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Peru's Regulation of foreign funding of NGOs

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Peru: regulation of the foreign funding of associations

by Jose Luis Sardon¹

Peru's regulation of foreign funding of associations includes the following five basic statutes:

- Legislative Decree 719, Law of International Technical Cooperation, November 8, 1991.
- Law 27692, Law that creates the Peruvian Agency of International Cooperation (APCI), April 8, 2002.
- Law 28094, Law of Political Organizations, October 31, 2003.
- Law 28386, that partially modifies Legislative Decree 719 and Law 27692, November 13, 2004.
- Law 28925, that partially modifies Law 27692, December 8, 2005.

However, these specific norms must be read in the context of more general ones. Article 2.13 of the Political Constitution of Peru of 1993, for example, recognizes that:

Every person has the right to: [...] Associate and constitute foundations and diverse forms of non profit legal persons without previous governmental approval and according to law. These associations cannot be dissolved by administrative decisions.

The Peruvian Civil Code of 1984 includes basic definitions regarding private associations. This Code regulates their creation, basic structure, dissolution, among other topics.

According to these general rules, everyone has the right to create associations. In principle, these juridical entities can receive funding from any source —both national and foreign— to develop their activities.

Nevertheless, this right is restricted by norms that refer, more specifically, to the foreign funding of associations. The two most relevant ones are Legislative Decree 719 and Law 27692.

Legislative Decree 719, approved in 1991, establishes that international technical cooperation received by the Peruvian government can be channeled through —and used by— recognized private associations.

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Contrario sensu, this norm requires special recognition—in the form of registration at an administrative agency—to use foreign funds channeled through the Peruvian government.

Law 27692, approved in 2002, created the Peruvian Agency of International Cooperation (APCI). This administrative authority is in charge of supervising international cooperation received by public entities, and administering the register of private institutions that receive such cooperation.

APCI is also in charge of supervising the activities of private entities that directly receive foreign funding, to the extent that they claim tax exemptions or benefits in relation to that part of their income.

Contrario sensu, private entities that are not entitled to—or do not claim—tax exemptions or benefits are not required to register and report their activities to APCI.

Private entities that claim these tax incentives have to annually report their plan of activities to APCI. This rule also applies to those private institutions that receive funding from foreign governments and/or international organizations, even if they choose not to use tax benefits.

APCI makes sure that foreign funding received by private entities is only used in ways authorized by the donors. Otherwise, these private institutions can be fined or, eventually, excluded from APCI's register.

All these rules aim to ensure that private entities make a transparent use of international technical cooperation and other types of funding from abroad.

Moreover, Peru's Criminal Code, approved in 1991, prohibits using freedom of association to develop criminal activities, including terrorism and money laundering. Its Article 105.2 says:

If the punishable act was committed through any legal person or its organization was used to favor or cover up such act, the judge may apply one or some of the following measures: [...] Dissolution and liquidation of the society, association, foundation, cooperative or committee.

Therefore, if a crime is committed through a legal person, it can be dissolved by a judicial decision. An administrative authority cannot make such a decision, since it is expressly prohibited by the Peruvian Constitution in the article quoted above.

Peru's Law of Political Organizations, approved in 2003, regulates the cases in which political organizations—including political parties—cannot receive funding from abroad. Article 31.c establishes that:

Political parties, regional or departmental movements, and local political organizations cannot receive contributions from: (...) c) Foreign political parties or government agencies, except when funds are destined to education, training or research.

Foreign funding of political organizations is also subject to the general limit for the private funding of those organizations. Article 30 establishes that:

contributions originating in a single natural or legal person cannot exceed, individually, 60 taxation units each year [approximately, USD 74,000.00].

Political organizations must register their finances, exclusively, at the National Office of Electoral Processes (ONPE), not at APCI. ONPE is not only in charge of supervising the activities and finances of political organizations; it is also responsible for organization the country's national, regional and local elections.

There are no exceptions to the general rules other than the case of political organizations. All others must abide those rules —basically, submitting relevant information and allowing the supervision of APCI.

APCI can impose sanctions to private entities that, among other violations, fail to register relevant information, do not keep that information up to date, do not provide accurate data on their use of foreign funding, or fail to collaborate in the supervision process.

These sanctions include warnings, fines up to 50 taxation units (approximately, USD 62,000), suspension of the register or cancellation of the register. In principle, the application of these sanctions must comply with the principle of proportionality.

When applying sanctions, APCI has to take into account circumstances such as previous offenses. Also, APCI has to consider if the conduct is typified as a *minor offense*, *serious offense*, or *very serious offense* by applicable norms, and adjust sanctions accordingly.

The procedure that private entities that receive foreign funding must follow to register before APCI is not established by law but in an administrative decree. This procedure is free of any charge, and can be completed in approximately 30 days.

The rhetoric concerning foreign funding of NGOs and political organizations has fluctuated over the years. In the present, however, this is a very hot issue due to former President Ollanta Humala's apparent failure to report important donations for his political campaigns.