



Pro Bono Practices and Opportunities in Peru¹

INTRODUCTION

The legal community in Peru, based primarily in the capital city of Lima, is increasingly recognizing the value of developing a pro bono culture and the significant impact that pro bono work can have on democracy and justice. The Pro Bono Declaration for the Americas is the founding document that has helped to institutionalize these practices by Peruvian lawyers along with the emergence of institutions such as the 'Alianza Pro Bono'. This report provides an overview of the Peruvian legal system, legal aid available for low-income individuals, and the recent growth in the pro bono movement in Peru.

OVERVIEW OF THE LEGAL SYSTEM

The Justice System

Constitution and Governing Laws

The 1993 Constitution (the “**Constitution**”) is the fundamental and supreme law of Peru. It has two primary functions: (i) to establish the government and its powers; and (ii) to recognize the fundamental human rights of individuals and the constitutional procedure to enforce them. Accordingly, Article 43 of the Constitution establishes a unitary, representative and decentralized government. There are three governmental branches, in accordance with the principle of separation of powers, which are the Executive, Legislative and Judiciary branches. The Executive branch, composed of the President of the Republic and the Council of Ministers, is in charge of the administration of the State, ensuring that laws are duly executed and enforced. The Legislative branch, which resides in Congress, has the authority to make, amend and repeal laws. Finally, the Judiciary Power, through the court system, administers and enforces the laws, and is expressly bound by the Constitution to adhere to the principle of due process of law.

Peru has signed and ratified (among other Human Rights Treaties and Declarations) the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the American Convention on Human Rights, including the international jurisdiction of the Inter-American Court of Human Rights. These treaties provide remedies for a denial of justice in Peruvian courts.

The Courts

The Peruvian Court System is comprised of the Supreme Court, the Superior Courts (Courts of Appeal), Trial Judges and, at the lowest level, Justices of the Peace (*Jueces de Paz*). The Constitutional Court is an autonomous entity, distinct from the Judicial Branch, which plays a critical role in the enforcement of laws. The Constitutional Court has two primary functions: (i) implementing procedures to enforce the Constitution as the supreme law of the State (the procedure of unconstitutionality and the procedure to solve conflicts between government entities); and (ii) implementing procedures to enforce constitutional rights (*habeas corpus*, *proceso de amparo*, *habeas data*).

In accordance with the Constitution (Article 155), all judges are selected and appointed by the National Council of the Judiciary; an independent body composed of seven members that are elected as follows: (i) one by the Supreme Court; (ii) one by the Board of Supreme Court Prosecutors; (iii) one by the members of Peru's Bar Associations; (iv) two by other professional associations; (v) one by the presidents of Peru's public universities; and (vi) one by the presidents of Peru's private universities.

¹ This chapter was drafted with the support of Estudio Eche copar



The Practice of Law

Education

In order for a student to become a lawyer, he/she must complete an undergraduate university degree, which normally takes three to six years depending on the university. Thereafter, the student must also obtain a legal degree by completing certain additional requirements established by the university (thesis, degree examination, among others).

Peruvian law does not require that students perform a minimum number of pro bono hours in order to obtain the lawyer degree.

Legal Regulation of Lawyers

Decree No. 25873 (*Decreto No. 25873*) requires that every practicing attorney be affiliated with a Bar Association². There are 31 national Bar Associations³ geographically distributed, which, among other functions, oversee attorneys' professional conduct. To join a Bar Association, an attorney must hold a law degree from one of the universities in Peru. Attorneys holding law degrees from foreign universities may be admitted to practice, if their degree is evaluated and considered by the authorities to be the equivalent of a Peruvian degree.

Demographics

As of 2014, there were 130,000 Bar affiliated lawyers (on which see below). That equates to roughly one lawyer for every 234 habitants.⁴

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

The obligation to provide legal aid is stipulated in the Constitution:

“Article 139. The Justice System has the following principles and rights: (...) 14. (...) Every person (...) has the right to communicate personally with a defender of his choice and to be advised by the latter since the moment that is summoned or arrested by the authority. (...) 16. Free administration of justice (court fees) and free defense for low-income people and for everyone in cases stipulated by legislation.”

Furthermore, the 1991 Judicial Branch Organic Act (applicable for all types of legal procedures) provides that legal practice shall serve a social role in favor of justice and law and that every person has the right to be defended by a lawyer of their choice (Article 284).

For criminal proceedings, the 2004 Code of Criminal Proceedings provides that “Every person has the inviolable and unrestricted right to be informed of his rights, to be communicated immediately and in detail the complaint against him, and to be assisted by counsel of their choice or, where appropriate, by a state-sponsored / legal aid lawyer, since he is summoned or arrested by the authorities (...)”.

For civil proceedings, the 1993 Code of Civil Proceedings promotes legal aid (*Auxilio Judicial*) providing “Judicial assistance will be provided to individuals in order to cover procedural expenses for their subsistence and the subsistence of their dependents in danger” (Article 179).

² A Bar Association affiliation does not mean that the attorney in question may only exercise its profession within such Bar Association's jurisdiction. Once affiliated to a Bar Association, a lawyer can practice law in any part of the Peruvian territory.

³ See <http://diarioelcallao.org/de1902.html> (last visited on September 4, 2015).

⁴ See <http://laley.pe/not/1215/los-abogados-en-el-peru/> (last visited on September 4, 2015).



State-Subsidized Legal Aid

State-sponsored legal aid is available to indigent individuals for the defense of criminal and some civil and family law matters⁵ under the 2009 Public Defender Service Act. This service is provided by the Justice Department (*Ministerio de Justicia*) and covers individuals who either (i) lack sufficient financial resources to hire a private defender, or (ii) are unemployed or have a salary below the minimum vital remuneration (S/.750, equivalent to approximately US\$230) (Article 15).

In civil matters⁶, under the 1993 Code of Civil Proceedings, beneficiaries of free legal services are not required to pay court fees (Article 182) and are entitled to a free defense provided by a lawyer of a Bar Association (Article 183). This legal aid is granted by the judge in charge of the applicable trial, and such assistance must be requested on a special form approved by the Administrative Government of the Judiciary Branch (Article 180).

The Justice Department has also recently launched a program to provide legal advice to the public in respect of labor matters.⁷

Mandatory assignments to Legal Aid Matters

According to Article 288.12 of the 1991 Judicial Branch Organic Act, all lawyers are legally obliged to assume at least one defense annually, without remuneration. This legal aid requirement is overseen and administered by the various Bar Associations. However, in reality, this obligation is not being enforced.

Unmet Needs and Access Analysis

As noted above, the legal aid scheme only provides aid in respect of criminal matters and limited civil (mainly family matters) and labor matters, and only to indigent persons. State funding for legal services is criticized as insufficient to meet the needs of those eligible for legal aid.⁸

Alternative Dispute Resolution

Mediation, Arbitration, Etc.

In addition to negotiation (a dispute resolution mechanism carried out directly between the parties) Peruvian Law recognizes the following alternative dispute resolution mechanisms: (i) mediation (the mediator is not compelled to propose a solution to the parties); (ii) conciliation (the conciliator is generally obliged to propose a solution to the parties); and (iii) arbitration (the arbitrator's decision is binding and has practically the same effects as a judge's sentence).⁹ Legal aid is not available for such processes.

⁵ According to Article 9 of the Act's bylaw, such family matters are restricted to: (i) alimony claim (including claim for its raising); (ii) conventional separation and ulterior divorce; (iii) registry records' rectification; (iv) intestacy; (v) death inscription; (vi) extramarital filiation in favour of an underage; (vii) custody; (viii) family council; (ix) interdiction; (x) familiar violence, only aiding the affected part; and, (xi) de facto union. The other civil matters are limited to eviction.

⁶ Those civil matters include family (non patrimonial civil matters) and other patrimonial civil matters.

⁷ See <http://www.minjus.gob.pe/defensapublica/> (last visited on September 4, 2015).

⁸ See <http://www.elpueblo.com.pe/noticia/opinion/la-defensa-publica-en-el-peru> (last visited on September 4, 2015) and <http://archivo.larepublica.pe/22-01-2015/faltan-defensores-publicos-en-la-fiscalia-para-atender-a-victimas-de-abuso-sexual> (last visited on September 4, 2015).

⁹ See <http://blog.pucp.edu.pe/blog/derysoc/2008/08/18/los-medios-alternativos-de-solucion-de-conflictos/> (last visited on September 4, 2015).



Ombudsman

Under the Constitution, an Ombudsman has also been established as a constitutionally autonomous entity to defend fundamental rights and supervise with compliance of duties of the Government's administration in Peru. The Ombudsman deals with all complaints, consultations and requests from Peruvian citizens that have seen their rights violated¹⁰. However, it does not impose sanctions or resolutions and does not replace the functions of the prosecutor or the judge.¹¹

PRO BONO ASSISTANCE

Pro Bono Opportunities

The Pro Bono Declaration for the Americas (the "**Americas Pro Bono Declaration**"), spearheaded by the Cyrus R. Vance Center for International Justice of the New York Bar, was launched in January 2008 by a committee of leading practitioners in Latin America and the United States. The Americas Pro Bono Declaration calls for each signatory to promote an average of at least 20 hours of annual pro bono work per practicing attorney.

Mandated to do or report on Pro Bono Matters?

Apart from the obligation established in Article 288.12 of the 1991 Judicial Branch Organic Act (as explained above), under Peruvian law, there is no enforceable rule for private attorneys to do, or report on, pro bono matters.

Law Firm Pro Bono Programs

Those law firms that are signatories to the Americas Pro Bono Declaration have established pro bono programs of their own. In addition, in 2013, 17 leading law firms joined to launch Alianza Pro Bono,¹² a non-profit organization created with the purpose of institutionalizing pro bono culture in Peru. Since its creation, Alianza Pro Bono has provided legal assistance to poor and vulnerable individuals and to the organizations that assist them. All member firms are signatories of the Americas Pro Bono Declaration.

Alianza Pro Bono was established as a civil association (*asociación civil*) under Peruvian law. It is governed by an assembly comprised of its 17 members, and a seven-member board of directors who are appointed for periods of three years. Each member firm is represented by one partner and one associate, the latter acting as pro bono coordinator for each such firm.

¹⁰ The Defender's actions during an investigation include the power to request information from the authorities on the issues under consideration and access to official documents (including judicial) as well as to carry out measures of inspections and everything that contributes to the collection of evidence or proof that can clarify the violation of rights or failure to official duties.

Therefore, the Constitution imposes on the Government the duty to cooperate with the Ombudsman. The task of the Ombudsman's defence is performed in partnership with citizens. Because of this, in some cases, it is the citizens themselves who accompany officials in their proceedings.

In the following link you will find a statistical table with the number of cases handled until July 2015.
<http://www.defensoria.gob.pe/Downloads/estadisticas/cuadro-jul-2015.pdf> (last visited on September 4, 2015).

Another pie chart can be found in the following website: http://www.defensoria.gob.pe/casos.php#casos_anuales (last visited on September 4, 2015).

As can be noticed, the greater amount of complaints admitted to consideration.

¹¹ See <http://www.defensoria.gob.pe/defensoria.php> (last visited on September 4, 2015).

¹² See <http://www.alianzaprobono.pe/quienes-somos/> (last visited on September 4, 2015).



Bar Association Pro Bono Programs

Article 296 of the 1991 Judicial Branch Organic Act (which must be read jointly with article 288.12 explained above) establishes that Bar Associations must designate a lawyer to handle cases in favor of persons with low resources without charging a fee.

University Legal Clinics and Law Students

Law students are not required by law to undertake pro bono work nor are they typically obliged to do so by their universities.

Historic Development and Current State of Pro Bono

Historic Development of Pro Bono

Pro bono work has faced some important obstacles in Peru, including:

Article 32 of the Income Tax Act states that a law firm must pay income tax on any legal services that it provides for free, based on an imputed “market value” for such services. However, that obstacle can be overcome by rendering the relevant services through a non-profit organization and obtaining a Certificate of Exemption From Income Tax granted by the Peruvian Tax Authority.

Many lawyers at law firms can be reluctant to do pro bono work because it diverts efforts from their achieving the billable targets set for them by their firm. This obstacle can be addressed if law firms considered pro bono work as “billable” for the purposes of their individual lawyer’s goals.

Laws and Regulations Impacting Pro Bono

According to Peruvian law, the loser (in a civil trial) shall pay the expenses of the trial and the winning party lawyers’ fees.

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

There are genuine concerns with respect to the formal legal system, such as corruption, judicial efficiency, a lack of public trust in the judiciary, efficacy of elected versus appointed judges, and the professionalism of judges and some lawyers. These concerns lead individuals to avoid the formal legal system and seek informal dispute resolution.

Pro Bono Resources

Law Firms

Many law firms, including Ehecopar, have pro bono programs that provide free legal assistance to low income individuals and NGOs in need of legal assistance with regard to matters that can have a societal impact. Website: <http://www.ehecopar.com.pe/>

TrustLaw Connect

TrustLaw is the Thomson Reuters Foundation’s global pro bono legal program. Even though it is not designed to do pro bono work itself, TrustLaw connects the best law firms and corporate legal teams around the world with high-impact NGOs and social enterprises working to create social and environmental change. Website: <http://www.trust.org/trustlaw/>

Alianza Pro Bono

See outline above. For more information please visit their website: <http://www.alianzaprobono.pe/>

CONCLUSION

Pro bono work has taken a big step forward thanks to initiatives like Alianza Pro Bono, and participation by lawyers in pro bono in Peru continues to increase slowly but surely. Lawyers are becoming



increasingly conscious of the need to provide pro bono services in a society where there is a high percentage of individuals who do not have access to justice. In recent years, pro bono practices have improved and are more widely understood; law students are choosing where to work based upon the pro bono work undertaken and, in universities, more seminars about pro bono are offered. Additionally, significant Peruvian law firms and universities have joined the pro bono movement, providing pro bono services alongside foundations and other NGOs.

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