

NOT A CHOICE, BUT



A NECESSITY

Our annual pro bono survey reveals leadership is key to getting broad buy-in across the law firm. By Clare Bolton, research by Richard Woolley

Carolina Bobillier Ceballos, a tax attorney from Colombian firm Gómez-Pinzón Abogados, surveys the meticulously neat dormitories of the children under the care of charity Hogares Club Michín. “I wonder if it was this house that had the tax problem I resolved,” she asks.

As a group of lawyers from the firm, which provides advice to the charity on a pro bono basis, met the former street children the charity cares for, they are loath to boast about their work. “We just help them as we would any other client. We ensure they can run smoothly and focus on the important work – looking after the children,” says Juan Manuel Ruíz Trejos, Carolina’s colleague and the lead associate for the project.

But while to a corporate attorney the issues the charity faces may be routine, they are far from so for the charity’s workers themselves. “These kinds of issues, when you do not understand them, can seem like massive problems,” Pilar Escobar, the charity’s

executive director, tells the lawyers. “The tax issue you resolved may have turned out to be a small one, but for me, it meant a month of sleepless nights, worrying about it.”

Hogares Club Michín was founded in 1958 to care for children from Bogotá’s least privileged communities. Today the charity cares for more than 175 children under the age of 18, often groups of brothers and sisters the charity takes great care to keep together. More than 8,000 children have been fed, clothed, housed, educated and loved in the charity’s 50 years.

The charity’s homes for the children – separated into boys and girls, and by age – are in the far west of the city, and while they are not state of the art, they are clean, spacious and well provided for.

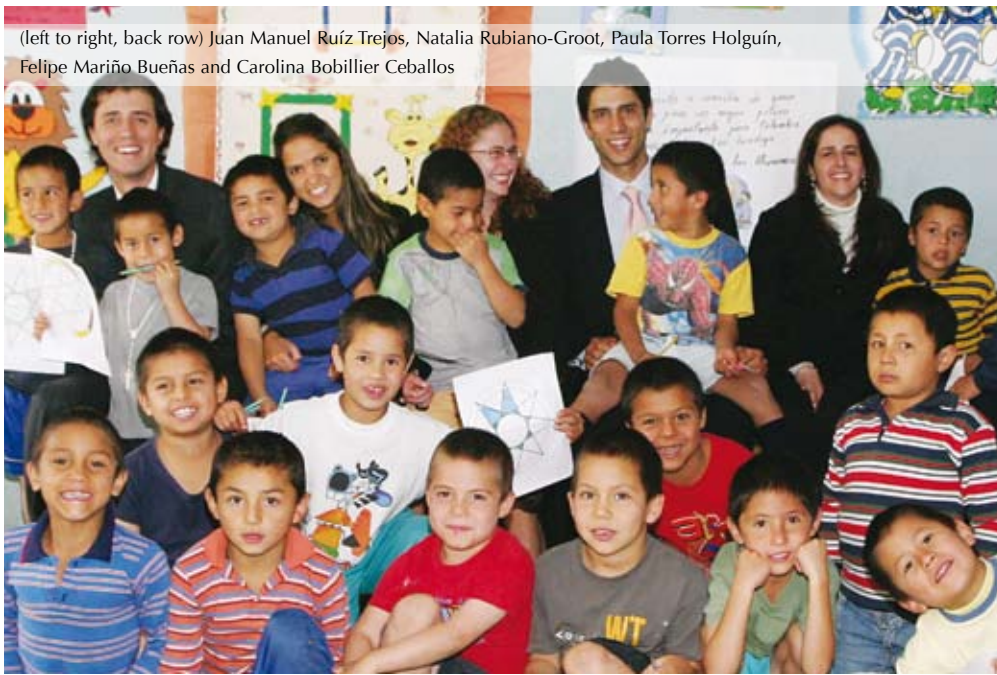
The children are taught essential life skills, such as making bread, and given the education and support they need for a good start in life. For example, one ex-resident went on to study art and to exhibit his work in Germany, among other places

– and regularly comes back to Michín’s homes to work with the kids and help out where he can.

More recently, Michín has branched out into caring for women who have been subjected to abuse. It houses the mother and her children temporarily while providing counselling and training. It is the only charity in Bogotá to provide this service – and it houses just 10 women. Clearly, and despite the charity’s dedicated work thus far, the unfulfilled need is huge.

Like any enterprise, it must comply with the law – register its workers, get licences for its operations, and pay taxes, among any number of other legal matters. In the past, unable to pay for legal advice, it muddled along as best it could. That was until it was accepted onto a programme run by Compartamos con Colombia, a “clearing house” which links charities with demonstrable social impact with law firms, management consultants and banks. The service companies offer free advice to the





(left to right, back row) Juan Manuel Ruiz Trejos, Natalia Rubiano-Groot, Paula Torres Holguín, Felipe Mariño Bueñas and Carolina Bobillier Ceballos



charities, and pay a fee for the running of Compartamos. That brought it in touch with Carolina, Juan Manuel and their colleagues.

Gómez-Pinzón is one of a number of leading Colombian law firms to contribute to Compartamos. “Often, when we start working with charities like Club Michín, their legal history is, well, complex,” says Paula Torres, the firm’s pro bono coordinator. “The kind of people that run these charities are so dedicated they just run at any problem, and find a way of working through or around it. We can resolve it for them and take away that stress.”

Like with any client, close and personal contact is essential. “Meeting the children and the charity workers is essential for us to know how best we can help them – what their needs are, what services we can provide, and for us to be able to put together the right team,” says Juan Manuel Ruiz. Seeing it must also make it more worthwhile? “Oh, absolutely – when you see how well cared for these children are, it brings the work to life.”

The commitment of these lawyers to pro bono work is clear. What makes it most worthwhile, they say, is not so much

giving up time or money; it is using their legal skills to affect the lives of those much less privileged than them. This means they can give far more in practical terms than they could as a lone donor. “Of course the charities need donations, but anyone can give money,” says Torres. “We at the firm have particular skills which only those in our position can offer such charities, and it makes such an impact on how effectively they can run. Here in Colombia we have such clear differences between the rich and the poor, and anything we can do to help change that is for the good of everyone.”

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In a different country, another associate who is leading a different kind of pro bono project echoes a similar sentiment. Fernando Berkemeyer of Peruvian firm Estudio Olaechea is heading a team looking at the extent to which small businesses can access the benefits of the formal economy in the country. “The informal economy here is huge – around 97 per cent – and if we as a country can resolve that issue and begin to formalise the economy, it would help a great deal with Peru’s broader social problems,” he says. “That is a problem of law, and so it is we lawyers who have the greatest role to play in resolving it.”

The assignment is from the UN-backed Commission on Legal Empowerment of the Poor, co-chaired by Peruvian economist Hernando de Soto and Madeleine Albright, former US secretary of state. The commission is driven by the idea that the poor of the world remain poor in part because they have

no legal rights. Citizens who live outside the protection of the law “do not own the houses or apartments in which they live, have no title to the land they till, cannot prove the livestock they feed and care for are their own, do not qualify for credit and have no legal licence to sell what they produce,” said Albright in *The Economist*. “Many do not possess any legal documents, even a birth certificate or proof of identity. Constantly vulnerable, they may be exploited by all who wield power, including criminals, predatory government officials, unscrupulous employers and single-minded developers who may want to move the poor out of their way.”

The Peruvian team was tasked with finding out the extent to which informal businesses can access contract enforcement and dispute resolution mechanisms. “The



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numbers which came out of our research were really difficult to believe,” says Berkemeyer. “We found that the informal economy virtually completely disregards the judicial system, because of the difficulty of accessing it.”

They found that a small company which was owed money – say, US\$10,000 – would have to spend 35 per cent of that to recover it through formal judicial processes. Simply to gain the initial judgment would take 300 days on average, with a further 156 days needed before they actually received the money owed.

“With such a wait, companies tend to rely on informal mechanisms to collect debts,” says Berkemeyer. “But when problems



are resolved either through trust or through violence, there is no guarantee, and this uncertainty blocks the whole economy.”

Now the report has been presented to the Commission, the next stage is to work out how to reform the system and show the benefits of formality to the micro businesses. “They need to be convinced that they can execute contracts and resolve their problems in a way in which there are guarantees,” adds Berkemeyer.

These two projects – the UN Commission and Hogares Club Michín – may be rather different, but they are both

designed to help the least privileged among their respective communities, and both require legal skills, rather than simply time or money, to succeed. As such, these were two among many projects which stand out when one surveys the pro bono activity of the leading firms in the region.

Pro bono has continued to creep up the agenda of the legal community in Latin America over the last year. March saw the official launch of the Pro Bono Declaration for the Americas, which has been signed by more than 300 law firms, legal departments, bar associations, judiciaries, universities, and

others. The declaration promotes the concept of a lawyer's social responsibility to help the poor and marginalised and invites the legal profession throughout the Americas to promote pro bono work as a way for lawyers to meet their social responsibility. Signatories have also more specifically agreed to provide 20 hours of pro bono work for each lawyer in their firm or department, within three years of signing.

The buy-in from law firms across the region to the declaration has been significant. When reading through the list of signatories – available on the website of the Vance Center of the New York City Bar Association, which is coordinating the initiative – Latin America's legal titans crop up again and again. As a broad commitment to the idea of pro bono, it is remarkably powerful.

Some issues, however, remain. One has been tracking and comparing the work firms have participated in – which is why we have launched a pro bono ranking table, to enable law firms and clients to do just that (see page 18 for more).

Another key issue is how to define pro bono work. There continue to be wide discrepancies between firms on what to include as “pro bono.” Does it include being on the boards of charities? Helping foundations in ways for which one does not need a law degree? Working with the government to change the legislative framework?

The drafting committee of the Pro Bono Declaration for the Americas, which is made up of members from leading law firms across the region, tackled this thorny issue at length during the two-year process to hone the wording of the declaration. This is their resolution:

For the purposes of this declaration, pro bono legal services are those provided without a fee, or expectation of a fee, principally to benefit poor or underprivileged persons or communities or the organisations that assist them. They may include representation of persons, communities or organisations in matters of public interest who otherwise could not obtain effective representation. In addition, pro bono legal services can also benefit civic, cultural and educational institutions serving the public interest who otherwise could not obtain effective representation.

Even with this clear and focused definition to work with (which we used as the basis

for the ranking table over the page) there are shades of grey, even among those with a clear commitment to pro bono. Santiago Corcuera is a partner in the Mexican office of Curtis Mallet-Prevost Colt & Mosle SC, and without doubt one of the country's leading human rights lawyers. He is chair/rapporteur of the working group on enforced or involuntary disappearances of the UN's Human Rights Council, of which there are only about 40 worldwide and two from Mexico. This work takes him to Geneva for at least three weeks throughout the year, where he and the rest of the group assist families in determining the fate and whereabouts of their relatives.

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Another of his projects is representing Jorge Castañeda, a former foreign minister of Mexico, who was denied registration as an independent candidate to run for president in the 2006 Mexican elections. Castañeda is bringing a case before the Inter-American Court of Human Rights, claiming the requirement under Mexican law to be proposed by political parties is an excessive restriction to political rights.

Clearly, this is a case with far-reaching implications for access to justice and democratic representation, but Corcuera plays it down. “I'm not certain I classify this as ‘proper’ pro bono work – Mr Castañeda, after all, can afford to pay for representation,” he says. Surely you're defending the principle, not the person? “That's true, of course, but nonetheless it is slightly different to my work for the UN.”

The resolution to this, agree those with established pro bono programmes, is working to find projects that meet both the firm's interests and goals as well as such international definitions of pro bono as that of the declaration. This problem of definition is thus closely linked to the second issue which crops up again and again in conversations with law firms still building their pro bono programme – finding the right projects to be involved in.

This difficulty is particularly pressing at this moment. Over the next three years, the signatories to the declaration which have not had large pro bono initiatives to date will need to expand their current provision to meet their annual obligation of 20 hours per lawyer. In Argentina, for example, seven of the 11 signatory law firms are listed in the **LATINLAWYER 250**, retaining 836 lawyers between them and offering 2,388 free hours within three years. That is a significant reservoir of time.

There are organisations which can link firms to need – the most obvious are the clearing houses, Compartamos con Colombia, Fundación Pro Bono in Chile, and Instituto Pro Bono in Brazil. Estudio Olaechea got the commission from the UN through law firm network Lex Mundi. But there can still be issues, admits Yves Hayaux-du-Tilly, partner and pro bono coordinator at Jáuregui Navarrete y Nader SC, number two in our ranking table. “There has been a difficulty in finding projects in which our corporate expertise is put to use for the benefit of society,” he acknowledges.

One project which works neatly is the firm's work for microfinance company FINCA, he explains. The firm helped the international organisation transform its Mexican subsidiary into a financial entity and form a corporate governance strategy. His top tip for anyone further back on the path to creating a pro bono programme is to ask associates for ideas. “By getting our associates to bring in ideas for pro bono projects, we widened the field we could choose from and made them feel more included in the programme as a whole.”

Another way to make those links is by creating the framework in-house. In Costa Rica, there is both a tradition of pro bono work – graduates have to do 600 hours of community work before gaining their degrees – as well as a demonstrable need, but little linking law firms to charities. BLP Abogados decided to create an entity to

make those links. “We knew the entities we wanted to help – institutions or charities without a great deal of financial backing, initially at least in the areas of housing, environment and public health,” says partner David Gutiérrez. “But they are not easy to find.”

So this year the firm is forming BLP Fundación to coordinate the programme and help the firm find the right projects for it. At the end of April Gutiérrez met with a PR agency, who presented the charities they might be able to work with, and searched for an executive director to head the foundation. Their role will be to coordinate the needs of the charitable entities with those within the firm who can help, and in turn with other firms who also want to provide the same kind of pro bono services. “This seemed the best way to maximise our pro bono programme,” says Gutiérrez.

It isn’t cheap – and the firm is, for now at least, providing all the funds for the foundation – but for Gutiérrez, the commitment is far beyond financial. “This effort is for us about a personal commitment, not about giving money,” he says. “Sure, money is important, but the dedication of everyone in the firm to this initiative is far more important.”

In Colombia, the indefatigable Paula Samper is engaged in a similar project. A drafter of the declaration, she is a long-term provider of a range of pro bono services from her firm, Gómez-Pinzón Abogados – but now she is engaged in creating a broader pro bono clearing house for Colombia to link the charities needing help with the law firms willing to provide it.

Undoubtedly such efforts are not easy, and all of the firms who have engaged with pro bono should be commended. Those profiled here, who have engaged fully with the idea of pro bono, are clear about its benefits. “These days, good law firms have to be socially responsible,” says Santiago Corcuera. “You can’t avoid doing pro bono work any more.”

Not least, say many, this is because of the broad and positive impact of such work on the firm as a whole. One of the projects Costa Rican firm BLP Abogados is working on is helping Rehabilitation International as it reviews in detail the UN Convention on the rights of persons with disabilities, in order to fully implement it in Costa Rica. “The lawyers working on the project loved it – they stayed weekends to work on it, and clearly enjoyed it,” says David Gutiérrez. “Now they compete to work on such projects.”

The kind of atmosphere such enjoyment, and such socially beneficial rivalry, creates within the firm rebounds positively on every area of practice, says Gutiérrez – and even the time-consuming and expensive process of building Fundación BLP from scratch has clear benefits. “As a firm, we’re learning, we’re building contacts with other firms, and we’re helping – for us, it is win-win-win.”

The associates leading the projects outlined at the beginning of this article are a case in point. They are gaining experience in finding out what clients really need, in putting together and leading teams, in the need to identify problems before they can be resolved – and they are happier, more well-rounded lawyers as a result.

“During the project we saw the other side of the law, which as a corporate attorney you would rarely see,” says Olaechea’s Fernando Berckemeyer. “You also see the faces of the people you are trying to help, and realise they are far more than statistics. It makes you much more motivated.”

“For me, pro bono is not a choice for lawyers – it is a necessity,” says Gómez-Pinzón’s Paula Torres. “And I love doing it.”

Additional reporting by Richard Wooley

The most to offer

One of the trickier parts of drafting the Pro Bono Declaration for the Americas was settling on the average number of hours per year lawyers at signatory firms should complete in order to meet its standard.

After some discussion and much consultation, the drafters settled on an average of 20 hours per year per lawyer. Quite apart from setting a regional benchmark, the committee have also provided us with a mechanism with which to rank firms according to their pro bono programme, and celebrate those across the region with a demonstrable and consistent commitment to helping those in need.

The table below shows our inaugural **LATINLAWYER** pro bono ranking of law firms, listing how the top 15 firms stack up against each other; the full table of all respondents is posted on **LATINLAWYER** Online.

Firms are ranked according to the “pro bono score” we have given, which combines a number of factors. Points were given firstly for the number of pro bono hours averaged across each lawyer in the firm. Other points were given according to the percentage of lawyers providing more than 20 hours per year to pro bono clients, with a heavier weighting of points going to firms in which a high percentage of partners provided more than 20 hours per year.

There are some caveats to comparing firms in this way. Only a minority of firms in Latin America keep track of the pro bono hours they provide, and thus these figures represent the “best guess” from a number of firms. What we have presented is also an analysis of the figures firms themselves have provided.

We chose this methodology for a number of reasons, the most important of which were to make the results dovetail as neatly as possible with the Pro Bono Declaration. This explains not only the use of the 20-hour benchmark, but also the awarding of points for hours as averaged out per lawyer in the firm. When drafting the Declaration, one of the key changes to the text requested by the wide range of law firms consulted was to ensure that the 20-hour target was not for each lawyer, but rather an average per lawyer; we wanted to ensure our mechanism did not conflict with that change.

Beyond this, our methodology rewards a broad commitment across the firm to pro bono work. As the most successful programmes often require broad buy-in from all lawyers, the partnership as well as the associate pool, and as such a broad commitment implies that pro bono is deeply entrenched in a firm's culture, we thought it important to credit that.

We gave further points to law firms with a high percentage of partners giving more than 20 hours of pro bono time per year. We noticed that the theme running through the responses from those firms with full-scale and successful pro bono programmes is they originate from clear and strong leadership from senior members of the firm. Like any other practice area of law, the leadership of dedicated and talented individuals is essential, and once the path has been forged by such people, more junior members of the firm follow happily. "I have always found associates of the firm to be very enthusiastic in assisting me with this kind of work," says Curtis, Mallet's Santiago Corcuera. "It is almost like a dessert, a different flavour of work."

Mexican law firm Jáuregui Navarrete y Nader has contributed more than 7,000 hours over the year for its 73 fully qualified lawyers, more than any other responding firm. Hayaux-du-Tilly is quick to pay tribute to founding partners Miguel Jáuregui and Gabriel Navarrete, and former of counsel Ignacio Gomez Palacios, whose "intensive support" for the practice of pro bono helped instil a widespread commitment to it throughout the firm. "They taught by example, without imposing the requirement to be involved," he says. "We continue that tradition, by helping each person within the firm to find that project which will take up their 20 hours in a way they would enjoy."

This weighting towards partners is a key factor in influencing the **LATINLAWYER** ranking. Those at the top of the table all have a broad commitment across the partnership, not just from younger lawyers, to consistently providing pro bono hours. One of the reasons Peru's Estudio Olaechea has done so well in our survey for two years in a row is the commitment of all partners to a high number of hours, and 13 of Jáuregui Navarrete's 15 partners hit the target.

This weighting helps explain some surprises. Brazilian firm Siqueira Castro – Advogados provided 4,600 pro bono hours last year, the second-highest figure of any firm in this survey. They deserve to be commended for that, not least because of the high number of charities they were able to help with such a commitment – but because only three of the 52 partners were able to offer more than 20 hours, they are not in the table as listed here. Gómez-Pinzón Abogados, whose partner Paula Samper has done so much for the practice of pro bono in the region, let alone her firm, is in a similar position.

We thank all firms who took part in the survey.

Pro bono ranking table

Firm	Country	No. of pro bono hours	PBDA signatory?	Pro bono score
Estudio Olaechea	Peru	1,700	Yes	350
Jáuregui Navarrete y Nader	Mexico	7,357	Yes	340
Grasty Quintana Majlis & Cía	Chile	797	Yes	340
Quiñones Ibarguén & Luján	Guatemala	588	Yes	331
Negri & Teijeiro Abogados	Argentina	1,000	No	295
Curtis Mallet-Prevost Colt & Mosle SC	Mexico	1,227	No	290
Estudio Echeopar	Peru	1,650	Yes	275
Brons & Salas	Argentina	1,500	Yes	252
Von Wobeser y Sierra	Mexico	974	Yes	244
Rodrigo Elias & Medrano Abogados	Peru	1,320	Yes	238
Haynes and Boone SC	Mexico	995	No	221
BLP Abogados	Costa Rica	900	Yes	210
Morales & Besa	Chile	777	Yes	208
Barrera Siqueiros y Torres Landa	Mexico	1,550	Yes	189
Corral & Rosales	Ecuador	282	Yes	169