



WORLD MOVEMENT *for* DEMOCRACY

Confronting the Challenges to Democracy in the 21st Century

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Defending Civil Society

Colombia Country Report Summary

(*This summary was prepared by World Movement Secretariat staff.)

When considering the concept of “Defending Civil Society,” two questions must be answered: what are the rights that must be protected to preserve civil society, and from what threats are they being defended? The first question can be answered by identifying the rights necessary for a vibrant civil society to exist, and the second by identifying threats curtailing these rights.

This report provides a brief explanation of which rights are justified to must be safeguarded for civil society to thrive, the threats that loom over the realm of civil society, the legitimacy or effective function of Colombian civil society, and strategies for protecting and strengthening civil society.

The State of Colombia is a unitary republic and functions in a decentralized manner with territorial state autonomy. Colombia is a state of law (art. 1) according to the 1991 Colombian Political Constitution (Political Constitution). As a result of Spanish and French Napoleonic influences, Colombian law is codified, written law with more legislative (and hence political) origins than the more jurisprudential Anglo-American common law.

Various constitutional provisions emphasize the importance of civil society in Colombia. The principles of participation (art. 2), the duty of solidarity (art. 95), the freedom of meeting, (art. 37), the freedom of assembly (art. 38), the freedom of information (art. 20), the right to create petitions for information to authorities (art. 23), the right to private property (art. 58), and the right to donate (art. 62) are all guaranteed in the Constitution.

The Political Constitution has other constitutional standards that are important for civil society, including: the obligation of the government to promote and strengthen civil society organizations to facilitate participation and control (art. 103); the preferential treatment of solidarity organizations to access property (art. 60); the prohibition of public officials blocking support or donations, also known as grants, from private nonprofit entities (art. 355); and the duty of the President of the Republic to ensure that the will and revenues of public utility institutions remain and be used for the public in the manner intended by the founder of the organization (art. 189-26).

According to the Civil Code of the Union, the two types of legal nonprofit entities are the nonprofit corporation (corporation) and the foundation. The corporation refers to any two or more persons uniting for the purpose of seeking personal interest. The foundation refers to one or more people uniting for a specific cause, and is based on equity, assets, and its specific purpose as intended by its founder or founders.

The corporation is a legal autonomous entity that is allowed to pursue established objectives based on the statutes that govern the corporation as set forth by its founders. Based on article 38 of the Constitution, people are allowed to assemble “*to develop the different activities that people accomplish in society.*” People are therefore permitted to assemble for their mutual interests, such as to create a savings fund, to debate and propose public works/ and or policies, or to create solidarity for humanitarian causes, among many others. The corporation is often referred to as an “association,” including in text, despite not being legally identified in the Civil Code. The foundation has autonomy and capacity to act based on the rights and obligations under the self-administered will of its founders. The 1886 Constitution introduced the notion “institutions of public use,” establishing (i) the concept of “institutions” in the description of foundations (ii) the intention of public benefit, under the notion of public utility, and (iii) the importance of national philanthropy. The 1991 Constitution maintained this notion.

In Colombia there have unfortunately been many contradictions between the permissive system enshrined in the constitution and the practice on the ground. Laws created after the Civil Code have caused confusion in the civil society organization legal arena. Since 2000, increased globalization has given non-governmental organizations (NGO) momentum, and Colombian authorities have implemented regulations and laws that frequently referred to NGOs, though the definition of an NGO has not been legally defined. As a result, the laws regarding nonprofit entities are vague and often contradictory.

Technically, it is not mandatory to register or officially establish an organization in Colombia, as the freedom of assembly and right to meet are provided in the constitution. If individuals choose to establish a structure and create a legal entity, it could have an almost unlimited number of purposes, including political objectives, security, peace, or even internal armed conflict. However, many civil society organizations have emerged focusing on defending human rights for victims of conflict. Quite often, their activities have included criticism of the government, resulting in clashes with the Executive branch. As a result, the Executive branch has publically referred to these organizations in a negative tone, which has led to their stigmatization. Though the constitution allows civil society organizations to form for diverse purposes, there are, in practice, limitations when they openly conflict with the government's actions or ideology.

To establish and register a corporation or foundation, the law requires that the organization provides statutes of incorporation, which are its own rules of internal governance. The statutes must be recorded as a private document, notarized, and include the following information: name, address, and identification of people involved in providing the name of the organization, origin of objective, form of administration, identification of administrators and legal representatives, the schedule of regular meetings and cases which will convene extraordinary meetings, as well as other similar details. There is no requirement for an initial amount of capital or assets. In addition to the statutes, the person submitting the registration must provide their address, telephone, and fax number at the time registration is due.

For a long period of time, the Ministry of Justice was responsible for reviewing an organization's statutes and accepting or denying registration. This responsibility was later passed on to the Governors and the Mayor of Bogotá. However, in 1995 the government delegated the country's Chambers of Commerce to provide public service management of the legal recognition of most CSOs, similar to commercial businesses. This decree further increased confusion as to the classification and typology of organizations that should enlist with the Chamber of Commerce, as there are no specific guidelines identifying which type of CSOs must apply there, and additionally interchanges characteristics of some organizations with others. Exemptions for enlisting with the Chamber of Commerce include but are not limited to: those involved in the health sector; collective management societies for copyright and related rights; and Charitable establishments of public and official nature of corporations and foundations established by laws, ordinances, decrees, and agreements regulated by Decree 3130 of 1968 and other relevant provisions. Organizations that do apply at the Chamber of Commerce must provide the statutes of incorporation and fill out a form with information identical to that identified in the statutes along with the purpose of the organization, the activities the obligations of the organization, and the entity that will supervise it. Once the paperwork is submitted, the applicant must pay 26 Colombian pesos and will automatically receive a provisional identification number. Within 24 hours, the applicant will know if the statutes were approved or denied.

In general, any person can solicit the certification of an organization's legal status. The individual will require the organization's identification information as there is no existing comprehensive national or local registry for public access that includes all the registered organizations, their representatives, activities, and purposes. Legally, registration for CSOs in Colombia is easy, fostering civil society expansion. It is so simple, in fact, that it could be used by organizations created for criminal activities, allowing a lax environment where an abuse of the process could hinder civil society's fundamental values of democracy and development.

Although the Chamber of Commerce has the legal responsibility to register CSOs, the general supervision of the organization rests on the relevant Governor or Mayor of Bogotá. More specifically, a 1987 law assigned the governors and Mayor of Bogotá not only the (i) the role of inspecting and monitoring institutions of public utility, but also (ii) the investigation of statutes and approval of legal entity of all the foundations and nonprofit corporations established in their territory. The same decree provides the governors the obligation to control the activities of the organization, corporation, or foundation to ensure that they (a) do not violate applicable laws (b) are not diverted from the purpose of its statutes, or (c) are contrary to the laws or public order. Furthermore, Decree 1529 of 1990 allows the relevant Governor and the Mayor of Bogotá to control an organization's existence and legitimacy, as they may withdraw the legal status of any foundation or corporation.

According to various decrees, the relevant governor or Mayor of Bogotá is responsible for monitoring the internal administration and activities of an organization. As a result, they have the authority to solicit: reports produced by organizations; and budgets for projects and the balance of each activity; statutes of the organization. In addition, they are able to visit or send a delegate to visit the organization and attend meetings where organization leaders are elected. There is no legal requirement of advance notification for attending of meetings.

Nationally, foundations and organizations must submit monthly bank statements of tax withholdings. In the case of Bogotá, they must provide their financial statements for the first three months of the year by December 31st of that year. Governors or the Mayor of Bogotá are authorized to withdraw the legal status of corporations and foundations that have their principal address registered within their department when their activities deviate from those identified in their statutes or are against public order or laws.

In terms of dissolution and liquidation of CSOs, corporations or foundations can be dissolved by the decision of the CSOs General Assembly as provided in the statutes or via the cancellation of legal status by the Governor or Mayor of Bogotá. When the dissolution is decreed, a liquidator is automatically appointed and the dissolution is made public via three registered and legal notices. These notices must be made in a national newspaper and each of the three must be fifteen days apart. After the last notice, the assets of the organization are liquidated to pay its obligations to third parties with priority claims. If assets remain, they are assigned to an entity chosen by the Assembly or a charitable institution of the municipality.

Unlike other countries with different levels of legal capacity, Colombia classifies the capacity of civil society organizations as the same as any other legal entity, allowing CSOs to acquire and dispose of property, contract personnel, invest resources, and import and export goods. The only legal or cultural limitations on civil society organizations interacting with international actors is that it could be considered as an act of disloyalty when criticizing the government in the international arena.

In terms of financing in Colombia, there is freedom to receive foreign funds via pacts for a specific common purpose or for donations, which are understood to be given without any conditions. To prevent money laundering, however, Colombian banks require a document officially translated into Spanish which describes the origin of support when the funds are converted to pesos.

To prevent corruption, the 1991 Constitution expressly and absolutely prohibited all branches of government to grant money or aid to private entities, including CSOs. However, government entities at the national, departmental, district and municipal level may, out of their own respective budgets, sign contracts with private nonprofits with recognized qualifications to promote programs and activities of public interest consistent with the National Plan and sectional development plans. CSOs in Colombia are able to enjoy a variety of tax breaks, including a lower rate than that of commercial companies or, in some cases, are even exempt from paying income taxes.

In conclusion, there is a serious disconnect between written legislation and applied law regarding civil society. Corporations are often referred to as associations and foundations are also often referred to as institutions of public utility and as of late, many government regulations have used the terms nongovernmental organizations and NGOs, which have yet to be legally defined. Furthermore, the existing legal structures are lax enough that they allow illegitimate entities access to the privileges intended for nonprofit CSOs. While the false CSOs are far from all CSOs in Colombia, they exist and unfortunately the law, to some extent, allows strengthening them. Given the serious lack of political, academic, and civic engagement in the legal field of nonprofit or civil-rights solidarity, there is little interest in defending and strengthening CSOs in Colombia. Hence there is an urgency to create policies that will help Governors, the Mayor of Bogotá and the Chambers of Commerce better articulate the processes of establishing and maintaining legitimate CSOs. Additionally, there is a need to teach the different dimensions of CSOs and their role in development and democracy in Colombia. Such efforts could include research at universities and CSOs themselves as well as establishing monitoring mechanisms, facilitating workshops and producing media making the role of CSOs in the country visible.