

**Labdoc**

**Spatial**

## **Beyond Good Intentions / Más Allá de las Buenas Intenciones**

*Building an area of law and practice for solidarity organizations / Construyendo un área de derecho y práctica para organizaciones solidarias, Civicus Workshop*

**2004**

Adriana Ruiz-Restrepo

# BEYOND GOOD INTENTIONS:

A wide-angle landscape photograph showing a range of mountains in the distance, with a layer of white, fluffy clouds in the sky. The entire scene is reflected in a calm body of water in the foreground, creating a symmetrical effect. The sky is a clear, bright blue.

**Building an area of law and practice for  
solidarity organizations**

**Adriana Ruiz-Restrepo,, CIVICUS WORKSHOP. Botswana 2004**

# CONTENTS

## **Introduction**

### **1. Theory of Solidarity Organizations Law**

**Need of law**

**Solidarity Organizations instead of  
CSO's or NPOs's?**

**Solidarity approaches**

**A General law principle of solidarity**

### **2. Practice of Solidarity Organizations Law**

**The landscape for action**

**Examples/Workshop**

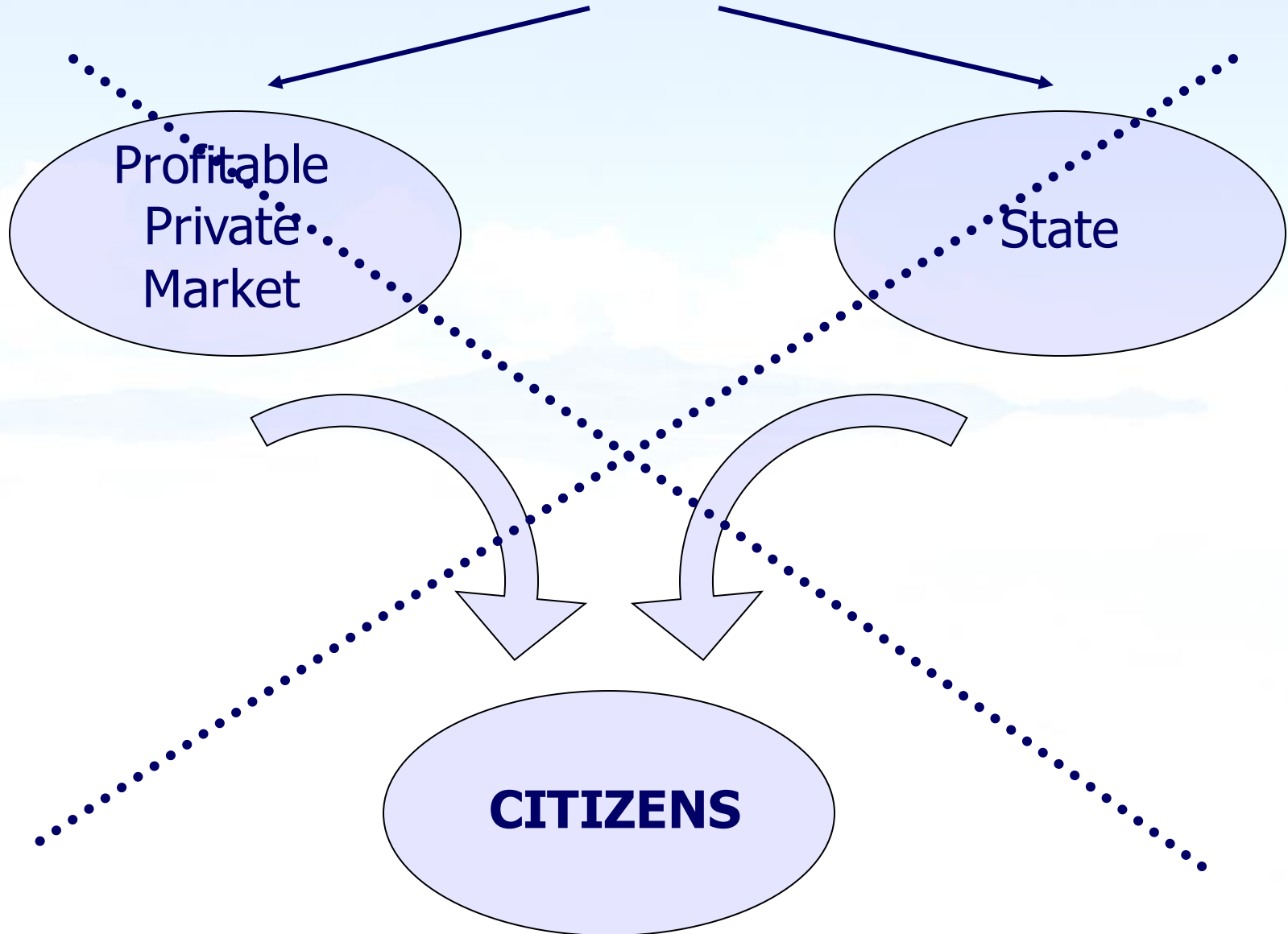
# Introduction

- 1. For strengthening the third sector (removing obstacles/promoting actions)**
- 2. For structuring better vehicles for organized citizen participation**
- 3. For development**
- 4. For building knowledge**

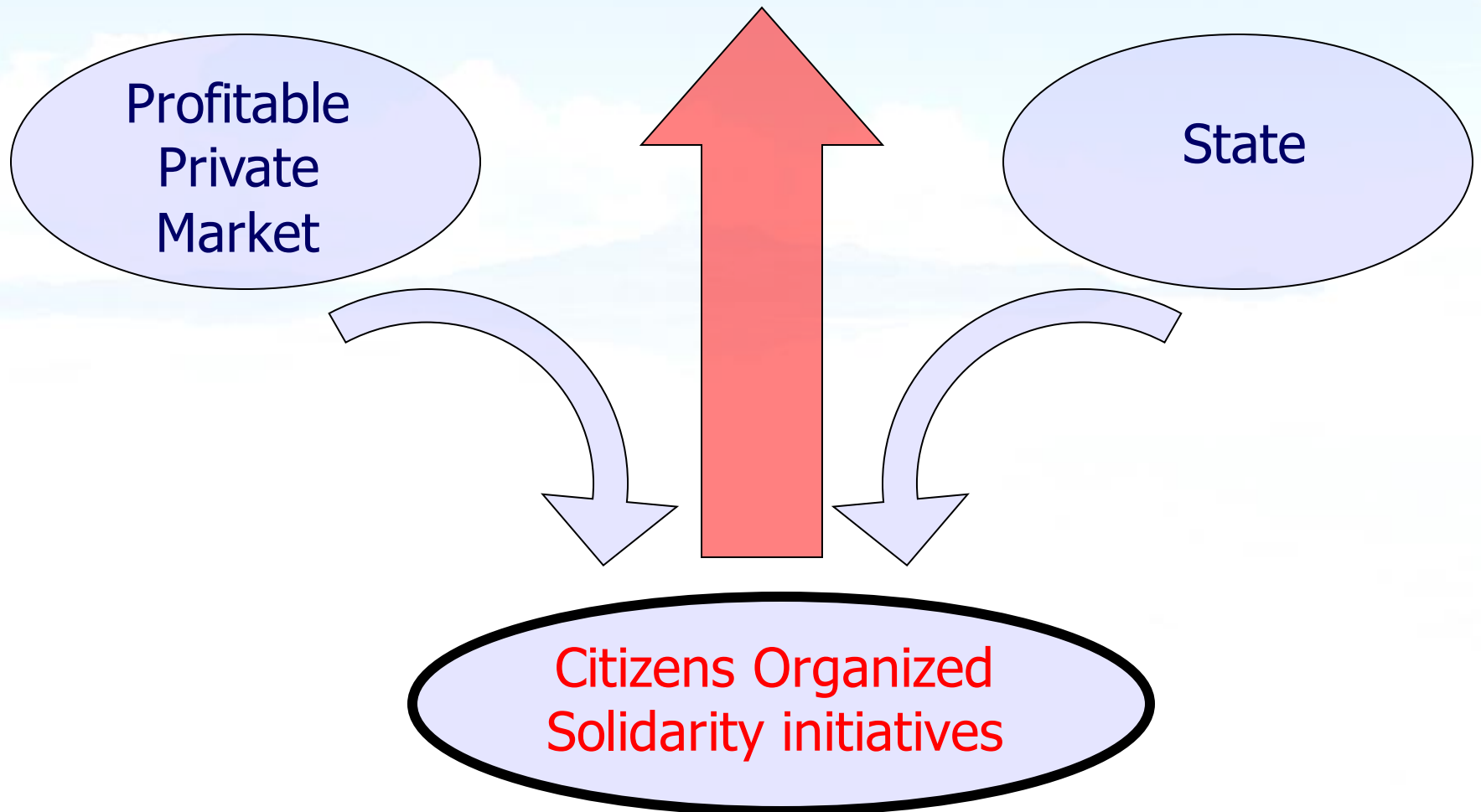
## **Colombia and developing countries' case:**

- 1. The State as well as its population have limited economic resources.**
- 2. Sociopolitical and environmental opportunities are inequitably distributed among the population.**
- 3. Due to geography or public order issues, the citizens' connections with the Market and the State are heterogeneous and unequal.**

- ▶ The citizens' future should not depend on a distribution of wealth and opportunities which would exclusively rely on:



Development should also be possible in an autonomous way.  
Citizens' solidarity initiatives for redistribution of economic wealth and opportunities may vehicle through juridical persons



**LAW**



## What is law ?

~~Exogenous  
Order~~

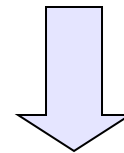
Ancient-Régime:

- Divine Mandate
- King is sovereign
- Law is given

Endogenous  
Construction

Modernity:

- Peoples sovereign
- National sovereignty
- Law is decided by  
the citizens' will



What for ?



# What approach to law ?

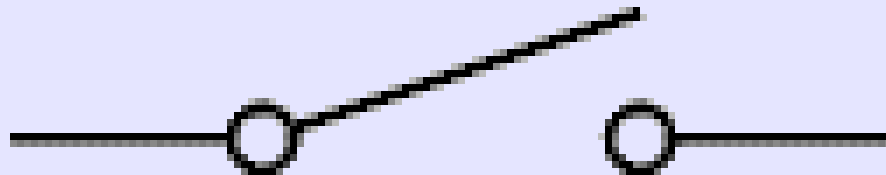
Law may be seen as a system designed to:

Give incentives to desirable social actions, i.e. production, employment, creation... and solidarity

Introduce limits to undesirable social actions, i.e. criminality, corruption, tax evasion, abuse...

**ON**

**OFF**



Incentives / Limits

## Society by means of law determines:

Which actions are  
desirable and should  
get incentives

(ON)

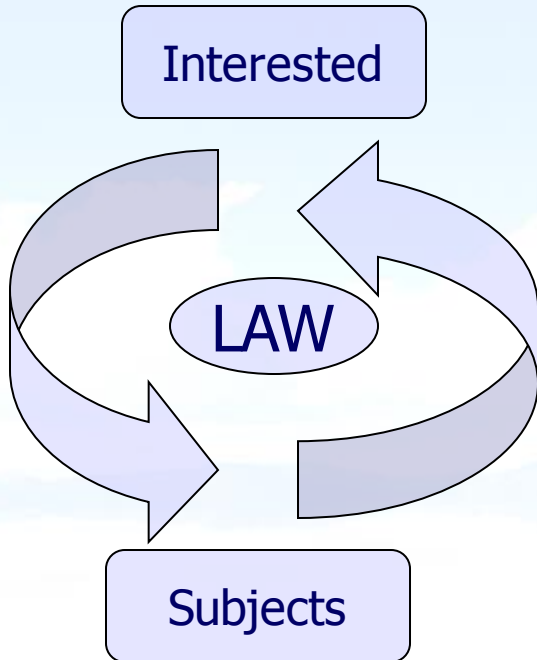
Which actions are  
not desirable and  
should be limited

(OFF)

In society, there are as many organizations as there are interests. Law reflects it: banking law, insurance law, tax law, sports law, wine law...

Behind these specialized areas of law, we find not only the Parliaments responsible for making law, but the organizations that deal with banking, insurance, tax, sports, wine...

## Why are these organizations relevant to the production of law ?



They are both interested and subject of the law, hence they are the best positioned to determine the incentives and limits affecting their condition or nature and mode of operation.

Indeed, these organizations are, ultimately juridical persons that depend on law, even for their mere existence.

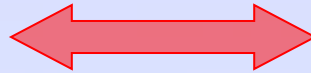
Usually, there is a law for determining the conditions of the constitution, tax duties, responsibility, ... of each of Solidarity Organization, understood as scattered entities.

But there does not exist a coherent set of rules that edicts the principles and organizes the Sector as unified around the concept of Solidarity.

# **SOLIDARITY ORGANIZATIONS**



# CIVIL SOCIETY



Individuals

Organized  
Individuals

**Domestic  
Affairs**

**Individual  
Citizenship**

**Groups  
Associations  
Movements  
Parties  
Societies  
Foundations  
Corporations  
Companies  
Firms**

# (Organized individuals' interests)

## ORGANIZATIONS

OR

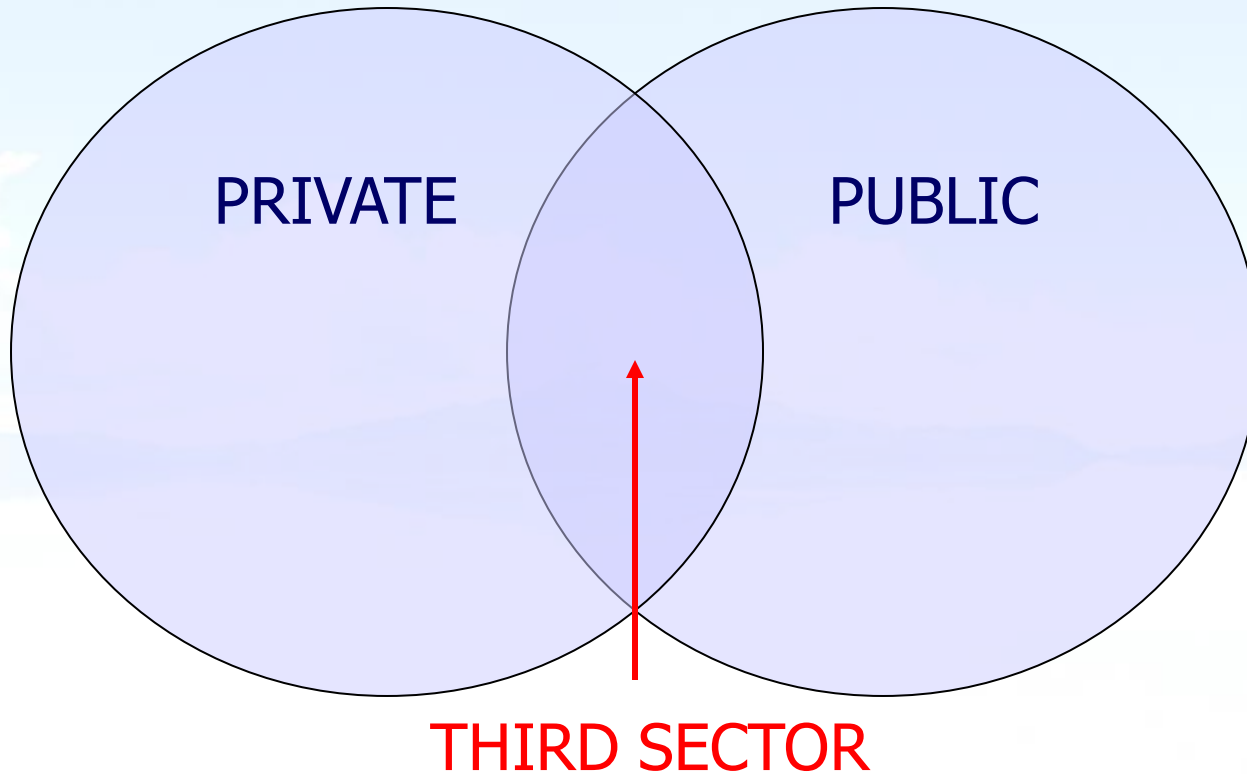
Profitable  
Private Market  
Sector

Limited Companies  
Limited Liability Companies  
Banks  
Corporations

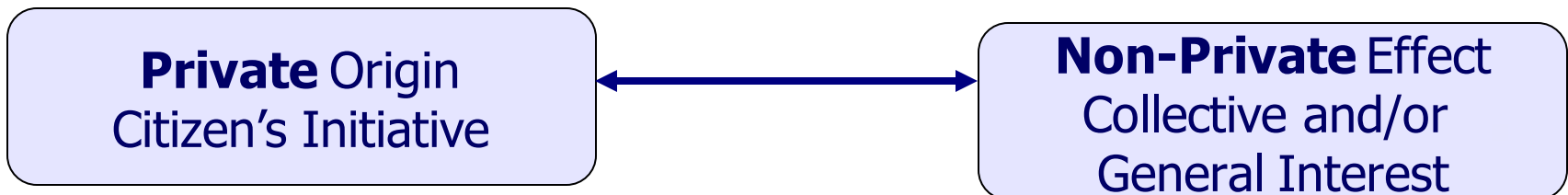
Public Official  
State Sector

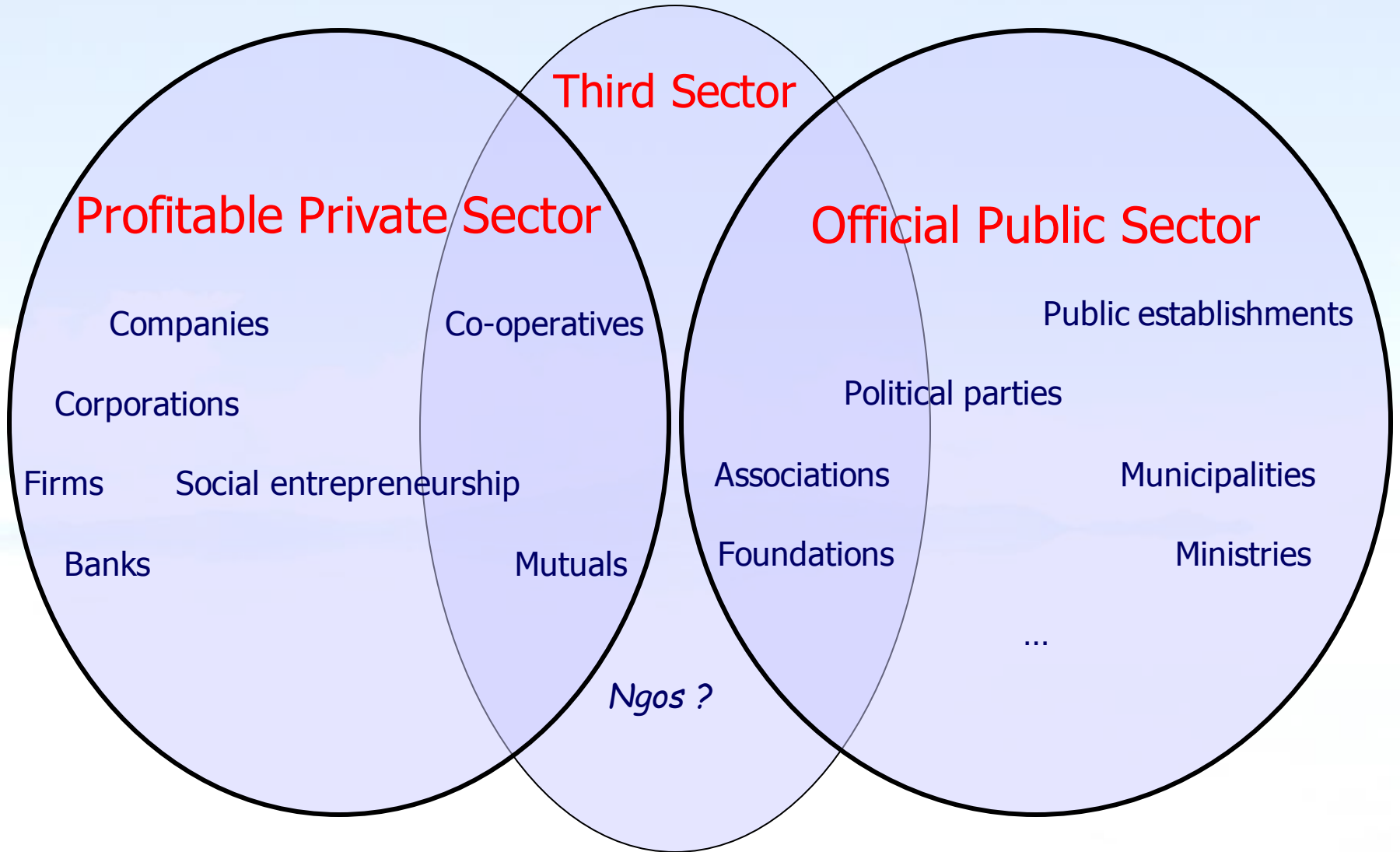
State Agencies  
Territorial Counties  
Oversight / Control entities  
Municipalities

Since 1970 an intersection between the two traditional sectors of activity has been highlighted:



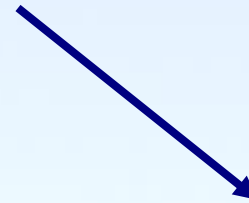
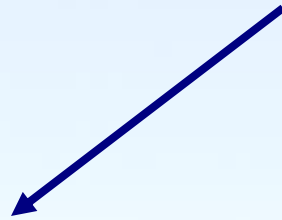
Non-State / public and non-profit / private domain







# ORGANIZATIONS



**Logic of profitability  
for individual gain  
(profit)**

**Logic of public power's  
prerogatives for the  
general interest**

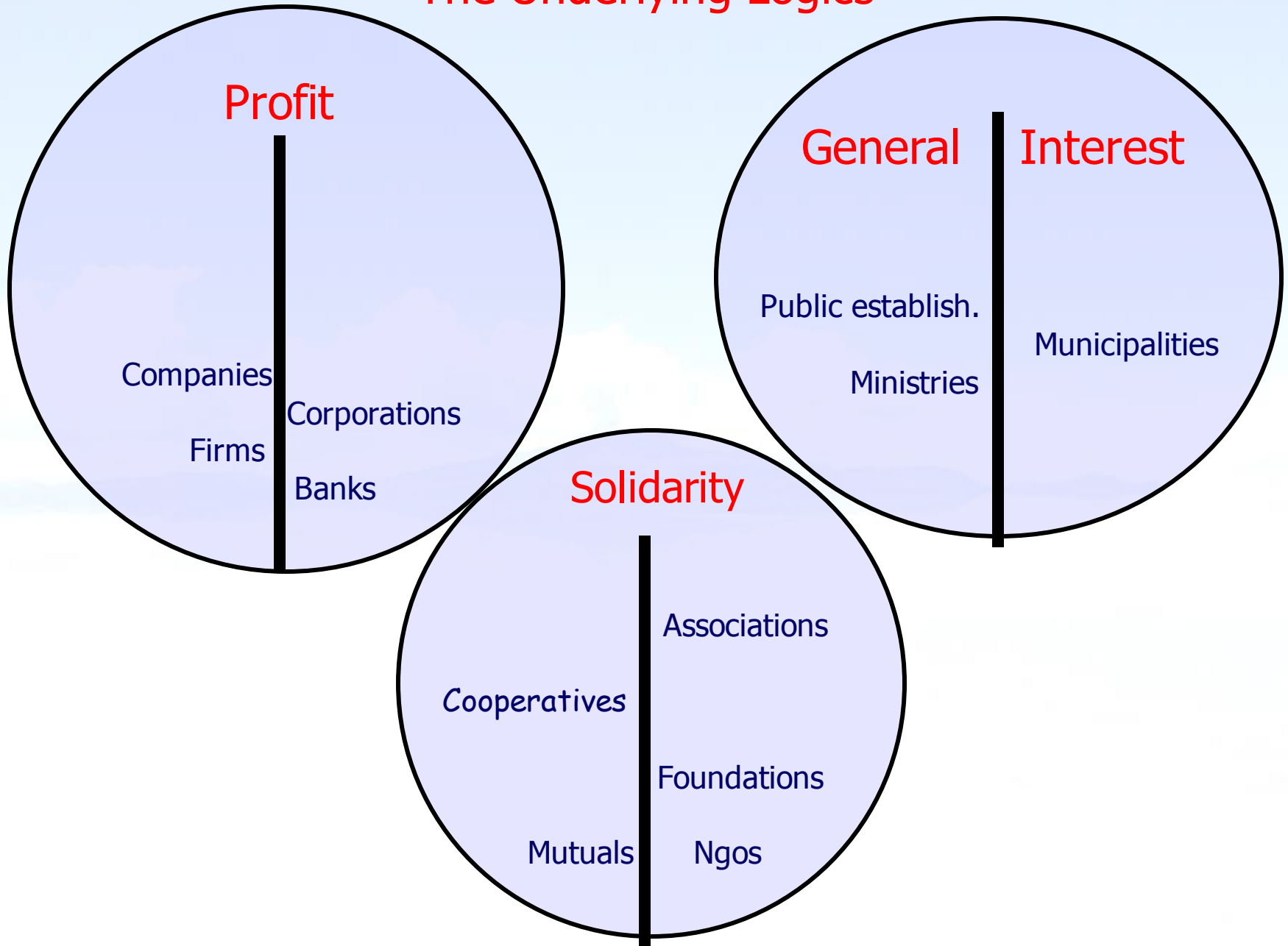
**Profitable  
Private Market  
Sector**

Limited Companies  
Limited Liability Companies  
Banks  
Corporations

**Public Official  
State Sector**

Secretaries of State  
Counties  
Control entities  
Municipalities

# The Underlying Logics



# DIVERSE APPROACHES TO DEFINITION OF SOLIDARITY

- Roman law (civil \ commercial) “in solidum”
- Philosophy (Aristotle)
- Sociology (Durkheim)

*Solidarity* as a sentiment (love, beauty, confidence, good faith)

Democracy's triptych: “ Liberty, Egalité, Fraternité”

## WHAT SOLIDARITY ?

(a) Solidarity as a sentiment reflected in a single isolated act

Ex: a person who gives money to a homeless person

(b) Solidarity as sentiment reflected in an activity

Ex: a juridical person whose objective implies a continuous solidarity action.

**In order to make it an area of law and practice, we exclude punctual manifestations of solidarity and focus on permanent solidarity activities which are found in the objective of juridical persons.**

# The scopes of solidarity:

## Reciprocal / Mutual Solidarity

Usually, reciprocal solidarity organizations look for socioeconomic welfare (us/closed)

***Solidarity Economy Organizations***

## Altruistic / Philanthropic Solidarity

Usually, altruist solidarity organizations look for redistributing opportunities or improving sociopolitical conditions (Others / open)

***Solidarity Organizations for Development***

# SOLIDARITY ORGANIZATIONS

**Instead of Not-for-Profit**

**Positive definition**

**Identity & Security**

**Solid Juridical Nature**

**The profit they seek is  
neither personal nor egoist**

**→ The profit they make is  
aimed to solidarity  
purposes**

## Third Sector

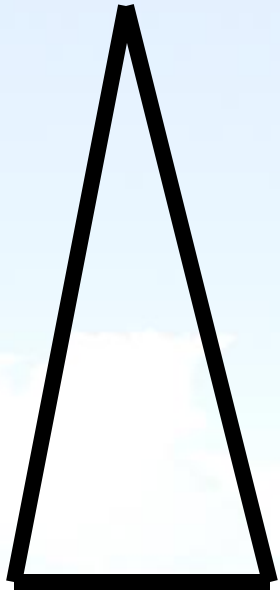
Co-operatives

Mutual Insurance  
Companies

Associations

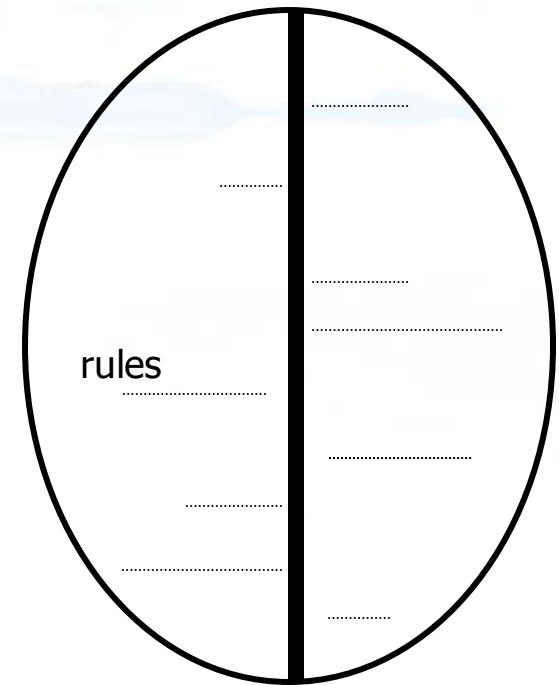
Foundations

...



- Constitution
- Laws
- Decrees
- Resolutions and other normative binding texts

## Juridical Principle







## Examples of solidarity law:

► Hungary (1996), Slovakia (2002), Lithuania (2002), Poland (2003) and Romania (2003): the “One percent Law”.

- Tax legislation meant to encourage and strengthen Civil Society Organizations in Central and Eastern Europe.

- The “One percent Law” allows payers of personal income tax to designate 1% of their previous year’s tax to an eligible NGO or a listed public cultural institution.

- For more information, see: [www.onepercent.hu](http://www.onepercent.hu)

## Examples of solidarity law:

### ► Chili: Law to Register Juridical Persons that Receive Public Funds.

✓ Some of the strong obstacles to Solidarity Organizations empowerment in Latin America:

- Distrust between the Official State Apparatus and the Civil Society.
- Lack of mutual controls and responsibility assignments.

→ In many Latin American countries, public funds to Solidarity Organizations have been prohibited.

✓ In Chile, the 1986 Act of 2003 establishes:

- The proceedings for a juridical person to receive public funds.
- The registering requirements.
- The information-sharing system.

## Examples of solidarity public policy:

► France: A coherent structure of institutions that influence solidarity organizations' development

✓ Governmental initiatives:

- Economic and Social Council (1958)
- National Council of Associative Life (1983)
- State Secretary for Solidarity Economy (1997-2002)
- Inter-ministerial Delegation for Social Economy and Social Innovation (1981). Gérard Sarracany is its Delegate since 2002.

✓ Solidarity Organizations initiatives, promoting associative life and values, as well as a constructive partnership with the State apparatus:

- Permanent Conference of the Associative Coordinations (1992)
- FONDA (1981)
- National Voluntary Center (1979) → France Bénévolat (2003)

## Examples of solidarity public policy:

### ► Italy: "Bank of Time" initiative

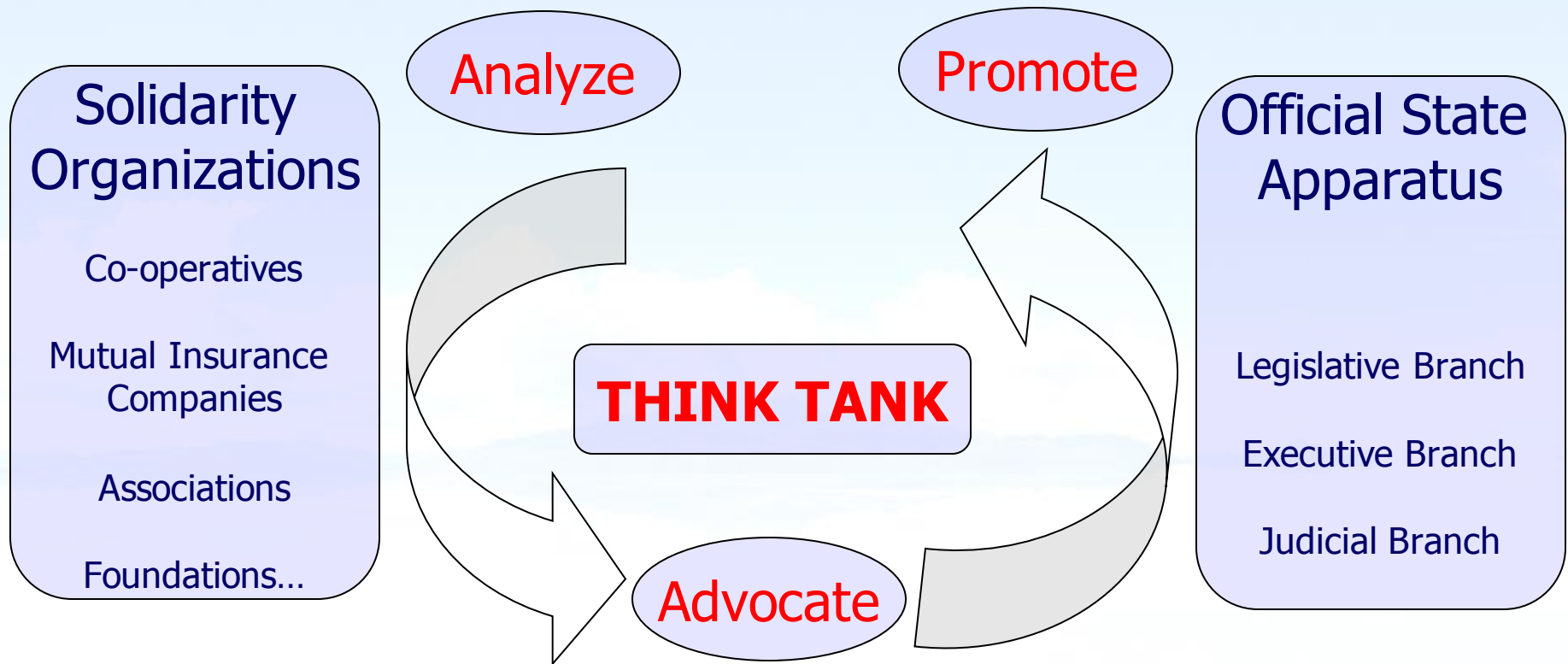
- ✓ A mutual help initiative: in 1995, some women created the 1<sup>st</sup> "Bank of Time". Everyone can express through a database:
  - his/her will to give time to others according to his/her savoir-faire,
  - his/her personal needs as well as their collective demands.
- Now there are 258 "Banks of Time" nation-wide. 80% of their members are women.
  
- ✓ Interaction between the "Banks of Time" and local administrations, without interfering with their independence:
  - By means of law, the local administration provide offices or financial support to the "Banks of Time".
  - In turn, the "Banks of Time" organize activities for the community.

## Examples of judicial action to protect solidarity:

### ▶ Colombia: Judicial Actions to defend vulnerable populations' solidarity organizations.

- ✓ The ... Recyclers (informal waste pickers /scavengers) in Bogotá where threatened to lose their living resources when was adopted a decree authorizing the privatization of the recycling business, which meant its monopoly.(personal litigation)
- ✓ A Judicial Action was held in defense of the Bogotá's Recyclers to prove the unconstitutionality of such a measure.
- ✓ The Constitutional Court reaffirmed the vulnerable people's right to benefit from affirmative actions in public market operations.

# Strategy for law and policy consolidation for the Sector



1. Analyze the Juridical Persons of Solidarity Origin (characteristics, barriers, weaknesses, strengths)
2. Influence public decisions (bills, public policies proposals, judicial actions)
3. Promote the creation of specific regulatory space, a political and juridical environment favorable to the Solidarity Sector.

**En la vida no hay solución. Sólo hay fuerzas en marcha: hay que crearlas y las soluciones siguen**

**Dans la vie il n'y a pas de solution. Il y a que des forces en marche: il faut les créer et les solutions suivent**

**There is no solution in life. There are only forces in action: they must be created and solutions follow**

**A. de Saint-Exupéry** *(Vol de nuit)*

