Peru

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QUICK FACTS

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

Five main social issues addressed by these organizations: Primary and High School Education, Health and Medical Research, Basic Needs, Environment, Agriculture and Economic Development, Women.

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

Average cost for registering a philanthropic organization: US $400

This cost refers to the average notary public and registration fees. Registration rights are established at the national level; notary fees are set by each notary public. It does not include legal advisory fees, which are governed by supply and demand.

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

Philanthropic Environment Scores:

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<td>2018</td>
<td>3.3</td>
<td>2.9</td>
<td>3.0</td>
<td>2.9</td>
<td>3.0</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?

Freedom of association is recognized in the Constitution (Section 13, Article 2). Natural or juridical persons—national or foreign—may form nonprofits under the legal form of civil associations, foundations, and committees—with associations being the most commonly used form. The Civil Code has few regulations on this subject. In the case of associations, the law is flexible. Foundations, however, are under the control of the state through the Consejo de Supervigilancia de Fundaciones (Supervisory Council of Foundations), and the existing norms do not permit agile operation. In practice, there existed (and still exists, but to a lesser extent) certain discretion of Public Registry officials; but with the current Regulations for Registration of the Registry of Juridical Persons (Resolution No. 038-2013-SUNARP-SN, February 2013), many aspects related to registration of nonprofits have been clarified (constitution, regularization of boards of directors, amendments of the bylaws, etc.).

The acquisition of legal personality in Peru is possible through registration in the Public Registry office (a national entity), which checks the “qualification of legality” (content and formality) of the documents. The registration rights and procedures are published on the Public Registry website. The registration procedure and required documentation are regulated, and gives applicants the opportunity to make corrections based on the observations made by the Registrar. If registration is denied by the Registrar, applicants can appeal to the Registration Court. Registration costs are not excessive. The Civil Code does recognize associations and foundations without legal personality (not registered), but establishes liability of those who act on behalf of these organizations. There is no legally established minimum amount of assets to establish an association or foundation.

Question 2: To what extent are POs free to operate without excessive government interference?

Civil associations have flexible legal regulation. In the case of foundations, founders do not participate in fundamental decisions—they serve only as administrators. Furthermore, decision-making is not an agile process, as there is state control over the process through the Supervisory Council of Foundations. In general, there are no limitations for the creation of nonprofits with social purposes, and no approval is required to receive international technical cooperation (CTI). However, between 2014 and 2016, the topic about the extent and limits of state control over international technical cooperation resources received and/or utilized by NGOs, currently registered through the Peruvian Agency for International Cooperation (APCI), was again under discussion. In May 2015, the Executive Resolution (Resolucion Directorial Ejecutiva) No. 085-2015-APCI-DEconditioned registration renewals of national NGOs and Entities and Institutions of
International Technical Cooperation-ENIEX (foreign) through the supervision and recommendations of the Peruvian Agency for International Cooperation (APCI). This measure was interpreted by several social civic organizations as a violation of the freedom of association and freedom of expression guaranteed by the constitution. Similarly, a series of directives were issued by APCI in 2015 that aimed to reinforce its controlling functions with systematic and intensive monitoring, as well as with sanctioning procedures, which, in practice, overflowed APCI's own administrative capacity. These requirements were eliminated by Executive Resolution RDE No. 130-2016 / APCI-DE (December 2016), after APCI recognized that they caused a dilation of procedures and "difficulties in complying with supervision requirements." ENIEX-NGOs registered in APCI must still present detailed information on their projects, and CSOs must submit taxes, as any legal person, to the National Superintendence of Tax Administration (SUNAT). In terms of access to internet, travel, conferences and participation in networks, neither associations nor foundations have government restrictions.

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

Score: 4.0

As part of the fundamental right of freedom of association, the Political Constitution of Peru (Article 2) establishes that philanthropic organizations cannot be dissolved by administrative decision—by the State. The dissolution of civil associations can be a voluntary decision by agreement of the General Assembly of Associates, although there are a few regulations in the Civil Code. The Public Prosecutor's Office can force, through an abridged process, the dissolution of an association whose activities or purposes are contrary to public order or morality. This judicial process is governed by the constitutional principle of double appeal, and therefore, the judicial decision, at first instance, is appealable. In the case of a foundation, since there are no members except administrators, voluntary dissolution is not regulated. Only the forced dissolution of a judicial nature is regulated, but the Supervisory Council of Foundations may request the dissolution of the foundation in the event that its purpose is impossible to fulfill. The judicial process is abbreviated and the sentence is elevated to the consideration of the Superior Court. There is not specific and/or precise regulation for nonprofits in relation to the tax issues regarding their dissolution and liquidation; so, only general regulations apply to this matter.

**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

The tax system in Peru is not entirely favorable to making charitable donations. However, recently, Law No. 30498 (August 2016) established certain regulations to promote donations of food, goods, and voluntary (free) services in situations of natural disasters. Such promotions include: a) tax deductions from the income tax; and b) donation of goods to entities qualified as eligible
organizations by SUNAT with the purpose of serving populations affected by natural disasters will not incur the general gales tax applied to goods and services sold in the country.

The Income Tax Law in Peru permits tax deductions for donations made by individuals or legal entities (taxpayers in Peru) to certain types of philanthropic organizations; specifically, organizations whose purpose is charity, social welfare, education, cultural, scientific, artistic, literary, health, organizations protecting historical heritage, indigenous culture, and similar initiatives. This rule holds true provided that the recipient organization is registered in the National Superintendence of Tax Administration-SUNAT as an eligible organization that can receive tax deductible donations. (Tax exemption is difficult to obtain because tax-exempt applicants must comply with the purposes of charity organizations established by SUNAT, and there is a tendency to use very strict criteria about the social objectives nonprofits must pursue to be tax-exempt. Deductions cannot exceed 10 percent of third category net-income, after compensating for losses. Registration as a recipient organization that receives tax deductible donations in SUNAT must be renewed every three years.

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

**Score: 2.8**

The Peruvian tax system is not favorable to grant tax exemptions in favor of nonprofit organizations, especially related to income tax. Regulations for income tax-exemption are temporary and have been renewed by law (the tax exemptions must be granted by law) until December 31, 2018.

Registration as an income tax-exempt organization requires the qualification of SUNAT and, according to the Income Tax Law, it is not granted to nonprofit organizations in general, but only to those that fulfill certain objectives, such as charity; social assistance; education; sports; cultural, scientific, artistic, literary, and political objectives; trade unions; and/or housing, in an exclusive manner. In practice, this makes it difficult for local entities to obtain income tax-exempt status because of restrictive interpretations about social objectives by SUNAT. The Tax Court has denounced the restricting criteria nonprofits must fulfil in order to be tax-exempt, as well as the limiting options available to organizations in regard to mission or purpose to be granted tax exemption.

Through Legislative Decree No. 1120 (July 2012) the regulations for income tax exemption for nonprofits were strengthened regarding the distribution—directly or indirectly—of incomes to associates or linked parties (in particular, costs or expenses not subject to subsequent tax control). The SUNAT inspects, verifies, and has the power to exclude the organization from the Income Tax Exemption Registry if it can be verified that the organization distributes incomes directly or indirectly. Additionally, SUNAT can override the resolution that grants the organization income tax exemption, as well as the registration that deems the organizations eligible to receive tax deductible donations. The organization can apply to register again with SUNAT after two years.

Additionally, there are no general tax benefits to property (Property Tax) of philanthropic organizations, nor is there tax exemption for operations that pay general sales tax.
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

The General Customs Law (Ley General de Aduanas) in Peru states that individuals do not pay taxes on the exportation of goods. Besides, in Peru, there are no special regulations for the export of charitable donations. In such cases, regulations and general procedures established in the General Customs Law apply.

In the case of cash donations abroad, the regulations for preventing money laundering (Superintendence of Banking and Insurance) and, more specifically, the regulation for tax evasion establish that money transfers overseas must be made through banking or financial agencies if the amount to be transferred exceeds three thousand five hundreds new soles (S/. 3,500) or US $1,000. (Single Consolidated Text of the Law against Evasion and for the Formalization of the Economy: Supreme Decree No. 150-2007-EF. September, 2007)

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

Score: 3.0

There are no legal limitations to receiving donations from abroad. Sending and receiving money from abroad are subject to the regulations explained in Question 6 (more detail in www.sbs.gob.pe, Prevention of Money Laundering).

Imported goods are generally charged an 18 percent General Sales Tax (GST). However, imports (donated goods) and transfer of free goods to Entities and Institutions of International Technical Cooperation-ENIEX, National Non-Government Development Organizations (NGDO-PERU), and Nonprofit Private Institutions receiving foreign welfare or educational donations (IPREDA), do not pay GST and customs duties (imports). In all cases, these organizations must be registered in APCI and qualified by SUNAT as eligible organizations to receive tax deductible donations; this last requirement was established by Law No. 30498 in August 2016, which eliminates the process of approval by ministerial resolution. Therefore, the donor does not lose the right to apply the tax credit for a donated good. Law No. 30498 also modified the regime of custom duties in favor of imported donated goods to ENIEX, ONG, and IPREDA.

The General Customs Law maintains the non-payment of customs duties on the importation of donated goods made to religious entities, as well as foundations serving education, culture, science, charity, social assistance or hospitals.
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 general, there are no established policies to promote mutual trust and partnerships between philanthropic organizations and the different levels of government in Peru. This is particularly evident in the case of NGOs. Since 1990 (during the government of Albert Fujimori), tensions have arisen with NGOs, especially with organizations that could be considered not convenient to government interests, such as human rights organizations, organizations in defense of democracy, and, more recently, organizations associated with environmental issues, as they are considered to be opponents to the interests of the mining industry.

The evidence of this low support is evident in the tax and international technical cooperation regulations. Tax policies and regulations do not grant greater tax exemptions to organizations, and the interpretation by SUNAT regarding the eligibility of institutions to receive income tax exemption is limited. In recent years, the extent of supervision by state agencies over resources given to POs by international technical cooperation agencies has increased tensions between the government and philanthropic organizations. Between 2014 and 2016, new regulations gave greater supervisory powers to APCI and also modified the requirements for registration renewals for NGOs and ENIEX, which in December 2016, after several discussions between the umbrella organization National Association of Centers (ANC) and APCI led to the amendment of APCI regulations.

In reference to the participation of POs in public policy implementation, there are no policies or mechanisms that promote or establish permanent or continuous collaborations or any means for the participation of philanthropic organizations in the development and implementation of public policies. However, the structure of the government at local and regional levels provides mechanisms for PO participation in the formulation of the participatory budget. Further, civil society organizations are allowed to participate in the National Agreement, which is a mechanism for the participation of CSOs in the analysis and development of public policies, the Special Commissions, such as the Anti-Corruption Commission, and the Dialogue Tables, such as the Poverty Reduction Roundtable.

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

Score: 2.8

There is no recent history of the government directly promoting a culture of philanthropy in Peru. The access to public resources is provided through public procurement procedures, and these rules apply to all kinds of organizations and enterprises, including philanthropic organizations. The
Fujimori administration (1990s) "outsourced" social programs to NGOs as part of a policy to reduce public expenses. These kinds of contracts were only accessible to NGOs experienced in social mediation and to grassroots organizations, which increased the levels of clientelism—exchange of goods and services for political support.

The Peruvian government still lacks the internal coordinating mechanisms to promote and support philanthropic activity in the country. One of the functions of APCI is to promote the coordination and articulation of public and private initiatives regarding international technical cooperation; however, in recent years, APCI efforts have been mainly focused on supervising NGOs.

Peru’s legal system recognizes the freedom of contracting and does not impose restrictions on receiving donations from foreign sources. However, in the case of non-reimbursable, international cooperation donations, in 2015, APCI issued new directives to strengthen monitoring and control mechanisms to ensure the "correct" and "efficient" use of grants.

Corruption is a serious problem in Peru and it has spread to the whole public sector, even though a significant number of legal measures have been approved to combat corruption, such as the State Policy approved by the National Agreement, the National Anti-Corruption Plan 2012-2016, as well as sectoral plans and amendments to the Penal Code that reinforced penalties for crimes against public administration. However, the need to strengthen the specialized anti-corruption agencies, to establish a clear policy for the active participation of civil society organizations, and to critically monitoring government activities is evident.

V. Socio-Cultural Environment

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

There is a long-standing tradition of philanthropy in Peru that started in colonial times under the influence of the Catholic Church. According to Béjar (1997), philanthropy was closely associated not only with religion but also with the upper and oligarchic classes. Philanthropy in Peru has gone through several different stages—from small organizations created to serve urban populations during the nineteenth century to larger organizations founded at the beginning of the industrialization period to provide diversified human services. The boom of nonprofits occurred in the 1980s, in part due to the presence of international cooperation agencies in the region. Sanborn and Cueva (2014) explain that the economic crisis, political violence, and the State's inability to address basic needs in the 1980s allowed philanthropic organizations to assume greater responsibilities in meeting basic needs, such as food, health, housing, and security. The executive director of the Peruvian International Cooperation Agency (APCI) reported that, by 2008, Peru had registered 1,704 non-governmental organizations (NGOs). However, experts estimate that the real number of nonprofit organizations could be much higher if we considered the number of unregistered nonprofits.

Peruvians have a general knowledge of the existence of the philanthropic sector and participate in philanthropic activities. The results of the national survey about NGOs in Peru (IMASEN, May
2015) revealed that 52.8 percent of Peruvians know or have heard about NGOs. Likewise, 51.8 percent would be interested in participating in volunteering at an NGO. According to the CAF World Giving Index 2016, which ranks countries according to what people do to help others, donate money, and volunteer, Peru ranked 65 out of 140 countries (36% overall score). The country ranked lower in donating money (90) but higher in volunteering (41). In fact, Peru stands out as one of the three countries with improved general ranking in relation to 2015 (an increase of 8%).

The mechanisms created by the government to ensure accountability and transparency are among the most commonly perceived constraints for the operation and growth of the philanthropic sector. The aforementioned IMASEN survey revealed that 45.9 percent of the surveyed population have a very good/good opinion of NGOs and 33.8 percent of respondents have a fair opinion (79.7% in total). Similarly, 57.9 percent consider that NGOs contribute to the development of low-income populations. The survey also reveals that 28.8 percent think that providing aid to those in need is the main positive aspect of NGOs; however, 47.9 percent believe that corruption is the main negative aspect.

The Peruvian Constitution recognizes equal rights, and prohibits discrimination based on origin, race, sex, religion, and economic status; therefore, are no legal or practical limitations for women to participate in philanthropic organizations. There are important organizations involved in advocacy on gender issues (reproductive sexual health, violence against women, civic union), as well as organizations that seek to support and to empower women. In Peru, the reduction of the population living in poverty has not led to the reduction of inequality, especially in the rural sector. This is why it is so important to have an organized civil society to support the philanthropic sector (70% of CSOs that work on public agenda issues are devoted to the development of the rural sector).

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 general, given the flexibility to form associations in Peru (but not to form foundations), the philanthropic sector is very heterogeneous and evenly dispersed. We can find business foundations, mothers' clubs, NGO's, charitable associations, among others. Within the nonprofit or philanthropic sector, the non-governmental development organizations played an important role and still maintain a presence among issues related to social inclusion, human rights, democracy, anti-corruption initiatives, etc. These organizations are also connected to with rural development, citizenship, and gender issues, and environmental goals, which are, in turn, associated with the defense of indigenous and rural populations from large-scale mining and/or environmental pollution. Nonetheless, NGOs have problems finding financial sustainability, as their funding is often tied to specific and time-bound projects. Because NGOs are continuously facing challenges of self-financing while also redefining their role in society, several NGOs have reduced their activities, and some have even shut down. Since the culture of donating money to philanthropic organizations is not strong in Peru, philanthropic organizations cannot count on private donations as a driving force for sustainability.
Adding to this problem, indigenous communities and rural populations have lately taken direct action in cases related to large-scale mining, without the intermediation of NGOs. Social mining funds have been created as associations involving communities and/or representatives of mining companies, but the low level of professionalization of community representatives have created difficulties in the management of these associations. Important umbrella organizations still remain, such as the National Association of Centers (ANC) (www.anc.org.pe), that played an important role in the legal debate concerning APCI’s oversight of POs in 2006 and 2007, as well as in the changes made to the APCI guidelines in 2015 registration renewals. ANC also does important work by training and supporting its members. Similarly, the I Coordinator of Foreign Entities of International Cooperation (COEEC) (www.coeeci.org.pe) has also had an important role in the development of the philanthropic sector in Peru.

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

- Oversight functions of the Peruvian Agency for International Cooperation (APCI) to monitor NGOs (local), ENIEX (foreign) and IPREDA (welfare institutions, local or foreign), specifically:
  - Executive Director Resolution No. 085 -2015-APCI-DE (May 2015) conditioned that NGOs and ENIEX registration renewals fall under the supervision of the APCI; and
  - The systematic APCI monitoring and control mechanisms during 2015 and 2016, which led to the beginning of sanctioning procedures, which especially affected NGOs connected to environmental and reproductive health issues.

- The positioning and strengthening of umbrella organizations in the NGO sector (especially the National Association of Centers’ public pronouncement in June 2015 to favor transparency, without restrictions on freedom of association and expression) against APCI Resolution No. 085, and its amendment added in December 2016 by Executive Resolution No. 130-2016. This led APCI to recognize its own limitations in attempting to accomplish such high levels of supervision.

- Criminalization of social protest. In January 2014, Law No. 30151 was approved to amend Article 20 of the Criminal Code, establishing that the personnel of the Armed Forces and the National Police of Peru who, in exercise of their duties, use their weapons or another means of defense and cause injury or death are exempt from criminal responsibility. The amendment eliminates the phrase “in a regulatory manner” which regulated the use of firearms according to the law. This has generated criticism from the Ombudsman’s Office, civil society organizations, and the Institute of Legal Defense (IDL). The Institute for Democracy and Human Rights (DDH) in Peru considers that the amendment is highly dangerous and is against the existing regulations of both domestic and international law regarding the limitations to the use of public force.

Future development trends in the philanthropic landscape

1) Challenges to the sustainability and financial viability of CSOs in general, and of NGOs in particular, to guarantee their permanence and search for alternative sources of funding. At the same time, new trends and agendas for CSOs that demand innovation and the pursuit
of new goals (climate change, rural development, environment, urbanism and citizenship, fight against corruption, etc.).

2) Social movements or community organizations focusing on social causes, mainly regarding socio-environmental conflicts. For example, as of February 2017 there have been 212 social conflicts, according to Defensoría del Pueblo.

3) Challenges regarding the extent and balance of APCI supervision upon non-reimbursable international cooperation resources. An observant and attentive supervision of the NGO sector can be an opportunity for strengthening the sector and increasing visibility among the general public.

4) Indigenous and rural communities are demanding institutional presence without having to rely on intermediary organizations, such as NGOs, in relation to mining projects. Although there is a special legal framework addressing this need, such as the ones developed for mining social funds and peasant communities, these organizations need to develop in terms of management capacity and transparency.

Three key recommendations to improve the environment for philanthropy

- Specialization and training to staff working in the nonprofit or philanthropic sector. There is lack of knowledge and experience concerning the application of legal, institutional, and tax frameworks as they relate to the management of philanthropic organizations. This lack increases financial and management issues and produces unnecessary costs. This not only affects the capacity of the public entities involved, such as the Public Registries and tax officials, but also the capacity and skills of the personnel involved in the operation of philanthropic organizations, such as accountants, lawyers, managers/directors, and general administrative staff. At the same time, the lack of financial resources in several of these entities prevents them from hiring specialized personnel or accessing specialized consultations. Alternatives to this dilemma include strengthening umbrella organizations and the alliances between these organizations and public entities to build capacity.

- Flexibility in the interpretation of the SUNAT for tax-exemption. Although an ideal scenario would be to expand the objectives of nonprofit organizations that can qualify for income tax exemption, this would imply a legal reform, which does not appear to be in the government's agenda in the short/medium term. Therefore, a more viable alternative would be to engage umbrella organizations—for example ANC and COEECI—in discussions with the Tax Administration (SUNAT) to get to a broader conceptualization of "charity" or "social assistance" that goes beyond the idea of social welfare. The current conceptualization has led the government to grant income tax exemption only to organizations offering free services to populations in need. Philanthropy and charity should also include the promotion of entrepreneurial activities and access to resources. There must be a general understanding that the concept of "nonprofit" does not imply "income loss," and that nonprofits need access to resources from a diversity of funding sources, not just donations. The concept of nonprofit, therefore, must be connected to the idea of "reinvesting" incomes to accomplish social purposes, and not only to the idea of providing free access to benefits, as currently interpreted by SUNAT.
- Legal and social recognition and greater opportunities for citizen participation through CSOs, in the form of participatory budgets, concerted proposals, and the fight against corruption and public policies. At the same time, it is important to strengthen the interactions and collaborations between the government and CSOs. For example, in the field of international technical cooperation, round tables and events have been held between NGOs (represented by the ANC) and APCI that need to be maintained and strengthened. Likewise, these experiences can be replicated regarding other public entities, for example the SUNAT, to provide recommendations on tax exemption.

- New accountability and corruption control mechanisms demand that philanthropic organizations, especially from the NGO sector, are capable of demonstrating transparency and increasing visibility. It is important to recognize that NGOs are making efforts to demonstrate greater transparency; for example, providing access to information through their websites regarding public events, general background, and public pronouncements.