Bolivia

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QUICK FACTS

Legal forms of philanthropic organizations included in the law: Association, Foundation.

Five main social issues addressed by these organizations: Health and Medical Research, Basic Needs, Youth and Family, Human Rights

Average time established by law to register a philanthropic organization: more than 90 days.

Average cost for registering a philanthropic organization: US $862 (Foundations) – US $2,155 (Networks of Foundations and Associations).

Government levels primarily regulating the incorporation of philanthropic organizations: Central Government, State Government

The organization and constitution of POs are governed by the Political Constitution of the State of Bolivia (Constitución Política del Estado Plurinacional de Bolivia), the Civil Code, Law No. 351, and the Supreme Decree No. 1597—all of them federal laws. According to these regulations: a) In the case of POs performing activities in a single Department, the government of each state takes jurisdiction in the incorporation; and b) in the case of POs that perform activities in more than one Department, the Vice-Ministry of Autonomies takes jurisdiction (Supreme Decree 0802).

Philanthropic Environment Scores:

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<td>2018</td>
<td>3.2</td>
<td>3.0</td>
<td>3.5</td>
<td>2.8</td>
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I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.

**Question 1: To what extent can individuals form and incorporate the organizations defined?**

Score: 3.0

The Political Constitution of the State (Article 21, 4) establishes the right to freedom of association for lawful purposes. Associations and foundations are basically regulated by the Civil Code. Law 351 and the Supreme Decree 1597 govern the registration of associations and foundations.

There are no legal restrictions on the rights of associations. However, legislation is not entirely clear; while the Civil Code allows associations "de facto" and "Comites sin Personeria" (committees without legal authorization) to operate without registration, Law 351 mandates that institutional networks and coordination entities be registered. Regulations allow for the creation of coordination entities and association between national and foreign POs. There are no legal requirements to form groups or carry out collective activities for lawful purposes, with the exception of the minority of age limitation.

Philanthropic organizations are not required to obtain legal personality or are charged significantly onerous fees. Law 351 requires multiple documents for the recognition of legal status. DS 1597 requires a certificate of reserving a name, the certificate of election and inauguration of the board of directors, a list of members, receipt of fee payment, and certificate that the group does not have outstanding debts with the central government. In the case of foundations, a comparable minimum endowment, an opening balance sheet, and the assessment of feasibility are also required. Foreign organizations must also submit a report on the compatibility of their projects with the National Development Plan.

To obtain a legal status and to register, a PO must pay service fees. In the case of the Government of La Paz—the seat of government—the official fee is approximately US $300. In the case of foundations, a document of donation or gift for a minimum amount of approximately US $2,873 is also required.

The government officials in charge are not known for being professionally competent or politically independent. In recent years, processing has become even more time-consuming. Supreme Decree 0802 centralizes the process of acquiring legal status in the Vice-Ministry of Autonomies (Ministerio de Autonomias), unlike the previous rule of Administrative Decentralization. The renewal of legal personalities of existing organizations can be difficult depending whether the existing organization is perceived to perturb the government plans or not.
Question 2: To what extent are POs free to operate without excessive government interference?

Bolivian laws allow POs to establish their own internal governance structure and operating procedures through the adoption of status and bylaws, which are an expression of their self-regulatory capacity. There are no direct restrictions related to criteria of national security, morality, and other criteria. However, Law 351 and Supreme Decree 1597 require that the statutes of the POs are aligned with the goals of the National Development Plan. In the case of the Government of La Paz, the statutes must also embrace the principles put forward by Law 045 against racism and any other form of discrimination, as well as Law 348, which protects women. Disturbance of public order is mentioned in Article 64 (4) as grounds for extinction by judicial order.

According to the regulations, POs are free to interact and cooperate among themselves, both inside and outside the country, through agreements, platforms, and institutional working networks. There are no legal restrictions on these activities or in the organization of conferences, travel, and use of the Internet and/or secure access to other information technologies that could be interpreted as human rights violations. Nor are there specific administrative and political constraints impeding groups to collaborate.

However, government information requirements for POs are not always clear and predictable. In practice, these requirements become very complicated due to administrative discretion and the high rotation of public servants in the government offices receiving paperwork.

Supreme Decrees 22409 and 26140 require that foundations and associations performing activities of social development, promotion, and assistance provide information about their operation. In addition, Supreme Decree 26140, applicable to philanthropic organizations working with peasants, indigenous people, and natives of colonist populations, determines whether or not the information submitted by a PO is cause for exclusion of the Single National Registry of Non-governmental Organizations. For its part, Law 351 states that POs must: a) Periodically report their sources of income to the Vice-Ministry of Autonomies; and b) communicate to the Single National Registry of Non-governmental Organizations any modification of the information presented in the Registration Form. The tax code requires that POs exempt from business income tax also submit an annual affidavit form together with the financial statements and the annual activity report.

The Control Law to make Transparent the Goals and Objectives of the Financial Management of Non-Government Organizations and other Entities that Receive External Resources or Donations (9/29/2015) shows the government’s intent to increase oversight and supervision over NGOs. The law entrusts the Vice Ministry Public Investment and Foreign Financing (under the Ministry of Treasure) to exert technical oversight of local NGOs programs and projects funded by foreign resources (international cooperation agencies, multilateral financial institutions and others). It must be noted however, that according to the bill, in 2010 more than 66 percent of NGOs received foreign funding, and more than 80 percent of the income they received to fund programs and projects came from foreign sources of funding. This Vice-Ministry also grants the certificate to operate in a specified territory and work authorization to NGOs. This certificate is needed to sign agreements with public
entities, participate in public tenders, open and operate institutional bank accounts in the National
Financial System, receive non-reimbursable external resources, and request tax exemptions.

**Question 3: To what extent is there government discretion in shutting down POs?**

Bolivian laws allow the highest governing authority of a PO to voluntarily dissolve the organization. This guarantee is recognized in practice in all relevant institutional statutes. However, there have been cases in which the voluntary dissolution of a PO has been administratively denied under protection Law 223 of Persons with Disabilities.

Law 351, established in 2013, grants legal personality to social organizations, non-government organizations, foundations, and nonprofit civil entities active in more than one department. It also enables the revocation of legal personality based on reasons established by specific regulations, which may be different from the reasons established in the main law. Legally, a regulation cannot establish grounds for revocation other than those established in the main law, because it cannot modify the content and intention of the latter.

Article 19 of the Supreme Decree 1597 grants the Bolivian government too much discretion in decisions about revoking the legal personality of a PO and provides five additional reasons why officials could withdraw legal personality. Article 20 grants any legal public entity the power to revoke legal personality without adhering to the minimum legal requirements. This regulation is so ambiguous that revoking the legal personality of a PO may be the result of either a very slight or very serious breach of law. The regulation makes a very generic reference to the basis of administrative action, which affects the freedom of association. Article 20 also allows for revocation of legal personality when even one associate or institutional representative acts against the law. Finally, one of the reasons for termination—which appears to be an obvious attempt to control and subordinate POs to the state—is when POs do not comply with sectoral policies.

Supreme Decree 1597 regulates the procedure for revoking the PO. The resolution of the revocation of a legal personality is reversible and may be challenged in accordance with the provisions of the Administrative Procedure Act and the Political Constitution.

II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

**Question 4: To what extent is the tax system favorable to making charitable donations?**

Tax Reform Law 843 establishes that business donations to nonprofit organizations are deductible from profit up to 10 percent. Supreme Decree 24051 stipulates that, in order to qualify for such deductions, beneficiary entities must comply with the statutory requirements before making the donation. Those requirements are: a) do not have tax debts if they are taxpayers of other taxes; and
b) provide the receipt of the donation and confirmation of receipt from the beneficiary organization. Foreign POs can get exemption as long as they have an agreement signed with the Ministry of Foreign Affairs.

The business sector has a weak philanthropic vocation, probably because of: (a) ignorance of the law; (b) lack of trust in the work POs do; (c) prevailing legal uncertainty surrounding investments; and (d) a degree of politicization of the tasks undertaken by associations and foundations. In recent years, this situation has changed for the better with the creation of business foundations that allow tax-deductible donations to be included in firm’s Corporate Social Responsibility (CSR) practices. However, CSR is not large enough in Bolivia, where more than 90 percent of the businesses are small and medium sized (CEPAL, 2013).

With the exception of the aforementioned 10 percent of the taxable benefit limit, Bolivian laws do not establish other ceiling amounts for tax deductions on donations made to legally recognized nonprofits. The processes to obtain tax benefit deductions are, in essence, transparent and predictable. Tax regulations are implemented efficiently, and the government enforces tax payment obligations; however, the general perception is that control over POs on this matter is greater than ever.

**Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?**

Bolivia’s Law 843 establishes that profits obtained by legally authorized POs are exempt from business income tax. The exemption applies if: a) by express provision of the bylaws, all income and assets are exclusively intended to further institutional purposes; b) under no circumstance, their income is distributed directly or indirectly among members; and c) In the event of liquidation, the assets are distributed among entities that share their objectives, or are donated to public institutions.

The same law establishes that property used for non-commercial or industrial activities, owned by associations, foundations, or legally authorized nonprofit institutions, is exempt from property tax (*Impuesto a la Propiedad de Bienes Inmuebles*). This tax exemption is only applicable to POs that do not carry out financial or other commercial intermediation activities, and only applies when there is a corresponding administrative resolution of support. However, there have been an increasing number of rejections of tax exemptions based on discretionary decisions of government officials. Supreme Decree 27190, which regulates business income tax exemption, stipulates that those entities that fail to officially establish their tax-exempt status be subject to pay income taxes. In addition, these entities must present an annual report including accounting, financial, programmatic information, and other requirements. The procedure to obtain property tax exemptions is governed by the autonomous local municipal governments. At times, this procedure becomes complicated and is often subjected to excessive requirements and formalities that are unpredictable and lack transparency.

From the legal point of view, the range of POs that can obtain tax exemptions is technically quite broad. In practice, however, this range is reduced because the organization has to be formally registered and institutionalized, and must also fulfill other established requirements. Many operating
organizations do not benefit from tax exemptions because they do not meet all the legal requirements.

III. Cross-Border Philanthropic Flows

The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.

Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?

Score: 4.0

There are no unique fees or taxes that are levied on external donors. External donors receive the same tax treatment as domestic donors. It should be noted that, according to data from the Vice-Minister of Public Investment and Foreign Financing in 2016, 22 percent of the total investment in Bolivia was foreign, of which only 1.01 percent were donations, while the rest were credits. There is no knowledge of the existence of tax procedures requiring prior approval, provision of additional information, or subsequent control by the government on international donations. Neither is there any knowledge of the existence of restrictions on the types of activities or organizations that can receive donations, the countries where donations originate, or restrictions in using only governmental channels to send donations.

However, the Supreme Decree 29308 establishes the obligation to register donations. The Decree prohibits donations that imply ideological and political conditioning, and obliges beneficiaries to report on donations received from financial multilateral organizations, international cooperation agencies, and foreign governments.

Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

Score: 3.0

Law 843 exempts legally established associations, foundations, or nonprofit institutions from paying the tax levied on transferred funds and assets. This exemption, which also applies to foreign donations, is subject to compliance with the established conditions and requirements for this purpose.

Supreme Decree No. 22225 establishes that donations are only exempt from the consolidated customs duty, provided that they are destined to users or final consumers free of charge, or are used directly by the beneficiary institutions. Only international nonprofits that have signed an agreement with the State can benefit from this exemption. Supreme Decree 29308 establishes the obligation to register donations received from multilateral financial institutions, international cooperation agencies, and foreign governments and NGOs. The law also prohibits donations that imply ideological and political conditioning. This law also stipulates that direct and non-official donations be reported to the Vice-minister of Public Investment and Foreign.
Through ministerial resolution, the Ministry of Development Planning approved the regulation of DS 29308, which establishes 30 days for the registration of donations. According to current regulations, there is no legal obligation to obtain approval for receiving donations, but POs have to report them. In this context, there is no information on restrictions that prevent receiving external donations, except for donations that imply ideological and political conditioning. In this sense, NGOs and foundations should not receive funding from agencies vetoed by the Bolivian state under the premise that they violate their sovereignty.

IV. Political and Governance Environment

The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.

Question 8: To what extent is the political and governance environment favorable for philanthropy?

Score: 3.0

In recent years, the conflict between the government and a group of POs not affiliated with the government has become intense due to presumed divergent socio-political visions. The government has threatened to shut down nonprofits for assuming critical positions towards government policies and actions, and tensions have taken NGOs to self-censorship, keeping low profiles, or accommodating to government requirements to avoid conflicts or denial of access to government resources. The philosophy of the government concerning the role of NGOs in society has changed in recent years. Currently, social movements (labor unions, indigenous and neighbor associations, producer associations, and other organizations that support and implement the economic model promoted by the state) are considered the main agents of social change. The NGOs that do not meet these expectations can be branded as opponents and contrary to the "process of change," and, therefore, have operational difficulties.

The government does not promote the participation of all NGOs in the design and implementation of public policies or the study of and drafting of bills. Such participation is mostly restricted to organizations close to government interests (ruling party, social movements), even though there are no legal constraints for POs to participate in political, electoral, or policymaking processes. Fundacion Construir (2014) identifies the absence of sufficient incentives for individuals to make donations as one of the main causes of low philanthropic development in Bolivia.

Since 2006, when the current administration was elected to govern Bolivia, there is an increasingly restrictive environment to the right of association and the fluent operation of POs. In the last decade, periods of political stability and crisis have alternated because of political events and confrontations between antagonistic social organizations, or between them and the government. Because of legal and political constraints, the financial crisis, and other factors, the development and increase of NGO activities has been impossible. In fact, the lack of financial resources and tax and fiscal problems has led to the shutdown of many NGOs in recent years.
Articles 241 and 242 of the Political Constitution of the State stipulate the social oversight of private institutions administering fiscal resources. Under the law, social movements (groups of corporate interest and/or pressure generally aligned with the government) have, in some cases, been attributed the financial oversight and supervision of NGOs that carry out tasks in the field of education, health, community development, and others.

The financial crisis of NGOs has its deepest roots in the gradual removal of financial support from international cooperation agencies in the last few decades because of changes in priorities of donor countries’ policies. Donor resources have ceased to exist, or have been displaced to other regions of the world that are most in need.

**Question 9: To what extent are public policies and practices favorable for philanthropy?**

In Bolivia, there have never been policies or government-led practices to promote a culture of philanthropy. However, in the last decades of the twentieth century, POs could accomplish their activities in an environment free of political or administrative restrictions, and build alliances with the government. The new political, social, and economic establishment has created an environment of legal, administrative, and political restrictions on philanthropic organizations, which goes against promoting and encouraging philanthropy.

Consequently, it is not possible to talk about equal and impartial access to government resources. In fact, POs aligned with government goals get better treatment than POs believed to have a critical political position. POs aligned with the government interests are more likely to access donors, information, services, training, networking, and funding sources. POs in conflict with the government, or even those that simply avoid conflict with the government, are limited in access to resources, and strive to maintain their traditional foreign sources of funding. In the last decade, this has become an even greater challenge since international cooperation agencies and donor countries have been subjected to new rules. The government has assumed a central role in channeling foreign cooperation resources, prioritizing geographic areas and sectoral activities, and controlling the organization and operation of associations and foundations. In general, coordination between government agencies and POs only occurs in programs or projects that involve POs aligned with the government’s economic and social development goals and due to pressures exerted by the social movements.

There are major gaps in the government’s capacity to support POs. The main governmental function is to grant legal personality to POs. There is no specific government policy to support the work and growth of the philanthropic sector. In the tax, social security, and labor areas, NGOs receive similar treatment as any other organization. Regarding laws and programs aimed at preventing corruption, Act No. 004 of 31.03.10 (Law for Combating Corruption, Illegal Enrichment and Investigation of Fortunes) applies to acts of corruption committed by natural persons and legal national or foreign representatives of legal entities that compromise or affect state resources. The effectiveness of this law is in question, due to its often political and biased use.
V. Socio-Cultural Environment

Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?

The first philanthropic organizations in Bolivia were religious in nature. According to Martinez (2015), social life in Bolivia, as well as many Latin American countries, developed in colonial times around the church and its institutions. Churches were centers for social and medical assistance and education, which shaped philanthropy with Catholic values. This work was the foundation of the current philanthropic activity. Over time, the philanthropic movement gradually lost its original religious identity, giving way to more pragmatic approaches that detached themselves from the original mission of philanthropy and focused more on human rights, education, as well as economic, social, and cultural inclusion. In the last decade, the new government vision of the role of social organizations, which is to strengthen government goals and privilege the political function of new social movements, has transformed the environment for philanthropic organizations, specifically NGOs and foundations in Bolivia.

In Bolivia, there is not an established culture of philanthropy, although the law recognizes voluntary action (Law 3314 of Volunteering). Several studies in Bolivia reveal the existence of social values of solidarity and reciprocity within indigenous communities. Even though these values exist and prevail in society, the existence of a social awareness and consequent behavior towards giving to philanthropic causes has not been fully developed in the Bolivian society. The number of POs receiving support from local private donors appears to be rather small. This might be due to a fragile philanthropic culture reflected in general low levels of private or personal support for social or public benefit. Throughout the years, and due to the strenuous poverty in the country, people have become accustomed to receiving financial and social support from the state and international agencies through local NGOs, rather than giving to social causes. Some recent government policies do not help in promoting solidarity and reciprocity among Bolivians; instead these policies reproduce old patterns of paternalism.

The perception of what philanthropy is and how it works varies among different groups. Some sectors of society recognize the achievements of philanthropic organizations. Other sectors are unaware of the role of philanthropic organizations to sustainable development. There are other groups that are suspicious of the transparency, integrity, and reliability of philanthropic organizations. The perceptions vary depending on the particular experience of each social group. In some cases, the way philanthropic organizations are perceived is mediated by how government and social movements identify their alignment with government goals.

In terms of equal opportunity, there are no known limitations on the participation of women in activities carried out by philanthropic organizations. There no barriers either to participation based on ethnicity, sexual orientation, culture, age, nationality, or religion. In fact, funders require that beneficiary organizations meet the gender equality criteria.

Historically, Bolivia has had vigorous, active, participative and mobilized civil society, but it is disparate, spread out, and heterogeneous (Fundacion Construir, 2014). Illiteracy and belonging to
rural segments that are disadvantaged and far from urban centers make it difficult for the sector to grow and expand in the country. In fact, these populations are characterized by limited or no access to fundamental rights (identity, education, health), and have no political voice, and oftentimes, lack the capacity to organize for self-development, leading to the displacement of their interests by those of the political and corporative intermediaries.

VI. Future of Philanthropy

These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.

Current state of the philanthropic sector

In 2014 in Bolivia, with a population of 10.7 million people, there were 2,125 officially registered nonprofits (Fundacion Construir, 2014). There were also many unregistered foundations and associations. However, the institutional sector of legally constituted associations and foundations has shrunk and become weaker. As result of the economic, political, and social changes in the last decade, many of them have ceased to operate, have reduced their activities to a minimum, or have been forced to change to accommodate to government interests. This situation has been more serious in the case of informal and non-institutionalized philanthropic organizations that are less likely to meet government requirements and receive foreign funding for domestic operation. Furthermore, few private groups (business or non-business) support an autonomous, capable, sustainable, and impactful philanthropic sector. There are a few private businesses that are exceptions to this trend, such as FundaBISA and the Mercantil Santa Cruz Foundation.

Looking at the future of philanthropy in Bolivia NGOs have an uncertain future, considering that the conditions for granting legal personality may become more restrictive, depending on the political environment. Organizations with the capacity to overcome the political and financial barriers will be more likely to succeed. Most nonprofits in Bolivia no longer have the leading role they had in defending civil rights and supporting disadvantaged populations between the 1970's and 2005; rather, emerging social movements supported by the state have displaced them. Consequently, the challenge now is to find new forms of organization and operation of philanthropy that are not “co-opted by the State or monopolized by a group of social organizations that claims to represent, exclusively and in an exclusionary manner” (Orias, 2011, p.8); or to find new spaces for dialogue and inclusion of nonprofits without favoritism.

Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- The accusations and threats of shutting down NGOs and the prosecution of members of the Fundación Tierra, the Center for Studies, Documentation and Information of Bolivia (CEDIB), the Center for Studies on Labor and Agrarian Development (CEDLA), and the Millennium Foundation for the creation and dissemination of research studies and documents with critical analyses of the government’s economic, employment, land tenure, food security, and other policies. It should be noted that most of these NGOs are research centers recognized by the Global Go To Think Tanks Index Reports.
• The voluntary retirement after 20 years of work of DANIDA, a Danish cooperation agency, from Bolivia, which increases the cessation of activities operated through Dutch and USAID cooperation.

• The ruling of the Supreme Court declaring the appeal to label Article 7 of Law 351 and Article 19 of the Supreme Decree 1597 unconstitutional as unfounded. The appeal was presented by the Ombudsman of 2013, accompanied by Amicus Curiae of Maina Kiai, an UN Special Speaker on the right to freedom to peaceful gathering and association.

Future development trends in the philanthropic landscape

In the mid-term, the following trends are identified regarding the environment for philanthropic organizations:

A) Restrictive conditions for the registration and operation of philanthropic organizations and discretionary use of the revocation procedures established by Law 351. All this happens in a context new political tensions due to the upcoming electoral processes, the deterioration of the economy, the imposition of government projects contrary to environmental and biodiversity protection interests, and the judicial crisis.

B) Reconsideration of the role of NGOs in society, and the creation of a new institutional identity that revitalizes philanthropic activity in the face of an eventual decrease in support by the State to vulnerable populations, due to changes in the macroeconomic environment in Bolivia.

Three key recommendations to improve the environment for philanthropy

• Continue to expand initiatives to strengthen freedom of association and to improve the legal framework developed in the institutional field (for example Fundación Construir and ICNL) to: a) strengthen the exercise of and the respect for the right of association; b) open spaces for dialogue, coordination, and complementation with the government; (c) progress toward the establishment of a new regulatory framework for NGOs, inspired by principles of freedom, respect, and legal certainty; and d) support the process of "reinvention" of NGOs in the new historical circumstances.

• Generate knowledge and reflection on the need to promote changes at the levels of education and citizen awareness, aimed at: a) overcoming old social patterns of dependency and paternalist practices; b) privileging self-managed and sustainable solutions to effectively address needs; and c) ensure the participation of all social actors and beneficiaries of philanthropic activities in identifying needs and priorities and in creating plans and programs.

• Promote the creation and institutionalization of a system of access to public funds by competitive bidding, under the criteria of equality, security, and legality, with the participation of the State, cooperation agencies, the philanthropic sector, and the business sector.