, the Instituto de Defesa do Direito de Defesa (“IDDD”)¹⁶ and Viva Rio¹⁷, used to be the primary providers of pro bono legal services and are still heavily involved in providing pro bono legal services and coordinating with practitioners in Brazil.¹⁸</p> <p>The IPB, created in 2002, campaigned for 13 years for the OAB to change its position, providing a considerable boost to pro bono legal work by allowing law firms and independent practitioners to participate.</p> <p>Law firms have begun to get involved in pro bono as the IPB now has more than 60 member firms, with Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados launching a dedicated pro bono department.¹⁹</p> <p>IPB and licensed attorneys also work with law students to provide pro bono legal services through clinics and other projects.</p>
<p>(c) Obstacles to Provision of Pro Bono Legal Services</p>		

¹⁴ Instituto Pro Bono, <https://probono.org.br/> (last visited on May 1, 2019).

¹⁵ Pro Bono Survey: Country by Country, Latin Lawyer (Nov. 19, 2015), <https://latinlawyer.com/benchmarking/pro-bono-2015/1097715/pro-bono-survey-country-by-country> (last visited on May 1, 2019).

¹⁶ IDDD, <http://www.iddd.org.br> (last visited on May 1, 2019).

¹⁷ Viva Rio, <http://www.vivario.org.br/en/> (last visited on May 1, 2019).

¹⁸ Pro Bono & the Legal Profession: Strengthening Access to Justice (Apr. 7/8, 2011), <https://www.vancecenter.org/wp-content/uploads/stories/vancecenter/brazil%20eng.pdf> (last visited on May 1, 2019).

¹⁹ Pro Bono Profile: Brazil’s Instituto Pro Bono, Latin Lawyer (Apr. 5, 2018), <https://latinlawyer.com/benchmarking/12th-annual-awards/1167559/pro-bono-profile-brazils-instituto-pro-bono> (last visited on May 1, 2019).

<p>1. Do lawyers require a license to provide pro bono legal services?</p>	<p>Lawyers must be licensed to practice law in Brazil to provide pro bono legal services.</p> <p>Law firms and lawyers at NGOs may supervise law student participation in legal clinics.</p>
<p>2. Do foreign lawyers require any additional license(s) to provide pro bono legal services?</p>	<p>Foreign lawyers may not advise or consult on matters of Brazilian law, enter into a partnership with a Brazilian lawyer or law firm or form multi-jurisdiction partnerships.²⁰</p> <p>A foreign lawyer who wishes to practice in Brazil must be authorized by the OAB under its Regulation No. 91/2000, which generally restricts the scope of activities in which foreign lawyers may engage and their relationships with local law firms. The authorization must be renewed every three years.</p> <p>Foreign lawyers are required to register with the state bar association in the state in which they intend to carry out professional activities, and are required, among other things, to hold a residence visa, proof of qualification to practice and proof of good conduct.</p> <p>Foreign lawyers are subject to the rules of the OAB. Under these rules, foreign lawyers may:</p> <ul style="list-style-type: none"> • Register as a Foreign Law Consultant to practice the law of their home jurisdiction or international law; • Register a foreign law firm followed by the mandatory title of Foreign Law Consultants; and • Qualify as a Brazil lawyer (by re-validating their degree and passing the bar exam).
<p>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?</p>	<p>There is no legal requirement for practicing lawyers to take out professional indemnity insurance.²¹</p> <p>Some state bar associations regulate professional indemnity insurance generally.</p>

²⁰ Brazilian Bar Association Regulation No. 91/2000, available at <https://www.oab.org.br/leisnormas/legislacao/provimentos/91-2000> (in Portuguese) (last visited on May 1, 2019). See also *How to Practice in Brazil*, Law Society, <http://communities.lawsociety.org.uk/international/regions/americas-and-caribbean/brazil/how-to-practise-in-brazil/5044592.fullarticle> (last visited on May 1, 2019).

²¹ *Id.* at 3.

	<p>4. Are there any rules that prohibit advertising of pro bono successes or soliciting new pro bono clients?</p>	<p>The OAB generally restricts the types of advertising a law firm may do and limits the purpose of advertisements to information purposes.²²</p> <p>Advertisements must include the full name of the lawyer and their OAB registration number. They may also include titles, professional qualifications, technical and scientific expertise, an address, office hours, e-mails and phone numbers.</p> <p>Advertisements may not include any mention of civil service, employment relationships or sponsorships that may attract clients.</p> <p>Advertisements may not include the cost of services or any claim as to the quality of the lawyer.</p>
	<p>5. Do lawyers receive any “Continuing Legal Education” or equivalent credit for pro bono hours worked?</p>	<p>Not generally, but state bar associations may have differing regimes.</p>
<p>(d) Sources of Pro Bono Opportunities and Key Contacts</p>		
	<p>1. Describe any governmental sources of pro bono and/or other legal services in Brazil.</p>	<p>The main source of free governmental legal services are legal aid services provided by public defenders.²³</p> <p>Public defense services are insufficient to cover the demand so public defenders’ offices often partner with state bar associations and private practitioners to provide pro bono legal services.²⁴</p>
	<p>2. Describe the main non-governmental sources of pro bono and/or other pro bono resources in Brazil.</p>	<p>IPB, founded in 2002, is a well-established NGO provider of pro bono legal services in Brazil and led the campaign to relax the restrictions on the provision of pro bono legal services in 2015.</p> <p>IPB has also established wide international alliances with similar organizations in the Americas and elsewhere.</p> <p>Other pro bono legal service providers and “third sector” entities, which are essentially NGO-driven initiatives meant to provide various forms of social services including pro bono legal services, include</p>

²² Renata Garcia, Advertising Regulation for Lawyers in Brazil, The Brazilian Business (Jul. 10, 2015), <http://thebrazilbusiness.com/article/advertising-regulation-for-lawyers-in-brazil> (last visited on May 1, 2019).

²³ Law No 1060 of February 5, 1950 ensures legal assistance to any person who alleges they are unable to bear legal costs without affecting the financial ability to support themselves or their own family. Law No 1060 of Feb. 5, 1950, Article 2.

²⁴ See generally Marcos Fuchs, Expanding Access to Justice 6-7 (2004).

		IDDD, Viva Rio, Connectas Human Rights and Terceiro Setor.
	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>Law firms are now developing dedicated pro bono resources. Local practitioners, firms and students can register their interest with the IPB, which serves as a clearinghouse for pro bono cases, though it also has a number of in-house lawyers who provide pro bono legal services directly.²⁵</p> <p>While foreign lawyers may not practice Brazilian law, opportunities for an international law firm to provide pro bono legal services in Brazil may still be permissible through relations with established local law firms, with Brazil-based NGOs and other entities of the “third sector”, as well as through contact with the IPB.</p> <p>There are also websites that list entities in the “third sector” in Brazil and specify areas in which they may need assistance.²⁶</p>

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²⁵ See Instituto Pro Bono, <https://probono.org.br/cadastro/> (in Portuguese) (last visited on May 1, 2019).

²⁶ See Terceiro Setor, <http://www.terceirosetor.org.br/> (in Portuguese) (last visited on May 1, 2019); Centro de Voluntariado, <http://www.voluntariado.org.br/> (in Portuguese) (last visited on May 1, 2019); Seja um Voluntário <http://www.voluntarios.com.br/> (in Portuguese) (last visited on May 1, 2019); and Instituto Ethos <http://www3.ethos.org.br/> (in Portuguese) (last visited on May 1, 2019).