México

Expert: Jacqueline Butcher García-Colín and Santiago Sordo Ruz
Institutional Affiliation: Centro de Investigación y Estudios sobre Sociedad Civil, A.C. at the Tecnológico de Monterrey, Mexico City Campus.
With contributions from staff at the Indiana University Lilly Family School of Philanthropy

QUICK FACTS

Legal forms of philanthropic organizations included in the law: Association, Cooperative, Society, Others: Several forms of private assistance entities (names vary according to each state, the most common is Private Assistance Institution “institución de asistencia privada”), and Faith-based Association (‘asociación religiosa’).

Five main social issues addressed by these organizations: Primary and High School Education, Health and Medical Research, Basic Needs, Food, Housing and Economic Development

Average time established by law to register a philanthropic organization: 0 – 30 days

Average cost for registering a philanthropic organization: US $500

The stated nominal cost includes only the fees that must be paid by organizations, but when associated costs (lawyer fees, travel expenses and the like) are considered the total average cost nears US $1,500.

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

The process is not centralized and instances at both government levels are involved; the main instance is the notary public, which is a state government entity.

Philanthropic Environment Scores:

<table>
<thead>
<tr>
<th>Year</th>
<th>Ease of Operating</th>
<th>Tax Incentives</th>
<th>Cross-Border Flows</th>
<th>Political Environment</th>
<th>Socio-Cultural Environment</th>
<th>OVERALL SCORE</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>3.9</td>
<td>3.3</td>
<td>3.8</td>
<td>3.1</td>
<td>3.3</td>
<td>3.47</td>
</tr>
</tbody>
</table>
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?**

The law allows individuals to act collectively through unregistered associations and has provisions for their protection. Freedom of association for any lawful purpose is protected by the Constitution (Article 9). Philanthropic organizations are allowed to pursue any lawful purpose; however, religious activities and political organizations are restricted from seeking, for example, tax-exempt status and are governed by very specific laws. In principle, the law is inclusive of all types of philanthropic organizations; registered organizations have access to several types of benefits provided by the laws, depending on the type of organization. In addition, some special statuses—such as tax-exempt status—are restricted to certain types of nonprofit organizations that carry out specific activities (Income Tax Law, Article 79). In order to be tax-exempt, organizations must be registered in the Public Registry of Property and the Federal Taxpayers Registry, both of which are required for incorporation. Additionally, according to the Federal Law for the Promotion of Activities Undertaken by Civil Society Organizations, Article 7, eligibility to receive government funds requires that organizations register in the Federal Registry of Civil Society Organizations (Registro Federal de las OSC), although some government funds may be available to organizations not registered in the Registry. Before registering, organizations must have previously obtained legal personality.

Philanthropic organizations do not have legal impediments from the government, but the registration process might prove costly and time-consuming. Furthermore, clear information about the exact steps to take to complete the process is not widely available, and completing registration usually requires the involvement of different authorities. In general, there is no unique government body tasked with processing the whole application. The process regularly involves paperwork sent to a state-level public registry, a notary public, a federal ministry, and the federal tax authority. These entities generally carry out their duties in a professional, consistent, independent and apolitical manner. The activities carried out by the aforementioned entities are mostly transparent, albeit in varying degrees.

There are no explicit restrictions as to who may serve as a founder of a PO, and there is no minimum amount of capital or assets required for PO registration; however, the costs, time, and scarcity of information may deter applicants. The law requires a clear and closed list of reasonable documentation; even so, some of the required documentation might be costly and time-consuming to obtain. There is no registration fee, per se, but advancing through the different steps of the process may require payment of fees—payment to a notary public is among the most important expenses. In addition to these direct costs, some organizations might need to find the services of a lawyer and incur travel expenses. The total cost associated with registration might prove a deterrent for applicants. There is a fixed period for registration, but it varies between jurisdictions. Regulations do not establish a clear and/or closed list of grounds for denial, but there seem to be no documented cases of denial. In the extremely rare case of denial, there are appealing mechanisms in place.
Question 2: To what extent are POs free to operate without excessive government interference?

Score: 4.0

Registered POs have absolute discretion to determine the structure and governance of the organization; there is not even a legal obligation to establish a board of directors/trustees. The only stable structural requirement is—perhaps—the designation of a member as a legal representative of the organization. The exception to this rule is private assistance institutions, which are regulated at a state level and required by state law to provide detailed information in the statutes. There are no restrictions, either, on the kind of activities a PO can engage in, as long as they are lawful. However, organizations whose bylaws include campaigning for or against political parties, religious doctrines, or remunerated lobbying may not seek tax-exempt status.

POs are not expressly restricted by law to cooperate with partner organizations in any sector or country. There are no legal restrictions in place, either, to prevent POs from participating in networks, using the Internet or social media—these forms of communication are not restricted.

Reporting requirements are clear and predictable; although, these vary among legal registration type (e.g. institutions of private assistance have heavier oversight and hence reporting requirements) and state of incorporation. Some requirements do vary depending on amount and source of income, but this is only applicable to organizations that have acquired tax-exempt status.

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

Score: 4.0

The governing body of a PO is able to voluntarily terminate the organization. Voluntary termination is subject to judicial supervision, and there are mechanisms in place to appeal.

Involuntary termination exists, but there is a lack of specificity of the reasons for termination, or the process of termination. This means that authorities have arbitrary discretion to terminate an organization de jure. However, cases of involuntary termination are extremely rare, and involuntary termination is not considered an actual threat for philanthropic organizations.

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

There are income tax incentives for donations at the federal (national) level in the form of deductions for both individuals and corporations. The limit for eligible deductions for cash donations to tax-
exempt entities is 7 percent of the previous fiscal year’s taxable income for both individuals and corporations (Income Tax Law, Article 27). Experts consider that this percentage is too low and inhibits individuals and corporations from making charitable donations.

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

All POs are permitted to receive contributions from private donors, though some exceptions may apply. In general, registered POs are considered nonprofit organizations under the income tax code; this means they are not subject to taxation on their income, although exceptions and limits apply. However, the range of activities eligible for tax exemption is fairly broad, and the definitions of these activities are also somewhat broad so as to allow for the inclusion of most philanthropic organizations. Some exemptions to the value added tax, import tax, and property tax also apply.

Registered POs may seek a special tax-exempt status—known as *donataria autorizada* status—that allows them to provide the receipts donors need in order to claim deduction on their individual income tax return. Specifically, Article 79 of the Income Tax Law limits exempt status to organizations devoted to arts, education, cultural heritage, libraries, and museums. Charitable institutions and nonprofit CSOs are authorized to receive donations that have as target beneficiaries: individuals, sectors, and regions with scarce resources, indigenous communities, and vulnerable groups. Some POs, such as religious or political organizations (including political parties), may not seek this particular status but may receive tax benefits, as provided in the specific laws governing them.

The process of receiving the additional tax-exempt status is somewhat clear and predictable, but may prove quite onerous. For example, to prove they are eligible, candidate organizations must obtain documentation from different government entities. While obtaining this documentation is cost-free, it might prove to be highly time-consuming and unclear for some entities. A considerably low percentage of existing organizations actually have this special status. However, while the process for receiving tax benefits is clear and predictable, most registered organizations are not authorized to provide valid donation receipts, thus making deduction impossible.

**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?**

Private philanthropic contributions from Mexico to other countries is low, but still relatively high in comparison to other emerging economies in the region. The Global Index of Philanthropy and Remittances (Center for Global Prosperity, 2016), shows that Mexican private donations to
developing countries in 2014 was only US $370,000. Mexico does not charge any special taxes on sending cash/in-kind contributions abroad, but the cost and deductibility of such contributions are subject to the treaties in place between Mexico and the recipient country. In practice, this might deter cross-border philanthropy.

No approval process is needed for sending contributions abroad, and there are no restrictions on contributions either; although, there are no incentives to sending them either. Cross-border donations on behalf of POs and individuals are very rare. Some Mexican corporations do engage in philanthropy abroad but do so through their respective foreign subsidiaries.

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

Costs associated with receiving donations from abroad vary depending on the donor’s country of origin. Customs, duties, and different kinds of taxes apply, depending on the case. However, Mexico has treaties in place with important donor countries, such as the U.S., to avoid double taxation and similar costs.

Costs vary depending on the origin of the donation. In order to receive donations from abroad, registered POs must receive a special authorization from the tax authority that is requested when applying for tax-exempt status. The restrictions that apply to cross-border charitable donations are basically the same that apply for national donations.

**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?**

The quality of the relationship between the philanthropic sector and the government varies depending on the levels of government and philanthropic subsectors. Some subsectors that are naturally vigilant of governmental action, such as those safeguarding environmental protection, freedom of the press, or human rights, may exhibit significant tensions with local and state government agencies. The relationship between POs and the federal government can be said to be on good terms. There have been attempts in the past by a sector of congress to enact laws and regulations to strengthen oversight and cut benefits to the philanthropic sector, but these attempts have been successfully countered by the philanthropic sector. For example, in 2016, a proposed fiscal reform suggested terminating organizations that lost their *donataria* status—among other damaging provisions—but a coalition of CSOs were able to stop this from passing.
The political-economic system recognizes the existence and operation of independent groups, but this recognition rarely translates into formal partnerships or other forms of interaction that can effectively empower these organizations. There are, however, successful instances of genuine inter-sectorial cooperation that have managed to influence policy and boost social change. For example, Fundación Walmart de México partnered with several other foundations, corporations, the Inter-American Development Bank, and the German Agency for International Cooperation to improve the efficiency of its proyectos productivos (OCDE netFWD, 2016).

In Mexico, federal and state levels of governments have created instances for the involvement of civil society organizations in policy development and implementation, but these instances of participation can be considered tokenistic or symbolic, to some extent. Organizations are convened but their involvement is marginal, and the issues they raise are not actually taken into consideration to change the public agenda. The same can be said of local government agencies in medium and large metropolitan areas. There are, however, some cases of genuine and productive cooperation, but they are not the common standard.

The political climate varies largely among the different regions in the country and with respect to different government levels. Some regions are undergoing political and security crises and this triggers the creation and development of certain types of POs. Some are government watchdogs and promote citizen oversight, while others seek to protect human rights, freedom of the press, or indigenous rights; several others provide services to victims of organized crime, one of the most pressing issues in Mexico today. Many of these POs start as social movements and later become institutionalized, while some others never register but provide much needed human services.

Current economic conditions are not particularly threatening to the autonomy and sustainability of the philanthropic sector. The economy has exhibited considerable stability in the past decade, but the result of the presidential election in the US might prove a destabilizing economic factor. The ways in which this may affect the sector remain uncertain.

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

Score: 3.2

The government—at all levels—is not involved in promoting a philanthropic tradition in the country. Incentives for donating to POs are often considered negative for tax collection overall. However, federal and state government are implementing programs to increase the access to resources and opportunities for civil society organizations. In fact, there are even some governmental co-investment programs; nevertheless, these efforts do not entail a great quantity of resources, and many policies are regarded as tokenistic by organizations in the sector. In general, the public infrastructure to support the development of philanthropic organizations is scarce and under-resourced; these instances are frequently the first to suffer from austerity plans and budget cuts. Service provision to the sector is scattered and uncoordinated.

Although donors and funders are free to support causes of their choice with low government pressure, this pressure may be greater at the local level. There are efforts in place to prevent corruption in the sector, most importantly from fiscal authorities, but there have been instances of
collusion. These vary from isolated cases of organizations used to embezzle public funds to organizations that have been set up to support electoral campaigns, an explicitly forbidden activity.

V. Socio-Cultural Environment

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

Score: 3.3

The philanthropic culture of Mexico is closely linked to the country’s Catholic heritage and the historical development of the State. For example, some of the oldest registered organizations have a religious origin, and many of the practices that bring the population together have/are related to faith practices. The existence of strong state control of social assistance activities dates back to the history of the country and may be responsible for the relatively low number of formal organizations. There is a strong philanthropic culture, but many of these activities occur through unregistered organizations often involving relatives and members of local community as beneficiaries. A recent article (Gonzalez-Ulloa, 2016) reveals that after 12 years of the enactment of the Federal Law for the Promotion of Activities Undertaken by Civil Society Organizations, 32,000 CSOs have obtained their Unique Identifier with the Registry of Civil Society Organizations (CLUNI); however, it has been estimated that this is just a small number of the existing organizations. The administrative burden put on small organization to register could lead to an underestimation of the real number of philanthropic organizations.

Solidarity and voluntary action are considerably high among the Mexican population, and are supported by the country’s core societal values. The community, religion, and family are very important institutions in the society, and formal associations are not the common channel people use to donate; similarly, voluntary action is quite generalized but does not take place through formal organizations. The 2016 World Giving Index shows that Mexicans are very responsive to helping a stranger, but are less likely to donate money to a charity or volunteer their time to an organization. Although the results of the National Survey of Philanthropy and Civil Society (2013) show an increase in the proportion of volunteers to organizations since 2005, the proportion of respondents giving money to strangers (50%) doubled the rate of giving to organizations. Similarly, the proportion of respondents preferring to give money to individuals instead of giving it to organizations was eight times higher.

This shows a generalized mistrust of POs in the aforementioned survey, with 43 percent of the respondents saying to have low levels of trust in organizations asking for donations, and distrust being the main reason why they do not donate to organizations. Different subsets of the philanthropic sector are perceived differently. People are somewhat untrusting of the motives behind philanthropic efforts per se, e.g. corporate foundations, but do perceive the existence of civil society organizations as positive and important for overcoming social issues.

There is a general understanding of the role of POs. Naturally, this understanding is correlated with an individual’s educational/cultural level and similar sociodemographic variables; low levels of education and development correlate with high ignorance about the topic.
Philanthropic organizations suffer from a particularly high level of mistrust among the population; the more visible POs, especially those related to corporations, are even less trusted. Despite the fact that tax-exempt POs are required to disclose their financial information, this data is not available to the public and is mostly unknown. This does not help in changing public perception about philanthropic organizations in the country.

The social structure and culture of Mexico facilitate and encourage the development of philanthropic activities. However, most of these are undertaken in informal settings and are rarely permanent over time; organized civil society organizations are proportionately few compared to other countries where philanthropy is a strong sector. Gender discrimination is ingrained in the country’s culture. However, while obviously not immune to discriminatory practices, the philanthropic sector exhibits comparatively lower levels of discrimination towards women; the same holds true toward other vulnerable subgroups.

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

Currently, the philanthropic sector is threatened by some structural conditions, such as prevalent corruption and social insecurity; these are, nonetheless, circumstances impending on other sectors too. There have also been attempts by the legislature to thwart the sector in different ways, but POs have responded actively to minimize the damage.

The number of registered organizations remains relatively low and most are concentrated in a few urban centers.

Informal small-scale giving is prevalent and relevant but there do not seem to be negative consequences of its informal nature. It could be said that the sector is in the very early stages of consolidation. There is a growing number of organizations devoted to the professionalization of the sector (Alternativas y Capacidades maintains an on-line directory of these entities at fortalecedoras.fondosalavista.mx), and there is also a growing interest in the generation of knowledge about different aspects of the sector among research centers and universities, and several cross-sectorial initiatives have developed (with mixed results). The sector is progressively becoming self-aware and is pushing to become enfranchised and able to influence public policy.

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

1. A PO-led initiative, created to promote transparency and accountability, persuaded an important number of public officers and candidates to make public a conflict-of-interest disclosure and taxes. This initiative contributed to fight corruption in the country and illustrated the power of organized civil society partnerships.

2. A coalition of POs, scholars, and practitioners succeeded in stopping congress from passing damaging changes to fiscal and other regulations that would have threatened the
survival of tax-exempt CSOs. This has highlighted the importance of the sector and heightened its self-awareness.

3. Corruption, organized crime, and generalized insecurity remain a threat for many of the activities undertaken by the philanthropic sector. These scourges have also mobilized countless groups within the sector and generated initiatives to protect human rights and freedom of the press and to fight corruption.

Future development trends in the philanthropic landscape

The philanthropic landscape is expected to remain relatively stable in the upcoming years. It is not easy to perceive any particularly influential forms of philanthropy or growth trends in the near future.

The political and economic consequences of the US presidential election and the policies to stop immigration and intentions to revise international treaties need to be assessed. The extent to which this may affect the sector is still uncertain. Mexican general elections will be in 2018 and several scenarios are possible. It could be said that the philanthropic sector—as does the rest of the country—faces times of uncertainty.

Three key recommendations to improve the environment for philanthropy

1. One of the impending needs of philanthropic organizations is to get funding and a comprehensive fiscal incentive, since the current fiscal incentives for the sector are considerably low. Both are needed to promote the balanced growth of the sector.

2. The registration process and the process for acquiring tax-exempt status need to become clearer, easier, and faster.

3. The existing commission charged with promoting the development of the sector (Comisión de Fomento de las Actividades de la Sociedad Civil) needs to be given enough resources and autonomy to become an instrument that truly catalyzes the growth and influence of the sector.