

Peru

I. Brief Introduction to the Legal System of Peru

Peru is a civil law country. It is a democratic and decentralized republic with a multi-party system, in which the President is the head of the state and government, representing the country's ongoing interests and directing governmental policy. Under the current Constitution, the Peruvian President is elected for five years and cannot seek an immediate re-election. The President designates the Prime Minister and the rest of the Council of Ministers. The country's governmental structure includes a Central Government, Regional Governments, and Local Governments.

The Central Government is organized as a three-tier system according to the principle of separation of powers with each of the three branches having autonomy and independence. The first is the Executive Branch, represented by the President and the Council of Ministers. It is in charge of directing and executing the policies of the country. The second branch is the Legislative Branch, represented by a unicameral Congress with 130 members elected for a five-year term. It makes Peruvian laws of lower range than the Constitution. The third is the Judicial Branch, in charge of the administration of justice in the country.

The Regional and Local Governments, under the sovereignty and supervision of the Central Government, are in charge of the development of regions or districts, with political, economic, and administrative autonomy in the matters within their competence. The Regional Governments are responsible for the administration of each of the Peruvian regions and have, as their duty, the development of the regional planning, the execution of public investment projects, the administration of public property, and the development and enforcement of economic activities. The Local Governments are the provincial and district municipalities and are charged with development of local planning and the local economy, in accordance with the Regional and Central Government policies.

The Peruvian Constitution of 1993 is the supreme law of the country followed by international treaties and then domestic legislation. The Supreme Court is the highest court in the hierarchy of the Judicial Branch. Below the Supreme Court are seven courts each consisting of five judges. These are, in this order, the Superior Courts, the Specialized or Mixed Courts, and the Peace Courts.

II. Peru's Anticorruption Laws

Anticorruption bill

Peru does not have any specific anticorruption law. The Government, however, has submitted a bill to the Peruvian Congress to amend several articles of the Peruvian Constitution in this regard. The bill provides that corruption acts performed by public officers shall have no statute of limitation. This bill, identified with number 238/2011-CR, is currently being reviewed by Congress. Even though the bill has not yet being approved, it is clear that the Government is working on the development of mechanisms in order to fight corruption.

Bribery under the Peruvian Criminal Code including foreign officials

The Peruvian Criminal Code specifies the different corruption offenses and establishes different sanctions for each offense. In this order, bribery (*Cohecho*) (articles 393 to 398), is punishable with imprisonment of 5 to 15 years for the public officer who accepts it (depending on his hierarchical level) and between 4 to 6 years for the person who provides it. Other corruption acts established in Section IV of the Criminal Code, regarding public officers' corruption, are: influence peddling (*Tráfico de Influencias*) (article 400) and illicit enrichment (*Enriquecimiento Ilícito*) (article 401). Since 2011 the Criminal Code also punishes a person who, by direct or indirect means, bribes or intends to bribe a foreign public officer (Article 397-A). In addition, the foreign public officer could be found liable under the Criminal Code (Article 393).

Facilitation payments

Peruvian laws do not allow any exceptions such as facilitation payments, often called "grease."

Enforcement

There are a series of government institutions in charge of enforcing anticorruption regulations, such as the Public Ministry and the Public Controller (*Contraloría*). In December

2012, the Peruvian Government approved the National Anticorruption Plan for the term 2012 – 2016. The main objectives of this plan are the following:

- Promote the strengthening of the National Anticorruption System.
- Promote practices and behaviors in the private sector against corruption.
- Promote the active participation of media against corruption.
- Develop concerted efforts in an international level against national corruption.

III. Assessment

The United States State Department's 2012 *Country Reports on Human Rights Practices* contains a section on corruption in Peru where it reports that: "The law provides criminal penalties for corruption by officials; however, the government did not always implement the law effectively, and officials sometimes engaged in corrupt practices with impunity. There was a widespread perception that corruption was pervasive in all branches of government." In 2010, the Peruvian Government appointed a commission charged with preventing and fighting corruption. More recently, on January 8, 2013, the Peruvian Congress issued Law N°. 29976 which created a new high-level anticorruption commission. The new commission assumed all the duties of the former commission and is charged with:

- Proposing to the Executive Branch the short, medium, and long term policies for the prevention of corruption by a joint effort of governmental entities, business associations, and other society members.
- Proposing the National Anticorruption Plan to the Executive Branch.
- Promoting the investigation and sanctions of corruption acts.
- Providing an annual report regarding the fulfillment of the National Anticorruption Plan to the Peruvian Congress.

Peru is a signatory to the UN Convention and the Inter-American Convention. It is not a member of GRECO but is a member of IACA. It is ranked 83 on Transparency International's 2012 Corruption Perceptions Index.



IV. Texts

Peruvian Constitution:

<http://www.tc.gob.pe/legconperu/constitucion.html>

Peruvian Criminal Code:

https://apps.contraloria.gob.pe/unetealcontrol/pdf/07_635.pdf

Law N°. 29976:

<http://www.congreso.gob.pe/ntley/Imagenes/Leyes/29976.pdf>

Bill to amend several articles of the Peruvian Constitution regarding anticorruption:

[http://www2.congreso.gob.pe/Sicr/TraDocEstProc/Contdoc01_2011.nsf/0/a82d0a1f931fc2b8052579110079c4f3/\\$FILE/PL00238200911.pdf](http://www2.congreso.gob.pe/Sicr/TraDocEstProc/Contdoc01_2011.nsf/0/a82d0a1f931fc2b8052579110079c4f3/$FILE/PL00238200911.pdf)