

Social Knowledge and the Social Economy¹

John Restakis, June 30, 2012

"Co-intelligence is the capacity to call forth the wisdom and resources of the whole and its members to enhance the long term vitality of the whole and its members." Collectively, a community has more - and more diverse - information, perspective, and resources than any individual has. A wise community, a wise leader, and a wise democracy will use that rich diversity creatively and interactively. The diversity will then be mutually enhancing rather than mutually problematic. The appropriate role of the state is to create enabling conditions for that to happen at all levels and in all sectors and facets of society.

- Tom Atlee

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Executive Summary

The realization of a social knowledge economy in Ecuador is a unique and complex undertaking that incorporates a wide range of issues and relationships that, in practice, involve all the economic sectors of the country: the public sector, the private sector – in particular small and medium enterprises – and the social economy (popular and solidarity economy).

This series of documents examines the relation between the implementation of a social knowledge economy in Ecuador and the role that the social economy and the broader civil society play in this process. The papers outline key issues and dynamics that need to be understood and addressed and in particular, the policy implications related to the social infrastructure and

¹ The term “social economy” is used synonymously with “social/solidarity economy” and “popular economy”.

institutions needed to make a social knowledge economy a reality in the political economy of the country.

The companion papers in this series include, *Social Knowledge and the Social Economy*, *Public Policy for a Social Economy*, *Civil Society, ICT and Open Government*, and *Public Policy for a Partner State*. Collectively, they are meant to outline a new framework for a paradigm shift that places an empowered and enriched social economy at the heart of a new social contract that mobilizes open knowledge and digital technology as central resources for the pursuit of the common good.

The present document examines the current legislation governing the popular and solidarity economy in Ecuador and offers an analysis of issues that serve to restrict the growth and development of popular/social economy associations and the wider social economy as a whole. It focuses on the existing legislation and regulations governing the popular/solidarity economy (LOEPS) and proposes a series of recommendations on how the legislation might be changed to address this core issue.

Public Policy for a Social Economy extends the discussion to address broader public policy issues that contribute directly to strengthening the social/solidarity economy. The paper covers such key topics as tax policy, the reform and democratization of public services, the creation of social markets, the extension of the social economy, and the support of organizational forms that both embody and promote the principles of sharing, co-operation, and the promotion of common benefit that underlie the production and diffusion of knowledge as a common good.

Civil Society, Open Government and ICT, addresses the question of how Information and Communication Technologies (ICTs) relate to the advancement of social knowledge, the role of civil power, and the democratization of the State. In this document, we explore how organizational form and social relationships relate to social knowledge and we address the issue of how the structure and power relations inherent in ICTs relate to the central questions of privacy, citizenship, and the operations of political power.

The culminating document, *Public Policy for a Partner State*, explores the formation of a new social contract between the State and Civil Society based on the thesis that social knowledge is an extension of civic principles that seek not only to protect the commons, but also to reframe the pursuit of the common good as the central purpose of government.

There is no question that the long-term success of the National Plan for Good Living, and the implementation of a social knowledge economy, will rely heavily on the strength and development of a social economy in Ecuador that is strong, autonomous, democratic, innovative, and capable of playing the central role that is envisaged for it both by the Constitution and the National Plan itself.

We argue that the social economy is the social and economic space that most reflects the values and principles of the civic ideals of the government and the source of those civil institutions that will, in the long run, defend and advance those ideals. Let us recall that it was Ecuador's civil society that gave birth to the Citizen's Revolution, not the state. The perspective offered in this paper is that in the end, it will also be civil society and the vitality of its institutions that will safeguard these ideals,

For this reason, Ecuador's public policy and legislation must serve as a vital political and legal resource for building the values, skills, and institutions that enable the social economy to flourish and to provide the indispensable social foundations that will ultimately serve to transform the political economy of the country. In our view, progressive public policy and legislation with respect to the social economy will serve as the primary mechanism for creating a new social

contract and social praxis that reflects the complementary aims and purposes of the state on the one hand and the collective values of civil society on the other.

We propose that for this to succeed, state policy and legislation must recognize the social economy as a vital sector with social and economic principles, values, relations, and institutions that are unique to itself. These principles and values, and the institutions that embody them, require at least the same level of state recognition and support as that provided to the capitalist economy. The recommendations that are presented in this paper are rooted in this perspective and serve to acknowledge and strengthen these principles.

Even more, the policy recommendations aim to facilitate the development and maturation of a social economy that it is capable of becoming a full partner with the state in the realization of Buen Vivir and the creation of a social knowledge economy founded on the values of democracy, free and open access to knowledge, social and economic equity, and the utilization of the economy for the pursuit of the common good.

For this to occur, it is essential that the overall regulatory and policy framework with respect to the social/solidarity economy establishes a level playing field between the treatment of the social economy on the one hand and the private, capitalist economy on the other. This question of equal treatment and recognition of the unique strengths and requirements of a vibrant social economy is a crucial starting point for the reform of Ecuador's legislative and policy environment with respect to the social economy.

Key Principles

The principle premise of this perspective is that a strong and autonomous social economy is essential to the long-term viability and success of establishing a social knowledge economy.

The second premise of a progressive public policy with respect to the social economy is the clear distinction between the role and prerogatives of the state on the one hand and those of civil society on the other.

The third premise is that there is also a fundamental complementarity between the roles of the state and those of the social economy and civil society, and that this complementarity is based on the pursuit of the common good.

A healthy, open, and democratic society is founded on the recognition and acceptance of this essential distinction between the civic principle on the one hand and the governmental principle on the other. Both social dimensions represent essential attributes of a healthy, and functioning body politic with recognition of distinctive roles – governmental and civic – which aim at the pursuit and protection of a collective social well being that entails essential principles of pluralism, openness and transparency, democratic agency, and solidarity for the common good.

As stated in the Good Living Plan:

Changing the productive structure and democratizing the State would not be emancipating if top priority were not given to strengthening the society. The goal is to promote the construction of a society that will deepen the quality of its democracy and broaden its opportunities to alter conditions of social and material equality. It is necessary to empower society rather than the market – as it happened before with neoliberalism –. It must also empower society over the State, such as in “real socialism”. Empowering society is promoting the development of freedoms and capacities to reflect critically and co-operatively, for each individual, each people and each

*collective.*²

A social knowledge economy is based on these same principles and seeks to make knowledge a social good, an open and freely accessible commons for the pursuit of these civic goals.

Civil Society

In its broadest and most accepted sense, civil society is the social impulse to free and democratic association, to the creation of community, and to the operations of social life, which includes politics. Modern conceptions of civil society also distinguish it from the state and from the operations of the private sector. Some writers also stress a distinction from the family as well.

Historically, civil society was the arena for organizing the governance, material activities, and intellectual, moral, and cultural aspects of communities. And whereas the state represents the “politics of domination”, civil society represents the “politics of consent”.³ This alone radically and fundamentally distinguishes the nature, purpose, and operations of the state from those of civil society.

Within civil society, a huge portion of civic activities are carried out by organizations created to provide goods and services through collaboration, by people acting together to realize mutual aims. This mutualist or collective character of civil society is also the primary source for the creation of social capital – the sum total of relationships, networks, and values that engender and sustain *trust* within a community. The role of trust, and of the capacity of people to work together toward mutual aims, is of central importance in accessing and diffusing knowledge as a common good, as will be discussed in further detail in the papers “Public Policy for a Social Economy, “Civil Society, Open Government and ICT” and “Public Policy for The Partner State”.⁴

These civic activities, focused on the creation of social value for common benefit, constitute that sector which is composed of non-profit and voluntary organizations, NGOs, community service groups, cultural organizations such as choral societies, charities, trade unions, social enterprises, and co-operatives. This *economic* aspect within civil society has also been described as the third sector, the social economy and the popular/solidarity economy. We use the term *social economy* most often in these documents to refer to this sector..

Ecuador Context

The relation of the state to civil society in Ecuador is both complex and contentious. While the Ecuadorian Constitution explicitly recognizes and guarantees the legitimacy and autonomy of civil society and its institutions, the application of these principles is uneven and sometimes runs counter to both the spirit and the letter of the Constitution. In addition, while there are a high number of civil society organizations (CSOs) in Ecuador, the level of civic engagement and citizen participation in the formation and implementation of public policy is relatively low.

The primary issue that has emerged then, is the need to resolve this contradiction between policy and practice, vision and reality, with respect to the legitimacy, autonomy and agency of civil society vis-a-vis the role and practices of the Ecuadorian state.

² *ibid.* p. 38

³ R. Tandon, Civil Society, the State, and Roles of NGOs, Institute for Development Research, V. 8, No. 3, 1991

⁴ J. Restakis, ICT, Open Government and the Social economy, and Public Policy for The Partner State, FLOK Society Project, IAEN, 2014

As stated in the Constitution, all organizations in society are recognized to be an expression of popular sovereignty and may therefore carry out processes of self-determination and influence decisions, public policy, and exercise social control of public bodies at all levels of government (Article 96). These organizations may be structured in any manner to enforce the popular power and its expression. They must adhere to internal democratic practices, and ensure the accountability of the organization (Article 96).

The Constitution also creates the “Council of Citizen Participation and Social Control” as a fourth branch of the State that is in charge of designating authorities such as the General Attorney, the General Prosecutor, and the members of the Judicial Administrative Council, among others. The Constitution provides that all the candidates for this body will be nominated by CSOs and the citizens.

In addition, the Constitution contains specific articles relating to the protection of human and civic rights. These include:

Article 66.13: Freedom of association - The State recognizes and guarantees the people the right to associate, meet, and speak freely and voluntarily.

Article 66.19: The right to personal data protection, which includes the access and the decisions about the information and data related, and its protection. The data gathering, filing, processing, distribution, and spreading shall require the owner's authorization or a legal mandate.⁵

Article 66.5: Freedom of expression - The State recognizes and guarantees the people the right to the free development of personality, with no more limitations than the rights of others, and the right to think and express one's thoughts freely and in all its forms and manifestations.

Moreover, the provisions of the National Plan for Good Living reflect this Constitutional recognition of the role and value of civil society, and in particular the popular and solidarity economy, as essential to the aims of a social knowledge economy and the pursuit of *Buen Vivir* as the guiding framework for Ecuador's political economy.

*Socialism for Good Living questions the dominant pattern of hegemonic accumulation, i.e., neoliberal models of production, growth and distribution. We propose a transition toward a society in which life is the supreme asset. This demands a deep democracy and the constant involvement of its citizens in the country's public affairs. It is based on the pursuit of the common good and individual happiness, rather than excessive accumulation and consumption.*⁶

*A democratic, participatory government requires the active participation of citizens and strong social movements working in open networks to address both local and national issues. Participatory democracy aims for a sort of equality that enables reciprocity among its members.*⁷

*The structural transformations proposed for the 2013–2017 period will be possible only if, at the same time, power relations are being transformed, because constructing Good Living is an eminently political process that demands not only a more radical political democracy, but also a socio-economic democracy. ...The objective is to democratize State-society relations.*⁸

⁵ These Constitutional protections are especially relevant to the use of ICTs in the promotion of Open Government and are explored in more detail in the paper “Civil Society, Open Government and ICT”, (Restakis, 2014).

⁶ *ibid*, p. 23

⁷ *ibid*, p. 24

⁸ *ibid*, p. 48

These are powerful and inspiring ideals and they go to the heart of a truly transformative democratic vision. In reference to deepening the democratic culture of State and society, the National Plan also specifies the following policies:

*To consolidate democratic governance and construct the people's power.*⁹

Policies:

1.9 To consolidate citizen participation in public policy-making and State-society relations.

1.12 To encourage social self-organization, associative life and construction of active citizenship valuing the common good.

1.13 To strengthen mechanisms of societal oversight, transparency of public administration and prevention of and the fight against corruption.

*To foster social and territorial equity, cohesion, inclusion and equity in diversity.*¹⁰

2.4 To democratize the means of production, generate equitable conditions and opportunities and foster territorial cohesion.

How then, do these principles relate to the concrete development, through public policy and legislation, of the social infrastructure that will both embody these ideals and sustain them in the future?

Challenges and Contradictions

One challenge that must be confronted is that there is no comprehensive law in Ecuador regarding community service organizations (CSOs). The basis of the sector's legal treatment is the Civil Code, effective since 1861. The Civil Code also provides the President of the Republic the authority¹¹ to establish and dissolve CSOs. Thus, CSOs are subject to Executive Decrees, which have been issued to address fundamental questions of operations, organization, and oversight of civil organizations.

The Presidential Decree No. 982 was signed by President Rafael Correa Delgado on March 25, 2008 and substantially revises the Regulations' provisions governing CSOs. It provides additional requirements, controls, and causes for dissolution of these organizations. A second Presidential Decree No. 19, which was passed on June 4, 2013, provides for additional regulations and controls.

These constraints on the formation, operation, and reporting of NGOs and CSOs in Ecuador underscore an ongoing tension between the stated objectives of the serving government and its practices with respect to recognition of the freedom and autonomy of civil society organizations. In turn, these tensions have been exacerbated by a history of weak regulatory controls and practices among some popular and solidarity economy associations that contravene the governing principles and purposes of these associations. This is one source of the state's concern with respect to the roles of civil society and the social economy as autonomous social and political

⁹ *ibid.* p. 53

¹⁰ *ibid.* p. 56

¹¹ Under the Regulation for Approval of the Statutes, Reforms and Codifications, Liquidation and Dissolution, and Registration of Members and Directives, of the Organizations under the Civil Code and Special Laws ("The Regulations")

spaces, over and against the legitimate requirements of state control and oversight for purposes of public accountability and the public interest.

Instances of corruption and abuse of organizational mandates in the social economy are of understandable concern for the state, but they are also of paramount interest for the credibility and legitimacy of the social economy itself. The question that arises is, what is the best means for addressing this issue? The posture of the serving government has been to exert ever more supervision and control over the operations of social economy organizations as a remedy to potential abuse. This is manifest in both the logic and the letter of the legislation. Inherent in the legislation is a pervasive mistrust of these organizations. We question this approach as being one-sided and ill-suited to the development of a social economy that is at once healthy and autonomous but also capable of reforming the practices of organizations that contravene the purposes for which they were established. Another, more balanced approach must be sought.

Since the passage of Decree 982, civil society organizations have lobbied for changes to the laws and regulations governing their activities. Their primary concerns relate to the restrictions on freedom of association and expression.¹²

Given these factors, and the clear recognition of the role and rights of civil society and the popular and solidarity economy as fundamental to the civic aims of the Constitution and the National Plan, the following policies seem essential for translating these rights into concrete practices as embedded in both legislation and state practice.

Organic Code for the Popular and Solidarity Economy

In consideration of public policies that frame the relations between state and civil society, we focus primarily on those institutions and relations that compose the goods and services that are produced for a collective or social benefit and animated by the principles of reciprocity, mutuality, and the common good. This is the field of activities that may be described as the social economy, as compared to the public economy of the state and the commercial, for-profit economy of the private sector. And, while many social economy organizations such as co-operatives and social enterprises also engage in commercial activities and compete in the market, insofar as they too are organized for the provision of a collective or mutual benefit they too are considered as key parts of the social economy.

The institutional supports required for the support and expansion of civil society in general, and the social economy in particular, cover a range of policies, legal frameworks, practices and relationships which obtain both *within* civil society as an autonomous and self-perpetuating field and *between* civil society and the state. This latter connection is of primary importance for clarifying and designating the evolving roles and relationships between these two spheres as related to the advancement of an open, pluralistic, and democratic society.

The existence of a healthy, vibrant, and autonomous civil society and social economy are central to this purpose and the establishment of a social knowledge economy is both sustained by, and sustaining of, a civic political economy that, through its institutions, shares its values and supports its aims.

¹² Decree gives government far-reaching powers over NGOs in Ecuador, 19 August 2013, [Human Rights Watch](#)

Composition of Ecuador's Social economy

One of the key achievements of the serving government has been the gathering of basic information concerning the character, composition, and size of the social economy in Ecuador. This has been the result of painstaking efforts to analyze and define the nature of the social economy, of documenting the number and size of popular/solidarity economy organizations, and of introducing new legislation to both support and regulate the sector.

From this effort, about 10,400 social economy organizations (co-operatives, associations and community organizations) have been documented.¹³ A preliminary analysis of the co-operative sector in Ecuador detected 3,260 co-operatives including savings and credit groups, transportation, housing, production, consumption and other co-operative services (946 credit unions, a central box and 2,313 non-financial co-operatives). The first three groups together account for 99% of co-operatives in the country. As for the voluntary sector, it was estimated that there are about 14,593 organizations that make up the community sector in the country, mainly represented by savings boxes and community banks.¹⁴

It is important to note that these figures remain tentative as the data still includes duplicate records, classification errors (e.g. integration organizations classified as credit unions, co-operatives classified as associations and vice versa, etc.) and inconsistencies in the financial information.

Trade unions, professional associations, cultural and sports associations, and religious forms of association, among others, whose corporate purpose is not the realization of economic activities, production of goods, or provision of services are not included in this data nor are they recognized as social economy organizations under the terms of the legislation.

The economic value and growth of the social economy, in particular the co-operative sector, is worth stressing.

According to the Institute for Social Security, the social economy in Ecuador comprises 25.7 % of the nation's GDP and 48.9 % of employment generated in enterprises of fewer than 11 employees.¹⁵ A study by the German Co-operative and Raiffeisen Federation (DGRV) (Cruz, 2003) also shows that in 1999-2002, the current portfolio of credit unions experienced a growth of 384.73% compared to 49.94 % for the banks.¹⁶ This is a sign that these organizations overcame the economic crisis and outperformed the capitalist firms despite their smaller size in terms of assets. This fact may be explained by factors such as diversification of the portfolio by avoiding concentration in a single economic activity, by avoiding high risk activities, and by remaining focused on the real needs of members to whom the credit unions were accountable.

The durability of the co-operative form has also been demonstrated by the nearly twofold growth of co-operatives in the past decade, a development that predates the Citizen Revolution.¹⁷ This same phenomenon has been documented with the performance of co-operatives in general and at

¹³ Dirección Nacional de Cooperativas (DNC) (Annex 1A). It is important to note that an organization could be located in more than two institutional records simultaneously, and with respect of the community sector this figure refers only to those organizations that are contained in the records of the Secretary.

¹⁴ Studies on the Popular and Solidarity Economy, The legal nature of the co-operative and the solidarity economic act, Carlos Naranjo Mena, 2013

¹⁶ The Role and Importance of Savings and Credit Co-operatives in Microfinancing and the Worldwide Activities of the German Co-operative and Raiffeisen Confederation, 2003

¹⁷ Promesas En Su Laberinto, Cambios y Continuades En Los Gobiernos Progresistas DE Latin America, Cambios En El Modelo De Acumulación, p. 165

a global level, not only in Ecuador.¹⁸ Similar findings have also been confirmed in studies by H. Jacome (2004 and 2005).

In summary then, the importance of the popular and solidarity economy is evident not only as a social foundation for the political economy aims of the government as expressed in its Good Living Plan, but also as a source of economic value, stability in times of economic crisis, and the generation of essential goods and services that provide for the common welfare. In this respect, Ecuador's social economy must be considered an essential part of the government's broader aim to modernize the country.

Social economy organizations such as co-operatives, CSOs, and NGOs are part of a broader array of state efforts that are needed to advance the capacity of socio-political and economic institutions to contribute to a new configuration of political economy based on Buen Vivir. Our view is that this entails not merely the passing of new policies and legislation, but the implementation of an intensive, and ongoing, education and training program aimed at reforming the attitudes and behaviours of leaders and decision makers *both in the state bureaucracies and among social economy organizations in the country*. This is also essential to addressing ongoing concerns over malpractice in the sector.

Given the relatively recent efforts to document and understand its role in Ecuador, the social economy warrants further careful study and ongoing support in the framing of public policy and legislative instruments that reflect the unique characteristics of this sector. Public policy and legislation must serve to reinforce the social economy's capacity to grow and to embody the social and economic values that are ultimately the basis of a social knowledge economy.

Social Infrastructure and Institutional Supports

Based on the above analysis and perspective, the principle characteristics of the institutional supports required to support this social framework are:

- a) Institutional autonomy of civil society and its social organisms;
- b) Recognition and validation of civic space as primary and distinct from that of the state and the commercial sectors;
- c) De-linking of the "public" from exclusive association with the state;
- d) Creation of enabling civil institutions that can mediate between the state on the one hand and communities, families and individuals on the other;
- e) Establishment of financial policies and mechanisms that guarantee access to autonomous sources of civic capital to social economy organizations;
- f) Establishment of civil institutions that are capable of relating social knowledge systems to the concrete needs and aspirations of civil society and social economy organizations.
- g) Establishment of a sector-controlled facility for social economy training and professional development.
- h) Creation of a social economy observatory for the rectification of reported abuses.

¹⁸ Resilience of the Co-operative Business Model in Times of Crisis, Johnston Birchall and Lou Hammond Ketlison, ILO, 2009

The following policy recommendations are founded on the principles outlined above and are based on our current reading of the Act and the issues that have been identified both by stakeholders inside Ecuador and on the basis of international experience.

General Policy Recommendations

1. Freedom of political expression and association are fundamental attributes of a free, open, and democratic civil society. Social economy organizations should therefore not be constrained from exercising these rights as a consequence of their status as non-profits or social benefit associations.

Recommendation: The dissolution of civil organizations by the state for reasons of legitimate political action should be ended.

2. As currently written, the law gives the government and the public nearly unrestricted access to the internal information of NGOs. Citizens may demand “accountability” – undefined – from any NGO that carries out public interest activities – also undefined – or public services, or that utilizes public resources. NGOs must also provide to government officials any information related to their activities, and must make their premises available for inspection so long as the officials provide advance notice.

Recommendation: These provisions entail an undue burden on civil organizations and are neither clearly defined nor bounded by reasonable limits. Access to information pertaining to the internal operations and activities of a group should be restricted to cases of suspected criminal wrongdoing and only with the authority of a judicial warrant. The same should apply to the inspection of an organization’s premises.

3. The Constitution prohibits the collection and use of personal data without the consent of the individual.

Recommendation: This principle should be applied to the Act and the requirement that popular and solidarity economy organizations be required to register on a government database information the names, ID numbers, nationality, and addresses of every member should be removed.

4. The Constitution guarantees citizens the freedom to associate freely in pursuit of their collective interests. However, the law requires NGOs to accept any and all applicants as members thus nullifying the basic corollary principle of freedom to *not* associate, and the right of a group to determine the nature and composition of its civil community. As currently written, the law also undermines an association’s capacity for self-protection against infiltration by hostile interests including potentially, the state itself.

Recommendation: This provision should be removed.

5. As currently drafted, the LOEPS invests undue powers of intrusion and dissolution in the Office of the Superintendent, with the stated aim of minimizing abuses in the sector. We propose that such powers of oversight and interference in the internal operations of social economy organizations be restricted to confirmed suspicion of criminal activity and subject to judicial warrant. Moreover, we suggest that the responsibility for oversight and the redress of possible wrongdoing or abuse be a shared responsibility between the state and the institutions of the social economy itself.

Recommendation: That an independent observatory with representation from a broad spectrum of social economy organizations through an autonomous and representative federation, be established to share supervisory and remedial activities with the Office of the Superintendent.

Recommendation: that this observatory, in co-operation with the social economy federation, develop and implement ongoing research, training, and professional development activities for organizations of the social/solidarity economy and that the costs of these activities be shared between federation member organizations and the state.

6. General Recommendation: In general, legal and public policy provisions that act as disincentives for the creation and incorporation of civil associations as legal entities should be minimized. This includes provisions and practices that infringe on individual and collective rights of assembly, of legitimate political action, of freedom to privacy, and of unnecessary regulatory procedures relating to financial and operational reporting, legal incorporation, and alteration of an association's purposes and operations.

Popular and Solidarity Economy Law

A number of policies that act as impediments to the free and open development of NGOs and CSOs as outlined above may be seen in the legislation governing the operation of co-operatives and the broader popular and solidarity economy. At the heart of the difficulties lies an excessive control by the state over the operations of social economy enterprises that should be free and autonomous entities in the pursuit of their social and economic aims as recognized both by the Constitution and the Good Living Plan.

In addition, there are fundamental confusions and contradictions in the language of the legislation that invites misunderstanding on what defines social economy organizations and the popular/solidarity economy as a whole. As presented in the law, the definition of popular and solidarity economy organizations is restricted to associations “whose corporate purpose is the conduct of economic activities for the production of goods or services”.¹⁹ This leaves out the numerous social economy groups whose primary purpose is the production of recreational, cultural, spiritual, or other social activities that have little connection to economic production or consumption. The focus on primarily economic functions thus skews perceptions of the nature and complexity of the popular/solidarity economy making policy formation in its support incomplete, if not contradictory, with respect to the operating logic of the sector.

A second problem has to do with the conflation of “popular economy” with the social/solidarity economy. The term “popular economy” as normally understood is quite distinct from the usual meaning of social or solidarity economy and denotes a type of economic activity that is confined primarily to the informal economic practices of very small-scale enterprises among low-income people, usually for the satisfaction of basic needs. This is one reason why small family businesses or individually owned subsistence enterprises are included in the LOEPS. However, these enterprises have no necessary connection to the principles of co-operation, democratic control, collective organization, or social benefit that distinguishes social economy organizations. The inclusion of popular economy in the law introduces confusion in the definition of social/solidarity economy and clouds the underlying nature of this sector.

¹⁹

Organic Law of the Popular and Solidarity Economy (LOEPS), Article 1, Section 2.

For this reason, we urge the separation of the concepts “popular economy” from “social economy” or “solidarity economy”, and suggest that the size of an enterprise, or its relation to the production of subsistence or basic needs, is irrelevant for purposes of defining the social/solidarity economy and properly belongs to the private sector on the basis of ownership and organizational structure and the private, as opposed to collective, purpose of the enterprise.

Outlined below is a listing of some of the more problematic issues with respect to the legislation. At their foundation however, is the underlying question of what constitutes a proper role for government when it comes to the regulation and support of co-operatives, credit unions, and the kinds of associations that constitute the popular/solidarity economy.

Co-operatives

As stated by International Labour Organization (ILO), and as borne out by the historical experience of co-operatives the world over, the basic principle that should characterize the relationship of the state to co-operatives is that of minimal involvement and intervention in matters of a co-op’s internal organization and operation.

In principle, the role of governments should be limited to establishing appropriate enabling policy and legislation that recognizes the nature and requirements of co-operatives, that registers co-operatives and grants them legal status, that compiles useful data on the co-op economy and its constituent sectors, and that supports the growth of the sector through appropriate public policies for social and economic development.

In its document, “ILO Guidelines for Co-operative Legislation”²⁰ the ILO states, “In order to thrive co-operatives need a favourable socio-economic, political and administrative framework. The current development model is based on political and economic freedom. The state must ensure respect for human rights, including the rule of law, the freedom to choose one’s economic activity, free access to national and international markets, private property as well as a clear distinction between the public and the private sector based on the principle of subsidiarity.

Apart from exercising the functions of legislation, registration, deregistration, and general normative control, the state in a market economy must not interfere in the economic affairs of co-operatives.”

Based on this perspective, the following represents a listing of key issues that flow from the current legislation and which contravene the principle of a free and self-governing co-operative sector operating within the framework of legitimate governmental oversight and regulation.

Key Issues

a) Definition of Popular and Solidarity Economy Organizations

As noted above, the characterization of popular/solidarity economy organizations in the legislation is inaccurate and confusing. The legislation fails to provide a clear definition of what constitutes social economy organizations and what are their defining economic and social attributes. The legislation also cites as examples of social economy organizations enterprises that clearly fall outside the accepted scope of what may be termed social enterprises (e.g. the inclusion of small, private businesses that engage in commercial practices for purposes of self-subsistence, Article 73). Such businesses, usually associated with the term “popular economy”, properly belong in the private sector, regardless of how small they may be.

²⁰ Guidelines for Co-operative Legislation, ILO, February 2005

Moreover, the determining factor for the inclusion of an organization in the popular and solidarity economy appears to be its size and the size of its revenue. For purposes of understanding the nature and role of social economy organizations, these factors are not relevant and if applied consistently would exclude any large social economy organization, as for example many NGOs and co-operatives. The key question therefore, is not whether a social economy organization makes a profit (surplus), but to what end this surplus is used. In addition, this view of social economy organizations arbitrarily and falsely excludes them from operating in the market. Clearly, many social economy organizations do trade in the market, as is the case with many co-operatives and social enterprises.

In our view, and as reflected in the evolution of progressive social economy legislation internationally, the objective of the legislation should be to facilitate the capacity of social economy organizations to operate as successful enterprises, to compete successfully with private companies, and to pursue their social and collective aims to the full extent possible.

Recommendation: The definition of social economy organizations in the legislation should be revised to reflect the essential attributes of these organizations as accepted by a growing international consensus.

In accordance with these principles, “A social economy organization is one whose activities are animated by the principles of reciprocity, mutuality, and social benefit, often through the social control of capital. The primary purpose of social economy organizations is the promotion of mutual collective benefit and service to the community.”

Recommendation: That the “popular economy” be distinguished from the social/solidarity economy and that enterprises that are privately or family-owned – regardless of their size – or that do not conform to the defining principles of social economy organizations described above be regulated under a different law.

b) In the current legislation, organizations such as trade unions, professional and sports associations, religious organizations, cultural organizations, etc. are excluded from the social economy. There is little justifiable rationale for this and such exclusion contravenes most broadly accepted definitions of social and solidarity economy.

Recommendation: The legislation should be revised to include these types of organizations as legitimate constituents of the popular and solidarity economy.

d) There appears to be a double standard with respect to the reporting and accountability requirements imposed on social economy organizations as compared to private businesses. Co-ops and other social economy organizations appear to be held to a much more stringent standard than private sector firms. Why this should be so is unclear.

Recommendation: That reporting and accountability requirements for social economy organizations should be minimized to those that are essential for the collection of useful sector-wide data and the proper oversight of activities as a check against unethical or criminal activity or the contravention of the purposes and principles defining these associations.

e) In the global co-op movement it is generally accepted that all co-ops, being founded on identical principles, should be treated equally within the same legislation. Exceptions sometimes apply to financial co-operatives (credit unions) and housing co-ops because of the special nature of these services.

Recommendation: That with the exception of credit unions and housing co-ops, all other types of co-ops be treated in an equal manner. In those cases that warrant particular types of oversight,

such oversight should be exercised not through the legislation but through specific state/sector agencies set up for this purpose and with a clear framework and timeframe for their mandate.

f) Undue powers of intervention in the affairs of co-operatives, including their dissolution, are granted to the Superintendent of Popular and Solidarity Economy. In addition, the terms for a co-op's dissolution are extremely vague and arbitrary and for these reasons constitute an infringement on the freedom of co-operatives to operate as autonomous organizations. This kind of practice has been ended in most reforms of modern co-op law.²¹

Recommendation: That the role of the Superintendent be revised to focus on the implementation of government policy with respect to co-operatives, to manage the overall regulation of the sector, to oversee the reporting and incorporation of co-ops, to oversee the collection and analysis of sector-wide data, to work with the sector to develop policies and practices that strengthen the sector, and to establish shared mechanisms for the review of co-operatives that engage in criminal activity or violate the accepted principles and practices of co-operatives.

g) The requirements for allocation of capital gains and surplus for co-operatives appear to be too prescriptive and fail to take account of the particular social and economic contexts within which individual co-operatives have to operate. Moreover, these provisions may be seen as an infringement on the control rights of members to determine how best to financially manage their co-operative.

Recommendation: These provisions should be removed. Aside from the requirement to provide for an indivisible reserve, or for investment in common co-operative financial pools, other matters of allocating capital within a co-op should be left to its members.

h) Article 55 – Debentures – this provision appears to allow co-operatives to issue bonds for trade on the stock market. This provision would thus seriously endanger the social and mutual nature of co-operative capital and expose co-operatives to the risks associated with issuing shares on a stock exchange. There are many examples of co-operatives that have traded shares on the stock market and this has led to an increase in the influence of private capital on the operations of the co-op and usually, to its de-mutualization.

While not necessarily suggesting that this power be withdrawn, it is important that other sources of civic and co-operative capital be made available to co-ops for their financing needs, apart from the issuing of shares on a stock market.

i) Articles 34-42 stipulate the powers and terms of office held by the elected bodies and representatives of co-operatives. The designation of the number of directors that may be elected for a co-op's governing body, the terms of office for co-operative Presidents, and the terms of office for the Supervisory Board are too prescriptive and undermine the freedom of co-operative members to determine the proper limits for the terms of office of their officers. The prescription of strict and invariable term limits for officers also undermines an organization's capacity to develop governance skills among its officers and to provide continuity in the overall governance and management of the co-op.

²¹ Indeed, as this is being written, *Allianza Solidaria* Co-operative in South Quito is being threatened with dissolution by the Office of the Superintendent. *Allianza Solidaria* is Ecuador's largest and most successful housing co-operative which has provided affordable housing and outstanding community services to residents of South Quito for over 25 years. Despite repeated request for information concerning the causes of this action, no information has been forthcoming to the co-op. On the face of it, this case provides a concrete illustration of the potential for abuse that is inherent in the current allocation of power provided to the Office of the Superintendent.

Recommendation: That prescriptive term limits on a co-operative's officers be revised to allow more discretion on the part of a co-operative's members.

1) The provision requiring that a general assembly of co-operatives with more than 200 members shall be conducted through representatives is an infringement on the democratic rights of co-op members to freely choose the manner of organizing their assembly. This provision should be removed.

2) Legislated term limits for officers, while necessary for the promotion of democratic governance and accountability, should be revised to allow for more discretion and flexibility on the part of co-operatives in the selection of their officers.

j) Co-operative Federations – It is unclear why co-op federations must be national in scope or why a minimum of thirty or more co-ops is needed for their formation. This seems arbitrary and ignores the particular contingencies of different co-operative sectors and their specific needs.

Recommendation: That this provision be removed.

k) Dissolution and Liquidation –The terms for dissolution outlined in Articles 14 and 57 of the Act, are vague and easily subject to arbitrary interpretation and abuse as is the imposition of sanctions stipulated in Articles 167-179.

Recommendation: That the terms for the dissolution and liquidation of co-operatives be clear and specific and restricted to matters of criminal behaviour. Moreover, an appeal process acceptable to both the government and the broader co-op sector should be established.

l) Article 174 – Administrative Appeals – The Act provides for an appeal process with respect to decisions taken by the Superintendent, however the appeal does not suspend the execution of the decision. This provision subjects a co-operative to the risk of closure or serious negative consequences that can terminate or gravely damage a co-op's operations pending a resolution of the appeals process.

Recommendation: That an appeal period of limited time be established (e.g. 90 days) within which a decision must be issued on the merits of the case. During this period a co-operative would continue to function pending the outcome of the appeals process.

m) The Interinstitutional Committee of the Popular and Solidarity Economy and of the Popular and Solidarity Financial Sector – There are issues with the conception and organization of the Interinstitutional Committee. These are primarily due to the lack of meaningful representation from civil society and the popular/solidarity economy and the domination of the Council by government bodies.

Recommendation: The organizational structure and mandate of the National Council should be reviewed with the aim of establishing meaningful representation from the popular/solidarity economy.

n) Superintendent of Popular and Solidarity Economy – The powers of this office are too broad and contravene the principles of a free and autonomous popular and solidarity economy. This single element in the legislation is perhaps the one most in need of reflection and reform.

Recommendation: That the powers and role of the Superintendent be reviewed within a new framework of minimal intervention in the internal operations of popular and social economy organizations. That this review take place as part of a broader review of the legislation and public policy and to be carried out in collaboration with the co-op sector and the broader popular and solidarity economy.

o) Multi-stakeholder Co-operatives

Multi-stakeholder co-operatives include more than one class of member in their organizational structure. This form of co-operative organization has been extremely effective at combining the mutual and complementary interests of different classes of stakeholders in the common enterprise of the co-op and has been key in the development of new forms of service to their members. Currently, there are no provisions for the recognition of multi-stakeholder co-ops in the legislation.

Recommendation: That multi-stakeholder co-ops be recognized as a legitimate form of co-operative in the Act.

p) Investment Shares

The power of co-operatives to issue investment shares in addition to member shares has been an important new development in legislation governing co-operatives in many countries. This has been seen as an important additional source of needed capital for co-ops – in addition to capital raised from traditional member shares – and helps to address a historical problem of capital scarcity for co-operatives.

Recommendation: Provisions for enabling co-operatives to issue investment shares should be included in the legislation, along with clear protections for guaranteeing member control of the co-op through the placement of strict limits on the control rights of investors. Investment shares would offer a capped rate of return to shareholders under a subordinated share structure in which investor shares rank above holders of equity but do not confer voting rights in the co-op. This is important to ensure that capital interests do not compromise the social and collective aims of the co-operative.

q) Community Service Co-operatives

Community service co-operatives, also known as social co-operatives or solidarity co-operatives, are special types of co-operative whose primary purpose is the promotion of social inclusion and the provision of community or social services to the community, in addition to co-op members. Because of their unique social mandate and the social benefits that accrue from their work, legislation has often conferred particular tax benefits and subsidies as an important component of their operations. These benefits are linked to the fulfillment on the part of the social co-ops of specific social inclusion provisions relating to the training and employment of marginal and vulnerable groups.

Recommendation: That the legislation recognize the specific typography of social/solidarity co-operatives as a distinct form of co-operative with an explicit community service mandate and with accompanying tax and public subsidies designed to promote and support their social mandate

r) Housing Co-operatives

As noted above, co-operative legislation often provides for distinct provisions for the incorporation and regulation of Housing Co-operatives. In the case of Ecuador, the legislation is in need of updating to incorporate the range and diversity of housing co-operatives that are now operating in jurisdictions around the world and which are essential elements in a country's

policies promoting safe, affordable, and community-focused solutions for addressing housing issues.

Recommendations:

- a) Housing co-operatives should not be required to have ownership of land as a condition of obtaining legal incorporation. In most jurisdictions, the creation of a housing co-op is an essential part of acquiring and then building co-operative housing.
- b) Currently, the co-op legislation recognizes only private ownership models for housing co-ops (equity co-ops). However, most housing co-operatives around the world offer housing to co-op members as renters, not owners. This is a key means of making housing co-ops accessible to those that cannot afford, or do not wish, to own housing. Rental forms of housing co-op should be recognized and supported in the co-op legislation.
- c) The existing co-op legislation severely restricts the kinds of activities that housing co-ops may engage in. This condition should be removed to allow housing co-ops to pursue any activities that are consonant or complementary to their primary mandate as providers of housing for their members. These should include such things as the provision of human services to members and the community (child care, senior care, food services, etc.), and the development of additional housing and community services.
- d) New forms of commons and co-operative forms of land ownership should be enabled by the legislation as essential complements to the development of co-operative housing. These forms of commons-based land tenure should include provisions for the creation of Community Land Trusts as mechanisms that enable the removal of land from the speculative market for purposes of non-market housing and the use of land for communal, environmental, or social benefit purposes (e.g. environmental protection of lands and waterways, use of land for cultural or artistic use, use of land for co-operative or commons-based enterprise development).
- e) Local governments should be empowered to partner with co-operative associations for the development of commons and co-operative housing and land use, including the investment of government-owned property in Community Land Trusts for this purpose.
- f) Co-operative legislation should enable the creation of targeted financial instruments and guarantees for the financing and development of co-operative housing and land use.

Regulations for the Popular and Solidarity Economy

The Regulations for the Organic Law on Popular and Solidarity Economy set out the procedures for the implementation of the [General Regulation of the LOEPS \(Executive Decree 1061\)](#).

However, many of the problematic issues identified in the above discussion on the LOEPS are present also in the Regulations to the Act.

The following section sets out some of the key issues that need to be reviewed in the Regulations and that in the opinion of this writer impede the healthy development of a popular and solidarity economy sector that is aligned with the social and economic values set out in Buen Vivir and the National Plan.

Key Issues and Recommendations:

- a) Article 5 – Requirements of Community Organizations – The requirements for the legal recognition of CSOs are overly onerous, with a requirement for 10 founding members. This

provision would prevent the incorporation of a CSO with fewer than 10 members and there is little rationale for such a constraint for the founding of an association.

Recommendation – That the provision be changed to require a minimum of 3 founding members.

b) Article 7 – Requirements for Co-operatives – This provision places additional constraints on the incorporation of co-operatives, including the presentation of a technical, economic and financial feasibility study showing the constitution of the co-operative and work plan and a favourable report from a competent authority (not defined). In our view, the technical feasibility of starting up and operating an association in the social economy should be of no more concern to the state than the incorporation of a private business in the private sector. Moreover, the requirement of a favourable report by any outside authority impinges on the democratic right of citizens to free association.

Recommendation: These provisions should be removed.

The requirement for a minimum of 20 members for the establishment of a co-operative is also overly onerous and once again, severely restricts the freedom of citizens to organize co-operatives in the manner they choose.

Recommendation: The minimum number of members required to incorporate a co-op should be reduced to three.

c) Article 8 – The Superintendent may, by order, refuse to grant legal personality to a co-operative, if the Superintendent determines that its constitution is not feasible, on the grounds specified in the accompanying technical report.

This provision is an unwarranted intrusion into the autonomy of co-operatives to determine on their own, whether their constitution is feasible. As with private businesses, members of co-operatives should be equally free to take the risks attending the establishment and operation of their association.

Recommendation: This provision should be removed.

d) Article 19 - Executive Organ - According to this provision, the governing body of the EPS associations shall be elected by the governing body and shall consist of a minimum of three and maximum of five members, who will meet ordinarily at least once every quarter and, extraordinarily, whenever necessary, be convened by the President.

This provision contravenes the right of associations to freely choose the number of representatives on their governing bodies according to their specific needs and wishes.

Recommendation: That this provision determining the number of directors to be selected by members be removed.

e) Article 24 - Entry and membership records. - According to this regulation the Board of Directors of a co-operative or agency must accept or reject requests for new members within thirty days. In addition, the Superintendent shall request the registration of new members, enclosing a certificate from the secretary of the co-operative, certifying compliance with statutory and regulatory requirements.

The requirement for confirmation of a membership application within thirty days is overly prescriptive and may, given the circumstances of an application or the situation of the association, be an unreasonable condition. In addition, the submission of a certificate to the Superintendent for new members is unduly onerous and unnecessary.

Recommendation: That this provision be removed.

f) Article 29 - Powers and duties of the general assembly – In its regulation of the powers and duties of the General Assembly, the Regulations require that the assembly

Approve or reject the financial statements and the reports of boards and management. And that rejection of management reports, will automatically involve the removal of directors or responsible officers, with the votes of more than half of the members of the assembly.

This provision is overly harsh and constrains a members' assembly to take an action that members may feel is unnecessary or detrimental to the association. The rejection of a manager's report should not entail the rejection of a manager or indicate a loss of faith in his or her capacities as an officer of the association.

Recommendation: That this provision be removed.

g) Article 36 - President - To be elected president of a co-operative a person is required to have practiced as a partner for at least two years before his/her election and receive training in areas of their competence before their inauguration.

This requirement also applies to the Manager of an association (Article 45). The Manager "must demonstrate experience in administrative management, according to the type, level, or segment of the co-operative and supportive training and co-operative economy.

These constraints place an undue burden on co-operatives in the selection of their officers. Moreover, the provision applies requirements on the officers of co-operatives that are not required of private firms.

As is appropriate for the setting up and governance of autonomous and democratically run associations, the responsibility for the selection of qualified officers of co-operatives should remain the prerogative of co-op members, not the state.

Recommendation: That these provisions be removed.

h) Article 40 - Election and re-election of representatives and voice - Representatives to the general assembly and the members of the councils will be elected for the prescribed social status period and may be re-elected only once consecutively and when completing their second period, may not be elected to any executive position until after this period.

This provision is an intrusion into the democratic rights of co-op members to freely run for office. In addition, the provision is particularly difficult for small co-operatives whose pool of members is limited. The imposition of these time constraints for the election of officers unfairly discriminates against co-ops with limited memberships and introduces an element of instability and discontinuity in the governance of the association.

In addition, there is little rationale in restricting the right of free assembly of all members in a co-operative to participate in the governance of their association.

Recommendation: That this provision be removed.

i) Article 68 - Causes for regularization – According to this section, the Superintendent shall provide that co-operatives are subject to a regularization plan for a number of causes, which include when the financial statements reflect losses for two consecutive semesters and when auxiliary reports, audits or supervision inspection disclose serious internal control deficiencies.

While there is reason for concern when internal difficulties pose a risk to a co-operative, there is no justification for the sanctioning or regularization of a co-operative on the basis of financial

losses for two consecutive semesters. The regulation is arbitrary and provides undue powers of interference on the part of the Office of the Superintendent. Moreover, there is no similar provision for the regulation of a private business that has undergone financial losses for two, or even more, consecutive semesters. This would indicate a lack of equal treatment between co-ops and private businesses.

It is our view that the long-term viability of a co-operative (or a business) cannot be determined by such a narrow reading of its financial status over such a short period of time. If the co-op does go bankrupt, the risk and responsibility rest with the co-op members, not the state.

Recommendation: That this provision be removed.

j) Article 117 – Federations – The constraints placed on the formation and composition of federations by social economy organizations and co-operatives seem arbitrary and fail to reflect the specific requirements or wishes of associations in accordance to their own identified needs and conditions of operation.

Recommendation: That the limitations on the formation and composition of federations be removed.

k) Article 126 – Support Entities – According to this regulation, entities that support the operations of social economy associations shall not be considered as part of the social economy and so not eligible for the benefits conferred under the law. This appears to be an arbitrary distinction between types of social economy organization based on their function, as opposed to the nature of the association. Many support entities are in fact structured as non-profit associations or co-operatives providing a necessary service to the broader social economy. It is unclear why they should not enjoy the rights and benefits available to other social economy groups.

Recommendation: That this provision be removed.

l) Article 136 - Certification of compliance with obligations – To access the benefits granted under the law, organizations are required to have credited registration in the Public Registry and attach a corresponding certification to be active and in compliance with their obligations, to be obtained from the Superintendent. However, the certificate of compliance with obligations is valid for only one year.

This provision requires a re-certification from the Superintendent every year, thus placing an unreasonable and unnecessary burden on the association to validate its operations. Unless there is clear evidence of a co-operative violating the law or contravening the terms of its obligations, the requirement for re-certification should be annulled.

Recommendation: That this provision be removed.

Concluding Comments

The analysis and policy recommendations outlined above are necessarily tentative pending a more detailed study of the legislative and regulatory framework and additional input on the issues on the part of popular and solidarity economy organizations and other stakeholders, including the relevant authorities and decision makers in government.

Nevertheless, the fundamental questions concerning the relative roles and powers of the state on the one hand and social economy organizations on the other, remain key issues that will

profoundly affect the prospects for the growth of the social economy and the role it is allowed to play in the transition to a true social knowledge economy.

Central to this process is the nature and structure of the political, economic, and social institutions that will ultimately determine whether, and how, social knowledge will be developed and diffused. In this, the production and mobilization of social capital and of those institutions that promote co-operation and the common good will play a crucial role.