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Regulation

The Lack of Third Sector Law / La Ausencia de Derecho del Tercer Sector

Section - Active without Recognition: Obstacles to Development of the Colombian Third Sector, IJNL

Excerpt

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(...) But there is also another problem in the Colombian Third Sector: the lack of law, by which I mean not only law as a set of precepts but law as a dynamic discipline in which operating rules evolve.

In Colombia, almost no one cares about not-for-profit law. The Solidarity Organizations pursue their social objectives and the necessary funding, while public authorities concentrate on Colombia's abundant problems. For instance, a longstanding inspection and vigilance statute exists, which addresses both SDOs and SEOs that violate the law through their creation, grant making, or operation. But it seems to have been forgotten. There has been no in-depth study, no follow up and measurement of responsibility *vs.* autonomy, and, above all, no amendment to adjust the law to contemporary needs. In the last ten years, at least three law drafts and several congressional studies have been undertaken, but none has made it onto the Colombian agenda.

The reason is simple: as everyone says in Colombia, urgent matters precede important ones. Unfortunately, however, the failure to tackle the important matters is fueling the urgent ones.

Amending the Third Sector laws would allow development and strengthening of the solidarity vehicles that create and redistribute wealth and opportunities in the country. Or, reformulated into a human security perspective, it would help to diminish the hunger, victimization, and criminal recidivism in the most vulnerable population, complementing the efforts of the State and the market.

Improved terms and enforcement of NPO law, or in a positive sense Solidarity Organizations Law, in my definition, is urgently needed to bring order to this domain. It would help the government detect illegal organizations and activities, and at the same time help legitimate organizations flourish.¹ Creating a state liaison office for SDOs² and taking seriously the SEOs' Administrative Department and Superintendence would represent definite steps toward achieving this goal.

In addition, it is necessary to breed a new generation of lawyers, politicians, and journalists capable of understanding the importance of civic Solidarity Organizations, including their interactions with the State, the market, and the community, as well as dealing with the newly broadened public sphere in democratic regimes. Recent initiatives elsewhere demonstrate this need. The U.S. Senate Finance Committee created a Panel on the Nonprofit Sector to prepare recommendations for Congress on how to improve the oversight and governance of charitable organizations, and the UN's Secretary General assembled a Panel of Eminent Persons on United Nations-Civil Society Relations, which reflects the needs of our contemporary world. As Kofi Annan recently stated, "The United Nations once dealt with Governments. By now we know that peace and prosperity cannot be achieved without partnerships involving governments, international organizations, the business community, and civil society. In today's world we depend on each other."³

Effective, efficient not-for-profit law has thus become a worldwide necessity, especially in developing countries. In a country like mine, where in addition violence menaces the society's development and the individual's security, failing to develop the law to encourage solidarity and organized citizenship is a grave mistake.

In the acceptance speech upon his election to the *Academie Française*, the respected *doyen* Georges Vedel said that after all of his years practicing law, he still couldn't rigorously define law, but he was pretty sure of what a world without law would look like. Unfortunately,

¹ [5] The Constitution assigns to the President of the Republic the inspection, vigilance, and control of cooperative entities (art. 189, #24) and the inspection and vigilance of common utility institutions so that funds will be conserved and properly applied toward accomplishing the will of the founders (art. 189, #26).

² [6] The National Administrative Department of Solidarity Economy is responsible for directing and coordinating state policy for the promotion, planning, protection, strengthening, and entrepreneurial development of Solidarity Economy organizations.

³ [7] <http://www.un.org/issues/civilsociety/>.

Colombia's current Third Sector offers a good picture of such a world: plenty of good intentions, precepts, isolated acts, equivoques, and mistrust.



Vedel's words helped me refine my conception of law. Years of studying in Colombia and abroad, learning norms, rule, exceptions, and criteria for balancing and distinguishing tend to make you forget what law is all about. At the end of the day, just as Vedel indicated and as Colombian Justice Cepeda showed me through his work, law is about shaping and tailoring a community through a normative system of incentives and limits that, with time, will chart a path for society's advance.

Where to advance--that is an intricate political problem of law, but I believe it has been answered for a few of us. The solution, to paraphrase Civicus World Assembly, is a matter of fueling civic energy into contemporary democracy and development--or in my terms, shaping and tailoring a community that welcomes and protects all, the powerful and the powerless alike.