



WORLD MOVEMENT *for* DEMOCRACY

Confronting the Challenges to Democracy in the 21st Century

National Endowment for
Democracy, Secretariat

1025 F St., NW, Suite 800
Washington, D.C. 20004

Tel: + 202-378-9700
Fax: +202-378-9889

world@ned.org
www.wmd.org

Defending Civil Society

Peru Country Report Summary

(*This report was prepared by World Movement Secretariat staff.)

As a unitary state, Peru has national legislation for Civil Society Organizations (CSOs), and the general legal framework that applies to them is the Civil Code. There are additional national regulations that govern International Technical Cooperation organizations, which apply to non-governmental Organizations (NGOs) in Peru, as well as International Technical Cooperation Foreign Entities (ENIEX) established abroad. The National Constitution establishes the right to "associate and form foundations and diverse forms of legal non-profit entities, without prior authorization and in accordance with the law," as a fundamental right of all. The Constitution further states that "organizations cannot be dissolved by Administrative Resolution."

The legal types of CSOs, or non-profit legal entities, regulated by the Civil Code in Peru are the association, the foundation, and the committee. The most common classification is the association, and the committee is the least used classification due to its specific and temporary duration. According to the Civil Code, an association is legally defined as "an organization established by two people or legal entities or both, that through a common activity pursue a nonprofit objective," and may define a public or social purpose. Thus, an association could be a beach club, or cultural group, or philanthropic entity. A foundation, on the other hand, is defined in the Civil Code as a "non-profit organization established by the assignment of one or more legal or natural personalities to accomplish objectives that are of religious, cultural, welfare, or other social interest." In addition, an initial contribution of money or property is a prerequisite to establishing a foundation. Since the purpose of a foundation must be social in nature, private interest groups seeking to obtain benefits for themselves are not allowed to form this legal entity. Foundations are established less often than associations as there are many limitations for its operation, including being under state control and surveillance.

In Peru, there is no legal identification for NGOs, so these organizations adopt the model of civil associations de facto. However, the blueprint and classification of NGOs in Peru are indicated in an administrative registry administered by the Peruvian International Technical Cooperation Agency (PITCA), which falls under the Ministry for Foreign Affairs. The registry defines an NGO as a non-profit organization with the aim to develop activities that involve international technical cooperation (ITC). More specifically, ITC applies to activities that constitute official and private cooperation with technical and financial characteristics that are not subject to reimbursement.

Any organization, non-profit (CSO), or for-profit (business) that requires legal status must register with the Register of Legal Entities (Public Registry) in its residential jurisdiction. The Registry is publicly available upon payment of required fees. Based on the constitutional right to freedom of association, individuals (and/or organizations) are able to form organizations not registered in public records. Furthermore, the Civil Code of Peru contains specific language addressing non-registered associations, foundations, and committees. These organizations do have legal identity as subjects of law; they may hold events, enter into contracts, as well as appear in court. Not having acquired formal legal status (registration in a public registry), however, they do not have the benefits provided to legal entities. In the specific case of an unregistered organization (which is the most used form of unregistered organization), individuals acting on its behalf are liable and able to enter into agreements. Although these organizations are not registered, they are required to have internal, written rules of governance.

NGOs are required to apply to a special registry called the Non-Governmental Development Organizations (ONGD); national recipients of international technical cooperation, which falls under the responsibility of the Peruvian International Cooperation Agency, must also apply. There are no regulations in the Peruvian Civil Code applying to foreign CSOs created outside of the country. Thus, foreign CSOs must refer to the rules of international private law contained in the Civil Code, which indicate that the existence and capacity of private legal entities established outside the country are governed by the law of the country in which they were formed. If a foreign CSO wishes to hold activities in Peru, it the Public registry in the jurisdiction of its residence, not to establish itself as an organization, but rather to obtain legal status. Foreign CSOs financing International Technical Cooperation activities are an exception, and must be registered with the Organization of International Technical Cooperation.

Associations and foundations are generally regulated by the Civil Code that establishes basic guidelines regarding their definition and operation. CSOs are subject to regular inspection to ensure compliance with tax and labor regulations (formal and substantive obligations) by the National Tax Administration Superintendent and the Ministry of Labor, respectively.

The Peruvian International Cooperation Agency (APCI) is the state governing body for the International Technical Cooperation and is responsible for leading, planning, organizing, prioritizing, and monitoring non-refundable international contributions. Several legal articles establishing APCI were amended via Law No. 28925 to strengthen APCI's control and supervision and include more subjects under its control. The Law also established the requirement for these contributions to be registered with APCI's administrative records, and, determined a system of offenses and penalties in respect of specific subjects covered under the supervision of APCI. The amended legislation also made national and foreign CSOs that finance and/or execute projects with non-reimbursable funds of International Technical Cooperation subject to the supervision and control of the state through the APCI.

The most important legal barrier that CSOs have recently faced is the excessive control and execution of the resources administered by APCI. In response, several CSOs have assembled and demanded revisions to the amendments made in Law 28925, which expanded the APCI's reach, resulting in some of the requests being accepted and parts of the law ruled unconstitutional on August 29, 2007. The government has justified its increased regulation by claiming that it will improve transparency.

Civil regulation of associations generally allows flexibility regarding the definition of objectives, as long as they remain non-profit in nature. However, lax regulations applying to associations leave room for differing interpretations, resulting in various criteria being applied to associations in different cases.

In light of current regulations, CSOs should: (i) address the lack of regulation for civil associations and inconsistencies regarding CSO criteria; (ii) establish modifications to the civil system to obtain a clear definition of foundations, as well as a more dynamic range of operations; (iii) analyze the August 29, 2007 ruling that deemed changes to the APCI unconstitutional to avoid implementation of stricter

regulations; (iv) promote the development of informational programs and discussion guides on the legal framework and tax system criteria that applies to CSOs, as it is widely misunderstood.