

## Pro bono: The good fight bearing fruit

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The responsibility of making justice more accessible in Latin America weighs heavier than ever on the shoulders of lawyers in the region, and law firms have risen to that challenge. Practitioners are now engaging with pro bono matters more than ever and firms' efforts to institutionalise pro bono services are delivering results beyond expectations. We present key trends from this year's Latin Lawyer-Vance Center Pro Bono Survey.

"The biggest achievement with pro bono work is uniting a legal community that is broader than us. It is not a competition; we are all helping each other," summarises Lila Gasca, pro bono director at Hogan Lovells (Mexico).

A record 206 law firms responded to the latest pro bono survey conducted by Latin Lawyer and the Cyrus R. Vance Center for International Justice. That is the highest-ever response rate for the annual study, which – now in its 14<sup>th</sup> year – looks back at pro bono activity in 2020.

"The huge jump in the number of law firms answering the survey indicates that the pro bono ethos is really penetrating the eco-system," summarises Antonia Stolper, who is the Vance Center Committee's vice chair for Latin America and of counsel at Shearman & Sterling LLP.

Our data supports that pro bono practice is gaining momentum throughout the region. Engagement with the pro bono work remained strong overall, with Latin America's two largest markets – Brazil and Mexico – capturing a majority portion of the work. Participation from the region's smaller jurisdictions increased in 2020, demonstrating that pro bono is taking greater prevalence there. Responses from Bolivia, El Salvador and Nicaragua all increased by double or more. Steady rises were also seen in Guatemala and the Dominican Republic.

### Everything to declare

According to our survey, lawyers dedicated more hours to pro bono work in 2020 than in previous years. By signing the Pro Bono Declaration for the Americas (PBDA), law firms pledge to complete at least 20 hours of pro bono work per lawyer each year. Firms have fallen noticeably short of that target in the past. However, the latest figures demonstrate how law offices are closing in on the target.

On average, firms provided 15.4 hours of pro bono assistance per partner in 2020. Back in 2016, law outfits were averaging a much reduced 11.5 hours per partner. The number of associates completing pro bono hours has risen too; in 2020, the average was 17.2 hours. That represents an approximate two-hour increase on 2016's figure.



A gap may still exist, but the data is tracking in the right direction. It indicates that firms are taking their PBDA commitment more seriously and implementing measures to make pro bono work an integral pillar of their offering.

“Signing the PBDA is the very first step for firms aiming to institutionalise pro bono,” says Jorge Escobedo, director of pro bono partnerships at the Vance Center. “The PBDA is like the constitution for pro bono in Latin America – it has laid the ground for several initiatives that firms are now working on,” he adds.

Just under 60% of the firms surveyed are PBDA signatories. That statistic is yet another indicator that the majority of Latin American law firms are committed to their pro bono obligations.

“Firms publicly declaring their involvement in pro bono work is critically important. Why? It shows that you raised your hand, put your name on a list and you’re now accountable,” summarises Stolper.

By setting manageable targets, the PBDA helps lawyers keep on track with their pro bono commitments. The more firms that sign up each year, the better idea they have of the goals they should set for the following year.

“The PBDA is an incentive; the mere act of signing it creates an internal pressure among lawyers to complete pro bono work,” says Maria-Fernanda Uzcategui, pro bono adviser at Baker McKenzie (Venezuela). “Before signing it, we had no idea it would be the push we needed to complete all our pro bono projects on time,” adds fellow Baker McKenzie partner Oscar Morean. One such project was the Jacinto Convit foundation, a local medical organisation that provides healthcare to vulnerable people. The firm helped it navigate US-issued trade sanctions in 2020.

Some 30% of law firms dedicated over 1,000 hours to pro bono work in 2020. This is an encouraging find. In comparison to just 25% of firms that devoted more than 1,000 hours to pro bono matters in 2018, it demonstrates that firms have upped their commitment to pro bono duties as the years have gone by.

“Our partners committed more hours than ever before to pro bono in 2020,” says Fernanda Mierez, partner at Argentina’s Beccar Varela. Firms have grown closer to the PBDA target in recent years, but Mierez mentions that the covid-19 pandemic changed the game; the crisis created widespread impetus for social responsibility. “It made us see the world through a different lens; it made us realise that people cannot fight for their rights if they don’t know what they are, so we need to be there for the most vulnerable members of society,” she adds.

Through the Arco Iris project, Peruvian firms stepped up to help marginalised groups in 2020. Local outfit Benites, Vargas & Ugaz Abogados advised on workshops that taught over 300 families how to identify and report domestic abuse. Local clearinghouse Alianza was crucial in selecting the project as one in need of legal assistance. “If firms had not been members of the clearinghouse, they would not have been able to get involved in this project,” says Marina Lazarte, executive director at Peruvian clearinghouse Alianza.

Brazil’s clearinghouse also brought important work to firms’ attention in 2020. The pandemic unmasked the alarmingly unsanitary conditions of São Paulo’s state prison system; already overcrowded prison centres became almost unliveable when they circumvented covid-19 restrictions. “Within a week, we had a queue of 400 people to help,” says Marcos Fuchs, executive director of Brazil’s Instituto Pro Bono. The clearinghouse connected over 200 pre-trial detainees to local firms, such as Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados and TozziniFreire Advogados, which helped provide legal aid to remove them from cramped and unhygienic cells.

Seeing the first-hand impact of pro bono initiatives last year spurred advisers to up their commitment. “We have noticed an increase in the hours invested by partners and attorneys that are working on some of the most impactful social projects,” says Baker McKenzie (Mexico) partner Rosario Lombera. “Knowing the impact of their contribution towards key issues such as environmental, social and governance (ESG) targets has been one key driver, along with the opportunity to support local communities,” she adds.

## Low risk, high reward

There is still room for improvement, however; most firms are still not meeting the 20-hour pledge they made to the PBDA.

Accomplishing the 20-hour goal requires air-tight commitment. “It is a difficult target to reach,” explains Benjamín Grebe, partner at Chilean firm Prieto. Nonetheless, the PBDA can help firms stay on target. “Each year we meet with PBDA representatives to discuss our results and how to improve our average” explains Grebe.

Some firms, such as Hogan Lovells (Mexico), use tracking numbers to ensure that lawyers are on course for the PBDA target. The firm can use the data to map the quota of hours that each adviser has completed, while they can also trace exactly which cases they are working on.

“This not only helps us track how many hours lawyers are dedicating to pro bono work, but we can feedback their progress to them each month,” says Gasca.

In the latest survey, six out of 10 firms informed us that they use a methodology for tracking pro bono work. Structure ensures lawyers can measure their pro bono targets, while a solid methodology helps institutionalise the work.

“Tracking the quantity and type of pro bono work that lawyers do is paramount,” says Todd Crider, Simpson Thacher & Bartlett LLP partner and Vance Center Committee member. Having an in-built system for measuring hours, such as digital software, not only helps firms stay on target but to “recognise and reward extraordinary efforts,” he explains.

## Get the right measurement

For law firms to meet pro bono objectives, they need the appropriate forums to measure pro bono activity. Firms have made strident efforts here. Some 71% of respondents have a pro bono committee at their firm – a steady increase from 63% five years ago. Nine out of 10 firms also have a partner supervising each pro bono project, a jump upwards from 85% of firms that did this in 2019.

Supervising pro bono work fosters a sense of duty among lawyers. Once the firm sets out its expectations, advisers become more inclined to devote time to the work.

Pro bono committees help firms to organise and monitor their pro bono activities too, explains Lombera of Baker McKenzie (Mexico). “It provides an opportunity to promote pro bono work and generate bigger interest and engagement in these matters,” she adds.

Mexican law firm Creel, García-Cuellar, Aiza y Enríquez SC assigns a responsible partner to each pro bono case and matches each matter to a practitioner from a relevant practice area. “It takes the advice to another level – if we see things are slowing down, we can contact the responsible partner to get things going,” explains counsel Valentina Villa.

Engaging senior staff in pro bono cases can also have a successful trickle-down effect. “What works best is the tone from the top,” says Stolper. “If the colleagues you admire are doing pro bono and going the extra mile, it gets lawyers on board who weren’t on programme before,” she adds.

“Whenever there is a partner involved, it guarantees that everyone is doing quality work,” agrees Escobedo. Risk management techniques, which are used in most other legal departments, can help hold lawyers accountable for their pro bono work too. Appointing dedicated co-ordinators and pro bono directors does this by ensuring that someone keeps their thumb on pro bono matters, explains Escobedo.

According to our data, most firms rely on a pro bono co-ordinator to help organise work. Some 82% of respondents told us that a designated member of staff co-ordinates pro bono work at their firm, a gradual rise from 75% in 2016. Around 13% of those work full time, which is an increase from 9% in 2019.

Pro bono co-ordinators have a pivotal role in assigning work to lawyers. As well as being the point of contact for clearinghouses, they monitor lawyers’ performance and keep track of the number of hours completed. As co-ordinators have regular contact with lawyers, they have a better understanding of which advisers are best suited to specific cases and record which legal assistance pro bono clients demand most regularly.

“We can see how many cases we have for certain legal areas, for example we know at the moment that NGOs are increasingly seeking tax advice,” explains Hogan Lovells’ Gasca. In 2020, the firm advised several NGOs on preparations for Mexico’s upcoming 2022 tax reform.

## Law of attraction

A way to reinforce firms' pro bono offering is to incorporate it into lawyers' professional development. Including pro bono advice in salary and performance reviews not only attracts lawyers to pro bono work but encourages them to put their best foot forward.

Of the survey's 206 respondents, 31% said they consider pro bono work when calculating partner compensation. That is the same as 2019's results, proving that pro bono has not dropped on law firms' priority lists even amid a tumultuous 2020.

Using pro bono for career development makes it more appealing, incentivising lawyers to treat the work like billable matters. "It sends a clear signal to lawyers that you must show a serious commitment to pro bono work if you want to progress at the firm," says Alianza's Lazarte.

Some 77% of law firms considered pro bono work when evaluating associates' yearly performance in 2020 compared to 80% in 2019. Over half of the survey's respondents said they used pro bono work to determine associates' pay and bonuses in 2020, a result consistent with findings from the year prior.

"It is crucial that pro bono work is met with best practice just like every billable matter," suggests Escobedo.

At EY Law (Costa Rica), certain compensation benefits can only be unlocked if lawyers' meet their pro bono targets. Though, with a growing interest in social responsibility, those incentives aren't needed as much as they previously were. Partner José Alfaro observes a "refreshing" level of interest from lawyers across the firm. "Even though there is economic incentive, engagement from the pro bono side is easier in many instances than it used to be," he adds.

## The clear choice

More than 70% of the survey respondents said clearinghouses were the primary provider of pro bono cases, making it the most popular way for firms to find work in 2020.

Clearinghouses act as an intermediary between legal counsel and pro bono clients by assigning work to firms. They are vital for laying down the foundations of a successful pro bono department and providing a forum for firms to communicate ideas and concerns.

They also establish a reliable channel through which work can flow into firms easily. "If you have a robust pro bono clearinghouse, it enhances the law firms' ability to seamlessly source pro bono work," comments Stolper.

"We rely on clearinghouses to be a mediator that connects vulnerable people to the most suitable advisers," says Beccar Varela's Mierez. Pro bono foundations provide the tools for firms to come together. "This is a crucial role of many clearinghouses; not only be the connector between pro bono clients and advisers but to help firms share experiences and collaborate on ideas," she says.

Without clearinghouses, the region's pro bono efforts would have a much-diminished impact. "Clearinghouses serve as a vital community hub; they are a focal point for NGOs and other pro bono clients. It's the most efficient way for law firms to maintain those relationships," summarises White & Case LLP partner Sabrena Silver.

### A new frontier

While some Latin American jurisdictions benefit from multiple clearinghouses (Mexico counts three), others don't even have one. Guatemala started establishing a clearinghouse in 2017, with Bolivia kickstarting its efforts one year later.

Setting up a pro bono clearinghouse has not been plain sailing in these two countries; the hurdles have not just been political, but also monetary and logistical.

Ignorance is bliss, they say. Yet that is one major obstacle that smaller jurisdictions often encounter. Fundación Pro Bono Guatemala's executive director, Claudia Murga, says the first block she received when establishing the clearinghouse came from authorities that didn't fully comprehend pro bono work. "They thought it would create unfair competition for lawyers," she says, adding that the process is often delayed by simple misunderstandings.

After Bolivia's 2019 elections were met with weeks of protests, the process of setting up the clearinghouse was also impeded. "The political crisis already had a negative impact on moving the process forward, then came the pandemic," says Roger Yance, executive director of Fundación Pro Bono Bolivia. "That's why we didn't have our certificates until just recently and currently the new political administration is still finding its feet," he adds. As a result, certain administrative tasks remain on the backburner and the clearinghouse still awaits its final approval from authorities.

Guatemala's clearinghouse is currently seeking to overturn legal resolutions that aim to prevent the institution from gaining legal status. Over the past few months though, momentum has picked up and things are moving in the right direction. "We are still pending vital steps to become a recognised foundation, with all rights and obligations," says Murga.

Local firms play a pivotal role in helping clearinghouses navigate these complex hurdles and getting operations off the ground. Outfits have helped draft and review documentation, while several have contributed financially, says Yance. "They have been there for every resolution and amendment and have helped cover every expense," Murga agrees.

In the initial proceedings, clearinghouses have few ways of sourcing revenue so law firms' financial support can make a real difference. "Without their contribution, we would not be able to operate," Yance mentions. Using the donations, pro bono institutes can begin to budget for key structural adjustments, such as adding new staff and expanding the range of legal advice on offer.

Relying on the existing support mechanisms, the Bolivian and Guatemalan institutions have already been involved in pro bono projects – the Vance Center's Keep Families Together [initiative](#). The project called on legal advisers across Latin America to help provide free advice to immigrants arriving at the US border, whose families are often separated.

With Guatemala and Bolivia's clearinghouses both set to become operational in 2022, the institutions aim to further expand their portfolio with more pro bono cases in the upcoming months. However, the decision is not completely in their hands; it hinges largely on political and social factors.

"We plan to have all our legal documentation by the first quarter of 2022, but we know it is not entirely up to us," Yance summarises.

## A new generation

It's no doubt that clearinghouses remain a vital source for pro bono work. With the boost they provide, lawyers become more confident in taking personal initiatives on pro bono work too. Our latest data indicates that law firm staff are engaging with pro bono matters more proactively than ever, and trends show that the work is a source of increased communication between in-house clients and law outfits. Over 64% of firms said they received pro bono work from law firm members or clients in 2020, making it the second most popular form of gathering cases after clearinghouses. This is a notable increase from 2019 when 45% of firms found work this way.

"I think that after several decades, lawyers are changing their view of pro bono work," says Brazilian clearinghouse director Fuchs. "It is no longer something firms are obliged to do – most firms now have pro bono co-ordinators and committees and believe in access to justice," he adds.

A new generation of lawyers is taking the lead on pro bono initiatives, with social responsibility high on the agenda. “There is more interest among young lawyers as there is a sense of moral duty and social justice,” mentions Isabel Becerra, Prieto’s pro bono co-ordinator. The firm last year gave back to the community through its advice to Corporación Crea+, a non-profit that provides free education to students from low-income communities in Chile, Brazil and Peru.

EY Law’s Alfaro agrees that “with younger talent, you do not have to push as you would have before; they are eager to make themselves available and they often show leadership by finding pro bono initiatives through professional relationships,” he says.

The pandemic of course inspired lawyers to rally around pro bono projects. As the need for legal assistance climbed to new heights, advisers were moved to give back through pro bono. “It inspired people to address social issues and disparities and I think really galvanised lawyers into helping,” comments White & Case’s Silver.

## The future is bright

The future looks promising for pro bono. A salient show of resilience during 2020 bodes well – in a year marked by the phrase “adapt or die,” pro bono practices of law firms proved their ability to acclimatise themselves and respond to novel challenges in a crisis.

Lawyers are more motivated than ever to make a difference with their legal ability, using the tools that clearinghouses have provided. These results show that clearinghouses are succeeding in what they set out to do; to make pro bono practice the standard, rather than the exception to the rule.

Clearinghouses are now harvesting the fruits of their labour, the seeds of which were planted over the course of the past years.

“The main forward-looking question is whether there will be a paradigm shift for pro bono practices; will clearinghouses and firms pivot as they have for the past year to meet the legal needs of the world around them? I think so. I think they shall continue to respond,” surmises Escobedo.

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