



## **WORLD MOVEMENT *for* DEMOCRACY**

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# Defending Civil Society

*A Study of the Laws and Regulations  
Governing Civil Society Organizations  
in  
Argentina*

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\*Statements and views expressed in this report are those of the author and do not necessarily reflect that of the World Movement for Democracy, the National Endowment for Democracy, or the International Center for Not-for-Profit Law.

## INTRODUCTION

The Argentine Republic is governed by the civil or continental law system, in contrast to the common law system found. It has three levels of government: federal, provincial and local.<sup>1</sup> The Argentine National Constitution (NC) is the supreme law of the land and has a strong human rights component resulting from the 1994 Reform. The Constitution explicitly recognizes the rights to freedom of association and expression and the right to petition the authorities (NC, Article 14). International human rights treaties have constitutional hierarchy in Argentina and they recognize civil and political rights (NC, Article 75 (22)). Additionally, according to Court jurisprudence, rulings handed down by the international human rights systems must be considered as interpretive guides. Human rights law is therefore particularly strong in Argentina. Moreover, Article 14 of the Constitution affirms that constitutional rights shall be practiced in accordance with “the laws that regulate their exercise.” This establishes the relativity of rights whose exercise cannot be interpreted in an absolute fashion. Some limitations derive from what is known as strict police power wherein the State may regulate rights based on the protection of order and morals, as per Article 19 of the Constitution. Similarly, Article 75 (18) and (19) allow limitations on the exercise of constitutional rights in what is known as the “progress clause.” Substantive rules are relatively uniform throughout the Argentine territory, where the federal and provincial governments hold concurrent powers in certain sectors. Provinces are autonomous under the National Constitution, and this status is especially evident in procedural regulations governing CSO activities.

As discussed in more detail below, the most relevant regulatory provisions governing CSOs have to do with the granting of legal personality (the Civil Code in some of its general guidelines and National Law 19.836 on Foundations); procedural regulations on compliance with substantive laws (which vary in each jurisdiction: Resolution 6/80 of the Office of the Inspector General of Justice is national and each province has its own regulations); those setting out the requirements for public charity status (General Resolution 2681 of the Federal Administration of Public Income (AFIP); and those conditioning access to international cooperation funds (such as Resolution 228/2009 of the Financial Information Unit of the Nation, or different communications from the Central Bank of the Argentine Republic).

The National Center of Community Organizations [Centro Nacional de Organizaciones de la Comunidad – CENOC] maintains a public registry of the most important NGOs in the country.<sup>2</sup> According to its most recent published report, the registry included 13,545 organizations as of 2006. These organizations are mainly concentrated in only a few jurisdictions, with nearly 38% located in the Autonomous City of Buenos Aires and Buenos Aires Province (*Interior*).

CSOs have strengthened their activities over the past decade. Many observers attribute this to the severe social and economic instability in 2001, accompanied by an extremely low level of public confidence in official institutions. This pattern is reflected, for example, in CENOC statistics in the number of CSOs established just in the past several years.

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<sup>1</sup> The Autonomous City of Buenos Aires has quasi-provincial status.

<sup>2</sup> CENOC uses three criteria in registering nongovernmental organizations: i) they must be independent of the governmental apparatus; ii) they must carry out not-for-profit activities to the benefit of the community within the national territory; and iii) they must be formally or informally established.

There is a broad and diverse landscape of CSOs in Argentina and they work in many different sectors with some degree of freedom. Highly developed CSOs in Buenos Aires are becoming extremely influential in the political arena.<sup>3</sup>

## **ESTABLISHMENT & REGISTRATION**

### **Organizational Categories**

CSOs fall into the legal categories of civil associations, foundations, mutuals and cooperatives. However, the relevant law is essentially asymmetrical, insofar as the requirements, jurisdictions and oversight authorities are concurrent in some cases, and vary according to category in others.

### **Legal Personality: Recognition and Capacity of a CSO**

The Civil Code (CC) defines a *person* as any entity with the ability to acquire rights and contract obligations (Article 30). It recognizes both natural and legal persons. Legal persons are further divided into public (the State and its entities at the three levels of government) and private, and the latter may be not-for-profit civil associations or civil and commercial associations (Article 33).

According to the CC, a legal person comes into existence pursuant to a legal or government authorization (Article 45). Any association that does not have legal personality (because it lacks the aforementioned authorization) is defined as a “simple” civil or religious association (Article 46). While the law does not deny the *existence* of an association that has not obtained legal personality, its legal capacity is limited in practice, and registration with government registries is mandatory when it comes to regularizing certain tax matters or even opening a bank account.

Two factors conspire against obtaining definitive figures on the number of CSOs registered in Argentina. First, information is scattered among 25 different registries (one in each province and in the City of Buenos Aires) and secondly, a large number of CSOs lack legal personality, which means that their existence can only be verified in local censuses.<sup>4</sup> The data concerning organizations registered with CENOC reflect a trend towards a growing proportion of CSOs with legal personality: according to its data, the percentage of legally registered CSOs rose from 57.6% to 64.1% between 1994 and 2006. However, this data does not reflect the entire CSO sector in the country.

### **Provincial & National Registries**

Civil associations and foundations are governed by a national law (a very broad one in fact), but must register with the provincial government in their jurisdiction. While the Civil Code provides the general legal framework for civil associations, and National Law 19.836 regulates foundations, each province is required to establish its own registration requirements for associations. The Federal Inspector General of Justice [Inspección General de Justicia] is the oversight agency for CSOs based in the Autonomous City of Buenos Aires. As for foundations, a specific national law provides a set of requirements for their recognition and registration that is commonly used as a reference in all provincial jurisdictions. Fewer

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<sup>3</sup> Gabriel Sued, “El poder de las ONG,” *La Nación*, September 12, 2010, [www.lanacion.com.ar/nota.asp?nota\\_id=1303465](http://www.lanacion.com.ar/nota.asp?nota_id=1303465).

<sup>4</sup> For example, Fundación Ciudadanos 365 conducted a study to develop a CSO directory for the city of Villa Carlos Paz. According to its findings, 45 out of 126 institutions (including Neighborhood Centers, Sports Clubs, etc.) took the form of Civil Association or Foundation, and of these, only 25 had legal personality granted by the Córdoba provincial government.

variations are therefore found among jurisdictions for foundations than for associations. It should be noted that there are no substantial differences in the requirements of other provincial jurisdictions.

The adoption of the legal form between civil association or foundation is not fundamentally determined by an entity's objectives, but rather by the way in which it is formed—whether through a simple association of persons or based on an endowment for a specific purpose—and this legal form will determine the obligations of its members, its administrative system, and the procedures governing its dissolution.

Official restrictions on the entity's purpose or the nature of its activities are confined to the following requirements:<sup>5</sup>

- It may not seek financial income or assets for distribution in any form to its members, associates, supporters, board members or employees.
- It serves "socially useful" and licit purposes in keeping with the principles of social coexistence—peace, tolerance, pluralism, and disagreement in a democratic system—articulated in the National Constitution.
- It does not seek to propagate a religious faith or creed and is ideologically independent of churches and sects.
- It is nonpartisan.

These requirements are drawn from the relevant legal language and by the relevant supervisory institution's practices. Of course, provincial variations in the criterion used for evaluation of the aim in the by-laws leave significant room for government official's discretion in how it is interpreted. This means that supervisory entities can withhold legal personality unless CSOs adjust their aim to fit within the parameters of whoever is doing the evaluation. There are opportunities to challenge the decisions of supervisory entities. An administrative remedy is most common, although in some cases, CSOs have filed *amparo* remedies in the courts. For example, an association representing a sexual minority in Córdoba province took this route after running into roadblocks in their efforts to obtain legal recognition.

Mutuals and cooperatives in Argentina must register with the National Institute for Associativity and Social Economy [Instituto Nacional de Asociativismo y Economía Social – INAES], which is responsible for matters of government jurisdiction regarding the promotion, development and oversight of cooperatives and mutuals.

### **Public Benefit Status**

In order for a CSO to obtain tax benefits based on its nature as a not-for-profit entity for the public good, it must first register with the provincial registry and obtain legal personality. While legal procedures for obtaining legal personality are regulated at the provincial level, the Federal Public Income Administration [Administración Federal de Ingresos Públicos – AFIP] is an agency of jurisdiction for tax matters. AFIP General Resolution 2681 of January 1, 2010 regulates the procedures for requesting income tax as well as the reporting obligations for donations received and granted.

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<sup>5</sup> UNDP-IDB-GADIS (2004) Civil Society Index in Argentina.

Requirements to obtain tax benefits status include:

- Registration with Federal Public Income Administration and have a valid Tax Identification Code [Clave Unica de Identificación Tributaria (CUIT)];
- Posses a high income tax and, if applicable, high value added tax, in accordance with the provisions of General Resolutions N° 10, its amendments and supplements and N° 2.337;
- Proof of legal status, the month its fiscal year ends and the economic activity/ies for which it is requesting this benefit, in accordance with the codes set out in the “Codifier of Activities” -Form N° 150- approved by means of General Resolution N° 485;
- Current declared tax domicile pursuant to the terms set out in General Resolution N° 2.109 and its amendment;
- Sworn declarations pertaining to the value added tax and social security resources for the previous twelve (12) fiscal periods, or those that are required when the activity commences, payable prior to the date the request was submitted; and
- Sworn declaration of income taxes and in compliance with the provisions of General Resolution N° 4.120 (DGI), its amendments and supplements, payable as of the date of the request.

These procedures can be more complicated than those required to obtain legal personality and the services of an accountant are virtually inevitable.

As benefits, the qualified organizations are:

- Exempt from income taxes;
- Not subject to income tax withholdings or collections;
- Not subject to value added tax withholdings or collections, in the case of contributors falling under Article 7 (f) and (h)(5) and (6) of the Value Added Tax as amended [*texto ordenado*] in 1997, and amendments; and
- Eligible for reduced rates, or exempt from taxes on bank account credits or debits or other operations, in accordance with Articles 7 and 10, respectively of the Addendum to Decree N° 380 of March 29, 2001 and its amendments.

### **Barriers to Entry**

As discussed earlier, the law does not restrict the operations of unregistered associations and it even recognizes these groups as “simple civil associations” (CC, Art. 46). However, CSOs are encouraged to register to obtain legal personality. For example, a CSO with legal personality may perform legal transactions in its own name and on its own behalf without detriment to its members as individuals. It is also entitled to apply for tax exempt status. Therefore, unregistered associations face the barrier of not obtaining benefits provided to CSOs that have obtained legal status.

According to the requirements set out in Law 19.836, a foundation may be established by living persons (Argentines or foreigners who certify their identity), by deceased persons through their last will and testament (in which case a succession judge is involved) and/or by other legal persons (which must be duly registered with the relevant registry). Foundations may even be created by just one person through a unilateral transfer of assets. Associations, on the other hand, refer to a group of persons, and the minimum number is set at two. Similarly, a minimum of 3 people are required to operate a foundation to fill the seats on the Administrative Council and a minimum of 7 is required for Civil Associations for

the same reason. Foreigners may create a foundation or form part of an association as long as the agents of the respective legal persons maintain an official domicile in the country.

While there is no requirement as to a minimum endowment, the Law requires that it be sufficient to “make it reasonably possible to carry out the proposed aims.” Administrative provisions at the provincial level require an endowment of approximately AR \$10,000 – 12,000 (equivalent to US \$2,500 – \$3,000) in cash or assets.

The province of Cordoba has the following requirements for establishing a foundation:<sup>6</sup>

- A note to the authority of jurisdiction (Inspector of Legal Personalities [Inspección de Personas Jurídicas]) requesting it to grant legal personality and accredit the bylaws. Opportunities for appeal were discussed earlier.
- A copy of the approved bylaws, a three-year plan of activities and a record of designation of officials. It must also include a sworn statement by the latter stating that they are in no way prohibited or disqualified from carrying out their assigned duties.<sup>7</sup>
- Setting up of the endowment in assets or cash, which requires the services of a public accountant to certify these requirements. A budgetary basis is also required and must provide income and expenses estimates for the foundation’s first three years. This document must also be certified by a public accountant. Taken together, these procedures require an outlay of approximately US \$200.
- A receipt for payment of a service fee based on the number of pages, or approximately US \$50.

Once legal personality has been obtained, the foundation must request the Inspector of Legal Entities to authenticate their records of minutes, inventory and balance sheets and records of assemblies.

Foreign foundations may register in Argentina by submitting their by-laws, the record of designation of officers, and authorization to operate in their country of origin. They may not operate in Argentina unless they are registered with the provincial registries.

Finally, it should be noted that there are significant tangible and intangible disincentives for the establishment and official recognition of a CSO. The complex legal and tax bureaucracy requires time and expertise that is not always accessible to everyone. Those attempting to undertake the process without professional assistance have normally to contract the services of a public accountant in order to certify the setting up of the endowment or the budgetary basis. The process may take up to three months if all of the requirements are met from the outset and there were no significant objections to the by-laws (particularly with respect to the objectives and goals). If any objections are duly resolved, the established time frame is six months.

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<sup>6</sup> The resolution that determines the requirements at the national level is IGJ Resolution 1/1983.

<sup>7</sup> Prohibitions and ineligibility to serve as a member of the Council of Administration: 1) Anyone who is ineligible to engage in commerce; 2) Anyone who has declared bankruptcy, until ten years after his or her credit has been restored, and any insolvent debtor until five years after his or her credit has been restored; 3) Anyone who has been convicted of an offense, which precludes him or her from holding public office; anyone convicted of theft, robbery, fraud, bribery, issuing bogus checks and offenses against the public trust, in all cases until ten years after the sentence has been carried out.

## **GOVERNMENT OVERSIGHT & ENFORCEMENT**

### **Regulatory Authorities**

The regulatory authorities are the same entities described earlier for establishment and registration: the Inspector General of Justice at the federal level, the Inspector of Legal Entities in Córdoba, and the Office of the Inspector General of Legal Personalities in Santa Fe. The other provinces have their own entities responsible for the application of procedural regulations for granting legal personality and, while the names may vary, their duties are essentially the same. It is important to point out that the IGJ, the relevant provincial offices, and specific oversight entities, such as the AFIP, have focused on *ex ante* supervision rather than on monitoring the activities of these organizations on a regular basis. In addition, while they do not specifically regulate the work of CSOs, there are liaison offices to coordinate relations between CSOs and the State at virtually all levels of government.

### **Internal Governance**

The governance structure varies based on whether the organization is legally considered a foundation or a civil association. The foundation is required to have an Administrative Council of at least three members, responsible for governance and administration (Article 10, Law 19.836 on Foundations) although it may be delegated to an Executive Committee (Article 14 of the same law). The governing organs of civil associations are determined by provincial regulations. Both the national regulations and those of the Cordoba province require the following structures: an assembly of associates; an executive committee; and an audit council. State oversight agencies may only examine the legal capacity of the individuals selected for each of these organs, but may not appoint them. However, certain provisions allow for rigorous State supervision at the operational level. The Inspector General of Justice, for example, is vested with the following powers with respect to foundations and civil associations: “ongoing supervision of its operations, dissolution and liquidation;” “the right to attend assemblies.” This authority is not often exercised in practice. Supervisory agencies in Argentina focus on *a priori* compliance with formal requirements and limit their oversight to the submission of financial reports and the minutes to be entered into the registries. Article 27 of National Law 19.836 on Foundations requires foundations to submit “all information requested by the supervisory authority of jurisdiction.”

### **State Reporting Requirements, Enforcement, & Sanctions**

Reporting requirements are associated with accounting obligations. CSOs must submit annual financial statements, signed by a public accountant certified by the Accountants Association [Colegio de Contadores] of their respective jurisdiction. For example, General Resolution 6/1980 of the Inspector General of Justice stipulates the following standard sanctions: a) a warning, b) a warning published by the Infractor, and c) a fine. The Resolution also allows the IGJ to “request intervention by the Ministry of Justice of the Nation or request revocation of the permit, and dissolution and liquidation in serious cases.” The lack of clear criteria concerning what would constitute a “serious case” leaves a wide margin of discretion in the hands of the enforcement authority. However, under Article 16 of the same Resolution, decisions made by the Inspector General of Justice may be appealed before the National Civil Appeals Chamber of the Federal Capital, which are independent tribunals that provide guarantees of impartiality.

### **Dissolution, Liquidation, & Disposal of Assets**

Under General Resolution 6/1980, the revocation of a civil association’s legal personality leads to the dissolution of the institution and disposal of its assets (Article 133, General Resolution 6/1980). Should a

civil association be dissolved, any remaining liquid assets may be given to a cooperative venture (Article 134, General Resolution 6/1980).

The dissolution of a foundation is decided by the Administrative Council by a two-thirds majority vote (Art. 29, National Law 19.836 on Foundations). Its assets must be transferred to a public entity or to a private, not-for-profit legal personality for the common good, domiciled in the Republic, except in the case of foreign foundations. These decisions shall be subject to prior approval by the administrative oversight authority (Art. 30, National Law 19.836 on Foundations).

## **ACTIVITIES OF CSOs**

### **General Powers**

CSOs enjoy the same powers as any other legal person. Any limitations are related to their social purpose, as set out in Article 95 of Resolution 6/80, which states that: “no civil association or foundation of any nature may invest its assets in operations or activities beyond the scope of the purpose or aims envisaged in its by-laws.”

### **Public Political Expression/Advocacy/Activities**

As discussed earlier, CSOs are becoming increasingly influential actors. According to an analysis of the sector conducted by CIVICUS-GADIS,<sup>8</sup> the impact of CSOs in Argentina is the most highly regarded in the area of human rights policy. Conversely, CSOs are viewed as having the least capacity for impact in the area of the government’s budgeting processes.

CSOs are free to engage in political activities. Public decision-making in the executive and legislative branches frequently includes opportunities for CSO input. Similarly, their participation is becoming increasingly common in the judicial sphere through procedures such as *amicus curiae*.

### **Communication & Cooperation**

CSOs may freely contact and cooperate with other CSOs, government, and business sectors inside the country and abroad. There are no restrictions on their participation in networks or on the Internet access at the international level.

### **Seeking & Securing Funds**

CSOs may receive funds from international donors in accordance with foreign trade regulations under the Ministry of Foreign Affairs. An Argentine bank must issue a form for each payment order, accompanied by a sworn statement including a breakdown of the funds and the use of the funds. This form is under the purview of the foreign trade division of the financial entity that then pays out the funds to the receiving bank account. Relevant supporting documentation certifying the information included in the sworn statement must be presented to demonstrate the validity of the item or concept declared in the exchange transactions (Communications of the Central Bank of the Argentine Republic “A” 4762, “A” 4377, “A” 4359, “A” 3471, “A” 3472 and “A” 5123 Concept Code [Código de Conceptos]).<sup>9</sup>

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<sup>8</sup> CIVICUS-GADIS, *Civil Society from within. Times of crisis, times of opportunity. Civic Civil Society Index Country report: Argentina (2004-2005)*, Buenos Aires, 2006.

<sup>9</sup> For further information, go to [www.bcra.gov.ar](http://www.bcra.gov.ar).

While the time frame for this procedure may vary, it usually takes 3-5 business days if the paperwork is accepted by the banking entity.

It should also be noted that Resolution 228/2009 of the Financial Information Unit requires a more rigorous accounting of these operations, which is applicable to all third party donations or contributions received by legal persons in amounts exceeding \$50,000 pesos (approximately US \$12,600).

CSOs may pursue economic activities as long as they are related to their social purposes. This regulation constitutes a barrier for creating social enterprises under CSOs. With this regulation, institutions that grant microcredits may face some challenges in conducting their activities.

All three levels of government conduct public bidding processes to fund CSO projects. These processes are open to entities with legal personality and usually focus on particular geographic or thematic areas. Some observers suggest, however, that the State tends to offer privileged information to organizations aligned with its interests. In the CIVICS-GADIS study mentioned earlier, the weakest indicator under civil society-government relations is the government's support for CSOs, particularly the level of transparency in the CSO support mechanism.<sup>10</sup>

There are limited incentives for social investment and there is no system in place to facilitate donations to CSOs. As stipulated in Law 24.475 on Income Tax, only 5% of annual net earnings may be deducted only if donations are for CSOs with one of the following objectives (Article 81(c)):

- Charitable medical or assistance activities including the care and protection of children, the elderly, the handicapped and the disabled;
- Scientific and technological research, when it is intended for academic activity or instruction and when the qualifications of the research programs and participating researchers and support staff have been duly certified by the Secretariat of Science and Technology under the Office of the President of the Nation;
- Scientific research on economic, political and social issues for the development of political party platforms; and
- Systematic educational degree programs to confer titles officially recognized by the Ministry of Culture and Education of the Nation. This involves the promotion of cultural values by sponsoring, subsidizing, lecturing, or holding free courses in public or private education facilities recognized by the ministries of education, or their equivalents, in the respective jurisdictions.

In addition to fulfilling this substantive requirement, CSOs must have a previously approved and current tax exempt status. This status must be renewed upon expiration of the respective certificate, which is determined by the administrative judge who signs the AFIP resolution (Article 6(c), General Resolution 1815/05).

## **CONCLUSIONS**

The following are some final reflections on the issues presented in this report:

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<sup>10</sup> Op. cit. p. 42.

- A general human rights framework at the constitutional level is conducive to the work of CSOs.
- A wide margin of discretion in the law may cause serious concerns in implementation of the regulations. This explains in part, the enormous disparity between regions and agencies in the criteria for applying these laws.
- The registration processes for civil associations and foundations are administratively complicated.
- Obtaining tax exempt status is extremely difficult for CSOs. Currently CSOs are working through coalitions to demand additional tax benefits, such as exemption from or reduced rates for the Value Added Tax (VAT, currently at 21%) for their operations, exemption from the Bank Account Debits and Credits tax (6% for each financial transaction), and trade union status for their employees.<sup>11</sup>
- Power is excessively concentrated in the hands of the Federal Public Income Administration [Administración Federal de Ingresos Públicos – AFIP], a tax authorized to determine whether or not a CSO deserves tax exempt status.
- More incentives for donors to obtain an income tax deduction for contributions to CSOs would have an enormous impact on the sustainability and growth of this sector.
- Current frameworks do not allow opportunities to be created for civil society participation and consultation in public policy-making.

There are currently two bills that might change this legal framework: the National Civil Associations Bill [“Proyecto de Ley Nacional de Asociaciones Civiles”]<sup>12</sup> introduced on November 17, 2009, by National Deputy Dr. Julio Piumato; and the bill on the “Establishment of the Office of Civic Dialogue, Participation and Engagement with the Congress of the Nation [“Creación de la oficina de dialogo, participación y vinculación ciudadana con el Congreso de la Nación”].<sup>13</sup>

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<sup>11</sup> These proposals are advocated by the “Juntos por la Sociedad Civil” coalition made up of the most important CSOs in the country, most of which are based in the City of Buenos Aires ([www.jxsc.org.ar](http://www.jxsc.org.ar)).

<sup>12</sup> For further information, see [www.leydeasociviles.com.ar](http://www.leydeasociviles.com.ar).

<sup>13</sup> Further information is available at:

<http://webappl.hcdn.gov.ar/diputados/hflores/proyectos/proyecto.jsp?id=101083>.