Government Regulation and the Self-construction of Self-regulating Nonprofit Organizations (DRAFT)

The Case of Ecuador

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Abstract

Public scandals, greater accountability to donors, questionable financial management, and security issues have all launched the regulation of nonprofit organizations into the academic and public spheres and resulted in increasing debate and implementation of government regulation. How are nonprofit organizations responding to both public debates about nonprofit regulation and the surge of government regulatory legislation toward the sector? The discourse(s) of “self-regulation” and “transparent management practices” has become a growing focal point among nonprofit organizations across various contexts. Using the case study of Ecuador in South America, this paper explores how nonprofit organizations react to government regulation to construct their own agenda in self-regulation. Through a narrative analysis, the paper describes and explains the construction of a Collective of Civil Society Organizations in Ecuador. The Ecuadorian narrative shows the struggles and processes of self-regulation—that is, both legitimizing and defining civil society while constructing relationships among organizations themselves, with the government, and with the public. The paper contributes to public administration scholarship and civil society research by illuminating the debates and contradictions that emerge when both public and nonprofit sectors assume the regulation (and its debate) of civil society.

Keywords
Nonprofit regulation, self-regulation, accountability, Ecuador
Recently in April 2011, nonprofit regulation was once again launched into the headlines when the television news magazine 60 Minutes aired a story calling into question the work of Greg Mortenson—his book, *Three Cups of Tea: One Man's Mission to Fight Terrorism and Build Nations ... One School at a Time*, and the subsequent 15-year-old nonprofit, Central Asia Institute, that is dedicated to building schools in Pakistan and Afghanistan.\(^1\) Daniel Borochoff, president of the American Institute of Philanthropy, explained on 60 Minutes that there was little transparency across financial records of the nonprofit organization, expressing serious concern for the mixing of private interests—Mortenson's book promotions—and the public purpose of the organization. In 2009 the organization received $23 million in contributions, but Borochoff and others have highlighted that more money was spent on the promotion of the organization than the actual building of schools Afghanistan and Pakistan (60 Minutes).\(^2\)

New York Times columnist Nicholas Kristof, who in recent years has written about Mortenson’s work positively and considers him a friend, said that this “should be a wake-up call to the [nonprofit] sector as a whole” in regard to financial efficiency and that nonprofit organizations should “… be ready and welcome for more scrutiny” (Anderson Cooper 360degrees, 2011; see also Kristof, 2011). Indeed, the news and accusations have jarred the nonprofit sector and international philanthropy specifically. Trevor Neilson, Co-Founder of the Global Philanthropy Group, highlighted that these accusations can hurt international philanthropy; i.e., donors will withdraw support from international projects. And he questions regulation within the sector. He states: “There is absolutely no way that any local, state or federal government agency can do a meaningful job of policing the activities of non-profits around the world” thus the responsibility falls on the organizations and the sector as a whole (Abramson, 2011).\(^3\) Yet, the Central Asia Institute scandal also provides an example that the sector is not always able to properly regulate itself nor effectively give sound information to (potential) donors. A nonprofit sector watchdog, CharityNavigator.com, as noted by NPR, had ranked Central Asia Institute with high marks up until the story broke (Abramson, 2011).

Public scandals like the accusations toward Central Asia Institute, greater demand for accountability to donors, questionable financial management, and as well as security issues as will be explained below account for the growing attention in public administration and policy scholarship to the regulation of nonprofit organizations (Bies, 2010; Bowman & Bies, 2005; 2005).

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\(^1\) The story hit national and international news outlets as the 60 Minutes report was coupled with a recent publication by respected writer Jon Krakauer called *Three Cups of Deceit: How Greg Mortenson, Humanitarian Hero, Lost His Way*. Krakauer accuses Greg Mortenson’s book and the accomplishments of the Central Asia Institute as often exaggerated (60 Minutes).

\(^2\) According to Mortenson, the 60 Minutes exposé “paints a distorted picture using inaccurate information, innuendo and a microscopic focus on one year’s (2009) IRS 990 financial, and a few points in the book “Three Cups of Tea” that occurred almost 18 years ago” (Mortenson, 2011). However the recent scandal has prompted the attorney general of Montana to look into the accusations.

\(^3\) Given the challenges for government regulation, some endorse deregulation. For example, at the state level, Irvin (2005) argues that states collect information that is never used but that costs money and time for nonprofits. She suggests that states should request this information only once a complaint against a nonprofit is made, this would save the organizations that adhere to the law the trouble of producing these documents (Irvin, 2005). She notes that no nonprofit organization has advocated such deregulation. Irvin (2005) suggests with the increase of information availability, many of these regulatory processes suffer duplication.
Boris, Renz, & Hager, 2005; Christensen & Ebrahim, 2006; Ebrahim, 2005; Jackson, 2006; Irvin, 2005; Perry, 2007; Salamon & Geller, 2005). Scholars and practitioners recognize that governments must strike a balance between regulating civil society and also encouraging its development (Brody, 2006; Open Society Institute, 2004; Salmon & Toepner, 2000). Many contend that at the core, a basic legal framework for the sector is the freedom to associate and freedom of expression (Brody, 2006; Open Society Institute, 2004; Salmon & Toepner, 2000). Legislation toward the nonprofit sector and new tools for regulation have become increasingly common across countries. Legal frameworks\(^4\) include state and local government guidelines for formation, reporting requirements, various types of regulation, dissolution processes, and funding procedures.

Some governments insist that strong regulatory laws toward nonprofit organizations are necessary to ensure national security and civil society accountability (Brysk, 2000; INCL, 2006; 2009; Rutzen & Shea, 2006; Sidel, 2009). Regulation of nonprofit organizations is increasingly linked to security issues. Sidel’s (2009) work has tied efforts to curb terrorist activity to the greater regulation of the nonprofit sector in several contexts including the U.S., the United Kingdom, Canada and India, for examples. He states that “a number of governments do not now appear to regard civil society and the charitable sector as a source of human security. Rather, they seem to regard the third sector as a source of insecurity; not as civil society but as encouraging uncivil society; not as strengthening peace and human security, but as either a willing conduit for, or an ineffective, porous, and ambivalent barrier against insecurity in the form of terrorism and violence” (Sidel, 2009, p. 5).

Restrictive policies might include difficult procedures for the legal formation of organizations and the banning of certain revenue sources (Brysk, 2000; Rutzen & Shea, 2006). Many governments implement restrictive legislation to suppress opposition and monopolize political power (INCL, 2006, 2009; NED, 2008). In contrast, legislation toward the sector can also implement “enabling laws” (Salamon & Toepner, 2000) and other policy tools that permit, protect, and fairly regulate these organizations (Hadenius & Uggla, 1998; Open Society Institute, 2004). Whether restrictive or ‘enabling,’ according to the International Center for Nonprofit Law (2009), more than a dozen countries around the world passed legislation that addresses the nonprofit sector in the year 2009 alone, most of which have a regulatory component.

How are nonprofit organizations responding to both public debates about nonprofit regulation and the surge of government regulatory legislation toward the sector? My previous research suggests that some nonprofit organizations consider that more regulation is appropriate, while others are concerned about excessive government interference. Some nonprofit organizations simply do not comply and others have strongly advocated the self-regulation of the nonprofit sector (Appe, 2010).

Indeed, the discourse(s) of “self-regulation” and “transparent management practices” has become a growing focal point among nonprofit organizations across various contexts and given

\(^4\) According to the International Center for Nonprofit Law (ICNL) (2009), a civil society legal framework is made up of “laws that attempt to address all of the issues that arise over the ‘lifecycle’ of a non-governmental organization” (p. 4).
the recent debate of Mortenson’s Central Asia Institute is even more prevalent in the
international philanthropic world. Using the case study of Ecuador in South America, this paper
explores how national nonprofit organizations react to government regulation to construct their
own agenda in self-regulation and transparent management practices. The Ecuadorian narrative
that will follow shows how self-regulation is more than finding tools for more transparent
management and a response to government threats of stronger regulation. Rather, the Ecuadorian
self-regulation narrative shows what Ebrahim (2003a) argues: “Self-regulation is strategic in the
sense that it is targeted toward change at a sector-wide level, not only by establishing codes for
NGO behavior, but also by forming NGO umbrella organizations that can engage in national-
level policy debates” (Ebrahim, 2003a, p. 826). Indeed, the Ecuadorian story shows a sector
attempting to command the NGO and development discourses in the context of nonprofit
scandals, concerns about accountability, financial discrepancies of the sector, security issues and
stronger regulation implemented by government.

First, the paper presents a review of literature on accountability issues and self-regulation
of civil society and nonprofit organizations. Following, I will explain the methods of inquiry and
the use of narrative within my study. Then the paper presents an evolving initiative in Ecuador
by a group of about 60 nonprofit organizations that form a “Collective of Civil Society
Organizations.” The paper conducts document analysis—both of government documents and
documents produced by Ecuador’s Collective of Civil Society Organizations, in particular press
releases and Collective meeting notes. In addition, I analyze data from in-depth interviews with
Collective leaders and participants. The paper contributes to public administration scholarship
and civil society research by illuminating the debates and contradictions that emerge when both
public and nonprofit sectors assume the regulation of civil society and its debate.

Self-Regulation Among Civil Society and Nonprofit Organizations

Gunningham and Rees’ (1997) definition for self-regulation is the most cited in nonprofit
studies. They define self-regulation as when an “industry-level (as opposed to a governmental or
firm-level) organization sets rules and standards (codes of practice) relating to the conduct of
firms in the industry” (p. 364-365). Given the increased pressure for government to regulate
nonprofit organizations and for nonprofit organizations to demonstrate a level of transparency,
self-regulation for accountability has been advocated by nonprofit organizations in different
countries such as Vietnam (Lux & Straussman, 2004), Uganda (Kwesiga & Namisi, 2006),
Indonesia (Antlov et al., 2006) and the U.S. (Bothwell, 2001; Irvin, 2005). Nonprofit self-
regulation, as observed by Bies (2010) is often “influenced by the relative strength or weakness
of the state’s regulatory apparatus” (p. 7).

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5 I conducted a total of 15 interviews from organizational leaders participating in the Collective. Interviews were
conducted in two stages, the first in July/August of 2009 and the second from September 2010-February 2011.
Fifteen interviews were conducted, 2 participants were interviewed in both stages. I attended ten Collective
meetings from July 2010 to April 2011.
Nonprofit Organizations and Accountability

Regulation of civil society and nonprofit self-regulation cannot be examined without a discussion on accountability within the sector. As Jordan & van Tuijl (2006) among others scholars explain, there are several factors have contributed to concerns about accountability in the nonprofit sector. First, the quantity and the growth of nonprofit organizations is significant. With this increase, NGOs have received attention through various scandals (Ebrahim, 2003b; Gugerty, 2008), such as the phenomenon of “suitcase NGOs” (Jordan & van Tuijl, 2006; Prakash & Gugerty, 2010). Second, there are more funding opportunities for organizations, particularly in service provision (Jordan & van Tuijl, 2006; Gugerty, 2008). And third, nonprofit organizations have been a growing voice within international politics and advocacy in several global issues such as environmental issues (Jordan & van Tuijl, 2006) as well as human rights and women’s rights (Kaldor, 2003; Keck & Sikkink, 1997).

While defining accountability is no easy task, several scholars posit various explanations. Accountability includes not only external accountability (nonprofits are held responsible for their actions), but also internal accountability (nonprofits must hold themselves to higher standards, open themselves up to critiques from the public and the state, and be true to their objectives) (Ebrahim, 2003a; see also, Jordan & van Tuijl, 2006; Kaldor, 2003; Najam, 1996). Edwards and Hulme’s (1996) examined NGO accountability during the sector’s boom in the 1990s and determined accountability as “the means by which individuals and organizations report to a recognized authority (or authorities) and are held responsible for their actions” (p. 967). Ebrahim’s (2003b) work highlights the social construction of the term and its complexities given that an organization has multiple accountabilities (see also Najam, 1996). He defines accountability as “the means through which individuals and organizations are held externally to account for their actions and the means by which they take internal responsibility for continuously shaping and scrutinizing organizational mission, goals, and performance” (Ebrahim, 2003b, p. 194). Ebrahim (2003b) suggests that there might be a risk of “too much” accountability. This results in two concerns: co-optation or derailing of a NGOs’ goals and objectives and the NGO sector’s creativity and innovation might be limited with too much emphasize on accountability.

Najam (1996) also identifies multiple accountabilities but notes that like much of the NGO scholarship, NGO accountability had for some time been “driven” by donor agencies. Najam’s (1996) contribution recognizes the distinct types of accountabilities as not only to patrons (or donors) but also to clients and to NGOs themselves. Accountability to patrons, he explains, often includes measureable results that meet shared policy goals. In this case, mechanisms are often in place to judge these results and there are consequences to not meeting expectations (for example, grants are cancelled). Accountability also is relevant to the clients of NGOs and take shape most often through participation mechanisms. Najam (1996) finds that power relations are important with this accountability relationship, as there is often a discrepancy between what the clients want and what the NGO/donors want or think is best for the constituency. And finally, Najam (1996) finds that NGOs need to be accountable to themselves. For example, NGOs have responsibility to their missions, staff and the NGO sector in general.
Accountability Mechanisms and Self-regulation

Najam (1996) asks if can we create mechanisms that serve accountability to all three audiences. What are accountability mechanisms? Ebrahim (2003a) focuses on five accountability mechanisms: reports and disclosure statements; performance assessments and evaluation; participation; self-regulation; and social audits. The mechanism that is of most interest to this paper is that of self-regulation. As an accountability mechanism, Ebrahim (2003a) defines self-regulation as “… efforts by NGO or nonprofit networks to develop standards or codes of behavior and performance” (p. 819). Ebrahim (2003a) recognizes both the formal and informal networks of self-regulation. One of the most common instruments for self-regulation for the nonprofit sector are codes of conduct (Bies, 2010; Ebrahim, 2003a). Ebrahim (2003a) asserts that self-regulation and the elaboration of codes of ethics in particular is “an opportunity for self-definition by national NGO networks, as well as for public presentation of their collective mission, principles, values, and methods” (Schweitz, 2001, p. 2 as cited by Ebrahim). Ebrahim (2003a) contends that self-regulation is often a result of a threat but also a response to the “erosion of public confidence due to scandals and exaggeration of accomplishments (external loss of funds; internal loss of reputation)” (p. 825).

Such outputs like codes of conduct and their reception are dependent on how a code is elaborated. Ebrahim (2003a) states that “self-regulation as such, and codes of conduct in particular, are not simple tools of accountability but are part of a complex accountability process linked to sectoral identity, legitimacy, and normative views on organizational behavior” (p. 822). This will be especially true in the case of Ecuador. Likewise, in European cases, Bies (2010) finds that codes of ethics help to shape perceptions of the nonprofit sector and frame the sector as a legitimate player in policy. Here, Bies (2010) argues that organizations seek to demonstrate “legitimacy and professionalism” (p. 13) to “stave off excessive government regulation” (p. 13) through self-regulation.

Theoretical Perspectives of Self-Regulation

‘Self-regulation regimes’ (Gugerty, 2008) among nonprofit organizations are found across continents and can vary. Recent scholarship has described and explained nonprofit self-regulation in the U.S. (Bothwell, 2001); in Asia (Sidel, 2005); Africa (Gugerty, 2008), and Europe (Bies, 2010). For example, Bies (2010) offers a variation of experiences of self-regulation among nonprofit organizations in Europe. She argues that nonprofit self-regulation is influenced by: 1) the relationship between nonprofit and other actors (a such as donors and government); 2) the structure of the market and nonprofit’s means to tap into resources; and 3) the internal dimensions of nonprofit organizations, level of professionalism and capacity of the sector (p. 3). Several theories have been highlighted to help understand self-regulation in the nonprofit sector. Here I will briefly address two: principal-agent theory and institutional theory.

Principal-Agent Theory. Quite often, accountability and self-regulation have been examined using a principal-agent perspective. This contends that some entity (principal) has goals achieved through the work of other entity (agent). Within the realm of NGOs, this is often understood through nonprofit (agent) service provision funded by government or donors (principal). Work on government-nonprofit contracts highlights the dimensions of nonprofits as agents of government more so than agents of the community (Smith & Lipsky, 1993) or clients (Najam,
1996). This highlights a main concern of the application of the principal-agent perspective as argued by Ebrahim (2003b) as nonprofit organizations have multiple accountabilities (Ebrahim, 2003b; Najam, 1996), and thus often competing principals (Gugerty & Prakash, 2010).

Prakash and Gugerty’s (2010) use the principal-agent perspective contending that donors do not have the information they need to assure that donations are reaching “credible nonprofits” (p. 23). Thus, to limit information discrepancies, NGOs have created mechanisms to alleviate concerns. Prakash and Gugerty’s (2010) focus has been on voluntary regulation programs or “clubs.” These clubs seek to mitigate “agency slippages,” that is, when nonprofit managers use resources and make decisions that stray from the original agreement between the funder (principal) and the nonprofit (agency). Prakash and Gugerty (2010) find that the nature of the nonprofit sector allows agency slippages. Hansmann’s nondistribution constraint helps to garner trust, for example, but that the goods and services that nonprofit supply are far harder to judge and evaluate than other sectors. Prakash and Gugerty’s (2010) work focuses on the donor-nonprofit relationship over the client-nonprofit relationship, while they note that accountability relationships occur with clients as well.

Prakash and Gugerty (2010) examine how nonprofits “collectively signal” with the objective to provide credible and reliable information to the principals (see also Gugerty, 2009). They note that the emergence of these types of clubs are within the environment of other government regulatory tools and watchdog oversight. The clubs signal quality (Prakash & Gugerty, 2010) but questions remain as to what information is needed to signal such quality, this will prove especially true in the case of Ecuador discussed below.

Ebrahim’s (2003b) ‘integrated perspective on accountability’ highlights the limitations of such a principal-agent perspective. He argues the importance of both the relationship within accountabilities and the mechanisms that are implemented to oversee accountability, one of which being self-regulation. In addition, he recognizes the difficulties of understanding accountability with the assumption that organizations are uniform. He elaborates NGO types and the variation of accountability across these types which include: membership organizations, service organizations, and network organizations. He finds that the relationships and mechanisms used vary across the types of NGOs. Prakash and Gugerty (2010) also call on more research to look at this. They question whether or not their framework of voluntary clubs can function across member, service and network organizations.

Institutional Theory. Institutional theory is helpful to frame the inquiry on self-regulation. It explains nonprofit self-regulation as a response to external pressures and environmental realities or can also be pre-emptive to pending regulations of the sector. The assumption here is that to understand self-regulation, we need to understand the external environment in which nonprofit organizations function. Bies (2010) finds that institutional theory helps us to understand why nonprofits might create similar self-regulation regime institutional designs.

For example, Prakash & Gugerty (2010) self-regulatory voluntary clubs have key institutional dimensions that help understand their designs and functions (see also Gugerty & Prakash, 2010). They state: “to solve the recruitment challenge, clubs can seek to develop standards that are stringent enough to demonstrate a credible commitment to mitigating agency
conflict, yet are reasonable enough that a minimum number of participants is willing and able to pay the costs of meeting them” (Prakash & Gugerty, 2010, p. 34). Of course, the authors contend that organizations already completing or close to completing the requirements will find it easier to meet the club standards/recruitment procedures as some organizations will be “priced out” (p. 36). In addition to club standards/recruitment requirements, club need a process and mechanisms to monitor and enforce standards such as disclosure requirements, verification requirements and sanctioning.

Using such institutional dimensions, Gugerty (2008) elaborates three “self-regulation regimes” that are present in Africa: national self-regulation guild, the voluntary club, and voluntary code of conduct. National guilds have a “monopoly over entry to a profession or industry” (p. 108). In the case of nonprofit national guilds, governments mandate that NGOs. Thus, the rules to entry and standards of such guilds are meant to apply to all NGO in the sector (as in the case of Kenya). Voluntary clubs (see also Prakash & Gugerty, 2010) set standards for nonprofit organizations and participation is voluntary. Nonprofit organizations join such clubs because it signals (Prakash & Gugerty, 2010) a positive reputation (as in the case of Ethiopia). And finally, the last self-regulation regimes are code of conducts which is essentially a pledge among a set of organizations (as in the case of Botswana) but is the least binding of the regimes (Gugerty, 2008). Codes of conduct have challenges as Gugerty (2008) explains: “Evidence on the effectiveness of industry codes among for-profit firms suggest that codes are unable to affect member behavior in part because industry associations are reluctant to reveal poor performance among members” (p. 110). In Africa, all models of self-regulation have difficulties with the capacity to regulate and often have limited or insufficient financial resources (Gugerty, 2008).

The Narrative Approach

The qualitative analysis of the Ecuadorian case of self-regulation of nonprofit organizations that follows is situated within a larger research project that examines intentions and interpretations of policy tools toward nonprofit organizations. The study is informed by policy studies concerned with social constructions and the multiple realities that exist within policy implementation (Berger & Luckmann, 1967; Schneider & Sidney, 2009; Yanow, 1999; 2007, see also Scott, 1998). I use what Yanow (2007) has termed “qualitative-interpretative methods in policy research” (p. 411) to focus how subjects (nonprofit organizations) respond to events or ideas (government policy). Through a policy frame analysis my research identifies several interpretative communities or also called ‘communities of meaning,’ ‘communities of practice,’ ‘speech or discourse communities’ (Yanow, 2007) and the way in which these communities frame their position or interests in the context of a policy issue. I focus on how organizations understand the intentions of government policy and how they react and frame their reaction.

The paper develops a narrative of the emerging of self-regulation discourse in Ecuador. Narrative analysis, like interpretative research methods in general, recognizes the multiple meanings through and within stories. Narrative analysis has a long history in public administration and policy scholarship (Dodge, Ospina & Foldy, 2005; Feldman et al., 2004; Ospina & Dodge, 2005; Roe, 1994; Yanow, 2007). While narrative inquiry is rooted in interpretative approaches, it does have particular dimensions. As part of a three-part series on
narrative in *Public Administration Review*, Ospina & Dodge (2005) explain five characteristics of narratives: (1) “They are accounts of characters and selective events occurring over time…; (2) They are retrospective interpretations of sequential events from a certain point of view; (3) They focus on human intention and action—those of the narrator and others; (4) They are part of the process of constructing identity (the self in relation to others) and (5) They are coauthored by narrator and audience” (p. 145).

As Ospina and Dodge (2005) and others (Brower, Abolafia, & Carr, 2000) remind us, public administration and policy scholarship must balance a practical orientation with the rigor of social science research. Such orientation requires that the researcher understands that the production of knowledge is not only a role for the researcher, rather the practitioner produces and creates knowledge that also contributes to theory building and development (Dodge, Ospina & Foldy, 2005). Through the participation in meetings and in-depth interviews, as a researcher I was privy to inside processes and given open access to the unfolding narrative of self-regulation in Ecuador. While this paper does not represent a “co-inquiry” or a collaborative research agenda, it does recognize that the boundaries between the researcher and practitioner (in this case, myself and NGO managers) were fuzzy and often conversational. Through my openness and relationships with the practitioners, the study maintains a high level of both rigor and relevance (Dodge, Ospina & Foldy, 2005).

Here, the narrative analysis attempts to better understand how actors respond and understand the larger “encompassing narrative” (Feldman et al., 2004) of the regulation and self-regulation of the nonprofit sector in Ecuador. Interpretations by organizations to policy are most often simplified. This study shows the complexity of context and the differences and similarities around a community of civil society organizations. It takes us beyond the for or against government policy, rather it highlights the development of an interpretative community, the twists and turns, successes and defeats related to establishing a frame or “conceptual lens” in which an interpretative community develops.

**Civil Society Organizations and Self-regulation in Ecuador**

In 2008, the Presidential Executive Decree No. 982 (Presidencia de la República del Ecuador, 2008) in Ecuador reformed the regulatory policy toward civil society organizations and created a new government-driven database of civil society organizations through the implementation of its Registry of Civil Society Organizations included in the Decree No. 982. The Ecuadorian state seeks to standardize and centralize information on civil society organizations for better regulation and coordination. With the implementation of Decree No. 982, public discourse on civil society, specifically nongovernmental organizations, has seen an all time high in Ecuador. Ecuadorian President Rafael Correa and other public officials have publicly discredited nongovernmental and nonprofit organizations in public statements and public discourse. One of the first lines of the Decree states: “It is necessary to achieve greater transparency and accountability of public resources by establishing regulation of special entities,” i.e., nonprofit organizations. The new regulation and its registry seek to distinguish public and private resources to enable the accountability of public resources, according to governemnt (Hoy, 2008).a

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6 In a given fiscal year, civil society organizations in Ecuador are said to manage about three billion U.S. dollars, but it is unclear how much of these funds are public funds. One of the first lines of the Decree states: “It is necessary to achieve greater transparency and accountability of public resources by establishing regulation of special entities,” i.e., nonprofit organizations. The new regulation and its registry seek to distinguish public and private resources to enable the accountability of public resources, according to governemnt (Hoy, 2008).a
several press conferences—targeting both national and international organizations. In May 2010 President Correa denounced the fact that there are more than 50,000 organizations with legal status in Ecuador accusing the sector of vast corruption (Flores, 2010; La Prensa Latina, 2010).

To couple the release of Decree No. 982 in 2008, the government initiated discussion and drafting of a more comprehensive civil society legal framework and hired a legal consultant group to elaborate a draft law. As a result and parallel to this government-drive process, civil society organizations began to meet and discuss the possibility of a law. This process included 11 civil society networks of around 800 organizations nation wide and 18 of the larger foundations in the country. In addition, several lawyers affiliated with civil society were included in the process for legal advise. In April 2008 until January 2009, there were approximately ten meetings among participating organizations and three meetings with the legal consultant group hired by the government. A draft law was circulated among civil society organizations and organizations commented on it but soon the process would be tabled. While the process led by government died, it left civil society organizations motivated to continue talking.

Thus, several civil society organizations in Ecuador started to meet to debate regulations toward organizations, civil society’s role in Ecuador, and how transparency and accountability within the sector might be operationalized. From these discussions, there has been increasing use of the term ’self-regulation’ Ecuador. The following sections provide a narrative of the consolidation process of what would become the “Collective of Civil Society Organizations” in Ecuador.


The 2008-2009 discussions about a civil society law and the concerns over the newly implemented Decree No. 982 were seen as windows of opportunity for debate and consolidation among civil society organizations. This point seemed to represent a turning point for civil society in Ecuador, as some interview participants noted:

There was not any process on which civil society organizations united, to improve their activities at the country level or strengthening their stance and improve their capacity (CSO 2.025E; 1/19/11).

To start, I believe that for …the fragmented characteristic of the sector, it has been very difficult in Ecuador to find an element that unified us, an element around which to form a [group of organizations] (CSO 2.031; 2/10/11).

Thus the civil society organizations continued to meet and the meetings would quickly become more than a response to implemented and pending regulation. Many, from this beginning stage, saw the now informal group of organizations tackling larger and broader issues across civil society organizations, as one interview participant reflected:

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7 It should be noted that for his second term election (April 2009) President Correa was elected with 51% of the vote, the highest of an elected Ecuadorian president in twenty years.
This decree called on us. … the [group] was created … to handle themes that are not [only] directly related to regulation. Yes, it was called on by the regulation, but also … how can we make ourselves better? To better our work, and be transparent in everything we do, so, the Decree served as an gathering element but all that are part of the [group] have benefited from this (CSO 2.025E; 1/19/11).

The small group of civil society organizations quietly released a public document that highlighted main concerns with the Decree No. 982 called: Aportes Ciudadanos a las Regulaciones de las Organizaciones de la Sociedad Civil del Ecuador, Citizen Contributions to the Regulations of Civil Society Organizations. In this document, the organizations begin to use language about civil society in Ecuador from the perspective of the organizations themselves. It explains the role of civil society organizations as complementary to the state: “Historically, civil society organizations have provided ideas, goods and social services that have contributed to the betterment to the life conditions of communities and the country, especially to the sectors most unprotected” (Aportes Ciudadanos, 2009, p. 1). The Citizen Contributions document highlights the norms set out in the 2008 Ecuadorian Constitution; in particular, the Constitution’s acknowledgement of citizen participation and the construction of a more democratic society.

In fact, several interview participants recognized and explained the work of civil society organizations as fundamental to democracy; as service to both the state and the public:

… this government owes a lot to civil society and NGOs because ideas, programs and political projects were not born [in the government], they were born in the NGOs, many of the ideas that today [the government] is implementing, that they are talking about, even the discourse, it is not from the government, it is from the NGOs, so… we must maintain respect between what is the action of the state and the action of the NGOs, because we are not arguing anything with the state, our work is toward the beneficiaries, we do not look for political representation, we do not look to take over the government… we do not have a problem with the government, because of the government should not have a problem with us and support the our work… (CSO 2.015E; 12/13/10).

… in the end [civil society] was a response … to the incapacity to the state to respond to certain needs, not only material, rather human needs, defending rights and things of this nature (CSO 2.012E; 11/9/10).

Because of …[the state’s] lack of knowledge, lack of interest, we do it. We do what the state does not do, we even do what the state does but differently (CSO 2.015E; 12/13/10).

In the last 20 years, civil society organizations provided several of the proposals for reform and institutional changes that were reached in Ecuador’s new 2008 Constitution of Montecristi. Civil society organizations generated and constructed the social base for new ideas, so that today Ecuador has rights for nature⁸ and is very progressive in the realm of other rights—rights for women, rights to political participation, etc. (CSO 2.031; 2/10/11)

⁸ Ecuador was the first country to grant rights to nature within its 2008 Constitution passed on Sept. 28, 2008. The article states: "Natural communities and ecosystems possess the unalienable right to exist, flourish and evolve within
In addition to recognizing the role of civil society organizations and the organizations interest to working jointly with the state, the Citizen Contributions document observes that civil society organizations have always been subject to legal frameworks in Ecuador. Several interview participants mentioned this. For example, one interview participant stated that prior to Decree No. 982:

\[\text{… civil society organizations were [always] subjects to taxes… there are regulations that always were there. There are labor regulations, there are local regulations. There are certain guidelines that organizations complete (CSO 2.008E; 10/25/10).}\]

The Citizen Contributions document, with consultations from the International Center for Not-for-Profit Law (INCL), determined several parts of the Decree No. 982 to be unconstitutional (ICNL, 2008). The small group of civil society organizations initially concentrated on four focal points: 1) excessive discretion in the dissolution of civil society organizations; 2) excessive discretion in the demand of information from civil society organizations; 3) disclosure of the identification of civil society organizations’ members; and 4) financial barriers to obtaining legal status.

Ministerial discretion was a concern on two accounts. First, the document argued that ministries have too much discretion to shutdown an organization. As stated in the Decree, a ministry can close down an organization for administrative violations, however, administrative violations are not defined. Second, the organizations posited that there is too much discretion in asking for information from civil society organizations. The Decree (Article 27) states that organizations must provide ministries and/or other government agencies with necessary information and “whatever other information that is related to their activities” (Aportes Ciudadanos, 2009, p. 3). The Citizen Contributions document finds that “whatever” information is not legally determined. Several interview participants were concerned about ministerial discretion, as one explained:

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9 As laid out in Decree No. 982, the process for the legalization of a civil society organization in Ecuador is reliant on a line ministry legalization system. An organization first must present its documents to a line ministry order that the line ministry can verify that the civil society organization is active, cross-check that it is paying taxes to Ecuador’s Internal Revenue Service and judge if the organization is completing its stated objective. In addition, a line ministry must ensure that an organization does not threaten security and interests of the state. Once it is legally formed in a line ministry, the organization must register itself in the RUOSC online (SPMSC, 2009). In Ecuador, there are several line ministries that legalize civil society organizations. Some of these include: Ministries of Environment; Agriculture; Sport; Education; Economy and Finance; Electricity and Renewable Energy; Commerce; Urban and Housing Development; Public Health; Exterior Relations; Tourism; Government and Policy; and Economic and Social Inclusion (http://www.sociedadcivil.gov.ec).

10 Likewise, Articles 28 and 30 require that organizations that receive “public resources” are subject to a higher level of regulation. While the Collective’s document recognizes the need to monitor public funds, it asserts that what accounts for “public resources” is unclear in the Decree.
I believe that it is not only a legal requirement issue, rather also the behavior of public employees, who do [the legalization] process. Before, problems did not happen. Now there is another type of consideration related to the theme of statutes. Before it was a more formal requirement, today I see it as a requirement that determines really what an organization can and cannot do (CSO 2.027E; 1/26/11).

Other interview participants were concerned with ministerial discretion and its relation to unlimited access to information:

…the citizenry wants to know what are the activities of [our foundation] … and that what we plan to achieve this year. Perfect, right? However, in the [Decree No. 982] regulation, it would be at whatever moment during the year, in whatever situation, one could ask for whatever document, so, you can have people who say ‘give me the minutes from that board of directors meeting from two years ago.’ You would have to have a single person in charge of providing these documents. For a foundation like [us], it is impossible…we are a small team and people here complete various functions at the same time. We could not be dedicating a person to handle these requests (CSO 2.023E; 1/13/11).

In addition, the small group of organizations has concerns that too much information will be made public. The Registry of Civil Society Organizations created by the Decree No. 982, is where information and data on civil society organizations are housed and available to the public. The group of organizations finds that the new mechanism does not fully comply with the 2008 Constitution (Article 66.11) which states that personal information such as religious beliefs, political affiliations and information about health and sexual preferences is not required to be made public. For example, there is no exception to the publication of personal information related to sensitive issues such as civil society organizations members linked to domestic violence or alcoholic anonymous, for example. As such, the organizations state that members of organizations should not be disclosed; rather that there should be clear rules and limits to the use of this information. Lastly, the group cites several financial barriers to receiving legal status for organizations; as new amounts of for financial requirements with the Decree No. 982 have increased ten times as before11 (Aportes Ciudadanos, 2009).

In addition, the Citizens Contributions document declares that civil society organizations desire to “work jointly with the state” to achieve objectives set out in the Constitution and create

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11 The Decree (Article 2) outlines the minimum amount of money needed to legalize a civil society organization. The amount of money required to obtain legal status depends on the structure of the civil society organization. A foundation must have a minimum of $4,000 in assets. A first-tier corporation must have assets of at least $400 while both second- and third-tier corporations, as foundations, must have assets of at least $4,000. To be a foundation, an organization must be legalized, be not-for-profit, and engage in activities that promote and develop social, cultural and educational programs for the public benefit. A corporation must also be legalized and be not-for-profit but is to provide a common good for its members or a determined community. Corporations are further divided into three levels. A first-tier corporation (also called an association) represents a group of persons with at least five members. They can be clubs, committees, professional groups, and centres. A second-tier corporation is considered an umbrella group of first-tier groups like a federation or chamber. And finally, a third-tier corporation is an even more encompassing group of the second-tier organizations such as confederations, national unions, or similar organizations (SPMSPC, 2008a).11
a legal framework that regulates the nonprofit sector in Ecuador (Aportes Ciudadanos, 2009, p. 2). Here, the organizations begin to set out a main objective, i.e., to work with the state to achieve mutual goals and to elaborate the regulation of civil society organizations. As highlighted by one interview participant:

I believe that from the [group] which I am part, what we have always said is we have to establish alliances and mechanisms… of dialogue, it is to say, we don’t obtain or take an attitude of confrontation, rather … to establish mechanisms which we can manage together, so, it is dialogue, it is to have a relation with the government, from this perspective it continues forward (CSO 2.025E; 1/19/11).

The small group of civil society organizations signed¹² and took the Citizens Contributions document to several ministerial officials including the Ministry of the Coordination of Social Development the entity at the time in charge of the implementation of Decree No. 982. As a result, an Inter-Ministerial Agreement (No. 001 and No. 004) was reached among Ministries to further grant legal status to civil society organizations. According to the Inter-Ministerial Agreement of 2009, Ministries would standardize processes that coincided with the legalization process and other regulations under Decree No. 982 (Ministerio de Coordinación de Desarrollo Social, 2009a & 2009b). However, many organizations did not feel that the Agreement changed the inconstancies across the ministries.

This initial stage of what will be the Collective not only focused on dialogue with the state; but also the articulation and debate about what the regulation of civil society is in Ecuador. Participants were able to talk about this during meetings and interviews:

I believe that to regulate is to establish a framework, a common framework, to establish criteria so [that] a sector can function in its relation with the state, that is how I understand regulation (CSO 2.027E; 1/26/11).

We in the foundation, when we talk about regulation, we associate it with transparency and with the quality of services that we give (CSO 2.002E; 9/21/10).

Some interview participants talked about regulation by explaining what it should not be, or highlighting Decree No. 982 as a ‘bad regulation:’

I believe that [Decree No. 982] is a bad example, I agree with a type of looser regulation, like you have for the private businesses, for the state, rather, loose guidelines that as citizens we have to complete… I do not believe in a strict regulation (CSO 2.008E; 10/25/10).

… Decree No. 982 [does not] satisfy what is laid out in the Constitution and in international agreements. This puts us in a position and in the right to demand better regulation, not to defend

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¹² Seven organizations signed the Citizen Contributions document. These organizations are very well-known at the national and international levels and included: Esquel Foundation, Group FARO, Citizen Participation, FundaMedios, Ecuador Foundation, Ecuadorian Center of Environmental Rights (CEDA), Center about Law and Society (CIDES).
NGOs, it is not only about this, but rather it is in the defense of democracy, it is in the defense of the Constitution. Therefore we have initiated the [group of organizations] that … a quality regulation that the Ecuadorian democracy deserves (CSO 2.031; 2/10/11).

In this stage, a group of well-established organizations in Ecuador began to talk about a sector-level body that would coordinate and debate issues within the sector, such as legalization and regulation policy; and relations with government in general. This stage brought about the first steps to consolidating what would eventually be called the Collective of Civil Society Organizations. While the formal name was not yet being used, the idea of a national level ‘Collective’ was beginning to circulate among the small group of civil society organizations. This stage established that organizations were concerned about Decree No. 982, but willing to work jointly with the state. It also began a discussion on what regulation of civil society means in Ecuador.


In 2009, after significant debate, the group of organizations decides to back off from meeting with public officials and producing public statements. This was an important turn for the group of organizations, as they increasingly believed that they needed to ‘get their story right.’ The group focused now on organization. Questions continually raised are, as civil society, who are we? what do we do? and why? These questions surface essentially as a result of the government asking the same questions. The Decree No. 982 included data collection (the Registry of Civil Society Organizations, RUOSC) in an effort to better understand civil society in order to better regulate it. The group of organizations will also engage in data collection but not regulate the sector, but rather self-regulate the sector, as will be explained further below.

To explore broader questions about civil society, the group of organizations launched three Working Groups. First, a Working Group (WG1) continued to explore the idea of a Collective of Civil Society Organizations in Ecuador. The second Working Group (WG2) was created to continue the discussion and drafting of a legal framework for civil society organizations in Ecuador. And third, a Working Group (WG3) was set up to explore the regulation mechanisms of civil society outside of government—focusing on transparency and accountability—and increasingly using the term “self-regulation.”

The consolidation of a Collective of Civil Society Organizations (WG1) became a process that unfolded as the other two Working Groups pushed ahead. The term “Collective” was now starting to be regularly used among the group of civil society organizations. During this stage it became increasingly apparent that the Collective was not only about consolidating the participating organizations, but also consolidating the sector of ‘civil society.’ As one interview participant explains:

… we have not been very visible with the state because we have to organize and work out some points. And we are … a group that is going to work on these points. … it is going to be a conversation, but not publicly now… (CSO 2.008E; 10/25/10).
Several ideas were offered to help shape the “Collective.” WG2 would suggest that a civil society legal framework can help. One idea proposed was to put the sector’s law again on the agenda of the public sector. This included a process of, again, negotiation and dialogue with the state through meetings. Another idea discussed was to have a public forum that presents a regional perspective of civil society legal framework laws, pulling from the knowledge of ICNL and experiences from other countries. This would not have necessarily been a move to formally negotiate with the government but rather to get it on the public agenda. Some participants in favor felt that this would have allowed the organizations to work behind the scenes on a draft a law themselves while keeping the debate active between sectors. Some participants felt that the Collective needed to have a proposal ready in the event that the government suddenly proposed something new. That is, when the government itself proposes a law, the Collective would have been ready for a counter proposal.

While the Collective continued to debate the best approach to proceed with a civil society legal framework law, meeting attendance starts to dwindle and the Collective starts to lose some momentum. Keeping organizations interested and focused became a challenge, as one interview participant mentioned:

… many times unfortunately [a group of organizations] functions in a very slow way, it does not advance, it does not make decisions, one does not see the products and then people get tired…and then the organizations go, it is what is now happening with [the group]. There were many more organizations and now there are few and I think if they don’t change the way it is managed, it is going to decrease more and it would be a shame that it disappears (CSO 2.012E; 11/9/10).

But other strengths to keep organizations interested. Particularly the interest in self-regulation and accountability mechanisms as one interview participant explained:

[We are involved]… for three or four themes. One theme is the legal part, the regulation of NGOs. Besides this, the theme of self-regulation united us…promoting for some time in different sites and this [group of organizations] started to work in a NGO code of ethics, and this seems very interesting to [our foundation]. The other was accountability and transparency that to us, it seems as institutions we would be working more on this (CSO 2.015E; 12/13/10).

Despite fluctuating numbers during this period, the WG3 on transparency and self-regulation of the sector was able to tap in to several organizational resources and international networks to launch an exploratory research project. This project was led by two well-established civil society organizations active from the beginning of the Collective: Group Faro and Ecuadorian Center of Environmental Rights (CEDA). WG3 initiated a partnership with international civil society transparency initiatives, particularly the regional project called “Strengthening the accountability and transparency practices of civil society organizations in Latin America” with the Colombian Confederation of NGOs, the NGO Network for Transparency also in Colombia and, the Communication and Development Institute with CIVICUS: World Alliance for Citizen Participation (ICD-CIVICUS) in Uruguay. With the Network’s guidance, the research project sought to create a baseline about the understanding of transparency from which to develop related mechanisms of self-regulation. The objectives are to 1) understand transparency and fiscal responsibility/accountability; 2) create new dialogue about
the topic; 3) garner proposals to strengthen transparency\textsuperscript{13} and fiscal responsibility/accountability; and 4) generate new practices and learned lessons.\textsuperscript{14}

To do this, the WG3 started a “mapping” of civil society organizations which are part of the Collective (at the time about 40?). They were interested in creating a map of civil society organizations by collecting data in order to explain who they are, what they do and where they do it, for example. Once the data were collected, as a group they planned to decide what information would be publicly disseminated. As one active WG3 participant explains:

… we have to show what we are, with who we work, how much of a budget we manage… look, we are here to be accountable because we believe we are important to society, we are not embarrassed by our work, rather we feel proud of what and who we are (CSO 2.031; 2/10/11).

This initiative was again in response, essentially, to the Decree No. 982 which has its own data collection element through the Registry of Civil Society Organizations (RUOSC). The process of the consolidation of the Collective has also tended to focus on the collection of data. Like the government, the Collective saw a need to “map” civil society organizations as part of a learning and ‘getting to know each other’ process. Just as mapping was a first step for government to regulate, mapping for the Collective participants was lauded as a first necessary step to develop and strengthen a national level Collective and promote self-regulation. Many of the Collective participants felt information and data on civil society organizations were thus, important to the development and strengthening of the civil society sector as a whole. For the participants, a key component of the information and data was how it was collected and how it was presented. As one WG3 participants explains:

So the first thing is to organize and do this mapping, but it has to be a map that [we] all are in agreement about, it is to say that you if you see it [on the map]… effectively [an organization] is doing [it], it cannot be a partially invented mapping, in this one has to be careful in how the results of the [government] registry come out, they have to be results scientifically based (CSO 2.008E; 10/25/10).

The mapping process seems to mimic government’s mapping, while at a much smaller scale. Government maps for regulation and the Collective maps for self-regulation. Indeed, self-regulation was becoming a more common term among the organizations that are participating. They saw the concept of self-regulation as legitimating the Collective and the sector:

\textsuperscript{13} Using the popularity of the idea of transparency in Ecuador since the passing of the \textit{Ley Orgánica de Transparencia y Acceso a la Información Pública}, The Organic Law of Transparency and Access to Public Information, in 2004 (LOTAIP)\textsuperscript{13}, the WG3 wanted to expand the concerns around transparency, which was general associated with only the public sector, to that of transparency within civil society in Ecuador.

\textsuperscript{14} In addition to the research project about the transparency, a virtual course on transparency for NGOs was offered and had the participation of approximately 40 Ecuadorian organizations.
[Government] regulation should promote transparency and should promote accountability, what it happening with [the group], because if there is … self-regulation … it would be much easier than to complete the regulation that comes externally… (CSO 2.012E; 11/9/10).

Self-regulation for me, is the exercise of central elements of civil society that define an self-governing civil society organization (CSO 2.027E; 1/26/11).

Self-regulation is all the mechanisms that you decide voluntarily to adopt to have better internal controls. So, this includes ethical factors, stricter regulations to the interior of organizations, auditing mechanisms of internal vigilance, let’s say, stricter and more efficient (CSO 2.023E; 1/13/11).

But other participants recognized still confusion about the term among the organizations that were forming the Collective:

… the concept of self-regulation, while it is supported by many organizations, it is not so clear for all and [organizations] have their own interpretations. … There are organizations that have guidelines, but in practice they are not very transparent and there are other organizations that have a lot of guidelines and in practice are very transparent, they do it well. So, there are these two [types of organizations] in Ecuador (CSO 2.008E; 10/25/10).

Despite a lack of clarity with terms still, this phase of the Collective focused on getting to know each other and organizing themselves internally as a Collective. In 2010, after sometime without public action by the Collective and little interaction with the government, the participants within the Collective started again to discuss its relationships with other actors. Ideas about a strategic ‘public campaign’ began to surface. Participants felt that the Collective needed to effectively communicate what civil society organizations are and what they do not just among themselves, but to the public at large. As some interview participants said:

Yes, we would like that society is conscious of the role that we complete (CSO 2.002E; 9/21/10).

… to make the Collective more visible, we are ready to say to the public: ‘Here we are a group of organizations and we are conscious of our responsibility, that is, we command a space in the public sphere but we are conscience of the responsibility that this brings (CSO 2.031; 2/10/11).

As this stage represented getting to know themselves, it also began to solidify the objectives of the Collective. The Collective had now reached a level of consensus among its participants about goals that focused on (1) reforming Decree No. 982 and any pending regulation to push for an acceptable civil society legal framework, and (2) moving forward with accountability mechanisms for the sector, particularly self-regulation. As it began to experiment with going public, government became a growing concern. The Collective was looking for a government link, it was becoming more clear that the government itself was not putting forth a legitimate entity with which the Collective could engage.

3. Mobilization Incited. (December 2010)
Just as the Collective solidifies its priorities, considers making public its efforts, and looks for a legitimate counterpart in government, a revised regulation is proposed by the government\(^\text{15}\) via the Secretariat of People, Social Movements and Citizen Participation\(^\text{16}\). With the release of the proposed regulation, at the December 1, 2010 “First National Meeting of NGOs,” the Secretariat of People, Social Movements and Citizen Participation and its Office of the RUOSC was publicly positioned as the liaison between the Correa Administration and civil society in regard to proposed reforms related to Ecuador’s civil society legal framework (El Ciudadano, 2010). During the meeting, civil society organizations listened to government officials from the Secretariat of People, Social Movements and Citizen Participation, Secretariat for National Planning and Development, and other government bodies. The Secretary of People, Social Movements and Citizen Participation, at the time, Alexandra Ocles stated the objective of her office: “We want to consolidate our relation with (NGO/CSOs), now that we meet, we realize that there are more things that unify us than separate us” (La Secretaría, 2010, December 8). The meeting was attended by over 100 representatives of civil society organizations. The Secretariat of People released the draft version of Proyecto de Reglamento de Personas Jurídicas de Derecho Privado con Finalidad Social y sin Fines de Lucro or the Regulation Project of Private Law for Legal Status with Social Purpose and Not-for-Profit (Presidencia de la República del Ecuador, 2010). It requested that organizations give their feedback to the new regulation in the next week and half and then the Secretariat would call a second meeting. A timeline was presented that sought to have a draft regulation to the Office of the President by the first week of January 2011.

The Collective called a meeting a week later to draft a document of comments to the new proposed regulation. Participants were uneasy with the new proposal as they saw it virtually as the same Decree No. 982. In fact, one participant highlighted that the proposal only included one of the changes that were requested by the Collective during various meetings with government officials in 2008 and 2009\(^\text{17}\). Nervous of the pending regulation, participants agreed that they did not accept the proposed regulation. Here, the Collective takes the stance that it wants to see a law for the sector realized because it is about a fundamental right: the right to association. This represents a change from previous discussions. That is, as explained above the Collective was beginning to define its two objectives, one related to regulation and the other to accountability mechanisms, such as self-regulation. Previously within its objective related to regulation, the

\(^{15}\) Due to public statements by Ecuador’s President Correa in the last two years, some civil society organizations had by this time already questioned the direction Ecuador’s regulation toward the sector was headed. New regulations for various sectors, including civil society organizations, in the last several years were drafted under the Correa Administration’s Citizen Revolution, which can be understood as various social and economic reforms that explicitly criticize and reverse previous neoliberal policies.

\(^{16}\) The Secretariat of People, Social Movements and Citizen Participation is the coordinator of the public policy that guarantees the intercultural citizens’ rights and participation. It seeks to mediate actions and stimulate and consolidate people, social movements and citizens in the new key decisions of the new model of development. Its vision includes a public institutions that impulses participative and inter cultural citizens as fundamental axis in inclusive democracy, guaranteeing the rights of nations, people and the organizations and citizens (http://www.secretariadepueblos.gov.ec/).

\(^{17}\) This was that of the financial requirements. EXPLAIN.
Collective was careful not to use the word ‘law,’ rather they were using broader terms such as legal frameworks or regulation in general. However, now the Collective was requesting a law for the sector for the first time. The Collective sends a document as instructed by the Secretariat with this stance.

The Collective then meets again the following week to prepare for a second public forum scheduled by the Secretariat to take place on December 16th, 2010. At this Collective meeting, the Collective elaborated a strategy that sought to underline the nature of the sector as flexible and creative and while working in the public space, not part of the public sector administrative apparatus. Another issue that the participants determined as important was to highlight areas where mutual interests between civil society organizations and government exist. For example, the Collective wanted to express to government officials that the sector supported transparency and accountability mechanisms and were increasingly discussing self-regulation. In addition, they wanted to stress that both the public and civil society sectors should be aligned with the 2008 Constitution, in particularly protecting the right to associate and the right to expression. Civil society organizations wanted to rely on the state to protect their rights and also foster civil society.

In fact, more and more, participants understood a government’s role in strengthening civil society through its regulatory framework. Interview participants stated:

The state, the government has a responsibility toward its citizens, so it should strengthen civil society… because civil society [is comprised of] groupings of organized citizens and citizens have rights … (CSO 2.027E; 1/26/11).

…the role of the state… should be to promote [NGOs] (CSO 2.015E; 12/13/10).

What a regulation should do is encourage the right, protect and impulse the right, [and] tend towards the strengthening of civil society. This includes the mechanisms of transparency, of accountability, of self-regulation, all of this strengthens a sector, in this case, civil society (CSO 2.023E; 1/13/11).

It seems to me that it is important that the state promotes the existence of civil society, that it guarantees the existence of civil society. In light of what the New Constitution says, the new Constitution guarantees of the freedom of association and guarantees the existence of civil society (CSO 2.026E; 1/20/11).

With the Collective’s perception that the government focused more on a regulatory component than on the development and strengthening of civil society, in addition to the past several months of discourse by the President and administration officials, many of the organizations in the Collective questioned continued dialogue with the government. Some participants were adamant by saying “enough is enough” reminding other participants that for almost two years the Collective had been trying to create a dialogue, and according to several participants, the Collective had not seen much success. Organizations were frustrated, as one interview participant stated:
So, what do organizations see? They see that organizations are an aspect of regulation. What organizations feel is that the state does not see us as organizations worried for the country, that we want to collaborate, rather [the state] only sees [organizations] as something to regulate (CSO 2.008E; 10/25/10).

At this stage two concerns emerge. First, it is clear that the participants want to better articulate the understanding of civil society as a sector, focusing on its development and strengthening. Second, there is continued uncertainty about what government entity was assuming the role of a liaison to civil society. Indeed, Secretariat and RUOSC had been publicly positioned as the link, but their legitimacy and capacity, along with other government agencies such as the line Ministries, were heavily questioned. Interview participants reflect on government capacity in regulation:

How does it seem that in the [Ministry of Economic and Social Inclusion] there are 15,000 organizations that are affiliated, what capacity can the Ministry of Economic and Social Inclusion have to regulate and control, especially 15,000 organizations if they do not create structures inside the [Ministry of Economic and Social Inclusion] in order to elaborate technical instruments needed to regulate and control those 15,000 organizations (CSO 2.012E; 11/9/10).

Yes, [our relation with the state] has changed… when [the foundation] formed, we understood very clearly that our interlocutor … was the [Ministry of Economic and Social Inclusion], the place where we had to register everything. Now, in reality, we do not know who is our interlocutor. Is it the RUOSC? Is it the Ministry of Economic and Social Inclusion? The Secretary of People? Who is the interlocutor to civil society in this moment? … with who do you sit down and talk? (CSO 2.023E; 1/13/11).

This is what I say to the Ministry of Health, they insist that they are the leaders of the health sector. I tell them that, of course, they should be the leaders, but it is one thing to say that we are leaders, and it is another thing to have the capacity to be a leader, leadership does not only mean control, rather it means many technical aspects that you should be managing, within the public sector and within the private sector, in order to effectively benefit the health of the population, in order that the people can enjoy good health and have mechanisms to recuperate when they fall sick (CSO 2.012E; 11/9/10).

A December 16th meeting was called by the Secretariat and was attended by about 30 organizations. Here it was clear that the Collective was the most organized grouping of civil society organizations. Government officials highlighted that they had only received seven-nine correspondences from civil society with observations on the regulation proposed on December 1, 2010, while a few of these were sent by networks or aggregations of organizations. At this meeting, the Collective publicly rejected the proposed regulation and for the first time, made public its desire to begin dialogue with the state to construct a proper law. To appease the present organizations, the Secretariat proposed a commission comprised of Secretariat and civil society representatives. This commission would meet during the first week of January to discussion in depth the proposed regulation.
After that December 16th meeting and as the Christmas holiday approached, the Secretariat continued its process to have a draft regulation presented to the President by the new year. Government officials were offering sound bites on the regulation of civil society organizations through state and independent media. The Secretary of People at the time said that "Many of these NGOs have been ghosts, many of these NGOs only remain as names, many have also dedicated themselves to political proselytism" (SPMSPC, 2011). The Secretary continued by saying that “In this case, what we have said is if a [NGO] wants to do political proselytism and wants to dedicate itself to political parties, simply, change [the organization’s] statutes, and register in the National Electoral Council and there is no problem” (SPMSPC, 2011).

The concept of political proselytism incited much debate in Collective meetings and within the public forums with government officials. Collective participants were concerned with the vagueness of the term. For many organizations there was a concern that the Executive branch was assuming an unhealthy concentration of power, one interview participant explained:

…Because the guidelines that regulate civil society organizations, the Presidential Executive Decree No. 982 of 2008, and the draft regulation proposed in December of 2010 by the Secretariat of People also reflect this tension between democratized institutions and institutions of concentrated power in very visible way. When you read the introductions of these Executive Decrees, they talk about the respect and the promotion of participation, etc., but then in many other parts of the actual bodies of the regulations, there exists significant discretion, even a bit of authoritarianism in regard to the power to dissolve an organization when the organization is not aligned to the political project of the serving government. How is it possible that there is a regulatory project like this, while we have the 2008 Constitution? It is because the Constitution has within it a schizophrenic tension, democratization on one side, and extreme concentration of power on the other side (CSO 2.031; 2/10/11)

The Collective met one more time in 2010, on December 22 to unify its stance, decide on participants for the commission called on by the Secretariat. The meeting was attended by approximately 30 organizations and again a discussion ensued about many, at this point, familiar issues. However, the discussion was representative of this stage of the Collective. During this late December 2010 meeting the participants agreed that it was the right time to publish a written statement clearly laying out the Collective’s interests. The Collective would publish a Manifesto the first week of January to coincide with what they had been told would be the timeframe for a final regulation to reach the Office of the President. While frustrated the Collective continues to use the language of dialogue but also take its message—particularly that the Collective does not support the proposed regulation—to the greater public. This stance continued to be situated within the need to generate a better understand of what is the concept of civil society organizations in Ecuador.

4. Public Launch. (January 2011 – present)

January 2011 brought about more meetings with the government through the designated Commission and a public launch of the Collective of Civil Society Organizations. On January 4, 2011 the commission formed by Collective participants and government officials. The Collective participants went to the meeting with the intention to draft a revised regulation with government
officials, but rather the meeting provided another platform for the Collective to discuss its issues with Decree No. 982 and the proposed regulation. At the meeting the Collective continued to be clear that it rejects the proposed regulation and requested the elaboration of a law for the sector.

Thereafter relations between the Collective and the Secretariat of People became strained when several quotes were taken out of context from the Commission meeting on January 4, 2011, according to Collective participants, were published by state-run media and government websites. Following the January 4, 2011 meeting, during that week Collective participants felt the government was interpreting incorrectly and publishing false information related to the Collective’s stance.

On the eve of what would be the publication of the Manifesto, January 6, 2011 the Collective met to elaborate a strategy for any reaction after the publication of the Manifesto. The Collective at this point was concerned with getting more civil society organizations in the know and involved. In addition to discussing regulation and the sector in general with government, the Collective decided to branch out beyond what was now described as not a legitimate government entity, the Secretariat and its Office of the RUOSC. The Collective put together a matrix of government entities that it could penetrate and entities with which there were already personal connections. This included governmental bodies such as the Office of the Vice Presidency, the Council on Citizen Participation and Social Control, the Private Secretary to the President, and Assembly members, among others. Conversations with these bodies would be realized in private while the Collective also focused on public attention.

On January 7, 2011, 67 civil society organizations in Ecuador signed a public Manifesto described as a “unified message with multiple voices” (Estévez, 2011; OSC Ecuador, 2011). The Manifesto again publicly rejected the December 2010 proposed regulation and was published in two of the largest newspapers in Ecuador (el Comercio and el Universo). It lays out four agreed on principals for the Collective of Civil Society Organizations that include: better understanding of civil society organizations and the nature of civil society; fostering accountability mechanisms and a culture of transparency; respecting the Ecuadorian Constitution; and developing the state’s role in protecting and fostering civil society development (OSC Ecuador, 2011). In addition, during this week on January 11, 2011, the Collective participants of the Commission wrote an open letter to the Secretary of People emphasizing that quotes were taken out of context and reiterating the four points elaborated in the recently published Manifesto.

After these public moves—the Manifesto and the letter to the Secretary—the Collective saw very little response from government officials. However, into February 2011, the Collective continued to meet and momentum was high as a result of the previous two months of mobilization. February 2011 brought about a continued charge to make the sector more visible. The Collective was to be more visible, targeting public audiences, while working on its two main objectives: (1) the construction of a law for the sector; and, (2) continuing the work of transparency, accountability mechanisms and self-regulation. As the government’s focus on regulation is waning, the Collective starts to focus on its second objective with WG2.

Seeing the need for a greater public presence, the Collective focuses on publicizing the work of WG3 on transparency, accountability, and self-regulation. The Collective made public a
report on accountability, which was voluntarily signed by 49 organizations in Ecuador. The “Accountability Report, 2010” is a report of 25 pages that provides descriptive data on the participating civil society organizations (Collective of Civil Society Organizations of Ecuador, 2011). The public launch on March 16, 2011 of the report was attended by 91 representatives from Ecuador’s civil society. The event was very much interrelated to the reason the Collective began. One of the leaders commented on the event in the press: “the process of the Decree [No. 982] … it reflected a change in the paradigm and the rules of the game within the relations between the state and civil society” (Group FARO press release, 2011). The civil society leader further reflected on a desire for the Collective to influence the civil society sector as a whole, “It is a new page in the history of civil society in Ecuador. We are taking a step to encourage ourselves and other civil society organizations to continue actively participating in this process that favors the flourishing of a civil society committed to the construction of a democratic, prosperous, and solitary country” (Group FARO press release, 2011).

The report argues why organized civil society is such an “important sector” in Ecuador. It defines accountability as “an expression of responsibility with transparency and ethics; of the autonomy of a sector that assumes self-regulation; of cohesion with which we preach and ask of other actors in society, and of the unity within the diverse sector” (p. 3). Many of the ideas in the Accountability Report are reiterating the ideas from the 2009 Citizen’s Contributions documents out during the Collective’s first stage. The report ties civil society to a strong democracy arguing that civil society is where many of the ideas for reform and citizen wellbeing are initiated. The report then provides data on various subjects including where organizations are working, thematic areas of work, who and how many beneficiaries, information about the amount of money organizations manage, etc. These data had previously not been aggregated nor available to civil society organizations themselves and less so among the public. In addition, the information that is provided in the document had not been previously covered in media outlets in Ecuador (Cezar’s article).

This fourth stage of the Collective represents going public. Next steps of the Collective are currently under discussion. Elaborating a law and continuing the discussion of accountability mechanisms, particularly self-regulation are under an overarching goal to consolidate and formalize the national-level Collective. This now includes forming an integrated Commission of approximately ten participants from civil society organizations and networks to elaborate clear proposals for the Collective’s future. In addition, participating organizations in the Collective are putting together a plan for greater dissemination of the Accountability Report. The Collective is

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18 The event included an introduction about the Collective by FARO Group’s director, Orazio Bellettini. It then provided an overview of the released report presented by several of the Collective’s active participants: César Ricaurte of FundaMedios; María Alvarado of Fundación Madre Teresa; José Tonello of Fondo Ecuatoriano Populorum Progressio and Humberto Salazar of Fundación Esquel. It ended with a keynote speaker, Mauricio Cadavid Restrepo from Antioqueña Federation of NGOs in Colombia. He spoke of experiences in Antioqueña—the advances and challenges of accountability efforts by the sector.

19 Some of the data that is highlighted in the report, as well as in subsequent editorial pieces on the report, include the amount of beneficiaries that the participating organizations serve. A total of 1,416,718 direct beneficiaries in 2010 was a result of the work of the NGOs according to the report, which equals about 10% of the Ecuadorian population. Indirect beneficiaries are totaled at 5,152,316 which is about 40% of the Ecuadorian population. Areas where the NGOs are most active are in capacity building (78%), research (59%) and consultancy (62%).
still in discussion about its institutionalization. In the context of Ecuador, as noted by the following participant, more formalization could be needed for its sustainability:

I personally believe that the Collective of Civil Society Organization does not have a chance to function if it does not institutionalize itself and [to do so it] probably needs to pursue legal status, in order to effectively have a structure, have who to direct it, have mechanisms that even look for funding, if not, how will the Collective function? (CSO 2.012E; 11/9/10).

**Discussion: Legitimizing and Defining Civil Society**

The narrative above describes and explains the construction of a Collective of Civil Society Organizations. The Collective of Civil Society Organizations is now a group of approximately 60 nonprofit organizations that initially joined together to debate to government regulations toward civil society organizations. The Collective is the most organized effort in response to Decree No. 982 that does not include litigation. While the Collective was a direct response to regulation of civil society organizations in Ecuador, it began to focus not only on regulation of civil society but also the construction of self-regulating organizations. This focus on self-regulation became a tool for legitimizing and defining civil society in Ecuador.

Dodge, Ospina & Foldy (2005) understand three approaches to narrative inquiry: *narrative as language*, i.e., narratives help to communicate meaning; *narrative as knowledge* or that narratives can help to understand and know more about the topic of interest for example; and finally, *narrative as metaphor* in that narratives can uncover often hidden structures and social processes. This paper tends to weight more *narrative as knowledge* as this narrative shows a process of the formation of a national Collective in Ecuador that is organized around both the desire to reform government regulation and its own journey with self-regulation.

Narratives and their stories have “a beginning, middle and end (or some sense of temporal progress), that help to organize events into coherent plots with some kind of resolution” (Ospina & Dodge, p. 289). In the Ecuador case, the end is not determined as the narrative of self-regulation is still unfolding. However, here I have identified four temporal stages of the narrative: 1. *Dialogue and Negotiation with Government* (April 2008 - August 2009); 2. *Behind Closed Doors, Objectives Emerge* (2009 – 2010); 3. *Mobilization Incited* (December 2010); and 4. *Public Launch* (January 2011 – present) (see Table 1).

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20 There are actually about 175 emails addresses on its email listserv, some organizations have several emails listed.
21 Two separate legal suits have been filed against Decree No. 982 asserting its unconstitutionality in Ecuador. The first from the Red Provincial de Organizaciones de Mujeres Kichwas y Rurales de Chimborazo, The Provincial Network of Rural and Quichua Women’s Organizations of Chimborazo, in 2009 and and the second from the environmental NGO Acción Ecológica, Environmental Action, in 2010.
<table>
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<tr>
<th>Phase</th>
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<tr>
<td>1. Dialogue and Negotiation with Government. (April 2008 - August 2009)</td>
<td>First steps to consolidating what would eventually be called the Collective of Civil Society Organizations. This stage established that organizations were concerned about Decree No. 982, but focused on dialogue with the state. It also began a debate about what the regulation of civil society means in Ecuador.</td>
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<td>2. Behind Closed Doors, Objectives Emerge. (2009 – 2010)</td>
<td>Organizations to get to know themselves and begin to solidify the objectives of the what now is called the Collective of Civil Society Organizations: (1) reforming Decree No. 982 and pushing for a new civil society legal framework, and (2) moving forward with accountability mechanisms for the sector, particularly self-regulation. The Collective begins data collection and mapping. It recognized that the government itself was not putting forth a legitimate entity with which the Collective could engage.</td>
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<tr>
<td>3. Mobilization Incited. (December 2010)</td>
<td>The government publicly puts forth the Secretariat of People, Social Movements and Citizen Participation as the liaison to civil society and proposes new regulation. The Collective determines that the Secretary as not legitimate liaison and rejects the proposed regulation. While frustrated with government, the Collective continues to use the language of dialogue but seeks to take its message to the greater public.</td>
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The first stage of the Collective, *Dialogue and Negotiation with Government* (April 2008 - January 2009) represented the first steps to consolidating what would eventually be called the Collective of Civil Society Organizations. Organizations were brought together because of concerns about Decree No. 982 and focused on dialogue with the state to reform regulations. This stage enabled organizations to debate what a regulation of civil society might look like in Ecuador and led to a step back. The group of organizations then engage in a second stage of formation: *Behind Closed Doors, Objectives Emerge* (2009 – 2010). In this second stage organizations begin the process of getting to know each other. Here the group begins to solidify the objectives of what now would be called the Collective of Civil Society Organizations: (1) reforming Decree No. 982 and pushing for a new civil society legal framework, and (2) moving forward with accountability mechanisms for the sector, particularly self-regulation. As the group of organizations formalized, it started to recognize that the government itself was not putting forth a legitimate entity with which the Collective could engage.

In the third phase, the Collective was mobilized by external conditions, specifically the start of formal, public meetings called upon by government. During this third phase: 3. *Mobilization Incited* (December 2010), the government publically puts forth the Secretariat of People and its RUOSC as the liaison to civil society and proposes new regulation toward civil society. However, quickly, the Collective determines the Secretariat is not legitimate and rejects the proposed regulation. While frustrated, the Collective continues to use the language of dialogue but seeks to take its message to the greater public. This then leads to its fourth and current stage: 4. *Public Launch* (January 2011 – present). The Collective of Civil Society
Organizations goes public with its *Manifesto* and the Accountability Event and continued the consolidation of the Collective of Civil Society Organizations.

During these four stages, the Collective sought leadership from within and also from government. Indeed, through the narrative, many times government was taking a lead in the discourse of civil society and the Collective was reacting to and at times mimicking the government discourse, through mapping and (self-)regulation. At the same time, throughout the four stages while the government takes a strong stance toward civil society. The Collective is consistently looking for a government agency with which it can relate, i.e., a legitimate government agency that engages with civil society. In fact, the four stages are defined often in reference to the Collective’s relationships (or lack of) to government (and, at times, the public). Throughout these stages, the narrative analysis illuminates the encompassing narrative as one of the emerging discourse on self-regulation and legitimizing the sector in general. As this research pushes forward, the narrative of Ecuador will continue to be examined. Illuminating the encompassing narrative and related themes will give credence to narrative as knowledge, as we can take lessons from the Ecuador experience.

**Conclusion**

With nonprofit regulation again in the headlines in the US and abroad and (restrictive) regulatory policies popping up across several regions, many civil society organizations find themselves debating both regulation and self-regulation. The Ecuadorian narrative shows the struggles and processes of self-regulation—that is, both legitimizing and defining civil society while constructing relationships among organizations themselves, with the state, and with the public. Narrative can help build theory and contribute to self-regulation literature in nonprofit studies by examining an in-depth case of organizations’ self-construction process of self-regulation organizations.

However, the experience here of the Collective of Civil Society Organizations in Ecuador only represents a small group of organizations in Ecuador, a challenge the Collective has recognized. Prakash & Gugerty’s (2010) examination of the emerging trend of voluntary self-regulatory clubs finds that these initiatives only represent small sample in the universe of nonprofits in a given context. For example, in the US they note the watchdog Charity Navigator represents only approximately 5,400 organizations out of more than 1.5 million; likewise in Pakistan, for example, the self-regulation regime is comprised of 140 organizations when there are 10,000 organizations country-wide (Prakash & Gugerty, 2010). The Collective of Civil Society Organizations in Ecuador has about 60-100 in discussion, all of which are not active, out of more than 50,000 organizations with legal status.

The Ecuadorian case shows how the Collective was a reaction to government regulation but evolved into efforts to explore the sector as a whole. The process analyzed here sought to understand relationships among themselves, with the government and public. The Collective experience illuminates issues related to who has the role to define and legitimate the sector. In Ecuador both government and civil society organizations seek to define and legitimate the sector, while at different scales use similar tools, i.e. mapping and other mechanisms for (self-)regulation. Indeed the Ecuadorian narrative will continue. Continued understanding of how civil society organizations react to government regulation and construct their own agenda—
sometimes borrowing heavily on concepts and ideas of government, such as mapping—is needed. How the construction of the a Collective influences and shapes not only organizations’ relationships with government and the public but also organizations’ role within service provision and public policy is still unfolding in Ecuador and elsewhere.
References


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