



Pro Bono Practices and Opportunities in Brazil

INTRODUCTION

Brazil is Latin America's largest country and arguably the region's leading economy, home to a vibrant and developed legal community. Despite these and its many other positive attributes, it is also a country suffering from widespread inequality. 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. The Brazilian Federal Constitution (the "**Constitution**") sets forth as fundamental rights the right to access to justice and the right to free legal assistance, but in practice such fundamental rights are not yet fully accessible for a significant part of the population. Pro bono work could help provide assistance where State-funded legal aid is not available, but regulatory restrictions that were in force until recently have significantly hindered the development of pro bono work in the country. However, there have been important changes in the last few years, with gradual but clear signs of evolution in terms of regulation and the mentality of the legal community in general. Law practitioners in Brazil have been devoting increasing resources to pro bono activities and pro bono services are expected to increase in the future.

OVERVIEW OF THE LEGAL SYSTEM

The Justice System

Constitution and Governing Laws

The Constitution was approved in October 5, 1988 and is the fundamental and supreme law of Brazil. It establishes that Brazil is a federal presidential republic, based on a representative democracy. The President is both the head of state and the head of government. The political and administrative organization of Brazil comprises the federal government, the states (26 states and one federal district) and the municipalities.

The federal government is divided into three independent branches: the executive power, exercised by the President (elected to a four-year term), supported by Ministers; the legislative power, exercised by the National Congress (composed of the Federal Senate and the Chamber of Deputies); and the judicial power, exercised by different courts, as described below.

Likewise, the government of each state has an executive power, which is exercised by the Governor (elected to a four-year term); a legislative power; and a judiciary power, as described below. Each municipality has an autonomous local government, comprising a mayor (the executive power, elected to a four-year term) and a legislative assembly.

The Constitution provides for the constitutional right of access to justice and defines the Brazilian judicial structure.

The Courts

Levels, Relevant Types, and Locations

The Constitution organizes the judicial system into specialized courts and ordinary courts.¹ The Supreme Federal Court and the Superior Court of Justice are the heads of the system. The specialized courts are divided between the military courts, labor courts and electoral courts. The ordinary courts are divided between the Federal and the State branches. Each Federal and State branch has courts of first instance and courts of second instance; first instance decisions are usually issued by one judge; second instance decisions are usually issued by a panel of three judges. First instance courts may specialize on a given legal subject, such as family law or criminal law.

¹ Article 92 of the Brazilian Federal Constitution.



Appointed vs. Elected Judges

Brazilian judges of first and second instance courts need to be approved in public competitions. There is an exception for judges of second instance courts which can be indicated by the Executive power. Those cases are limited to renamed attorneys or Public Prosecutor (“Quinto Constitucional”).²

The Practice of Law

Education

In order to permissibly practice law in Brazil, a lawyer (*advogado*) must be registered with the Brazilian Bar Association. In order to register with the Brazilian Bar Association, an individual must (i) have a law degree, and (ii) have been approved in a final examination to the Brazilian Bar Association, among others.³ Each of the states and the federal district is responsible for licensing attorneys in their territories, through the respective State Bar Associations. For example, an attorney must have gained admission to the Bar Association of São Paulo prior to practicing law in that jurisdiction on a regular basis.

Lawyers admitted in one State Bar Association can practice law in other States without the need for supplementary registration as long as their work is limited to the simultaneous performance of five specific acts in another state, falling into any of the three following categories: (i) pleadings before Court; (ii) legal counseling and (iii) legal management.

To act in other States without limitation, lawyers need to request a supplementary registration before the other State Bar Association or request the assignment of the registration from the original State Bar Association.

Licensure and Legal Regulation of Lawyers

The practice of law is organized through Bar Associations in each of the Brazilian states or federal district (the “**State Bar Associations**”). These State Bar Associations are in turn joined into the *Ordem dos Advogados do Brasil* (the “**Brazilian Bar Association**”),⁴ which is empowered by federal law to regulate the profession. The practice of law in Brazil is regulated by means of a federal statute – Law No 8,906 of July 4, 1994 – and other legislation, among which is the Brazilian Bar Association’s Code of Ethics and Discipline of February 13, 1995, as amended from time to time.

The Brazilian Bar Association’s Code of Ethics and Discipline sets forth the rules of professional conduct and ethics concerning issues such as advertising, client relationships and legal fees. These regulations are also embodied in professional conduct codes enacted by the individual State Bar Associations.

In Brazil, lawyers enjoy wide latitude to enter into fee arrangements with their clients, as long as they observe the more general rules of ethics and professional conduct. Legal fees can be agreed in the form of billable hours, flat fees and contingent or success fees.

While there are a significant and growing number of international law firms that have established offices in Brazil, foreign lawyers are not authorized to practice Brazilian law. The Brazilian Bar Association authorizes foreign lawyers to act as consultants as to foreign law, as long as they are registered with the Brazilian Bar Association for this purpose. Many international firms have established offices in Brazil by entering into close affiliations with local Brazilian firms. Alliances between international and Brazilian firms have been subject to increasing scrutiny from Bar Associations, as Brazilian local firms argue that in some cases these alliances in practice serve to bypass the existing restrictions for foreign lawyers to practice law in Brazil.

Portuguese qualified lawyers who are duly registered with the Portuguese Bar Association may register with the Brazilian Bar Association to practice law in Brazil, subject to certain conditions of reciprocity treatment agreed between the Portuguese and the Brazilian Bar Associations.⁵

² Article 94 of the Brazilian Federal Constitution.

³ Articles 8 and 9 of Law No 8906 of July 4, 1994.

⁴ See <http://www.oab.org.br> (last visited on September 4, 2015).

⁵ Ruling (Provimento) No 129, of December 8, 2008 of the Brazilian Bar Association.



Demographics: Number of Lawyers per Capita; Number of Legal Aid Lawyers per Capita.

According to the latest reports, in 2014, there were approximately 835,000 lawyers in Brazil (for a population of roughly 206 million people), and estimates indicate that by 2019 there will be 1,000,000 lawyers (for a population closer to 215 million), thus demonstrating an increasing rate of lawyers per capita.⁶ The number of law schools has also increased in the last decade, from 165 in 1995 to 1,284 in 2014.

In 2014, according to the Brazilian Demographic Institute, the population of Brazil totaled 202,768,562 inhabitants. This would make the number of lawyers per capita in 2014 approximately 243.

However, this number varies drastically depending on the region or State of Brazil. According to data published by the Brazilian Bar Association in 2008, the five States with the highest number of lawyers per capita were: the Federal District (140), Rio de Janeiro (154), São Paulo (203), Rio Grande do Sul (245) and Mato Grosso do Sul (327). The five States with the lowest number of lawyers per capita were: Amazonas (858), Bahia (859), Pará (883), Piauí (913) and Maranhão (1,337). The same 2008 data indicates that Brazil would rank as having the third highest number of lawyers in the world, behind the United States and India.⁷

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

In Civil Proceedings⁸

The Brazilian Constitution grants as fundamental rights the right to access to justice and the right to full and free legal assistance.⁹ These rights are granted in very broad terms, comprising assistance in relation to any type of legal dispute or litigation, before any type of court, as well as the provision of legal consultancy services, or assistance in conciliation procedures before litigation takes place. To attain these objectives and provide broad legal assistance to those who cannot afford it, the Constitution mandates the creation of Public Defender Offices at federal and state levels.¹⁰

The obligation of the State to provide access to the courts and free legal advice to the public is also required pursuant to specific legislation concerning, for instance, consumer rights, labor unions and access to small claims courts.

In Criminal Proceedings¹¹

The same legal provisions described above regarding the right to legal assistance in civil proceedings apply to the right to legal assistance in criminal proceedings.

⁶ See <http://blog.portalexamedeorde.com.br/blog/2014/11/futuro-da-advocacia-brasil-devera-ter-1-milhao-de-advogados-em-2018/> and <http://www.worldometers.info/world-population/brazil-population/> (last visited on September 4, 2015).

⁷ See http://www.conjur.com.br/2008-fev-05/aceso_advogados_maior_estados_ricos (last visited on February 21, 2016).

⁸ Pursuant to Article 36 of the Brazilian Civil Procedure Code, a party in any civil proceeding must be represented by a lawyer.

⁹ Brazilian Federal Constitution Article. 5, XXXV and LXXIV.

¹⁰ Brazilian Federal Constitution Article 134. The Constitution expressly refers to Public Defenders as essential for the Brazilian justice system, along with other institutions such as the Public Prosecutors or the Attorney General. The Complementary Law No 80 of January 12, 1994, altered by Complementary Law No 132, of October 7, 2009, organizes the Public Defenders' career.

¹¹ Pursuant to Article 261 of the Brazilian Criminal Procedure Code, no defendant in a criminal case can be accused or sentenced without being represented by a lawyer.



State-Subsidized Legal Aid

Non-remunerated legal services may be made available in Brazil through: (i) the appointment of a lawyer (Public Defender) by the State; (ii) Law No 1060 of February 5, 1950 (concerning legal assistance); (iii) the operation of legal clinics; and (iv) the rendering of pro bono legal advice by qualified lawyers, either individually or collectively. From these alternatives, (i) and (ii) correspond to State-subsidized legal aid.

Appointment of Public Defenders

Where a person is unable to pay for legal representation, the Brazilian State must appoint an attorney free of charge to ensure the exercise of the constitutional right of access to justice. In such cases, counsel is appointed from the Public Defenders' Office, at Federal or State level. Public Defenders are bachelors in law who must pass a public competition to join the Public Defenders Office.

Public Defenders may provide legal assistance in relation to a broad range of matters. Typical examples are assistance to criminal defendants, individuals seeking alimony payments or other family law rights, as well as individuals involved in a variety of civil law disputes. The activity of Public Defenders is not limited to representation in court, but also comprises legal consultancy, mediation or arbitration of conflicts, actions to educate the population about human rights and other types of laws.¹² In addition to Brazilian citizens, foreigners resident in Brazil can also benefit from legal assistance provided by Public Defenders.

The number of Public Defenders is often insufficient to handle the large demand for legal assistance (for instance, in the state of São Paulo, for each existing Public Defender there are over 50,000 individuals from the public in need of legal assistance)¹³ and it is common for the different Public Defenders Offices to establish cooperation agreements with local Bar Associations to have additional legal support from private lawyers where needed. Lawyers who assist the Public Defenders Office are remunerated by the State in accordance with a pre-approved table of fees.

Legal Assistance Law

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.¹⁴ This form of legal assistance is available to Brazilian nationals and also foreigners resident in Brazil and can be provided in relation to any legal matter. It is granted by a judge, on the basis of a request formulated by the interested party as plaintiff or defendant in a legal proceeding. A person who invokes Law No 1060 is presumed to have the right to legal assistance and does not need to prove such inability to support themselves; however, the judge may withdraw such benefit if the other party to the proceedings is able to rebut this presumption.

¹² Complementary Law No 80 of January 12, 1994, as altered by Complementary Law No 132, of October 7, 2009.

¹³ See <http://www.probono.org.br/ipb-fala-undefinidacesso-a-justica-e-advocacia-pro-bonoundefined-aos-estudantes-da-direito-sao-bernardo> (last visited on September 4, 2015); and <http://www.conjur.com.br/2012-jun-24/entrevista-daniela-cembranelli-defensora-publica-geral-sao-paulo> (last visited on September 4, 2015).

A research study conducted in 2013 by IPEA (Institute of Applied Economic Research) and ANADEP (National Association of Public Defenders) (available at <http://www.ipea.gov.br/sites/mapadefensoria> (last visited on September 4, 2015)) indicated that, although currently all states in Brazil have formally created the respective Public Defenders Offices, in practice in at least four states (Paraná, Santa Catarina, Goiás and Amapá) such offices were not yet functioning, mainly due to delays in organizing public competitions to recruit Public Defenders. Overall, from the 8,489 Public Defender positions created throughout Brazil by law at federal and state levels, over 40% of such positions still needed to be fulfilled with actual nominations of Public Defenders. The study concluded that many states (such as São Paulo, Minas Gerais and Bahia) had a significant deficit in the number of Public Defenders needed to assist the population in need. Overall, the study estimated that approximately 10,500 additional Public Defender positions would need to be created in Brazil, in order to reach a ratio of 10,000 individuals in need (with income lower than three times the minimum wage) per Public Defender in the country.

¹⁴ Law No 1060 of February 5, 1950, Article 2, sole paragraph.



In addition to legal fees, beneficiaries of Law No 1060 may be exempt from the general fees involved in judicial proceedings, such as fees to the court, Official Journal publications, experts and witnesses. However, attorneys that represent beneficiaries of Law No 1060 are still permitted to charge fees for their work. For instance, if the beneficiary of the legal assistance wins a claim, the unsuccessful party will be required to pay the fees of the attorneys representing the beneficiary. Also, if the beneficiary of the legal assistance wins the case and has agreed with the attorney representing him that fees will be payable on a contingency basis, the beneficiary may be required to pay the relevant portion of contingent fees, as long as such payment does not affect the beneficiary's ability to provide for themselves or their family.

Eligibility Criteria

Individuals who demonstrate that their monthly income is lower than three times the minimum wage in Brazil (around US\$750 per month)¹⁵ are considered to be unable to pay for legal representation and may thus be assisted by a Public Defender. Individuals who earn more than this amount may also qualify for the benefit.

A Public Defender may be requested by individuals (if they fulfill the criteria mentioned above), but also by nonprofit organizations, if they do not have sufficient financial resources to obtain legal representation.

In relation to Law No 1060, recent case law has also recognized that legal entities, and not only individuals, may be entitled to legal assistance based on such law, as long as an inability to pay is demonstrated.

Mandatory Assignments to Legal Aid Matters

Are Private Attorneys Required to Accept Matters Assigned to Them by A Court or Legal Aid Scheme, or are Assignments Voluntary?

As mentioned above, the Brazilian Constitution provides for the right to access to justice and to free legal assistance (i.e., the right to public defenders). Therefore, any attorney can volunteer to provide legal assistance with the Brazilian Bar Association and the judge appoints such lawyer to assist a party who does not have resources to pay for legal representation. In case of absence of the Brazilian Bar Association in some jurisdiction, the judge can appoint any attorney to provide the legal assistance, and such lawyer may refuse the appointment if they provide a justification, but these usually need to be exceptional.

Are Private Attorneys Compensated, Even at a Reduced Fee, for Such Assigned Matters?

If the party has financial resources to pay legal fees, as determined by the judge of the proceedings¹⁶, they will be required to pay. If the party has no financial resources, the lawyer can request the payment of legal fees by the State.

Alternative Dispute Resolution

Mediation, Arbitration, Etc.

The law applicable to Public Defenders expressly sets forth that Public Defenders will make it a priority to try to obtain an extra-judicial solution of conflicts by means of mediation, conciliation, arbitration or other.¹⁷

¹⁵ In 2015, the minimum wage in Brazil is set in R\$ 788, or approximately US\$ 250.

¹⁶ See <http://www.cnj.jus.br/noticias/cnj/78885-noticia-servico> (last visited on September 4, 2015); <http://www.oabsp.org.br/comissoes2010/assistencia-judiciaria/manual-do-advogado> (last visited on September 4, 2015); <http://www.oabmg.org.br/dativo/> (last visited on September 4, 2015); Article 263 of the Brazilian Criminal Procedure Code.

See <http://www.oabmt.org.br/Noticia/Noticia.aspx?id=6503&titulo=advogados-que-recusarem-nomeacao-como-dativos-nao-incorrem-em-infracao-etica> (last visited on September 4, 2015).



More broadly, mediation and arbitration have been developing in Brazil as an alternative mechanism to solving conflicts, lowering the dependency on judicial courts and providing full access to the justice system. The judicial reform in 2004 (which began with Constitutional Amendment No. 45) foresaw the approval of laws regulating mediation and arbitration. Law No 13,129/2015, which regulates arbitration,¹⁸ was approved on May 26, 2015 and Law No 13,140/2015, which regulates mediation, was approved on June 26, 2015.^{19 20}

PRO BONO ASSISTANCE

Pro Bono Opportunities

Law Firm Pro Bono Programs

Historically, Bar Associations and local lawyers in general have not provided pro bono legal services in a systematic and consistent manner. This has been in part due to the sharp growth in the number of lawyers in Brazil and the difficulty in finding billable work for these new lawyers. Consequently, State Bar Associations have tended to focus greater attention on the needs of their less successful members than on making legal services available to civil society at large.

However, this approach has changed with the recent approval of a new chapter to the Brazilian Bar Association's Ethics Code, which expressly allows pro bono practices in Brazil for the benefit of individuals and non-profit legal entities in need of legal assistance. It is therefore expected that law firms' pro bono programs will increase in the coming years. The law firms that already provided pro bono services before the change in the Brazilian Bar Association's Ethics Code are expected to increase the resources devoted to such practice now that the scope of the provision of pro bono services has been made clearer.

Legal Department Pro Bono Programs

Some of the legal departments within major companies in Brazil have been involved in pro bono services in conjunction with the Instituto Pro Bono (described below).²¹

Non-Governmental Organizations (NGOs)

In 2001, a group of lawyers from São Paulo created the Instituto Pro Bono,²² a groundbreaking organization designed to organize, expand and promote the provision of pro bono legal services in Brazil. One of the first tasks undertaken by this group was to overturn the São Paulo Bar Association's prohibition on performing pro bono services. Instituto Pro Bono was able to lobby the São Paulo Bar Association to pass a resolution in 2002 permitting lawyers to provide free assistance to NGOs.²³ However, this resolution did not extend to providing free assistance to individuals. As São Paulo boasts the most sophisticated legal practice and practitioners in Brazil, this was an important step to the wider

¹⁷ Complementary Law No 80 of January 12, 1994, as altered by Complementary Law No 132, of October 7, 2009, Article 4, II.

¹⁸ See http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Lei/L13129.htm (last visited on September 4, 2015).

¹⁹ See <http://www.cnbsp.org.br/Documentos/Upload/Conteudo/files/13140-2015%281%29.pdf> (last visited on September 4, 2015).

²⁰ See <http://www.amcham.com.br/impactos-legislativos-e-juridicos/noticias/arbitragem-e-mediacao-empresarial-facilitam-solucoes-amigaveis-e-preserva-relacoes-comerciais-8831.html> (last visited on September 4, 2015).

²¹ See <http://www.probono.org.br/quem-somos/prestando-contas> (last visited on September 4, 2015).

²² See <http://www.probono.org.br> (last visited on September 4, 2015).

²³ The "Pro Bono Resolution" of August 19, 2002.



spread of pro bono services throughout the country. In 2008, the Bar Association of the State of Alagoas issued a similar resolution to allow pro bono work exclusively to NGOs.

Launched with the advice and cooperation of the Public Counsel Law Center in Los Angeles,²⁴ the Instituto Pro Bono serves as a clearinghouse for pro bono cases, though it also has a number of in-house lawyers who provide pro bono services directly. It works with a network of Brazilian lawyers and law firms, referring cases to qualified lawyers who have volunteered to accept these on an unpaid basis. This organization often deals with cases relating to public interest rights of action, known as “*interesses difusos e coletivos*”, comparable to a class action. Since its first years, Instituto Pro Bono has advised NGOs in matters concerning the rights of children, women, minorities and persons with special needs and environment law. It has also established wide international alliances with similar organizations in the Americas and elsewhere. It was active, for example, in the drafting of the Pro Bono Declaration for the Americas, undertaken by the Cyrus R. Vance Center for International Justice Initiatives of the New York City Bar, and launched in January 2008²⁵. Furthermore, it was active in lobbying the Brazilian Bar Association to legalize pro bono legal services throughout the country and to permit attorneys to provide pro bono legal services not only to NGOs but also directly to individuals.

There is a growing movement in Brazil of “third sector” initiatives. These are essentially NGO-driven initiatives meant to provide various forms of social services. There have been attempts to set up NGOs to provide legal services, but in the past these have generally been prohibited by Bar Association rules. A type of pro bono practice that has been growing among law firms in Brazil is to have some lawyers act as board representatives in NGOs and other “third sector” entities and thereby participate in the administration of such entities free of charge.

University Legal Clinics and Law Students

The operation of legal clinics is not specifically regulated in Brazil. Legal clinics are normally run by qualified lawyers who supervise a group of junior and trainee lawyers, who in turn have the most interaction with the client. Traditionally, legal clinics have been organized through Brazilian universities and law schools.²⁶ The Instituto Pro Bono has programs that law students can join to support lawyers engaged in pro bono activities.²⁷

Historic Development and Current State of Pro Bono

Historic Development of Pro Bono

As explained above, Bar Associations have traditionally banned pro bono work as adversely affecting the ability of other attorneys to earn a livelihood. However, it was often argued that Article 133 of the Brazilian Constitution provides support for pro bono legal services, for it states that advocacy is an essential component of the proper administration of justice to which the State is bound. In June 2015, the Brazilian Bar Association finally approved an amendment to Article 30 of its Ethics Code that authorizes the provision of pro bono services for individuals and non-profit legal entities that cannot afford to pay for legal assistance.²⁸ The Brazilian State Bar Association may issue more detailed regulations concerning

²⁴ See <http://www.publiccounsel.org> (last visited on September 4, 2015).

²⁵ See <http://redprobono.org/> (last visited on September 4, 2015).

²⁶ For instance, since the early 1920s pro bono legal assistance is provided by students of the Law School of the University of São Paulo through the Departamento Jurídico XI de Agosto, (<http://www.dionzedeagosto.org.br>) (last visited on September 4, 2015).

²⁷ See <http://www.probono.org.br/projeto-pro-bono-jr> (last visited on September 4, 2015).

²⁸ “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



pro bono practice, but the Ethics Code amendment has already boosted the development of this practice in Brazil.

Current State of Pro Bono including Barriers and Other Considerations

Laws and Regulations Impacting Pro Bono

Historically, there was resistance from the Brazilian Bar Association to allow pro bono practice, which was seen as a violation of the ethical rules and a form of unethical advertisement, and therefore, the Brazilian Bar Association restricted the terms whereby lawyers could provide free legal assistance.

However, in June 2015, the Brazilian Bar Association approved a new chapter to the Ethics Code that permits lawyers to engage in pro bono services, irrespective of whether the lawyer was chosen by the client, or appointed by the court. In November 2015, the Brazilian Bar Association edited Ruling No. 166/2015 to regulate the provision of pro bono services.²⁹

According to Ruling No. 166/2015, pro bono services may be provided to individuals, to non-profit legal entities and to the beneficiaries of non-profit legal entities, whenever they have no financial resources to pay for legal services. Both lawyers from private practice and lawyers from in-house departments may provide pro bono services.

Also according to Ruling No. 166/2015, lawyers who chose to provide pro bono services cannot subsequently charge the beneficiaries of such pro bono services for any paid legal advice or representation; this prohibition is valid for a period of three years, starting from when the provision of the pro bono services ends. Providing pro bono services in conjunction with, or as a condition to, the provision of paid legal services is also prohibited under any circumstance.

Furthermore, Ruling No. 166/2015 expressly stipulates that pro bono services cannot be used for political or electoral purposes or as a marketing tool, and only institutional or generic publicity of pro bono services are permissible.

In January 2016, the Brazilian Bar Association issued Resolution No 02/2016, creating a “pro bono week” to take place every second week of each month of December. During such week, special events shall be organized to promote and deliver pro bono assistance to those in need.³⁰

“Loser Pays” Statute

According to Articles 82 and 322 of the Civil Procedure Code, the losing party shall pay the legal fees paid by the winning party to the lawyer.

Statutorily Mandated Minimum Legal Fee Schedule

Each State section of the Brazilian Bar Association publishes a Minimum Legal Fee Schedule. The fees may vary from State to State.

Practice Restrictions on Foreign-Qualified Lawyers

Foreign-qualified lawyers are not allowed to practice Brazilian law. They may act as consultants in foreign law, as long as they are registered with the Brazilian Bar Association for this purpose.

Concerns About Pro Bono Eroding Public Legal Aid Funding (i.e., where government pays private attorneys to represent indigent clients)

One of the concerns of the Brazilian Bar Association is that some lawyers in Brazil make their living from state-provided legal aid commissions (as mentioned above, some lawyers are remunerated by the State to assist Public Defenders, given that the number of Public Defenders in Brazil is often insufficient to handle the large demand for free legal assistance). Pro bono services could take away the only source of income for such lawyers.

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.”

²⁹ <http://www.oab-bnu.org.br/attachments/article/11955/PROVIMENTO%20166.2015.pdf>

³⁰ <http://www.oab-bnu.org.br/attachments/article/11955/resolucao-n-02-299860837.pdf>



Regulations Imposing Practice Limitations on In-House Counsel

In-house lawyers employed by a public or private company may be restricted to representing third parties as clients before Brazilian Courts or Administrative Institutions. For example, if an in-house lawyer leaves his/her employer, he or she may be forbidden to represent third parties against the company for years after the employment relationship is over.

The activities of in-house lawyers in Brazil are not fully regulated, and in 2013 the Brazilian Bar Association created a “Special Commission for In-House Lawyers”, to discuss and develop themes related to in-house legal practice, including their prerogatives and obligations.³¹ Specifically with respect to pro bono services, Ruling No. 166/2015 from the Brazilian Bar Association expressly provides that in-house lawyers are allowed to provide pro bono services.³²

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

At least some of the Brazilian State Bar Associations regulate professional indemnity legal insurance for the corresponding practitioners. This practice (of contracting provisional indemnity legal insurance) is in general still novel and little developed in Brazil. As pro bono activities have just been authorized by the Brazilian Bar Association, the State Bar Associations will still need to regulate how legal insurance may apply to pro bono activities.

Availability of Legal Insurance for Clients (protection for moderate income individuals not eligible for legal aid but unable to afford full-cost legal fees)

Legal expenses insurance products are not very developed in Brazil. The Brazilian Bar Association opposes the offer of legal services through insurance plans; it considers that such practice breaches ethical rules because it is likely to lead to the “commoditisation” of legal services, resulting in a significant reduction of legal fees (to a level below the minimum legal fee schedule) and to the undue advertising of legal services. Lawyers that take part in such legal expenses insurance products may suffer sanctions.³³

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

Public concerns about the formal legal system, such as corruption, judicial efficiency, lack of public trust in the judiciary which leads to informal dispute resolution, efficacy of elected versus appointed judges, and the professionalism of judges.

In recent years, Brazil has been involved in major criminal investigations into corruption at a State level, involving the government and State-owned companies. These cases resulted in a loss of trust in the political sector, but at the same time they reinforced the role of the Brazilian courts and legal institutions (such as the federal police and public prosecutors), confirming their strength and independence. In this context, the public trust in the functioning of the Brazilian judicial system and in such institutions has increased, as they showed that they are capable of investigating and convicting politicians and business people.

A major problem faced by the Brazilian judicial system continues to be the extensive delays in the review of almost any type of judicial proceedings. These delays are due to insufficient human resources or infra-structure, as well as to the number of appeals possible against almost any type of judicial/court decision. As a result, it is common for legal proceedings in Brazil to last five, ten or more years. Such delays are often a cause of concern and lack of trust in the judiciary.

³¹ See <http://www.oab.org.br/noticia/25263/oab-cria-comissao-especial-da-advocacia-corporativa> (last visited on February 21, 2016); <http://www.secovi.com.br/biblioteca/publicacoes/oab-cria-comissao-especial-da-advocacia-corporativa-para-dialogar-com-empresas/750/> (last visited on February 21, 2016); and <http://www.migalhas.com.br/Quentes/17,MI217367,61044-Comissao+Especial+da+Advocacia+Corporativa+toma+possa+em+Brasilia> (last visited on February 21, 2016).

³² See <http://www.oab.org.br/noticia/29076/oab-edita-provimento-que-regulamenta-a-advocacia-pro-bono> (last visited on February 21, 2016).

³³ See <http://www.conjur.com.br/2010-jan-09/resistencia-oab-nao-impede-oferta-planos-assistencia-juridica>; and http://www.ambito-juridico.com.br/site/index.php?n_link=revista_artigos_leitura&artigo_id=3553 (last visited on February 21, 2016).



Opposition from the Bar

Until June 2015, the Brazilian Bar Association and the State Bar Associations restricted the terms on which free legal services could be provided and regarded lawyers who did not charge for their services as breaching professional ethics rules. In this context, pro bono work could be perceived as suggestive of unethical marketing.

Only the Bar Associations of the States of São Paulo and Alagoas in Brazil allowed pro bono services to be provided, but their authorization was limited to pro bono services directed to NGOs (as discussed above). In January 2012, the Ethics Commission of the São Paulo Bar Association issued a resolution expressly prohibiting the provision of pro bono services to individuals.³⁴

The new chapter to the Brazilian Bar Association's Ethics Code that was introduced in June 2015 has approved pro bono practices in Brazil. These practices have been further regulated by Ruling No. 166/2015, issued by the Brazilian Bar Association in November 2015.³⁵

Pro bono work remains subject to the general restrictions on advertising imposed by the State Bar Associations. Brazilian lawyers cannot advertise to prospective clients, publicize the value of their services (paid or free) or solicit legal work. They may only inform the public about the type of legal services that they provide.³⁶

Pro Bono Resources

Entities Engaged in Pro Bono

As mentioned, law firms and legal departments of companies based in Brazil were engaged in some pro bono activity before the recent changes in the Brazilian Bar Association's Ethics Code and are expected to increase such activities going forward. In addition, the non-profit organization Instituto Pro bono has had a major role in the development of pro bono services in the country.

Bearing in mind that 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" (such as Ashoka Organization and Connectas Human Rights³⁷), as well as through contact with the Instituto Pro Bono. There are presently several websites that list entities in the "third sector" in Brazil and specify areas in which they may need assistance.³⁸

CONCLUSION

There is a growing awareness and willingness in Brazil to provide pro bono legal services in a systematic and organized manner. Access to justice remains an unattainable right for many in Brazil and pro bono advocacy could play a much more instrumental role than it currently does to help alleviate this lack of access to justice. Although it is clear that much work remains to be done, indications point to increased participation in, and recognition of the value of, pro bono activities. With the recent approval by the Brazilian Bar Association of the provision of pro bono services in Brazil, the opportunities available in the pro bono arena will certainly increase in the years to come.

³⁴ See <http://www.conjur.com.br/2012-jan-05/advocacia-pro-bono-destina- apenas-pessoa-juridica-oab-sp> (last visited on September 4, 2015); and <http://www.migalhas.com.br/Quentes/17,MI162849,81042-ADIn+questiona+lei+do+MT+que+responsabiliza+advogado+por+obrigacao+de> (last visited on September 4, 2015).

³⁵ <http://www.oab.org.br/noticia/29076/oab-edita-provimento-que-regulamenta-a-advocacia-pro-bono>

³⁶ Brazilian Bar Association, Ruling No 94 of September 5, 2000.

³⁷ See <http://www.conectas.org/artigo-1> (last visited on September 4, 2015).

³⁸ See <http://www.terceirosetor.org.br/> (last visited on September 4, 2015); <http://portaldovoluntario.v2v.net/> (last visited on September 4, 2015); <http://www.voluntariado.org.br/> (last visited on September 4, 2015); <http://www.voluntarios.com.br/> (last visited on September 4, 2015); and <http://www3.ethos.org.br/> (last visited on September 4, 2015).



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Pro Bono Practices and Opportunities in Brazil

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