Ecuador

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QUICK FACTS

Legal forms of philanthropic organizations included in the law: Foundation, Corporation, National and Foreign Social Organizations (including Cooperatives, Associations and Foreign NGOs). Other: State organizations (Social organizations founded by state institutions),

Five main social issues addressed by these organizations: Food, Primary and High School Education, Basic Needs, Youth and Family, Housing and economic development. Other: Childhood

Average time established by law to register a philanthropic organization: 31-60 days

The average time to register a PO is 50 days, depending on the timely submission of all required documents and the approval of the officer in charge of the case.

Average cost for registering a philanthropic organization: US $2,200

Based on Decree 16 signed by President Correa on June 4th, 2013, there are two options to register corporations and foundations: 1) US $400 for first degree corporations; and 2) US $4000 for second and third degree corporations or foundations. Legal costs are not included in these amounts.

Government levels primarily regulating the incorporation of philanthropic organizations: Central/Federal Government

Philanthropic Environment Scores:

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<td>2.7</td>
<td>3.3</td>
<td>3.0</td>
<td>1.5</td>
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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 specific legal frameworks that regulate philanthropic organizations in Ecuador are Decree 16 (June 4, 2013) and Decree 739 (August 3, 2015). These regulations establish that the Secretaría Nacional de Gestión Política (National Secretary of Policy Management, under the Ministry of Interior, Executive Branch of government) is the governing body responsible for the Sistema Unificado de Información de las Organizaciones Sociales (SUIOS) (Unified System of Social Organizations Information), which is a website, and the "Registro Único de Organizaciones Sociales (RUOS) (Social Organizations Unified Register).

The law restricts an individual’s ability to form organizations; all institutions should have a legal registration if they want to operate and receive and manage funds. The government heavily monitors the types of organizations formed, as well as the purposes they serve; Decrees 16 and 739 limit the types of organizations that the civil society can create and establishes that all organizations must be registered with SUIOS. The registration process is clear, but demands extensive legal and administrative information from applicant organizations, and the minimum cost is US $500.

In order to operate, POs need to have their statutes approved by the appropriate authority. The documentation required to approve the statutes are: 1) minutes of the Constitutive General Assembly of the organization, signed by all the founding members; 2) the proposed statutes; and 3) a certified copy of the document or documents that prove the organization’s assets (except in the case of organizations that work in the defense of vulnerable groups). Decree 16 establishes that first degree corporations cannot obtain legal status without possessing US $400, and second and third degree corporations and foundations require minimum US $4,000 to attain legal status.

Decree 16 also lists the aspects that must be addressed in the statutes: name and location, territorial scope, objectives, organizational structure, rights and obligations of the members, election procedures, quorum requirements, exclusion and inclusion criteria, and procedures for dissolution, among others.

The procedure to approve the statutes and give legal personality to the organization is as follows: 1) a public officer must check copies of the documentation filed by the organization and will respond within 15 days; 2) if the PO gets approval, the original documents must be filed within 15 days; 3) if it does not receive approval, the applicant will have 20 days to complete the documentation; 4) then it will take another 15 days to have a new response from the public officer; and 5) if, for the second time, the request does not meet the requirements, it will be denied, but the organization can present a new request in the future.
Question 2: To what extent are POs free to operate without excessive government interference?

Score: 3.0

Despite the long time frame and documentation required to attain legal personality, the authority in charge can “officially introduce the necessary reforms” for complete legality (Decree 16, Article 15, 5). This means that the National Secretary of Policy Management has the last word in decisions about the contents of the statutes of the organization.

In order for a PO to change its governance structure within legal limits, Decree 16 establishes that the PO needs to present a request to reform and establish a new codification of their statutes; to do so, they must follow a similar procedure to the one followed for initial approval.

Foreign non-governmental organizations that are interested in carrying out international cooperation activities in Ecuador must follow a special procedure established by the law. These types of organizations must be registered with the Secretaría Técnica de Cooperación Internacional (Secretary of International Cooperation), and must clearly articulate their goals and the activities they want to implement in Ecuador. Before starting operations, they must sign a Functioning Basic Agreement with the Secretary of International Cooperation. Foreign NGOs are forbidden from practicing partisan politics, interfering in public policy, or threatening peace and national security. If organizations do not comply with the laws and regulations, the Ecuadorian government, through the STCI, can terminate the activities of such organizations in Ecuador.

Foundations and corporations must comply with Articles 39 and 40 of Decree 16 concerning control (functioning control, use of public funds control (if it is the case), fiscal control (internal revenue service), customs control, and other type of controls established in the law) and must report to the competent authority. Upon request, POs are subject to present to the public authority proceedings, audit reports, approved internal reports, and other types of information regarding their activities. It is also a PO’s obligation to facilitate access to its records for verification by public officials.

The activities of the cooperatives are supervised through regulations established in Ley Organica de la Economía Popular y Solidaria (Law of Popular and Solidarity Economy), which regulates grassroots organizations in the community sector, the associative sector, and the cooperative sector (the sector related to production, consumption, housing, savings and credit, and services). The law establishes the procedures for continuous support, supervision and regulation of such entities through the Superintendence of Popular and Solidarity Economy.

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

Score: 2.2

The National Secretary of Policy Management has the power to dissolve a PO. The nine causes for dissolution are established in Decree 16, Article 26.

One of the objectives of SUIOS is to stimulate the co-management, execution, and control of programs and projects to ensure they benefit society through the “mixed participation of government
and social organizations” (Decree 16, Article 26, 7). POs may be dissolved if the organization engages in “partisan activities, activities threatening the internal or external security of the State, or activities that affect public peace” (Decree 16 Articles 22 and 6). This article is open to multiple interpretations, increasing government officers’ discretion on deciding what constitute threatening activities limiting the operation and freedom of association of POs.

Decree 16 outlines two ways a PO can be dissolved: 1) through voluntary dissolution (as stated in Article 27); and 2) through controverted dissolution (as stated in Article 28). In the process of voluntary dissolution, members make the decision to dissolve through a resolution of the General Assembly, and then inform the appropriate authority of its formal dissolution and liquidation. In the case of controverted dissolution, the appropriate authority can decide to dissolve an organization based on complaints and evidence that the organization has deviated from the originally established purpose. The commission created for the termination of an organization has 90 days to present the termination report. A dissolved PO can only reactivate its legal personality by means of a judicial or administrative resolution.

In conclusion: yes, the governing body has the discretion to shut down a PO. In cases of involuntary termination, organizations do not have the opportunity to be heard until after the decision of termination has been executed; in such a case, social organizations can take administrative and/or legal actions to defend themselves.

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?

Score: 3.0

Article 54 of the Organic Law of Internal Regime of Taxation establishes that donations to legally-constituted, private nonprofit institutions do not pay Value Added Taxes. There are no other fiscal incentives for donors.

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

Score: 3.5

Philanthropic organizations have a special tax treatment. The Law of Internal Regime of Taxation (Article 9) establishes that legally constituted, private nonprofit organizations are tax-exempt. In the case of cooperatives and second and third degree corporations (i.e. federations and associations of corporations), only those whose members are peasants and small farm owners are tax-exempt.

Article 19 of the Regulation for Application of the Law of Internal Regime of Taxation establishes that nonprofit organizations are exempt from income tax if they comply with the following requirements:

- Are legally-constituted and recognized;
Comply with the objectives established in their statutes; Serves a purpose related to one of the following areas: religion, charity, the promotion and development of women, children and families, cultural activities, arts, education, research, health, sports, professional organizations, unions, political parties, communal organizations, indigenous people, cooperatives, federations and confederations of cooperatives and other associations of peasants and small farmers.

- Their assets and income are totally devoted to their specific goals;
- Any surplus generated by the end of the fiscal year is invested to achieve their specific goals until the end of the next fiscal year; and
- They comply with the formal requirements listed on the Tax Code, the Law of Internal Regime of Taxation, and other laws of the country.

Additionally, the Law of Internal Regime of Taxation (Article 9) establishes that, in order to receive tax-exemption status, organizations must be registered in the Unique Contribution Registry and maintain accountability records.

Ecuadorian state incomes not received due to this exemption are considered a subsidy, based on what has been established in the Organic Law of the General Controllership of Ecuador.

However, if the philanthropic institution declares that it has not accomplished the legal requirements or if the Internal Revenue Service finds out that these requirements have not been accomplished, the organization will have to pay taxes on the total received income for that year.

Article 509 c of the Codigo Organico de Organizacion Territorial Autonomia y Descentralizacion (Organic Code of Territorial Organization Autonomy and Decentralization) establishes that properties belonging to charitable or social assistance institutions are exempt if they have legal personality and their buildings and incomes are intended to be exclusively used for charitable or social assistance purposes. Locally, there is also exemption for property taxes for charitable and social assistance institutions. However, this does not apply to all the Ecuadorian territory, as the decision to provide exemption, as well as the amounts and levels of exemptions, are locally regulated by the municipalities.

Regulations in Ecuador establish a minimum percentage of contributions or donations that must be earned by nonprofit private institutions to be considered exempt from income tax. Except for Universities and Polytechnic Schools created by Law, the income of nonprofit organizations must include contributions or donations in a percentage greater or equal to the following percentages: 1) for organizations with annual incomes between US $0 and US $50,000, 5 percent of their incomes must be from donations; 2) organizations with incomes from US $50,001 to US $500,000 must receive 10 percent or more in donations; and 3) organizations with incomes above US $500,000 must receive 15 percent or more in donations. This minimum percentage limits the range of philanthropic organizations that can actually be exempt.

Donations may come from cash contributions, bequests, and in-kind goods and services, and may be donated by members of the organization, founders or others. These donations, including cash donations are tax-exempt (Regulation for Application of the Law of Internal Regime of Taxation, Article 19).
The Tax Code (Article 35) also includes a regulation giving exemption from the payment of taxes to private, legally-constituted charitable or educational institutions and associations, provided that their goods or income are destined for the aforementioned purposes and only in the part which is directly invested in them.

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: 3.0*

Based on the Organic Law of Internal Regime of Taxation, legally-constituted, private nonprofit organizations are exempt from paying the Value Added Tax, as long as their assets and income are devoted to fulfill their specific goals, and only when the funds are invested directly in accomplishing those goals. In order for NGOs to have access to this exemption they have to be registered in the Unique Taxpayers Register, keep accounting records, and comply with all the formal duties established by national laws.

The Ecuadorian government can verify at any moment that an institution is complying with these regulations, that it actually is a nonprofit organization, and that it is devoting its resources to accomplish its specified goals. If a PO does not comply with this requirements, it will not receive any exemptions.

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

*Score: 3.0*

There are limitations to the types of cross-border donations that can be received by nonprofits. Cross-border donations that are received by nonprofit organizations are exempt from custom taxes as long as they are dedicated to any of the following causes: health, food aid, technical assistance, charity, medical assistance, education, and cultural and scientific research; further, the PO must have previously filed a cooperation contract with the Ecuadorian government. In addition, help/aid sent from other countries to assist in natural disasters is exempt from custom taxes. (Organic Code of Production, Commerce and Investments of Ecuador, Article 125, December 2010).

According to the provisions established in government-to-government contracts or agreements, any payments, credits on accounts, advances or reimbursement of expenses made abroad in favor of nonprofit institutions in the country that are part of foreign governments, are also exempt.

There are no limitations on the exemption of Value Added Tax for donations to nonprofits. The only reason a limitation may occur is if a nonprofit organization is not using donations to accomplish its
mission. However, there is a high level of discretion among public servants in deciding when a nonprofit is not complying with this law.

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: 1.0

There are political tensions between the government and the philanthropic sector. In fact, there were several critical moments during 2016. In a meeting at the Vatican in April 2016, President Correa questioned the presence of NGOs in Ecuador, saying that they are not civil society organizations, but organizations from other governments. This is consistent with his previous declarations in 2011 and 2014 when he denounced NGOs to be practicing politics or to be funded by groups of the extreme right in the U.S. who try to destroy "new socialist" governments such as the Ecuadorian. The most critical moment for NGOs in Ecuador was in December 2016 when the Shuar indigenous community tried to stop mining activities on what they consider to be their sacred land in Morona Santiago district, and police and military forces intervened. As a result of this process, on December 18, 2016, the NGO Acción Ecológica (Ecological Action) called for the creation of a Commission of Peace and Truth in order to investigate the persecution against indigenous people and the attack on their ancestral rights. Immediately, the Ministry of Environment initiated the process of dissolution of this NGO. Accion Ecologica had been defending this cause for over 30 years and was dissolved because, according to the government, it "promotes violence and social discord."

The current economic condition is a threat to the autonomy and sustainability of the philanthropic sector. Based on the economic forecast of the International Monetary Fund, Ecuador will have a decrease in its GDP of 2.3 percent. On the other hand, the World Bank made a projection of -2.9 percent growth of the Ecuadorian economy for 2017.

Finally, the new government will commence in May 2017, and the elected president, Lenin Moreno, comes from the political party founded by Rafael Correa. Therefore, we can expect no big changes to the adverse environment for POs in Ecuador.

It is expected that Ecuador will not offer opportunities for the free development of any type of philanthropic organizations during the coming years.

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

Score: 2.0

President Correa considers that some NGOs belong or respond to the interests of other governments, and are being financed by the extreme right of the U.S. in order to undermine "new
leftist" governments like the Ecuadorian. It is not a coincidence that USAID abandoned operations in the country at the end of 2014, rather, they were forced to leave by a presidential order. Donors and funders are free to support philanthropic causes. On the other hand, NGOs are not free to practice partisan politics, or other activities related to public policy that the government considers to be contrary to the internal and external security of the country, or that affects public peace. These reasons seem reasonable, although there seems to be little government discretion in deciding when, and if, any of these situations actually occur.

In February 2014, the Ecuadorian government dissolved a nonprofit organization advocating for the Human Rights of Amazon Indigenous Peoples and the Rights of Nature, Fundación Pachamama. In December 2016, Acción Ecológica was notified that its dissolution process had begun. This gives a clear message to donors and funders not to fund those types of organizations in Ecuador.

A positive thing about the Ecuadorian regulations for NGOs is that through the use of the Unified System of Civil Society Organizations (SUIOS), organizations can participate in the public procurement system and be official providers of services for the public sector. However, in order to access public resources, organizations require accreditation from RUOS (Unique Registry of Social Organizations).

Finally, Ecuador had not been implementing effective laws and programs to prevent corruption. Corruption scandals have been emerging in the news since 2016 more frequently than in the previous 10 years. In 2016, Ecuador held the 120th position out of 176 countries in the Corruption Index of Transparency International, with 176 representing the most corrupted country.

V. Socio-Cultural Environment

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

Philanthropic tradition has existed in Ecuador since the 19th century, but its development has been uneven. The Junta de Beneficiencia de Guayaquil (Guayaquil Benefit Board) is an example of successful philanthropic administration that has been operating for over 100 years, but the model has not been replicated in other cities in the country. The role of the Catholic Church and other Christian churches has been significant in encouraging a culture of philanthropy, but volunteering remains limited, and when people are asked if they participate in social activities positive responses are usually low (Surveys: "Cultura Política de las Américas", Vanderbilt University 2014 / Latinobarómetro, series 2007 - 2015). The lack of a legal framework that encourages the development of the philanthropic sector does not help to create a strong philanthropic culture, either.

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

The current situation could be qualified as a "generalized weakness" of the philanthropic sector. The State is omnipresent and controls every move of NGOs. It is not a very encouraging situation. As we mentioned, the new government, which will commence in May, is of the same political party as Rafael Correa, so the environment for POs is very likely to continue to be equally unfavorable and even harmful to the development of a free organized sector.

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

- December 15th, 2013: "Pachamama" Foundation was dissolved by the government, who argued that the nonprofit was aggressively acting against foreign oil companies.

- August 21th, 2015: Decree N. 739 reforming Decree N. 16 was enacted. The Decree increased government control and supervision of NGOs in Ecuador.

- December 20th, 2016: Acción Ecológica Foundation was dissolved by the government, who argued that its actions deviated from its original purposes stated in the statutes, and it had become a threat to national security.

Future development trends in the philanthropic landscape

Given the absence of a strong philanthropic tradition and the existing political and legal environment, it is difficult to think that we will see a much stronger, more diversified, or consolidated sector in the near future.

Only after a drastic change in the political system (constitutional reforms and legal changes) would it be possible to think of a new era for philanthropy in Ecuador.

It would be worthwhile to briefly mention that the area of corporate social responsibility (CSR) has begun to appear in recent years thanks to a group of local and international companies that promote CSR. Perhaps this is a route to future development of philanthropy.

The cooperative sector could also be another space for the growth of philanthropy, if the government allows the independent development of the sector and approves more flexible regulations.

Three key recommendations to improve the environment for philanthropy

- The private sector could establish alliances with the third sector and universities to expand philanthropic efforts in the country.

- Social organizations must demand the elimination of or reform of Decree 16 to safeguard the future of the philanthropic sector in Ecuador.

- International Organizations (UN, OAS) could promote activities to improve the conditions in developing countries in the region.