



WORLD MOVEMENT *for* DEMOCRACY

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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

*Report on Laws and Regulations
Governing Civil Society Organizations
in
Bolivia*

Prepared by:
Ramiro Orias

**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

Bolivia is a pluricultural and multiethnic country with a historically vigorous, active, engaged and mobilized civil society that is as diverse, disaggregated and heterogeneous as the Bolivian people. As a social phenomenon, non-governmental organizations (NGOs) are a product of contemporary democracy. Many emerged in the 1970s for the political purpose of serving as a public voice and defending civil rights under authoritarian and dictatorial governments. In response to a nonexistent or shrinking State presence in the 1980s, they expanded their work to include social development assistance and income generation initiatives. Throughout the ensuing decade—and operating on the assumption that a stable democracy was in place—many NGOs shifted their focus towards promoting the economic, social, and cultural rights of the most disadvantaged sectors through initiatives to mitigate and counteract the impact of economic market reforms in the country, particularly at the local level. Most recently, in an effort to keep pace with the political changes occurring in the country, NGOs operating in different spheres have contributed to public policy implementation, provided social services and publicized reforms. Others have promoted intercultural democratic dialogue and the development of indigenous peoples, or have proactively monitored the process.

NGO activities are premised on the right to freedom of association set out in Article 21 (4) of the Political Constitution of the State.¹ They are governed by the Civil Code regulations pertaining to associations and foundations, as well as administrative regulations, particularly Supreme Decree No. 22409, which has created the national NGO registry.

ESTABLISHMENT & REGISTRATION

Under Bolivian civil law there are two legal or organizational categories for NGOs as private, not-for-profit collective legal persons or entities:²

- A *foundation* is an entity established to dispose of assets in keeping with the wishes of one or more persons, for a particular not-for-profit purpose.
- An *association* is established pursuant to an agreement between two or more persons to associate in pursuit of a common not-for-profit activity for the common good. In other words, it is an entity made up of persons united around a special not-for-profit purpose.

Under the Civil Code, founders of a foundation or association are legally empowered to determine its purposes and objectives as long as they are licit, and to establish their rules of self-governance. Their legal and operational capacity is therefore limited only by the purposes set out in their articles of incorporation and the sphere of action determined under their by-laws. Any physical or collective person with recognized legal capacity may create an association or foundation without any restrictions.³

¹ “Bolivian men and women have the right to freedom of assembly and association, in public and in private, for licit purposes.”

² See the Bolivian Civil Code, Title II, Chapters I to IV (Articles 52 (2), 58 and 57), setting out the requirements and procedures for the establishment of associations and foundations, which are the legal categories applicable to non-governmental organizations.

³ See Rosario Baptista, *Legislación vigente para ONGs en Bolivia*, Instituto de Servicios Legales e Investigación Jurídica (ISLI), 2007.

An association's by-laws must indicate its purpose, available assets,⁴ source of its income, management mechanisms, requirements for the admission or exclusion of member's rights and duties, and provisions for the dissolution of the institution (Civil Code, Article 60). Foundations are created by means of a public instrument or a last will and testament. In the latter case, it falls to the heirs, the executor, or the Public Ministry to process its legal personality.

The procedure for obtaining legal personality of a not-for-profit association or foundation was modified in 1995. Under the Administrative Decentralization Law, Departmental Prefects are vested with the authority to "grant legal corporate status valid throughout the national territory to any civil foundation, association, and society formed in the national territory or abroad, as long as it has established residency in its jurisdiction."⁵ This decentralization significantly helped expedite and streamline the procedure, particularly at the central government level. Previously, even such simple procedures as these in any part of the country were concentrated in La Paz and were subject to considerable delays because they required the signature of the President.⁶

Under Article 58 of the Civil Code, the founders of an association, or their agents, must submit the following documentation to the Departmental Prefect: articles of incorporation, a list of founders with their name, profession, and residence, the by-laws and rules of procedure, and a certificate of approval of the latter by the entities members.⁷ Subject to a previously obtained tax report [*dictamen fiscal*], the Prefect shall issue a reasoned order for the documents to be recorded in a special registry maintained by the Government Registry Office [Notaría de Gobierno] and for recognition of the legal personality. Article 59 provides that "In case of a denial, the interested party may contest the decision before the district judge [*juez de partido*]. The judge's ruling shall give rise to any remedies available under the law."

Associations or foundations that promote or provide assistance for social development are subject to Supreme Decree No. 22409 of January 11, 1990, which regulates the operations of non-governmental organizations. NGOs are defined as "national or foreign, religious or secular, private or not-for-profit institutions, or legal entities engaged in development or assistance using funds from the State and/or foreign cooperation in the national territory." This Supreme Decree also establishes a single national NGO registry under the jurisdiction of the Ministry of Planning for the "mandatory registration of all NGOs and the systematization of information about them."⁸ The information about registered groups is normally not easily or freely accessible to the public, but may be obtained through an explicit request or petition submitted to the aforementioned government office.

Foreign NGOs are also subject to the same NGO registry, although they must first sign an official framework agreement with the Ministry of Foreign Affairs and Worship authorizing them to operate

⁴ While the by-laws must indicate the types of income that the association might obtain and administer, there is no minimum capital requirement nor must a specific amount be designated prior to obtaining legal personality.

⁵ Under Article 5 (r) of Law 1654 on Administrative Decentralization of July 28, 1995, the departmental prefectures have the authority to recognize the corporate status of associations, foundations, peasant communities, indigenous peoples and neighborhood boards. Supreme Decree 24776, of July 31, 1996, regulates this procedure and establishes One-Stop Processing Windows to process and approve requests.

⁶ See Appendix, page 4, Ramiro Orias.

⁷ The Civil Code establishes in **Article 58.- (Constitution and Recognition)** I. *The founders of an association must present the Prefecture with: the founding of the name, occupation and address of the founders, the status and regulation, and the formal approval of the latter, by the entities members.*

⁸ Supreme Decree No. 22409 of January 11, 1990, Article 2.

legally in the country. The Ministry has a special office responsible for this issue. Before a framework agreement is signed or renewed, the ministry relevant to the sector in which a foreign NGO works must provide a report declaring the relevance of the proposed projects to the government's National Development Plan. The government claims that this is to ensure that foreign cooperation and aid contribute to, and are aligned with, official State policy. In addition, Supreme Decree No. 26140 of April 6, 2001, adopted the Regulation of the Operations of Non-governmental Organizations working with Peasants, Indigenous, and Orinary Peoples and Settlers, establishing the powers to investigate, supervise, and sanction these NGOs, including the suspension or revocation of their registrations in the NGO Registry through an administrative proceeding. Article 64 of the Civil Code provides for a legal ruling to dissolve a NGO at the request of the Public Ministry should it engage in activities contrary to public order.

The principle of "autonomy of assets" distinguishes between the assets of the collective person and those of its members or associates. Therefore, once the assets of the legal entity have been established, they cannot be disposed of or used for purposes other than those for which they were intended. According to the tax law, tax exemptions shall apply to:

"earnings obtained by legally authorized not-for-profit civil associations, foundations, or institutions that have signed agreements and are engaged in: religious, charitable, relief, social assistance, educational, cultural, scientific, environmental, artistic, literary, sports, political, professional or trade union or association activities. This exemption shall apply as long as they do not engage in financial intermediation or other commercial activities; their by-laws explicitly provide that the totality of their income and assets is to be used exclusively for the purposes enumerated and in no case shall be directly or indirectly distributed among their associates; in case of liquidation, their assets are to be distributed among entities with the same purpose or donated to public institutions; and the aforementioned conditions are duly reflected in their economic reality."

To this end, the beneficiary entities must request and process their tax-exempt status before the tax administration. Once their tax-exempt status is granted, non-governmental organizations may be exempt from paying:

- Corporate Income Tax (Article 39 of Law No. 843, Tax Reform Law);⁹
- Tax on Presumed Profits of Property Owners (Article 54 of Law No. 843, Tax Reform Law);
- Urban Real Property Tax (Article 61 of Law No. 843, Tax Reform Law);
- Net Income Tax (Article 49 of Law No. 1606, Amendments to Law 843);¹⁰
- Real Property Tax (Article 53 of Law No. 1606, Amendments to Law 843);
- Consolidated Customs Duty (Article 45 of Supreme Decree No. 22225, Regulation of Exemptions from Customs Duties for Imports);¹¹ and,
- Donations are exempted from the Value Added Tax VAT and the Excise Tax (Article 50 to 52 of Supreme Decree No. 22225, Regulation of Exemptions from Customs Duties for Imports).

⁹ BOLIVIA. Honorable National Congress. 1986. Law No. 843 Tax Reform Law, May 1986, with amendments to Article 49 introduced under Law 2493 of August 4, 2003.

¹⁰ BOLIVIA. Honorable National Congress. 1994. Law No. 1606 Amendments to Law 843, Dec. 1994.

¹¹ BOLIVIA. Office of the President of the Republic, SD No. 22225: Regulation of Exemptions from Customs Duties for Imports, June 1989.

In case of donations, such exemptions may be revoked if the donated goods are sold in the country under the terms of the donation agreement or for any other reason. Under Supreme Decree No. 22225, the exemption from the Consolidated Customs Duty for Imports for the non-governmental sector applies only to “international, not-for-profit nongovernmental entities and bodies that have signed framework agreements with the State through the Ministry of Foreign Affairs” (Article 44), and it is not applicable to domestic NGOs.

GOVERNMENT OVERSIGHT & REGULATION

Regulatory Authorities

Established by Supreme Decree No. 22409 of January 11, 1990, the Single National Registry of Non-governmental Organizations [Registro Único Nacional de Organizaciones no Gubernamentales – RUN ONGs] is intended to efficiently and reliably disseminate information concerning NGOs, including the geographical areas where they are active, the sectors in which they work, the target beneficiary populations, the projects implemented, and funding sources. Supreme Decree No. 26973 of March 27, 2003—the Regulation of the Executive Branch Law—entrusted the Vice Ministry of Public Investment and Foreign Financing [Viceministerio de Inversión Pública y Financiamiento Externo – VIPFE], under the Ministry of the Treasury, to maintain the Registry. Subsequently, Supreme Decree No. 29894, which regulates the Organizational Structure of the Executive Branch of the Plurinational State (Article 40(I)) transferred the VIPFE to the Ministry of Development Planning and vested it with the authority to “maintain the National Registry of Non-governmental Organizations, work with the relevant ministries to coordinate the relationship of these institutions with the government, and develop a regulatory framework.”

Internal Governance

Pursuant to the Civil Code, collective persons, such as foundations and associations, have legal capacity to operate within the parameters of the purposes for which they were created as stipulated in the by-laws approved by their members. The by-laws must set out the rules governing the management or administration of their assets. There is no mandatory organizational or structural model for foundations or associations.

Reporting

NGOs wishing to register in the NGO Registry must fill out an “Information System” form to facilitate the systematization of data. According to Supreme Decree No. 22409, all of the information provided is considered to be a sworn statement that each NGO is liable for. Every three years, registered NGOs must provide general information on their activities, the funding they have received and the projects scheduled for the following three year period. At the end of each fiscal year, not-for-profit tax exempt organizations must submit a sworn declaration to the tax administration, accompanied by financial statements and an annual activities report.¹²

Government Enforcement & Sanctions

Bolivian law regulates the oversight and evaluation of the work of NGOs in the country. Under Article 70 of the Civil Code, foundations are subject to oversight by the Public Ministry. Moreover, according to Article 11 of Supreme Decree No. 22409 on the registration of NGOs, “the Ministry of Planning and

¹² National Taxes, Official Procedure for Exemption from the IUE, Resolution No. 10.0030.05, La Paz, September 14, 2005.

Coordination, through its Undersecretariat of Social Policy, and in coordination with the relevant ministries, may evaluate: a) the extent to which institutions have fulfilled their objectives and implemented their projects, and b) the impact of the activities stipulated in the implementation agreements between the NGOs and the ministries, where such agreements exist. The timing, evaluators, and terms of reference for these evaluations shall be agreed upon in each case between the Ministry of Planning and Coordination and the NGO.”

Dissolution, Winding Up, & Liquidation

The Civil Code establishes the legal framework for the dissolution and liquidation of associations and foundations. Article 64 of the Code stipulates that a collective person ceases to exist:

- For the reasons set out in its by-laws;
- Because it has fulfilled, or failed to fulfill, the purpose for which it was created;
- Because it is unable to operate in accordance with its by-laws; or,
- Pursuant to a legal ruling issued at the request of the Public Ministry, when it engages in activities contrary to public order or good conduct.

In the first three scenarios, depending on the language approved by its members in the by-laws, a special assembly of the members usually must approve the organization’s termination by a two-thirds majority vote. The minutes for this vote are entered into the record of the Government Registry Office and submitted to the other relevant public registries for removal of the entity from their rolls.

In the case of termination pursuant to a court ruling, the law does not stipulate any special proceeding. It is understood that the matter must be taken up in an ordinary civil proceeding and may be appealed to the Superior District Court and that a cassation appeal must be brought before the Supreme Court of Justice.

The assets of the association or foundation must be disposed of once it has been dissolved. Any surplus assets will be adjudicated according to the by-laws. If the by-laws do not include provisions or surplus assets, the assets will be assigned to the National University of the district in question.

Other Restrictions

At the time of publication of this report, the national government submitted a bill on “Transparency and Access to Public Information” to the Plurinational Legislative Assembly, the measures that civil society organizations had been demanding for over ten years. The bill is intended “to regulate transparency in public management and to ensure citizen access to public information in the custody, administration or possession of the State,” yet it includes in its sphere of application “private entities that receive funds or goods of any origin to be used for public interest or social purposes.” This bill would also apply to private foundations and civil associations that do not receive public funds; therefore, it contravenes the principle of autonomy vis-à-vis the State, which is at the heart of the right to freedom of association.

The bill is contradictory to international standards that protect an “independent space” for NGO activities. The access to information regime applies only “to private organizations that operate with substantial public funds or benefits... or that perform public functions and services insofar as it applies to those funds or to the public services or functions they undertake,”¹³ rather than indiscriminately to all private entities working for social purposes. Private entities must have their own internal accountability

¹³ OAS, *Model Inter-American Law on Access to Information*, adopted by the General Assembly in May 2010.

mechanisms, applicable to their members and sponsors. Their governance structure must also include self-regulation and self-oversight mechanisms applicable to all stakeholders, and particularly to beneficiary populations. They must also submit periodic annual reports and yearbooks of activities and official financial statements to the relevant public agencies which—just as all State agencies—are bound to comply with transparency and access to public information laws. The issue here is not to sidestep the challenges of transparency and accountability, but rather to give the civil organizations proper measures. A transparency law for public management is one thing, and the mechanisms that civil organizations adopt to ensure transparency in their management is quite another.

CSO ACTIVITIES

General Powers

NGOs in Bolivia may exercise all of the general rights and powers of any legal entity. In this regard, Article 54 (I) of the Civil Code stipulates that: “Collective persons have legal capacity and the capacity to operate within the boundaries established by the purposes for which they were created.”

Public Political Expression/Advocacy/Activities

NGOs are generally free to participate in fora for public debate. NGO networks have advocated in favor of dialogue and deliberations on public policy and legal reforms relevant to the implementation of the new Political Constitution of the State. Some of the emblematic experiences to date include NGO involvement in citizen electoral observation, the promotion of democratic values, and constructive conflict resolution. While Bolivian law does not restrict NGOs from engaging in advocacy and lobbying, groups face *de facto* limitations either because of a lack of awareness and information about the mechanisms for engaging in such activities in the various State structures, or because their requests are frequently ignored.¹⁴

Several recent incidents also represent a setback regard NGO’s freedom of political expression. Acting outside the bounds of their jurisdiction, municipalities of the governing party in Pando Department have prohibited environmental NGOs that receive USAID funding from working in the Amazon region.¹⁵ This reflects a growing tendency to use instruments of power to limit civil society’s right to participation, freedom of association, and expression. The practice of prohibiting NGOs from conducting their activities has been observed in recent social protests in the Caranavi and Potosí provinces. One example is an indigenous march spearheaded by the NGO Confederation of Indigenous Peoples of Bolivia (CIDOB).¹⁶ In this case, the NGO Centre of Legal Studies and Social Investigation (CEJIS), was accused of promoting the activity by using North American cooperation funds.¹⁷ Members of CEJIS were attacked by civic groups from Santa Cruz and Beni for their activities defending indigenous rights resulting in the

¹⁴ Olivares, Lourdes: Informe de Investigación Pilar Sociedad Civil. SNI, Bolivia. 2009.

¹⁵ *ABI*, “Expulsan de Pando a ONGs,” La Paz, July 8, 2010. Five non-governmental organizations (Conservation Strategy Fund (CSF), Herencia, Puma, WCS Rainforest Alliance and Armonía), while implementing agencies for projects funded by the United States Agency for International Development were intimidated into leaving Pando following a resolution of the Association of Municipalities [Amdepando] to expel them from its territory of jurisdiction “for menacing the government of President Evo Morales and accusations that they had infiltrated local social organizations.”

¹⁶ *La Prensa*, “Evo Morales cambia de discurso y descalifica demandas indígenas,” La Paz, June 22, 2010.

¹⁷ *El Deber*, “Ataque del Gobierno a las ONGs es visto como un error,” Santa Cruz, June 5, 2010.

Inter-American Commission on Human Rights granting protective measures to CEJIS, which required the government to provide CEJIS with protection.¹⁸

Communication & Cooperation

Bolivian CSOs may communicate freely and cooperate with colleagues from civil society, the government, and business sectors, inside the country and abroad. Several CSOs are members of international networks, and participate in thematic regional platforms intended to facilitate joint efforts and advocacy in international fora. In addition, there are no restrictions on Internet access.

Seeking/Securing Funding

There are no legal restrictions on seeking and securing funding; however, philanthropy from domestic sources in Bolivia is very rare. The lack of adequate tax incentives to encourage private giving might be a reason for this. Furthermore, there is no ingrained culture that supports such entities or professional volunteer work. These organizations are therefore extremely dependant on international cooperation.¹⁹

Government Financing

As far as public resources, NGOs do not have access to direct public subsidies to strengthen their work in the country. That said, the government has set up certain State funds—formed mainly through international cooperation—to finance small development projects that may be implemented by NGOs. Any institution that receives these resources is subject to government oversight under Law No. 1178 on Governmental Administration and Control (the SAFCO Law),²⁰ which authorizes the General Comptroller of the Republic to supervise and audit how these public resources are managed.

Under the public procurement system,²¹ registered associations may participate as bidders in public procurement processes. Under Article 8 of Supreme Decree No. 29308, “in order to be contracted for the implementation of programs financed by donated resources, NGOs must comply with all of the legal requirements stipulated under Bolivian law. In particular, they must have their domicile in the national territory and a legal agent whose permanent domicile is in the country, and they must be duly registered in the national NGO registry.”

¹⁸ Several violent attacks against CEJIS members occurred in 2008. CEJIS main office in Santa Cruz de la Sierra was set on fire and ransacked on September 9, 2008. That same month, radical groups intimidated CEJIS employees in Trinidad and Riberalta, Beni department, and also attempted to take over the CEJIS offices in those cities. In light of these attacks, in September 2008, the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS) granted precautionary measures directing the Bolivian State to effectively protect CEJIS employees.

¹⁹Olivares, Lourdes: Informe de Investigación Pilar Sociedad Civil. SNI, Bolivia. 2009.

²⁰ Article 5.- All persons ..., regardless of their legal character, that receive State resources for expenditures or operations, benefit from subsidies, financial aid, preferences or exemptions, or provide public services not subject to open competition, shall inform the public entity of jurisdiction concerning the allocation, management methods and outcomes of those resources and public privileges and shall submit duly audited financial statements. A qualified and independent opinion on the effectiveness of any or all administrative and control systems employed may also be required.

²¹ Plurinational State of Bolivia, Basic Norms of Administration and Goods and Services, Supreme Decree No. 181, of June 28, 2009, Article 42.

CONCLUSIONS

NGOs in Bolivia are playing a very important role in promoting social inclusion, interculturalism, participation, and the rights of the most vulnerable groups in society. There have also been several notable attempts to curtail or stigmatize civil society work, particularly as it relates to public criticism and the open debate of issues on the national agenda. In light of the current constitutional transition underway in the country, organized civil society in the form of private not-for-profit entities is facing enormous external and internal challenges. The main external challenges have to do with legislative developments and the application of the new Bolivian Constitution. The Plurinational Legislative Assembly must adopt a Social Oversight and Citizen Participation Law. In the context of the new Constitution, the Law should consolidate public and pluralistic opportunities to participate in and oversee government management through representative, democratic, and independent organizations. This poses many challenges, particularly in terms of how to preserve civil society's autonomy and complex diversity. There are also challenges to ensuring that participation is available to all citizens, regardless of if they are acting as individuals or organized groups. This is important particularly because the democratic progress to be achieved does not end up being co-opted by the State or monopolized by a group of social organizations that claims to represent, exclusively and in an exclusionary manner.

Another challenge is to promote the legislature's adoption of a law to grant freedom of information and transparency in public management that will equip civil society with more monitoring and oversight tools across the branches of government. Despite a recent announcement about the need to pass a law regulating NGO activities and operations, none of the at least five bills proposed over the past ten years have been passed and the scope of the current proposal is still unknown. NGOs have an interest in obtaining legislation specifically for them that sets out their obligations while shielding them from arbitrary State action. In other words, the rules of the game must be clearly articulated so that they require adherence by NGOs, while recognizing and protecting their activities. It is not a matter of eluding State supervision (which exists) but of laying the groundwork for mechanisms of self-oversight and self-regulation.

External supervision, especially by State institutions, is necessary but limited in its scope. The State oversees NGOs in several different ways. For example, they must report their finances to the National Tax and Customs Service and provide annual reports to the VIPFE. Moreover, NGOs that receive cooperation monies must comply with the rigorous reporting requirements of their donors, others provide detailed reports to their beneficiaries, and they all have the legal duty to report to their associates.