

Article

CIVIL SOCIETY ORGANIZATIONS RESPOND TO NEW REGULATION IN ECUADOR: AN INTERVIEW WITH ORAZIO BELLETTINI CEDEÑO

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Since we talked with Ecuadorian social entrepreneur and policy expert Orazio Bellettini Cedeño in 2011,² the Collective of Civil Society Organizations legally formalized into the Ecuadorian Confederation of Civil Society Organizations in 2013. During that same year, after almost five years of no regulatory reform, the Ecuadorian Presidential Office released Executive Decree No. 16.³ Replacing the 2008 Decree No. 982, Decree No. 16 adds new requirements for legal status, a new registry for civil society organizations, and further obligations for international organizations seeking to work in Ecuador. The Confederation's concerns about the new Decree were widely covered in the media and have continued a public debate about the role and the regulation of civil society organizations in Ecuador.

Under Decree No. 16, the government revoked the legal status an active environmental civil society organization, *Fundación Pachamama*, in 2013 because of its involvement in protests against mining development in Ecuador. Government officials alleged that *Fundación Pachamama* was “straying from its statutory objectives” and endangering “internal security and public peace.”⁴ The organization remains shut down as of late 2014. It is exploring options to take the case to the Inter-American Court of Human Rights.⁵ The broader issue of freedom of association in Ecuador was brought to a hearing at the Inter-American Commission on Human Rights in 2014.⁶ As a legalized, formal Confederation, civil society organizations in Ecuador responded to Decree No. 16 and *Pachamama*'s closing.

Bellettini sat down to talk about the developing role of the new Ecuadorian Confederation of Civil Society Organizations, the sector's regulation in Ecuador, the closing of

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² Appe, S. (2011). Interview: Civil Society Organizations Respond to Government Regulations in Ecuador. *International Journal of Not-for-Profit Law*. 13(3), 27-32, http://www.icnl.org/research/journal/vol13iss3/special_4.htm.

³ Presidencia de la República del Ecuador [The Office of the President] (2013, June 4). Executive Decree No. 16, <http://www.inclusion.gob.ec/wp-content/uploads/downloads/2014/11/Decreto-Ejecutivo-16.pdf>.

⁴ Solano, G. (2013, December 5). Ecuador shuts down nonprofit environmental group. *The World Post*, <http://www.huffingtonpost.com/huff-wires/20131205/lt-ecuador-environmental-ngo/>.

⁵ <http://www.pachamama.org/advocacy/fundacion-pachamama>.

⁶ Ahuja, P. (2014, March 30). Situation of the Right to Freedom of Association and Environmental Defenders in Ecuador, <http://hrbrief.org/2014/03/situation-of-the-right-to-freedom-of-association-and-environmental-defenders-in-ecuador/>.

Pachamama, and opportunities for relations between civil society, the state, the universities, and the private sector. The transcript is lightly edited for clarity and concision.

We have seen changes in Ecuador since 2011: the creation of a formal national Confederation of Civil Society Organizations and the imposition of a new regulation, Decree No. 16. Let's start with the Confederation.

Historically in Ecuador, there have been spaces to form civil society organizations around themes—for example, the environment or health. There have been networks around these themes as well as regional networks. But Ecuador differs from other Latin American countries. For example, the Confederation of Colombian Nongovernmental Organizations and the Communication and Development Institute in Uruguay are platforms that bring together the sector. In Ecuador, we have not had that.

We have taken a step forward with the formation of the Confederation. We have started by generating levels of trust and by finding goals that we could achieve better together than alone. But we still face several challenges to consolidate a space in which organizations can work across different sectors and regions with the aim to strengthen civil society

With the Collective, some people in 2009 said that we should create a space, legalize it, elect a board of directors, and have a membership fee. However, we had to arrive at that point after trust and collaboration have been built. If we had taken the other route and made the space more formal immediately, with a board of directors and the rest, the Confederation would not exist. I do not have any doubts about this. Part of the challenge of the sector has been creating and generating these spaces to meet—spaces of knowledge creation and of trust that allow us to work together.

We have important work to do. The Decree No. 982 of 2008 and now Decree No. 16, put into place in June 2013, are contrary to our constitutional rights. This has not been a matter of debate in the Confederation. The challenge has been agreeing on which parts of the regulation limit fundamental rights and affect citizen organizations, no matter the size or the sector.

What did the Confederation agree on? What are its messages related to the 2013 regulation, Decree No. 16?

As the Confederation, we have taken steps forward, as outlined on the website.⁷ We have met with the National Secretary of Politics Management, the new state liaison to civil society. We have shared three overarching messages.

The first message is a continuation from our position with Decree No. 982, and it is very important to begin the dialogue with the state around this issue. It is that organized civil society, the Confederation specifically, agrees with a legal framework for civil society organizations. For five years we have had this message. We believe that a good legal framework would make civil society better, because it would assure levels of quality and transparency that would help us recuperate the legitimacy and credibility we have lost. It would help achieve more direct and concrete participation rights and rights to associate. Therefore, the first message is that we agree with a legal framework.

⁷ See <http://www.confederacionecuatorianaosc.org/>.

The second message around Decree No. 16 is that we acknowledge that the state has a legal framework that not only regulates but also fosters civil society. The Decree cites three mechanisms by which the state is going to foster the development of civil society. First, it promises to create a competitive grant fund. This is a proposal that the Collective and the Confederation have been making for many years. Resources are not coming in from international cooperation. Civil society organizations produce public goods and contribute to public policy, and we believe that it is important for the state to finance some of their activities in a transparent and nonpartisan manner. Second, the Decree incorporates capacity-building programs, something we have been seeking for many years. Ecuadorian universities do not offer specialized academic programs about civil society. One school of law has a program related to nonprofit law, but there are no masters-level or certification programs about managing nongovernmental organizations. Recognizing this gap, Decree No. 16 promises to create training programs. Third, under the Decree, the state is going to assume its responsibility for helping smaller, low-capacity organizations complete the regulatory requirements. The three mechanisms come from civil society, not from the state. In these ways, Decree No. 16 not only regulates but also fosters civil society.

Our third message is that we remain very worried about Decree No. 16, just as we worried about Decree No. 982. We consider some elements of the Decree unconstitutional. As with Decree No. 982, it was difficult for the different organizations in the Confederation to agree on which elements those are. The Confederation has an enormous diversity of organizations working in different sectors, with different levels of institutionalization, some fifty years old and others only five years old, some working very closely with the state and others not. It was difficult, but we found three elements to focus on.

So what has the Confederation decided to focus on?

First, the causes for dissolution in the Decree No. 16 worry us. The state eliminated some that were in the Decree No. 982, but Decree No. 16 now prohibits activities related to public policy. We have told public officials and authorities from the National Secretary of Politics Management that the right to participate in public policies is established in the constitution. Citizens are guaranteed the right to participate in public policy formulation. How can you prohibit this and dissolve an organization for an activity which is constitutionally guaranteed? Also, an organization can be dissolved for activities that disrupt the “public peace.” In practice, what does that mean? If a civil society organization goes to a march in favor of fundamental rights is this cause for dissolution? These causes for dissolution continue to be unconstitutional.

The second thing that worries us is similar to elements of Decree No. 982. In Decree No. 16, an organization must respond to requests for information. A ministry could ask for documentation from twenty years back. We have said to the public officials that not even the state has the administrative capacity to maintain twenty-year old archives. Why are we going to demand this from an organization? And why is failure to achieve it cause for dissolution? We have said that needs to be corrected.

And third, Decree No. 16 says that an organization must open its membership to any person who wants to join. Imagine someone opposed to the use of contraception who wants to join an organization that promotes sexual rights with the aim of changing the organization’s agenda. Under Decree No. 16, the organization must admit this person as a member despite the radical philosophical differences. But this violates the right of freedom of association. You have

the right to associate with persons who you choose, persons who share values and goals. This is the third worry that we expressed to the National Secretary of Politics Management.

The meetings were positive, and they resulted in two agreements.

First, the three mechanisms to strengthen the sector are good; the challenge is to implement them. How should the competitive grant fund and the capacity-building programs be designed? We told the National Secretary of Politics Management to count on the Confederation to help design the programs, because who better knows the capacities that are needed to strengthen civil society? They told us they would work with us.

The other agreement concerns the three things that worry us. We argued that Decree No. 16 is unconstitutional, and that this does not make the state look good. They said in response that they do not want to dissolve an organization for working on public policy. Rather, they explained that some organizations use their work on public policy to serve political ends. Our response was that as written, it can be interpreted to allow a public official to close an organization for working to enrich public policies. We agreed that this part of the Decree No. 16 needs to be rewritten in order to leave no room for discretion.

Unfortunately, neither of these two agreements has been completed. But we still consider them advances. We sat at a table and said that we propose *this* and that we want to change *this* together with you. The Collective never achieved this. I believe that the public officials and authorities from the National Secretary of Politics Management see a stance that is more consolidated and more formal than under the Collective.

Until now these parts of Decree No. 16 have not changed, but you are still meeting with the National Secretary of Politics Management?

There have been changes in leadership at the National Secretary of Politics Management, which is an enormous problem. We have sent a letter to the new Secretary. We have the expectation that we will meet and tell the new Secretary all that we have accomplished with the hope to continue working together.

When Decree No. 16 came out and Pachamama was closed, you were in the media discussing the case. Talk about the role of the Confederation in these types of cases.

After the dissolution in the case of *Pachamama*, we made a public pronouncement and reached out to some media outlets. What we did was so delicate. As the Confederation, we could not defend *Pachamama*. We said, rather, that dissolution must be an outcome of an investigation and a process. We argued for the right of an organization like *Pachamama* to present evidence and have the opportunity to defend itself adequately. We also argued that an organization must have reasonable guarantees that an independent body will listen to all sides and reach a decision with reasonable levels of independence.

Ecuador is a very polarized country and society. Some said *Pachamama* is guilty. Others said *Pachamama* is innocent. The Confederation could not say that *Pachamama* is innocent or guilty. Rather, we championed the right of *Pachamama* to defend itself, as we would do for any citizen or civil society organization. I believe that the Confederation achieved a balance in a complicated debate. That is our role.

The Confederation is pushing collective accountability. It is starting the process of its third report. How is this part of the Confederation's vision?

When we began, there was a level of self-learning, looking at ourselves as a sector and recognizing the reasons that the state was using in trying to justify the restrictive regulations in Decree No. 982. The state said that no one knows what these organizations do, no one knows for whom they are working, no one knows what interests they have. They used this argument: These are not organizations without profits; they are organizations without objectives. No one knows what they do with their resources. No one knows how much the directors and employees make.

The truth is that individual organizations exercise transparency, but as a sector, we have been careless. We have not communicated to society what we do with our resources, where they come from, how we contribute, and how many people we benefit. We have forgotten the visibility of our role, and in doing so, we have lost our credibility and legitimacy. Now in the face of this gigantic attack, with regulations as restrictive as the Decree No. 982 and now the Decree No. 16, no one is defending us. There are not editorials about it. No beneficiaries are saying, for example, How can you attack this organization that has been so helpful to my family? We have lost credibility and legitimacy. We need to be much more proactive and tell the country why we are here.

In its first year of collective accountability, 37 organizations came together; in its second, 102 organizations. It has been a very important process.

The second report allowed us to say that 2.6 million Ecuadorians benefit from 102 organizations—that is almost 20 percent of the population. As such, civil society makes a significant contribution and complements the work of the state.

The process also had a political effect. The two reports allowed us to demonstrate that civil society organizations are key to the development of Ecuador, especially for those with less opportunity. In addition, the collective transparency process enabled us to spotlight the fact that these organizations have a profound conviction about their ethical responsibility, and they manage resources that benefit many people. We are signaling that important organizations are voluntarily accountable. They tell the country where their money is coming from and what they are doing with it.

With the reports, we are committing ourselves to ethics and transparency. This has helped reduce pressures from the state. But it is still complicated. International cooperation traditionally supported the process of civil society, but it has stepped back from the country and the programs that it had financed. Because Ecuador is labeled upper middle income, these resources do not exist anymore.

The third accountability report has had many challenges, because it has not received one dollar of support from international funders. I met with funders from Europe and the United States, international foundations, and they all said what a useful, valuable report this is. I told them that with more resources, we could have a video, we could do testimonies, we could present it in the 24 provinces of the country and invite the private sector—but we need resources. The response was, unfortunately, we have no resources.

It is a challenge, but I think it speaks to the increased legitimacy of the process in the Confederation. We managed to get US\$6,000 from members. Sure, that is not a huge amount, but in these times of tight resources, it allows us to bring together information, prepare the report, and hold a public event for its presentation. Despite limited resources, organizations were willing to give US\$50, US\$100, or US\$200. This speaks to their commitment to accountability.

When is the third report going to be released?

The report will come out during the first quarter of 2015.

To finish up, you are president of the Confederation with a two-year term. As the first president, what do you see as the vision for the Confederation over the next five years?

We always had the objectives of a dialogue about a legal framework and collective accountability reporting. These two objectives remain. There is a third objective that we have developed as a Confederation, which we did not have as the Collective. This objective, which will be fundamental over the next few years, is to strengthen civil society organizations.

There are few financial resources for this, so we are going to have to be very creative. We also have to be very generous among ourselves—supporting each other, collaborating more in networks, and sharing resources, methodologies, and data. One of the Confederation's most important roles is enabling the organizations to collaborate and synergize.

Part of the process is opening up dialogues with other sectors in society to find win-win relations that allow us to increase the sustainability of organizations. I will give you two concrete examples.

The first is the most obvious: relations with universities. Universities, according to the 2010 Law of Higher Education in Ecuador, are obligated to conduct research and to make links to communities. Universities in Ecuador, and I am generalizing a bit, know little about doing research or about making links to communities in a systematic and organized way. Their experiences with communities have been spontaneous and rare. Civil society organizations know very well how to link to communities. This we have already done. Some, like *Grupo Faro* and others, know how to conduct research too. This is a win-win relationship. We know how to do it, but we do not have resources. The universities do not know how to do it, but they have more resources. It is a good match.

The second is relations with the private sector. Ecuador now has the label of upper middle income, as I mentioned. In part because of this, the international cooperation is shrinking. This has a positive side. The private sector is managing much greater resources than it did ten to twenty years back, and it needs to develop socially responsible practices. Businesses do not necessarily know how to be socially responsible. Again, we feel that this can be a win-win relationship with civil society organizations. We know how to improve transparency and how to be effective with interventions in communities. We believe the Confederation can help produce a dialogue about this.

Part of the problem of not having collaborations among civil society organizations and universities and civil society organizations and the private sector is that we do not know each other. The Confederation can be the connector enabling the sectors to better know each other. From there, we can find opportunities to collaborate. This is our vision for the Confederation and civil society in Ecuador.