



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

### INTRODUCTION

Pro bono work in Bolivia is not particularly common nor is it widely practiced among private attorneys. Compared to other Latin American countries such as Argentina and Mexico, each of which has successfully created the infrastructure for the provision of pro bono services on a non-governmental basis,<sup>2</sup> Bolivia still lacks such an institutionalised infrastructure for pro bono.

Although pro bono has not traditionally formed part of the legal culture, law firms have become increasingly interested in pro bono work. This interest has been driven, in part by the “business case” to carry out pro bono work as clients have become increasingly aware and interested in the pro bono profile of Bolivian law firms.<sup>3</sup> As a result, the larger and more internationally focused firms have been cautiously increasing their pro bono involvement.

### OVERVIEW OF THE LEGAL SYSTEM

#### The Justice System

##### Constitution and Governing Laws

Bolivia is a democratic republic located in the south east of the Latin American continent. The country is divided into nine departments. It is a multi-ethnic state with a population of around ten million with the indigenous population comprising more than 50%.

Bolivia’s legal system is based on the Roman-Germanic model, which includes division of powers and a democratically legitimated legislature empowered to implement statutory law which, in turn, is binding on the judiciary.<sup>4</sup> Statutory law is the principal source of law with the Bolivian constitution (the “**Constitution**”) at its core.<sup>5</sup>

The Bolivian Civil Code is an adaptation of the former French Code Napoléon.

Historically determined legal customs and court judgments are sources of secondary law and certain of the legal customs are applied solely on a departmental level (*leyes departamentales*).

A new constitution came into force on February 7, 2009 pursuant to which the country was officially renamed as the Plurinational State of Bolivia, highlighting the multi-ethnic composition of the population. A dominant objective of the constitutional reform was to preserve the self-determination of the indigenous people and to guarantee their participation in the political discourse of the country. Several constitutional tools were implemented as a result, including the reservation of a certain number of seats in the national congress for indigenous people and the recognition of an indigenous judiciary in penal matters. The indigenous judiciary is in addition to the existing state judiciary, and each judiciary has its own rights of hearing. Certain criminal acts with reference to indigenous principles and laws can now be heard in indigenous courts without further prosecution within the common court.

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<sup>1</sup> This chapter was drafted with the support of C.R. & F. Rojas Abogados.

<sup>2</sup> See The Latin Lawyer and Vance Center Pro bono Survey 2014, P. 6, 8, available at <http://www.vancecenter.org/vancecenter/images/stories/vancecenter/pro%20bono%20survey%202014.pdf> (last visited on September 4, 2015).

<sup>3</sup> Ibid., P.5.

<sup>4</sup> Mauricio Ipina Nagel, The Bolivian Legal System and Legal Research, 2009, available at <http://www.nyulawglobal.org/globalex/Bolivia.htm#bar> (last visited on September 4, 2015).

<sup>5</sup> Further sources of law in Bolivia are available at <http://bolivialegal.com/> (last visited on September 4, 2015).



## The Courts

### Levels, Relevant Types and Locations

Following substantial reforms the national judiciary consists of the following courts:

- the Supreme Court (Tribunal Supremo de Justicia)<sup>6</sup>,
- the (Plurinational) Constitutional Tribunal (*Tribunal Constitucional Plurinacional*)<sup>7</sup><sup>8</sup>,
- the Judiciary Council (*Consejo de la Magistratura*)<sup>9</sup>,
- the Agrarian and Environmental Tribunal (*Tribunal Agroambiental*)<sup>10</sup>.

The Supreme Court is divided into four chambers and hears penal, civil social and administrative matters and also serves as the appellate court for the various regional courts (*tribunals departamentales*), such as the district courts, lower regional courts and courts for specific matters such as commercial, criminal, family, labor, social security, controlled substances, mining, administrative and breaches courts<sup>11</sup>.

### Appointed vs. Elected Judges

As part of the sweeping constitutional and judicial reforms introduced in 2009 and 2010, the first nationwide judicial elections were held in order to choose the 28 members of the four national courts (the Supreme Court, the Plurinational Constitutional Court, the Agro-environmental Tribunal and the Judicial Council) by a direct democratic procedure in 2011.<sup>12</sup>

Prior to those direct democratic elections, the judges were elected by the legislature on the basis of party agreements.<sup>13</sup> For the direct election in 2011 there were 581 candidates, from which 125 were selected for the election by the ruling Plurinational Legislative Assembly.<sup>14</sup> The new assigned judges then elect the departmental judges.<sup>15</sup>

The most recent judicial elections were perceived extremely critically by the population, the opposition and international elections observation organisations. Observers criticised that the pre-selection of judges for the public vote was highly politicised, favouring candidates which were likely to represent the interests of the new government without adequate consideration of their actual qualification.<sup>16</sup> A further point of

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<sup>6</sup> See <http://tsj.bo/> (last visited on September 4, 2015).

<sup>7</sup> Ley No 027.

<sup>8</sup> See <http://www.tcpbolivia.bo/tcp/judicial> (last visited on September 4, 2015).

<sup>9</sup> See <http://magistratura.organojudicial.gob.bo/> (last visited on September 4, 2015).

<sup>10</sup> See <http://www.tribunalagroambiental.bo/> (last visited on September 4, 2015).

<sup>11</sup> Mauricio Ipina Nagel, *The Bolivian Legal System and Legal Research*, 2009, available at <http://www.nyulawglobal.org/globalex/Bolivia.htm#bar> (last visited on September 4, 2015).

<sup>12</sup> See <http://lta.reuters.com/article/domesticNews/idLTASIE7A7Q0E20111013?pageNumber=1&virtualBrandChannel=0> (last visited on September 4, 2015).

<sup>13</sup> See <http://www.lanacion.com.ar/1415329-reves-para-evo-en-la-eleccion-de-jueces> (last visited on September 4, 2015).

<sup>14</sup> See <http://americaeconomia.com/politica-sociedad/politica/bolivia-avanza-polemica-eleccion-de-jueces-por-voto-universal> (last visited on September 4, 2015).

<sup>15</sup> See <http://lta.reuters.com/article/domesticNews/idLTASIE7A7Q0E20111013?pageNumber=1&virtualBrandChannel=0> (last visited on September 4, 2015).

<sup>16</sup> See <https://www.hrw.org/world-report/2015/country-chapters/bolivia> (last visited on September 4, 2015).



critique was the allegedly targeted voidance of ballots.<sup>17</sup> In spite of the far-reaching protests, the elections were declared valid by the government.

## The Practice of Law

### Education

The qualifications for becoming a lawyer in Bolivia are set out in Art. 6 of la *Ley del Ejercicio de la Abogacía* – ley N° 387 (the “**Law of the Practice of Law**”). The academic prerequisite is the completion of a law degree at one of the eight Bolivian law faculties. The usual study period is between nine and ten semesters.

### Pro bono Specific Rules and Requirements

There are no particular rules or requirements placed on lawyers in Bolivia to undertake pro bono.

### Licensure

A lawyer in Bolivia must be registered with the Ministry of Justice in order to practice law. Candidates have to provide evidence of their graduation from law school and a certificate of good conduct. There are no differences in this respect between barristers, solicitors and in-House Counsel. Foreign professionals wanting to practice law in Bolivia must obtain an official approval of their professional degree.

### Demographics

The public Bar Register of the Ministry of Justice has 1,516 lawyers on record<sup>18</sup> on the basis of 10,027,254 inhabitants in 2013,<sup>19</sup> that equates to 6,614 inhabitants per lawyer.

### Legal Regulation of Lawyers

La *Ley del Ejercicio de la Abogacía* – Ley no. 387 (the “**Lawyers Act**”) of 2013 regulates the rights and duties of lawyers, and also states that the compensation of a lawyer will be announced by the Ministry of Justice every two years by public media.<sup>20</sup>

## LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

### State-Subsidized Legal Aid

Law No. 463 of the Multinational Public Defender Service (the “**Service**”) grants a service provided by the State based on the recognition of the right to defense as a fundamental right and expression of justice. The Service provides poverty-stricken defendants with attorneys at public expense if needed. Additionally, a mobile public defender service was established in order to cover legal needs in the more remote parts of the country.<sup>21</sup>

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<sup>17</sup> See <http://www.economist.com/node/21542421> (last visited on September 4, 2015). 40.5% of the votes were voided.

<sup>18</sup> See the following links:

[http://rpa.justicia.gob.bo/rpa/app/images/files/6to\\_Juramento\\_La\\_Paz\\_2015.pdf](http://rpa.justicia.gob.bo/rpa/app/images/files/6to_Juramento_La_Paz_2015.pdf);  
[http://rpa.justicia.gob.bo/rpa/app/images/files/3er%20Juramento%20Potosi%202015\(1\).pdf](http://rpa.justicia.gob.bo/rpa/app/images/files/3er%20Juramento%20Potosi%202015(1).pdf);  
<http://rpa.justicia.gob.bo/rpa/app/images/files/3er%20Juramento%20Tarija%202015.pdf>;  
[http://rpa.justicia.gob.bo/rpa/app/images/files/3%20er%20Jumraneto%20Chuquisaca%202015\(2\).pdf](http://rpa.justicia.gob.bo/rpa/app/images/files/3%20er%20Jumraneto%20Chuquisaca%202015(2).pdf);  
<http://rpa.justicia.gob.bo/rpa/app/images/files/4toJuramento%20Oruro%202015.pdf>;  
<http://rpa.justicia.gob.bo/rpa/app/images/files/5to%20Juramento%20La%20Paz%202015.pdf> (all last visited on September 4, 2015).

<sup>19</sup> See [http://www.la-razon.com/index.php?url=/economia/OficialBolivia-habitantes-Paz-Santa-Cruz\\_0\\_1879612094.html](http://www.la-razon.com/index.php?url=/economia/OficialBolivia-habitantes-Paz-Santa-Cruz_0_1879612094.html) (last visited on September 4, 2015).

<sup>20</sup> See <http://medios.economiayfinanzas.gob.bo/MH/documentos/L387.pdf> (last visited on September 4, 2015).

<sup>21</sup> Greame R. Newman, 2010, *Crime and Punishment around the world*, Bolivia, p. 58.



## Mandatory Assignments to Legal Aid Matters

According to the Lawyers Act, licensed attorneys have to provide free care to people with limited economic resources. Therefore, the Ministry of Justice will send lists of attorneys registered in the past year to the Judicial Branch (Bar Association), for the appointment of attorneys and defenders, to provide legal assistance in accordance with No. 025 of the Judiciary Law. In principle, every attorney registered with the Ministry of Justice could become appointed for legal assistance.

There is no compensation provided by the state for such assigned matters.

## Unmet Needs and Access Analysis

In 2007, the Inter-American Commission of Human Rights found that only 11 municipalities have Public Defenders, which represents only 3% of all municipalities in Bolivia. They further found that the quality of the service provided by such Public Defenders appears to be relatively poor as compared to private attorneys.<sup>22</sup>

## Alternative Dispute Resolution

### Mediation, Arbitration, Etc.

The Ministry of Justice has implemented two public institutions in the Bolivian judicial system to allow for the settlement of disputes by means of arbitration and mediation.<sup>23</sup>

The first one, *Centro de Conciliación y Arbitraje Comercial*, was introduced in 1992 and is a mediation and arbitration institution.<sup>24</sup> It is the main body for administering alternative dispute resolution in Bolivia and is fully empowered to supervise and manage national and international disputes.<sup>25</sup> A second centre for arbitration was created with the *Centro Boliviano de Arbitraje & Conciliación*.<sup>26</sup> The *Centro de Conciliación y Arbitraje Comercial* has 79 Bolivian attorneys serving as arbitrators.<sup>27</sup> Since its inception, the centre has settled more than 100 disputes.

### Ombudsman

In 1997, Bolivia introduced *El Defensor del Pueblo* (the “Ombudsman”) by law.<sup>28</sup> As a public institution, the responsibility of the Ombudsman is to defend human rights and the rights of citizens against abuses from political powers.<sup>29</sup> The current Ombudsman, Rolando Villena Villegas, was elected in 2010<sup>30</sup> and is paid by the state to perform his duties.<sup>31</sup> The responsibility of the Ombudsman is to investigate and report independently on human rights violations pursuant to Art. 11 of *Ley del Defensor del Pueblo – Ley No. 1818*. He is allowed to suggest the ratification or signing of human rights treaties and to propose changes to decrees, laws and non-judicial resolutions. Furthermore, the Ombudsman is permitted to present and

<sup>22</sup> See <http://www.cidh.org/pdf%20files/BOLIVIA.07.ENG.pdf>, p. ix (last visited on September 4, 2015).

<sup>23</sup> See <http://www.cebac.com.bo/03presentacion.php>, (last visited on September 4, 2015).

<sup>24</sup> See <http://www.arbitraje.bo/index.php?mc=19> (last visited on September 4, 2015).

<sup>25</sup> See <http://www.arbitraje.bo/index.php?mc=27> (last visited on September 4, 2015).

<sup>26</sup> See <http://www.cebac.com.bo/01presentacion.php>, (last visited on September 4, 2015).

<sup>27</sup> See <http://www.arbitraje.bo/index.php?mc=36> (last visited on September 4, 2015).

<sup>28</sup> See <http://www.defensoria.gob.bo/sp/quees.marco.asp> (last visited on September 4, 2015).

<sup>29</sup> See <http://www.eabolivia.com/social/3788-rolando-villena-villegas-nuevo-defensor-del-pueblo-boliviano.html> (last visited on September 4, 2015).

<sup>30</sup> See <http://www.defensoria.gob.bo/sp/defensor.biografia.asp> (last visited on September 4, 2015).

<sup>31</sup> See [http://www.defensoria.gob.bo/sp/preguntas\\_frecuentes\\_defensor.asp](http://www.defensoria.gob.bo/sp/preguntas_frecuentes_defensor.asp) (last visited on September 4, 2015).



monitor the status of complaints. The Ombudsman also participates directly in the resolution of conflicts, for example in the dialogue between cocoa growers and the integral development of the tropics of Cochabamba.<sup>32</sup>

## PRO BONO ASSISTANCE

### Pro Bono Opportunities

#### Private Attorneys

There is no national clearinghouse or other central pro bono organization which is able to directly assign pro bono matters. Private attorneys have to cooperate with international or smaller local pro bono organizations (see below) in order to engage in pro bono work. Alternatively, some of the more international law firms are aiming to establish their own pro bono practice. For example, Ferrere has established an ongoing cooperation with several national and international NGOs<sup>33</sup> and has been among the firms more active in undertaking local pro bono activities.

#### Law Firm Pro Bono Programs

The Cyrus R. Vance Center for International Justice reports that there are a number of Bolivian law firms that have signed the Pro bono Declaration for the Americas (PBDA). The PBDA was launched in 2008 to encourage collaboration among law firms engaging in pro bono. Despite being signatories to the PBDA, private law firms' pro bono programs are relatively unevolved.

Consequently, in the majority of cases involving Bolivian citizens or NGOs, the cases are handled on a pro bono basis by international law firms, often North American firms with a large Latin American presence, rather than local Bolivian firms.

#### Legal Department Pro Bono Programs

Based on public information, law firms do not generally have pro bono programs as such.

#### Non-Governmental Organizations (NGOs)

In Bolivia not many NGOs are involved in pro bono activity.

There is one global and one Latin-American organization participating in pro bono action in Bolivia. The Cyrus R. Vance Center for International Justice is a global organization with an active presence in Latin America. The organization has supported four projects in Bolivia on a pro bono basis. For example, the Vance Center provided training for lawyers in order to develop their capacity to provide legal representation to petitioners before the Inter-American Commission on Human Rights.

The Latin-American NGO Red ProBono Internacional serves as a clearinghouse to coordinate the work of pro bono lawyers and law firms on a regional basis. The focus of Red *ProBono* Internacional in Bolivia is on the development of pro bono service. In this context, they provide information and advice to Bolivian law firms about pro bono work.

Bolivia itself has only three regional NGOs that are involved in pro bono work. These three NGOs are present throughout Bolivia and are specialized in different fields such as human rights and the rights of women. *El Centro de Estudios Jurídicos e Investigación Social* is an organization working on human rights problems, which represents pro bono clients before the *Comision Interamericana de Derechos Humanos* (CIDH) and the Inter American Court of Human Rights. Another NGO is *La Oficina Jurídica Para La Mujer* which was founded to promote and guarantee the rights of women. The third Bolivian NGO

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<sup>32</sup> See <http://www.juridicas.unam.mx/publica/librev/rev/iidh/cont/37/pr/pr9.pdf>, p. 243 (last visited on September 4, 2015).

<sup>33</sup> See <http://en.ferrere.com/who-we-are/corporate-social-responsibility/pro-bono> (last visited on September 4, 2015).



is *La Capacitación y Derechos Ciudadanos*, an organization founded by students of the *Universidad Católica Boliviana*. They provide legal advice for the population with low incomes and limited access to justice.

### Bar Association Pro Bono Programs

There are currently no Bolivian Bar Association Pro Bono Programs. The Multinational Public Defender Service mentioned above, being a governmental entity, is a legal aid institution.

### University Legal Clinics and Law Students

The *Capacitación y Derechos Ciudadanos* together with two universities, *Universidad Católica Boliviana* and the *Universidad Salesiana de Bolivia*, created the first Legal Clinic in 2012.<sup>34</sup> The program was initially supported by the International Senior Lawyers Project which provided experienced pro bono lawyers during the implementation of the Legal Clinic.

## Historic Development and Current State of Pro Bono

### Current State of Pro Bono

Bolivia does not have a pro bono clearinghouse or other institution to serve as a central coordinating body for pro bono activities on a national basis or to assign pro bono matters to firms which would like to engage in pro bono work (like the Comisión Pro Bono in Argentina or the ProVene in Venezuela).

The country still lacks well developed programs and a coordinated approach to pro bono. The social background of the country, being among the poorest of the Latin American continent, makes the institutionalization of pro bono work difficult. Pro bono is still subject to individual engagement and devotion and strongly depends on the enthusiasm and the willingness to contribute of the individual attorney.

Generally, pro bono supporters are aiming for a better integration of the pro bono work and projects into the law firms culture and to anchor pro bono as part of the self-understanding of the lawyers and law firms. The major objective is to achieve an increasing institutionalization of pro bono work and culture in order to guarantee coverage of unmet legal needs within Bolivia.

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

The major obstacle to the implementation of and participation in a functional pro bono infrastructure is the widespread distrust by the population in the legal system, which suffers severely from corruption. In 2014, Bolivia's Congress announced that 300 of the country's 508 prosecutors were under various forms of investigations under the statutes of the public prosecutor's office, leading to fears that the judiciary is ill-equipped to address graft, fraud and abuse. Thirty percent of the population reported being victims of corruption.<sup>35</sup>

President Morales tried to achieve improvements by replacing appointed judges with elected ones. This undertaking ended in a nationwide scandal. In 2011, more than five million people went to the polls to elect judges, but over 40% of the counted votes were invalid. Combined with blank ballots, the percentage of invalid votes rose to nearly 60%.<sup>36</sup> This was seen by the media and the opposition party as

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<sup>34</sup> See <http://www.lawschool.cornell.edu/spotlights/First-Bolivian-Legal-Clinic.cfm> (last visited on September 4, 2015); and <https://www1.villanova.edu/villanova/law/newsroom/webstories/2013/022013.html> (last visited on September 4, 2015).

<sup>35</sup> See <http://www.worldpoliticsreview.com/articles/15457/unlike-neighbors-bolivia-s-morales-contains-corruption-fallout> (last visited on September 4, 2015).

<sup>36</sup> See [http://myweb.fsu.edu/adriscoll/CV\\_files/DriscollNelson2012ESBolivia.pdf](http://myweb.fsu.edu/adriscoll/CV_files/DriscollNelson2012ESBolivia.pdf), p. 3 (last visited on September 4, 2015).





a setback for the President.<sup>37</sup> The opposition dismissed the direct elections, denouncing it as a plan to fill the courts with Movement for Socialism party militants.<sup>38</sup> The prior appointment procedure was criticized, because of the lack of transparency and the necessary safeguards.<sup>39</sup>

There is also a public perception that the judicial system and the courts are underfunded and inefficient which shows in unpredictable processing periods and an uncertain outcome of petitions and proceedings.<sup>40</sup> As a result, there are a lot of Bolivians without access to justice.<sup>41</sup>

The Human Rights World Report of 2014 describes an extensive use of pre-trial detention, long delays in trials and overcrowded prisons.<sup>42</sup> Additionally, the country has had big problems with high-profile killings of women. Public protest resulted in a new comprehensive law to combat gender-based violence but the Inter-American Commission on Human Rights has found that the judicial response to those cases is deficient and not on a par with the severity and incidence of the problem.<sup>43</sup>

This fundamental distrust by the population leads to a renunciation of the legal system which cannot easily be overcome by pro bono supporters.

### Pro Bono Resources

Useful information on legal aid and pro bono opportunities in Bolivia can be found on the following websites, mostly in Spanish:

- Public Defender Service: <http://www.defensoria.gob.bo/> (last visited on September 4, 2015)
- The Cyrus R. Vance Center for International Justice: <http://www.vancecenter.org/vancecenter/> (last visited on September 4, 2015)
- The Centro de Estudios Jurídicos e Investigación Social: <http://cejis.org/> (last visited on September 4, 2015)
- Oficina Jurídica Para La Mujer: <http://www.ojmbolivia.org> (last visited on September 4, 2015)
- Red ProBono Internacional: <http://redprobono.org/es/>
- Capacitación y Derechos Ciudadanos: <http://www.cdcbolivia.com/> (last visited on September 4, 2015)

## CONCLUSION

Bolivia still lacks an established civil society and opportunities for the individual to substantially participate in social, political and legal matters are limited. Distrust in the government and the political system and widespread poverty define Bolivian society. In these circumstances, Pro bono in Bolivia is still at an early stage of development. The influence of pro bono service providers is limited and widespread corruption within the judiciary makes it difficult to provide reliable legal assistance to people with limited economic

<sup>37</sup> See <http://www.lanacion.com.ar/1415329-reves-para-evo-en-la-eleccion-de-jueces> (last visited on September 4, 2015).

<sup>38</sup> See <http://americaeconomia.com/politica-sociedad/politica/bolivia-avanza-polemica-eleccion-de-jueces-por-voto-universal> (last visited on September 4, 2015).

<sup>39</sup> See <http://www.google.de/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CDIQFjAC&url=http%3A%2F%2Fwww.ibanet.org%2FDocument%2FDefault.aspx%3FDocumentUId%3Ddea29564-a74c-4148-93ed-63201108f0fb&ei=5kOaVZ6VCYnjoAS1w4C4Cw&usq=AFQjCNHEXKXPdCUPJomyhsRmKJRBbO9ayQ> (last visited on September 4, 2015).

<sup>40</sup> See <http://www.opentrial.org/legal-dysfunction/item/132-bolivias-legal-system-recommendations-for-reform> (last visited on September 4, 2015).

<sup>41</sup> See <http://www.economist.com/node/21542421> (last visited on September 4, 2015).

<sup>42</sup> See <https://www.hrw.org/world-report/2014/country-chapters/bolivia>; <http://ain-bolivia.org/2012/08/prison-detainees-in-bolivia-bad-fruit-of-a-slow-judiciary-system/> (both last visited on September 4, 2015).

<sup>43</sup> See <http://www.cidh.org/women/Access07/chap2.htm>, recital 123 (last visited on September 4, 2015).



resources. The concept of pro bono is not yet commonly acknowledged due to a lack of incentives to engage in pro bono work – and a lack of faith in its outcome.

However, one can detect a growing awareness for the advantages of pro bono and the positive impact it has on society. With external assistance from international pro bono organisations and clearinghouses, the national pro bono infrastructure is slowly gaining more substance. With the assistance of other international Latin American clearinghouses it was even envisaged that a Bolivian national clearinghouse will be established. Continued success, however, will be conditioned on the further democratisation of the country and the outcome of the ongoing struggle to fight corruption.

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